

VOLUME I OF III

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Lexington County

S.C. SUPREME COURT

Honorable Perry H. Gravely, Circuit Court Judge

RICKY ESAW,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-001407

APPENDIX

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1 State of South Carolina
2 County of Lexington

Court of General Sessions

3
4
5 State)
6)
7 v.)
8 Ricky L. Esaw)
9 Defendant.)

Transcript of Record
16-GS-32-206
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10
11 October 2, 2017
Lexington, South Carolina

12
13 B E F O R E:

14 The Honorable William P. Keesley, Judge.
15

16 A P P E A R A N C E S:

17 Rhonda W. Patterson, Assist. Solicitor
Attorney for the State

18 Jason S. Chehoski, Assist. Public Defender
19 Attorney for the Defendant
20
21
22
23

24 Stacy L. Sheppard, RPR
25 Official Court Reporter

1

I N D E X

2

WITNESSESDIRECTCROSSREDIRECTRECROSS

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(There were no witnesses.)

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E X H I B I T S

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NO.DESCRIPTIONID.EVD.

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(There were no exhibits.)

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1 (The following proceedings were held on
2 October 2, 2017.)

3 **THE COURT:** What do y'all have?

4 **MS. PATTERSON:** Your Honor, Mr. Esaw was
5 brought before Your Honor on September 12th, 2007,
6 and he was served with an intent to seek life
7 without parole on our upcoming trial, which is
8 scheduled for October 16th. At that time, Your
9 Honor, the only thing we had ready was a copy of the
10 motion and a copy of the sentencing sheet. And, at
11 that time, we put on the record that when we were
12 able to get a copy of the indictment, that we would
13 serve it on Mr. Esaw. So this is just a
14 housekeeping matter, Your Honor, so we can complete
15 that process in serving him a copy of the indictment
16 for which we seek life without parole.

17 **THE COURT:** Anything else need to be put on the
18 record?

19 **MS. PATTERSON:** No, sir, Your Honor, not from
20 the State.

21 **MR. CHEHOSKI:** Yes, Your Honor. As we were
22 preparing for the trial, we filed a supplemental
23 discovery motion last week. We're seeking any and
24 all statements and identifications that are
25 contradictory to what we've been provided. We're

1 also seeking -- again, there were -- according to
2 police reports, there were lineups that were
3 provided to the victims for identification that did
4 not include Mr. Esaw and we're asking for those to
5 be provided. We're also asking for any or all
6 forensic or DNA testing that involved Mr. Esaw as
7 well.

8 **MS. PATTERSON:** And, Your Honor, after this
9 hearing, we are going to go in the back and meet
10 with defense counsel and I think his paralegal and
11 make sure that they have all the discovery that we
12 have, but we're pretty sure we sent him everything
13 in our possession.

14 **THE COURT:** Anything else?

15 **MS. PATTERSON:** Nothing from the State.

16 **MR. CHEHOSKI:** Nothing further from the
17 defense, Your Honor.

18 **THE COURT:** Thank you.

19 **MS. PATTERSON:** Thank you, sir.

20

21 END OF PROCEEDINGS

22

23

24

25

C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

I, the undersigned, Stacy L. Sheppard, Official Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Criminal Court for Lexington County, South Carolina, on the 2nd of October, 2017.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

December 28, 2017

s/Stacy L. SheppardStacy L. Sheppard, RPR
Official Court Reporter

State of South Carolina
 County of Lexington

Court of General Sessions

State	)	
	)	
	)	Transcript of Record
v.	)	2016-GS-32-00206
	)	2016-GS-32-00213
Ricky Lamont Esaw	)	2016-GS-32-00214
	)	2016-GS-32-00216
Defendant.	)	2016-GS-32-00217
	)	2016-GS-32-00218

October 16 - 19, 2017
 Lexington, South Carolina

B E F O R E:

The Honorable Thomas W. Cooper, Judge; and a
 jury.

A P P E A R A N C E S:

Rhonda Patterson, Assist. Solicitor
 Angela Martin, Assist. Solicitor
 Attorneys for the State

Jason Chehoski, Assist. Public Defender
 Elizabeth Fullwood, Assist. Public Defender
 Attorneys for the Defendant

Bethanie K. Creppon
 Circuit Court Reporter

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E X H I B I T S				
	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
	<u>STATE'S</u>			
1	1	Dft. Stmt.	78	292
2	2	Lineup Photo	149	292
3	3	Lineup Photo	149	292
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19	19	Photo	335	337
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1 P R O C E E D I N G S
2 * * *

3 (The following proceedings were held October
4 16, 2017.)

5 THE COURT: Mr. Chehoski and Ms. Fullwood, in
6 regard to your proposed voir dire, I will decline to
7 ask questions 3, 4, 6, 7 and 10. I will ask the
8 remaining questions or the import of those will be
9 part of my general order. I'll make the requested
10 voir dire a Court's record to preserve for appellate
11 review. All right.

12 MR. CHEHOSKI: Thank you, Your Honor.

13 (Court's Exhibit No. 1 marked for
14 identification.)

15 THE COURT: All right, folks. Are both sides
16 ready to proceed to jury selection? Is the State
17 ready?

18 MS. PATTERSON: The State is ready, Your Honor.

19 THE COURT: Is the Defense ready?

20 MR. CHEHOSKI: Yes, Your Honor.

21 THE COURT: All right. Ms. Patterson, you may
22 call your case.

23 MS. PATTERSON: Thank you, Your Honor. May it
24 please the Court. Indictment 2016-GS-32-206, the
25 State of South Carolina vs. Ricky Lamont Esaw,
possession of a weapon during the commission of a

1 violent crime; 213, attempted armed robbery; 214,
2 armed robbery; 216, attempted armed robbery; 217,
3 murder; 218, attempted murder.

4 THE COURT: Thank you.

5 Ladies and gentlemen, as you've just heard, the
6 State has called the case of The State vs. Ricky
7 Lamont Esaw. Mr. Esaw is charged in Indictment
8 No. 218 with attempted murder; that indictment
9 accuses Mr. Esaw, here in Lexington County, on or
10 about August 9th of 2015, whether acting alone or in
11 concert with Wilfred Pitts, attempting to kill
12 another person with malice aforethought, either
13 expressed or implied, by shooting the victim
14 Franklin Vasquez with a firearm in violation of the
15 law.

16 Indictment 217 charges Mr. Esaw with the crime
17 of murder. That indictment alleges that at the same
18 time and place here in Lexington County on August
19 9th of 2015, with malice aforethought, either
20 expressed or implied, Mr. Esaw shot the victim
21 Hector Vasquez and that he died as a result thereof,
22 in violation of the law.

23 Indictment 216 charges attempted armed robbery
24 and alleges that at the same time and place, the
25 defendant knowingly and willfully, while armed with

1 a deadly weapon, that is, a handgun, did attempt to
2 feloniously or wrongfully take from the person or
3 presence of Hector Vasquez by means of force or
4 intimidation or threats, goods or monies or a cell
5 phone with intent to steal those things in violation
6 of the law.

7 Indictment 214 charges armed robbery and
8 alleges that at the same time and place the
9 defendant knowingly and willfully, whether acting
10 alone or with Wilfred Pitts, and while armed with a
11 handgun, did feloniously take from the person or
12 presence of Rafael Izaguirre by means of force or
13 threats or intimidation a wallet and/or a cell phone
14 with the intent to steal those things in violation
15 of the law.

16 Indictment 213 charges attempted armed robbery
17 and alleges that at the same time and place the
18 defendant knowingly and willfully, while armed with
19 a handgun, did attempt to take from the person or
20 presence of Franklin Vasquez by means of force or
21 intimidation money and a cell phone in violation of
22 the law.

23 And Indictment 206 charges possession of a
24 weapon during the commission of a violent crime and
25 alleges that Mr. Esaw did in Lexington County on the

1 same date knowingly and willfully possess a firearm
2 during the commission or the attempted commission of
3 a crime of violence, that is, murder and armed
4 robbery, in violation of the law.

5 Ladies and gentlemen, let me tell you at the
6 outset that the indictments which I've just read to
7 you are not evidence, nor are they proof of the
8 charges that they contain. They're simply charging
9 documents, legal documents, that tell you or me or
10 anyone else who reads them what this case is all
11 about.

12 To the charges contained in these indictments,
13 Mr. Esaw has entered pleas of not guilty and has
14 asked for a jury trial at your hands. Mr. Esaw,
15 will you please stand and face the jury behind you.

16 (The defendant stands and faces the jury.)

17 THE COURT: Thank you. You can be seated.

18 Ladies and gentlemen, are any of you related by
19 blood or connected by marriage or friends or
20 business associates or casual acquaintances or
21 people who have any direct or indirect contact with
22 Mr. Ricky Lamont Esaw? If so, will you please
23 stand. Thank you.

24 Ladies and gentlemen, the indictment contains
25 the names of the alleged victims Hector Vasquez,

1 Raphael Izaguirre -- I-Z-A-G-U-I-R-R-E -- and
2 Franklin Vasquez. I need to know if any of you-all
3 are related by blood or connected by marriage to any
4 of those individuals or friends, casual
5 acquaintances, business associates, or people who
6 have any direct or indirect contact with any of
7 those alleged victims. If so, will you please
8 stand. Thank you.

9 Potential witness who may testify in the trial
10 of this case are Christy Vasquez, Franklin Vasquez,
11 Raphael Izaguirre, Luenetta Grayson --
12 L-U-E-N-E-T-T-A -- Danitra Johnson, Wilfred Akiem
13 Pitts, Arthur Gene Evans. Are any of you related by
14 blood or connected by marriage to any of those folks
15 or business associates, casual acquaintances or
16 people who have any direct or indirect contact with
17 any of those folks? If so, please stand. Thank
18 you.

19 Additional witnesses who may testify: From
20 EMS, April Tutich -- T-U-T-I-C-H -- Elizabeth
21 Benton, and Dr. Janice Ross from the Newberry
22 Pathology Associates; from Lexington County 911,
23 Nikki Rodgers, Will Herring from Securis, Sergeant
24 Waters from Amtel, and from Richland County, Sean
25 Kilcoyne -- K-I-L-C-O-Y-N-E -- and Kerry Johnson.

1 Are any of you related by marriage or blood or
2 friends or business associates or people who have
3 any direct or indirect contact with any of those
4 potential witnesses? If so, please stand.

5 Yes, sir, in the back. Your name and number,
6 please?

7 POTENTIAL JUROR: 131.

8 THE COURT: Okay. Mr. Newburg, who is the
9 association with and the nature of it, please, sir?

10 POTENTIAL JUROR: April Tutich is a friend of
11 my daughter-in-law.

12 THE COURT: Okay. Would that association, that
13 friendship between your daughter-in-law and one of
14 the witnesses who may testify in the trial of this
15 case make it difficult for you to be fair and
16 impartial as a juror in this trial?

17 POTENTIAL JUROR: No, sir.

18 THE COURT: Could you aside that association
19 and decide this case on the basis of the evidence
20 that you would hear in court without regard to that?

21 POTENTIAL JUROR: Yes, sir.

22 THE COURT: And would you do that, sir?

23 POTENTIAL JUROR: Yes, sir.

24 THE COURT: Thank you Mr. Newburg.

25 Additional witnesses who may testify in the

1 trial of the case are, from Wafford College --
2 excuse me. Let me get back on track here with this
3 list.

4 From the Lexington County Sheriff's Department
5 Doug Novak, Deputy Edmonson, Anthony Creech, Candy
6 Kyzer, Beverly Smith, Keith Sprinkle, Glenn Ross
7 retired now from the sheriff's department, Heather
8 Clary, Miles Rawl -- R-A-W-L -- John Moore, BJ
9 Steen, EW Richardson, Joe Andaloro, Barry Sowards --
10 S-O-W-A-R-D-S -- Eddie Prestigiacomo --
11 P-R-E-S-T-I-G-I-A-C-O-M-O -- and Bryan Travis.

12 Are any of you related by blood or connected by
13 marriage to any of those folks or people who have
14 any direct or indirect contact, social friendship or
15 otherwise? If so, please stand.

16 We'll start here in the front. Yes, ma'am,
17 your name and number, please?

18 POTENTIAL JUROR: 164, Laura Richardson.

19 THE COURT: Who is the association with,
20 please, ma'am?

21 POTENTIAL JUROR: There were a few named. My
22 husband worked for Lexington County Sheriff's
23 Department and worked with Mr. Moore and
24 Mr. Sowards.

25 THE COURT: All right. Is Mr. Novak one of

1 them?

2 POTENTIAL JUROR: No. I don't know that name.

3 THE COURT: Mr. Edmonson?

4 POTENTIAL JUROR: No.

5 THE COURT: Mr. Creech?

6 POTENTIAL JUROR: No.

7 THE COURT: Ms. Kyzer?

8 POTENTIAL JUROR: No.

9 THE COURT: Ms. Smith?

10 POTENTIAL JUROR: No.

11 THE COURT: Mr. Sprinkle?

12 POTENTIAL JUROR: No.

13 THE COURT: Mr. Ross?

14 POTENTIAL JUROR: No.

15 THE COURT: Ms. Clary?

16 POTENTIAL JUROR: No.

17 THE COURT: Mr. Rawl?

18 POTENTIAL JUROR: No.

19 THE COURT: John Moore?

20 POTENTIAL JUROR: Yes.

21 THE COURT: BJ Steen?

22 POTENTIAL JUROR: No.

23 THE COURT: EW Richardson?

24 POTENTIAL JUROR: No.

25 THE COURT: Joe Andaloro?

1 POTENTIAL JUROR: No.

2 THE COURT: Barry Sowards?

3 POTENTIAL JUROR: Yes.

4 THE COURT: Eddie Prestigiacomo?

5 POTENTIAL JUROR: No.

6 THE COURT: Byron Travis?

7 POTENTIAL JUROR: No.

8 THE COURT: Would your association with

9 Mr. Moore, Mr. Sowards, through your husband, as

10 you've explained it to me, make it difficult for you

11 to be fair and impartial as a juror in the trial of

12 this case?

13 POTENTIAL JUROR: No, sir.

14 THE COURT: Would you be able to set that

15 association aside then and decide this case based on

16 the evidence that you'll hear in this court without

17 regard to that?

18 POTENTIAL JUROR: Yes, sir.

19 THE COURT: And would you do that, please,

20 ma'am?

21 POTENTIAL JUROR: Yes.

22 THE COURT: And your number again, 164?

23 POTENTIAL JUROR: Yes.

24 THE COURT: All right. Thank you.

25 Yes, ma'am. Your name and number, please?

1 POTENTIAL JUROR: 174.

2 THE COURT: Ms. Sharpe, who is the association
3 with, please, ma'am?

4 POTENTIAL JUROR: Miles Rawl.

5 THE COURT: And what's the nature of that
6 association?

7 POTENTIAL JUROR: He's just a distant cousin.

8 THE COURT: Would that relationship make it
9 difficult for you to be fair and impartial as a
10 juror in this case?

11 POTENTIAL JUROR: No.

12 THE COURT: Could you set that matter aside and
13 decide this case based on the evidence that you'll
14 hear in court without regard to that?

15 POTENTIAL JUROR: Yes, sir.

16 THE COURT: Would you do that, please, ma'am?

17 POTENTIAL JUROR: Yes, sir.

18 THE COURT: Thank you, Ms. Sharpe.

19 Yes, sir, in the back?

20 POTENTIAL JUROR: 41, Mark Crumpton.

21 THE COURT: Who is the association with?

22 POTENTIAL JUROR: Barry Sowards.

23 THE COURT: And what's the nature of that
24 association?

25 POTENTIAL JUROR: I'm friends with his wife.

1 I'm a pastor at a church and he and his wife both
2 attended services at my church.

3 THE COURT: And that's the Lexington Church of
4 God, is that right?

5 POTENTIAL JUROR: Yes.

6 THE COURT: Would that association that you've
7 just described, Reverend Crumpton, make it difficult
8 for you to be fair and impartial as a juror in the
9 trial of this case?

10 POTENTIAL JUROR: No, sir.

11 THE COURT: Could you set aside that
12 association and decide this case based on the
13 evidence you'll hear in court without regard to
14 that?

15 POTENTIAL JUROR: Yes.

16 THE COURT: Would you do that, please, sir?

17 POTENTIAL JUROR: Yes, sir.

18 THE COURT: Thank you, sir.

19 Yes, sir, your name and number, please?

20 POTENTIAL JUROR: 183, David Stalnaker.

21 THE COURT: All right, sir. Who is the
22 association with?

23 POTENTIAL JUROR: Mr. Creech.

24 THE COURT: Mr. Creech. And what's the nature
25 of that association?

1 POTENTIAL JUROR: High school classmate.

2 THE COURT: Have you maintained your contact
3 with each other and your association with each other
4 after you got out of high school?

5 POTENTIAL JUROR: Not recently, not in the last
6 five years.

7 THE COURT: Okay. Would that association as
8 you've just described it make it difficult for you
9 to be fair and impartial as a juror in the trial of
10 this case?

11 POTENTIAL JUROR: Not at all.

12 THE COURT: Would you be able to set aside that
13 association and decide this case based on the
14 evidence you'll hear in court without regard to
15 that?

16 POTENTIAL JUROR: Yes, sir.

17 THE COURT: And will you do that, please, sir?

18 POTENTIAL JUROR: Yes, sir.

19 THE COURT: Thank you.

20 Additional witnesses who may testify in the
21 trial of this case are Dr. Dawn McQuiston --
22 M-C-Q-U-I-S-T-O-N -- from Wafford College, Patricia
23 Reid from West Columbia, Erica Esaw from Jonesboro,
24 Georgia, John Barron from the Richland County
25 Sheriff's Office, Donna Money from SLED, Jessica

1 Stowe from SLED, and Jason Rushton from Neese
2 Investigations.

3 I need to know if any of you-all are related by
4 blood or connected by marriage to any of those
5 potential witnesses or friends, business associates,
6 or people who have direct or indirect contact with
7 any of those potential witnesses. If so, please
8 stand. Thank you.

9 Now, ladies and gentlemen, the lawyers who will
10 be involved in the trial of this case, on behalf of
11 the State the case will be presented by assistant
12 solicitors Rhonda Patterson and Angela Martin of the
13 11th Judicial Circuit Solicitor's Office here in
14 Lexington County.

15 The defendant, Mr. Esaw, is represented by
16 Mr. Jason Chehoski and Ms. Beth Fullwood of the
17 Lexington County Public Defender's Office. Thank
18 you.

19 Are any of you related by blood or connected by
20 marriage to any of these lawyers or friends of
21 theirs or business associates of theirs or casual
22 acquaintances of theirs or have you ever been
23 represented by any of them in the past or sued by
24 any of them in the past? If so, please stand.

25 Yes, sir. Your name and number, please, sir?

1 POTENTIAL JUROR: Steven Moseley, Juror 129.

2 THE COURT: Who is the association with?

3 POTENTIAL JUROR: That would be with Jason. We
4 did attend the same church, East Lake Community
5 Church.

6 THE COURT: All right. Would that association
7 as being attendees of the same church make it
8 difficult for you to be fair and impartial as a
9 juror in the trial of this case?

10 POTENTIAL JUROR: No, sir.

11 THE COURT: Could you set aside that
12 association and decide this case based on the
13 evidence that you'll hear without regard to that
14 association?

15 POTENTIAL JUROR: Yes, sir.

16 THE COURT: Would you do that, please, sir?

17 POTENTIAL JUROR: Yes, sir.

18 THE COURT: Thank you.

19 Now, ladies and gentlemen, a few moments ago I
20 read to you the indictments in this case, once
21 again, not because they're evidence nor are they
22 proof of the charges that they contain, they just
23 tell us all what this case is all about. I need to
24 know if you know anything about this case. If you
25 have seen or heard or read anything about this case

1 or if you have any knowledge about this case from
2 any source at all, would you please stand?

3 I remind you that the allegations allege that
4 the crime occurred on or about August 9th of 2015 --
5 and I take it that it occurred at the Rolling
6 Meadows mobile home park. Is that right?

7 MS. PATTERSON: Yes, sir.

8 THE COURT: All right. That it occurred at the
9 Rolling Meadows mobile home park located at 3941
10 Charleston Highway in West Columbia. That's all
11 that I know and all that the indictment revealed to
12 me about the case.

13 Based on that, can any of you tell me if any of
14 you-all have any knowledge about this case from any
15 source at all? If you have seen or heard or read
16 anything about this case or if you have any
17 knowledge about the case from any source at all,
18 will you please stand. Thank you.

19 Now, you don't know anything about this case
20 itself, but you understand what the charges are.
21 You understand that the allegations are crimes of
22 attempted armed robbery, armed robbery, attempted
23 murder, and murder. These are crimes of personal
24 violence, that is, crimes against a person. There
25 are other crimes of personal violence as well that

1 are not involved with this particular case, don't
2 have anything to do with this case, but by way of
3 example, criminal sexual conduct, criminal domestic
4 violence, assault and battery, those sorts of
5 things, those are crimes of personal violence under
6 the law.

7 Now I need to know if any of you-all have ever
8 been involved in a crime of personal violence,
9 either as those alleged in these indictments or
10 other crimes of personal violence as I've indicated
11 to you exist in the eyes of the law. I need to know
12 if you or any members of your immediate family have
13 been involved in such crimes and I need to know if
14 you or any members of your immediate family have
15 been involved either as a defendant, that is the
16 person who was charged with the crime, or the
17 victim, that is the person against whom the crime
18 was committed, or as a witness, that is a person who
19 has some direct knowledge of the crime itself.

20 So the question applies not only to you, it
21 applies to any members of your immediate family, any
22 members of your household, and it applies to a wide
23 range of possible involvement in the crime. You or
24 your family member could have been a victim; you or
25 your family member could have been the defendant,

1 the person charged; you or your family member could
2 have been a witness.

3 Now, if that question applies to you in any of
4 those respects, I want you to stand right now and
5 give me your name and number and then I'm going to
6 bring you down individually in the relative privacy
7 of the court reporter myself and the lawyers and
8 inquire further about your situation. So right now
9 all I need to know is your name and number. And as
10 you give me your name and number, I'm going to ask
11 you to form a line in the center aisle.

12 Yes, ma'am, in the center front. Your name and
13 number?

14 POTENTIAL JUROR: 107, Bonnie Little.

15 THE COURT: All right. If you'll form a line,
16 please, right there in that center aisle. Thank
17 you.

18 Yes, ma'am?

19 POTENTIAL JUROR: 158, Ms. Ramirez-Pena.

20 THE COURT: All right.

21 POTENTIAL JUROR: 195, Sheri Swygert.

22 THE COURT: Yes, sir?

23 POTENTIAL JUROR: 222, Walter Wylie.

24 THE COURT: Thank you.

25 POTENTIAL JUROR: 78, Stephen Hoffman.

1 THE COURT: Thank you.

2 Yes, ma'am?

3 POTENTIAL JUROR: 127, Shakeshia Morales.

4 THE COURT: Thank you, ma'am.

5 POTENTIAL JUROR: 191, Roshaunda Strickland.

6 THE COURT: Thank you.

7 POTENTIAL JUROR: 209, Denise Watkins.

8 THE COURT: Thank you.

9 In the center?

10 POTENTIAL JUROR: 112, Heather Mack.

11 THE COURT: Thank you.

12 POTENTIAL JUROR: 69, Kimberly Headd.

13 THE COURT: Thank you.

14 THE BAILIFF: Juror No. 107, Your Honor.

15 THE COURT: Thank you.

16 Ms. Little, if you'll speak so she can hear
17 you. Was it you or a family member who was
18 involved?

19 POTENTIAL JUROR: My daughter, family member.

20 THE COURT: What was her involvement?

21 POTENTIAL JUROR: She was assaulted by her
22 boyfriend. It was assault of highly aggravated
23 nature.

24 THE COURT: Did that occur here in Lexington
25 County?

1 POTENTIAL JUROR: Yes.

2 THE COURT: How long ago was that?

3 POTENTIAL JUROR: Four years.

4 THE COURT: Okay. Was he in a trial or
5 convicted for that?

6 POTENTIAL JUROR: We let him go as long as he
7 moved back to his parents house. So...

8 THE COURT: Okay. You've had no problems since
9 that time?

10 POTENTIAL JUROR: No, just calls.

11 THE COURT: Okay. Would your involvement,
12 through your daughter as a victim in that case, make
13 it difficult for you to be fair and impartial as a
14 juror in the trial of this case?

15 POTENTIAL JUROR: No.

16 THE COURT: Would you set aside your own
17 family's experience in that regard and decide this
18 case based on the evidence that you'll hear in this
19 case without regard to that?

20 POTENTIAL JUROR: Yes.

21 THE COURT: Would you do that, please, ma'am?

22 POTENTIAL JUROR: Yes.

23 THE COURT: Thank you. You can go back and
24 have a seat.

25 THE BAILIFF: Juror No. 158, Your Honor.

1 THE COURT: Thank you.

2 Ms. Ramirez-Pena, if you'll speak so she can
3 hear you, please, ma'am. Was it you or a family
4 member who was --

5 POTENTIAL JUROR: Family member.

6 THE COURT: What was the relation to you?

7 POTENTIAL JUROR: She's my daughter.

8 THE COURT: And what was her involvement?

9 POTENTIAL JUROR: Sexual assaulted.

10 THE COURT: How long ago was that?

11 POTENTIAL JUROR: It was June of 2016.

12 THE COURT: And how old was she?

13 POTENTIAL JUROR: Twelve.

14 THE COURT: Was anyone caught?

15 POTENTIAL JUROR: Yes.

16 THE COURT: Okay. Has that case been disposed
17 of yet?

18 POTENTIAL JUROR: Tried and deported.

19 THE COURT: Trial and --

20 POTENTIAL JUROR: He's been tried and
21 deported.

22 THE COURT: Was that here in Lexington County?

23 POTENTIAL JUROR: Yes.

24 THE COURT: Do you remember who prosecuted that
25 case from the --

1 POTENTIAL JUROR: No, I do not.

2 THE COURT: Okay. You, obviously, were
3 involved in the trial itself, were you?

4 POTENTIAL JUROR: I never went to it.

5 THE COURT: You never went?

6 POTENTIAL JUROR: Huh-uh. They asked me if I
7 wanted to go to the courts and I said no.

8 THE COURT: How is your daughter doing now?

9 POTENTIAL JUROR: Better. She's done with
10 counseling.

11 THE COURT: Is she back in school?

12 POTENTIAL JUROR: Yes.

13 THE COURT: Doing okay?

14 POTENTIAL JUROR: Yes.

15 THE COURT: Would your involvement through your
16 daughter in that regard, Ms. Ramirez, make it
17 difficult for you to be fair and impartial as a
18 juror in this trial?

19 POTENTIAL JUROR: No.

20 THE COURT: Could you set aside that experience
21 and decide this case based on what you'll hear in
22 court?

23 POTENTIAL JUROR: Yes, sir.

24 THE COURT: Would you do that, please, ma'am?

25 POTENTIAL JUROR: Yes, sir.

1 THE COURT: Thank you, ma'am.

2 THE BAILIFF: Juror No. 195, Your Honor.

3 THE COURT: Thank you.

4 Ms. Swagger, if you'll speak so she can hear
5 you, please, ma'am. Was it you or a family member?

6 POTENTIAL JUROR: Me and my family members.

7 THE COURT: Who was the family member?

8 POTENTIAL JUROR: My three sisters and my
9 mother.

10 THE COURT: Was this is a single event or a
11 series of events?

12 POTENTIAL JUROR: A couple single -- well, a
13 couple events that led up to it.

14 THE COURT: Why don't you describe it to me so
15 that -- how -- what was you-all's involvement?

16 POTENTIAL JUROR: My sisters and I were present
17 at the -- my father and mother.

18 THE COURT: I see. Okay. And did any criminal
19 charges arise out of any of that?

20 POTENTIAL JUROR: Yes.

21 THE COURT: What was the outcome of those?

22 POTENTIAL JUROR: He pled guilty and served
23 four years.

24 THE COURT: How long ago?

25 POTENTIAL JUROR: It was in 1974.

1 THE COURT: Okay. And was that in Lexington
2 County?

3 POTENTIAL JUROR: I believe Richland.

4 THE COURT: Richland?

5 POTENTIAL JUROR: Because we lived in Richland
6 at the time.

7 THE COURT: All right. I understand that's
8 difficult. Have you been able to get past it?

9 POTENTIAL JUROR: Pretty much.

10 THE COURT: All right. I am sorry I had to ask
11 about that. Would that make it difficult for you to
12 be fair and impartial as a juror in this case?

13 POTENTIAL JUROR: No.

14 THE COURT: Would you set aside your own
15 unpleasant experience and decide this case based on
16 what you'll hear in court.

17 POTENTIAL JUROR: Yes.

18 THE COURT: Would you do that, please, ma'am?

19 POTENTIAL JUROR: Yes.

20 THE COURT: Thank you.

21 THE BAILIFF: Juror No. 222, Your Honor.

22 THE COURT: If you'll speak so she can hear
23 you, please. Was it you or a family member who was
24 involved?

25 POTENTIAL JUROR: My wife.

1 THE COURT: And what was her involvement?

2 POTENTIAL JUROR: She was assaulted by her
3 ex-husband. This is 25 years ago while we were in
4 Italy.

5 THE COURT: Okay. Was he tried or convicted or
6 faced judgment in that regard?

7 POTENTIAL JUROR: He was expelled from the
8 country.

9 THE COURT: Were you there in that military?

10 POTENTIAL JUROR: Yes, sir.

11 THE COURT: How is your wife doing now?

12 POTENTIAL JUROR: She's good.

13 THE COURT: Okay. Would that experience in the
14 past but obviously on your mind when I ask you to
15 remember it and I'm sorry I had to ask you to do
16 that, would that make it difficult for you to be
17 fair and impartial as a juror in this trial?

18 POTENTIAL JUROR: No, sir.

19 THE COURT: Would you set aside that experience
20 and decide this case based on the evidence you will
21 hear in court?

22 POTENTIAL JUROR: Yes, sir.

23 THE COURT: Would you do that, please, sir.

24 POTENTIAL JUROR: I will.

25 THE COURT: Thank you.

1 THE BAILIFF: Juror No. 78, Your Honor.

2 THE COURT: Mr. Hoffman, if you'll speak so she
3 can hear you. Was it you or a family member?

4 POTENTIAL JUROR: My roommate. His mother was
5 shot and killed in 2005 in the barber shop murders
6 in Orangeburg. It was never taken to trial.

7 THE COURT: They didn't find anybody?

8 POTENTIAL JUROR: The guy that they had
9 arrested and charged with it, he also shot two
10 deputies. They charged him for the shooting the two
11 deputies and the guy got two life sentences, so it
12 was never tried.

13 THE COURT: I understand. Would your
14 experience indirectly in that regard make it
15 difficult for you to be fair and impartial as a
16 juror in this trial?

17 POTENTIAL JUROR: No.

18 THE COURT: Could you set aside that experience
19 and decide this case based on the evidence that
20 you'll hear in court?

21 POTENTIAL JUROR: Yes.

22 THE COURT: Would you do that, please, sir?

23 POTENTIAL JUROR: Yes, sir.

24 THE COURT: Thank you.

25 THE BAILIFF: Juror No. 127, Your Honor.

1 THE COURT: Ms. Morales, if you'll speak so she
2 can hear you, please, ma'am. Was it you or a family
3 member who was involved?

4 POTENTIAL JUROR: Me.

5 THE COURT: And what was the involvement?

6 POTENTIAL JUROR: I was a victim, me and my
7 children, of home invasion. It was armed robbery,
8 kidnapping, rape.

9 THE COURT: How long ago was that?

10 POTENTIAL JUROR: 2011.

11 THE COURT: Was that here in Lexington County?

12 POTENTIAL JUROR: Yes.

13 THE COURT: Was anybody caught and convicted of
14 that?

15 POTENTIAL JUROR: Yes.

16 THE COURT: And you said your children?

17 POTENTIAL JUROR: Yes.

18 THE COURT: How old were your children?

19 POTENTIAL JUROR: At the time, my son was about
20 six and my daughter was about three.

21 THE COURT: How are they doing now?

22 POTENTIAL JUROR: My son had two years of
23 mental therapy, but he's doing pretty good now.

24 THE COURT: How are you doing?

25 POTENTIAL JUROR: Good.

1 THE COURT: Do you know who prosecuted that
2 case from the Solicitor's Office?

3 POTENTIAL JUROR: No. I get letters, like, you
4 know --

5 THE COURT: Ma'am?

6 POTENTIAL JUROR: I get letters from the
7 office, but I just put them in the closet because
8 it's always, like, denied.

9 THE COURT: I understand. Did you come to the
10 trial in the case?

11 POTENTIAL JUROR: Uh-huh.

12 THE COURT: So you saw the case being tried?

13 POTENTIAL JUROR: Yes.

14 THE COURT: Right here in this courtroom?

15 POTENTIAL JUROR: Yes, right here.

16 THE COURT: Would your experience in that
17 regard, Ms. Morales, make it difficult for you to be
18 fair and impartial as a juror in this trial?

19 POTENTIAL JUROR: It would be my first time
20 dealing with something like this after that. But, I
21 mean, I could set my own personal feelings to the
22 side.

23 THE COURT: Do you think that you could put
24 aside your own experience and decide this case based
25 on what you will hear in court?

1 POTENTIAL JUROR: Yes.

2 THE COURT: Would you do that, please, ma'am?

3 POTENTIAL JUROR: Yes.

4 THE COURT: All right. Thank you, Ms. Morales.

5 THE BAILIFF: Juror No. 191, Your Honor.

6 THE COURT: Ms. Strickland, if you'll speak so
7 she can hear you, please, ma'am. Was it you or a
8 family member who was involved?

9 POTENTIAL JUROR: It was family members.

10 THE COURT: And what was the relation to you?

11 POTENTIAL JUROR: They were both cousins. One
12 was reared in the home with me.

13 THE COURT: Okay. They were cousins but they
14 resided with you?

15 POTENTIAL JUROR: One did, one of the two.

16 THE COURT: And what was the involvement?

17 POTENTIAL JUROR: They were both participants
18 in a double homicide.

19 THE COURT: And what was their participation?

20 POTENTIAL JUROR: One was accused -- both were
21 accused of it. One actually pulled the trigger and
22 the other testified against that one.

23 THE COURT: I see. Okay. Did that occur in
24 Lexington County?

25 POTENTIAL JUROR: No, sir. Richland County.

1 THE COURT: How long ago was that?

2 POTENTIAL JUROR: About eight years ago.

3 THE COURT: Did you attend the trial of the
4 case over there?

5 POTENTIAL JUROR: No, sir, I did not.

6 THE COURT: Okay. Would your experience in
7 that regard as having cousins who resided with you
8 charged with these crimes make it difficult for you
9 to be fair and impartial as a juror in this regard?

10 POTENTIAL JUROR: I don't believe so.

11 THE COURT: Ma'am?

12 POTENTIAL JUROR: I don't believe so.

13 THE COURT: Can you set aside your experience
14 in this regard then and decide this case based on
15 the evidence that you hear in court?

16 POTENTIAL JUROR: Yes.

17 THE COURT: And will you do that, please,
18 ma'am?

19 POTENTIAL JUROR: Yes, sir.

20 THE COURT: Thank you so much.

21 THE BAILIFF: Juror No. 209, Your Honor.

22 THE COURT: Ms. Watkins, if you'll speak so she
23 can hear you, ma'am. Was it you or a family member
24 who was involved?

25 POTENTIAL JUROR: My son.

1 THE COURT: What was his involvement?

2 POTENTIAL JUROR: He was murdered, 2005.

3 THE COURT: Where did that happen?

4 POTENTIAL JUROR: In New York.

5 THE COURT: Was anybody ever caught and
6 convicted of that?

7 POTENTIAL JUROR: No.

8 THE COURT: Was your son living in New York at
9 the time?

10 POTENTIAL JUROR: Yes.

11 THE COURT: How old was he?

12 POTENTIAL JUROR: He had just turned 21.

13 THE COURT: Would your tragic experience as a
14 victim in that regard, Ms. Watkins, make it
15 difficult for you to be fair and impartial in the
16 trial of this case where one of the charges is
17 murder?

18 POTENTIAL JUROR: Yes. I couldn't do it.

19 THE COURT: I can understand that. I'm sorry
20 that I had to ask you to relive that. We're going
21 to stand you aside as a juror in this case. Please
22 don't discuss your personal situation with anybody
23 else on this jury panel until we get a jury in
24 place. Okay?

25 POTENTIAL JUROR: Okay.

1 THE COURT: Thank you, Ms. Watkins. I'm sorry.
2 209 is excused.

3 THE BAILIFF: Juror No. 112, Your Honor.

4 THE COURT: Ms. Mack, was it you or a family
5 member who was involved?

6 POTENTIAL JUROR: My dad.

7 THE COURT: And what was his involvement?

8 POTENTIAL JUROR: He tried to kill somebody, so
9 attempted murder.

10 THE COURT: Attempted murder. And where did
11 that happen?

12 POTENTIAL JUROR: It would have been in
13 Batesburg.

14 THE COURT: Here in Lexington County?

15 POTENTIAL JUROR: Maybe. I don't know where
16 Batesburg is.

17 THE COURT: How long ago was that?

18 POTENTIAL JUROR: It was a long time ago. I
19 was only five years old. So...

20 THE COURT: How old are you now?

21 POTENTIAL JUROR: I'm 23.

22 THE COURT: So 18 years ago, thereabout. What
23 ever happened to your father as a result of that?

24 POTENTIAL JUROR: He was in prison for about
25 eight years and now he's out of prison.

1 THE COURT: Okay. Have you maintained your
2 association with your father in all that time while
3 he was in jail and since he's out?

4 POTENTIAL JUROR: Yes.

5 THE COURT: Okay. Would your experience in
6 that regard, Ms. Mack, make it difficult for you to
7 be fair and impartial as a juror in the trial of
8 this case?

9 POTENTIAL JUROR: Maybe, because, you know --

10 THE COURT: Well, let me ask you a different
11 way.

12 POTENTIAL JUROR: Okay.

13 THE COURT: If you were asked to serve as a
14 juror in the trial of this case, would you be able
15 to make your discussion as a juror based on the
16 evidence that you would hear in court in this case
17 or would the fact that your father was accused of a
18 similar crime in the past have a bearing on your
19 decision as a juror?

20 POTENTIAL JUROR: Mine would be a little biased
21 because now I know that good people can make bad
22 decisions.

23 THE COURT: And I can understand that. And we
24 appreciate that. That's why we ask these questions.
25 So I'm not going to put you in that uncomfortable

1 position, Ms. Mack, I'm going to stand you aside as
2 a juror in this trial. Please don't discuss your
3 situation or your father's situation with anybody
4 else on the jury until we get a jury in place.
5 Okay?

6 POTENTIAL JUROR: So I just go and sit down?

7 THE COURT: Go ahead and sit back down and I'll
8 excuse you in a few moments. Okay? Thank you.

9 POTENTIAL JUROR: Okay.

10 THE COURT: Juror No. 112 is excused.

11 THE BAILIFF: Juror No. 69, Your Honor.

12 THE COURT: Ms. Headd, if you'll speak so she
13 can hear you.

14 POTENTIAL JUROR: Okay.

15 THE COURT: Was it you or a family member who
16 was involved?

17 POTENTIAL JUROR: My daughter.

18 THE COURT: What was her involvement?

19 POTENTIAL JUROR: She was a victim of an armed
20 robbery when she was the manager at GB Shoe
21 Warehouse when she was making the night deposit
22 drop.

23 THE COURT: How long ago did that happen?

24 POTENTIAL JUROR: Three years ago.

25 THE COURT: Where did it happen? Lexington?

1 POTENTIAL JUROR: Richland County.

2 THE COURT: Okay. Was anybody ever caught and
3 convicted of those?

4 POTENTIAL JUROR: They were.

5 THE COURT: And how old was your daughter at
6 the time?

7 POTENTIAL JUROR: She was 21.

8 THE COURT: Was she harmed or injured in any
9 way?

10 POTENTIAL JUROR: Thank God, no. But they did
11 shoot at her. And her purse was taken because she
12 was able to make the night deposit drop, so I guess
13 they got upset and took her purse.

14 THE COURT: Right. I see. Okay. The charges
15 in this case are similar, attempted armed robbery,
16 armed robbery, attempted murder. Would the fact
17 that your daughter was involved in a similar crime
18 three years ago make it difficult for you to be fair
19 and impartial as a juror in this trial?

20 POTENTIAL JUROR: Yes.

21 THE COURT: Okay. I can appreciate that,
22 Ms. Headd, and we're going to stand you aside as a
23 juror in this case. I'm glad your daughter is doing
24 okay. Please don't discuss your situation or your
25 daughter's with anyone on this jury. And if you'll

1 go sit back down and have a seat for the time being,
2 I'll let you go in just a moment.

3 POTENTIAL JUROR: Thank you.

4 THE COURT: All right. Ms. Headd, Ms. Mack,
5 and Ms. Watkins, ladies, you are all excused for the
6 balance of the day. Please call the number on that
7 card that you received when you signed up this
8 morning after 6:00 this afternoon. Call that
9 call-in number, just you three ladies, nobody else
10 just yet. You're free to go. Call that number
11 after 6:00 today. Thank you. You're free to go.

12 Ladies and gentlemen, have any of you or any
13 members of your immediate family ever been employed
14 by any law enforcement agency? When I say immediate
15 family, I mean in your household; your spouse or
16 your children. If so, please stand. If you or any
17 members of your immediate family have ever been
18 employed as a member of any law enforcement agency,
19 would you please stand.

20 Okay. And I just need your name and number.
21 Starting on the front row, yes, ma'am?

22 POTENTIAL JUROR: 12, Rebecca Baxley.

23 THE COURT: Who is the relation -- the agency
24 and the relation to you, please, ma'am?

25 POTENTIAL JUROR: Lexington County, my brother.

1 THE COURT: Okay.

2 Yes, sir?

3 POTENTIAL JUROR: Matt Pfister, 148. My wife
4 was an AUSA for the Department of Justice and now
5 she trains them.

6 THE COURT: Okay. Thank you, sir. You can be
7 seated.

8 Yes, ma'am?

9 POTENTIAL JUROR: Denver Strickland, 190.

10 THE COURT: And the relation and the agency,
11 please?

12 POTENTIAL JUROR: I'm engaged to someone who
13 has gone to school for law enforcement.

14 THE COURT: I'm sorry?

15 POTENTIAL JUROR: I'm engaged to someone who
16 graduated with law enforcement.

17 THE COURT: Okay. Are they currently employed
18 or have been in the past employed by an agency?

19 POTENTIAL JUROR: He's a security officer for
20 the state armory on Bluff Road.

21 THE COURT: All right. Thank you, ma'am.

22 Yes, ma'am?

23 POTENTIAL JUROR: 164, Laura Richardson.

24 THE COURT: And your husband works with
25 Lexington County sheriffs, is that right?

1 POTENTIAL JUROR: Previously. He works for
2 Cayce Public Safety now.

3 THE COURT: Okay. Thank you.

4 Yes, ma'am?

5 POTENTIAL JUROR: Juror No. 5 Kimberly Backman.
6 I previously worked at the South Carolina Department
7 of Public Safety and my daughter works for the South
8 Carolina Department of Natural Resources.

9 THE COURT: Thank you, ma'am.

10 Yes, sir?

11 POTENTIAL JUROR: 182. My wife works for SLED
12 at the drug ID lab, and before that she worked in
13 the toxicology lab.

14 THE COURT: Thank you.

15 Yes, sir?

16 POTENTIAL JUROR: 63, Jason Hall. My father
17 used to be a police officer in Orangeburg County.

18 THE COURT: Okay. Thank you, sir.

19 Yes, sir, in the center, your name?

20 POTENTIAL JUROR: 24, Norris Bryant.

21 THE COURT: Mr. Bryant, tell me the relation
22 and the agency.

23 POTENTIAL JUROR: My wife works at the police
24 academy.

25 THE COURT: Okay. Thank you.

1 Yes, sir?

2 POTENTIAL JUROR: 188, Richard Stingel. My
3 father is a retired prison guard for the California
4 state.

5 THE COURT: Thank you.

6 Yes, ma'am?

7 POTENTIAL JUROR: 136, Cindy Odom. Way back in
8 1979 I worked at the Department of Juvenile Justice.

9 THE COURT: Thank you, ma'am.

10 Folks, those of you who have just stood in
11 response to that question, would the fact that you
12 or a family member have now or in the past been
13 employed as a member of some law enforcement agency
14 make it difficult for you to be fair and impartial
15 as a juror in the trial of this case? If so, please
16 stand.

17 Yes, sir, Mr. Pfister. Let me ask you to come
18 forward here and talk about this. Mr. Pfister,
19 speak so she can hear you but nobody else can.
20 Okay? What was your situation?

21 POTENTIAL JUROR: My wife was AUSA of Phoenix.
22 And just the experience that she had, the number of
23 caseloads they would carry, it's my impression that
24 the prosecutor is not going to bring in a case
25 that's a solid close-the-door case.

1 THE COURT: So you feel that if the case was
2 brought and --

3 POTENTIAL JUROR: It might -- based on my
4 experience with limited resources that they have at
5 the prosecutor's office, they're not going to bring
6 something forward that's a solid case.

7 THE COURT: Would you have difficulty then
8 applying the principle of the presumption of
9 innocence or innocent until proven guilty?

10 POTENTIAL JUROR: I would.

11 THE COURT: I'm going to stand you aside as a
12 juror in this trial. I'm going to let you slip out
13 now, but please call the number after 6:00 today.

14 POTENTIAL JUROR: All right.

15 THE COURT: Number 148 will be stood aside as a
16 juror in this trial.

17 Is any member of the jury panel currently
18 employed by or related to anyone by blood or by
19 marriage who works for a solicitor's office, an
20 attorney general's office, or a public defender's
21 office? If so, please stand. Thank you.

22 Is any member of the jury panel a supporter of
23 or member of or a contributor to any organization
24 who promotes the advancement of law enforcement or
25 victims rights such as MADD, SADD, CAVE and so forth

1 of the like? If so, please stand.

2 Has any member of the jury panel or any member
3 of your family ever resided at the Rolling Meadows
4 mobile home park on 3941 Charleston Highway in West
5 Columbia? That's the location of the alleged events
6 in this case. If so, please stand.

7 Yes, ma'am?

8 POTENTIAL JUROR: 158, Cynthia Ramirez-Pena.

9 THE COURT: 158?

10 POTENTIAL JUROR: Yes, sir.

11 THE COURT: When did you reside there?

12 POTENTIAL JUROR: I didn't reside there. My
13 husband's side of the family resided there.

14 THE COURT: I see. And how long ago did they
15 reside there?

16 POTENTIAL JUROR: I believe it was back in
17 2014.

18 THE COURT: Have they resided there since 2014?

19 POTENTIAL JUROR: No, sir.

20 THE COURT: Have you yourself maintained any
21 contact or any association or visited that place
22 since 2014?

23 POTENTIAL JUROR: Yes, sir.

24 THE COURT: When did you last visit there?

25 POTENTIAL JUROR: I believe it was about a year

1 ago.

2 THE COURT: All right. Was that to visit
3 friends there?

4 POTENTIAL JUROR: Yes. It was actually to take
5 my daughters to a friend's house.

6 THE COURT: Okay. Do you have any knowledge
7 about this case? Did you hear anything about this
8 case when you were there?

9 POTENTIAL JUROR: No, sir.

10 THE COURT: All right. Thank you, ma'am.
11 Yes, ma'am, your name and number again, please?

12 POTENTIAL JUROR: 195, Sheri Swygert. I had a
13 brother and sister-in-law that resided there
14 probably 15 to 20 years ago.

15 THE COURT: Not since then?

16 POTENTIAL JUROR: No.

17 THE COURT: Have you yourself maintained any
18 contact or visited that place since that time?

19 POTENTIAL JUROR: No.

20 THE COURT: Thank you, ma'am.

21 Ladies and gentlemen, have any of you formed in
22 your own mind or expressed to anyone else any
23 opinion that you might have as to the guilt or
24 innocence of Mr. Ricky Lamont Esaw? If so, please
25 stand? All right.

1 Are any of you aware of, that is to say
2 consciousness of, any bias or prejudice for or
3 against the State or for or against this defendant?
4 If you know of any such reason, would you please
5 stand.

6 Do any of you know of any reason at all that
7 would keep you from serving fairly and impartially
8 as a juror in this trial, both to the State and this
9 defendant? If you know of any such reason, will
10 please stand. Thank you.

11 Ms. Patterson, further questions from the
12 State?

13 MS. PATTERSON: No, Your Honor.

14 THE COURT: Thank you.

15 Other than previously noted, Mr. Chehoski, any
16 further questions from the Defense?

17 MR. CHEHOSKI: Nothing further from the
18 Defense.

19 THE COURT: Thank you.

20 Madam Clerk, you can give us a jury. The
21 strikes will be five for the State, ten for the
22 Defense. We will select two alternates. As to each
23 alternate, the strikes will be one for the State and
24 two for the Defense.

25 Ladies and gentlemen, a jury list is now being

1 generated by a cold and dispassionate computer in a
2 secret room where Ms. Frick has gone. She's going
3 to come out in a moment with a list and it's going
4 to have some of your names on and will not have some
5 of your names on it, and it's from that list that
6 the jury will be selected.

7 I tell jurors in the old days this was a very
8 archaic and showy process. Jurors' names were all
9 put on little slips of paper and they were put in
10 little white capsules and put in some sort of
11 receptacle. In a big place like Lexington or
12 Richland County, it was generally an ornate tumbler
13 and they put them in and turn them around.

14 In my home county of Clarendon County, it was a
15 King Edwards cigar box and it would be shaken up and
16 a great show made of it, and according to the
17 statute, the names had to be drawn by a child under
18 the age of seven or by a blind person to assure the
19 anonymity of the selection process. Now the
20 anonymity it is assured by a computer program which
21 has a random program and does just that.

22 So here is the list. And as your name is
23 called, ladies and gentlemen, follow the
24 instructions given to you by the clerk. Thank you.

25 THE CLERK: Okay. As I call your name, please

1 come forward, stand in front of the podium like I
2 showed you earlier, and remain there until I tell
3 you to either have a seat in the box or to return to
4 your seat in the audience.

5 THE COURT: And bring your personal items with
6 you.

7 THE CLERK: Number 102, Anthony Lane.

8 (Mr. Lane comes forward.)

9 THE CLERK: What say you for the State?

10 MS. PATTERSON: Please present the juror.

11 THE CLERK: What say you for the Defense?

12 MR. CHEHOSKI: Please seat Mr. Lane.

13 THE CLERK: Have a seat in the jury box, sir.

14 186, Dale Stiffler.

15 (Mr. Stiffler comes forward.)

16 THE CLERK: What say you for the State?

17 MS. PATTERSON: Please present the juror.

18 THE CLERK: What say you for the Defense?

19 MR. CHEHOSKI: Please seat Mr. Stiffler.

20 THE CLERK: Have a seat in the jury box, sir.

21 Number 40, Dawn Coulter.

22 (Ms. Coulter comes forward.)

23 THE CLERK: What say you for the State?

24 MS. PATTERSON: Please present the juror.

25 THE CLERK: What say you for the Defense?

1 MR. CHEHOSKI: Please seat Ms. Coulter.

2 THE CLERK: 129, Steven Moseley.

3 (Mr. Moseley comes forward.)

4 THE CLERK: What say you for the State?

5 MS. PATTERSON: Please excuse the juror.

6 THE CLERK: Return to your seat, please, sir.

7 208, Patricia Waters.

8 (Ms. Waters comes forward.)

9 THE CLERK: What say you for the State?

10 MS. PATTERSON: Please present the juror.

11 THE CLERK: What say you for the Defense?

12 MR. CHEHOSKI: Please seat Ms. Waters.

13 THE CLERK: Have a seat in the jury box, ma'am.

14 63, Jason Hall.

15 (Mr. Hall comes forward.)

16 THE CLERK: What say you for the State?

17 MS. PATTERSON: Please present the juror.

18 THE CLERK: What say you for the Defense?

19 MR. CHEHOSKI: Please seat Mr. Hall.

20 THE CLERK: Have a seat in the jury box, sir.

21 Number 18, Matthew Blackwell.

22 (Mr. Blackwell comes forward.)

23 THE CLERK: What say you for the State?

24 MS. PATTERSON: Please present the juror.

25 THE CLERK: What say you for the Defense?

1 MR. CHEHOSKI: Please excuse Mr. Blackwell.

2 THE CLERK: Please return to your seat, sir.

3 Number 114, David Martin.

4 (Mr. Martin comes forward.)

5 THE CLERK: What say you for the State?

6 MS. PATTERSON: Please present the juror.

7 THE CLERK: What say you for the Defense?

8 MR. CHEHOSKI: Please seat Mr. Martin.

9 THE CLERK: Have a seat in the jury box, sir.

10 24, Norris Bryant.

11 (Mr. Bryant comes forward.)

12 THE CLERK: What say you for the State?

13 MS. PATTERSON: Please present the juror.

14 THE CLERK: What say you for the Defense?

15 MR. CHEHOSKI: Please excuse Mr. Bryant from

16 the trial of this case.

17 THE CLERK: Have a seat, please, sir.

18 25, Brandon Burnette.

19 (Brandon Burnette comes forward.)

20 THE CLERK: What say you for the State?

21 MS. PATTERSON: Please present the juror.

22 THE CLERK: What say you for the Defense?

23 MR. CHEHOSKI: Please seat Mr. Burnette.

24 THE CLERK: 118, Rashad Mcrae.

25 (Mr. Mcrae comes forward.)

1 THE CLERK: What say you for the State?

2 MS. PATTERSON: Please present the juror.

3 THE CLERK: What say you for the Defense?

4 MR. CHEHOSKI: Please seat Mr. Mcrae.

5 THE CLERK: Have a seat in the jury box, sir.

6 143, Sarah Passomato.

7 (Ms. Passomato comes forward.)

8 THE CLERK: What say you for the State?

9 MS. PATTERSON: Please excuse the juror.

10 THE CLERK: Return to your seat, please, ma'am.

11 66, Donna Hartley.

12 (Ms. Hartley comes forward.)

13 THE CLERK: What say you for the State?

14 MS. PATTERSON: Please present the juror.

15 THE CLERK: What say you for the Defense?

16 MR. CHEHOSKI: Please excuse Ms. Hartley from

17 the trial of the case.

18 THE CLERK: Return to your seat, please, ma'am.

19 157, Michael Ragsdale.

20 (Mr. Ragsdale comes forward.)

21 THE CLERK: What say you for the State?

22 MS. PATTERSON: I beg the Court's indulgence.

23 Please present the juror.

24 THE CLERK: What say you for the Defense?

25 MR. CHEHOSKI: Please seat Mr. Ragsdale.

1 THE CLERK: Have a seat in the jury box, sir.
2 182, Eric Sorrells.
3 (Mr. Sorrells comes forward.)
4 THE CLERK: What say you for the State?
5 MS. PATTERSON: Please present the juror.
6 THE CLERK: What say you for the Defense?
7 MR. CHEHOSKI: Please excuse Mr. Sorrells.
8 THE CLERK: Return to your seat, please, sir.
9 162, Kenneth Reavis.
10 (Mr. Reavis comes forward.)
11 THE CLERK: What say you for the State?
12 MS. PATTERSON: Please present the juror.
13 THE CLERK: What say you for the Defense?
14 MR. CHEHOSKI: Please excuse Mr. Reavis.
15 THE CLERK: Return to your seat, please, sir.
16 64, Randall Hallman.
17 (Mr. Hallman comes forward.)
18 THE CLERK: What say you for the State?
19 MS. PATTERSON: Please present the juror.
20 THE CLERK: What say you for the Defense?
21 MR. CHEHOSKI: Please seat Mr. Hallman.
22 THE CLERK: Have a seat in the jury box, sir.
23 41, Mark Crumpton.
24 (Mr. Crumpton comes forward.)
25 THE CLERK: What say you for the State?

1 MS. PATTERSON: Please present the juror.

2 THE CLERK: What say you for the Defense?

3 MR. CHEHOSKI: Please excuse Mr. Crumpton.

4 THE CLERK: Return to your seat, please, sir.

5 91, Stephanie Jones-Fitts.

6 (Ms. Jones-Fitts comes forward.)

7 THE CLERK: What say you for the State?

8 MS. PATTERSON: Please present the juror.

9 THE CLERK: What say you for the Defense?

10 MR. CHEHOSKI: Please excuse Ms. Jones-Fitts.

11 THE CLERK: Return to your seat, please, ma'am.

12 161, Joel Reardon.

13 (Mr. Reardon comes forward.)

14 THE CLERK: What say you for the State?

15 MS. PATTERSON: Please present the juror.

16 THE CLERK: What say you for the Defense?

17 MR. CHEHOSKI: Please excuse Mr. Reardon.

18 THE CLERK: Return to your seat, please, sir.

19 THE COURT: The State has exercised two
20 strikes, the Defense has exercised eight strikes.

21 THE CLERK: 159, Justin Rauton.

22 (Mr. Rauton comes forward.)

23 THE CLERK: What say you for the State?

24 MS. PATTERSON: Please present the juror.

25 THE CLERK: What say you for the Defense?

1 MR. CHEHOSKI: Please seat Mr. Rauton.

2 THE CLERK: Have a seat in the jury box, sir.

3 130, Timothy Murphy.

4 (Mr. Murphy comes forward.)

5 THE CLERK: What say you for the State?

6 MS. PATTERSON: Please excuse the juror.

7 THE CLERK: Return to your seat, please, sir.

8 Number 207, Joshua Washington.

9 (Mr. Washington comes forward.)

10 THE CLERK: What say you for the State?

11 MS. PATTERSON: Please excuse the juror.

12 THE CLERK: Return to your seat, please, sir.

13 178, Edith Smith.

14 (Ms. Smith comes forward.)

15 THE CLERK: What say you for the State?

16 MS. PATTERSON: Please present the juror.

17 THE CLERK: What say you for the Defense?

18 MR. CHEHOSKI: Please seat Ms. Smith.

19 THE CLERK: Have a seat in the jury box,

20 please, ma'am.

21 Proceed with alternates, Your Honor?

22 THE COURT: Yes, ma'am.

23 THE CLERK: Number 111, Gary Mack.

24 (Mr. Mack comes forward.)

25 THE CLERK: What say you for the State?

1 MS. PATTERSON: Please present the juror.

2 THE CLERK: What say you for the Defense?

3 MR. CHEHOSKI: Please excuse Mr. Mack.

4 THE CLERK: Return to your seat, please, sir.

5 86, James Jaskola.

6 (Mr. Jaskola comes forward.)

7 THE CLERK: What say you for the State?

8 MS. PATTERSON: Please present the juror.

9 THE CLERK: What say you for the Defense?

10 MR. CHEHOSKI: Please seat Mr. Jaskola.

11 THE COURT: Have a seat in the jury box, sir.

12 That's Alternate 1, Your Honor.

13 133, Beverly Nivens.

14 (Ms. Nivens comes forward.)

15 THE CLERK: What say you for the State?

16 MS. PATTERSON: Please present the juror.

17 THE CLERK: What say you for the Defense?

18 MR. CHEHOSKI: Please excuse Ms. Nivens.

19 THE COURT: Return to your seat, please, ma'am.

20 36, Christina Cochcroft.

21 (Ms. Cochcroft comes forward.)

22 THE CLERK: What say you for the State?

23 MS. PATTERSON: Please present the juror.

24 THE COURT: What say you for the Defense?

25 MR. CHEHOSKI: Please seat Ms. Cochcroft.

1 THE CLERK: Alternate No. 2, Your Honor.

2 THE COURT: Thank you.

3 Ms. Patterson, are there any matters regarding
4 the jury selection process from the State?

5 MS. PATTERSON: Nothing from the State.

6 THE COURT: Mr. Chehoski, any matters regarding
7 the jury selection process from the Defense?

8 MR. CHEHOSKI: Nothing from the Defense, Your
9 Honor.

10 THE COURT: Thank you. Counsel, would you
11 approach just for a scheduling issue, please?

12 (Sidebar conference.)

13 THE COURT: Ladies and gentlemen, those of you
14 who were not selected as jurors in the trial of this
15 case, I thank you very much for your patience and
16 your cooperation throughout the morning and into the
17 early afternoon hours. I'm going to be able to let
18 you go now with the instructions that you're to call
19 that number that you received earlier today that
20 will connect you with the recording in the clerk's
21 office. Please call it after 6:00 today.

22 You don't need to call it before then as we
23 probably won't have a message there. But you can
24 call it any time after 6:00 to get instructions
25 about what your plans will be for tomorrow. As you

1 know, it's a recording; you can't argue with it, you
2 can't talk back, it's not going to listen to a thing
3 you've got to say, it'll just give you instructions
4 about tomorrow. Everybody have that number?
5 Everybody understand that? All right.

6 Thank you, folks. I'll see you perhaps later
7 in the week, depending upon how we get things done
8 here. Call that number after 6:00 today.

9 (The jury pool is excused.)

10 THE COURT: Now, ladies and gentlemen, you-all
11 have been selected as jurors in the trial of the
12 case and we're going to start the trial tomorrow at
13 9:30. So I'm going to let you go momentarily and
14 ask that you be back in the jury room tomorrow
15 morning at 9:30. You will not come into this
16 courtroom. They're going to take you right through
17 a door here and show you the jury room. They'll
18 show you the jury room and you'll report back to
19 that in the morning at 9:30.

20 Now, before we start this trial tomorrow
21 morning at 9:30, I'll give you instructions about
22 things that you can and cannot do as jurors in the
23 trial of this case. But to keep you from mistakenly
24 an innocently doing some of those things between now
25 and then, not even knowing that you weren't supposed

1 to be doing those things, let me tell you very
2 briefly that during the trial of this case, you're
3 not allowed to talk about this case with anybody
4 else.

5 You can't expose yourself to any information
6 about this case, if any is generated, by way of
7 publicity or otherwise. There probably won't be,
8 but if there is, you have to set it aside and read
9 that when you get done and your role as juror is
10 over. You can't even talk about this case among
11 yourselves during the trial. And I'll tell you more
12 about that and why you can't do that tomorrow. Of
13 course right this minute you don't know anything
14 about the case, so you can't talk about it among
15 yourselves just yet.

16 But under the rules that we operate and unde
17 the system of justice that we all enjoy and are a
18 part of, everything that you need to know about this
19 case in order to render a verdict, indeed everything
20 that you're allowed to know about this case in order
21 to render a verdict, you have to learn from this
22 courtroom and from no other source at all; from the
23 witness stand right here where people will sit in
24 this chair and answer questions that the lawyers
25 from both sides will put to them, and from any items

1 or documents that might be introduced into the trial
2 of this case.

3 All of those things get presented to you under
4 our rules subject to the test of strict proof,
5 people who are supposed to know what they're talking
6 about and who answer questions that both sides put
7 to them so that you yourself can decide whether they
8 know what they're talking about. All of that is in
9 the protection of this courtroom under the rules of
10 evidence and the rules of procedure.

11 Out there in the street and out there in the
12 newspaper, we don't have any control about that,
13 anybody can say anything that they want to about
14 anything that they want to, and they often do.
15 Obviously your verdict can't rest on that sort of
16 information; it has to rest on what you hear in this
17 courtroom, and that's the reason you can't expose
18 yourself to anything about this case outside of this
19 courtroom, you can't let anybody talk to you about
20 the case, and you can't talk to anybody else about
21 it.

22 Thank you, folks. I'll see you tomorrow
23 morning at 9:30 in the morning. Have a safe trip
24 home. Follow the bailiff right through here and
25 he'll show you where to go.

1 (The jury exits courtroom at 12:42 PM.)

2 THE COURT: All right. Let's take a lunch
3 break before we start the motions. Is an hour
4 enough time? A quarter of two, is that enough?

5 MS. PATTERSON: That's fine with us, yes, sir.

6 THE COURT: We'll take an hour and start back
7 at 1:45 p.m. Thank you.

8 (Luncheon recess 12:43 PM - 1:46 PM.)

9 MR. CHEHOSKI: Judge, I don't know if we do it
10 now or wait until the others are here, but Mr. Esaw
11 would like to have the use of one hand during the
12 various motions.

13 THE COURT: What says security? Is that a
14 problem, gentlemen?

15 COURTROOM DEPUTY: No, sir.

16 THE COURT: All right. If you'll release one
17 hand of his choosing.

18 Ms. Patterson, is the State ready to proceed or
19 do you want us to wait for Ms. Martin?

20 MS. PATTERSON: If you'll give us one second,
21 Your Honor. She stepped in the ladies' room.

22 She's here, Your Honor.

23 THE COURT: All right. Folks, I understand we
24 have a Jackson vs. Denno motion, Neil vs. Biggers
25 hearing, suppression motion, Franks motion, and a

1 motion of disclosure of any negotiations and
2 agreements made with any witnesses who would
3 testify. What order do you want to take those in,
4 folks?

5 MS. PATTERSON: Yes, sir, Your Honor. And one
6 more motion to add, Your Honor: We would -- the
7 State would make a motion to not allow the expert
8 witness on cross-racial identification, Dawn
9 McQuiston, and we'll have that motion, Your Honor.

10 I will go ahead and tell you that there have
11 been no negotiations or deals made with the
12 co-defendant, so can go ahead and scratch that out.
13 He's represented by attorney John Shupper. He's not
14 here, Your Honor, but he will be here at the time
15 that his client testifies. But we have made no
16 deals, no offers, or anything with the co-defendant,
17 Wilfred Akiem Pitts.

18 THE COURT: And who represents him?

19 MS. PATTERSON: John Shupper. And, Your Honor,
20 we can handle the Jackson vs. Denno followed by the
21 Biggers hearing for the State, Your Honor.

22 THE COURT: All right.

23 MR. CHEHOSKI: Your Honor, for the record, I've
24 handed up just our formal motion to reveal random
25 immunity or deals with witnesses just to make a

1 Court exhibit.

2 THE COURT: All right. You gave a copy to the
3 court reporter?

4 MR. CHEHOSKI: Yes, Your Honor.

5 THE COURT: Good. All right. That will be a
6 Court's Exhibit.

7 Next, the State's response to that is that no
8 deals, no negotiations, no promises have been made
9 in order to secure the testimony of any witnesses.
10 All right.

11 All right. Jackson vs. Denno, let's proceed to
12 that.

13 MS. MARTIN: Your Honor, we call John Moore.

14 JOHN MOORE

15 being first duly sworn, testified as follows:

16 THE WITNESS: I do.

17 THE CLERK: Have a seat, sir. Once you're
18 seated, state your full name spelling your last,
19 please.

20 THE WITNESS: John Moore, M-O-O-R-E.

21 DIRECT EXAMINATION

22 BY MS. MARTIN:

23 Q. And, Detective Moore, where are you employed?

24 A. I am employed with the Lexington County
25 Sheriff's Office as a detective.

1 Q. And how long have you been in law enforcement?

2 A. Thirty-four years.

3 Q. And for purposes of this hearing, let's go
4 straight to this next question: Did you have an
5 occasion to meet the defendant, Ricky Esaw?

6 A. I did.

7 Q. Okay. Can you tell us briefly when and where
8 was the first time you had contact with Ricky Esaw?

9 A. The first time I had contact with him was
10 actually at his apartment where I just saw him. The
11 second time was at the Lexington County Detention
12 Center.

13 Q. Okay. And if I can direct your attention to
14 Friday August 14th of 2015. Is that when you met
15 with Ricky Esaw?

16 A. I did.

17 Q. Okay. And what was the purpose of this
18 meeting?

19 A. I went with Detective Sowards and myself to
20 serve arrest warrants on him at the detention
21 center.

22 Q. Okay. And which warrants are you speaking of?

23 A. Speaking of the murder warrant, the armed
24 robbery, and weapon during violent crime.

25 Q. Okay. But the indictments based on the

1 warrants --

2 A. That's correct.

3 Q. -- that you're talking about today; correct?

4 A. Yes.

5 Q. Okay. And where had -- if you know, where had
6 Ricky Esaw been prior to that Friday of August in
7 2015?

8 A. His prior address where he was living.

9 Q. No, no, no. I'm sorry. Let me -- did Ricky
10 Esaw come into the sheriff's department off the
11 street or did he come to you some other way?

12 A. He was from Richland County Detention Center.

13 Q. So he had been in custody at the time that you
14 and Mr. Sowards served warrants?

15 A. That's correct, yes, ma'am.

16 Q. And when you and Mr. Sowards served warrants on
17 Mr. Esaw, where were y'all located?

18 A. We were at the Lexington County Detention
19 Center.

20 Q. And, clearly, Mr. Esaw was in custody?

21 A. He clearly was.

22 Q. And who was actually -- let me ask you this:
23 When you're serving a warrant, what is the process
24 to serve a warrant on someone?

25 A. The warrant service is identify -- I signed the

1 warrant, so I took Barry Sowards to execute the
2 warrant for me.

3 Q. And when you say execute the warrant, what does
4 that involve?

5 A. To service -- to read the warrant to the
6 defendant, and to serve it on him.

7 Q. And were you present when Barry Sowards was
8 doing that?

9 A. I was. I was right next to him.

10 Q. And what if anything was Mr. Esaw's reaction at
11 that point?

12 A. Mr. Esaw was very upset, he wouldn't let Barry
13 finish the warrant. And he finally told him just
14 calm down, we'll let you say anything once the
15 warrant is read to you, all the warrants.

16 Q. And were the warrants read to him?

17 A. They was.

18 Q. And at the conclusion of the warrants being
19 read to him, what if anything what did Mr. Esaw say
20 or do?

21 A. After the warrants was read to him, he said --
22 he first said to us that that was not me, then he
23 said I'm just it the driver, hell no you ain't got
24 nothing on me, okay, at best you got accessory.

25 Q. And at that point was that in response to a

1 question that you had asked?

2 A. No.

3 Q. Was that in response to a question that --

4 A. That was in response to reading the warrants to
5 him.

6 Q. Okay. And when he made that statement to you,
7 based on that reaction he had, what did you do?

8 A. I asked him simply did he want to tell us his
9 side of the story.

10 Q. And what was his answer?

11 A. Yes.

12 Q. And what happened next?

13 A. I called Detective Creech to meet -- to get an
14 interview room at the sheriff's office for me, also
15 started checking him out of the jail. We got to get
16 him out of the jail in handcuffs and take him over
17 to the interview room.

18 Q. And did you check Ricky Esaw out of jail?

19 A. I did.

20 Q. And was Barry Sowards still with you and
21 Detective Creech at this point?

22 A. Barry walked me over with him to the interview
23 room, but Barry left.

24 Q. And when you went into the interview room, who
25 was present with you and Mr. Esaw?

1 A. Detective Adam Creech.

2 Q. In these interview rooms do you have the
3 capability or is it procedure for the Sheriff's
4 Department to videotape and audiotape what is going
5 on in those rooms?

6 A. It's not procedure, no.

7 Q. Okay. And was there an audiotape or a
8 videotape of this meeting?

9 A. No.

10 Q. Okay. After the three of you are in this room,
11 what do you do next?

12 A. I do a basic statement form, which I get the
13 date, the place where we're at, and the time we
14 start, and I put the defendant's name down, Ricky
15 Esaw, and get his date of birth, place of birth, and
16 his address, and any contact numbers for him.

17 After I get all that, I ask him does he want to
18 make a statement to me, and I identify myself,
19 Detective Creech, and once he agrees to it, I read
20 him his Miranda rights.

21 Q. And what rights did you read to Ricky Esaw?

22 A. I read to him off the sheet the Miranda rights.
23 It goes down, there's five of them. Would you --

24 Q. Yes, please.

25 A. -- like me to read them?

1 Q. Yes.

2 A. It says: I have the right to remain silent.
3 And I ask Ricky did he understand that, he said he
4 did; I asked him to sign it, he did.

5 Second one is: Anything I say can and will be
6 used against you in a court of law. Do you
7 understand that? He did. He initialed, I
8 initialed.

9 You have the right to talk to a lawyer for
10 advice before answering any questions and have him
11 present with you during any questions. Do you
12 understand that? He said he did. He initialed, I
13 signed beside him.

14 If you have no money for a lawyer fee, the
15 Court will appoint one to represent you without cost
16 if you wish. Do you understand that? He did. He
17 signed, I signed.

18 If i decide to answer the questions now without
19 a lawyer present, I still have the right to stop
20 answering questions at any time. I also have the
21 right to stop answering questions at any time until
22 I talk to an attorney. Do you understand that?
23 Yes, he did. I asked him to initial it, I initial
24 beside him.

25 I said, at this time are you willing to --

1 after reading your rights or these statements, are
2 you willing to make a statement? He said he was.
3 Again, he initialed.

4 At that point I set my pen down and I said tell
5 me your side of the story, you know where we're at,
6 you tell me.

7 Q. Did you have any reason to think the defendant
8 was impaired in any way at that time?

9 A. No.

10 Q. Did he appear to you to understand the rights
11 as you read them?

12 A. Absolutely he did.

13 Q. Okay. Did you threaten him in any way?

14 A. No.

15 Q. Did you make him any promises of leniency?

16 A. No.

17 Q. Did you coerce him in any way?

18 A. I did not.

19 Q. To the best of your knowledge, was his decision
20 to talk made freely and voluntarily?

21 A. He wanted to tell his side.

22 Q. And as you went -- okay. From the reading of
23 the rights and advisement of rights, you say then
24 you begin an oral conversation with him?

25 A. I do.

1 Q. Did the defendant talk or did you ask
2 questions? How did this go?

3 A. I asked what happened, tell me what happened.
4 And then he starts telling me what went on.

5 Q. Did he give any other oral admissions about
6 any -- anything to do with his co-defendant?

7 A. He said that he knew that they seen his face
8 because the light was shining on him in the car.

9 Q. Okay. All right. I think you might have
10 misunderstood my question.

11 A. I'm sorry.

12 Q. Did he say anything about his co-defendant?
13 Who is his co-defendant?

14 A. Oh, his co-defendant. Yes. Co-defendant is
15 Pitts.

16 Q. Okay. And did he say anything about his
17 relationship with Mr. Pitts?

18 A. He said that everything he gave me on Pitts was
19 he recognized what Pitts was doing, he saw Pitts do
20 it, and he -- every movement that Pitts did, he
21 recognized.

22 Q. Okay. Did he make any statements to you as to
23 whether he was innocent or guilty in his mind?

24 A. During the conversation he said he -- I was
25 just the driver. He said hell no, you ain't pinning

1 nothing on me, you have nothing on me, I'm just the
2 driver; okay, at best you got me as an accessory.

3 Q. Okay. Did he indicate that he felt like the
4 victims would be able to identify him?

5 A. Because of the light in the car, I think, is
6 what he was meaning about being identified.

7 Q. After he told you his role or what his version
8 of the story was, did you ask him to do anything
9 else?

10 A. I asked him to write down his story to me --

11 Q. And did --

12 A. -- write a statement.

13 Q. And did he write this down?

14 A. He did.

15 Q. And once again, were there any threats made to
16 him?

17 A. No, ma'am.

18 Q. Or any promises made to him if he wrote down
19 his version of events?

20 A. No, ma'am.

21 Q. After he wrote down his version of events, did
22 he say anything else to you and Detective Creech?

23 A. The -- at -- he wrote his side and then I
24 started asking him questions.

25 Q. And is there a question-and-answer portion --

1 A. There is.

2 Q. -- that was put in writing?

3 A. There is and it was put in writing, yes, ma'am.

4 Q. And how many pages -- is there a record made of
5 the rights you gave him, his written statement, and
6 questions and answers?

7 A. Yes, ma'am, there is.

8 MS. MARTIN: If I may approach the witness,
9 Your Honor?

10 THE COURT: Yes, ma'am.

11 MS. MARTIN: Your Honor, may I have this marked
12 for identification purposes only?

13 THE COURT: Certainly.

14 (State's Exhibit No. 1 marked for
15 identification.)

16 BY MS. MARTIN:

17 Q. If I can show you what's been marked as State's
18 Exhibit 1.

19 A. Yes, ma'am.

20 Q. Can you identify that document?

21 A. I do.

22 Q. What is that document?

23 A. This is a statement from Ricky Esaw on August
24 14th, 2015.

25 MS. MARTIN: I beg the Court's indulgence one

1 moment, Your Honor.

2 Your Honor, for purposes of this hearing, I'd
3 move in State's 1.

4 THE COURT: State's 1 for ID.

5 (State's Exhibit No. 1 admitted into evidence.)

6 BY MS. MARTIN:

7 Q. If I can direct your attention to the top part
8 on the advisement of rights. Do you see the rights
9 1 through 5?

10 A. I do.

11 Q. And on the left-hand side of the rights, whose
12 initials are those?

13 A. Those are mine.

14 Q. And to the right hand of those rights, whose
15 initials are those?

16 A. Ricky Esaw.

17 Q. As far as the body of this document, whose
18 writing is all of this?

19 A. Defendant Ricky Esaw.

20 Q. And is that defendant this defendant, Ricky
21 Esaw?

22 A. That's correct.

23 Q. And later in the statement, let's just go to
24 page 3, if there's a Q and A, who wrote the Q line?

25 A. I wrote the question, he wrote the answer.

1 Q. Okay. And so when there's an A --

2 A. That's answer.

3 Q. And the initials to the left of any A are done
4 by who?

5 A. Ricky Esaw.

6 Q. Okay.

7 MS. PATTERSON: I beg the Court's indulgence
8 one moment.

9 THE COURT: All right.

10 BY MS. MARTIN:

11 Q. Did Mr. Esaw ever ask for an attorney?

12 A. No.

13 Q. Based on your experience with Mr. Esaw, were
14 you aware he was a convicted felon?

15 A. I was.

16 Q. And were you aware he had experience with the
17 court system?

18 A. I did.

19 Q. And as I asked you before, did -- based on your
20 observation of Mr. Esaw that day, do you feel like
21 he wanted and was anxious to give his version of the
22 story?

23 A. He wanted and he wanted me to hear that side of
24 the story.

25 Q. Please answer any questions Mr. Chehoski has.

1 THE COURT: Mr. Chehoski, cross-examination?

2 MS. MARTIN: Your Honor, may we approach for a
3 moment?

4 THE COURT: Yes.

5 (Sidebar conference.)

6 CROSS-EXAMINATION

7 BY MR. CHEHOSKI:

8 Q. Good afternoon, Detective.

9 A. Good afternoon, Counselor.

10 Q. Your first encounter with Ricky Esaw was on
11 August 12th; right?

12 A. The Wednesday night -- it's -- yes. It's
13 Wednesday night about midnight.

14 Q. And that was at his apartment?

15 A. At his apartment, that's correct.

16 Q. Did you go into the apartment?

17 A. I did.

18 Q. Did you -- and when you went into the
19 apartment, did you smell anything?

20 A. I don't remember smelling anything.

21 MS. MARTIN: Your Honor, I'd object to this.
22 We're here about statements, oral and written.

23 MR. CHEHOSKI: Your Honor, it can go to motive
24 of the statement at a later point in the hearing.

25 THE COURT: Okay. I'll let it.

1 What was the question?

2 BY MR. CHEHOSKI:

3 Q. Do you remember smelling the marijuana in the
4 apartment?

5 A. I -- you know, I think, now that you said it,
6 we had a marijuana scent there, but I -- I went on
7 past that. I was there for something else.

8 Q. All right. Do you know whose name was on that
9 lease?

10 A. I think it was on Annette -- Luenetta Grayson.

11 Q. All right. And when -- and two days later when
12 you met with Mr. Esaw at the detention center and
13 Mr. Sowards was with you --

14 A. That's correct.

15 Q. All right. Was there any mention of charges
16 against Ms. Grayson?

17 A. Not that I'm aware.

18 Q. All right. Any suggestion that Ms. Grayson
19 might be facing charges?

20 A. I know we was going to talk to her about this
21 incident.

22 Q. Okay. But also was there any -- again, was
23 there any suggestions about a possible marijuana
24 charge?

25 A. I don't think so. I don't think so, because we

1 didn't collect any of the marijuana.

2 Q. There was marijuana --

3 A. That smell -- you said the smell. And I don't
4 remember us finding any marijuana there.

5 Q. All right. And, again, there's no question
6 that Mr. Esaw was in custody at the time?

7 A. He was in custody at the time.

8 Q. Yeah. He was not free to go anywhere?

9 A. No.

10 Q. And when -- after you read the warrants, you
11 took him to an interview room?

12 A. Right.

13 Q. And it was that -- it was at that point that
14 you sat down; correct?

15 A. Yes.

16 Q. And you confirmed that he wanted to make a
17 statement?

18 A. Right.

19 Q. And then you read him his rights?

20 A. I went through the basic information and then
21 read him his Miranda, yes, sir.

22 Q. All right. And you said there's no -- it's not
23 policy or procedure to record the statements?

24 A. Some detectives record it audio. I have
25 recorded it audio, and that particular day I wanted

1 mine but the battery was dead on it.

2 Q. Did you have a cell phone with you?

3 A. I don't think I did. I think Detective Creech
4 had his cell phone, but I don't think I had mine.

5 Q. And do you know what kind of phone Detective
6 Creech has?

7 A. I don't.

8 Q. You don't know of any -- you don't know --

9 A. It's -- I'm sure --

10 Q. -- if it has any recording capabilities?

11 A. I'm sure it's a work phone. We all got the
12 little work phone.

13 Q. Does the work phone have recording capabilities
14 on it?

15 A. These particular phones are the cheap ones. I
16 don't think so. Maybe, maybe not. I've never done
17 it. It's old flip phones. I usually have a real
18 recorder when I go into them.

19 Q. But you didn't this time?

20 A. I didn't.

21 Q. Or it was dead?

22 A. The battery was dead in it. In fact, I do
23 remember asking Detective Creech did he have his and
24 he didn't have his either.

25 Q. How long does it take to charge up?

1 A. I don't know.

2 Q. Or is it -- do you know if it's -- do you know
3 if it's just like a double-A battery?

4 A. It's double-A and plus it's chargeable.

5 Q. And you have -- do you have double-A batteries
6 at your station?

7 A. I'm sure we do.

8 Q. You didn't look for them?

9 A. Huh-uh.

10 Q. Again, Mr. Esaw wasn't going anywhere?

11 A. Nope.

12 Q. All right?

13 A. He wanted to give his statement and I wanted
14 him to give his statement. I wanted to hear his
15 side.

16 Q. You wanted to hear his side. Before he put pen
17 to paper though, you had a conversation?

18 A. After I read his Miranda to him, yeah.

19 Q. Right. But before --

20 A. And I sat him down and said, tell me your side.

21 Q. And was there Q-and-A followup afterwards?

22 A. There was.

23 Q. And did you go into the details of what
24 happened?

25 A. The warrant read to him was pretty detailed and

1 then I -- if he asked me something, I told him.

2 Q. All right. And those questions led to more
3 details of what happened?

4 A. That he give -- when he give me the answer, I
5 was writing down another question.

6 Q. All right. And again, those were, again,
7 pertaining to details of what happened on the night
8 of August 9th?

9 A. On the shooting scene, yes.

10 Q. The day of the incident?

11 A. Right. Right.

12 Q. Okay.

13 MR. CHEHOSKI: One moment, please, Your Honor.

14 THE COURT: Yes, sir.

15 BY MR. CHEHOSKI:

16 Q. Just a couple more questions, Detective Moore.
17 Are you aware if Richland County collected any
18 marijuana at the scene?

19 A. I'm not.

20 Q. Okay. And --

21 A. I'm not.

22 Q. -- just again, for a little bit of background,
23 that the -- when you first encountered Mr. Esaw was
24 at his apartment?

25 A. Right.

1 Q. And that apartment is in Richland County?

2 A. Right. That's correct.

3 Q. And when you encountered him, you were working
4 in tandem with Richland County?

5 A. That's correct.

6 Q. And so, again, I just want to confirm that
7 before Mr. Esaw put pen to paper after you gave him
8 Miranda, there was a conversation regarding the
9 details of the incident?

10 A. As like -- I think he asked what trailer park
11 or it's a trailer park and I told him Rolling
12 Meadows.

13 Q. Okay. All right. That's all I have.

14 THE COURT: Okay. Thank you.

15 Redirect, Ms. Martin?

16 MS. MARTIN: Just briefly, Your Honor.

17 REDIRECT EXAMINATION

18 BY MS. MARTIN:

19 Q. When Mr. Esaw was found in Richland County back
20 on that Wednesday the 12th of August, 2015, was he
21 arrested by Richland County?

22 A. He was.

23 Q. And he was served a warrant. Do you remember
24 what the warrant was for?

25 A. Yeah. The warrant was breach of trust less

1 than \$10,000.

2 Q. And where did he go on that Wednesday when
3 Richland County deputies arrested him?

4 A. It was actually after midnight when he left and
5 they went to -- or it was right at midnight when he
6 left and they went to Richland County, Alvin S.
7 Glenn.

8 Q. And when you saw him on Friday, August 14th of
9 2015, where had he come from, Mr. Esaw?

10 A. Alvin S. Glenn.

11 Q. So he was never back out on the street?

12 A. Never was.

13 Q. He went from one jail to the next?

14 A. Next.

15 Q. Okay. And you didn't have any trouble
16 communicating with him during your interview, did
17 you?

18 A. None.

19 MS. MARTIN: That's all I have, Your Honor.

20 THE COURT: Thank you.

21 Any followup to any of those points,

22 Mr. Chehoski?

23 MR. CHEHOSKI: No, Your Honor.

24 THE COURT: All right. Thank you.

25 Detective, you may step down.

1 MS. MARTIN: Your Honor, we'd call Barry
2 Sowards.

3 THE COURT: Mr. Sowards, come forward, please,
4 to be sworn.

5 BARRY SOWARDS
6 being first duly sworn, testified as follows:

7 THE WITNESS: I do.

8 THE CLERK: Have a seat, sir. Once you're
9 seated state, your full name spelling your last,
10 please.

11 THE WITNESS: My name is Barry Sowards,
12 S-O-W-A-R-D-S.

13

14 DIRECT EXAMINATION

15 BY MS. MARTIN:

16 Q. Detective Sowards, where are you employed?

17 A. I'm employed with the Lexington County
18 Sheriff's Office.

19 Q. And how long have you been in law enforcement?

20 A. Nineteen years.

21 Q. And for purposes of this hearing, let's just
22 jump forward. When was the first time you met this
23 defendant, Ricky Esaw, first time you saw him?

24 A. When he was -- when -- the night he was
25 arrested.

1 Q. Okay. And do you remember, was that in
2 Lexington County or Richland County?

3 A. It was in Richland County.

4 Q. And after he was arrested by Richland County
5 when was the next time you saw Mr. Esaw, if that
6 would have been on Wednesday, August 12th?

7 A. I believe it was Thursday, the following day,
8 later that day.

9 Q. If I told you it was Friday, August 14th, could
10 that have been true?

11 A. Yes.

12 Q. Okay. And what was the purpose of you seeing
13 Mr. Esaw?

14 A. When I seen Mr. Esaw, when he came to us, was
15 for the purpose of serving a warrant on him.

16 Q. And were the warrants in regards to this case
17 and these indictments today?

18 A. Yes.

19 Q. And when you say you served warrants on him,
20 were you alone with Mr. Esaw or with another law
21 enforcement officer?

22 A. No. I was with Detective Moore seated right
23 behind you.

24 Q. And do you remember where y'all were?

25 A. I was in an area -- a room outside of the pod.

1 It's more of a private room.

2 Q. Is that located in the jail?

3 A. It is.

4 Q. Is that behind the sheriff's department?

5 A. Yes.

6 Q. And Mr. Esaw was in custody?

7 A. Yes.

8 Q. Had Mr. Esaw come directly from Alvin S. Glenn?

9 A. Yes.

10 Q. And when you serve a warrant on someone, how
11 did you do this? What was your procedure?

12 A. I also introduce myself with everybody I serve
13 a warrant with, let them know who I am, I read the
14 charge of the warrant, and then I read the body of
15 the warrant to make sure that they understand what
16 I'm reading to them.

17 Q. And did you do that with Mr. Esaw?

18 A. I did.

19 Q. And how -- what was Mr. Esaw's reaction?

20 A. Mr. Esaw's reaction as I was reading the body
21 of the warrant -- told him what the charges were.
22 And then as I was reading the body of the warrant he
23 continued to interrupt me reading the warrant,
24 eventually allowing me to get through the narrative
25 of the warrant explaining it to him.

1 Q. And did you question him after you read him the
2 warrant?

3 A. I didn't.

4 Q. And did he make any statements to you?

5 A. He did. He told me right after I read him the
6 body of the warrant that -- now, if I actually got
7 it in my report -- I wrote it down. I'm going to
8 have to refer to it to be exact. If you'll give me
9 a moment, I'll try to locate it.

10 Here it is. It says -- he said to me that it
11 wasn't him, he was just the driver. And he just
12 blurted this out without being questioned or
13 anything, it was just as soon as I got through
14 reading the warrant. He said it wasn't me, I was
15 just the driver, hell no you ain't got nothing on
16 me, at best you got me for accessory.

17 Q. And that's noted in your report?

18 A. It is.

19 Q. Do you remember him saying that to you?

20 A. I do.

21 Q. And did he indicate that he wanted to make
22 further statements?

23 A. He did at that time. Detective Moore and I
24 asked him if he wanted to talk about it, he said
25 that he did. It was at that point arrangements were

1 made for a proper interviewing room to bring him to.

2 Q. And were you involved in that subsequent
3 interview?

4 A. I was not.

5 MS. MARTIN: That's all I have, Your Honor.

6 THE COURT: Thank you.

7 Cross-examination?

8 CROSS-EXAMINATION

9 BY MR. CHEHOSKI:

10 Q. I just want to make sure I get this right: You
11 were -- where were you when you were reading the
12 warrants to him?

13 A. Inside the jail.

14 Q. Inside the jail. And specifically where inside
15 the jail?

16 A. There's -- we have rooms, private rooms,
17 outside of the pods, and that's where he was at when
18 it was read.

19 Q. He was outside of the pod?

20 A. It's a room within the pod, but it's sectioned
21 off from the pod.

22 Q. All right. Behind closed doors?

23 A. Correct.

24 Q. And -- and where is the laundry room in
25 relation to that, because I see that's in your

1 report?

2 A. There's a -- there -- there's several rooms. I
3 don't know exactly what you would call that room.
4 So I'm not sure --

5 Q. It wasn't the laundry room?

6 A. I don't know. We could call it the laundry
7 room, but I'm not for sure. I don't work in the
8 jail.

9 Q. Was there -- when I picture a laundry room, I'm
10 picturing a washing machine and dryer in there.

11 A. We -- no. There's no washing machine and
12 dryer.

13 Q. I got that. And the outburst that you
14 attribute to Mr. Esaw, that was why you were reading
15 the warrants?

16 A. It was directly -- the outburst that I just
17 recited was directly after I read the warrant, like
18 a second after I read the warrant.

19 Q. All right. And you didn't record yourself
20 reading the warrant?

21 A. No, I didn't.

22 Q. It's not your practice to do that?

23 A. No, sir.

24 Q. And you did not accompany Mr. Esaw to the
25 interview room?

1 A. Not to my recollection, no.

2 Q. You weren't with him inside the room?

3 A. Not when he was being interviewed, no.

4 Q. One moment, please.

5 Do you have your report with you, Investigator
6 Sowards?

7 A. I do.

8 Q. Let me make sure I -- all right. I want to
9 refer you to page 18.

10 A. Yes.

11 Q. And I want to reference you to 11 lines down.
12 It's a sentence that says: It should be noted when
13 referencing of the items recovered in this apartment
14 related to this case are indicated on the search
15 warrant as to be consistent with case evidence.

16 A. Your page 18 must be different from my page 18.

17 MR. CHEHOSKI: May I approach the witness?

18 THE COURT: You may.

19 BY MR. CHEHOSKI:

20 Q. Okay.

21 A. Okay. Your page 18 is consistent with my page
22 41.

23 Q. Okay. That sentence that begins with it should
24 be noted, can you recall what you're referencing in
25 that?

1 A. I was basically condensing -- it appears that I
2 was basically condensing the verbiage trying to
3 refer to this search warrant as it indicated on the
4 search warrant so I wouldn't have to put exactly the
5 item on this report.

6 Q. All right. So you're referring to items
7 collected by the search warrant?

8 A. Yes.

9 Q. Are you -- did you go inside the apartment?

10 A. I was inside the apartment.

11 Q. You were the first to go inside the apartment
12 actually; right?

13 A. First or second.

14 Q. Right. You were part of the lead. Did you
15 detect the odor of marijuana in that apartment?

16 A. I did.

17 Q. Did you see any marijuana in that apartment?

18 A. I did.

19 Q. All right. Do you know if that marijuana was
20 seized by Richland County?

21 A. I do not.

22 Q. And do you know if marijuana appeared on the
23 search warrant return?

24 A. Marijuana wasn't on the search warrant return
25 that I observed.

1 Q. All right.

2 MR. CHEHOSKI: Your Honor, I think that's all I
3 have.

4 THE COURT: Thank you.

5 Redirect, Ms. Martin?

6 MS. MARTIN: No, Your Honor.

7 THE COURT: Thank you.

8 You can step down, Mr. Sowards.

9 MS. MARTIN: Your Honor, just for
10 clarification, we're trying to do the motions
11 separate, one at a time, because these officers are
12 involved in every one of the motions.

13 THE COURT: Right.

14 MS. MARTIN: So they're going to be recalled,
15 but just to make everything clean and clear --

16 THE COURT: Okay.

17 MS. MARTIN: -- we were trying to do them one
18 at a time.

19 THE COURT: All right. That's fine.

20 MS. MARTIN: I mean one motion at a time.

21 THE COURT: Who is this witness?

22 MS. MARTIN: Adam Creech.

23 THE COURT: Mr. Creech, come forward, please,
24 be sworn.

25 ANTHONY ADAM CREECH

1 being first duly sworn, testified as follows:

2 THE WITNESS: I do.

3 THE CLERK: Be seated, sir. Once you're
4 seated, state your full name spelling your last.

5 THE WITNESS: My full name is Anthony Adam
6 Creech, C-R-E-E-C-H.

7 DIRECT EXAMINATION

8 BY MS. MARTIN:

9 Q. Detective Creech, where are you employed?

10 A. I'm employed with the Lexington County
11 Sheriff's Department.

12 Q. How long have you been in law enforcement?

13 A. Eight years and two months.

14 Q. Are you a major crimes detective?

15 A. I am.

16 Q. And did you have occasion to meet this
17 defendant, Ricky Esaw?

18 A. I did.

19 Q. Can you tell us how you first became
20 involved -- well, just for any involvement on that
21 Friday, August 14th of 2015 when -- can you tell us
22 where you saw Mr. Esaw?

23 A. I can. I was contacted by Detective Moore who
24 was the case officer in this incident. He asked me
25 to meet with him in the booking area of Lexington

1 County Detention Center to help him speak with
2 Mr. Esaw.

3 Q. And where did y'all go from the booking area?

4 A. So from the booking area we relocated over to
5 the interview room to the sheriff's department.

6 Q. And in the interview room, did -- were you
7 present the entire time with Mr. Esaw?

8 A. I was.

9 Q. And who else was with you?

10 A. Detective John Moore.

11 Q. And to your knowledge what was Barry Sowards
12 doing? Had he left the -- had he left working that
13 day?

14 A. He had.

15 Q. Okay. Were you present when the warrants were
16 initially served on Ricky Esaw at the jail?

17 A. I was not.

18 Q. In the interview room, was -- did y'all
19 interview Ricky Esaw?

20 A. We did.

21 Q. And was it audiotaped or videotaped?

22 A. It was not.

23 Q. And do you remember if there was a reason why
24 it was or was not audiotaped or videotaped?

25 A. Just it's not policy or standard operating

1 procedure to do so.

2 Q. And whose decision would it have been to record
3 it or not record it?

4 A. I would have left that up to the case officer
5 who wasn't myself.

6 Q. Okay. And that would have been John Moore?

7 A. It would have.

8 Q. If I can show you what's been marked as State's
9 1, do you recognize this document?

10 A. I do.

11 Q. What is that document?

12 A. This would be the written statement that Ricky
13 provided to myself and Detective Moore.

14 Q. Were you present when Detective Moore -- or did
15 Detective Moore give any rights, particular rights,
16 to Ricky Esaw? Did he advise him of his rights?

17 A. He did. He would have advised him of his
18 Miranda rights.

19 Q. And were you present when this was done?

20 A. I was.

21 Q. And are you familiar with John Moore's initials
22 and his writing?

23 A. I am.

24 Q. Is that shown on State's 1?

25 A. It is.

1 Q. Did you see the interaction between Detective
2 Moore and Mr. Esaw?

3 A. I did.

4 Q. And did Mr. Esaw, in your mind, appear to
5 understand the questions and the answers and the
6 questions that Detective Moore posed to him?

7 A. He did.

8 Q. And did he indicate that he understood his
9 rights by initialing that document in front of you?

10 A. He did.

11 Q. Did he give y'all a verbal statement?

12 A. He did. So standard procedure in these kind of
13 cases would be we would have spoken to him verbally
14 at some length when he was given his Miranda rights.
15 And then we -- after speaking to him for some time
16 about his testimony, he was then allowed the
17 opportunity to put it in writing.

18 Q. And do you recall -- have you had occasion
19 before today to read your reports and your notes?

20 A. I have.

21 Q. And do you, to the best of your recollection,
22 recall anything orally that Mr. Esaw told you and
23 Detective Moore?

24 A. I do.

25 Q. Can you tell us what he said?

1 A. Absolutely. So we gave him his rights. He
2 initially said he wasn't going to allow Wilfred
3 Pitts to, quote, put this all on me, and he wanted
4 to give his side of the story. Mr. Esaw then
5 proceeded to give us an explanation that he had been
6 approached about participating in an armed robbery
7 over in Rolling Meadows.

8 He said he agreed to participate in this
9 robbery. He went on to say that upon arrival, he
10 said that people that were present at a party of --
11 a Hispanic family's house, he said his face was very
12 clearly visible and this would have been because of
13 his positioning underneath some street lights, so he
14 said he knew people at this location saw him.

15 He then explained that a shooting had occurred.
16 He said they left. He maintained that there was a
17 third party with them named AJ that he says did the
18 shooting. But he did say that -- I quoted him as
19 saying I'm innocent, at best I'm an accessory. Very
20 shortly after this he said I know I'm an accessory.

21 He went on to explain that a nine-millimeter
22 and .40-caliber handgun were involved. He was very
23 clearly able to articulate what he described Wilfred
24 Pitts as doing in the incident, but he was unable to
25 similarly describe this alleged AJ individual. He

1 went on to give us a description of AJ. After all
2 this discussion, then he was asked to provide all
3 this in writing, which he then did.

4 Q. After the oral conversation and before he wrote
5 things down, had Mr. Esaw asked for an attorney?

6 A. He had not.

7 Q. Had y'all made him promises that if he
8 cooperated, y'all would go easier on him?

9 A. We did not.

10 Q. Did you make any threats to him or his family
11 or even his girlfriend, Ms. Grayson?

12 A. No.

13 Q. Okay. After the oral statement, you said that
14 he did give a written statement?

15 A. He did.

16 Q. And were you present when he wrote this down?

17 A. I was.

18 Q. And is it contained in State's 1, the exhibit
19 that's in front of you?

20 A. It is.

21 Q. After he gave a written statement, were you
22 present when Detective Moore did a
23 question-and-answer section there in the interview
24 room?

25 A. I was.

1 Q. And were you present when those questions and
2 answers were written on the State's Exhibit 1?

3 A. I was.

4 Q. And were the questions written by John Moore?

5 A. They were.

6 Q. And who wrote the answers?

7 A. The answers were written by Mr. Esaw.

8 Q. Is that this defendant here?

9 A. It is.

10 Q. And after he completed writing the statement
11 and answering the Q-and-A, did Mr. Esaw have
12 anything else to say to you or Detective Moore, if
13 you recall?

14 A. He did. After he provided the statement, he
15 asked specifically if the charges against him were
16 going to be withdrawn because he was trying to say
17 that he was just the driver during this robbery. We
18 explained to him that the charges weren't going to
19 change based on his testimony. He got a little
20 upset over that. He did say that the charges
21 against him were, quote, bullshit, end quote.

22 MS. MARTIN: I beg the Court's indulgence.

23 Please answer any questions Mr. Chehoski has.

24 THE COURT: Ms. Fullwood?

25 MS. FULLWOOD: Yes, sir.

1 CROSS-EXAMINATION

2 BY MS. FULLWOOD:

3 Q. This wasn't your first involvement in this
4 case; correct?

5 A. It was not.

6 Q. Okay. And on previous days, you had done other
7 work on it?

8 A. I had.

9 Q. Okay. You didn't participate in the execution
10 of the search warrant at the apartment though, did
11 you?

12 A. No. I was not involved in that.

13 Q. All right. And at the Lexington County
14 Sheriff's Department, the Department does own audio
15 recorders and video recorders, does it not?

16 A. We did not back then, no.

17 Q. You didn't have anything that you could make a
18 record of either audibly or video?

19 A. Well, at the end of the day this would have
20 been Detective Moore's case, so I never would have
21 recorded the interview against his direction.

22 Q. Okay. But my question is, did you have the
23 equipment to do it if the case officer chose to do
24 it?

25 A. I don't have any Department-issued equipment.

1 Q. But that's not the question. Did the
2 Department have the equipment for people to use if
3 they wanted to?

4 A. The Department did not have the equipment.

5 Q. Then who would have had the equipment?

6 A. I mean, if you want to be technical, I could
7 have used a personal cell phone. But we're
8 typically discouraged from using personal equipment
9 for those kinds of purposes.

10 Q. Okay. So it's your testimony that in 2015, the
11 Sheriff's Department did not have any audio
12 recorders?

13 A. In the interview rooms we use, we did not have
14 audio-recording equipment back then.

15 Q. In the rooms?

16 A. In the rooms, yes.

17 Q. Okay. My questions isn't just in the rooms.
18 Anywhere in the sheriff's department?

19 A. Not that I'm aware of.

20 Q. Okay. When you and Detective Moore talked to
21 Mr. Esaw, did he just directly start talking about
22 this or did you and Detective Moore try to build
23 some rapport with him prior to getting him to talk
24 about the substance of the case?

25 A. It was pretty clear that he knew what he was

1 wanting to discuss with us. And we gave him his
2 rights and he was very clear that he wanted to tell
3 his side of the story, so we pretty much jumped
4 pretty directly to discussing this situation.

5 Q. Was there any discussion about the fact that
6 the Sheriff's Department had seized and impounded
7 his girlfriend Ms. Grayson's car?

8 A. I didn't make any notes of that, so I can't
9 recall that part of the conversation if it took
10 place.

11 Q. Okay. Was there any discussion about the fact
12 that there was marijuana in that apartment and the
13 apartment leaseholder was Ms. Grayson?

14 A. I don't know anything about the apartment or
15 the apartment search warrant that I think you're
16 alluding to.

17 Q. Okay. Okay. Were you aware that previously on
18 the 12th a search warrant had been executed on her
19 apartment?

20 A. No, I wasn't. My involvement in this case was
21 kind of in and out. I wasn't privy to everything
22 start to finish.

23 Q. I know you didn't participate in the execution.

24 A. Yeah. I wasn't privy to any of the information
25 about that.

1 Q. So you didn't know anything about it?

2 A. No, ma'am.

3 MS. FULLWOOD: Okay. I beg the Court's
4 indulgence.

5 THE COURT: Yes, ma'am.

6 MS. FULLWOOD: No further questions. Thank
7 you.

8 THE COURT: Thank you.

9 Redirect?

10 MS. MARTIN: No, Your Honor.

11 THE COURT: Thank you. Mr. Creech, you can
12 step down.

13 MS. MARTIN: Your Honor, that's all the
14 witnesses we'd have on this issue.

15 THE COURT: All right.

16 Does the Defense wish to offer any evidence or
17 testimony on this before we get to arguments?

18 MR. CHEHOSKI: Yes, Your Honor. The Defense
19 calls Ricky Esaw.

20 THE COURT: Mr. Esaw, come forward, please, to
21 be sworn.

22 RICKY ESAW

23 being first duly sworn, testified as follows:

24 THE DEFENDANT: Yes, ma'am.

25 THE CLERK: Have a seat, sir. Once you're

1 seated, state your full name spelling your last,
2 please.

3 THE DEFENDANT: Ricky Esaw, E-S-A-W.

4 DIRECT EXAMINATION

5 BY MR. CHEHOSKI:

6 Q. Mr. Esaw, directing your attention to August
7 the 14th of 2015, where were you on that day?

8 A. Excuse me?

9 Q. Where were you August 14th, 2015? Do you
10 remember?

11 A. On my way to Lexington County Detention Center.

12 Q. All right. And do you remember what time you
13 arrived at Lexington County Detention Center?

14 A. About, like, 11:30, 12:00.

15 Q. Okay. At any point in time that day did you
16 come into contact with Investigator Barry Sowards?

17 A. Yes, sir.

18 Q. At any point in time did you come into contact
19 with Investigator John Moore?

20 A. Yes, sir.

21 Q. Is that John Moore seated over here?

22 A. Yes, sir.

23 Q. When they came into contact with you, what did
24 they have to tell you?

25 A. They took me into the laundry room at the

1 detention center and read me my warrants.

2 Q. Okay. And as you read your warrants, did you
3 give any response to them?

4 A. I mean, I told them -- nah. I ain't -- you
5 know what I'm saying? I just told them, nah, that
6 ain't me, they got the wrong guy.

7 Q. Did you mention that you were just the driver?

8 A. No.

9 Q. Did you mention you were just an accessory?

10 A. No.

11 Q. After reading these warrants, did you go
12 anywhere after that?

13 A. To the investigator office.

14 Q. Who was with you when you went there?

15 A. Me, Detective Moore, and Sergeant Sowards
16 walked me over there.

17 Q. Was Sergeant Sowards with you inside the
18 interrogation room?

19 A. No.

20 Q. Was there anybody else inside the interrogation
21 room?

22 A. Detective Creech.

23 Q. And that was the gentleman that was on the
24 stand before you?

25 A. Yes, sir.

1 Q. At any point in time between when they issued
2 the arrest warrant and when you went to the
3 interrogation room, were any threats made upon you
4 personally?

5 A. No.

6 Q. Or any threats made upon any of your loved
7 ones?

8 A. Yes, Luenetta.

9 Q. Okay. And Luenetta is who?

10 A. My girlfriend.

11 Q. What was the nature of that threat?

12 A. Telling me that if I don't claim or own up to
13 it that they was going to charge her with accessory
14 after the fact of murder.

15 Q. Own up to what?

16 A. To the charges.

17 Q. Okay. And what specific charges are they
18 referring to?

19 A. Murder, armed robbery, weapons possession
20 charge.

21 Q. When -- and who specifically made that
22 statement?

23 A. Detective Moore.

24 Q. All right. Again, seated behind me?

25 A. Yes.

1 Q. Was -- were any of these conversations
2 recorded?

3 A. I don't know. I just saw phones on the table.
4 I don't know if it was recorded or what.

5 Q. All right. Did you see -- were you made aware
6 of anything being recorded?

7 A. No.

8 Q. And as you sat down inside the interrogation
9 room, what was going through your mind at this time?

10 A. I was just scared. Just, you know what I'm
11 saying, they was just running back and forth in the
12 room handing out papers and stuff.

13 Q. You were scared of what?

14 A. What was going on with the charges. Like, you
15 know what I'm saying, like, they got me charged with
16 this, I wanted to know why.

17 Q. Did -- were you aware of -- were you made aware
18 of any actions by Wilfred Pitts?

19 A. No.

20 Q. Were you made aware that he may have made a
21 statement against you?

22 A. No.

23 Q. And during your statement, how much of
24 regarding the incident did they tell you about?

25 A. I mean, they didn't tell me nothing until I got

1 to the jailhouse. Like, when they arrested me, they
2 just put me in handcuffs. I was just sitting
3 outside the apartment.

4 Q. How about at the jailhouse?

5 A. They just read the warrant and told me what
6 happened after I got to the investigator office.

7 Q. Okay. What specific facts did they give you?

8 A. They said that -- that I was with Pitts when
9 the crime happened.

10 Q. All right. Did they tell you about how many
11 shots were fired?

12 A. No.

13 Q. Did they tell you about how many guns were
14 involved?

15 A. No.

16 Q. Did they tell you about how many people were
17 injured?

18 A. No.

19 Q. Did they tell you about any actions taken on
20 the shooter?

21 A. No. They ain't say nothing happened to the
22 shooter.

23 Q. Did they tell you that the shooter had gotten
24 into a fight?

25 A. Yeah. Yeah. They say somebody got into an

1 altercation, the driver or something like that.

2 Q. Did they tell you that the driver had gotten a
3 beer bottle broken over his head?

4 A. Yeah.

5 Q. How about getting kicked in the face?

6 A. Yeah.

7 Q. How about getting a can of soda thrown in his
8 face?

9 A. Yeah.

10 Q. All right. Did -- how much of that do you
11 recall made it into your statement?

12 A. I can't recall.

13 Q. All right. If you look at your statement,
14 would that help refresh your memory?

15 A. Yeah.

16 Q. (Tenders document to the witness.)

17 A. It don't say nothing about beer bottles, just
18 says something about a gun.

19 Q. All right. You remember if you were told --
20 again, now that your memory has been refreshed, do
21 you remember, again, if you were told about all
22 those items?

23 A. Yes.

24 Q. All right. And were you or were you not told
25 those items?

1 A. Yeah.

2 Q. In giving the statement that you wrote, what
3 were you trying to prove?

4 A. I was trying to keep my girl out of trouble.

5 Q. Is there anything that's in that statement
6 that's not true?

7 A. The whole statement is not true.

8 Q. Were you paying attention when Detective Moore
9 gave you -- read you your rights?

10 A. He never read me my rights.

11 Q. Were you paying attention to what you were
12 initialing on the top of that page?

13 A. No. I mean, like, when I was sitting in there,
14 he was at the table with me. And then Detective
15 Creech was sitting on one side and there was, like,
16 three other officers at the door and they was just
17 handing papers back and forth.

18 Q. Did you read what you initialed?

19 A. I mean, I read it today. But I didn't pay
20 attention to it when they passed me the paper.

21 Q. Did you read it at the time you initialed?

22 A. No.

23 Q. Was -- that statement that is there, did you
24 give that voluntarily?

25 A. I mean, yeah.

1 Q. But did you -- did you give it truthfully?

2 A. No.

3 MR. CHEHOSKI: One moment, please.

4 THE COURT: Okay.

5 BY MR. CHEHOSKI:

6 Q. At the time that you gave this statement, how
7 long had you been dating Luenetta?

8 A. Almost a year and a half, almost two.

9 Q. How long had you been living together?

10 A. Since, like, November of 2014 until I got
11 arrested.

12 Q. Do you remember what Luenetta's job was?

13 A. Yeah. She worked for South Carolina Mental in
14 conjunction with DSS.

15 Q. And do you remember what her specific role was?

16 A. I mean, she do home visits.

17 Q. Okay. What would a marijuana charge do to her
18 job?

19 MS. MARTIN: Objection, Your Honor, relevance.

20 THE COURT: I'll sustain that. I see where
21 we're headed with this, but I'll sustain the
22 objection.

23 MR. CHEHOSKI: Your Honor, I -- never mind.

24 BY MR. CHEHOSKI:

25 Q. Giving --

1 THE COURT: Frankly, I think the answer to the
2 question is self-evident, whether he says it or not.
3 I think we all know what the answer is going to be.

4 MR. CHEHOSKI: All right. If it's
5 self-evident, I don't have anything further.

6 THE COURT: All right.

7 Cross-examination, Ms. Martin?

8 MS. MARTIN: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MS. MARTIN:

11 Q. Mr. Esaw, how old are you?

12 A. Forty-two.

13 Q. And how far did you go in school?

14 A. Twelfth grade.

15 Q. You can read and write?

16 A. Yes.

17 Q. And you're a convicted felon; is that not true?

18 A. Yes.

19 Q. And you've served time?

20 A. Yes.

21 Q. And you've had occasion to be interviewed by
22 law enforcement before in the past?

23 A. What you mean by that?

24 Q. You've met with detectives like in Jasper
25 County?

1 A. Yes.

2 Q. And you've been advised of your rights in the
3 past?

4 A. Yes.

5 Q. And you know what your rights are when you're
6 arrested, don't you?

7 A. Yes.

8 Q. And back on that Friday when Detective Sowards
9 served warrants on you, did you tell him that wasn't
10 me, I was just the driver, hell no you don't have me
11 on anything?

12 A. Yeah. I told him I ain't -- that it wasn't
13 even much me, you know what I'm saying, I wasn't
14 even much there.

15 Q. Okay. Did you tell him at best all you got me
16 on is accessory?

17 A. No. I never said that.

18 Q. Okay. So Detective Sowards and Detective Moore
19 would be lying if they said you did?

20 A. Yes.

21 Q. When you were in the interview room with
22 Detective Creech and Detective Moore -- and you were
23 shown State's 1; isn't that right?

24 A. Yes.

25 Q. And is that your initials to the right where it

1 says I have the right to remain silent, RE?

2 A. Yes.

3 Q. Is that your writing?

4 A. Yes, that's my writing.

5 Q. And rights 1 through 5, is that your initials
6 beside each one?

7 A. Yes.

8 Q. And didn't you tell Detective Creech and
9 Detective Moore that you wanted to talk with them
10 about what happened?

11 A. Yes. I told them I wanted to talk with them
12 and what happened, but they had made a statement.
13 They was just steady talking to me and telling me
14 just sign here, just sign here, you know what I'm
15 saying. I didn't have a chance to read nothing.

16 Q. And did you ask them to stop, that you
17 wanted --

18 A. No. I didn't ask them nothing. I didn't have
19 a chance to say nothing. They was just talking.
20 You know what I'm saying?

21 Q. Well, you signed that you initialed -- that you
22 knew your rights?

23 A. Yes.

24 Q. And today you regret doing that, don't you?

25 A. I mean, yeah.

1 Q. When you said there were threats made against
2 Net, was that in the interview room?

3 A. Detective Moore made a threat to me.

4 Q. Was it in the interview room?

5 A. Yes.

6 Q. Okay. And that would have been in front of
7 Detective Creech?

8 A. Yes.

9 Q. And what exactly was the threat to Net?

10 A. He told me that if I don't own up to the charge
11 that he was going to lock her up and she was going
12 to lose her job.

13 Q. And what did you say back to him?

14 A. I said, man, nah, I'll just take the charge.

15 Q. You were going to take a murder charge for Net?

16 A. Yeah.

17 Q. Okay. Did you tell Detective Creech that
18 you're not going to let Pitts put all this on you?

19 A. Yeah, because when they -- when they first
20 brought me to the jailhouse, the first thing
21 Detective Moore and Sergeant Sowards told me in the
22 laundry room was that Pitts said it was mine. And I
23 said, nah, I don't believe you. They said, well,
24 Pitts putting everything on you.

25 Q. And did you tell Detective Creech and Detective

1 Moore at best I'm just an accessory?

2 A. Yeah.

3 Q. Okay. So you said that verbally?

4 A. Yeah.

5 Q. Because you were the driver to the armed
6 robbery?

7 A. Yeah.

8 Q. And is that what you wrote in your written
9 statement?

10 A. Yeah, but I wasn't there.

11 Q. You weren't there at all?

12 A. No.

13 Q. So you're saying that the entire seven-page
14 statement isn't true?

15 A. No, it's not true.

16 Q. And you wrote all that --

17 A. To save my girlfriend because they was
18 threatening her.

19 Q. So you admit to being a driver to an armed
20 robbery and a murder to save your girlfriend?

21 A. Yeah.

22 Q. Okay. And did you ask for an attorney?

23 A. No. I ain't ask for nothing.

24 Q. If you're familiar with your rights and you're
25 familiar with the court system, why wouldn't you

1 have asked for a lawyer?

2 A. I don't know.

3 Q. Was marijuana found in the house over in
4 Richland?

5 A. Yes. But I --

6 Q. Did you see it collected?

7 A. I was outside. They came outside and told me
8 it was marijuana in the house. I said I'll take the
9 charge.

10 Q. Okay. And were you ever charged with
11 marijuana?

12 A. No, not in Richland or Lexington. No.

13 Q. Okay. When you gave this written statement,
14 you talk about an AJ. Who is AJ?

15 A. A guy that stay around in West Columbia. Him
16 and Pitts hang together.

17 Q. Why did you put his name in this?

18 A. Because him and Pitts was together.

19 Q. How do you know this?

20 A. I saw them the day it happened. They came at
21 the -- I was at my niece birthday party and they
22 came there.

23 Q. And how did you know there had been a murder
24 and an armed robbery?

25 A. I know because Pitts tell me that the day it

1 happened -- not the day it happened. Like, he told
2 me Wednesday that the police was looking for him for
3 it.

4 Q. And did --

5 A. Claims it was the 12th.

6 Q. Didn't AJ actually call you that Wednesday to
7 tell you the police were at your mama's?

8 A. No.

9 Q. So that didn't happen?

10 A. No.

11 Q. Okay. And AJ is Arthur Felder; right?

12 A. I don't know his real name.

13 Q. But he lived over in West Columbia in the
14 apartments where your mom lived?

15 A. Yeah. The only thing I know him as AJ. I
16 don't know his real name.

17 Q. Okay. On that State's 1 that's still beside
18 you, did you sign the last page of the statement?

19 A. Yes.

20 Q. And if you could read what's right above your
21 signature, it says: "I have read this page,
22 initialed corrections or changes if any, and
23 received a copy. I certify that the facts contained
24 are true and correct to the best of my knowledge."

25 Are those your initials?

1 A. Yes.

2 Q. Okay. And that's your signature?

3 A. Yes.

4 MS. MARTIN: That's all we have, Your Honor.

5 THE COURT: Thank you.

6 Redirect?

7 MR. CHEHOSKI: Thank you, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. CHEHOSKI:

10 Q. Mr. Creech, you testified that you were at your
11 niece's birthday party.

12 A. Yes.

13 Q. Were you there the whole time?

14 A. Yes.

15 Q. Did you ever leave the apartment -- or the
16 party?

17 A. I went to the store for my mom.

18 Q. What did you go to the store to get?

19 A. Some corn on the cob and some cigarettes.

20 Q. Who was with you?

21 A. I was by myself.

22 Q. Did you leave the party with anybody else?

23 A. No.

24 Q. All right. Did you see AJ after August 9th?

25 A. No.

1 Q. And your testimony is that you were -- you gave
2 the statement to save your girlfriend?

3 A. Yes.

4 Q. Regarding an armed robbery?

5 A. Yes.

6 Q. That you weren't at?

7 A. Yes.

8 Q. All right. Nothing further.

9 THE COURT: Thank you.

10 Mr. Esaw, you may step down.

11 THE DEFENDANT: Can I speak?

12 THE COURT: If he asks -- if you've got a
13 question, you can answer any questions he has.

14 MR. CHEHOSKI: I have no more questions at this
15 time regarding this matter.

16 THE COURT: I understand.

17 See, you can respond to questions, but you can
18 talk to your lawyer once you get off the stand about
19 what you might to say. He'll have to figure out a
20 way to work that in.

21 THE DEFENDANT: Okay.

22 THE COURT: You can step down.

23 MS. FULLWOOD: If it pleases the Court, Your
24 Honor, may we approach the bench?

25 THE COURT: Sure.

1 (Sidebar conference.)

2 THE COURT: Ms. Green in the back of the
3 courtroom, would you mind stepping to the rail here
4 and letting me have a conversation with you, please,
5 ma'am. Yes. Please come forward because I want to
6 be able to hear you and I want you to be able to
7 hear me. Okay?

8 Ms. Green, you are the mother of Ms. Luenetta
9 Grayson; is that right?

10 MS. GREEN: That's correct.

11 THE COURT: And Ms. Grayson, as you probably
12 know, is a witness and is on this witness list and
13 has been sequestered. And all the witnesses are
14 being sequestered, that means we want their
15 testimony, when they testify, to be their own
16 testimony and not be influenced in any way by what
17 anybody else has said. You understand that's the
18 reason for sequestration? You understand that?

19 MS. GREEN: Okay.

20 THE COURT: Well, I'm telling you that's the
21 reason for sequestration. That's the reason why we
22 keep the witnesses behind that door over there, and
23 when we want them to testify, we bring them in and
24 they sit down here and they testify. And they
25 testify of their own knowledge, they don't testify

1 as to what the witness before them said. You
2 understand that?

3 MS. GREEN: Right.

4 THE COURT: That's the reason we do that. Now,
5 the fact that your daughter is a sequestered witness
6 would not normally cause any concern except, of
7 course, it's been brought to my attention that
8 you're taking notes about the testimony that's being
9 offered here.

10 I really can't prevent you from doing that
11 right now, but what I can prevent you from doing is
12 showing those notes to your daughter to in any way
13 color her testimony. Before she testifies I'm going
14 to ask her if she's had any conversation with you
15 and has seen any notes or had any conversation with
16 you about those notes, because that would be a
17 violation of the sequestration order against her,
18 could get her in trouble, could cause her to be held
19 in contempt of court and face punishment as a result
20 of that.

21 Now, I got my hands full trying this case right
22 now. I don't need to get involved with all those
23 side issues like that. So I want to let you know
24 that you're not to share those notes with your
25 daughter or with anybody else who will indirectly

1 share them with her.

2 You're free, this is an open courtroom, you can
3 sit back there and listen to all you want to listen
4 to and that's fine, but you do not share that with
5 your daughter as a sequestered witness. You
6 understand that?

7 MS. GREEN: Okay.

8 THE COURT: That would get both of you in
9 trouble, and I don't want to deal with that. Okay?

10 MS. GREEN: Okay.

11 THE COURT: Thank you, ma'am. You can go back
12 and have a seat. Thank you.

13 All right. Any further witnesses from the
14 Defense on these issues?

15 MR. CHEHOSKI: Nothing further from the
16 Defense.

17 THE COURT: Anything from the State in reply?

18 MS. MARTIN: No, Your Honor.

19 THE COURT: All right. I'll be glad to now
20 hear motions.

21 MR. CHEHOSKI: Your Honor, I'll go first. At
22 this time the Defense is moving to suppress the
23 statement given by Mr. Esaw. Basically it was --
24 we're arguing that it was given under duress,
25 through a promise to withhold prosecution from a

1 family or loved one.

2 The statement that is given, while seemingly
3 voluntarily given, was given under duress because
4 Mr. Esaw felt like his girlfriend was going to be
5 charged as an accessory to the crime that is before
6 us here today, and, therefore, gave the statement
7 with the intention to protect her from any criminal
8 liability.

9 THE COURT: All right. Thank you. The
10 officers have testified, all three have testified,
11 as to their involvement in this and the issue of the
12 marijuana, of course, which would have been a
13 Richland County case in any event, as I understand
14 it -- is that right?

15 MS. MARTIN: Yes, sir.

16 THE COURT: And, of course, there's been no
17 testimony that any Richland County officer has
18 offered any threat. I can appreciate the fact that
19 that's a jurisdictional nicety which can get lost in
20 all of this stuff that we're talking about.

21 But, in fact, Mr. Esaw's testimony itself is
22 inconsistent as to what he had said and when he had
23 said it and when he had not. At one point in time
24 you're saying he said nothing and then eventually
25 the record reflects those statements. I need not

1 belabor them here.

2 Suffice it to say that I find the officers'
3 testimony more credible on the issues of
4 voluntariness of this, the fact that he was advised
5 of and informed of his rights. He said they were
6 never read to him, but he initialed every one of
7 them. He said he understood the statement that he
8 had made, but it's not true. If that, in fact, is
9 the case, that's a matter for the jury's
10 determination. The fact is that he acknowledged
11 those statements. According to the officer, he made
12 those statements himself and put them down in his
13 own handwriting.

14 I find that he was advised of his rights prior
15 to any interrogation, that he had a right to remain
16 silent, that he had a right to have an attorney,
17 that he have one appointed if he could not afford
18 one, that he had the right to have the attorney
19 present with him and could stop questioning at any
20 time that he wanted to if he wanted to have his
21 attorney with him, and that he was not threatened
22 nor coerced in any way to make the statements.

23 I find that the State has met its burden of
24 proving that by a preponderance of the evidence and
25 still has to prove that to a jury beyond a

1 reasonable doubt. But, nonetheless, the statement
2 is entitled to being admissible for the jury's
3 consideration. Respectfully, the motion to suppress
4 is denied.

5 All right. What's next?

6 MR. CHEHOSKI: Your Honor, if I may, I think we
7 should take up the State's motion regarding my
8 expert witness as that will have bearing on the Neil
9 v. Biggers issue.

10 THE COURT: All right. I'll be glad to hear
11 that. I haven't seen that motion, I've just had it
12 expressed up here at sidebar. I don't know what
13 it's all about, but if somebody will tell me before
14 I'm expected to rule on it.

15 So, Ms. Patterson, what's that motion about?

16 MS. PATTERSON: Yes, sir, Your Honor. It's the
17 State's understanding that the defense is going to
18 put up an expert witness to talk about cross-racial
19 identification in an attempt to try to get our
20 witnesses' identification excluded.

21 State v. Whaley, Your Honor, speaks about this.
22 While we do agree that identification is an issue in
23 our case, we would -- Your Honor, in State v.
24 Whaley, it sets out two -- two -- it says that it
25 can be -- it is --

1 THE COURT: I'll tell you what, give me a copy
2 of State vs. Whaley and it will save us both a lot
3 of time.

4 MS. PATTERSON: I'm sorry. Because I'm -- it
5 sets out two different circumstances where expert
6 testimony --

7 THE COURT: Thank you.

8 POTENTIAL JUROR: -- should be considered. And
9 I'll give you a minute to read the case.

10 THE COURT: Okay. Thank you.

11 All right. I've had a chance to read it.
12 Thank you.

13 MS. PATTERSON: Thank you, Your Honor.

14 As set out in State v. Whaley, there are two
15 instances in which this type of expert testimony
16 should be allowed in cases. And that's, instance
17 one, where eyewitnesses suffer some type of mental
18 disability that could impair perception or
19 reliability, and the second case is when the main
20 issue is the identity of the perpetrator and the
21 sole evidence of the identity is the eyewitness
22 identification and the identification is not
23 substantially corroborated by evidence.

24 Your Honor, it's the State's position that
25 neither one of those instances is present in our

1 case. The eyewitness, Your Honor, that made the
2 identification is Franklin, Your Honor, Franklin
3 Vasquez, who is one of the victims in the case as
4 well. He made the identification based on his
5 ability to perceive and see what was going on. He
6 also gave a description.

7 He had no defects in his mental capabilities,
8 Your Honor. He was a rising senior at Airport High
9 School, he was set to graduate the next spring. He
10 didn't have any problems communicating, any problems
11 writing. It is no evidence that he had any mental
12 defects, Your Honor, that could prevent or render
13 his identification unreliable.

14 THE COURT: Okay. I take it then that the
15 Defense must be relying on the second prong of the
16 Whaley case, and so tell me about that.

17 MS. PATTERSON: And the second prong, Your
18 Honor, it would state that if that identification
19 was the sole evidence of the identification. In our
20 case, Your Honor, we have a Crimestoppers tip that
21 came in that specifically identified Mr. Esaw as
22 being one of the perpetrators in this case.

23 The co-defendant places the defendant's
24 presence there, as well as the defendant's own oral
25 and written statements that we just heard about in

1 the previous hearing, as well, again, Your Honor, as
2 the eyewitness who had never seen Mr. Esaw before.
3 So going back, again, his identification is not the
4 sole evidence, but it's like the fourth thing that
5 actually identifies and put the defendant at the
6 scene, Your Honor.

7 So we would say that the expert witness
8 testimony, while it is a recognized science, Your
9 Honor, that it should not be allowed in this case
10 because it is not the sole evidence that we have
11 putting Mr. Esaw at the scene.

12 THE COURT: All right. Now, the other
13 evidence, independent of Mr. Vasquez's testimony,
14 which, of course, is the subject of the motion, you
15 said that the co-defendant, that's Mr. -- what's his
16 name?

17 MS. PATTERSON: His name is Wilfred Pitts.

18 THE COURT: Mr. Pitts. He places the defendant
19 at the scene. And what's the other evidence that
20 puts him there?

21 MS. PATTERSON: The defendant's own written and
22 oral statements.

23 THE COURT: Okay.

24 POTENTIAL JUROR: And then we have a
25 Crimestoppers tip that came in to the Crimestoppers

1 communication that actually gave Mr. Esaw and
2 Mr. Pitts' name as being the suspects.

3 THE COURT: All right.

4 Yes, sir?

5 MR. CHEHOSKI: Thank you, Your Honor.

6 For starters I'll point out that the court in
7 Whaley stated that these two -- it's only that these
8 two instances would be an abusive of discretion to
9 exclude it. The admission of evidence is always
10 within the court's discretion, and in this case I
11 think that this testimony would not only be helpful
12 to the jury but also helpful to the Court.

13 In response to the State's proclamation that
14 there are three other pieces of evidence that are
15 assisting here, we've already addressed the
16 defendant's statement, that was in the Jackson v.
17 Denno, and we have the identification, which is the
18 purpose of this hearing.

19 The other two, Your Honor, is the Crimestoppers
20 tip which, for the Court's information, includes --
21 is inaccurate as to the date of the crime, the
22 location of the crime, and the victim of the crime.

23 THE COURT: Right.

24 MR. CHEHOSKI: The --

25 THE COURT: The Crimestoppers tip -- I can save

1 some time on the Crimestoppers too. I'm not
2 convinced that that's the same time of evidence that
3 Whaley had in mind, quite frankly, as being
4 corroborating or anything of that nature. There's
5 nothing from the Crimestoppers tip itself that would
6 help with the issue of identification. It's a name
7 out there, but it's not any help with the normal
8 elements of identification.

9 MR. CHEHOSKI: Right.

10 And then moving forward, that brings us to the
11 testimony of Wilfred Pitts. Mr. Pitts is the -- as
12 you've already heard, is the co-defendant in this
13 case. He was interviewed originally on August 12th,
14 probably moving into the morning hours of August
15 13th, at which point he gave the statement that not
16 only exonerated himself but exonerated Mr. Esaw as
17 well. He has -- again, my understanding is, has
18 since changed his testimony, so his -- and that was
19 the basis for my motion to reveal the -- motion to
20 reveal any negotiations or deals made between the
21 State and the co-defendant as his credibility is
22 clearly a co-critical issue here with the
23 identification of Mr. Vasquez.

24 Your Honor, by offering up Dr. McQuiston, and
25 I'll note that in the footnote that this is a --

1 this is a science that could be tested for now well
2 over 100 years, that we're not relying on untested
3 methods, we're not relying on unproven hypotheses,
4 intuition revelation, but based testimony on
5 established techniques and authorities.

6 Your Honor, I think that -- here, I think that
7 the State's argument is somewhat misplaced in saying
8 that these are the only two instances where this
9 kind of testimony can be admitted. I think the
10 Court is saying that these are the only two
11 instances where the Court would be committing
12 reversible error by admitting them.

13 In this case I think -- that in your
14 discretion, I think allowing this would not only be
15 helpful for the Court, but also helpful to the jury,
16 and, therefore, I think this testimony should be
17 admitted.

18 THE COURT: All right. Thank you.

19 You've got the last word, Ms. Patterson. It's
20 your motion, so...

21 MS. PATTERSON: Well, Your Honor, again, just
22 to reargue the same issues, Your Honor, we don't
23 have a -- this is not a case where that is the sole
24 evidence of identity.

25 Mr. Pitts, Your Honor, he does give a statement

1 implicating Mr. Esaw, he gives a statement later on
2 implicating himself as well. He has agreed to
3 testify, Your Honor. And in Mr. Vasquez's, Your
4 Honor, his identification is reliable. The
5 defendant's statement, Your Honor, you've already
6 ruled that that will be admissible, so that's going
7 to be also evidence.

8 THE COURT: Right.

9 MS. PATTERSON: And so, Your Honor, we'd just
10 ask that the expert testimony not be allowed in this
11 instance, Your Honor.

12 THE COURT: Thank you.

13 The court, in analyzing the Whaley situation,
14 of course indicated that this is not necessarily the
15 type of testimony that has to withstand expert
16 witness scrutiny. But, nevertheless, the courts
17 rejected any argument that while it need not be
18 submitted to the Jones test, which is the test of
19 the admissibility of scientific expert testimony,
20 that, nevertheless, is the type of testimony that
21 does comport with the Jones factors in any event for
22 the reasons which are set out in the footnote.

23 The Court at note number -- page 143 says that
24 generally admission of expert testimony is a matter
25 within the sound discretion of the trial court, and

1 gave the court two instances which it must allow
2 this type of evidence in or else would be committing
3 reversible error. And the two types of cases in
4 which this type of expert testimony must be admitted
5 are the two types that are contained in the language
6 to the Whaley case.

7 As we've said, one is where the witness is
8 suffering from some mental problems or would have
9 some disability that would impair that person's
10 perception or reliability, and the second is where
11 the main issue is the identity and the sole evidence
12 is eyewitness identification.

13 You're right, there is other evidence other
14 than just the eyewitness identification in this
15 particular case. That evidence in and of itself can
16 be brought into question because there's a
17 co-defendant testifying against a defendant in this
18 particular case. But the jury is going to hear what
19 that co-defendant says about this, the jury is going
20 to hear about what Mr. Esaw himself said about being
21 there. And the fact that the jury may be asked to
22 analyze Mr. Vasquez's testimony and the accuracy of
23 that in light of the cross-racial identification
24 issues is simply a matter for the jury's
25 consideration.

1 I'm going to allow the testimony, however, as
2 the Whaley case states, and I'm certain this expert
3 will not transgress in that regard, this witness can
4 give no opinion as to whether this particular
5 testimony of this eyewitness is accurate or not; it
6 can simply talk about the science of cross-racial
7 identification and what that has revealed. The
8 motion to suppress is respectfully denied. All
9 right.

10 MS. PATTERSON: Thank you, Your Honor.

11 THE COURT: Thank you-all.

12 All right. What do we have next?

13 MS. PATTERSON: Your Honor, we have our Neil v.
14 Biggers hearing.

15 THE COURT: Okay. Good. Go ahead.

16 MS. PATTERSON: The State calls Franklin
17 Vasquez.

18 FRANKLIN VASQUEZ

19 being first duly sworn, testified as follows:

20 THE WITNESS: I do.

21 THE CLERK: Have a seat, sir. Once you're
22 seated, state your name spelling your last, please.

23 THE WITNESS: My name is Franklin Vasquez,
24 V-A-S-Q-U-E-Z.

25 DIRECT EXAMINATION

1 BY MS. PATTERSON:

2 Q. How old are you?

3 A. I'm 19.

4 Q. And did you graduate from high school?

5 A. Yes, ma'am.

6 Q. When did you graduate?

7 A. Last year, 2016.

8 Q. Did you take a break after high -- before you
9 graduated?

10 A. No. I'm working with my uncle right now.

11 Q. And where were you supposed to graduate from
12 high school?

13 A. Airport High School.

14 Q. And you said you work with your uncle?

15 A. Yes, ma'am.

16 Q. And what type of work do you do?

17 A. Metal roofing.

18 Q. Now, have you ever testified in court before?

19 A. No, ma'am.

20 Q. You a little nervous?

21 A. Yeah, a little bit.

22 Q. Just relax take a deep breath.

23 Franklin, on August 9th of 2015, did you
24 witness an incident where your father was shot and
25 killed?

1 A. Yes, ma'am.

2 Q. And as a matter of fact, you too were a victim
3 in that crime; correct?

4 A. Yes, ma'am.

5 Q. And where did this take place?

6 A. 3941 Charleston Highway, Lot 162.

7 Q. And what is that also known as?

8 A. Rolling Meadows.

9 Q. And do you remember what time of day that this
10 incident occurred?

11 A. Around nighttime.

12 Q. And can you tell the Court, what were you doing
13 right before this incident happened?

14 A. Earlier that day we went to Academy Sports to
15 get bookbags for my senior year. And I had to get
16 back to cut the grass for the baptism party that
17 they had. And then I had gotten dressed to go play
18 basketball up the street from where the party was
19 going on.

20 And then when it turned dark, I was walking
21 back with my friend from playing basketball to check
22 in with my dad. And when I checked in with my dad,
23 I went to the cooler and grabbed a drink and came
24 back to talk to him. Then all of a sudden, a black
25 four-door sedan came, passed by, and he said -- the

1 driver had the window down a little bit and he said
2 something. My dad turned around and he said, what?
3 And then the car stopped --

4 Q. Let me stop you for a second, Franklin. So you
5 had went and played basketball with your friends.
6 Who are those friends?

7 A. Nate and DeShaun.

8 Q. And where was your dad when you came back to
9 the check in?

10 A. He was at the white fence.

11 Q. Okay. And where is the white fence?

12 A. Right in front of the house where the big
13 baptism party was at.

14 Q. And where was this cooler that you went and got
15 a drink from?

16 A. Behind the house, right behind the white truck.

17 Q. And when you got back to your dad, how close to
18 you -- how close to you were -- how close were you
19 to your dad when you saw the car pull up?

20 A. Side by side. Basically it was, like, the
21 corner of the fence, and I was, like, in the middle,
22 like, right here, basically.

23 Q. And when did you first notice or get a look at
24 the person who got out of the car?

25 A. When he -- I got a good glance when he got the

1 car and pointed the gun at me and told me empty out
2 my pockets.

3 Q. And how close -- and I'm going to walk towards
4 you and you tell me to stop and let me know how
5 close you were when he got out of the car and
6 pointed the gun at you. Okay?

7 A. Okay.

8 Q. (Approaching the witness.)

9 A. He was, like, right there.

10 Q. Right here?

11 A. Yes, ma'am.

12 Q. And when he pointed the gun at you, were you
13 looking eye to eye?

14 A. Yes, ma'am.

15 Q. And did you have any problems seeing this
16 person?

17 A. No, ma'am.

18 Q. Now, you mentioned that it was nighttime. Was
19 it any light or anything out there?

20 A. Yes, ma'am.

21 Q. And what happened after -- did that person --
22 did you say anything back to that person?

23 A. I told him that I didn't have anything.

24 Q. And did he say anything back?

25 A. He repeated and told me to empty out my

1 pockets. And then that's when my ad jumped on front
2 of me and told him what was his problem. Then he
3 pointed the gun at my dad and told him to empty out
4 his pockets. And then my dad said he didn't have
5 anything. He tried to shoot the gun, but the gun
6 jammed, and then my dad hit him upside the head with
7 a beer bottle and they were struggling with the gun.

8 Q. When your dad and this person were struggling
9 for the gun -- again, I'm going to walk towards you
10 and you tell me when to stop. You let me know how
11 close you were when you -- to your dad and that
12 person when they were struggling for the gun.

13 A. Okay.

14 Q. (Approaching the witness.)

15 A. Like right there.

16 Q. And when they were struggling for the gun, what
17 position were they in?

18 A. They were on the floor wrestling for the gun.

19 Q. Okay. They were on the ground?

20 A. Yes, ma'am.

21 Q. And are you still able to see the person when
22 he's struggling on the ground with your dad?

23 A. Yes, ma'am.

24 Q. And did you have any close contact with the
25 person?

1 A. Yes, ma'am.

2 Q. At what point?

3 A. At first I was froze up and didn't know what to
4 do, but then I snapped out of it and I threw the
5 soda can at him and kicked him in the face. And
6 then that's when the bigger dude came around and
7 shot the gun through the passenger's side and the
8 bullet grazed me and hit the white truck. And I
9 jumped out -- jumped and ran inside to grab the
10 keys. And then I tried to chase him and then I came
11 back and got in my car and chased him in my car, but
12 it was too late.

13 Q. Let me stop you again. So when you threw the
14 soda bottle at this person and when you kicked him,
15 did you make contact with their body?

16 A. Yes, ma'am.

17 Q. Where did you kick them?

18 A. In the face.

19 Q. And, Franklin, how good was your eyesight?

20 A. It was pretty good.

21 Q. And how did this person look?

22 A. Just like him over there. (Indicating)

23 Q. Okay. And about how long was the incident?

24 A. It was, like, between five and ten minutes.

25 Q. And what were you focused on mainly during the

1 incident?

2 A. I was focused on the driver pointing the gun at
3 me and my dad.

4 Q. And you mentioned a second suspect.

5 A. Yes, ma'am.

6 Q. How did that suspect look?

7 A. From what I saw, he was bigger than the driver.

8 Q. Did you have much contact or interaction with
9 that person?

10 A. No, ma'am.

11 Q. And once it was over, again, what did the
12 suspect do?

13 A. They got in their car and left.

14 Q. And you said you left. Did you return to the
15 scene?

16 A. Yes, ma'am.

17 Q. When you returned to the scene, did you talk to
18 a police officer about what happened?

19 A. Yes, ma'am. I told him that there was two
20 people involved. And then he checked me to see if I
21 was okay and then he saw that I had a graze on my
22 upper right thigh, and I was immediately taken to
23 the hospital to get treated.

24 Q. And at the hospital did you talk to another
25 officer?

1 A. Yes, ma'am.

2 Q. And did you give him a statement?

3 A. Yes, ma'am.

4 Q. And were you still in the process of getting
5 treatment then?

6 A. Yes, ma'am.

7 Q. And did you give him a description of the
8 person who shot and killed your dad?

9 A. Yes, ma'am.

10 Q. And did you ever meet with Detective John
11 Moore?

12 A. Yes, ma'am.

13 Q. And would this have been after you got out of
14 the hospital?

15 A. Yes, ma'am.

16 Q. And do you remember where you were when you
17 talked to Detective John Moore?

18 A. At my uncle's house.

19 Q. Did you ever tell him about your ability to be
20 able to identify this person?

21 A. Yes, ma'am.

22 Q. What did you tell Detective John Moore?

23 A. I told him I'd be able to pick him out in an
24 instant.

25 Q. Okay.

1 (State's Exhibit Nos. 2 - 5 marked for
2 identification.)

3 BY MS. PATTERSON:

4 Q. Franklin, I'm going to show you what's been
5 marked for identification only as State's Exhibits 2
6 and 3. Do you recognize what's been marked as
7 State's Exhibits 2 and 3?

8 A. Yes, ma'am.

9 Q. And do these pictures appear to be the same
10 ones that Detective Moore showed you?

11 A. No, ma'am.

12 THE COURT: I'm sorry. Is that answer yes or
13 no?

14 THE WITNESS: Yes.

15 THE COURT: It is? Okay.

16 BY MS. PATTERSON:

17 Q. Did you make a selection out of those pictures?

18 A. No, ma'am.

19 Q. And why didn't you?

20 A. Because none of them looked like the guy I saw
21 that night.

22 Q. Now I'm going to show you what's been marked as
23 State's Exhibit No. 4. Do you recognize that --

24 A. Yes, ma'am.

25 Q. -- paper?

1 A. Yes, ma'am.

2 Q. How do you recognize that paper?

3 A. It has my signature and the date.

4 Q. And what date is that?

5 A. April 13th, 2015.

6 Q. What is it again?

7 A. April 13th, 2015.

8 Q. Does it say April?

9 A. I mean August.

10 Q. August what now?

11 A. August 13th, 2015.

12 Q. And is that paper -- is that the lineup
13 Detective Moore showed you?

14 A. Yes, ma'am.

15 Q. And when Detective Moore showed you that
16 picture, did those people in that picture have
17 similar physical features?

18 A. Yes, ma'am.

19 Q. Did Detective Moore tell you or suggest who you
20 should pick?

21 A. No, ma'am.

22 Q. Did you make a selection and an identification?

23 A. Yes, ma'am.

24 Q. And what number did you pick out?

25 A. Number 2.

1 Q. Did you indicate that somewhere else on the
2 paper too?

3 A. Yes, ma'am. At the bottom, I circled it.

4 Q. And then you signed it?

5 A. Yes, ma'am.

6 Q. And how were you able to make that selection?

7 A. His facial features. They were -- to me, the
8 facial features are the same as the guy that I saw
9 that night.

10 Q. And is that the guy that shot your father?

11 A. Yes, ma'am.

12 Q. And is that the guy that pointed the gun at
13 you?

14 A. Yes, ma'am.

15 Q. How long did it take you to make that
16 selection?

17 A. Not even a minute.

18 Q. Had you ever seen that person before the night
19 of the shooting?

20 A. No, ma'am.

21 Q. I'm going to show you what's been marked as
22 State's Exhibits No. 5. Do you recognize that
23 paper?

24 A. Yes, ma'am.

25 Q. Did Detective Moore show you that lineup as

1 well?

2 A. Yes, ma'am.

3 Q. And did you make an identification in that
4 lineup?

5 A. No, ma'am.

6 Q. Why didn't you?

7 A. Because I wasn't sure about second suspect.

8 Q. Why weren't you sure about the second suspect?

9 A. Because I was worried about the first one, the
10 one that had the gun pointed at me and my dad.

11 Q. Now, Franklin, at the time that you lived in
12 Rolling Meadows and this took place, you said you
13 were a rising senior at Airport High School?

14 A. Yes, ma'am.

15 Q. Did you go to school with any African-American
16 kids?

17 A. Yes, ma'am.

18 Q. Did you have any African-American friends?

19 A. Yes, ma'am.

20 Q. As a matter of fact, what race is Nate and
21 DeShaun who you played basketball with that day?

22 A. They're black.

23 Q. And did black kids live in your neighborhood?

24 A. Yes, ma'am.

25 MS. PATTERSON: I beg the Court's indulgence.

1 THE COURT: Yes, ma'am.

2 BY MS. PATTERSON:

3 Q. And, Franklin, do you see the same person in
4 this courtroom who shot and killed your father?

5 A. Yes, ma'am.

6 Q. And how are you able to recognize that person?

7 A. By his facial features. And he has the same
8 beard that he had when all that happened.

9 Q. And where do you see that person?

10 A. Over there. (Indicating)

11 Q. And what does he have on?

12 A. He has an orange jumpsuit.

13 Q. Thank you, Franklin. Please answer any
14 questions the Defense may have.

15 THE COURT: Ms. Fullwood, cross-examination?

16 MS. FULLWOOD: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MS. FULLWOOD:

19 Q. Good afternoon, Franklin. How are you doing?

20 A. Good. How are you?

21 Q. Fine, thanks.

22 Okay. You previously testified you went home
23 after playing basketball when it got dark?

24 A. Yes, ma'am.

25 Q. So y'all just couldn't see the net good enough

1 to play it anymore?

2 A. Yes, ma'am, because there wasn't a light post
3 near where the basketball goal was.

4 Q. Okay. So you go home and get your drink out of
5 the cooler?

6 A. Yeah.

7 Q. Now, you were describing to Ms. Patterson, if I
8 understood you correctly because you were making
9 hand gestures and I couldn't see, that this occurred
10 where the fences met together, the corner of the
11 fences?

12 A. Yes, ma'am.

13 Q. So it was the fences that kind of separated
14 your yard from the neighbor's?

15 A. The fence covered our yard with our neighbor's,
16 so basically shared the same link.

17 Q. Okay.

18 A. Yeah.

19 Q. But there was one corner that met like that --

20 A. Yeah.

21 Q. -- at a right angle? (Demonstrating)

22 A. Yeah. And -- yeah.

23 Q. Okay. So when this happened, were you standing
24 in somebody's yard or were you standing outside the
25 fence near the roadway?

1 A. Where the white truck was parked, I was
2 standing right there right beside it.

3 Q. Okay.

4 A. Yeah.

5 Q. Okay. And the white truck was parked in
6 between y'all's house and the neighbor's house?

7 A. No. It was in the driveway of the neighbor's
8 house.

9 Q. Okay.

10 A. Yeah.

11 Q. Okay. Is the driveway between the two houses?

12 A. Uh-huh.

13 Q. Okay. All right. And what kind of lighting
14 was there out there that would let you see?

15 A. The light post that's across the street.

16 Q. Okay. Now, that light post is sort of
17 catty-corner across the street?

18 A. Yeah. And there was some lighting also from
19 the porch too.

20 Q. A porch from which house?

21 A. From the neighbor's house where we were at --
22 where everybody was at.

23 Q. Okay. Well, wasn't that the back porch?

24 A. No. It was the front porch.

25 Q. It was the front porch?

1 A. Everybody was at the front.

2 Q. Okay.

3 A. Yeah.

4 Q. So there were people in the yard?

5 A. Yeah. People on the porch. And then when all
6 that happened, everybody ran inside.

7 Q. I see. Okay. So, initially, when this
8 incident began, there were other people outside?

9 A. Yeah. Yeah.

10 Q. Okay. But they just went on inside?

11 A. Yeah. Yes, ma'am.

12 Q. Okay. So you had the streetlight that was kind
13 of catty-corner from where y'all were; right?

14 A. Uh-huh.

15 Q. And it was on the opposite side of the road
16 than the side your house was on; right?

17 A. Yeah.

18 Q. And then you had some light from the neighbor's
19 porch. Can you tell us what kind of light that is?

20 A. No. I don't -- I didn't live there.

21 Q. Okay. Did they have a little porch with a
22 light on it or was it like one of those lights that
23 was beside your door so if somebody comes to your
24 house, you can turn it on and see who it is?

25 A. It was turned on the whole time. I really

1 didn't get a look at it. I didn't pay any attention
2 to it.

3 Q. You don't know if it was hung beside the door?

4 A. Huh-uh.

5 Q. Okay. But you say that house had a porch on
6 it?

7 A. Yes, ma'am.

8 Q. Can you describe the porch for me?

9 A. It was a wooden porch that's -- I don't know.
10 Like --

11 Q. I'm not trying to give you a hard time.

12 A. Yeah.

13 Q. But, you know, sometimes words mean different
14 things to different people. And I'm thinking the
15 porch could either be just a little bit wider than
16 the door, so when a visitor came, they would have a
17 place to stand while they were knocking on the
18 door.

19 A. Yeah. It's a wider -- it's a wide porch.

20 Yeah.

21 Q. Okay. Did it run the whole length of the house
22 or --

23 A. It was about halfway of the house. Yeah.

24 Q. Okay. Did it have a roof over it?

25 A. Yeah.

1 Q. Okay. Okay. Now -- so this happened about
2 9:00 at night; right?

3 A. Uh-huh.

4 Q. Okay. So the guy first says something to you;
5 right?

6 A. Uh-huh.

7 Q. And then he says something to your father?

8 A. Uh-huh.

9 Q. And your father says, no, I don't even have any
10 money or something?

11 A. Uh-huh.

12 Q. And is that --

13 THE COURT: Franklin, if I could get you to
14 please say yes or no, it makes it easier for the
15 court reporter --

16 THE WITNESS: Okay.

17 THE COURT: -- to get your response.

18 THE WITNESS: Yes, sir.

19 MS. FULLWOOD: I beg the Court's indulgence.

20 THE COURT: Okay.

21 BY MS. FULLWOOD:

22 Q. So at a certain point, your dad began to
23 struggle with the man?

24 A. Yes, ma'am.

25 Q. All right. And was -- did he jump on him and

1 throw him to the ground or did the struggle start
2 while they were both still on their feet or how did
3 it occur?

4 A. No. At first when my dad hit him with the beer
5 bottle, they were struggling on their feet. And
6 then they eventually fell to the ground onto the
7 pavement.

8 Q. Okay. So the struggle started because your dad
9 decided to defend himself and hit him with a bottle?

10 A. Yes, ma'am.

11 Q. And the bottle broke; correct?

12 A. Yes, ma'am.

13 Q. Okay. And was it pretty quick that they were
14 on the ground after that?

15 A. Yes, ma'am.

16 Q. And then -- then they were on the ground?

17 A. Yes, ma'am.

18 Q. Is that when he could hear the person trying to
19 shoot the gun but it wouldn't fire?

20 A. No, ma'am. That happened way before that.

21 When the -- the gun jammed -- when he tried to shoot
22 the gun and the gun jammed, that's when my dad
23 reacted and hit him with the bottle.

24 Q. Okay. I see.

25 A. Then when they were on the ground struggling,

1 they were struggling for the gun. And when I threw
2 the soda can at him and kicked him in the face,
3 that's when the gun went off.

4 Q. Okay. And you heard him rack the gun or
5 whatever you call it?

6 A. No. He --

7 Q. Slid the -- slide the gun?

8 A. Huh-uh.

9 Q. You didn't even hear that?

10 A. He just pulled the trigger, I guess.

11 Q. Just pulled it?

12 A. Yes, ma'am.

13 Q. Okay. And your soda can hit him where?

14 A. In the face.

15 Q. In the face?

16 A. Yes, ma'am.

17 Q. Did it pop the can or anything?

18 A. I don't know. I just threw it and then kicked
19 him in the face, and that's when I got grazed with
20 the bullet. And then I ran inside, grabbed the
21 keys, chased him, and then went back and grabbed my
22 car.

23 Q. Okay. Now, the man -- your father -- are you
24 trying to say the man that shot your father was also
25 the man that shot you?

1 A. No.

2 Q. Different man?

3 A. Different man, the bigger man.

4 Q. All right. And when your dad and the man were
5 on the ground, was one of them on top of the other
6 or were they side by side or how did that struggle
7 occur, to your recollection?

8 A. They were struggling for the gun.

9 Q. I know.

10 A. Yeah.

11 Q. But, I mean, was your dad on top of him or was
12 he on top of your dad? Were they punching each
13 other, or can you tell me?

14 A. I couldn't tell you because I was frozen up
15 when they were struggling. And I just snapped up
16 out of it and threw a soda can and kicked him in the
17 face.

18 Q. Okay. And then there was a shot and you got
19 shot?

20 A. Uh-huh.

21 Q. How many shots did you hear out there that
22 night?

23 A. Two.

24 Q. Two?

25 A. Yes, ma'am.

1 Q. Okay. And then they left and you went and got
2 your keys --

3 A. Got my keys.

4 Q. -- and followed them?

5 Okay. I know you've testified that you didn't
6 know these people.

7 A. Uh-huh.

8 Q. Okay. That night did you say anything that
9 made your mom believe that you did? Was there
10 anything going on like that?

11 A. No, ma'am.

12 Q. Okay. Eventually you came back, right, to
13 the --

14 A. Yes, ma'am.

15 Q. -- to your house? And that's because one of
16 the officers saw you and --

17 A. Yes, ma'am. And I took them to where
18 everything happened at.

19 Q. Okay.

20 A. And he asked me who was there, what happened,
21 and I told him there was two people involved. And
22 he started checking me to see if I was all right,
23 and I had a graze on my thigh and --

24 Q. Right. And --

25 A. -- they sent me to the hospital.

1 Q. Right. And one of the people you talked to
2 when you came back to your house was Officer Steen,
3 one of the first policemen that came; right?

4 A. Uh-huh.

5 Q. And you told him basically what you just
6 related: Two men did this, tried to rob you, and
7 then they saw that you were wounded, and they had
8 you taken to the hospital. Right?

9 A. Yes, ma'am.

10 Q. All right. And when you got to the hospital,
11 you talked to a different officer, didn't you?

12 A. Yes, ma'am.

13 Q. All right. And you told him, basically, about
14 the fight; right?

15 A. Yes, ma'am.

16 Q. And you didn't tell him anything about these
17 men's heights; right?

18 A. Later, yeah, I did tell them, like, one --

19 Q. Are you sure?

20 A. Yes, ma'am, because the driver was the same
21 size as my dad.

22 Q. Okay. You told him that?

23 A. Yes, ma'am.

24 Q. What about their weights?

25 A. No, not the weight.

1 Q. And you didn't tell anything about the
2 clothing; right?

3 A. No, ma'am.

4 Q. Or anything about any facial features they
5 might have had?

6 A. I did tell them about facial features.

7 Q. What did you tell them?

8 A. About the driver, that he had a beard and the
9 type of haircut he had.

10 Q. What type of haircut was that?

11 A. A fade haircut.

12 Q. A fade haircut?

13 A. Yes, ma'am.

14 Q. All right. And that night at the hospital you
15 gave -- you wrote down a statement of what happened;
16 right?

17 A. (Nonverbal response.)

18 Q. And in that statement you said that the men
19 pulled up in a gray car, didn't you?

20 A. Yes, ma'am.

21 Q. All right. And have you had a chance to look
22 at this statement leading up to today?

23 A. Yes, ma'am.

24 Q. Okay. So correct me if I'm wrong, but isn't
25 the only description of these two men's physical

1 characteristics the fact that the passenger driver
2 was a fat guy?

3 A. Yeah. Yeah.

4 Q. And then later on Detective Moore showed you
5 the lineups that you testified about. And this
6 thing happened to you on August 9; right?

7 A. Yes, ma'am.

8 Q. And it was, I believe, August 13 --

9 A. Yes, ma'am.

10 Q. -- when he showed it to you?

11 A. Yes, ma'am.

12 Q. Okay.

13 MS. FULLWOOD: I beg the Court's indulgence.

14 THE COURT: Yes, ma'am.

15 BY MS. FULLWOOD:

16 Q. Can you tell me what portion of your foot
17 connected with the man's face?

18 A. Like the -- where your toes are at, the upper
19 part of your foot.

20 Q. Up, like, your toe area?

21 A. Yeah.

22 Q. You want to show me?

23 A. Yeah. (Indicating)

24 Q. Okay. The top -- kind of the top --

25 A. Yeah.

1 Q. All right. But it did connect?

2 A. Uh-huh.

3 Q. Was it a pretty --

4 A. Yes, ma'am.

5 Q. Was it a pretty hard kick?

6 A. Yes, ma'am.

7 Q. Did he react to it?

8 A. I heard a grunt when I kicked him.

9 Q. Okay. Did you see any jewelry on any of these
10 men?

11 A. No, ma'am.

12 Q. Never did?

13 A. No, ma'am.

14 Q. Okay.

15 MS. FULLWOOD: No further questions, Your
16 Honor.

17 THE COURT: Thank you.

18 Redirect, Ms. Patterson?

19 MS. PATTERSON: Yes, sir, just briefly.

20 (State's Exhibit Nos. 6 and 7 marked for
21 identification.)

22 REDIRECT EXAMINATION

23 BY MS. PATTERSON:

24 Q. Franklin, I'm going to show you State's Exhibit
25 No. 6. Does that picture show the area that you and

1 your dad were when y'all were robbed and your dad
2 was shot?

3 A. Yes, ma'am.

4 Q. And can you see that porch in that picture that
5 you were describing to Ms. Fullwood?

6 A. Yes, ma'am.

7 Q. And does that porch have the light on?

8 A. Yes, ma'am.

9 Q. Okay. And I'm going to show you what's been
10 marked as State's Exhibit No. 7. And can you see
11 the area that you and your dad were when all this
12 happened?

13 A. No, ma'am. It was more this way a little, more
14 this side. (Indicating)

15 Q. I think you testified about being in front of
16 the truck.

17 A. Yes, ma'am.

18 Q. And was the truck next to anything else?

19 A. The white car.

20 Q. Okay. Is the white car --

21 A. And the white fence.

22 Q. Is the white car in that picture, State's
23 Exhibit No. 7?

24 A. Yes, ma'am.

25 Q. And what can you see in that picture?

1 A. Streetlight.

2 Q. Streetlights in that picture?

3 A. Yes, ma'am.

4 Q. And when you gave the law enforcement officer
5 the first statement, that's when you realized you
6 were shot and you needed to get treatment?

7 A. Yes, ma'am.

8 Q. And at the hospital when you gave the written
9 statement about the gray car, did you later talk to
10 Investigator Moore and give him another description
11 of the car?

12 A. Yes, ma'am. I said it was a dark color,
13 darkish, grayish color.

14 Q. And that's what you remember --

15 A. Yes, ma'am.

16 Q. -- it being dark color car?

17 A. Yes, ma'am.

18 Q. Did you also tell Detective Moore about the
19 shooter being about the same size as your dad?

20 A. Yes, ma'am.

21 Q. And did he ask you about your dad's height and
22 weight?

23 A. Yes, ma'am.

24 Q. And what did you tell him about your dad's
25 height and weight?

1 A. Five-seven, 160.

2 Q. And, again, at that time did you tell him you'd
3 be able to recognize this person if you saw him
4 again?

5 A. Yes, ma'am.

6 MS. PATTERSON: I beg the Court's indulgence.
7 Your Honor, that's all we have for this
8 witness.

9 THE COURT: All right. Thank you. You can
10 step down, Franklin.

11 Anything further?

12 MS. PATTERSON: Yes, sir, Your Honor.
13 Detective Creech.

14 THE COURT: Detective Creech, resume the stand
15 please, sir. You're still under oath.

16 MS. FULLWOOD: If it pleases the Court, Your
17 Honor, our client needed a quick break. If we
18 can --

19 THE COURT: All right. If it's real quick,
20 we'll just stay in place. How about that?

21 MS. FULLWOOD: Yes, sir.

22 THE COURT: When we finish this issue I'm going
23 to take a break for everybody else. But --

24 MS. FULLWOOD: Yes, sir.

25 (Brief pause in the proceedings.)

1 REDIRECT EXAMINATION

2 BY MS. MARTIN:

3 Q. You're still under oath. Were you involved in
4 a photo lineup that was provided to Franklin
5 Vasquez?

6 A. I was.

7 Q. And do you recall where this took place?

8 A. I do. It took place at 893 Wheeland School
9 Road.

10 Q. And were you present with Detective Moore when
11 he gave certain instructions to Franklin?

12 A. I was.

13 Q. And did Detective Moore tell him who to pick or
14 give him any indication whose photographs were
15 involved in the lineup?

16 A. He did not.

17 Q. If I can show you State's 5, is that the lineup
18 that was shown to Franklin Vasquez by you and
19 Detective Moore?

20 A. No, it's not.

21 Q. It's not? You're right.

22 If could show you what's been marked State's 4.
23 Was that a photo lineup that included Mr. Esaw that
24 was shown to the defendant -- excuse me, to the
25 victim Franklin Vasquez?

1 A. It is.

2 Q. And did Franklin -- were you present when he
3 view that lineup?

4 A. I was.

5 Q. And when he was shown that lineup, was his
6 family with him?

7 A. His mother was there, but she was separated
8 while we were providing lineup instructions and
9 displaying the lineup so there'd be no
10 cross-contamination.

11 Q. And when Franklin observed the lineup, did he
12 make an indication that he recognized someone?

13 A. He did.

14 Q. And did he indicate in writing on that lineup
15 who he recognized?

16 A. He did.

17 Q. How quick or long was it when he viewed the
18 lineup that he made this identification?

19 A. It was almost immediate.

20 Q. Okay. And did he indicate that that's the
21 person who shot his father?

22 A. He did make that indication.

23 MS. MARTIN: Nothing else, Your Honor.

24 THE COURT: Cross-examination?

25 MS. FULLWOOD: No questions, Your Honor.

1 THE COURT: You may step down. Thank you.

2 MS. MARTIN: Detective Moore.

3 THE COURT: Mr. Moore, you're still under oath.

4 Thank you.

5 DIRECT EXAMINATION

6 BY MS. MARTIN:

7 Q. Detective Moore, when did you first meet
8 Franklin Vasquez?

9 A. I met him the Monday after the incident.

10 Q. And was he already out of the hospital?

11 A. He was.

12 Q. And did he indicate to you in any way that he
13 was able to identify the shooter of his father?

14 A. He did. He did.

15 Q. How did he indicate this to you?

16 A. He said he'd never forget it.

17 Q. Was he able to give you a description of the
18 person that shot his dad?

19 A. He did. He did. He said it was about like his
20 father; weight, height, had a beard, thick beard, he
21 said.

22 Q. Did you show him a lineup on -- that involved
23 other suspects than Mr. Esaw?

24 A. I'm sorry. I didn't --

25 Q. Well, let me --

1 THE COURT: Just show it to him.

2 Q. Were these lineups presented to Franklin?

3 A. Yes, they were.

4 Q. And was he able to pick anyone out?

5 A. No, he wasn't.

6 Q. And is Ricky Esaw included in those photo
7 lineups?

8 A. No, he isn't.

9 Q. If I can show you State's 4, do you recognize
10 that lineup?

11 A. I do.

12 Q. And was that lineup presented to Franklin?

13 A. It was.

14 Q. And who else was y'all when you presented this?

15 A. Detective Creech, myself, and Detective
16 Sowards.

17 Q. Okay. And did you tell Franklin the names of
18 the individuals in the lineup or any identifying
19 information of the people?

20 A. No.

21 Q. And was he able to pick anyone out of that
22 lineup?

23 A. He did.

24 Q. How long did it take him upon viewing the
25 lineup before he identified anyone?

1 A. Immediately me picked out Ricky Esaw.

2 Q. What if anything did he say about Mr. Esaw's
3 involvement?

4 A. That he's the one that shot my dad.

5 Q. Did he hesitate in any way when looking at the
6 lineup?

7 A. No.

8 Q. What was his level of certainty?

9 A. A hundred percent.

10 Q. Was he able to pick out anyone else in the
11 other lineup, State's 4 -- State's 5?

12 A. I showed him a second one with Wilfred Pitts in
13 it and he could not -- was not sure.

14 Q. And did not pick anyone out?

15 A. Did not pick anybody out, no.

16 Q. Did you suggest to him who the suspect in the
17 lineup where he did pick out Mr. Esaw?

18 A. No.

19 Q. Did you tell him that you thought you had
20 shooter in the lineup?

21 A. Yes.

22 Q. Did you indicate to him which picture or which
23 photograph?

24 A. No.

25 Q. Did his mom -- she was present, wasn't she?

1 A. Away, yes.

2 Q. Did she influence him in any way?

3 A. No. We separated them.

4 MS. MARTIN: That's all I have, Your Honor.

5 THE COURT: Cross-examine?

6 CROSS-EXAMINATION

7 BY MR. CHEHOSKI:

8 Q. Were you able to get a description of the
9 clothing that the people involved in the incident
10 were wearing?

11 A. Well, he said it was dark.

12 Q. That's a no?

13 A. I'm sorry?

14 Q. Did you get a description of the clothing that
15 the assailants were wearing from Mr. Vasquez?

16 A. In his statement -- let me check. Hang on a
17 minute, counselor. I wasn't present when he wrote
18 the actual statement. No. I don't see any clothes
19 in the statement that he actually said.

20 Q. Okay. You did get an approximate height?

21 A. And weight. Yes, sir.

22 Q. And weight?

23 A. Yes, sir.

24 Q. And facial feature of a beard?

25 A. Right.

1 Q. Any other description of the assailant?

2 A. No, sir.

3 Q. And, of course, African-American?

4 A. Right.

5 Q. Now, you did not compile the photo lineup,
6 right?

7 A. I did not.

8 Q. You received that from either Brian Travis or
9 Beverly Smith?

10 A. Which one now? Which -- the one he picked out?

11 Q. Number 4, the one with Mr. Esaw in it.

12 A. Yes, that one.

13 Q. Okay. And after -- did you clear the lineup
14 with anyone before showing it to Mr. Vasquez?

15 A. I did. I wanted to make sure that it looked
16 good and I showed one of the supervisors in major
17 crimes.

18 Q. All right. Is that your normal procedure?

19 A. I do sometime if I want to make sure.

20 Q. And did you notice that Mr. Esaw's picture is
21 lighter than the other five pictures?

22 A. No, I don't. In fact, number 5 looks lighter
23 than number 2.

24 Q. Let me see it, please. You're saying the skin
25 on number 5 looks lighter than number 2?

1 A. You said the picture was lighter.

2 Q. And the skin is lighter. Notice that the
3 skin -- Mr. Esaw's skin is lighter than the other
4 five pictures.

5 A. They all look basically the same to me. Except
6 when you mentioned that the picture was lighter, I
7 look at number 5, his actual picture is a little bit
8 lighter.

9 Q. You don't think Mr. Esaw's skin is lighter than
10 the other five?

11 A. No.

12 Q. And the procedure that you used in showing them
13 the lineups, is that your standard procedure as
14 well?

15 A. Yes.

16 Q. Is that the standard Lexington County
17 procedure?

18 A. That's what I do.

19 Q. It's what you do?

20 A. Yes, sir.

21 Q. Do other officers use a different method?

22 A. I'm not sure.

23 Q. Have you not been with other officers when they
24 did this --

25 A. I have.

1 Q. -- when they do a lineup?

2 A. I have. But each officer in their own way.

3 Q. Each officer's own way. There is no -- is it
4 your testimony that there is no standard procedure
5 outlined by Lexington County?

6 A. The procedure is that there's a six-man lineup
7 shown to a victim or a witness.

8 Q. And that's it?

9 A. (Nonverbal response.)

10 Q. And the lineup that you showed Mr. Vasquez,
11 State's No. 4, that was the only lineup that anybody
12 was ever identified?

13 A. On him?

14 Q. Let me --

15 A. Yeah, clarify.

16 Q. I'm sorry. I ask confusing questions.
17 You showed Mr. Vasquez several lineups?

18 A. Right.

19 Q. You showed Ms. Vasquez several lineups?

20 A. Yes.

21 Q. Mr. Vasquez was the only one who identified
22 someone?

23 A. Yes.

24 Q. And Mr. Vasquez only identified Mr. Esaw?

25 A. Correct.

1 Q. Okay. Didn't identify anybody else? And --

2 A. And that makes sense to me because he was right
3 there fighting with him.

4 Q. Understood.

5 MR. CHEHOSKI: One moment, please, Your Honor.

6 THE COURT: Yes, sir.

7 MS. PATTERSON: Your Honor, that's all the
8 State has for this issue --

9 MR. CHEHOSKI: Wait --

10 THE COURT: Well, let's see if the defense is
11 through first.

12 MS. PATTERSON: I'm sorry.

13 MR. CHEHOSKI: I have nothing further.

14 THE COURT: Okay. Detective Moore, you may
15 step down.

16 All right. And, Ms. Patterson, you said you
17 have no more evidence or testimony to offer in the
18 Neal vs. Biggers hearing, right?

19 MS. PATTERSON: That's correct, Your Honor.

20 THE COURT: Mr. Chehoski?

21 MR. CHEHOSKI: Yes, Your Honor. The Defense
22 calls Dr. Dawn McQuiston.

23 THE COURT: Should we take a break first?

24 MR. CHEHOSKI: That's not the worst idea, Your
25 Honor.

1 (Short break.)

2 DAWN MCQUISTON

3 being first duly sworn, testified as follows:

4 THE WITNESS: I do.

5 THE CLERK: Have a seat, ma'am. Once you're
6 seated, state your name spelling your last, please.

7 THE WITNESS: Dawn McQuiston,
8 M-C-Q-U-I-S-T-O-N.

9 DIRECT EXAMINATION

10 BY MR. CHEHOSKI:

11 Q. Dr. McQuiston, where do you currently work?

12 A. At Wofford College.

13 Q. How long have you been there?

14 A. About four and a half years.

15 Q. And what is your position there?

16 A. I'm an associate professor of psychology.

17 Q. How long have you been an associate professor?

18 A. Eight years, nine years.

19 Q. What is your educational background?

20 A. I have a bachelor's degree in psychology, a
21 master's degree in experimental psychology, and a
22 Ph.D. in experimental psychology.

23 Q. Where did you get those degrees?

24 A. I got my bachelor's degree at Eastern New
25 Mexico University and my master's and Ph.D. at the

1 University of Texas at El Paso.

2 Q. And what are your primary duties as a
3 professor?

4 A. I teach classes and I do research.

5 Q. And what is your general area of expertise?

6 A. Legal psychology.

7 Q. Do belong to any professional associations?

8 A. I do, yes.

9 Q. Which ones are those?

10 A. The American Psychology-Law Society, the
11 Society for Empirical Legal Studies, the Society for
12 Applied Research in Memory and Cognition.

13 Q. All right. And has any of your research ever
14 been published?

15 A. It has, yes.

16 Q. And before it's published, is it subject to
17 peer review?

18 A. Yes.

19 Q. And what is peer review?

20 A. Peer review is the process that scholars
21 undergo in order to have their research reviewed for
22 its quality. So it's reviewed by other scholars in
23 the field.

24 Q. All right. So what -- to be published after
25 being subject to peer review, what does that

1 generally mean?

2 A. Do you mean -- it has gone -- every paper
3 that's published has undergone peer review and has
4 been accepted.

5 Q. And to your knowledge how often does something
6 that's subject to peer review get rejected?

7 A. It depends on the journal. It could be
8 anywhere between 20-percent rejection rate to 80- or
9 90-percent rejection rate.

10 Q. Do you in turn conduct peer review studies on
11 other people's work?

12 A. Yes.

13 Q. And have you ever presented your research at
14 professional psychology conferences?

15 A. Yes.

16 Q. In the past have you ever been qualified as an
17 expert in eyewitness identification?

18 A. Yes.

19 Q. Do you know about how many times?

20 A. About 35 or 40 times.

21 MR. CHEHOSKI: Your Honor, at this time I'd
22 tender Dr. McQuiston as an expert in the field of
23 eyewitness identification and psychology.

24 THE COURT: All right.

25 Voir dire, Ms. Patterson?

1 VOIR DIRE EXAMINATION

2 BY MS. PATTERSON:

3 Q. Dr. McQuiston, have you ever published any
4 articles in relation to cross-racial identification?

5 A. I have, yes.

6 Q. And how many --

7 A. I think so. I'd have to look back.

8 Q. So you're not sure?

9 A. I'd have to go back and look at my CV. It
10 would be way in my early days, if so.

11 Q. About how long ago?

12 A. In the late '90s.

13 Q. And what kind of research have you done in
14 regarding cross-racial identification studies?

15 A. What kind of research have I done?

16 Q. Yes, ma'am.

17 A. Similar to colleagues in my field, looking at
18 the degree to which people are susceptible to the
19 cross-race effect under various conditions, maybe
20 lineup conditions, different stressful conditions.
21 Those are the general areas that people do research
22 in, in that area. So my research would be
23 consistent with that.

24 Q. And you stated you've been qualified as an
25 expert 35 to 40 times?

1 A. Yes, ma'am.

2 Q. Were you qualified as an expert as it relates
3 to cross-racial identification issues?

4 A. Not necessarily specifically that. I've been
5 qualified as an expert in general having to do with
6 eyewitness memory. And the cross-race effect falls
7 under that broad umbrella, so I've testified many
8 times about the cross-race effect.

9 MS. PATTERSON: Thank you, Your Honor. No
10 further questions.

11 THE COURT: Dr. McQuiston, the cross-racial
12 component is just one of many components that goes
13 into the eyewitness identification; is that right?

14 THE WITNESS: That's correct.

15 THE COURT: Okay. Thank you.

16 Mr. Chehoski, go ahead.

17 MR. CHEHOSKI: Your Honor, is she qualified as
18 an expert?

19 THE COURT: Without objection, Dr. McQuiston is
20 so qualified as an expert in eyewitness
21 identification psychology.

22 CONTINUED DIRECT EXAMINATION

23 BY MR. CHEHOSKI:

24 Q. Dr. McQuiston, is there a general -- generally
25 accepted theory of how memory works?

1 A. There is, yes.

2 Q. Can you tell us about that?

3 A. Sure, sure. It goes back to the 1960s. It has
4 to do with the idea that memory does not work like a
5 videotape and, instead, information that we process
6 has to pass through a series of stages before making
7 it into long-term memory. And we think of memory
8 as -- or this theory asserts that memory is more
9 reconstructive than working like a videotape, like
10 some people might think.

11 Q. What do you mean by reconstructive?

12 A. So when we are processing an event, there are
13 often gaps in what we remember. There are several
14 stages through which information has to pass,
15 sensory memory which is all of the things that are
16 happening in the world around us at any given
17 moment, and then short-term memory where we can hold
18 information for only about 30 seconds. If we
19 rehears it, it may make it into long-term memory;
20 otherwise, it's forgotten.

21 And so there are these stages that information
22 has to pass through. And so we -- what we often end
23 up with are gaps in what we remember, and so we tend
24 to fill those gaps in with information from various
25 sources. So when it comes to the idea of memory

1 being reconstructive, our memory are often made up
2 of a lot of bits, things from the original events
3 plus, perhaps, things that we've heard or things
4 that people have told us. Rehearsing the event over
5 and over in our mind, we fill in those gaps with
6 other information.

7 Q. Can memories fade over time?

8 A. Yes. Memories fade over time.

9 Q. Do you know what the general -- generally
10 speaking, what a retention rate is from sensory
11 memory all the way to long-term memory?

12 A. There's no way of quantifying that, really.

13 Q. All right. What do scientists mean by the term
14 attention?

15 A. Attention is a mechanism by which we filter out
16 information that we don't need while focusing on the
17 task at hand, focusing on the information that we do
18 need.

19 Q. And how does that affect memory?

20 A. We can only later remember those things that we
21 attend to.

22 Q. And under what kind of circumstances would
23 people -- would someone fail to attend to something?

24 A. Attention is limited for one thing. We can
25 only attend to one thing at a time. So if there's a

1 lot going on in any given moment, we will often have
2 bad memory for all of them. And also, if we -- we
3 might fail to attend to something if we don't think
4 we're going to have to recall it later, if we don't
5 think we're going to need that information later.

6 Q. What do scientists mean by the term perception?

7 A. Perception is another one of these mechanisms
8 that helps us interact with the world, specifically
9 our senses. So if you think of things we see or
10 touch or smell or taste, perception is the process
11 by which we perceive or integrate information from
12 the senses. So here we'd be talking about visual
13 information, probably.

14 Q. And can people make errors in perception?

15 A. Yes.

16 Q. Is that something-- and are there things that
17 happen that influence the quality of information
18 that's perceived and -- are there things that
19 happen -- I'm sorry, that happen that influence the
20 quality of the information received that affect the
21 memory?

22 A. Yes, there can be.

23 Q. Okay. And, for example, I guess, would the
24 amount of time you have to experience the event,
25 would that affect the amount perceived with the

1 memory?

2 A. Yes.

3 Q. How --

4 A. It -- sorry. It certainly can. The amount of

5 time that you experience any event that --

6 obviously, the longer the amount of time, the more

7 information you'll get, therefore, the better your

8 memory will be.

9 Of course, on the flip side of that, if

10 something happens very quickly, the less information

11 you'll get, therefore, you might not have as good of

12 a memory for it later.

13 Q. Okay. And does the quality of the view that

14 you have during the event, does that affect your

15 memory?

16 A. It can, yes.

17 Q. All right. How about -- so in a situation

18 where it's dark outside, can that affect it?

19 A. It can. And it really does have to do with how

20 much information you're able to get. If it's dark

21 and you don't get a great view, if the circumstances

22 aren't optimal, the less information that you get,

23 the less available it will be to recall later.

24 Q. Is it normal to make mistakes in perception?

25 A. It is, yes.

1 Q. And is it something that would happen to just
2 about anyone?

3 A. Yes.

4 Q. I want to also talk to you now about stress and
5 how stress can experience the level of information.
6 Does heightened stress or fear affect eyewitness
7 identification?

8 A. It can, yes.

9 Q. How so?

10 A. It turns out there are a lot of studies that
11 show that at heightened levels of stress or fear or
12 physiological arousal, this can interfere with our
13 ability to properly process information. And if it
14 interferes with that ability, then you often aren't
15 able to recall information as well later. So it
16 interferes with our ability to accurately describe
17 an event, as well as recall information in order to
18 make an identification.

19 Q. Is there scientific research that examines the
20 effect of stress and eyewitness identification?

21 A. There is. There was what we call a
22 meta-analysis several years ago published by some
23 top researches in my field. And what that does --
24 it's a statistical way of combining several papers,
25 several articles, several studies that have been

1 done, dozens of studies that have been done, looking
2 at this effect of stress on memory. So it's a way
3 to come up with, say, an -- like, one average
4 result, so researchers tend to rely on
5 meta-analyses.

6 Q. And who that participated make up these
7 studies?

8 A. Sure. Adults over the age of 18, males and
9 females.

10 Q. And how are these studies generally conducted?

11 A. Typically someone would be exposed to a
12 stressful event, that would be one group, versus
13 another group who isn't. And then later they are
14 asked to make an identification, and those two
15 groups would be compared.

16 Q. What has generally been the results of these
17 meta-analyses?

18 A. Overall, in general, what is found is that
19 people who are exposed to a stressful event aren't
20 able to describe the event as well and they are not
21 as accurate in their identifications as the
22 nonstressed.

23 Q. And in your experience, do eyewitness experts
24 generally support these conclusions concerning
25 perception and memory and stress?

1 A. Yes.

2 Q. Is there a phenomenon called the cross-race
3 effect?

4 A. Yes.

5 Q. What does that refer to?

6 A. It refers to a person's -- or the idea that
7 people tend to not recognize people of other ethnic
8 groups as well as people of their own ethnic group.

9 Q. Does research demonstrate this?

10 A. It does, yes.

11 Q. What scientific research can you point to that
12 would support this conclusion?

13 A. There was another one of these meta-analyses
14 conducted in 2000 or published in 2001, again, top
15 scholars in my field, about 40 studies that all
16 looked at the cross-race effect. And so when you
17 look at -- the general results shows that many
18 ethnic groups are susceptible to the cross-race
19 effect, so people are -- tend to not be as accurate
20 when they're trying to recognize or identify a face
21 of a different ethnic group versus their own.

22 Q. And how does this phenomenon happen?

23 A. There are a lot of theories proposed in that
24 paper, but what it turns out, the one that seems to
25 receive the most support is the idea of contact,

1 what they call a contact hypothesis. So the more
2 contact you have with another ethnic group, the less
3 susceptible you would be to this effect.

4 Q. And has this found to be different among other
5 racial groups?

6 A. The finding is consistent among different
7 racial groups.

8 Q. All right. I mean, across whites --

9 A. Whites, blacks, Hispanics, cultures and
10 different ethnic groups in Europe. This has been
11 studied all over the world.

12 Q. And is the cross-race effect and the
13 conclusions surrounding that, is that generally
14 supported in the eyewitness expert identification
15 field?

16 A. Yes.

17 Q. All right. What I want to talk to you about
18 next is the length between confidence and accuracy.
19 Has that been studied?

20 A. It has extensively, yes.

21 Q. And what are scientists looking at in studying
22 this?

23 A. They're looking to see whether confidence --
24 the confidence that an eyewitness expresses along
25 with their identification is a reliable predictor of

1 eyewitness -- of their accuracy -- of eyewitness
2 accuracy.

3 Q. And what does that research generally find?

4 A. That research finds another meta-analysis
5 published in 1995; has found that, contrary to what
6 researchers thought up to that point, that -- and
7 what people think in general, that the relationship
8 between confidence and accuracy is only a moderate
9 relationship, meaning that confidence is not a
10 really strong predictor of accuracy.

11 Q. And why might that be?

12 A. The reason that researchers -- the reasons
13 they've expressed have to do with confidence is
14 malleable. You can modify a person's confidence. A
15 person's level of confidence in their identification
16 can change over time, can be influenced by other
17 people. There's a lot of reasons why confidence
18 itself can fluctuate.

19 Q. And do eyewitness experts, again, generally
20 support the conclusions between the relationship of
21 confidence and accuracy?

22 A. Yes.

23 Q. All right. Is there research that addresses
24 situations involving multiple perpetrators in a
25 case?

1 A. There is some research on that, yes.

2 Q. And what is the purpose of the research?

3 A. The purpose of those studies were to look at
4 whether the presence of multiple perpetrators during
5 a crime affects an eyewitness' ability to make an
6 accurate identification versus if there is one
7 perpetrator.

8 Q. Okay. And what does this research find?

9 A. It finds that when there are multiple -- when
10 there is more than one perpetrator, when there's
11 multiple, the rate of identification accuracy is
12 decreased.

13 Q. Okay. So when there are multiple perpetrators,
14 witness descriptions of all of them can suffer?

15 A. Yes, that as well. So identification accuracy
16 can suffer as well as the descriptions that
17 people -- that an eyewitness can give can suffer.

18 Q. And does that affect the likelihood of correct
19 identifications?

20 A. Yes. General identification accuracy
21 decreases.

22 Q. And why does this happen?

23 A. It's the idea -- it goes back to attention.

24 And when there's more than one perpetrator, a
25 witness has to divide his or her attention among

1 those people, so it could turn out that the memory
2 for both of them or all of them is going to suffer.

3 Q. All right. This case involves a photo lineup.
4 Are there national guidelines that discuss the
5 composing and administering of a lineup?

6 A. There are, yes.

7 Q. And has the National Academy of Sciences had
8 input on this as well?

9 A. They have recently, yeah.

10 Q. And what does this research say about
11 presenting a lineup?

12 A. One of -- they say many things. One of the
13 newest recommendations has to do with it's good
14 practice to use a blind procedure, meaning the
15 person administering the lineup doesn't know who the
16 suspect is in the lineup.

17 Q. Why is that important?

18 A. The idea there is so that you can avoid any
19 sort of nonverbal cues that people don't even know
20 that they're giving. There's a long history of
21 psychological research showing that people often can
22 give nonverbal cues without knowing it. Therefore,
23 in order to completely do away with any possibility
24 of any cues being given, that's what the basis for
25 that recommendation is.

1 Q. Are police departments adopting this procedure?

2 A. They are, yes.

3 Q. And, to your knowledge, was this procedure used
4 in this case?

5 MS. PATTERSON: Objection, Your Honor. We're
6 not talking about the identification in this case
7 specifically.

8 THE COURT: That's exactly right. And whether
9 this lineup goes to this jury is a matter for the
10 Court to determine in this case.

11 MR. CHEHOSKI: Yes, sir.

12 BY MR. CHEHOSKI:

13 Q. All right. Are there any difficulties in
14 assessing the reliability of in-court
15 identification?

16 A. Of an in-court identification?

17 Q. Yes.

18 A. There can be, yes.

19 Q. What are those?

20 A. The main one has to do with -- an in-court
21 identification will always be tainted by an earlier
22 identification that was made. So if an
23 identification was in the case -- in any case was
24 already made, it's only the first one that counts.
25 Any identification made after that, you can never

1 know how much influence the first identification has
2 on making that inquiry identification. So it's not
3 a fresh identification.

4 Q. What are encoding conditions?

5 A. By that -- that has to do with how well --
6 like, optimal conditions might be the person was
7 able to view the perpetrator for a good length of
8 time with bright lights, low stress. So it has to
9 do with the conditions under which the crime happens
10 or the scene is happening, so what the conditions
11 are when the eyewitness is processing the
12 information.

13 Q. All right. And what factors might hurt optimal
14 conditions?

15 A. Sure. Many of the things we've talked about.
16 If it's a quick situation, if it -- so if it happens
17 very quickly, if it happens to be dark outside, if
18 it's a very high-stress situation, if the
19 cross-race -- if it's a cross-race situation. So
20 many of those things will affect the encoding
21 conditions all together.

22 Q. All right.

23 MR. CHEHOSKI: One moment, please, Your Honor.

24 THE COURT: Yes, sir.

25 MR. CHEHOSKI: Thank you, Dr. McQuiston.

1 Please answer any question from Ms. Patterson.

2 THE COURT: Ms. Patterson, you may
3 cross-examine.

4 MS. PATTERSON: Thank you.

5 CROSS-EXAMINATION

6 BY MS. PATTERSON:

7 Q. Good afternoon, Dr. McQuiston.

8 A. Good afternoon.

9 Q. Wouldn't you agree that a person who has a
10 clear view, meaning they're eye to eye with that
11 person, and had ample opportunity to view the person
12 would be more apt to make a positive identification?

13 A. An accurate identification? Is that what
14 you're asking?

15 Q. Yes.

16 A. Yes. And wouldn't you agree that a person who
17 actually has close contact with a person may be more
18 apt to make a correct identification?

19 Q. Can you describe what you mean by close
20 contact; meaning if they were, like, from where you
21 and I are?

22 A. Sure. Yes, I would agree.

23 Q. Okay. And wouldn't you agree that if a person
24 is attentively focused on something or someone for
25 five to ten minutes, that they will be able to make

1 a correct identification?

2 A. If that is the situation, yes.

3 Q. And in a lot of situations, stress is good for
4 people, isn't it?

5 A. It depends on the amount of stress, actually.

6 Q. Okay. And stress can sometimes heighten a
7 person's senses; correct?

8 A. It can up to a certain point, so yes. But at a
9 certain point stress gets to be too much and then
10 identification and other things can tend to fall
11 off.

12 Q. And I think you said that the people in most of
13 your studies were 18 or over. Do you have any
14 information about studies in teenagers 17 and under?

15 A. I'm not aware of research that has used
16 teenagers, probably for ethical reasons, in their
17 studies.

18 Q. And what about the proximity and time of a
19 person experiencing the traumatic event and doing a
20 photo lineup? Would that have any bearing on their
21 ability to make a positive identification?

22 A. It would, yes.

23 Q. And what would you agree to be a very late
24 timeframe in making that identification? Let's say
25 in this case the person -- well, let's say three

1 days after the event.

2 A. Sure. It's so hard to quantify that. There's
3 no research that points to any sort of exact numbers
4 like that. So the best that I could say is that --
5 we call that a retention interval, the time between
6 the event and the lineup, so the best that I can say
7 is the shorter that amount of time, the more
8 advantageous that is for the eyewitness in terms of
9 remembering; the longer that amount of time, there
10 would be a disadvantage. But I can't really
11 pinpoint it.

12 Q. Because everybody's memory is different --

13 A. That's right.

14 Q. -- correct?

15 A. Correct.

16 Q. And you talked about this cross-racial effect.
17 What if, for instance, a person has a great amount
18 of -- they're around the person -- they're around
19 that race -- they're exposed to that race a great
20 amount of time?

21 A. Right. So, like I was saying, the -- according
22 to this contact hypothesis, the idea is that if
23 you're around the other ethnic group a lot, that
24 decreases your risk to be susceptible to the -- to
25 that effect.

1 Q. So if a person goes to school with people of
2 that race, they live in a neighborhood with that
3 race, or they have friends of people of that race,
4 they would be more likely to be able to identify
5 someone in that race?

6 A. That's right.

7 Q. And in this situation where it's multiple
8 perpetrators, what if that person is primarily
9 focused on one perpetrator a great deal more than
10 the other perpetrator? Would their focus and
11 reliability of that identification be greater with
12 the person that they have more focus on?

13 A. I think that's hard to say. I think the idea
14 here is that it is tough to make -- it is tough to
15 focus on one person when there are multiple people
16 there. That's -- I think that's the idea behind
17 this research, that if there are multiple people, it
18 makes it really hard to be focusing just on any one
19 given thing.

20 Q. But what if that one person is the one that's
21 closer and has more contact and conversation with
22 the person who identifies them later?

23 A. I think that question is hard for me to give
24 any sort of definitive answer.

25 Q. That's fair.

1 And you talked about this in-court
2 identification and you stated that it's always
3 tainted. Is that a fair statement?

4 A. Yes.

5 Q. So you're saying there are no situations in
6 which a person can give an in-court identification
7 and it's accurate?

8 A. If there was already an identification made
9 before that, if there was any sort of identification
10 already made. So I'm assuming that that would be
11 the case, so any ID that follows that, in my
12 opinion, is unreliable.

13 Q. So if the person already made an identification
14 and identifies that person later in court, would
15 that be more likely to be accurate?

16 A. I wouldn't say it's an accuracy issue. That's
17 not the issue that I have with in-court
18 identifications.

19 Q. Would it be more likely to be tainted?

20 A. Yes.

21 Q. If they've already ID'd that person and later
22 identifies them, you say that's still tainted?

23 A. That later identification doesn't add any
24 information. And I -- my sense is that it has the
25 potential to give a jury a false sense of the weight

1 of the evidence, because that in-court ID doesn't
2 add anything in addition to an identification that
3 might have already been made.

4 Q. But it doesn't take anything away from that
5 identification, does it?

6 A. The one that was already made, you mean?

7 Q. Yes.

8 A. Right. Right.

9 Q. Okay.

10 MS. PATTERSON: I beg the Court's indulgence.
11 No further questions, Your Honor.

12 THE COURT: Redirect?

13 MR. CHEHOSKI: No redirect, Your Honor.

14 THE COURT: Thank you.

15 Doctor, you can step down. Thank you, ma'am.

16 All right. Mr. Chehoski, anything else from
17 the Defense?

18 MR. CHEHOSKI: No further witnesses, Your
19 Honor.

20 THE COURT: All right. Does the State wish to
21 offer any testimony in this regard before we go to
22 arguments?

23 MS. PATTERSON: No, sir, Your Honor.

24 THE COURT: All right.

25 Mr. Chehoski, let me hear from you.

1 MR. CHEHOSKI: Your Honor, I'd start with the
2 idea that this confrontation procedure was
3 suggestive.

4 As you heard in my cross-examination of
5 Detective Moore, I think that the skin tone and the
6 picture itself of Mr. Esaw is significantly lighter
7 than the other five pictures. If may approach?

8 THE COURT: Please.

9 MR. CHEHOSKI: And in starting with that
10 premise, not only is Mr. Esaw's photo significantly
11 lighter, it's also -- his placement is in the middle
12 of it, which would be the immediate -- I guess the
13 immediate eye contact or the immediate place where
14 anybody looking at it would first go.

15 Secondly, the procedure was not conducted --
16 was not done as a double-blind procedure. Detective
17 Moore had already encountered Mr. Esaw when
18 presenting with this lineup and was familiar with
19 the case, therefore any -- he was, therefore,
20 susceptible to any cues or suggestiveness that he
21 was done -- was done probably unintentionally.

22 I'm not here to try and say that Detective
23 Moore was conducting himself in an unethical way.
24 But, as Dr. McQuiston stated, when the person who is
25 conducting the procedure is involved in the

1 procedure, that enhances the likelihood of a
2 possible taint because of some possible cues,
3 whether verbal or nonverbal, a mistaken finger,
4 along those lines.

5 And then to determine whether or not --
6 according to the Neal v. Biggers factors, whether or
7 not the identification was sufficiently reliable,
8 Your Honor, the five factors are the opportunity to
9 view -- we already talked about the conditions. It
10 was dark out. There was -- it was dark out, the
11 incident did not last very long.

12 There was a lot of information from Mr. Vasquez
13 to absorb in a very short amount of time, and I
14 think that that means that there's a likelihood that
15 he did not absorb all of the information and was
16 filling in the gaps the best he could. The degree
17 of attention -- as Dr. McQuiston said, there were
18 multiple perpetrators here.

19 Mr. Vasquez himself was shot by the other
20 perpetrator. I think with multiple people holding
21 guns, given a high level of stress, multiple things
22 happening at the same time, his father being
23 involved in an altercation with the shooter and more
24 focused on helping his father, by his own testimony
25 that he froze and then snapped back into it before

1 he got into action -- Your Honor, the accuracy of
2 the prior description is really a black male with
3 some facial hair, roughly the same size as his
4 father. It's not detailed.

5 There's no detail, there is no talk about
6 appearance, there's no -- nothing about clothing,
7 shoes, eye color, or hairstyle. And so moving along
8 with that to the level of certainty, Dr. McQuiston
9 testified that the relationship between certainty
10 and accuracy is actually fairly weak. The -- just
11 merely being accurate has about as much of a chance
12 as something being remembered wrong as it does as
13 being accurate.

14 And, Your Honor, there's a tie between the
15 crime and the confrontation is a little more than
16 three days. Your Honor, things don't get into --
17 things get into long-term memory within the first
18 minute of the incident happening, between several
19 seconds from the sensory time and place to up to 30
20 seconds and a minute for short-term memory, and
21 anything that's retained is in the long-term memory.

22 Memories fade over time, Your Honor. And as
23 more time accrues to the next day to the next day,
24 that memory, again, has a tendency to become weaker.
25 Your Honor, based off this analysis and based off

1 the testimony of Dr. McQuiston and based off what I
2 feel is a tainted and a suggestive photo lineup and
3 going over the factors in Neal v. Biggers, Your
4 Honor, I have no choice but to conclude that this is
5 a tainted lineup. And I think that the in-court
6 identification should be ruled inadmissible.

7 THE COURT: All right. Mr. Chehoski, I don't
8 feel that the factors force me into the same choice
9 as they have forced you into. Let's start with the
10 lineup itself, the photo lineup. As I look at this
11 I see six African-American males with facial hair,
12 the same type of haircut, the same, generally,
13 facial features. The skin tone of number 2 is
14 perhaps somewhat lighter than some of the others;
15 conversely, skin tone of number 1 seems to be darker
16 than anybody else.

17 So if he's going to choose a light or a dark,
18 is -- if this was designed to point by skin tone
19 alone to one of these, I would suggest that he could
20 have just as easily picked out number 1 who is the
21 darkest one of the crowd. This happened at night,
22 limited light. It would seem like, perhaps, the
23 propensity would be to pick the one with the darkest
24 skin color to match the circumstances surrounding
25 it.

1 However, I find that that -- there are slight
2 variances, so much slight variances in the skin tone
3 of all these individuals. The fact that he was also
4 shown two other lineups with 12 other people in them
5 who did not contain the defendant and yet he did not
6 identify any of those folks out of any of those
7 lineups but did focus on this one in this
8 circumstance seems to weigh against the fact that
9 here was an inaccurate identification.

10 This is not like he picked one man out of six;
11 he picked one man out of 18. So that seems, in my
12 view, my limited view of this, to somewhat enhance
13 the accuracy of the identification. Now, the
14 opportunity to witness, we are, you know, six feet
15 away, perhaps, maybe eight feet away, whatever the
16 estimate that you would make on the distance as
17 Mr. Vasquez described the encounter, certainly in
18 any event, by any measurement, it was close enough
19 to get a very accurate view of the person that he
20 was confronted the degree of his attention.

21 The -- I don't know about you-all, but just
22 from my own common sense approach to this, with all
23 the scientific data thrown into the mix, and given
24 whatever weight we choose to give it or whatever
25 weight the jury would choose to give it, I'm not

1 sure that in three days I would forget the man who
2 shot my dad when I was within six feet of him when
3 he did it. I believe that that would -- that that
4 would tend to submit that.

5 One thing that Dr. McQuiston testified to was
6 that stress and these tests that are made by people
7 who observe things in a non-stressful environment as
8 opposed to those who observe things in a stressful
9 environment, that they're more likely to remember
10 those things if there's no stress involved because
11 they have cool reflection available to them.

12 But one thing that she did not say because no
13 one asked her was the fact that somebody who is not
14 under stress might be able to remember something
15 more accurately on a scientific basis than someone
16 who is under stress, does that render the
17 observation under stress unreliable? And that's not
18 what she said. She said one is more reliable than
19 the other.

20 The accuracy of a prior description, of course,
21 is really not a level here; that gets to the
22 in-court identification. And there's another point:
23 The point that she was making, obviously, is that
24 once you pick out somebody the first time, you're
25 more likely to pick them out the second time. And

1 that's exactly true. Nobody can argue with that.

2 But that does not -- as Ms. Patterson brought
3 out on cross-examination, that does not indicate
4 that the first identification was inaccurate, it
5 simply means that the second identification was
6 based on the first and not on an independent
7 start-over.

8 The length of time between the crime and the
9 confrontation: Three days. The whole question
10 about all of this is whether or not the
11 identification process by the lineup, primarily, has
12 been so tainted as to -- and so suggestive and so
13 conducive, as the language in the case says, to
14 irreparable mistaken identity that it denies the
15 defendant due process. And that's not the case here
16 at all.

17 This jury is going to be able to hear
18 Mr. Vasquez and what he saw and what he said and how
19 he remembered, they're going to be able to hear
20 about the identification from the lineup, and
21 they'll be able to hear from Dr. McQuiston. And
22 she's going to tell them the same thing she told us,
23 and they're going to be free to give all of that the
24 weight that they think it is entitled to receive.
25 But the motion to suppress the lineup and the

1 identification are respectfully denied.

2 All right. Now, we still got the matter of the
3 warrant, right?

4 MS. FULLWOOD: Yes, sir.

5 THE COURT: Okay. Let's move on to that.

6 Ms. Fullwood?

7 MS. FULLWOOD: Thank you, Your Honor.

8 To start off, Your Honor, we're asking to
9 suppress the fruits of a search warrant served on
10 August the 12th, 2016 [sic] and executed on that
11 same date at 166 Fair- -- I can hardly read it -- an
12 apartment.

13 THE COURT: Okay. I gotcha. And the date of
14 the warrant?

15 MS. FULLWOOD: August 12, 2015.

16 THE COURT: Okay.

17 MS. FULLWOOD: I guess to start, since I think
18 the Court is going to need to have access to the
19 warrant, I would like to have this marked as a
20 Defense exhibit for identification.

21 (Defendant's Exhibit No. 1 marked for
22 identification.)

23 MS. MARTIN: Your Honor, may I be sure we're
24 talking about the same one? I'm sure we are, I
25 just --

1 MS. FULLWOOD: Okay. I'm sorry.

2 MS. MARTIN: That's okay.

3 MS. FULLWOOD: Your Honor, may the defendant
4 have a very brief break?

5 THE COURT: Okay, while I'm looking at this.
6 We'll stay in here.

7 (The defendant exits the courtroom at 5:00 PM.)

8 (Brief pause in the proceedings.)

9 (The defendant enters the courtroom at 5:02
10 PM.)

11 THE COURT: All right. I've read the search
12 warrant. And you're attacking the accuracy or
13 sufficiency of the affidavit; is that right?

14 MS. FULLWOOD: Yes, sir, both.

15 THE COURT: Okay.

16 MS. FULLWOOD: Basically our position is that
17 this warrant was obtained in violation of his rights
18 under the 4th and 14th Amendments to the United
19 States Constitution; Article 1, Section 10 of the
20 South Carolina Constitution; and Section 17-13-140
21 of our Code of Laws.

22 Our first argument is that this warrant is
23 simply invalid on its face because it does not make
24 a -- it does not give the magistrate who issued it a
25 substantial basis to believe that probable cause

1 exists that he committed the offense that he's
2 charged with, and it doesn't give the magistrate any
3 basis to believe that the items sought would be
4 where they sought to search.

5 The allegations in the affidavit of the warrant
6 and the attached supplemental affidavit merely make
7 conclusory statements. It says that there was a
8 shooting on August 9th out at 3941 Charleston
9 Highway, that Mr. Vasquez died, that Franklin
10 Vasquez gave a description of someone being
11 five-seven, 160 pounds, and the other person as
12 being a black male, tall and heavyset in build.

13 Of course Your Honor heard Franklin's testimony
14 earlier today; he tells them that the first person
15 was about the same size as his dad, five-seven or
16 so, and just in one statement he said the passenger
17 was fat and bigger than the other guy.

18 It then says -- the warrant then goes on to say
19 that the first suspect had a dark beard and a dark
20 shirt, the second suspect had a white shirt and
21 white sneakers, they both had semiautomatic
22 handguns, they were driving what is described as a
23 black Toyota Corolla with ground effects package and
24 rear trunk, having a partial tag of South Carolina
25 tag 581 with a palm tree tag.

1 The supplemental affidavit goes on to say they
2 found that Mr. Esaw's vehicle, which was registered
3 to his girlfriend and owned by her mother, had a tag
4 number of EKY 558, that he had been seen driving the
5 vehicle, it was by her apartment, she's a tenant of
6 the apartment, that they had been led there to
7 arrest him for an outstanding warrant that's
8 unrelated to this case and he was arrested by
9 Richland County Sheriff's Office on that unrelated
10 warrant --

11 THE COURT: So what you're saying is where is
12 the evidence that --

13 MS. FULLWOOD: That he committed a crime or
14 that the fruits of the crime are in that building.

15 THE COURT: Okay. Let's see what they have to
16 say about that before we move past it.

17 MS. FULLWOOD: Okay.

18 THE COURT: Ladies, where is the evidence from
19 the affidavit that Mr. Esaw committed any crime or
20 certainly this crime in question?

21 MS. PATTERSON: And I beg the Court's
22 indulgence, Your Honor.

23 THE COURT: Yes, ma'am.

24 MS. FULLWOOD: Actually, I'm so sorry, there's
25 a second prong to that argument.

1 THE COURT: I know. They got to get past the
2 first one first.

3 MS. FULLWOOD: I know. A second prong to the
4 first part of the argument.

5 THE COURT: Oh, I see. While they're
6 contemplating, Ms. Fullwood, I'll come back to you
7 and let you go ahead and get to the other part that
8 I cut you off on.

9 MS. FULLWOOD: Okay. Right now?

10 THE COURT: Yes, ma'am. I take it that you
11 wanted to add something before --

12 MS. FULLWOOD: Yes, sir, I did. It's in the
13 same -- another problem just with the warrant on its
14 face is, it's not made under oath or affirmation as
15 required by the state and federal constitution and
16 by statute.

17 That's because the person who signed the
18 affidavit was a Richland County Sheriff's Department
19 deputy who did not have any personal knowledge or
20 basis for knowledge as to the contents contained in
21 those two affidavits. And under Dunbar v. State --
22 State v. Dunbar, that would render the affidavits
23 invalid.

24 MS. PATTERSON: Your Honor --

25 THE COURT: I believe there's also State vs.

1 Robinson, is it not as well?

2 MS. FULLWOOD: Yes, sir.

3 THE COURT: Now, Ms. Patterson, yes, ma'am?

4 MS. PATTERSON: Thank you, Your Honor. With
5 regards to her -- the latest argument, Investigator
6 Carrie Johnson was contacted by Lexington County
7 Sheriff's Department investigator Barry Sowards in
8 order to -- and John Moore in order to obtain this
9 search warrant since the property was located in
10 Richland County.

11 THE COURT: Right.

12 MS. PATTERSON: He spoke to Investigator Moore
13 over the phone, which is common practice for them to
14 do when they're assisting another agency, in order
15 to get probable cause to search the property. He
16 then will say that he went to local magistrate
17 really close to his office and got this statement --

18 THE COURT: Now he is who?

19 MS. PATTERSON: Investigator Johnson with the
20 Richland County Sheriff's Department.

21 THE COURT: Okay. Yes, ma'am. Carrie Johnson.

22 MS. PATTERSON: Yes, sir.

23 And, Your Honor, what I would argue is, in the
24 supplemental part of the argument, Ricky Esaw is
25 named as a suspect, Your Honor, he had been

1 witnessed as driving the vehicle that was parked in
2 front of the apartment that was to be located -- I
3 mean, that was to be searched, after they were able
4 to locate his address as being that of his
5 girlfriend, Ms. Luenetta Grayson.

6 He was a named suspect. That vehicle was
7 identified as being -- as corroborating to the one
8 that was identified in the murder-robbery case, Your
9 Honor, so that led investigators to that particular
10 apartment. He was -- we would argue that he was
11 named, that that car did fit the description, and
12 that would give us probable cause to search the
13 place that he was living.

14 THE COURT: The part about going across the
15 lines, you're right, that's common. That doesn't
16 cause me the heartburn. It's often the case, as you
17 said, for an officer in one jurisdiction to relay
18 the information to an officer in another to get the
19 warrant.

20 But now you said, and you're right, Mr. Esaw is
21 named as a suspect. But a suspect of what and on
22 what basis?

23 MS. PATTERSON: The investigators, Your Honor,
24 were following leads at this point. They were still
25 following the Crimestoppers lead. They were

1 interested in him. He was a named suspect. He and
2 his co-defendant, they went -- part of the
3 Crimestoppers tips was to go to Facebook, Your
4 Honor. And on the Facebook pictures is where they
5 saw the bracelet of the co-defendant that was found
6 on the scene.

7 THE COURT: Right.

8 MS. PATTERSON: So investigators started trying
9 to find out where Mr. Esaw lived, and they located
10 his address as being that with his girlfriend
11 Luenetta Grayson. This was that apartment that they
12 wanted to search. They also -- again, Your Honor,
13 they saw the car parked directly in front of that
14 apartment building. So he -- and he also had a
15 valid outstanding warrant in Richland County, Your
16 Honor.

17 THE COURT: Right.

18 MS. PATTERSON: So they wanted to search the
19 place because of the crime in Lexington County, but
20 they also wanted to be able to serve that
21 outstanding arrest warrant over in Richland County.

22 THE COURT: And, of course, they could have
23 done that. They could have done that -- if they had
24 an arrest warrant, they didn't need another warrant
25 to serve that, I don't think.

1 But the information that you just gave me,
2 Ms. Patterson, of course is helpful information, but
3 I can't see in these affidavits where the magistrate
4 knew all that stuff about Crimestoppers and about
5 the bracelets and all that. Can somebody help me
6 with that?

7 MS. PATTERSON: Your Honor, we're certain that
8 Investigator Moore relayed this information to
9 Investigator Johnson, but, to be honest with you, we
10 just can't prove that that happened.

11 THE COURT: Well, I'm basically going on what's
12 here before me today.

13 MS. PATTERSON: Yes, sir.

14 THE COURT: And I hadn't heard any testimony in
15 that regard. Is that --

16 MS. PATTERSON: Well, we can prove that
17 Investigator Ward gave it to Investigator Johnson,
18 but he just can't remember if he relayed it to the
19 magistrate.

20 THE COURT: I see. But three rounds of
21 .9 millimeter ammunition, is that all that they got
22 from this warrant?

23 MS. PATTERSON: Yes, sir.

24 THE COURT: Is that tied to the crime?

25 MS. PATTERSON: We never was able to identify

1 or locate the weapon, Your Honor. But, based on
2 Mr. Esaw's statement, we do know that -- what type
3 of gun may have been used in the crime.

4 THE COURT: Right. Well, if you've got his
5 statement, frankly, which I've allowed into
6 evidence, that is much less suspect by a long shot
7 than me allowing this three rounds of .9 millimeter
8 ammunition into evidence, which is one of the most
9 common rounds of -- or one of the most common
10 calibers that are out there. The -- and I
11 appreciate your candor, Ms. Patterson, about who can
12 remember what in these particular cases.

13 I find that the warrant fails to state probable
14 cause from which a magistrate could have concluded
15 that Mr. Esaw committed this particular crime.
16 There's nothing in there about the identification;
17 probably hasn't occurred at this time, quite
18 frankly. There's nothing in there about that. And
19 when you -- which is possible, under our case law,
20 to supplement even a supplemental affidavit with
21 oral testimony, and we've got case law that stands
22 for that.

23 This is not the quintessential Franklin case
24 where there's a false affidavit being offered or --
25 this is just one that is deficient as to the

1 probable cause issue to begin with. Whether the
2 magistrate had a substantial basis for concluding
3 probable cause, that's the standard, the affidavit
4 must contain sufficient underlying facts and
5 information upon which the magistrate may make a
6 determination of probable cause. I don't see it.
7 The motion to suppress the fruits of the search is
8 granted.

9 MS. PATTERSON: Yes, sir. Thank you, Your
10 Honor.

11 MS. FULLWOOD: Thank you, Your Honor.

12 THE COURT: All right. Folks, 9:30 in the
13 morning. And the jury will be brought in, will be
14 sworn, I will appoint a foreperson, make some brief
15 introductory comments, allow you-all some opening
16 statements, and we'll start the trial then.

17 Anything from the State before we break for the
18 day?

19 MS. PATTERSON: No, sir, Your Honor.

20 THE COURT: Thank you.

21 From the Defense?

22 MR. CHEHOSKI: No, Your Honor.

23 THE COURT: All right. Thank you. I'll see
24 you-all in the morning at 9:30.

25 (Trial in recess for the evening at 5:16 PM.)

1 (The following proceedings were held October
2 17, 2017.)

3 THE COURT: Good morning. The first matter of
4 business is the qualification of an interpreter that
5 will be used in trial today. So to save a little
6 time, Ms. Hope has put me on notice and we'll take
7 care of that in advance of the jury coming in.

8 Do we have any paperwork or any certifications
9 so far?

10 THE CLERK: I have the forms for her, Your
11 Honor, that we would prepare as the Court for her
12 from Court Administration.

13 THE COURT: All right.

14 THE CLERK: There's two that you need to sign
15 of the three, Your Honor.

16 THE COURT: All right.

17 Ms. Cahue, how long have you been certified or
18 qualified as a court interpreter?

19 MS. CAHUE: Eight years.

20 THE COURT: And about how many times of that
21 have you served in that capacity, in this or any
22 court?

23 MS. CAHUE: I would say maybe 800.

24 THE COURT: 800?

25 MS. CAHUE: Around.

1 THE COURT: All right. That's good enough for
2 me.

3 Does either side wish to question the
4 qualifications of Ms. Cahue before she's qualified
5 as a court interpreter?

6 MS. PATTERSON: Nothing from the State.

7 MS. FULLWOOD: No, Your Honor.

8 THE COURT: Ms. Cahue, make it 801.

9 MS. CAHUE: Thank you.

10 THE COURT: We'll call on you when the time is
11 right.

12 Okay. Ms. Patterson, is the State ready for
13 the jury?

14 MS. PATTERSON: Yes, sir, Your Honor.

15 THE COURT: Mr. Chehoski, is the Defense ready?

16 MR. CHEHOSKI: Yes, sir. There is one thing I
17 just wanted to bring up. I spoke with Ms. Patterson
18 and Ms. Martin this morning and I think we have the
19 situation resolved. I left off, inadvertently, a
20 possible witness from my witness list who is a
21 Captain Moyer who would be the custodian of records
22 at Alvin S. Glenn Detention Center.

23 I think the purpose of it was to introduce the
24 booking photo taken of Mr. Esaw when he was arrested
25 on the unrelated Richland County charges. I think

1 we can -- actually, I think either the State is
2 going to stipulate or they're going to introduce
3 their own photograph taken a little bit earlier
4 either that same day or if it was taken, like, in
5 the early morning hours of the 12th, and if that's
6 the case, we'll just go with the picture that
7 they're going to use.

8 THE COURT: All right. So I don't need to voir
9 dire the jury any further on Captain Moye?

10 MR. CHEHOSKI: I don't think so, no.

11 MS. PATTERSON: Yes, sir, that's correct.

12 THE COURT: All right. Thank you.

13 All right. Folks, the jury will be brought in,
14 I'll appoint a foreperson and make some introductory
15 remarks, and then allow you-all some opening
16 statements. Who will opening for the State?

17 MS. MARTIN: I will, Your Honor.

18 THE COURT: Who will open for the Defense?

19 MR. CHEHOSKI: I will, Your Honor.

20 THE COURT: All right. Thank you.

21 Bring us the jury.

22 (The jury enters the courtroom at 9:38 AM.)

23 THE COURT: Mr. Hallman, please have a seat in
24 that chair right where you're standing. Thank you.
25 I've asked you to occupy that chair, sir, because I

1 want you to serve as the foreperson of the jury.
2 And all that means is you'll be the jury spokesman
3 here in court, and when the trial of the case is
4 over, you'll be responsible for writing the verdict
5 of the jury. But I'll tell you more about that
6 before you have to do it. You don't have to worry
7 about that now. Just remember you've got a reserved
8 seat, you'll occupy that chair throughout the trial
9 of this case.

10 Mr. Jaskola and Ms. Cochcroft, you'll be the
11 alternate jurors during the trial, and you will sit
12 on those two chairs throughout this trial, unless
13 sometime during the trial I ask you to sit somewhere
14 else. Okay?

15 The rest of you ladies and gentlemen don't have
16 reserved seats, you've got general admission
17 tickets, you just got to do the best you can. It's
18 always a good idea to do just what you did a while
19 ago: Move all the way down and don't leave an open
20 chair behind you or beyond you, because it's kind of
21 painful people stepping on your feet to get to that
22 during the course of the trial.

23 Ladies and gentlemen, you're going to be sworn
24 in now as jurors and I want you to pay attention to
25 the oath you're about to take. It explains to you

1 very thoroughly but yet very concisely what your
2 responsibilities as jurors are. I'm going to be
3 reminding you during this trial and indeed after
4 this trial exactly what your responsibilities are.
5 So please now listen to the clerk as she administers
6 the oath.

7 THE CLERK: Please stand and raise your right
8 hand.

9 (Jury sworn.)

10 THE CLERK: Be seated, please.

11 THE COURT: Ladies and gentlemen, before we
12 start the trial of this case, let me take a few
13 moments to go over the procedure that we'll follow
14 during this trial and explain to you more completely
15 what your role as jurors will be in the trial of
16 this case.

17 In just a minute when I finish talking to you,
18 Ms. Martin, on behalf of the State, one of the
19 attorneys presenting the State's case in this
20 instance, will stand before you and make a brief
21 opening statement.

22 And in that opening statement she's going to
23 outline for you, in something of a preview fashion,
24 what this case is all about from the State's point
25 of view. She may also indicate to you what she

1 intends to offer or what the State intends to offer
2 by way of proof in support of the charges that are
3 brought in this indictment.

4 And after she is finished making the opening
5 statement on behalf of the State, then Mr. Chehoski,
6 on behalf of Mr. Esaw, will make an opening
7 statement on his client's behalf. He doesn't have
8 to do that, but he has a right to do that, and if he
9 chooses to do that, he will.

10 After the opening statements have been made,
11 then you'll actually begin to see and hear the
12 presentation of the evidence in this case.
13 Evidence, for the most part, will take the form of
14 testimony; testimony of witnesses who will take an
15 oath and sit in this chair right here and will
16 answer questions that the lawyers of both sides will
17 put to them.

18 Evidence can also take the form of photographs
19 or documents or items like that that may be
20 introduced into evidence under our rules. The State
21 will put in its evidence and testimony first, and
22 after the State has completed its evidence and
23 testimony, then the Defendant has a right to offer
24 evidence and testimony, but is under no obligation
25 to do that, and I'll tell you why in just a moment.

1 Now, after all the evidence and testimony is
2 presented, then the lawyers will come back before
3 you and make their closing statements, their final
4 arguments or closing statements. And in those
5 statements they're allowed to summarize the evidence
6 that's been presented and to submit to you
7 conclusions that they claim you ought to draw from
8 that evidence.

9 After that is done, then I will instruct you or
10 charge you as to what the law is. And then,
11 finally, after you've heard the instructions of the
12 law, you'll go back into your jury room and start to
13 discuss this case among yourselves, to deliberate
14 and to reach a verdict.

15 Now, you're not allowed to talk about this case
16 among yourselves, and now I'll tell you why. Once
17 you start to talk about this case among yourselves,
18 you're going to start to draw conclusions about the
19 case, perhaps subconsciously, perhaps consciously.
20 But you'll start to draw conclusions about the case
21 once you begin to discuss the testimony.

22 It could happen that later in the case you hear
23 testimony that's different from that testimony that
24 you've already started to talk about and draw
25 conclusions based on it. And if that's the case,

1 you're not likely to receive that later testimony
2 with an open mind. And you have to keep an open
3 mind throughout the trial of this case, and for that
4 reason you're not allowed to talk about this case
5 among yourselves during the trial. When the trial
6 is over, you can take as much time as you want to to
7 talk about it, but not until then.

8 And for the reasons I told you yesterday, I
9 remind you, you're not allowed to talk with anybody
10 about this case or expose yourselves to any
11 publicity about this case or try to find out
12 anything on your own about this case outside of this
13 courtroom.

14 Now, ladies and gentlemen, I told you that the
15 evidence will be presented and I told where it will
16 come from. Let me tell you what is not evidence.
17 The opening statements that the lawyers will make
18 are not evidence and the closing arguments are
19 evidence and the questions are not evidence.

20 It is the answers to the questions that are
21 evidence, because the answers come from somebody who
22 is supposed to know what they're telling you about.
23 And they're making those statements under oath and
24 it's subject to the questions from the lawyers on
25 both sides, so those answers have to meet the test

1 of strict proof before you can give it any weight or
2 give it whatever weight you choose to give it. So
3 it's the answers, not the questions.

4 In that regard, some of you may have asked if
5 you wanted to take notes in this case. Let me tell
6 you, you're allowed to take notes, but when you take
7 notes, make sure that you don't get so absorbed in
8 the taking of notes that you're forgetting what else
9 is being said while you're writing things down.

10 And if you're taking notes, you should take
11 notes only of the answers, not the questions. The
12 questions are not evidence. You won't take notes
13 during the final arguments or the opening statements
14 because they're not evidence. I'll give you more
15 instructions, if you choose to take notes, before
16 you go into your jury room to deliberate about what
17 you should put to those notes. I give you that
18 information now.

19 Now, the reason that you understand the
20 distinction between what is evidence and what is not
21 evidence is this: When it comes to the matter of
22 evidence, ladies and gentlemen, you-all actually act
23 as the judges. I'm the judge of the law. All I've
24 got to do is decide whether you can hear somebody
25 tell you something or look at a piece of evidence.

1 But once you hear the testimony, you become the
2 judge of that testimony. You have to decide the
3 facts of this case.

4 And you're capable of doing that whether you've
5 ever been in a courtroom before yesterday or not.
6 We just ask you to use the same abilities in this
7 courtroom in making decisions about what you think
8 the facts of the case are that you use every day in
9 your own lives, in your own businesses, in raising
10 your children, whatever you do, just getting
11 through, in making decisions about things that
12 you're trying to decide on. That's what we ask you
13 to do in court, the same thing that you do outside
14 of this court every day.

15 And once you've done those things, you'll be
16 able to decide what the facts of this case are. And
17 the facts that you determine to exist in this case
18 will be applied to the law that I will give you.
19 And when you've done that, you'll be able to decide
20 the verdict in this case.

21 Now, a few moments ago I told you that the
22 Defendant doesn't have to make an opening statement,
23 doesn't have to offer evidence and testimony. And
24 the reason because, as you know, yesterday, before
25 we began the selection process, Mr. Esaw has,

1 obviously, pled not guilty to these charges. And
2 under the law, when someone pleads not guilty to the
3 charges in a criminal case, that means that that
4 person is presumed in law to be innocent of the
5 charges.

6 When we say that somebody is presumed to be
7 innocent of the charges, that means that he does not
8 have to prove that he's innocent, he does not have
9 to take the stand and try to convince you that he
10 did not do the things that he is accused of doing,
11 he does not need to bring in a parade of witnesses
12 to try to make you believe that he did not do the
13 things he's accused of doing.

14 He's presumed to be innocent of those things,
15 so that means the burden of proof, as in this case
16 and every case like this, is always on the State to
17 prove the guilt of one who's charged with a crime
18 beyond a reasonable doubt to the satisfaction of all
19 of you.

20 Now, when the trial is over and when I give you
21 my final instructions, I'll tell you in a little bit
22 in greater detail what we mean by proof beyond a
23 reasonable doubt. But for our purposes right now at
24 this early stage of the trial, let me tell you that
25 proof beyond a reasonable doubt is proof that leaves

1 you firmly convinced of the defendant's guilt. And
2 so after you've heard all of the evidence and
3 testimony in this case, if you're firmly convinced
4 that the State has met its burden of proof, then the
5 State would be entitled to a verdict of guilty on
6 these charges.

7 But after you've heard all of the evidence and
8 testimony, if you find there's a real responsibility
9 that he is not guilty, then the State has not met
10 its burden of proof. And in that instance, the
11 Defendant would be entitled to a verdict of not
12 guilty at your hands.

13 So you're going to be listening to the lawyers,
14 to the witnesses, and to me, and then you're going
15 to go back into that jury room and listen to each
16 other and you're going to discuss this case among
17 yourselves. And in your discussions you're going to
18 reach a conclusion as to whether or not the State
19 has met its burden of proof, and you will write a
20 verdict, we find the defendant guilty or we find the
21 defendant not guilty, depending upon your view as to
22 whether or not the State has met its burden of
23 proof.

24 Thank you, folks, for your attention to these
25 remarks. Now please listen to the lawyers as they

1 make their opening statements.

2 Ms. Martin?

3 MS. MARTIN: Thank you, Your Honor. May it
4 please the Court.

5 THE COURT: Yes, ma'am.

6 MS. MARTIN: Defense counsel.

7 Good morning, ladies and gentlemen. Judge
8 Cooper has given you an overview of what's going to
9 happen this week in the trial and how things are
10 going to progress. But certainly it's
11 understandable, you as new jurors, you might be
12 nervous, you might be apprehensive, you might be
13 concerned about making such a serious decision. And
14 that decision will come to you later this week.

15 Judge Cooper has told you and your jurors oath
16 has confirmed that you will base your verdict on the
17 evidence and the law. The evidence, as Judge Cooper
18 said, will come from the witness stand. There are
19 going to be witnesses who are going to tell you
20 under oath what they saw, what they heard, and what
21 they did. They're going to tell you how they became
22 involved in this case and what knowledge, what
23 particular knowledge, they have about the events
24 that have led us to this courtroom today. You're
25 going to have items in evidence; photographs, photo

1 lineup, witness statements. You're going to have
2 those that will also aid you in your decision in
3 reaching a verdict.

4 Now, as Judge Cooper has said, Ricky Esaw,
5 right now as you look at him, he's presumed
6 innocent. That is the law. Today, right now, on
7 trial, Ricky Esaw is presumed to be innocent.
8 Ladies and gentlemen, the State has the burden of
9 proof. That means the State must present to each
10 one of you proof beyond a reasonable doubt that he
11 is guilty as charged.

12 What is proof beyond a reasonable doubt? How
13 in the world can the State do that? And we're going
14 to do it, as we told you, by the evidence. But
15 please note, you don't have 100 percent convinced,
16 you don't have to be convinced beyond a shadow of a
17 doubt or beyond each and every doubt, you must be
18 convinced beyond any reasonable doubt. If you are
19 firmly convinced, then you will find Mr. Esaw
20 guilty.

21 Let's talk a little bit about the law. When
22 you came into this jury box here, you didn't leave
23 your common sense out there in the gallery. No.
24 No. You brought it with you. The law involved,
25 armed robbery, attempted armed robbery, what does

1 that mean? It's very similar. You know what it
2 means. It means that someone, while armed with a
3 deadly weapon, robbed or attempted to rob someone
4 else of their property.

5 The charge attempted murder and murder, what
6 does that mean? It means that someone killed
7 another with malice or attempted to kill another one
8 with malice, with a wicked heart, intent of
9 evildoing or wrongdoing. Possession of a weapon
10 during the commission of a violent crime, it's
11 exactly as it sounds: That the defendant had
12 possession of a deadly weapon during the commission
13 of a violent crime.

14 And Judge Cooper is going to tell you that
15 attempted armed robbery, armed robbery, attempted
16 murder, and murder are violent crimes. You're going
17 to other laws that exist about the hand of one is
18 the hand of all or accomplice liability; that if a
19 series of events are so interweaved and entangled
20 that there's no way to separate them, that that
21 course of conduct means that two people can be
22 charged with one act. And you're going to hear the
23 law about that. So that's the law, ladies and
24 gentlemen. You get to judge the credibility and
25 believability of witnesses.

1 Now, any time Ms. Patterson and I become
2 involved in a case like this, it's because a tragedy
3 has occurred. And the tragedy that we're here today
4 about involves the Vasquez family as they sit here
5 on the front row. You're going to meet this family.

6 You're going to meet Christy Vasquez. She's
7 going to tell you that in August of 2015, she lived
8 with her husband Hector, they'd been married 20
9 years, four children, the oldest being Franklin, and
10 three girls, and that on August 9th of 2015, they
11 were living at the Rolling Meadow apartments on
12 Charleston Highway here in Lexington County, and on
13 that Sunday afternoon, they'd gone back-to-school
14 shopping.

15 Franklin was about to start his senior year.
16 They'd gone to get bookbags and school supplies, and
17 then that afternoon, early evening, there was a
18 neighborhood party. Their neighbors had had a baby.
19 The baby was baptized or christened at church that
20 morning, and then the family was going to have a
21 get-together of family, friends, and neighbors. It
22 should have been a fun time, should have been a good
23 time, but it wasn't.

24 Franklin will tell you that he had been playing
25 basketball with some of his friends there at the

1 trailer park, that it had gotten dark, it was about
2 9:00 in the evening, and he went back to his house
3 and to the neighbor's house, and he came upon his
4 dad, Hector, who was walking with a friend, Rafael,
5 who is present today.

6 And Franklin will tell you that a car pulled
7 up. It was a dark-colored car, four doors, and two
8 black men got out and these men had handguns. The
9 chubby or fat one approached Raphael at the back of
10 the car, the other one, the driver of the car, got
11 out and approached him. And Franklin will tell you
12 that this man was saying give me your money, give me
13 your wallet, give me your cell phone. Franklin
14 tells this guy, I don't have anything.

15 Raphael, you'll find out, gave up his cell
16 phone and he gave up his wallet. Franklin will say
17 that his dad moved closer to the armed driver of the
18 car, placing himself more at risk in front of his
19 son, protecting his son, and his dad told this man
20 we don't have anything.

21 Franklin hears a click, the trigger has been
22 pulled on the gun, and Hector, at that point, knows
23 he needs to fight, uses a beer bottle and hits this
24 guy. They begin to struggle, they drop to the
25 ground. Hector [sic] sees this, he's right there.

1 He throws a soda can and tries to kick this person.
2 He sees his dad has been shot. There's blood
3 everywhere.

4 Christy, who has been inside, hears the
5 commotion and she comes running out. Christy
6 Vasquez comes running out. All she knows is that
7 her husband and child are out there and she wants to
8 get to them. She can see that Hector is bleeding,
9 he's on the ground. There's a man that she doesn't
10 know. A black man has his arms around her husband
11 and putting him on the ground. He holds the gun up
12 towards her and he says stop, don't come any closer,
13 I'll shoot you. She continues to come closer. He
14 tells her again, I'll shoot you. She doesn't care.
15 She's trying to get to her husband.

16 Then that man jumps into the driver's seat of
17 that car and they speed away. You're going to hear
18 from Christy about how she calls 911. You're going
19 to hear how she held her husband's head up so he
20 wouldn't choke on his own blood. You're going to
21 hear about the last conversation she ever had with
22 her husband.

23 The Sheriff's Department gets there quickly,
24 EMS gets there quickly. Franklin will tell you that
25 right before the car pulled off, the passenger, the

1 chubby one that had robbed Raphael, had gotten into
2 the passenger's seat of the car and he had leaned up
3 and fired out of the open car door, driver's side,
4 and he'd been shot. Franklin was treated and
5 released from Richland Memorial. But,
6 unfortunately, the good trauma surgeons there could
7 not save Hector. Hector Vasquez died, 45 years old.

8 Law enforcement begins an investigation. No
9 suspects. But, very quickly, Ricky Esaw and Wilfred
10 Pitts are named as suspects. And on the Wednesday
11 of that same week, August 12 of 2015, law
12 enforcement has their first contact with Mr. Pitts
13 and Mr. Esaw.

14 Mr. Pitts, when he robbed Raphael, the evidence
15 will bear out, had dropped a gold bracelet there at
16 the scene. His DNA is on that bracelet. Mr. Pitts,
17 when confronted by law enforcement, as most
18 criminals do, denied any knowledge, but he knew he
19 was a caught. And, ladies and gentlemen, you'll
20 hear how Mr. Pitts did tell law enforcement that
21 night, August 12th of 2015, that he had been
22 involved in this, that Ricky Esaw had been involved
23 in this, and that Ricky Esaw was the shooter; that
24 he wanted to talk to his mom and an attorney and he
25 would cooperate.

1 Ladies and gentlemen, you're going to meet
2 Wilfred Pitts. You're going to meet Ricky Esaw's
3 co-defendant. Co-defendant, what does that mean?
4 Well, that means he's charged with exactly the same
5 charges as Ricky Esaw. And he'll tell you that he
6 has no plea bargain with the State, he has no
7 agreement, that he is guilty, that he's going to
8 plead guilty, and he's going to tell you who did
9 what and who was involved.

10 Ladies and gentlemen, you're going to hear
11 about Ricky Esaw's statement to law enforcement,
12 things he told law enforcement on Friday, August
13 14th of 2015, about how, oh, no, I'm innocent, Pitts
14 ain't going to put all this on me, I was just the
15 driver, I was an accessory; no, no, that's the best
16 you got me on, I was an accessory.

17 And you're going to be able to read a statement
18 that Ricky Esaw wrote in his own hand of how he puts
19 himself there at the scene committing an armed
20 robbery, knowing that he is going with people who
21 are committing an armed robbery, and he's the
22 driver. And he says that, no, Mr. Pitts was the
23 actual shooter of Hector and there's somebody else
24 involved named AJ. And you're going to hear that.

25 You're going to hear that Ricky tried to

1 minimize what he did and say that, yeah, I knew what
2 we were going to do, that we were going to rob some
3 Mexicans, I sat there and watched it, there's a
4 shooting, they make it back in the car, I take them
5 away, and, oh yeah, I got \$50 for doing it, but I'm
6 innocent, so, law enforcement, y'all need to let me
7 go. Ladies and gentlemen, that didn't happen.

8 Mr. Pitts, as I said, will testify. Sometimes it
9 takes a criminal to help convict another criminal.

10 Let's bring this back to Franklin Vasquez. Do
11 you think Franklin Vasquez told law enforcement he
12 could identify the man that came towards him with a
13 handgun? He certainly did. Do you think Franklin
14 told law enforcement that he could identify the man
15 who fought with his dad? He did. Do you think
16 Franklin told law enforcement, if you catch the guy
17 and put him in a lineup, I can identify the man who
18 killed my dad? He did. August 14th of 2015,
19 Franklin did that, ladies and gentlemen, and he
20 identified Ricky Esaw, this man right here.

21 At the close of the case, ladies and gentlemen,
22 when you've heard the evidence, you've seen the
23 exhibits, you've been charged on the law that
24 applies in this case, you will be convinced beyond
25 any reasonable doubt that Ricky Esaw is guilty of

1 each one of those indictments. You will be
2 convinced beyond any reasonable doubt. And at that
3 point, you won't look at this man as an innocent
4 man, you'll look at him and you'll know he's guilty
5 and you'll look at him and you'll know that he's a
6 murderer. Thank you for your attention.

7 THE COURT: Thank you, Ms. Martin.

8 Mr. Chehoski?

9 MR. CHEHOSKI: Ladies and gentlemen, Hector
10 Vasquez is dead, and no one is here to speak bad
11 about his name or his character. He was a father,
12 he was a husband, and he was definitely loved by his
13 family. I am sorry for their loss. It is a
14 nightmare that they have to be here, and they
15 deserve our sympathy.

16 It is just as much a nightmare, however, to be
17 dragged in and accused of something that you didn't
18 do. And, ladies and gentlemen, that is Ricky Esaw's
19 nightmare. He's here, he's an innocent man. And
20 you here are who we are putting our faith in,
21 because when you're charged with something you
22 didn't do, you have to put your faith in a system
23 that our forefathers gave us, a system that Judge
24 Cooper yesterday told you was started over 800 years
25 ago. And today, in this courtroom, that means that

1 we're putting our faith in you.

2 And as you look around this courtroom, you can
3 see symbols of power everywhere, from our security
4 officers standing as the first line of defense, to
5 our prosecutors and our detectives who investigate
6 and prosecute the crimes, to the Judge in the black
7 robe who has the power and authority to hand down
8 sentences and declare people either guilty or not
9 guilty. And all of that pales in comparison to the
10 power that each one of you has.

11 I agree with much of what Ms. Martin said in
12 her opening. You did not leave your common sentence
13 in the gallery. Each one of you is unique. You
14 have your own individual experiences, your own
15 individual education, you know how things are
16 supposed to work, you have that sense. And by the
17 oath that you've taken, you have now assumed a duty
18 to try this case and ask your questions. Your vote
19 is powerful.

20 And if there are questions that you have, you
21 are entitled to have them answered to your
22 satisfaction before you give that power and give up
23 your vote. But especially if it's to something you
24 disagree with, you have a right to stand firm.

25 Ladies and gentlemen, there are going to be a

1 couple questions that we're going to ask you to
2 consider throughout this case. The first is, is
3 there evidence to support what the State is saying?
4 As you heard Ms. Martin say, there's going to be an
5 identification, there's going to be a co-defendant
6 testifying. And in the facts that they give you,
7 should you expect that there's some kind of
8 underlying independent evidence that will
9 corroborate that testimony? Please pay attention
10 and see if that's true. And then there's a second
11 question. And that question is, is there a real
12 chance that they got the wrong person?

13 Judge Cooper will give you the law at the end
14 of this case. I want you to pay close attention to
15 his definition and the law of reasonable doubt, and
16 then ask yourself the same question I just asked
17 you: Is there a real chance that they got the wrong
18 person? If your answer is yes to that question or
19 even maybe, then, by the oath you've taken, you must
20 vote not guilty and find Ricky Esaw innocent as he
21 still stands. Thank you.

22 THE COURT: Thank you, Mr. Chehoski.

23 Ladies, you may call your first witness,
24 Ms. Patterson, Ms. Martin.

25 MS. MARTIN: Your Honor, we'd call Christy

1 Vasquez.

2 THE COURT: Ms. Vasquez, come forward, please,
3 and be sworn.

4 CHRISTY VASQUEZ

5 being first duly sworn, testified as follows:

6 THE WITNESS: Yes, ma'am.

7 THE CLERK: Have a seat, please, ma'am. Once
8 you're seated, state your full name spelling your
9 last, please.

10 THE WITNESS: Christy Maria Herrera Vasquez,
11 V-A-S-Q-U-E-Z.

12 DIRECT EXAMINATION

13 BY MS. MARTIN:

14 Q. Ms. Vasquez, where were you born and raised?

15 A. Solomon County, Indiana.

16 Q. And are you married?

17 A. Yes, I am. I'm a widow, actually.

18 Q. And who were you married to?

19 A. Hector Vasquez.

20 Q. And do you remember when you first met Hector?

21 A. I was -- it was July 21st, 1996. I was 18
22 years old.

23 Q. And at the time he died, how long had y'all
24 been married?

25 A. Twenty years.

1 Q. And did y'all have children together?

2 A. Yes, ma'am, we did.

3 Q. How many children?

4 A. Four.

5 Q. Are they here in court today?

6 A. Yes, ma'am, they are.

7 Q. Can you introduce them to us, please?

8 A. Franklin Vasquez is my oldest son, he's 19,
9 soon to be 20; my youngest daughter, which is
10 sitting right next to him, is Brenda Vasquez and
11 she's 12 years old, she'll be 13 next month; Claudia
12 Vasquez, she's sitting next to Brenda, she is 16;
13 and Vanessa Vasquez, she is 17, soon to be 18.

14 Q. Where were you and your family living in August
15 of 2015?

16 A. Rolling Meadows.

17 Q. And is that on Charleston Highway?

18 A. Yes, ma'am, it is.

19 Q. Do you know if that's in Lexington County?

20 A. It is in Lexington County.

21 Q. How did y'all end up in South Carolina?

22 A. My husband's job moved us here.

23 Q. Did Hector have family members here?

24 A. He had family members here. He was working
25 with his cousin at the time.

1 Q. And what kind of work did your husband do?

2 A. Metal roofing.

3 Q. And is Franklin following in those footsteps?

4 A. Yes, ma'am, he is.

5 Q. Now, if I may, I need to direct your attention
6 specifically to August 9th of 2015 on that Sunday.

7 Can you tell us what you remember about earlier in
8 that day, what y'all did?

9 A. We got up, kids said -- was running around the
10 trailer like normal, playing around, joking around.
11 Then we were talking about school because it was
12 going to be next week. The kids said, well, we need
13 bookbags and we need stuff for school. So my
14 husband said, okay, let's go and get you guys some
15 school supplies and get bookbags. And so everybody
16 got ready and we left and went to Academy Sports
17 near the mall in Lexington and we went and bought
18 bookbags for them.

19 Q. Did you have any plans for later that day?

20 A. Yes. We had a baptism party we had to go to.
21 And, actually, Franklin was actually supposed to mow
22 the neighbor's yard because the party was going to
23 be there, the after-party.

24 Q. And is this your neighbors that live next door
25 to you?

1 A. Yes, ma'am.

2 Q. Did Franklin cut the grass that afternoon?

3 A. Yes, he did.

4 Q. And this party was -- do you remember about
5 what time it started?

6 A. I want to say it was around like -- it started
7 around 2:00 or 3:00, somewhere around there.

8 Q. And did it go into the evening hours?

9 A. Yes, ma'am, it did.

10 Q. And was the party inside or outside or both?

11 A. It was -- actually, it was a little bit of
12 both, but mainly it was outside.

13 Q. And would the children have been in a backyard
14 area?

15 A. Yes, ma'am.

16 Q. And do you know what Franklin was doing that
17 evening?

18 A. As far as I know -- you talking about before?

19 Q. Yes.

20 A. When we got back from buying bookbags, Franklin
21 went -- and it was around 1:00, I believe it was,
22 and he went and started cutting grass. And after
23 that we was at the neighbor's house and we was
24 getting -- we was just sitting outside talking and
25 everything because really nobody had gotten there

1 yet because it was so early. And we just -- hanging
2 around and talking.

3 Q. Okay. All right. When did you first know or
4 what first alerted you to the fact that something
5 was wrong?

6 A. It was around -- it was around like -- I think
7 around 9:00 or 10:00 at night. Some guy ran into
8 the trailer. I was inside the trailer. I was
9 holding a baby and --

10 Q. Was this the baby of the baptism?

11 A. Yes, ma'am. It was the baby from -- my next
12 door neighbor's baby. It was her baby's baptism
13 party. And I heard gunshots. And as soon as I
14 heard gunshots, I handed the baby off to somebody, I
15 can't remember who it was, and I started walking to
16 the door. As I started walking to the door,
17 somebody walked into the trailer and said, nobody go
18 outside because they have guns, they're shooting.

19 Q. And what was your intention?

20 A. To go to my husband and my son because they was
21 outside.

22 Q. And did you leave this trailer?

23 A. I went outside.

24 Q. And what did you see?

25 A. As I walked outside and I saw my husband being

1 held by a black man and they were struggling --
2 struggling and slouched over, he had a hold of him
3 and --

4 Q. When you say him, who do you mean?

5 A. Hector, my husband.

6 Q. Okay.

7 A. I ran down the stairs and I started walking
8 towards him.

9 Q. What, if anything, was said?

10 A. There -- as soon as I started walking towards
11 them, I was told -- the black man told me, he said,
12 if you come any closer, I'll shoot you. I kept on
13 walking.

14 Q. And is it nighttime, obviously?

15 A. Yes, ma'am.

16 Q. Are there lights out there?

17 A. Yes. There's a light post at the -- it's like
18 at the corner of the road.

19 Q. Okay. And did your neighbor's light --
20 neighbor's house have any lights?

21 A. Yes, ma'am.

22 Q. And how close would you say you were to this
23 man who had a gun?

24 A. I came pretty close.

25 Q. And could you see Hector?

1 A. Yes, I could.

2 Q. And did you observe anything about his
3 injuries?

4 A. I saw that he was bleeding. I saw him -- blood
5 pouring down from his side.

6 Q. Did you see Franklin at that time?

7 A. I don't remember seeing him. All I was focused
8 on was him.

9 Q. Him being Hector?

10 A. Being my husband, yes.

11 Q. Did you see Raphael?

12 A. Yes.

13 Q. Did you see the car?

14 A. Yes, I did.

15 Q. Do you remember what kind of car?

16 A. It was a dark four-door sedan. I don't know
17 what make or what model it was.

18 Q. Do you recall if the driver's door was open or
19 closed?

20 A. It was open.

21 Q. Is there a white fence near your husband?

22 A. Yes.

23 Q. Okay. After you kept approaching the armed
24 gunman, what happened next?

25 A. Whenever I kept on approaching him, he just

1 kept on telling me you come any closer, I'll shoot
2 you. I kept on walking close to him, I was focused
3 on my husband, I didn't care.

4 Q. And did this man leave?

5 A. After he laid him down on the ground, yeah, he
6 left.

7 Q. And how did he leave?

8 A. He got in the driver's side of the car and
9 drove off.

10 Q. Did you see anyone else in the car?

11 A. No, ma'am, I did not.

12 Q. And how sure are you that this person who held
13 your husband got into the driver's seat?

14 A. I'm very sure. I saw him get in the driver's
15 side.

16 Q. After they pulled out, what did you do with
17 Hector?

18 A. Whenever they drove off, I got down on my
19 knees, I put him in my lap, and I told him not to
20 leave me because he had to help me take care of my
21 babies.

22 Q. Were any of your daughters out there with you?

23 A. Yes, one of them was, the oldest out of the
24 three girls.

25 Q. Did you call 911?

1 A. Yes, I did.

2 Q. Do you know what phone you used?

3 A. I used my phone.

4 Q. Did Hector still have his cell phone?

5 A. Yes, he did. I -- whenever I was looking -- I
6 was trying to dial 911. My phone wasn't working --
7 I couldn't get my phone to work properly, and I
8 started fighting, like, arguing with my phone
9 because it wouldn't work. After that, I reached
10 into his pocket, I got his cell phone out of his
11 pocket, and I gave it to my daughter to start
12 calling family and letting them know what happened.

13 Q. Did you try and put pressure on any of Hector's
14 wounds?

15 A. Yes, I did.

16 Q. And what was the purpose of you holding his
17 head?

18 A. I was holding his head up so he wouldn't choke
19 on his own blood.

20 MS. MARTIN: May I have this marked, please?

21 MS. FULLWOOD: Your Honor, we have a matter of
22 law.

23 THE COURT: About what?

24 MS. FULLWOOD: Would you like us to approach
25 the bench?

1 THE COURT: Yes.

2 (Sidebar conference.)

3 (State's Exhibit No. 8 marked for
4 identification.)

5 THE COURT: Madam Court Reporter, please note a
6 sidebar conference.

7 MS. MARTIN: Your Honor, may I approach the
8 witness?

9 THE COURT: Yes, ma'am.

10 DIRECT EXAMINATION

11 BY MS. MARTIN:

12 Q. I'll show you what's been marked as State's
13 Exhibit 8. Do you recognize this disc?

14 A. It's the 911 call.

15 Q. Does it have your initials on it?

16 A. Yes, it does.

17 Q. Have you heard it outside of court before
18 today?

19 A. Yes, I have.

20 Q. And does it fairly and accurately represent
21 what -- the phone call that you made to 911 that
22 night?

23 A. Yes, it does.

24 MS. MARTIN: Your Honor, we'd move to publish.

25 THE COURT: Subject to objection of defense

1 counsel. What's the number?

2 MS. MARTIN: State's 8.

3 THE COURT: Thank you.

4 (State's Exhibit No. 8 published to the jury.)

5 BY MS. MARTIN:

6 Q. Ms. Vasquez, on that 911, do you recognize your
7 voice?

8 A. Yes, ma'am.

9 Q. Did you recognize any other family members'
10 voices?

11 A. Yes.

12 Q. Who did you recognize?

13 A. My son.

14 Q. And did you hear your daughter who was there,
15 some of her cries?

16 A. Yes.

17 Q. And you were speaking Spanish. Who were you
18 speaking to?

19 A. To my husband.

20 Q. Did he answer you?

21 A. Yes, he did.

22 Q. What did he say?

23 A. He told me let him go. And I told him that I
24 couldn't because he had to help me finish raising my
25 kids; that we had always said that no matter what,

1 we'd raise our kids together. And he just told --
2 kept on telling me, just let me go.

3 Q. On that 911, I believe I heard you yelling at
4 Franklin. Did you yell at Franklin?

5 A. Yeah.

6 Q. Were you -- was there a reason you were yelling
7 at Franklin?

8 A. For him not to leave.

9 Q. Okay. And did Franklin, in fact, get your car?

10 A. Yes, he did.

11 Q. And did he leave there?

12 A. Yes, he did.

13 Q. About how long was he gone?

14 A. Probably not even five minutes.

15 Q. And when did you learn Franklin had been shot?

16 A. As -- whenever he was still there.

17 Q. And did you see blood on him?

18 A. Yes, I did.

19 Q. And did you believe it to be some type of
20 ricochet?

21 A. Yes, ma'am.

22 Q. Did you later find out that was not accurate?

23 A. Yes, ma'am.

24 Q. Did you meet with people from the sheriff's
25 department that night?

1 A. Yes.

2 Q. And did you give them a written statement that
3 night?

4 A. Yes, I did.

5 Q. When you're giving them this written statement,
6 where is Hector?

7 A. He's getting put in the ambulance to go to the
8 hospital.

9 Q. And where is Franklin?

10 A. He's getting seen also by the paramedics to go
11 to the hospital.

12 Q. And when you gave a written statement to law
13 enforcement, was it a full and complete statement?

14 A. It was not a -- I guess, the whole full one.
15 It was basically what I could write down because I
16 wanted to get to my husband at the hospital. I
17 wanted to be with him.

18 Q. And did they finally let you go to the
19 hospital?

20 A. After maybe, I think it was, about 30, 40
21 minutes, something like that.

22 Q. And when you got to the hospital -- do you
23 remember which hospital it was?

24 A. Richland hospital.

25 Q. When you got there, who did you check on first?

1 A. Whenever I got to the hospital, I took my
2 daughters up to the floor where my husband was at, I
3 found out where Franklin was at, I went back
4 downstairs to the ER part, and I went to go check on
5 Franklin.

6 Q. And after you checked on him, where did you go?

7 A. I went back upstairs.

8 Q. What, if anything, did you learn about Hector's
9 condition?

10 A. I had learned that he had passed away.

11 Q. And did you see Hector there at the hospital?

12 A. Yes, I did.

13 Q. And who was with you at that time?

14 A. His cousin.

15 Q. Now, do you remember the first time you met
16 this detective John Moore?

17 A. It was at his cousin's house.

18 Q. Whose cousin's house?

19 A. Hector's cousin's house.

20 Q. Would that be in Little Mountain?

21 A. Little Mountain, yes.

22 Q. Some people call that Newberry; is that right?

23 A. Yes.

24 Q. And would it have been the next morning?

25 A. Yes, ma'am.

1 Q. And did you indicate at that time that you
2 thought you could or could not identify the man that
3 you saw holding your husband with the gun?

4 A. I wasn't sure.

5 Q. And was Franklin there at that time as well?

6 A. Yes, ma'am.

7 Q. Did Franklin indicate to law enforcement that
8 he would be able to identify the person?

9 A. Yes, ma'am.

10 MS. FULLWOOD: Objection, Your Honor, hearsay.

11 THE COURT: I'll sustain the objection as to
12 hearsay, what Franklin said. Thank you.

13 BY MS. MARTIN:

14 Q. Did there come a time that Detective Moore
15 showed you some lineups?

16 A. Yes, ma'am.

17 MS. MARTIN: (Tenders documents to
18 Ms. Fullwood.)

19 MS. FULLWOOD: No objection, Your Honor.

20 THE COURT: Thank you. Without objection.

21 BY MS. MARTIN:

22 Q. I'll show you what's been marked State's 2 and
23 State's 3. Do you recognize these lineups?

24 A. Yes, ma'am.

25 Q. Were they shown to you by Detective Moore?

1 A. Yes, ma'am.

2 Q. Were you able to identify anyone in these
3 lineups?

4 A. No.

5 (State's Exhibit No. 9 marked for
6 identification.)

7 MS. MARTIN: (Tenders document to
8 Ms. Fullwood.)

9 MS. FULLWOOD: No objection.

10 BY MS. MARTIN:

11 Q. If I can show you what's been marked State's 9.
12 Do you recognize this document?

13 A. Yes, ma'am.

14 Q. And what is that document?

15 A. It's a lineup of black males, six of them. And
16 I put not sure on it because I was not sure of
17 who -- of anybody on there.

18 Q. And did you, in fact, sign the lineup?

19 A. Yes, ma'am, I signed it.

20 Q. And Detective Moore showed this to you?

21 A. Yes, ma'am.

22 Q. Were you present when Franklin looked at the
23 same lineups?

24 A. Yes, ma'am.

25 Q. Did you talk to Franklin or encourage him to

1 pick someone out or anything of that nature?

2 A. No, ma'am.

3 Q. Were you standing right there with Franklin
4 when he looked at those lineups?

5 A. No, ma'am.

6 Q. What were the instructions --

7 MS. MARTIN: Scratch that, Your Honor.

8 THE COURT: Thank you.

9 BY MS. MARTIN:

10 Q. Was Hector right-handed or left-handed?

11 A. He was right-handed.

12 Q. Where did Hector keep his wallet?

13 A. In his back right-hand pocket.

14 Q. And to this day have you found his wallet?

15 A. No, ma'am, we have not. I have asked law
16 enforcement about his wallet, I've asked Mr. Moore
17 about his wallet, and they've -- the answer they've
18 always given me is that they still have not found my
19 husband's wallet.

20 Q. Since this night back in 2015, have -- did
21 y'all move away?

22 A. Yes, ma'am.

23 Q. And where are you living now?

24 A. I live in Chrisman, Illinois.

25 Q. And Franklin, where is he living?

1 A. Franklin lives in Little Mountain.

2 Q. With your husband's family?

3 A. With his cousin, yes.

4 MS. MARTIN: I beg the Court's indulgence.

5 THE COURT: Yes, ma'am.

6 MS. MARTIN: Please answer any questions the
7 Defense may have.

8 THE COURT: Ms. Fullwood, you may
9 cross-examine.

10 MS. FULLWOOD: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MS. FULLWOOD:

13 Q. Good morning.

14 A. Good morning.

15 Q. Ms. Vasquez, when did you and your family move
16 to South Carolina?

17 A. We moved to South Carolina in April of 2013.

18 Q. Okay. Understandably that night, you were
19 distraught; correct?

20 A. Yes, ma'am.

21 Q. But you -- as you've told us, you did speak to
22 law enforcement for approximately 30 minutes before
23 you got to leave to go to the hospital; is that
24 right?

25 A. Yes, ma'am.

1 Q. Okay. And you talked with the officers; is
2 that right?

3 A. Yes, ma'am.

4 Q. And you wrote, in your own hand, a statement;
5 is that correct?

6 A. Yes, ma'am.

7 Q. Okay. Didn't your statement indicate that it
8 there was more than one robber involved?

9 A. There -- all I put in it that I recall is that
10 there was a black male and that there was one. I'm
11 not --

12 Q. Did you -- you've been down here because of
13 this trial; right?

14 A. Yes.

15 Q. Okay. And before today you've had a chance to
16 meet with Ms. Martin and Ms. Patterson, right, to
17 talk to them?

18 A. For the trial, yes.

19 Q. Okay. And have you had a chance to look at
20 your statement when you've been down here to refresh
21 your memory about what you wrote that night?

22 A. Yes.

23 Q. Okay. So tell me if this sounds right to you.
24 Did you write: A black man with a gun, he told me
25 that if he got any closer he was going to kill me.

1 And then they left and I saw my son had a shot burn
2 to his legs?

3 A. Yes, ma'am.

4 Q. Okay. So you used the words they at that time?

5 A. Yes, ma'am.

6 Q. All right. I don't think I have any further
7 questions. Thank you, ma'am.

8 THE COURT: Thank you.

9 Redirect, Ms. Martin?

10 MS. MARTIN: If I may approach the witness,
11 Your Honor?

12 THE COURT: Yes, ma'am.

13 (State's Exhibit No. 10 marked for
14 identification.)

15 REDIRECT EXAMINATION

16 BY MS. MARTIN:

17 Q. If I may show you what's been marked State's
18 10. Do you recognize this document?

19 A. Yes, ma'am.

20 Q. What is that?

21 A. The statement I made and I gave to the police
22 officer.

23 Q. Okay. And does it have every detail from that
24 evening on there?

25 A. It has just the basic stuff on there.

1 MS. MARTIN: Your Honor, we'd offer State's 10
2 into evidence.

3 THE COURT: Any objection?

4 MS. FULLWOOD: No objection, Your Honor.

5 THE COURT: Thank you. Without objection,
6 State's 10 in evidence.

7 (State's Exhibit No. 10 admitted into
8 evidence.)

9 MS. MARTIN: That's all we have, Your Honor.

10 THE COURT: Thank you.

11 You can step down, Ms. Vasquez. Thank you.

12 MS. PATTERSON: Your Honor, the State calls
13 Rafael Izaguirre.

14 THE COURT: Thank you.

15 Ladies and gentlemen, Mr. Izaguirre is going to
16 testify through a Court-approved and Court-certified
17 interpreter. English is not his first language, so,
18 therefore, we'll use an interpreter to get that
19 testimony preserved for you. Thank you.

20 (Interpreter sworn.)

21 RAFAEL IZAGUIRRE

22 being first duly sworn, testified as follows:

23 THE WITNESS: Yes.

24 THE CLERK: Have a seat right here, please,
25 sir. Once you're seated -- once he's seated, please

1 state your name for the record, please, sir.

2 THE WITNESS: Rafael Izaguirre,

3 I-Z-A-G-U-I-R-R-E.

4 DIRECT EXAMINATION

5 BY MS. PATTERSON:

6 Q. Rafael, on August 9th of 2015, where were you
7 living?

8 A. Rolling Meadows.

9 Q. Do you know Hector Vasquez?

10 A. Yes. I was there that afternoon with him at a
11 party that was there.

12 Q. And where was the party?

13 A. At the residential parking mobile home parking
14 park, there was a party there at Rolling Meadows.

15 Q. And would have this have been August 9th of
16 2015?

17 A. Yes.

18 Q. What were you and Hector doing on that day?

19 A. Well, we were there talking. It was getting
20 late or dark. People were there, but they were
21 already leaving, so we were just outside.

22 Q. And do you remember what happened right before
23 Hector got shot?

24 A. We were there, a black car approached. It was
25 a black car, had four doors. And two black men got

1 out of the car, each of them with a gun in their
2 hand, walked to each one of us and they asked us for
3 money. I reached out for my wallet, I was going to
4 give them the money. And they took the wallet and
5 then they also took my cell phone.

6 Q. How many people took these things from you?

7 A. To me, one, and the other one went toward
8 Hector.

9 Q. And were you on -- at the end of the car -- or
10 the front of the car or the end of the car -- the
11 back of the car? I'm sorry.

12 A. In the back.

13 Q. And where was Hector?

14 A. He was closer toward the front.

15 Q. Was anybody else with Hector?

16 A. At that time, it was just Hector and I that
17 were outside.

18 Q. At any time did anybody else -- do you know if
19 anybody else was with Hector?

20 A. When they took my wallet and my telephone, I
21 walked away from there, and then I didn't see
22 anything else.

23 Q. And after you walked away, did you see or hear
24 anything as you were walking away?

25 A. I heard the gunshots.

1 Q. And what did you do after you heard the
2 gunshots?

3 A. I only walked to my car and...

4 MS. PATTERSON: I beg the Court's indulgence.

5 (State's Exhibit No. 11 marked for
6 identification.)

7 BY MS. PATTERSON:

8 Q. I'm going to show you what's been marked as
9 State's Exhibit 11. Do you recognize this?

10 A. Yes.

11 Q. And how do you recognize this?

12 A. That's a telephone that I had from the AT&T
13 company.

14 Q. Okay. Does it look like the phone that the guy
15 took from you on August 9th?

16 A. Yes.

17 Q. Do you remember seeing Franklin out there?

18 A. Before this happened or...

19 Q. While this was happening, do you remember
20 seeing Franklin out there?

21 A. When I returned there to where Hector was, they
22 were all there, but Hector was already on the
23 ground.

24 Q. When the man was pointing the gun at you, do
25 you remember seeing Franklin out there then?

1 A. No. When you're like that, you're frightened
2 and you don't -- you don't remember anything more.
3 I only remember that he was pointing the gun at me
4 and that he took my wallet and my phone.

5 Q. So were you mainly focused with the person that
6 was taking your wallet and your phone?

7 A. Yes. But it was very fast, it was something
8 very fast.

9 Q. Thank you. Please answer any questions the
10 Defense may have for you.

11 THE COURT: Mr. Chehoski, cross-examine?

12 CROSS-EXAMINATION

13 BY MR. CHEHOSKI:

14 Q. How many shots did you hear that night?

15 A. I don't recall well, but it was more than one
16 shot.

17 Q. Before this night, you knew who Franklin was?

18 A. Hector's wife?

19 Q. Hector's son.

20 A. Yes, I knew him.

21 Q. From before this night?

22 A. Yes.

23 Q. And you do not remember seeing him there that
24 night?

25 A. I saw him earlier in the day, but later at

1 night I saw him only after all of this was
2 happening.

3 Q. Thank you.

4 You did not meet with police after this
5 incident?

6 A. What date afterwards?

7 Q. In the week that followed this incident, did
8 you meet with police?

9 A. Someone went to my house to ask me, but I told
10 him that I had not recognized the cars of the...

11 Q. You did not recognize the car?

12 A. The faces.

13 THE INTERPRETER: Apologies. The interpreter
14 corrects, the faces.

15 Q. You did not recognize the faces?

16 A. Yes, that's true.

17 Q. And you did not recognize the gun?

18 A. No.

19 Q. Did you recognize the make of the car?

20 A. No. It was just a black car.

21 MR. CHEHOSKI: One moment, please, sir.

22 THE COURT: Yes, sir.

23 MR. CHEHOSKI: I have no further questions.

24 THE COURT: Thank you.

25 Redirect, Ms. Patterson?

1 MS. PATTERSON: Yes, sir, just briefly.

2 (State's Exhibit No. 12 marked for
3 identification.)

4 REDIRECT EXAMINATION

5 BY MS. PATTERSON:

6 Q. The defense attorney just asked you if you
7 talked to law enforcement that night. I'm going to
8 show you what's been marked as State's Exhibit 12.
9 Do you recognize that paper? Is that the statement
10 that you gave to law enforcement officers?

11 A. Yes.

12 Q. And was it given that night, on August 9th,
13 2015?

14 A. Yes.

15 Q. Does it look like it's been changed?

16 A. No.

17 MS. PATTERSON: Your Honor, at this time we
18 move State's Exhibit 12 into evidence.

19 MR. CHEHOSKI: No objection.

20 THE COURT: Without objection.

21 State's Exhibit 11 was the cell phone that was
22 mentioned and questioned about, but was ultimately
23 introduced into evidence. Is that not in evidence
24 without objection.

25 MS. PATTERSON: The cell phone, can we move it

1 in without objection?

2 MR. CHEHOSKI: We don't object.

3 MS. FULLWOOD: We don't object.

4 (State's Exhibit Nos. 11 and 12 admitted into
5 evidence.)

6 BY MS. PATTERSON:

7 Q. And can you read that statement? It's a brief
8 statement. Can you read that statement?

9 THE INTERPRETER: It's in English. I can read
10 it for him.

11 They pointed a gun at me and took my phone and
12 wallet, a small black car with two
13 African-Americans.

14 MS. PATTERSON: Thank you. No further
15 questions.

16 THE COURT: Any follow-up on those points,
17 Mr. Chehoski?

18 MR. CHEHOSKI: No, Your Honor.

19 THE COURT: You may step down.

20 MS. PATTERSON: Your Honor, we ask that this
21 witness be excused.

22 THE COURT: Without objection, Mr. Izaguirre is
23 excused.

24 Ladies and gentlemen, this is a good time for
25 us to take a morning recess. The next witness may

1 be somewhat lengthy and through and beyond the hour
2 and a half -- we're already beyond an hour and a
3 half, perhaps even beyond the two hours' limit that
4 we like to keep you in that jury box at one time.

5 So I'm going to send you to your jury room at
6 this time and remind you, please, not to discuss
7 this case among yourselves while you're in the jury
8 room. We'll get you out in about 15 minutes to
9 resume the trial of the case. Thank you.

10 (The jury exits the courtroom at 11:01 AM.)

11 THE COURT: Madam Reporter, we need to
12 memorialize a sidebar conference that was held
13 outside of the presence of the jury. When the 911
14 tape was offered into evidence, Ms. Fullwood made a
15 timely objection and we had heard that at sidebar.

16 Ms. Fullwood objected that the playing of the
17 911 tape was very emotional and would inject an
18 emotional theme into this case that could very well
19 prejudice her client. I overruled the objection at
20 that time. And, as it turned out, the 911 tape is a
21 part of had the res gestae of the event. It did
22 not, of course, implicate Mr. Esaw in any way. But,
23 as Ms. Fullwood properly objected and raised the
24 point, it was emotional and could have, in her view,
25 tainted the proceedings.

1 Ms. Fullwood, I didn't say that nearly as
2 eloquently as you did, so I will be glad for you to
3 add anything to the record that you want to add.

4 MS. FULLWOOD: Well, basically, I'd just like
5 to make reference to the rules of evidence that I'm
6 invoking.

7 THE COURT: Okay.

8 MS. FULLWOOD: And that would be basically Rule
9 402 about relevance generally; 401, definition of
10 relevance; 403, exclusion of evidence on grounds of
11 prejudice, confusion, waste of time.

12 My point was that it was emotional, it was
13 merely cumulative to the witness' testimony; that
14 its probative value was far outweighed by its
15 prejudicial impact because it would relate to the
16 jury information that may persuade them to base
17 their verdict on their passions, emotions, or
18 prejudice, rather than upon the evidence presented
19 to them.

20 THE COURT: All right. It was indeed
21 emotional. Obviously, the event itself was
22 emotional. There's no way to avoid that, as
23 everybody recognizes. At the same time, it did have
24 probative value. It was a partial identification of
25 the perpetrator and of the event that, if not led up

1 to the fact, immediately followed the fact, a
2 partial identification, as I recall it, perhaps of
3 the vehicle, and the entire res gestae of this event
4 was capsulated in that timeframe preserved in the
5 911 tape.

6 I note those objections and I would simply
7 renew my earlier rulings and allow it into evidence
8 for the reasons which I mentioned. Thank you.

9 All right. Folks, let's us have a recess now.
10 We'll start back in about ten minutes. Thank you.

11 (Brief recess.)

12 THE COURT: Are both sides ready for the jury?

13 MS. PATTERSON: The State is ready, Your Honor.

14 MS. FULLWOOD: Yes, Your Honor.

15 THE COURT: Thank you.

16 Bring the jury in, please.

17 (The jury enters the courtroom at 11:20 AM.)

18 THE COURT: Thank you, folks. We'll continue
19 now as the State continues to offer evidence in this
20 case.

21 Ms. Patterson?

22 MS. PATTERSON: Thank you, Your Honor. The
23 State calls Franklin Vasquez.

24 THE COURT: Mr. Vasquez, please come forward.

25 FRANKLIN VASQUEZ

1 being first duly sworn, testified as follows:

2 THE WITNESS: I do.

3 THE CLERK: Have a seat, sir. Once you're
4 seated, state your full name, spelling your last,
5 please.

6 THE WITNESS: My name is Franklin Vasquez,
7 V-A-S-Q-U-E-Z.

8 DIRECT EXAMINATION

9 BY MS. PATTERSON:

10 Q. Franklin, how old are you?

11 A. I'm 19.

12 Q. When is your birthday?

13 A. [REDACTED] 1997.

14 Q. And are you working now?

15 A. Yes, ma'am.

16 Q. And what kind of work are you doing?

17 A. Metal roofing with my uncle.

18 Q. Okay. Is it hard work?

19 A. Yes, ma'am.

20 Q. And when did you graduate high school?

21 A. Last year, 2016.

22 Q. And do you have any brothers or sisters?

23 A. Yes, ma'am, I got three sisters.

24 Q. Are you older or younger?

25 A. I'm the oldest.

1 Q. You're the oldest. And in August of 2015,
2 where were you living?

3 A. In Rolling Meadows, 3941 Charleston Highway,
4 Lot 162.

5 Q. And who lived there with you?

6 A. Me, my mom, my dad, and my three sisters.

7 Q. Did you have many friends who lived out there?

8 A. Yes, ma'am.

9 Q. And during this time, what high school were you
10 going to?

11 A. I was going to Airport High School.

12 Q. I think someone said earlier this would have
13 been your senior year?

14 A. Yes, ma'am.

15 Q. Do you and your friends like to hang out around
16 the house or around the neighborhood?

17 A. Yes, ma'am.

18 Q. What type of things do you like to do?

19 A. We would normally play basketball or I would go
20 outside and play soccer or go inside and play video
21 games, 2K or something like that.

22 Q. Let's go back to August 9th of 2015. Earlier
23 that day what had you and your family been doing?

24 A. Earlier that day we woke up and went to get
25 school supplies at Academy Sports. And I had to get

1 back to mow the lawn for my neighbor's baptism
2 party. And then we were -- when I finished mowing
3 the lawn, I asked my dad if I could go play
4 basketball up the street from where the party was
5 at. And I --

6 Q. Who were you going to play basketball with?

7 A. My friends Nate and DeShaun.

8 Q. And where was the party going to be?

9 A. Beside my house.

10 Q. So about what time did you finish playing
11 basketball?

12 A. Until it got dark, until we couldn't see
13 outside.

14 Q. Okay. And where did you go next?

15 A. I was heading home to go check in with my dad.

16 Q. And where was your dad?

17 A. On the corner of the white fence speaking to --
18 he was talking to Rafael.

19 Q. And whose house had the white fence?

20 A. Both of our houses shared the white fence,
21 basically.

22 Q. So this was your right next door neighbor?

23 A. Yes, ma'am.

24 Q. And you remember Mr. Rafael being there talking
25 with your dad?

1 A. Yes, ma'am.

2 Q. And what did you do after you checked in with
3 Dad?

4 A. I was going to the cooler to get something to
5 drink.

6 Q. Where was the cooler located?

7 A. It was behind the trailer, behind the white
8 truck too.

9 Q. And then what do you remember happening next,
10 Franklin?

11 A. When I got the drink out of the cooler, I was
12 wiping the soda can off with my shirt. And then all
13 of a sudden, a black car rolls by and he said
14 something and my dad said, what? The car stopped,
15 he put it in reverse -- put the car in reverse, and
16 got out. The driver came towards me, pointing the
17 gun at me, telling me to empty out my pockets, to
18 give him all what I had in my pockets. And then I
19 told him I didn't have anything and --

20 Q. Okay. Let me stop you for a second. You said
21 he said something. Who do you mean?

22 A. The driver.

23 Q. The driver?

24 A. Yes, ma'am.

25 Q. And what type of car was it?

1 A. It was a black four-door sedan.

2 Q. And at this point, where were you in relation
3 to your dad?

4 A. I was -- he was at the corner and I was, like,
5 right beside him.

6 Q. And you said the person got out of the car?

7 A. Yes, ma'am.

8 Q. Did anybody else get out of the car with him?

9 A. Yes, ma'am. The passenger.

10 Q. Okay. So explain to us how each of the people
11 got out of the car and where they went.

12 A. So, like, this is the car. The passenger came
13 out this way to where me and my dad was at and the
14 passenger came out this way to where Rafael was at.
15 (Demonstrating)

16 Q. You said the passenger came with you and your
17 dad?

18 A. No. The passenger went to Rafael, the driver
19 came towards me and my dad.

20 Q. Okay. And when he told you to empty out your
21 pockets, how close was he to you? And I'm going to
22 walk towards you and you tell me when to stop.

23 A. Like, right there.

24 Q. So he was this close to you?

25 A. Yes, ma'am.

1 Q. Did he have anything in his hands?

2 A. A gun.

3 Q. And what did he do with the gun?

4 A. He pointed it at me and told me to empty out my
5 pockets. And then my dad stepped in front of me and
6 he told him what was his problem. Then he pointed
7 the gun at my dad. He tried to shoot the gun, but
8 the gun jammed and --

9 Q. Okay. I'm going to stop you again. When he's
10 this close to you, are you looking eye-to-eye to
11 him?

12 A. Yes, ma'am.

13 Q. Are you able to see what he looks like?

14 A. Yes, ma'am.

15 Q. Now, you stated earlier it had gotten dark.
16 Were you still able to have visibility and see this
17 person?

18 A. Yes, ma'am.

19 Q. And then after you told him you didn't have
20 anything in your pockets, what happened?

21 A. My dad got in front of me and he told him what
22 was his problem. And then, like I said, he tried to
23 shoot the gun and the gun jammed. Then my dad hit
24 him with the beer bottle and they started struggling
25 for the gun. And then I froze up a little bit, and

1 then when I snapped out of it I grabbed my soda can,
2 when I saw they were struggling on the ground, and
3 threw it in his face and kicked him.

4 That's when the gun went off. That's when the
5 passenger came around the passenger's seat and shot
6 through the car and the bullet grazed me. And then
7 I jumped and went inside to grab the keys. And when
8 I came back outside, they were driving off and I
9 was chasing them on foot. And then --

10 Q. Let me stop you again, Franklin. I'm sorry. I
11 want to get as much information as I can.

12 A. Uh-huh.

13 Q. So when your dad got in front of you, were you
14 able to still see the guy?

15 A. Yes, ma'am.

16 Q. And, again, how close were you to your dad and
17 the guy when they began struggling?

18 A. To about the same place where you were standing
19 the first time.

20 Q. Okay. And you're still able to have visibility
21 and see this person?

22 A. Yes, ma'am.

23 Q. And at any point -- when you made contact with
24 him with the soda and you kicked him in the face,
25 were you close contact to him?

1 A. Yes, ma'am.

2 Q. Did you actually connect with his face?

3 A. Yes, ma'am.

4 Q. You know what side of his face you --

5 A. No, ma'am.

6 Q. And where were you mainly focused on during
7 this incident?

8 A. The driver.

9 Q. And about how long would you say this incident
10 happened?

11 A. About, like, between five and ten minutes.

12 Q. And you say that you did freeze up?

13 A. Yes, ma'am.

14 Q. But were you able later to react?

15 A. Yes, ma'am.

16 Q. And at what point did you hear the gun go off?

17 A. When I threw the soda can and kicked the guy in
18 the face.

19 Q. And where was your dad when the gunshot went
20 off?

21 A. On the ground struggling with the driver.

22 Q. And what did you see next?

23 A. When I saw -- when I kicked him in the face and
24 he shot my dad, I saw the passenger came around the
25 car. And from the passenger's seat inside the car,

1 he shot the gun and it grazed me. And that's when I
2 ran inside and grabbed the keys and came --

3 Q. Why were you going inside to get the keys?

4 A. To try to chase the people that did that to my
5 father.

6 Q. And did you see this person get back in the car
7 that shot your father?

8 A. Yes, ma'am.

9 Q. And what side of the car did he get in?

10 A. The driver's side.

11 Q. And did he drive away?

12 A. Yes, ma'am.

13 Q. And did you see your mom come outside at any
14 point?

15 A. Yes, ma'am. When she came outside, I was
16 running inside to go get the keys.

17 Q. Did you say anything to your mom?

18 A. No, ma'am.

19 Q. Did you hear your mom?

20 A. Yes, ma'am. I heard her screaming at me
21 telling me to stay.

22 Q. Was that driver's side open or closed?

23 A. It was open.

24 Q. Now, did you see the person who shot you?

25 A. Yes, ma'am -- I mean, no, ma'am, I didn't. I

1 only saw the driver.

2 Q. But did you see where the shot came from?

3 A. Yes, ma'am.

4 Q. Where did it come from?

5 A. From the passenger's side.

6 Q. Now, although you didn't get a good look at
7 him --

8 A. Yeah, I didn't get a good look at the guy who
9 shot me.

10 Q. But did you notice any physical differences
11 between he and the driver?

12 A. The driver was smaller than the passenger. The
13 passenger was bigger than the driver.

14 Q. And were you able to drive away?

15 A. Like -- yes, ma'am. I was able to drive to
16 Phase II, which is like another part of Rolling
17 Meadows on the other side, and try to get my friend
18 to help me.

19 And then a cop car came by slowly and I waved
20 him down to tell him to help me. And he told me to
21 show him where this incident happened, then I took
22 him to where everything happened. He asked me who
23 did it and I told him it was two black males. And
24 then he started checking me to see if I was hurt and
25 he saw that I had a graze, and they sent me straight

1 to the hospital.

2 Q. So you returned back to the scene with the
3 officer?

4 A. Yes, ma'am.

5 Q. And you were able to tell him what happened?

6 A. Yes, ma'am.

7 Q. Now, was your statement full and complete?

8 A. Yes, ma'am.

9 Q. Then after you -- was it anything you were
10 missing out of your statement that you gave him?

11 A. The only thing was about the color of the car
12 about what I meant about gray was it was like a dark
13 gray, dark color.

14 Q. Because you still had to go to the --

15 MS. FULLWOOD: Objection, Your Honor, leading.

16 THE COURT: I'll sustain the objection.

17 BY MS. PATTERSON:

18 Q. Did you still need to get treatment?

19 A. Yes, ma'am.

20 Q. And what did you do after you talked to the
21 officer?

22 A. What do you mean by that?

23 Q. Did you -- after you talked to the officer and
24 gave them your statement, where did you go next?

25 A. I went -- I was -- I went home with my uncle.

1 Q. Did you ever go to the hospital?

2 A. Yes, ma'am.

3 Q. Okay. And was that before or after you gave
4 the officer the statement?

5 A. That was before.

6 Q. And when I say statement, I mean did you tell
7 the officer something?

8 A. Yes, ma'am.

9 Q. And then later on when you were at the
10 hospital --

11 MS. PATTERSON: I beg the Court's indulgence.

12 (State's Exhibit No. 13 marked for
13 identification.)

14 BY MS. PATTERSON:

15 Q. I'm going to show you what's been marked as
16 State's Exhibit No. 13 and ask you to take a look at
17 that paper. Do you recognize that?

18 A. Yes, ma'am.

19 Q. What is that?

20 A. It's a statement I wrote at the hospital.

21 Q. At the hospital?

22 A. Yes, ma'am.

23 Q. So at the hospital you gave a written
24 statement --

25 A. Yes, ma'am.

1 Q. -- is that correct?

2 A. Uh-huh.

3 Q. Does that look fairly and accurately like the
4 statement you gave him?

5 A. Yes, ma'am.

6 Q. Does it bear your signature?

7 A. Yes, ma'am, and the date.

8 MS. PATTERSON: Your Honor, at this time we
9 move State's Exhibit 13 into evidence.

10 MS. FULLWOOD: No objection, Your Honor.

11 THE COURT: Thank you. Without objection, 13
12 into evidence.

13 (State's Exhibit No. 13 admitted into
14 evidence.)

15 BY MS. PATTERSON:

16 Q. Now, you also gave officers a description of
17 the car; correct?

18 A. Yes, ma'am.

19 Q. And did you give them any other information
20 about the car?

21 A. All I said was about the car being gray. But
22 what I meant about that was about like a dark gray,
23 like I said, and about the taillights, like it was a
24 Toyota Corolla or Camry.

25 Q. Okay. And did you say anything else about the

1 tag?

2 A. No, ma'am.

3 (State's Exhibit No. 14 marked for
4 identification.)

5 MS. PATTERSON: (Tenders document to
6 Ms. Fullwood.)

7 MS. FULLWOOD: No objection, Your Honor.

8 THE COURT: Thank you.

9 BY MS. PATTERSON:

10 Q. I'm going to show you State's Exhibit No. 14
11 just for identification. Do you notice what's in
12 that photograph?

13 A. Yes, ma'am.

14 Q. And is that -- what's in that photograph?

15 A. It's the black car that I saw that night.

16 Q. Now, do you remember ever -- when you first met
17 Detective John Moore sitting right here?

18 A. Yes, ma'am.

19 Q. Where were you when you first met him?

20 A. I was at my uncle's house in Little Mountain.

21 Q. And did you talk to him about what happened the
22 previous night?

23 A. Yes, ma'am.

24 Q. Did you give him a description of the people?

25 A. Yes, ma'am.

1 Q. Did you give him a little more detail?

2 A. All I said was he was about the same size and
3 build as my dad, and the other guy I didn't know
4 anything about. All I said was that he was bigger
5 than the driver.

6 Q. And when you say he was about the same size,
7 who were you referring to?

8 A. The driver.

9 Q. The driver. And is that the person who shot
10 your dad?

11 A. Yes, ma'am.

12 Q. And what was your dad's size?

13 A. He was five-seven, 160.

14 Q. And did you tell him anything about your
15 ability to be able to pick out the person if you saw
16 him again?

17 A. Yes, ma'am. I'd be able to pick him out in an
18 instant.

19 Q. And did you ever meet with Detective Moore in
20 order to look at a photo lineup?

21 A. Yes, ma'am.

22 MS. PATTERSON: (Tenders documents to
23 Ms. Fullwood.)

24 MS. FULLWOOD: Your Honor, nothing -- Your
25 Honor, nothing other than our previous motion

1 yesterday.

2 THE COURT: I understand. Thank you.

3 Subject then to previous motions heard and
4 argued yesterday, in evidence.

5 BY MS. PATTERSON:

6 Q. I'm going to show you State's Exhibits 2 and 3
7 together and ask you to take a look at this. Do you
8 recognize those pictures?

9 A. Yes, ma'am.

10 Q. And how do you recognize those pictures?

11 A. This is the lineup that Mr. Moore showed me the
12 first day.

13 Q. Okay. And did you make any kind of
14 identification on that day?

15 A. No, ma'am.

16 Q. And why not?

17 A. Because none of them looked like the man that
18 shot my dad that night.

19 MS. PATTERSON: Your Honor, I move State's
20 Exhibits 2 and 3 into evidence.

21 THE COURT: Subject to previous objections,
22 State's 2 and 3 in evidence.

23 (State's Exhibit Nos. 2 and 3 admitted into
24 evidence.)

25 BY MS. PATTERSON:

1 Q. I'm going to first show you State's Exhibit
2 No. 4. Do you recognize that paper?

3 A. Yes, ma'am.

4 Q. And how do you -- what do you recognize that to
5 be?

6 A. The lineup that Mr. Moore showed me later, like
7 a couple days later.

8 Q. And how do you know that that is the lineup
9 that you were shown?

10 A. Because I signed it and I dated it.

11 Q. And what was the date?

12 A. August 13th, 2015.

13 Q. So this would have been three, four days later
14 after the incident?

15 A. Yes, ma'am.

16 Q. And did you make a selection?

17 A. Yes, ma'am.

18 Q. And what number did you select?

19 A. Number 2.

20 Q. Okay. And why did you make that selection?

21 A. Because that was the man that I remembered from
22 that night.

23 Q. Did you have any problems making that
24 selection?

25 A. No, ma'am.

1 Q. How long did it take you to make that
2 selection?

3 A. Not even a minute.

4 Q. Did anybody tell you who you should pick?

5 A. No, ma'am. They told me to take my time, and
6 if I wasn't sure, then not to choose anybody.

7 Q. And is that the man that you saw that shot your
8 dad?

9 A. Yes, ma'am.

10 Q. And I'm going to show you State's Exhibit
11 No. 5. Do you recognize that paper?

12 A. Yes, ma'am.

13 Q. And what is it?

14 A. It's another lineup he show me the same day.

15 Q. And did you make an identification?

16 A. No, ma'am.

17 Q. Why not?

18 A. Because I wasn't sure about the passenger.

19 Q. Okay. And is your signature on that?

20 A. Yes, ma'am.

21 Q. Okay.

22 MS. PATTERSON: Your Honor, we move State's
23 Exhibits 4 and 5 into evidence.

24 THE COURT: Same objection?

25 MS. FULLWOOD: Yes, Your Honor.

1 THE COURT: Subject to same objection, in
2 evidence.

3 (State's Exhibit Nos. 4 and 5 admitted into
4 evidence.)

5 BY MS. PATTERSON:

6 Q. So you were able, without any doubt, to make
7 this identification of the person who shot your dad?

8 A. Yes, ma'am.

9 Q. What was -- what were you mainly focusing on
10 when this was going on?

11 A. I was focused -- like, as the incident happened
12 or as I was looking at the lineup?

13 Q. As the incident was happening.

14 A. I was focused on him, mainly on him, because he
15 had the gun pointed at me and my dad.

16 Q. And, Franklin, during this time you said you
17 were a student of Airport High School. Did you go
18 to school with black kids?

19 A. Yes, ma'am.

20 Q. Did you have friends who were black?

21 A. Yes, ma'am.

22 Q. Lived in your neighborhood?

23 A. Yes, ma'am.

24 Q. Nate and DeShaun, who you hung out with that
25 day, were they black?

1 A. Yes, ma'am.

2 MS. PATTERSON: (Tenders documents to
3 Ms. Fullwood.)

4 MS. FULLWOOD: Your Honor, may we have a
5 sidebar?

6 THE COURT: Yes, ma'am.

7 (Side bar conference.)

8 THE COURT: Ladies and gentlemen, sometimes we
9 have these sidebar conferences when we talk behind
10 your back, and the reason is we don't want to send
11 you out of the courtroom and into the jury room
12 while we take up a brief matter that really does not
13 involve your participation in it. It's a matter of
14 law.

15 So I always tell jurors that if you're curious
16 about what we're whispering about over there behind
17 your back, when your role as a juror in this case is
18 over, if you'll come to me and ask me what we were
19 talking about and if I can remember what we were
20 talking about, I'll be glad to tell you. Thank you.

21 These next exhibits will come in over
22 objections of defense counsel.

23 (State's Exhibit Nos. 15 and 16 marked for
24 identification and admitted into evidence.)

25

1 BY MS. PATTERSON:

2 Q. Franklin, I'm going to show you what's been
3 marked as State's Exhibits 15 and 16 and ask you to
4 take a look at it. Do you recognize who is in those
5 photographs?

6 A. Yes, ma'am.

7 Q. And who is in those photographs?

8 A. That's me.

9 Q. And is that the way you appeared on the night
10 of August 9th, 2015, when you were in the hospital?

11 A. Yes, ma'am.

12 Q. Does it look like it's been changed in any way?

13 A. No, ma'am.

14 MS. PATTERSON: Your Honor, at this time we
15 move State's Exhibits 15 and 16 into evidence.

16 THE COURT: Okay. Which is which?

17 MS. PATTERSON: 15 is the head shot, Your
18 Honor, and 16 is more of the leg shot.

19 THE COURT: Okay. Thank you. Subject to
20 objection, they're in. Thank you.

21 BY MS. PATTERSON:

22 Q. So, Franklin, these pictures show you at the
23 hospital being treated for the bullet graze to your
24 inner thigh?

25 A. Yes, ma'am.

1 Q. And you were released later on?

2 A. Yes, ma'am.

3 Q. So is this when you gave that written statement
4 when you were still undergoing treatment?

5 A. Yes, ma'am.

6 Q. I'm going to show you State's Exhibits 6 and
7 7 --

8 MS. PATTERSON: (Tenders documents to
9 Ms. Fullwood.)

10 MS. FULLWOOD: No objection, Your Honor.

11 THE COURT: Thank you.

12 BY MS. PATTERSON:

13 Q. I'm going to show you State's Exhibit 6. Do
14 you recognize the area in that photograph?

15 A. Yes, ma'am.

16 Q. And how do you recognize it?

17 A. That's where me and my dad was standing at that
18 night, right here in the corner in the middle of
19 this part of this fence right here. (Indicating)

20 Q. Okay. Does it look like it's been changed?
21 That's the way it appeared on August 9th, 2015?

22 A. Yes, ma'am.

23 Q. And what about number 7? Do you recognize that
24 area in that photograph?

25 A. Yes, ma'am.

1 Q. How do you recognize it?

2 A. That's the front part from where we were
3 standing at.

4 Q. Does it look like it's been changed in any way?

5 A. No, ma'am.

6 MS. PATTERSON: Your Honor, at this time we
7 move State's Exhibits 6 and 7 into evidence.

8 THE COURT: Without objection.

9 (State's Exhibit Nos. 6 and 7 admitted into
10 evidence.)

11 BY MS. PATTERSON:

12 Q. Franklin, what's in this photograph?

13 A. That's the place where we had the baptism party
14 at.

15 Q. Can you point it out with it the laser pointer?

16 A. (Complies.)

17 Q. Okay. And I know it's dark, but is the cooler
18 that you went to in that photograph?

19 A. Yes, ma'am.

20 Q. Where is it? Point it out.

21 A. Right there. (Indicating)

22 Q. And where had you gotten in this picture when
23 you saw the black car drive up?

24 A. Right there. My dad was right here and I was
25 right there. (Indicating)

1 Q. Okay. And do you notice something on the front
2 porch of that house?

3 A. Yes, ma'am.

4 Q. And what is it?

5 A. The light right there. (Indicating)

6 Q. And what do you remember about that truck in
7 that photograph?

8 A. The white truck?

9 Q. Uh-huh. Do you remember standing in front of
10 that white truck?

11 A. Yes, ma'am.

12 Q. And State's Exhibit No. 7 -- well, let me go
13 back to 6. State's Exhibit No. 7, what's next to
14 that white truck?

15 A. That white Honda right there. (Indicating)

16 Q. And in this photograph, can you see part of the
17 white truck?

18 A. Yes, ma'am.

19 Q. And the white Honda?

20 A. Yes, ma'am.

21 Q. Do you also see a streetlight in that
22 photograph?

23 A. Yes, ma'am.

24 Q. Where is it? Point it out.

25 A. (Complies.)

1 Q. Franklin, do you see the same man in this room
2 who killed your father?

3 A. Yes, ma'am.

4 Q. How are you able to recognize him?

5 A. His facial features and his beard that he had
6 the same day.

7 Q. And where do you see that person?

8 A. He's right over there.

9 MS. FULLWOOD: Your Honor, this would be
10 subject to our previous motion.

11 THE COURT: Subject to objection, yes. Thank
12 you.

13 Q. And where do you see this person?

14 A. Over there. (Indicating)

15 Q. And what does he have on?

16 A. A suit.

17 Q. Okay.

18 MS. PATTERSON: Your Honor, let the record
19 reflect he's pointed out the defendant, Ricky Esaw.

20 THE COURT: Yes, ma'am.

21 MS. PATTERSON: Thank you, Franklin. Please
22 answer any questions the Defense may have.

23 THE COURT: Yes, ma'am, Ms. Fullwood?

24 MS. FULLWOOD: Thank you, Your Honor.

25 (Interruption in the proceedings.)

1 THE COURT: We haven't yet figured out where
2 that sound comes from. Every time somebody hits a
3 certain button, it does that. But there's no reason
4 to be alarmed.

5 MS. FULLWOOD: It's a bad sound.

6 THE COURT: It is. It's scary.

7 CROSS-EXAMINATION

8 BY MS. FULLWOOD:

9 Q. You stopped playing basketball with your
10 friends that night because it had gotten too dark to
11 see the hoop; is that right?

12 A. Yes.

13 Q. And were you playing at a court that was on the
14 grounds of the park?

15 A. Yes.

16 Q. All right. And when these men pulled up, they
17 pulled up, then reversed, and stopped; right?

18 A. Yes.

19 Q. Okay. Which person in the car was closest to
20 you and your dad and Rafael, the driver or the
21 passenger?

22 A. The driver was closest to -- came -- approached
23 to me and my dad. The passenger went to Rafael.

24 Q. Well, what I mean was, which part of the car
25 was closest to you guys, the driver's side or --

1 A. The driver's side.

2 Q. The driver's side?

3 A. Yes, ma'am.

4 Q. Okay. So they came up and one robbed Rafael
5 and the other one tried to rob you and your dad; is
6 that right?

7 A. Yes.

8 Q. All right. And he had a gun?

9 A. Yes.

10 Q. Do you know what kind of gun he had?

11 A. No, ma'am, I don't. I guessed because --

12 Q. Uh-huh.

13 A. -- I said it was a .9 millimeter.

14 Q. Okay. And why did you guess that?

15 A. It had similar features of a nine.

16 Q. Okay. You familiar with them then?

17 A. Yes, ma'am.

18 Q. All right. And could you tell for sure?

19 A. No, not really.

20 Q. Okay.

21 A. Like I said, I just guessed.

22 Q. Okay. And what color was it?

23 A. It was black.

24 Q. Okay. Now, I believe you testified at first
25 you just froze?

1 A. Yes.

2 Q. Because, obviously, you were getting robbed;
3 right?

4 A. Yes.

5 Q. All right. And then your dad started fighting
6 the man with the gun?

7 A. Yes, ma'am.

8 Q. All right. Do you know what that man was
9 wearing?

10 A. No.

11 Q. Okay. Do you know if he was wearing any
12 jewelry?

13 A. No.

14 Q. All right. Basically your dad and this man got
15 into a struggle; right?

16 A. Yes.

17 Q. And it ended up with your father breaking a
18 beer bottle over his head; right?

19 A. Yes.

20 Q. And that bottle burst?

21 A. Yes.

22 Q. Okay. And so is it right that eventually the
23 two of them got -- were struggling on the ground?

24 A. Yes.

25 Q. All right. While they were struggling and

1 fighting each other, were they saying anything to
2 each other?

3 A. No.

4 Q. Not a word passed between them or --

5 A. Not that I remember, no.

6 Q. No fussing or --

7 A. No.

8 Q. -- cussing like you might expect in a fight?

9 A. No.

10 Q. Okay. Now, you were pretty close to the house
11 with the party; right?

12 A. Yes.

13 Q. And there were people on the front porch of
14 that house; right?

15 A. Yes.

16 Q. Did any of those people see what was going on?

17 MS. PATTERSON: Objection; speculation.

18 THE COURT: I'll sustain that.

19 BY MS. FULLWOOD:

20 Q. Did any people on the porch come down to help
21 you, your dad, and Rafael?

22 A. No, ma'am. Nobody came inside -- they all went
23 inside because they were scared.

24 Q. Okay. So they went inside the house?

25 A. Yes, ma'am.

1 Q. All right. At that point is it fair to say
2 that you unfroze and you kind of kicked in to
3 action?

4 A. Yes, ma'am.

5 Q. Because your dad was down there on the ground.

6 A. Yes, ma'am.

7 Q. All right. And what you did was you threw your
8 Fanta can at this man fighting your dad?

9 A. Yes.

10 Q. And you burst that can when you threw it that
11 hard; right?

12 A. I don't know if I burst it, but I threw it at
13 him and then I kicked him.

14 Q. Okay. And that kick connected --

15 A. Yes, ma'am.

16 Q. -- on his face?

17 A. Yes, ma'am.

18 Q. Okay. And didn't you testify that after the
19 gun went off and the man -- the driver was going to
20 leave, the passenger shot threw the car?

21 A. Yes, the passenger.

22 Q. So he was still in the car when he --

23 A. No. He was about to get in -- when he was
24 about to get in, he shot, and then he got in when
25 the bullet grazed me and hit the white truck.

1 Q. Well, did he shoot through --

2 A. He shot -- the passenger went to get in the
3 passenger's side, but before he got in, he shot from
4 the passenger's side. Both doors was open. He shot
5 through the passenger's side and the bullet grazed
6 me.

7 Q. Okay. Well, did he shoot over the car or did
8 he shoot --

9 A. Inside the car.

10 Q. He shot inside the car?

11 A. Yes.

12 Q. Okay. Okay. Once that had happened, the men
13 drove off. And then you drove off and came back;
14 right?

15 A. Yes.

16 Q. Okay. And at the scene you talked to Detective
17 Steen; right?

18 A. Yes.

19 Q. All right. And you told him some about what
20 happened?

21 A. Yes.

22 Q. All right. And is it correct that you told him
23 that the men were in a dark car?

24 A. Yes.

25 Q. All right. And is it correct that you didn't

1 give him a detailed description of the men?

2 A. Not until I spoke with Mr. Moore.

3 Q. Okay. Well, you talked to Detective Edmonson
4 while you were at the hospital; correct?

5 A. Yes.

6 Q. All right. And what you told him was that the
7 men were in a dark car; is that right?

8 A. Yes.

9 Q. And is it right to say that the only
10 description you gave to Detective Edmonson of the
11 two men was that the second guy was a fat black
12 male?

13 A. Yes.

14 Q. And that night you gave a written statement?

15 A. Yes, ma'am.

16 Q. And you wrote it yourself?

17 A. Yes.

18 Q. And nobody tried to tell you what to say?

19 A. No.

20 Q. All right. And in that statement you said the
21 car was gray, didn't you?

22 A. Yes. By gray I meant a dark color.

23 Q. Well, you didn't say dark gray, did you?

24 A. No, because I was getting assistance at the
25 time.

1 Q. But you didn't need stitches or anything like
2 that, did you?

3 A. No.

4 Q. Okay. And they didn't put you under anesthesia
5 or anything like that?

6 A. Not that I know of, no.

7 Q. Well, you were conscious the whole time; right?

8 A. Yeah.

9 Q. Yeah. Okay. And in the statement -- well, let
10 me -- do you still have that statement up there?

11 A. No. I don't have anything up here.

12 Q. Okay. Let me try to locate and give you -- let
13 me give you State's Exhibit 13, that's your
14 statement. Okay? And you've had a chance to look
15 at this statement and prepare for this trial today;
16 right?

17 A. Yes.

18 Q. Okay. And could you read us the last sentence
19 of the statement?

20 A. It says: Then the passenger driver had shot
21 his --

22 Q. No. The very last sentence.

23 A. Yeah. That is the last sentence.

24 Q. Oh, okay.

25 A. Then the passenger driver had shot gun inside

1 the car and it grazed me and hit the white truck.

2 The passenger driver was the fat guy.

3 Q. What exactly do you mean by the term passenger
4 driver?

5 A. I meant the passenger.

6 Q. Okay.

7 A. Yes.

8 Q. Okay. So the next day you talked to Detective
9 Moore; right?

10 A. Yes.

11 Q. Okay. And that's when you gave your most
12 detailed description?

13 A. Yes.

14 Q. And that was that the man who shot you and your
15 dad was similar in size and build to your dad?

16 A. Yes.

17 Q. Okay. And that was that he was about
18 five-seven and 160 pounds; is that right?

19 A. Yes.

20 Q. And that's your most detailed description; is
21 that right?

22 A. Yes. And he had a beard, yes.

23 Q. You told him he had a beard?

24 A. Yes.

25 Q. Okay. Now, when you talked to Detective Moore

1 again on the 13th, he showed you a couple of
2 different photo arrays; right?

3 A. Yes.

4 Q. And didn't he tell you the shooters are in
5 these photographs?

6 A. No.

7 Q. You sure about that?

8 A. Yes.

9 Q. Okay.

10 MS. FULLWOOD: I beg the Court's indulgence.

11 THE COURT: Yes, ma'am.

12 BY MS. FULLWOOD:

13 Q. Going back to your father hitting the guy with
14 the bottle --

15 A. Yes.

16 Q. -- you testified your dad is right-handed;
17 right?

18 A. Yes.

19 Q. So did he hit the man on the left side of the
20 head?

21 A. Yes.

22 Q. The top of the head, just right up there or --

23 A. On the side.

24 Q. On the side?

25 A. Yeah.

1 Q. Okay. Like --

2 A. Should have, because he swung like this.

3 (Demonstrating)

4 Q. Okay.

5 A. Yeah.

6 Q. So it should have caught him right like --

7 A. Yeah.

8 Q. -- between the forehead and cheeks?

9 A. Yes.

10 Q. Is that what you saw?

11 A. No, because I was frozen at the time.

12 Q. Okay. So you weren't looking at your dad and
13 the man at that point?

14 A. I was, but I was frozen. I saw him swing and
15 then hit him, and then that's when they were
16 struggling and that's when I snapped.

17 Q. Okay. So are you trying to say you're having
18 trouble remembering what you saw while you were
19 frozen?

20 A. No. No.

21 Q. Okay. But you just don't know where your dad
22 hit the man?

23 A. Yeah. I don't know where he hit him.

24 Q. Do you know what you were looking at then?

25 A. I was looking at the shooter.

1 Q. You were looking at --

2 A. Yeah. The driver was the shooter that shot my
3 dad. Yes.

4 Q. Were you looking at the gun then?

5 A. No. I was looking at the shooter, the guy.

6 Q. Okay. You were looking at the man?

7 A. Yes.

8 Q. Okay. But you didn't see what part of the head
9 your dad hit him on?

10 A. No.

11 Q. Okay. No further questions.

12 THE COURT: Thank you.

13 Redirect?

14 MS. PATTERSON: No, sir, Your Honor.

15 THE COURT: Thank you, Mr. Vasquez. You can
16 step down.

17 Ms. Patterson?

18 MS. PATTERSON: The State calls Branden Steen.

19 THE COURT: Mr. Steen, come up, please.

20 BRANDEN STEEN

21 being first duly sworn, testified as follows:

22 THE WITNESS: I do.

23 THE CLERK: Have a seat, sir. Once you're
24 seated, state your full name, spelling your last,
25 please.

1 THE WITNESS: Branden James Steen, S-T-E-E-N.

2 DIRECT EXAMINATION

3 BY MS. PATTERSON:

4 Q. And, Branden, what is your rank?

5 A. I'm a patrol deputy with the Lexington County
6 Sheriff's Department.

7 Q. And, Deputy Steen, how long have you worked
8 with Lexington County Sheriff's Department?

9 A. Approximately three and a half years.

10 Q. And were you on call the evening of August 9th,
11 2015?

12 A. Yes, ma'am.

13 Q. Did you get called out to 3941 Charleston
14 Highway?

15 A. Yes, ma'am.

16 Q. And what is at that location?

17 A. That is the Rolling Meadows mobile home park.

18 Q. Is that in Lexington County?

19 A. Yes, ma'am. That is in West Columbia area of
20 Lexington County.

21 Q. And what time did you get dispatched out?

22 A. I was dispatched at 9:19 p.m.

23 Q. And what time did you arrive?

24 A. I arrived on scene at 9:23 p.m.

25 Q. And what was the nature of the call?

1 A. What we first got when we first were dispatched
2 was a subject that had been -- had a gunshot wound.

3 Q. And when you got to the scene, can you kind of
4 describe what you saw.

5 A. Yes, ma'am. When I first arrived on scene, I
6 noticed a large group of people around a certain
7 area. I then started walking towards the area to
8 figure out what was going on.

9 Q. And when you got to the area, what caught your
10 attention?

11 A. When I first got to the area what caught my
12 attention was that there a Hispanic male lying on
13 the ground. That male was later identified as
14 Hector Vasquez. As I further approached Hector, I
15 noticed that he was bleeding from a gunshot wound in
16 the middle of his torso.

17 Q. What did you do as a result?

18 A. I immediately got gloves and started applying
19 pressure to the wound and had his family speak to
20 him to keep him conscious, keep him talking.

21 Q. And at this point, what was the demeanor of the
22 people around Hector?

23 A. Everybody around Hector was frantic, they were
24 scared, multiple ones were crying, basically telling
25 him you're going to be okay, you're going to be

1 okay, stay with us, just trying to keep talking to
2 him to keep him conscious.

3 Q. And did EMS ultimately arrive?

4 A. Yes, ma'am. EMS arrived a short time later.

5 Q. What did you do once EMS arrived?

6 A. When EMS arrived, Deputy Burnett and myself and
7 other deputies began setting up crime scene tape and
8 a crime scene log was established.

9 Q. And did you talk to someone named Franklin at
10 the scene?

11 A. Yes, ma'am, I did.

12 Q. And how long had you been at the scene before
13 you spoke with Franklin?

14 A. I'm not exactly sure of the exact time, ma'am.
15 The scene was chaotic, had a lot of moving pieces.
16 I was just trying to keep everybody safe, keep
17 control of Hector and everything there, so I'm not
18 sure of the exact time, ma'am.

19 Q. So did you talk to Franklin a great deal?

20 A. Not a whole lot, ma'am. I basically got just a
21 general statement from him. But I noticed that he
22 had been shot in the leg, he brought that to my
23 attention, and due to that I had EMS come for him
24 and get him out of there so he could be medically
25 treated.

1 Q. Okay. And did you also speak to someone named
2 Rafael?

3 A. Yes, ma'am, I did.

4 Q. And did you have to have assistance
5 translating?

6 A. I do not recall, ma'am.

7 Q. Okay. I'm going to show you what's already
8 been entered as State's Exhibit No. 6. Does this
9 picture show where you saw the body lying?

10 A. Yes, ma'am.

11 Q. Where did you see the body lying?

12 A. When I first approached Hector, he was lying
13 about right there. He was to the side of this
14 fence, kind of in between the truck right there.
15 (Indicating)

16 Q. Does this picture show where the ambulance may
17 have been parked?

18 A. If it was, it would be at the bottom corner
19 right here, if not a little farther off the screen,
20 so it may or may not. I know the ambulance was a
21 little bit farther over. (Indicating)

22 Q. It was further over which way?

23 A. Further over towards this corner. (Indicating)

24 (State's Exhibit No. 17 marked for
25 identification.)

1 Q. This might help you a little better. I'll show
2 you State's Exhibit 17 and ask you to take a look at
3 this photograph.

4 MR. CHEHOSKI: Your Honor, no objection.

5 THE COURT: Thank you.

6 A. Okay. So --

7 Q. And I can put this picture up --

8 MS. PATTERSON: Your Honor, at this time,
9 State's Exhibit 17 into evidence.

10 THE COURT: Without objection.

11 (State's Exhibit No. 17 admitted into
12 evidence.)

13 BY MS. PATTERSON:

14 Q. Does this better reflect where you may have
15 seen the --

16 A. Yes, ma'am. The ambulance would have been
17 right there where the number 2 marker is.

18 Q. And in this picture, where was the body lying?

19 A. More over towards the truck, right around here.
20 (Indicating)

21 Q. And I'll show you what's been introduced as
22 State's Exhibit No. 7. I'll show it to you close-up
23 first so you can take a good look at it. In that
24 photograph do you see police cars and things of that
25 nature?

1 A. Yes, ma'am.

2 Q. And where are they?

3 A. A little bit farther off the scene.

4 Q. Okay. You described the scene as chaotic.

5 A. Yes, ma'am.

6 Q. Do you mean with people, cars or both or
7 something else?

8 A. At first, like I said, I was first on scene, it
9 was just a lot of keeping -- making sure the shooter
10 wasn't still there, making sure Hector was okay,
11 making sure everybody around was cool, calm,
12 collected, nobody went around destroying any
13 evidence or anything like that. So it was a lot of
14 moving pieces for me right there just by myself
15 until other units got there.

16 Q. And where do you see other police cars?

17 A. They are further off -- they are further
18 setting up the perimeter about right there.

19 (Indicating)

20 Q. And, Deputy Steen, these pictures that I showed
21 you, are they from that night, August 9th, 2015?

22 A. Yes, ma'am, they are.

23 MS. PATTERSON: I beg the Court's indulgence.

24 THE COURT: Yes, ma'am.

25 MS. PATTERSON: Thank you, Deputy Steen.

1 Please answer any questions the defense counsel may
2 have.

3 THE COURT: Mr. Chehoski, cross-examine?

4 MR. CHEHOSKI: Thank you.

5 CROSS-EXAMINATION

6 BY MR. CHEHOSKI:

7 Q. You just spoke briefly with Franklin when you
8 arrived; correct?

9 A. Yes, sir.

10 Q. And you said you got a general statement from
11 him --

12 A. Yes, sir.

13 Q. -- of what happened?

14 And you documented that in your report?

15 A. Yes, sir.

16 Q. And when you document these reports, you
17 document them to be as complete as possible?

18 A. Yes, sir.

19 Q. And as accurate as possible?

20 A. Yes, sir.

21 Q. And as thorough as possible?

22 A. Yes, sir.

23 Q. And in your report you documented that -- let
24 me make sure I -- that Franklin said he and his
25 father were walking; correct?

1 A. Yes, sir.

2 Q. Okay. And that two African males approached
3 riding in a dark vehicle?

4 A. Yes, sir.

5 Q. Okay. Nothing about the car backing up; is
6 that correct? That's not in your report.

7 A. Yes, sir.

8 Q. Right. And also there you talked with other
9 people as well?

10 A. Yes, sir.

11 Q. And as many people as possible?

12 A. Yes, sir.

13 Q. To try to get as much information as possible?

14 A. Yes, sir.

15 Q. And at that point nobody was able to give you
16 any accurate -- an description of either suspect?

17 A. No. The basis that I got were the continual it
18 two African-American males.

19 Q. But no other description other than two
20 African-American males?

21 A. Yes, sir, that's correct.

22 Q. And no further description other than a dark
23 vehicle?

24 A. Yes, sir, that is correct.

25 Q. And no further description of the firearm?

1 A. Yes, sir, that is correct.

2 Q. You also indicated that you discovered that
3 there was a -- there was broken glass in the
4 roadway?

5 A. Correct.

6 Q. And that broken glass would have come from a
7 bottle?

8 A. I can't speculate, but I would assume.

9 Q. Okay. Well, let's just -- was it dark broken
10 glass?

11 A. Yes, sir.

12 Q. All right. And you did not indicate though how
13 close to the body that was?

14 A. No, sir, not in my report.

15 Q. Do you remember how close to the body it was?

16 A. I can't say exactly, sir.

17 Q. Understood. I appreciate your honesty.

18 MR. CHEHOSKI: One moment, please, Your Honor.

19 THE COURT: Yes, sir.

20 BY MR. CHEHOSKI:

21 Q. Just a couple more. You -- being that this
22 was a -- there was a gunshot wound, you searched the
23 scene for shell casings?

24 A. Not at first. My first and most prominent
25 priority was to basically make sure the scene was

1 secure and provide medical attention to Hector.

2 Q. But at some point you did look -- you did
3 search the scene for shell casings?

4 A. Yes, sir, very briefly until I was put on
5 perimeter.

6 Q. And in that brief period, you did not find any
7 shell casings?

8 A. No, sir, I did not personally.

9 Q. And you were not the first one to find any
10 bracelets on the scene?

11 A. No, sir. That was Corporal Richardson who
12 brought that to my attention. The bracelet was
13 under the EMS bus.

14 Q. All right.

15 MR. CHEHOSKI: Nothing further.

16 THE COURT: Redirect?

17 REDIRECT EXAMINATION

18 BY MS. PATTERSON:

19 Q. Deputy Steen, I think you said earlier your
20 responsibilities was to secure the scene and make
21 sure that the injured person received treatment.

22 A. Yes, ma'am.

23 Q. And who took over the scene?

24 A. After me it was Corporal Richardson and then it
25 was Lexington County major crimes units.

1 Q. Major crimes. And that's where the detective
2 is normally assigned to the case?

3 A. Yes, ma'am.

4 Q. And do you know the role of the detective?

5 A. Basically gather statements on scene, gather
6 evidence to successfully prosecute, and determine if
7 crime has or hasn't committed and who committed the
8 crime.

9 Q. So would their role be a little greater than
10 yours?

11 A. Yes, ma'am.

12 Q. Thank you. No further questions.

13 THE COURT: You can step down. Thank you, sir.

14 MS. PATTERSON: Your Honor, may this witness be
15 excused?

16 MR. CHEHOSKI: Without objection.

17 THE COURT: Without objection, yes.

18 Ladies?

19 MS. MARTIN: Your Honor, we'd call April
20 Tutich, T-U-T-I-C-H.

21 THE COURT: Come forward, please, Ms. Tutich to
22 be sworn.

23 APRIL TUTICH

24 being first duly sworn, testified as follows:

25 THE WITNESS: Yes, ma'am.

1 THE CLERK: Have a seat, please, ma'am. Once
2 you're seated, state your full name and spell your
3 last, please.

4 THE WITNESS: April Tutich, T-U-T-I-C-H.

5 DIRECT EXAMINATION

6 BY MS. MARTIN:

7 Q. Ms. Tutich, where are you employed?

8 A. I'm a paramedic with the County of Lexington.

9 Q. How long have you been a paramedic?

10 A. I was certified in 2014.

11 Q. And are there different levels of EMS treatment
12 providers?

13 A. There are. Paramedics are advanced life
14 support care. We also have EMT intermediates and
15 basics.

16 Q. And is it shift work?

17 A. Yes, ma'am.

18 Q. And in -- if I can direct your attention back
19 to August 9th of 2015, were you working that
20 evening?

21 A. Yes, ma'am.

22 Q. Were you dispatched to a call?

23 A. I was.

24 Q. And did you end up at Rolling Meadows?

25 A. We did.

1 Q. And based on your review of your report, can
2 you tell us what time were you dispatched?

3 A. We were dispatched at 2119 and we arrived on
4 scene at 2131.

5 Q. All right. And that's what time, not in
6 military time?

7 A. I'm sorry. At 9:19 and 9:31.

8 Q. Okay. And when you got there, can you describe
9 the scene to us, please?

10 A. It was very hectic, there was a lot of
11 bystanders around. We did have one male patient on
12 the ground. We had a police officer holding
13 pressure to a wound on the anterior side of the
14 patient, on the front side. The patient did not
15 speak English, so our communication with him was
16 limited, but we understood that there had been a
17 gunshot. We didn't know why, but he was on the
18 ground, still responsive.

19 Q. Okay. And what exactly was his condition there
20 on the scene that night?

21 A. He was still responsive, he was alert,
22 obviously in pain, he wasn't moving much. They were
23 trying to hold him still. Any time we have an
24 injury like that to the torso, we don't want to move
25 them a lot in case there's any spinal damage.

1 Q. And did your records show who this patient was?

2 A. We obtained the name of Hector Vasquez.

3 Q. And you said he was still alert. Was he
4 conscious?

5 A. He was then. During our transport he would
6 kind of go in and out of consciousness. He didn't
7 lose pulses or -- he was maintaining his own airway
8 breathing.

9 Q. With injuries like this, did you move him into
10 your ambulance pretty quickly?

11 A. We did. We took precautions for his spine.
12 There's a procedure we use where we put him on a
13 board to keep everything as stable as we can. So we
14 pretty quickly got him on that, checked him briefly,
15 got him into the unit so we could get away from the
16 crowd that was on scene.

17 Q. And what treatments were you able to provide
18 for him there still at the scene?

19 A. Our protocol is we expose the body so we can
20 locate all the injury sites, make sure that we can
21 control all the bleeding that we can find, we
22 initiate IV access so we can start replenishing the
23 volume loss with a normal saline.

24 We don't keep blood products on the truck, so
25 we can't replace with blood, so we supplement with a

1 fluid, making sure his airway was intact. He was
2 breathing on his own. We check their lungs. Based
3 on where his injuries were, we had a high concern
4 that he might have had an injury to his right lung.
5 His lung sounds were good. He was maintaining his
6 own airway, we just provided him some supplemental
7 care.

8 Q. Do y'all have a protocol -- and y'all being
9 EMS. Do y'all have a protocol as to where gunshot
10 wound victims should be transported?

11 A. We do. As long as they're still breathing and
12 have a pulse, they're not in cardiac arrest, we
13 transport to the trauma center, which our closes
14 facility is Richland hospital.

15 Q. And was that decision made to transport Hector
16 to Richland Memorial?

17 A. Yes.

18 Q. And before you left that scene, what if
19 anything did you there on site at Rolling Meadows?

20 A. We placed him in spinal precaution, we
21 controlled as much bleeding as we could, we did
22 remove his clothing, which was left on scene, just
23 so that we could evaluate his body and make sure
24 there was not any other life-threatening injuries
25 that we could not see.

1 Q. And before transport, did you have occasion to
2 meet any other wounded people that evening?

3 A. I did check. My captain was on scene and my
4 partner that night was also another paramedic, so
5 once they had him in the truck and were assessing
6 him, I, as the crew chief, checked the scene to make
7 sure that there wasn't any other injured parties.

8 There was one young male who had some abrasions
9 on his inner thighs where they believe he had also
10 been struck by a bullet. He was ambulatory on
11 scene, walking around, he was stable, he was not
12 even bleeding. We had another unit coming to
13 transport him since the older gentleman was a
14 critical patient.

15 Q. All right. And that would have been Franklin
16 Vasquez?

17 A. I did not know his name. I was understood that
18 that was his son.

19 Q. During transport of Hector, what if anything
20 changed with his condition?

21 A. He remained fairly stable for us. He was kind
22 of in and out of consciousness. If we spoke to him,
23 we could get some stimulation. But, like I said,
24 with the language barrier, it was kind of harder
25 than just saying his name and trying to get him to

1 respond some.

2 He did become combative. He didn't want the
3 oxygen mask on his face. That's typically a sign of
4 the trauma hypoxia. It could be for various reasons
5 that they get combative like that.

6 Q. And were you surprised to find out that Hector
7 had died of his injuries?

8 A. It's not uncommon for us to see gunshot wounds
9 that are fatal. Based on where he was struck and
10 based on where we believed the exit and entry wounds
11 were, it's very hard to determine where that bullet
12 made impact internally with other organs, so usually
13 we have a high suspicion that those type patients
14 will not survive.

15 Q. Please answer any questions the Defense may
16 have.

17 A. Okay.

18 THE COURT: Ms. Fullwood?

19

20 CROSS-EXAMINATION

21 BY MS. FULLWOOD:

22 Q. Ma'am, can you tell us what you mean by the
23 word abrasion? Is there another more common word
24 for that term?

25 A. It kind of just looked more like a burn. It

1 went on the inside of both of his thighs.

2 Q. Sort of like a scrape?

3 A. A little more intense than that. You could
4 tell there was some trauma involved to it, but it
5 wasn't deep. It didn't really penetrate any of the
6 muscle or much beyond the skin.

7 Q. Thank you, ma'am.

8 A. Uh-huh.

9 MS. MARTIN: Your Honor, we'd ask that this
10 witness be excused.

11 THE COURT: Thank you. Without objection,
12 Ms. Tutich may be excused. Thank you.

13 How long do you anticipate your next witness
14 taking?

15 MS. MARTIN: Your Honor, we beg the Court's
16 indulgence.

17 THE COURT: Okay.

18 MS. PATTERSON: Maybe 20 minutes.

19 THE COURT: Okay. Let's try to get that in
20 before lunch.

21 MS. PATTERSON: Thank you.

22 THE COURT: Thank you.

23 MS. PATTERSON: Sergeant Miles Rawl.

24 THE COURT: Sergeant Rawl, come forward,
25 please, to be sworn.

1 basically crimes against -- violent crimes against
2 persons.

3 Q. And on August 9th of 2015, did you respond to
4 3941 Charleston Highway?

5 A. I did.

6 Q. And what type of call did you respond to?

7 A. It was an armed robbery shooting incident where
8 two victims had been shot.

9 Q. And did it take you long to get to the incident
10 location?

11 A. It was a Sunday night, so I was actually called
12 from my residence. So it took approximately 35 to
13 40 minutes for me to get there on scene.

14 Q. And when you got to the scene, were there
15 officers already there?

16 A. Yes, ma'am.

17 Q. And kind of describe the scene when you got
18 there.

19 A. Upon my arrival, the roadway had been taped
20 off. The area was busy, full of a lot of people,
21 police cars, other witnesses from the area, people
22 from the neighborhood. Upon my arrival, the
23 ambulances had already come and gotten both victims
24 that had been shot.

25 Q. And did you notice anything in particular, when

1 you got there, in the road?

2 A. Yes, ma'am. I did notice the -- it was a blood
3 spot in the middle of the roadway near the white
4 fence in that area and a broken beer bottle nearby.

5 Q. Okay. And were you able to find out later what
6 caused that blood stain in the roadway?

7 A. Yes. That's where the victim was laying when
8 he was shot.

9 Q. And you said you noticed broken glass near that
10 area as well?

11 A. I did.

12 Q. And did you notice anything else that caught
13 your attention?

14 A. I'm sorry. Can you be more specific?

15 Q. Did you notice anything else near the area
16 where the body had been laying?

17 A. It was a gold bracelet located in the roadway
18 approximately 10 to 15 feet from the -- a piece of a
19 gold bracelet 10 to 15 feet from where the victim
20 had been laying.

21 Q. Was any -- so do you have any knowledge of any
22 information that may have been collected at the
23 scene?

24 A. Yes, ma'am.

25 Q. And what did you -- what was collected?

1 A. I know the piece of gold bracelet was collected
2 along with the pieces of broken glass as well as a
3 phone that was located near the entrance of Rolling
4 Meadows Mobile Home Park.

5 (State's Exhibit Nos. 18, 19, 20 marked for
6 identification.)

7 Q. First, Sergeant Rawl, let me show you what's
8 introduced as State's Exhibit 17 and ask you to take
9 a look at it.

10 A. Okay.

11 Q. And do you see in that picture where the pool
12 of blood you described in the roadway was located?

13 A. Yes, ma'am.

14 Q. Okay. And do you also see in that picture
15 where the gold bracelet was located?

16 A. I do.

17 Q. Okay. And what's beside the gold bracelet in
18 that picture?

19 A. An evidence marker 2.

20 Q. Okay. And I'm going to show you State's
21 Exhibit 18, ask you to take a look at it. Do you
22 recognize what's in that photograph?

23 A. I do.

24 Q. And what's in that photograph?

25 A. The pieces of gold bracelet.

1 Q. Okay. And is that the -- just a close-up of
2 the other photograph when you talked about the
3 Marker No. 2?

4 A. Yes, ma'am.

5 Q. And does that fairly and accurately represent
6 the scene that night on August 9th, 2015?

7 A. It does.

8 MS. PATTERSON: Your Honor, at this time we
9 move State's Exhibit 17 -- 18 into evidence. I
10 apologize.

11 MR. CHEHOSKI: Without objection, Your Honor.

12 THE COURT: Without objection, State's 18 in
13 evidence.

14 (State's Exhibit No. 18 admitted into
15 evidence.)

16 BY MS. PATTERSON:

17 Q. And State's Exhibit 19, do you recognize what's
18 in that?

19 A. I do.

20 Q. And what is that?

21 A. The gold bracelet that was collected by CSI
22 that was packaged in a clear plastic container.

23 Q. Does that bracelet look like it's been changed
24 in any way?

25 A. It does not.

1 MS. PATTERSON: Your Honor, we move State's
2 Exhibit 19 into evidence.

3 MR. CHEHOSKI: No objection.

4 THE COURT: Thank you.

5 (State's Exhibit No. 19 admitted into
6 evidence.)

7 BY MS. PATTERSON:

8 Q. And State's Exhibit 20, do you recognize what's
9 in that photograph?

10 A. Yes, ma'am, I do.

11 Q. And what's in that photograph?

12 A. That is the phone that I located near the exit
13 of the -- or the entrance/exit of the Rolling
14 Meadows Mobile Home Park.

15 Q. And does that fairly and accurately represent
16 where you located that phone on August 9th, 2015?

17 A. It does.

18 MS. PATTERSON: Your Honor, we move State's
19 Exhibit 20 into evidence.

20 MR. CHEHOSKI: One moment, please, Your Honor.
21 Without objection.

22 THE COURT: Thank you.

23 (State's Exhibit No. 20 admitted into
24 evidence.)

25 BY MS. PATTERSON:

1 Q. State's Exhibit 17, and we've already seen this
2 picture earlier, can you point where the bracelet
3 was located?

4 A. Bracelet was located in the roadway right here
5 where the marker 2 is. You can see it in this area
6 in here.

7 Q. And, again, where did you find out, through
8 your investigation, the body was laying?

9 A. It is -- you can barely read the marker, but I
10 think it's A, which that's the bloodspot in the
11 roadway where the victim had been laying which is in
12 close proximity to the white fence.

13 Q. And 19, is that just a close-up of that
14 bracelet?

15 A. Yes, ma'am.

16 Q. Does it look like it's broken or together?

17 A. Looks broken.

18 Q. Is that just the way it was packaged into
19 evidence?

20 A. That's correct.

21 Q. And number 20, what is that?

22 A. That's the phone that I located after we pinged
23 the phone through using the phone company. It
24 kept -- the tower hit was 4941 Charleston Highway,
25 so we scoured the area and I was able to locate the

1 phone in the bushes at the exit.

2 Q. So was it still -- in comparison to where the
3 body and the bracelet and all that was found, how
4 far away was this phone found?

5 A. That was approximately, I would say, 100 yards,
6 if not more. You had to go down the road, take a
7 right, and then hang a left at a stop sign which
8 takes you to the exit of the mobile home park. And
9 it was actually located approximately 25 or 30 feet
10 or so from the stop sign, that Charleston Highway.

11 Q. So was it leaving the mobile home park that
12 you --

13 A. Yes, ma'am. It was actually on the right side,
14 which would be consistent with someone exiting the
15 vehicle; would be to the right, in that lane.

16 Q. And, Sergeant Rawl, I'm going to show you
17 what's been entered already as State's Exhibit 11.
18 Do you recognize that cell phone?

19 A. I do.

20 Q. And what cell phone is that?

21 A. This is the phone that I located in the bushes
22 at the mobile home park.

23 (State's Exhibit No. 21 marked for
24 identification.)

25 Q. And I'm going to hand you State's Exhibit 21,

1 ask you to take a look at that. Do you recognize
2 that package?

3 A. I do.

4 Q. And what do you recognize that package to be?

5 A. This is the evidence bag containing the
6 two-piece gold-in-color bracelet.

7 Q. And did you recover that or did you take
8 possession of that?

9 A. I did not.

10 Q. Were you there when that was recovered?

11 A. Yes, ma'am.

12 Q. Okay. And is your name on it as the case
13 agent?

14 A. Yes, ma'am.

15 Q. Okay. And does that fairly and accurately
16 represent the way it would have been packaged that
17 night?

18 A. That's correct.

19 MS. PATTERSON: Your Honor, we move State's
20 Exhibit 21 into evidence.

21 MR. CHEHOSKI: No objection.

22 THE COURT: Without objection, 21 in evidence.

23 (State's Exhibit No. 21 admitted into
24 evidence.)

25 BY MS. PATTERSON:

1 Q. Is that the bracelet located at the scene at
2 Rolling Meadows on August 9th 2015?

3 A. Yes, ma'am.

4 Q. Okay. Now, after this night, were you assigned
5 to this case?

6 A. No, ma'am, I was not.

7 Q. And do you know who was assigned to this case?

8 A. Yes, ma'am; my teammate Detective Moore.

9 Q. And what was your next involvement or
10 interaction with Detective Moore?

11 A. Basically the next day, we had a large major
12 crimes meeting concerning this case. At that point
13 in time our command staff decided to reassign this
14 case to Detective Moore based on the fact that I had
15 had a homicide earlier that week assigned to me in
16 Lexington County. And I basically briefed Detective
17 Moore on the information that I saw and gathered at
18 the crime scene that night.

19 Q. And what if anything did you and Detective
20 Moore do after that briefing?

21 A. After that briefing, Detective Moore wanted to
22 see the crime scene himself and I also wanted to go
23 back out there to see the crime scene in the
24 daylight, because it was basically at night when we
25 responded out, so he and I relocated back to the

1 crime scene to look around where he could physically
2 see it -- or later that afternoon.

3 Q. Was any bullet casings located?

4 A. No, ma'am.

5 Q. Based on your training and experience, did that
6 surprise you?

7 A. No, ma'am.

8 Q. Why not?

9 A. Basically it was a lot of traffic in and out of
10 that mobile home park prior to the crime scene being
11 locked down, as we call it; basically taped off and
12 roped off. You had, I know, at least two ambulances
13 that had rolled up to take care of the victims, you
14 also had police cars in that area as well trying to
15 secure the scene, you had a lot of foot traffic as
16 well with the party that was going on at 162, so it
17 was just a lot of activity going on in that area.

18 Q. And could that activity cause evidence to
19 disappear?

20 A. Absolutely.

21 Q. And did you assist Detective Moore with doing
22 any photo lineups?

23 A. Yes, ma'am, I did.

24 Q. And did you participate in one with Franklin
25 Vasquez?

1 A. I did.

2 Q. And how many did you participate -- sorry.

3 Scratch that.

4 That photo lineup, do you know if Franklin made
5 an identification?

6 A. He did not.

7 Q. And during that photo lineup, who was present?

8 A. Myself, Detective Moore, and Franklin.

9 Q. Did you try to suggest to him that the person
10 who did the shooting was in that photograph or in
11 that lineup?

12 A. We did not.

13 Q. And did you also -- were you also with
14 Detective Moore when he showed Christy Vasquez the
15 lineup?

16 A. I was.

17 Q. And did she make an identification?

18 A. She did not.

19 Q. And did you have any further involvement in
20 this case?

21 A. I did.

22 Q. I'm sorry?

23 A. Yes, ma'am, I did.

24 Q. And what did you do next?

25 A. The following day, Detective Moore and I -- or,

1 basically, a Crimestoppers tip came in. Detective
2 Moore had Intel run some information regarding two
3 possible suspects, at which time we responded to
4 Newberry County to attempt to locate one of the
5 suspects.

6 Q. And who was that suspect?

7 A. William Akiem Pitts, Jr.

8 MS. PATTERSON: I beg the Court's indulgence.

9 Thank you, Sergeant Rawl. Please answer any
10 questions the Defense may have.

11 THE COURT: Mr. Chehoski?

12 CROSS-EXAMINATION

13 BY MR. CHEHOSKI:

14 Q. Detective, do you know if any bullet jackets
15 were recover on the scene?

16 A. I'm sorry? Projectiles?

17 Q. Bullet jackets.

18 A. No, sir.

19 Q. You're not aware of any?

20 A. No, sir.

21 Q. What is the difference between a bullet jacket
22 and a casing?

23 A. The casing is the casing around the bullet
24 and -- I'm sorry. What are you asking?

25 Q. I was just noticing that there was a notation

1 of a bullet jacket being recovered and I was just
2 wondering if you were aware of that.

3 A. Was that the one out of the tire, I believe?

4 Q. No, sir, it was not.

5 A. Let me -- give me just a second.

6 Q. You didn't collect any casings or bullet
7 jackets, did you?

8 A. I did not. No, sir.

9 Q. You did not. And you were present at the scene
10 that night?

11 A. Yes, sir.

12 Q. And you were there while other evidence was
13 being collected?

14 A. That's correct.

15 Q. And while they were searching for brass
16 casings?

17 A. Yes, sir.

18 Q. Are brass casings and bullet jackets -- do you
19 think they're comparable?

20 A. Yes, sir.

21 Q. Okay. And were people -- did you see people
22 looking with metal detectors for any items that
23 might be projectiles and brass casings?

24 A. I did.

25 Q. And, to your knowledge, none was found?

1 A. That's correct.

2 Q. You also had a chance to speak with Christy
3 Vasquez?

4 A. Yes, sir, I did.

5 Q. And you were able to get a -- a description of
6 the shooter at that point; right?

7 A. That's correct.

8 Q. And you documented this in your report?

9 A. Yes, sir.

10 Q. And just making sure that when you do
11 document -- when you make documentations, you want
12 your documentations to be as complete as possible?

13 A. That's correct.

14 Q. And as accurate as possible?

15 A. Yes, sir.

16 Q. And as thorough as possible?

17 A. Yes, sir.

18 Q. And you documented in your report that the
19 shooter was described as a buff guy?

20 A. She could not tell buff guy at that point.

21 Q. All right. Is that --

22 A. But she did describe as a buff -- buffer guy.

23 Q. All right. And dressed in dark clothes?

24 A. Dressed in dark clothes, yes.

25 Q. Dressed nice in dark clothes; is that correct?

1 A. That's correct.

2 Q. All right. And when you got to the scene, the
3 bracelet was already in two pieces?

4 A. That's correct.

5 Q. You also noticed a broken beer bottle near the
6 bloodspot?

7 A. Correct.

8 Q. Did you measure how close the bottle was to the
9 bloodspot?

10 A. No, sir, I did not.

11 Q. Did you notice how close it was?

12 A. It was close in proximity, yes, sir; but, I
13 mean, as far as measurements, no, sir.

14 Q. Was it less than ten feet?

15 A. Yes, sir.

16 Q. Less than five feet?

17 A. I would actually have to refer to the photo to
18 better judge.

19 MR. CHEHOSKI: One moment, please, Your Honor.

20 THE COURT: Yes, sir.

21 BY MR. CHEHOSKI:

22 Q. I'm going to hand you State's Exhibit No. 6.
23 Can you tell me it that helps, please.

24 A. Yes, sir, it does.

25 Q. All right. May I put it up here? Do you still

1 have the laser pointer with you?

2 A. Yes, sir, I do.

3 Q. All right. And you stated before that the
4 bloodspot was pretty much next to --

5 A. Right there.

6 Q. Right there. Where is the glass in that
7 picture?

8 A. Over in this area. (Indicating)

9 Q. All right. Thank you.

10 One moment, please, Your Honor.

11 THE COURT: Yes, sir.

12 MR. CHEHOSKI: That's all I have. Thank you.

13 THE COURT: Redirect, Ms. Patterson?

14 MS. PATTERSON: Just briefly. (Tenders
15 documents to Mr. Chehoski.)

16 MR. CHEHOSKI: Your Honor, at this time I
17 object to this as outside the scope of cross.

18 THE COURT: All right. Let me look at them and
19 then I'll be able to rule on that.

20 The question was raised during
21 cross-examination about a bullet jacket being found
22 somewhere or a bullet -- I'm sure it's a jacket,
23 being found somewhere. The officer answered the
24 question, are you talking about in the tire? And
25 you said no. But I -- is that -- is this what

1 that's designed to try to clarify?

2 MS. PATTERSON: Yes, sir.

3 THE COURT: Okay. All right. I note the
4 objection respectfully overruled. Thank you.

5 (State's Exhibit Nos. 22, 23, and 24 marked for
6 identification.)

7 REDIRECT EXAMINATION

8 BY MS. PATTERSON:

9 Q. Sergeant Rawl, I'm going to show you what's
10 been marked as State's Exhibit 22. You recognize
11 what's in that photograph?

12 A. Yes, ma'am, I do.

13 Q. What's in that photograph?

14 A. That's the white-in-color Chevrolet truck that
15 was sitting beside the trailer that was struck by
16 one of the stray bullets.

17 Q. Does that fairly and accurately represent the
18 way it appeared on August 9th, 2015?

19 A. Yes, ma'am, it does.

20 MS. PATTERSON: Your Honor, at this time we
21 move State's Exhibit No. 22 into evidence.

22 THE COURT: Subject to objection by defense
23 counsel, State's 22 in evidence.

24 (State's Exhibit No. 22 admitted into
25 evidence.)

1 BY MS. PATTERSON:

2 Q. Sergeant Rawl, what's that red thing in the
3 picture?

4 A. That's what crime scene investigators put to
5 show the angle of the -- where the bullet had
6 entered the vehicle.

7 Q. And I'm going to show you State's Exhibit 23
8 and 24, ask you to take a look at it, and ask if you
9 recognize what's in those photographs.

10 A. Yes, ma'am. That is the tire from that vehicle
11 that was struck.

12 THE COURT: Which one is that?

13 THE WITNESS: 23.

14 THE COURT: Thank you.

15 BY MS. PATTERSON:

16 Q. And what is in photograph 24?

17 A. That is the projectile that was inside the
18 tire.

19 Q. Okay. And do those pictures fairly and
20 accurately represent the scene that night, August
21 9th, 2015?

22 A. Yes, ma'am.

23 MS. PATTERSON: Your Honor, at this time we
24 move State's Exhibit Nos. 23 and 24 into evidence.

25 THE COURT: Also subject to objection, in

1 evidence.

2 (State's Exhibit Nos. 23 and 24 admitted into
3 evidence.)

4 BY MS. PATTERSON:

5 Q. For the jurors' benefit, can you point out the
6 trajectory that crime scene investigation used to
7 show the path of the bullet.

8 A. Yes, ma'am. It's marked by the red object
9 there and it shows the angle coming sideways.

10 Q. And in photograph 23, what does that show?

11 A. Where the round went into the tire.

12 Q. And 24?

13 A. The projectile that was inside the tire.

14 Q. Thank you.

15 Your Honor, no further questions.

16 THE COURT: Thank you.

17 Any follow-up on those points, Mr. Chehoski?

18 MR. CHEHOSKI: Very briefly.

19 RE CROSS-EXAMINATION

20 BY MR. CHEHOSKI:

21 Q. In State's Exhibit 22, can you tell if that
22 bullet is entering in an upward or downward
23 trajectory?

24 A. No, sir, I cannot. I'm not an expert on that.

25 Q. Okay. And is the truck on level ground in this

1 picture?

2 A. Yes, sir.

3 Q. All right. It's not on an incline, to the best
4 of your knowledge?

5 A. To the best of my knowledge, no, sir.

6 Q. I'll show you again State's Exhibit 6. Is this
7 the truck that -- the same truck that we're talking
8 about?

9 A. Yes, sir.

10 Q. Can you tell if that truck is on an incline?

11 A. It does not appear to be on an incline. No,
12 sir.

13 Q. Doesn't appear to be parked -- more parked
14 facing a -- facing the road but a little bit on a
15 decline?

16 A. It's a little bit on a decline from what I can
17 see to the left side due to the tire being deflated.

18 MR. CHEHOSKI: Nothing further, Your Honor.

19 THE COURT: Thank you.

20 MS. PATTERSON: Your Honor, may this witness be
21 excused?

22 MR. CHEHOSKI: No objection.

23 THE COURT: Sergeant, you may be excused.

24 Thank you.

25 Ladies and gentlemen, this, obviously, is a

1 good time for lunch recess. You might have thought
2 it was a good time for a lunch recess about 30
3 minutes ago. I can't argue with that, but here we
4 are.

5 Be back in the jury room, please, at 2:30.
6 That's an hour and a half. That's a little more
7 than we normally take for lunch, but I'm aware of
8 the fact that you may have to wait in line
9 somewhere. Be back in the jury room, please, at
10 2:30. Remember, as always, not to talk about this
11 case when you get back there together and don't talk
12 with anybody else while you're out of court. Thank
13 you very much. 2:30.

14 (The jury exits the courtroom at 12:58 PM.)

15 THE COURT: Ms. Patterson, Ms. Martin, how are
16 we doing on schedule? Are we pretty much on track?

17 MS. PATTERSON: Yes, sir, Your Honor. This
18 afternoon I think we're going to have Dr. Ross and
19 two officers that's going to testify. And then
20 we'll just see where we are with time because the
21 officer after that will be the chief investigating
22 officer and he'll be relatively long.

23 THE COURT: All right, folks. Thank you.
24 We'll be in recess until 2:30 -- I'm sorry.

25 MS. FULLWOOD: We had a sidebar.

1 THE COURT: We sure did. I'm sorry,
2 Ms. Fullwood.

3 MS. FULLWOOD: If I may, let me find the
4 exhibit.

5 THE COURT: 15 and 16?

6 MS. FULLWOOD: Yes, sir, 15 and 16. And we
7 objected to introduction of those pictures because
8 they are merely cumulative to Mr. Vasquez's
9 testimony. They -- they're really not relevant to
10 anything. We do not contest that this young man
11 suffered an injury from a bullet.

12 THE COURT: Right.

13 MS. FULLWOOD: Furthermore, I mean, they're
14 inflammatory; they're a young man in the hospital,
15 he's hurt. I think they're more calculated to
16 arouse passion and prejudice of the jury and inflame
17 their emotions to encourage them to base their
18 verdict on improper factors rather than the evidence
19 in the case.

20 THE COURT: Right. While the pictures do show,
21 obviously, as you've described, Ms. Fullwood, a
22 young man in a hospital setting, you and I have both
23 seen much more graphic pictures of hospital victims
24 and wounds in the past.

25 So from that perspective, it just -- it's not

1 so grossly garishly depicting any terrible wound in
2 that regard. It does depict at least a wound that
3 has been covered and has been described, as well, in
4 varying terms. Of course the fact that he suffered
5 a wound of some sort, that is an element that the
6 jury can take into account on the matter of malice.

7 And when I viewed the relatively sterile nature
8 of the photographs themselves, except for depicting
9 what they did, a young man with bandages on the
10 inside of both of his thighs, it didn't seem to me
11 to be so prejudicial that the jury is likely to be
12 swayed simply by that occurrence.

13 He's already testified and, you're right, to
14 that extent, it's cumulative. But the jury seeing
15 what the victim looked like on the date and the time
16 close in proximity to the event itself, in my view,
17 is something that the jury has a right to see and
18 hear.

19 So, anyway, you've very accurately just stated
20 the legal position in that regard, and I think the
21 record is preserved sufficiently.

22 MS. FULLWOOD: Thank you, Your Honor.

23 THE COURT: Thank you.

24 All right, folks, 2:30.

25 MS. PATTERSON: Thank you, Your Honor.

1 (Luncheon recess 1:01 PM - 2:30 PM.)

2 (State's Exhibit Nos. 26, 27, 28 marked for
3 identification.)

4 THE COURT: Are both sides ready for the jury?

5 MS. MARTIN: No, Your Honor.

6 Briefly, the next witness is Dr. Ross, the
7 pathologist.

8 THE COURT: Right.

9 MS. MARTIN: And I have shared some proposed
10 exhibits with the Defense that we would intend to
11 use. We've had them marked for ID.

12 THE COURT: Okay.

13 MS. MARTIN: State's 26, 27, and 28. And I
14 believe Ms. Fullwood has an objection.

15 MS. FULLWOOD: That's correct, Your Honor.

16 MS. MARTIN: May I approach so you may look at
17 these while --

18 THE COURT: Absolutely. Thank you.

19 All right. Ms. Martin, tell me what the State
20 intends prove from the admissibility of these.

21 MS. MARTIN: Your Honor, if I may approach so
22 that I may reference the numbers on the photos.

23 THE COURT: Yes.

24 MS. MARTIN: Thank you. I apologize.

25 THE COURT: 26, 27, 28.

1 MS. MARTIN: Yes, sir. 26 would show the
2 condition that Dr. Ross received the body. It also
3 shows an entry wound, but it's the only photo, I
4 think, that shows the exit wound at the abdomen.

5 The next photograph that has an FA number is a
6 photograph that Dr. Ross used -- took that shows the
7 entrance wound underneath Hector's right arm. Then
8 the last picture is a close-up of that which shows a
9 muzzle impression and soot marks, so I think that
10 those photographs will assist her as she explains
11 what she found during her autopsy.

12 Obviously, Judge, we had, I don't know, 25 or
13 30 pictures between the coroner's office and the
14 pathologist, and we pared it down to those three
15 photos.

16 THE COURT: All right.

17 Ms. Fullwood?

18 MS. FULLWOOD: Your Honor, our objections to
19 those photographs are essentially the same as we
20 made to the photographs of Franklin Vasquez, but I
21 think these arguments have more import with these
22 pictures of a deceased body. Your Honor, this is
23 not the penalty phase of a death penalty trial.

24 In such a situation after a person has been
25 convicted of murder and you get to sentencing, maybe

1 those would be admissible because it would show the
2 injuries inflicted and the way the deceased was left
3 at the time of the crime. Those are not
4 considerations at this -- in this trial at all.

5 The Court and the lawyers in this room may
6 certainly have well seen worse pictures of deceased
7 bodies, but we've got to keep in mind that those
8 jurors probably never have seen pictures of deceased
9 bodies. I think they're inflammatory.

10 I -- while they might assist the doctor, I'm
11 familiar with Dr. Ross, she's a very experienced,
12 quite able pathologist who is more than capable of
13 explaining her findings to laymen in terms that they
14 can understand. There are alternative ways that she
15 can do that, if we chose to, by using anatomical
16 drawings they use as a matter of course when they're
17 doing autopsies.

18 Again, since the photos themselves could arise
19 sympathy or anger in the jurors and allow them to
20 base their verdict on emotion rather than facts and
21 reasons, I think they should be excluded from
22 evidence.

23 THE COURT: All right.

24 MS. MARTIN: Your Honor, if I may, I left out
25 one or two things, like I think that the pictures

1 would help show the angle of the wound. And also,
2 when I was talking about showing the muzzle imprint,
3 certainly there's been already some discussion on
4 cross as to how close Franklin and Hector were to
5 the armed gunman, and I think the fact that the
6 photograph where it shows soot and a muzzle imprint
7 certainly would assist the jurors in trying to
8 determine if Franklin's testimony was credible or
9 believable.

10 THE COURT: Okay. And I'll give you that as
11 number 28 because that's the one that shows that
12 clearly.

13 Where does either 26 or 27 show the exit wound?

14 MS. MARTIN: Your Honor, if I may approach.
15 26, Your Honor, is the exit wound is in the middle
16 of the stomach there.

17 THE COURT: And, obviously, this is --

18 MS. MARTIN: After surgery.

19 THE COURT: And that surgery was a surgery to
20 try to --

21 MS. MARTIN: Repair the damage. It's not from
22 the autopsy.

23 THE COURT: Okay.

24 MS. MARTIN: And 27 is just in reference,
25 because from picture 28 you don't know where it

1 comes from. 27 is the far-away and 28 is showing
2 where it is. If you don't have the reference of --

3 THE COURT: I think the doctor, of course, can
4 provide that.

5 MS. MARTIN: 27.

6 THE COURT: All right. Thank you. Give me a
7 moment.

8 27 also shows the exit wound, does it not?

9 MS. MARTIN: Yes, sir, maybe, Your Honor. At
10 the base, yes, sir.

11 THE COURT: Okay.

12 MS. MARTIN: May I see it? I'll show it to
13 Ms. Fullwood. Yeah, it does.

14 THE COURT: Okay. Thank you.

15 MS. MARTIN: We'll be happy to pull the other
16 one, if you wish.

17 THE COURT: 26 is not in evidence. The motion
18 to suppress that is granted. It really adds nothing
19 to the testimony that the doctor would give other
20 than the full -- the more or less full body shot of
21 the decedent, his face with the mask and things of
22 that nature over it; 27 and 28 focus on the wounds
23 themselves, the entry and the exit wounds, the
24 contact nature of the wounds shown in 28 in
25 corroboration of the fact a fight did occur; 27

1 showing the exit wound to show the path of the
2 trajectory of the weapon that -- I mean, of the
3 bullet, allowing the jury to better understand the
4 nature of the fight and what was going on at that
5 time in corroboration with testimony that's been
6 offered in that regard.

7 Among many cases, the most recent that I have,
8 State vs. Henry Gray, it's found at 408 SC 601, a
9 June of 2014 Court of Appeals case, which dealt,
10 quite frankly, with -- it was not a death penalty
11 case, which dealt with autopsy photos, photos before
12 the autopsy, autopsy photographs taken during the
13 course which showed an exposed skull and a brain.

14 In that particular case, there had been a
15 fight -- at least two fights before the actual
16 killing occurred. The Court in that particular
17 case, even with the brain, said that that -- those
18 photographs were necessary in order to let the jury
19 understand the nature of the injuries received. We
20 don't have anything like that. We have here about
21 as benign as you can get.

22 I was concerned, obviously, when I saw the
23 open -- the stapling of the chest and that had been
24 done in the autopsy. The fact that can be explained
25 as that was part of the treatment trying to save his

1 life, obviously, is less prejudicial than something
2 that was just done purely for diagnostic purposes.

3 The balancing of the prejudicial impact versus
4 the probative value of these things, I think, is met
5 when you consider how they do corroborate testimony
6 that has been offered concerning the fight itself,
7 things of that nature. They are almost as sterile
8 as any pictures can be, for reasons that I've
9 already mentioned, depicting the wounds themselves
10 and not the full fascial context of the victim in
11 this case.

12 Exhibits 27 and 28 in evidence over objection
13 of defense counsel.

14 (State's Exhibit Nos. 27 and 28 admitted into
15 evidence.)

16 MS. MARTIN: Thank you, Your Honor.

17 THE COURT: Thank you.

18 MS. MARTIN: Your Honor, I'm going to put 26 in
19 our box facedown where the other exhibits will be so
20 there's no confusion.

21 THE COURT: All right. I would like for that
22 to be marked for identification only and preserved
23 for appellate review so the higher court, if
24 necessary, can make an analysis of what was in and
25 what was out.

1 MS. MARTIN: Yes, sir.

2 THE COURT: All right. Is the State ready?

3 MS. MARTIN: The State is ready, Your Honor.

4 THE COURT: Is the Defense ready?

5 MS. FULLWOOD: Yes, sir.

6 THE COURT: Is Dr. Ross already in the
7 courtroom?

8 MS. MARTIN: Yes, sir.

9 THE COURT: Dr. Ross, how are you?

10 (The jury enters the courtroom at 2:46 PM.)

11 THE COURT: Good afternoon, ladies and
12 gentlemen, and thank you for your prompt time. We
13 were here at 2:30 too. The next witness being
14 called will be the pathologist, Dr. Ross.

15 It was necessary for me to deal, in advance of
16 her testimony, with some matters of law regarding
17 some evidence that may come in during the course of
18 her testimony. We took care of that outside of your
19 presence rather than have to send you back out or
20 have a sidebar conference that deal with those
21 matters so that her testimony would not be,
22 otherwise, interrupted during its presentation.
23 We're now ready to proceed though as the State
24 continues to offer evidence and testimony.

25 Ms. Martin?

1 MS. MARTIN: Thank you, Your Honor. We'd call
2 Dr. Janice Ross.

3 THE COURT: Dr. Ross, please come forward and
4 be sworn.

5 JANICE ROSS

6 being first duly sworn, testified as follows:

7 THE WITNESS: I do.

8 THE CLERK: Have a seat, Doctor. Once you're
9 seated, Doctor, spell your full name spelling your
10 last, please.

11 THE WITNESS: Janice Edwards Ross, R-O-S-S.

12 DIRECT EXAMINATION

13 BY MS. MARTIN:

14 Q. Dr. Ross, where are you employed?

15 A. Newberry Pathology Associates in Newberry,
16 South Carolina.

17 Q. And can you tell use about your educational
18 background.

19 A. Yes. I have a Bachelor's degree from the
20 University of South Carolina and my M.D. Doctorate
21 of Medicine from Upstate Medical Center in Syracuse,
22 New York where I did training in pathology.

23 Pathology is a discipline in medicine as opposed to
24 surgery or pediatrics where we learn how to diagnose
25 diseases by looking at tissue under the microscope

1 and by using the laboratory in the hospital. We
2 also learn to do an autopsy to find a cause of
3 death.

4 I did further training in forensic pathology
5 through medical examiners offices where we learned
6 to identify patterns of injury, document such
7 injuries, and take samples for toxicology, and
8 document evidence for the court of law.

9 MS. FULLWOOD: Your Honor, we would stipulate
10 to Dr. Ross' expertise in the field of forensic
11 pathology.

12 THE COURT: Thank you.

13 Do you accept that stipulation?

14 MS. MARTIN: Yes, Your Honor, we do.

15 THE COURT: Thank you. Dr. Ross is so
16 qualified.

17 MS. MARTIN: Thank you.

18 BY MS. MARTIN:

19 Q. Dr. Ross, as part of your duties, were you
20 called to work a case involving a patient named
21 Hector Vasquez?

22 A. Yes.

23 Q. Okay. And when did you meet Mr. Vasquez?

24 A. On August 10th, 2015.

25 Q. And your office is in Newberry; is that right?

1 A. Yes. And we do the autopsies in the morgue at
2 Newberry County Memorial Hospital.

3 Q. And did you, in fact, conduct an autopsy on
4 him?

5 A. Yes.

6 Q. And did you, in fact, prepare a report of your
7 findings?

8 A. Yes.

9 (State's Exhibit No. 25 marked for
10 identification.)

11 MS. MARTIN: Your Honor, may I approach the
12 witness?

13 THE COURT: Yes, ma'am.

14 BY MS. MARTIN:

15 Q. If I can show you what's been marked as State's
16 Exhibit 25.

17 A. Yes. This is my report from the autopsy.

18 Q. And does it document how you processed the body
19 and what your findings were?

20 A. Yes.

21 MS. MARTIN: Your Honor, I'd move that into
22 evidence.

23 THE COURT: Any objection?

24 MS. FULLWOOD: I do object, Your Honor. It
25 would only be cumulative to Dr. Ross' testimony.

1 We've stipulated that she's an expert. And the only
2 reason is it would be a bolstering type of process
3 device, et cetera. I would think there's no need
4 for that to be in evidence.

5 THE COURT: Respectfully overruled. I take it
6 the report, as well as her testimony, is going to
7 contain some rather detailed, perhaps technical,
8 information and some technical language and
9 knowledge that it might be difficult for this jury
10 to recall when it goes back into the jury room
11 whenever this trial is over. The report would
12 certainly be helpful for them in recalling that
13 information in such a way that they could --

14 MS. FULLWOOD: Your Honor, may we have a
15 sidebar?

16 THE COURT: Okay.

17 (Sidebar conference.)

18 (State's Exhibit No. 25 admitted into
19 evidence.)

20 BY MS. MARTIN:

21 Q. Dr. Ross, surely you've reviewed your report
22 prior to today?

23 A. Yes.

24 Q. And before you tell us what your final
25 diagnosis was, can you tell us how you first -- how

1 you came to the final diagnosis?

2 A. When we do an autopsy, the patient is brought
3 to us in the morgue at Newberry County Memorial
4 Hospital. We photograph the external body, and
5 then -- before we proceed with the internal
6 procedure and dissection. So when we had the
7 external -- we saw the external body. There was no
8 clothing other than -- but there was some medical
9 equipment.

10 And we could see that there was an entrance
11 gunshot wound in the right side. And there had been
12 surgery on this patient with a surgical incision
13 that was closed with sutures at the time of autopsy,
14 but it went from the chest all the way down to the
15 bottom of the abdomen.

16 Q. And, Dr. Ross, let me stop you right there. If
17 I can show you what's been marked as State's 27, do
18 you recognize this photograph?

19 A. Yes.

20 MS. MARTIN: Your Honor, I believe State's 27
21 is in evidence.

22 THE COURT: It is. Over objection of defense
23 counsel, it is in evidence. Thank you.

24 BY MS. MARTIN:

25 Q. Dr. Ross, if I publish this photograph to the

1 jurors, could you take a look at it and explain --
2 use it, maybe, to explain what you just told us?

3 A. Yes.

4 Q. Is that the condition of the body as you
5 received it in Newberry?

6 A. Yes. The -- this is the right side of the
7 body, the right arm. This is the entrance wound.
8 And this is the surgery -- the surgical wound that
9 goes from the top of the chest down to the bottom of
10 the abdomen.

11 And the surgeon went through the exit wound,
12 which was, I believe, right about there. Because
13 this was a gunshot wound, we did x-rays also to see
14 if there was any bullet or bullet fragments left in
15 the body, which we did not see.

16 Q. No bullet fragments; correct?

17 A. Correct.

18 Q. If I can show you what's been marked as State's
19 Exhibit 28 already in evidence. Can you identify
20 that photograph?

21 A. Yes. That's a close-up view of the entrance
22 wound of Hector Vasquez.

23 MS. MARTIN: Move to publish, Your Honor?

24 THE COURT: Also in evidence over objection of
25 defense counsel. Thank you.

1 BY MS. MARTIN:

2 Q. What can you tell us is documented in this
3 photograph?

4 A. The -- this is the entrance wound itself where
5 the bullet went in the skin, and surrounding it is
6 some abrasion. When a bullet goes into the skin, it
7 pushes the skin and it rubs against the skin,
8 calling -- what we call an abrasion.

9 There's also a partial imprint around here that
10 would -- is consistent with the end of the gun, the
11 muzzle itself. It's called a muzzle imprint.

12 (Indicating)

13 Q. And does that show what looks like soot? Would
14 that be a fair characterization?

15 A. Yes. A lot of this darkened area is soot.

16 Q. And what if anything would that tell you as to
17 how close the muzzle was to the body?

18 A. We're talking about range of the bullet. When a
19 bullet comes out of the end of a gun, so does powder
20 and soot. But the powder and soot only goes a
21 certain distance, whereas the bullet goes a lot
22 further.

23 If there's -- close range or near contact or
24 contact wound is where -- what this is, where we'd
25 have a little bit of soot and we have a muzzle

1 imprint. If it's an intermediate range wound such
2 that the gun is maybe two feet away, you might have
3 some powder imprints and some soot. But if it's
4 further than a couple feet, then it's a distant
5 range wound.

6 Q. And how is this wound characterized?

7 A. As contact or near contact.

8 Q. Can you tell us what injuries you observed
9 internally to Mr. Vasquez?

10 A. Yes. The bullet went into the right chest;
11 didn't go through the lung, went just below the
12 lung, went through the diaphragm, which is a muscle,
13 thin muscle, that divides the chest cavity from the
14 abdomen, and then it went right straight across the
15 liver causing a large gaping wound in the liver
16 before it exited the upper stomach area.

17 Q. And in your report I see a mention of
18 hypovolemic shock. What is that?

19 A. Yes. That just means when you -- hypovolemia,
20 just decreased volume of blood. This patient lost a
21 lot of blood. When you have a laceration of the
22 liver like that, you're opening up, basically, lakes
23 of blood and small vessels that so there's a lot of
24 bleeding out. It doesn't bleed out of the -- it
25 bleeds out of the liver and into the abdomen. And

1 that's why the surgeons went in to try to close that
2 off, but there was just too much damage.

3 Q. And based on what you saw of Hector's injuries,
4 were you surprised that he died?

5 A. No, I was not.

6 Q. And after conducting your autopsy and
7 documenting what you found, were you able to tell us
8 what the probable cause and mechanism of death was
9 for Hector?

10 A. Yes. It's the hypovolemic shock due to the
11 laceration of the liver and due to the gunshot to
12 the chest.

13 Q. And did you determine a manner of death?

14 A. Yes.

15 MS. FULLWOOD: Objection, Your Honor. It goes
16 to the ultimate issue and basic province of the
17 jury.

18 THE COURT: All right. Thank you.
19 Respectfully overruled. I'll allow the testimony.
20 Thank you.

21 BY MS. MARTIN:

22 Q. You may answer the question: Were you able to
23 determine a manner of death?

24 A. Yes; homicide.

25 Q. Okay.

1 MS. MARTIN: Beg the Court's indulgence one
2 moment.

3 Please answer any questions the Defense may
4 have. Thank you.

5 THE COURT: Ms. Fullwood, you may
6 cross-examine.

7 CROSS-EXAMINATION

8 BY MS. FULLWOOD:

9 Q. Dr. Ross --

10 A. Yes.

11 Q. -- when you use the term homicide, is what
12 you're saying that what caused the death was the
13 actions of another person that killed them?

14 A. Victim, yes.

15 Q. Yes. Somebody else caused their death?

16 A. Correct.

17 Q. Thank you.

18 THE COURT: Redirect?

19 MS. MARTIN: No, Your Honor. May Dr. Ross be
20 excused?

21 THE COURT: Thank you. Certainly.

22 Dr. Ross, you're excused. Thank you for
23 coming.

24 MS. MARTIN: Your Honor, the State would call
25 Barry Sowards.

1 THE COURT: Mr. Sowards, come forward, please,
2 to be sworn.

3 BARRY SOWARDS

4 being first duly sworn, testified as follows:

5 THE WITNESS: I do.

6 THE CLERK: Have a seat, sir. Once you're
7 seated, state your full name spelling your last,
8 please.

9 THE WITNESS: My name is Barry Sowards,
10 S-O-W-A-R-D-S.

11 DIRECT EXAMINATION

12 BY MS. MARTIN:

13 Q. Detective Sowards, where are you employed?

14 A. At the Lexington County Sheriff's Office.

15 Q. And how long have you been employed there?

16 A. Approximately 19 years.

17 Q. And is that your entire career in law
18 enforcement?

19 A. It is not. It's 19 in total. It's four years
20 with the City of Columbia patrol unit and then the
21 rest with Lexington County.

22 Q. And what is your rank at the sheriff's
23 department?

24 A. Sergeant.

25 Q. Do you have experience working on the road, I

1 think you said?

2 A. Correct.

3 Q. Do you have experience working major crimes?

4 A. I do.

5 Q. And what other areas are you familiar with as
6 far as different divisions at the sheriff's
7 department?

8 A. I've worked the fugitive unit which I'm now in
9 charge of.

10 Q. And what is the fugitive unit?

11 A. The fugitive unit is the apprehension of people
12 who have warrants on them. We locate and apprehend
13 those individuals and take them to jail.

14 Q. Is it common for you to be called to work in on
15 a homicide?

16 A. It is. Many times I'll visit the major crimes
17 unit to see if they need assistance on their cases.

18 Q. And how did you get involved in this event from
19 August 9th of 2015?

20 A. That was a Monday morning. I showed up to work
21 right around 8:00, as I usually do, and went to the
22 major crimes suite at the Lexington County Sheriff's
23 Department. And they were short on some manpower,
24 and I assisted -- volunteered to assist on the
25 investigation.

1 Q. And who was the detective that actually ended
2 up running with the case?

3 A. Detective Moore.

4 Q. Right here?

5 A. Yes, seated right behind you.

6 Q. So what was one of the first duties you did
7 once you started to help Detective Moore?

8 A. There were a number of things that I was used
9 for; basically, to start running some leads down and
10 possible leads. One of the things that I did was
11 assist with our CAT team, which the CAT team is the
12 Community Action Team. They're the people that
13 are -- go into the neighborhoods and establish
14 contact with local communities.

15 Due that this was a Hispanic area, I got one of
16 the detectives off of the Community Action Team and
17 we developed a flyer in Spanish and started
18 distributing it throughout the area.

19 Q. And at the beginning of the case, were there
20 any known suspects?

21 A. No.

22 Q. And at some point were suspects developed?

23 A. Yes.

24 Q. And how did this come about, if you know?

25 A. I do. It was approximately Wednesday morning

1 around 2:29 a.m. I was informed -- I'm one of the
2 recipients of Crimestoppers, and it's a tip line
3 that comes in via email to my email. And it gave a
4 tip in reference to the crime that we're here for --

5 MS. FULLWOOD: Your Honor --

6 MR. CHEHOSKI: Your Honor, objection. This is
7 hearsay.

8 THE COURT: All right. The existence of the
9 tip is not hearsay; the content of it may very well
10 be.

11 MS. MARTIN: Your Honor, do we need a sidebar
12 at this moment?

13 THE COURT: I'll be glad to.

14 MS. MARTIN: Thank you, Your Honor.

15 THE COURT: I'm the only one here who doesn't
16 know what he's going to say next, so maybe I ought
17 to hear you.

18 (Sidebar conference.)

19 BY MS. MARTIN:

20 Q. As a result of any Crimestoppers tip, where did
21 your investigation lead you?

22 A. Based upon the tip, the investigation -- I
23 began to investigate particular information in the
24 tip that all led me to different law enforcement
25 programs and things like that, led me to Woodbine

1 Apartments in West Columbia.

2 Q. Okay. Well, let's back up a bit. Based on
3 your investigation, were you particularizing all of
4 your Intel on one people, two people, three people?

5 A. Two individuals in reference to this -- you
6 know, my investigation, based upon the tip.

7 Q. And did anyone at the sheriff's department
8 search social media for these people?

9 A. Yes. When I received the tip, I asked
10 Detective Travis, who is in our crime intelligence
11 unit, to begin to use social media to try to locate
12 individuals based upon the tip.

13 Q. And based upon the tip as well, before you
14 ended up in West Columbia, did you go anywhere else?

15 A. I did. At one point we were in Newberry.

16 Q. And when you say we, who went to Newberry?

17 A. It was Detective Moore and I and sergeant --
18 now Sergeant Miles Rawl.

19 Q. And in Newberry, who were you searching for?
20 What address and --

21 A. We responded to an address in Newberry in
22 reference to Wilfred Akiem Pitts. The address in
23 Newberry County -- I don't have it directly in front
24 of me.

25 Q. Was it an address associated with Mr. Pitts and

1 his family?

2 A. It is. It was -- we were going to
3 Ms. Catherine Pitts', Wilfred Akiem Pitts' mother's
4 house in Newberry County.

5 Q. And did you make contact with her?

6 A. We did.

7 Q. And did you advise her that you were looking
8 for her son?

9 A. I did.

10 Q. And did you leave your contact information?

11 A. Detective Moore and I both left our contact
12 information with our cell phones so she could get a
13 hold of us.

14 Q. Based on other Intel you received, you said you
15 ended up in West Columbia. Is that here in
16 Lexington County?

17 A. It is. It's Woodbine Apartments.

18 Q. And what information or what -- who were you
19 looking for at the Woodbine Apartments?

20 A. At that time I was looking for Mr. Ricky Esaw
21 at Unit 1 -- I'm sorry, Unit 49.

22 Q. And did you find Ricky Esaw on that day there?

23 A. I did not.

24 Q. Did you speak to any of his family that day?

25 A. I spoke with Ricky's brother Chris Esaw.

1 Q. Right there, that man? (Indicating)

2 A. Yes, yes.

3 Q. Mr. -- that Mr. Esaw goes by a nickname?

4 A. He goes by Bam.

5 Q. And did you speak with the defendant's mother,
6 Patricia?

7 A. I did at the doorway of the residence and
8 inside the residence.

9 Q. Did you make any headway in finding Ricky Esaw
10 based on the conversations you had with Ricky's
11 family there at Woodbine?

12 A. Based upon the information and the
13 conversations that I had at that moment, I was able
14 to determine that Ricky Esaw lived with his
15 girlfriend and he -- it was described her name was
16 Net at the time and that -- and the type of vehicle
17 that he drove.

18 Q. Okay. And were you -- after you left West
19 Columbia, those apartments there, did you have any
20 other Intel that led you to some place or a work
21 history of Ricky Esaw?

22 A. Actually, what I did was I started to research
23 the history of Mr. Ricky Esaw, see if there was any
24 to history to find his location. And I was able to
25 determine that he was working at one point at

1 Palmetto Point Apartments which is located in
2 Lexington County off Lake Murray Boulevard. It's
3 now, I believe, called The Legends.

4 I knew an individual that worked up there on
5 the maintenance team and I called him up on the
6 phone and asked him if he knew Ricky Esaw and he
7 said he did.

8 Q. And based on that information, what did you do
9 next?

10 A. That -- based upon that information, it led us
11 to another apartment where Ricky was said to be
12 living with it the female known as Net. We came in
13 contact at the apartments off of Crossbow, I believe
14 it is, which is right off of Columbiana Drive, and
15 got in contact with the management team there.

16 The management team was able to provide me
17 with -- said that, yes, Net and Ricky did live
18 there, but they moved out two months prior. And she
19 was able to provide me with Net's real name which
20 was Luenetta Grayson.

21 I then took that information, ran it through
22 one of my databases, and was able to determine her
23 new address, which was on 100 Fair Forest Drive
24 which is basically right in behind the Home Depot
25 just off Harbison Boulevard.

1 Q. And is that in Richland County or Lexington
2 County?

3 A. It's just in Richland County.

4 Q. And when you had Luenetta Grayson's full name,
5 did you search to see if she had any vehicles?

6 A. I did.

7 Q. And, based on that search of DMV records, what
8 did you learn?

9 A. I learned that Ms. Grayson actually had a
10 vehicle -- it was her mother's vehicle registered to
11 her mother out of Ridgeway, and that that vehicle
12 was a 2000 -- I believe a 2006 Toyota Corolla dark
13 in color, and that it was actually registered to the
14 mother. And through -- the investigation revealed
15 that Ms. Luenetta Grayson or Net was actually the
16 driver or keeper of the vehicle.

17 MS. MARTIN: (Tenders documents to
18 Mr. Chehoski.)

19 MR. CHEHOSKI: Without objection, Your Honor.

20 THE COURT: Thank you.

21 BY MS. MARTIN:

22 Q. If I can show you what's marked State's 29,
23 what does this show?

24 A. This is a picture of the back of Net's car, or
25 Luenetta Grayson, bearing her South Carolina tag

1 registered to that vehicle.

2 Q. If I can show you what's been mark State's 14,
3 what does this show?

4 A. This is Ms. Luenetta Grayson or Net's vehicle
5 after an impound sitting in the back lot of the
6 sheriff's department impound.

7 Q. And do you know if that car is still there?

8 A. It is.

9 THE COURT: 29 and 14 are in evidence without
10 objection.

11 (States' Exhibit Nos. 14 and 29 admitted into
12 evidence.)

13 (State's Exhibit No. 30 marked for
14 identification.)

15 BY MS. MARTIN:

16 Q. If I can show you what's been marked State's
17 30, do you recognize this photograph?

18 A. Yes, I do.

19 Q. What does it depict?

20 A. It's a depiction of the left rear quarter
21 panel, gas tank area, and wheel of Ms. Grayson's
22 vehicle that she drives, the Toyota Corolla.

23 MS. MARTIN: Your Honor, I'd move State's 30
24 into evidence.

25 MR. CHEHOSKI: Your Honor, I don't see the

1 relevance.

2 MS. MARTIN: It will become relevant, Your
3 Honor, with the next witness.

4 THE COURT: All right. I assume this is not
5 the last question that's going to be asked about
6 this.

7 MS. MARTIN: Correct.

8 THE COURT: All right.

9 MS. MARTIN: It is for this witness. But...

10 THE COURT: All right. I'll allow it in,
11 subject to being tied in with more relevance in the
12 future. Thank you.

13 (State's Exhibit No. 30 admitted into
14 evidence.)

15 BY MS. MARTIN:

16 Q. So once you ended up in Richland County, what
17 did you do?

18 A. When I was in Richland County, I was with
19 Detective Moore and Detective Andaloro. We had
20 responded to that address that I had indicated,
21 which was 100 Fair Forest Drive, and set up in the
22 area. I identified -- because I was an undercover
23 plain-clothes officer at the time. I walked into
24 the parking lot to identify what we believed was the
25 vehicle that I just identified in the pictures and I

1 took a picture of the tag and ran the tag and it
2 came back to Ms. Grayson, Net's mother.

3 At that point we realized what was going on,
4 that this was the exact place where Ricky lived with
5 Net, and I pulled offsite, made a few phone calls to
6 my Richland County counterparts --

7 Q. And did some Richland County officers meet with
8 you there?

9 A. Yes. They met with me alone offsite at the
10 Lowe's parking lot while Detective Andaloro and
11 Moore kept constant watch on the parking lot and the
12 apartment.

13 Q. And that same evening -- this is Wednesday
14 August 12th; is that correct?

15 A. That is correct.

16 Q. About what time of day was this?

17 A. It was in the evening when we first began,
18 probably around 7:00, 7:30 in the evening.

19 Q. And did you have occasion there in Richland
20 County to actually meet the defendant, Ricky Esaw?

21 A. I did.

22 Q. And was he, when you met him, inside or outside
23 of the apartment?

24 A. He was just standing inside the apartment,
25 right in the entryway of the apartment. I would

1 call it the foyer.

2 Q. And do you recall who, if anyone, was with
3 Ricky Esaw?

4 A. Ms. Grayson, Luenetta Grayson or Net, had
5 passed by me just outside the apartment in the
6 breezeway, a young lady by the name of -- everybody
7 called her Trell but it was Danitra Johnson, and
8 Mr. Wilfred Akiem Pitts.

9 Q. And when you met these four people, were
10 Mr. Pitts and Mr. Esaw separated or were they kept
11 together?

12 A. No, they were separated.

13 Q. And was Mr. Pitts arrested there at that time?

14 A. No, ma'am.

15 Q. And are you aware where Mr. Pitts was -- I
16 assume you were at the scene quite a while; is that
17 fair to say?

18 A. Yes.

19 Q. And do you know what was going on with
20 Mr. Pitts?

21 A. Mr. Pitts was brought over by Detective
22 Andaloro and myself. And at one point, you know,
23 Mr. Pitts was advised he was not under arrest, he
24 didn't have any handcuffs at that point. And I
25 asked him to do, if he would volunteer, a buccal

1 swab.

2 Q. And what was -- why were you interested in
3 getting a buccal swab from Mr. Pitts?

4 A. We wanted to obtain known DNA evidence with
5 evidence on the scene of the crime.

6 Q. And why was that important?

7 A. To have a comparison match between the two.

8 Q. And what items in evidence were you looking to
9 link to a suspect?

10 A. Specifically, we were very interested in the
11 bracelet found at the scene.

12 Q. And in your presence, did Mr. Pitts consent or
13 did he not consent to a buccal swab?

14 A. He volunteered a consent and did sign a consent
15 form.

16 Q. Okay. And at some point did you leave --

17 MS. MARTIN: I beg the Court's indulgence one
18 moment.

19 THE COURT: All right.

20 (State's Exhibit Nos. 31 and 32 marked for
21 identification.)

22 BY MS. MARTIN:

23 Q. If I can show you State's 31, do you recognize
24 this?

25 A. Yes, I do.

1 Q. And what does this show?

2 A. This is a picture of Ricky Esaw outside the
3 apartment with his eyes closed.

4 Q. And were you present when that photograph was
5 taken?

6 A. I was.

7 Q. And do you -- once again, what was the date
8 that photograph was taken?

9 A. This was actually the Wednesday night which
10 would have been the 12th of August of 2015.

11 MS. MARTIN: Your Honor, I'd move State's 31
12 into evidence.

13 MR. CHEHOSKI: Without objection.

14 THE COURT: Without objection, 31 in evidence.

15 (State's Exhibit No. 31 admitted into
16 evidence.)

17 BY MS. MARTIN:

18 Q. Is there anything unusual in that photograph
19 that you noted?

20 A. I did. In this photograph, there above his
21 left eye, which I would actually be pointing just to
22 give you a visual, right here, would indicate some
23 discoloration and swelling.

24 Q. And this would have been how many days after
25 the murder?

1 A. This would have been four days -- four days
2 after the murder.

3 Q. If I can show you State's 32, do you recognize
4 that photograph?

5 A. I do.

6 Q. And what does it depict?

7 A. This is Mr. Wilfred Akiem Pitts sitting on the
8 steps when I actually first encountered him, just
9 minutes after I first encountered him.

10 MS. MARTIN: Your Honor, I'd move that into
11 evidence as well.

12 MR. CHEHOSKI: Without objection.

13 THE COURT: Without objection, 32 in evidence.

14 (State's Exhibit No. 32 admitted into
15 evidence.)

16 BY MS. MARTIN:

17 Q. And it does show he's in handcuffs. Can you
18 explain that to us? If you said he was not under
19 arrest --

20 A. Absolutely. Whenever entry is made onto any
21 house, given the nature of what we do and the
22 violent propensity of folks in dealing with what we
23 do, everyone, or most everyone, at that point is
24 usually put in handcuffs until the scene is secure,
25 at which point they're taken out of handcuffs.

1 Q. Are you aware of Mr. Pitts meeting with
2 Detective Andaloro and Detective Moore at the
3 sheriff's department that same evening?

4 A. Yes, I am.

5 Q. Based on the conversation that Mr. Pitts and
6 those detectives were having, what did that lead you
7 to do?

8 A. It led me to respond to Mr. Pitts --
9 Mr. Wilfred Pitts' brother's house in Woodbine
10 Apartments as well to question his alibi.

11 Q. And what time of night would this have been?

12 A. It was right around midnight.

13 Q. And so you went back to Woodbine Apartments?

14 A. I did.

15 Q. And after speaking with Mr. Pitts' brother,
16 what did you do?

17 A. After speaking with Mr. Pitts' brother and his
18 wife, I called Detective Andaloro and Detective
19 Moore on the phone and advised him that his alibi
20 was -- was a lie.

21 Q. And then where did you go?

22 A. I responded back to the headquarters building
23 where Mr. Pitts was at and Detective Moore and
24 Detective Andaloro.

25 Q. At some point did -- well, let me ask you this:

1 Are you of equal rank to Detective Moore?

2 A. No. I'm Detective Moore's boss. But at the
3 time I was not Detective Moore's boss.

4 Q. Together was any decision made as far as if
5 Mr. Pitts was going to go home that night?

6 A. Yes.

7 Q. And what decision was made?

8 A. After the interviewing process, Detective Moore
9 and I got together as a team and we had decided to
10 make charges on Mr. Pitts for obstruction of
11 justice.

12 Q. And why were those charges made?

13 A. Well, those charges were made actually for two
14 reasons: One, because he lied about the
15 investigation itself, which was the reason why the
16 charges developed, and Mr. Pitts, throughout the
17 interview process, kept demonstrating behavior that
18 he was afraid. And it was of my opinion that if he
19 walked back out on the streets --

20 MR. CHEHOSKI: Objection, Your Honor;
21 speculation.

22 THE COURT: He testified that he thought he was
23 afraid. Apparently the next thing is he thought he
24 was a flight risk. Right?

25 MR. CHEHOSKI: Your Honor, he's giving

1 opinions. Again, he's speculating here.

2 THE COURT: Well, he's been asked to give his
3 reason for arresting him. He can give his reason,
4 of course; can he not?

5 MR. CHEHOSKI: Well, Your Honor, I mean, you
6 can't arrest somebody just because they're afraid.

7 THE COURT: No, no, can. He talks about that
8 he lied about the investigation, which is
9 obstruction of justice.

10 MR. CHEHOSKI: But that was just one. But the
11 second incident is outside -- is outside, really,
12 this corporal's authority as well.

13 THE COURT: I think he's got a right. If he
14 knows -- if he has reason to believe -- probable
15 cause to believe somebody has broken the law and if
16 he has reason to believe that he might flee, he
17 doesn't have to sit around and twiddle his thumbs
18 while the guy runs, he can do something about it,
19 subject to the process, of course. He's got to take
20 him and have a bond hearing and all that other
21 stuff.

22 MR. CHEHOSKI: Your Honor, maybe I misspoke.
23 What I was saying, he's testifying that he's
24 arresting Mr. Pitts because Mr. Pitts is afraid.

25 THE COURT: Well, you're right. Being afraid

1 in and of itself, of course, is not grounds for
2 arrest. That's right.

3 MR. CHEHOSKI: And again, Your Honor, that's
4 the basis of my objection.

5 THE COURT: All right. Well, insofar as the
6 officer gives that -- if he does, and I don't think
7 that he does -- as the only reason for locking him
8 up, then you're right, he can't do that.

9 But he testified earlier that he was going to
10 arrest him -- that he was going to place him under
11 arrest and -- and if he wanted to gill the lily, I
12 suppose he might have gone farther than he needed to
13 go. He really didn't need to do anything other than
14 say that he was going to arrest him for obstruction
15 of justice and leave it at that.

16 MR. CHEHOSKI: That's where -- that's -- it's
17 after that is the beginning of my objection.

18 THE COURT: Well, that's a good place to leave
19 it.

20 MS. MARTIN: We'll move on, Your Honor.

21 THE COURT: Thank you.

22 BY MS. MARTIN:

23 Q. Detective Sowards, during the course of this
24 investigation and you being at the sheriff's
25 department with Detective Moore, Detective Andaloro

1 and now, I guess, defendant Pitts, are you aware of
2 any change in what Mr. Pitts was saying happened at
3 Rolling Meadows? Don't tell us what he said, but
4 are you aware of any change in how he was telling
5 the story?

6 A. Yes.

7 Q. And at some point did he indicate that he was
8 involved in the murder?

9 A. He did.

10 Q. And this was done in your presence?

11 A. It was.

12 Q. And are you aware if he --

13 MR. CHEHOSKI: Your Honor, objection on
14 leading.

15 THE COURT: It probably is going to be. I
16 hadn't heard the question yet, but it does sound
17 like it probably is going to lead.

18 Can you rephrase that?

19 MS. MARTIN: Sure.

20 THE COURT: Thank you.

21 BY MS. MARTIN:

22 Q. Based on Mr. Pitts' change in statement, was a
23 decision -- or what kind of decision was made for
24 further followup with Mr. Pitts?

25 A. Mr. Pitts indicated to me and Detective Moore

1 and Andaloro that he had lied in his statement. He
2 did indicate to us that he wanted to tell us
3 everything, but he wanted to talk to his mother
4 first.

5 MR. CHEHOSKI: Objection, hearsay.

6 THE COURT: I'm sorry?

7 MR. CHEHOSKI: Objection to hearsay, Your
8 Honor.

9 THE COURT: He wanted to tell us everything and
10 that he wanted to talk to his mother first. Of
11 course that's not offered for the proof of the
12 matter --

13 MS. MARTIN: Right.

14 THE COURT: -- asserted, that's simply offered
15 to show why they were doing what they were doing.
16 So it doesn't meet the hearsay rule, I'll allow it
17 in. Thank you.

18 BY MS. MARTIN:

19 Q. And when he requested to speak with his mom,
20 what did law enforcement do?

21 A. Law enforcement -- Detective Moore, actually,
22 responded -- was one of the detectives to respond
23 the next morning and get Mr. Wilfred Pitts' mother
24 and have her attend the interview.

25 Q. And is that something that's routinely done?

1 A. No.

2 Q. And were you part of the decision that was made
3 to do this, to go get the mom?

4 A. Yes, I was.

5 Q. Can you explain to us why y'all decided to go
6 get Ms. Pitts?

7 A. We felt it was probably the right thing to do
8 to get Mrs. Pitts involved into the conversation
9 because Wilfred Pitts felt comfortable around his
10 mother and we wanted to afford him that opportunity
11 to be comfortable and tell us the truth.

12 Q. You said before that you know where Ricky
13 Esaw's mom's home was -- apartment. Is that right?

14 A. Yes.

15 Q. And are you familiar with where the murder site
16 at Rolling Meadows was located?

17 A. Yes, I am.

18 Q. Do you have any idea the distance between those
19 two locations and the length of time it would take
20 to drive back and forth between the two?

21 A. Timewise, you're probably looking at somewhere
22 around 25 minutes from point A to point B.

23 Q. Okay. Did you have an occasion to meet
24 Franklin Vasquez and Christy Vasquez?

25 A. I did.

1 Q. And do you recall when you met them with
2 Detective Moore and Detective Creech?

3 A. I do. Detective Moore and Creech and I
4 responded to them, and that was on a Thursday, which
5 was the 13th of August. We responded up to
6 Newberry, I believe it was to an uncle's house.

7 Q. And what was the purpose of going there that
8 day?

9 A. It was to show a photo lineup that was
10 developed and ready to present.

11 Q. If I can show you what's been marked as State's
12 9.

13 A. Yes.

14 Q. Do you recall what that shows?

15 A. I see Ricky Esaw on this page here, number 3.

16 Q. And who was that lineup shown to?

17 A. Christy Herrera.

18 Q. And was she able to identify anyone?

19 A. No.

20 Q. And what was her demeanor that day?

21 A. Christy was -- it was the first and only time I
22 met Christy, and she seemed -- she was crying and
23 she was very upset. She was trying to gather her
24 emotions.

25 Q. If I can show you what's been marked as State's

1 4, can you identify that document?

2 A. I can.

3 Q. What does it show?

4 A. This also shows Ricky Esaw on the paper with
5 five other individuals.

6 Q. And are you aware who that was shown to?

7 A. Yes. It was shown to the son, Franklin.

8 Q. And was Franklin able to identify anyone in
9 that lineup?

10 A. He was. He identified Ricky Esaw on number 2.
11 And did it without hesitation, he went straight to
12 number 2.

13 Q. Okay.

14 MS. MARTIN: Your Honor, may I pass this lineup
15 around? I believe it's already in evidence.

16 THE COURT: Yes, ma'am. They're in evidence.

17 BY MS. MARTIN:

18 Q. If I can show you State's 5, can you recognize
19 that document?

20 A. This is Mr. Wilfred Akiem Pitts shown on number
21 3 with five other individuals, male individuals.

22 Q. And who was that lineup shown to?

23 A. Franklin Vasquez.

24 Q. And was he able to identify anyone?

25 A. No, ma'am, he wasn't.

1 Q. And did he sign that document?

2 A. He did.

3 Q. And what number did you say was Mr. Pitts?

4 A. Mr. Pitts is number 3 in that lineup.

5 Q. Were you present for the whole lineup process?

6 A. I was not.

7 Q. Okay. When you got there, had the lineup
8 process already started or where were you, if you
9 remember?

10 A. I came in on the tail end of the photo lineups.
11 Basically, the one you just shown me where Mr. Esaw
12 was indicated as number 2, that's the one I was
13 actually present for.

14 Q. Okay. After -- who actually served arrest
15 warrants on Ricky Esaw in regards to this case?

16 A. It was me.

17 Q. And what date were these warrants served on
18 Ricky Esaw?

19 A. I served the warrants on him Friday, the 14th
20 of August, 2015.

21 Q. And where did you serve these warrants on him?

22 A. At the Lexington County Detention Center.

23 Q. And when you say serve warrants, can you
24 explain to us what that really means?

25 A. Sure. With I serve a warrant to someone, I

1 make sure that the identifiers on the warrant are
2 correct, meaning name, date of birth, the physical
3 identifiers are correct, and then I'll read the
4 charge in this case, and then I'll read the body of
5 the warrant, basically the narrative of the warrant,
6 to the individual that I'm charging. And then I'll
7 sign the bottom of the paper of the date that I
8 serve it and I'll write my name on it as well, along
9 with the defendant's name.

10 Q. And were there multiple warrants in this case?

11 A. Yes.

12 Q. There's one for each charge or how does that
13 go?

14 A. Each element of the crime itself.

15 Q. Okay. And who, if anyone, was with you when
16 you served warrants on Mr. Esaw?

17 A. Detective Moore was with me when I served it.

18 Q. And what was Mr. Esaw's demeanor as you served
19 these warrants on him?

20 A. As I explained, in the service of a warrant you
21 read the identifiers, the charge, and then the
22 narrative. I had no sooner got through the charge
23 itself --

24 MR. CHEHOSKI: Your Honor, renew our previous
25 objection.

1 THE COURT: I'll note that. And subject to
2 previous objection, continue his testimony.

3 You can continue.

4 A. So as I got through the charge, Mr. Esaw became
5 really agitated and continued to interrupt me as I
6 attempted to run through the narrative of the
7 warrant, the body of the warrant. And he was very
8 agitated. And as I finished, I stopped him and
9 said, let me finish, let me finish reading the
10 warrant.

11 And as I did that, I finished reading the
12 warrant, he says, that wasn't me, I was just the
13 driver. He said, hell no, you ain't got nothing on
14 me, at best you got me for accessory. And I know
15 this because I wrote it down after he said it.

16 Q. Did he say anything else?

17 A. Right after he said that, he indicated to
18 Detective Moore and I that he wanted to talk to us
19 about it.

20 Q. Is this the only oral statement or am I missing
21 a sentence? I'm not sure.

22 A. You have to forgive me, my eyes aren't what
23 they used to be.

24 Q. That wasn't me, I was just the driver, hell no,
25 you ain't got me on nothing.

1 A. He said -- he said at the end -- he said, at
2 best you got me as accessory.

3 Q. Was this statement in response to any
4 questioning by you of Mr. Esaw?

5 A. No, ma'am. It was just an utterance predicated
6 by my reading the warning to Mr. Esaw.

7 Q. And did he indicate that he did want to be
8 interviewed by y'all?

9 A. Yes, he did.

10 Q. And were you involved in that interview
11 process?

12 A. I was not.

13 Q. And do you know who took over with Detective
14 Moore?

15 A. I believe that was going to be Detective Creech
16 and Detective Moore together.

17 Q. Let's back up a little bit. When did you first
18 meet Luenetta Grayson?

19 A. The first time I met Luenetta Grayson, she --
20 when -- bringing it back to 100 Fair Forest, which
21 is the apartment right behind the Home Depot off
22 Harbison Boulevard, Luenetta Grayson was the first
23 person that came out of the apartment on the
24 breezeway when I was going to make contact with the
25 apartment. Luenetta had pretty much disappeared

1 from there and just kept walking, I guess.

2 Q. And so was she in custody that day?

3 A. No, she was not.

4 Q. Were any charges made against her on that
5 Wednesday, August 12th?

6 A. No.

7 (State's Exhibit No. 33 marked for
8 identification.)

9 Q. If I can show you what's been marked for ID
10 only as State's Exhibit 33, without telling us
11 what's on this CD, are you familiar with that CD?

12 A. Yes, I am.

13 Q. And based on your review of that CD, what did
14 you do -- or let me back up for a moment. Are your
15 initials on that CD?

16 A. Not this particular CD, no.

17 Q. Okay. But you have heard that CD?

18 A. Yes, I have.

19 Q. Based on your review of that CD, what did you
20 do?

21 A. The review of the CD, I got with Detective
22 Moore and we decided to make contact with Luenetta
23 Grayson or Net and bring her in to question her.

24 Q. And did that interview of Ms. Grayson happen?

25 A. It did.

1 Q. Do you know the date?

2 A. It was actually Monday, the 17th of August,
3 2015.

4 Q. Could it have been later?

5 A. We had a second interview, a second meeting,
6 which actually occurred on, I think, September 2nd
7 with Detective Moore.

8 Q. And were you present for that interview?

9 A. I was.

10 MS. MARTIN: Beg the Court's indulgence one
11 moment.

12 Please answer any questions the Defense may
13 have.

14 THE COURT: Cross-examine, Mr. Chehoski?

15 MR. CHEHOSKI: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. CHEHOSKI:

18 Q. You were the one who received the initial tip
19 that got you investigating Mr. Esaw?

20 A. That's correct, yes.

21 Q. All right. And without getting into the
22 substance of the tip, couple questions I want to ask
23 you about it. First, in that tip, did they get it
24 the date of the incident correct?

25 A. Are you referring to on the tip the date it

1 came in or the date it happened?

2 Q. The date the incident happened.

3 A. No.

4 Q. Did they get the location of the incident
5 correct?

6 A. I would have to review the tip to look at it.

7 Q. So would reviewing the tip refresh your memory?

8 A. Yes. Yes, it would. Absolutely.

9 MS. MARTIN: Your Honor, we don't object to the
10 whole tip coming in, if he's going to question him
11 about part of the tip.

12 THE COURT: I think he can ask specific
13 questions about the accuracy of a couple parts of
14 it, if he wants to. I'll let him do that.

15 Q. Is that the right tip?

16 A. Yes, it is.

17 Q. All right. Having read it, does that refresh
18 your memory?

19 A. Yes, it does.

20 Q. May I have it back, please?

21 All right. I'm going to repeat my question
22 now. Did they get the location of the incident
23 correct?

24 A. No, they did not.

25 Q. Did they get the name of the victim correct?

1 A. No, they did not.

2 Q. All right. As you're going through your
3 investigation, it is important to document all the
4 work that you're doing; is that correct?

5 A. Yes, it is.

6 Q. And in doing so, you draft and author reports
7 to do so?

8 A. Correct.

9 Q. All right. And it's important in those
10 reports, as you've known from your 19 years in law
11 enforcement, to be as complete as possible?

12 A. Correct.

13 Q. You don't want to leave anything untouched;
14 correct?

15 A. Sure, you try not to.

16 Q. All right. And you want to be as accurate as
17 possible?

18 A. Correct.

19 Q. You don't put anything in there that's false?

20 A. That's correct.

21 Q. And you want to be as thorough as possible?
22 You don't -- you want to get all of the information;
23 correct?

24 A. Correct.

25 Q. All right. And so in doing so, during the

1 course of your investigation prior to your initial
2 contact with Mr. Esaw, you met with several people
3 to document your contact with them; is that correct?

4 A. Yes.

5 Q. And one of those people was Christopher Esaw?

6 A. That's correct.

7 Q. In meeting -- when you first met with
8 Christopher Esaw, he actually identified himself as
9 Ricky Esaw; is that correct?

10 A. He did.

11 Q. All right. And then in talking with him, you
12 realized that that's not exactly who he was;
13 correct?

14 A. Yes. At first he identified him as -- he
15 identified himself as Ricky Esaw, and then he
16 said -- and then I said, good, that's -- you're the
17 guy I'm looking for. And then he changed his mind
18 and says, no, I'm Chris Esaw.

19 Q. Okay. And were you able to actually confirm
20 his identity?

21 A. Yes.

22 Q. And you said you were not involved in any of
23 the -- you were not involved in the composition of
24 any of the lineups?

25 A. No.

1 Q. Okay. So you wouldn't have occasion to have
2 put Mr. Christopher Esaw in a lineup?

3 A. No.

4 Q. I'm just making sure that we're on the same
5 page now.

6 The -- in speaking with Mr. Esaw, you learned
7 that -- you asked what Ricky drove; correct?

8 A. I did.

9 Q. And you learned that that was a -- that was not
10 a black Toyota Corolla, he didn't own that car?

11 A. He didn't own it, no.

12 Q. No. He -- however, you did learn that his
13 girlfriend did own that car?

14 A. Yes -- well, actually, his girlfriend's mother
15 owns that car, technically.

16 Q. Well, it was registered to Luenetta; is that
17 right?

18 A. No. It was registered to Luenetta's mom.

19 Q. Okay.

20 A. Yes.

21 Q. But she drove -- it was -- she used it as her
22 primary vehicle?

23 A. Correct.

24 Q. Okay. I'm going to get there.

25 A. All right.

1 Q. And you document that as a newer model black
2 Toyota Corolla; is that right?

3 A. Yes.

4 Q. And then you also met with someone named Raina
5 Plowden?

6 A. Correct.

7 Q. And she was the property manager?

8 A. Raina was the property manager at then The
9 Legends apartments which used to be known as the
10 Palmetto Point Apartments.

11 Q. And it's now known as The Legends?

12 A. Correct.

13 Q. And, again, that was -- you documented your
14 interaction with her regarding the vehicle as a
15 newer model black Toyota Corolla?

16 A. I don't know if I actually said newer model,
17 but in the area, that could be -- what I'm referring
18 to as newer model is above 2000s, mid-2000s.

19 Q. Right. It's --

20 A. Open to interpretation, I guess is what I'm
21 saying.

22 Q. It is open to interpretation. But, again, your
23 phrasing was particularly a newer model?

24 A. I believe so, yes.

25 Q. And also in meeting with Sherman Rice, you got

1 that same information again: Newer model Toyota
2 Corolla, black?

3 A. I can't say that I actually said newer model,
4 but -- I don't know if I actually said newer model.

5 Q. All right. If you need to refer to your notes,
6 please let me know.

7 A. I do. All right. I see in here where it says
8 2005/2006 Toyota Corolla.

9 Q. That was the -- was that the information
10 gleaned from the tip?

11 A. Yes.

12 Q. Okay. And were you able to identify the year
13 of the model that Luenetta Grayson's mother's car
14 was?

15 A. After a while, yes, but not at the time.

16 Q. All right. And after a while, what you did
17 learn was that in the -- was that within two years
18 of that vehicle's model year?

19 A. I'll have to refer back to the impound on
20 exactly what year it was. 2009 Toyota Corolla.

21 Q. It was a 2009?

22 A. Correct.

23 Q. All right. And, Detective, what are ground
24 effects?

25 A. Ground effects are --

1 Q. In talking to a car -- talking in reference to
2 a car.

3 A. Ground effects typically are plastic in nature
4 that enhance the car's, I guess, looks.

5 Q. All right.

6 A. They're typically on the bottom of the car,
7 attached to it.

8 Q. Are they cosmetic in nature?

9 A. Yes. They -- I don't think they serve any --
10 maybe some aerodynamic purposes, but mostly
11 cosmetic.

12 MR. CHEHOSKI: One moment, please, Your Honor.

13 THE COURT: Okay.

14 MR. CHEHOSKI: I'm trying to find the --

15 BY MR. CHEHOSKI:

16 Q. And in talking about ground effects, have --
17 you had, in the course of your investigation, met
18 with some people who identified the car as having
19 found effects on it; correct?

20 A. I believe that was Sherman Rice --

21 Q. All right.

22 A. -- that said that.

23 Q. And I want to, again, make sure -- the ground
24 effects are kind of like decorations along the
25 bottom of the car?

1 A. That's correct.

2 Q. All right. Would they be of a different color
3 of the car, often, maybe?

4 A. Usually, no.

5 Q. No. All right. I just -- but they don't serve
6 any functional purpose?

7 A. Other than aerodynamic effects, most of it's
8 for cosmetic and looks.

9 Q. Again, they're along the side of the car?

10 A. Front and side.

11 Q. Front and side?

12 A. I'm not an automotive expert. But I'm guessing
13 that that's where people put them, for the most
14 part.

15 Q. I'm showing you State's Exhibit 30. If you
16 would, point to me where the ground effects are.

17 A. Right here.

18 Q. And that's the ground effects? That's not --

19 A. That's actually -- I'm not automotive expert,
20 but I do know that that's an add-on from the
21 factory. It's an actual -- something you can buy
22 that's an add-on.

23 Q. Okay. Again, me not being an expert either, I
24 thought they were just kind of decorations along the
25 side of the car kind of showing maybe some -- maybe

1 a stripe or something like that. It's not?

2 A. Decorations.

3 Q. Yeah.

4 A. That's what it is.

5 Q. All right. And moving on to the evening of
6 August 12th, you testified that you had -- you had
7 gotten consent and -- from Wilfred Pitts to get the
8 buccal swab?

9 A. Correct.

10 Q. And for the jury's information, what is a
11 buccal swab?

12 A. It's a buccal swab. The buccal swab is
13 basically a swab done on a long -- it looks like a
14 Q-Tip, but it only has one end with cotton on it.
15 And it's swabbed inside the person's mouth to get
16 saliva which is used for a DNA comparison or a
17 DNA -- just DNA.

18 Q. All right. And after you obtained the buccal
19 swab, what did you do with it?

20 A. I didn't do anything with it. It was a CSI
21 unit detective, Glen Ross, who did the buccal swab.
22 I'm not qualified to do that.

23 Q. All right. So you just got the consent for him
24 to take the swab?

25 A. It was myself and Detective Andaloro together

1 that did that.

2 Q. And then the CSI investigator was the one who
3 performed it?

4 A. That's correct.

5 Q. All right. Thank you.

6 And continuing on as -- it's your recollection
7 then that Detective Moore and Detective Andaloro got
8 a statement from Mr. Pitts?

9 A. Yes.

10 Q. All right. And acting upon the information got
11 in that statement, you went to meet with Mr. Pitts'
12 brother?

13 A. Yes, that's correct.

14 Q. And that was to get a -- to either confirm or
15 deny a -- information that was given in that
16 statement?

17 A. That's correct.

18 Q. And you learned that the information given was
19 incorrect?

20 A. Yes.

21 Q. And subsequent to that, you rode back to the
22 sheriff's department and you sat in the -- you sat
23 in, in Mr. Pitts' continuing interview?

24 A. That's correct.

25 Q. All right. And, again, you documented what was

1 said during that interview; is that correct?

2 A. Which part are you referring to? I know the
3 interview you're talking about, but --

4 Q. A couple of parts. Again, you were present
5 when Mr. Pitts indicated that his initial statement
6 was all a lie?

7 MS. MARTIN: Objection, Your Honor.

8 THE COURT: I'm sorry. Yes, ma'am.

9 MS. MARTIN: Your Honor, I think that we're
10 going to go far aground and be talking about what
11 actually Mr. Pitts said.

12 THE COURT: I'll sustain the objection as to
13 Pitts says as being hearsay.

14 Q. Okay. You wrote in this statement that
15 Pitts -- that was on the table, was that that
16 statement was a lie.

17 MS. MARTIN: Is there a question there, Your
18 Honor? I --

19 THE COURT: There is a question there. I
20 think he didn't -- he couldn't have passed Jeopardy
21 with it because he didn't put it in the form of a
22 question, but he meant for it to be a question.

23 MR. CHEHOSKI: May I rephrase?

24 THE COURT: Yes. Please do that.

25 BY MR. CHEHOSKI:

1 Q. You wrote in your report that the statement
2 that Pitts gave was -- that was on the table in
3 front of him was a lie.

4 A. Right.

5 Q. And at the time, Mr. Pitts was shown a picture
6 from his Facebook page of a bracelet --

7 A. Yes.

8 Q. -- of him wearing a bracelet?

9 A. Yes.

10 Q. Okay. And that was -- let me make sure I say
11 this right, that -- and then, again, it was
12 indicated that that was the bracelet at the scene,
13 the scene -- that bracelet that he was wearing in
14 that same Facebook picture was the same bracelet
15 that was recovered at the scene?

16 A. Are you asking me --

17 Q. Did you suggest to Mr. Pitts or was it
18 suggested to Mr. Pitts that the bracelet that was in
19 the Facebook picture was the same one that was found
20 at the scene August 9th at Rolling --

21 A. Yes, that was suggested.

22 Q. And then you wrote in your report that
23 Mr. Pitts advised that the bracelet was his.

24 A. That's correct.

25 Q. And that he had given it to Rick --

1 MS. MARTIN: Objection, Your Honor, once
2 again --

3 THE COURT: We're getting a whole lot of
4 hearsay in through this that is now going to the
5 truth of the matter asserted which makes it hearsay.
6 I will sustain the objection as to the last
7 statement.

8 MR. CHEHOSKI: One moment, please, Your Honor.

9 THE COURT: Okay.

10 BY MR. CHEHOSKI:

11 Q. Couple more questions, Sergeant Sowards, is,
12 you initially served the warrants on Mr. Esaw on
13 August 14th; is that correct?

14 A. Yes, that's correct.

15 Q. All right. That wasn't the only time you
16 served warrants on him; is that correct?

17 A. That's correct.

18 Q. You also served warrants on him in September?

19 A. I don't know the exact time.

20 Q. September 16th, does that sound right?

21 A. I don't know. I wish I could tell you.

22 Q. Do you remember what those warrants were for?

23 A. Not without documentation to say definitively
24 in front of me. I don't have that.

25 MS. MARTIN: Your Honor, I'd ask that he show

1 him the document he's referring to.

2 THE COURT: Right. If you've got a specific
3 question about a specific warrant, and you obviously
4 do, let him look at it.

5 MR. CHEHOSKI: May I approach?

6 THE COURT: Yes, sir.

7 BY MR. CHEHOSKI:

8 Q. (Tenders document to the witness.)

9 A. I'm sorry.

10 Q. We can't accuse you for being a human being.

11 A. This one says 9/16/2015. This is my
12 handwriting.

13 Q. And that's your signature?

14 A. That is my signature.

15 Q. Besides the date, is there anything about those
16 warrants that are different than what you originally
17 served Mr. Esaw with, to the best of your knowledge?

18 A. Without scanning, I'm not sure.

19 Q. All right. Are they the same charges?

20 A. The charges look appropriate, that's all I can
21 tell you right now. And this is my handwriting.

22 Q. The charges look the same, is that right, from
23 the previous time?

24 A. As far as I can tell. I'm not -- you have to
25 keep in mind I literally serve thousands of warrants

1 a year.

2 Q. I understand. And, again -- but to the best of
3 your knowledge, they look the same?

4 A. Yes.

5 Q. All right. Do you -- again, do you remember
6 why you served warrants the second time?

7 A. I don't recall, and I'd hate to speculate at
8 this point.

9 Q. And you weren't the one who swore them out?

10 A. No.

11 Q. All right.

12 MR. CHEHOSKI: Your Honor, I don't have any
13 questions at this time -- hold on one moment.
14 Pending on any redirect, I do have a motion
15 regarding excusing the witness.

16 THE COURT: All right. Any further questions,
17 Ms. Martin?

18 MS. MARTIN: Your Honor, may we approach?

19 THE COURT: Okay.

20 Folks, I take back my invitation to tell you
21 what we're talking about. There's no way in the
22 world I could remember all this stuff.

23 (Sidebar conference.)

24 THE COURT: All right. Madam Court Reporter,
25 note a sidebar conference. We'll take it up out of

1 the presence of the jury. Thank you.

2 REDIRECT EXAMINATION

3 BY MS. MARTIN:

4 Q. Detective Sowards, this Crimestoppers tip that
5 we've talked about, is that something maintained by
6 the sheriff's department?

7 A. No, it is not.

8 Q. And the information learned from Crimestoppers,
9 is that something that's available to the general
10 public?

11 A. No; it's protected.

12 Q. And you've said that the date and location of
13 the homicide in one of the tips was not proper or
14 was not in regards to our incident. Is that true?

15 A. That -- many times Crimestoppers tips come
16 out -- there's different ways that they can be
17 entered. Sometimes they can entered electronically
18 or they can be entered on the phone as an anonymous
19 tip. So there is -- there's always a possibility
20 that a date is entered wrong on a Crimestoppers tip.
21 You really don't know.

22 Q. When you received this tip, I think you said,
23 at 2:35 --

24 A. It was approximately 2:29, 2:27 on Wednesday
25 morning, a.m.

1 Q. Okay. And what, precisely, did that tip give
2 you information about?

3 A. It basically gave me a starting point for the
4 investigation to develop suspects.

5 Q. And did the tip itself name any particular
6 suspects?

7 A. It did, via social media monikers, in that it
8 said specifically Facebook information on King Pitts
9 and then backslash Ricky Esaw, one word.

10 Q. And did the tip involve a particular type of
11 crime?

12 A. It did. The tip came out, which was why it --
13 it came out to my attention as is in reference to a
14 shooting that shot and killed an individual.

15 Q. Okay. Is there a difference between a tip and
16 a witness statement?

17 A. Sure.

18 Q. Okay. And based on your tip, that led you to
19 Mr. Esaw; correct?

20 A. Yes.

21 MS. MARTIN: That's all we have of this
22 witness, Your Honor.

23 THE COURT: Thank you.

24 I'll let you follow up on that point,
25 Mr. Chehoski.

1 MR. CHEHOSKI: Just one.

2 RECROSS-EXAMINATION

3 BY MR. CHEHOSKI:

4 Q. The tipster specifically stated that they did
5 not know their names; is that correct?

6 A. It says does not know the names, but the
7 Facebook information is King Pitts backlash Ricky
8 Esaw, one word.

9 Q. All right.

10 MR. CHEHOSKI: Your Honor, that's the only
11 question we -- we ask that Sergeant Sowards be
12 available for further cross-examination in the
13 future, if the need arises.

14 THE COURT: All right. I will not release
15 him from his -- or have him available to be
16 recalled. I'm not sure what his other duties are
17 outside of this, but I'll allow him to be recalled
18 by you.

19 MR. CHEHOSKI: Thank you.

20 THE COURT: Okay.

21 All right. Ms. Martin, you get the last word.
22 He's your witness.

23 MS. MARTIN: That's all I have for him, Your
24 Honor.

25 THE COURT: Thank you, Mr. Sowards. You can

1 step down.

2 THE WITNESS: Thank you.

3 THE COURT: Folks, let's take a brief recess.

4 You've been in here a long time and I appreciate
5 your patience, but we wanted to finish this witness,
6 obviously, and not be interrupted midstream. I'm
7 going to send you to the jury room and get you out
8 in about 10 or 15 minutes to conclude the
9 afternoon's work.

10 I'm mindful of the hour and I'm not going to
11 keep you here real late, so don't worry about that.
12 I'll let you know what we'll do next when I get you
13 back, but right now I don't know what we'll do next.
14 Thank you. Don't talk about the case while you're
15 in there among yourselves.

16 (The jury exits the courtroom at 4:13 PM.)

17 THE COURT: Madam Court Reporter, at sidebar I
18 ruled admissible the follow-up questions about the
19 tip. Mr. Chehoski had cross-examined Mr. Sowards
20 about the inaccuracies or the incorrect nature of
21 the tip itself.

22 And the questions were: Did the tip contain
23 the correct date of the incident? And the answer
24 was, no, it was incorrect. And was the location of
25 the incident correct or incorrect? It was

1 incorrect. Was the name of the victim correct or
2 incorrect? Incorrect.

3 A jury listening to that line of questioning
4 could be rightfully wondering, well, if none of that
5 information was right, neither the date, the name of
6 the victim, or the location, then how in the world
7 would this -- the officers have a right to rely on
8 anything in there to follow up the investigation?

9 And, of course, it was this tip, as we know
10 from the testimony, that headed the investigation in
11 a more finite direction than it had been before.
12 Out of a sense of fairness and completeness then, I
13 allowed the rest of the information, which was just
14 gotten out on redirect examination, obviously, over
15 objection of defense counsel.

16 Who is the next witness and how long will it
17 take?

18 MS. MARTIN: Your Honor, it would be Detective
19 Creech. And I don't think he -- Your Honor, it's
20 just hard to tell, at least 30 minutes.

21 THE COURT: Well, I can tell you how long it
22 took the last time he testified. Didn't take all
23 that long last time, but, obviously, the testimony
24 this time is going to be much more involved than
25 that.

1 After Detective Creech, how many more witnesses
2 do you have?

3 MS. MARTIN: Your Honor, we have three or four.

4 THE COURT: Is it likely that we could finish
5 the State's testimony tomorrow even if he doesn't
6 testify today, or not?

7 MS. MARTIN: I doubt it, Your Honor. I would
8 think Mr. Pitts, the testifying co-defendant, is
9 going to take two hours.

10 THE COURT: Okay. That's fair enough.

11 All right. Well, we'll try to get as much of
12 Mr. Creech's in. Let's just take about ten minutes
13 and start back about 25 after the hour.

14 MS. MARTIN: Yes, sir, Your Honor. Thank you.

15 (Brief recess.)

16 THE COURT: Both sides ready for the jury?

17 MS. MARTIN: We're ready, Your Honor.

18 MR. CHEHOSKI: Yes, sir.

19 (The jury enters the courtroom at 4:28 PM.)

20 THE COURT: Ladies and gentlemen, we're going
21 to work in one more witness before we stop the work
22 for the day. I don't think it will take us much
23 past 5:00 today, but I think it's better than -- I
24 think and you'll agree that it's better if we have
25 to work a little later today or even tomorrow,

1 that's better than having to work later, later in
2 the week. So that's what we're trying to get done.
3 But I'm not going to waste any more time. We're
4 going to get to that witness and start to work on it
5 right now.

6 Ms. Martin?

7 MS. MARTIN: Thank you, Your Honor. Your
8 Honor, we'd call Adam Creech.

9 THE COURT: Mr. Creech, come forward to be
10 sworn.

11 ANTHONY ADAM CREECH

12 being first duly sworn, testified as follows:

13 THE WITNESS: I swear.

14 THE CLERK: Have a seat, sir. Once you're
15 seated, state your full name spelling your last,
16 please.

17 THE WITNESS: My name is Detective Anthony Adam
18 Creech. Creech is spelled C-R-E-E-C-H.

19

20

21 DIRECT EXAMINATION

22 BY MS. MARTIN:

23 Q. And, Detective Creech, where are you employed?

24 A. I'm employed with the Lexington County
25 Sheriff's Department.

1 Q. And how long have you been with them?

2 A. I've worked for the sheriff's department for
3 eight years and two months.

4 Q. And what is your rank?

5 A. I'm a detective with our major crimes unit.

6 Q. And were you working at the sheriff's
7 department in August of 2015?

8 A. I was.

9 Q. Can you tell us how you became involved in this
10 case?

11 A. I became involved in this case shortly after
12 the fact. This original incident occurred August
13 9th of 2015. It's typical with our homicide
14 investigations we'll have a mass unit briefing the
15 following business day where they tell us what's
16 going on, they make a bullet list, that way if
17 there's any other work that needs to be done,
18 there's additional people to help with that.

19 We had that briefing on August 11th of 2015.
20 My involvement was pretty minimal but, at the time,
21 I did make note that they mentioned a gold-colored
22 bracelet had been recovered at the original crime
23 scene.

24 Q. And at some point during the course of your
25 investigation were you made aware of any

1 Crimestoppers tip information?

2 A. I was. That would have been August 11th. The
3 following day, August 12th, I was made aware of a
4 Crimestoppers tip which indicated two possible
5 suspects on this case with the names -- on Facebook
6 under the names Ricky Esaw and King Pitts.

7 I was able to find King Pitts pretty easy on
8 Facebook because it's a pretty unique name and
9 there's not a whole lot of King Pitts on Facebook.
10 We were able to further confirm that this was the
11 correct account because under King Pitts' publically
12 viewable friends on Facebook, Ricky Esaw was
13 present.

14 Q. Did you notice anything else in that
15 information in regards to Mr. Pitts' information on
16 Facebook?

17 A. I did. So it was numerous pictures of
18 Mr. Pitts on Facebook. He was wearing very distinct
19 gold jewelry that looked very similar to the picture
20 I had seen from August 11th.

21 Q. Okay. Were you involved in meeting the victims
22 Franklin Vasquez and Christy Vasquez?

23 A. I was.

24 Q. And do you recall when you met them?

25 A. I do. On August 13th, which would have been

1 the day after that, I got involved with assisting
2 Detective Moore further. He and I responded to 893
3 Wheeland School Road where we met with Franklin
4 Vasquez and his mother Christy Herrera and we showed
5 them photo lineups.

6 Q. Do you recall who was present during this
7 lineup procedure?

8 A. I do. Myself, Detective Moore, and fugitive
9 detective Sergeant Sowards.

10 Q. And just in general, are you familiar with how
11 lineups are generated?

12 A. I am.

13 Q. Can you tell us just a little bit about that
14 procedure in general?

15 A. So the generation of lineups, we submit a
16 request to our Intel unit and they'll either operate
17 on existing photos derived from either South
18 Carolina DMV or corrections photos, depending on
19 what's available.

20 Q. And not in regard to our case here, but are you
21 familiar with who requested these lineups?

22 A. Who requested these lineups in this case, I
23 couldn't say.

24 Q. And were you present when Detective Moore
25 presented the lineups to the witnesses?

1 A. I was.

2 Q. And are you -- or do you remember which victim
3 he showed the lineups to first?

4 A. I do. He showed the lineups first to Franklin.

5 Q. And when Franklin was shown the lineup, were
6 you present there with them?

7 A. I was.

8 Q. Was his mom, Christy, involved in Franklin
9 viewing the lineup?

10 A. She was not because we want to keep them sight
11 and sound separated so one wouldn't influence the
12 other's selection.

13 Q. And did you see Franklin view the lineup?

14 A. I did.

15 Q. If I can show you what's been marked State's 4.
16 Do you know what that lineup shows?

17 A. I do.

18 Q. Can you please tell us?

19 A. Yes. This was the first lineup shown to
20 Franklin Vasquez in which he picked Picture No. 2
21 indicating that that was the person who shot his
22 father, and that would be Ricky Esaw.

23 Q. And did it take Franklin long to observe that
24 lineup before he picked?

25 A. It didn't. He made that selection virtually

1 immediately.

2 Q. And were you present when he signed that
3 lineup?

4 A. I was.

5 Q. If I can show you State's 5, do you recognize
6 that lineup?

7 A. I do.

8 Q. What does it show?

9 A. This would be the lineup with Akiem Pitts.

10 Q. And was that shown to Franklin Vasquez?

11 A. It was.

12 Q. And did he identify anyone?

13 A. He did not. He wasn't able to make a selection
14 because he said he didn't have as much interaction
15 with that person.

16 Q. State's 9, what is that lineup of?

17 A. This would be additional lineup with Ricky
18 Esaw's picture in it which was presented to Christy
19 Herrera.

20 Q. And was Christy able to identify anyone?

21 A. She was not able to make a selection. She said
22 she didn't have as close of an interaction as her
23 son did.

24 Q. And what was Christy's demeanor that day, if
25 you recall?

1 A. She was extremely upset at the time, still
2 dealing with the grief over what happened.

3 Q. And were you present at the time with Detective
4 Moore when instructions were given to Franklin and
5 then to Christy about how to conduct the -- or how
6 to view the photographic lineup?

7 A. I was.

8 Q. And did you or anyone in your presence tell
9 Franklin Vasquez who was in the lineup?

10 MS. FULLWOOD: Your Honor, objection. It's
11 leading and testimonial. She can ask him what he
12 said in relation to it, I think, but not put words
13 in his mouth.

14 THE COURT: Well, if the question doesn't
15 necessarily suggest the answer, it's not leading.
16 The answer to many questions is going to be yes or
17 no without being suggestive about a question itself.
18 Rephrase it again or say it again because I --

19 MS. MARTIN: Yes, sir.

20 BY MS. MARTIN:

21 Q. Were instructions given to Franklin and Christy
22 about the lineup procedure?

23 A. They were.

24 Q. And what instructions were given to them?

25 A. As is typical policy and procedure when we

1 present photo lineups, they're a six-person photo
2 lineup, typically black and white, as they were in
3 this case. When we present a photo lineup to an
4 individual, we expressly indicate the person that
5 we're looking to identify may or may not be present
6 in that photo lineup, and we impress upon somebody
7 that if they are not able to make a selection or
8 they don't feel like they see the person that
9 they're looking for, we tell them not to make a
10 selection unless they're certain, and then we
11 typically ask for a level of certainty after the
12 fact as well, just to further shorten that up.

13 Q. And were those instructions given to Franklin
14 and also to Christy?

15 A. They were.

16 Q. And what was Franklin's level of certainty?

17 MS. FULLWOOD: Objection, Your Honor; that's
18 subjective.

19 THE COURT: You can ask him if there was any
20 hesitation or anything like that or how long it took
21 him. I think he's already said that, so --

22 MS. MARTIN: He has, Your Honor.

23 BY MS. MARTIN:

24 Q. Did you tell or anyone in your presence suggest
25 the names of anybody that were in the lineup?

1 A. No. We made no suggestions of the names of
2 Ricky Esaw or Akiem Pitts or anyone else present in
3 the lineup and we made no indications whatsoever
4 that the persons we were seeking would be in that
5 lineup.

6 And even after they make a selection, we don't
7 tell them at the time whether they made the correct
8 selection. It's just kind of a blind -- we don't
9 show it to them when we give them the instructions,
10 we show it to them, they make a selection, and we
11 take it back. And you kind of got to keep a good
12 poker face; you can't tell them whether they got it
13 right or got it wrong.

14 Q. And after this lineup procedure, what else if
15 anything did you work on with this case?

16 A. So the next involvement I had in this case was
17 on August 14th when I was contacted by Detective
18 Moore once more to assist him in interviewing Ricky
19 Esaw.

20 Q. Before we get to that, if I can direct your
21 attention back to August 13th. Did you have any
22 involvement with the co-defendant Wilfred Pitts?

23 A. I did have involvement some with Wilfred Pitts.

24 Q. And what was your involvement with that?

25 A. My involvement with Mr. Pitts was fairly

1 minimal. I was asked to escort Mr. Pitts from the
2 Lexington County Detention Center booking area to an
3 interview room, to sit by with him until he could be
4 interviewed by Detective Moore and Detective
5 Andaloro. I didn't discuss the case with Mr. Pitts
6 because it wasn't my place to. I just basically
7 kept him company for a few minutes until they came
8 and took over with a formal interview.

9 Q. And did you have an opportunity to meet anyone
10 else involved with Mr. Pitts?

11 A. Yes. Mr. Pitts' mother was brought from
12 Newberry. She was allowed to speak with him. When
13 she spoke with him, it kind of concluded the
14 interview, and then I helped Detective Moore escort
15 Ms. Pitts back to her address in Newberry. And this
16 would have been directly before we then went to 893
17 Wheeland School Road.

18 Q. So it was before the lineups?

19 A. It was.

20 Q. So you first met Ricky Esaw when?

21 A. I first met Ricky Esaw August 14th.

22 Q. And under what circumstances did you meet
23 Mr. Esaw back in August of 2015?

24 A. He was in the Lexington County Detention Center
25 and I had been contacted by Detective Moore to

1 assist in interviewing him.

2 Q. And where would an interview with Mr. Esaw have
3 taken place?

4 A. So we initially met with him in booking. It
5 was my understanding he wanted to talk with us. We
6 confirmed together that he did want to speak with
7 us, so we then signed him out from booking -- it's
8 just a standard procedure -- so that the jail would
9 know where he was at, and then we escorted him to an
10 interview room over at the sheriff's department.

11 Q. And in that interview room, was the interview
12 recorded, either audiotaped or videotaped?

13 A. No. The interview was not recorded in line
14 with departmental policy. We don't have a policy
15 against it, but we don't really have a policy that
16 says to automatically record interviews either.

17 Q. If I can show you State's Exhibit 1, are you
18 familiar with that document?

19 A. I am familiar with this document.

20 Q. And can you tell us what it pertains to?

21 A. Yes. This would be the written statement that
22 Ricky Esaw provided to myself and Detective Moore on
23 August 14th, 2015.

24 Q. Was Mr. Esaw provided any rights?

25 A. He was. As with the standard procedure under

1 the law with any questioning or interrogation of the
2 person in custody who's not free to leave, Mr. Esaw
3 was read his Miranda rights, which he waived. And
4 he did that verbally but then he also did that in
5 writing. His rights are in writing here and next to
6 each of these lines are his initials to acknowledge
7 that he understood those rights.

8 Q. Did anyone else initial those rights?

9 A. They did. This is not actually normal
10 practice, but I think it was -- I like the way he
11 did it in this case. Detective Moore also put his
12 initials next to each right to indicate reading
13 those rights.

14 Q. And were you present when those rights were
15 read?

16 A. I was.

17 Q. And after those rights were given, what did
18 Mr. Esaw say or do?

19 A. Mr. Esaw said that he wanted -- he was not
20 going to let Wilfred Pitts, quote, put this all on
21 me, end quote. And said he was going to tell his
22 side of the story.

23 Q. Did you make notes of what Mr. Esaw said that
24 day?

25 A. I did.

1 Q. After Mr. Esaw said this, did he waive his
2 rights?

3 A. He had actually waived his rights before saying
4 that. And then he proceeded to tell us his side of
5 the story, for lack of better words.

6 Q. And what did Mr. Esaw tell y'all that day?

7 A. So he went on to tell us -- and, of course,
8 with these kind of situations, he knows what he's
9 being charged with. We asked him to go back to
10 whatever they feel is a relevant point.

11 Mr. Esaw told us that earlier on August 9th,
12 2015, he was at a birthday party for his niece in
13 West Columbia, and he said Wilfred Pitts or Akiem
14 Pitts -- you might hear me say those names
15 interchangeably -- was at the party as well with an
16 individual that Ricky identified as AJ driving a
17 black car.

18 He said -- he went on to tell us that he was
19 hanging out with his brother Chris, this would be
20 Ricky's brother, when he says he was approached by
21 AJ and Wilfred who asked him to help them with
22 something in Rolling Meadows. And he said that AJ
23 claimed to have just sold some marijuana to some
24 Hispanics in Rolling Meadows trailer park and they
25 said that they had seen these individuals with a

1 quantity of cash.

2 Ricky says he was approached about being a
3 driver so that they could then go rob these
4 individuals and take their money. According to
5 Ricky, he said that he had been told that the
6 Hispanic individuals were having a party in front of
7 their trailer.

8 He then told us that he agreed to drive AJ and
9 Wilfred down there and that their intention was to
10 commit an armed robbery. He described how he'd get;
11 he said they drove down Charleston Highway to
12 Rolling Meadows, they drove into Rolling Meadows and
13 they stopped in front of the trailer park.

14 Ricky then told us that he let AJ and Wilfred
15 out of the vehicle, at which time he said he drove
16 right up to the trailer. And this was kind of
17 interesting in light of the lineup, I thought,
18 because --

19 MS. FULLWOOD: Objection to the
20 editorializing --

21 THE COURT: I'll sustain that. Yes. You can
22 define his statements as to what the statement was.
23 Thank you.

24 MS. FULLWOOD: Move to strike, Your Honor.

25 THE COURT: Whatever he was going to say is

1 stricken. I don't know what he was going to say.

2 Okay. Go ahead.

3 A. So the next thing Ricky told us was that he
4 knew people at the party had saw his face because he
5 had been underneath the streetlights and he had been
6 close to everybody. He then told us the next thing
7 he knew, he heard gunshots and he saw AJ and Wilfred
8 run back to the car.

9 He said that AJ told him that Wilfred had shot
10 somebody and he said he had seen Wilfred fighting
11 with somebody when he heard a gun go off. He then
12 said he saw Wilfred fighting with a Hispanic male
13 and he heard Wilfred tell the man, son, I'm going to
14 shoot your ass -- and that's a quote -- before then
15 shooting at the son.

16 Ricky said that they then fled in the vehicle,
17 which he was driving, at which time they threw away
18 a cell phone that they had stolen during the robbery
19 out a window. While telling me this -- or us this,
20 because Detective Moore was present, Ricky said,
21 quote, I'm innocent, at best I'm an accessory, end
22 quote. And he followed this by, I know I'm an
23 accessory.

24 He then went on to say that the guns that had
25 been used in this incident were a .9 millimeter and

1 .40 caliber handguns. He described AJ as having the
2 .9 millimeter and Wilfred as having the .40 caliber.
3 He was real specific to describe what Wilfred had
4 done in the incident, but when it came to describing
5 how AJ interacted or what AJ did or didn't do, he
6 couldn't really describe anything. In following the
7 incident, he said he was given \$50 for his
8 involvement and went his separate way.

9 We asked him some more about AJ. Ricky went on
10 to describe AJ as a bi-racial brown-skinned male
11 approximately 23 years old. He gave us a height and
12 weight; he said he was about five-eight, 135 to 140
13 pounds. He said he'd been in the Lexington County
14 Detention Center earlier in 2015 for an related
15 murder charge.

16 He said the guy had a street name that was
17 possibly T-Rex or T-Mac. These seemed like some
18 pretty identifiable traits. He said he drove a
19 black Nissan. He went on to change this later to
20 say it was a black Lincoln.

21 After he tells us all this -- and it's a pretty
22 lengthy story, I've been sitting here telling it in
23 a bit of a summary -- we then asked him to provide a
24 written statement. And that's pretty normal
25 procedure when we're doing interview on a case,

1 especially on a big case like this. You want to
2 give them the chance to say everything, make sure
3 they've told you everything they want to tell you so
4 that way when they come to writing their statement,
5 it's easier to make sure that they get everything
6 into their statement.

7 Q. And did Ricky Esaw reduce his oral statement to
8 writing?

9 A. He did. He then provided us the seven-page
10 statement that's State's Exhibit 1.

11 Q. And were you present during this entire oral
12 statement and written statement?

13 A. I was.

14 Q. And did you or anyone in your presence make any
15 threats towards Mr. Esaw?

16 A. No.

17 Q. Did you or Detective Moore make promises to
18 Mr. Esaw?

19 A. No, we did not.

20 Q. Did you coerce him in any way?

21 A. We did not.

22 Q. Did you make any specific threats towards his
23 loved ones?

24 A. We made no threats whatsoever to anybody.

25 Q. After Mr. Esaw provided a written statement,

1 was there any other question-and-answer session with
2 Mr. Esaw?

3 A. So after Mr. Esaw provided his statement about
4 the events I just told you guys about, he felt like
5 we were going to recall the charges against him
6 because he was just the driver, according to his
7 testimony. We told him that wasn't going to be the
8 case. He got a little upset with us that we weren't
9 going to recall the charges.

10 It seemed what did arise is whether he was the
11 shooter or not the shooter, he made himself a
12 principal to what occurred because he said he was
13 the driver, he knew they were going to commit an
14 armed robbery, he had his role in that, and then
15 after the fact, he continued his role. So at that
16 point it was the hand of one, the hand of all.

17 MS. FULLWOOD: Your Honor, I'm going to object
18 to this.

19 THE COURT: I'll sustain the objection as to
20 the statement of the law. That's totally a matter
21 for the Court's determination.

22 MS. MARTIN: Your Honor, may I approach the
23 witness?

24 THE COURT: Yes, ma'am.

25 BY MS. MARTIN:

1 Q. If I could have back State's 1. Pages 2
2 through 7 of State's 1, if there is a Q, do you know
3 who wrote that part?

4 A. So the way this statement works, we give a
5 person we're interviewing a chance to kind of just
6 write what they -- kind of freeform their side of
7 the story. And a lot of times when people tell you
8 a story and then you ask them to write it down,
9 they're not near as detailed.

10 So what'll happen is they'll write their
11 initial -- beginning of their statement, which in
12 this case would be page 1, and then on page 2 we'd
13 start with a question-and-answer format where one of
14 the detectives present is going to write a Q for
15 question and then they're going to write the
16 question next to that.

17 In this case, Detective Moore handled all the
18 questions on this form, and that would be Detective
19 Moore's handwriting.

20 Q. And if there's an A and then writing, whose
21 writing would that be?

22 A. So the A would be in Detective Moore's writing
23 just indicating where Mr. Esaw would begin his
24 answer to the said question, and then the questions
25 are all written in Mr. Esaw's handwriting.

1 THE COURT: The questions are written in
2 Mr. Esaw's handwriting?

3 THE WITNESS: I mean, I'm sorry, the answers.

4 THE COURT: Thank you.

5 BY MS. MARTIN:

6 Q. As followup to Mr. Esaw's statement, were you
7 able to find an AJ?

8 A. No. So as we were getting this information
9 during the interview, I was relaying that
10 information to Sergeant Sowards and Lieutenant
11 Prestigiaco to see if they could find anybody.
12 When we concluded the interview, I had made my own
13 efforts. We've got a pretty sophisticated in-house
14 report management system that's really great for
15 searching partial information and partial
16 identifiers.

17 Using everything he'd told us about AJ, the
18 prior incarceration, the description, I looked
19 pretty decently and I couldn't find anybody who
20 matched all those details.

21 Q. Please answer any questions the Defense may
22 have.

23 THE COURT: Ms. Fullwood?

24 MS. FULLWOOD: Thank you, Your Honor.

25 CROSS-EXAMINATION

1 BY MS. FULLWOOD:

2 Q. Good afternoon, Officer Creech.

3 A. Good afternoon.

4 Q. Okay. So you knew about this gold bracelet;
5 correct?

6 A. Correct.

7 Q. Have they shown you pictures of it or anything?

8 A. I believe I had seen pictures of it on August
9 11th, yes.

10 Q. Okay. So you knew what it looked like. And it
11 was real easy for you to find Mr. Pitts' Facebook
12 page; right?

13 A. Yes, because he was under the name King Pitts,
14 P-I-T-T-S. It's not real common.

15 Q. Correct. Correct. And he had a lot of
16 pictures of himself on that page, didn't he?

17 A. I seem to recall he did, yes.

18 Q. Yeah. And as you've already testified to, he
19 wore jewelry in a lot of those pictures, didn't he?

20 A. Yes. He wore real distinct-looking gold
21 jewelry in a lot of those pictures.

22 Q. I mean, a lot of jewelry; right?

23 A. Yes.

24 Q. Not just -- and we're not just talking like a
25 man's watch or something, are we? Necklaces,

1 bracelets --

2 A. I seem to recall there were necklaces. I --
3 the bracelets in particular are what we were
4 focusing on.

5 Q. And, in fact, in some of those pictures he had
6 a gold grill in his mouth, didn't he?

7 A. That, I can't remember offhand.

8 Q. Okay. Okay. Now, on the 13th of August of
9 2015, you went with Mr. Moore and Mr. Sowards over
10 to Newberry to talk with the Vasquezes; correct?

11 A. Yes, I did.

12 Q. And Franklin picked a picture; correct?

13 A. He did.

14 Q. And then Mrs. Vasquez didn't because she told
15 y'all she didn't have as close an interaction with
16 either of the men out that there that night;
17 correct?

18 A. That is correct.

19 Q. All right. And after you had dealt with both
20 of those individuals, the Vasquezes, isn't it
21 correct that Detective Moore told them the person
22 Franklin selected is now in custody?

23 A. I believe he may have indicated that. That was
24 not -- would not have been a detail I would have
25 been as focused on. So he may have had some

1 interaction with them that I didn't take note of.

2 Q. Weren't they really happy after that happened,
3 after they got that information? Do you remember
4 them being --

5 A. I remember her being very emotional. I'll be
6 honest, it would be appropriate for me to testify
7 about something I didn't take good notes about.

8 Q. All right. You don't dispute that that
9 happened though?

10 A. I'm not saying it couldn't have happened, I
11 just can't tell you I distinctly remember it.

12 Q. All right. Concerning interviewing your
13 suspects, is it the policy of the Sheriff's
14 Department concerning recording statements that
15 there is no policy, basically?

16 A. Yes. There's not really a clear -- it's not
17 really clear policy one way or the other. They
18 don't really give us equipment to do anything which
19 makes it, therefore, hard to decide you're going to
20 record statements and whether it's audio or video.
21 That's something they're working to actually
22 implement. Of course this was back in 2015, now
23 it's 2017, and we're trying to get on board. Of
24 course there's a lot of policy and technology issues
25 with that that they're working through.

1 Q. Now, you're not trying to tell the jury that in
2 the entire sheriff's department there's absolutely
3 no recording technology that even has been available
4 for decades? You're not trying to tell them that?

5 A. I can speak for myself that I didn't have
6 anything department-issued and the interview rooms
7 we use to do not have recording ability.

8 Q. But somewhere in the department there should be
9 some device that can do that; right?

10 A. I can't speak for all the equipment in the
11 sheriff's department. But, again, we don't -- is it
12 standard procedure and is it secondary, just an
13 assisting investigator it wouldn't be my decision to
14 locate and make a decision to record this interview.

15 Q. Because some investigators do choose to do
16 that, do they not?

17 A. I'd say it happens occasionally, but it's
18 probably more the exception than the rule at this
19 point.

20 Q. But it does happen?

21 A. It does happen occasionally.

22 Q. And when it does, obviously those investigators
23 have had access to equipment to do it with; right?

24 A. Yes. And I know in some of those cases it's
25 been personally owned. I don't know of any specific

1 cases where it's been Department-issued equipment.

2 Q. But you don't know that it's not either;
3 correct?

4 A. I don't know. I can't speak for everybody.

5 Q. Okay. Now, in this case it wasn't your
6 decision to make, was it?

7 A. It wouldn't have been my decision to make in
8 this case either way.

9 Q. That would have been Detective Moore's decision
10 to make; correct?

11 A. That is correct.

12 MS. MARTIN: No further questions.

13 THE COURT: Thank you.

14 Redirect?

15 MS. MARTIN: No, Your Honor. We'd ask that he
16 be excused.

17 THE COURT: Detective Creech, you can step down
18 and be excused. Thank you.

19 Okay. Folks, this is the perfect time to stop
20 for the day. Thank you for your patience in working
21 with us throughout the day. We have more work to
22 do, so I ask that you to be back in the morning at
23 9:30 and we'll start back again.

24 I remind you again not to talk about this case
25 among yourselves when you get back in the jury room

1 in the morning and don't expose yourself to any
2 information or -- I don't think there's been any
3 publicity about this. I'm not sure who all these
4 folks are. But if there is any, just set it aside
5 and read it when your role as a juror in this case
6 has ended.

7 Thank you so much, folks, for your cooperation,
8 your patience, and your promptness, and I'll see you
9 at 9:30 in the morning. Have safe a trip home.

10 (The jury exits the courtroom at 4:59 PM.)

11 THE COURT: Anything from the State before we
12 break for the day, ladies?

13 MS. MARTIN: Nothing from the State, Your
14 Honor.

15 THE COURT: All right. Thank you.

16 From the Defense?

17 MR. CHEHOSKI: No, Your Honor.

18 THE COURT: All right. Everybody be ready to
19 go at 9:30 in the morning. See you then. Have a
20 great evening.

21 (Trial in recess for the evening at 5:00 PM.)

22 (The following proceedings were held October
23 18, 2017.)

24 THE COURT: Madam Court Reporter, we need to
25 memorialize the chambers conference just held a few

1 moments ago where all counsel were present regarding
2 the admissibility of a recorded jailhouse telephone
3 conversation between the defendant and an
4 acquaintance of his, I think his girlfriend at the
5 time. And Ms. Fullwood at this time has filed an
6 objection, and I'd like her to put it on the record.

7 Ms. Fullwood?

8 MS. FULLWOOD: If it pleases the Court, Your
9 Honor. Our position is that this recording should
10 not be admissible because it violates the State's
11 Homeland Security Act that's found in Section
12 17-30-10, and so on, in the code of laws. This was
13 unauthorized and illegal violation of that act and
14 also a violation of his right to privacy.

15 He was incarcerated at the Alvin S. Glenn
16 Detention Center in Richland County. The only way
17 that inmates can have any contact with their family,
18 their friends, their loved ones, is to use the
19 telephone system that the County provides via a
20 private corporation. All of those telephone calls
21 are recorded and monitored, they are saved. And it
22 has been the practice within the past several years
23 since more and more county facilities are using that
24 type of private telephone service to, when people
25 come to trial, they harvest those calls, and when

1 they can, they use them against people during the
2 trial of their case.

3 I'm sure the State's position is that he
4 consented to the recordation because, of course, it
5 is announced at the beginning of each call that they
6 are recorded. Our position is that no person using
7 those telephone services can be said to be a
8 voluntary consent, and it is a violation of his
9 rights to privacy and due process to make him do so.

10 He and most others similarly situated in a
11 county facility like Richland County has not been
12 convicted of any crime. He's a pretrial detainee.
13 While he might have some diminishment of the right
14 to privacy that simply goes into being in a jail, he
15 can't be said to give up all of his rights.

16 Certainly procedures can be in place to ensure
17 jail security, and that could include use of
18 telephone services. However, when it's in a
19 situation where they're not only recorded but kept
20 past the time that would be any reason for it to be
21 for purposes of security, for example, they overhear
22 someone talking about a jailbreak that night and
23 they use it then, well, that's not what happens
24 here. They save them, then they look at them to see
25 what has been said even though he hasn't been

1 convicted of anything and is, in fact, presumed
2 innocent.

3 I would also say that in addition to violating
4 that statute, I think this is problematic because
5 when we're letting people -- letting lawyers for the
6 State go into and listen to these calls, they're
7 sort of using the third party to go around our state
8 court's rule that lawyers cannot tape-record others
9 without the consent of all parties.

10 Since this is a coerced type of situation, he
11 can't be said to have genuinely and legally given
12 consent. And the lawyers for the State are allowed
13 to sort of do an end run around our Supreme Court's
14 rules concerning the conduct of lawyers to get
15 access to this type of material. So for these
16 reasons, I would ask that that recording be
17 suppressed from evidence in this case.

18 THE COURT: Thank you, Ms. Fullwood.

19 The case is United States of America vs. James
20 Anthony Frink recorded at 328 Federal Appendix 183,
21 a 2009 case from the 4th Circuit Court of Appeals,
22 which held that in that particular case it was
23 telephone conversation between an inmate and his
24 girlfriend, asking her to get him some drugs and to
25 get him a gun and other things of that nature. They

1 raise the issue that the Omnibus Crime Control and
2 Safe Streets Act prohibit the unauthorized
3 interception of those types of conversations.

4 The court held, as other courts have held, that
5 there is an exception to the consent required by the
6 law before those sorts of things can be admissible
7 so long as there was adequate warning given to the
8 individual before the conversation was made that it
9 was going to be recorded or overheard.

10 And that -- I understand from our in-chambers
11 conference that that is a standard procedure on
12 these particular calls that there's either a posted
13 warning or there is a recorded warning that the call
14 will be recorded. Is that correct, ladies?

15 MS. MARTIN: Yes, Your Honor.

16 THE COURT: All right. Given that fact then,
17 the only prohibition that the Frink case plays is
18 whether or not the conversation that was in fact
19 played was complete; that is, that it did not
20 eliminate any exculpatory information, because that
21 was a redacted conversation as well as this one is
22 going to be.

23 And so if there's no question in this
24 particular case that exculpatory information is
25 being withheld, then there's no reason under the law

1 and certainly under the Constitution or under the
2 Omnibus Act to exclude it. The consent exception to
3 those sorts of recordings is established by the law
4 and the motion is respectfully denied.

5 MS. FULLWOOD: Thank you, Your Honor.

6 THE COURT: Thank you.

7 All right. Are we ready for the jury?

8 MS. MARTIN: Yes Your Honor.

9 THE COURT: All right.

10 Is the Defense ready?

11 MR. CHEHOSKI: Yes, Your Honor.

12 THE COURT: All right. Bring the jury in,
13 please.

14 (The jury enters the courtroom at 9:47 AM.)

15 THE COURT: Ladies and gentlemen, good morning
16 and thank you again for your promptness. You were
17 here early this morning. I got here about 20 after
18 the hour and you-all were already in place, and we
19 appreciate that.

20 Once again, as is usual in cases of this sort,
21 there is a few housekeeping matters that we need to
22 take care every morning and sometimes every
23 afternoon as well before we start the trial. And
24 the purpose of that is simply to make sure that
25 we've eliminated any unnecessary interruptions that

1 might occur in the upcoming testimony that we can
2 anticipate by dealing with those matters outside of
3 your presence.

4 We've done that today, and that's the reason
5 why we're about 15 minutes late in getting you out
6 here. I'm sorry about that. But what we have done,
7 I think, will facilitate the presentation of the
8 case before you in a more smooth manner. The State
9 now will continue to offer evidence and testimony in
10 this case.

11 Ms. Martin?

12 MS. MARTIN: Thank you, Your Honor. We'd call
13 Luenetta Grayson.

14 THE COURT: It's obvious to you by now, ladies
15 and gentlemen, the witnesses are always sequestered;
16 that is, they are kept out of the courtroom while
17 other witnesses are testifying. And that's done to
18 preserve the integrity of everybody's testimony so
19 that no one testifies on the basis of what somebody
20 else has already said. Thank you.

21 Ms. Grayson, come forward, please, and be
22 sworn.

23 LUENETTA GRAYSON

24 being first duly sworn, testified as follows:

25 THE WITNESS: I do.

1 THE CLERK: Have a seat, please, ma'am. Once
2 you're seated, state your full name spelling your
3 last, please.

4 THE WITNESS: First name is Luenetta, last name
5 is Grayson, G-R-A-Y-S-O-N.

6 DIRECT EXAMINATION

7 BY MS. MARTIN:

8 Q. Ms. Grayson, where are you employed?

9 A. South Carolina Mentor.

10 Q. And how long have you been with them?

11 A. I've been with them for three years.

12 Q. And where do you live?

13 A. I live in Harbison Lakes.

14 Q. And that's in Richland County?

15 A. Yes, it is.

16 Q. And what kind of education level do you have?

17 A. I have a Bachelor's from the University of
18 South Carolina and a Master's from Webster
19 University.

20 Q. And do you know the defendant, Ricky Esaw?

21 A. Yes.

22 Q. And how do you know him?

23 A. We were once involved in a relationship.

24 Q. And do you know about what time period you
25 started dating him?

1 A. November of 2015.

2 Q. And does he have a nickname?

3 A. Yes.

4 Q. And what is that nickname?

5 A. Silk.

6 Q. And at some point did y'all live together?

7 A. We did.

8 Q. And do you know the time period that y'all
9 lived together?

10 A. Probably from January 2016, maybe December
11 2015.

12 Q. And I think a minute ago you might have said
13 2015 was when you started dating, November.

14 A. Correct.

15 Q. Okay. Could it have been November of 2014?

16 A. 2014, no.

17 Q. If this incident happened August of 2015 --

18 A. Oh, correct, correct, correct. That's right.
19 It would have been 2014.

20 Q. Okay. All right. And since that time, have
21 you had contact with the defendant?

22 A. I have.

23 Q. And are you still in a dating relationship with
24 him?

25 A. No.

1 Q. And during the time period that you were with
2 him, did you get to know his family?

3 A. I did.

4 Q. And what's his mother's name?

5 A. Patricia.

6 Q. And did you know his brother?

7 A. I did.

8 Q. And do you know where they lived during that
9 time period?

10 A. Yes.

11 Q. Where was that?

12 A. They lived at Woodbine Apartments.

13 Q. And did you have occasion to visit there --

14 A. I did.

15 Q. -- back during 2015?

16 A. Yes.

17 Q. Do you know a man named Wilfred Akiem Pitts?

18 A. Yes.

19 Q. And how do you know him?

20 A. I know him as he's a friend to Ricky.

21 Q. And did Mr. Pitts spend a lot of time at your
22 home or your apartment?

23 A. He has. Uh-huh.

24 Q. If I can direct your attention to Wednesday,
25 August 12th of 2015, did anything very out of the

1 ordinary happen that Wednesday?

2 A. Law enforcement came to the home.

3 Q. Okay. Were there Lexington County officers?

4 A. Yes.

5 Q. Were there Richland County officers?

6 A. Yes.

7 Q. And were you taken into custody or arrested
8 that day?

9 A. No.

10 Q. If I can show you what's been marked in
11 evidence as State's Exhibit 32, do you recognize the
12 person in that photo?

13 A. I do.

14 Q. And who is that?

15 A. That is Wilfred Pitts.

16 Q. And is that how he looked on the night that the
17 law enforcement came to your apartment?

18 A. Yes.

19 Q. If I can show you State's 31 that's in
20 evidence, do you recognize that person?

21 A. Yes.

22 Q. And who is that?

23 A. That is Ricky Esaw.

24 Q. Is that how he looked on the night of
25 Wednesday, August 12th of 2015?

1 A. Yes.

2 Q. What kind of car did you have back in August of
3 2015?

4 A. I had a black Toyota Corolla.

5 Q. And was the car in your name or someone else's
6 name?

7 A. No. It was in my mother's name.

8 Q. If I can show you State's 14, do you recognize
9 this photo?

10 A. I do.

11 Q. And what is that?

12 A. It's a picture of my car.

13 MS. MARTIN: Your Honor, I think this is the
14 only photo that might not be in evidence. We would
15 move it in.

16 THE COURT: Thank you. State's 14 in evidence.

17 BY MS. MARTIN:

18 Q. If I can show you State's 29, do you recognize
19 that?

20 A. I do.

21 Q. And what is that?

22 A. It's a photograph of back of my car with the
23 license plate showing.

24 Q. If I can show you what's already in evidence as
25 State's 30, do you recognize that photograph?

1 A. I do.

2 Q. What does it show?

3 A. It shows the rear end of my car, and there's a
4 scratch on the gasoline area where the gasoline is.

5 MS. MARTIN: Your Honor, move to publish this
6 picture.

7 THE COURT: Without objection -- well, I
8 believe that was objected to, but it came in over
9 objection.

10 MS. MARTIN: Right.

11 BY MS. MARTIN:

12 Q. You said there's a scratch over the gas tank
13 area.

14 A. Uh-huh.

15 Q. Had there been something on your car?

16 A. There was. There was a USC decal.

17 Q. And do you know how long a USC decal been on
18 your car?

19 A. Probably about two years.

20 Q. And in the photograph, is there a decal?

21 A. It is not.

22 Q. And when did you first realize the decal was
23 gone?

24 A. When I saw the photograph.

25 Q. Do you know where your car is at this time?

1 A. It should be at the sheriff's department.

2 Q. Okay. After that Wednesday night when law
3 enforcement was at your home, did there come a time
4 you were interviewed by the Lexington County
5 Sheriff's Department?

6 A. Yes. I was interviewed on the Monday after the
7 incident occurred.

8 Q. And did you come here?

9 A. I went to the sheriff's department.

10 Q. And were you under arrest?

11 A. No, I was not.

12 Q. And did you answer questions for law
13 enforcement?

14 A. I did.

15 Q. And did you give a written statement to law
16 enforcement?

17 A. Yes, I did.

18 Q. And have you had an opportunity to review that
19 written statement prior to today?

20 A. Yes.

21 Q. On that Monday, August 17th, would that have
22 been before or after Ricky was arrested?

23 A. When what would have been?

24 Q. The statement to law enforcement.

25 A. It was after.

1 Q. And what did you tell law enforcement, if you
2 remember, or you can just tell us, what do you
3 remember about Sunday, August 9th of 2015?

4 A. We were at a party at his mother's house.

5 Q. And where did his mom live again?

6 A. Woodbine Apartments.

7 Q. And what kind of party was it?

8 A. It was a birthday party for his niece.

9 Q. And what time of day was the party?

10 A. It was in the afternoon, early afternoon.

11 Q. And who all went to the party with you?

12 A. It was Ricky, Cain, Jeremy, who is Ricky's son,
13 and myself.

14 Q. And how did y'all get to the party?

15 A. In my car.

16 Q. And was that usual or unusual to be in your
17 vehicle?

18 A. It was usual.

19 Q. And did Ricky have a car at that time?

20 A. No. He had a car, but it was in the shop.

21 Q. And did Ricky drive your car?

22 A. Yes.

23 Q. Often or --

24 A. He drove often.

25 Q. Okay. And was Ricky working back August 9th of

1 2015?

2 A. No, he was not.

3 Q. Do you remember who all was at the birthday
4 party?

5 A. It was Ricky's sister, his brother-in-law, his
6 brother, his mom, his son, Mr. Pitts was there,
7 another girl named Patricia, maybe a couple other
8 people I didn't know.

9 Q. Did you ever know anyone named AJ?

10 A. Yes.

11 Q. Do you know what AJ's real name was?

12 A. No.

13 Q. Did he live in that area, if you know?

14 A. Once upon a time, he did.

15 Q. And was he at that birthday party?

16 A. No, he was not.

17 Q. What were y'all doing at the birthday party --
18 well, let me ask, was it an inside or an outside
19 party or can you tell us about that?

20 A. They had a cookout, so we were outside briefly.
21 We did play cards together for a brief period and
22 then I went inside the home.

23 Q. And why did you go inside?

24 A. I had to do some work for work.

25 Q. And what did that work involve?

1 A. It was dictation of some notes that I had to
2 complete.

3 Q. And do you know if Ricky left the party?

4 A. He -- I know for sure that he did leave on two
5 occasions.

6 Q. Can you tell us about that and how you know
7 this?

8 A. One occasion he went to the store, he retrieved
9 some meat to put on it the grill, and on the second
10 occasion, he went to the neighborhood store --

11 Q. Okay. And --

12 A. -- convenience store.

13 Q. -- did you go with him?

14 A. No.

15 Q. And do you know how -- what vehicle he took?

16 A. Mine.

17 Q. And did he have your keys during this time
18 period?

19 A. My keys were in the kitchen area and they were
20 on the counter.

21 Q. And do you know if he left any other times?

22 A. It's a possibility he could have, but I was not
23 sure because I was inside the home in the living
24 room area.

25 Q. Do you know if King Pitts was with him the two

1 times you know he left?

2 A. Yes, he was.

3 Q. Do you have any idea how long he was gone the
4 two times you're aware he left?

5 A. He maybe was gone maybe about 15 or 20 minutes.

6 Q. And how long did you stay at the party?

7 A. We left about 10:00 p.m.

8 Q. Okay. And at the time y'all left, were you
9 inside or outside before that?

10 A. I was inside.

11 Q. And how long do you think you'd been working on
12 your dictation?

13 A. Probably about three hours because I had quite
14 a few to complete.

15 Q. And do you know what Ricky was doing during
16 that three-hour time period?

17 A. No.

18 Q. After the party, who left together? Who left
19 with you?

20 A. Ricky, Kiem or Mr. Pitts, myself, and Jeremy.

21 Q. Did any other -- how old was Jeremy? Let me
22 ask that.

23 A. He was four.

24 Q. Did he have some kind of carrying bag that
25 y'all kept with him?

1 A. Yes.

2 Q. Can you describe it for us?

3 A. It has a cartoon character on it and it was
4 blue and white.

5 Q. Okay. After you left the party, did anything
6 happen that evening?

7 A. No. I went inside my bedroom, finished my
8 work, and Mr. Pitts and Ricky were in the living
9 room area.

10 Q. And did you go to work Monday?

11 A. Yes.

12 Q. And do you know what was happening during the
13 day when you weren't there?

14 A. No.

15 Q. Do you know if he had your car that day?

16 A. No. I had my car that day.

17 Q. And do you remember anything about that
18 Tuesday? Did anything unusual happen?

19 A. No. I went to work on Tuesday as well.

20 Q. Okay. Did -- are you -- do you recall if
21 Mr. Esaw and Mr. Pitts had haircuts that week?

22 A. They did have haircuts, they did.

23 Q. And direct your attention back to that
24 Wednesday, can you tell us what you did on that
25 Wednesday?

1 A. That Wednesday we went to his cousin's house
2 and --

3 Q. Let me interrupt you. Who is his cousin?

4 A. Sherika.

5 Q. And where did she live?

6 A. She lived off of Bush River Road.

7 Q. Okay. When you say his cousin, Ricky's cousin?

8 A. Yes, Ricky's cousin.

9 Q. Okay. And when y'all went there, what did
10 y'all do?

11 A. We were there for a brief period, then I took
12 Jeremy to EdVenture. And after -- we stayed at
13 EdVenture for a few hours, then I came back to
14 Sherika's home.

15 Q. Okay. And who all was at Sherika's then at
16 that time?

17 A. Who was there?

18 Q. Yes.

19 A. Ricky was there, Mr. Pitts was there, Sherika
20 was there, and I think his cousin -- another one of
21 his cousins was there as well.

22 Q. What's her name?

23 A. Danitra.

24 Q. And had -- where had Mr. Pitts been all during
25 that week, as far as you know?

1 A. He was at our home.

2 Q. Did he spend every night with y'all?

3 A. During that timeframe, yes.

4 Q. Was he basically living with y'all?

5 A. Sometimes he would stay there and then
6 sometimes he was at his brother's, so in between.

7 Q. Do you know what the age difference is between
8 King Pitts and Ricky Esaw?

9 A. Probably about 15 years.

10 Q. And who's older?

11 A. Ricky is.

12 Q. Okay. When did you learn exactly what Ricky
13 Esaw had been charged with?

14 A. When -- when -- after they posted his bond.
15 And that's when I found out that he couldn't get out
16 from Richland County.

17 Q. Okay. And let me ask you this: In your
18 conversations with Ricky, have y'all discussed this
19 murder and armed robbery?

20 A. No.

21 Q. And has he ever admitted to you that he was
22 involved in this?

23 A. No.

24 Q. And if he had admitted this to you, what would
25 you have done?

1 A. That would have been the end of our
2 relationship.

3 Q. Have you ever seen Mr. Esaw with a gun or with
4 bullets?

5 A. I have seen bullets in the home, but I've never
6 seen a gun.

7 Q. And were the bullets yours?

8 A. No.

9 Q. If I can show you what's been marked State's
10 33, do you recognize this disc?

11 A. Yes.

12 Q. And have you listened to what's on the disc?

13 A. Yes.

14 Q. And whose voices are on the disc?

15 A. Ricky and myself.

16 MS. MARTIN: Your Honor, I'd move to put
17 State's 33 in evidence.

18 THE COURT: Over objection of defense counsel,
19 State's 33 is in evidence.

20 MS. MARTIN: Move to publish, Your Honor.

21 THE COURT: Yes, ma'am.

22 (State's Exhibit No. 33 published to his Honor
23 and the jury.)

24 BY MS. MARTIN:

25 Q. Ms. Grayson, after hearing that phone call

1 there, what was Ricky asking you to do?

2 A. To get rid of a bag.

3 Q. What kind of bag?

4 A. It was a green and white bag.

5 Q. And did you get rid of this green and white
6 bag?

7 A. No.

8 Q. And what, if anything, did you do after this
9 conversation about the bag?

10 A. I informed his relatives of what he told me and
11 I told him that I wasn't coming to see him anymore.

12 Q. Did you have a conversation with law
13 enforcement about this phone call?

14 A. Yes.

15 Q. Do you remember when that was?

16 A. It was September 2nd.

17 Q. And did you give them any other information
18 about this phone call or any knowledge about the
19 green bag?

20 A. No.

21 Q. Ms. Grayson, why are you here in court today?

22 A. Because I was subpoenaed.

23 Q. Please answer any questions the Defense may
24 have.

25 THE COURT: Ms. Fullwood?

1 MS. FULLWOOD: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MS. FULLWOOD:

4 Q. Good morning, Ms. Grayson.

5 A. Good morning.

6 Q. Let's talk about August 9th, the day you went
7 to the party. Okay?

8 A. Okay.

9 Q. What was Ricky wearing that day?

10 A. A white shirt and khaki pants.

11 Q. All right. Was he wearing any jewelry?

12 A. No.

13 Q. Did he normally wear jewelry?

14 A. No. He just owned a watch.

15 Q. Okay. How about Pitts?

16 A. Yes, he was.

17 Q. What kind of jewelry did he wear?

18 A. He had some rings and a bracelet.

19 Q. All right. So, to your knowledge, Ricky left
20 the party two times?

21 A. Yes.

22 Q. Okay. And the first was to go to the grocery
23 store to get meat?

24 A. Yes.

25 Q. All right. And he came back a short time after

1 that?

2 A. Yes.

3 Q. And he had meat; correct?

4 A. Correct.

5 Q. All right. And do you know what time of the
6 day that was?

7 A. It probably was about maybe 4:30, 5:00 --

8 Q. All right.

9 A. -- maybe a little sooner.

10 Q. All right. And the second time he went to the
11 store, what time was that?

12 A. Maybe 6:00.

13 Q. Okay. And did he come back with the items that
14 he was supposed to come back with?

15 A. Yes.

16 Q. Okay. And I guess at that point you were still
17 participating in the party, playing the cards and --

18 A. Yes.

19 Q. -- eating the food?

20 A. Yes.

21 Q. All right. What time did you go inside to
22 finish your work?

23 A. Probably maybe like 7:00, 7:15, 7:30.

24 Q. Okay. You had some dictation to do?

25 A. Yes.

1 Q. All right. And I take it you have a pretty
2 demanding job?

3 A. Yes.

4 Q. And you have to --

5 A. I have to write notes daily.

6 Q. And you have to work even though it's not work
7 hours sometimes?

8 A. Correct.

9 Q. All right. You had a lot of your work notes in
10 the car that you haven't gotten back; right?

11 A. Yes.

12 Q. All right. In fact, they were all over the
13 car?

14 A. Yes.

15 Q. Pretty much?

16 A. Yes.

17 Q. Okay. And your car hadn't been cleaned or
18 washed or vacuumed out or wiped down between the day
19 of the party and the day the police seized it, had
20 it?

21 A. Not to my knowledge.

22 Q. All right. Well, if your stuff is still in
23 there, they probably hadn't; right?

24 A. I mean, it's a possibility. You could have
25 washed the outside and not done anything with the

1 inside.

2 Q. Well, I'm talking about the inside.

3 A. Oh. Well, no. My things were still in the
4 inside.

5 Q. Okay. You didn't notice that your car had been
6 cleaned up; right?

7 A. No.

8 Q. Okay. Now, when you went inside to do your
9 work, you went in the living room?

10 A. Yes.

11 Q. All right. And is that a one- or two-level
12 apartment his mom lives in?

13 A. Two levels.

14 Q. All right. The living room, I would assume, is
15 downstairs?

16 A. It is.

17 Q. Okay. And is the kitchen adjacent to the
18 living room?

19 A. Yes.

20 Q. And your car keys were on the counter?

21 A. Yes.

22 Q. All right. But you don't -- you just don't
23 know whether or not your car was used after that; is
24 that correct?

25 A. Correct, because you can't see from the living

1 room area into the kitchen area.

2 Q. Right. Okay. So Ricky comes and asks you to
3 be ready to leave the party about 10:00?

4 A. Yes.

5 Q. All right. And were his clothes clean?

6 A. They were.

7 Q. Did he have blood on his clothes?

8 A. No.

9 Q. All right. Was he sweaty or --

10 A. No.

11 Q. Okay. Did you see any marks or injuries on
12 him?

13 A. I did not.

14 Q. All right. And you left the party between
15 10:00 and whenever?

16 A. At 10:00.

17 Q. About how long does it take you to get to your
18 house?

19 A. About 20 minutes.

20 Q. A 20-minute drive? And you say Kiem was with
21 you --

22 A. He was.

23 Q. -- from that night until the 12th?

24 A. Yes.

25 Q. Okay. And it was sort of business as usual,

1 no -- nothing unusual about either man's conduct
2 that you noticed?

3 A. No, not that I noticed.

4 Q. Okay.

5 MS. FULLWOOD: I beg the Court's indulgence.
6 Thank you. That's all the questions I have.

7 THE COURT: Ms. Martin, any redirect?

8 MS. MARTIN: No, Your Honor. We'd ask this
9 witness be excused.

10 THE COURT: Ms. Grayson, you may step down and
11 be excused. Thank you for coming.

12 Ms. Martin?

13 MS. MARTIN: Your Honor, we'd call Detective
14 John Moore.

15 THE COURT: Mr. Moore, come and be sworn,
16 please.

17 JOHN MOORE

18 being first duly sworn, testified as follows:

19 THE WITNESS: I do.

20 THE CLERK: Have a seat, sir. Once you're
21 seated, state your full name spelling your last,
22 please.

23 THE WITNESS: John Moore, M-O-O-R-E.

24 DIRECT EXAMINATION

25 BY MS. MARTIN:

1 Q. Detective Moore, where are you employed?

2 A. I'm employed with the Lexington County
3 Sheriff's Office.

4 Q. And how long have you been working here in
5 Lexington County?

6 A. About 14 years.

7 Q. And were you involved in law enforcement before
8 you came to Lexington?

9 A. I was. I worked 20 years in Orangeburg County.

10 Q. So, total, how long in law enforcement?

11 A. This is my 34th year, might be going on my
12 35th, something like that.

13 Q. And what kinds of cases do you work?

14 A. I work major crime cases, anything from vicious
15 assault to homicide.

16 Q. Have you worked drug cases?

17 A. Oh, yes. Yes.

18 Q. Have you worked criminal sexual conduct cases?

19 A. Yes, ma'am, I have.

20 Q. Is there any kind of trial or major case crime
21 that you have not investigated?

22 A. I don't think so.

23 Q. Have you been involved in many trials?

24 A. Quite a few.

25 Q. Okay. And do you remember back in August of

1 2015 the homicide or the death of Hector Vasquez at
2 Rolling Meadows?

3 A. Yes, ma'am, I do.

4 Q. Can you tell us how you first got involved in
5 investigating this particular case?

6 A. Yes, ma'am. That -- the 10th, which was a
7 Monday morning, I was coming -- worked the --
8 started the normal day of work. That week prior, I
9 was on vacation, so I wasn't at work. And Monday,
10 when I came in, doing my normal thing, getting on
11 the computer, one of the supervisors told me that
12 there was a homicide last night and for you to sit
13 in on it.

14 Q. And who did you meet with to talk about the
15 case?

16 A. I met with most of the supervisors at the
17 sheriff's office and Detective Rawl who was on the
18 case that night. He was still coming in to brief
19 the detective major crime unit. When you have a
20 homicide or a major crime the night before, it's
21 kind of like an all-hands-on-deck; we get all the
22 detectives together and brief -- get briefed on it.

23 Q. Okay. So to be clear, you had not gone to the
24 scene that evening?

25 A. No, ma'am. I was still scheduled on vacation

1 that day.

2 Q. Okay. When you first got with Detective Rawl,
3 what did y'all do?

4 A. When I first found out that I was going to be
5 appointed lead on this case, I wanted to know
6 everything about the scene, what he collected,
7 photographs any evidence of the case, the
8 photographs of the scenery, and I did talk to Keith
9 Sprinkle who is our CSI guy, crime scene
10 investigator, asked him did he have anything, what
11 did he see with the case.

12 I wanted to know all about it before we got
13 started. And, obviously, Detective Rawl was out
14 that whole night, so he was exhausted, so I wanted
15 to get him home as soon as I could get all his
16 information from him.

17 Q. Do you remember when you first met Franklin and
18 Christy?

19 A. I do.

20 Q. When was that?

21 A. That was that Monday. I wanted to go and
22 interview them as well.

23 Q. And at that time did you learn anything new
24 from Franklin or Christy?

25 A. I did. The one thing I've learned with

1 Franklin is that he told me the perpetrators, one of
2 them that he realized was exactly he knew he fought
3 with and he kicked him and he hit him and he was
4 fighting with his father.

5 I said, give me a general description of him.
6 And he said, about my father's height. And the
7 way -- and that he could recognize him because of
8 his face features of him and that he has -- he was
9 on him, he was fighting with him, and trying to get
10 him off of his dad.

11 Q. And what about Christy?

12 A. Ms. Vasquez, she was very upset, very
13 distraught. Every time I had a meeting with her,
14 she was just crying, which rightfully so, she was
15 involved in a horrible scene. And some people are
16 strong and some people break down. Most of the time
17 when I came to her, she cried and she was very
18 upset.

19 Q. If I can show you what's been marked as State's
20 2 and 3 that are in evidence, if you can recognize
21 these documents.

22 A. Yes, ma'am.

23 Q. Can you tell us what those documents -- what
24 was the purpose of those?

25 A. These are photograph of lineup that I showed

1 both Christy and Franklin.

2 Q. And do they -- were they able to identify
3 anyone in those lineups?

4 A. No, ma'am, they was not.

5 Q. Okay. After they had looked at those lineups,
6 do you remember what was the next investigative tool
7 that y'all used?

8 A. Well, we used several tools and stuff in that
9 nature, because I'm running different ways. Let me
10 give you an example. We was collecting the
11 photographs, I was making case jackets. I got --
12 since it was a Hispanic family and the community of
13 Hispanics, we put out a poster that I got with our
14 CAT team, which is a community-organized team, and
15 put it in Spanish for them to have a meeting with
16 that neighborhood; anybody seen anything, hear
17 anything, say something. And that's exactly what we
18 did at that point.

19 I also left there and we canvassed -- went back
20 to the crime scene and canvassed the neighborhood.
21 It's daylight, I want to see the scene, I want to
22 talk to the people in the neighborhood, I want to
23 knock on doors, and I want to see if anybody has
24 seen anything, knew anything, that would say
25 something personally to me.

1 Q. Did you learn anything through that?

2 A. No, ma'am. Most people didn't answer the door,
3 didn't see anything, if I talked to them. So...

4 Q. And do you recall how Barry Sowards became
5 involved in this investigation?

6 A. That week that I asked Barry -- I asked for
7 Barry because supervisors asked me to take the lead
8 on it. And all of our detectives -- we had a busy
9 week that week, and all of them was out and running
10 on things, so we was actually shorthanded.

11 I asked if I could get Barry and the fugitive
12 team to run with me on it along with Detective Rawl
13 and anybody else I could pick up to help do
14 odd-and-end things because we're doing so many
15 things at one time, trying to jump ahead of the game
16 on this.

17 Q. Do you remember what was the first real lead
18 that came to you?

19 A. Detective Sowards called me Wednesday morning
20 early and said he had received a lead from
21 Crimestoppers.

22 Q. And based on that lead, what did y'all do?

23 A. Just like with leads we get from Crimestoppers
24 on every case, we got to work it. We work it to see
25 if it will pan out. Some of them pan out, some of

1 them don't. We started working this lead right
2 away.

3 Q. And based on that, what, if anything, did you
4 learn?

5 A. I learned of the suspects' names.

6 Q. Okay. And what were the names?

7 A. The names that was on the lead was King Pitts,
8 slash, Ricky Esaw.

9 Q. Okay. And did you have anything to do with any
10 Facebook investigation?

11 A. Only thing I -- I got a hold of Detective
12 Creech and I said please start me search warrants
13 for this for the information on Facebook on each and
14 every one of these individuals. Also, I got
15 searching their names with our Intel unit, which is
16 Sergeant Travis from Intel.

17 Q. And after doing that, did you and any other
18 officers make a trip?

19 A. We did. We made a trip to Newberry County.

20 Q. Who went to Newberry?

21 A. That day, it was Barry Sowards and Detective
22 Rawl and I.

23 Q. And why were you going to Newberry?

24 A. We was trying to locate Wilfred Akiem Pitts,
25 known as King Pitts.

1 Q. And did you find Mr. Pitts there in Newberry?

2 A. No.

3 Q. Did you meet anybody else there in Newberry?

4 A. We went to his address that's located on his
5 South Carolina driver's license, which was his
6 mother's house.

7 Q. And did y'all meet and talk to her?

8 A. We did.

9 Q. Did you leave your contact information there?

10 A. I gave her all my information. She said she
11 hadn't seen him, and I gave her my name and number
12 for her to get in contact with him to get in contact
13 with me.

14 Q. After Newberry, what was the next area you
15 investigated?

16 A. After Newberry, I came back to the office.
17 Again, I met with CSI Sprinkle to try to get this
18 processed, get the evidence processed, and Detective
19 Sowards was headed to the second address on there
20 which was the apartment complex in West Columbia,
21 which would be Esaw's address.

22 Q. Okay. And so in West Columbia, do you remember
23 where y'all went?

24 A. Well, I made contact with Detective Sprinkle,
25 we got that done, and I met with Barry Sowards and

1 Detective Rawl down at Esaw's mother's house.

2 Q. And that's in West Columbia?

3 A. That's in West Columbia, yeah, Woodbine
4 Apartments.

5 Q. Did y'all find Ricky Esaw there?

6 A. When we went to the house, we found Chris Esaw.
7 When asked him his name at first when he was coming
8 out of the house, he said his name was Ricky.

9 Q. And that's his brother that's been here this
10 week?

11 A. Yes, ma'am.

12 Q. Okay. And did you meet anyone else in Ricky's
13 family?

14 A. I actually went with Barry Sowards and we
15 talked to who we later found out it was Chris
16 instead of Ricky. We went ahead and cuffed and
17 detained him and was trying to get all of his
18 identifications to run him. That's what I was
19 doing. Detective Sowards left and went and talked
20 to the mother.

21 Q. Okay. And did y'all anywhere else to look for
22 Ricky after meeting with his mom and brother?

23 A. Yes. We had a girlfriend's name, Net.

24 Q. Okay. And what was next in your investigation?

25 A. When we started looking, we started trying to

1 research Ricky with Net. And we found out that the
2 apartment complex, which is up in Columbia, we went
3 to that apartment complex, which is -- I think they
4 called it -- it was Palmetto Point, that Ricky Esaw
5 had worked or did some work there. And we contacted
6 the maintenance person that -- there that would know
7 him.

8 Q. Okay. And based on conversations there, did
9 you learn any new information?

10 A. We did. We learned that Ricky was driving a
11 black Toyota Corolla and we -- he said that he moved
12 somewhere into the -- moved out of the apartment
13 complex.

14 Q. And did you find out anything else about Net?

15 A. We found out her Net's full name.

16 Q. And after you found out Net's full name, did
17 y'all search for her cars --

18 MR. CHEHOSKI: Objection; leading, Your Honor.

19 THE COURT: Yes, sir?

20 MR. CHEHOSKI: Objection to leading questions,
21 Your Honor.

22 THE COURT: It is leading, but I think it's
23 moving -- 611 allows leading questions in areas like
24 this just to move things along. I'll note the
25 objection, but I'll allow it under Rule 611. Thank

1 you.

2 MR. CHEHOSKI: Thank you.

3 A. Barry Sowards started doing a search of the
4 driver's license with her. And we got her license
5 and it showed a new apartment complex that she was
6 living in and it was the Crossbow Apartment Complex.
7 We went to that address and found out that she had
8 just left there. The management told us she had
9 just left. We did further research on it and found
10 that she had put her name on a power bill at Water
11 Edge Apartment Complex.

12 Q. And is that in Lexington County or Richland
13 County?

14 A. That's in Richland County.

15 Q. And because it was in Richland County, what, if
16 anything, did y'all do?

17 A. We notified Richland County to come with us on
18 that. We don't like crossing jurisdiction lines
19 unless we have somebody with us. It's just common
20 practice.

21 Q. And where are we in the timeline as far as what
22 day?

23 A. We're at that Wednesday the 12th. We started
24 early morning Wednesday the 12th. And about that
25 time, we was probably late afternoon.

1 Q. Okay. And did there come an occasion that you
2 actually did meet Ricky Esaw?

3 A. I did.

4 Q. Can you tell us about that, please?

5 A. Once we got to the Water Edge Apartment Complex
6 and found that -- her address, we circled -- and let
7 me back up just a second. I drive an unmarked
8 Crown, which I consider marked. It's an unmarked
9 Crown though. Detective Sergeant Barry Sowards, who
10 was working for the fugitives and he's got an
11 unmarked, so we send Barry to circle the parking lot
12 looking for any Toyota that's black in her apartment
13 complex. And we came up with her car, and it came
14 back registered to her mother, that was parked right
15 at her apartment complex, her apartment that she was
16 staying in.

17 Q. And after her car -- Net's car was located
18 there, did you see Ricky Esaw?

19 A. I did.

20 Q. How did y'all come upon Mr. Esaw?

21 A. The plan on this one was that we was going to
22 surround the building and I was going to maintain
23 the car. I didn't want the car to leave. Barry
24 Sowards led the Richland County guys up to the
25 house, and they encountered Ricky Esaw at the door.

1 Q. If I can show you State's 29, is that the car
2 you're talking about?

3 A. Yes, ma'am. This is the car that I maintained
4 control of from the time we went to get to the
5 house.

6 Q. When you first met Mr. Esaw, who was with him?

7 A. We had Mr. Esaw, Pitts was there, and Net and
8 Johnson girl -- I just forget her first name. I
9 know we call her Trell, but it's something else.

10 Q. And were photographs taken of Ricky Esaw and
11 King Pitts that evening?

12 A. It was.

13 Q. If I can show you State's 32, do you recognize
14 that photograph?

15 A. This is Wilfred Akiem Pitts or King Pitts.

16 Q. And is that how he looked that evening?

17 A. That's how he looked.

18 Q. If I can show you State's 31, do you recognize
19 that?

20 A. That is the defendant, Ricky Esaw.

21 Q. Is there anything unusual or anything to note
22 in that photograph?

23 A. Just looks like he's got some swelling to me on
24 his eye, his left eye.

25 Q. Back to the car, do you know what was done with

1 Net's car that was over in Richland County at that
2 time?

3 A. Yes; I had it impounded.

4 Q. And what does that mean?

5 A. We took custody of the car, towed it from her
6 residence to the sheriff's office impoundment lot.
7 Once it was impound, we put it inside -- they got a
8 garage there, inside the impoundment garage. I
9 wanted to maintain the custody of that vehicle in a
10 locked and secured place.

11 Q. And was that car ever searched?

12 A. Yes, it was.

13 Q. Did y'all find anything of value related to
14 this crime?

15 A. Nothing related to the crime.

16 Q. So on that Wednesday night, do you recall what
17 was done with Mr. Pitts?

18 A. Mr. Pitts was my main concern on this night.
19 And I got Mr. Pitts away from the rest of the crowd.
20 Barry Sowards and them was in what I call
21 SWAT-outfit-type gear and Detective Andaloro and
22 myself was the only two guys in suits. And I
23 maintained Pitts from their custody into mine and
24 Detective Andaloro's custody at my car.

25 Q. Was he under arrest at that time?

1 A. Actually, no; I took the handcuffs off of him.

2 Q. And did you tell him anything about why y'all
3 were speaking with him?

4 A. We was telling him we was interviewing him for
5 a murder-robbery.

6 Q. And did you tell him anything else about the
7 particulars of the crime?

8 A. We told him that we had a lead on him and that
9 we was here to investigate his activity on this date
10 of the crime.

11 Q. Did you tell had him about any evidence
12 collected from the crime scene where the homicide
13 was?

14 A. After we started and got into it, yes.

15 Q. And did you offer to take a buccal swab from
16 the defendant Pitts?

17 A. My goal was to get a swab him from.

18 Q. And was that done?

19 A. And it was.

20 Q. And was there a match to Mr. Pitts and the
21 bracelet.

22 A. It was later a match from the bracelet on the
23 scene, positive match DNA to King Pitts.

24 Q. And any other DNA matches to Mr. Pitts?

25 A. Yes. One of the victims, Rafael, that Pitts

1 took his phone and wallet, the phone was found right
2 outside the trailer park where it was tossed out the
3 window. And the DNA came back to a positive hit on
4 Wilfred Akiem Pitts.

5 Q. If I can show you State's 11.

6 A. Yes, ma'am.

7 Q. Is this the phone you're talking about?

8 A. It's absolutely.

9 Q. After -- about how long do you think Mr. Pitts
10 was with you and Detective Andaloro?

11 A. He was with us probably four hours.

12 Q. And in your 34 years of investigating crimes
13 and law enforcement experience, is it common or
14 uncommon for defendants to lie when first confronted
15 by law enforcement?

16 A. Yeah. It's -- they'll change or change up with
17 something on a statement, they don't give you half
18 the truth. I mean, you got to basically work it out
19 of them.

20 Q. At some points -- at some point did y'all leave
21 the scene there in Richland County?

22 A. We did.

23 Q. And where did y'all go?

24 A. Went back to headquarters to the interview room
25 at Lexington County Sheriff's Office.