

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Greenville County

Honorable Walton J. McLeod, IV, Circuit Court Judge

TIMIYA RASHAD MASSEY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2026-001040

APPENDIX

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DEFENDANT EXHIBITS

3

NO

DESCRIPTION

IDEV

4

1

Chain report

159

5

6

COURT EXHIBITS

7

NO

DESCRIPTION

IDEV

8

1

Warrant

10

9

2

Email Dated 10-31-17

14

10

3

Defendant's request to charge

384

11

4

Note from the jury

460

12

November 6, 2017

13

THE COURT: All right, we'll call to bar this morning the case of The State vs. Timiya Rashad Massey. And we have qualified our jury.

14

15

16

And if we can go ahead and call for 40 to be brought up, Madam Clerk.

17

18

THE CLERK: Yes, sir.

19

THE COURT: And in the intervening period, we will take up any outstanding motions.

20

21

MR. STEELE: I'm going to step into the hall and get my client.

22

23

THE COURT: Yes, sir.

24

MR. STEELE: Thank you, Your Honor.

25

THE COURT: All right, motions?

1 MR. STEELE: Which side you want to hear from
2 first, Your Honor?

3 THE COURT: I defer to y'all entirely. I trust
4 that y'all are going to give me what I need to get in
5 the appropriate order.

6 MR. STEELE: If, Your Honor, please.

7 THE COURT: Yes, sir.

8 MR. STEELE: I have a motion to suppress the
9 fruits of a search warrant, which was signed, it
10 looks like, by a Magistrate Judge on October 1st,
11 2015, to take a buccal swab from Mr. Massey. And the
12 description of the property reads as follows: Buccal
13 swab for DNA sample to be collected from the person
14 of Timiya Rashad Massey for further forensic testing.
15 And I believe that was done.

16 And I would move to suppress the proceeds of
17 that warrant based upon the warrant being improperly
18 issued based upon the lack of probable cause for the
19 issuance of the warrant and based upon the violation
20 of the Defendant's Fifth Amendment right not
21 incriminate himself.

22 THE COURT: All right, Mr. Richardson.

23 MR. RICHARDSON: Your Honor, I think it would be
24 best if I went ahead and had the warrant actually
25 marked as a Court's Exhibit, if that's okay.

1 THE COURT: Yes, sir, if you do that, we'll mark
2 it as Court's Exhibit 1.

3 (WHEREUPON, Court's Exhibit No. 1 was marked for
4 identification only.)

5 THE COURT: Thank you, sir.

6 MR. RICHARDSON: Your Honor, I think the basis
7 what I heard from Mr. Carlyle is his objection to it
8 is probable cause. It's established in the warrant,
9 we had a situation where this individual was located
10 outside of a residence where a fire fight had taken
11 place. In this location was a firearm, it's a mask
12 among other evidence.

13 Your Honor, I think it's explicit in the
14 affidavit by Mr. Chris Hammett, that is all stated.
15 And it's at this point in time that we have evidence
16 at this scene and we have a suspect at the time at
17 the scene. Obviously, we're going to need to compare
18 certain samples for DNA to the evidence that we have
19 at the scene.

20 Your Honor, that's our basic probable cause and
21 that's laid out in the affidavit, along with a very
22 limited description of property sought, being a DNA
23 sample to be collected from the person of Mr. Massey.
24 Ultimately, he did -- it wasn't a fight or anything
25 like that. He succumbed once the search warrant was

1 served on him and, of course, a return to that search
2 warrant was given to Mr. Massey.

3 So, under the statutory requirements of
4 17-13-140, I think this is an admissible search and
5 warrant.

6 THE COURT: Okay. All right.

7 Mr. Steele, anything you'd like to put on the
8 record, sir?

9 MR. STEELE: Your Honor, I would argue to the
10 Court that the description is inadequate. That there
11 was a lack of adequate understandable description and
12 the property to be sought. And I would point out
13 that the evidence in the possession of the officers
14 at that time did not indicate that there was only one
15 person involved, it indicated that there were a
16 number of people involved.

17 And I would respectfully submit that all of that
18 makes the warrant improperly issued. And I would
19 reiterate my motion to suppress the proceeds of that
20 warrant.

21 THE COURT: Okay. All right. Thank you.

22 I would respectfully deny the motion to
23 suppress. I've read the affidavit and I don't think
24 that the issuing judge abused his or her discretion
25 in issuing the search warrant. And I don't think

1 that the number of people involved necessarily
2 obviates the probable cause analysis or changes it.
3 The affidavit and the warrant pertains with
4 particular to the Defendant. And -- the Defendant,
5 Mr. Massey. And it does appear from the testimony of
6 the affiant that there was probable cause to have
7 collected the swab based on the nature of the injury,
8 the nature of the allegations and the proximity to
9 the scene of the crime. And the fact that there was
10 very clearly a -- Mr. Massey had been wounded as
11 well. Therefore, I'll deny the motion to suppress on
12 that basis. Thank you, sir.

13 Anything further from the Defense?

14 MR. STEELE: Not on that, Your Honor. I do have
15 one other issue to bring up.

16 THE COURT: Sure.

17 MR. STEELE: And that would be this. We
18 discussed this, as Your Honor knows, in the informal
19 in-camera conference prior to coming out here. But I
20 think Your Honor decided to the issue of whether I
21 can cross-examine Forensic Officer Josh Spurgeon
22 regarding some of the problems he's had in his
23 pursuit of his profession at the sheriff's office,
24 that we're going to reserve that.

25 But I would make the Court aware and make the

1 government aware at this time that I will be wanting
2 to cross-examine him about some of the reprimands
3 that he's received depending on, of course, what he
4 testifies to.

5 THE COURT: Okay, Mr. Richardson.

6 MR. RICHARDSON: Your Honor, that's fine. I
7 think that was our understanding we were going to
8 reserve that. What I would like to do is I sent a
9 categorical list to Mr. Steele, an email of these
10 particulars. I would like to go ahead and mark this
11 as well as Court's Exhibit 2 for your review so that
12 you can have recourse before we get to --

13 THE COURT: I understand. Let's go ahead and
14 mark it.

15 MR. STEELE: Are we talking about that email
16 that I received?

17 MR. RICHARDSON: This is a copy of it.

18 MR. STEELE: It's the same thing?

19 MR. RICHARDSON: Yes.

20 MR. STEELE: I have no objection, Your Honor.

21 THE COURT: All right. Mark that document as
22 Court's Exhibit No. 2.

23 (WHEREUPON, Court's Exhibit No. 2 was marked for
24 identification only.)

25 THE COURT: Thank you, sir.

1 MR. RICHARDSON: Yes, sir.

2 THE COURT: Okay. And I believe based on our
3 conversation, I was reserving that decision until the
4 time that it was offered into the record. I can't
5 determine pre-trial whether or not it would be
6 admissible or appropriate. So, I'll consider it in
7 the context of the testimony and the evidence that's
8 presented at that time.

9 MR. RICHARDSON: And likewise, Your Honor, we
10 also discussed autopsy photos. I'm probably
11 premature on that until my case is presented, but we
12 will be seeking certain autopsy photos.

13 THE COURT: Yeah, at some break, you can just
14 show Mr. Steele what it is that you wish to present.
15 I do think that in most instances, if the witness,
16 and I presume it's the coroner in this case,
17 establishes the relevances and authenticates the
18 same, some limited number of autopsy photos could be
19 appropriate and admissible. The problem always is
20 under 403, first of all, under the threshold, they're
21 unduly prejudicial. And then secondly, whether
22 they're duplicative of one another. That is, you
23 know, have one that shows one thing and have one that
24 shows another as opposed to a series of pictures that
25 essentially show the same thing.

1 MR. RICHARDSON: Yes, sir.

2 THE COURT: Okay.

3 MR. RICHARDSON: I will show Mr. Carlyle those
4 on lunch break.

5 THE COURT: All right, I appreciate it.
6 Anything further?

7 MR. STEELE: No, Your Honor.

8 THE COURT: All right, each of you have had the
9 opportunity to look at the warrants and the
10 affidavits on the warrants. Is there anything
11 objectionable on the warrants before -- that I need
12 to be careful about before I read them to the jury?

13 MR. STEELE: From to standpoint of Mr. Massey,
14 no, sir.

15 THE COURT: Okay. Okay.

16 They're coming up, Mr. Bailiff?

17 THE BAILIFF: They're outside waiting.

18 THE COURT: They're outside, okay, let's bring
19 them in.

20 MR. STEELE: Your Honor, you want to tell me how
21 many strikes I've got?

22 THE COURT: You've got 10 strike, sir. 10
23 strikes for the Defense, five for the State.

24 JURY QUALIFICATION

25 THE COURT: All right, ladies and gentlemen,

1 welcome to courtroom four. We are about to select a
2 jury for the case that I'm going to call to bar.
3 Now, I'll remind you that you continue under the oath
4 that you took downstairs to tell the truth. And the
5 process that we will follow for the selection of this
6 particular jury is going to be very similar to the
7 process that we followed downstairs. That is, I'm
8 going to pose questions to you and you'll answer
9 those questions. The distinction is that these
10 questions are designed to determine whether it's
11 appropriate that you sit on this jury as opposed to
12 whether you are generally and broadly qualified to
13 serve as jurors in the county and in the state.

14 Now, ladies and gentlemen, when I pose the
15 questions to you, again, you'll stand up, state your
16 name and your juror number and then give me the
17 response to the question that I pose. Now, it's
18 important, ladies and gentlemen, that you tell me
19 your name and juror number. Because Ms. Herron here
20 is the Court Reporter and she's taking down
21 everything that's being said in the courtroom. So,
22 when you stand up, if you simply start to tell me the
23 answer to the question, the record doesn't recognize
24 you. I might recognize you, but the record won't
25 recognize you. And it's important that the record is

1 clear who is addressing the Court and what the
2 response is. So, please state your name and your
3 juror jury number. If you start talking and I stop
4 you and say please state your name and juror number,
5 it's not because I'm trying to give you what for,
6 it's because the record needs to be clear, okay.

7 Now, ladies and gentlemen, we are going to call
8 to bar the case of The State vs. Timiya Rashad
9 Massey.

10 Mr. Massey, did I pronounce your first name
11 right, sir?

12 MR. MASSEY: Yes, sir.

13 THE COURT: Timiya Rashad Massey. Now, ladies
14 and gentlemen, there are several indictments that are
15 before the Court today. I'm going to read to you the
16 allegations on the indictments. Now, before I do
17 that, I need to make it very clear to you that what
18 I'll read to you are the allegations. I make no
19 representations to you what the facts are in this
20 case. I do not have the authority under the law to
21 have an opinion about the facts in this case. A
22 jury's role in the trial of the case is to determine
23 what the facts are.

24 So, ladies and gentlemen, when I read to you
25 these affidavits, I'm not telling you what the facts

1 are and I'm not telling you what happened. It's
2 important to know that in any proceeding, criminal
3 proceeding that comes before the courts in the United
4 States of America, the Defendant is presumed innocent
5 until the State proves each and every element of each
6 indictment beyond a reasonable doubt.

7 Now, ladies and gentlemen, the jury, a jury of
8 12 deliberating persons ultimately will determine
9 whether the State has met its burden of proving the
10 Defendant guilty beyond a reasonable doubt. Until
11 that time, the Defendant is presumed innocent. The
12 Defendant, imagine, if you will, wears a cloak of
13 innocence just like I'm wearing a robe, and retains
14 the presumption of innocence until 12 jurors
15 determine if they should or whether it's appropriate
16 to take that robe of innocence or that presumption of
17 innocence off of the Defendant.

18 Now, I spent a little bit of time explaining
19 that to you. The reason is because it's not just a
20 legal catchphrase. It is actually the cornerstone of
21 our criminal justice system. So, keep that in mind
22 as we go through the case and as we go through the
23 selection process. If I say anything to you at any
24 point in time that gives you the impression that I
25 have an opinion about the facts or what you should

1 ultimately do, disregard that. Because I truly don't
2 have an opinion about the facts of this case.

3 The indictments are just a charging paper. It's
4 the mechanism through which the State initiates
5 formal prosecution of the Defendant. But it's
6 important that I tell you what the case is about. It
7 important that I tell you the allegations so that you
8 can intelligently answer the questions that I pose to
9 you in jury selection.

10 So, ladies and gentlemen, I'm going to go
11 through them one by one. And the first indictment
12 that I have in front of me is Indictment No.
13 2016-GS-23-8747, The State vs. Timiya Rashad Massey
14 for attempted murder. In this case, ladies and
15 gentlemen, the State would allege that the Defendant
16 did in Greenville County on or about September 30th,
17 2015, unlawfully with malice aforethought and with
18 the intent to kill, attempt to kill, Haskell
19 Nutridge.

20 Ladies and gentlemen, the next indictment that I
21 have in front of me is The State vs. Mr. Massey, case
22 number 2016-GS-23-8748, indictment for burglary first
23 degree. In that indictment, ladies and gentlemen,
24 the State would allege that the Defendant did in
25 Greenville County or about September 30th, 2015,

1 willfully and unlawfully enter the dwelling of
2 Mr. Anthony Kareen Nutridge located at 1140 North
3 Franklin Road, Apartment ■ in Greenville, South
4 Carolina, without consent and with the intent to
5 commit a crime therein.

6 Ladies and gentlemen, the next indictment is The
7 State vs. Timiya Rashad Massey, indictment ending
8 3412, attempted armed robbery. In that case, ladies
9 and gentlemen, the State would allege that the
10 Defendant did in Greenville County on or about 30
11 September 2015, while armed with a deadly weapon, or
12 while alleging either by action or words that he was
13 armed, while using a deadly weapon, or object during
14 the commission of the robbery, would reasonably
15 believe to be a deadly weapon. That he did in that
16 instance attempt to take by means of force or
17 intimidation goods or monies described as drugs from
18 the person of Kenneth Leach. Sometimes the way these
19 are written are very awkward, so. I tell you that
20 because I don't want to have to accept responsibility
21 for the way they're drafted.

22 All right, ladies and gentlemen, the next case
23 is The State vs. Timiya Rashad Massey, case number
24 ending in 3413, attempted armed robbery. The State
25 would allege that Mr. Massey did in Greenville County

1 on or about 30 September 2015, while armed with a
2 deadly weapon or while alleging either by action or
3 word that he was armed with a deadly weapon,
4 attempted to take by means of force or intimidation
5 goods or monies described as drugs from the person of
6 Anthony Kareen Nutridge.

7 Ladies and gentlemen, the next indictment is one
8 for kidnapping. Wherein, the State would allege that
9 the Defendant did in Greenville County on or about
10 September 30th, 2015, unlawfully seize, abduct,
11 confine, inveigle, decoy or carry away Kenneth Leach
12 without the authority of law.

13 The last indictment that I have before me,
14 ladies and gentlemen, is The State vs. Timiya Rashad
15 Massey, indictment ending 8747 for murder and the
16 possession of a weapon during the commission of a
17 violent crime. In count one of that indictment,
18 ladies and gentlemen, the State would allege that the
19 Defendant did in Greenville County on or about 30
20 September 2015, unlawfully and with malice
21 aforethought kill Anthony Kareen Nutridge by means of
22 shooting him and that Mr. Nutridge died as a
23 proximate result thereof. Count two, the State would
24 allege that Mr. Massey did in Greenville County on or
25 about September 30th, 2015, possess or visibly

1 display a handgun during the commission of a violent
2 crime, specifically murder, attempted murder and/or
3 burglary.

4 So, ladies and gentlemen, those are the cases
5 that are before the Court. The State must prove its
6 case beyond a reasonable doubt. Until such time as
7 the State proves the case as determined by 12
8 deliberating jurors, the Defendant retains the
9 presumption of innocence.

10 Now, ladies and gentlemen, is there anyone among
11 you who has any prior knowledge, any prior opinion or
12 any predisposition regarding the parties to this case
13 or the allegations in this case?

14 (There was no response.)

15 THE COURT: Ladies and gentlemen, the Defendant
16 in this case, as I have told you, is Mr. Timiya
17 Rashad Massey. Is there anyone among you who has any
18 personal, professional or family relationship with
19 Mr. Massey?

20 (There was no response.)

21 THE COURT: Ladies and gentlemen, Mr. Carlyle
22 Steele of the Greenville County bar is representing
23 Mr. Massey in this case.

24 Is there anyone among you who has any personal,
25 professional or family relationship with Mr. Steele?

1 (There was no response.)

2 THE COURT: Ladies and gentlemen, Mr. Doug
3 Richardson and Mr. Ian Conits of the 13th Circuit
4 Solicitor's Office is prosecuting this case on behalf
5 of the State.

6 Is there anyone among you who has a personal,
7 professional or family relationship with
8 Mr. Richardson, Mr. Conits or with any employee of
9 the 13th Circuit Solicitor's Office?

10 (There was no response.)

11 THE COURT: Ladies and gentlemen, I'm going to
12 read to you a list of potential witnesses in this
13 case. Now, when I read to you these witnesses, I'm
14 not representing to you that all of these people will
15 testify and I'm not representing to you that these
16 are all of the people who may testify. This is a
17 list of people who may testify in this case. When I
18 read all of these names, afterwards, I'm going to ask
19 you the very same question I asked you about the
20 parties and the lawyers. That is do you know them,
21 do you have any personal professional or family
22 relationship with them?

23 And those are as follows: Katharine McGrath of
24 the Greenville County Sheriff's Office; Michael
25 Derosa of the sheriff's office; Joseph Corneroli of

1 the sheriff's office; Jeremy Jones of the sheriff's
2 office; Drew Rossello of the sheriff's office; Robert
3 Whatley, sheriff's office; Josh Spurgeon, sheriff's
4 office; James Armstrong, sheriff's office; Blake
5 Wolfe of the sheriff's office; Antonio Bailey of the
6 sheriff's office; Chris Hammett of the sheriff's
7 office; David Whitlock of the sheriff's office and
8 ATF; Wayne Campbell with the sheriff's office, Dar
9 Shaw, sheriff's office; Sergeant J. F. Hamilton of
10 the sheriff's office; Robert Hodges of the sheriff's
11 office; Jesse Wasserman of the sheriff's office;
12 Dr. Michael Ward; Kenneth Leach; Haskell Nutridge;
13 Kaitlin Appel; Timothy Nafziger; Melanie Watson of
14 the sheriff's office; Dustin Kretschmar of the
15 sheriff's office; Kristen McCall of the sheriff's
16 office; Cindy Witherspoon of the sheriff's office;
17 Kara Bennick of the sheriff's office; Nyerere
18 Williams; Terry Harris.

19 Ladies and gentlemen, is there anyone among you
20 who has any personal, professional, family
21 relationship with any of those perspective witnesses?

22 Yes, sir.

23 PROSPECTIVE JUROR: Riccardo Dawson, Juror 226.
24 When I came in just now, I seen a co-worker out
25 there, so I don't know what reason they have to be in

1 this courtroom.

2 THE COURT: Who did you see working?

3 PROSPECTIVE JUROR: A co-worker.

4 THE COURT: Oh, you did. All right. What's

5 that coworker's name, do you know?

6 PROSPECTIVE JUROR: They just started.

7 THE COURT: I don't know whether they have any
8 type of relationship with this case or not, but I'll
9 ask you this, do you think the fact that someone --
10 that you saw somebody in the hall that may or may not
11 have some interest in this case that you know them,
12 do you think that would affect your ability to be a
13 fair and impartial juror in trial this case?

14 PROSPECTIVE JUROR: What do you mean? As far as
15 we talking about it while we at work?

16 THE COURT: Yeah, you never talked about it
17 while you were at work, did you?

18 PROSPECTIVE JUROR: I ain't know nothing about
19 this.

20 THE COURT: All right. So, you think you can
21 still be fair and impartial, open-minded about the
22 whole thing? Understand that during the course of
23 the case, you're not going to be having conversations
24 with people in the peanut gallery.

25 PROSPECTIVE JUROR: Okay.

1 THE COURT: Okay. All right. I'll take that as
2 a yes. Thank you, sir, I appreciate it. Okay.

3 MR. RICHARDSON: Your Honor, can we ask where he
4 works?

5 THE COURT: I know you told me downstairs, I
6 just can't remember. Where do you work?

7 PROSPECTIVE JUROR: Magnum Drive.

8 THE COURT: For whom? Magnum Drive, that's the
9 name of it?

10 PROSPECTIVE JUROR: Yes, sir.

11 THE COURT: That's not the location, huh? Okay.
12 All right. Good. Thank you, I appreciate it.

13 All right. Anybody else?

14 (There was no response.)

15 THE COURT: All right. Ladies and gentlemen, is
16 there anyone among you who has formally been employed
17 by law enforcement or who has an immediate family
18 member who is currently employed by law enforcement?

19 Yes, sir?

20 PROSPECTIVE JUROR: Mark Wolf, 220, my brother
21 is a patrolman up north.

22 THE COURT: Okay. Knowing that fact, sir, do
23 you think you can still be a fair and impartial juror
24 in the trial of this case?

25 PROSPECTIVE JUROR: I think so.

1 THE COURT: When you say up north, you mean
2 North Carolina, Gaffney?

3 PROSPECTIVE JUROR: Pennsylvania.

4 THE COURT: Oh, way up north. All right, thank
5 you. Well, did I ask you, you can still be a fair
6 and impartial juror in the trial of this case?

7 PROSPECTIVE JUROR: Yes, sir.

8 THE COURT: Thank you. I appreciate that.
9 Yes, sir?

10 PROSPECTIVE JUROR: Roderick Duncan, Juror 45.
11 Conrad Bazzel works with the police department.

12 THE COURT: And he's related to you?

13 PROSPECTIVE JUROR: Yes, sir.

14 THE COURT: And what's his relation?

15 PROSPECTIVE JUROR: Cousin.

16 THE COURT: Knowing that fact, do you think you
17 could still be a fair and impartial juror in this
18 case?

19 PROSPECTIVE JUROR: Yes, sir.

20 THE COURT: Thank you for telling me. I
21 appreciate it.

22 Anyone else?

23 (There was no response.)

24 THE COURT: Ladies and gentlemen, is there
25 anyone among you who is a member of or a contributor

1 to, a financial contributor to any organization which
2 advocates for the prosecution of crimes or victim's
3 rights? Now, when I say that, I mean organizations
4 like MADD, Mothers Against Drunk Drivers, SADD,
5 Students Against Drunk Drivers, or any other like
6 organization, again, that advocates for prosecution
7 or advocates for criminal rights?

8 Yes, ma'am?

9 PROSPECTIVE JUROR: I'm Juror No. 75, Tammy
10 Helms. Mothers Against Drunk Drivers, I'm a big
11 supporter of them.

12 THE COURT: Do you think that you can still be a
13 fair and impartial juror in the trial of this case?

14 PROSPECTIVE JUROR: Oh, yes, sir.

15 THE COURT: Thank you. I appreciate it, ma'am.

16 Ladies and gentlemen, is there anyone among you
17 who has either personally been or has an immediate
18 family member who has been a victim of violent crime?

19 Yes, ma'am?

20 PROSPECTIVE JUROR: My brother, he was killed.

21 THE COURT: Oh, I'm sorry to hear that.

22 PROSPECTIVE JUROR: Murdered seven years ago.

23 THE COURT: Oh, no. And what's your name and
24 juror number?

25 PROSPECTIVE JUROR: Abigail Middleton, 122.

1 THE COURT: Do you think that you can still be
2 fair and impartial in this case, ma'am?

3 PROSPECTIVE JUROR: Yes, sir.

4 THE COURT: Thank you for telling me. I
5 appreciate it.

6 Anyone else?

7 Yes, sir?

8 PROSPECTIVE JUROR: Juror No. 5, Philbrick
9 Allen. My son was attacked in his car while he was
10 in high school by a number of kids. Everything
11 turned out fine, but, you know, that's something that
12 happened to my son.

13 THE COURT: Do you think that you could still be
14 fair and impartial in this case, sir?

15 PROSPECTIVE JUROR: I think so. I probably
16 should also mention -- I mean, burglary was
17 mentioned. And, unfortunately, I've been robbed
18 twice in my lifetime. Once while I was on honeymoon
19 with wife, just getting married. Came home to,
20 basically, an empty house. And a few years ago while
21 I was out of town and my wife was at work, she got
22 home and we had been robbed again, so.

23 THE COURT: Do you think you could still be fair
24 and impartial in this case, sir.

25 PROSPECTIVE JUROR: I would certainly try to be,

1 yes, sir.

2 THE COURT: All right. Thank you for telling
3 me. I'm sorry that's happened to you.

4 Anyone else?

5 MR. STEELE: What was his number, Your Honor?

6 THE COURT: What was your juror number, sir?

7 PROSPECTIVE JUROR: No. 5.

8 THE COURT: No. 5.

9 All right, ladies and gentlemen, is there anyone
10 among you who for whatever reason feels as though you
11 could not be a fair and impartial juror in the trial
12 of this case?

13 (There was no response.)

14 THE COURT: Okay. Let the record reflect no
15 affirmative response.

16 Counsel, any additional questions in voir dire?

17 MR. RICHARDSON: Nothing from the State, Your
18 Honor.

19 MR. STEELE: Nothing from Mr. Massey.

20 THE COURT: All right, ladies and gentlemen,
21 we're going to go through the process of jury
22 selection now. What will happen is your name will be
23 called off from a randomly generated list. Ms. Olson
24 downstairs, when she picked a panel of 40 for me, she
25 fed into the computer, give me 40. And they spit out

1 in random order 40 jurors.

2 So, what will happen is Ms. Troupe, the clerk of
3 court, will read off your name. When she reads your
4 name, what I would like for you to do, please, is
5 just stand up exactly where you are. Stand up where
6 you are and just wait. The attorneys will then have
7 the opportunity to exercise their strikes.

8 Now, they have great latitude in how they
9 exercise their strikes. That is, they can strike you
10 for just about any reason. So, please don't be
11 offended if you're either stricken as a juror in this
12 case or whether you are allowed on the jury. Each
13 side calculates their strikes in keeping with their
14 theory of representation. So, neither you nor I will
15 know why you have been stricken or why you were put
16 on the jury. And I would suggest to you that you
17 probably shouldn't think about it too hard because
18 you'll probably never figure it out.

19 So, what will happen is the State will go first
20 and exercise its strike. Then the Defense will have
21 the opportunity to exercise strikes. The State gets
22 five strikes. The Defense gets 10 strikes. Now, the
23 State will go first and then the Defense will go. If
24 you hear twice, if you hear twice from both sides,
25 please seat the juror or please swear the juror, then

1 you will have been selected for this case. What I
2 would ask you to do is pick up everything that you
3 have with you in here and come around and have a seat
4 in the jury box. If you hear, however, just once
5 from either side, please strike the juror or please
6 excuse the juror from the trial of this case, then
7 you will have been stricken as a juror in this case,
8 and just have a seat where you are.

9 We're going to pick 12 primary jurors and we're
10 going to pick two alternate jurors. The reason we
11 pick alternate jurors is because during the course of
12 a trial from time to time people will become
13 disqualified, either because of health, because of
14 family issues or sometimes during the course of a
15 case, something happens in the trial that makes them
16 know that they may have some information about it.
17 That happens very, very rarely, but sometimes it
18 happens. So, we have to have 14 because I can't go
19 forward in a case with less than 12. So, I've got to
20 have 12 left standing at the end of the case, so I
21 have to have some alternates. Alternate's role is
22 just as important as sitting jurors because I've got
23 to have you. Okay?

24 JURY SELECTION

25 So, having said that, ladies and gentlemen, I'm

1 going to ask for the clerk of court to call your
2 names.

3 THE CLERK: Juror 204, Gary Sutton.

4 (Gary Sutton, a white male, stood.)

5 THE CLERK: What says the State?

6 MR. RICHARDSON: Please present Mr. Sutton.

7 THE CLERK: What says the Defendant?

8 MR. STEELE: Excuse Mr. Sutton.

9 THE CLERK: You may be seated, sir. You have
10 been excused from this case.

11 Juror 129, Robert Morris.

12 (Robert Morris, a white male, stood.)

13 THE CLERK: What says the State?

14 MR. RICHARDSON: Please present Mr. Morris.

15 THE CLERK: What says the Defendant?

16 MR. STEELE: Excuse Mr. Morris.

17 THE CLERK: You may be seated, sir. You have
18 been excused from this case.

19 Juror No. 138, Patrick Oliver.

20 (Patrick Oliver, a white male, stood.)

21 THE CLERK: What says the State?

22 MR. RICHARDSON: Please present Mr. Oliver.

23 MR. STEELE: Excuse Mr. Oliver.

24 THE CLERK: You may be seated, sir.

25 Juror No. 131, Tod Mosher.

1 (Tod Mosher, a white male, stood.)

2 THE CLERK: What says the State?

3 MR. RICHARDSON: Please present Mr. Mosher.

4 THE CLERK: What says the Defendant?

5 MR. STEELE: Seat Mr. Mosher.

6 THE CLERK: Sir, please bring your things, come
7 have a seat in the jury box.

8 Juror No. 130, Stuart Morris.

9 (Stuart Morris, a white male, stood.)

10 THE CLERK: What says the State?

11 MR. RICHARDSON: Please present Mr. Morris.

12 THE CLERK: What says the Defendant?

13 MR. STEELE: Seat Mr. Morris.

14 THE CLERK: Mr. Morris, please come have a seat
15 in the jury box.

16 Juror No. 186, Jeffrey Shirley.

17 (Jeffrey Shirley, a white male, stood.)

18 THE CLERK: What says the State?

19 MR. RICHARDSON: Please present Mr. Shirley.

20 THE CLERK: What says the Defendant?

21 MR. STEELE: Excuse Mr. Shirley.

22 THE CLERK: You may be seated, sir. You have
23 been excused from this case.

24 Juror No. 143, George Parker.

25 (George Parker, a white male, stood.)

1 THE CLERK: What says the State?

2 MR. RICHARDSON: Please present Mr. Parker.

3 THE CLERK: What says the Defendant?

4 MR. STEELE: Excuse Mr. Parker.

5 THE CLERK: You may be seated, sir. You have
6 been excused from this case.

7 Juror 45, Roderick Duncan.

8 (Roderick Duncan, a black male, stood.)

9 THE CLERK: What says the State?

10 MR. RICHARDSON: Please present Mr. Duncan.

11 THE CLERK: What says the Defendant?

12 MR. STEELE: Seat Mr. Duncan.

13 THE CLERK: Sir, please bring your things, come
14 have a seat in the jury box.

15 Juror 193, Mark Snow.

16 (Mark Snow, a white male, stood.)

17 THE CLERK: What says the State?

18 MR. RICHARDSON: Please present Mr. Snow.

19 THE CLERK: What says the Defendant?

20 MR. STEELE: Seat Mr. Snow.

21 THE CLERK: Sir, please come have a seat in the
22 jury box.

23 Juror 147, Richard Patrick.

24 (Richard Patrick, a white male, stood.)

25 THE CLERK: What says the State?

1 MR. RICHARDSON: Please excuse Mr. Patrick from
2 the trial of this case.

3 THE CLERK: All right, sir, you may be seated.
4 You have been excused from this case.

5 Juror 173, John Ronk.

6 (John Ronk, a white male, stood.)

7 THE CLERK: What says the State?

8 MR. RICHARDSON: Please excuse Mr. Ronk from the
9 trial of this case.

10 THE CLERK: All right, sir, you may be seated.

11 Juror 181, Elizabeth Sharpe.

12 (Elizabeth Sharpe, a white female, stood.)

13 THE CLERK: What says the State?

14 MR. RICHARDSON: Please present Ms. Sharpe.

15 THE CLERK: What says the Defendant?

16 MR. STEELE: Excuse Ms. Sharpe.

17 THE CLERK: You may be seated, ma'am.

18 Juror No. 166, Andrew Robinson.

19 (Andrew Robinson, a black male, stood.)

20 THE CLERK: What says the State?

21 MR. RICHARDSON: Please present Mr. Robinson.

22 THE CLERK: What says the Defendant?

23 MR. STEELE: Swear Mr. Robinson.

24 THE CLERK: Sir, please, come have a seat in the
25 jury box.

1 Juror No. 3, Celeststeen Allen.

2 (Celeststeen Allen, a black female, stood.)

3 THE CLERK: What says the State?

4 MR. RICHARDSON: Please present Ms. Allen.

5 THE CLERK: What says the Defendant?

6 MR. STEELE: Swear Ms. Allen.

7 THE CLERK: Ms. Allen, please, come have a seat
8 in the jury box.

9 Juror No. 136, Gillian Nicol.

10 (Gillian Nicol, a white female, stood.)

11 THE CLERK: What says the State?

12 MR. RICHARDSON: Please present Ms. Nicol.

13 THE CLERK: What says the Defendant?

14 MR. STEELE: Excuse Ms. Nicol.

15 THE CLERK: You may be seated, ma'am.

16 Juror No. 216, Amanda Whitaker.

17 (Amanda Whitaker, a white female, stood.)

18 THE CLERK: What says the State?

19 MR. RICHARDSON: Please present Ms. Whitaker.

20 THE CLERK: What says the Defendant?

21 MR. STEELE: Swear Ms. Whitaker.

22 THE CLERK: Ma'am, please bring your things,
23 come have a seat in the jury box.

24 Juror No. 185, Joann Sherman.

25 (Joann Sherman, a black female, stood.)

1 THE CLERK: What says the State?

2 MR. RICHARDSON: Please excuse Ms. Sherman from
3 the trial of this case.

4 THE CLERK: All right, you may be seated, ma'am.
5 Juror No. 220, Mark Wolf.

6 (Mark Wolf, a white male, stood.)

7 THE CLERK: What says the State?

8 MR. RICHARDSON: Please present Mr. Wolf.

9 THE CLERK: What says the Defendant?

10 MR. STEELE: Excuse Mr. Wolf.

11 THE CLERK: You may be seated, sir.

12 Juror 140, Ana Ospina.

13 (Ana Ospina, a white female, stood.)

14 THE CLERK: What says the State?

15 MR. RICHARDSON: Please present Ms. Ospina.

16 THE CLERK: What says the Defendant?

17 MR. STEELE: Swear Ms. Ospina.

18 THE CLERK: Ma'am, please, come have a seat in
19 the jury box.

20 Juror 77, Stephanie Hoelbling.

21 (Stephanie Hoelbling, a white female, stood.)

22 THE CLERK: What says the State?

23 MR. RICHARDSON: Please present Ms. Hoelbling.

24 THE CLERK: What says the Defendant?

25 MR. STEELE: Swear Ms. Hoelbling.

1 THE CLERK: Ma'am, please, come have a seat in
2 the jury box.

3 Juror No. 42, Emily Davis.

4 (Emily Davis, a white female, stood.)

5 THE CLERK: What says the State?

6 MR. RICHARDSON: Please present Ms. Davis.

7 MR. STEELE: Swear Ms. Davis.

8 THE CLERK: Ma'am, please, come have a seat in
9 the jury box.

10 Juror 75, Tammy Helms.

11 (Tammy Helms, a white female, stood.)

12 THE CLERK: What says the State?

13 MR. RICHARDSON: Please present Ms. Helms.

14 THE CLERK: What says the Defendant?

15 MR. STEELE: Swear Ms. Helms.

16 THE CLERK: Ma'am, please, come have a seat in
17 the jury box.

18 Juror 195, Solomon Spears.

19 (Solomon Spears, a white male, stood.)

20 THE CLERK: What says the State?

21 MR. RICHARDSON: Please present Mr. Spears.

22 THE CLERK: What says the Defendant?

23 MR. STEELE: Swear Mr. Spears.

24 THE CLERK: Sir, please, come have a seat in the
25 jury box.

1 THE COURT: All right, that's 12. Strikes will
2 be two and one per alternate. Pick two alternates.

3 THE CLERK: Okay.

4 Juror 225, Marie Bush.

5 (Marie Bush, a black female, stood.)

6 THE CLERK: What says the State?

7 MR. RICHARDSON: I'm sorry, Madam Clerk, what
8 was the last number?

9 THE CLERK: 225, Marie Bush.

10 MR. RICHARDSON: Present Ms. Bush.

11 THE CLERK: What says the Defendant?

12 MR. STEELE: Swear Ms. Bush.

13 THE CLERK: Ma'am, please, come have a seat in
14 the jury box.

15 Juror 62, Cynthia Gillanders.

16 (Cynthia Gillanders, a white female, stood.)

17 THE CLERK: What says the State?

18 MR. RICHARDSON: Please present Ms. Gillanders.

19 THE CLERK: What says the Defendant?

20 MR. STEELE: Excuse Ms. Gillanders.

21 THE CLERK: You may be seated, ma'am. You've
22 been excused from this case.

23 Juror 82, Philippe Humbert.

24 (Philippe Humbert, a white male, stood.)

25 THE CLERK: What says the State?

1 MR. RICHARDSON: Please present Mr. Humbert.

2 THE CLERK: What says the Defendant?

3 MR. STEELE: Excuse Mr. Humbert.

4 THE CLERK: You may be seated, sir.

5 Juror No. 109, Devona Martin.

6 (Devona Martin, a black female, stood.)

7 THE CLERK: What says the State?

8 MR. RICHARDSON: Please excuse Ms. Martin from
9 the trial of this case.

10 THE CLERK: All right, ma'am, you may be seated.

11 Juror 22, Kenneth Bright.

12 (Kenneth Bright, a white male, stood.)

13 THE CLERK: What says the State?

14 MR. RICHARDSON: Please present Mr. Bright.

15 THE CLERK: What says the Defendant?

16 MR. STEELE: Have I exercised both strikes?

17 THE CLERK: Yes, sir.

18 MR. STEELE: Swear Mr. Bright.

19 THE CLERK: All right, sir, please come have a
20 seat in the jury box.

21 THE COURT: All right. Counsel, any issues or
22 matters of law to take up with respect to the
23 qualifications or selection of this jury?

24 MR. RICHARDSON: None from the State.

25 MR. STEELE: None from Mr. Massey.

1 THE COURT: Thank you.

2 All right, ladies and gentlemen, those of you
3 who weren't selected, I'm sorry. Maybe you will get
4 a chance next time.

5 Mr. Cox, I'm particularly disappointed that you
6 weren't selected. We can find something for you to
7 do, though, perhaps, some patrol cars to wash or
8 something.

9 PROSPECTIVE JUROR: Thank you, Your Honor.

10 THE COURT: Y'all go back down. I believe what
11 will happen is that Ms. Olson is going to dismiss you
12 for the day. That may be a dismissal for the week.
13 It may operate as that because they're developments
14 in a civil case that's going to be called tomorrow.
15 So she'll dismiss you. Call back after 6:00 this
16 evening. If I don't see you again this week, I tell
17 you again thank for your service.

18 Even though you may not have had the opportunity
19 to sit on a jury, the fact that you are here is
20 meaningful. Because when we start a term of court,
21 there are literally, literally thousands of cases on
22 the docket. And it may not be ready for trial
23 precisely, but they're on the docket. As a
24 consequence of a jury being impaneled, hundreds of
25 those cases will come to some sort of resolution.

1 Either by way of a jury verdict or by way of an
2 accommodation between the parties to the case. And
3 that's both in criminal court and in civil court.
4 So, y'all may not feel like it, but believe me, y'all
5 have gotten a lot accomplished this week and you have
6 moved our docket substantially. So, I thank you for
7 that and that's a heartfelt thank you. I do
8 appreciate it. If I don't see you for the rest of
9 the week, have a great week and have a fantastic
10 weekend as well.

11 (WHEREUPON, the jury venire was dismissed.)

12 THE COURT: Okay, ladies and gentlemen,
13 congratulations. I look forward to working with you
14 this week. I always find that before we begin a
15 trial of a case, it's helpful for me to have a talk
16 with you and explain to you what your role is, what
17 your job is as jurors in the trial of a case. And
18 also, to talk to you about the process and the
19 procedure that we'll follow so that you'll have an
20 idea of what comes next and, more importantly, what
21 the end game is so that you're not just sitting there
22 wondering where are we in this trial and what am I
23 ultimately going to have to do.

24 So, let's start with your role as jurors. In a
25 trial of a case, your role as jurors is to be the

1 finders of the facts, the judges of the facts. Now,
2 you'll determine what the facts are in this case by
3 looking at the evidence, by weighing the evidence and
4 then analyzing it and determining what those facts
5 are.

6 Now, you'll receive evidence in this case
7 throughout the trial of the case as the parties
8 present the same. The parties will present evidence
9 to you during the presentation of their case. Now,
10 evidence can come in any number of forms. Usually,
11 and the most common way that you receive evidence is
12 through the testimony of witnesses who take the
13 stand, take the oath of an witness and then testify.

14 During that testimony, you may receive other
15 types of evidence. You could receive documents, you
16 could receive video tapes, you can receive audio
17 tapes, pictures. Oftentimes, you can receive actual
18 physical objects that may be placed into the record.
19 But you'll receive that evidence in this case and
20 you'll determine from that what the facts are.

21 Now, nobody can tell you what the facts are. I
22 can't tell you what the facts are. I'm precluded
23 under the law from having an opinion about the facts
24 or telling you what the facts are. The lawyers can't
25 tell you what the facts are. They certainly will

1 offer their opinion and they will argue to you in an
2 attempt to persuade you to their position. But
3 ultimately, it's your sole and exclusive authority to
4 determine what the facts are in the case.

5 Now, once you have determined what those facts
6 are at the very end of the case, then you will apply
7 the law as I give it to you to the facts that you
8 have determined. Now, your job is the judges of the
9 facts. My job is to be the judge of the law, which
10 means that I'll tell you all of the law that is
11 relevant to the evidence that's presented in this
12 case.

13 Now, I'll wait until the very end to tell you
14 the law that applies to this case. And the reason is
15 because I'm exactly like you are right now. That is,
16 I haven't seen any of this evidence. I haven't heard
17 the testimony. I haven't seen any documents,
18 pictures, I haven't seen any of it. I'm going to see
19 it as a matter of first impression just like y'all
20 are. Today and tomorrow and, perhaps, into Wednesday
21 into this case as well. So, I wait until the end to
22 give you a charge on the law, just as y'all will wait
23 until the end to begin your deliberations.

24 So, what you will do is you'll apply that law to
25 the facts and determine whether the State has met its

1 burden of proof. I told you in jury selection that
2 the State has the burden of proving each and every
3 element of the offense beyond a reasonable doubt.
4 Until such time the 12 jurors determine that the
5 State has met that burden of proof, the Defendant is
6 presumed innocent. You're the only ones who can
7 determine whether the State has met that burden of
8 proof.

9 Now, my job as well is to be the referee. The
10 objective umpire, who's making sure that we're
11 following the law and that we're following the rules
12 of court as we conduct this trial. So, during the
13 course of this trial, I can tell you that the
14 attorneys -- the sides will be making objections and
15 motions.

16 And my role as the umpire, my role as the judge
17 of the law, I'll be ruling on those motions. And I'm
18 going to rule for somebody and against another. If
19 you've got two parties, then I have to rule for
20 somebody and against another. But don't think that
21 by my rulings that I have an opinion or I have a bias
22 or preference in favor of or against either party. I
23 don't. When a motion is made, I have to rule on it
24 based on my understanding of the law. And I'm just
25 making an objective decision based on my

1 understanding of the law. I truly have no stake in
2 the outcome of this trial. I have no concern about
3 what your ultimate verdict is. That's entirely your
4 business. If you hear me say anything during the
5 course of this trial that gives you the sense that I
6 have an opinion about what you should do, disregard
7 it because I truly don't. All I care about is that
8 this is a fair trial, that's all I care about is a
9 fair trial. Everything that I do will be calculated
10 to ensure that this is a fair trial for everyone
11 involved, to include you.

12 Now, the way this case will start is after I
13 give you this opening explanation, the parties will
14 have the opportunity to make opening statements to
15 you. Now, those opening statements are not evidence.
16 That's the opportunity for each party to make its
17 introduction, both of themselves and of their theory
18 of the case. Now, that's not argument and that's not
19 a presentation of the case. Again, they should be
20 fairly short and they're introductions.

21 After you hear introductions from both sides,
22 then you will -- then we'll start to present
23 evidence. The State has the burden of proof, so the
24 State goes first. The State will begin by calling
25 witnesses to the stand. They'll call a witness,

1 examine that witness or ask that witness questions.
2 Then the Defense will have the opportunity to
3 cross-examine that witness or ask that witness
4 questions as well.

5 After all the questions are exhausted and all
6 the evidence has been presented through a witness,
7 that witness will stand down and then the next
8 witness will be called. The State will proceed in
9 that fashion until they've called all the witnesses
10 they intend to call and until they've presented all
11 the evidence they intend to present. At that time,
12 the State will rest. Then the Defense will have the
13 opportunity to begin calling witnesses.

14 Now, the Defense doesn't have to call witnesses
15 because the Defense doesn't have any burden of proof.
16 As I indicated to you, the Defendant is presumed
17 innocent and doesn't have to do or say or prove
18 anything in the conduct of a trial. But they have
19 the right to. And if the Defense elects to call
20 witnesses to the stand or put evidence into the
21 record, then that would be the opportunity for the
22 Defense. When the Defense rests, then, ordinarily,
23 we're go to closing arguments.

24 Now closing arguments, again, will not be
25 evidence. You will have already heard all the

1 evidence through the parties' presentation of their
2 case. They'll simply be making arguments to you at
3 that point. And they will be advocating to you,
4 again, in an attempt to persuade you to their
5 respective position. It's not evidence, that's
6 argument. Okay. And it's distinguishable from the
7 opening statement because they will be commenting on
8 the evidence at that point.

9 After you've heard closing arguments from both
10 parties, then I'll give you the closing charge on the
11 law. Again, I wait until the end so that I can see
12 what the evidence is, so that I can -- so that I can
13 make sure that I'm only giving you that law that is
14 relevant and appropriate to the evidence. After I
15 give you a closing charge on the law, then I'll send
16 you to your jury room and you can begin your
17 deliberations.

18 Now, note, please don't begin any deliberations
19 until the very end of the case and until I give you
20 specific instructions to do so. Now, you probably
21 from your common sense know why that's important, but
22 at the risk of insulting your intelligence, I'm going
23 to tell you anyway, okay. You know that in your
24 lifetime, you've never been able to make an important
25 decision about anything until and unless you have all

1 of the information that bears upon that decision to
2 be made. And court is essentially the same way. You
3 need to hear everything before you begin to make up
4 your minds, before you begin to deliberate about the
5 case. That's fair to both sides, but it's also fair
6 to you as well because you will be armed with all the
7 information at that point and you should begin your
8 deliberations.

9 Now, when I say don't begin your deliberations,
10 I mean don't discuss it, okay. From time to time,
11 juries want to walk out of the courtroom when we're
12 taking a break, whether it's for lunch or just a
13 regular break during the course of the day or at
14 night, want to have a sidebar about whether somebody
15 was a good witness or a bad witness, whether they're
16 believable or not, whether the lawyers are good or
17 not good. What I will tell you is don't have those
18 conversations because that is a form of deliberation.
19 It's not all 12 of the deliberating jurors, it's just
20 two of you or three of you having a sidebar. Don't
21 do that. Just wait, keep your powder dry and you
22 discuss it when it's the appropriate time to discuss
23 it.

24 Also, we will be taking breaks for lunch. We'll
25 going to be taking breaks overnight. I'm not going

1 to put you in a hotel and sequester you. So when you
2 go home at night, don't discuss the case with
3 somebody outside of the jury either. I know that
4 when you go home, your friend, spouse, significant
5 other will probably want to engage you in a
6 conversation about what you saw. And you might be
7 tempted to do it, but don't. Because what will
8 happen is you'll start having a conversation with
9 somebody outside of the jury about the trial and
10 about the evidence and that's a deliberation as well.
11 So, just tell them hey, I'm going to wait until the
12 end and after this case is over, we'll sit down and
13 we'll talk about it as much as you want. And you
14 can, you'll be able to talk about it as much as you
15 want. But don't do it yet.

16 Also, don't do any self-help. I don't know if
17 there's any media coverage about this case.
18 Honestly, I have no idea. I don't know if there's
19 anything on the internet, say in the clerk's office
20 that would give you some clue about this case or give
21 you some indication of what happened or what
22 allegedly happened. But you can't go out and find
23 any of that information. Don't get on your smart
24 phone or your computer and try to do any self-help or
25 research. The only thing that's appropriate for your

1 consideration is that evidence which is presented in
2 court under the rules of evidence. Anything else
3 taints your deliberations, okay? So, don't be
4 tempted to do it, please.

5 Okay. Practical matters. We're about to do our
6 opening statements. Those opening statements, like I
7 said, are going to be fairly short, probably
8 collectively less than 20 minutes. Then what I'm
9 going to do is take a break for lunch. I'm going to
10 send y'all out for either an hour, hour and a half,
11 depending on what we have going on, probably about an
12 hour and 15 minutes. Have you come back, then we'll
13 start the presentation of the evidence.

14 Based on my conversation with the lawyers right
15 now, I think there are going to be about 18
16 witnesses. Now, you know I read to you a list of
17 witnesses, which were somewhere in the high 20's, but
18 I think it's actually going to be closer to 18.
19 Don't hold me to that. I'm not holding the lawyers
20 to that, but about 18, okay. So, based on my
21 conversation with the attorneys today, I'm hopeful
22 that we will be done with the presentation of
23 evidence no later than Wednesday morning. And then I
24 can give you the case to begin your deliberations on
25 either late Wednesday morning or Wednesday afternoon.

1 Okay. That all depends on how quickly we go. I
2 can't tell you how quickly we go because I don't ask
3 the questions and I lose control once the
4 witness gets on the stand because then the attorneys
5 are asking questions. But I know these attorneys and
6 I know they're very considerate of juries and I
7 they're considerate of each other, so I know they're
8 going to be as sufficient as they possibly can be.
9 So, I am thinking that we will be done on Wednesday.

10 Now, I'll update you. Every time we take a
11 break for lunch or every time we take a break for the
12 evening, I'll update you and let you know if any of
13 that has changed, okay. Because I'm going to
14 continue to ask those questions of the attorneys to
15 make sure that we all know where we stand. Okay.
16 We're in this together, so I'm not going to keep any
17 secrets from you.

18 All right. We are going to take ordinary
19 breaks, too, during the course of the case. I like
20 to take a break every hour, hour and a half,
21 depending on where the testimony stands. I find that
22 among 14 people, one of y'all has to take a break
23 every hour. I know I do. And if it's not one of
24 y'all, then it's somebody else in the courtroom.
25 Okay. So, we just take a break. All right.

1 If for whatever reason you need to take a break
2 at a different time, then let me or let Mr. Page
3 know, okay, and we'll take a break. Make no mistake
4 about it, y'all are the 14 most important people in
5 this courtroom right now. Okay. So, if you are in a
6 position where you're like man, I'm not catching any
7 of this testimony because I got to take a break, and
8 that's all I'm thinking about, then say hey, I got to
9 take a break. Because it's not doing any of us any
10 good for you to be thinking boy, I wish these people
11 would shut up. Just tell me, okay, and we'll take a
12 break. All right.

13 So, ladies and gentlemen, we're about to begin
14 this case. Before we begin opening statements, I'm
15 going to ask the clerk of court to administer another
16 oath. You've already taken an oath downstairs to
17 tell the truth. This is a different oath. This is
18 an oath to verily and truly try this case in
19 accordance with the law and in accordance with the
20 evidence.

21 Ms. Troupe, you may administer the oath.

22 THE CLERK: Please stand and raise your right
23 hand. The proper response is, I will.

24 (WHEREUPON, the jury was sworn.)

25 THE COURT: Okay. All right, Mr. Richardson.

1 Mr. Conits.

2 OPENING STATEMENT

3 MR. CONITS: Good afternoon, ladies and
4 gentlemen, my name is Ian Conits and I'm a prosecutor
5 here with the solicitor's office. First of all, I'd
6 like to thank you all for being here today. You're
7 going to hear the phrase in this case beyond a
8 reasonable doubt. You're going to hear -- you've
9 already heard it here today. And the State -- we,
10 the State, we have to prove our case beyond a
11 reasonable doubt. That is a burden we must meet and
12 we accept that burden. Because the evidence in this
13 case will show that on September 30th, 2015, the
14 Defendant in this case gathered a group together to
15 go rob the victims in this case, Anthony Nutridge and
16 his brother, Haskell Nutridge, at their apartment.

17 When the Defendant and his group arrived to
18 Anthony and Haskell's apartment complex that night,
19 the evidence will show that the Defendant put on a
20 mask and he had a gun. And that the others that were
21 with him in his group, they did, too.

22 Now, as the Defendant was leading his group
23 towards the Nutridge's apartment unit, they
24 approached another individual and they took that
25 individual with them and they forced him to knock on

1 the door at the Nutridge's apartment. The evidence
2 will show that Anthony Nutridge answered that door
3 when the individual knocked on it. And when
4 Mr. Nutridge opened the door, the Defendant in this
5 case pistol whipped him in the face and rushed into
6 the apartment.

7 Now, the evidence will also show that Anthony
8 Nutridge's brother, Haskell, who is also a victim in
9 this case, was in the apartment at that time. And in
10 an attempt to protect his brother, he grabbed a gun
11 and a gun fight ensued. And the evidence will show
12 that the Defendant in this case shot and killed
13 Anthony Nutridge in that apartment that night.

14 The evidence will also show that the Defendant
15 himself was shot in the leg and was found outside the
16 apartment laying on top of his gun holster, with a
17 gun and a mask nearby.

18 Now, you may be told that someone else in the
19 Defendant's group shot and killed Anthony Nutridge.
20 You may be told that, but it doesn't matter. It does
21 not matter. In South Carolina, the hand of one is
22 the hand of all. If three people go to rob someone
23 and the person they're rob -- and one of the three
24 individuals shoots and kills the person they're
25 robbery, all three of the people who were involved in

1 the robbery are as guilty of murder as the person who
2 actually did the killing.

3 Now, ladies and gentlemen, I am going to be
4 upfront with you. There is going to be some
5 disturbing evidence that will be introduced over the
6 course of this trial, but we have to tell you what
7 happened. And you're going to hear in this case, as
8 you already know, from a lot of witnesses. And
9 you're going to see several pieces of evidence. It
10 is going to be a lot of information. But this case
11 is actually pretty straightforward.

12 The evidence is going to show that the Defendant
13 in this case led a group on the night of
14 September 30th, 2015, to rob Anthony and Haskell
15 Nutridge in their apartment. And the evidence will
16 also show that the Defendant murdered Anthony
17 Nutridge in his own apartment that night. That's
18 what the evidence will show. And after we have
19 presented that evidence to you, we are going to ask
20 that you find the Defendant guilty beyond a
21 reasonable doubt. Thank you.

22 MR. STEELE: May it please the Court.

23 THE COURT: Yes, sir.

24 OPENING STATEMENT

25 MR. STEELE: May it please you, ladies and

1 gentlemen of the jury. My name is Carlyle Steele.
2 I'm a lawyer here in Greenville. And I have the
3 honor of representing Mr. Massey, Mr. Timiya Massey,
4 which is the gentleman seated with me at counsel
5 table with the vest on. You have heard the theory of
6 the case to come from the government, but Mr. Massey
7 has entered a plea of not guilty. And when he enters
8 a plea of not guilty, he, by implication, has denied
9 everything that the government has said. In other
10 words, he is standing on his right to be presumed
11 innocent.

12 You have heard the Judge tell you this morning
13 that every person charged with a criminal offense is
14 presumed to be innocent. Why is that? Because it's
15 easy to charge. Because the government has all the
16 resources of the sheriff's department, all the
17 resources of solicitor's office. So, it's easy for
18 them to bring charges. But we recognize in our
19 system of justice, we put such a high prize on
20 freedom from conviction of a criminal offense that
21 we've said charge away. That's easy. But we have
22 erected a bar between the citizen accused of a crime
23 and conviction of that crime. And that bar is the
24 presumption of innocence and the requirement that he
25 be proven guilty beyond a reasonable doubt.

1 Now, you have just heard a recitation of facts
2 from the government. You've heard them tell you what
3 they say the proof will show. Well, where does that
4 proof come from? Obviously, none of us were out
5 there when this incident occurred. Obviously, none
6 of us were present. Obviously, the officers who are
7 going to testify weren't present. The solicitors,
8 they weren't present. They are getting their
9 information from the actual killers of the victim in
10 this case, from the actual people who did the
11 kidnapping, from the actual people who attempted the
12 robbery, from the actual people who were attempting
13 the larceny. Those are people who were charged in
14 this offense with Mr. Massey. And they have decided
15 in order to get out of trouble that they will try to
16 put the burden not on themselves for what they've
17 don't, but put the burden on Mr. Massey. They have
18 decided that they will testify for the State and say,
19 well, we were involved, but the primary person here
20 who is guilty of everything is Timiya Massey.

21 So, I'm asking you, ladies and gentlemen, when
22 you listen to the testimony from this witness stand,
23 to apply special scrutiny to the testimony of these
24 people who are charged with Mr. Massey, who are also
25 defendants in this case. And ask yourself, what do

1 they have to gain? Why are they testifying for the
2 State? They're obviously not doing it because
3 they're good citizens. They're doing it to get
4 themselves out of trouble by getting Timiya Massey in
5 trouble.

6 The evidence will show that Mr. Massey is a
7 victim here. Mr. Massey was actually shot in the leg
8 during this attempted robbery, murder by these people
9 who are charged with him. He was injured, also. He
10 was fortunate enough to survive his wounds, whereas
11 Mr. Nutridge, the victim, did not.

12 So, ladies and gentlemen, throughout this trial,
13 as you've been told by the Judge, Mr. Massey sits
14 over there at that counsel table with me presumed to
15 be innocent. And that presumption of innocence stays
16 with him throughout the trial. And only after you've
17 considered all the evidence can that presumption of
18 innocence be removed from him.

19 So remember, he's presumed innocent. Listen
20 with special attention and special scrutiny to the
21 testimony of those co-defendants, who are going to
22 try to get themselves out of trouble or minimize the
23 trouble they're in by putting Mr. Massey in trouble.

24 On behalf of Mr. Massey, I want to thank you for
25 your service here. Obviously, you've been through a

1 several-tier selection process. And we have the
2 right with the exercise of what are called peremptory
3 challenges to strike you for any reason. And you are
4 the ladies and gentlemen who are going to decide this
5 case. And remember -- and I know you know this and I
6 know you take this seriously, but remember, that in
7 your deliberations and in your verdict and in your
8 consideration of the testimony and evidence, you are
9 going to make one of the most important decisions
10 ever made in the life of a fellow human being.

11 And I thank you in advance for the attention
12 that you're giving to this case for the fact that
13 you're sitting here as jurors. I thank you on behalf
14 of Mr. Massey. I thank you on behalf of myself. I
15 thank you on behalf of what I regard and what I would
16 submit is the greatest system of justice in the
17 world, where we as South Carolinians and as
18 Americans, we actually draw citizens out of the
19 community as you have been done in this process to
20 decide what happened in this case and decide if the
21 government can establish Mr. Massey's guilt beyond a
22 reasonable doubt. But if you are left at the end of
23 this case, as I believe you will be, in a state of
24 doubt and that doubt can be given a reason, then you
25 required under your oath to come back with a verdict

1 of not guilty. I ask you to do that. Thank you.

2 THE COURT: All right, ladies and gentlemen,
3 we're going to take a break for lunch. When we come
4 back after lunch, we'll begin -- the State will begin
5 with the presentation of its case. Let's take an
6 hour and a half for lunch. It's 12:30 now, if y'all
7 will be back at 1:45, please, 1:45.

8 Please don't discuss the case. Enjoy your
9 lunch. And I'll see you then. If you'll follow
10 Mr. Page, he'll show you the means of egress and
11 ingress to the courthouse.

12 (WHEREUPON, the jury left open court at
13 approximately 12:33 p.m.)

14 THE COURT: Okay. Anything for the record
15 before we break for lunch?

16 MR. STEELE: Your Honor, I would respectfully
17 ask the Court to sequester the witnesses. I know
18 that for a long time, there was nobody in the
19 courtroom other than, I assume Mr. Hammett's the
20 primary officer on the case. But now it looks like a
21 lot people are in here. And I'm respectfully asking
22 you to sequester the witnesses.

23 THE COURT: Okay.

24 Sir?

25 MR. RICHARDSON: I don't have an objection to

1 that in general. However, I do have my chief
2 investigating officer. And also a witness in this
3 case will be the victim's brother. I would ask that
4 he be able to remain along with the family members.

5 THE COURT: Victims as defined under the statute
6 and the chief prosecuting officer are welcome to
7 stay.

8 Is the victim's brother also a victim under --

9 MR. RICHARDSON: Yes, he's a victim.

10 THE COURT: So long as he's a victim, then sure.
11 Otherwise, I'll enter the order of sequestration.

12 What I will tell you, gentlemen, is I never know
13 who's going to testify and who's not going to
14 testify. And, you know, sometimes people walk into
15 the courtroom and I have no clue whether they are
16 subject to the sequestration order or not. So, y'all
17 have to police it. Y'all have to tell me if somebody
18 who's under sequestration has come into the courtroom
19 because I don't have any way of knowing.

20 MR. STEELE: Well, I will say for the record,
21 Your Honor, Mr. Nutridge, the man who was killed's
22 brother is a critical witness. I understand your
23 ruling, but I want the Court to understand that my
24 motion was for all witnesses.

25 THE COURT: If he's a victim under the statute,

1 then I think statutorily, he has the right to remain
2 in the courtroom.

3 Is he a victim?

4 MR. RICHARDSON: Yes, sir. Two of the
5 indictments pertain to him. One was attempted
6 murder.

7 THE COURT: That's what I thought. I didn't
8 want to presume that we were talking about the same
9 person, but if he -- under the statute if he's a
10 victim, he may stay. But otherwise, the order of
11 sequestration applies.

12 MR. RICHARDSON: Thank you, Your Honor.

13 THE COURT: Thank you. I appreciate it,
14 gentlemen.

15 Anything else, Mr. Steele?

16 MR. STEELE: Well, Your Honor, the trial has
17 started and I understand that technically the bond
18 ends at the start of a trial. But I would point out
19 to the Court that Mr. Massey has, with one exception,
20 been totally in compliance with the terms of his bond
21 for a couple of years now. He was on electronic
22 monitoring. He still is on electronic monitoring.
23 He has reported every time he's been required to
24 report with one exception. So, I would ask to leave
25 him out during this trial.

1 As Your Honor said so eloquently to the jury,
2 he's presumed to be innocent. And he is no less
3 presumed to be innocent now than he was yesterday or
4 the day before. So, I would respectfully ask the
5 Court to leave him out until the conclusion of the
6 trial.

7 THE COURT: Okay. State's position?

8 MR. RICHARDSON: Your Honor, we would object to
9 that and ask that he be taken into custody. He
10 actually cut his ankle monitor off.

11 MR. STEELE: Since then, a Court has allowed him
12 to get back out. It's all been considered already.

13 THE COURT: All right.

14 MR. RICHARDSON: And also, in consideration of
15 the charges that we have before us.

16 THE COURT: Right, I understand that.

17 MR. STEELE: He's charged with the same thing
18 today he was yesterday. So, it -- nothing's changed.

19 THE COURT: I understand. You know, in most
20 cases, in most cases, I allow defendants to stay on
21 their bond. That's my general practice. It's also
22 my general practice in a case where you have
23 potential life sentence and a jury has been
24 impaneled, that I generally take the defendant into
25 custody, and I'll do that. Nothing personal,

1 certainly, against Mr. Massey. But my experience is
2 that in cases with multiple indictments which include
3 potential penalties of life without the possibility
4 of parole, that taking someone into custody is the
5 better practice. Therefore, I respectfully deny the
6 motion with regard to maintaining him on bond at this
7 point. Okay.

8 MR. STEELE: He wants to know can he talk to his
9 family before he leaves the courtroom?

10 THE COURT: Yeah, I don't have any issue with
11 that.

12 MR. STEELE: Yeah, go ahead and do that.

13 That's all, Your Honor, from us.

14 THE COURT: Okay, good enough.

15 MR. STEELE: Your Honor, may I leave my stuff
16 out here?

17 THE COURT: Yes, sir, you may.

18 (WHEREUPON, a lunch break was taken.)

19 THE COURT: All right, good afternoon.

20 The State ready for the jury?

21 MR. RICHARDSON: The State is ready, Your Honor.

22 THE COURT: Defense?

23 MR. STEELE: We're ready for Mr. Massey. I
24 think they said they were going to bring him out in
25 just a minute. I think he's still eating.

1 THE COURT: That's okay, we'll wait for him.

2 MR. STEELE: That's what the officer said.

3 THE COURT: Okay, we ready Mr. Steele?

4 MR. STEELE: Yes, Your Honor.

5 THE COURT: All right, bring the jury in,
6 please.

7 (WHEREUPON, the jury came into open court at
8 approximately 1:56 p.m.)

9 THE COURT: All right, welcome back, ladies and
10 gentlemen.

11 Mr. Richardson, Mr. Conits, you may call your
12 first witness.

13 MR. CONITS: Thank you, Your Honor. At this
14 time, the State calls Lieutenant Robert Whatley to
15 the stand.

16 THE CLERK: Sir, if you would please come
17 forward. Please pause at the end of the bench, place
18 your left hand on the Bible, raise your right hand.
19 Raise your right hand.

20 ROBERT WHATLEY, after being duly
21 sworn, testified as follows:

22 THE CLERK: Thank you, please be seated. Would
23 you please state your name for the record?

24 THE WITNESS: Robert Frank Whatley.

25 THE CLERK: Thank you, sir.

ROBERT WHATLEY-DIRECT BY MR. CONITS

1 DIRECT EXAMINATION

2 BY MR. CONITS:

3 Q Lieutenant Whatley, where do you work?

4 A Greenville County Sheriff's Office.

5 Q In what capacity?

6 A I am currently uniform patrol lieutenant.

7 Q How long have you worked there?

8 A Twenty-four years.

9 Q Okay. And were you working there in
10 September of 2015?

11 A Yes, sir, I was.

12 Q And you were employed in your present capacity
13 at that time?

14 A A little bit different. I was -- the title to
15 me was night watch commander, but it was still in uniform
16 patrol in a supervisory capacity.

17 Q Were you on shift on September 30th, 2015,
18 around 8:30 p.m.?

19 A Yes, sir.

20 Q Okay. Did you respond to 1140 North Franklin
21 Road soon thereafter?

22 A Yes, sir.

23 Q Why?

24 A The call came out of a gunshot victim and
25 multiple units were -- we call that clear signal one. It

ROBERT WHATLEY-DIRECT BY MR. CONITS

1 was authorizing to use blue lights and siren to respond to
2 the scene.

3 Q And 1140 North Franklin Road is in Greenville
4 County?

5 A Yes, sir, it is.

6 Q Okay. Approximately what time did you arrive to
7 the incident location?

8 A I can't give you an exact time. I was
9 approximately the fourth or fifth car on the scene.

10 Q Okay. And what did you -- what did you see when
11 you arrived at this location?

12 A A young deputy named Bobby Hodges grabbed me and
13 said, We have a victim here that we believe is deceased in
14 one of the buildings.

15 So, he took me to the building. The
16 building is set up as such where there's one doorway that
17 leads into a small breezeway with a stairwell with two
18 apartments on the bottom and two apartments at the top of
19 the stairwell. And that's where the deceased was found.
20 He pointed him out to me where he was laying.

21 Q Where was he laying?

22 A He was at the bottom of the stairwell in a
23 seated position, but leaned back onto the stairs.

24 Q Did he have a pulse at this time?

25 A I did not check, but Deputy Hodges told me that

ROBERT WHATLEY-DIRECT BY MR. CONITS

1 he had checked for a pulse.

2 MR. STEELE: Your Honor, we've gotten in two
3 pieces of hearsay and I let it go. But I would
4 object to the hearsay.

5 THE COURT: Okay. Sustained.

6 BY MR. CONITS:

7 Q What did you do next?

8 A I asked Deputy Hodges what the situation was?

9 He said, All we have is --

10 MR. STEELE: Objection, Your Honor, on the same
11 grounds.

12 THE COURT: Okay. All right. What's the
13 purpose for which the testimony is elicited,
14 Mr. Conits?

15 MR. CONITS: Your Honor, I can rephrase the
16 question.

17 THE COURT: Okay.

18 BY MR. CONITS:

19 Q So, after you see the victim's body in the
20 breezeway, where do you go next?

21 A My concern at that point was once the
22 deceased -- we felt like there was no help that we could
23 give the deceased at that point in time. My next point is
24 to find out if we have any other victims that need
25 assistance or potential suspects that need to be brought

ROBERT WHATLEY-DIRECT BY MR. CONITS

1 into custody for the protection of the public.

2 Like I said earlier, the apartment complex
3 is set up, there are two apartments right as you enter the
4 breezeway door on the bottom floor and two at the top. I
5 was told that the contact had been made with the bottom
6 two floor apartment and the top right apartment and that
7 the people in there were okay. The top left apartment,
8 the door was opened and I was instructed that call outs
9 had been made, you know, sheriff's office, sheriff's
10 office, are you okay, and there was no response.

11 At that point, not knowing anything as far
12 as an incident location, additional victims, suspects,
13 anything of that matter, the exigent circumstances
14 overtook what we had and I, along with Deputy Robert
15 Hodges, went over the deceased body, up the stairs and
16 went to the left into that top apartment to clear it to
17 make sure there were no other victims or suspects.

18 Q And the apartment number? Do you recall the
19 apartment number?

20 A It was apartment [REDACTED].

21 Q Okay. And what did you observe in apartment [REDACTED]?

22 A Typical furnishings for an apartment. There
23 were couches and chairs and televisions. All we cared
24 about at the time were physical bodies, beings, alive or
25 otherwise. We wanted to make sure we were not overlooking

ROBERT WHATLEY-DIRECT BY MR. CONITS

1 people that needed assistance. We quickly went in with
2 weapons drawn, cleared the apartment. There were no other
3 people inside. At that point, we exited and waited for
4 the investigators to arrive.

5 Q Did you observe any shell casings in the
6 apartment?

7 A I did. There were shell casings on the living
8 room floor. The first room you entered is a living room,
9 slash, den area. And there were multiple shell casings on
10 the floor.

11 Q When you cleared the residence, did you observe
12 any drugs in the apartment and/or large amounts of cash?

13 A I did not because we were not in there long. It
14 was a quick brief simply looking for human bodies and that
15 is it.

16 Q Okay. What did you do after you cleared the
17 apartment?

18 A I waited at the top of the stairwell. Being
19 that the deceased was at the bottom, I did not want to
20 take the chance of messing up this crime scene at all.
21 But at some point, we had to go back over it. So we went
22 down the stairs generally without disturbing anything,
23 stepped back over him and exited the building.

24 MR. CONITS: One moment, Your Honor.

25 THE COURT: Uh-huh.

ROBERT WHITLEY-CROSS BY MR. STEELE

1 MR. CONITS: No further questions.

2 MR. STEELE: May it please the Court?

3 THE COURT: Yes, sir.

4 CROSS-EXAMINATION

5 BY MR. STEELE:

6 Q Lieutenant Whatley, it sounds like you were the
7 second man on the scene, is that an accurate statement?

8 A According to my report, I had that I was the
9 fourth or fifth car on scene.

10 Q How long did you remain there?

11 A Several hours.

12 Q Okay. So, when you said you just stepped over
13 the man who was deceased, that wasn't the end of your
14 involvement? You were there for a long time after that,
15 weren't you?

16 A Yes, sir, I stayed around to make sure they
17 had -- responding deputies had the things they needed to
18 conduct the investigation.

19 Q So, in other words, you stayed around to assist
20 the investigators, didn't you?

21 A Yes, sir.

22 Q Did you tell me you'd been with the sheriff's
23 department 14 years?

24 A Twenty-four yours.

25 Q Twenty-four years?

ROBERT WHITLEY-CROSS BY MR. STEELE

1 A Yes, sir.

2 Q During those years, you've been to murder scenes
3 other than this one, haven't you?

4 A Yes, sir.

5 Q Have you ever conducted a type of test on an
6 individual or seen it done wherein you can determine if a
7 certain individual has fired a firearm?

8 A In the past, we have gunshot residue tests, but
9 I've never performed one.

10 Q You seen them performed though?

11 A I've seen them swab fingers for that, but that's
12 as far as my extent would be.

13 Q Okay. Isn't there a process where you have to
14 bag the individuals hands to protect them from
15 contamination?

16 A That's been my -- in the past, yes, sir.

17 Q You've seen that done, haven't you?

18 A Yes, sir.

19 Q And you were out there for a while. During the
20 period of time that you were out there, did you see any
21 type of gun residue test performed on anybody?

22 A I did not.

23 Q All right. Did you see any effort to take
24 fingerprints while you were out there?

25 A I did not.

ROBERT WHITLEY-CROSS BY MR. STEELE

1 Q You've already told us that you had a -- you saw
2 a lot of shell casings around?

3 A Multiple. I don't if I would consider it a lot.
4 I just remember seeing more than one.

5 Q We'll say a number.

6 A Yes, sir.

7 Q And that number of shell casings, did you make
8 any effort to determine what caliber they were?

9 A No, sir.

10 Q Okay. You don't know what caliber they were, do
11 you?

12 A No, sir.

13 Q When you went up into that apartment and looked
14 around, did you see any weapons around there?

15 A No, sir.

16 Q Specifically, did you see a 38-caliber pistol
17 anywhere?

18 A No, sir.

19 Q Did you engage -- see or engage Timiya Massey at
20 any time while you were out there?

21 A Yes, sir. He was lying in the back of the
22 apartment at some point. But it -- I was told about that.
23 We did not recognize that he was out there at first. But
24 another deputy said there's someone in the back. And he
25 was laying in a thicket behind the apartment complex. And

ROBERT WHITLEY-CROSS BY MR. STEELE

1 he was later identified as Timiya Massey.

2 Q And you actually saw him back there?

3 A Yes, sir.

4 Q Would it be a true statement to say that he had
5 been injured?

6 A Yes, sir.

7 Q He had been shot in the leg?

8 A Yes, sir.

9 Q Okay. Can you tell me what Timiya Massey was
10 wearing?

11 A I can't remember, no, sir.

12 Q You don't remember what clothes he had on?

13 A No, sir.

14 Q Can you tell me when you saw him whether or not
15 his hands had been bagged in preparation for any kind of
16 gun residue test?

17 A I did not see any bags on his hands.

18 Q And you did see him, didn't you?

19 A Yes, sir.

20 MR. STEELE: May I have a moment, Your Honor?

21 THE COURT: Yes, sir, you may.

22 MR. STEELE: If Your Honor please, that's all I
23 have of Lieutenant Whatley.

24 THE COURT: Any redirect?

25 MR. CONITS: Yes, Your Honor.

ROBERT WHATLEY-RECROSS BY MR. STEELE

1 REDIRECT EXAMINATION

2 BY MR. CONITS:

3 Q Lieutenant Whatley, is it your job to take
4 fingerprints at the scene or is that the forensic
5 officers' job?

6 A That would be the forensic officer.

7 MR. CONITS: No further questions, Your Honor.

8 RECROSS-EXAMINATION

9 BY MR. STEELE:

10 Q But at the same time, you saw what you saw and
11 what you just described, did you not?

12 A At the time I had physical view of the deceased.
13 I did not see anyone take fingerprints.

14 Q And you did see Mr. Mr. Massey and he didn't
15 have any bags on his hands or anything?

16 A At the time I had physical eyesight on him, I
17 did not see any bags on his hands.

18 MR. STEELE: That's all, Your Honor.

19 THE COURT: All right, you may step down, sir.

20 Thank you. I appreciate your being here.

21 THE WITNESS: Thank you, sir.

22 MR. RICHARDSON: Your Honor, may this officer be
23 excused?

24 THE COURT: Any objection?

25 MR. STEELE: No objection.

WAYNE CAMPBELL-DIRECT BY MR. RICHARDSON

1 THE COURT: Yes, sir, absolutely.

2 Have a great day, Officer.

3 THE WITNESS: Thank you, sir.

4 THE COURT: Yes, sir.

5 MR. RICHARDSON: The State calls Wayne Campbell.

6 WAYNE CAMPBELL, after being duly
7 sworn, testified as follows:

8 THE CLERK: Thank you, please be seated. State
9 your name for the record.

10 THE WITNESS: Wayne Taylor Campbell.

11 DIRECT EXAMINATION

12 BY MR. RICHARDSON:

13 Q Sir, where are you employed?

14 A Greenville County Sheriff's Office.

15 Q In what capacity are you employed with the
16 Greenville County Sheriff's Office?

17 A I'm a violent crime investigator.

18 Q Okay. And how long have you been in that
19 particular job?

20 A Since 2009.

21 Q Okay. And how long have you been in law
22 enforcement?

23 A Approximately 32 years.

24 Q Have you spent 32 years in the Greenville County
25 Sheriff's Office or have you been elsewhere?

WAYNE CAMPBELL-DIRECT BY MR. RICHARDSON

1 A No, sir, with two other agency besides
2 Greenville.

3 Q Okay, sir. Now, I want to take your memory back
4 to this incident date, which is September 30th, 2015.
5 Were you working on that day?

6 A I was.

7 Q Were you working as an investigator or what was
8 your role that particular day?

9 A Back in 2015, the sheriff came out with a memo
10 that anyone that did not work our uniform patrol division
11 had to ride 40 hours. This particular week, I was riding
12 with uniform patrol doing my 40-hour week.

13 Q As part of that particular duty on that
14 particular -- was this nighttime?

15 A It was in the evening hours, yes, sir.

16 Q Okay. Were you dispatched to any particular
17 location?

18 A Yes, sir. We were sent to Dolphin Apartments,
19 which is located on North Franklin Road in Greenville.

20 Q And exactly, would that be 1140 North Franklin
21 Road?

22 A Yes, sir, it is.

23 Q Okay, sir. Let ask you, upon arrival, what did
24 you see, initially?

25 A When we got there, there were only a couple of

WAYNE CAMPBELL-DIRECT BY MR. RICHARDSON

1 deputies that were on scene. People were starting to
2 gather, this being an apartment complex. And the call had
3 come out that it was gunshot. Then we got a second call
4 that it was a gunshot victim, someone had been hit. So,
5 the people in the area, the community of the apartments
6 were starting to come out to see what was going on.

7 Q Okay, sir. Now, based upon -- had you ever been
8 there before or was this your first time going to that
9 location?

10 A It was my first time to be at that location.

11 Q Are you familiar with that location now?

12 A Yes, sir, I am.

13 Q Let me show you what's previously been marked --

14 And I believe I've shown this to Defense
15 counsel prior, Your Honor.

16 -- 4. Do you recognize this?

17 A Yes, sir.

18 Q Okay. Does that accurately depict the area of
19 1140 North Franklin Road?

20 A It does.

21 Q Okay. Does it look like it's been changed in
22 any form or fashion?

23 A Other than the vehicles in the picture being
24 different from that day or that evening, no, sir.

25 MR. RICHARDSON: Your Honor, at this time, we

WAYNE CAMPBELL-DIRECT BY MR. RICHARDSON

1 would offer State's 4 into evidence.

2 MR. STEELE: At this time, Your Honor, I don't
3 think there's been any foundation established to
4 relevance and I would object.

5 THE COURT: Okay. I'll overrule the objection.
6 The same is admitted over objection as State's
7 Exhibit No. 4.

8 (WHEREUPON, State's Exhibit No. 4 was marked for
9 identification and received into evidence.)

10 MR. RICHARDSON: Your Honor, I ask permission
11 from the Court that the witness be allowed to step
12 down?

13 THE COURT: Sure, yes, sir.

14 BY MR. RICHARDSON:

15 Q Sir, is this the exact apartment complex that
16 we're referring to where the incident took place?

17 A These buildings right here are Dolphin Apartment
18 complex.

19 Q Do you know which one is where the incident took
20 place?

21 A Apartment ■■■, the door going to the exterior is
22 facing this way on this particular end of the building.

23 Q Okay, sir. Now, when you arrived, can you show
24 the jury where you viewed the victim's body?

25 A We pulled in this direction, stopped about here.

WAYNE CAMPBELL-DIRECT BY MR. RICHARDSON

1 Deputy Hodges told me that the victim was deceased.
2 Brought me right over here to this sidewalk and showed me
3 the victim, who was lying in like a foyer area right
4 inside the building.

5 Q Okay, sir. Did you also notice any type of
6 evidence, possibly evidence scattered throughout that
7 area?

8 A After making some decisions about roping off the
9 area and all, I was informed that there was some evidence
10 down here that needed to be protected. So, we put a
11 deputy down there to protect that part of the crime scene.

12 Q Okay, sir. If you'll take your seat. And in
13 particular, regarding that evidence, what did you do -- or
14 let me ask you this. What did you see?

15 A There was a what I call a ski mask as well as a
16 firearm over on that side of the building. So, if you're
17 look at the building facing the doorway going into the
18 apartments where ■ -- apartment ■ would be entering from
19 the exterior, it's on the left end of the building. There
20 was a ski mask, and then the firearm, which was to the
21 left of it.

22 Q Okay, sir. And while you were out there, did
23 you notice any pictures being taken?

24 A Yes, sir.

25 Q Okay. And let me hand you what's been marked

WAYNE CAMPBELL-DIRECT BY MR. RICHARDSON

1 State's 3 -- excuse me, 1, 2, and 3. If you could just
2 look at those photos, please, sir.

3 A All right, sir.

4 Q Okay. And does that depict what you saw that
5 evening?

6 A Yes, sir, it does.

7 Q Okay, sir. Don't explain it to me. Just does
8 it depict what you saw and accurately represent what you
9 saw?

10 A Yes, sir.

11 Q Has it been changed or altered in way from what
12 you saw?

13 A No.

14 MR. RICHARDSON: Your Honor, at this time, we
15 would offer State's 1 through 3 into evidence.

16 THE COURT: Objection, sir?

17 MR. STEELE: Well, I don't have an objection
18 that I can make right now, but subject to
19 cross-examination, no objection.

20 THE COURT: Okay. All right. Same is admitted
21 without objection.

22 (WHEREUPON, State's Exhibits Nos. 1-3 were
23 marked for identification and received into
24 evidence.)

25

WAYNE CAMPBELL-DIRECT BY MR. RICHARDSON

1 BY MR. RICHARDSON:

2 Q Okay, sir. Let me show you what's been
3 marked -- I'm referring to State's 1. It appears to be a
4 glare. In this particular picture, what is this
5 depicting?

6 A That's the -- what I call a ski mask and then
7 there's a firearm right there.

8 Q What are those red items around that ski mask
9 and that firearm?

10 A That particular evening, it had been raining and
11 the weather forecast was for more rain. So, to protect
12 these two items that I was aware of, I asked Lieutenant
13 Granner if they had something to cover it up. He brought
14 back a red plastic bag, basically, what we call a
15 biohazard bag. I tore the bag into two pieces and put
16 it -- just sort of perched it up here and here to cover
17 those items to prevent them from getting wet or damaged by
18 rain.

19 Q Let me show you what is State's Exhibit 2. What
20 is this, sir?

21 A That's the firearm right there. You can see it
22 right in here.

23 Q Okay. It's kind of difficult to see. Can you
24 point out the firearm, please?

25 A It's right here.

WAYNE CAMPBELL-DIRECT BY MR. RICHARDSON

1 Q Is that what's in the right corner?

2 A Someone has removed the piece of plastic bag
3 that I loosely placed over it.

4 Q And I'm referring to State's 3. What is that,
5 sir?

6 A This is the ski mask -- or the mask that I
7 referred to as a ski mask and that's the plastic piece of
8 bag that I had placed over it.

9 Q Okay, sir. Now, you may have testified to this,
10 but the reason for the plastic bags was what?

11 A Like I say, we had heavy rains that evening and
12 the forecast was for more rain. So, to prevent it from
13 losing any further evidentiary value, such as DNA, put the
14 bags over it so if it did rain, it wouldn't wash that
15 evidence away.

16 Q Okay, sir. Now, upon seeing this evidence,
17 what, if anything, did you do after you covered it?

18 A After I covered it, I called Investigator
19 Hammett and spoke with him concerning him responding.

20 Q Okay. Did Investigator -- this is Investigator
21 Hammett?

22 A That is correct.

23 Q Okay. Did Investigator Hammett respond to the
24 scene?

25 A He did.

WAYNE CAMPBELL-DIRECT BY MR. RICHARDSON

1 Q Okay. Now, you're an investigator, why did you
2 need to call Investigator Hammett?

3 A He was on call that week. And as I told you
4 before, I was doing my 40 hours with uniform patrol. So,
5 instead of being an investigator, I was having to do more
6 of a uniform patrol duty, if you know what I'm saying.
7 Meaning, protecting and preserving the crime scene.

8 Q Is that, in fact, what you did that night?

9 A Yes, sir.

10 Q At some point in time, did you -- did you
11 actually check the victim yourself?

12 A No, sir, I did not.

13 Q Okay, sir. At some point in time, did EMS
14 arrive?

15 A They did. And I escorted one of the EMS
16 personnel to the area and allowed them to check the
17 victim. Once he was pronounced deceased, I escorted him
18 right back out of the crime scene area.

19 Q After doing that, at some point in time, were
20 you involved in obtaining a search warrant?

21 A I was.

22 Q What was that search warrant for?

23 A The victim's apartment, No. [REDACTED].

24 Q Okay, sir. And why did you obtain the search
25 warrant at that particular time?

WAYNE CAMPBELL-DIRECT BY MR. RICHARDSON

1 A At that particular point in time, it was part of
2 the crime scene. And on a case of this magnitude, which
3 being a murder, we always get a search warrant.

4 Q Okay. And did you, in fact, get that search
5 warrant?

6 A I did.

7 Q Okay. Now, did you yourself search that
8 apartment or did other individuals search it?

9 A I never entered the building, sir.

10 Q When you say you never entered the building, you
11 mean you never apartment [REDACTED]?

12 A I never entered the building itself, period.

13 Q Okay. Did you ever enter apartment [REDACTED]?

14 A No, sir, I did not.

15 Q What was you're involvement with apartment [REDACTED]?

16 A After I obtained the search warrant, Master
17 Deputy Jones approached me and told me that the occupant
18 in apartment [REDACTED] had told him that a bullet or projectile
19 had come into his apartment and that he was willing to
20 sign a consent to search form and allow us to come
21 photograph and retrieve that said bullet or projectile.
22 I, in turn, passed it on to Sergeant Dar Shaw with our
23 forensic units as well as Investigator Hammett.

24 Q Was that your last involvement with any
25 projectile in that particular apartment?

WAYNE CAMPBELL-DIRECT BY MR. RICHARDSON

1 A Yes, sir.

2 Q Okay. Do you know if the forensic unit took
3 that projectile into evidence?

4 A I would assume, but I don't know personally.

5 Q Okay. And this apartment ■■■, in relation to
6 apartment ■■■, is where?

7 A If you've got -- if you look here --

8 MR. RICHARDSON: Your Honor, can he come off the
9 stand?

10 THE COURT: Sure.

11 BY MR. RICHARDSON:

12 Q If you can, move that up a little bit closer.

13 A Up this way?

14 Q Yes, sir, to the jury.

15 A Apartment ■■■ was on this end of the building
16 coming this way. Apartment ■■■ is in this building. It's
17 a different building.

18 Q Okay. And just as a general description of
19 these apartments, are there two apartments downstairs and
20 two apartments upstairs in one particular --

21 A That's what I would assume here because standing
22 on the stoop looking in, you had a door on the right, one
23 on the left. The victim was lying between them against
24 the stairwell. The stairs went up to what I assume to be
25 two apartments up there.

WAYNE CAMPBELL-DIRECT BY MR. RICHARDSON

1 Q Okay. And do you know that one of those
2 apartments, being ■, the victim's apartment?

3 A Yes, sir.

4 Q Now, you can return to your seat.

5 A (The witness complies.)

6 Q Now, sir, during your investigation, do you know
7 approximately how long you had been -- you were in the
8 area, in the incident place?

9 A From beginning to end?

10 Q Yes, sir.

11 A I would say roughly probably an hour and a half,
12 two hours.

13 Q During that hour and a half, two hours, did you
14 ever come in contact with the Defendant?

15 A Yes, sir, I did.

16 Q Tell the jury about that contact.

17 A As I told you that Master Deputy Jones had
18 informed me about apartment ■ having a bullet or
19 projectile that entered the apartment. Standing there
20 talking to Sergeant Shaw about it when he arrived on the
21 scene as the crime scene sergeant, Crime Scene Technician
22 Spurgeon approached us and, basically, looked at us and
23 said there's another --

24 MR. STEELE: Your Honor, I object to what
25 Spurgeon said. I object on hearsay grounds.

WAYNE CAMPBELL-DIRECT BY MR. RICHARDSON

1 THE COURT: You want to rephrase the question?

2 MR. RICHARDSON: Yes, sir, I will.

3 BY MR. RICHARDSON:

4 Q Well, let me ask you --

5 A I'll just rephrase it.

6 Q It's okay. You talked to Mr. Spurgeon?

7 A Yes.

8 Q Okay, sir. And subsequent to your talking to
9 him and as a result of your talking to Spurgeon, what did
10 you do?

11 A We went on the backside of the building where
12 apartment ■, I showed you where the front door, on the
13 back side, the other side, on the left end of it, he told
14 us that a body was there. So, we go back, Sergeant Shaw
15 and I, and see an individual lying in what I call the
16 thicket, meaning briars, underbrush and all. And you
17 could see from, at least, his waist down there lying in
18 that thicket.

19 Q Okay. Did you go over and look at this person?

20 A After I had called Investigator Hammett and the
21 deputy coroner that was on the scene, I crawled in there
22 to check to see if I could tell if he was alive, if I
23 could feel him breathing.

24 Q So, when you say you crawled in there, explain
25 to me where he is in this thicket?

WAYNE CAMPBELL-DIRECT BY MR. RICHARDSON

1 A He's up underneath a bunch of briars and bush,
2 underbrush. So, I have to go crawl sort of in and just
3 put my hand up his under nose and his mouth and felt him
4 breathing, and then I backed out.

5 Q Okay. Did it appear that he was hiding back
6 there?

7 A Yes, it did.

8 MR. STEELE: I object on grounds of his drawing
9 a conclusion without any foundation laid for his
10 ability to observe that. He might could describe
11 what happened, but I don't think he can just say he
12 was hiding.

13 THE COURT: All right, I will respectfully
14 overrule the objection.

15 BY MR. RICHARDSON:

16 Q Okay, sir. Now. upon finding him in there, did
17 you attempt to do anything with him?

18 A We moved him out of the thicket area and EMS was
19 called by another deputy. And upon their arrival, they
20 provided medical care.

21 Q Okay, sir. And when you say you moved him out,
22 was it more than one person?

23 A It was myself and the deputy coroner moved him.

24 Q Okay. And at that time, did you notice an
25 injury about him?

WAYNE CAMPBELL-CROSS BY MR. STEELE

1 A The bottom of his right pants leg was saturated
2 with blood.

3 Q Now, if you will --

4 MR. RICHARDSON: I'm sorry, one more time, Your
5 Honor, can I ask him to come down off the stand?

6 THE COURT: Sure.

7 BY MR. RICHARDSON:

8 Q Come down off the stand. I want you to show
9 where this thicket was that you found him hiding?

10 A Like I said, this was apartment ■ right here.

11 Q Yes, sir.

12 A He was found in this underbrush thicket area
13 right here on the back corner. And the gun and all was in
14 here. He was found here.

15 Q Okay.

16 Okay, sir. I appreciate your testimony.
17 Please answer any questions that Mr. Steele has for you.

18 CROSS-EXAMINATION

19 BY MR. STEELE:

20 Q Mr. Campbell, even though you were there in a
21 uniform capacity that night, you are an investigator?

22 A That's correct.

23 Q I think you were then?

24 A Probably in some way, yes.

25 Q I don't mean that night, I mean you were in an

WAYNE CAMPBELL-CROSS BY MR. STEELE

1 investigator role with the sheriff's department generally,
2 but you were doing your period of working uniform patrol
3 as required by the sheriff?

4 A Yes, sir, on that particular week.

5 Q And you have conducted murder investigations, I
6 would expect, in your career, which is 32 years long,
7 isn't it?

8 A Yes, sir, been doing them since 2009.

9 Q And you know about the test to determine if a
10 person has gunshot residue on their hands?

11 A Very familiar with it.

12 Q Have you ever performed that?

13 A Yes, sir, I have.

14 Q Tell me how you do that? How you did that?

15 A Well, back when I've done them, I've done them
16 two different ways. One is when we used to use Q-tips,
17 which is no longer used. The one they do now is what we
18 call a dabber. It's got a little piece of, I guess,
19 sticky tape or something on it. You pull a piece of
20 plastic off of it to make it adhesive and you just dab on
21 the part of the hand, back part of hand, and you do both
22 hands to adhere to it. You put a little cap over it to
23 keep anything from contaminating that tip.

24 Q And what's the other way?

25 A The other what was we have call an atomic

WAYNE CAMPBELL-CROSS BY MR. STEELE

1 absorption kit, which, basically, we put a solution on a
2 Q-tip and rolled the Q-tip. Instead of using the dabber,
3 you rolled the Q-tip on the back of the hand, the front of
4 the hand and do both hands. And on that one, you had to
5 do an area that would not be subjected to like gun powder,
6 which usually was the left ankle. Pull the sock down,
7 swab it. Because the sock usually covers it. So, you
8 have your known standard there, plus your samples.

9 Q Tell me, is there a procedure that you use to
10 prevent contamination of the hands?

11 A As far as?

12 Q Bagging the hands?

13 A They do bag hands. It's mainly used for
14 deceased people.

15 Q But that is sometimes done?

16 A Very seldom on live people, but deceased people,
17 it's done on all the time.

18 Q Did you see any such test performed on Timiya
19 Massey that night?

20 A Not that I'm aware of.

21 Q And you were there a pretty good while? I think
22 three or four hours?

23 A It was about an hour and a half, two hours.

24 Q But you were there a long time?

25 A I was there long enough for them to put him on

WAYNE CAMPBELL-CROSS BY MR. STEELE

1 stretcher and leave.

2 Q So, in other words, you were there until

3 Mr. Massey was taken away?

4 A Yes, I was. But what they did from the point of
5 leave, I have no clue.

6 Q But you didn't see any indication that a gunshot
7 residue test had been conducted?

8 A No, sir.

9 Q What about fingerprints on the gun, did you see
10 any process there?

11 A It's too early in the stage to be doing latent
12 fingerprint processing on anything at that point unless
13 it's an object you can't collect and take back to the
14 office and process. I mean, like a door, you would
15 process it, or a window on the scene. But a glass or
16 something, you collect it and take it back to the office.

17 Q So, it wouldn't have been necessary to do it out
18 there?

19 A No, sir.

20 Q But just for my information, nothing about
21 fingerprints was done out there, was it?

22 A You would have to speak to Investigator Hammett.

23 Q Okay, sir. To your knowledge, you didn't see
24 anything?

25 A Not while I was there, but I never entered the

WAYNE CAMPBELL-CROSS BY MR. STEELE

1 building.

2 Q Yes, sir. Now, you told me you actually saw
3 Mr. Massey and you're the person, apparently, who
4 approached him first, am I correct about that?

5 A I checked to see if he was still alive, and he
6 was.

7 Q Did he appear to be unconscious?

8 A No, sir.

9 Q Were his eyes opened?

10 A He was laying very still, trying to be shallow
11 breath, his eyes were closed.

12 Q You obviously were close enough to him to see
13 what he was wearing, what color was his pants?

14 A It was a light gray sweatpants?

15 Q Light gray sweatpants?

16 A With the right bottom pants leg saturated in
17 blood.

18 Q Yes, sir. It was not blue jeans, was it?

19 A No, sir.

20 Q And did I understand you to say that
21 Mr. Spurgeon of the sheriff's office was out there?

22 A He works for our crime scene unit, but he was
23 there, yes.

24 Q What would be his exact title?

25 A I don't know. I guess he was crime scene

WAYNE CAMPBELL-CROSS BY MR. STEELE

1 technician on that night.

2 Q His first name is Josh, isn't it?

3 A I believe so.

4 Q What was he doing? What was his --

5 A He was processing -- documenting and processing
6 the crime scene as well as collecting evidence.

7 Q Did you see him doing that?

8 A I saw him taking picture, yes, sir.

9 Q Okay. Did you see him actually collect any
10 evidence?

11 A No, sir.

12 Q Specifically, I'll just ask you, I think you've
13 answered, but did you see him pick up a ski mask or a gun
14 or anything?

15 A Never saw him collect it, no, sir.

16 Q You just saw him photograph it?

17 A Photographing the area, plus, I had him
18 photograph some footprint impressions on the backside of
19 the building.

20 Q You might have said, but tell me what kind of
21 shirt Mr. Massey had on.

22 A He had a white T-shirt on when I found him.

23 Q White T-shirt?

24 A Yes, sir.

25 MR. STEELE: That's all, Your Honor. Thank you.

WAYNE CAMPBELL-REDIRECT BY MR. RICHARDSON

1 THE COURT: Yes, sir.

2 MR. RICHARDSON: Thank you, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. RICHARDSON:

5 Q So we're clear, your job that day or that
6 evening was not to take fingerprints, correct?

7 A It was not to take fingerprints.

8 Q Or to do anything regarding GSR; is that
9 correct?

10 A No, sir, I was there for crime scene
11 preservation.

12 Q Okay. That would be the job of the forensics
13 unit?

14 A That's correct.

15 Q And you said you're familiar with GSR; is that
16 correct?

17 A I am.

18 Q Okay, sir. You familiar with the analysis of
19 GSR?

20 A What do you mean?

21 Q Are you familiar with the -- when GSR is
22 accumulated on a person, that that comes from gunshots
23 that take place around you?

24 A Yes, it can.

25 Q Okay. So, if a bunch of people are shooting,

WAYNE CAMPBELL-FURTHER REDIRECT BY MR. RICHARDSON

1 everybody will have GSR on them; is that correct?

2 A Possible, yes.

3 MR. RICHARDSON: That's all the questions I
4 have.

5 MR. STEELE: Recross, Your Honor?

6 THE COURT: Yes, sir.

7 RECROSS-EXAMINATION

8 BY MR. STEELE:

9 Q But even though you weren't there in an
10 investigative capacity, you saw what you saw, right?

11 A Yes, sir.

12 Q And you answered my questions honestly about
13 what you saw and did not see, right?

14 A Yes, sir.

15 Q And you did not see anybody conduct anything
16 resembling a gunshot residue test, did you?

17 A No, sir, I didn't.

18 Q Nor did you see anybody prepare Mr. Massey for
19 that test, did you?

20 A No, sir.

21 MR. STEELE: That's all, Your Honor.

22 MR. RICHARDSON: Your Honor, just one question.

23 FURTHER REDIRECT EXAMINATION

24 BY MR. RICHARDSON:

25 Q But were you around the forensic unit the entire

WAYNE CAMPBELL-FURTHER REDIRECT BY MR. RICHARDSON

1 time you were there?

2 A No, sir, I was not.

3 MR. RICHARDSON: Thank you.

4 THE COURT: All right, you can step down, sir.
5 Thank you.

6 MR. RICHARDSON: Your Honor, can this witness be
7 excused?

8 THE COURT: Objection, sir?

9 MR. STEELE: No objection.

10 THE COURT: All right, certainly.

11 MR. RICHARDSON: Your Honor, the State calls
12 Josh Spurgeon to the stand. I'm sorry, we're going
13 to call Jesse Wasserman.

14 THE COURT: Too late, I already checked
15 Spurgeon, I'm sorry. Which witness are you calling?

16 MR. RICHARDSON: Jesse Wasserman.

17 THE COURT: Okay.

18 THE CLERK: Would you please raise your right
19 hand, place your left hand on the Bible.

20 JESSE WASSERMAN, after being duly
21 sworn, testified as follows:

22 THE CLERK: Thank you, please be seated. State
23 your name for the record.

24 THE WITNESS: My name is Deputy Jesse Ross
25 Wasserman.

JESSE WASSERMAN-DIRECT BY MR. CONITS

1 THE CLERK: Thank you, sir.

2 DIRECT EXAMINATION

3 BY MR. CONITS:

4 Q Deputy Wasserman, where do you work?

5 A I'm employed by the Greenville County Sheriff's
6 Office.

7 Q In what capacity?

8 A I'm a K-9 handler.

9 Q How long have you worked with the sheriff's
10 office?

11 A I've worked for the sheriff's office for nine
12 years.

13 Q Okay. And you were working there in
14 September of 2015?

15 A That is correct.

16 Q Were you employed in your present capacity at
17 that time?

18 A Yes, as a K-9 handler.

19 Q To be certified as dual purpose being through
20 the North American Police Work Dog Association, what is
21 required?

22 A We do 40 hours of training every month. We
23 train for 10 hours every Wednesday. We're also tested by
24 a North American Police Work Dog Association master
25 trainer, and that occurs yearly.

JESSE WASSERMAN-DIRECT BY MR. CONITS

1 Q Okay. And you were on shift on September 30th,
2 2015, around 8:30 p.m.?

3 A Yes, sir.

4 Q Okay. Did you respond to 1140 North Franklin
5 Road?

6 A Yes, sir.

7 Q Why?

8 A We were called to the apartments on North
9 Franklin Road, 1140 North Franklin Road, for an incident
10 that occurred. They were requesting a K-9 come out and do
11 a track. Witnesses stated that somebody -- the
12 individuals that were involved in the crime had fled on
13 foot. And that's why we got called in, to try to help
14 out.

15 When I got there, I was told by the
16 deputies on scene that had talked to witnesses that
17 someone was seen running out of the back of the apartment
18 toward North Franklin Road. So, at that point, I got my
19 K-9, I hooked him up to his tracking harness. I put him
20 on a 20-foot leash and we went to the last known location
21 where the person was seen running around the back of
22 apartments. And that's where I put my K-9 down on the
23 ground and gave him his track command.

24 MR. CONITS: Permission for the witness to step
25 down?

JESSE WASSERMAN-DIRECT BY MR. CONITS

1 THE COURT: Sure.

2 BY MR. CONITS:

3 Q Step down here and just kind of go through the
4 initial track. Here's a map if you will point it out for
5 the jury.

6 A Absolutely. So, we were told that the person
7 had fled on foot, had come around the back of the
8 apartment complex --

9 MR. STEELE: Objection to what he was told, Your
10 Honor.

11 THE COURT: Hold on, hold on.

12 What's the objection, to hearsay, sir?

13 MR. STEELE: Yes, sir. It's apparently offered
14 for the truth of the matter asserted and I don't see
15 an exception.

16 THE COURT: What is it offered for, Mr. Conits?

17 MR. CONITS: Your Honor, we're trying to get why
18 he went where he went.

19 THE COURT: Okay, I'll allow it in over
20 objection.

21 Go ahead.

22 THE WITNESS: We started tracking around the
23 back of the apartment complex and toward North
24 Franklin Road.

25

JESSE WASSERMAN-DIRECT BY MR. CONITS

1 BY MR. CONITS:

2 Q What did you observe during that initial track?

3 A About several yards in, I began to notice that
4 my K-9 started to display behavior changes, which meant
5 that he was in close proximity to something that had a lot
6 of human odor on it. If you can imagine, as you're
7 walking along a path, your body puts human odor on the
8 path. If you hold onto something for a long period of
9 time, that object is going to have more human odor -- or
10 if it's a clothing item, it's going to have more human
11 order on it.

12 So, as we're going along and we're
13 tracking, he makes a head check left and dives into some
14 tall grass and starts looking for something. At that
15 point, I walk over and I notice that there is a gun laying
16 in the long grass and a little bit further past it is a
17 black mask. At that point, we called another deputy over
18 to control that scene and make sure that nothing was
19 touched. We continue on with our track toward North
20 Franklin Road.

21 Q Thank you, Deputy. You can take your seat. You
22 called the other deputy over. Where did you then go?

23 A After that, after Deputy McGrath came and
24 controlled that scene where that gun and that mask was
25 found. We continued on our track, which went toward North

JESSE WASSERMAN-DIRECT BY MR. CONITS

1 Franklin. It crossed over North Franklin Road. We
2 circled behind some residences that were across the
3 street. And then we came -- the track circled back to
4 North Franklin Road.

5 Q Okay. Why did you go up there?

6 A Go to?

7 Q Why did you go up to -- up past the houses?

8 A We went up past the houses, that's where my dog
9 was tracking. He was following the trail that the person
10 that fled took, the path of the suspect.

11 Q Okay. And what time did you return your K-9 to
12 your patrol vehicle?

13 A It was approximately 9:30.

14 Q Okay. So, this whole sequence of events took
15 about 45 minutes?

16 A Yes, sir.

17 Q Okay. Did you ever see the Defendant during
18 your initial deployment?

19 A No, sir.

20 Q So, what happens next?

21 A I went back to normal work and we got called out
22 again at about 10:41. They had found -- when they were
23 out on scene, deputies that were still out on scene, saw
24 an injured subject laying in some brush that was along
25 side the apartments.

JESSE WASSERMAN-DIRECT BY MR. CONITS

1 Q Okay. And so your response to that?

2 A Our response to that was they requested that I
3 do what's called a backtrack to see where the person came
4 from. What you do is after they moved that subject, I
5 started where he was found and tracked back to where he
6 came from, which was in a wooded area to the right of
7 apartment complex.

8 MR. STEELE: Your Honor, I would object on the
9 grounds that there's been no establishing of an area
10 of expertise or that this witness is an expert
11 witness. So, I don't think he can draw these kinds
12 of conclusions in the absence of that.

13 THE COURT: Okay.

14 Mr. Conits?

15 MR. CONITS: Let me just get away from that. I
16 can move on.

17 THE COURT: Okay.

18 MR. STEELE: Can we strike all that then?

19 THE COURT: Strike the part about how the dog
20 was reading the scent?

21 MR. STEELE: Yes.

22 THE COURT: You said that's the subject of
23 expert testimony?

24 MR. STEELE: Yes, he was telling where he had
25 been. And I would ask the Court to strike that.

JESSE WASSERMAN-CROSS BY MR. STEELE

1 THE COURT: Okay, I'll respectfully deny your
2 request. I don't think it is within the purview of
3 expert testimony based on what specifically he said.
4 Now, he could if he were talking about what a dog
5 does and why it does and why it may respond to a
6 scent. But I think he was just giving the factual
7 lay down of how it responded.

8 In any event, I'll allow you to respond,
9 Mr. Conits.

10 BY MR. CONITS:

11 Q Did you and your K-9 come into contact with
12 anyone else during the second deployment?

13 A No, sir.

14 MR. CONITS: One moment, Your Honor.

15 THE COURT: Yes, sir.

16 MR. CONITS: No further questions, Your Honor.

17 THE COURT: All right.

18 CROSS-EXAMINATION

19 BY MR. STEELE:

20 Q Mr. Wasserman, I realize that your role out
21 there was somewhat limited. You were there mostly just to
22 allow your K-9 to do what he's trained to do, am I
23 correct?

24 A Yes, sir.

25 Q But you didn't -- did you actually -- how long

JESSE WASSERMAN-CROSS BY MR. STEELE

1 were you there if you combine those two visits that you
2 described?

3 A Say approximately two and a half to three hours.

4 Q Okay. So, you were there a pretty good while?

5 A Yes, sir.

6 Q Do you know a forensics officer by the name of
7 Josh Spurgeon?

8 A No, sir.

9 Q Did you see other officers performing their
10 duties there? I suspect you did?

11 A Yes, sir.

12 Q Did you see anybody -- and you actually did see
13 Timiya Massey, did you not?

14 A Sir?

15 Q You saw Timiya Massey, did you not?

16 A No, sir.

17 Q You never saw him?

18 A No, sir.

19 Q So, when your dog was retracing as you
20 described, and that's been admitted into evidence, you
21 never saw Timiya Massey?

22 A No, sir.

23 Q So, you don't know what he was wearing?

24 A No, sir.

25 Q You don't know if his hands were being tested

JESSE WASSERMAN-CROSS BY MR. STEELE

1 for gun residue?

2 A No, sir.

3 Q You didn't see any of that?

4 A No, sir.

5 Q Right. Your testimony is with all your
6 activities with the dog around there, you never laid eyes
7 on Timiya Massey?

8 A No, sir.

9 MR. STEELE: That's all, Your Honor.

10 THE COURT: Redirect?

11 MR. CONITS: Nothing further, Your Honor.

12 THE COURT: Thank you, Officer, you can step
13 down. I appreciate you being here.

14 MR. RICHARDSON: Your Honor, may this officer be
15 excused?

16 THE COURT: Without objection, yes.

17 No objection, Mr. Steele?

18 MR. STEELE: I'm sorry, Your Honor.

19 THE COURT: To the officer being excused, no
20 objection?

21 MR. STEELE: No objection to the officer being
22 excused.

23 THE COURT: Okay, thank you.

24 MR. RICHARDSON: Now, we'll call Josh Spurgeon.

25 THE COURT: Okay.

JOSH SPURGEON-DIRECT BY MR. RICHARDSON

1 THE CLERK: Sir, please come forward. If you
2 would please place your left hand on the Bible, raise
3 your right hand.

4 JOSH SPURGEON, after being duly sworn,
5 testified as follows

6 THE CLERK: Thank you, please be seated. State
7 your name for the record, please.

8 THE WITNESS: Josh Spurgeon.

9 THE CLERK: Thank you.

10 DIRECT EXAMINATION

11 BY MR. RICHARDSON:

12 Q Mr. Spurgeon, where are you presently employed?

13 A Progressive Insurance.

14 Q And how long have you been employed there?

15 A About a year and a half.

16 Q If you would, speak up a little bit. I'm having
17 a hard time hearing you.

18 A A year and a half or so.

19 Q And previous to that, were you employed with the
20 Greenville County Sheriff's Office?

21 A I was.

22 Q Okay. In what capacity?

23 A As a forensics evidence technician.

24 Q How long were you in law enforcement, total
25 amount of time?

JOSH SPURGEON-DIRECT BY MR. RICHARDSON

1 A I was on patrol for three years in North
2 Carolina, two years with Greenville County forensics and a
3 private investigator for several years and still am part
4 time. So maybe, if you consider PI work, 10 years
5 roughly.

6 Q Okay. You may have testified to this, how long
7 had you done the forensic work?

8 A Began, when was it, May 2014. So, at this time,
9 maybe a year and four months, five months, roughly.

10 Q Okay, sir. Now, can you just briefly tell the
11 jury what a forensics officer does?

12 A We go out to crime scenes, ranging from auto
13 break-ins, robberies, homicides. Look for evidence,
14 collect evidence, whatever needs to be collected, whatever
15 is of interest that may have value. Take photographs and
16 process the scene for fingerprints.

17 Q Okay. And would you -- is part of your duties
18 also to take swabs for possible DNA analysis?

19 A Yes, sir.

20 Q Now, let me take your memory back to September
21 of 2015, were you working?

22 A Yes, sir.

23 Q Okay. Exactly on the 30th, were you working
24 that day?

25 A Yes, sir.

JOSH SPURGEON-DIRECT BY MR. RICHARDSON

1 Q Were you dispatched to a location at 1140 North
2 Franklin Road?

3 A I was.

4 Q Okay. When you arrive there and as a forensic
5 officer, what's the first thing you do?

6 A On major calls, we meet with the investigator,
7 just like they're already on scene, discuss briefly what
8 occurred and how the scene needs to be handled.

9 Q Okay. In this particular case, did you do that?

10 A Yes, sir.

11 Q Okay. So, did you have a conversation with
12 the -- with Chris Hammett or another investigator?

13 A Yes, with Investigator Hammett.

14 Q Now, as a result of that conversation, did you
15 walk the scene or what did you do?

16 A Briefly, did a quick walk-through. Didn't go
17 inside. There was a threat of rain, so Investigator
18 Campbell wanted the emphasis to be on the evidence outside
19 since there was a lot. And as rain may be moving in, we
20 stayed outside, that was our primary focus.

21 Q Okay. Eventually, you went inside?

22 A Yeah, eventually.

23 Q Okay. But tried to get the scene processed so
24 the rain didn't get to it?

25 A Yes, sir.

JOSH SPURGEON-DIRECT BY MR. RICHARDSON

1 Q Okay, sir. Now, did you observe the victim?

2 A Yes.

3 Q Okay. And when you observed the victim, did you
4 do anything as far as forensics is concerned?

5 A Not initially.

6 Q Okay. Did you notice any wounds about his face?

7 A I can't recall.

8 Q Okay. Now, after you observed the victim, did
9 you start to take any photographs of the scene?

10 A I did.

11 Q Okay. And is that a camera that is issued by
12 Greenville County Sheriff's Office?

13 A Yes.

14 Q Okay. And is it a digital camera?

15 A Yes, sir.

16 Q All photos, are they kept on that camera?

17 A Yes, sir.

18 Q Once you take the photographs with that camera,
19 what do you do with them?

20 A We give them back to the crime scene office. We
21 upload them to the digital system on the computer.

22 Q Is that a system that you have access to after
23 it's downloaded?

24 A Yes, sir.

25 Q Okay. Let me hand you what's been marked

JOSH SPURGEON-DIRECT BY MR. RICHARDSON

1 State's 6 through 9. Just what I want you to do is look
2 at each one of those photos, please, sir.

3 A (The witness complies.) They look familiar.

4 Q Are those the photos you took?

5 A Yes, sir.

6 Q Does it actually identify as a forensic photo at
7 the top?

8 A Yes, sir.

9 Q Do those photos accurately depict of what you
10 took?

11 A They do.

12 Q Do those photos, have they been changed or
13 altered in any way that you can ascertain?

14 A No, sir.

15 MR. RICHARDSON: Your Honor, at this time, the
16 State would offer Exhibits 9 -- excuse me, 6 through
17 9 into evidence.

18 THE COURT: Objection, sir?

19 MR. STEELE: He said he took them, I can't do
20 much about that.

21 THE COURT: Okay. All right. With no
22 objection, they're introduced as State's next
23 exhibits.

24 (WHEREUPON, State's Exhibits Nos. 6-9 were
25 marked for identification and received into

JOSH SPURGEON-DIRECT BY MR. RICHARDSON

1 evidence.)

2 BY MR. RICHARDSON:

3 Q Okay, sir, let me -- I'm referring to State's
4 Exhibit 6, this photograph. There's a pointer up there if
5 you need to use it, a red laser. Can you tell the jury
6 what this is depicting?

7 A The inside of the apartment where the shootout
8 took place?

9 Q Okay. Is that from -- is that a photograph from
10 the entranceway into the apartment?

11 A Yes, right at the top of the stairs.

12 Q Yes, sir. And referring to now State's Exhibit
13 No. 8, what does that depict?

14 A That's inside the apartment located at the exit
15 door.

16 Q Okay. And State's Exhibit 7, what does that
17 depict?

18 A That's another view from the doorway looking
19 inside.

20 Q In particular, do you see a shoe in that
21 picture? By the loveseat?

22 A Looks like maybe a black one.

23 Q Can you just show it with that laser pointer?

24 A (The witness complies.)

25 Q Okay, sir. And referring to State's No. 9, what

JOSH SPURGEON-DIRECT BY MR. RICHARDSON

1 does that depict?

2 A The entryway to the apartment building. So, you
3 go up into that door, up the stairs, and then the shootout
4 location apartment is on the left.

5 Q Sir, can you with the laser pointer show the
6 jury where the victim was found? Where you saw the
7 victim.

8 A He was just a couple feet from the entryway
9 here. Most of his body was still laying on a couple of
10 the bottom stairs.

11 Q Okay, sir. Did you also take photographs of
12 physical evidence that you found?

13 A Yes, sir.

14 Q Okay. So we're clear on this, are you taking
15 the photographs before you're collecting any evidence?

16 A Yes.

17 Q All right. Why do you do that?

18 A To document the location of it before it's
19 altered or moved.

20 Q Okay. Let me show you Exhibits 10 through 17.
21 Once again, if you can just look at those.

22 A Okay.

23 Q Are those the photographs that you took?

24 A Six of them are. The white ski mask, no.

25 Q Did you ever see this white ski mask?

JOSH SPURGEON-DIRECT BY MR. RICHARDSON

1 A No. That must have been someone else collecting
2 that.

3 Q The remainder of the photographs on there, did
4 you take those photographs?

5 A Yes.

6 Q Do those photographs accurately depict what you
7 took and saw that night?

8 A Yes, sir.

9 Q Have they been changed or altered in any form or
10 fashion?

11 A No, sir.

12 MR. RICHARDSON: Your Honor, at this time, the
13 State would offer 10 through 16 into evidence.

14 MR. STEELE: Did I understand the witness to say
15 he did not take the photo of the white ski mask?

16 MR. RICHARDSON: That's correct.

17 MR. STEELE: And so it's not being offered?

18 MR. RICHARDSON: That's correct. We are not
19 offering it. I just pulled that out.

20 MR. STEELE: With all that then, I have no
21 objection.

22 THE COURT: All right, no objection, same is
23 admitted.

24 MR. RICHARDSON: Okay, I need to clarify
25 something, Your Honor.

JOSH SPURGEON-DIRECT BY MR. RICHARDSON

1 THE COURT: Okay.

2 BY MR. RICHARDSON:

3 Q So, I'm going to hand you back State's Exhibit
4 16, did you take that photograph?

5 A No.

6 MR. RICHARDSON: Okay, then, Your Honor, I will
7 pull that and the remainder exhibits, we would offer
8 into evidence.

9 THE COURT: All right, without objection, the
10 remainder are offered into evidence. Make sure
11 that -- you just pulled 16, right?

12 MR. RICHARDSON: That's correct, Your Honor.

13 THE COURT: The rest of them are admitted.

14 MR. RICHARDSON: That's correct. My apologies
15 to the Court.

16 THE COURT: No worries.

17 (WHEREUPON, State's Exhibits Nos. 10-15 were
18 marked for identification and received into
19 evidence.)

20 BY MR. RICHARDSON:

21 Q So we're clear to the jury, these photographs
22 were being taken outside the area of the apartment
23 building?

24 A Yes.

25 Q Let me show you what's been marked as State's

JOSH SPURGEON-DIRECT BY MR. RICHARDSON

1 10. What is that?

2 A Black handgun.

3 Q Can you show with the pointer exactly where it
4 is?

5 A (The witness complies.)

6 Q Okay. Thank you, sir. And again, State's 11,
7 what is that?

8 A Black handgun.

9 Q What's that three marker for?

10 A That's how we label the evidence.

11 Q Okay. So, did you put that there?

12 A Yes.

13 Q And does that -- does that follow this item
14 throughout property and evidence when you put it into
15 property and evidence?

16 A Yes.

17 Q State's 12, what is that?

18 A Navy blue ski mask.

19 Q Once again, did you place that number two marker
20 there?

21 A Yes.

22 Q State's 13, what is that?

23 A Navy blue ski mask.

24 Q Is that the same one we just showed?

25 A It is.

JOSH SPURGEON-DIRECT BY MR. RICHARDSON

1 Q State's 14, what is that?

2 A Skeleton mask.

3 Q It's hard to see, can you point it out? Once
4 again, did you put the placard there, number seven
5 placard?

6 A Yes.

7 Q Then again, State's 15, what is that?

8 A Skeleton mask.

9 Q That same mask that we just showed the jury.

10 A It is.

11 Q Now, in taking the photos of that evidence, did
12 you also take photos of shell casings?

13 A Yes.

14 Q Did you also take photographs of bullets?

15 A Yes.

16 Q Let me show you what's been marked State's
17 Exhibits 18 through 35. If you could look at those
18 please, sir.

19 A (The witness complies.)

20 Q Do these photos -- are these photos -- were they
21 taken by you?

22 A Yes.

23 Q Okay. Do they accurately depict what is
24 photographed?

25 A They do.

JOSH SPURGEON-DIRECT BY MR. RICHARDSON

1 Q They accurately depict what you saw out there
2 that night?

3 A Yes.

4 Q Have they been changed in any form or fashion?

5 A No.

6 Q Thank you.

7 Your Honor, at this time, we will offer
8 State's 18 through 35.

9 THE COURT: Objection?

10 MR. STEELE: No, sir.

11 THE COURT: All right, without objection, the
12 same is admitted.

13 (WHEREUPON, State's Exhibits Nos. 18-35 were
14 marked for identification and received into
15 evidence.)

16 BY MR. RICHARDSON:

17 Q Okay, sir. I'm referring to exhibit -- State's
18 Exhibit 18. What is that?

19 A Let me check my report.

20 Q Sure.

21 A A whole lot of shell casings.

22 Q Shell casings.

23 A Yeah.

24 Q Okay. Do you know what kind of shell casings
25 they are?

JOSH SPURGEON-DIRECT BY MR. RICHARDSON

1 A Some were head stamped Win 9-millimeter Luger,
2 then PMC 9-millimeter Luger.

3 Q When you refer to head stamp, what are you
4 referring to?

5 A Head stamp, if you have a small bullet and it's
6 fired, that produces the shell casing. And then the head
7 stamp is what is marked on the casing so it can be
8 identified.

9 Q And this -- I think you testified, this is shell
10 casing; is that correct?

11 A Correct.

12 Q What's the difference between shell casing and a
13 bullet?

14 A Shell casing is -- that's the result of a bullet
15 that was fired.

16 Q Okay. Show you State's Exhibit 19. What is
17 that?

18 A Shell casing.

19 Q Okay. Can you tell the jury what kind of shell
20 casing it is?

21 A Sure. That's PMC 9-millimeter Luger.

22 Q Okay. Do you know where that shell casing was
23 located?

24 A Hallway floor in the door frame.

25 Q And State's Exhibit 20, what is that?

JOSH SPURGEON-DIRECT BY MR. RICHARDSON

1 A Same shell casing.

2 Q Just a closer view?

3 A Yes.

4 Q Is that the 9-millimeter?

5 A Yes.

6 Q Just briefly on that, when we refer to
7 9-millimeter, what are we referring to?

8 A The caliber of the weapon.

9 Q Okay. Let me show you State's 21. What is
10 that?

11 A Shell casing.

12 Q And State's 22?

13 A Same shell casing.

14 Q And what kind of shell casing?

15 A PMC 9-millimeter Luger?

16 Q And where was that found?

17 A Hallway floor.

18 Q Okay. State's 23, what is that?

19 A Shell casing.

20 Q And State's 24?

21 A That's the same shell casing.

22 Q What's the head stamp of that shell casing?

23 A PPU 9-millimeter Luger.

24 Q I'm sorry, I couldn't hear you?

25 A PPU 9-millimeter Luger.

JOSH SPURGEON-DIRECT BY MR. RICHARDSON

1 Q Okay. State's 25, what is that?

2 A Shell casing.

3 Q Where was that located?

4 A Living room floor.

5 Q And State's 26, what is that?

6 A That's a closeup of the same shell casing.

7 Q Okay. What is -- what kind of shell casing is
8 that?

9 A PPU 9-millimeter Luger.

10 Q And you said that was found where?

11 A Living room floor.

12 Q When you're referring to the living room floor,
13 you're referring to the apartment, the victim's apartment?

14 A Yes.

15 Q State's 27, what is that?

16 A Shell casing.

17 Q And State's 28, what's that?

18 A That close-up view of the same shell casing?

19 Q Okay. What caliber -- what's the head stamp on
20 that?

21 A FC 9-millimeter Luger.

22 Q And where was that found?

23 A Living room floor victim's apartment.

24 Q State's 29, what are these?

25 A It's a better view of all the shell casings and

JOSH SPURGEON-DIRECT BY MR. RICHARDSON

1 their location right inside.

2 Q Can you just point out, is that -- when you say
3 right inside, where is that?

4 A Inside. That's the front door, that's the
5 living room.

6 Q Okay. Of the victim's apartment?

7 A Yes.

8 Q And State's 30, what is that?

9 A Shell casings.

10 Q And State's 31?

11 A It's a close-up view of it.

12 Q What's the head stamp on that?

13 A PPU 9-millimeter Luger.

14 Q Where was that found?

15 A Living room floor.

16 Q State's 32, what is that?

17 A Projectile.

18 Q Okay. Can you show the projectile to the jury?

19 A (The witness complies.)

20 Q Where was that projectile found?

21 A Living room floor.

22 Q State's 29, what is that?

23 A Shell casing.

24 Q Can you point it out?

25 A (The witness complies.)

JOSH SPURGEON-DIRECT BY MR. RICHARDSON

1 Q State's 34, what is that?

2 A A shell casing, close-up view.

3 Q Where was that shell casing found?

4 A Loveseat in the living room.

5 Q Okay. And to be clear on those, on State's

6 Exhibit 35, what is that?

7 A That's the loveseat in the living room.

8 Q Is that those placards, what we just looked at?

9 A Yes.

10 Q Did you also take photograph in the hallway --
11 stairway, I should say?

12 A Yes, sir.

13 Q Let me hand you what's been marked State's

14 Exhibit 36. Did you take this photo?

15 A Yes.

16 Q Does that accurately depict what you saw and
17 what you photographed?

18 A It does.

19 Q Has it been changed or altered in any form or
20 fashion?

21 A No.

22 MR. RICHARDSON: Your Honor, at this time, we
23 would offer State's 36 into evidence.

24 MR. STEELE: Okay.

25 THE COURT: All right. No objection, the same

JOSH SPURGEON-DIRECT BY MR. RICHARDSON

1 is admitted.

2 (WHEREUPON, State's Exhibit No. 36 was marked
3 for identification and received into evidence.)

4 BY MR. RICHARDSON:

5 Q I'm referring to State's 36. Sir, can you tell
6 me what that is?

7 A Single black Nike sandal collected from the
8 stairwell which led up to the apartment.

9 Q Just with the pointer, in relation to the
10 victim's body, where is this. Is it above, below?

11 A I can't recall. I'd have to see a better photo.

12 Q But nevertheless, this is a shoe in the
13 stairwell?

14 A Yes, sir.

15 Q And just so we're clear, is that the stairwell
16 that leads up to the victim's apartment?

17 A Yes, sir.

18 Q After photographing, making photos of this
19 evidence, what do you do with the actually physical
20 evidence that you photograph?

21 A We put it in paper bags, secure it with crime
22 scene tape, then initial it and secure it in a truck.

23 Q And the truck that you secure it in, is this a
24 Greenville County Sheriff's Office assigned vehicle to
25 you?

JOSH SPURGEON-DIRECT BY MR. RICHARDSON

1 A Yes, sir.

2 Q And when you secure it in that truck, what do
3 you do with it at that point in time?

4 A At that point?

5 Q Yes.

6 A Lock the doors. Secure the truck.

7 Q And that's at the scene, right?

8 A That's at the scene before we transport it back
9 to the crime scene office.

10 Q So, where do you take it then, to the crime
11 scene office?

12 A Yes, sir.

13 Q Is that your office?

14 A Yes.

15 Q And what do you do with it there?

16 A Take it downstairs, the first floor, bottom
17 floor. There are several secured doors. And then usually
18 put it in a secured locker. Usually don't have time to
19 process it at that exact moment.

20 Q So, you put it in a secured locker. Is this in
21 property and evidence?

22 A It's at the forensics division.

23 Q So we're clear, the forensics lab is separate
24 from property and evidence; is that right?

25 A Yes, that's correct.

JOSH SPURGEON-DIRECT BY MR. RICHARDSON

1 Q Once you secure it in -- it's a secured
2 facility?

3 A Correct.

4 Q Okay. Once you secure it into that facility and
5 that locker, at some point in time, do you take it
6 anywhere else?

7 A I usually process it if it's needed to be
8 process, then I'll take it to property and evidence
9 downtown.

10 Q Do you assign it a particular number that
11 corresponds to you?

12 A Yeah. I initial it with my initials, JTS.

13 Q Okay. Let me hand you what's been marked
14 Exhibit 39, 41, 42, 43, 44, 45 and 46. Take a look at
15 those items, please, sir.

16 A (The witness complies.)

17 Q Are those items that you -- some of the items
18 that you took into evidence from this crime scene?

19 A Yes, sir.

20 Q You can identify it by your initials?

21 A Yes.

22 Q Is it also assigned a bar code?

23 A Yes.

24 Q Does that bar code stay with it throughout?

25 A Yes.

JOSH SPURGEON-DIRECT BY MR. RICHARDSON

1 Q The time it's in property and evidence?

2 A Yes.

3 Q Okay.

4 MR. RICHARDSON: Your Honor, at this time, we
5 would offer State's 39, 41, 42, 44, 45, and 46 into
6 evidence.

7 THE COURT: Objection, sir?

8 MR. STEELE: No, sir.

9 THE COURT: All right. Without objection, same
10 is admitted into evidence.

11 (WHEREUPON, State's Exhibits Nos. 39, 41, 42,
12 44, 45 & 46 were marked for identification and
13 received into evidence.)

14 BY MR. RICHARDSON:

15 Q And these items I have shown you, are these the
16 items that we actually showed the jury in the photographs?

17 A Let me take a look.

18 Q Take your time.

19 A Yes.

20 Q Okay, sir. And they're sealed in there as you
21 sealed them in; is that correct?

22 A Yes, sir.

23 Q All right. Let me hand you what's been marked
24 State's 54, 55, 56, 57, 58 and 60. Do you recognize
25 those?

JOSH SPURGEON-DIRECT BY MR. RICHARDSON

1 A Yes, I do.

2 Q And do those indicate on there your initials and
3 did you seal those items?

4 A I did.

5 Q Are those the items that we have shown the jury
6 through photographic evidence?

7 A Yes.

8 Q Okay.

9 MR. RICHARDSON: Your Honor, at this time, I
10 would enter -- move to enter State's 54 through 58
11 and also, State's 60 into evidence.

12 THE COURT: Objection, sir?

13 MR. STEELE: No, sir.

14 THE COURT: All right, without objection, the
15 same is admitted.

16 (WHEREUPON, State's Exhibits Nos. 54-58 & 60
17 were marked for identification and received into
18 evidence.)

19 BY MR. RICHARDSON:

20 Q And likewise, I hand you what's now into
21 evidence Exhibits 54, 55, 56, 57, 58 and 60. Are those
22 the physical evidence that we just went through and showed
23 the jury through photographic evidence?

24 A Yes, they are.

25 Q Okay. Let me show you what's been marked

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1 Exhibits 48 through 52. If you could look at those
2 please, sir.

3 A Yes.

4 Q And those items are the items that you took into
5 evidence?

6 A That's correct.

7 Q Okay. Secured with your initials?

8 A Yep, I see my initials.

9 Q Okay.

10 MR. RICHARDSON: Your Honor, at this time, we
11 would move into evidence State's 48 through 52.

12 THE COURT: Objection, sir?

13 MR. STEELE: No, sir.

14 THE COURT: All right, without objection, the
15 same is admitted.

16 (WHEREUPON, State's Exhibits Nos. 48-52 were
17 marked for identification and received into
18 evidence.)

19 BY MR. RICHARDSON:

20 Q Now, sir, these items that I've asked you about
21 that have been taken into evidence and the other evidence
22 that was taken in, did you have another forensic police
23 officer with you at that time when you took them into
24 evidence and took photographs?

25 A Back at the crime scene office?

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1 Q No, this is at the scene?

2 A At the scene, yes, I did.

3 Q In order to do a digital imaging of it?

4 A He did a scene diagram and he assisted, was
5 there to help out.

6 Q Okay. Once that evidence is placed into
7 property and evidence -- that's a secured facility?

8 A Yes, it is.

9 Q Okay. Once you place it in there and seal it,
10 do you have anything else to do with it?

11 A I do not. Property and evidence is located in
12 the law enforcement center downtown, which is the
13 headquarters for the sheriff's department and Greenville
14 PD.

15 Q Okay. Now, as part -- did you also take into --
16 we've seen several photographs of a mask, did you take
17 masks into evidence?

18 A I did.

19 Q And when you took the masks into evidence, did
20 you put them in anything?

21 A Put it in a paper bag.

22 Q Okay. Then where do you take it from there?

23 A To the forensics division office.

24 Q Okay. Let me hand you what's been marked
25 State's Exhibit 61 and 63, do you recognize those?

JOSH SPURGEON-DIRECT BY MR. RICHARDSON

1 A Yes, I do.

2 Q Is that the masks that we saw in the photograph
3 that you took into evidence?

4 A It's label as such, yes.

5 Q Did you seal it and initials on it?

6 A I did.

7 MR. RICHARDSON: Your Honor, at this time, we
8 would offer State's 61 and 63 into evidence.

9 THE COURT: Objection, sir?

10 MR. STEELE: No objection.

11 THE COURT: All right, without objection, the
12 same is admitted.

13 (WHEREUPON, State's Exhibits Nos. 61 & 63 were
14 marked for identification and received into
15 evidence.)

16 BY MR. RICHARDSON:

17 Q I'm going to refer to State's Exhibit 61 first.
18 Can you please open that bag and show what's in it to the
19 jury?

20 A Sure.

21 Q If you could just hold it up a little bit.

22 A (The witness complies.)

23 Q Okay. Is that the mask that we saw in the
24 photograph?

25 A Yes.

JOSH SPURGEON-DIRECT BY MR. RICHARDSON

1 Q And you found this outside the curtilage of the
2 apartment building?

3 A I did.

4 Q Referring now to -- you can put that -- to the
5 next exhibit. I'm referring to Exhibit 63. Can you
6 please open that, sir?

7 A (The witness complies.)

8 Q Is that the mask that you took into evidence
9 found around the victim's apartment?

10 A Yes.

11 Q The one that we saw in the photographs?

12 A Yes.

13 Q Okay, sir. Now, with that particular mask -- or
14 for that matter, both of these masks, after you took them
15 into evidence and you put them in this brown bag, do you
16 seal them at the scene or later?

17 A Seal them with a piece of tape and initial it
18 there.

19 Q Okay. And once you seal it, you take it back to
20 the forensics department; is that correct?

21 A Yes, sir.

22 Q At that point time with this type of evidence,
23 is there anything else that you do?

24 A Secure it in the evidence locker.

25 Q Okay. And did you attempt to swab anything for

JOSH SPURGEON-DIRECT BY MR. RICHARDSON

1 DNA?

2 A I did the next shift, which was the following
3 day. I swabbed it for DNA.

4 Q Before you swabbed it for DNA, these are kept in
5 a secured locker?

6 A They are.

7 Q In fact, the whole facility is secured?

8 A That's right.

9 Q When you swab something for DNA, explain briefly
10 to the jury how you do this.

11 A It's like a Q-tip. We order them, have a bunch
12 of them. You unscrew it, pull it out and it's basically a
13 Q-tip that you can hold on a little base. You saturate
14 the Q-tip part with a couple drops of water, then you rub
15 it where you want it to pick up the DNA. The water allows
16 it to better absorb any DNA. Then put the Q-tip back into
17 the little plastic tube and you screw it in, then it's
18 secure.

19 Q During that process, are you wearing any type of
20 gloves?

21 A Yes, absolutely.

22 Q Is there other evidence around you when you do
23 that?

24 A Some, yes.

25 Q Okay. And when you swab this particular -- did

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1 you swab this particular mask?

2 A I did.

3 Q Can you show the jury where you swabbed it?

4 A The interior mouth area. So basically, common
5 sense will tell if you're worn a ski mask where they may
6 be breathing.

7 Q Okay, sir. Once you screw it in, does that
8 secure that particular sample?

9 A It seals it.

10 Q Then once you seal it in the tube, what do you
11 do with it?

12 A Sometimes we go ahead and put evidence tape on
13 it and initial it, if time allows, or we'll put it back in
14 the bag.

15 Q Do you recall which one you did in this case?

16 A I can't recall.

17 Q Okay.

18 A This one, I most likely went ahead and sealed
19 it. I'll have to check my notes.

20 MR. STEELE: Objection to most likely, Your
21 Honor, that calls for speculation. He either
22 remembers or he doesn't.

23 THE COURT: Okay, rephrase.

24 THE WITNESS: I can't recall.

25 THE COURT: Ask the question once again,

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1 Mr. Richardson.

2 BY MR. RICHARDSON:

3 Q All right. Well, let me hand you what's been
4 marked State's Exhibit 64. Do you recognize that? If
5 need be, you can take it out.

6 A Yes, I do.

7 Q What is that?

8 A It's a swab DNA from this mask.

9 Q How do you know that's a swab of DNA from that
10 particular mask?

11 A Check my numbers. It's labeled as JTS-2A. This
12 item is JTS-2. So, that's how we label it.

13 Q JTS are your initials?

14 A That's right.

15 Q And once you do that aspect of it, where do you
16 take it?

17 A Once it's ready for transport, we take it to
18 property and evidence downtown to the law enforcement
19 center.

20 Q Do you assign a bar code to that particular
21 item?

22 A Yes.

23 Q So, you do that?

24 A I do that at the forensics office.

25 Q And that bar code follows that item throughout;

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1 is that correct?

2 A Yes.

3 Q When it gets into property and evidence,
4 etcetera?

5 A Yes.

6 Q And did you take this item? Did you bar code
7 this item?

8 A I did.

9 Q And did you take that bar coded item to property
10 and evidence?

11 A I did.

12 Q Okay. Did you leave it there in a secured
13 fashion?

14 A Yes.

15 Q Also, sir, do you recall taking into evidence a
16 holster?

17 A (There was no response.)

18 Q Let me hand you State's Exhibit--

19 A Yes, I do.

20 Q State's Exhibit 37.

21 A Okay.

22 Q Do you recognize that?

23 A I do.

24 Q And is that the holster?

25 A It's labeled as so.

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1 Q And your initials are on that item?

2 A Yes.

3 Q Did you seal it?

4 A I did.

5 MR. RICHARDSON: Your Honor, at this time, we
6 would offer State's Exhibit 37 into evidence.

7 MR. STEELE: Okay.

8 THE COURT: All right. Without objection, the
9 same is offered into evidence or admitted into
10 evidence.

11 (WHEREUPON, State's Exhibit No. 37 was marked
12 for identification and received into evidence.)

13 MR. RICHARDSON: And, Your Honor, we would also
14 offer State's Exhibit 64 into evidence, too.

15 THE COURT: Objection, sir?

16 MR. STEELE: No objection.

17 THE COURT: All right, without objection, the
18 same is admitted.

19 (WHEREUPON, State's Exhibit No. 64 was marked
20 for identification and received into evidence.)

21 THE COURT: How much longer do you have with
22 this witness, Mr. Richardson?

23 MR. RICHARDSON: I'm at the end.

24 THE COURT: Okay, go ahead.

25 I just want the jury to take a break in a few

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1 seconds. We've been at this for a while. I didn't
2 know this witness was going to take quite this long.

3 MR. RICHARDSON: My apologies.

4 THE COURT: That's okay.

5 BY MR. RICHARDSON:

6 Q Okay, sir. So, in this case, JTS-14, can you
7 open that, please, sir?

8 A (The witness complies.)

9 Q And what is that?

10 A It's a black holster.

11 Q Okay. Do you know where you located that?

12 A From the ground at the rear of the building.

13 Q Okay. And was that in the vicinity of where you
14 located the Defendant?

15 A Yes, sir.

16 Q And you, in fact, located the Defendant; is that
17 right?

18 A I did.

19 Q Okay. And when you located him, where was he
20 found?

21 A He was behind the building about 12 feet, sort
22 of in some vines and some thick brush.

23 MR. RICHARDSON: Okay, sir, thank you. That's
24 all the questions I have. Please answer any
25 questions Mr. Steele has for you.

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1 THE COURT: Yes, sir.

2 MR. STEELE: You want me to start, Your Honor?

3 THE COURT: Well, I tell you what, why don't we
4 take a break. I know we've been at this for a while
5 now, almost two hours.

6 So, ladies and gentlemen, let's take a short
7 break and we'll come back in and we'll resume
8 testimony. So, please don't discuss the case and
9 we'll back in just a few minutes.

10 (WHEREUPON, the jury left open court at
11 approximately 3:34 p.m.)

12 THE COURT: All right, anything we need to put
13 on the record?

14 MR. STEELE: Yes, sir, if Your Honor please.
15 Your Honor knows what we talked about in chambers
16 regarding impeachment of this witness based upon
17 reprimands and letters of caution, etcetera.

18 And I would submit the evidence is
19 sufficiently -- I mean, the record is sufficiently
20 strong. His name is all over the collection of
21 evidence. His name is all over the chain of custody
22 reports. And these are critical, very, very critical
23 parts of the chain of custody as well as critical
24 parts of the State's case insofar as DNA evidence is
25 concerned, insofar as maintaining the chain of

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1 custody maintaining the security of the exhibits.

2 So, I think I have a right to ask him about his
3 reprimands and his letter of caution. And rather
4 than bring it up later, I'm bringing it up now to
5 avoid one more trip to the jury room.

6 THE COURT: Mr. Richardson, what's your
7 position, sir?

8 MR. RICHARDSON: Your Honor, the State's Exhibit
9 2 is what I'm referring to -- excuse me, it's Court's
10 Exhibit 2.

11 THE COURT: Yes, sir.

12 MR. RICHARDSON: I'm not sure if you had time to
13 review that.

14 THE COURT: I got it right here.

15 MR. RICHARDSON: I think -- if this is
16 disciplinary actions that were taken by his
17 supervisors. Number one, they're subjective by them.
18 Number two, I don't see the relevancy in the
19 situation where we have no evidence or nothing that
20 shows that any of this evidence was improperly
21 handled in any form or fashion. If Mr. Steele can
22 lay a foundation as to some improper handling, then I
23 think it would come into play.

24 MR. STEELE: Well, Your Honor, I would submit
25 credibility is always important. Bias is always

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1 important. Competence is always important.

2 THE COURT: Right.

3 MR. STEELE: And based upon that, all these
4 factors come into play on this particular witness.

5 THE COURT: I'll allow you to ask the questions.
6 I grant parties wide latitude in conducting
7 cross-examination. Inasmuch as the Defendant,
8 Mr. Massey, has significant liberty interest at stake
9 in this matter, I think it's fair to allow those
10 questions for the purpose of credibility.

11 MR. STEELE: And, Your Honor, for the Court's
12 information, I was going to respectfully ask the
13 Court to ask him specifically about his reprimands
14 and to have him read from the reprimands in a limited
15 fashion, not to read the whole letter, but read
16 portions of it.

17 MR. RICHARDSON: Your Honor, I object to that.
18 It needs to be formulated -- we're talking about
19 credibility. It's formulated that he had a
20 disciplinary action for this factor. Anything
21 extrinsic after that, I find highly irrelevant and
22 prejudicial to the State.

23 THE COURT: It could, it could be relevant
24 depending on his response to the question. If he
25 denies it, then extrinsic evidence may be

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1 appropriate. If he acknowledges it, then I don't
2 think that the extrinsic evidence would be
3 admissible.

4 So, you know, you can ask him questions related
5 to those disciplinary infractions. And I'm not yet
6 in a position to say whether any extrinsic evidence
7 is admissible or not. That will entirely depend on
8 his response.

9 MR. STEELE: Well, in the interest of keeping
10 the record for Mr. Massey, may I read into the
11 record, in the absence of the jury, what I proposed
12 to have him read? Want to do it now, Your Honor?

13 THE COURT: Yeah, sure.

14 MR. STEELE: If Your Honor please, if allowed
15 to, I would ask Mr. Spurgeon to read the following
16 paragraph from a letter to him from a lieutenant of
17 the forensic division crime scene section. That
18 paragraph reads as follows:

19 Quote, Our job in the forensic division is to
20 ensure that we are professional and precise with all
21 areas of our job performance. Greenville County
22 Sheriff's Office, along with other agencies within
23 the county depend on our gathering of correct
24 information and evidence so that they can make sound
25 judgment calls with the cases they work. When

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1 incorrect information is placed into our system or
2 not entered at all, it only causes the
3 investigation -- it not only causes the investigation
4 to stall, but places doubt in those agencies about
5 our job performance. According to Section 12.3.1,
6 your inefficiency in the performance of your duties
7 and failing to do acceptable quality work is a
8 violation of the employees, the expectations listed
9 in the Greenville County Personnel Handbook. Due to
10 the continued incidents regarding the issue,
11 disciplinary action must be administered.

12 Likewise, Your Honor, if allowed to, I would
13 read this paragraph from a letter to Mr. Spurgeon
14 from Lieutenant Lenway of the forensic decision,
15 dated January 15th, 2016.

16 Quote, As of November 30th, 2015, all avenues
17 have been exhausted, leaving the whereabouts of the
18 missing evidence with you. Missing or lost evidence
19 places doubt in those agencies we serve, the
20 solicitor's office and victims of crime and cast a
21 shadow upon the forensic division and our job
22 performance.

23 Likewise, Your Honor, I would have Mr. Spurgeon
24 read from a letter of February 29th, 2016, as
25 follows:

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1 These types of mistakes can cause serious
2 consequences in regards to chain of custody and
3 security of evidence collected not only by you, but
4 all agencies, officers and deputies who use our
5 property and evidence section.

6 Same letter, same date.

7 You will consider this document as a letter of
8 verbal warning that your inefficiency in the
9 performance of duties is unacceptable and must be
10 corrected immediately. The security of our evidence,
11 offices and information is paramount and should be
12 considered at all times. Further incidents of this
13 nature may result in further disciplinary action.

14 If Your Honor please and I'm allowed to, I would
15 ask the witness on cross-examination, as Your Honor
16 already said, we have pretty much leeway on
17 cross-examination, I would ask him to read those
18 sections that I just read to the Court during my
19 cross-examination of him.

20 THE COURT: Okay. All right. Well, my concern
21 with just reading that into the record without --
22 without setting the appropriate conditions and
23 foundation is that it becomes testimony from someone
24 outside of the courtroom.

25 Now, as I've indicated to you, depending on his

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1 response, you may be able to either read it to him or
2 you may have him read it. But again, it depends on
3 his response. To offer it ab initio without
4 having -- giving him the opportunity to respond to
5 questions that bear upon his credibility, I think
6 isn't necessarily appropriate. So, it may be
7 appropriate or it may not be appropriate. It depends
8 on the answers to the questions.

9 Now, if you ask him questions that bear upon his
10 performance and the alleged efficiencies and he
11 acknowledges it, then I don't think the narrative
12 from those actual reprimands become admissible. If
13 he denies it and takes exception to it or is evasive
14 in some way, shape or form, then they definitely
15 become admissible. We'll have to wait to see what he
16 says.

17 MR. STEELE: Yes, sir.

18 THE COURT: Okay. So, we'll just have to see
19 how it goes, okay. Inasmuch as he's in the courtroom
20 listening to all this, if he denies it or is evasive
21 in some way, shape or form, I'd be surprised, though.
22 In any event --

23 MR. STEELE: Well, I don't know how else to
24 proceed, Your Honor. We had to do in here on the
25 record.

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1 THE COURT: I'm not questioning the way you
2 proceeded. I think you've done it exactly correctly
3 and I wouldn't take exception to it. There's no
4 other way that you necessarily could have done it.
5 As a matter of fact, I don't think you had that
6 information for very long, if I'm not mistaken, that
7 document. So, I think this is the only way you could
8 have done it. And I agree with you, under certain
9 circumstances, it's admissible and relevant. I just
10 don't know that it's going to be admissible and
11 relevant on cross-examination. That is, if he
12 acknowledges it. Okay.

13 And I can't resite the precise rule in the rules
14 of evidence, but it's very clear in the rules of
15 evidence that -- the circumstances under which you
16 could produce a writing of that sort. And I think it
17 starts with the denial, then the opportunity to
18 review it, then a limited questioning and/or
19 publication, okay. In any event, I'm not saying you
20 can't do it yet, I'm saying it depends on what he
21 says.

22 MR. STEELE: Have I made a sufficient record if
23 Your Honor disallows it during the presence of the
24 jury for appeal purposes, you think?

25 THE COURT: Sure, I think you have. If you want

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1 to put it on the record after his testimony, you're
2 welcome to do it. I will tell you this, in all
3 candor, don't rely upon me to protect the record for
4 purposes of appeal. Because the Court of Appeals and
5 Supreme Court don't give a jock what I say about
6 whether it's preserved or not.

7 MR. STEELE: Well, I'll go ahead and say now
8 that that's what I would read if allowed to on
9 cross-examination and I'll reiterate it after he
10 finishes.

11 THE COURT: Okay, good enough. Thank you very
12 much.

13 All right let's take a break.

14 Mr. Spurgeon, you can take a break, too, but you
15 can't discuss your testimony with anyone inasmuch as
16 you're under oath and now testifying.

17 Okay, good enough. Thank you.

18 (WHEREUPON, a short break was taken.)

19 THE COURT: Mr. Spurgeon back?

20 MR. RICHARDSON: Your Honor?

21 THE COURT: Yes, sir.

22 MR. RICHARDSON: I have one thing to address. I
23 got all with that and then under the wrath of The
24 Court, I know I forgot to put one item of evidence
25 in. I would ask I be allowed to reopen my direct and

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1 put that in.

2 THE COURT: Any objection to that, sir?

3 MR. STEELE: Well, if Your Honor please, I try
4 not to stipulate and not object my client into a life
5 sentence, so no, I don't agree.

6 THE COURT: I understand.

7 What was the piece of evidence, sir?

8 MR. RICHARDSON: The handgun.

9 THE COURT: Oh, the handgun?

10 MR. RICHARDSON: Yes, sir.

11 THE COURT: What I'll let you do is I'll let you
12 reopen your direct examination for the sole purpose
13 of introducing that item.

14 MR. RICHARDSON: Absolutely, I appreciate it.
15 Of course, it's under the wrath of the jury, too?

16 THE COURT: Yes, that's exactly right.

17 Bring them in, please.

18 (WHEREUPON, the jury came into open court at
19 approximately 3:58 p.m.)

20 THE COURT: All right. Mr. Richardson, I know
21 that you had asked to have a very, very limited
22 amount of questions relating to a piece of evidence.
23 I'll let you reopen your direct examination for that
24 sole purpose, sir.

25 MR. RICHARDSON: Thank you, Your Honor. May it

JOSH SPURGEON-DIRECT BY MR. RICHARDSON

1 please the Court.

2 BY MR. RICHARDSON:

3 Q Sir, we saw photographs presented to the jury of
4 a handgun. Did you take that handgun into evidence?

5 A Yes.

6 Q Let me hand you what's been marked State's
7 Exhibit 47. Are your initials on that box?

8 A Yes.

9 Q Is that the handgun that you took into evidence?

10 A It's labeled as such.

11 MR. STEELE: Your Honor, I would object on these
12 grounds. The witness was asked if this was the
13 handgun.

14 His response was, and I quote verbatim, It's
15 labeled as such.

16 I would submit that is an equivocal response
17 insufficient to establish the authenticity of this
18 exhibit. And on those grounds, I would object.

19 THE COURT: Okay.

20 Ask him an additional question regarding the
21 gun, sir.

22 BY MR. RICHARDSON:

23 Q In the box -- your initials have been identified
24 on the box. Can you look at the handgun?

25 A Yes, that resembles the handgun.

JOSH SPURGEON-DIRECT BY MR. RICHARDSON

1 MR. RICHARDSON: At this time, we would move it
2 in.

3 MR. STEELE: Another equivocal response. It
4 resembles the handgun opens up all kinds of questions
5 about which handgun. I would object again on those
6 same grounds.

7 THE COURT: Does it have serial markings?

8 MR. RICHARDSON: Yes, Your Honor, it does.

9 THE COURT: Can you identify it through the
10 serial markings?

11 THE WITNESS: Yes, sir, let me take a look.

12 Serial number HBE 726, same handgun.

13 BY MR. RICHARDSON:

14 Q So, that is the gun that you took?

15 A It is the gun.

16 MR. RICHARDSON: At this time, we would move it
17 into evidence.

18 THE COURT: Remaining objection, sir?

19 MR. STEELE: I would just reiterate my earlier
20 objections and also that he was allowed to reopen,
21 but then we just kind of asked questions until he got
22 it right and I would object.

23 THE COURT: Fair enough. I respectfully
24 overrule the objection and allow it into evidence as
25 State's next exhibit.

JOSH SPURGEON-CROSS BY MR. STEELE

1 (WHEREUPON, State's Exhibit No. 47 was marked
2 for identification and received into evidence.)

3 BY MR. RICHARDSON:

4 Q Okay, sir. And if you would, can you pull that
5 handgun out of this container?

6 A (The witness complies.)

7 Q Is it safe and secured?

8 A Yes.

9 Q Okay. Can you just hold it up and show it to
10 the jury?

11 A (The witness complies.)

12 MR. RICHARDSON: Thank you. Thank you, that's
13 all the questions I have.

14 MR. STEELE: Is Your Honor ready for me?

15 THE COURT: Yes, sir, I am. I hope so any way.

16 MR. STEELE: Thank you, sir.

17 CROSS-EXAMINATION

18 BY MR. STEELE:

19 Q Mr. Spurgeon, you indicated that you have been
20 for a period of time a private detective as well as your
21 law enforcement experience, am I correct about that?

22 A Yes, sir.

23 Q I believe you said that your total actual law
24 enforcement experience, and I'm excluding the private
25 detective aspect of it, is a total of five years?

JOSH SPURGEON-CROSS BY MR. STEELE

1 A That's right.

2 Q How many years with the sheriff's department of
3 Greenville?

4 A Two.

5 Q And three years with another agency?

6 A Yes.

7 Q What was that other agency?

8 A Raleigh Police Department.

9 Q Raleigh, North Carolina?

10 A Yes, sir.

11 Q What was the circumstance of your leaving the
12 employment of Raleigh?

13 A Moved to California for my wife to pursue her
14 profession.

15 Q Okay. Am I correct that you began working in
16 forensics for the Greenville County Sheriff in May of
17 2014, did I get that right?

18 A Yes.

19 Q Okay. And you resigned from there in early
20 July 2016?

21 A That's correct.

22 Q So, you would have been in forensics for
23 approximately a year and a couple months? I'm sorry, two
24 years and a couple months?

25 A That's correct.

JOSH SPURGEON-CROSS BY MR. STEELE

1 Q And you -- at the time of this investigation,
2 which was over the evening of September 30th to
3 October 1st, 2015, you had been with forensics
4 approximately one year and four months; is that correct?

5 A Yes, sir.

6 Q During the --

7 MR. STEELE: I'm going to walk over -- may I
8 walk over to the witness, Your Honor?

9 THE COURT: Yes, sir, you may.

10 BY MR. STEELE:

11 Q I'm going to walk over here and ask you about a
12 couple things about some evidence collection. This is a
13 chain of custody report, isn't it?

14 A Yes, sir.

15 Q And I'm going to take the paper clip off. And
16 when it has your name at the top, that would indicate that
17 you are the person who collected it at the crime scene, am
18 I correct?

19 A Yes, sir.

20 Q So, it looks like you collected a GSR kit --

21 MR. RICHARDSON: Your Honor, I'm going to
22 object. He's referring to a document that's not into
23 evidence. And I haven't seen it yet.

24 MR. STEELE: That's true, it's not into
25 evidence. But he must have seen it, I got it from

JOSH SPURGEON-CROSS BY MR. STEELE

1 him.

2 THE COURT: Show him the document.

3 MR. STEELE: And I would submit the fact that
4 it's not in evidence is the usual way we start off
5 the examination of a witness.

6 THE COURT: I understand.

7 MR. STEELE: That's how we get it into evidence.

8 THE COURT: I'm not prepared to grant the
9 objection, yet.

10 BY MR. STEELE:

11 Q Mr. Spurgeon, we can look through all these and
12 you're happy to look through all of them, but I'll tell
13 you ahead of time I think there are 24 of them or so. And
14 at the top, there's a time, either late on the 30th of
15 September or early on the 1st of October 2015, indicating
16 your name, is that a correct statement?

17 A Yes.

18 Q And at the top there beside your name, it says
19 crime scene intake. Does that mean that you collected it
20 at the crime scene?

21 A The crime scene intake, I believe is probably
22 the property and evidence location where it was moved to.

23 Q But at any rate, it was collected by you. I
24 think you've already testified about that?

25 A Yes.

JOSH SPURGEON-CROSS BY MR. STEELE

1 Q And you took it down to property and evidence;
2 is that correct?

3 A I did.

4 Q And there are a number of them here ranging all
5 along from -- do you recall a skeleton mask? I think you
6 identified it on direct examination.

7 A Yes.

8 Q So, you turned it into property and evidence?

9 A I did.

10 Q And that's what means, doesn't it?

11 A Which part?

12 Q When it says crime scene intake, that means you
13 turned it in at property and evidence?

14 A Okay. Property and evidence is actually going
15 to be here. Kara works for property and evidence. This
16 is at the forensics division.

17 Q Okay. So, you took it to forensics?

18 A Yes.

19 Q What does locker 001 mean beside your name
20 there?

21 A I believe that's property and evidence location.

22 Q All right. Did you connect -- it says here, I'm
23 looking at the top one here --

24 MR. STEELE: And if Your Honor please, I'll go
25 ahead and mark it as Defendant's 1 for identification

JOSH SPURGEON-CROSS BY MR. STEELE

1 at this point.

2 THE COURT: You can mark it for identification,
3 sir.

4 (WHEREUPON, Defendant's Exhibit No. 1 was marked
5 for identification only.)

6 BY MR. STEELE:

7 Q Now, looking at Defendant's 1 for
8 identification, if you want to, you can look through all
9 these and see if your name is at the top at crime scene
10 intake on all of them?

11 A (The witness complies.) I do see my name.

12 Q Sir?

13 A Yes, I see my name.

14 Q And it was up there at crime scene intake. And
15 tell me what that means again.

16 A We rarely -- I don't even know if we've ever
17 used those forms as technicians, so I'm not too familiar
18 with them. That's more of a property and evidence
19 employee paperwork. It looks -- I believe the crime scene
20 intake is where the forensics division office is. We
21 don't really term it as that, but I believe that would be
22 accurate.

23 Q Is there anything -- in this series of papers
24 identified as Defendant's 1 for identification, is there
25 anything in here that you saw that you did not collect at

JOSH SPURGEON-CROSS BY MR. STEELE

1 the time at the crime scene?

2 A It would take some time to review --

3 Q Well, you can look at them again.

4 A -- each piece of paper and the items.

5 Q It looks like it's pretty clear up here, what it
6 is.

7 A I'll take your word for it.

8 Q Okay. Now, the one on top refers to item JTS-1.
9 It says GSR kit collected from subject Leach, Kenneth.
10 What is that and what does that mean?

11 A GSR is a gunshot residue kit collected from
12 someone's hands.

13 Q And there was a gentleman out there by the name
14 of Kenneth Leach, was there not?

15 A There was.

16 Q And sounds like you conducted a GSR residue test
17 on Kenneth Leach?

18 A I did.

19 Q Do you remember doing that?

20 A I do.

21 Q Is Kenneth Leach a Caucasian individual?

22 A I cannot recall.

23 Q Okay. Tell me what you did when you conducted
24 that GSR residue test on Kenneth Leach?

25 A You take four little sticky things, front part

JOSH SPURGEON-CROSS BY MR. STEELE

1 of someone's hand, the back part of someone's hand,
2 specifically, around this finger here because that's
3 commonly what you hold the gun with. You do the left
4 hand, then the right hand. So, four sticky things total.
5 Once you do it, you put it back in the kit and secure it.

6 Q Is that what you did?

7 A Yes, sir.

8 Q Is it necessary sometimes to secure the actual
9 hands of the individual prior to doing the collection of
10 the residue?

11 A You said secure the hands?

12 Q Yeah, secure them by placing bags on them?

13 A A live subject?

14 Q Yes.

15 A I've never done that.

16 Q Okay. Have you ever done anything to keep the
17 hands of the individual being tested from contamination?

18 A There's a time frame you want to do it within.

19 Q Now, while you were out there that night, that
20 date of the 30th of September over to October 1st, you
21 conducted -- you've already said that you did the GSR test
22 on Mr. Leach, right?

23 A Yes.

24 Q Did you do the test on Timiya Massey?

25 A No.

JOSH SPURGEON-CROSS BY MR. STEELE

1 Q Those shell casings that you testified about,
2 were a lot of those found inside the house?

3 A Yeah.

4 Q How many were found inside the house, do you
5 know?

6 A I cannot recall the exact amount.

7 Q How many of them were from a 9-millimeter Luger
8 that you referred to?

9 A I can consult the report here and answer that,
10 but it will take just a minute.

11 Q Okay.

12 A The question was inside the apartment?

13 Q Yes, sir.

14 A Okay. Approximately 10.

15 Q What about outside the apartment?

16 A Approximately two.

17 Q How many, sir?

18 A Two.

19 Q Two. So, most of them were inside the
20 apartment; is that true?

21 A That's correct.

22 Q Did you find any shell casings or anything
23 indicating that a 38 caliber handgun had been fired?

24 A I cannot recall.

25 Q You can't recall or there were none, which?

JOSH SPURGEON-CROSS BY MR. STEELE

1 You've got your reports there, haven't you?

2 A No, there's none labeled as 38.

3 Q All right, sir. Did you -- as the forensics
4 officer on the scene, would you have been the person who
5 would have checked for fingerprints?

6 A Yes.

7 Q Did you check for fingerprints?

8 A Let me check. We processed several items for
9 fingerprints back at the crime scene office?

10 Q Did you find any fingerprints?

11 A No.

12 Q No fingerprints?

13 A Correct.

14 Q And I'm assuming since you just said no
15 fingerprints, that would include State's Exhibit 47, which
16 is the handgun that you identified I think sitting right
17 there in front of you now?

18 A Yes, sir.

19 Q No fingerprints?

20 A Yes, sir.

21 Q You recovered some spent shells, also, didn't
22 you?

23 A I did.

24 Q Would you -- as a forensic officer, would you
25 have been the person to conduct a ballistics test to see

JOSH SPURGEON-CROSS BY MR. STEELE

1 if the weapon that had fired those spent shells could be
2 determined?

3 A No, sir, that's not my position.

4 Q Somebody else would have done that?

5 A Yes.

6 Q Do you know if that was done?

7 A I'm not sure. It would likely be James
8 Armstrong.

9 Q Sir?

10 A It would likely have been James Armstrong.

11 Q Okay. How many ski masks, mask, whatever you
12 want to call them, how many did you find?

13 A I found the navy blue mask and a skeleton mask.

14 Q Do you know what a Jason mask is?

15 A Yes, I did not find that one. I've never seen
16 that before.

17 Q There was a Jason mask, though, you just weren't
18 the man that found it?

19 A I was shown pictures of one?

20 Q You know what one looks like?

21 A Yes.

22 Q What does it look like?

23 A White mask.

24 Q Made out of what?

25 A Plastic.

JOSH SPURGEON-CROSS BY MR. STEELE

1 Q The ones you found were all cloth, it sounds
2 like?

3 A Yes.

4 Q During your period of employment at the
5 Greenville County Sheriff's Office, direct your attention,
6 if you will to July 20th, 2015. That would have been a
7 couple three months before the investigation was conducted
8 in this case. Were you given a letter of written warning
9 for insufficiency in the performance of your duties and
10 failing to do acceptable work by putting incorrect
11 information or failing to put information in the V-connect
12 system?

13 A I take your word for it, I was.

14 Q You're taking my word for it?

15 A Yes, sir.

16 Q You don't remember?

17 A I don't remember the exact dates.

18 Q On January 15th, 2016, were you suspended for
19 two 12-hour shifts for losing evidence?

20 A I believe so, yes, sir.

21 Q Specifically, you lost a very small piece of
22 paper that was to be processed for latent prints,
23 apparently, by failing to repackage it after processing.
24 And the disciplinary action included other incidents
25 involving improper packaging of evidence and scanning of

JOSH SPURGEON-CROSS BY MR. STEELE

1 evidence. Do you remember that, sir?

2 A Yes.

3 Q On February 29th, 2016, were you issued a verbal
4 letter of warning for inefficiency in the performance of
5 duties for leaving a secured program open at property and
6 evidence and failing to log out?

7 A That sounds right, yes, sir.

8 Q Did you resign from the forensics office on
9 July 4th, 2016?

10 A Yes.

11 MR. STEELE: If your Honor please, does Your
12 Honor want to do what I'm about to do? I was going
13 to make a request of the Court that we do it in the
14 presence of the jury or?

15 THE COURT: Your request again is to read the
16 substance of the letters of reprimand?

17 MR. STEELE: And he was equivocal, I would
18 submit.

19 THE COURT: What's the State's position on that?

20 MR. RICHARDSON: I disagree. He admitted to
21 every incident. One comment was he said he couldn't
22 remember the exact date.

23 THE COURT: I --

24 MR. STEELE: I would -- I'm sorry, Your Honor.

25 THE COURT: Go ahead. I'm sorry.

JOSH SPURGEON-CROSS BY MR. STEELE

1 MR. STEELE: I was going to make one additional
2 supporting statement.

3 THE COURT: Sure.

4 MR. STEELE: I don't think, I will take your
5 word for it, I cannot imagine a more equivocal
6 statement than that, and that's what he said. And
7 his failure to affirmatively unequivocally --

8 MR. RICHARDSON: I'm going to object. Can we
9 approach?

10 THE COURT: Hold on.

11 You're protected on the record in that regard.
12 Whether it's equivocal or not I think ultimately goes
13 to his credibility and the jury can determine whether
14 he equivocated or not. Based on the full substance
15 of the testimony, I think he said he had to take your
16 word for the date. That's my recollection of his
17 testimony. I think he acknowledged the reprimands.
18 Therefore, in keeping with my prior ruling, I'm going
19 to respectfully deny your request to read the
20 substance of the letters into the record.

21 MR. STEELE: And I will say for the record, but
22 for Your Honor's ruling, I would have read them to
23 him at this time.

24 THE COURT: Fair enough, sir.

25 MR. STEELE: May I have just a moment, Your

JOSH SPURGEON-CROSS BY MR. STEELE

1 Honor?

2 THE COURT: Sure, you may.

3 MR. STEELE: I've got a couple more questions
4 for him, Your Honor.

5 BY MR. STEELE:

6 Q Did you find any blood out there that you took
7 samples of?

8 A Let me check. Once back at the office, I took
9 some blood samples from some of the suspect's clothing.

10 Q And were they tested?

11 A I turned it into property and evidence.

12 Q And that was the end of your involvement?

13 A Yes, that's right.

14 Q Did you look for head hairs at the scene?

15 A We looked at everything that we could see at
16 scene, so, yes.

17 Q Did you find any head hairs?

18 A There were, I believe, some head hairs in the
19 masks?

20 Q Did you preserve those?

21 A Yes.

22 Q Did you have anything to do with testing those?

23 A No, sir.

24 Q Do you know if they were tested?

25 A I do not know.

JOSH SPURGEON-REDIRECT BY MR. RICHARDSON

1 Q Did you ever see Mr. Massey?

2 A I did.

3 Q Did you take any head hairs from his hair?

4 A No.

5 Q For comparisons purposes?

6 A I did not.

7 MR. STEELE: That's all Your Honor.

8 THE COURT: Okay, any redirect, sir?

9 MR. RICHARDSON: Just briefly, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. RICHARDSON:

12 Q Mr. Steele asked you about finding 38 shell
13 casings. I believe your answer to that is you did not
14 find any?

15 A Yes.

16 Q Okay. If you fire a revolver, would you find
17 shell casings? Or do you know?

18 A I can't make an accurate.

19 Q Does a revolver eject shell casings?

20 A It does not.

21 Q So, if a revolver is fired, the shell casings
22 stay within the cylinder, do they not?

23 A Yes.

24 MR. RICHARDSON: Thank you, that's all the
25 questions.

JOSH SPURGEON-RECROSS BY MR. STEELE

1 MR. STEELE: May I ask one on that, Your Honor?

2 THE COURT: You may.

3 RECROSS-EXAMINATION

4 BY MR. STEELE:

5 Q Of course, if a person opened up the cylinder on
6 a revolver and held it up, those shell casings would fall
7 out, wouldn't they?

8 A Possibly.

9 Q Possibly.

10 MR. STEELE: That's all, Your Honor.

11 THE COURT: Okay. All right, Mr. Spurgeon,
12 thank you, sir. You may step down. I appreciate
13 your being here.

14 MR. RICHARDSON: Thank you, Your Honor.

15 THE COURT: Yes, sir.

16 All right, Mr. Richardson, it's about 4:25. We
17 just hit daylight savings time, so it feels like
18 5:25. I'm not going to take a break yet, I just want
19 to caution you not to call a witness who's going to
20 last an hour.

21 MR. RICHARDSON: Okay, Your Honor. I don't
22 think this one will last quite that long.

23 THE COURT: All right, good enough. Go ahead
24 call your witness, sir.

25 MR. RICHARDSON: Okay, Kenneth Leach.

KENNETH LEACH-DIRECT BY MR. RICHARDSON

1 KENNETH LEACH, after being duly sworn,
2 testified as follows:

3 THE CLERK: Thank you, please be seated. Sir,
4 would you please state your name for the record?

5 THE WITNESS: Kenneth Jason Leach.

6 THE CLERK: Thank you, sir.

7 DIRECT EXAMINATION

8 BY MR. RICHARDSON:

9 Q Mr. Leach, where do you currently reside?

10 A Where I currently reside?

11 Q Yes, sir.

12 A I reside at Whitehorse Road.

13 Q Can you move up to that mouthpiece so we can
14 hear you back here?

15 A All right.

16 Q Now, I want to take you back to September 30th
17 of 2015, where did you live at that point in time?

18 A Dolphin Apartments on North Franklin, 1140 North
19 Franklin Road.

20 Q 1140 North Franklin?

21 A Yes, sir.

22 Q Do you remember that night?

23 A Yes, sir.

24 Q Okay. Were you outside of those apartments that
25 night?

KENNETH LEACH-DIRECT BY MR. RICHARDSON

1 A Yes, sir, I was over at a friend's house.

2 Q Where did that friend live?

3 A I forget the apartment number, but they lived
4 right across the hall from the victim.

5 Q And can you tell the jury what happened to you
6 that night?

7 A Well, as I was leaving her apartment, I was
8 walking down the steps. I got to the bottom of the
9 breezeway and four guys came out with guns and had masks
10 on. Held me hostage. Tried to rob me, but I didn't have
11 nothing to take. So they told me to go up the steps and
12 knock on this guy's door. And it was the guy's door that
13 lived right across from the girl I was visiting. I
14 knocked on the door, they shoved me off to the side and
15 knocked the guy in the head. They went in there. The guy
16 was laying on floor.

17 Q When you say -- so we can be clear, okay. They
18 hit somebody in head, who was that?

19 A Yellow Boy is what I call him?

20 Q Is that the victim in this case?

21 A Yes, sir.

22 Q What did they hit him with?

23 A Barrel of the gun.

24 Q Okay.

25 A Bottom of the gun.

KENNETH LEACH-DIRECT BY MR. RICHARDSON

1 Q Okay. Did everybody have a gun that you saw?

2 A Yes, sir.

3 Q Okay. Now, so we're clear, when the door
4 opened, did Yellow Boy or the victim open the door?

5 A Yes, sir.

6 Q What happened to you at that particular time?

7 A That shoved me off to the side of the --

8 Q Were you inside or outside?

9 A I was still outside.

10 Q Okay. When they shoved you, where did you go?

11 A Just off to the side of the door. Right there,
12 there was like just trash sitting right there, like carpet
13 or something.

14 Q Okay.

15 A And they shoved me on top of that.

16 Q Then what happened?

17 A They proceeded to enter the house. The last guy
18 told me I had to come in with them. And they shoved me
19 into a recliner.

20 Q Okay.

21 A At that time, Yellow Boy's brother come, I
22 guess. I only saw his hand around the corner start
23 shooting the gun.

24 Q All right. So, you have -- the victim's Yellow
25 Boy and you're saying his brother came out from where?

KENNETH LEACH-DIRECT BY MR. RICHARDSON

1 A Well, I just seen an arm pop around the corner
2 with a gun in his hand. They started shooting at each
3 other.

4 Q Okay.

5 A Two of them took off running and the other ones
6 was waiting until the clip was empty. They took off. I
7 proceeded right behind them. I jumped on his back.
8 That's how I got blood on me and all that.

9 Q You jumped on whose back?

10 A That guy, the first one that entered the
11 apartment. The one that hit Yellow Boy in the head.

12 Q Okay. Now, let's go back. You stated that they
13 put guns on you and were attempting to rob you?

14 A Yes, sir.

15 Q Okay. What were they doing when they went into
16 the house or apartment ■? What were they saying to the
17 victim?

18 A They didn't say nothing. They knocked him right
19 on the ground.

20 Q Okay. At that point in time, did they attempt
21 to rob him?

22 A No. The brother came around the corner too fast
23 and when he started shooting, like I said, two of them
24 took off running. They all started shooting at each
25 other. It was kind of hectic at that moment. Pretty

KENNETH LEACH-DIRECT BY MR. RICHARDSON

1 much, I waited until the guns went click. I got shoved
2 into the recliner. Time they went to run, I ran out
3 behind them.

4 Q And where did you go when you ran out?

5 A I proceeded to safety. I didn't run back to my
6 apartment. I made the first left. They was running to
7 the right, so I made a left, made another left real quick.
8 Because my apartment would have been a beeline. I didn't
9 want to shot in the back, so I just proceeded to the
10 safest place I could, up underneath a bush. Hid there for
11 a little while, went to the next breezeway, next apartment
12 complex over right there. It's the same apartment
13 complex, but a different building. I went in that
14 breezeway right there and shut the door and hid.

15 Q Okay. Now, at some point in time, did you see
16 where the police arrived?

17 A Yes, sir, the police was arriving just as I was
18 about to walk bark towards the house.

19 Q Did you stop to talk with them?

20 A No, sir. I was going upstairs to clean up and
21 stuff and the officer asked me if I had seen what
22 happened.

23 I said, Yes, sir -- yes, ma'am, I did.

24 They proceeded to put me in the cop car.

25 Q All right. And did you tell them what -- did

KENNETH LEACH-DIRECT BY MR. RICHARDSON

1 you tell them what had happened that night?

2 A Yes, sir.

3 Q So we're clear, when they put the gun on you and
4 took you up the steps, you were not a part of that?

5 A No. No way, no form, no fashion.

6 Q All right. And what were they doing when they
7 entered that apartment? What was their purpose?

8 A Kill everybody and rob them from what I could
9 understand, what I saw.

10 MR. STEELE: Your Honor, that would be
11 speculation. Unless he can read the minds of the
12 individuals, he would have no way of knowing.

13 THE COURT: I sustain.

14 BY MR. RICHARDSON:

15 Q Let me ask you this, were they trying to rob
16 you?

17 A Yes, sir. They asked me to empty my pockets
18 inside out. I told them they had to go in my pockets. I
19 wasn't going to put my hands in my pockets. But I didn't
20 have no money or my wallet wasn't on me.

21 Q When they went into that apartment, were they
22 asked to come in?

23 A Oh, no. Like I said, I knocked on the door.
24 They told me to knock, and I knocked. When the dude
25 opened the door up, he didn't ask who it was or nothing,

KENNETH LEACH-DIRECT BY MR. RICHARDSON

1 he just opened the door up. They pushed, shoved me off to
2 the side and hit him with the bottom of -- barrel --
3 handle of the gun.

4 Q And do you have any idea how many times they
5 shot?

6 A No. I just know they shot until I heard the gun
7 go click. That's when I knew it was safe to try to run up
8 out of there, when everybody started hustling around.

9 Q At that time, you figured the guns were --

10 A Empty.

11 Q -- empty. Okay.

12 A That's why I jumped on his back, I didn't want
13 him to have time to reload. They were all wearing masks.

14 Q You say you jumped on his back, we're talking
15 about one of the people with the mask on?

16 A Yes, sir. When he proceeded to exit the
17 apartment?

18 Q Were you able to see anybody get shot?

19 A There was a lot of shooting. I don't know who
20 all got shot. All I know I was trying to get out of
21 there.

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

23 THE COURT: Yes, sir.

24 BY MR. RICHARDSON:

25 Q And you stated you had blood on you?

KENNETH LEACH-CROSS BY MR. STEELE

1 A Yes, sir.

2 Q And where did that come from?

3 A That came from the guy that was wearing a mask,
4 the first one that entered the apartment and the last one
5 that ran out. The shooters.

6 Q Okay.

7 A They held me hostage.

8 Q So, the guy who you got your blood on was the
9 guy that was the first one in the apartment?

10 A Yes, sir.

11 Q And the last one to leave?

12 A Yeah, I was right behind him. I was the last
13 one to enter, but I was the last one coming out.

14 MR. RICHARDSON: Thank you, that's all the
15 questions I have. Please answer any Mr. Steele may
16 have for you.

17 CROSS-EXAMINATION

18 BY MR. STEELE:

19 Q Mr. Leach, how many people did you say there
20 were who accosted you and tried to rob you?

21 A There was four of them.

22 Q Could there have been as many as five?

23 A I only seen four.

24 Q You're sure of that?

25 A Positive.

KENNETH LEACH-CROSS BY MR. STEELE

1 Q Now, this is not a trick question, but do you
2 remember when you were interviewed by the law enforcement
3 people in this case?

4 A Yes, sir.

5 Q Remember when they taped that interview?

6 A Yeah.

7 Q Didn't you tell them at that time, I'm just
8 asking because I heard it, there could have been as many
9 as five.

10 A I don't recall that. It's been a long time ago.

11 Q Yes, sir. But I'll just put it to you this way,
12 is it possible you said there could have been as many as
13 five or not? Maybe you're sure now, I don't know.

14 A That night I might have said that, but I'm
15 sure -- like I say, I remember saying four.

16 Q You're sure there were four?

17 A I remember saying four.

18 Q Never mind what you said, just how many were
19 there?

20 A There was four.

21 Q Okay. And you're sure of that?

22 A Yep.

23 Q No doubt about it?

24 A Yep.

25 Q The other thing, do you remember telling the law

KENNETH LEACH-CROSS BY MR. STEELE

1 enforcement when you were interviewed that everybody was
2 wearing blue jeans, all four of them, do you remember
3 telling them that?

4 A No, I don't recall telling them that.

5 Q You do not?

6 A I said all four of them was wearing masks.

7 Q We'll get to the masks in a minute, but do you
8 remember telling them that all were wearing blue jeans?

9 A No. Not at this moment, no.

10 Q It is possible that you said?

11 A Yes, it is very possible. It was two years ago.

12 Q How long ago after the incident was it that you
13 were interviewed by law enforcement?

14 A Huh?

15 Q How long was it after the incident that you were
16 interviewed by law enforcement?

17 A I wasn't looking at a clock, could have been a
18 couple hours.

19 Q Okay. Same night, though, that's what I'm
20 getting at?

21 A Yes, same night.

22 Q It wasn't a day or two later?

23 A No, sir.

24 Q So, it was while your memory of that incident
25 was very, very fresh, wasn't it?

KENNETH LEACH-CROSS BY MR. STEELE

1 A Yes, sir.

2 Q As you just pointed out a couple of times, and I
3 agree with you, it's been two years now, hasn't it?

4 A Yes, sir.

5 Q At that time, it had been maybe two hours,
6 right?

7 A Yeah, something like that.

8 Q And it was very fresh in your mind, wasn't it?

9 A Yep.

10 Q Which makes sense that what you said then might
11 be right, what you can't say now one way or the other
12 might be that you forgot over two years, am I correct?

13 A Yeah, my memory gets a little hazy.

14 Q Yes, sir. Everybody was wearing masks, you've
15 made that clear, haven't you?

16 A Yes, sir.

17 Q And you know what a Jason mask is?

18 A Yeah.

19 Q Was one of them wearing a Jason mask?

20 A I was not trying to look at them. I was looking
21 up in the air most of the time. I mean, they already had
22 masks on, I wasn't trying to give them no reason to shoot
23 me?

24 Q What about a skeleton mask? Do you remember a
25 skeleton mask?

KENNETH LEACH-CROSS BY MR. STEELE

1 A I was looking up the air. I just know they were
2 wearing masks.

3 Q So, at this point, you cannot say what kind of
4 masks they were wearing?

5 A No, sir. I was concentrating on surviving.

6 Q Sir?

7 A I was trying to survive.

8 Q Yes, sir.

9 MR. STEELE: If Your Honor please, through
10 discovery, I was given a copy of his audio interview.

11 THE COURT: Yes, sir.

12 MR. STEELE: And I would respectfully ask leave
13 to play it at this time.

14 THE COURT: Okay. Do you have the means to play
15 it?

16 MR. STEELE: No, sir.

17 THE COURT: We'll have to figure out to do it
18 then.

19 MR. STEELE: Yes, sir.

20 THE COURT: Okay. Here's what I would ask you
21 to do. Let's go ahead and get to the end of his
22 testimony. Do you have any additional questions?

23 MR. STEELE: No, sir, other than playing this.

24 THE COURT: All right, do you have any questions
25 in redirect?

1 MR. RICHARDSON: No, sir -- I -- no, sir.

2 THE COURT: All right. Well, let us then -- do
3 you have any objection to the playing of the tape?

4 MR. RICHARDSON: No, sir.

5 THE COURT: Okay. Well, this is what I'd ask
6 you to do. Let's take a short break. What I want
7 you to do is find something to play it for the jury
8 on. And also, make sure that you go through it and
9 find the specific portion that you're looking for.
10 Because I presume that it last more than a couple of
11 minutes. And all of it isn't relevant, just the
12 specific portion that you are asking about.

13 MR. STEELE: I sort of know where it is, but
14 I'll have to listen to it.

15 THE COURT: That's fine. You know, if you get
16 something together, you can play it for the jury.
17 But what I don't want you to do is for you to end up
18 playing the whole thing and going back and forth.

19 MR. RICHARDSON: Your Honor, I'm sorry, to
20 interrupt.

21 THE COURT: Yeah.

22 MR. RICHARDSON: If he's going to put in
23 portions of it, I want the whole thing played.

24 THE COURT: Well, you want to play the whole
25 thing or you want to put the whole thing into

1 evidence?

2 MR. RICHARDSON: I want the whole thing played
3 as much for completion.

4 THE COURT: So, if you want to do that, I think
5 it should be --

6 MR. STEELE: I have no objection to that.

7 THE COURT: Okay. All right. So, do you want
8 to play it in front of the jury or do you simply want
9 to admit it as evidence and let the jury have it for
10 their review during deliberations?

11 MR. RICHARDSON: If we're not going to play any
12 portion of it, that's okay with me.

13 MR. STEELE: Actually, either way is all right,
14 but they're going to have to listen to it in the jury
15 room.

16 THE COURT: They can. That's -- how y'all
17 present the evidence is entirely up to you. I'm just
18 giving you options. It doesn't matter to me. It
19 really doesn't. But if y'all collectively want to
20 enter the whole thing, then that's fine.

21 There are two things we have to determine.
22 Okay. Do you want to play it? You don't have to.
23 And if you do want to enter it as evidence, is it
24 Plaintiff's Exhibit or is it Defendant's Exhibit?

25 Because I think it makes a difference to you,

1 Mr. Steele?

2 MR. STEELE: It does. I was simply going to
3 play and ask him some questions about it.

4 THE COURT: All right. Do you want to enter it
5 as an exhibit?

6 MR. RICHARDSON: I think actually that would be
7 the proper way to do it. I'll enter it.

8 THE COURT: You'll enter it? Okay.

9 So, knowing that it will be State's Exhibit, do
10 you want to play it on the record or just have it
11 available for the jury to listen to in their jury
12 room?

13 MR. STEELE: I don't have a way of playing it
14 right now. I would have to run downstairs and make
15 arrangements for that.

16 THE COURT: Yeah.

17 MR. STEELE: I guess I'll need about five
18 minutes to see if I can do that.

19 THE COURT: Okay.

20 MR. STEELE: Then I can answer Your Honor's
21 question.

22 MR. RICHARDSON: For judicial economy, just put
23 it into evidence, then it will be available to the
24 jury later.

25 THE COURT: Again, it doesn't matter to me.

1 It's y'all's case. Y'all tell me how you want to do
2 it. What I'm trying to do is be considerate of their
3 time. That's all I'm trying to do.

4 MR. RICHARDSON: Yes, sir.

5 MR. STEELE: Here's the way then I would suggest
6 we do it, Your Honor, consistent with what Your Honor
7 has asked and what Your Honor has suggested. I'm
8 just going to offer it -- he's going to offer it and
9 I'm just going to term this as State's Exhibit
10 whatever the appropriate number is and let it be
11 played in the jury room.

12 THE COURT: That's fine.

13 MR. RICHARDSON: No objection.

14 MR. STEELE: But there again, do I need to make
15 arrangements for a device to play it on?

16 THE COURT: At the end of trial, I want y'all to
17 have something that will give them the opportunity to
18 play it in the jury room.

19 MR. STEELE: So, I'm going to hand it to the
20 court reporter to be marked as a State's Exhibit?

21 THE COURT: That's right.

22 MR. STEELE: And with that, Your Honor, I would
23 conclude --

24 THE COURT: Let her mark it.

25

1 (WHEREUPON, State's Exhibit No. 74 was marked
2 for identification and received into evidence.)

3 MR. STEELE: Your Honor ready?

4 THE COURT: Yes, sir.

5 BY MR. STEELE:

6 Q So, tell me again what your testimony is
7 regarding what the people that tried to rob you were
8 wearing?

9 A They was all wearing masks.

10 Q Okay. And you don't remember what kind of
11 clothes?

12 A Not at this time. I mean, if I said they were
13 wearing pants on the tape, they probably was then.

14 Q Well, more specifically, if you said they were
15 wearing blue jeans on the tape?

16 A If that's what I said, then probably so. I
17 mean, from I remember right now, I remember them wearing
18 masks. I was looking up in the air most of the time, I
19 wasn't even trying to look at them.

20 Q And you -- tell me again, I've already asked you
21 this, but it won't take but a second. Do you remember
22 what kind masks they were wearing?

23 A No, sir.

24 MR. STEELE: That's all, Your Honor.

25 THE COURT: Okay, any redirect, sir?

KENNETH LEACH-CROSS BY MR. STEELE

1 MR. RICHARDSON: No, sir.

2 THE COURT: Okay. Thank you, sir, you may step
3 down. I appreciate you being here, sir.

4 THE WITNESS: No problem.

5 THE COURT: Have you got another short witness?

6 MR. RICHARDSON: Your Honor, I think this would
7 be a good time to break.

8 THE COURT: Okay. All right. Good enough.

9 All right. Ladies and gentlemen, we'll take a
10 break for the afternoon. The reason I was asking
11 about the witness because I don't want you to be here
12 going on 6:00 o'clock if we can avoid it. If you
13 have made any plans with your families and with
14 people depending on you, so I'm not going to keep you
15 here past the normal business hour.

16 I told you when we began, I wasn't going to keep
17 any secrets from you. We were talking about the
18 introduction of that evidence. That was entirely
19 just a matter of time. And I was trying to determine
20 how much time we were going to spend on that. Some
21 of what we discussed was fairly technical from an
22 evidentiary perspective, but at the end of the day,
23 the only thing that I think I and the attorneys were
24 trying to get to was what was going to make the best
25 use of your time because your time is valuable.

KENNETH LEACH-CROSS BY MR. STEELE

1 Okay.

2 So, ladies and gentlemen, if you would, please,
3 be back tomorrow morning at 9 o'clock. And we'll
4 start -- we'll restart with the introduction of
5 evidence by the State.

6 Mr. Richardson, how many additional witnesses do
7 you intend to call in your case, sir?

8 MR. RICHARDSON: Your Honor, it looks like
9 around nine.

10 THE COURT: Nine. Okay.

11 MR. RICHARDSON: Yes, sir. None to the length
12 of Mr. Spurgeon.

13 THE COURT: I got you. Okay. I understand.
14 So, nine witnesses, all of whom are about like what
15 we saw today with the exception of the evidence
16 custodian?

17 MR. RICHARDSON: Correct.

18 THE COURT: Okay.

19 Mr. Steele, I'm not holding you to this, I'm not
20 holding you to it, but do you intend on calling any
21 witnesses to the stand as we sit here right now?

22 MR. STEELE: If Your Honor please, that has not
23 yet been determined. I'm sorry.

24 THE COURT: Fair enough. Fair enough.

25 So, ladies and gentlemen, you hear that. Nine

KENNETH LEACH-CROSS BY MR. STEELE

1 witnesses remaining --

2 MR. RICHARDSON: I'm sorry, I apologize for
3 interrupting. I miscounted, it will be about 12.

4 THE COURT: Okay. Twelve.

5 But if we get off to a good start tomorrow
6 morning and you saw the pace that we went at today,
7 then Wednesday is probably realistic, okay. And my
8 goal will be tomorrow when we come in is to get all
9 12 of those witnesses up and down, okay, and be done
10 with the introduction of evidence. Then the Defense
11 will have the opportunity the present evidence. But
12 it may be at that point that we come back Wednesday
13 and hear any of that evidence if the Defense intends
14 to introduce evidence. Like I've told you, the
15 Defense doesn't have to introduce evidence. The
16 Defense doesn't have the burden of proof.

17 So, we'll come back tomorrow and we'll get busy.
18 We'll try to get rid of -- try to hear all of the
19 State's testimony tomorrow. Then, hopefully, we'll
20 go to argument and charge on Wednesday morning, if
21 not morning, then afternoon. Okay.

22 All right. Y'all have a good evening. Please
23 don't discuss the case. Please don't do any
24 self-help. Please be on time tomorrow because I have
25 to wait until all 14 of you are here. So, if we only

KENNETH LEACH-CROSS BY MR. STEELE

1 have 13, then I'm left waiting, okay. So, out of
2 consideration for each other, not for me and the
3 parties, but each other, be on time if you will,
4 please. Thank you very much. I hope you have a
5 great evening.

6 (WHEREUPON, the jury left open court at
7 approximately 4:49 p.m.)

8 MR. STEELE: What time did you say?

9 THE COURT: Nine.

10 Okay, anything further to put on the record this
11 afternoon?

12 MR. STEELE: No, Your Honor.

13 MR. RICHARDSON: Nothing from the State.

14 THE COURT: All right, good, we'll see y'all
15 tomorrow morning. Y'all have a good evening.

16 (WHEREUPON, the proceedings were concluded for
17 the day to be reconvened on November 7, 2017.)

18

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KENNETH LEACH-CROSS BY MR. STEELE

1 November 7, 2017

2 THE COURT: Okay, y'all ready for the jury?

3 MR. RICHARDSON: Yes, sir.

4 MR. STEELE: Yes, sir.

5 THE COURT: Okay, bring them in, please.

6 (WHEREUPON, the jury came into open court at
7 approximately 9:41 a.m.)

8 THE COURT: All right, good morning everybody,
9 welcome back. I hope you had a good evening. Sorry
10 we started a little late this morning. I didn't want
11 to, but an issue came up and it was unavoidable. So
12 we'll try to move along as possible. I know you've
13 asked to take note, you're welcome to take notes if
14 you would like to but I do need to caution you. When
15 you take notes, understand that it is possible that
16 you can miss something. That's when you're looking
17 down and you're take your notes, you may miss
18 something that a witness does or says or some body
19 language or facial expression that he or she makes.
20 So, understand that there is a risk associated with
21 taking notes because you can miss that.

22 Also, I caution you when you take notes and you
23 begin your deliberations at the end of the case,
24 sometimes people rely on their notes. And because
25 someone has written something down, the remainder of

BLAKE WOLFE-DIRECT BY MR. CONITS

1 the jury may accept it as accurate. I will tell you
2 that in your deliberations, one juror's notes
3 shouldn't be preferred over another person's
4 recollections. Just because someone may have taken a
5 note doesn't necessarily mean that it accurately
6 reflects what happened on the stand. So, with that
7 caution, ladies and gentlemen, you're welcome to take
8 notes if you'd like to. Okay.

9 All right, Mr. Richardson, you may call your
10 next witness, sir.

11 MR. CONITS: Thank you, Your Honor. The State
12 calls Officer Blake Wolfe to the stand.

13 THE CLERK: Please come forward. Pause at the
14 end of the bench, place your left hand on the Bible,
15 raise your right hand.

16 BLAKE WOLFE, after being duly sworn,
17 testified as follows:

18 THE CLERK: Thank you, please be seated. Please
19 state your full name for the record.

20 THE WITNESS: Blake Edward Wolfe.

21 THE CLERK: Thank you, sir.

22 DIRECT EXAMINATION

23 BY MR. CONITS:

24 Q Officer Wolfe, where do you work?

25 A Greenville County Forensics on the Crime Scene

BLAKE WOLFE-DIRECT BY MR. CONITS

1 Unit.

2 Q And how long have you worked there?

3 A Three years.

4 Q Okay. So, you were working there in 2015?

5 A Yes, sir.

6 Q And you were employed in your present capacity
7 at that time?

8 A Yes, sir.

9 Q Okay. So, did you respond to 1140 North
10 Franklin Road on September 30th?

11 A Yes, I did.

12 Q Okay. Why did you respond?

13 A For a homicide investigation.

14 Q And did you investigate the crime scene along
15 with Mr. Spurgeon?

16 A Yes, I did.

17 Q Were you with him as he took pictures and
18 gathered evidence?

19 A Yes, sir.

20 Q Were you there when he marked the evidence?

21 A Yes, I was.

22 Q Okay. From what you saw that night, did
23 Mr. Spurgeon follow standard procedure?

24 A Yes, sir, he did.

25 Q Now, did you construct a diagram showing the

BLAKE WOLFE-DIRECT BY MR. CONITS

1 location of items of evidence collected by Mr. Spurgeon
2 from inside apartment [REDACTED]?

3 A Yes, I did.

4 Q Based on what you observed?

5 A Yes, sir.

6 Q Okay. Here's what has been marked as State's
7 Exhibit 73. Is this the diagram you drew?

8 A Yes, sir, it is.

9 Q Okay.

10 MR. CONITS: Your Honor, the State offers
11 State's Exhibit 73 for admission into evidence.

12 MR. STEELE: No objection, Your Honor.

13 THE COURT: All right, without objection, the
14 same shall be admitted.

15 (WHEREUPON, State's Exhibit No. 73 was marked
16 for identification and received into evidence.)

17 BY MR. CONITS:

18 Q Officer Wolfe, I have what has been marked as
19 State's Exhibit 54, 52, 51 and 50. And for the purposes
20 of your diagram, these are also labeled as JTS-21, JTS-22,
21 JTS-23 and JTS-25. You have a pointer right there, could
22 you point out where these items of evidence are located in
23 your diagram?

24 A They are here and here, right in front of the
25 doorway as you go into the apartment.

BLAKE WOLFE-DIRECT BY MR. CONITS

1 Q Okay. All four of them are in that doorway
2 area?

3 A Yes, sir.

4 Q Okay. I have here what has been marked as
5 State's Exhibit 56, 58 and 56. And for purposes of your
6 diagram is JTS-27, 29 and 30. Could you point those out
7 on your diagram as well?

8 A Yes, sir. They are the two on the couch and one
9 on the floor there.

10 Q Okay. And these are all 9-millimeter shell
11 casings?

12 A Yes, sir, that would be correct.

13 Q Okay. And now, in your diagram, in the bedroom
14 area, are there any 9-millimeter shell casings in that
15 area?

16 A In the bedroom, no, sir.

17 Q What about outside the bedroom?

18 A Directly outside the bedroom, no.

19 Q Okay. Now, did you also construct a diagram of
20 the outside of the apartment building?

21 A Yes, sir, I did.

22 Q Okay. Based on what you observed in your
23 investigation?

24 A Yes, sir.

25 Q Okay. Here is what has been marked for purposes

BLAKE WOLFE-DIRECT BY MR. CONITS

1 of identification as State's Exhibit 72. Just a diagram
2 you drew?

3 A Yes, sir, it is.

4 MR. CONITS: Your Honor, the State offers
5 State's Exhibit 72 for admission as evidence.

6 MR. STEELE: No objection.

7 THE COURT: All right, without objection, same
8 is admitted.

9 (WHEREUPON, State's Exhibit No. 72 was marked
10 for identification and received into evidence.)

11 BY MR. CONITS:

12 Q Okay, I have here what has been marked as
13 State's Exhibit 63. It's a navy blue ski mask collected
14 from the crime scene. Can you pull that out and then
15 point out where it is on your diagram?

16 A Mask is recovered there.

17 Q Okay. And here I have what has been marked as
18 State's Exhibit 47. And in your diagram is JTS-3, the
19 handgun. If would pull this out from the box and point
20 that out as well.

21 A The handgun was recovered from there.

22 Q Okay. And this bag has been marked State's
23 Exhibit 37, have a black holster that was collected
24 outside. Can you take this out first and then point it
25 out as well?

BLAKE WOLFE-CROSS BY MR. STEELE

1 A Right there, in the bushes.

2 Q Is the brush there?

3 A Yes, sir.

4 Q Okay. Did you observe the Defendant at any
5 point that night?

6 A Yes, I did.

7 Q Where did you observe the Defendant?

8 A Right there where the holster and the other two
9 items were located.

10 Q Was he on top of the holster?

11 A When we saw him, he was laying on the ground.
12 After EMS moved him, we found the holster.

13 MR. CONITS: One moment, Your Honor.

14 THE COURT: Yes, sir.

15 BY MR. CONITS:

16 Q Back to the diagram of inside the apartment,
17 outside the bedroom, those are not shell casings?

18 A No, sir.

19 Q The items that you have marked outside that
20 bedroom?

21 A No, sir, they're not.

22 Q Okay.

23 MR. CONITS: No further questions, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. STEELE:

BLAKE WOLFE-CROSS BY MR. STEELE

1 Q Mr. Wolfe, you testified you were, of course,
2 one of the two forensics officers out there that night,
3 September 30th to October 1st, 2015; is that right?

4 A Yes, sir.

5 Q Okay. It was just you and Mr. Spurgeon, wasn't
6 it?

7 A No our supervisor, Dar Shaw, also responded?

8 Q So, there were three of you out there?

9 A Yes, sir.

10 Q Now, I'm assuming y'all were doing different
11 things in different places at different times, am I
12 correct?

13 A Yes, sir.

14 Q In other words, the three of you weren't just
15 right there together all the time, were you?

16 A Not all the time, no, sir.

17 Q Mr. Spurgeon would have been off doing some
18 things and you would have been off doing some things?

19 A Yes, sir.

20 Q I'm going to show you what's been marked for
21 identification only, Defendant's Exhibit 1, chain of
22 custody reports. This would indicate -- where it has the
23 name Joshua Spurgeon up here at the top, this would
24 indicate that he was the person who collected that at the
25 crime scene; is that correct?

BLAKE WOLFE-CROSS BY MR. STEELE

1 A Yes, sir.

2 Q And I'm not going to go through every one of
3 them, but we have a ski mask, we have a GSR, that is a
4 gunshot residue kit, we have a Glock handgun. And all of
5 them have Mr. -- and you're welcome to look at them to
6 confirm what I'm about to ask you. But all of them have
7 Mr. Spurgeon's name on them, don't they?

8 A All, but one piece of evidence. I did a video
9 of the crime scene.

10 Q Okay. So, without looking at every one of
11 these, you can tell me they all have Mr. Spurgeon's name
12 on them?

13 A Yes, sir.

14 Q With the exception of that video you did?

15 A Yes, sir.

16 Q So, he would have been the one who collected a
17 gunshot residue kit from Kenneth Leach; is that correct?

18 A Yes, sir.

19 Q Did you or anybody else to your knowledge out
20 there that day collect a gunshot residue kit from Timiya
21 Massey?

22 A No, sir, not to my knowledge.

23 Q Can you say affirmatively that that was not done
24 or just that you don't know whether it was done?

25 A I don't know if it was done.

BLAKE WOLFE-CROSS BY MR. STEELE

1 Q And that's often done, though, to determine who
2 might have recently fired a weapon, isn't it?

3 A Yes, sir.

4 Q What about the collection of fingerprints, did
5 you gentlemen collect any fingerprints out there?

6 A No, sir.

7 Q You didn't even attempt to collect any?

8 A No, sir.

9 Q Okay. What about that gun that's right there in
10 front of you, was any effort made to get fingerprints off
11 that gun?

12 A I would have to review Mr. Spurgeon's report.

13 Q Okay.

14 A Since he collected it, he would be responsible
15 for processing it.

16 Q So, if it was done, it would have been done by
17 Mr. Spurgeon?

18 A Yes, sir.

19 Q So, if he says it wasn't done, then we can
20 assume it wasn't done?

21 A Yes, sir.

22 Q And what about the collection of human head
23 hairs, was there any effort to collection human head hairs
24 out there?

25 A Not that I'm aware of.

BLAKE WOLFE-CROSS BY MR. STEELE

1 Q You didn't do it, at any rate?

2 A No, sir.

3 Q Who collected the blue ski mask and turned it
4 into property and evidence?

5 A Mr. Spurgeon.

6 Q That would have been Mr. Spurgeon. You still
7 work there at the sheriff's office, don't you?

8 A Greenville County forensics. It's separate from
9 the sheriff's office.

10 Q Y'all actually work for both law enforcement
11 agencies or all law enforcement agencies in the county,
12 don't you?

13 A Yes, sir.

14 Q And Mr. Spurgeon does not work there anymore,
15 does he?

16 A No, sir.

17 Q He resigned on July 4th, I think it was 2016,
18 does that sound right?

19 A I don't know the exact date, but he did resign.

20 Q And you are aware that he received several
21 letters of reprimand and sanctions while he was working
22 there?

23 A Yes, sir.

24 Q Did you have anything to do with those or would
25 that have been done by somebody else?

BLAKE WOLFE-CROSS BY MR. STEELE

1 A No, I'm not a supervisor.

2 Q Who would have done that?

3 A Our sergeants or lieutenants.

4 Q Do you know specifically who did it in his case?

5 A No, sir, I don't.

6 MR. STEELE: May I have just a moment, Your
7 Honor?

8 THE COURT: Yes, sir, you may.

9 MR. STEELE: If Your Honor please, that's all
10 for this witness.

11 THE COURT: Okay. Thank you.

12 Any redirect, sir?

13 MR. CONITS: No, Your Honor.

14 THE COURT: Thank you, sir. You may step down.
15 I appreciate your being here.

16 Yes, sir, you may call your next witness.

17 MR. RICHARDSON: Your Honor, may this witness be
18 excused?

19 THE COURT: Yes, sir.

20 MR. STEELE: Yes, sir.

21 MR. RICHARDSON: Your Honor, the State calls
22 Chris Hammett to the stand.

23 CHRIS HAMMETT, after being duly sworn,
24 testified as follows:

25 THE CLERK: Thank you. Please be seated.

CHRIS HAMMETT-DIRECT BY MR. RICHARDSON

1 DIRECT EXAMINATION

2 BY MR. RICHARDSON:

3 Q Sir, could you state your name for the record,
4 please?

5 A Henry Christopher Hammett.

6 Q And where are you employed?

7 A Greenville County Sheriff's Office.

8 Q In what capacity?

9 A Now, I'm the sergeant with the internal affairs
10 unit.

11 Q Okay, sir. And what capacity -- were you
12 working back in September 2015?

13 A I was, yes.

14 Q What capacity were you working in?

15 A It was a master deputy investigator assigned to
16 the homicide unit.

17 Q Okay, sir. How long have you been in law
18 enforcement?

19 A Approximately 20 years.

20 Q Let me take your memory back to that date,
21 September 30th, 2015. Were you involved in the
22 investigation of the case that we have here?

23 A I was.

24 Q How so?

25 A I was the on-call investigator for that week and

CHRIS HAMMETT-DIRECT BY MR. RICHARDSON

1 I was notified when this incident was reported.
2 Investigator Campbell had responded with uniform patrol
3 and notified me as the on-call investigator to respond to
4 conduct the scene investigation.

5 Q Did you, in fact, respond?

6 A I did.

7 Q Where did you respond?

8 A To the apartment at 1140 North Franklin, which
9 is Dolphin Apartments.

10 Q Is that in Greenville County?

11 A It is, yes.

12 Q Upon arrival at 1140 North Franklin, can you
13 tell the jury what you saw?

14 A When I arrived, the scene was already secured by
15 law enforcement, which is the First Responders there, the
16 marked uniform patrol deputies. It was roped off with
17 crime scene tape and deputies were in various areas
18 securing it. There was some people in the parking lot
19 area outside of the area that was secured. And it was all
20 being contained until forensics and myself and the
21 coroner's office could arrive.

22 Q Okay, sir. And you mentioned to the jury that
23 it was secured when you got there?

24 A Correct.

25 Q Specifically, when you secure a crime scene,

CHRIS HAMMETT-DIRECT BY MR. RICHARDSON

1 what is done to secure that crime scene?

2 A Basically, it is kept from anyone going through
3 it, walking through it or going in there that doesn't have
4 an absolute necessity to be in there. Typically, with
5 homicide scenes, especially like this one, the only people
6 that went in there prior to actually conducting the
7 investigation were your initial deputies that responded to
8 check for additional victims or potential suspects that
9 would have been inside the area.

10 Q And upon your observations, did you find any
11 problems with the security of this crime scene?

12 A No, not at all.

13 Q Now, once you arrived -- don't tell me what
14 somebody said, but were briefed about what happened?

15 A I was.

16 Q Do you recall who briefed you?

17 A I believe it was Lieutenant Whatley and
18 Investigator Campbell.

19 Q Okay. And upon that briefing, what did you do?

20 A Basically, from that point, we formulated a plan
21 to process the scene. What we typically do is meet with
22 the forensic supervisor or technician that's on scene as
23 well as the deputy coroner that's on scene. The three of
24 us or four of us, however many, including the forensic
25 technicians will make an initial walk-through of the

CHRIS HAMMETT-DIRECT BY MR. RICHARDSON

1 general area to be searched just to get a layout of what
2 we're looking for, where the evidence might be and, also,
3 where the victim might be located.

4 Q So, we're clear to the jury, you're the lead
5 investigator on this case?

6 A That is correct, yes.

7 Q Once you -- did you, in fact, walk through the
8 property as you just stated?

9 A We did. We did not go past where the victim was
10 located on the stairs initially because of not wanting to
11 contaminate anything in his general area. The initial
12 walk-through we did was on the outside.

13 Q Okay, sir. And upon that walk-through, did you
14 notice -- we've seen evidence entered, did you notice
15 evidence strong throughout the area?

16 A I did. Various locations around the exterior of
17 the apartment building and in the edge and inside of the
18 wooded area.

19 Q Okay. And once you did your walk -- initial
20 walk-through on the outside area, what, if anything, did
21 you do?

22 A Eventually, we -- once we got to where the
23 victim was located, the victim was processed as far as
24 location and photographs and videos, then we proceeded up
25 to where the victim's apartment was located.

CHRIS HAMMETT-DIRECT BY MR. RICHARDSON

1 Q Okay, sir. And at some point, referring to the
2 victim, did you -- were you present when EMS came or not?

3 A They were still on scene initially, I believe,
4 when I got there, but he had already -- they had already
5 attended to him and made the pronouncement once I had
6 arrived.

7 Q Okay, sir. But after they had done that, did
8 EMS unit stay on the scene?

9 A They were outside in the area initially, yes,
10 sir.

11 Q Okay. After your -- you walked through the
12 outside -- well, let me ask you this, before you went
13 inside, did you obtain a search warrant?

14 A I requested a search warrant, yes, sir, I did.

15 Q Did you, in fact, get that?

16 A Yes.

17 Q And was that search warrant for apartment ■?

18 A It was, yes, sir.

19 Q Is that the victim's apartment?

20 A Correct, yes.

21 Q Upon arrival to the victim's apartment, what, if
22 anything, did you see? Tell the jury.

23 A Basically, we observed it was at the top of the
24 stairs in the breezeway to the left. The door was
25 standing open and you could see what appeared to be damage

CHRIS HAMMETT-DIRECT BY MR. RICHARDSON

1 from bullets inside the apartment as well as shell casings
2 in the hallway area and right inside the living room or
3 den area of the apartment there. Then once you proceeded
4 in a little further, you could see additional damage where
5 projectiles had struck -- or what appeared to be
6 projectiles.

7 Q And in reference to that, is that holes in the
8 walls?

9 A Yes.

10 Q After your walk-through on the inside of the
11 apartment, what, if anything, did you do? And let me ask
12 you this before, did you disturb any of the evidence while
13 you were in there?

14 A No. No. As I go through with forensics, I
15 don't manipulate or touch anything nor does the coroner.
16 We're just all together to view everything. Then it's
17 actually -- the forensics units go behind us and actually
18 do the documentation and collection of evidence?

19 Q And likewise, the forensic unit does the outside
20 of it, also?

21 A Correct, yes.

22 Q So, your job is not to take any items into
23 evidence?

24 A Correct, yes.

25 Q Now, after you did the walk-through of the

CHRIS HAMMETT-DIRECT BY MR. RICHARDSON

1 interior of the apartment, did you leave?

2 A No, sir.

3 Q Did you leave that apartment?

4 A Oh, of the apartment itself, yes, sir.

5 Q I apologize. And where did you go?

6 A Down to the outer area of the perimeter area to
7 continue overseeing what was going on.

8 Q Okay. And during these initials walk-throughs
9 and your time in the briefing, approximately at this point
10 in time, how long had you been out to the scene?

11 A Roughly about an hour or so, I guess, somewhere
12 in that neighborhood.

13 Q And during that period of time, during your
14 walk-through, etcetera, have you seen the Defendant at any
15 time?

16 A Not up to that point, no, sir.

17 Q Now, at some point, did you, in fact, come in
18 contact with the Defendant?

19 A Yes, I did.

20 Q Can you tell the jury what you saw in that
21 regard?

22 A Yes. I was notified of a second person that had
23 been found on the scene behind the apartment building.
24 So, I then responded back to where he was located. And he
25 was in a wooded area with some vegetation and the trees

CHRIS HAMMETT-DIRECT BY MR. RICHARDSON

1 right behind -- there's a little small path behind the
2 apartment that the woods come up to. Right on the outside
3 of that path in the wooded area.

4 Q Was he covered up?

5 A Yes, he was down underneath some brush.

6 Q Did he appear to be hiding?

7 A Yes, sir.

8 MR. STEELE: I object to what he was appeared to
9 be, Your Honor. He can describe the setting, but I
10 don't think he can draw that conclusion.

11 THE COURT: Okay. All right. I'll let the jury
12 determine from the facts whether that's an
13 appropriate characterization or not. I don't take a
14 position one way or the other.

15 BY MR. RICHARDSON:

16 Q Okay. Let me just follow up with that. Was the
17 Defendant difficult to see?

18 A Yes, he was.

19 Q Was there foliage out there?

20 A Yes.

21 Q And this was September the 30th; is that
22 correct?

23 A Correct, yes, sir.

24 Q Now, upon seeing the Defendant, what, if
25 anything, did you do?

CHRIS HAMMETT-DIRECT BY MR. RICHARDSON

1 A Basically, we obviously contacted the EMS, who
2 responded to provide medical treatment because he had a
3 pretty severe injury to his leg.

4 Q Okay. And did you see the injury to his leg?

5 A I didn't see it specifically because it was
6 underneath his clothing.

7 Q I see. Did you see any blood?

8 A Yes.

9 Q You may have testified to this, did you help
10 move him?

11 A I did not, no.

12 Q Were you there when he was moved?

13 A Yes.

14 Q At some point was EMS called over to treat him?

15 A They were, yes.

16 Q Okay. And did EMS, in fact, treat him?

17 A They did.

18 Q And at some point, was the Defendant
19 transported?

20 A Yes, sir. As soon as they were able to
21 stabilize him, they transported him to the emergency room.

22 Q Okay. Now, there's been some talk here about
23 GSR. And I don't believe the jury has been explained what
24 that is. Can you briefly explain to the jury what GSR is?

25 A GSR is gunshot residue. What it is, is

CHRIS HAMMETT-DIRECT BY MR. RICHARDSON

1 particles of gunpowder or the stimulant for the projectile
2 that can -- they're microscopic, not visible. That can
3 potentially be found on the hands of someone who has fired
4 a gun or handled a gun. It doesn't necessarily mean they
5 fired it, but just had a gun in their hand. And it could
6 potentially show.

7 Q Can it also potentially show a gun's fired near
8 that person?

9 A That is correct, yes.

10 Q Now, in this particular case as lead
11 investigator, GSR was not done; is that correct?

12 A That is correct, yes.

13 Q Can you explain to the jury why GSR was not done
14 on Mr. Massey?

15 A It wasn't obtained from Mr. Massey because
16 the -- the medical treatment supercedes any evidence
17 collection. Obviously, if someone is injured or in pain,
18 our -- even as law enforcement, our main priority is to
19 provide aid to them. So, when you have a situation like
20 that, that supercedes what we do.

21 So initially, as soon as he was found, EMS
22 was contacted. And as soon as they got there and
23 stabilized him, he was immediately taken from the location
24 to the hospital where he was treated.

25 Q Okay. And in the treating hospital, are y'all

CHRIS HAMMETT-DIRECT BY MR. RICHARDSON

1 permitted back during surgeries and that type of thing?

2 A No, sir, we are not. We have to have a doctor's
3 permission after that even to get back there.

4 Q Let's talk a little bit about the conditions out
5 there and GSR. Was it wet out there that night?

6 A Yes, sir, it had raining and, actually, was
7 supposed to start back.

8 Q In the location that you found the Defendant,
9 was he in a -- were there leaves and foliage around him
10 that were wet?

11 A Yes, sir.

12 Q And what does that do to GSR?

13 A GSR is a very fragile element of evidence. Just
14 after you handle it and get the GSR on you, just putting
15 your hand in your pocket will rub it off potentially. Or
16 just doing this will separate it. So, anytime it comes
17 into contact with water, it will dissipate. It is washed
18 away because it is so fragile.

19 Q And in your experience, what is the reliability
20 of GSR?

21 A It can provide false negatives and false
22 positives. Again, the false negative would be where
23 something like that happened, somebody fired a gun, but
24 they put their hands in their pocket. We test and it
25 comes back negative. And then the reverse to that would

CHRIS HAMMETT-DIRECT BY MR. RICHARDSON

1 be if you had a shooting and someone fired a gun -- or
2 excuse me, if someone who didn't fire the gun picked it up
3 and moved it after the fact, they could potentially have
4 that on them. And there are some other chemicals that
5 will provide a false negative. I'm not sure what they
6 are, I can't recall. But there are things that can alter
7 that. So it's not exactly reliable.

8 Q Okay. In this particular case, is this a case
9 that GSR becomes a reliable source?

10 A It's not reliable on a situation like this
11 because the results, whether they were positive or
12 negative would be questionable because of the environment
13 they were collected in and the circumstances behind the
14 shooting aspect itself.

15 Q Okay. Now, in the location the Defendant is,
16 did you notice any evidence around the Defendant himself?

17 A Once he was removed, there was a holster that
18 was located there.

19 Q Okay. Let me just show you what's been marked
20 State's 37. Can you view that, please, sir?

21 A Yes, sir.

22 Q And where was that found?

23 A Underneath -- in the same area, actually, on the
24 ground underneath where the victim -- the area the
25 victim -- or excuse me, the Defendant had been laying in.

CHRIS HAMMETT-DIRECT BY MR. RICHARDSON

1 Q Okay. Now, at some point in time, did you
2 obtain what's known as a buccal swab?

3 A I did, yes.

4 Q Do you recall when you obtained that?

5 A The exact date, no, sir, I don't.

6 Q Okay. Well, let me ask you this, just explain
7 to the jury briefly what a buccal swab is.

8 A It's basically a non-intrusive way of obtaining
9 a DNA sample. It's a Q-tip that has a plastic attachment
10 on the end of it and it inserts into a tube that screws
11 together. It's a plastic tube so that it's not
12 contaminated after you -- well, actually, it's sterile
13 before you use it and it's not contaminated afterwards.
14 It just a long stick Q-tip with an attachment that screws
15 into a plastic tube.

16 Q Okay. And in this case, did you obtain a buccal
17 swab?

18 A Yes, I did. I actually obtained two samples.

19 Q In order to do that, did you have to get court
20 permission?

21 A Yes, sir.

22 Q In what form or fashion?

23 A We obtained a search warrant for buccal swabs.

24 Q Okay. Now, when you took a buccal swab of the
25 Defendant in this particular case, can you explain to the

CHRIS HAMMETT-DIRECT BY MR. RICHARDSON

1 jury where you swabbed him?

2 A Basically, the Q-tip is inserted into the inside
3 of the mouth on either side of the jaw and just rubbed up
4 and down in a circular motion to obtain saliva samples
5 from inside the jaw area.

6 Q Do you recall where -- the location that you did
7 that?

8 A The location?

9 Q The physical location?

10 A The Greenville County Detention Center.

11 Q And did you take -- how many buccal swabs did
12 you take?

13 A I believe it was two total.

14 Q Why do you do two?

15 A I've had past experiences where the first sample
16 did not collect enough, so basically, now, when we do the,
17 I just do two to try to make sure that, at least, one of
18 them has an active enough sample to get a DNA profile
19 from.

20 Q And whether there's enough sample, that's up to
21 the DNA analyst?

22 A Yes, sir, that's forwarded to them.

23 Q Okay. Let me hand you what's been marked
24 State's Exhibit 66. What is that?

25 A It's marked as buccal swabs obtained from Timiya

CHRIS HAMMETT-DIRECT BY MR. RICHARDSON

1 Massey, with HCH-3 and 4 as the items number.

2 Q Well, let me talk about that. HCH-3 and 4,
3 where are those item numbers coming from?

4 A Those are numbers that I generate for any
5 evidence that I collect. Like, after the scene
6 investigation is done, as the actual criminal
7 investigation proceeds, there may be things that I collect
8 or generate as evidence. And those, I actually will place
9 into property and evidence and will use my initials, which
10 is HCH. Then whatever progresses referring to, that's my
11 logging number for me.

12 Q And you -- when you take a buccal swab, do you
13 actually log it in?

14 A I do not. I take it to property and evidence
15 and they will actually log it, bar code it and secure it.
16 I don't do anything with that. I just itemize it by my
17 numbers.

18 Q Okay. Let me ask you to open that item.

19 A (The witness complies.)

20 Q Sir, if you can view what you have taken out of
21 there. Are those the buccal swabs that you took?

22 A They are.

23 Q How do you know?

24 A They -- the tube itself, not just the outer
25 envelope has my initials -- or excuse me, my item number

CHRIS HAMMETT-DIRECT BY MR. RICHARDSON

1 as well as the date and the time that it was collected and
2 the name of the person that it was collected from.

3 Q Okay. And the date and time it was collected is
4 what?

5 A It's 10:47 on 11 -- I believe it's 11/13/15, I
6 believe. I'm sorry, I can't read it that well.

7 Q Once you take those, I believe you testified
8 that you would take it to property and evidence; is that
9 correct?

10 A Yes. Once they're collected, they're taken to
11 property and evidence where they are turned over to a
12 property technician to be secured and bar coded.

13 Q Okay. And when you turn them in, are they
14 sealed?

15 A Yes.

16 Q Are they secured?

17 A Yes, they are.

18 Q Okay. Is property and evidence a secured
19 facility?

20 A Yes, it is.

21 Q Let me hand you what's been --

22 MR. RICHARDSON: Well, Your Honor, at this time,
23 I would move State's 66 into evidence.

24 THE COURT: Any objection?

25 MR. STEELE: No, sir.

CHRIS HAMMETT-DIRECT BY MR. RICHARDSON

1 THE COURT: All right, without objection, the
2 same is moved into evidence.

3 (WHEREUPON, State's Exhibit No. 66 was marked
4 for identification and received into evidence.)

5 BY MR. RICHARDSON:

6 Q And regarding those two tubes, when you give it
7 to property and evidence, do you fill out a property and
8 evidence report?

9 A Yes, sir, you do.

10 MR. STEELE: Your Honor, I do need to say this,
11 though. Your Honor will recall that I made a motion
12 to suppress at the pre-trial hearing.

13 THE COURT: Yes, sir.

14 MR. STEELE: I would reiterate that at this
15 time. I have no objection beyond what I argued at
16 that time.

17 THE COURT: I understand, sir. I understand.

18 MR. STEELE: But I would reiterate my motion to
19 suppress previously.

20 THE COURT: Yes, sir. The prior ruling stands.
21 You may proceed, Mr. Richardson.

22 MR. STEELE: Thank you.

23 BY MR. RICHARDSON:

24 Q I will show you what's been marked State's
25 Exhibit 74. What is that?

CHRIS HAMMETT-DIRECT BY MR. RICHARDSON

1 A Appears to be the copy of -- a copy of the
2 property evidence form I filled out to place these two
3 items into property and evidence.

4 Q And you filled that out?

5 A I did, yes, sir.

6 Q Did you also sign that?

7 A I did, yes, sir.

8 Q What's the date on that form?

9 A The date on that is 10/16 of 2015.

10 Q Okay.

11 MR. RICHARDSON: Your Honor, at this time, we
12 would offer State's 74 into evidence.

13 THE COURT: Objection, sir?

14 MR. STEELE: Same objection, subject to that
15 motion I made.

16 THE COURT: Okay. Overrule the objection. The
17 same is admitted as State's next exhibit.

18 THE COURT REPORTER: That would be State's 75.
19 74 was the CD we marked yesterday.

20 MR. RICHARDSON: I'm sorry.

21 (WHEREUPON, State's Exhibit No. 75 was marked
22 for identification and received into evidence.)

23 BY MR. RICHARDSON:

24 Q Now, once that's secured in property and
25 evidence, you have nothing else to do with this; is that

CHRIS HAMMETT-CROSS BY MR. STEELE

1 correct?

2 A No, sir.

3 MR. RICHARDSON: Beg the Court's indulgence?

4 THE COURT: Yes, sir.

5 MR. RICHARDSON: Thank you, sir. Answer any
6 questions that Mr. Steele may have for you.

7 MR. STEELE: May it please the Court?

8 THE COURT: Yes, sir.

9 CROSS-EXAMINATION

10 BY MR. STEELE:

11 Q Sergeant Hammett, did y'all collect any hair
12 samples out there at the scene? I know it wouldn't have
13 been done directly and specifically by you, but as the
14 investigating officer in charge, did you direct forensics
15 to take any hair samples from around?

16 A No, sir.

17 Q Were any taken from Timiya Massey?

18 A No, sir.

19 Q What about fingerprints?

20 A Again, that's up to the forensics unit to do.

21 But to my knowledge, as far as at the scene, there were no
22 fingerprints.

23 Q Could you have suggested it as the investigator
24 in charge?

25 A Yes, sir, I could have.

CHRIS HAMMETT-CROSS BY MR. STEELE

1 Q But you didn't, it sounds like?

2 A No, sir, I didn't because they basically -- we
3 don't know any areas specifically that had been touched by
4 any of the defendants or suspects. So, we didn't have any
5 specific areas to process.

6 Q Well, y'all found a gun?

7 A Yes, sir.

8 Q You didn't check it?

9 A It was collected and processed later at the
10 forensics laboratory.

11 Q Would that have included checking for
12 fingerprints?

13 A Forensics is a little better to explain this,
14 but when you have -- you can only really do one of two
15 processes, either fingerprinting or DNA printing on
16 firearms because one typically disturbs the other, the
17 presence of the other. And so, when a gun is found in the
18 condition that this one is, that was wet and muddy,
19 fingerprints aren't very conducive to the firearms. So,
20 they opt to do the DNA processing versus fingerprints on
21 firearms for the most part.

22 Q Okay. Do you know if either one was done in
23 this case?

24 A DNA was swabbed, yes, sir.

25 Q But not the fingerprints?

CHRIS HAMMETT-CROSS BY MR. STEELE

1 A Correct.

2 Q And you could have -- again, I asked you this
3 generally, I'll ask you specifically about the weapon, you
4 could have requested that as the officer in charge,
5 couldn't you?

6 A Yes, sir.

7 Q But you didn't again?

8 A That is correct, yes.

9 Q Now, you say that Mr. Massey was found in a
10 wooded area. Was he wearing gray sweatpants?

11 A To my recollection, yes, sir, I believe they
12 were gray.

13 Q He definitely had on sweatpants?

14 A Yes.

15 Q And he definitely did not have on jeans?

16 A Correct.

17 Q And you say it looked like he was hiding. Well,
18 he had been shot in the leg, hadn't he?

19 A That is correct, yes, sir.

20 Q It would have been time to hide, wouldn't it?

21 A Yes, sir.

22 Q So, those -- you talked a little bit about this
23 GSR and the fact that there were reasons not to do it.
24 You were afraid of false positives or false negatives and
25 you don't think it was appropriate in this instance. But

CHRIS HAMMETT-CROSS BY MR. STEELE

1 as the investigator in charge, you could have requested
2 that, couldn't you?

3 A Yes, sir.

4 Q But you didn't?

5 A Correct.

6 Q But you did do one to Mr. Leach?

7 A Correct.

8 Q Now, you took the swabs from Mr. Massey, subject
9 to my motion earlier, and you told me that you were the
10 one who collected them. But the swabs from the ski mask
11 were not collected by you, were they?

12 A No, sir.

13 Q They were collected by forensics?

14 A Correct.

15 Q Specifically, by Josh Spurgeon?

16 A I'm not a hundred percent on who it was, but
17 yeah, it was done by forensics, yes, sir.

18 Q Well, you were here in court throughout the
19 trial and you heard the other forensics officer say that
20 the only thing he did out there was do a video?

21 A Right, I know Spurgeon collected it. As far as
22 who processed it at the lab, I wasn't over there, so I'm
23 not 100 percent sure.

24 Q Yes, sir. But you do agree with me Mr. Spurgeon
25 at that point collected it?

CHRIS HAMMETT-CROSS BY MR. STEELE

1 A Correct, yes, sir.

2 Q Were you present at the interviews of some of
3 the co-defendants in this case?

4 A Yes, sir.

5 Q Were you present at the interview of Nyerere
6 Williams?

7 A Yes, sir.

8 Q I've listened to it and there's a voice on
9 there. The voice who's asking the questions and
10 conducting the debriefing, is that you?

11 A Possibly. I was there. I don't know if anyone
12 else was there with me, I don't recall.

13 Q But at any rate, you did talk to Nyerere
14 Williams?

15 A Yes, I did.

16 Q And Nyerere Williams was charged in this same
17 thing, am I correct?

18 A Yes, sir.

19 Q Do you remember -- that was actually done on an
20 audio disk, was it not?

21 A I believe it was a video recorded statement.

22 Q Anyway, there was either a video or a an audio?

23 A Correct. Yes, sir.

24 Q Do you remember what -- Mr. Williams saying that
25 he was told to put a mask on?

CHRIS HAMMETT-CROSS BY MR. STEELE

1 A Yes, sir.

2 Q Did he say that he was told to put a Jason mask
3 on?

4 A I can't recall specifically.

5 Q What kind?

6 A Right.

7 Q Anyway, he was told to put a mask on?

8 A Yes, sir, that's correct.

9 Q He was also told to stand out in the parking lot
10 and watch?

11 A Correct, that's what he said.

12 Q That's what he told you. And he told you that
13 he been brought into this thing by --

14 MR. RICHARDSON: Your Honor, I'm going to
15 object. I've let it go several times, but he's
16 asking for hearsay.

17 THE COURT: Okay. When you refer to he told
18 you, who is he?

19 MR. STEELE: I was going to ask him about
20 Nyerere Williams.

21 THE COURT: Okay. Then I sustain the objection.

22 BY MR. STEELE:

23 Q Okay. Not what he said, but were you present
24 also at the interview of Terry Harris?

25 A I did not conduct it, but I was present when it

CHRIS HAMMETT-CROSS BY MR. STEELE

1 was being done. I was observing it.

2 Q What about Mr. Leach?

3 A No, sir. I was out at the scene when Mr. Leach
4 was interviewed.

5 Q You didn't talk to him?

6 A I did not.

7 Q Were you the one who directed that he be tested
8 for gunshot residue?

9 A Yes, sir.

10 MR. STEELE: If Your Honor please, may I have a
11 moment?

12 THE COURT: Yes, sir, you may.

13 (WHEREUPON, a brief pause was taken.)

14 BY MR. STEELE:

15 Q Sergeant Hammett, summing up, no fingerprints,
16 right?

17 A Yes, sir.

18 Q No hair fibers?

19 A Correct.

20 Q No gunshot residue test on Timiya Massey?

21 A Yes, sir, that's correct.

22 Q And all of the collection was done by Josh
23 Spurgeon?

24 A To my knowledge, yes, sir.

25 Q Well, like we said earlier, I don't mean to keep

CHRIS HAMMETT-REDIRECT BY MR. RICHARDSON

1 repeating ourselves, but the other forensics officer said
2 all he did was take the video?

3 A Yes.

4 Q So, it had to be Mr. Spurgeon?

5 A Correct.

6 Q Who was later -- previously and later
7 disciplined by the office he worked for?

8 A Yes, sir.

9 MR. STEELE: That's all, Your Honor.

10 THE COURT: Redirect, sir?

11 MR. RICHARDSON: Briefly, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. RICHARDSON:

14 Q During this hour period of time that you did not
15 see the Defendant, were other police officers walking the
16 area?

17 A Yes, sir.

18 Q Were there numerous police officers around that
19 area?

20 A Yes, sir, they were.

21 Q And around the Defendant?

22 A Yes, sir.

23 Q Okay. And that was for about an hour period of
24 time?

25 A Roughly, yes, sir.

CHRIS HAMMETT-RECROSS BY MR. STEELE

1 MR. STEELE: On that same subject, Your Honor,
2 just in response to what he said.

3 RECROSS-EXAMINATION

4 BY MR. STEELE:

5 Q Are you telling the Court and the jury that
6 Mr. Massey was out there, at least, an hour?

7 A Yes, sir.

8 Q Was it longer than an hour?

9 A It could have potentially been.

10 Q Could have been two hours?

11 A Yes, sir.

12 Q Maybe even three?

13 A Potentially.

14 Q Yes, sir.

15 MR. STEELE: That's all, Your Honor.

16 THE COURT: All right. Thank you, I appreciate
17 it.

18 Okay, you may call your next witness.

19 MR. CONITS: Your Honor, at this time, the State
20 calls Kara Bennick to the stand.

21 THE CLERK: Place your left hand on the Bible
22 and raise your right.

23 KARA BENNICK, after being duly sworn,
24 testified as follows:

25 THE CLERK: Thank you, please be seated. Please

KARA BENNICK-DIRECT BY MR. CONITS

1 state your name for the record.

2 THE WITNESS: Kara Bennick.

3 DIRECT EXAMINATION

4 BY MR. CONITS:

5 Q Ms. Bennick, where do you work?

6 A Greenville County Department of Public Safety
7 Forensics Unit, in the property and evidence room,
8 specifically.

9 Q And how long have you worked there?

10 A I've been down there about 13 years.

11 Q And as part of your employment, do you take in
12 evidence from crime scenes?

13 A I do.

14 Q Where do you take in this evidence?

15 A We take it in across the counter of the property
16 and evidence section during business hours or through
17 temporary storage after hours.

18 Q Okay. Can you briefly describe what property
19 and evidence is?

20 A Property and evidence is a secured holding area
21 for all -- any kind of evidence or property coming in from
22 the sheriff's office or the Greenville County Police
23 Department.

24 Q Okay. And, in addition, are you the supervisor

25 --

KARA BENNICK-DIRECT BY MR. CONITS

1 A I am.

2 Q -- of property and evidence? Okay. And as part
3 of your supervisory role, are you also custodian of the
4 records?

5 A For evidence, yes.

6 Q I've here documents that have been marked for
7 purposes of identification as State's Exhibit 67, 68 and
8 69.

9 A Okay.

10 Q Take a look at those.

11 A (The witness complies.) Okay.

12 Q And Ms. Bennick, are these documents that are
13 kept in the regular course of business by P & E?

14 A Yes, sir, they are.

15 Q And are these documents maintained in your
16 control?

17 A Yes, through the bar code system, they are.

18 MR. CONITS: Your Honor, at this time, the State
19 offers Exhibit 67, 68, and 69 for admission in
20 evidence.

21 THE COURT: Objection, sir?

22 MR. STEELE: Well, I don't know what the
23 relevance is.

24 THE COURT: What's the relevance, sir?

25 MR. CONITS: Well, Exhibit 67 is the DNA swab,

KARA BENNICK-DIRECT BY MR. CONITS

1 68 is a buccal swab and 69 is the chain of custody of
2 a metal projectile.

3 THE COURT: So, it's relevant to the
4 establishment of the chain of custody.

5 MR. STEELE: I thought -- I understand. No
6 objection.

7 THE COURT: Okay. All right, without objection,
8 the same is admitted as State's next exhibit.

9 (WHEREUPON, State's Exhibits Nos. 67-69 were
10 marked for identification and received into
11 evidence.)

12 BY MR. CONITS:

13 Q State's Exhibit 67 on top. And what is Exhibit
14 67, Ms. Bennick?

15 A It's the chain of custody for a swab.

16 Q And a swab of what?

17 A A swab for possible DNA collection collected
18 from the interior of mouth.

19 Q Who submitted this item into property and
20 evidence?

21 A It was submitted in -- it was actually collected
22 or, at least, generated from Joshua Spurgeon from the
23 crime scene section. He submitted it to locker one in
24 evidence.

25 Q And is every individual who's handled the

KARA BENNICK-DIRECT BY MR. CONITS

1 evidence from that point on listed in that report?

2 A Yes, sir.

3 Q Okay. And so, this document shows the chain of
4 custody for this item of evidence?

5 A It does.

6 Q Can you take a look at Exhibit 68?

7 A Okay.

8 Q And what is Exhibit 68?

9 A It's a chain of custody for a buccal swab
10 obtained from Timiya Massey.

11 Q Who submitted this item into property and
12 evidence?

13 A It was submitted by crime scene. And then --
14 oh, I'm sorry, it was actually -- it was submitted at the
15 counter and it was taken in by Melanie Watson. The
16 submitting officer was Hammett, investigator. Sorry.

17 Q No problem. Is every individual who handled the
18 evidence from this point on listed in that report?

19 A Yes.

20 Q So, the chain of custody for this report is
21 complete as well?

22 A It is.

23 Q Okay. Could you look at State's Exhibit 69?

24 A Yes.

25 Q What is this report?

KARA BENNICK-CROSS BY MR. STEELE

1 A That's the chain custody for a metal projectile.

2 Q Who submitted this item into property and
3 evidence?

4 A Dustin Kretschmar from crime scene.

5 Q And is everyone from that point on listed in
6 this report?

7 A Yes.

8 Q Who handled the evidence? And the chain of
9 custody for this item is complete?

10 A It is.

11 MR. CONITS: Okay. One moment, Your Honor.

12 THE COURT: Yes, sir.

13 MR. CONITS: No further questions, Your Honor.

14 THE COURT: Cross?

15 MR. STEELE: May it please the Court?

16 THE COURT: Yes, sir.

17 MR. STEELE: May I borrow the exhibit from you
18 please, ma'am?

19 CROSS-EXAMINATION

20 BY MR. STEELE:

21 Q I'm looking at the top -- I guess, collectively,
22 these are State's Exhibit 67. This one refers to the swab
23 of possible DNA collected from the interior mouth area.
24 Does that mean -- this JTS-2, is that referring to a --

25 A To another item.

KARA BENNICK-CROSS BY MR. STEELE

1 Q Another item. An inanimate object? In other
2 words, we're not talking about a person here, are we?

3 A I couldn't tell you because I don't know what
4 JTS-2 is.

5 Q Well, take my word for it, this is probably from
6 the ski mask. Does that sound right? You have ski mask
7 down there in this case or do you know?

8 A I couldn't tell you that, sir.

9 Q But at any rate, the point I'm making is this
10 was definitely submitted by Joshua Spurgeon, was it not?

11 A Yes.

12 Q In fact, his name's on their twice. Does that
13 mean that he brought it in from the crime scene?

14 A He's the one who generated the item in the
15 computer and then he is the one who placed them into the
16 evidence locker number one.

17 Q Okay. So, it required him to put in the
18 computer; is that correct?

19 A Yes.

20 Q I'm going to show you, also, what's been marked
21 for identification only as Defendant's 1. And these are
22 records maintained by you and your office, are they not?

23 A They're chain of custodies.

24 Q Yeah, you maintain these, your responsible for
25 these, aren't you?

KARA BENNICK-CROSS BY MR. STEELE

1 A The bar code system maintains the actual chains,
2 but I am the administrator of the system.

3 Q And it's very important that everything be
4 entered correctly in the bar code system, isn't it?

5 A Uh-huh.

6 Q And failure to do that could jeopardize the
7 chain of custody, could it not?

8 A Yes.

9 Q And it looks like Mr. Spurgeon here has been the
10 person -- and I'll just turn them page by page. On all
11 these pieces of evidence that have come in in this case,
12 is his name as the crime scene intake person on all of
13 them?

14 A It is.

15 Q Okay.

16 MR. STEELE: That's all I have of this witness,
17 Your Honor.

18 THE COURT: All right. Redirect?

19 MR. CONITS: No, Your Honor.

20 THE COURT: Okay. Thank you, ma'am, I
21 appreciate your being here. You may step down. You
22 may be excused absent any objection.

23 MR. STEELE: No objection.

24 THE COURT: Okay. Good enough, thank you.

25 All right. Anybody on the jury need to take a

TIMOTHY NAFZIGER-DIRECT BY MR. RICHARDSON

1 break? Everybody good? Anybody need a break? Let's
2 go through, at least, one more witness, okay.

3 All right. You may call your next witness, sir.

4 MR. RICHARDSON: Thank you, Your Honor. The
5 State would call Timothy Nafziger.

6 TIMOTHY NAFZIGER, after being duly
7 sworn, testified as follows:

8 THE CLERK: Thank you, please be seated. State
9 your name for the record.

10 THE WITNESS: Timothy Nafziger, Jr.

11 THE CLERK: Thank you.

12 DIRECT EXAMINATION

13 BY MR. RICHARDSON:

14 Q Sir, where are you employed?

15 A The Greenville County Department of Public
16 Safety Forensic Division. I work in the DNA lab.

17 Q Okay. And in that position, what exactly is
18 your position in that lab?

19 A I'm a serologist.

20 Q And how long have you been doing serology?

21 A More than four years.

22 Q Okay. Has it all been in this particular
23 department?

24 A Yes.

25 Q And as a serologist, if you can tell the jury,

TIMOTHY NAFZIGER-DIRECT BY MR. RICHARDSON

1 what are your duties?

2 A Part of my duty is to identify human bodily
3 fluids on evidence and take samples for DNA analysis.

4 Q Okay, sir. Now, when you got this position, you
5 had some educational background; is that correct?

6 A Yes.

7 Q Can you tell the jury what your educational
8 background is?

9 A I have a Bachelor's Degree in biological
10 sciences from Clemson and a Master's Degree from Auburn
11 University.

12 Q And what's your Master's Degree in?

13 A Entomology.

14 Q Do you have any training regarding serology?

15 A I have a lot of experience in lab work through
16 my education. I was trained when I was hired by the DNA
17 lab in the specific tests that we do for about six months
18 by our technical people.

19 Q And if you can speak up just a tad, I'd
20 appreciate it. Now, approximately, how many DNA samples
21 have you generated?

22 A I'm not sure off the top of my head. Several
23 thousand.

24 Q And in those examinations of those, how many
25 have been in particular regarding -- well, strike that.

TIMOTHY NAFZIGER-VOIR DIRE BY MR. STEELE

1 In those -- the number of DNA generations that you have
2 done, have you ever had a situation where any of those
3 have been negative results?

4 A Yes.

5 Q Okay. And have you ever been qualified by the
6 State of South Carolina courts?

7 A Yes, I have.

8 Q How many times?

9 A I think six.

10 Q All right. Is that -- was that in serology?

11 A Yes, sir.

12 MR. RICHARDSON: Your Honor, at this time, we
13 would offer him as an expert in serology.

14 THE COURT: All right. Any voir dire or
15 exceptions to his qualifications?

16 MR. STEELE: I have both, Your Honor. If I
17 could have just a moment.

18 THE COURT: Okay.

19 VOIR DIRE EXAMINATION

20 BY MR. STEELE:

21 Q Did I understand you to say that your training
22 was all received at your present employer's location after
23 you were hired?

24 A I have extensive experience in lab work in my
25 educational background as well.

TIMOTHY NAFZIGER-VOIR DIRE BY MR. STEELE

1 Q But your specific training in DNA was where you
2 work now?

3 A I'm not specifically trained in DNA. But in the
4 serological tests that I run, some specific training
5 occurred where I work today.

6 MR. STEELE: If Your Honor please, I would
7 object on three grounds. Ground number one, he says
8 he's not specifically trained in DNA. That would be
9 number one and primary. Number two, apparently, all
10 the training he's received has nothing to do with the
11 Master's Degree he's received and I think he said
12 where he's working now. And lastly, he's only been
13 qualified half a dozen times. I would submit that's
14 insufficient to establish him as an expert. So yes,
15 I would object to his being qualified as an expert.

16 THE COURT: Okay. What is the scope of his
17 expertise from which the State would offer?

18 MR. RICHARDSON: Your Honor, the scope is
19 serology. I may not have been clear, not in DNA
20 analysis.

21 THE COURT: Okay. All right, good enough. All
22 right. Well, I'll respectfully overrule the
23 objection and accept him as an expert witness.

24 Now, ladies and gentlemen, I'm going to explain
25 to you what just happened. Okay. From time to time,

TIMOTHY NAFZIGER-VOIR DIRE BY MR. STEELE

1 a party may want to offer a witness as an expert
2 witness because of his or her education, experience
3 or expertise in a given field. The reason somebody
4 may want to offer an expert witness is because an
5 expert witness can offer testimony that a lay witness
6 can't offer. Specifically, an expert witness can
7 offer opinions that a lay witness couldn't
8 necessarily offer.

9 Now, understand that when somebody is offered as
10 an expert witness and they are accepted by the Court
11 as an expert witness, that doesn't mean that their
12 testimony has any preferred value. You take that
13 testimony just like you take any other piece of
14 evidence. You determine whether it's credible and
15 you determine what value it has and what meaning it
16 has in your determination.

17 Now, the process we just went through was when
18 someone offers someone as an expert witness, the
19 non-offering party has the opportunity to ask
20 questions related to qualifications and then take
21 exceptions to the qualifications. So, that's just
22 what we went through. And you noticed that I ask a
23 specific question, what is the scope of his
24 expertise. The scope of the expertise offered by the
25 State is within the field of serology. Okay.

TIMOTHY NAFZIGER-VOIR DIRE BY MR. STEELE

1 So with that, Mr. Richardson, you may proceed,
2 sir.

3 BY MR. RICHARDSON:

4 Q Can you explain to the jury what a serologist
5 is.

6 A Serology is identification of human bodily
7 fluids on evidence.

8 Q Is it limited to that?

9 A Yes.

10 Q Okay. Also, is part of your duties to retrieve
11 evidence from Greenville County Sheriff's Office property
12 and evidence to be tested?

13 A I do, I get it from property and evidence.

14 Q I'm sorry?

15 A Yes, it is.

16 Q Okay. And in this case that we have before us,
17 did you retrieve items from property and evidence?

18 A I did.

19 Q Okay. When you retrieve those items, do you
20 denote an item number to it?

21 A Yes, when I pick up items from property and
22 evidence, I give them each a lab number, a lab item number
23 that helps us to track our samples as they're being
24 tested.

25 Q Did you do that in this case?

TIMOTHY NAFZIGER-VOIR DIRE BY MR. STEELE

1 A Yes, sir.

2 Q Did you compile a report of those lab numbers
3 and items that you picked up and tested?

4 A Yes, sir.

5 Q Okay. Now, when you do the testing of items,
6 what exactly are you looking for?

7 A It depends on the circumstances of the case. I
8 can look for blood if that's -- we look at the incident
9 report and the request from the investigator and based on
10 what the circumstances are, we can look for blood or semen
11 or saliva or we can do swabs for touch DNA. It just
12 depends on the circumstances of the case.

13 Q Okay, sir. And part of -- what you, in essence,
14 are doing is you are looking for items that can be later
15 tested for DNA?

16 A That's correct.

17 Q Okay. And in this particular case, how many
18 items did you review?

19 A I picked up 16 items in this case. I only
20 opened 15 of them.

21 Q Okay. Now, at some point in this case, did you
22 receive hair samples?

23 A I received tape lifts, which --

24 Q Can you just explain to the jury what a tape
25 lift is?

TIMOTHY NAFZIGER-VOIR DIRE BY MR. STEELE

1 A A tape lift is, basically, pretty much what it
2 sounds like, a piece of tape that's used to lift hairs or
3 fibers off of evidence.

4 Q Did you do an analysis of those?

5 A Yes, I did.

6 Q Okay. Now, what did you find regarding the
7 hairs?

8 A Let me look at my report.

9 Q Sure.

10 A So, our lab numbers are items 4, 6, 8 and 10
11 that were tape lifts.

12 Q Yes, sir. Let's just start with item 4. What
13 is that?

14 A Item four, I examined it with -- there was a
15 tape lift from the back part of JTS-3. I examined it with
16 a magnifying lamp. And it revealed two -- or three hairs
17 with no roots. The entire tape lift was swabbed and that
18 swab was sampled for DNA analysis.

19 Q All right. Now, once it's swabbed for DNA
20 analysis, what do you do?

21 A I take the sample -- I, basically, cut off the
22 cotton tip of the swab and put it into a small
23 two-milliliter tube. And I package it and store it --
24 seal it and store it in our DNA freezer, where it will be
25 taken by the DNA analyst for first analysis.

TIMOTHY NAFZIGER-VOIR DIRE BY MR. STEELE

1 Q Okay, sir. And as far as item No. 6?

2 A Item 6 was a tape lift from the inside lining of
3 JTS-7.

4 Q What did you do on that?

5 A I examined it with a microscope. It revealed
6 approximately 30 curly black hairs, six hairs with roots.
7 The entire tape lift was swabbed and a swab and six hair
8 roots were sampled for DNA analysis as item 6A.

9 Q Okay. Once you did that, you use same
10 procedure?

11 A Same procedure. And all the evidence, once I
12 have taken a sample from it is resealed into its original
13 packaging. Like the original tape lift after I take the
14 sample.

15 Q And put into the --

16 A Ultimately, it's returned to property and
17 evidence, but it's stored in the DNA lab until it's
18 returned.

19 Q Okay. And this particular -- when you refer to
20 no serology was done on these items, what are you offering
21 to?

22 A Basically means, I didn't test for any bodily
23 fluids.

24 Q Okay. Why not?

25 A Well, in this case, we weren't looking for

TIMOTHY NAFZIGER-VOIR DIRE BY MR. STEELE

1 bodily fluid. We were looking for hairs or possibly touch
2 DNA, which would just be basically cells that would have
3 been lifted up by the tape lift.

4 Q Okay. What was your next item regarding tape
5 lifts and hairs?

6 A Item 8 was tape lifts from the interior of
7 JTS-2. There were two tape lifts in this case.
8 Microscopic examination revealed many bluish, purple and
9 green fibers, hairs without roots and one hair with a
10 root. Both entire tape lifts were swabbed and the swab
11 and the hair root were sampled through DNA analysis as
12 item 8A.

13 Q And these -- that came from JTS-2?

14 A Yes.

15 Q Now, referring to item 7, what is that?

16 A Item 7 is a swab from the interior mouth area of
17 JTS-2?

18 Q Okay. And was -- when you picked these items up
19 from property and evidence, do you denote anything on the
20 container that it's in?

21 A Yes, I note the receive date. I also write our
22 lab number and the item number that I assign it.

23 Q Okay, sir. When you take it to your facility,
24 is it secured in your facility?

25 A Yes, it is.

TIMOTHY NAFZIGER-VOIR DIRE BY MR. STEELE

1 Q Okay. Let me hand you what's been placed into
2 evidence, State's Exhibit 64. What is that?

3 A This is item JTS-2A, which is the swab from the
4 interior mouth area of JTS-2.

5 Q And is that an item that you picked up from
6 property and evidence?

7 A Yes, it is.

8 Q Okay. When you picked it up, was sealed and
9 secured?

10 A Yes, it was.

11 Q If it wasn't sealed and secured, what would you
12 have done with it?

13 A I would not have picked it up.

14 Q Did you at some point test that item?

15 A I did.

16 Q Okay. And when you tested, what was your
17 results?

18 A Well, visual examination revealed the swab to be
19 covered in reddish-brown material. Presumptive
20 examination with phenolphthalein tested positive for the
21 presence of blood. The entire swab was sampled for DNA
22 analysis as item 7A.

23 Q So, you did a presumptive test on it?

24 A That's correct.

25 Q Why do y'all do that?

TIMOTHY NAFZIGER-VOIR DIRE BY MR. STEELE

1 A It helps identify blood. It is -- if the
2 phenolphthalein test is positive for blood, it's not
3 specific to human blood, but it's also negative for most
4 things that might otherwise be blood. It just helps us
5 screen the evidence.

6 Q At that point in time, what do you do with that
7 item?

8 A The sample I took got put into a tube, sealed
9 into a separate package and stored in the DNA lab. The
10 remainder of the swab, whatever was left was resealed,
11 repacked into its original packaging and stored in the DNA
12 lab until it was returned to property and evidence.

13 Q And you do that for -- you're not a DNA analyst,
14 correct?

15 A That's right.

16 Q And you do that for the DNA analyst?

17 A Yes, ultimately, the DNA analyst will just take
18 the sample.

19 Q Referring to item 15, what is that?

20 A Item 15 is a buccal swab of Massey Timiya.

21 Q Let me show you what's been marked State's 66.
22 Can you view those for me, please, sir?

23 A Yes.

24 Q Are those items that you picked up from property
25 and evidence?

TIMOTHY NAFZIGER-VOIR DIRE BY MR. STEELE

1 A Yes, they are.

2 Q From the sheriff's office. Were those sealed
3 and secured at the time you picked them up?

4 A They were.

5 Q Okay. Just so we're clear, when I say item 15,
6 that's an item number that you placed on those items?

7 A That's right. The original number for item 15
8 that was HCH-3.

9 Q And this HCH-3, did you perform a presumptive
10 test on it?

11 A No, I didn't.

12 Q Does that go -- what happens with that item?

13 A For a buccal swab --

14 Q Yes, sir.

15 A -- which is just a swab from the mouth, because
16 we know where it came from, there's no need to run any
17 tests on it. I just take a third of the swab and I just
18 sample a third of the swab and package that sample for
19 DNA.

20 Q Okay. And did you do that in this case?

21 A I did.

22 Q Was that 15A?

23 A Yes, that was item 15A.

24 MR. RICHARDSON: Beg the Court's indulgence.

25 THE COURT: Sure.

TIMOTHY NAFZIGER-VOIR DIRE BY MR. STEELE

1 BY MR. RICHARDSON:

2 Q Let me ask you, with regard to item 2, what was
3 that?

4 A It was a swab from grip of JTS-3. The item
5 number was JTS-3A.

6 Q Did you form tests on that?

7 A I did.

8 Q And same procedure?

9 A Same procedure. Visual examination revealed the
10 swab to be covered in a reddish-brown stain or
11 reddish-brown material. A presumptive examination with
12 phenolphthalein tested negative for the presence of blood.
13 The entire swab was sampled for DNA analysis as item 2A.

14 Q So, in that particular case, what happened with
15 that?

16 A Because it had that reddish-brown color to it, I
17 used the phenolphthalein test to see if it was blood. And
18 it gave me a negative result for that.

19 Q When you refer to a negative result, what are
20 you saying exactly?

21 A That the test indicated that the stain was not
22 blood.

23 Q Okay. And is that something that you would send
24 for DNA analysis?

25 A In this case, yes, because the swabs were taken

TIMOTHY NAFZIGER-CROSS BY MR. STEELE

1 from a gun for touch DNA. So -- I think it was a gun.
2 Were taken for touch DNA. So, in that case, there was no
3 bodily fluids to specifically test for, so we just sample
4 the whole swab for DNA analysis.

5 Q Okay. And so I'm clear on that, was that
6 actually sent for the analyst to look at?

7 A Yes, it was.

8 Q How about item 3, what is that?

9 A Swab from trigger of JTS-3, case item number
10 JTS-3B.

11 Q And did you perform a test on that?

12 A It was similar circumstances to item 2. The
13 swab was covered in reddish-brown material. I did a
14 presumptive test with phenolphthalein for blood. The test
15 was negative, but I still sampled the swab for DNA.

16 Q So, the conclusion on that, it was negative for
17 blood, but you still submitted it to DNA for analysis on
18 each of those items?

19 A That's correct.

20 MR. RICHARDSON: Thank you. That's all the
21 questions I have. Please answer any questions
22 Mr. Steele may have for you.

23 MR. STEELE: May it please the Court?

24 THE COURT: Yes, sir.

25 CROSS-EXAMINATION

TIMOTHY NAFZIGER-CROSS BY MR. STEELE

1 BY MR. STEELE:

2 Q Nafziger, am I pronouncing it correctly?

3 A Yes, sir.

4 Q Mr. Nafziger --

5 MR. STEELE: Subject to my objection to
6 qualification, Your Honor.

7 THE COURT: Yes, sir.

8 BY MR. STEELE:

9 Q Did I understand you to say you picked up 16
10 items and tested 15?

11 A That's right.

12 Q And I think you might have said, but which one
13 did you not test?

14 A Item 16.

15 Q And what was it?

16 A Buccal swab of Massey, Timiya, case item number
17 HCH-4.

18 Q Does that mean it's a buccal swab from the mouth
19 of Timiya Massey?

20 A That's correct.

21 Q And you did not test that?

22 A That's right.

23 Q Tell me again what a tape lift is.

24 A A tape lift is, basically, similar to a piece of
25 tape. It's sticky on one side and used to collect hairs

TIMOTHY NAFZIGER-CROSS BY MR. STEELE

1 and fibers.

2 Q Okay. So, anytime you're talking about a tape
3 lift, you're talking about hairs?

4 A No, not necessarily.

5 Q In this instance, they were all hairs?

6 A They can also pick up cells, whatever's on the
7 surface. It picks up whatever's on the surface. So, in
8 this case, I looked for hairs with roots and I swabbed the
9 tape lifts to see if I can get any cells off them.

10 Q Any kind of analysis you do would be dependent
11 upon the integrity of the collection process at the crime
12 scene, would it not?

13 A Yes.

14 MR. STEELE: That's all, Your Honor.

15 MR. RICHARDSON: Nothing further, Your Honor.

16 THE COURT: Okay. Thank you. You can step
17 down, I appreciate it. You're excused absent any
18 objection from the parties.

19 MR. STEELE: No, sir, no objection.

20 THE COURT: Okay, good. Thank you, sir, I
21 appreciate you being here.

22 All right, ladies and gentlemen, let's take a
23 short break. We'll come back in just a few minutes
24 and resume testimony.

25

KAITLIN APPEL-DIRECT BY MR. RICHARDSON

1 (WHEREUPON, the jury left court at approximately
2 10:58 a.m.)

3 THE COURT: Okay, we'll be in recess for about
4 10 minutes. Thank you.

5 (WHEREUPON, a short break was taken.)

6 (WHEREUPON, the jury came into open court at
7 approximately 11:17 a.m.)

8 THE COURT: All right, you may call your next
9 witness, sir.

10 MR. RICHARDSON: Thank you, Your Honor. The
11 State calls Kaitlin Appel.

12 THE CLERK: Ma'am, if you'll please come
13 forward. If you'd please pause at the end of the
14 bench, place your left hand on the Bible and raise
15 your right hand.

16 KAITLIN APPEL, after being duly sworn,
17 testified as follows:

18 THE CLERK: Thank you, please be seated. Please
19 state your name for the record.

20 THE WITNESS: Kaitlin Appel.

21 THE CLERK: Thank you.

22 DIRECT EXAMINATION

23 BY MR. RICHARDSON:

24 Q That's Appel?

25 A Appel, yes, sir.

KAITLIN APPEL-DIRECT BY MR. RICHARDSON

1 Q I apologize, I mispronounced your name. Ma'am,
2 where do you work?

3 A I work at the Greenville County Department of
4 Public Safety in the forensics division at the DNA lab.

5 Q What is your position there?

6 A I am a DNA analyst.

7 Q How long have you been employed in that
8 particular position?

9 A I've been employed with Greenville County since
10 October of 2014.

11 Q As a DNA analyst?

12 A Yes, a DNA analyst.

13 Q Can you tell the jury what your educational
14 background is?

15 A Yes. I received a Bachelor's of Science Degree
16 in biology from University of Georgia. I also received
17 extensive in-house training at the Georgia Bureau of
18 Investigation, which I worked prior to Greenville County.
19 That included background literature review, completion of
20 quizzes and exams, completion of mock samples, observation
21 of senior scientists.

22 Q Is that basically the training that you've had
23 regarding DNA?

24 A Yes.

25 Q Is there in other update -- do you have updated

KAITLIN APPEL-DIRECT BY MR. RICHARDSON

1 training as you go along?

2 A It's a requirement that we have to receive a
3 minimum of eight hours of training a year. And that's
4 through conferences and reading updated literature and
5 research that's been going on.

6 Q Okay. And do you have -- do you know how many
7 DNA analysis you have done?

8 A It's been over 300, 300 cases. I don't know the
9 exact number.

10 Q Okay. Have you ever been qualified in court as
11 an expert?

12 A Yes.

13 Q As what kind of expert?

14 A Forensic biologist in Georgia. That was the
15 title in Georgia.

16 Q Have you ever been qualified as a DNA analyst or
17 is that what DNA analyst is?

18 A That's what DNA analysis is, yes.

19 Q Have you been qualified in South Carolina?

20 A I have not.

21 Q Okay.

22 MR. RICHARDSON: Your Honor, at this time, we
23 move to qualify her as an expert in DNA analysis?

24 THE COURT: Okay. Voir dire?

25 MR. STEELE: May it please the Court?

KAITLIN APPEL-VOIR DIRE BY MR. STEELE

1 VOIR DIRE EXAMINATION

2 BY MR. STEELE:

3 Q Ms. Appel --

4 May I ask her a couple questions?

5 THE COURT: Sure, absolutely.

6 BY MR. STEELE:

7 Q Ms. Appel, did I understand you to say you've
8 worked here for three years?

9 A Correct.

10 Q And you've never testified in those three years
11 that you've worked here?

12 A Not in Greenville County, no.

13 Q And you've never been qualified as an expert?

14 A Yes, I have.

15 Q No, in Greenville County?

16 A Not in Greenville County, no.

17 Q And the extent of your formal education is a
18 Bachelor's Degree?

19 A Correct.

20 Q And you've had some training beyond that in your
21 employment, is that what --

22 A Correct.

23 Q -- where it was?

24 A Correct.

25 MR. STEELE: Your Honor, I would except

KAITLIN APPEL-VOIR DIRE BY MR. STEELE

1 Ms. Appel very respectfully, her being qualified as
2 an expert. She's got a Bachelor's Degree. She's
3 never testified in court in South Carolina. She's
4 never been qualified as an expert here. And
5 apparently, beyond studying biology in college, all
6 of her training has been at her place of employment.
7 So, based upon that, I would except to her
8 qualification and her determination to be an expert.

9 THE COURT: What is the scope of her expertise
10 from which the State offers?

11 MR. RICHARDSON: Specifically DNA analysis.

12 THE COURT: DNA analysis. All right, over
13 objection, I'll allow her as an expert witness with
14 respect to points --

15 Mr. Steele, the jury can take all that into
16 consideration in deciding upon her credibility and
17 weight of her testimony.

18 Therefore, you may proceed, sir.

19 MR. RICHARDSON: Thank you, Your Honor.

20 BY MR. RICHARDSON:

21 Q Ma'am, can you explain to the jury what DNA is?

22 A Yes. DNA stands for deoxyribonucleic acid.

23 It's found in only creative cells in the human being. It
24 what governs the inheritance of our traits. You receive
25 half from your mother and half from your father.

KAITLIN APPEL-VOIR DIRE BY MR. STEELE

1 Everyone's DNA is unique, except for identical siblings.

2 Q Okay, ma'am. Can you briefly describe how DNA
3 analysis is done?

4 A Yes. There's four main steps in DNA analysis.
5 The first step is extraction. This is part where you take
6 the evidence and you are releasing the DNA from the cells
7 if there's DNA present. From that point on, you do
8 quantification. And you have -- if there is DNA present,
9 it will -- that's the step that shows you how much DNA is
10 present in the sample. And the reason we need to know
11 that is to do our next step, which is amplification.

12 This is the point at which we take any DNA
13 that's present and we create multiple copies, actually,
14 millions of copies of specific regions of this DNA so that
15 it can be analyzed. And that's our final step, is
16 capillary electrophoresis. This is what generates the DNA
17 profile. Once we have a DNA profile, we then compare it
18 to any known samples that we may have to say whether or
19 not there's a match.

20 Q Referring to a known sample, would that also be
21 known as a buccal swab?

22 A Correct.

23 Q Now, did you do an analysis on items of evidence
24 obtained in this case?

25 A Yes, I did.

KAITLIN APPEL-VOIR DIRE BY MR. STEELE

1 Q And where do you obtain the items from to do
2 that analysis?

3 A From our serologist in the lab. He will take
4 the samples and place them in a freezer in our lab. And
5 from the freezer, I will take those items of evidence and
6 process those.

7 Q Okay. And do y'all denote a particular item
8 number?

9 A Yes.

10 Q And in this particular case -- well, let me ask
11 you this, when you obtain the DNA samples that you're
12 testing, if there not secured, what do you do?

13 A If the DNA samples are not secured?

14 Q Yes.

15 A Well, I don't physically -- I don't actually
16 pick up the items of evidence. But if those aren't sealed
17 properly, we won't accept them in the lab.

18 Q Okay. Now, did you -- in doing your analysis,
19 did you do a report?

20 A Yes, I did.

21 Q On each item that you analyzed?

22 A Yes.

23 Q Now, I'll refer you to item 2A. If you can tell
24 the jury, did you do an analysis of that item, item A,
25 what is that item?

KAITLIN APPEL-VOIR DIRE BY MR. STEELE

1 A Item 2A is a sample of swab from grip of JTS-3?

2 Q And did you perform an analysis of that item?

3 A Yes, I did.

4 Q And what was the results?

5 A That particular item was not moved forward, it
6 stopped before amplification because there was not any DNA
7 in the quantification step. So, there was no DNA to move
8 forward to do further testing on.

9 Q Okay, ma'am. I refer you to item 3A. Did you
10 do an analysis of that and what is that from?

11 A Yes, I did do an analysis on that and that is a
12 sample of swab from trigger of JTS-3.

13 Q And what were your -- what were your findings
14 with regard to that particular item?

15 A Item 3A was also stopped for amplification due
16 to the absence of DNA.

17 Q So, in talking about the absence of DNA, when
18 DNA -- would this be considered touch DNA?

19 A Yes.

20 Q Okay. Can you explain to the jury what touch
21 DNA is?

22 A Touch DNA is just when you take a swab from an
23 object and you moisten that swab and you're just swabbing
24 the area where that particular object was handled. I
25 mean, like a door handle, that's a touch swab. But with a

KAITLIN APPEL-VOIR DIRE BY MR. STEELE

1 door handle, many people handle door handles, so.

2 Q So, in particular, taking a sample from the
3 trigger and a grip of a gun, do things affect whether you
4 get DNA off that or not?

5 A I'm sorry, can you --

6 Q Can other elements affect whether you can get
7 DNA off a gun trigger or the gun itself?

8 A It can, yes.

9 Q Such as being outside in the elements?

10 A Yes.

11 Q Okay. So, in touch DNA, in particular, do you
12 always get it?

13 A No.

14 Q I would refer you to item four. Did you do an
15 analysis of that?

16 A Yes, I did.

17 Q What is that item?

18 A That was a swab of tape lift from back part of
19 JTS-3.

20 Q Okay. And what was the conclusion of that
21 analysis?

22 A Amplification was not performed due to an
23 insufficient amount of DNA present.

24 Q So, once again, it was not enough there to do an
25 analysis, is that what you're saying?

KAITLIN APPEL-VOIR DIRE BY MR. STEELE

1 A Correct.

2 Q And item No. 4, what is that?

3 A Item four, what we just discussed.

4 Q I'm sorry, I apologize. Item No. 6.

5 A Item six was hairs and swab from tape lift from
6 inside lining of JTS-7.

7 Q And what -- did you do an analysis on that?

8 A Yes, I did.

9 Q Okay. This is hairs?

10 A This is -- yeah, hairs and a swab from a tape
11 lift.

12 Q Okay. And what was your conclusion of your
13 analysis of that particular item?

14 A DNA results obtained from this item contained
15 the DNA of an unknown male individual. Anthony Kareen
16 Nutridge and Timiya Massey are not contributors to the DNA
17 obtained from this item.

18 Q And that particular item, JTS-7, Anthony
19 Nutridge nor Timiya Massey DNA was found in that item?

20 A Correct.

21 Q And I refer you to item eight. What was that?

22 A Item eight was a swab of tape lift from interior
23 of JTS-2?

24 Q And in that item, did you do an analysis?

25 A I did.

KAITLIN APPEL-VOIR DIRE BY MR. STEELE

1 Q What was that analysis?

2 A Amplification was not performed due to
3 insufficient amount of DNA present.

4 Q Once again, not enough there to test?

5 A Correct.

6 Q Okay. Now, let me refer you to item 7A. Did
7 you do an analysis of that item?

8 A Yes, I did.

9 Q Okay. And did you also do an analysis of item
10 15A?

11 A Yes, I did.

12 Q And in your analysis of 7A, what did you
13 determine?

14 A 7A. DNA results obtained from item seven
15 contained the DNA of one male individual. The contributor
16 of this DNA matches the DNA of Timiya Massey, and
17 excluding an identical twin, Timiya Massey is the source
18 of this DNA to a reasonable degree of scientific
19 certainty.

20 Q So ma'am, I show you what's been marked State's
21 Exhibit 63, that is JTS-2?

22 A I am not sure.

23 Q But if it, that's where the DNA would have come
24 from?

25 A If that is -- yeah, JTS-2. If that's JTS-2, it

KAITLIN APPEL-VOIR DIRE BY MR. STEELE

1 is.

2 Q And Timiya Massey's, if that is that, is found
3 in there?

4 A Correct.

5 MR. STEELE: Object to the leading, Your Honor.
6 He's putting words in her mouth. I would object.

7 THE COURT: Okay, I'll overrule the objection.

8 BY MR. RICHARDSON:

9 Q And in your analysis of 15A, the buccal swab,
10 what was your findings of that?

11 A It's -- when I work a buccal swab, it's just
12 doing the same process as items of evidence. Go through
13 the same process. It's just compared to any profiles that
14 have been generated from evidence.

15 Q So, that -- what you did is you compared that
16 buccal swab to the swab of JTS-2?

17 A Yes.

18 Q And in your analysis -- well, let me ask you
19 this, when you're making a finding and making an opinion
20 as to that, is there a ratio that you come to to ascertain
21 whether that DNA is the Defendant's?

22 A We do run a frequency on the profile that's
23 generated off of the evidence.

24 Q Okay. Did you do that in this case?

25 A Yes, I did.

KAITLIN APPEL-CROSS BY MR. STEELE

1 Q Okay, what was the result of that?

2 A The frequency of item 7A. In the
3 African-American population, it was 1 in 900 sextillion.
4 In the Caucasian population, it was 1 in 100 septillion.
5 In the southeast Hispanic population, it was 1 in 20
6 septillion. And in the southwest Hispanic population, it
7 was 1 in 60 septillion.

8 Q Are you familiar with what the population of the
9 earth is?

10 A Roughly seven billion, I believe.

11 Q So, in your expert opinion, is that DNA the DNA
12 of the Defendant, Timiya Massey?

13 A It was the DNA -- the DNA on the item JTS-7
14 matched the item 15A, which was a buccal swab from Timiya
15 Massey?

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

17 BY MR. RICHARDSON:

18 Q And I think -- just to clarify, you referring to
19 JTS-2, right?

20 A Oh, I'm sorry, yes, it is JTS-2.

21 MR. RICHARDSON: Please answer any questions

22 Mr. Steele may have for you.

23 CROSS-EXAMINATION

24 BY MR. STEELE:

25 Q Ms. Appel, can you tell me how many items you

KAITLIN APPEL-CROSS BY MR. STEELE

1 are --

2 MR. STEELE: Subject to my objection to
3 qualification, Your Honor.

4 THE COURT: Yes, sir.

5 BY MR. STEELE:

6 Q Can you tell me how many items match the DNA
7 according to your testimony of Timiya Massey? Was it just
8 one?

9 A Yes, sir.

10 Q And it was item 7A?

11 A Correct.

12 Q And you're taking the solicitor's word that 7A
13 and Exhibit 63 are the same thing because you don't know?
14 You don't know where it came from, do you?

15 A All I have is that it's a sample of swab from
16 interior mouth area of JTS-2.

17 Q Yes, ma'am. And you don't know what JTS-2 is,
18 do you?

19 A I do not.

20 Q That's not even a part of your examination, is
21 it?

22 A It's not in my report.

23 Q Did you test all the hairs?

24 A Are you referring to my item 6A?

25 Q That maybe the number. I'll have to take your

KAITLIN APPEL-CROSS BY MR. STEELE

1 word for that.

2 A That's the only item that I have hairs listed.
3 I did test the hairs on that.

4 Q One hair, is that what it was?

5 A It says hairs.

6 Q Okay. You don't know how many there were?

7 A Actually, let me check real quick. No, I don't.

8 Q And that was not a match with Timiya Massey's
9 DNA, was it?

10 A No, it was not.

11 Q How many items did you test that were not a
12 match of the DNA of Timiya Massey?

13 A Of the items I tested -- of the items tested
14 that produced profile, that was seven items.

15 Q You tested seven items. And one of them was
16 that gun, right? You tested a swab from a weapon? From
17 the trigger of a weapon?

18 A Yes.

19 Q And that was not a match, was it -- or maybe
20 there wasn't enough DNA?

21 A Yeah, there were certain items that didn't have
22 enough DNA and certain items that had no DNA present.

23 Q You would agree with me, would you not,
24 Ms. Appel, that the whole process is dependent upon the
25 integrity of the collection of the DNA evidence at the

KAITLIN APPEL-CROSS BY MR. STEELE

1 scene of the crime, isn't it?

2 A Yes.

3 MR. STEELE: That's all, Your Honor.

4 MR. RICHARDSON: Nothing further, Your Honor.

5 THE COURT: Thank you, ma'am. Appreciate your
6 being here. You may be excused.

7 MR. STEELE: Could I ask one more question
8 before she leaves?

9 THE COURT: Just stay right there.

10 Just one question right?

11 MR. STEELE: Yes, sir, one question.

12 BY MR. STEELE:

13 Q Were any of those hairs recovered from State's
14 Exhibit 63 also known as item 7A?

15 A The hairs from 7A?

16 Q Yes, ma'am.

17 A 7A was just the swab from interior mouth of
18 JTS-2?

19 Q And no hairs were tested from that particular
20 exhibit known to you as 7A, known to the Court as Exhibit
21 63?

22 A No.

23 MR. STEELE: Thank you, ma'am.

24 Thank you, Your Honor.

25 THE COURT: All right. You may be excused.

DAR SHAW-DIRECT BY MR. CONITS

1 Thank you.

2 Next witness, sir.

3 MR. CONITS: Your Honor, at this time, the State
4 calls Sergeant Dar Shaw to the stand.

5 THE CLERK: Sir, please come forward, if you
6 would, please, place your left hand on the Bible and
7 raise your right hand.

8 DAR SHAW, after being duly sworn,
9 testified as follows:

10 THE CLERK: Thank you, please be seated. State
11 your name for the record.

12 THE WITNESS: Darwin Shaw, S-H-A-W.

13 THE CLERK: Thank you, sir.

14 DIRECT EXAMINATION

15 BY MR. CONITS:

16 Q Sergeant Shaw, where do you work?

17 A I work with the forensics department at
18 Department of Public Safety in Greenville.

19 Q In what capacity?

20 A I'm a Sergeant.

21 Q How long have you worked there?

22 A Next month will be 19 years.

23 Q You were working there 2015?

24 A Yes, I was.

25 Q Okay. And you were employed in your present

DAR SHAW-DIRECT BY MR. CONITS

1 capacity at that time?

2 A I was.

3 Q Okay. Were you on shift on September 30th,
4 2015, around 8:30 that night?

5 A Yes, I was.

6 Q Okay. Did you respond to 1140 North Franklin
7 Road soon thereafter?

8 A Yes, I did.

9 Q Why?

10 A I was advised that there was a homicide by one
11 of our technicians and I responded out there to assist.

12 Q Okay. And what did you do when you arrived on
13 scene?

14 A When I first got there, I met with the
15 investigators. I met with our technicians. Just to walk
16 around, make an assessment to see what evidence was there
17 and what needed to be collected and so on. I had spoke
18 with Investigator Hammett. He said that a weapon had been
19 discharged from the apartment and, apparently, had gone
20 into another building and wanted somebody to go there to
21 document that scene and to see about collecting a
22 projectile if one could be recovered.

23 Q So, you went over to that building?

24 A I did.

25 Q And which apartment was it?

DAR SHAW-DIRECT BY MR. CONITS

1 A Apartment ■.

2 Q So, you went into apartment ■, what happened?

3 A As got in -- I went in with a male and a female.
4 They came up to the apartment to show me where the
5 projectile they believed came through the kitchen wall,
6 leading into the kitchen. They said that the bullet had
7 gone through a pillow on the couch.

8 MR. STEELE: Your Honor, all the hearsay is
9 coming in and I've refrained from objecting until
10 now. But what they said, I would submit is
11 inadmissible, so I would object.

12 THE COURT: Sir, your position?

13 MR. CONITS: I'll rephrase, Your Honor.

14 THE COURT: Okay, good enough.

15 BY MR. CONITS:

16 Q So, there were people living in apartment ■?

17 A Yes, sir.

18 Q Were they injured?

19 A No, they were not.

20 Q And did you observe a projectile in the cushion
21 of the couch in this apartment?

22 A I recovered a projectile from a throw pillow on
23 the couch.

24 Q Okay. And did you do any trajectory analysis of
25 where that projectile entered in the apartment and where

DAR SHAW-DIRECT BY MR. CONITS

1 it finally -- to its final resting point?

2 A I located a hole in the kitchen wall. There was
3 also a mattress from -- a bed mattress leaning up against
4 a wall near the kitchen. And there was a hole that went
5 through the mattress and was in line with the couch. I
6 used a trajectory rod, placed it through the hole in the
7 wall, also, to identify whether it was an ascending or
8 descending angle left to right. I followed that path that
9 went through the hole in the pillow and followed that path
10 then to where the projectile had gone into a throw pillow
11 on the couch. Apparently, the projectile went in far
12 enough that in the pillow, it pushed a hole in the leather
13 couch. And I had to actually pull the pillow out from the
14 hole in the couch. And I located the projectile inside
15 the stuffing inside that pillow.

16 Q Here's what has been marked for purposes of
17 identification as State's Exhibit 40. Do you recognize
18 this?

19 A I do.

20 Q What is it?

21 A It is a bar code label DS-1, specifically,
22 unknown caliber projectile removed from a pillow. Should
23 be on the couch, the rest is not printed. But it's also a
24 paper back that has my initials and dated October 6, 2015.

25 MR. CONITS: Your Honor, the State offers

DAR SHAW-DIRECT BY MR. CONITS

1 Exhibit 40 for admission as evidence at this time?

2 MR. STEELE: No objection.

3 THE COURT: Without objection, the same is
4 admitted.

5 (WHEREUPON, State's Exhibit No. 40 was marked
6 for identification and received into evidence.)

7 BY MR. CONITS:

8 Q Now, upon retrieving the projectile, what did
9 you do with it?

10 A It stayed in my custody until I later packaged
11 it and transported it to property and evidence.

12 Q Okay. Now, later that same night, did you go to
13 any area outside of the apartment buildings?

14 A Yes, I did.

15 Q Okay. Can you describe where did you go?

16 A The same apartment building that had been struck
17 with the projectile, which is apartment ■■■, it's an
18 elongated building. Apartment ■■■, Investigator Hammett
19 said that officers had been outside, had located a white
20 hockey-style mask behind apartment ■■■ --

21 MR. STEELE: Objection to what Mr. Hammett told
22 him, Your Honor.

23 THE COURT: Okay.

24 BY MR. CONITS:

25 Q So, you went to the area --

DAR SHAW-DIRECT BY MR. CONITS

1 THE COURT: So, are you rephrasing?

2 MR. CONITS: I am.

3 THE COURT: Okay. All right, good enough.

4 Thank you.

5 BY MR. CONITS:

6 Q So, you went to the area behind apartment ■?

7 A Yes, I did.

8 Q What did you observe there?

9 A A white hockey-style mask, a plastic mask.

10 Q Here's what has been marked State's Exhibit 16

11 and 17. Review these.

12 A Yes, sir.

13 Q Do you recognize these photos?

14 A I do.

15 Q Do they fairly and accurately depict the subject

16 matter therein?

17 A They, do. Yes, they.

18 Q Have they been altered in any way?

19 A No, sir.

20 MR. CONITS: Your Honor, the State offers

21 State's Exhibit 16 and 17 for admission as evidence.

22 MR. STEELE: Without objection.

23 THE COURT: All right, without objection, the

24 same is admitted.

25

DAR SHAW-DIRECT BY MR. CONITS

1 (WHEREUPON, State's Exhibit No. 16 & 17 were
2 marked for identification and received into
3 evidence.)

4 BY MR. CONITS:

5 Q Sergeant Shaw, what does this photo depict?

6 A This is a photo of the rear of the building,
7 apartment ■. There was a tree line and chain link fence
8 that went across this area. So, there was about a seven
9 or eight-foot walkway behind the apartment building. And
10 this is the hockey mask that was found behind apartment
11 ■.

12 Q Okay. And this photo here?

13 A It's just a close-up photo actually showing the
14 item that was collected.

15 Q Okay. Here's what has been marked for purpose
16 of identification as State's Exhibit 62. Take a look at
17 that. Do you recognize this?

18 A Yes, I do.

19 Q How?

20 A It is paper bag that has my handwriting on it.
21 It has the word mask. It has the time it was collected,
22 also, bar code. It's labeled DS-2, which is my initials,
23 and number two is the second piece of evidence that was
24 collected. It also has my initials on the back on the
25 evidence tape when it was sealed.

DAR SHAW-DIRECT BY MR. CONITS

1 Q What is it?

2 A It is that white plastic hockey-style mask.

3 Q So, upon retrieving this hockey mask, what did
4 you do?

5 A I put it in this bag, placed it in the patrol
6 vehicle and secured it until I could later package it and
7 put it in property and evidence.

8 Q So, it was sealed?

9 A Yes, it was.

10 MR. CONITS: Your Honor, the State offer State's
11 Exhibit 62 for admission into evidence.

12 MR. STEELE: No objection.

13 THE COURT: All right, without objection, the
14 same is admitted.

15 (WHEREUPON, State's Exhibit No. 62 was marked
16 for identification and received into evidence.)

17 BY MR. CONITS:

18 Q Sergeant Shaw, could you take this item out of
19 the bag, please, and show it to the jury?

20 A (The witness complies.)

21 Q Is this the mask you found outside of apartment
22 ■?

23 A Yes, it is. My initials are on the inside of
24 the mask. I placed it there after it was collected.

25 MR. CONITS: One moment, Your Honor. No further

DAR SHAW-CROSS BY MR. STEELE

1 questions.

2 THE COURT: Yes, sir.

3 CROSS-EXAMINATION

4 BY MR. STEELE:

5 Q Sergeant Shaw, right? Am I getting your name
6 correct?

7 A Yes, sir.

8 Q Sergeant Shaw, can you tell me, please, sir,
9 that projectile that you recovered from the apartment, is
10 that the only projectile you recovered?

11 A No, sir.

12 Q How many did you recover?

13 A Two.

14 Q Where was the other one?

15 A The other one was in apartment ■, which was an
16 apartment adjacent to ■ where the shooting had actually
17 taken place.

18 Q Specifically, where in there?

19 A It was on the floor inside of the main door. A
20 projectile had gone from apartment ■, through the
21 kitchen, through a half wall, struck a wicker chair next
22 to the front door and was found on the floor inside the
23 front door.

24 Q Just lying on the floor?

25 A Yes, sir.

DAR SHAW-CROSS BY MR. STEELE

1 Q Were you able to look at it and tell what
2 caliber it was?

3 A No, sir, that's not my job to do that.

4 Q Do you know what a Jason mask is? Does that
5 term mean anything?

6 A Type of movie --

7 Q Yeah.

8 A Type of movie-style, yeah.

9 Q You know what one looks like?

10 A Yes, sir.

11 Q Is that a Jason mask?

12 A I believe that somebody could call it that.

13 Q And it's definitely called a -- not called, it
14 is a white mask, is it not?

15 A It is.

16 MR. STEELE: Okay. That's all for this witness,
17 Your Honor.

18 THE COURT: All right, any redirect?

19 MR. CONITS: No, Your Honor.

20 THE COURT: All right. Thank you, sir, I
21 appreciate you being here. You may be excused.

22 Next witness.

23 MR. RICHARDSON: Thank you, Your Honor. The
24 State calls Dustin Kretschmar.

25 THE CLERK: Please place your left hand on the

DUSTIN KRETSCHMAR-DIRECT BY MR. RICHARDSON

1 Bible and raise your right hand.

2 DUSTIN KRETSCHMAR, after being duly
3 sworn, testified as follows:

4 THE CLERK: Please state your name for the
5 record.

6 THE WITNESS: Dustin Kretschmar.

7 DIRECT EXAMINATION

8 BY MR. RICHARDSON:

9 Q Sir, where are you employed?

10 A Greenville County Forensics Division.

11 Q In what capacity?

12 A I'm an evidence technician.

13 Q How long have you been with forensics?

14 A I've worked there for seven years.

15 Q How long have you been in law enforcement?

16 A Nine years.

17 Q Now, were you working back in September of 2015?

18 A Yes, sir.

19 Q And also, October?

20 A Yes, sir.

21 Q In this particular case, did you attend the
22 autopsy of one Anthony Nutridge?

23 A Yes, sir.

24 Q Where was that?

25 A That was at the Greenville Memorial Hospital.

DUSTIN KRETSCHMAR-DIRECT BY MR. RICHARDSON

1 Q Okay. And when you arrived at the autopsy, did
2 you actually go in and view the autopsy being done?

3 A Yes, sir, I was present during the autopsy
4 procedure.

5 Q Okay. And at some time in that autopsy, were
6 you given any type of item taken from the victim's body?

7 A Yes, sir. There was a metal projectile taken by
8 Dr. Ward and he transferred custody of that projectile to
9 me.

10 Q Let me hand you what's been marked Exhibit 65.
11 Can you look at that, please, sir?

12 A Yes, sir.

13 Q Is that the project that you recovered?

14 A It is.

15 Q How do you know?

16 A The bar code label is the one that I created for
17 this piece of evidence.

18 Q Okay. Do you also put initials or indications?

19 A Yes, sir. Also, on the evidence is my initial
20 DK, with the date that I packaged this piece of evidence.

21 Q Okay. And do you also assign a number to it?

22 A Yes. In this case, it would be DK-14.

23 MR. RICHARDSON: Your Honor, at this time, we
24 would offer this as State's 65.

25 MR. STEELE: No objection.

DUSTIN KRETSCHMAR-CROSS BY MR. STEELE

1 THE COURT: All right, without objection, the
2 same is admitted.

3 (WHEREUPON, State's Exhibit No. 65 was marked
4 for identification and received into evidence.)

5 BY MR. RICHARDSON:

6 Q Upon receiving this item, what did you do with
7 it?

8 A I collected it from Dr. Ward and brought it back
9 to our crime scene office. I temporarily stored it in my
10 secure storage locker and then packaged it in that paper
11 bag and then transported it to our property and evidence
12 section.

13 Q When you left it there, was it secure at that
14 point?

15 A Yes, sir.

16 Q Once you leave it in property and evidence, did
17 you have anything else to do with it?

18 A No, sir.

19 MR. RICHARDSON: That's all the questions I
20 have. Please answer any questions Mr. Steele may
21 have for you.

22 CROSS-EXAMINATION

23 BY MR. STEELE:

24 Q Where was it recovered from the body of
25 Mr. Nutridge, do you know?

DUSTIN KRETSCHMAR-CROSS BY MR. STEELE

1 A I do not recall, sir.

2 Q So, in other words, the doctor did the autopsy
3 and handed you the projectile?

4 A Yes, sir.

5 Q And that's all you know?

6 A Yes, sir.

7 Q You work in forensics, don't you?

8 A Yes, sir.

9 Q You didn't have anything to do with the evidence
10 collection out there at the scene of this offense, did
11 you?

12 A No, sir.

13 MR. STEELE: That's all, Your Honor.

14 THE COURT: Any redirect?

15 MR. RICHARDSON: Nothing further, Your Honor.

16 THE COURT: Okay. Now, you can be excused.

17 Thank you for being here.

18 MR. RICHARDSON: The State calls James Armstrong
19 to the stand.

20 THE CLERK: Please come forward. If would
21 please place your left hand on the Bible, raise your
22 right hand.

23 JAMES ARMSTRONG, after being duly
24 sworn, testified as follows:

25 THE CLERK: Thank you, please be seated. Please

JAMES ARMSTRONG-DIRECT BY MR. RICHARDSON

1 state your name for the record.

2 THE WITNESS: James William Armstrong.

3 DIRECT EXAMINATION

4 BY MR. RICHARDSON:

5 Q Sir, where are you employed?

6 A I'm employed with the Greenville County
7 Department of Public Safety Forensics Division and Crime
8 Laboratory.

9 Q And what capacity are you employed there?

10 A Employed as a criminalist, where I have the dual
11 responsibilities of forensic drug chemist and forensic
12 firearm examiner.

13 Q How long have you been doing that particular
14 job?

15 A Been employed with the Greenville crime lab a
16 little over 22 and a half years.

17 Q Okay. How long have you been law enforcement
18 total?

19 A Right at 24 years.

20 Q Do you have -- well, let me ask you this, what
21 is your educational background?

22 A I have a Bachelor of Science in chemistry. I
23 trained in the area of firearm identification
24 approximately two years under the direction of retired
25 firearm examiner from Philadelphia PD. I've attended

JAMES ARMSTRONG-DIRECT BY MR. RICHARDSON

1 numerous firearm manufacturing facilities to look at how a
2 firearm is manufactured from raw material to the finished
3 product. I've attended, I believe, five different
4 ammunition assembly plants as well to see how ammunition
5 is manufactured and assembled. I'm a member of the
6 Association of Firearm and Tool Mark Examiners. I've also
7 attended numerous school sponsored by the Alcohol,
8 Tobacco, Firearm, Explosives in identifying and working on
9 different firearms. I've attended, I believe it was six
10 different armor schools to learn how to work on various
11 firearms as well. I've testified in federal and state
12 courts, at least, 58 times as an expert in the area of
13 firearm identification.

14 Q Okay, sir. And how many analysis have you done
15 of firearms?

16 A Probably thousands.

17 Q Okay. Have you ever been -- well, you just
18 testified. You've been qualified how many times?

19 A Fifty-eight times.

20 MR. RICHARDSON: Your Honor, at this time, we
21 would offer him as an expert in firearm analysis.

22 THE COURT: Any voir dire or exceptions?

23 MR. STEELE: Your Honor, no voir dire, I have,
24 however, would -- no stipulation either.

25 THE COURT: Okay, good enough.

JAMES ARMSTRONG-DIRECT BY MR. RICHARDSON

1 All right, ladies and gentlemen, I'll accept
2 this gentleman as an expert in the scope of which you
3 articulated, Mr. Richardson. Again, just because
4 somebody is an expert, they don't have any preferred
5 value. You decide the weight and the credibility of
6 the evidence presented.

7 Go ahead, Mr. Richardson.

8 MR. RICHARDSON: Thank you, sir.

9 BY MR. RICHARDSON:

10 Q In doing an analysis of firearm identification
11 and doing analysis to compare to shell casings, what
12 exactly do you do?

13 A In order to do a comparison of -- if I have a
14 firearm and then compare it to shell casings, I first take
15 the firearm and I test fire it and I collect the fired
16 cartridge casings myself. Then I go back to the office
17 where I actually have a comparison microscope where I sit
18 down and put the evidence on one side and then the knowns
19 where I just collected from the firearm on my right side
20 on the comparison microscope. I do a side-by-side
21 comparison under the microscope. Kind of like putting the
22 pieces of a puzzle together. You look at the striations
23 or imperfections that are transferred to that casing from
24 the firearm and try to make an identification.

25 Q Okay, sir. It is fair to say that that is

JAMES ARMSTRONG-DIRECT BY MR. RICHARDSON

1 basically a fingerprint of the firearm?

2 A Yes, sir, it is.

3 Q Okay. Now, in this particular case, did you
4 receive shell casings to do an analysis on and a firearm
5 to do an analysis on?

6 A Yes, sir, I did.

7 Q Okay. When you do that, do you report this or
8 put it in a report?

9 A Yes, sir, I do.

10 Q Do you have that with you?

11 A I have copy of it, yes.

12 Q In particular, did you receive items -- shell
13 casings, items JTS-21, 22, 23, 25, 26, 27 and 29?

14 A Yes, sir, I did.

15 Q Did you do an analysis of those particular shell
16 casings that were found in the victim's apartment?

17 A Yes, sir, I did.

18 Q Let me hand you what's been marked as State's
19 47. Do you recognize that?

20 A Yes, sir I do.

21 Q What is that?

22 A This the a Glock Model 19 semiautomatic pistol
23 with serial number 8VE726.

24 Q Is that serial number that you indicated on --

25 A Yes, sir, it is.

JAMES ARMSTRONG-DIRECT BY MR. RICHARDSON

1 Q So, is that the gun that you tested?

2 A Yes, sir, it is.

3 Q And what caliber gun is that?

4 A It's a 9-millimeter Luger.

5 Q When you compared -- made a comparison, do you
6 have an opinion as to whether those shell casings matched
7 that gun?

8 A Yes, sir. The items JTS-21, 22, 23, 25, 26, 27
9 and 29 fired cartridge cases were fired in the item JTS-3
10 pistol.

11 Q And did you also do an analysis of JTS-19 and
12 20?

13 A Yes, sir, I did.

14 Q And what was your opinion on those two shell
15 casings?

16 A They were not fired in the item JTS pistol.

17 Q Okay, sir.

18 A But they were fired in the same firearm. They
19 were fired in the same firearm, but not this firearm.

20 Q I see. In other words, those two were fired in
21 a 9-millimeter?

22 A In a different firearm, yes, sir.

23 Q Okay. Now, in addition to doing an analysis of
24 the shell casings -- before I get to that, let me ask you,
25 when you are dealing with a 9-millimeter, such as that

JAMES ARMSTRONG-DIRECT BY MR. RICHARDSON

1 automatic, once the gun is fired, what happens to the
2 shell casings?

3 A Typically, the shell casing is ejected. It is
4 pulled from the chamber of the firearm. If you're holding
5 the firearm in traditional shooter stance, the casing is
6 usually ejected up and to the right of the shooter.

7 Q And if you were firing a 38 revolver or any
8 revolver, for that matter, do they expel the shell?

9 A No, sir, they do not.

10 Q The shells stay in the cylinder?

11 A They stay in the cylinder.

12 Q In this case, did you also do an analysis of a
13 projectile?

14 A Yes, sir, I did. A couple of them.

15 Q Let me hand you what's been placed into
16 evidence, State's Exhibit 65. Do you recognize that, sir?

17 A Yes, sir, I do.

18 Q And how do you recognize it?

19 A The outer bag here, which is sealed, has my
20 initials and date where I sealed it. The inside, the
21 envelope on the actual container where the projectile is,
22 I have a case number item number and my initials as well.

23 Q And you did an analysis on that item?

24 A Yes, sir, I did.

25 Q Can you explain to the jury what you did in

JAMES ARMSTRONG-DIRECT BY MR. RICHARDSON

1 regards to that particular projectile -- let me ask you
2 this before you go into that. The difference between a
3 shell casing and projectile is? So we're clear.

4 A The shell casing is what actually holds the
5 projectile and the powder charging the, I want to say,
6 cartridge all in one. When it is fired, the shell casing
7 is the body which used to hold everything that is ejected
8 off to the side and the projectile, which goes down the
9 barrel.

10 Q Now, when you did an analysis on that particular
11 projectile, what exactly did you do?

12 A It's real similar as far as with the fired
13 cartridge casings. With the knowns that I collected from
14 the firearm during the test fire, I do a side-by-side
15 comparison on the microscope to see if I can actually make
16 an identification to the firearm or not.

17 Q Okay, sir. You did that, in fact, on this
18 particular item?

19 A I did.

20 Q Okay. And what was your conclusion of that
21 analysis?

22 A That the item DK-14 or State's Exhibit 65, very
23 similar in nature, but insufficient microscopic marks to
24 confirm identification to the item JTS-3 pistol.

25 Q So, is that an item that could have been shot

JAMES ARMSTRONG-DIRECT BY MR. RICHARDSON

1 out of that particular gun?

2 A Yes, sir, it could have.

3 Q Okay. Does it match exactly to that particular
4 gun?

5 A I could not make a confirmation call on that.

6 Q Why is that?

7 A Because the general rifling characteristics or
8 the way the barrel is made in a Glock, it's very difficult
9 to actually make a positive identification. And this
10 projectile has the same type of characteristics, but not
11 individual enough to make a positive ID.

12 Q Okay. And let me ask you this, as you stated,
13 you're an expert in firearms. You're familiar with a 38
14 caliber?

15 A There are many of them, yes, sir.

16 Q Yes, sir. Could this projectile had come out of
17 a 38 caliber handgun?

18 A Be a little bit more specific.

19 Q Could it have been shot from a 38 caliber?

20 A Like a 38 Special revolver?

21 Q Yes, sir.

22 A No, sir.

23 Q Okay.

24 MR. RICHARDSON: That's all the questions I
25 have. Please answer any questions Mr. Steele may

JAMES ARMSTRONG-CROSS BY MR. STEELE

1 have for you.

2 MR. STEELE: May it please the Court, Your
3 Honor?

4 THE COURT: Yes, sir.

5 CROSS-EXAMINATION

6 BY MR. STEELE:

7 Q Which exhibit is the projectile from the
8 autopsy?

9 A State's Exhibit 65, item DK-14.

10 Q Thank you, sir. My understanding of your
11 testimony is that State's Exhibit 65 could have come from
12 State's Exhibit 47?

13 A That's correct.

14 Q But you're not sure?

15 A Not sure.

16 MR. STEELE: That's all, Your Honor.

17 MR. RICHARDSON: Nothing further.

18 THE COURT: Thank you, sir. I appreciate it.
19 You may be excused.

20 All right, Mr. Richardson, how many witnesses do
21 you have left?

22 MR. RICHARDSON: Appears I have four.

23 THE COURT: Four. Okay. All right, good. Go
24 ahead and call your next witness, please, sir.

25 MR. RICHARDSON: State calls Haskell Nutridge.

HASKELL NUTRIDGE-DIRECT BY MR. RICHARDSON

1 THE CLERK: Please come forward. If you would
2 please pause at the end of the bench, place your left
3 hand on the Bible and raise your right hand.

4 HASKELL NUTRIDGE, after being duly
5 sworn, testified as follows:

6 THE CLERK: Thank you, please be seated. Please
7 state your name for the record.

8 THE WITNESS: Haskell Nutridge.

9 THE CLERK: Thank you, sir.

10 DIRECT EXAMINATION

11 BY MR. RICHARDSON:

12 Q Sir, how old are you?

13 A Forty-three.

14 Q You're going to need to --

15 A Forty-three.

16 Q Okay. Are you married?

17 A Yes, I am.

18 Q How long you been married?

19 A Ten years.

20 Q Okay. Once again, you're going have to move up.

21 A Ten years.

22 Q Do you have any children?

23 A Yes, I do.

24 Q How many children do you have?

25 A Four.

HASKELL NUTRIDGE-DIRECT BY MR. RICHARDSON

1 Q All right. Do you reside in Greenville County?

2 A Yes, sir, I do.

3 Q Okay. Are you employed?

4 A Yes, sir.

5 Q Where do you work?

6 A All My Sons Moving Storage.

7 Q Okay. What do you for All My Sons Moving
8 Storage?

9 A Move furniture.

10 Q How long you been employed there?

11 A Fifteen years.

12 Q Now, the victim in this case, Anthony Nutridge,
13 is that your brother?

14 A Yes, it is.

15 Q And did he work with you?

16 A Yes, he did.

17 Q At the same establishment, All My Sons?

18 A Yes, he did.

19 Q Now, I'm going to take your memory back to
20 September 30th, 2015, when this incident took place. You
21 remember that day?

22 A Somewhat.

23 Q Okay. What were you doing that day, earlier
24 that day?

25 A Working.

HASKELL NUTRIDGE-DIRECT BY MR. RICHARDSON

1 Q Okay. Was Anthony working with you, your
2 brother?

3 A Yes, he was.

4 Q What time -- do you recall what time -- you're
5 going to have to speak up, too. Do you recall what time
6 you got off work?

7 A About 6:30 maybe, give or take.

8 Q All right. Was it dark outside yet or?

9 A It was getting dark. It was not quite dark yet,
10 but it was getting dark.

11 Q Okay, sir. Now, once you got off work, what did
12 you and Anthony do?

13 A Well, we stopped by the store and got sandwich
14 meat, a couple beers and went to the house.

15 Q Okay. The house you went to, is this 1140
16 Franklin?

17 A Yes, sir, it is.

18 Q All right. And you were in apartment -- what
19 apartment were you in?

20 A [REDACTED].

21 Q All right. Now, did and your brother live
22 together?

23 A Yes, we did.

24 Q Okay. How long had y'all lived in that
25 apartment together?

HASKELL NUTRIDGE-DIRECT BY MR. RICHARDSON

1 A About a year.

2 Q I'm sorry?

3 A Right at a year.

4 Q Okay. Were you separated from your wife at that
5 time?

6 A Yes, I was.

7 Q Are you separated with your wife today?

8 A No.

9 Q When you arrived home, what happened or what did
10 you do at that point in time?

11 A Well, we was -- fixed something to eat, drunk
12 the beers and I was sitting on the couch. I got a little
13 tired, so I got up and went in the bedroom. And Yellow
14 boy, that's Anthony, he stayed in the living room watching
15 TV.

16 Q Okay. Now, did you go lie down, did you go to
17 sleep?

18 A I didn't -- kind of dozed off, but I wasn't all
19 the way asleep.

20 Q All right. At some point in time, did you hear
21 anything that grabbed your attention?

22 A Yeah, I heard a commotion.

23 Q Tell the jury what you heard.

24 A I heard -- someone knocked on the door. I heard
25 the knock on the door. My brother opened the door and

HASKELL NUTRIDGE-DIRECT BY MR. RICHARDSON

1 someone hit him in his face. But it was the commotion,
2 Where it is at, Where is the shit at.

3 Q Before you get there, okay. You say they hit
4 your brother on the nose. Did you see that?

5 A No, I did not. I did not see that.

6 Q You were still in your bedroom?

7 A I was in the room, yeah.

8 Q Is that what got your attention?

9 A What got my attention was Where the shit at?

10 Q Okay. That's what somebody was saying?

11 A That's what someone said, the person that came
12 in the door, when he opened the door.

13 Q Now, when they said that, did they say it in a
14 quiet voice or in a loud voice?

15 A No, it was loud.

16 Q All right. Did they say it more than once?

17 A Yeah.

18 Q All right. Once you heard that, what, if
19 anything, did you do?

20 A I got up off the bed, got my 38 and headed
21 towards the living room.

22 Q Okay. And this 38 that you got, is this a
23 revolver?

24 A Yes.

25 Q Where did you keep it?

HASKELL NUTRIDGE-DIRECT BY MR. RICHARDSON

1 A On my nightstand under my fan. The fan I had,
2 the bottom -- it doesn't have like a bottom, it's like a
3 shell around the fan, so you could put something under it.
4 So, basically, at the head of my bed.

5 Q Okay. Was it loaded?

6 A Yes.

7 Q Was it loaded at the time or did you have to
8 load it?

9 A It was loaded.

10 Q What did you at this point in time?

11 A I proceeded out the room and as I turned the
12 corner, I seen a guy on top of my brother with a ski mask
13 with a pistol in his hand.

14 Q When you say on top of him, was your brother
15 lying down?

16 A Yes.

17 Q Okay. And where was the gun that you saw?

18 A My gun?

19 Q No, sir, where was the gun that the person on
20 top of your brother?

21 A In his hand. He had it in his hand.

22 Q Where did he have it pointed?

23 A At my brother like. They didn't know I was in
24 the room. They didn't know -- they was thinking that he
25 was the only one there.

HASKELL NUTRIDGE-DIRECT BY MR. RICHARDSON

1 Q I see. All right. So at that point in time,
2 what did you do?

3 A I fired.

4 Q Okay. And when you fired, was -- the person
5 with the mask on, was he standing up?

6 A Yes, he was standing over my brother on the
7 couch.

8 Q All right. Now, at this point in time, I know a
9 lots going on, did you see anybody else in the apartment?

10 A As I came around the corner a little, yes. But
11 they say four people, I only see two. The actual one was
12 over my brother and there was one at the door. I didn't
13 see anyone else.

14 Q So we're clear on that, when you look out the
15 doorway, is there an apartment across the way?

16 A Yes, it is.

17 Q Okay. Did the steps go down to the left?

18 A Yeah.

19 Q Okay.

20 A No, coming out my door --

21 Q Oh, I'm sorry.

22 A -- the steps go down to the right.

23 Q Yes, sir. Thanks for correcting me on that.

24 So, you couldn't see what was on the steps?

25 A No, I couldn't.

HASKELL NUTRIDGE-DIRECT BY MR. RICHARDSON

1 Q All right. At that point in time, you said you
2 fired your weapon?

3 A Uh-huh.

4 Q Did anybody return fire at you?

5 A Yes. The person that was over my brother. He
6 turned -- because they didn't know I was there, like I
7 said. He turned to me and started firing their weapon.
8 So, I backed back around the corner into my bedroom.

9 Q When you went into your bedroom, were you able
10 to see anything else at that point in time?

11 A No, I wasn't.

12 Q Now, you heard Mr. Leach testify; is that
13 correct?

14 A Uh-huh.

15 Q Did you ever see him in the apartment?

16 A That day?

17 Q Yes, during that incident.

18 A No, I never seen him.

19 Q You never saw him in the apartment that day?

20 A Never.

21 Q Okay. Is this a very quick incident that takes
22 place?

23 A Somewhat. Maybe three minutes total.

24 Q Well, during the shooting, how long did that
25 take?

HASKELL NUTRIDGE-DIRECT BY MR. RICHARDSON

1 A Two minutes, maybe three minutes.

2 Q Did you unload your gun?

3 A Yes, I did.

4 Q Did you ever reload it?

5 A No.

6 Q Okay. Were the people who was over your brother
7 and the other person, were they shooting at you?

8 A The person that was over my brother was.

9 Q Yes.

10 A And from -- I can't say for certain the person
11 at the door, but they shot up the bathroom so that person
12 had to be shooting, too.

13 Q Okay. I --

14 A Because of the angle of the apartment.

15 Q I don't want you to assume anything, but what
16 you saw is the person over your brother?

17 A The person over my brother, I seen shoot.

18 Q That was the one --

19 A That's the one was shooting at me.

20 Q And that was the one with the ski mask?

21 A Yes.

22 Q And why were you shooting at them?

23 A Why I was shooting at him?

24 Q Yes, sir. Why were you shooting?

25 A What do you mean? He got my brother down over

HASKELL NUTRIDGE-DIRECT BY MR. RICHARDSON

1 him with a pistol and it --

2 Q Were you scared for your brother's life?

3 A Yeah, I was scared for my life, too, at that
4 point, I mean.

5 MR. STEELE: Your Honor, I would object to the
6 leading and the yes, sir. I don't think he needs to
7 be encouraging the witness.

8 THE COURT: Okay. All right. Ladies and
9 gentlemen, as I told you before, lawyer's comments
10 aren't evidence. So, the evidence that you will take
11 into consideration is the evidence, the responses to
12 any questions that were elicited from the question
13 itself.

14 Having said that, sir, you may proceed,
15 Mr. Richardson.

16 MR. RICHARDSON: Thank you.

17 BY MR. RICHARDSON:

18 Q After you fell back in your room, what happened?

19 A Maybe three or four more shots ring out and
20 everything went quiet. That's when I came out the room.
21 I start calling for my brother.

22 I say, Yellow Boy, is you all right?

23 He says, No, I'm hit.

24 So, I'm like, Where are you hit?

25 He said, My leg.

HASKELL NUTRIDGE-DIRECT BY MR. RICHARDSON

1 So, by that time, as I was proceeding to
2 the front door, I looked down the steps, my brother was
3 laying at the bottom of the steps. So, I ran down, I
4 still have the gun in my hand. I ran down the steps and I
5 run out the breezeway, like down to the -- to the concrete
6 looking around. So, when I turned around, I went back to
7 my brother and he died in my arms.

8 Q Okay. Now, when you went out, who were you
9 looking for?

10 A For help. I mean --

11 Q Okay. What did you do with your gun at that
12 time?

13 A I don't know, to be honest. I either dropped it
14 on -- right there.

15 Q And do you -- do you know what happened to the
16 gun after that?

17 A No, I don't.

18 Q Did you get the gun back?

19 A No, I didn't.

20 Q Did you ever see that gun again?

21 A Never.

22 Q When this commotion happened -- are these
23 apartments a tight apartment complex?

24 A Yeah, it's pretty tight.

25 Q Did people come out of their apartments?

HASKELL NUTRIDGE-DIRECT BY MR. RICHARDSON

1 A Yes, sir.

2 Q And approach you?

3 A Yeah. People was coming from everywhere.

4 Q Your brother, did you say he was laying on the
5 steps?

6 A Yeah, he had like his -- his butt was on the
7 ground part of the hallway, but his back was laying up
8 against the steps.

9 Q What did you do with him at that time, if
10 anything?

11 A I was holding him. I was trying to talk to him.

12 Q What were you saying to him?

13 A Hold on, help coming.

14 Q Was he -- did he say anything back to you?

15 A He told me he loved me and he went out.

16 Q After he went, did he breathe again?

17 A No, he didn't.

18 MR. RICHARDSON: Beg the Court's indulgence.

19 THE COURT: Yes, sir.

20 BY MR. RICHARDSON:

21 Q I asked you, when you finished firing your
22 weapon, you never took the shells out of that gun?

23 A No, I didn't. No.

24 MR. RICHARDSON: That's all the question I have.

25 Please answer any questions Mr. Steele may have.

HASKELL NUTRIDGE-CROSS BY MR. STEELE

1 MR. STEELE: May it please the Court?

2 THE COURT: Yes, sir.

3 CROSS-EXAMINATION

4 BY MR. STEELE:

5 Q Mr. Nutridge, when they first started asking you
6 questions -- when Mr. Richardson first started asking you
7 questions, he asked you did you remember what happened on
8 September 30th, 2015. You remember him asking you that?

9 A Yeah.

10 Q And your reply was, I wrote it down, you said,
11 Somewhat.

12 A Uh-huh.

13 Q Does that mean that there's a little not
14 necessarily -- it's not a hundred percent clear to you?
15 What does somewhat mean?

16 A I mean, that was two years ago. Do you remember
17 what you done two years ago?

18 Q No, sir, I don't.

19 A Okay.

20 Q But anyway, the time has caused you to remember
21 some things a little bit differently?

22 A Not when someone killed your brother. I
23 remember that part of it, I mean.

24 Q Well, I'm asking you for a reason. And the
25 reason I'm asking you is I listened to your recorded

HASKELL NUTRIDGE-CROSS BY MR. STEELE

1 statement and you said at that time that when y'all got
2 home, y'all smoked a blunt. You haven't mentioned that
3 today. Did you smoke --

4 A Maybe.

5 Q Did you smoke a blunt?

6 A Probably.

7 Q So, if you said it back then, that was probably
8 true, wasn't it?

9 A Probably.

10 Q Yes, sir. You know, you're not in any trouble
11 for that --

12 A Yeah.

13 Q -- but I need to ask you these questions.

14 A I understand.

15 Q And having smoked a blunt, that might be why
16 your memory was somewhat rather than totally clear, am I
17 correct?

18 A No, that's not correct. If you was in a room
19 and someone killed your brother, wouldn't you remember it?

20 Q Well, they won't let me answer questions. I
21 have to ask you questions.

22 A Okay.

23 Q I do this respectfully. But I'll have to
24 decline to answer your question. Let me ask you this,
25 though, did you see a man in a white mask?

HASKELL NUTRIDGE-CROSS BY MR. STEELE

1 A Yes.

2 Q Do you know the term Jason mask?

3 A Yes.

4 Q Was is a Jason mask?

5 A No, no, it wasn't a Jason mask.

6 Q It was a white mask?

7 A It was a white and black mask.

8 Q White and black?

9 A Yeah.

10 Q Okay. Did that gun -- your pistol, it was a 38;

11 is that correct?

12 A Yes, it was.

13 Q And the 38, apparently, disappeared that night,

14 am I correct?

15 A Yes, sir.

16 Q The last time you saw it, it was in your hand

17 and you dropped it, I think you testified on direct; is

18 that right?

19 A Yes.

20 Q And you never have seen it again?

21 A No, I haven't.

22 Q You weren't supposed to have that pistol, were

23 you?

24 A Probably not.

25 Q Yeah, I mean this is not to get you in trouble

HASKELL NUTRIDGE-CROSS BY MR. STEELE

1 either or to embarrass you, but as a person with a
2 criminal record, you were not supposed to possess that
3 pistol, were you?

4 A Yeah.

5 Q So, you didn't want anybody to find that pistol,
6 did you?

7 A What do you mean find it?

8 Q It's --

9 A I told the officers that I had the gun. So, I
10 mean.

11 Q Well, I'm asking you did you get rid of the gun?

12 A No, I didn't.

13 Q Well, what could have happened to the gun?

14 A I don't know what happened. It was so many
15 people out there, I mean, I don't know. To be honest with
16 you, I don't know.

17 Q How long was it between the time that you say
18 you put the pistol down, dropped it, however you got rid
19 of it, and law enforcement were there?

20 A Eight, nine minutes maybe, 10 minutes.

21 Q So, what you're saying -- tell me if this is a
22 correct summary of your testimony. What you're saying is
23 that somewhere in that eight, nine, 10 minutes, whatever
24 it was, somebody got the gun?

25 A Yes.

HASKELL NUTRIDGE-CROSS BY MR. STEELE

1 Q Is that your testimony?

2 A Yes.

3 Q And your testimony under oath is you had nothing
4 to do with getting rid of the gun?

5 A No, I did not.

6 MR. STEELE: That's all, Your Honor.

7 THE COURT: Redirect, sir?

8 MR. RICHARDSON: No, Your Honor.

9 THE COURT: Thank you, Mr. Nutridge, I
10 appreciate it, sir. You may step down.

11 You have three witness left?

12 MR. RICHARDSON: That's correct, Your Honor.

13 THE COURT: All right. Okay.

14 All right, ladies and gentlemen, let's take a
15 lunch break at this point, okay. If you will,
16 please, be back at quarter till 2:00. Quarter till
17 2:00, all right. And we'll resume the introduction
18 of evidence in this case. As you know, we have got
19 three witnesses left. Don't know how long those will
20 take. And then the State will rest. I'll have to
21 take up some matters of law. And then if the Defense
22 elects to put evidence into the record, then we'll
23 receive that evidence as well.

24 Based on where we stand right now, I'm guessing
25 that we'll probably be finished with the evidence

HASKELL NUTRIDGE-CROSS BY MR. STEELE

1 today and we'll come back tomorrow morning for
2 argument and charge. Unless we go really quickly
3 this afternoon and then we'll try to do argument and
4 charge. But I don't want to do argument and charge
5 too late.

6 The reason that is is because that's going to
7 take about an hour and a half to do. Then after we
8 argue and charge, I give the case to the jury to
9 begin deliberations. And you're going to take either
10 10 minutes or 10 hours or five hours or 20 hours, I
11 don't know. It's entirely up to you how long you
12 take. But once you start deliberations, you continue
13 deliberations. And I don't want y'all here at
14 midnight tonight deliberating. I'd rather come back
15 tomorrow and start fresh. But that depends, it
16 depends on when we finish the introduction of
17 evidence.

18 So, now y'all know everything I know and you
19 know what I'm thinking as well. So, be back a
20 quarter till 2:00. Have an excellent lunch. Please
21 don't discuss the case.

22 THE BAILIFF: Please remain seated until the
23 jury leaves.

24 (WHEREUPON, the jury came into open court at
25 approximately 12:27 p.m.)

HASKELL NUTRIDGE-CROSS BY MR. STEELE

1 THE COURT: Okay, anything additional to put on
2 the record before we break for lunch?

3 MR. RICHARDSON: I don't know if now is the time
4 to address the autopsy photos. Dr. Ward will be my
5 last witness.

6 THE COURT: Okay.

7 MR. RICHARDSON: I have them here. These are
8 basically photos that --

9 THE COURT: Why don't y'all take a look at it
10 and if you have a disagreement about what is
11 appropriate, then when we get back after you've both
12 had a chance to look at, then we'll put the
13 objections on the record. All right.

14 MR. STEELE: That's right.

15 THE COURT: All right, good enough. Anything
16 else?

17 MR. RICHARDSON: Nothing further.

18 MR. STEELE: Nothing from the Defense.

19 THE COURT: Thank you. Have a great lunch.

20 (WHEREUPON, a lunch break was taken.)

21 THE COURT: Okay. We ready for the jury?

22 MR. RICHARDSON: Just briefly, Your Honor.

23 THE COURT: Sure.

24 MR. RICHARDSON: Back to the infamous autopsy
25 photos. I've shown them to Mr. Steele. I'm not sure

HASKELL NUTRIDGE-CROSS BY MR. STEELE

1 if he has an objection to them. I can establish for
2 the record the relevancy of this.

3 THE COURT: Yeah.

4 MR. RICHARDSON: We got several photographs --
5 these are autopsy photographs, and I'll show the
6 Court, that had to be cleaned up, not with the blood.
7 But it shows entrance wounds, that being in the front
8 of the victim, in his torso, and also an exit wound
9 in the back of the leg of the victim. The bullet
10 that was retrieved from his body. Then I have two
11 photos, the abrasion on his nose that corroborates
12 the testimony that people came in and hit him with a
13 pistol.

14 THE COURT: Okay.

15 MR. RICHARDSON: I'm more than happy to show
16 these to you.

17 THE COURT: Do you have an objection to them,
18 Mr. Steele?

19 MR. STEELE: If Your Honor please, I do. I
20 would submit to the Court this his -- obviously, the
21 gentleman is a victim. He is deceased. That is an
22 undisputed fact that has been established through the
23 testimony of many witnesses. And based upon that, I
24 would submit that these photos do not contribute to
25 any contested issue in the case. Therefore, that

HASKELL NUTRIDGE-CROSS BY MR. STEELE

1 their prejudicial value has to exceed their probative
2 value. I really don't see how the State is hurt on
3 their theory of the case if you exclude them.

4 THE COURT: Okay. All right. Go ahead and let
5 me see the pictures. Okay. All right, subject to
6 authentication, I find that they are relevant. I've
7 had the opportunity to take a look at them, they
8 don't violate a 403 analysis. That is, they're not
9 unduly prejudicial. With respect to whether they
10 lend any credence or relevance to the State's case, I
11 think the State has articulated a basis upon which
12 they're relevant. That is, it shows the entrance
13 wounds and it corroborates previous testimony of the
14 strike on the nose. Therefore, I'll respectfully
15 deny the Defense's motion.

16 All right. Okay. And obviously, that's all
17 subject to the authentication piece, of course.

18 Okay. All right. All right. Anything else?

19 MR. STEELE: We've talked about agreeing, if
20 Your Honor would agree, to close tomorrow.

21 THE COURT: Well, we'll see where we stand. I'm
22 leaning that way myself. I mean, it's -- by the time
23 we get them in and get started good, it's going to be
24 2:00. And we may go through things pretty rapidly.
25 But after -- at the conclusion of the evidence, we're

HASKELL NUTRIDGE-CROSS BY MR. STEELE

1 going to take up directed verdict motions, I presume.
2 And it may be that I need to have a talk with
3 Mr. Massey about his right to testify. Then, of
4 course, you have a right to present evidence as well.
5 I don't know whether you intend to or not. So, by
6 that -- by the time all of that develops, it will be
7 3:30 and I think that's probably too late to charge a
8 jury on a case like this.

9 MR. STEELE: Yes, Your Honor.

10 THE COURT: So, I'm trending toward you, but
11 let's wait and see, okay?

12 MR. STEELE: Yes, sir.

13 THE COURT: Okay. Anything else?

14 MR. RICHARDSON: Nothing from the State.

15 MR. STEELE: Nothing from the Defense, Your
16 Honor.

17 THE COURT: Okay, bring the jury in, please.

18 (WHEREUPON, the jury came into open court at
19 approximately 1:55 p.m.)

20 THE COURT: Mr. Richardson, you may call your
21 next witness, sir.

22 MR. RICHARDSON: Thank you, Your Honor, the
23 State calls Terry Harris.

24 THE CLERK: Mr. Harris, sir, if you would come
25 right around here. Please place your left hand on

TERRY HARRIS-DIRECT BY MR. RICHARDSON

1 the Bible, raise your right hand.

2 TERRY HARRIS, after being duly sworn,
3 testified as follows:

4 THE CLERK: Thank you. Please be seated. Sir,
5 would you state your name for the record?

6 THE WITNESS: Terry Harris.

7 THE CLERK: Thank you, sir.

8 DIRECT EXAMINATION

9 BY MR. RICHARDSON:

10 Q Mr. Harris, I'm going to need you to speak up a
11 little bit into that microphone so we can hear you way
12 back here, all right?

13 A Yeah.

14 Q How old are you?

15 A Thirty-three.

16 Q Okay. And right now, are you residing at the
17 law enforcement center here in Greenville?

18 A Yeah.

19 Q Okay. Now, you have been charged in this case,
20 have you not?

21 A Yes.

22 Q You've been charged with murder, attempted
23 murder, attempted armed robbery, kidnapping, burglary in
24 the first degree and possession of a weapon during a
25 violent crime, right?

TERRY HARRIS-DIRECT BY MR. RICHARDSON

1 A Yes.

2 Q Once again, you're going to have to speak up.

3 A Yes.

4 Q Now, you have on your prior record prior
5 involvement with law enforcement. You pled guilty to a
6 failure to stop for a blue light, do you recall that?

7 A Yes.

8 Q And also to a possession with intent to
9 distribute crack cocaine, do you recall that?

10 A Yes.

11 Q And did you go to trial on those or did you
12 plead guilty?

13 A Guilty.

14 Q So, you admitted to those charges?

15 A Yes.

16 Q Now, do you know the Defendant, Timiya Massey?

17 A Yes.

18 Q How do you know him?

19 A I been knowing him for about 10 years.

20 Q Are y'all friends?

21 A Yeah, we're pretty close.

22 Q Now, does he have a street name that he goes by?

23 A Bam.

24 Q Bam, like B-A-M, Bam?

25 A Yeah.

TERRY HARRIS-DIRECT BY MR. RICHARDSON

1 Q Okay. Now, I'm going to take you -- well, let
2 me ask you this, do you also know to Nyerere Williams?

3 A Yes.

4 Q How do you know him?

5 A Been knowing him for a couple years.

6 Q Is he also a friend?

7 A Yeah.

8 Q Do you have a street name that you're known by?

9 A Yeah, T Black.

10 Q T Black?

11 A Yeah.

12 Q Now, I'm going to take your memory back to
13 September 30th, 2015, that this incident that we're here
14 today happened, okay?

15 A Uh-huh.

16 Q Do you remember that day?

17 A Yeah.

18 Q Did you meet up with the Defendant, Timiya
19 Massey at some point in time that day?

20 A Yes, he came and picked me up.

21 Q Okay. And when he came to pick you up, who was
22 in the car?

23 A It was him and Cornelius.

24 Q Where was Massey sitting?

25 A He was in the front seat.

TERRY HARRIS-DIRECT BY MR. RICHARDSON

1 Q Who was driving?

2 A Cornelius.

3 Q Was Mr. Williams with y'all at that time?

4 A Yes, he was with me.

5 Q Okay. When -- had he called you and told you he
6 was going to come pick you up or did he just show up?

7 A Just showed up.

8 Q When he showed up, what did y'all do at that
9 point in time?

10 A He asked me to ride with them.

11 Q Did he say where you were going?

12 A No.

13 Q Okay. Where did you go?

14 A We had went to --

15 Q You need to speak up, sir.

16 A We had went to the apartments, like off
17 Franklin.

18 Q Would that be the Dolphin Apartments?

19 A Yes, sir.

20 Q Is that the same apartments this happened at?

21 A Yes.

22 Q Now, did you have gun?

23 A Yes.

24 Q Where did you get that gun from?

25 A Him.

TERRY HARRIS-DIRECT BY MR. RICHARDSON

1 Q Who is him?

2 A Bam.

3 Q Bam, being Timiya Massey, the Defendant?

4 A Yes.

5 Q And did Timiya Massey have a gun?

6 A Yes.

7 Q Where did he keep his gun?

8 A He kept it on his side.

9 Q Was it in a holster?

10 A Yes.

11 Q At some point in time when y'all arrived at 1140
12 North Franklin Road, Dolphin Apartments, was it nighttime?

13 A Yes.

14 Q What did you do when you arrived there?

15 A What did we do when we arrived? We had saw a
16 dude coming out and just grabbed him.

17 Q Well, before that, let me ask you this, when you
18 were in the car, did you get any masks?

19 A Yes.

20 Q Who put on the masks?

21 A All of us.

22 Q Was that -- did y'all put those on in the car?

23 A Yes.

24 Q Okay. At that point in time you got out of the
25 car, where did you go?

TERRY HARRIS-DIRECT BY MR. RICHARDSON

1 A We had came through the back.

2 Q All right. Came through the back of the
3 apartment complex?

4 A Yes.

5 Q Now, did you know this apartment complex?

6 A No.

7 Q Who knew this apartment complex?

8 A I guess they had already talked about it.

9 MR. STEELE: Object to the speculation, Your
10 Honor. He wasn't there, he didn't hear it. He can't
11 guess anything.

12 THE COURT: Okay. Well, I haven't heard the
13 full answer to the question, so I'll overrule at this
14 point.

15 Rephrase the question if you will, please.

16 MR. RICHARDSON: Yes, sir.

17 BY MR. RICHARDSON:

18 Q Once you got there, who led you up to the
19 apartment complex?

20 A Who led me up?

21 Q Yes, sir.

22 A He had grabbed some white dude so --

23 Q No, no, before that. When you got out of the
24 car, who took you to the apartment complex?

25 A Him and Cornelius.

TERRY HARRIS-DIRECT BY MR. RICHARDSON

1 Q When you got up there, what happened?

2 A When we got up there, he had grabbed a white
3 dude --

4 Q When you say he, are you talking about the
5 Defendant?

6 MR. STEELE: Your Honor, he's leading. He needs
7 to just say -- not putting the Defendant in the
8 witness's mind.

9 THE COURT: I sustain. Go ahead,
10 Mr. Richardson.

11 MR. RICHARDSON: Your Honor, just to clarify,
12 he's saying he, I'm just making the pronoun so that
13 they'll understand who he's talking about.

14 THE COURT: I understand. I understand.

15 MR. STEELE: Well, let's let him tell us, not
16 the government.

17 THE COURT: I understand. Go ahead.

18 BY MR. RICHARDSON:

19 Q Who is he?

20 A Bam.

21 Q Okay. And what happened then?

22 A He grabbed a white dude and carried him
23 upstairs.

24 Q Now, when that happened, were you with them?

25 A Yes.

TERRY HARRIS-DIRECT BY MR. RICHARDSON

1 Q And did Bam, or the Defendant, did he have a gun
2 out?

3 A Yes.

4 Q Did he have a gun on the white dude?

5 A Yes.

6 Q Did you also have a gun out?

7 A Yes.

8 Q Okay. At that point in time, did y'all have any
9 masks on?

10 A Yeah.

11 Q What happened after you took him up the steps?
12 Did you go with him?

13 A Yes.

14 Q What happened?

15 A When he took him up the steps, he started pistol
16 whipping the other dude.

17 Q Prior to that, how did the door open?

18 A He just opened the door.

19 Q Okay. Then what happened? Did he -- he did
20 what?

21 A He opened the door and he started pistol
22 whipping the dude.

23 Q When you say he opened the door, who opened the
24 door?

25 A Bam.

TERRY HARRIS-DIRECT BY MR. RICHARDSON

1 Q And what happened after he pistol whipped the
2 dude?

3 A I guess he was hollering or whatever.

4 Q What was hollering?

5 A The dude.

6 Q Okay. And the dude is who?

7 A The dude is who?

8 Q Who are you talking about when you say the dude?

9 A I meant Bam.

10 Q Okay.

11 A But the dude was hollering. I don't know the
12 dude's name.

13 Q What, if anything, was Bam saying?

14 A Say what now?

15 Q What, if anything, was the Defendant saying?

16 A What was he saying?

17 Q Yes.

18 A I guess he was like -- he was saying, Where the
19 shit at?

20 Q Where the shit is?

21 A Yeah.

22 Q Okay. What was the purpose of him being over
23 there?

24 A I couldn't even tell you.

25 Q Okay. What do he mean by the shit, where the

TERRY HARRIS-DIRECT BY MR. RICHARDSON

1 shit is?

2 A I guess drugs.

3 MR. STEELE: He said he didn't know, Your Honor.

4 He asked him what was the purpose of being over there
5 and he said he didn't know.

6 THE COURT: I think that's a different question.

7 I overrule the objection.

8 BY MR. RICHARDSON:

9 Q What did he mean by Where is the shit at?

10 A The drugs.

11 Q Okay. Now, did you enter the apartment, also?

12 A Yes.

13 Q And where was Bam, or the defendant, where was
14 he in relation to you? Was he in front of you or behind
15 you or what?

16 A In front.

17 Q Did he have his gun out?

18 A Yes.

19 Q Was he pointing it towards the victim?

20 MR. STEELE: Your Honor, he's leading. He just
21 needs to say what was he doing, if anything, not say
22 did he have his gun out?

23 THE COURT: Rephrase it.

24 BY MR. RICHARDSON:

25 Q Where was he pointing his gun?

TERRY HARRIS-DIRECT BY MR. RICHARDSON

1 A He was pointing the gun at the Defendant.

2 Q Okay. Where was the Defendant pointing his gun?

3 A He was pointing his gun at the dude.

4 Q And the dude is who?

5 A The one that passed.

6 Q The one that passed? The one that died?

7 A Yeah.

8 Q What happened then?

9 A After that, the brother came out shooting or
10 whatever.

11 Q Did you see the brother come out?

12 A Yes.

13 Q And what did the Defendant do when the brother
14 came out shooting?

15 A Just kept on doing what he was doing, pistol
16 whipping the dude.

17 Q Did you ever see the Defendant fire back at the
18 brother?

19 A Yes.

20 Q Okay. And what did you do?

21 A I took off.

22 Q All right. Where did you take off to?

23 A Back to the car.

24 Q All right. And was that the last time -- when
25 you took off, was the Defendant in the apartment?

TERRY HARRIS-DIRECT BY MR. RICHARDSON

1 A Yes.

2 Q Okay. Was he the only one of the group in the
3 apartment?

4 A Yes.

5 Q When you took off, where did you go?

6 A Went to the car.

7 Q Okay. Did you still have your gun?

8 A Yes.

9 Q All right. And what did you do with your mask,
10 if anything?

11 A I dropped it.

12 Q All right. When you were running out of there,
13 was anybody else running out of there?

14 A Yes, the other two.

15 Q Okay. Let me go back, the white dude that you
16 took up the steps, what did y'all do with him?

17 A He was still in there.

18 Q He was still in the apartment?

19 A Yeah.

20 Q Okay. When you got back to the car, what did
21 y'all do?

22 A Took off.

23 Q Okay. Was the Defendant with you at that point
24 in time?

25 A No.

TERRY HARRIS-DIRECT BY MR. RICHARDSON

1 Q All right. Did you wait on the Defendant?

2 A No.

3 Q Okay. Where did you go?

4 A He had dropped us off by the bingo.

5 Q What bingo?

6 A On Old Buncombe.

7 Q Okay. Did you live near there?

8 A Yes.

9 Q Where did you go from the old bingo?

10 A I had went to my friend's house.

11 Q All right. Let me go back real quick, was the
12 car when y'all parked it, was it in the parking lot of the
13 apartment or was it in some other area?

14 A It was in North Franklin parking lot.

15 Q Okay. And did you -- to get to the apartments,
16 did you have to go through any woods or anything like
17 that?

18 A Yes.

19 Q Once you got home, what did you do with your
20 gun?

21 A Cornelius took it.

22 Q Okay. Who was that? Who was Cornelius?

23 A That was the driver.

24 Q Okay. Do you know what happened to that gun?

25 A No.

TERRY HARRIS-CROSS BY MR. STEELE

1 Q Now, after this -- at some point in time, you
2 were arrested; is that right?

3 A Yeah.

4 Q When you were arrested, did the police talk to
5 you?

6 A Yes.

7 Q Okay. And did you tell them what happened that
8 night?

9 A Yep.

10 Q And from that point on, have you been
11 cooperative with the police?

12 A Yep.

13 MR. RICHARDSON: Beg the Court's indulgence?

14 THE COURT: Yes, sir.

15 MR. RICHARDSON: Okay, sir, please answer any
16 questions that Mr. Steele may have for you.

17 CROSS-EXAMINATION

18 BY MR. STEELE:

19 Q Mr. Harris, is your full name Terry Clifton
20 Harris?

21 A Yes.

22 Q Are you -- at this time, you're obviously in
23 custody, aren't you?

24 A Yes.

25 Q Are you in state or federal custody?

TERRY HARRIS-CROSS BY MR. STEELE

1 A Federal.

2 Q Federal custody?

3 A Yes.

4 Q Have you pled guilty to an offense in federal
5 court?

6 A Yes.

7 Q What is it?

8 A Pistol.

9 Q Pistol possession?

10 A Yes.

11 Q Have you been sentenced on that yet?

12 A Yes.

13 Q What did you get for that?

14 A 120 months.

15 Q So, you're serving at this time 120-month
16 sentence?

17 A Yes, sir.

18 Q Which translates to 10 years, doesn't it?

19 A Yes.

20 Q And you've been charged, as you said to the
21 lawyer for the government, you've been charged with
22 everything that Timiya Massey has been charged with,
23 haven't you?

24 A Yes.

25 Q But you haven't pled guilty to that yet, have

TERRY HARRIS-CROSS BY MR. STEELE

1 you?

2 A No.

3 Q Are you planning to plead guilty to it?

4 A Yes.

5 Q When you going to plead guilty?

6 A I guess whenever they come with it.

7 Q What kind of sentence are you expecting?

8 A Trying to, at least, get something ran in
9 concurrent with my federal time.

10 Q That's what you're expecting, isn't it?

11 A Yes.

12 Q And to translate that for lay persons, when you
13 get a concurrent sentence with your federal 10-year
14 sentence, that means you would serve no extra time at all,
15 right?

16 A Yes.

17 Q That's your ideal situation, isn't it?

18 A Yes.

19 Q That's what you're trying to get, isn't it?

20 A Yes.

21 Q That's what you're hoping for?

22 A (The witness nods.)

23 Q Sir?

24 A Yes.

25 Q That's why you're testifying here today, isn't

TERRY HARRIS-CROSS BY MR. STEELE

1 it?

2 A Yes.

3 Q What's Cornelius's last name?

4 A I couldn't tell you.

5 Q Did you know Cornelius before that night?

6 A I been knowing him a couple years.

7 Q Is Cornelius charged in this offense?

8 A No.

9 Q Why is Cornelius not charged?

10 A Couldn't tell you.

11 Q But he isn't charged, is he?

12 A Huh-uh.

13 Q Cornelius was the driver of the automobile,
14 right?

15 A Yes.

16 Q And you don't know his last name?

17 A No.

18 Q And he is not charged in this offense?

19 A (The witness shook his head.)

20 Q The way you describe it, you make it sound like
21 Timiya Massey set this thing up. Is that what you're
22 trying to say?

23 A Yes.

24 Q Have you discussed your testimony with the
25 detectives and with the sheriff's office?

TERRY HARRIS-CROSS BY MR. STEELE

1 A Yes.

2 Q In fact, your testimony was recorded, was it
3 not?

4 A Yes.

5 Q And at the time that your testimony was
6 recorded, did you tell them what kind of a mask you were
7 wearing?

8 A Yes.

9 Q What kind of a mask was it?

10 A Like a white and black mask.

11 Q Was it what people call a Jason mask?

12 A Yeah, something like that, yeah.

13 Q Okay. Is this the mask you wore?

14 A No.

15 Q But it was one similar to that, wasn't it?

16 A Yeah.

17 Q How can you tell that that's not it?

18 A I remember it when I see it.

19 Q Okay. But it was very similar to this one?

20 A Yes.

21 Q Exactly like this one?

22 A About like it.

23 Q About like this one?

24 A Yeah.

25 Q Okay. Mr. Harris, the gun that you had, is that

TERRY HARRIS-CROSS BY MR. STEELE

1 it? Referring to Government Exhibit 47?

2 A (The witness shook his head.)

3 Q How do you know that's not it?

4 A Mine was silver.

5 Q Your's was silver?

6 A Yes.

7 Q Okay. Is it just like that, other than it was

8 silver?

9 A Probably a little bigger.

10 Q It was an automatic, though, wasn't it?

11 A Yeah.

12 Q Was it a -- what caliber was it, you know?

13 A (The witness shook his head.)

14 Q Answer out loud. You don't know?

15 A No, I don't know.

16 Q And as I understand your testimony, you are
17 saying that your gun that you took that night was carried
18 off by this mysterious Cornelius fellow?

19 A Yes.

20 Q Whose last name you don't know?

21 A Yes.

22 Q But whom you knew, you just don't know his last
23 name?

24 A Yes.

25 Q How long had you known Cornelius?

TERRY HARRIS-CROSS BY MR. STEELE

1 A Almost a year.

2 Q Well, since you're cooperating with the
3 government, have you told them all you know about
4 Cornelius?

5 A Yes.

6 Q Have you told them where they can find him?

7 A Yes.

8 Q But nobody's found Cornelius?

9 A Yes.

10 Q The driver of the automobile?

11 A Yes.

12 Q According to you?

13 A Yes.

14 Q Were you out for a period of time before you
15 arrested on your federal charges and locked up?

16 A Yes.

17 Q During that time, did you run into Cornelius out
18 there anywhere?

19 A No, sir.

20 Q You never saw him again?

21 A No, sir.

22 Q Gone with your gun and you never saw him again?

23 A Yes.

24 Q Did he live in your neighborhood?

25 A No.

TERRY HARRIS-REDIRECT BY MR. RICHARDSON

1 Q Where did he live?

2 A He lived in Berea at the time.

3 Q Did you tell the government this?

4 A Yes.

5 Q Did you have jeans on?

6 A Yes.

7 Q Did everybody have jeans on?

8 A Yes.

9 MR. STEELE: Your Honor, would you give me a
10 moment?

11 THE COURT: Yes, sir.

12 MR. STEELE: If Your Honor please, no further
13 questions.

14 THE COURT: Redirect, sir?

15 MR. RICHARDSON: Thank you, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. RICHARDSON:

18 Q When you were initially arrested on this charge
19 and were placed in jail, you talked to the detective; is
20 that right?

21 A Yes.

22 Q And that was some year and a half ago?

23 A Yes.

24 Q Did you talk to me at that time?

25 A I think I did.

TERRY HARRIS-REDIRECT BY MR. RICHARDSON

1 Q A year and a half ago? Or did you just talk to
2 me several months ago?

3 A I think I did talk to you.

4 Q A year and a half ago?

5 A I remember talking to --

6 Q You talked to the detective?

7 A Yes.

8 Q But you didn't talk to me? I didn't work here
9 then.

10 MR. STEELE: Well, Your Honor, he shouldn't be
11 telling the witness things like this. He ought to be
12 asking questions instead of prompting the witness,
13 and I object.

14 THE COURT: Okay. Ask questions. Go ahead.

15 BY MR. RICHARDSON:

16 Q Did you talk to a detective at that time?

17 A Yes.

18 Q You told the detective what happened just after
19 you were arrested; is that right?

20 A Yes.

21 Q Okay. And subsequent to that, no promises were
22 made to you at that time, was it not?

23 MR. STEELE: Leading, Your Honor. I object to
24 the leading.

25

TERRY HARRIS-REDIRECT BY MR. RICHARDSON

1 BY MR. RICHARDSON:

2 Q Were any promises made to you by this detective?

3 THE COURT: That's a good question.

4 THE WITNESS: No.

5 BY MR. RICHARDSON:

6 Q Now, after this, you talked to me about what you
7 told the detective; is that right?

8 A Yes.

9 Q Now, the Defense counsel has asked you what you
10 expected. Have I made you any promises?

11 A No, sir.

12 Q Have I dropped any charges against you?

13 A No.

14 Q Have I told you you're going to get a certain
15 amount of time?

16 A No.

17 Q Your understanding is that you're facing a
18 magnitude of time; is that correct?

19 A Yes.

20 MR. STEELE: Your Honor, he's still leading and
21 I object again. I don't know why he persist. We're
22 supposed to ask open-ended questions that allow the
23 witness to answer instead of prompting.

24 THE COURT: I understand, I sustain.

25 Go ahead, Mr. Richardson.

TERRY HARRIS-REDIRECT BY MR. RICHARDSON

1 BY MR. RICHARDSON:

2 Q And when you and I talked, what did we talk
3 about?

4 A The case.

5 Q Okay. And that was what you gave in your
6 interview some years ago?

7 A Yes.

8 MR. RICHARDSON: Thank you. That's all the
9 questions I have.

10 MR. STEELE: Could I have just a minute, Your
11 Honor?

12 THE COURT: Sure.

13 MR. STEELE: That's all, Your Honor, from this
14 side.

15 THE COURT: All right. Thank you, sir, I
16 appreciate it. You may be excused.

17 All right, you may call your next witness.

18 MR. RICHARDSON: Your Honor, we call Nyerere
19 Williams.

20 THE CLERK: Sir, if you would pause at the end
21 of the bench, place your left hand on the Bible and
22 raise your right hand, please.

23 NYERERE WILLIAMS, after being duly
24 sworn, testified as follows:

25 THE CLERK: Thank you. Please be seated. Sir,

NYERERE WILLIAMS-DIRECT BY MR. RICHARDSON

1 would you please state your name for the record?

2 THE WITNESS: Nyerere Williams.

3 THE CLERK: We can't hear you.

4 THE WITNESS: Nyerere Williams.

5 DIRECT EXAMINATION

6 BY MR. RICHARDSON:

7 Q Mr. Williams, you're kind of soft-spoken, so I
8 need you to speak up into that microphone, okay?

9 A Yes, sir.

10 Q How old are you?

11 A Thirty-seven.

12 Q Okay. Now, you have been charged in this case;
13 is that correct?

14 A Yes, sir.

15 Q You've been charged with the same charges that
16 the Defendant has; is that correct?

17 A Yes, sir.

18 Q And those charges are still pending; is that
19 correct?

20 A Yes, sir.

21 Q And have I made any promises regarding those
22 charges?

23 A No, sir.

24 Q And you have a prior record for distribution of
25 crack cocaine; is that correct?

NYERERE WILLIAMS-DIRECT BY MR. RICHARDSON

1 A Yes, sir.

2 Q Did you go to trial or did you plead guilty to
3 that?

4 A Pled guilty.

5 Q Okay. Now, do you know the Defendant, Timiya
6 Massey?

7 A No, sir.

8 Q Do you know of him?

9 A Yes, sir.

10 Q All right. When you initially gave a -- after
11 you were arrested and you gave a statement in this case,
12 you talked to the police; is that right?

13 A Yes, sir.

14 Q At that time, you didn't tell them everything,
15 did you?

16 A No, sir.

17 Q All right. Let me ask you this, I'm going to
18 take your memory back to September 30th, okay, 2015, when
19 this incident happened. Did you come to meet up with the
20 Defendant, Timiya Massey?

21 A Timiya came and picked me up.

22 Q I'm sorry, you're going to have to speak up.

23 A Picked me up.

24 Q Who was with you?

25 A T Black.

NYERERE WILLIAMS-DIRECT BY MR. RICHARDSON

1 Q Who was driving the car?

2 A I don't know.

3 Q I'm sorry?

4 A I don't know him.

5 Q You don't know him?

6 A No, sir.

7 Q How many people were in the car total?

8 A Three.

9 Q Okay. Three or four?

10 A Four. Four.

11 Q Including you?

12 A Including me.

13 Q Okay. Now, when they picked you up, where did
14 you go?

15 A To the apartments.

16 Q Okay. Do you remember the name of the
17 apartments?

18 A The Dolphin something.

19 Q Okay. When you got to that location, what did
20 y'all do?

21 A Parked.

22 Q Okay. Did you put anything on?

23 A Not at the time until we got around to the
24 apartment.

25 Q What did you put on?

NYERERE WILLIAMS-DIRECT BY MR. RICHARDSON

- 1 A Put on masks.
- 2 Q Did everybody put on masks?
- 3 A Yes, sir.
- 4 Q Now, did the Defendant Massey, did he have a
- 5 gun?
- 6 A He had something in the holster.
- 7 Q You say it was in a holster?
- 8 A Yes, sir.
- 9 Q When you got up to apartment, what did y'all do
- 10 at that time?
- 11 A T Black went around first, then he came back.
- 12 Q Then what did you do?
- 13 A Went around.
- 14 Q Was somebody outside?
- 15 A Somebody was coming down.
- 16 Q All right. And do you remember what color he
- 17 was, what race?
- 18 A He was white.
- 19 Q All right. What did y'all do with him?
- 20 A They grabbed him.
- 21 Q Were the guns out?
- 22 A Yes, sir.
- 23 Q Okay. Where did y'all take him?
- 24 A Took him up the steps.
- 25 Q All right. Who was in the front of the group

NYERERE WILLIAMS-DIRECT BY MR. RICHARDSON

1 taking him up the steps?

2 A T Black.

3 Q Where was the Defendant?

4 A He was on the side of him.

5 Q Okay. Were both their guns out?

6 A Yes, sir.

7 Q Okay. What happened at the top of the steps?

8 A Got him to knock on the door.

9 Q Okay. Did he knock on the door?

10 A Yes, sir.

11 Q What happened after he knocked on the door?

12 A Somebody came to the door.

13 Q Okay. What happened when they came to the door?

14 A They rushed in.

15 Q Okay. And did that do anything as they were

16 rushing in with the guns?

17 A I don't know. I didn't go in.

18 Q At any time, did you see anybody get hit?

19 A No, sir.

20 Q With the gun?

21 A No, sir.

22 Q You say you didn't go in?

23 A I was at the top of the steps.

24 Q What happened at that point in time?

25 A Seconds after that, shooting start.

NYERERE WILLIAMS-DIRECT BY MR. RICHARDSON

1 Q Okay. When -- did you hear anything before the
2 shooting started?

3 A Some arguing.

4 Q I'm sorry?

5 A Some arguing.

6 Q Okay. And after the shooting started, what did
7 you do?

8 A Took off running.

9 Q Okay. Where did you go?

10 A To the car.

11 Q All right. And when you got to the car, what
12 did you do?

13 A I got in the back seat.

14 Q All right. And once in the back seat, did
15 anybody else get to the car?

16 A Not at the time.

17 Q Okay. At some point, did T Black get to the
18 car?

19 A Yes, sir.

20 Q And that's -- so we're clear, who is T Black?

21 A Terry Harris.

22 Q What did he have in his hands, if anything?

23 A Had a black handgun.

24 Q At that point in time, where did y'all go --
25 well, let me ask you this, did the Defendant make it back

NYERERE WILLIAMS-DIRECT BY MR. RICHARDSON

1 to the car?

2 A No, sir.

3 Q Okay. At that point in time, did y'all wait on
4 him?

5 A No, sir.

6 Q Where did y'all go?

7 A They dropped me off.

8 Q Okay. Where did they drop you off?

9 A Hampton Avenue.

10 Q All right. What did -- when you left the
11 apartment, what did you do with your mask?

12 A Threw it down.

13 Q Okay. Now, at some point in time, did you turn
14 yourself into the police?

15 A Yes, sir.

16 Q Okay. And why did you do that? What prompted
17 you to do that?

18 A It was the right thing to do.

19 Q Did you hear about your being wanted?

20 A Yes, sir.

21 Q Where did you hear about that?

22 A Just through the neighborhood.

23 Q Okay. When you turned yourself in, did you
24 speak to the police?

25 A Yes, sir.

NYERERE WILLIAMS-CROSS BY MR. STEELE

1 Q Okay. At that time, you didn't tell them that
2 you went up the steps?

3 A No, sir.

4 Q Okay. And that you met up with the white guy,
5 right?

6 A No, sir.

7 Q Okay. At that point in time, what did you tell
8 them, you were the look-out?

9 A Yes, sir.

10 Q Now, why --

11 MR. STEELE: Your Honor, he's leading again.

12 THE COURT: Sustained.

13 BY MR. RICHARDSON:

14 Q Why did you tell them something -- initially,
15 tell them something different than you have today?

16 A I was scared.

17 Q Okay.

18 MR. RICHARDSON: Thank you. That's all the
19 questions I have. Please answer any questions that
20 Mr. Steele has for you.

21 CROSS-EXAMINATION

22 BY MR. STEELE:

23 Q Mr. Williams, you responded to a question from
24 the government lawyer that you told the officer something
25 different when your statement was tape recorded. Do you

NYERERE WILLIAMS-CROSS BY MR. STEELE

1 remember saying that to him just now?

2 A Yes, sir.

3 Q That's another way of saying you lied to them,
4 isn't it?

5 A Yes, sir.

6 Q Sir?

7 A Yes, sir.

8 Q You lied, didn't you?

9 A Yes, sir.

10 Q You lied and then they talked to you some more.

11 And coming in here today, you're telling an entirely
12 different version of events that you told to the officers
13 when you were tape recorded, didn't you?

14 A Yes, sir.

15 Q Now, I warn you, we've got a copy of that tape
16 recording right here.

17 A Uh-huh.

18 Q So, you know that everything you said was taken
19 down, don't you?

20 A Yes, sir.

21 Q And at that time -- and you can tell me when you
22 were lying and when you weren't, let me ask you some
23 specific questions about it. You said that the reason you
24 went off was because you got a call from the fellow you
25 call T Black. That's Mr. Harris, isn't it?

NYERERE WILLIAMS-CROSS BY MR. STEELE

1 A Yes, sir.

2 Q Is that right, is that part true?

3 A I got call from him.

4 Q You got a call from him?

5 A Yeah, come get me.

6 Q Sir?

7 A Yes, sir.

8 Q And he asked you -- this is what you said on the
9 tape, I don't know if it's true or not. But he asked you
10 if you wanted to go get some weed; is that right?

11 A Yes, sir.

12 Q Is that true or not?

13 A That's true.

14 Q That part's true?

15 A Yes, sir.

16 Q Didn't say anything to you about going off to
17 rob somebody and shoot somebody, right?

18 A No, sir.

19 Q That wasn't mentioned?

20 A No, sir.

21 Q But the person you talked to is T Black, also
22 known as Mr. Harris, right?

23 A Yes, sir.

24 Q So, what did y'all -- they come by, did they
25 pick you up at -- did he pick you up at your house?

NYERERE WILLIAMS-CROSS BY MR. STEELE

1 A Yes, sir.

2 Q And in the car was this fellow Cornelius
3 driving?

4 A I don't know him.

5 Q You didn't even know his name?

6 A No, sir.

7 Q So, a man you didn't know was driving?

8 A Yes, sir.

9 Q Had you ever seen him before?

10 A No, sir.

11 Q Have you seen him since?

12 A No, sir.

13 Q Have you tried to help law enforcement find him?

14 A No, sir. I don't know his name.

15 Q Don't know his name?

16 A No, sir.

17 Q Never saw him before?

18 A No, sir.

19 Q So, when y'all went to the house, what you told
20 the officers back when you were recorded, you said y'all
21 got out and they gave you a mask, right?

22 A Uh-huh.

23 Q I think you said they give you a Jason mask; is
24 that right?

25 A Yes, sir.

NYERERE WILLIAMS-CROSS BY MR. STEELE

1 Q You know -- is that your mask?

2 A Yes, sir.

3 Q It is?

4 A Uh-huh.

5 Q And you told the officers at that time that you
6 really didn't know anything because you were told to stay
7 out in the parking lot?

8 A Uh-huh.

9 Q Right?

10 A Yes, sir.

11 Q That's what you told them. And you were
12 standing out there in the parking lot. And I think you
13 also told them nobody came by and you just stood out there
14 in the parking lot, right?

15 A Well, behind -- I told them behind the apartment
16 building.

17 Q Out in the parking lot?

18 A No, it wasn't the parking lot.

19 Q It wasn't. But it was outside, at least?

20 A It was outside.

21 Q And your testimony -- well, your story at that
22 time was that's all you did?

23 A Yes, sir.

24 Q Right?

25 A That's right.

NYERERE WILLIAMS-CROSS BY MR. STEELE

1 Q But now, you're saying something different,
2 right?

3 A Yes, sir.

4 Q Back then, you said you walked around for a few
5 minutes, right?

6 A No.

7 Q Is that what you said?

8 A No, sir.

9 Q You don't remember saying that?

10 A No, sir.

11 Q Well, I'm warning you, I went through your
12 statement and I made some notes. Maybe I'm wrong and
13 you're right, but I wrote down that you just stood around
14 out there, somewhere outside, right? That's what you
15 said; is that right?

16 A Yes, sir.

17 Q And you said that the other two, this is your
18 words not mine, went around the building, right?

19 A Yes, sir.

20 Q And you said at that time, and I quote you
21 pretty close to verbatim, pretty close to word for word,
22 you did not know who shot who, right?

23 A Yes, sir.

24 Q But that Terry Harris had a gun?

25 A Yes, sir.

NYERERE WILLIAMS-CROSS BY MR. STEELE

1 Q And I think you said you did not have gun; is
2 that right?

3 A Yes, sir.

4 Q Well, let's try the new story, did you have a
5 gun?

6 A No, sir.

7 Q Never had a gun?

8 A No, sir.

9 Q You went up to the front of this door and your
10 testimony is nobody gave you a gun?

11 A No gun, yes, sir.

12 Q So, you were unarmed?

13 A Yes, sir.

14 Q Now, that's what you said then, is that also
15 what you're trying to say now?

16 A Yes, sir.

17 Q Well, Mr. Williams, what did you think was going
18 on?

19 A Going to get weed.

20 Q Going to get weed?

21 A Uh-huh.

22 Q So, what you're telling this jury under oath is
23 that you didn't know anything about anybody getting
24 robbed, right?

25 A No, ain't supposed to been no robbery.

NYERERE WILLIAMS-CROSS BY MR. STEELE

1 Q Sir?

2 A Supposed to have been a burglary, not a robbery.

3 Q Well, that's a little different from going to
4 get some weed, isn't it? What was it, going to get some
5 weed, going to be a burglary, what was it? What were you
6 told?

7 A It was going to be a burglary to get weed.

8 Q Oh, you were going to break into a place to get
9 some weed?

10 A Yes, sir.

11 Q That's what you were told?

12 A Yes, sir.

13 Q Nothing about robbery?

14 A Huh-uh.

15 Q Your testimony today, though, under oath is that
16 you did go up to the door, right?

17 A Yes, sir.

18 Q But you didn't go up with a gun, right?

19 A No, sir.

20 Q And your testimony today is you never went
21 inside?

22 A No, sir.

23 Q And you didn't see what happened inside?

24 A No, sir.

25 Q Is that what you're trying to say today?

NYERERE WILLIAMS-CROSS BY MR. STEELE

1 A Yes, sir.

2 Q Well, Mr. Williams, that's pretty good -- that's
3 a right different story, isn't it?

4 A No.

5 Q You don't think that it's a good bit different
6 saying I went up to the door with everybody else and that
7 I stood around outside watching? You don't think that's
8 different?

9 A Yes, sir.

10 Q So, what happened then in your new story? What
11 are you say happened then?

12 A When?

13 Q Sir?

14 A At what time?

15 Q After you went up to the door and the shooting
16 started, what are you saying happened then?

17 A I took off running.

18 Q Where did you go?

19 A I went back to the car.

20 Q You ran back to the car?

21 A Yes, sir.

22 Q Who came back to the car, if anybody?

23 A T Black.

24 Q Anybody else?

25 A No, sir.

NYERERE WILLIAMS-CROSS BY MR. STEELE

1 Q Okay. And you and T Black left?

2 A And the driver.

3 Q And who was that?

4 A I don't know him.

5 Q The man you don't know?

6 A Yes, sir.

7 Q Well, one consistent thing in your story that
8 you told the officers months ago right after this happened
9 and now is both times, you said you never had a gun,
10 right?

11 A Yes, sir.

12 Q It sounds like to me the way you're describing
13 this, your friend, T Black, sort of set this thing up; is
14 that right?

15 A I don't know for sure about that.

16 Q Well, he was the only one talking to you, wasn't
17 he?

18 A Yes, sir.

19 Q And he was only one giving you instructions,
20 wasn't he?

21 A Yes, sir.

22 Q So, all your orders, so to speak, came from the
23 gentleman you knew as T Black, right?

24 A Yes, sir.

25 Q In other words, Mr. Harris?

NYERERE WILLIAMS-CROSS BY MR. STEELE

1 A Yes, sir.

2 Q Did you have on jeans?

3 A Yes, sir.

4 Q Did everybody have on jeans?

5 A I can't remember.

6 Q But you definitely had jeans on?

7 A Yes, sir.

8 Q Are you in custody now?

9 A Yes, sir.

10 Q At the Greenville County Detention Center?

11 A Uh-huh.

12 Q Is it on these charges?

13 A Yes, sir.

14 Q You haven't pled guilty yet, have you?

15 A No, sir.

16 Q But you're charged with exactly the same thing
17 that Timiya Massey is charged with, aren't you?

18 A Yes, sir.

19 Q And that includes murder, kidnapping, attempted
20 armed robbery and all the others, right?

21 A Yes, sir.

22 Q Are you serving an active sentence of any kind
23 now?

24 A No, sir.

25 Q So, are these charges the only thing keeping you

NYERERE WILLIAMS-CROSS BY MR. STEELE

1 in jail right now?

2 A Yes, sir.

3 Q Well, do you -- what are you expecting to get
4 out of this?

5 A I don't know, just doing the right thing.

6 Q So, your testimony is that the only reason
7 you're testifying here today is because you want to do the
8 right thing?

9 A Yes, sir.

10 Q The right thing?

11 A Uh-huh.

12 Q You don't have any expectation of your testimony
13 here helping you in your sentencing, right?

14 A No, sir.

15 Q Well, with all due respect, Mr. Williams, that
16 kind of flies in the face of human nature. Wouldn't you
17 like to get out with a short sentence?

18 A (There was no response.)

19 Q Wouldn't you like to get out with a short
20 sentence?

21 A Sure, everybody would.

22 Q Don't you think your testifying here today is
23 going to contribute to your getting a shorter sentence?

24 A No.

25 MR. RICHARDSON: I'm going to object to that

NYERERE WILLIAMS-CROSS BY MR. STEELE

1 question. He's, in essence, asking him what he's
2 thinking I'm going to do.

3 MR. STEELE: Well, no, it's what he expects.
4 It's his state of mind. It goes to his credibility.

5 THE COURT: I'll overrule the objection you can
6 ask it.

7 BY MR. STEELE:

8 Q My question was, wouldn't you expect that your
9 testimony here today is going to help you get a shorter
10 sentence?

11 A I wouldn't even know.

12 Q Sir?

13 A I don't know.

14 Q You don't know?

15 A Uh-huh.

16 Q You don't know what you expect? Well, you
17 either expect it or you don't. Why can't you answer that?
18 How would you not know that?

19 A I don't know.

20 Q Sir?

21 A I don't know.

22 Q You don't know?

23 A No, sir.

24 Q Well, you knew a lot of different things back
25 when you gave this statement to law enforcement than

NYERERE WILLIAMS-CROSS BY MR. STEELE

1 you're saying now, didn't you?

2 A (There was no response.)

3 Q Who talked you into changing your story?

4 A Nobody.

5 Q How is this jury supposed to know if you were
6 lying then or you're lying now? You got any suggestions
7 about that?

8 A No, sir.

9 Q Tell me what -- do you know -- have you been
10 told or do you know about what your maximum sentence is on
11 this thing, what your possible maximum sentence is on this
12 thing?

13 A No, sir.

14 Q Well, you're aware you're charged with murder,
15 aren't you?

16 A Yes, sir.

17 Q Are you aware you could get a life sentence?

18 MR. RICHARDSON: Objection, Your Honor.

19 THE COURT: I sustain.

20 MR. STEELE: All right.

21 BY MR. STEELE:

22 Q When did you decide to change your story from
23 what you told the first time to what you're telling now?

24 A Months ago.

25 Q Sir?

NYERERE WILLIAMS-CROSS BY MR. STEELE

1 A Months ago.

2 Q Months ago?

3 A Yes, sir.

4 Q Well, did you ever give a second recorded
5 statement?

6 A No, sir.

7 Q Never did. So nobody -- you didn't tell
8 anybody -- who did you tell you were changing your story?
9 Did you tell the officers? Did you talk to the
10 solicitor's office?

11 A No, sir.

12 Q But you admit now -- of course, you're under
13 oath and you were supposed to be telling the truth then,
14 under oath or not, you would admit that the story you're
15 telling here today is entirely different from the one you
16 told back when you were interviewed by law enforcement on
17 this tape, right?

18 A Yes, sir.

19 Q Back then, you said you didn't go to the door?

20 A Yes, sir.

21 Q And you're still saying you didn't have a gun?

22 A Yes, sir.

23 Q Anything you want to add to the story you told
24 today and kind of come a little closer to the truth? You
25 sure you didn't have a gun?

NYERERE WILLIAMS-CROSS BY MR. STEELE

1 A I'm sure.

2 Q Why would everybody besides you have had a gun?

3 A I don't know.

4 Q You had a mask on?

5 A I don't know.

6 Q This burglary y'all were planning, according to
7 you, what were the details of it? You were going to break
8 into a house that was unoccupied, nobody there? What were
9 you planning?

10 A It wasn't my plan.

11 Q Well, what was your understanding of the plan?

12 A Just go break in a house.

13 Q Were you going to break in a house where
14 somebody was at home or not at home?

15 A I was thinking there was nobody at home.

16 Q That doesn't make sense, sir, with all due
17 respect. You put on a mask, you take guns or, at least,
18 you say some people have guns and you're going to break in
19 an unoccupied house, that was your understanding?

20 A Yes, sir.

21 Q Why would you need a mask if you were breaking
22 in an unoccupied house?

23 A I don't know.

24 Q Nobody there to see you, right?

25 A Could have been somebody.

NYERERE WILLIAMS-CROSS BY MR. STEELE

1 Q Some of this isn't adding up, with all due
2 respect, sir?

3 A Uh-huh.

4 Q When did you come to the sudden realization that
5 y'all were at a house that had somebody in it?

6 A (There was no response.)

7 Q When did you figure that out?

8 A As soon as we knocked on the door.

9 Q And people came to the door?

10 A Yes, sir.

11 Q And you were sure surprised, weren't you?

12 A Uh-huh.

13 Q Because you thought they were going to an
14 unoccupied house, is that your testimony?

15 A (The witness nods.)

16 Q The court reporter can't take a nod down. Is
17 that your testimony?

18 A Yes, sir.

19 MR. STEELE: Could I have a moment, Your Honor?

20 THE COURT: Sure.

21 BY MR. STEELE:

22 Q You had on jeans, you've testified. You say you
23 don't remember whether the other people were wearing jeans
24 or not. Did everybody have on dark-colored clothing?

25 A I don't remember.

NYERERE WILLIAMS-CROSS BY MR. STEELE

1 Q You don't remember?

2 A Uh-huh.

3 MR. STEELE: That's all, Your Honor.

4 THE COURT: Mr. Richardson.

5 MR. RICHARDSON: Nothing further, Your Honor.

6 THE COURT: Thank you, sir, I appreciate your
7 being here. You may step down.

8 All right, ladies and gentlemen, during that
9 last testimony, you heard an objection stated by the
10 State over the Defense's characterization of a
11 certain penalty for a certain criminal offense. And
12 I sustained that objection. That's not because I
13 have any secrets that I want to keep from you. It's
14 because a potential sentence is not relevant to your
15 decision. Your decision in this case is to determine
16 whether the State has met its burden of proof of
17 proving each and every element of the offense beyond
18 a reasonable doubt.

19 It's entirely the authority and the
20 responsibility of the Court, that is me, to determine
21 sentencing. So, you don't have to determine that.
22 You don't have any stake in that. That is the
23 business of the Court. That's why that was that --
24 that's why that objection was sustained. Just wanted
25 to let you know why.

MICHAEL WARD-DIRECT BY MR. RICHARDSON

1 Okay, call your next witness, sir.

2 MR. RICHARDSON: Thank you, Your Honor. The
3 State would call Dr. Michael Ward.

4 THE CLERK: Sir, if you please come forward.
5 Place your left hand on the Bible and raise your
6 right hand.

7 MICHAEL WARD, M.D., after being duly
8 sworn, testified as follows:

9 THE CLERK: Thank you. Please be seated. Sir,
10 would you state your name for the record, please?

11 THE WITNESS: Michael Eugene Ward.

12 THE CLERK: Thank you, sir.

13 DIRECT EXAMINATION

14 BY MR. RICHARDSON:

15 Q Doctor, where are you employed?

16 A I'm employed by Pathology Associates of
17 Greenville and by the Greenville County Medical Examiner's
18 Office.

19 Q In what capacity are you employed there?

20 A I'm the chief medical examiner for Greenville
21 County.

22 Q How long have you been the chief medical
23 examiner for Greenville County?

24 A Twenty years.

25 Q Okay, sir. What is your educational background?

MICHAEL WARD-DIRECT BY MR. RICHARDSON

1 A I received my Bachelor's Degree in biology from
2 the University of Alabama. I have a Master's Degree in
3 forensic science from the University of Alabama at
4 Birmingham. I received my medical degree from the
5 University of South Alabama, which is in Mobile. I did a
6 four-year anatomic pathology residency at the Medical
7 University of South Carolina in Charleston. I had a
8 one-year fellowship in forensic pathology at the
9 University of New Mexico in Albuquerque. I'm Board
10 certified by the American Board of Pathology in both
11 anatomic and forensic pathology.

12 Q Okay, sir. Can you tell the jury how many
13 autopsies you have performed?

14 A Over 5000. I don't know the exact number, but
15 it's well over 5000.

16 Q Okay. Have you ever been qualified as an expert
17 in the State of South Carolina?

18 A Yes, I have.

19 Q How many times?

20 A Over a hundred times.

21 Q In what qualification?

22 A I've been qualified in both anatomic and
23 forensic pathologist.

24 MR. RICHARDSON: Your Honor, at this time, we
25 would ask that he be qualified in medical

MICHAEL WARD-DIRECT BY MR. RICHARDSON

1 examinations and pathology.

2 THE COURT: Voir dire, exceptions?

3 MR. STEELE: No voir dire, no stipulation.

4 THE COURT: All right, good enough.

5 I'll accept him as an expert in that field.

6 BY MR. RICHARDSON:

7 Q Sir, when you do an autopsy, exactly what are
8 you looking for? What's the purpose of an autopsy?

9 A An autopsy is a detailed physical examination
10 performed on someone who has died. The purpose of the
11 autopsy is to determine cause of death and the manner of
12 death.

13 Q Okay, sir. And did you have an occasion to do
14 an autopsy on Anthony Nutridge?

15 A Yes, I did.

16 Q Okay, sir. Do you know when that autopsy was
17 performed?

18 A On October 1st, 2015, and it was done at
19 9:00 a.m.

20 Q Okay, sir. As part of that autopsy, do you also
21 take photographs?

22 A Yes, I did.

23 Q Okay. Let me hand you what's been marked
24 State's Exhibit 75 [verbatim] through 79. If you can take
25 a look at each one of those, please, sir.

MICHAEL WARD-DIRECT BY MR. RICHARDSON

1 A (The witness complies.)

2 Q Are those photographs that you took?

3 A Yes, they are. They have Mr. Nutridge's unique
4 autopsy number within each photograph?

5 Q Okay, sir. And that's the way you identify it?

6 A That is.

7 Q Do these accurately depict what you took a
8 photograph of?

9 A Yes, they do.

10 Q Do that appear to be changed or altered in any
11 form or fashion?

12 A They do not.

13 MR. RICHARDSON: Your Honor, at this time, we
14 would offer State's 75 [verbatim] through 79 into
15 evidence.

16 THE COURT: Yes, sir.

17 MR. STEELE: Your Honor knows my position from
18 the previous and I would incorporate all my earlier
19 remarks and objections.

20 THE COURT: Okay, sir. The objection is
21 respectfully overruled. The same shall be admitted
22 as State's Exhibits.

23 THE COURT REPORTER: Judge, that would be 76
24 through 79.

25 THE COURT: Okay.

MICHAEL WARD-DIRECT BY MR. RICHARDSON

1 (WHEREUPON, State's Exhibits Nos. 76-79 were
2 marked for identification and received into
3 evidence.)

4 BY MR. RICHARDSON:

5 Q Sir, I'm going to show you State's Exhibit 75
6 [verbatim]. What is that a photo of? Can you see the
7 photograph?

8 A Not very well. Can I step down?

9 THE COURT: Sure, you can.

10 THE WITNESS: This is a gunshot wound, which we
11 labeled as number one. Not meaning that that's the
12 one that occurred first, but that it's, by
13 convenience, labeled as number one, which is a
14 gunshot wound to the right upper abdomen of
15 Mr. Nutridge. This is his autopsy number and this is
16 the gunshot wound entrance and its location.

17 BY MR. RICHARDSON:

18 Q Okay, sir. And let me ask you, in your autopsy
19 from that gunshot wound, were you able to extract a
20 projectile?

21 A During the autopsy, we were able to identify the
22 wound path of this gunshot wound and to recover a
23 projectile at the termination of that wound path.

24 Q Okay. So we're clear, the projectile came from
25 this particular wound?

MICHAEL WARD-DIRECT BY MR. RICHARDSON

1 A That's correct.

2 Q Okay. Let me show you State's Exhibit 76. What
3 is that?

4 A That is the recovered projectile that was
5 recovered at autopsy from the termination of wound track
6 from gunshot one number one to the right abdomen that was
7 recovered from the musculature of the left back.

8 Q And let me show you what's marked State's 77.
9 What is that?

10 A This is a photograph of the back of
11 Mr. Nutridge's right leg. This is the back portion of the
12 knee. So the knee would be immediately in front of that.
13 This is a gunshot wound of exit where the bullet came out
14 of the skin. And this is where it restructured the skin
15 causing a graze-type injury. So, it exited here and
16 restructured the skin here causing that abrasion.

17 Q In this particular wound, there was a frontal
18 wound, also?

19 A There was.

20 Q Where was that?

21 A It was to the inner thigh of Mr. Nutridge,
22 roughly in this region here, just to the left of the
23 midline. So, this projectile passed through the
24 musculature of the right leg, transected or cut the
25 femoral artery, exited the lower -- the back of the right

MICHAEL WARD-DIRECT BY MR. RICHARDSON

1 leg and then grazed the calf muscle or the skin of the
2 calf of Mr. Nutridge's right leg.

3 Q And what is the trajectory of the bullet?

4 A Well, if I am standing like this, what we call
5 the anatomic position, then that projectile from
6 Mr. Nutridge's front to his back, downward and from his
7 left to his right.

8 Q Okay. Let me show you what's been marked
9 State's Exhibit 78. Do you see a wound in that particular
10 picture?

11 A Yes, I do.

12 Q Where is it?

13 A There is a laceration or a tear of the skin to
14 the bridge of the nose. So, it's immediately between each
15 high, the bridge of the nose. There's a laceration or
16 tear of the skin and fracture of the underlying bone of
17 the bridge of the nose.

18 Q Is that, in essence, a broken nose?

19 A It is a broken nose with a laceration, yes.

20 Q Okay, sir. And is that consistent with a blunt
21 blow?

22 A It is a blunt force trauma to the nose, yes.

23 Q Would that, in your opinion, be consistent
24 with -- hypothetically, with a pistol being hit upon the
25 bridge of the nose?

MICHAEL WARD-DIRECT BY MR. RICHARDSON

1 A Certainly could be, yes.

2 Q Thank you. Now, I believe there was also a
3 third wound to the body; is that correct?

4 A That's correct.

5 Q And where was that?

6 A There was a superficial gunshot wound to the
7 right wrist. The inference is at the junction of the
8 wrist with a right hand. The course of the wound was from
9 the decedent's hand towards his elbow. It went for about
10 two inches beneath the skin and then exited the skin. It
11 didn't damage the underlying bone. It didn't damage any
12 underlying vascular structures. It is a very superficial
13 gunshot wound to the right wrist. Again, in the anatomic
14 position, which is like this, it would have gone from
15 below upward and from Mr. Nutridge's left to his right.

16 Q Thank you, Doctor. I'm going to refer back to
17 77 again. Is that consistent with the leg being bent at
18 the time of the shooting or the entrance of the bullet?

19 A In order for the gunshot wound, which is exiting
20 here, to strike the skin here, if it's in a straight line,
21 that doesn't happen. If the knee is flexed -- I'm sorry.
22 If the leg is flexed at the knee such that it's bent, as
23 this projectile exits the back of the thigh, it then
24 strikes the skin of the calf muscle. So, it is consistent
25 with his right leg being bent at the knee.

MICHAEL WARD-CROSS BY MR. STEELE

1 Q I'm sorry to jump around on you, but back to the
2 wrist injury, was that a fatal injury?

3 A It was not.

4 Q As far as your opinion as to how Mr. Nutridge
5 died, what is that?

6 A It was my opinion that Mr. Nutridge died as a
7 result of gunshot wounds of the abdomen and the right leg.

8 Q Were you able to ascertain which of those wounds
9 were the actual fatal wound?

10 A No, each would have been contributory causing
11 blood loose, extensive blood loss. There was a great deal
12 of blood within the musculature of the left back where we
13 recovered the projectile. And there was a great deal of
14 blood present within the musculature of the right thigh,
15 where that bullet cut or transected the right femoral
16 artery.

17 Q Okay. Thank you, sir.

18 MR. STEELE: Leave that up if you would, please.

19 MR. RICHARDSON: Yes, sir.

20 That's all the question I have. Please answer
21 any questions Mr. Steele may have for you.

22 CROSS-EXAMINATION

23 BY MR. STEELE:

24 Q Dr. Ward, I was going to ask you, I understand
25 the conclusions you drew from this exhibit right here.

MICHAEL WARD-CROSS BY MR. STEELE

1 And you are operating under the assumption, are you not,
2 sir, that both of these wounds were caused by the same
3 bullet, same projectile?

4 A That is correct, yes, sir.

5 Q But it's possible, isn't it, that this was
6 caused by one projectile, this was caused by another
7 projectile, that is striking by an almost spent bullet,
8 and that he was standing upright and that his knee was not
9 flexed? That's a possibility, isn't it?

10 A Excuse me. It's certainly a possibility that
11 the graze wound is from a completely different round that
12 is not associated with gunshot wound to the front of the
13 leg. If Mr. Nutridge receives this one while standing
14 upright, then it has a particularly downward angle, yes.

15 Q And you may know this or not, but I'll just ask
16 you anyway, there was a lot of shooting going on on these
17 premises, are you aware of that?

18 A This was my understanding, yes.

19 Q A lot of bullets flying around?

20 A That's correct.

21 Q So, there could have been a spent bullet that
22 struck him right here where I'm pointing?

23 A That graze would be from a separate round,
24 indeed, yes.

25 MR. STEELE: That's all, Your Honor.

MICHAEL WARD-REDIRECT BY MR. RICHARDSON

1 MR. RICHARDSON: Just real quick.

2 THE COURT: Yes, sir.

3 REDIRECT EXAMINATION

4 BY MR. RICHARDSON:

5 Q The graze would not have been fatal, right?

6 A It would not.

7 MR. RICHARDSON: That's all the questions I
8 have.

9 THE COURT: All right. Recross, sir?

10 MR. STEELE: No, sir.

11 THE COURT: Okay. Thank you, Doctor. I
12 appreciate you being here, sir.

13 Okay. Any additional witnesses from the State?

14 MR. RICHARDSON: None, Your Honor.

15 THE COURT: Okay.

16 All right, ladies and gentlemen, let's take a
17 short break. There are several matters that I need
18 to take up before we resume. I'm going to talk to
19 the attorneys. It may be that I send you home for
20 the evening. I know it's kind of early, but as I
21 told you, once we start going with argument and
22 charge, it's going to be close to five before finish
23 because I've got some business, legal matters to
24 discuss with them, and then we'll do to actual
25 argument and charge. We'd be close to 5:00 and I

1 don't want y'all to have to deliberate into the
2 night. So, I'm probably going to have y'all come
3 back tomorrow morning. I'll send word back with the
4 bailiff to you as what time to be here. But I need
5 to have a discussion with the attorneys first, okay?

6 So, please return to your jury room and don't
7 discuss the case.

8 (WHEREUPON, the jury left open court at
9 approximately 3:00 p.m.)

10 THE COURT: Mr. Steele, I know you have directed
11 verdict motions. I do want to deal with the jury
12 before I hear those. My question is, do you intend
13 to present any evidence this afternoon or in this
14 case?

15 MR. STEELE: Mr. Massey rests.

16 THE COURT: Okay, good enough. All right. Do
17 you want to rest on the record or you prefer to do
18 that tomorrow morning when the jury comes back in or
19 are you content to rests with the jury out?

20 MR. STEELE: I tell you, Your Honor, I believe
21 I'll just wait in the morning to rest in front of the
22 jury if it's okay with the Court.

23 THE COURT: Okay, good enough.

24 In that case, what I'm going to do is I'm going
25 to dismiss the jury and tell them to be at 9:00

1 tomorrow morning. We'll start with argument and
2 charge tomorrow morning. What we'll do this
3 afternoon is we'll do our directed verdict motions.
4 And then if counsel will meet me in my chambers,
5 we'll do a quick charge conference off the record so
6 that we're all on the same sheet of music with
7 respect to the law that I'll be charging and the
8 argument, okay?

9 MR. STEELE: Yes, Your Honor.

10 THE COURT: So, Mr. Ford, will you release the
11 jury and ask them to be back tomorrow at 9:00 a.m.,
12 please. Thank you, sir.

13 All right, Mr. Steele, be happy to hear from
14 you, sir.

15 MR. STEELE: If Your Honor please, I would move
16 at this time for a directed verdict of not guilty on
17 the grounds that taking the evidence in the light
18 most favorable to the State, that there is
19 insufficient evidence for a well motivated juror
20 consciously deliberating to reach the conclusion
21 beyond a reasonable doubt that the State has proven
22 its case beyond a reasonable doubt, each and every
23 element thereof. I would move for a directed verdict
24 on those grounds, Your Honor.

25 THE COURT: Okay, thank you.

1 The State's position?

2 MR. RICHARDSON: Your Honor, in the light most
3 favorable to the State, of course, we're not talking
4 about reasonable doubt at this point in time. I
5 think we have established in the light most favorable
6 to the State that all elements as pertaining to each
7 and every charge has come through testimony and/or
8 physical evidence. Your Honor, at this point in
9 time, I think it's a jury question.

10 THE COURT: Okay. All right. Based on the
11 applicable standard for granting of a directed
12 verdict, I respectfully deny the motion. I think
13 that there is evidence in the record upon which a
14 jury could find that the State has met its burden of
15 proof. I don't take any position as to whether they
16 should or shouldn't, but the evidence exists. And I
17 don't take, again, any position to the weight or
18 sufficiency of that evidence. However, I do -- in
19 looking at the evidence in the light most favorable
20 to the nonmoving party, I respectfully deny the
21 motion for directed verdict.

22 Okay. All right. Anything further?

23 MR. RICHARDSON: Not from the State.

24 MR. STEELE: Nothing from Mr. Massey, Your
25 Honor.

1 THE COURT: Well then, if y'all will come up to
2 my office in about -- give me about five minutes and
3 we'll just talk through the charge so we'll all be
4 ready tomorrow morning. And we'll reconvene tomorrow
5 at 9:00 a.m. Okay. Thank you.

6 Now, before we go off the record, Mr. Steele,
7 you want me to advise Mr. Massey of his rights?

8 MR. STEELE: Now would be a good time, Your
9 Honor.

10 THE COURT: Okay.

11 All right, Mr. Massey if stand up, please, sir.
12 If you would raise your right hand.

13 TIMIYA MASSEY, after being duly sworn,
14 testified as follows:

15 EXAMINATION

16 BY THE COURT:

17 Q Mr. Massey, you understand that you have a right
18 to remain silent -- you can lower your hand. You have a
19 right to remain silent. That is a right against
20 self-incrimination that's guaranteed under the
21 Constitution. Which means during this proceeding, you are
22 not compelled to do or say or prove anything. You don't
23 have to present any evidence. You don't have to testify
24 to the jury. That is your Constitutional right and it's a
25 sacred Constitutional right. And if you choose not to

TIMIYA MASSEY-EXAMINATION BY THE COURT

1 testify, I'll instruct the jury that they cannot hold that
2 against you. And I'll tell them that as a matter of fact,
3 it is such a sacred Constitutional right that they can't
4 even consider it in their jury deliberations.

5 However, you do understand that if you
6 elect not to testify that you assume certain risks because
7 you won't have the opportunity to tell the jury your side
8 of the story. You won't have the opportunity to say what
9 you may like to say. Also, if you do testify, you assume
10 a risk in that regard because the State can cross-examine
11 you. And they can ask you questions in an attempt to
12 impeach your credibility. That is, to convince the jury
13 that you are not to be believed.

14 So, either way you go, if you testify or
15 whether you don't testify, you assume certain risks. But
16 understand that ultimately, it is your decision as to
17 whether you'll testify or not. You can talk to your
18 attorney, and I'm sure your attorney has opinions in that
19 regard. You can talk to your family. You can talk to
20 other people whom you respect, but -- and they can all
21 give you their opinions about whether you should or
22 shouldn't testify. But ultimately, it is your decision
23 and your decision alone as to whether you would testify or
24 not. Do you understand that, sir?

25 A Yes, sir.

TIMIYA MASSEY-EXAMINATION BY THE COURT

1 Q Do you have any questions that you would like to
2 ask me or Mr. Steele about either your right to remain
3 silent or your corresponding right to testify, sir?

4 A No, sir.

5 Q Have you made up your mind as to whether you're
6 going to testify in this case?

7 A No, sir.

8 Q You have or you haven't?

9 A I haven't.

10 Q You have not?

11 A I have not, no, sir.

12 Q Do you need some time to talk to Mr. Steele?

13 MR. STEELE: Let me have a moment, Your Honor.

14 THE COURT: Okay.

15 MR. STEELE: Your Honor, I think he's ready to
16 respond to the question.

17 THE COURT: Okay.

18 BY THE COURT:

19 Q All right, Mr. Massey, have you decided whether
20 you will testify or not?

21 A I decided not to.

22 Q And that's your decision, Mr. Massey?

23 A Yes, sir.

24 THE COURT: All right, thank you very much. I
25 appreciate it, sir. You can sit down.

1 Okay. All right anything further for this
2 afternoon? We're good. Okay, I'll see y'all in
3 chambers in about five minutes, thank you.

4 (WHEREUPON, the proceedings were concluded for
5 the day to be reconvened on November 8, 2018.)
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1 November 8, 2018

2 THE COURT: Counsel, will you come up real
3 quick? I want to talk to you for two seconds.

4 (WHEREUPON, an off-the-record bench conference
5 was held.)

6 (WHEREUPON, Court's Exhibit No. 3 was marked for
7 identification only.)

8 THE COURT: Okay, we're back on the record.

9 I noticed, Mr. Steele, that you made a request
10 for a jury charge and I denied that. I believe we've
11 made that jury charge Court Exhibit No. 1. Is there
12 anything additionally you need to put on the record
13 in that regard, sir?

14 MR. STEELE: I understand Your Honor is going to
15 charge firmly intent -- excuse me, firmly convinced?

16 THE COURT: Yes, sir.

17 MR. STEELE: As opposed to the old charge of
18 reluctant or hesitation to act. Could I have
19 exception in the record to that?

20 THE COURT: Well, you want me to tell them that
21 reasonable doubt can be defined as the type of doubt
22 which would cause a reasonable person to hesitate to
23 act?

24 MR. STEELE: Would Your Honor do that?

25 THE COURT: Yeah. I don't think it means much,

1 but okay.

2 MR. STEELE: Thank you, Your Honor.

3 THE COURT: All right.

4 THE COURT REPORTER: Judge, that would be
5 Court's 3.

6 THE COURT: Okay.

7 Are the parties -- again, we are going to
8 appoint Mr. Roger Duncan as foreperson of the jury.
9 The order of argument will be the State will argue
10 first, then the Defense in as much as it introduced
11 no evidence will close.

12 Do you want to rest in front of the jury,
13 Mr. Steele?

14 MR. STEELE: I would consider myself to have
15 already rested if the Court is satisfied with that?

16 THE COURT: I'm entirely satisfied with that. I
17 know that some attorneys have a preference and they
18 prefer to do it in front of the jury.

19 Okay. So, we're about to bring the jury in.
20 Make sure that nobody is coming in and out of the
21 courtroom. The attorneys said that they were
22 bothered some deal in openings because people were
23 coming and going. So, if there's anybody else that
24 wants to come into the courtroom, they've got about
25 two minutes, or maybe one minute and then they're not

1 getting back in.

2 Okay. All right. So, having said that, let's
3 go ahead and bring the jury in.

4 (WHEREUPON, the jury came into open court at
5 approximately 9:16 a.m.)

6 THE COURT: All right. Good morning ladies and
7 gentlemen. Thank you for being on time, I do
8 appreciate it.

9 Mr. Duncan, congratulations.

10 THE FOREPERSON: Thank you.

11 THE COURT: Because of your demonstrated
12 excellence as a juror, I've appointed you foreperson
13 of the jury. Now, what that means is that during the
14 deliberations, you've got responsibility to ensure
15 that everybody has a voice in the deliberations.
16 That is everybody has the opportunity to express
17 their opinion. You know when 12 people get together
18 and you've never met each other before, you're going
19 to have some people who are more vocal and more ready
20 to offer their opinion and some people who are just
21 more reticent and more reluctant to offer their
22 opinion. But in deliberations, everyone should have
23 the opportunity to have a voice. So, Mr. Duncan,
24 it's your responsibility to ensure that everyone has
25 that voice.

1 Beyond that, I can't tell you exactly what to do
2 or how to do it. I've never served on a jury. And
3 I'm not allowed to go into the jury room during
4 deliberations. So, I suspect that every single jury
5 kind of settles upon its own method of conducting
6 deliberations and settles on the most efficient and
7 effective way for those 12 people. And I'm sure that
8 y'all will settle on the best way to deliberate.

9 Now, during your deliberations, you may have
10 questions that arise. Oftentimes, I'll get questions
11 from jurors.

12 Mr. Duncan, if the jury has a question, you can
13 simply write it down on a note pad, deliver it to the
14 bailiff and he'll bring it to me and I'll try to
15 answer it if I can.

16 Just a heads up to you to set your expectation,
17 I can't answer all your questions. A lot of times I
18 get questions from juries that have to do with the
19 facts. That is, what was the evidence? What did so
20 and so say? Or can I get more evidence? And I've
21 already told you once and I'll tell you again, I
22 don't have any authority to comment on the evidence.
23 I really don't.

24 So, if you ask me a question that deals with an
25 evidentiary issue, I'm just going to send you back a

1 very curt response that either says no or I don't
2 know or that's up to you. And don't think I'm being
3 curt with you and I don't want to answer the
4 question. There are just some things that I'm not
5 allowed to answer. If it's a legal question or a
6 procedural question, then, perhaps, I can answer it.
7 And I'll do my best to answer it if I can, okay?

8 Yesterday when you left, we took up several
9 legal matters. And I discussed with the Defense
10 whether the Defense would offer any evidence or not.
11 The Defense has rested. That is, the Defense has
12 elected not to introduce any evidence in this trial.
13 As I've told you before and I'll tell you again, that
14 is the prerogative of the Defense. The Defendant
15 does not have any responsibility for proof. Does not
16 have any burden of proving anything. Therefore, the
17 Defendant doesn't have to do or say or prove
18 anything. The State has the burden of proving each
19 and every element of each offense beyond a reasonable
20 doubt.

21 Now, understand, that the Defendant then has
22 elected not to testify. Now, that is a
23 constitutional right that he has chosen to exercise.
24 And because that is a constitutional right, you can't
25 hold that against him. As a matter of fact that is

1 such a sacred constitutional right that we all enjoy
2 as citizens of the United States that it is
3 inappropriate for you to even discuss it in your jury
4 deliberations because it's not relevant. The only
5 thing that's relevant is whether the State has met
6 its burden of proof.

7 Now, ladies and gentlemen, we're going to
8 proceed to closing arguments at this point. As I
9 told you when we began, closing arguments are not
10 evidence. You've already heard all the evidence in
11 this case. Each side will have the opportunity to
12 comment on the evidence in an attempt to advocate and
13 in an attempt to persuade you to their position. The
14 order of argument will be the State will go first
15 because the State has the burden of proof. Then the
16 Defense will have the opportunity to follow and close
17 with argument. I will then give you a charge on the
18 law, and then I'll let you return to your jury room
19 for deliberations.

20 So, having said that ladies and gentlemen, I
21 will defer to Mr. Richardson.

22 Sir, you may begin your closing argument.

23 CLOSING STATEMENT

24 MR. RICHARDSON: Thank you, Your Honor, may it
25 please the Court.

1 Mr. Steele.

2 Good morning, ladies and gentlemen. I want to
3 start out saying thank you for your time and your
4 attention throughout this trial. I know that it
5 hasn't been a very lengthy trial, especially for a
6 case of this magnitude. There was a lot of evidence
7 that I put in. It was very tedious. It was very
8 tedious for me. But in order for me, having the
9 burden as I do and I gladly accept, I have to put in
10 everything for your consideration. I appreciate
11 throughout that process your attention throughout.
12 That is something greatly needed and for that, I
13 thank you.

14 Now, ladies and gentlemen, as you've been told
15 at the beginning of this case, the Defendant has been
16 charged with several different charges. Now, the
17 Judge is going to charge you and tell you what the
18 law is in this case. That's certainly the law that
19 you will take. That's his job. Y'all, in fact, are
20 the triers of the fact. Y'all are kind of judges
21 yourself. You're judges on the facts. He's going to
22 give you the law. You're the ones that are going to
23 decide what happened back on September 30th of 2015,
24 and make your decision from that. I'm going to go
25 over each piece of law just kind of briefly to give

1 you an idea of what the law is before I start my
2 arguments.

3 First and foremost, the Defendant has been
4 charged with murder. Murder in the State of South
5 Carolina is a killing of another human being with
6 malice aforethought. That can be expressed or
7 implied. Now, what is malice? Malice a depraved
8 heart. I tell juries all the time it's just being
9 mean. And you can take malice from that type of act,
10 a mean act. You can take malice from a weapon being
11 used against another person to kill that person. A
12 person coming into a home with a mask on and shooting
13 a person, that is malice, that is being mean, that is
14 a depraved heart.

15 You also see the charge of attempted murder.
16 Attempted murder is little bit different. A person
17 with the intent to kill another human being with
18 malice aforethought and attempts to do that act is
19 attempted murder. That malice can also be expressed
20 or implied. In this case, the malice -- excuse me,
21 the attempted murder that we referred to, we referred
22 to the victim, Haskell Nutridge, and the shots that
23 went towards him.

24 There's also in this case a kidnapping charge.
25 Kidnapping is something that comes from way back in

1 our law. Initially, it's -- why it's called
2 kidnapping, taking a child, getting a ransom for
3 them, that type the act. That is not how the law is
4 today. Kidnapping is simply moving a person from one
5 point to another, however slight, or even holding
6 them in that certain point and forcing them to make
7 that move. In this case, it was with that particular
8 victim Mr. Leach that you heard from, who was moved
9 from -- at gunpoint from one point at the bottom of
10 the steps to the top of the steps and made to knock.
11 I'm briefly going over the facts right now. I will
12 get back to this a little later in my closing
13 arguments.

14 In addition to the kidnapping charge, we have a
15 burglary charge. Burglary in the first degree. Now,
16 what is burglary? Burglary is entering a dwelling
17 without consent with the intent to commit a crime.
18 That's your general burglary. Now, what makes it
19 first degree? What makes it first degree is there's
20 an element of aggravation. If you have this
21 aggravation, the burglary goes from a second degree
22 to a first degree. In this case, the aggravation is
23 two-fold. One -- and it could be either one of
24 these. They entered without consent with a deadly
25 weapon. In this case, a firearm. That's your

1 aggravation that makes it burglary first. Also, if
2 you enter and injury a person within the dwelling,
3 that's an aggravating factor. You don't have to have
4 both of them, can have either one.

5 When you enter a home, it does not have to be a
6 break-in. You enter without consent, that means
7 break the threshold of the door. You don't have to
8 kick in the door. You can enter an opened door, an
9 unlocked door, whatever manner, if you're not given
10 consent to be in there and you go in with the intent
11 to commit a crime, that's burglary.

12 You also a possession of a weapon during a
13 violent offense. You've heard testimony about the
14 weapons that were involved with this. Murder in
15 South Carolina is considered a violent offense. Now,
16 with that said, there's also -- and I apologize, I
17 forgot one thing. There's attempted armed robbery.
18 What attempted armed robbery is that where you're
19 armed and try to rob somebody. The reason why it
20 becomes attempted as opposed to armed robbery is
21 because attempted armed robbery, you don't get
22 anything. That's why he's indicted for attempted
23 armed robbery because in this case, the Defendant did
24 not get anything from Mr. Leach, that's one attempted
25 armed robbery, nor did he ever obtain any goods or

1 monies from Mr. Nutridge, the victim in this case.
2 That's why it's an attempted armed robbery, not full
3 fledged armed robbery.

4 Now, as you've heard and as the Judge has told
5 you, I have the burden of proof. Burden of proof
6 being beyond a reasonable doubt. And I'll tell you
7 that basically means that if there is doubt that
8 causes any juror to hesitate to act, then that would
9 be considered reasonable doubt. I'm going to speak a
10 little bit on that. This is a burden that solicitors
11 take every day throughout the state. We deal with
12 this burden all the time. It is not a scenario where
13 we have to prove a case beyond all doubt. It's a
14 reasonable doubt. I kind of boil it down to y'all
15 using your common sense. When you left home and you
16 came to this courthouse on Monday, we did not ask you
17 to leave your common sense behind. This is the jury
18 system. We want you to come in and we want you to
19 use your common sense. That's what reasonable doubt
20 is.

21 As an illustration, if the Defense attorney and
22 I went out hunting for deer. And we're out in the
23 middle of a field and across that field is a big
24 buck. And I have a rifle and I pull that rifle up to
25 my shoulder and aim it at that deer and I pull that

1 trigger and that gun goes off and that deer falls.
2 And I say man, what a great deer I just killed.
3 Mr. Steele, our defense attorney, may say no, uh-huh,
4 no, reasonable doubt. That deer could have had a
5 heart attack. Well, what's your common sense tell
6 you? Y'all know what happened. Does that cause you
7 to hesitate to act? You know your common sense says
8 I killed that deer by that weapon.

9 Now, how have we proved this case beyond a
10 reasonable doubt? We put up numerous witnesses, a
11 lot of officers. And I want to start from the
12 beginning when the officers arrived on the scene.
13 They get to the scene, and as you heard testified,
14 there were numerous officers out there walking the
15 scene. They're securing the scene, they're putting
16 up tape. They're seeing evidence laying about the
17 ground. I believe several officers testified that
18 they saw that evidence. Wayne Campbell came up and
19 said that he had marked that evidence and he also
20 covered it for purposes of DNA and that type of thing
21 in order to keep the elements off.

22 During this period of time when they're walking
23 throughout this area, next to the woods, which are
24 back behind, it's interesting at no time does the
25 Defendant come out of those woods. And you know he's

1 in those woods. It's interesting for that lengthy
2 period of time at the initial stages that he never
3 comes out of the woods. He never asked for help.
4 There are dogs running all through there. In fact,
5 the testimony was from Mr. Wasserman is that the dogs
6 were actually left, I believe after 45 minutes.
7 That's why we have 12 people because you can remember
8 the facts collectively a lot better than I can. And
9 I believe it was 45 minutes and they were actually
10 called back to the scene after they found the
11 Defendant. The Defendant's in there, at least, 45
12 minutes, but I believe Investigator Hammett and maybe
13 another investigator testified that it was well over
14 an hour that he was in the woods hiding, injured
15 never asking for help. There were police officers
16 all around. There's EMS there. You heard officers
17 testify that EMS stayed there after they had checked
18 the victim and found him to be deceased. Never comes
19 out and asks for help. In fact, what is he doing?
20 He's hidden. He's up under the brush, back in the
21 woods. Why does he not come out to get help?
22 Because ladies and gentlemen, he did not want to be
23 found. But we found him.

24 Mr. Spurgeon got up and testified, the forensics
25 officer, who's actually the guy who found him

1 initially. Other investigators got involved after
2 that. Mr. Spurgeon was our crime scene tech. You
3 heard he's had some disciplinary actions. And that's
4 something that I gave as my duty as a prosecutor to
5 the Defense counsel. He would have never known about
6 it. I'm the one who told him about it. The fact of
7 the matter is, ladies and gentlemen, in our job is
8 that people get disciplined and people make mistakes.
9 He did not get fired. He made mistakes. But there
10 is absolutely nothing in this record, nothing in this
11 case to show that he did anything wrong. If he did,
12 Mr. Wolfe, the technician, the forensic technician
13 that was following him to collect evidence and saw
14 him collect evidence would have said something on the
15 stand. He also would have stopped it at the scene.
16 The people in property and evidence who receive it
17 in, we have to have sealed items. We have to have
18 those items initialed. You see it here. This is the
19 process. You see it on this piece of evidence here.
20 It's sealed, it's initialed. It's put into property
21 and evidence. That is done. If anything is wrong
22 with property and evidence, people would certainly
23 bring it to our attention.

24 The DNA and the serologist who picked up the DNA
25 sample and said they were secured would not have

1 picked them up if they weren't secured, if they were
2 not in proper form. In fact, at any point in time,
3 they were not never tested, this DNA. I'll get to
4 the DNA in a little bit. That would not have
5 happened. It's checks and balances. The same thing
6 we have in the United States. We have a president,
7 we have a legislature, then we also have our court
8 system. There's three checks and balances. That's
9 why we have what we have here where people are
10 controlling evidence and checking and balancing. And
11 when he made those mistakes, that's who caught him.
12 That's who found it out. There's nothing in this
13 record that says he made any mistakes.

14 Now, you saw co-defendants get up and testify,
15 that was Mr. Williams and Mr. Harris. And I'll tell
16 y'all what happened in this case wasn't clear on the
17 stand. They were arrested for this crime.
18 Mr. Williams turned himself in after he found out he
19 had a warrant for his arrest, but Mr. Harris was
20 found elsewhere and arrested. At that point in time,
21 both Defendants gave a statement way back a year and
22 a half ago. And in that statement, they immediately
23 implicated themselves. Said yeah, I was there, I did
24 it. They implicated each other. Yes, I was there
25 and Mr. Harris was there. I was there, Mr. Williams

1 was there. And granted Mr. Williams did not, as I
2 brought out to y'all, initially tell everything.
3 What he said initially was that he was a lookout.
4 And he's mitigating, he's trying to make himself not
5 be as involved as he was. There's no question about
6 that. But he later come and said yes, I went up to
7 Mr. Leach and I went up the steps. So today -- or
8 excuse me, yesterday under oath after he's sworn to
9 tell the truth, this prosecutor heard him implicate
10 himself even more in the crime.

11 What's consistent from the get-go from all their
12 statements, both of their statements is that
13 Defendant sitting right there, that Defendant was
14 with them. Mr. Williams was arrested on a different
15 date and Mr. Harris was arrested on different dates.
16 They give statements at different dates. They're not
17 around each other. They're totally separate from
18 each other, and yet, both of them say yes, we did it
19 and so did the Defendant. They got to deal with
20 their crimes. And they are going to deal with each
21 and every one of those crimes. The law in this state
22 is the hand of one is the hand of all. Mr. Massey
23 shot and killed the victim. If you believe that
24 another one of them shot and killed them does not
25 matter. The hand of one is the hand of all. So,

1 Mr. Williams, and Mr. Harris are both guilty of
2 murder, just as the shooter is guilty of murder.

3 It's interesting on Mr. Harris, who was I
4 believe the first one arrested. He's friends with
5 them. Eight or nine years said he's known him.
6 Asked him are you friends? Yes, we're friends. So,
7 he's implicating his own friend. Not only his own
8 friend, but himself. That's the consistency of their
9 statements. They're consistent that masks were used.
10 They're consistent that the Defendant had a gun in a
11 holster. Both of them said he had his gun in a
12 holster. Well, ladies and gentlemen, what was found
13 under the Defendant? This holster. Empty.

14 Mr. Leach corroborates what the co-defendants
15 say. Masked men came up with guns and took me
16 upstairs. Forced me upstairs. Attempted to rob me
17 first, didn't get anything, but forced me upstairs.
18 Go back, there's the kidnapping. That's exactly what
19 Massey said -- excuse me, that's exactly what
20 Mr. Williams said and that's exactly what --

21 Your Honor, can we get her some water?

22 THE COURT: Sure. You want to take a short
23 break?

24 MR. RICHARDSON: Yes, sir.

25 (WHEREUPON, a short break was taken.)

1 (WHEREUPON, a juror walked out of the
2 courtroom.)

3 (WHEREUPON, the juror walked back into the
4 courtroom.)

5 THE COURT: Yes, sir, you may proceed.

6 MR. RICHARDSON: Thank you, Your Honor.

7 I believe where I left off is that they all talk
8 about the holster. And that this is where Massey
9 kept his weapon. And yet, when we find Massey,
10 there's no weapon in the holster. And I'll get to
11 that in just a minute.

12 Mr. Leach corroborates what they say, that he's
13 taken by gunpoint. And this is what Mr. Harris said
14 at the get-go, that they had taken him at gunpoint
15 and made him go up the stairs and knock on the door.
16 What Mr. Leach and all of them say is that when the
17 door opened that Mr. Massey, that Defendant over
18 there, struck the victim in the face.

19 Now, I called Dr. Ward to the stand. He showed
20 you and told you these pictures of the wound. That
21 corroborates exactly what everybody is saying, that
22 he was struck in the face with a handgun. And
23 Dr. Ward said it's consistent with that. It's blunt
24 force trauma that can be caused by pistol whipping
25 with a gun. Co-defendants admit that.

1 Ladies and gentlemen, there were several things
2 brought up in regards to Mr. Leach. I believe
3 Defense counsel brought up whether or not everybody
4 was wearing jeans. And there's a video tape in and
5 he says in there not real equivocal, not real
6 unequivocal, but he says I thought they were wearing
7 jeans, that type of thing. Well, ladies and
8 gentlemen, I submit to you, he's coming down the
9 steps, guys come up to him with masks on that look
10 like this, that's what he's looking at. He says he
11 was looking around. He's scared about this. It's
12 nighttime, he's being robbed and this and this and
13 that hockey mask are all around him with guns and
14 he's supposed to know what everybody's got on?
15 Really? And then he's in the midst of being shot at
16 and he's supposed to know what everybody has on?

17 What do we do know? We do know that the
18 Defendant is found in the woods hiding outside that
19 apartment complex with a gunshot to him. We do know
20 that the Defendant has -- is found in proximity of
21 this mask with his DNA in it. What did Haskell
22 testify to?

23 He said, The guy standing over my brother had a
24 ski mask with a gun.

25 This weapon, it's in close proximity to that, to

1 this mask, in close proximity to where the Defendant
2 was. The Defendant has no holster. This is the
3 Defendant's gun. That's what we know. So, who has
4 on what, ladies and gentlemen, is dependent upon
5 Mr. Leach? Come on. Use our common sense here.
6 This is in proximity. This picture is in proximity.
7 And you'll have these back in the jury room. That's
8 the proximity of the mask to the gun. And you can
9 see the woods where the Defendant was hiding.

10 At some point in time, Mr. Steele goes into
11 about hairs. He keeps going on about hairs and
12 hairs. I put up the DNA people, we did look at
13 hairs. You don't get DNA off everything. In order
14 to get DNA off of hair, you have to get the roots
15 out. You don't always get DNA. This is not a
16 perfect system, not a perfect world. We try to get
17 DNA where we can. In fact, we did get it in this
18 particular case.

19 There was some mention about gunshot residue.
20 Ladies and gentlemen, the Defendant is found in the
21 woods with a serious injury to his leg. He had been
22 shot. They pull him out. What's the first thing
23 they do? They go and get EMS to have EMS start
24 working on him. This is not a time to be getting
25 gunshot residue. He is given medical treatment and

1 that's the main concern of Investigator Hammett and
2 others out there that he get medical treatment and
3 get sent to the hospital where he goes into surgery.
4 At this point in time, gunshot residue is not a
5 thing. He's out in the woods with wet leaves. He's
6 being treated. His hands are being dealt with in the
7 emergency room.

8 In fact, you can't get it after six hours as
9 Investigator Hammett testified to. What happens to
10 gunshot residue, as was testified to, is that when
11 the gun is shot, the residue comes out of that gun.
12 People in the area are going to get residue all over
13 them. As you heard, there was several guns shot in
14 this case. There's gunshot residue on everyone.
15 It's not reliable in this particular situation
16 anyway. But it would not have been a way that he
17 could get the gunshot residue of him in the hospital
18 getting surgery.

19 And you heard Mr. Armstrong tell you that he
20 looked at the shells and compared these shells as the
21 casings up in the apartment. In the apartment at the
22 doorway and also there were shell casings over by the
23 couch. And this is -- when I was putting all this in
24 for your review, I showed you pictures of it. They
25 were all 9-millimeter, 9-millimeter. They were all

1 shot -- he said no question about it, it's like a
2 fingerprint, they were shot out of this gun. This
3 gun that was found in the yard, next to the mask with
4 his DNA on it and him hiding in the woods.

5 He also testified that the slug that came out of
6 the victim's body, picture was taken of it. It's
7 also in evidence for your review, the slug, was not
8 shot out of a 38 revolver, but this came from a
9 9-millimeter. Granted, he can't say it came from
10 this particular 9-millimeter. He can say it came
11 from a 9-millimeter Glock. That's what he testified
12 to. This, ladies and gentlemen, as testified to, is
13 a 9-millimeter Glock.

14 Also, corroborating the co-defendants' testimony
15 and Mr. Leach's testimony is Haskell Nutridge, the
16 brother of the victim. What happens with him? He
17 hears a commotion. He grabs a gun. And he enters
18 into his living from his bedroom and he sees his
19 brother with the Defendant over him. And remember
20 that Leach said first person in was the last person
21 to leave and that person was bleeding. That's
22 important. This, on top of -- over his brother with
23 a gun saying, Give me the shit.

24 That's exactly what Mr. Harris said, by the way.
25 He corroborates -- he says exactly what Mr. Nutridge

1 says. He don't know Mr. Nutridge. Exact same
2 statement, Give me the shit. He sees this, he sees
3 this, he sees this in the background. He has every
4 right at that point in time to unload his weapon into
5 those people to protect his brother and protect
6 himself. Every right. And, in fact, if he hadn't
7 shot him, I don't know if we would be here today.
8 Because when he got shot, he couldn't get away. And
9 he told the police from the get-go -- when they asked
10 him what happened, he told the police as he testified
11 on the stand, this investigator or another
12 investigator that he had a 38 and he shot back. He
13 admitted that from the get-go.

14 Now, ladies and gentlemen, I talked about the
15 DNA. And the DNA in this case shows that the
16 Defendant had this mask on. The percentages were
17 astronomical. I had never even heard that figure
18 before. But we have seven million people on earth
19 and it was far more, far more than that. His DNA --
20 he was wearing this mask. And this was the mask that
21 was standing over the brother.

22 And once again, I tell you, ladies and
23 gentlemen, that Haskell said that he went back in the
24 room and he heard several shots after that. I submit
25 to you that that's when the victim was shot. And you

1 heard Mr. Leach say that he -- the last person out of
2 that place was the person that was bleeding. Outside
3 the victim, who was the only person bleeding?

4 Mr. Massey. The hand of one is the hand of all. I'm
5 firmly convinced Mr. Massey shot him. But if he was
6 shot by another 9-millimeter, then Mr. Massey is just
7 as guilty for that happening.

8 But Dr. Ward testifies that his leg is bent.

9 Remember Haskell saying, He's over my brother.

10 Dr. Ward says his leg was bent, it was a downward
11 trajectory that came out the back of his leg. That
12 absolutely corroborates what Mr. Haskell Nutridge
13 testified to. Because that man is over his brother
14 after he's pistol whipped in the face, knocking him
15 back.

16 Is it just a coincidence, ladies and
17 gentlemen -- using our common sense, is it just a
18 coincidence that the Defendant is found hiding in the
19 woods, bloody, adjacent to the apartment building,
20 these woods are right behind the apartment building,
21 in close proximity to this mask with his DNA on it
22 and to this gun, which is in close proximity to the
23 mask and also the Defendant, that shot the shells
24 that are found in that apartment, with a holster that
25 everybody said is where he kept his gun, but yet when

1 found is empty? It is just a coincidence that two of
2 the co-defendants when they were arrested immediately
3 give a statement saying yes, this is all of us. We
4 put masks on and he was with us. The Defendant was
5 with us. Once they do that, they're guilty. They
6 give them the statement. They put themselves under
7 the bus. Who else was there? Mr. Massey. Is that
8 just a coincidence? It is just a coincidence that
9 all this, this man out in the woods, bleeding, not
10 coming out, not wanting the police to find him,
11 everything else that happened in this case, that
12 Haskell Nutridge corroborates everything he saw?

13 I submit to you, ladies and gentlemen, if we use
14 our common sense, this is what happened that night.
15 Haskell and his brother, Anthony, called Yellow Boy,
16 went to work at All My Sons. They got up that
17 morning, went to work and moved furniture all day
18 long. They got off work, they go home. They don't
19 go anywhere. They go home. They eat. He admitted
20 that he smoked some marijuana. He's telling you very
21 truthfully that he smoked some marijuana and drank
22 some beers. Then he got tired and he went to sleep.

23 While they're at work, what are the
24 co-defendants doing, including this Defendant? What
25 are they doing? They're planning a home invasion

1 where they're going to steal and they're going to
2 rob. And that's why he's saying, Give me the shit.
3 Because he's robbing him. They planned it. They're
4 at work, the co-defendants are planning to rob them.
5 They come home from work, in their apartment, and
6 co-defendants head that way. They go to Dolphin.
7 They called put on masks. They arm themselves. The
8 Defendant has his in the holster. They approach
9 Mr. Leach. Mr. Leach does not have a dog in this
10 fight. He's an unfortunate parties that got caught
11 in the middle of this.

12 At that point in time, they see opportunity.
13 Well, we're going to rob them, but let's go rob this
14 guy. Let's get whatever we can. Give me your stuff.
15 They don't get any stuff from Mr. Leach. But they
16 still going to use this opportunity to use Mr. Leach
17 in any form or fashion. They go and have him knock
18 on the door. The minute the door is opened, it's
19 opened by the victim, Anthony, Yellow Boy, not one
20 argument, nothing. Not one thing said. First thing
21 he opens the door is Massey, this mask on, takes this
22 gun and he bangs it onto the bridge of his nose. Can
23 you imagine what that does to a person? I'm sure it
24 knocked him back. It knocked him to his knees.
25 That's what Haskell heard.

1 Haskell gets up, comes out of his room and sees,
2 after he's knocked him down, him over him. He says
3 he's got to defend his brother from these masked men
4 from this horrific event. The guy's got a gun on
5 him. So, what does Haskell do as he has every right
6 to do? He attempted to protect. And he was firing,
7 firing it to the extent that he had to fall back into
8 his room. Then what happened? This Defendant has --
9 this Defendant has that gun over that victim and at
10 some point in time, he shoots him three times, two of
11 which are fatal.

12 In his cowardly way, he decides what I'm going
13 to do is I'm going to run out of there. I'm going to
14 get away. But can he get away? No. Because,
15 luckily, Haskell had hit him in the leg. So, he goes
16 and hides. Before he hides, he throws this -- got to
17 get the mask away from him, can't get caught with the
18 mask. He forgot about DNA. Got to throw the pistol
19 away that I used to kill the guy, can't have that on
20 me. Well, he can't get very far. His only choice is
21 to hide. So, he's in the woods and he's hiding with
22 EMS around him and police officers around him, for,
23 at least, an hour, I submit to you, much longer.
24 But, at least, an hour.

25 Haskell comes out of the room, still has his

1 gun, he goes to find his brother. Where my brother?
2 Yellow Boy, Yellow Boy. He hears him.

3 Says, Are y'all okay?

4 No, I been shot.

5 Haskell had worked all that day with his
6 brother, living with his brother, went down those
7 steps and saw his brother laying out on the steps.
8 Bloody, shot, unable to move. In the meantime,
9 what's Massey doing? He's hiding in the woods. He's
10 getting away from him. Mr. Nutridge comes up to his
11 brother and tries to talk to him. And unfortunately,
12 the last thing that Haskell heard from his brother
13 was his last breath of life. And he died in his
14 brother's arms. All because that Defendant and those
15 co-defendants decided to go out and rob somebody, put
16 masks on and using guns.

17 Ladies and gentlemen, there's -- I'm
18 respectfully asking you to come back with a verdict
19 of guilty on all counts against the Defendant. Thank
20 you.

21 MR. STEELE: May it please the Court?

22 THE COURT: Absolutely.

23 CLOSING STATEMENT

24 MR. STEELE: May it please you, ladies and
25 gentlemen of the jury, and Mr. Foreman. I told you

1 at the beginning of this trial that you all were
2 going to be making a very important decision, maybe
3 one of the most important decisions ever made in the
4 life of a fellow human being. And you're how to do
5 it. You're about to do it with your deliberations.

6 Obviously, Mr. Massey has not testified in this
7 case. And the Judge has told you several times and I
8 will make mention of it again right now, you cannot
9 consider the fact that he has not testified. You
10 can't even discuss the fact that he didn't testify
11 back in the jury room. Because we have the
12 Constitution of the United States. And the
13 Constitution of the United States says that you
14 cannot be compelled to testify. You cannot be
15 compelled to give evidence. So, he is exercising his
16 right. And we are trusting you, ladies and
17 gentlemen, to honor that what the Court has already
18 called a sacred right not to testify. There are some
19 cases so weak, and I would submit to you that this is
20 one of them, where there is no advantage to
21 Mr. Massey presenting evidence.

22 This is a case that doesn't have a reasonable
23 doubt, although, a reasonable doubt requires you to
24 come back with a verdict of not guilty under your
25 oath, this is a case shot through with reasonable

1 doubt. Reasonable doubt can arise out of the
2 evidence. And I'm going to discuss the evidence with
3 you today. But reasonable doubt, ladies and
4 gentlemen, can also arise out of the lack of
5 evidence, what is not there, what should be there,
6 what common sense tells us ought to be there, what
7 common sense tells us was there, but just wasn't
8 pursued or wasn't examined by law enforcement in this
9 case.

10 There are no fingerprints. There was no effort
11 made out there that day to get any fingerprints off
12 this gun. Excuse me, off this gun or off any of the
13 exhibits here. There's not one fingerprint
14 connecting Timiya Massey to the offenses that he's
15 charged with here today. There are no head hairs
16 that have been examined. They examined some, but
17 they didn't find anything. This man has dreadlocks.
18 He would have had hairs. They didn't find one hair
19 that connects him to these offenses that he's charged
20 with. I would submit the absence of head hair, the
21 absence of fingerprints, all these things can give
22 rise to a reasonable doubt. Multiple reasonable
23 doubts.

24 The gunshot residue case. The officers who
25 testified tried to kind of minimize that, that's not

1 important, it's not conclusive, we don't do it all
2 the time, all these things. We were treating
3 Mr. Massey, therefore, we couldn't do the gunshot
4 residue test. Ladies and gentlemen, none of that
5 will hold up. In the first place, they could have
6 done the gunshot residue, it must have some validity.
7 It must have some worth because they did it on
8 Mr. Leach. Mr. Leach, who's not charged with
9 anything, who's not even a Defendant in this case,
10 they did a gunshot residue test on him. Why not on
11 Mr. Massey? That could have told us something. They
12 say, well, we were giving him treatment. He was out
13 there an hour, at least, maybe -- one officer said he
14 could have been there two or three hours. He was out
15 there plenty of time for them to have not only
16 treated him for his wound, but also conducted the
17 gunshot residue test. I would submit to you it is
18 unfortunate that we don't have a gunshot residue
19 test. It could tell us something. It could
20 exonerate this man from involvement. But they didn't
21 do it. And they come in here and they just pass it
22 off as not important. But it was important enough to
23 have done it on Mr. Leach. Why not Mr. Massey?

24 Where is the driver? He's not even charged.
25 Mr. Harris and Mr. Williams both talked about

1 somebody named Cornelius. One of them knew his name,
2 one didn't. He was allegedly the driver in this
3 thing. Where is Cornelius? We haven't heard
4 Cornelius's last name. To our knowledge, he hasn't
5 even been charged in this case. His absence, another
6 reasonable doubt.

7 Where is Haskell Nutridge's 38 pistol?
8 Apparently, it got gone that night. We don't know
9 where. The 38 pistol would be an important piece of
10 evidence in this case. But either through
11 mishandling or incompetence or whatever it was, we
12 don't have the 38 pistol. Apparently, during the
13 time, Mr. Nutridge says it got gone in the eight
14 minutes between the time of the shooting and when law
15 enforcement got there. But we don't know, maybe it
16 got gone after law enforcement got there, but it's
17 not here. And I would submit to you, its absence is
18 another reasonable doubt.

19 You know, the chain of custody is one of the
20 most important things in a criminal case. And a
21 chain of custody is only as strong as its weakest
22 link. And in this case, we have a very, very weak
23 link in the chain of custody for the DNA evidence,
24 and for that matter, some of the evidence that was
25 collected. And that weak link is named Josh

1 Spurgeon. Josh Spurgeon worked in forensics for two
2 years. At the time of this event, he had only been
3 working there about a year and a half. And during
4 that period of time, he received not one, not two,
5 but three write-ups for doing the wrong thing.

6 As you know already from hearing the testimony,
7 but I want this to be clear. On July 20th, 2015, he
8 got a letter of warning for failing to do acceptable
9 work by putting incorrect information and failing to
10 enter info at all. He was suspended for two shifts.
11 He was also suspended for losing evidence, for
12 improper packaging of evidence and improperly
13 scanning evidence. On February 29th, 2016, he got a
14 verbal letter of warning for insufficiency and
15 performance of duties. He only worked there two
16 years, ladies and gentlemen, and he gets three
17 write-ups for mishandling evidence. I would submit
18 to you, some people go their whole careers without
19 mishandling evidence or doing the wrong thing in
20 their career. This man was written up three times in
21 a short period of time.

22 There is the weak link in the DNA evidence.
23 There is the reason that it cannot be trusted. And
24 there is the reason I would submit that a reasonable
25 doubt arises out of the handling of the DNA evidence

1 by the Greenville County Sheriff's Department. It
2 can't be corrected. We can't go back and undo that.
3 We can't go back and make Mr. Spurgeon do the right
4 thing. We can't go back and correct all these events
5 of mishandling. They are asking you, the State,
6 ladies and gentlemen, the government over here, is
7 asking you to convict Timiya Massey on the testimony
8 of a man who does not have the confidence of his own
9 employer. Nevermind that we shouldn't have
10 confidence in him, the people he works for don't have
11 confidence in Mr. Spurgeon. Otherwise, he wouldn't
12 have been written up three times for mishandling
13 evidence. It would be dead wrong to convict Timiya
14 Massey where Josh Spurgeon is anywhere in the chain
15 of evidence with his record of mishandling evidence
16 and doing the wrong thing.

17 You're going to hear the testimony and it's --
18 oh, here it is. You're going to hear the testimony
19 of Mr. Leach back in the jury room. Of course,
20 Mr. Leach came in here just telling what he saw. He
21 gave a recorded statement right after this event
22 happened. When he got in here, he changed a couple
23 of things, but he admitted in his conversation with
24 me on cross-examination that that statement was taken
25 a couple hours after the event and that was probably

1 accurate.

2 And he said some important things, ladies and
3 gentlemen, that should give rise to a reasonable
4 doubt in this case. Mr. Leach was unequivocal in his
5 statement two years ago that everybody that came up
6 to him and grabbed him and forced him up to that
7 door, everybody had blue jeans on. You can hear him
8 say it. Every one of you can listen to this and you
9 can hear him say they all had blue jeans on, no
10 question about it. The testimony is undisputed and
11 the facts are undisputable that Timiya Massey had on
12 a pair of gray sweatpants, that's not blue jeans. I
13 don't believe you can confuse gray sweatpants with
14 blue jeans. I think that's a pretty distinct
15 difference. And it says -- it ought to say to you,
16 ladies and gentlemen, that that is a reasonable
17 doubt. If Mr. Leach is convinced that they all had
18 blue jeans on, there is no way that one of the people
19 who came up to him can be Timiya Massey. That's not
20 just a reasonable doubt, that's almost conclusive
21 proof, ladies and gentlemen. And I would submit to
22 you, there is again, another reasonable doubt. He
23 also, Mr. Leach says, that he was not paying
24 attention, he was kind of looking away. But at the
25 same time, nobody can mistake blue jeans for gray

1 sweatpants. Therein, again, a reasonable doubt.

2 You all are the judges of the credibility of the
3 witness. And that might be your most important
4 function. We want you, the system of justice that
5 we're all working in today want you, ladies and
6 gentlemen, to use your common sense. Look at the
7 witnesses who testified from that witness stand and
8 decide whether or not they're credible. You know,
9 that's kind of an intangible thing, I would submit.
10 But one of the things you can consider is the
11 demeanor of the witnesses on the witness stand.

12 I want to talk to you about the demeanor of
13 Mr. Williams and Mr. Harris. They both were similar
14 in some respects. They gave largely one-word
15 answers, yes, no, somewhat, for a long period of
16 time, until I objected to leading questions from the
17 government over here. Did you do so and so? Yes.
18 Did you do so and so? No. Did so and so happen?
19 Yeah. Their answers weren't just one word, they're
20 almost grunts coming out of these fellows. Did they
21 act like they were telling the truth?

22 The Judge is going to charge you that a
23 reasonable doubt should cause you to hesitate to act
24 in an important matter. Would you act in an
25 important matter on anything that Williams and Harris

1 told you in the manner that they told you? And I
2 haven't even gotten to the substance of their
3 testimony yet. I'm just talking about the way they
4 looked? Did they look like people who were telling
5 the truth? Did they look like people who were
6 credible witnesses? Did they give their statements
7 to you with sufficient credibility that you would not
8 hesitate to act? Were you firmly convinced? I would
9 submit you can't be. There's no way anybody would
10 make a decision relying upon Harris and Williams.
11 They are not believable.

12 And what are some of the things that they said?
13 What are some of the inconsistencies? First of all,
14 Mr. Harris says that he had a silver gun. I asked
15 him about this one. No, that can't be my gun, I had
16 a silver gun. Well, Nyerere Williams said that
17 Mr. Harris had a black gun when he came back to the
18 car. Well, I would submit to you it's hard to make
19 that mistake. You know, a silver gun doesn't look
20 like a black gun any more than jeans look like gray
21 sweatpants. So, I would submit to you the fact that
22 they're making it up as they go along is the reason
23 they got it wrong. They're lying to you, ladies and
24 gentlemen. They don't have any credibility. They
25 are not believable.

1 And Mr. Williams says -- or makes it sound like,
2 at least, that Terry, T Black Harris was the primary
3 planner. He said T black was the one that told him
4 everything and sort of came up with the plan. Well,
5 obviously, T Black Harris is not going to say that.
6 So, T Black Harris, he says the major planner was
7 Mr. Massey. So, who do we know what to believe?
8 Wait until next week, maybe they'll have a different
9 version.

10 And Nyerere Williams, he told two completely
11 different to law -- well, one completely different
12 story to law enforcement, then another different
13 story to you, ladies and gentlemen, in here
14 yesterday. He starts off saying well, all I did was
15 I just put on a mask and I stood out in the parking
16 lot. I didn't do anything else. And he admits
17 that's what he said. Well, he waits a year or two
18 and then he comes in here and says no, that's not
19 right. I didn't wait out in the parking lot, I went
20 up to the front door, also. I was right there with
21 them. I went on up there. He finally said it very,
22 very reluctantly.

23 Well, what are we supposed to believe? Are we
24 supposed to believe his statement from two years ago
25 or are we supposed to believe his statement

1 yesterday? You wait another week, maybe he'll have a
2 third version. Well, we don't have that luxury.
3 We've got to make a decision now. We're here today
4 trying this case. But I would submit to you, it
5 certainly effects a person's credibility, doesn't it,
6 when they tell one set of facts two years ago and
7 another set of facts now? And I don't know if
8 there's any in between that or not. But it certainly
9 doesn't enhance a person's believability if they tell
10 two different versions about the same thing. So he
11 changed his story. The government doesn't like that
12 one, so he changed his story.

13 Terry, T Black, Harris. This ought to really
14 cause you pause on his believability. He is serving
15 a 10-year sentence in the federal penitentiary. You
16 heard me ask him about what he's expecting for his
17 testimony. He said, Well, I'd like to have
18 concurrent time. That's what he's expecting. You
19 know what concurrent time is, ladies and gentlemen,
20 is that means he would serve whatever sentence he
21 gets out of this -- and by the way, neither Williams
22 or Harris has pled guilty. They talked about them
23 being guilty. Well, right now, they're not guilty
24 because they haven't pled guilty and they certainly
25 haven't been sentenced yet. So they're waiting to

1 see how they do in here before they decide what kind
2 sentence they get.

3 Well, Mr. Harris is serving a 10-year sentence
4 in the federal pen. And he says he'd like to have
5 concurrent time. What concurrent time means is he
6 would serve whatever sentence he ultimately gets for
7 this, if he gets anything, he hasn't got anything
8 yet. But if he gets anything, he wants to serve it
9 the same time that he's serving his federal sentence.
10 What does that mean? That means he wouldn't get
11 anything. If he gets anything under 10 years, that
12 means -- and serves it concurrently, that means he
13 would get off scott free for what he's saying he did
14 in this case. So, that's what he's expecting. And
15 that, ladies and gentlemen, is his motivation to lie.
16 A man with that kind of time in jail at stake will do
17 anything, say anything, tell any lie to get out of
18 that trouble or to minimize that trouble. And that's
19 what he's trying to do.

20 His co-defendant, Nyerere Williams, he says he's
21 just a good citizen doing the right thing. He didn't
22 use the word good citizen, but he did say I want to
23 do the right thing. This is a fellow with a criminal
24 record, he's in custody, he's admitted to this. And
25 he comes in here and tells you, ladies and gentlemen,

1 I just want to do the right thing. He doesn't want
2 to do the right thing. He wants to get some kind of
3 deal to minimize his sentence for what he's accused
4 of here. That's what he's trying to do. So, these
5 gentleman don't have any credibility. Neither
6 Mr. Williams or Mr. Harris is believable. And I
7 would submit to you they didn't look believable when
8 they testified and the stories they told do not add
9 up to scrutiny or to the test of common sense.

10 You know, we all have our roles in this thing
11 and we all have our responsibility. And your's is
12 the primary responsibility. And I started off a
13 couple days ago, telling you ladies and gentlemen
14 that I appreciate your service on this. Now, I've
15 got sense enough to know that you didn't come down
16 here voluntarily to serve on this jury. But you did
17 respond to the subpoena and you have come in here and
18 you have come through a several-tier selection
19 process. So, on behalf of Timiya Massey, I want to
20 thank you for your service in this case.

21 And when you're back in that jury room, I want
22 you to consider the things that we've talked about
23 out here. And remember, every criminal defendant,
24 and that includes Timiya Massey, comes into court
25 clothed with a presumption of innocence. He is

1 presumed innocent and he remains under that
2 presumption of innocence unless every reasonable
3 doubt is removed from every one of your minds. And I
4 could lists all those reasonable doubt again. No gun
5 residue test, no fingerprints, no testing of hairs.
6 The highly, highly unbelievable testimony of Harris
7 and Williams. The technician, Mr. Spurgeon, the
8 forensics fellow, who made a mess out of collection
9 of evidence in other instances, and I would submit to
10 you you shouldn't trust him in this instance either.
11 You shouldn't trust him to the extent that you are
12 being asked to trust him, to the extent that you're
13 being asked to convict Timiya Massey of some very
14 serious offenses that could have very serious
15 consequences on his life.

16 So remember, ladies and gentlemen, this is a
17 criminal case. And we in America, we put such a high
18 price on freedom from conviction of a criminal
19 offense. As I told you in the beginning, we say that
20 the greater weight of the evidence or just tipping
21 the scales a little bit, like in a civil case, is not
22 enough. We want to make sure that the people that
23 are convicted in our criminal justice system are
24 guilty of what they are accused of. So, we have said
25 greater weight or tipping the scales a little bit is

1 not enough. We require proof of guilt beyond a
2 reasonable doubt. All these reasonable doubts that
3 I've enumerated for you, you don't need all of those,
4 ladies and gentlemen, you just need one. You just
5 need a reasonable doubt. And under our law, if you
6 have a reasonable doubt, you are required to come
7 back with a verdict of not guilty in the case of
8 Timiya Massey. So remember, those scale have to be
9 all the way down. They have to be down beyond proof
10 of guilt beyond a reasonable doubt. And the
11 government in this case has failed miserably to do
12 that. So, I ask you to come back with a verdict of
13 not guilty.

14 JURY CHARGE

15 THE COURT: All right, ladies and gentlemen, I'm
16 about to give you the charge on the law. It's going
17 to take about 25 minutes. Does anybody need to take
18 a break before I start? Everybody feel good? Okay.
19 Good.

20 All right, ladies and gentlemen, as we started
21 this case, I told you that you had certain functions
22 and roles to perform and I have certain functions and
23 roles to perform as well. My role is judge of the
24 law, which means that it is my responsibility to
25 charge you the law that's relevant to the evidence

1 that's been presented in this case.

2 Now, under your oath when you began this case,
3 you promised, you swore to try this case in
4 accordance with the law and the evidence. Therefore,
5 under your oath, you must accept the law as I give it
6 to you. If you come into this courtroom with any
7 prior opinions, any prior dispositions, or
8 predispositions regarding what the law is or what the
9 law should be, I charge you at this point to
10 disregard that. Because under your oath, you must
11 accept the law as I give it to you.

12 Now, you recognize that your role in this case
13 is to be the judges of the facts, the finders of
14 facts. You have the sole and exclusive authority to
15 determine what the facts are in this case based on
16 the evidence that's been presented. If you've heard
17 me say anything during this case which gives you the
18 impression that I have an opinion about the facts, I
19 charge you now to disregard that. I truly don't have
20 an opinion about the facts.

21 Now, ladies and gentlemen, in your role as
22 jurors in this case, you will determine whether the
23 State has met its burden of proof. Now, the State
24 has the burden of proving each and every element of
25 every offense beyond a reasonable doubt.

1 Now, you have seven charges before you in this
2 case. Seven charges. Six indictments, seven
3 charges. Now, understand, that you must consider
4 each and every one of those charges independent of
5 the other. That is, you're going to look at each one
6 of them independently and determine whether the State
7 has met its burden of proof.

8 Now, that means that you'll consider one charge
9 and you'll decide whether the State has met its
10 burden of proof, then you'll consider the next
11 charge, and the charge, then the next charge.
12 Understand that if you find that the State has met
13 its burden of proof on one charge, that does not mean
14 that you will find -- that you must necessarily find
15 that the State has met its burden of proof on the
16 remaining charges. Also, understand that if you find
17 that the State has not met its burden of proof on one
18 charge, it doesn't necessarily follow that you must
19 find that they have not met the burden of proof on
20 the remaining charges. You look at them all
21 independent of one another and make that
22 determination.

23 Now, ladies and gentlemen, as we started this
24 case and we started jury selection, I told you that
25 the Defendant is presumed innocent. And the

1 Defendant retains that presumption of innocence until
2 12 deliberating jurors determine whether or not the
3 State has met its burden of proof. As we sit here
4 right now, Mr. Massey retains that presumption of
5 innocence. And that presumption of innocence will
6 not be stripped of him until and unless 12 jurors
7 determine that the State has met its burden of proof.

8 Now, of course, we've bandied around this term
9 of reasonable doubt any number of times. We've
10 talked about it, so it probably serves us well for me
11 to define that for you. Now, you may have been on
12 other juries in your lifetime or you may have seen
13 television programs or you may have had courses in
14 some term of school which has discussed burdens of
15 prove. In a lot of cases in the United States of
16 America, we have a burden of proof -- generally, in
17 civil cases, we'll have a burden of proof of
18 preponderance of the evidence. That is that it's
19 more likely than not. In some type of cases, we have
20 the burden of proof of clear and convincing evidence.
21 Sometimes that happens when you have civil causes of
22 action for fraud or when a party may be asking for
23 punitive damages. But in a criminal court, the
24 burden of proof is beyond a reasonable doubt. It's
25 the highest burden of proof that there is under the

1 law. And proof beyond a reasonable doubt has been
2 defined as the type of proof which would cause a
3 reasonable person to hesitate to act. Now, in other
4 words, brief -- excuse me, proof beyond a reasonable
5 doubt is proof that leaves you firmly convinced of
6 the Defendant's guilt.

7 Now, there's nothing on the face of this earth
8 that can be proven with absolute certainty. And the
9 law does not require the State to prove its case
10 beyond possible doubt. But understand, ladies and
11 gentlemen, after your review of the evidence, if you
12 are firmly convinced of the Defendant's guilt, then
13 you would find him guilty under your oath. However,
14 after your review of the evidence, if you feel there
15 is a real possibility that he is not guilty, then
16 under your oath, you would find him not guilty of the
17 offense.

18 Now, ladies and gentlemen, you will determine
19 whether the State has met its burden of proof by
20 reviewing all of the evidence. Part of reviewing
21 evidence is to look at the credibility of witnesses.
22 And you'll decide in your sole and exclusive
23 authority whether to believe witnesses or not.

24 Now, you come into this courtroom with certain
25 inherent skills that you use every single day in your

1 common lives and you make determinations as to
2 whether someone should be believed or not. And you
3 do that by listening to what they have to say,
4 listening to how they say it, how they express
5 themselves. You look at their facial expressions,
6 you look at their body language. You also look and
7 determine whether someone has something to gain or
8 something to lose as a consequence of his or her
9 testimony. And from all that, you use your common
10 sense, your common intuition to determine whether
11 somebody should be believed or not.

12 Now, ladies and gentlemen, when you're
13 determining whether to believe somebody, you're going
14 to look and determine whether a part of his or her
15 testimony may be believed and part of it may or may
16 not be believed. That is, you can take a part of
17 someone's testimony and think it's very believable
18 and put great value and weight upon it and then
19 discount the rest. You can discount of all or you
20 can take all of it and take it with great weight on
21 it and believe that it is credible testimony. It's
22 entirely up to you. Entirely up to you.

23 I'll take a moment just to restate, expert
24 witnesses. You did hear testimony from expert
25 witnesses in this case. That doesn't have any

1 preferred value, you decide whether it's believable
2 and you decide whether it is credible as well.

3 Now, ladies and gentlemen, again, I'll restate
4 the Defendant didn't testify, that's his prerogative.
5 You can't hold it against him and you can't discuss
6 it in your jury room.

7 Now, ladies and gentlemen, in any case that
8 comes before the Court, in whatever context, that is
9 a civil case or in a criminal case, evidence is going
10 to take one of two forms. It's either going to be
11 direct evidence or it's going to be circumstantial
12 evidence. Now, you've probably heard both of those
13 terms. And understand that the law does not prefer
14 direct evidence or circumstantial evidence or
15 circumstantial evidence over direct evidence. You
16 decide what weight and what value any type of
17 evidence has regardless of how it's characterized.

18 Now, direct evidence is evidence which
19 immediately establishes a fact to be proven.
20 Circumstantial evidence, by contrast, is proof of a
21 chain of facts or collateral facts that when taken
22 together prove the main fact to be proven. Now,
23 that's a pretty simple definition, but I find it's
24 more helpful for me to give you an example that helps
25 you conceptualize it a little bit better.

1 So, let's say one January morning, you're in
2 your house and when you're going to bed, you look out
3 your front window, or the front door and you see that
4 there's no precipitation on the ground in front of
5 your house or your apartment. And the next morning,
6 you wake up and you look out that same window or that
7 door and you see that there's a blanket of snow on
8 the ground. You also see in the snow footprints
9 which lead to your front door and which lead away.

10 Now, under that set of circumstances, you've got
11 direct evidence that it snowed last night because
12 it's immediately established by and through the
13 presence of the snow. You can touch the snow, you
14 can feel it, it's right there. But you have
15 circumstantial evidence that sometime during that
16 night or early that morning, someone came to your
17 doorway and they walked away. Now, you can't see
18 that person, you can't have a conversation with them.
19 You can't touch them, but you know as a consequence
20 of the timing of the snowfall and the presence of the
21 footprints in the snow that someone must have come to
22 your door and walked away. That's circumstantial
23 evidence. Again, the law doesn't prefer one over the
24 other. You decide what has weight and what has
25 value. Understand, however, if the State relies upon

1 circumstantial evidence, all of the circumstances
2 when taken together, must point conclusively to the
3 guilt of the accused and not merely raise a
4 suspicion.

5 All right, ladies and gentlemen, I'm going to go
6 over the specific law with you in this case. Now, I
7 do not like to read. And you notice that I've not
8 read much to you up to now. As a matter of fact, I
9 haven't read anything to you up to now. But it's
10 important in this case for me to get precise
11 definitions precisely right. So, because this is an
12 important case for the State and for y'all, I'm going
13 to do a little bit of reading to you. Again, I
14 apologize to you up front for that because I think
15 that's boring and it suggest to you that, perhaps,
16 I'm either too dumb to know the law or I'm too lazy
17 to memorize it. But again, there's a lot of law and
18 I need to get it precisely right. So, I apologize to
19 you in advance for reading some to you. But we're
20 going to go over all of the charges and I'm going to
21 define them for you, okay?

22 So, the first indictment that you have is one
23 for murder. The State must prove beyond a reasonable
24 doubt that the Defendant killed another person with
25 malice aforethought. Malice is hatred, ill will or

1 hostility towards another person. It's the
2 intentional doing of a wrongful act without just
3 cause or excuse and with an intent to inflict an
4 injury or under circumstances that the law will infer
5 an evil intent. Malice aforethought does not require
6 that will malice exist for any particular time before
7 the act is committed, but malice must exist in the
8 mind of the Defendant just before and at the time the
9 act is committed. Therefore, there must be a
10 combination of the previous evil intent and the act.

11 Malice aforethought may be expressed or
12 inferred. That is direct evidence -- that is either
13 by direct evidence or by inference from the facts and
14 circumstances which are proved. Expressed malice is
15 shown when the person speaks words which express
16 hatred or ill will for another or when the person
17 prepared beforehand to do the act which was later
18 established. Malice may be inferred from conduct
19 showing a total disregard for human life. Inferred
20 malice may also arise when the deed is done with a
21 deadly weapon.

22 So, ladies and gentlemen, to summarize, the
23 State must prove beyond a reasonable doubt that the
24 Defendant killed another person with malice
25 aforethought.

1 The next charge that you have to consider,
2 ladies and gentlemen, is attempted murder. In order
3 to prove this crime, the State must prove the
4 Defendant attempted to kill another person with
5 malice aforethought. Now, ladies and gentlemen, I've
6 already defined for you malice, hatred or ill will
7 and evil intent. The distinction between attempted
8 murder and murder is that in an attempted murder
9 case, then the malice must be expressed. It can't be
10 implied. Expressed malice is shown when a person
11 speaks words which express hatred or ill will for
12 another or when the person prepared beforehand to the
13 act what was later accomplished. A specific intent
14 to kill is an element of attempted murder. Intent
15 means intending the result which actually occurs, not
16 accidentally or voluntarily. Intent may be shown by
17 acts and conduct of the Defendant and other
18 circumstances from which you may naturally and
19 reasonably infer intent.

20 So, ladies and gentlemen, again, to summarize,
21 the State must prove the Defendant attempted to kill
22 another person with malice aforethought.

23 All right, ladies and gentlemen, the next charge
24 that you will consider is first degree burglary. The
25 State must prove beyond a reasonable doubt that the

1 Defendant entered a dwelling without consent. A
2 dwelling is a building or portion of a building in
3 which a person ordinarily sleeps. A building
4 constructed as a dwelling that has never been
5 occupied cannot be considered a dwelling for purposes
6 of burglary. But a building is a dwelling even if
7 the residents are temporarily absent from the
8 building.

9 Next, the State must prove beyond a reasonable
10 doubt that the Defendant intended to commit a crime
11 at the time of the entry. The mere entry into a
12 dwelling without consent is not burglary. If the
13 intent to commit a crime is formed after the entry,
14 it is not burglary. On the other hand, if the
15 Defendant intended to commit a crime at the time of
16 the entry, it is a burglary even if the attempt was
17 abandoned after the entry. Intent may be shown by
18 acts and conduct of the Defendant and other
19 circumstances from which you may naturally and
20 reasonably infer intent.

21 Finally, ladies and gentlemen, for a charge of
22 burglary in the first degree, the State must prove
23 beyond a reasonable doubt that when entering the
24 building, or fleeing, the Defendant or accomplice was
25 armed with a weapon. Or ladies and gentlemen, the

1 State must prove that the Defendant entered the
2 dwelling during the period of nighttime.

3 All right, ladies and gentlemen, possession of a
4 weapon during the commission or attempt to commit a
5 violent crime is the next charge that you will
6 consider. The State must prove beyond a reasonable
7 doubt that the Defendant was in possession of a
8 firearm or visibly displayed what appeared to be a
9 firearm during the commission of a violent crime. A
10 firearm means a machine gun, automatic rifle,
11 revolver, pistol, or any pistol which will or is
12 designed to be readily converted to expel a
13 projectile.

14 In order to find the Defendant guilty of
15 possession of a weapon during the commission of a
16 violent crime, you must first find the Defendant
17 guilty of either committing a violent crime or
18 attempting to commit a violent crime. I charge you,
19 ladies and gentlemen, that in this case, the crimes
20 of murder, attempted murder and burglary first degree
21 are violent crimes.

22 Ladies and gentlemen, the next charge that
23 you'll consider is armed robbery. In order to prove
24 this offense, the State must prove beyond a
25 reasonable doubt that the Defendant took personal

1 property from the person or presence of another
2 person. Property is in the presence of a person that
3 is within the person's reach, inspection, observation
4 or control so that the person could if not overcome
5 with violence or prevented by fear keep possession of
6 the property.

7 The State must also prove beyond a reasonable
8 doubt that the Defendant carried the property away
9 intending to permanently deprive the owner of the
10 property and to use and keep the property for the
11 Defendant's own use. The slightest removal of the
12 property or the complete possession of the property
13 even for an instant by the Defendant is sufficient to
14 show a taking and carrying away of the property. The
15 taking and carrying away of the property must have
16 been done with violence or by putting the owner of
17 the property in fear of violence. Finally, ladies
18 and gentlemen, the State must prove beyond a
19 reasonable doubt that the Defendant was armed with a
20 deadly weapon during the robbery.

21 Ladies and gentlemen, the next item and the last
22 charge that you will consider is the charge of
23 kidnapping. The State must prove beyond a reasonable
24 doubt that the Defendant knowingly and unlawfully
25 seized, confined, inveigled, decoyed, kidnapped,

1 abducted or carried away another person without
2 authority of law. Now, the State doesn't have to
3 prove that the Defendant did all of those things, it
4 only has to prove that the Defendant did one of those
5 things.

6 I've read for you that laundry list of things.
7 I'm going to define those for you now. To do a thing
8 unlawfully is to do it willfully against the law.
9 Knowingly means without knowledge, consciously, not
10 accidentally. Seize means to take hold of suddenly
11 or forcefully. Confine means to limit, restrict or
12 enclose within bounds, imprison or shut or keep in.
13 Inveigle means to lure, entice, or lead astray by
14 false representations, promises or other deceitful
15 means. Decoy means to lure by or as if by decoy. A
16 decoy is something to entice a person into a trap.
17 Kidnap is to remove a person against his will by
18 unlawful force or fraud. Abduct means to carry off
19 secretly or by force. Carry away means to remove.
20 Kidnapping does not have to be for any personal or
21 monetary gain or for any illegal purpose, but may be
22 for any reason whatsoever.

23 Now, ladies and gentlemen, those are the
24 charges. Now, the State has presented the theory of
25 the hand of one is the hand of all. Ladies and

1 gentlemen, I charge you that if a crime is committed
2 by one -- or excuse me, by two or more people who are
3 acting together to commit a crime, the act of one is
4 the act of all. The person who joins with another to
5 commit an unlawful act is criminally responsible for
6 everything done by the other person which happens as
7 a probable or natural consequence of the acts in
8 carrying out the common scheme or purpose. If two
9 person are acting together -- acting -- are together
10 acting together, assisting each other in committing
11 the offense, the act of one is the hand of all, or as
12 it is sometimes said, the hand of one is the hand of
13 all.

14 Prior knowledge that a crime is going to be
15 committed without more is not sufficient to make a
16 person guilty of that crime. Mere knowledge that
17 another person is going to commit is crime, even if
18 the Defendant is present when the crime is committed
19 is not sufficient to convict. There must be actual
20 or constructive presence at the scene as a result of
21 prior arrangement. Therefore, a finding of a prior
22 arranged plan or a common scheme is necessary for a
23 finding of guilt. The State must prove beyond a
24 reasonable doubt by competent evidence that the
25 theory of the hand of one is the hand of all.

1 Now, ladies and gentlemen, when a person does an
2 act in the presence of and with the assistance of the
3 other, the act is done by both. Where two or more
4 acting with a common plan and present during the
5 commission of a crime, it does not matter who
6 actually commits the crime. However, ladies and
7 gentlemen, understand that mere presence at the scene
8 of a crime is not sufficient to convict one as a
9 principle on the theory of aiding and abetting.
10 Intent, as I've already defined to you, is a
11 necessary element. The State must prove the elements
12 of the hand of one is the hand of all beyond a
13 reasonable doubt.

14 Now, I'm done reading to you, okay. I have for
15 you seven verdict forms. And I'm going to go over
16 one of them for you before you get back to your jury
17 room because I want you to have seen it before you
18 begin your deliberations. And let's see, let's look
19 at the murder verdict form.

20 Now, ladies and gentlemen, here's the verdict
21 form. This is the one for the murder indictment.
22 Now, you'll see it has the caption of the case. Then
23 it has the indictment number and it has the charge
24 and it has as to which victim. Now, that may not be
25 important for murder and attempted murder, but it's

1 important for the armed robbery cases so that you'll
2 know which specific case you're considering and
3 which -- excuse me, which victim you are considering
4 by the caption that I have put on the indictment
5 form. So, I hope that helps you.

6 You'll see it starts, as to charge of murder as
7 to Anthony Kareen Nutridge, we, the jury, unanimously
8 find the Defendant. Now you have two choices. Now,
9 before I start talking about your choice, let me make
10 sure that I point out for you what this language
11 means, okay. We, the jury, unanimously, your verdict
12 must be unanimous. It must be 12 of you who agree.
13 It cannot be 11 to one or 10 to 2, it must be a
14 unanimous verdict on which you all agree. Also,
15 understand, that your verdict must be based on the
16 evidence that's been presented in this case. It
17 can't be based upon sympathy, passion, prejudice,
18 bias, caprice, or anything outside of the evidence
19 which has been presented in this case. It must be
20 based on the law and evidence and it must be reasoned
21 and in context therewith.

22 Now, ladies and gentlemen, you'll have two
23 options, okay. Now, I prepared these verdict forms.
24 I've given you an option of not guilty or guilty.
25 Please don't take anything from any messages or

1 signals from me through the order in which I put your
2 options on this verdict form, okay. There are two
3 options, I've got to put one first and one second
4 okay. So, don't take signals or messages from me.
5 I'm not sending you any messages or signals.

6 So, you'll look first at the murder case. And
7 you can go -- I'm just going through this one. You
8 can go in whatever order you want to go, okay. But
9 you see the first one is the murder case. And you'll
10 determine, has that State met its burden of proving
11 each and every element of the offense beyond a
12 reasonable doubt. If you find unanimously that the
13 State has not, then you would check not guilty. If
14 however, you found unanimously, all 12 of you, that
15 the State has met its burden of proving each and
16 every element of the offense beyond a reasonable
17 doubt, then Mr. Duncan, you would simply check --
18 now, you can check or you can initial, just whatever
19 makes it to me what your intent was, okay. Then once
20 you have resolved one of the charges, then
21 Ms. Duncan, you sign as foreperson and date. Then
22 you move to the next. And you would look at each
23 indictment and each verdict form separately and
24 independently. Okay.

25 Now, I'm going to send you back to your jury

1 room, but I don't want you to begin your
2 deliberations quite yet. This is the opportunity for
3 the attorneys to do a quality control on my charge.
4 It may be that I left something out or that I
5 misstated a proposition of law and I need to bring
6 you back in and correct something that I said. If I
7 have to do that, I'll bring you back out. I hope
8 that I won't, but if I do, I'll bring you back out
9 and I'll correct it or I'll add the proposition of
10 law that I have inadvertently left out.

11 You will know that it's time to begin your
12 deliberations when you get these verdict forms, okay.
13 When the bailiff opens the door and gives you these
14 verdict forms and says start your deliberations,
15 that's when you'll start your deliberations, okay.
16 You'll also get all of the evidence that's been
17 admitted as well. You'll get a tape that's been put
18 into evidence. And the clerk of court is going to
19 send back a computer, a clean computer, that you can
20 use to listen to the tape should you elect to, okay.
21 So please return to your jury room. Hopefully, I'll
22 be giving you the case in just a few minutes.

23 (WHEREUPON, the jury left open court at
24 approximately 10:43 a.m.)

25 THE COURT: All right. Exceptions to the

1 charge?

2 MR. RICHARDSON: Your Honor, I may be wrong, you
3 charged armed robbery, I believe the charge that we
4 have is attempted.

5 THE COURT: Okay, fair enough. I'll bring them
6 back out.

7 MR. RICHARDSON: I apologize. I'll check it
8 because my memory gets worse the older I get.

9 THE COURT: I understand. I'll bring them back
10 out and make sure that they understand that.

11 Okay, yes, sir.

12 MR. STEELE: He's right, I think. And I would
13 suggest that -- I want the record to reflect the
14 failure to charge my request to charge is the same,
15 too.

16 THE COURT: Okay. All right. Thank you. Thank
17 you.

18 All right. Yeah, I think did do -- I did say
19 armed robbery. The verdict form is clearly attempted
20 armed robbery. I'll bring them back out here and
21 I'll tell them that I discussed with them armed
22 robbery, it's actually attempted armed robbery and
23 then send them back, okay. I don't think it requires
24 any additional definitions of attempt. I've already
25 talked about that.

1 Okay, bring them back out.

2 (WHEREUPON, the jury came into open court at
3 approximately 10:45 a.m.)

4 THE COURT: All right, ladies and gentlemen, I
5 am imperfect. When I charged the law as to armed
6 robbery, I charge armed robbery. In this instance,
7 it's attempted armed robbery. I just wanted to make
8 that distinction for you. When you look at your
9 verdict form, it will say very clearly attempted
10 armed robbery. I just wanted to make that clear and
11 correct that for the record.

12 Okay. So, having said that, any further
13 exceptions to charge?

14 MR. RICHARDSON: Nothing from the State, Your
15 Honor.

16 MR. STEELE: No, Your Honor.

17 THE COURT: Okay. So, Mr. Duncan, I'm going to
18 give you those verdict forms. Y'all can go back to
19 the jury room and begin your deliberations.

20 The alternates, I'm going to dismiss you, but
21 you've got to come to my office and talk to me before
22 you leave, okay, that's your punishment.

23 So, if y'all would go back to your jury room and
24 begin your deliberations.

25 And please, the alternates, you need to just

1 stay behind and collect all of your things from the
2 bailiffs, okay.

3 (WHEREUPON, the jury left open court at
4 approximately 10:46 a.m.)

5 (WHEREUPON, deliberations began at approximately
6 10:46 a.m.)

7 MR. RICHARDSON: Your Honor, if it pleases the
8 Court. You informed them to start deliberations,
9 they don't have the evidence.

10 THE COURT: That's right. Y'all are going to do
11 an inventory of the evidence and then send it back to
12 them.

13 MR. RICHARDSON: I didn't know if you wanted
14 them to go ahead and start --

15 THE COURT: I want them to go ahead and start.
16 Because they can start their organizational process
17 without the evidence. It will take them some time to
18 kind of get organized.

19 Okay, so Ms. Bush and Mr. Bright, if y'all will
20 your things, collect your things, then the bailiff
21 will take you up to my office and I'll dismiss you
22 from there. We'll have a short talk, okay.

23 Okay. All right. Anything further for the
24 record before we go into recess?

25 MR. STEELE: No, Your Honor.

1 THE COURT: And the State?

2 MR. RICHARDSON: No, sir.

3 THE COURT: Okay, if y'all will please do an
4 inventory of the evidence.

5 And Ms. Troupe, do you have the computer ready?

6 THE CLERK: Yes, sir.

7 THE COURT: We'll send the computer back with it
8 as well. Just make sure that you have it all, you're
9 satisfied you have all of the evidence, and you've
10 inventory it all and you can send it back by way of
11 the bailiff.

12 Good luck to all of you. I appreciate everybody
13 in the courtroom having been very civil and well
14 behaved during the trial, I do appreciate it. I know
15 it was an emotional trial for a lot of you, so I
16 appreciate that. I appreciate the attorneys being
17 very well prepared and professional. It makes my job
18 a lot easier. Thank you very much. Good luck to
19 everyone.

20 (WHEREUPON, court was in recess awaiting a
21 verdict.)

22 THE COURT: All right, I've been advised that
23 the jury has reached a verdict.

24 Is the State ready to receive the verdict?

25 MR. RICHARDSON: We're ready.

1 THE COURT: The Defense?

2 MR. STEELE: Ready for Mr. Massey.

3 THE COURT: All right, bring the jury in,
4 please, sir.

5 (WHEREUPON, the jury came into open court at
6 approximately 1:46 p.m.)

7 VERDICT

8 THE COURT: Mr. Duncan, has the jury reached a
9 unanimous verdict, sir?

10 THE FOREPERSON: Yes.

11 THE COURT: Could you pass the verdict forms,
12 please, to the bailiff. Thank you, sir.

13 Okay, you may publish the verdict, ma'am.

14 THE CLERK: Your Honor, in the case of
15 2016-GS-23-3413, The State vs. Timiya Rashad Massey,
16 the charge of attempted armed robbery as to Anthony
17 Rakeem Nutridge, we, the jury, unanimously find the
18 Defendant guilty.

19 In the case of 2016-GS-23-8748, as to the charge
20 of burglary in the first degree as to Anthony Kareen
21 Nutridge, we, the jury, unanimously find the
22 Defendant guilty.

23 In the case of 2016-GS-23-8747, as to the charge
24 of attempted murder, as to Haskell Nutridge, we, the
25 jury, unanimously find the Defendant guilty.

1 As to the case of 2016-GS-233414, as to charge
2 of kidnapping as to Kenneth Leach, we, the jury,
3 unanimously find the Defendant guilty.

4 In the case of 2016-GS-23-3412, as to the charge
5 of attempted armed robbery as to Kenneth Leach, we,
6 the jury, unanimously find the Defendant guilty.

7 In the charge of 2016-GS-23-8746, as to the
8 charge of possession of a weapon during the
9 commission of a violent crime, we, the jury,
10 unanimously find the Defendant guilty.

11 In the case of 2016-GS-23-8746, as to the charge
12 of murder as to Anthony Kareen Nutridge, we, the
13 jury, unanimously find the Defendant guilty. These
14 are all signed by our foreperson.

15 Ladies and gentlemen, if these verdicts are the
16 verdicts you reached in your deliberations room,
17 would please raise your right hand.

18 (WHEREUPON, all members of the jury raised their
19 right hand.)

20 THE COURT: All right. Anything further for
21 this jury from the State or Defense?

22 MR. RICHARDSON: Not from the State, Your Honor.

23 MR. STEELE: Would Your Honor considering
24 polling the jury?

25 THE COURT: Yes, sir, I will.

1 Ms. Troupe, poll the jury.

2 THE CLERK: I will ask you two questions, was
3 this your verdict you reached in the jury room and is
4 it your verdict now? When I call your name, please
5 answer yes or no.

6 Roderick Duncan?

7 JUROR: Yes.

8 THE CLERK: Tod Mosher?

9 JUROR: Yes.

10 THE CLERK: Stuart Morris?

11 JUROR: Yes.

12 THE CLERK: Mark Snow?

13 JUROR: Yes.

14 THE CLERK: Andrew Robinson?

15 JUROR: Yes.

16 THE CLERK: Celeststeen Allen?

17 JUROR: Yes.

18 THE CLERK: Amanda Whitaker?

19 JUROR: Yes.

20 THE CLERK: Ana Ospina?

21 JUROR: Yes.

22 THE CLERK: Stephanie Hoelbling?

23 JUROR: Yes.

24 THE CLERK: Emily Davis?

25 JUROR: Yes.

1 THE CLERK: Tammy Helms?

2 JUROR: Yes.

3 THE CLERK: Solomon Spears?

4 JUROR: Yes.

5 THE CLERK: Thank you.

6 THE COURT: All right, anything further for this
7 jury from the Defense?

8 MR. STEELE: No, Your Honor.

9 THE COURT: Okay. All right, ladies and
10 gentlemen, thank you for your service on this jury.
11 If you will return to your jury room, I'll dismiss
12 you informally from the jury room. I'll give you the
13 opportunity to ask me any questions or make any
14 comments that you'd like to make. Then after that,
15 I'm going to come back into the courtroom for
16 sentencing. You're welcome to come back in if you'd
17 like, but I'll give you the opportunity to leave if
18 you'd like as well. So, if you'll return to your
19 jury room, I'll be back to talk to you in just a few
20 minutes.

21 (WHEREUPON, the jury left open court and was
22 excused at approximately 1:51 p.m.)

23 THE COURT: All right, yes, sir.

24 MR. STEELE: If Your Honor please, may I make a
25 couple of post-trial motions?

1 THE COURT: Yes, sir, you may.

2 MR. STEELE: Is Your Honor ready now?

3 THE COURT: Sure.

4 MR. STEELE: I would move at this time for a
5 judgment notwithstanding the verdict, or in the
6 alternative, for a new trial based upon the fact that
7 this verdict can only be based upon caprice and
8 prejudice and respectfully ask the Court to consider
9 either a judgment notwithstanding the verdict or a
10 new trial on those grounds.

11 THE COURT: All right.

12 Position of the State?

13 MR. RICHARDSON: Your Honor, I think the
14 evidence established in and of itself what is
15 necessary to establish each and every element of each
16 and every crime. I think the verdict is correct on
17 that.

18 THE COURT: All right. In applying the 13th
19 juror standard as articulated by the Supreme Court in
20 South Carolina, I will respectfully deny the motion.
21 Whether or not I agree with the jury or not is
22 absolutely immaterial and irrelevant. The question
23 is whether there was sufficient evidence upon which
24 the jury could have reached this verdict. I find
25 that there was evidence in the record for the

1 verdict.

2 MR. STEELE: And I would also at this time renew
3 any other motions I might have made during the trial.

4 THE COURT: Yes, sir.

5 MR. STEELE: Reiterate them as if repeated in
6 their entirety herein.

7 THE COURT: Yes, sir. You're protected on the
8 record in that regard. The prior rulings of the
9 Court stands. Anything further?

10 MR. STEELE: No, sir.

11 THE COURT: Okay, I'm going to dismiss the jury.
12 Then I'll come back out in five or 10 minutes and
13 we'll proceed to sentencing.

14 Okay. Thank you.

15 (WHEREUPON, a short break was taken.)

16 SENTENCING

17 MR. STEELE: Does Your Honor want us up there
18 for sentencing?

19 THE COURT: Yes, if you would, please.

20 Okay. All right, Mr. Richardson, is there
21 anything further from the State?

22 MR. RICHARDSON: Just briefly if you would like
23 to hear his prior record, Your Honor?

24 THE COURT: Yes, sir.

25 MR. RICHARDSON: He has a failure to stop for a

1 blue light and resisting arrest, each of which he's
2 received probation. He has a reckless homicide of
3 which he received a youthful offender act sentence.

4 THE COURT: Mr. Massey, does that sound like a
5 fair account of your prior record, sir?

6 MR. MASSEY: Yes, sir.

7 THE COURT: Anything further from the State?

8 MR. RICHARDSON: Nothing further. The family is
9 here, Your Honor. Obviously, they've been here
10 throughout the trial. They informed me that they
11 wish not to speak.

12 THE COURT: Okay.

13 Mr. Steele, I'll be happy to hear from you, sir.

14 MR. STEELE: Thank you, Your Honor. I
15 appreciate that opportunity. Mr. Massey has, prior
16 to the injury that he received, been working for a
17 furniture company, Grade Smith Lines, moving houses.
18 And he is a life-long resident of Greenville. He
19 finished Greenville High School in the class of 2005.
20 He also had a job at a metro company as a phone
21 salesman. He's had a lot of trouble recently
22 health-wise. The injury to his leg has given him
23 terrible problems. He's had infections. He's had
24 surgery after surgery. I've actually consulted with
25 him in the hospital several times. He's been

1 rehospitalized several times. He's got a good
2 family, they're all here. His mother, his father,
3 other members of the family.

4 Would y'all all please stand up if it's all
5 right with the Court?

6 This is his father on the right. This is his
7 mother on the left. These are other family members
8 in between. I would ask the Court to consider these
9 factors in sentencing.

10 Y'all can have a seat now, thank you.

11 And we would ask for the mercy of the Court.

12 THE COURT: All right, Mr. Massey, anything
13 you'd like to tell me, sir?

14 MR. MASSEY: I've had a job ever since I been
15 out on house arrest, but due to my leg not being
16 strong enough, I had broke my leg again, femur bone
17 at Joe's Crab Shack.

18 MR. STEELE: He fell on a slick floor at Joe's
19 Crab Shack messed his leg up again. He probably be
20 walking with a limp for life is my impression.

21 THE COURT: He's been incarcerated or house
22 arrest since the date -- since the date you were
23 arrested?

24 MR. STEELE: Yes, sir.

25 THE COURT: How long is that?

1 MR. RICHARDSON: I'm sorry, I don't have that
2 information. There was a period of time that he
3 actually cut his ankle bracelet off.

4 MR. STEELE: That was a very short period of
5 time.

6 MR. RICHARDSON: I'll take Mr. Steele's word for
7 that.

8 THE COURT: Okay. Well, I won't consider that.
9 But I am interested in knowing when he was picked up
10 on the original warrant.

11 MR. STEELE: Your Honor, he was incarcerated
12 from the beginning, which would be September -- my
13 impression is he's been under some kind home
14 incarceration or actual incarceration since
15 September 30th, 2015.

16 MR. RICHARDSON: Your Honor, I'm not going to
17 dispute that.

18 MR. STEELE: Am I correct, Mr. Massey?

19 MR. RICHARDSON: I'm not going to dispute that.

20 THE COURT: Thirty September 2015?

21 MR. STEELE: Yes, sir.

22 THE COURT: Okay.

23 MR. STEELE: And if he was out with a cut off --
24 We're talking less than a week, right?

25 MR. MASSEY: Yes, sir.

1 MR. STEELE: A couple days, whatever it was.

2 THE COURT: Okay, Mr. Massey, the sentence of
3 the Court is as follows: On the attempted armed
4 robbery indictment ending in 3412, the sentence of
5 the Court is 20 years in the State Department of
6 Corrections, concurrent, credit for time served since
7 30 September 2015. For the kidnapping, 30 years in
8 the Department of Corrections, concurrent, credit for
9 time served. For the murder, 40 years, concurrent,
10 credit for time served. For the possession of a
11 weapon during the commission of a violent crime,
12 that's five years in the Department of Corrections.
13 For the burglary, that is 30 years in the Department
14 of Corrections, concurrent, credit time served. For
15 the attempted murder, 30 years in the Department of
16 Corrections, concurrent, credit time served. For the
17 attempted armed robbery, that's 20 years in the
18 Department of Corrections, concurrent, credit time
19 served. Mr. Massey, good luck to you, sir.

20 MR. STEELE: Your Honor, did you say concurrent
21 on all of them?

22 THE COURT: Yes, sir.

23 Now, my question is this -- and I can't
24 remember, on the possession of a weapon during the
25 commission of a violent crime, is that required to be

1 consecutive?

2 MR. RICHARDSON: Not any longer.

3 THE COURT: Well, that's concurrent as well.

4 MR. STEELE: Thank you, Your Honor.

5 THE COURT: Good luck to you, sir.

6 (WHEREUPON, Court's Exhibit No. 4 was marked for
7 identification only.)

8 (WHEREUPON, the proceedings were concluded.)

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1 CERTIFICATE OF REPORTER
2
3

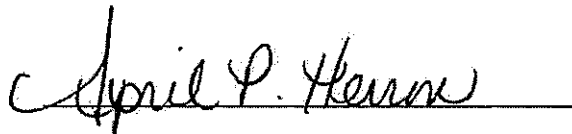
4 STATE OF SOUTH CAROLINA)

5 COUNTY OF GREENVILLE)
6
7

8 I, APRIL P. HERRON, Official Court Reporter for
9 the Thirteenth Judicial Circuit of the State of South
10 Carolina, do hereby certify that the foregoing is a true,
11 accurate and complete Transcript of Record of the
12 proceedings had and evidence introduced in the trial of
13 the captioned case, relative to appeal, in the Court of
14 General Sessions for Greenville County, South Carolina, on
15 the 6-8 day of November, 2017.

16 I do further certify that I am neither of kin,
17 counsel nor interest to any party hereto.
18

19 May 10, 2018
20
21

22 
23
24

25 APRIL P. HERRON, Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

County of Greenville)

Timiya Rashad Massey #322913)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2022-CP-23- 02305

APPLICATION FOR

POST-CONVICTION RELIEF

 '22 MAY 3 PM2:37
 Paul Wickensimer COC SUL SC
INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Turbeville Correctional Institution SC Department of Corrections _____
 1578 Clarence Coker Highway Turbeville, SC 29162
2. Name and location of Court which imposed sentence Greenville County Court of General Sessions 305 East North Street Greenville, SC 29601
3. Name(s) of co-defendant(s) (if any) Nyerere Williams and Terry C. Harris _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 16GS2308746 - Murder _____
 - (b) 16GS2308746 - Possession of Weapon _____

- (c) 16GS2308747 - Attempted Murder See Attachment
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) November 8, 2017 - 40 years concurrent
- (b) November 8, 2017 - 5 years concurrent
- (c) November 8, 2017 - 30 years concurrent See Attachment
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty No
- (b) after a plea of not guilty Yes
- (c) after a plea of nolo contendere No
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes, I did.
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. Supreme Court of South Carolina
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Appeal for rehearing was denied.
- ii. Petition for writ of certiorari was denied.
- iii. _____
- (c) the date of each such result:
- i. April 23, 2020
- ii. May 7, 2021
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

- (c)
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of trial counsel _____
 - (b) State misconduct and presentation of false evidence _____
 - (c) Violation of constitutional rights and amendments _____ See Attachment
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Failure to independently investigate the case. See attachment. _____
 - (b) Misconduct by non-expert forensic analysis; who resigned due to remands of lost evidence. _____
 - (c) Improper chain of custody. _____ See Attachment
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? Yes _____
 - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No _____
 - (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No _____
 - (d) any other petitions, motions or applications in this or any other Court? No _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
 - i. Direct Appeal Brief _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (b) the name and location of the Court in which each was filed:
 - i. South Carolina Court of Appeals - 1220 Senate Street Columbia, SC 29201 _____
 - ii. _____
 - iii. _____
 - iv. _____

(c) the disposition thereof:

i. Direct appeal Affirmed.

ii.

iii.

iv.

(d) the date of each such disposition:

i. May 7, 2021

ii.

iii.

iv.

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
No, they have not.

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i.

ii.

iii.

(b) the proceedings in which each ground was raised:

i.

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Attorney did not provide adequate defense. _____

(b) Attorney failed to authenticate evidence provided by the state. _____

(c) Attorney failed to make objections at the correct times. See Attachment

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Yes _____

(b) your trial, if any? Yes _____

(c) your sentencing? Yes _____

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes _____

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
Yes

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. C. Carlyle Steele 16 Whitsett Street Greenville, SC 29601 _____

ii. Robert Michael Dudek- Division of Appellate Defense P.O. Box 11589 Columbia, SC 29211-1589

iii.

(b) the proceedings at which each such attorney represented you:

i. Attorney represented me for arraignment, trial, and sentencing. _____

ii. Attorney represented me for appeal and writ of certiorari. _____

iii.

19. State clearly the relief you seek in filing this application:
Based on the above, conviction and sentence VACATED; in the alternative, conviction
sentence REVERSED to match co-defendants.
20. Are you now under sentence from any other court that you have not challenged?
No, I am not.

STATE OF SOUTH CAROLINA)

County of Greenville)

VERIFICATION

I, Timiya Rashad Massey #322913, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Timiya Rashad Massey

SWORN to and subscribed before me this 25
 day of APRIL, 2022.

Bridget J. Williams-Durkin (L.S.)
 Notary Public

My Commission Expires: March 15, 2031

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Timiya Rashad Massey #322913, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Timiya Massey

Applicant

SWORN or affirmed to and subscribed before me this

25 day of April 2022.

Bridget J. Jolley - Davis
Notary Public

My Commission Expires: March 15, 2031

Timiya Rashad Massey #322913 Attachment to Application for Post-Conviction Relief

- 4. (d) 16GS2308746 - Burglary First Degree**
 - (e) 16GS2303414 - Kidnapping**
 - (f) 16GS2303413 - Attempted Armed Robbery**
 - (g) 16GS2303412 - Attempted Armed Robbery**

- 5. (d) November 8, 2017 - 30 years concurrent**
 - (e) November 8, 2017 - 30 years concurrent**
 - (f) November 8, 2017 - 20 years concurrent**
 - (g) November 8, 2017 - 20 years concurrent**

- 10. (d) After trial discovered evidence.**

- 11. (d) All evidence not disclosed at trial that the GSR test was completed.**

- 16. (d) Attorney did not use the supporting crime scene photo.**

25 MAR 11 AM 11:27
JAN GRESHAM COC GVL SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
Timiya Rashad Massey, #322913	)	Case No.: 2022-CP-23-2305
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	<i>(Evidentiary Hearing Requested)</i>
State of South Carolina,	)	
	)	
Respondent.	)	ENTERED COMPUTER
	)	

Applicant, Timiya Rashad Massey, is currently incarcerated in Turbeville Correctional Institution for the crimes of murder, attempted murder, two counts of attempted armed robbery, burglary 1st degree, kidnapping, and possession of a weapon during the commission of a violent crime. On May 3, 2022, Applicant initiated the captioned action by filing an application for post-conviction relief. Applicant has raised multiple ineffective assistance of counsel allegations, a prosecutorial misconduct allegation, and an allegation concerning improper chain of custody. Respondent submits that at least the allegations of ineffective assistance of counsel will require an evidentiary hearing to adequately resolve. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (“Where an application for post-conviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court, a question of fact is raised which can only be resolved by an evidentiary hearing.”).

In support of its position, Respondent would respectfully show the court:

PROCEDURAL HISTORY

Applicant was indicted by a Greenville County grand jury in the September 2016 term for murder and possession of a weapon during the commission of a violent crime, attempted murder burglary 1st degree, attempted armed robbery, and kidnapping. (Attachment 1). A jury trial was

held November 6-8, 2017, with the Honorable Robin B. Stilwell presiding. Applicant was represented by C. Carlyle Steele, Esq., and Doug Richardson Esq. prosecuted the case. The jury found Applicant guilty as indicted and Judge Stilwell sentenced applicant to 40 years for murder, 5 years for the weapon charge, 30 years for attempted murder, 30 years for burglary 1st degree, 20 years for each count of attempted armed robbery, and 30 years for kidnapping, all to be served concurrently with credit for time served. (Attachment 2, at 458; Attachment 3). Applicant, through counsel, filed a timely notice of appeal.

DIRECT APPEAL

Chief Appellate Defender Robert Dudek of the South Carolian Commission on Indigent Defense, Division of Appellate Defense, represented Applicant on appeal. Applicant raised the following issue on appeal:

Whether the court erred by refusing to allow the defense to question alleged accomplice, Nyerere Williams, if he was aware that he could receive a life sentence if he was convicted of murder in this case, since his correct potential sentencing exposure for a crime he was charged with was well settled proper cross-examination where Williams was testifying as a state's witness against appellant?

(Attachment 4).

On January 1, 2020, the Court of Appeals affirmed by unpublished per curiam opinion. *State v. Massey*, Unpublished Opinion No. 2020-UP-020 (S.C. Ct. App. Filed January 29, 2020). (Attachment 5). Applicant, through counsel, filed a Petition for Rehearing, which was denied on April 23, 2020. (Attachment 6 and 7). Applicant then filed a Petition for Writ of Certiorari, which was denied by order on May 7, 2021. (Attachment 9). The remittitur was issued on May 12, 2021. (Attachment 10).

ATTACHMENTS

Attached herewith and incorporated herein are the following documents:

1. Indictments;
2. Trial Transcript, November 6-8, 2017;
3. Sentence Sheet;
4. Final Brief of Appellant, filed April 17, 2019
5. *State v. Massey*, Unpublished Opinion No. 2020-UP-020 (S.C. Ct. App. Filed January 29, 2020);
6. Petition for Rehearing, filed February 13, 2020;
7. Order denying Petition, filed April, 23, 2020;
8. Petition for Writ of Certiorari, filed June 24, 2020;
9. Order denying Certiorari, filed May 7, 2021;
10. Remittitur, filed May 12, 2021.

CURRENT ALLEGATIONS

In his current application, Applicant raises the following allegations, which Respondent includes verbatim:

1. "Ineffective Assistance of Trial Counsel"
 - a. "Failed to independently investigate the case;"
2. "State's misconduct and presentation of false evidence"
 - a. "Misconduct by non expert forensic analysis who resigned due to remnants of lost evidence;"
3. "Violation of constitutional rights and amendments"
 - a. "Improper chain of custody;"
4. "After trial discovered evidence"
 - a. "All evidence not disclosed at trial that the GSR test was completed;"
5. "Attorney did not provide adequate defense;"
6. "Attorney failed to authenticate evidence provided by the state;"

7. “Attorney failed to make objections at the correct times;”

8. “Attorney did not use supporting crime scene photo.”

(PCRApp. at 3, 5 and 8).

Applicant requests that his “conviction and sentence be vacated; in the alternative, conviction sentence REVERSED to match co-defendants.” (PCR App. at 6).

DISCUSSION

The scope of this Court’s jurisdiction for PCR matters is set out in S.C. Code Ann. § 17-27-20(A), which lists the types of claims that may be considered cognizable for review. Section (B) further limits the jurisdiction by recognizing that PCR “is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction.” S.C. Code Ann. § 17-27-20(B). Because a PCR action is not a substitute for other available proceedings and/or remedies, particularly those at trial and direct appeal, a PCR applicant cannot assert any issues in his PCR action that could have been raised at trial and on direct appeal.

While previously heard or unheard freestanding trial or direct appeal issues are not cognizable, the general factual basis for the previously unheard issues may be reached by and through an allegation of ineffective assistance of counsel. *Drayton v. Evatt*, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993) (“Issues that could have been raised at trial or on direct appeal cannot be asserted in an application for post-conviction relief absent a claim of ineffective assistance of counsel.”). Ineffective assistance of counsel claims are generally appropriate for post-conviction relief actions. See, e.g., *Al-Shabazz v. State*, 338 S.C. 354, 367, 527 S.E.2d 742, 749 (2000) (discussing jurisdiction pursuant to S.C. Code Ann. § 17-27-20(A) and finding “A typical PCR claim of ineffective assistance of counsel falls into this category....”). Ineffective assistance claims are analyzed under the *Strickland* standard.

STRICKLAND V. WASHINGTON STANDARD

To establish that Sixth Amendment counsel was ineffective, a PCR applicant must show that counsel's representation fell below an objective standard of reasonableness, and but for counsel's error, there is a reasonable probability that the outcome of the trial would have been different. *Strickland v. Washington*, 466 U.S. 668, 694 (1984); *Simpson v. Moore*, 367 S.C. 587, 595–96, 627 S.E.2d 701, 706 (2006). “A reasonable probability is a probability sufficient to undermine confidence in the outcome” of the trial. *Strickland*, at 694. Relief will not be granted on a showing of mere error—prejudice must also be shown. *Id.* Moreover, it is presumed that counsel made all decisions in exercise of reasonable judgment. *Strickland*, at 689. It is an applicant's burden to prove, by a preponderance of the evidence, an entitlement to relief. Rule 71.1 (e), SCRCR. *See also Speaks v. State*, 377 S.C. 396, 399, 660 S.E.2d 512, 514 (2008) (“the burden of proof is on the applicant to prove the allegations in his application”).

ARGUMENT IN RESPONSE TO THE CLAIMS

At minimum, the allegations of ineffective assistance of counsel presented in the attachment to the application likely requires consideration of facts outside the existing record to adequately resolve. Therefore, Respondent requests an evidentiary hearing under *Sharper*. As it presently stands, though, the trial record appears to demonstrate competent assistance, and, as a matter of law, counsel is presumed to have rendered “reasonable professional assistance.” *Strickland*, at 689. Thus, it is unlikely that Applicant will be able to carry his burden of proof. Respondent acknowledges Applicant's right to amend, and, in response, specifically reserves the right to move for summary dismissal of any allegations not withdrawn or later made that may be adequately resolved by the record alone.

CONCLUSION

WHEREFORE, having made its Return, Respondent submits that this matter be scheduled for an evidentiary hearing pursuant to *Sharper*.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

KAYLEE C. KEMP
Assistant Attorney General
SC Bar No: 107073
kayleekemp@scag.gov

By: 
KAYLEE C. KEMP

Office of the Attorney General
P.O. Box 11549
Columbia, South Carolina 29211-1549
(803) 734-6305

February 26, 2025
Columbia, South Carolina

ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA)
 COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
 THIRTEENTH JUDICIAL CIRCUIT

Timiya R. Massey, #322913,)

C/A No. 2022-CP-23-2305

Applicant,)

v.)

AFFIDAVIT OF SERVICE

State of South Carolina,)

Respondent.)

25 MAR 11 AM 11:27
 JAY GRESHAM CDC CIVL SC

1. I am an employee of Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return, in the above-captioned matter on the following by depositing same in the United States mail, postage prepaid:

Isaac L. Johnson, Jr., Esquire
 130 Carson's Pond Drive
 Simpsonville, South Carolina 29681

DATED this 26th day of February, 2025.


 Angela Brown
 Administrative Coordinator

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

Timiya Rashad Massey,

Applicant,

v

State of South Carolina

Respondent.

2022-CP-23-02305

TRANSCRIPT OF RECORD

February 5th, 2026
Greenville County, South Carolina

B E F O R E:

The Honorable Walter J. McLeod, IV, Judge

A P P E A R A N C E S:

ATTORNEY FOR APPLICANT:

Isaac Louis Johnson, Jr., Esq.

ATTORNEY FOR RESPONDENT:

Kylee Kanealey, Attorney General

Sarah L. Galanti, CVR
Official Court Reporter, III

I N D E X

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Doug Richardson	
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Cross Examination	61
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P R O C E E D I N G S

(Whereupon, the hearing commenced at 10:47 a.m.)

MS. KANEALEY: May it please the Court. This is the PCR matter of *Timiya Massey v. State*, case number 2022-CP-23-2305 out of Greenville County. Applicant was indicted by the Greenville County Grand Jury in September of 2016 for murder, possession of a weapon during the commission of a violent crime, attempted murder, burglary first degree, two counts of attempted armed robbery, and kidnapping.

Applicant proceeded to a jury trial on November 6th through 8th, 2017, before the Honorable Robert B. Stilwell. Applicant was represented by Carlyle Steele, and Assistant Solicitor Doug Richardson prosecuted the case. The jury found Applicant guilty as indicted, and Judge Stilwell sentenced Applicant to 40 years for murder, five years for the weapons charge, 30 years for attempted murder, 30 years for burglary first degree, 20 years for each count of attempted armed robbery, 30 years for kidnapping, all to be served concurrently.

Applicant timely filed a notice of appeal, and the Court of Appeals affirmed this. The remittitur was issued May 12th, 2021. Applicant filed this application on May 2nd, 2022, and I'll turn it over to opposing Counsel.

THE COURT: Yes, sir.

MR. JOHNSON: Your Honor, I have gone over this case with

1 Mr. Massey. In his application, he alleges several grounds.
2 I've gone over these with the Attorney General. It is my
3 position that, again, this is a PCR hearing to determine
4 whether his counsel, unfortunately who has passed away, was
5 ineffective in representing him. He makes -- and we're
6 prepared to go forward on attempting to establish that Mr.
7 Steele was ineffective in representing him.

8 There's some other issues in this case, and I don't think
9 it would be proper for the -- Mr. Massey to get into, such as
10 the State's misconduct and presentation of false evidence.
11 We're not here to discuss that matter. That's not a matter
12 that should be raised in a PCR hearing, so that issue is not
13 one that will be raised by Mr. Massey, but Mr. Massey will
14 concentrate his testimony on the fact that he feels that Mr.
15 Steele was ineffective in representing him, and he's prepared
16 to testify on that issue.

17 THE COURT: Okay. And that's Carlyle Steele?

18 MR. JOHNSON: That's correct, Your Honor.

19 THE COURT: S-T-I-L-L?

20 MR. JOHNSON: S-T-E-E-L-E.

21 THE COURT: All right. Do you want to call your first
22 witness?

23 MR. JOHNSON: Yes, sir. The State [sic] calls Timiya
24 Massey to the stand.

25 THE COURT: Very well.

Timiya Massey - Direct

1 THE CLERK: Mr. Massey, put your left hand on the Bible,
2 and raise your right hand after you set your items down.

3 (Whereupon, Timiya Massey was duly sworn.)

4 THE CLERK: Thank you. You may be seated. State your
5 full name for the record, please.

6 THE WITNESS: Timiya Rashad Massey.

7 Direct Examination

8 By Mr. Johnson:

9 Q Mr. Massey, let me ask you. You filed an application for
10 post-conviction relief. Correct?

11 A Yes, sir.

12 Q Do you understand that as you sit here, you're testifying
13 under oath?

14 A Yes, sir.

15 Q And that -- you understand that if the Judge grants your
16 application that there would be an order granting you a new
17 trial in this matter. Do you understand that?

18 A I understand that, but you told me I couldn't get a new
19 trial.

20 Q No. If the Judge grants your application.

21 A Yes, I understand that, but when me and you talked, you
22 told me on the phone that they wasn't trying to give me a new
23 trial.

24 Q What did I tell you they were trying to do?

25 A You didn't tell me they were trying to do nothing. I was

Timiya Massey - Direct

1 confused about it.

2 Q Okay. But you understand that the Judge -- if he grants
3 your application, you could possibly have another trial in
4 this matter?

5 A Yes, sir.

6 Q So, anything that you say today could be used against you
7 if there were to be some other proceedings, legal or
8 otherwise, but particularly legal proceedings, such as another
9 trial in this matter.

10 A Yes, sir.

11 Q Okay. Now, you've just handed me this morning, about 10
12 minutes ago, three pages, and it says "Opening Statement for
13 Lawyer." Is that correct?

14 A Yes, sir.

15 Q And are you proposing that I read what you've handed to
16 me?

17 A Yes, sir.

18 Q Okay. Mr. Massey, let me ask you this. What you've
19 handed me -- what are you -- I'm not sure in all candor that I
20 can read this to the Court, but I wanted to ask you what are
21 you alleging in this -- these three pages that I should
22 present to the Court?

23 A I'm alleging that they didn't have sufficient enough
24 evidence to prosecute --

25 Q They -- they -- who?

Timiya Massey - Direct

1 A The State didn't have sufficient enough evidence to
2 prosecute me. I'm innocent, and I never was on the scene of
3 the crime. I was on the outside of the apartment the whole
4 time. I never was inside of the house. I never --

5 MS. KANEALEY: We would object, Your Honor. This is not
6 relevant to a PCR proceeding.

7 THE COURT: Yes, sir.

8 MR. JOHNSON: I think that because this is a unique
9 circumstance and that Mr. Steele is no longer with us -- he's
10 deceased, and in my reading of the transcript, at some point
11 the Court asked Mr. Massey if he wanted to testify. Mr.
12 Massey said, "I do." There was a momentary pause, and then
13 there evidently was a discussion between Mr. Steele and Mr.
14 Massey.

15 Mr. Massey, after that brief discussion, said, "Okay. I
16 will agree that I do not want to testify," and he is prepared
17 to explain to the Court why he did not testify, and what his
18 position is, is that had I had an opportunity to tell my side
19 of the story against all of the direct and circumstantial
20 evidence that was presented at trial against him, that there
21 was a possibility that at the very least there could have been
22 a hung jury or he could have been found not guilty.

23 So, it is his contention that I need to present to the
24 Judge -- to the Court as to why I think Mr. Steele was
25 ineffective is because I desperately wanted to testify, and he

Timiya Massey - Direct

1 convinced me otherwise.

2 THE COURT: Okay. Yes, ma'am.

3 MS. KANEALEY: Your Honor, just to clarify for the
4 record, that's not exactly what happened. If you would look
5 at page 380 and 381, I just want to clarify he never said,
6 "Yes, I want to testify" and changed his mind. He said he was
7 not sure if he wanted to testify yet, so he spoke to his
8 attorney more and then decided not to. I just want to clarify
9 that for the record.

10 THE COURT: Okay. You can clarify that on cross, as
11 well. Your objection is noted. This is a unique situation
12 where trial Counsel is deceased, so I'll overrule the
13 objection just to allow the witness to get as much as he can -
14 - make as much record as he can, and then he'll be subject to
15 cross.

16 MR. JOHNSON: And again, I understand the uniqueness of
17 the situation, and otherwise I would not be going into this
18 line of testimony, but I believe it's relevant.

19 By Mr. Johnson:

20 Q So, you were -- how did Mr. Steele come about to
21 represent you? Was he appointed, or was he retained?

22 A He was appointed to me.

23 Q Okay. And do you recall how long after you were arrested
24 on these charges that he was appointed to represent you?

25 A I was in the hospital once I got shot on the scene, and

Timiya Massey - Direct

1 they put me in the hospital, because I had a leg wound, and
2 Mr. Steele came, like, three or four days after I was in the
3 hospital to see me.

4 Q And what happened there in the hospital?

5 A I told Mr. Steele to push the DNA -- to get everything
6 tested, and then when I woke up, I woke up in the hospital,
7 and my hands was bagged, and it was for GSR, and so everything
8 would clear me once everything came back. He said he was
9 going to check into it and get back with me.

10 Q And then at some point, you were discharged from the
11 hospital?

12 A Yes, sir.

13 Q And then where did you go after you were discharged from
14 the hospital?

15 A Back to Greenville County.

16 Q Greenville County Detention Center?

17 A Yes, sir.

18 Q Okay. And did you remain there until the day of the
19 trial?

20 A No, sir.

21 Q Tell me, were you -- tell me how it happened that you
22 were not there the whole time after you were brought back from
23 the hospital and placed in the Detention Center.

24 A I sat in Greenville County for, like, five or six months,
25 and then they gave me a bond, and I bonded out.

Timiya Massey - Direct

1 Q Okay. Now, let me ask you this. During those five or
2 six months, how many -- did you meet with Mr. Steele?

3 A Yes, sir.

4 Q How many times did you meet with him?

5 A I met with Mr. Steele approximately three or four times.

6 Q Okay. And what did you all discuss during those three or
7 four times during that six-month period?

8 A The first time, we discussed the motion of discovery.

9 Q Did you just discuss it, or did he have the most -- the
10 evidence? Did he show it to you?

11 A He had the -- he had all the evidence.

12 Q He had all the evidence?

13 A He had most of the evidence, because a couple weeks later
14 there were some new charges, so he had all the charges and the
15 warrants from those first initial charges.

16 Q Okay. And what happened? Did you go over the evidence
17 with him that day?

18 A Yes, sir.

19 Q Okay. Let me ask you this. We know that Mr. Steele is
20 no longer with us unfortunately, but did he ever discuss with
21 you that he was ill at any point, not just during those five
22 or six months but at any point of his representing you?

23 A No, sir.

24 Q Okay. And after -- you say he met with you initially.

25 Did he meet with you again within those six months at the

Timiya Massey - Direct

1 Detention Center?

2 A We met all the way up until I had bonded out in May of
3 2016.

4 Q Okay. And then, did you remain out until the day of the
5 trial?

6 A Yes, sir.

7 Q And while you were out awaiting trial, did you and Mr.
8 Steele discuss this matter -- the case?

9 A Yes, sir. We went over it.

10 Q During this trial -- during the time of preparation for
11 this hearing, what did you tell Mr. Steele about whether you
12 were guilty or innocent in this trial? I mean, whether you
13 were guilty or innocent.

14 A I told Mr. Steele I was innocent and that the facts in
15 the case would prove that I was innocent.

16 Q And what was his response?

17 A His response was that it was a fourth codefendant named
18 into my case and that I wouldn't go to trial until the fourth
19 codefendant was brought in and questioned or arrested. That's
20 when I would go to trial, because the fourth person would
21 clear my name.

22 Q Was the fourth person ever apprehended?

23 A No, sir.

24 Q And at some point in 2017, you went to trial. Is that
25 correct?

Timiya Massey - Direct

1 A November.

2 Q November of 2017?

3 A Yes, sir.

4 Q Okay. And during that trial, at any point during that
5 trial in November of 2017, did you tell Mr. Steele that you
6 wanted to testify?

7 A That was already my defense to testify after Kenneth
8 Leach [phonetic] testimony was put in so the jurors could hear
9 it, that I would testify, but the jury said they never could
10 find nothing to play the video on to hear it, so Mr. Steele
11 told me that I don't need to testify, and the burden is on the
12 State to prove that I'm guilty.

13 Q Let me ask you this. When you all -- Mr. Steele prepared
14 -- you and Mr. Steele prepared this case. He helped you get
15 ready to go to trial. Correct?

16 A Yes, sir.

17 Q Did he ever talk to you about any potential witnesses in
18 the case?

19 A He told me that it was witnesses in my case, but if he
20 would have let me testify, I know the outcome would have been
21 different.

22 Q I know, but did he tell you that -- did y'all discuss any
23 potential witnesses in your case that would testify on your
24 behalf?

25 A He told me I didn't need no witnesses.

Timiya Massey - Direct

- 1 Q Okay. Did he discuss with you any defenses that you
2 might have?
- 3 A My defense -- yes, sir.
- 4 Q And what defense was that that you all discussed?
- 5 A For me to get up there and tell the jury exactly what
6 happened, so they could hear my side of the story.
- 7 Q And you had that discussion with Mr. Steele?
- 8 A Yes, sir.
- 9 Q Let me ask you this. Now, you were -- at some point
10 during the incident took place that led to your being charged
11 with this crime, you were shot. Correct?
- 12 A Yes, sir. I was shot, and they got me from the scene
13 with the bullet hole in my leg.
- 14 Q Okay. And you underwent surgery?
- 15 A Yes, sir. I got documentation from the hospital that let
16 them know that I had been shot and that from the ambulance --
17 from the police report --
- 18 Q Go ahead. And where were you shot, what part of your
19 body?
- 20 A I was shot in the leg, in the back of my leg.
- 21 Q The back of your leg. Did you and Mr. Steele ever
22 discuss calling the surgeon that performed -- I presume the
23 surgeon performed surgery on you?
- 24 A Yes, sir. The ortho doctor.
- 25 Q The what, now?

Timiya Massey - Direct

- 1 A It's the ortho doctor, the bone doctor.
- 2 Q The ortho doctor. Okay.
- 3 A My bone was shattered.
- 4 Q Right. Did Mr. Steele -- did you and Mr. Steele ever
- 5 discuss calling the ortho surgeon as a witness?
- 6 A Yes, sir.
- 7 Q Did Mr. -- what did y'all come to a determination as to
- 8 whether the witness, that witness being the surgeon, would be
- 9 called?
- 10 A He said that I wasn't going to trial until they got the
- 11 fourth codefendant to clear my name and that everybody that I
- 12 had as witnesses would be there to testify too, but in
- 13 November they just popped up and said I was going to trial. I
- 14 didn't even know I was going to trial. I learned I was going
- 15 to trial, like, two to three days before I went to trial.
- 16 Q And the two or three days before you went to trial --
- 17 when was the last time you spoke with Mr. Steele about
- 18 preparing for the trial, prior to the two or three days before
- 19 you found out you were going to trial?
- 20 A It was a Friday. I had started trial on a Monday.
- 21 Q Okay. And you talked with Mr. Steele on the Friday
- 22 before the trial?
- 23 A I went and seen Mr. Steele at his office.
- 24 Q And what did y'all talk about?
- 25 A We talked about my whole case and about that -- why I'm

Timiya Massey - Direct

1 not going to be -- why is not the fourth codefendant named in
2 the case and why he's not going to be at trial, because I
3 asked him who all was testifying against me at trial.

4 Q And what did he say?

5 A He said he didn't have no response for it.

6 Q Okay. And after that conversation, you all went to
7 trial?

8 A Yes, sir.

9 Q And it was your position on the day of trial that you
10 were not guilty?

11 A Yes, sir.

12 Q And that you were not involved in this murder/armed
13 robbery/kidnapping to the extent that it was testified to by
14 the State's witnesses. Is that right?

15 A Yes, sir.

16 Q Are you -- tell the Court if you can without going into
17 great detail, but tell the -- just tell the Court why you feel
18 that you wanted to testify, you should have testified, but you
19 did not testify based on -- was it Mr. Steele's advice that
20 you not testify?

21 A Mr. Steele said the burden was on the State to find me
22 guilty, that I don't need to testify.

23 Q Okay. And did he say that during the trial?

24 A He said that when we paused, and me and him talked.

25 Q When you paused during the trial?

Timiya Massey - Direct

1 A Yes, sir.

2 Q And then the Court said, "Mr. Steele, does your client
3 want to testify?" Right?

4 A Yes, sir.

5 Q And what was your response when the Judge asked Mr.
6 Steele and you whether you wanted to testify?

7 A I asked Mr. Steele have the jury heard Kenneth Leach
8 video or seen it. He said no, they haven't heard it; they
9 don't got nothing to hear it on; and then he said I don't need
10 to testify, that the burden was on the State to testify -- I
11 mean, to prove I was guilty.

12 Q So, that was Mr. Steele's --

13 A Those are his words.

14 Q -- recommendation and advice to you that you don't need
15 to testify because the burden is on the State?

16 A Yes, sir.

17 Q Based on that testimony, what did you decide to do?

18 A I took the trust into my lawyer, because I'm thinking my
19 lawyer is being a hundred percent with me, so I went with him
20 and didn't testify.

21 Q Okay. But up until that point, you wanted to testify?

22 A The whole time I wanted to testify since the day I got
23 shot in 2015.

24 Q All right. Tell the Court what you told Mr. Steele as to
25 what happened and because of what your story is about what

Timiya Massey - Direct

1 happened you wanted to testify in your own trial in your
2 defense.

3 A I told Mr. Steele that I was in the area.

4 Q Say what now?

5 A I said I told Mr. Steele that I was in the area and that
6 I do sell weed.

7 Q In the area where?

8 A North Franklin.

9 Q Is that where the incident took place?

10 A Yes, sir. North Dolphin Apartments.

11 Q Okay. And you were in the area?

12 A I'm over there in the area all the time. That's what I -
13 -

14 Q All right. On the day in question, though, were you in
15 the area?

16 A Yes, sir.

17 Q Where were you in the area?

18 A In the apartments.

19 Q What apartment?

20 A All the apartments.

21 Q Okay. Were you in the apartment of Mr. Nutridge?

22 A No, sir, I wasn't. I wasn't initially over there until
23 somebody called me and told me to come to sell them some weed.

24 Q And Mr. Nutridge was the victim in this case.

25 A Mr. Nutridge, yes, sir.

Timiya Massey - Direct

1 Q And your position is that you never went to his
2 apartment?

3 A I never went to his apartment.

4 Q But you were there at the apartment, but you never went
5 into his apartment?

6 A I never went into his apartment.

7 Q Okay. Tell the Court what you did while you were there
8 at the incident location.

9 A When I was at the incident location, two guys came out
10 with guns and put them on me and asked me where everything at.

11 Q Who were those -- do you know who those two guys were?

12 A Initially -- now I know that it was Nyerere Williams and
13 Terry Harris.

14 Q And did those two gentlemen testify in your case?

15 A Yes, sir.

16 Q Did they testify for the State?

17 A Yes, sir.

18 Q But your position is that they actually pulled guns on
19 you?

20 A I'm a victim in this case, sir.

21 Q So, your position is they actually pulled guns on you?

22 A Yes, sir.

23 Q All right. Then what happened?

24 A And then what happened was they asked me for some --
25 asked me where the weed at.

Timiya Massey - Direct

- 1 Q They who?
- 2 A Terry Harris and Nyerere Williams.
- 3 Q Okay. And then what happened?
- 4 A Then, I heard gunshots. Then, we got to fighting.
- 5 Q Where did you hear the gunshots from? Did you know where
- 6 the gunshots were coming from?
- 7 A The gunshots were coming from behind, like from behind my
- 8 head.
- 9 Q Were you upstairs -- where were you when--
- 10 A I was at the front of the apartment. I never went into
- 11 the apartment. I've never been there. I couldn't even tell
- 12 you what the apartment looked like.
- 13 Q So, when you got into this fight and you heard gunshots,
- 14 you were down at the bottom floor of the apartment?
- 15 A Yes, sir.
- 16 Q In a -- what's called maybe a breezeway?
- 17 A I -- yes, I guess you could say breezeway, but not in the
- 18 breezeway. Breezeway would be like somewhere you could walk
- 19 into. I never was into the apartment where you could walk
- 20 into. I was on the initial sidewalk.
- 21 Q And now, correct me if I'm wrong, but the incident
- 22 location is an upstairs apartment that belonged to Mr.
- 23 Nutridge.
- 24 A Yes, sir.
- 25 Q And you never went up to that second-floor apartment.

Timiya Massey - Direct

- 1 A No, sir.
- 2 Q You remained downstairs outside of that apartment
3 complex.
- 4 A Yes, sir. On the walkway.
- 5 Q And you heard gunshots?
- 6 A Yes, sir.
- 7 Q Do you know where those gunshots came from? If you
8 don't, just --
- 9 A No.
- 10 Q Okay. And then after you heard those gunshots, what
11 happened?
- 12 A Me and the robbers got to fighting.
- 13 Q And what now?
- 14 A Me and the witnesses -- the codefendants, Terry Harris
15 and Nyerere Williams. I'm not knowing which one it was, but
16 we got to fighting.
- 17 Q You got into a fight with whom?
- 18 A I don't know exactly which one it was.
- 19 Q One of them.
- 20 A It was one of them.
- 21 Q Okay. What were y'all fighting about?
- 22 A I was fighting for my life once I heard those gunshots go
23 off.
- 24 Q Did one of those two have a gun that you talked about?
- 25 A Yes, sir.

Timiya Massey - Direct

- 1 Q Williams or the other gentleman?
- 2 A Yes, sir.
- 3 Q They had guns?
- 4 A Yes, sir.
- 5 Q Did they shoot the guns?
- 6 A No, sir.
- 7 Q Did they shoot them at you?
- 8 A No, sir. I got shot from behind.
- 9 Q All right. And then what happened?
- 10 A And then what happened -- I passed out. I passed out and
- 11 woke up.
- 12 Q Excuse me. I hate to interrupt you, but you got shot
- 13 from behind?
- 14 A Yes, sir.
- 15 Q While you were down in the breezeway?
- 16 A Yes, sir.
- 17 Q And you were fighting with those two gentlemen?
- 18 A I got shot. Yes, sir.
- 19 Q Do you know who shot you?
- 20 A No, sir.
- 21 Q You got shot from behind?
- 22 A Yes, sir.
- 23 Q Then what happened?
- 24 A Then, when I woke up the ambulance people was asking me
- 25 what was going on.

Timiya Massey - Direct

1 Q Let me ask you when did you wake up?

2 A You say when?

3 Q Did you wake up at the scene or in the hospital?

4 A I woke up on the scene.

5 Q Okay.

6 A And when I woke up on the scene the ambulance people were
7 saying -- asking me what was my name and different stuff like
8 that, but, like, I was telling them I was shot, and then they
9 was like, what happened, and I told them I believe I got shot
10 over a bag of weed.

11 Q And now, the testimony in the trial from the officers was
12 that when they found you, you were hiding in some bushes
13 nearby the apartment. Do you remember that?

14 A Yes, sir.

15 Q Did that happen?

16 A No, sir. I was never hiding from nobody.

17 Q Do you recall ever running or leaving the scene after
18 being shot?

19 A No, sir. I never left the scene at all.

20 Q Do you know where you were found?

21 A They said on the side of the building.

22 Q And you were found -- is it correct that you were found
23 in some bushes?

24 A I don't remember exactly where I was found at, sir. I
25 was exactly -- being that how the apartments are set up is

Timiya Massey - Direct

- 1 there's some apartments. They stayed on the end apartment,
2 and right here on the end -- right here in the walkway is
3 where me and the dudes got to scuffling is where I got shot,
4 so after I heard gunshots go off when we was fighting again I
5 got shot. I didn't initially get shot from the beginning.
- 6 Q All right. And when you came -- you said at some point
7 at the scene you became unconscious?
- 8 A Yes, sir.
- 9 Q Do you know where you became conscious?
- 10 A When did I become?
- 11 Q Did you know where you were when you became conscious?
- 12 A I was laying on the ground.
- 13 Q Where?
- 14 A I don't know. It was dark. I don't know exactly where I
15 was at.
- 16 Q Okay. And what happened?
- 17 A They cut my clothes off.
- 18 Q They who?
- 19 A The ambulance. The ambulance people cut all my clothes
20 off.
- 21 Q There at the scene?
- 22 A Put me on the ambulance, asked me what happened. I told
23 them --
- 24 Q Well, hold on a second. Let me ask you this. What were
25 you wearing?

Timiya Massey - Direct

- 1 A White T-shirt and gray sweatpants.
- 2 Q White T-shirt and gray sweatpants?
- 3 A Yes, sir.
- 4 Q Did you ever have jeans on?
- 5 A No, sir.
- 6 Q Okay. Did you ever have a mask with you?
- 7 A No, sir.
- 8 Q Did you ever have a holster?
- 9 A No, sir.
- 10 Q And I believe in the testimony -- there's testimony in
- 11 the transcript that you were found near a holster.
- 12 A I can believe they said that in my transcript, but --
- 13 Q You were there. You --
- 14 A I was there. Like I say --
- 15 Q No. But you were at the trial, and you heard them say
- 16 that. Didn't you?
- 17 A Yes. It's what I'm telling you. I was at the trial, and
- 18 I heard them say that, but that was a lie the whole time. I
- 19 never -- I never had a holster. I had on sweatpants.
- 20 Q What about a mask? Did you ever wear a mask --
- 21 A No, sir.
- 22 Q -- at any point during this incident when Mr. Nutridge
- 23 was killed?
- 24 A No, sir.
- 25 Q Did you ever -- did you ever have a weapon?

Timiya Massey - Direct

- 1 A No, sir.
- 2 Q Did you and Mr. Steele discuss -- let me ask you this.
- 3 At some point did you recall your hands being bagged?
- 4 A Yes, sir.
- 5 Q And did they tell you, they being -- who bagged your
- 6 hands?
- 7 A The Forensics.
- 8 Q Where?
- 9 A I can't remember where they bagged it. Like I said, when
- 10 I woke up at the hospital, they -- my hands was bagged, but
- 11 that was all the way until the next day, but I got pictures
- 12 showing where they swabbed my hands at. I had my family
- 13 members send them to you.
- 14 Q Law enforcement swabbed your hands. Is that right?
- 15 A Yes, sir.
- 16 Q Did they tell you why they were swabbing your hands?
- 17 A For GSR.
- 18 Q Gun powder residue?
- 19 A Yes, sir.
- 20 Q Do you recall where your hands were bagged? Was it at
- 21 the scene or at the hospital?
- 22 A I couldn't -- when I got on the ambulance, I was strapped
- 23 down. They came -- the Forensics people came and took
- 24 pictures of me, and I was just laying right there, and I
- 25 passed back out. I woke up. When I woke up, I had bags on my