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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Honorable Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANTONIO VASHON BARNES, JR.

APPELLANT

APPELLATE CASE NO. 2023-001390

RECORD ON APPEAL

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT: FROM THE DECEMBER 5-13, 2022 TRIAL: STATE'S EXHIBITS #20, 25, 27, 28 (PHOTOGRAPHS), STATE'S EXHIBIT #71 (DVD OF INTERVIEW), AND DEFENDANT'S EXHIBIT #108 (DVD).

STATE OF SOUTH CAROLINA	)	GENERAL SESSIONS
	)	
County of Richland	)	2019A4021600441 2019A4021600442 2019A4021600444 2021-GS-40-01292 2021-GS-40-01293 2021-GS-40-01294
	)	
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
ANTONIO BARNES,	)	
	)	
DEFENDANT,	)	

March 30, 31, 2022
Columbia, South Carolina

BEFORE:

THE HONORABLE DEANDREA GIST BENJAMIN, JUDGE.

APPEARANCES:

DALE SCOTT, ASSISTANT SOLICITOR
PAUL WALTON, ASSISTANT SOLICITOR
NICK FOWLER, ASSISTANT SOLICITOR
Attorneys for the State

LAURA YOUNG, ASSISTANT PUBLIC DEFENDER
LUKE SHEALY, ESQ.
BRIAN SHEALY, ESQ.
Attorneys for the Defendant

KAREN AMBROZIAK
Official Court Reporter

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NO	DESCRIPTION	ID	EV
1	Photograph	135	152
2	Photograph	135	152
3	Photograph	135	142
4	Photograph	135	142
5	Photograph	135	142
6	Photograph	135	142
7	Photograph	135	142
8	Photograph	135	142
9	Photograph	135	142
10	Photograph	135	149
11	Photograph	135	143
12	Photograph	135	158
13	Photograph	135	191
14	Receipt/manufacture	146	147
15	7 photos	256	265
16	11 pages records	256	282
17	CD	256	
18	Photograph	303	304
19	Document	328	328

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1	Photograph	8	23
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4	Lease - Samuel Thomas	8	23
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6	Advice of Rights	8	44
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17	Immunity passport.	8	
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(WHEREUPON, Defendant's Exhibits 1 through 17 marked for identification only.)

THE COURT: All right. All right. My understanding we are scheduled for a Stand Your Ground hearing. This is the case of the State of South Carolina versus Antonio Vashon Barnes, Jr., 2021-GS-40-1293. I don't have the indictments.

All right. We're here on the motion for the defense of a Stand Your Ground hearing. I'll put the correct indictment number on the record once we receive it from Mr. Tolbert.

LUKE SHEALEY: That's correct, Your Honor.

THE COURT: All right. And let me get who's representing who, everybody's name for the record. Representing Mr. Barnes, Mr. Shealey.

LUKE SHEALEY: Shealeys and Ms. Young of the Public Defender's Office and Ms. Lattimer from the Shealey Law Firm.

THE COURT: All right. And for the State?

MR. SCOTT: Your Honor, it's going to be me Dale Scott, Nick Fowler, and Paul Walton.

THE COURT: All right. And the indictment numbers are 2021-GS-40-1294, 2021-GS-40-1293 and 2021-GS-40-1292.

All right. Yes, ma'am.

MS. YOUNG: Your Honor, if I could briefly before we

down.

So whatever -- because they read -- I've learned over the pandemic that court reporters read lips and so it helps them to have your mask down. So yes, you can pull it down. If y'all need to talk to each other, if you're comfortable pulling your mask down, y'all can pull it down. But that part is up to you all.

LUKE SHEALEY: Okay.

THE COURT: However you want to do that.

MS. YOUNG: Sorry, Your Honor. Just very briefly another housekeeping matter, we were in court on Friday on this case and Mr. Scott indicated that he -- we have a couple of chain witnesses.

Mr. Scott indicated that he would be willing to stipulate to chain so that we could not call those witness and speed things along. I just wanted to put that on the record, as well, and see if Mr. Scott was still inclined to do that.

MR. SCOTT: That's correct, Your Honor.

THE COURT: All right. So you're stipulating to chain for purposes of this hearing?

MR. SCOTT: I am, Your Honor.

THE COURT: And just as, I guess, my housekeeping here, I have a plan to go until maybe a little before 1:00 and then we'll take a lunch break. I have a doctor's

appointment. And I believe somebody said that the Shealeys, you all have a PCR hearing tomorrow afternoon?

LUKE SHEALEY: That has been officially continued as of late yesterday.

THE COURT: I'm hoping we'll be done by tomorrow at lunch because I have another doctor's appointment tomorrow afternoon. But I can figure that out, work that out. We shall see, but please have witnesses lined up to go.

Like I said, we'll take break close to one o'clock. Probably have to start back around 2:30 just because it's going to take me a minute to get there and back. But have enough witnesses go through the rest of the afternoon.

All right. Call your first witness.

LUKE SHEALEY: Your Honor, may it please the Court. The defense would call Investigator Emmitt Gilliam.

THE CLERK: State your full name, please.

THE WITNESS: Emmitt Gilliam.

THE COURT: Spell your last name.

THE WITNESS: G-I-L-L-I-A-M.

EMMITT GILLIAM, after being duly sworn, testified as follows:

THE CLERK: All right. Have a seat in the witness stand.

DIRECT EXAMINATION:

BY LUKE SHEALEY:
Q All right. Good morning, Investigator.
A Good morning.
Q Do you have your report with you, your investigative files and all that? Would it help you when we talk about this case if I went ahead and provided you with a copy of that stuff?
A Sure.
Q This is everything I think I have from you, your reference. All that look familiar? Looks like I've got your followup report and your summary. Does that look like you?
A Yes.
Q And I want to talk about some stuff just to give this judge kind of an idea of what this case is about. I think there's probably a lot of stuff we can agree about before maybe we start to disagree. So we can start with the easy stuff if that's all right with you.
I want to show you some photographs -- just for reference of this case, we're talking about an incident that occurred on February 7th of 2019. Do you recall that?
A Yes.
Q And this occurred generally at 511 Alcott Drive here in Columbia, Apartment 14G?

A Yes.
Q That's a place commonly called the Willow Run Apartments?
A Yes.
Q All right. And I've got an incident time on your report as 8:56 a.m. in the morning?
A Yes.
Q And I guess the time, you base that on 9-1-1 calls, talking with witnesses, all that to figure out as specific as you can time of an incident, right?
A Yes.
Q And that's there on your report. I want to show you some photographs, if I may approach, I think we can agree on. This is an aerial view from Google maps. Does that look like the Willow Run Apartment complex?
A Yes.
Q And you've got have Healing Dale across the street on Defendant's 1?
A That's correct.
Q I've gone ahead -- my investigator has taken the liberty of marking, labeling some of those buildings with apartment numbers. Do you see that?
A Yes.
Q You can see generally that would be Building 14 where this incident occurred?

A Yes.
Q And you've got 15 and 13 behind it?
A Yes.
Q That's the office? Is that familiar to you?
A Yes.
Q Building 17, where Shekila Smalls lives, for example?
A Yes.
Q That accurately looks like what we're talking about. I want to show you Defendant's No. 2. That's just a closer-up view of that same thing. Does that accurately depict that apartment complex and the buildings we described?
A Yes, to the best of my knowledge.
Q All right. Now, I want to -- this is Defendant's No. 3, City of Columbia crime scene investigator developed this diagram of, essentially, the scene. Are you familiar with this document from the CSI investigator?
A Yes.
Q That looks like y'all's work?
A Yes.
Q And one of the things that we're going to get to, but my client, Mr. Barnes, he was a leaseholder at 14G, were you aware of that?
A Yes, he was one of them, one of the occupants.
Q Right. I'm going to show you what's marked as

Defendant's 5. Do you recognize -- this is probably a document that you pulled showing he's on that lease, right?
A Yes.
Q And the other individual, Defendant's No. 4, Sam Thomas, his name is on that lease, as well?
A Yes.
Q Just for the Court's information, Samuel Thomas is a roommate of Mr. Barnes who wasn't there during the incident, right?
A Yes.
Q And there's another roommate, who is the decedent in this case, Mr. Antonio Dash. You're familiar with him, of course?
A Yes.
Q Is it fair to say he's been living there about a year prior to this?
A That's what I was told.
Q You didn't find any information to the contrary, okay.
I want to show you again just some general photos. We're going to try to enter these into evidence so the judge can have them. Would this, Defendant's No. 7, be the kind of front entranceway to Building 14?
A Yes.

Q There's an apartment up there?
A Yes, it goes to the right.
Q And this is a picture of Ms. Iesha Washington's car that she, Mr. Griffin and Ms. Griffin drove there that day in front of Building 14?
A Yes.
Q This is an actual crime scene photograph of inside the scene after the incident. Do you recognize that with two children on the ground?
A Yes.
Q And that hole in the wall?
A Yes.
Q Defendant's No. 9. That's a closer-up of the hole in the wall that CSI took, and that's No. 10, right?
A Yes.
Q We've got some photos of a flipped over table and a large TV on the ground?
A Yes.
Q Defendant's No. 11. Defendant's No. 12, another shot of that TV on the ground, correct?
A Yes.
Q We've got a door being propped open. I think I read somewhere an officer propped that door open, right?
A Yes.
Q No. 14, this is just a clothing note of Ms. Smalls

once y'all interviewed her. You probably remember that?
A Somewhat.
Q You wouldn't disagree with that?
A No.
Q And this is a body cam shot of some folks standing by a dumpster out there. No. 15, do you recognize Ms. Smalls there?
A Yes.
Q With her face?
A Yes.
Q Okay.
LUKE SHEALEY: Just for right now, Your Honor --
Dale, do you want to look at all of these? I'm seeking to enter those photos we discussed into evidence for those hearing.
THE COURT: What numbers are they?
THE COURT REPORTER: I've marked through 17. I forgot to tell you that. I'm sorry.
THE COURT: Okay.
MR. SCOTT: No objection from the State, Your Honor.
THE COURT: All right.
LUKE SHEALEY: And these would be somewhat haphazard order, but we're talking about Defense Nos. 1, 2, 3, 4, 5, skipping 6; 7, 8, 9, 10, 11, 12, 13, 14, 15.
THE COURT: All right. So 1 through 5, 7 through 15

will be entered without objection.

LUKE SHEALEY: All right.

(WHEREUPON, Defendant's Exhibit Nos. 1 through 5 and 7 through 15 were admitted into evidence.)

BY LUKE SHEALEY:

Q All right. Investigator Gilliam, just so the judge can see now it's in evidence, again, this is the apartments we're talking about here, the Willow Run?

A Yes.

Q Number 14 being the apartment in question where Mr. Barnes, my client, Samuel Thomas and the decedent, Mr. Antonio Dash lived?

A Yes.

Q Just a closer-up again, this would be Building 14 where all of this transpired?

A Yes.

Q And the car that Mr. Griffin arrived in is parked right there with Ms. Washington?

A Move it back a little bit.

Q In that parking lot?

A It's in that parking lot, yes.

Q And then we've got 15, 18, 17. Bring out 17, that's where Ms. Shekila Smalls lived, who is a witness in this case?

A Yes.

Q And, generally, this is the crime scene diagram for the judge's edification, but this is his apartment. You agree it's a pretty small apartment, right? These are not luxury apartments that are fairly big, right?
A Well, fair size apartment building.
Q It's Willow Run Apartment complex. And Mr. -- my client slept back here in this bedroom, the far right?
A I think some -- I thought it was the far left. I'm not -- let's see --
Q That's the bathroom, that's the kitchen?
A Okay.
Q This is the living room where the activity occurred. This is the front bedroom?
A That's correct, he did stay in the back bedroom.
Q All right. This is what Mr. Potash did. We might hear from him some time later, but this is generally what he drew to help us understand the case, correct?
A That's correct.
Q And again, this is -- Mr. Thomas is the leaseholder there, as we discussed, and as is my client, Mr. Barnes, through Exhibit 5. And I think what we know from the investigation is the other decedent, Mr. Dash, was allowed to stay there, correct?
A Yes.
Q And everything you knew from your investigation is

that Mr. Antonio Dash was a very good close friend of Mr. Barnes, right?
A That's correct.
Q And that Mr. Griffin was a friend who came over -- maybe not as close as Mr. Dash who's living there, but a friend, correct?
A To my understanding, they were all pretty good friends.
Q And just so the judge can see, this is the front of the Building No. 14, correct?
A Yes.
Q And you can see, again, the day of the incidents. This would be Ms. Iesha Thomas' -- or Iesha Washington's car she drove there that day with Mr. Griffin?
A That's correct.
Q Eric Griffin is the other decedent in this case?
A Yes.
Q And she also came with his mother that day?
A That is correct.
Q And that's Building 14. Just so we're clear while we're talking about the car, when the police got called shortly before nine o'clock -- I think your incident time is 8:56, but the phone calls started coming maybe 8:57?
A Possibly.
Q And that would be the shooting -- shots fired and

also after the shots were fired, you agree that Ms. Washington and Ms. Griffin went up to the apartment to see what's going on?
A Yes. Yes.
Q And that Mr. Griffin had advised them that day -- they were all, I think, on the way to work and he wanted to stop over real quick to see T.B., right?
A My understanding was they were stopped over there to see T.B., but Ms. Griffin, the mother was going --
Q She was going to work?
A Yes.
Q But he was in the car and said I want to stop at this apartment to see my friend, T.B., Tony Barnes?
A Him or Dash, one of the two.
Q Well, stopped there -- he directed them. It wasn't their agenda to stop by Apartment 14, Building 14. And then after hearing shots, they were obviously concerned, went up to the apartment, knocked on the door, right?
A Negative. When she initially heard the shots, they called her boyfriend.
Q Sure.
A No answer again. Then they went up to the scene.
Q Right. Left that part out, had eyes on the apartment, no one coming, no one going and then entered truly a horrific scene, right?

A That's correct.
Q All right. And Mr. Griffin was their loved one and he's dead there on the floor?
A Uh-huh.
Q And they see -- and Mr. Barnes, my client, is there with a gun in his hand, correct?
A I'm not sure if they see the gun in his hand, but when they knocked on the door, it took him a couple minutes to get there. At the time he opened the door, he opened it and closed it behind him. They said something went on inside.
THE COURT: I didn't get the last part.
THE WITNESS: Yes, ma'am, when he -- the two witnesses went upstairs to look at the apartment, knocked on the door, it took Mr. Barnes a couple minutes to come. Then when he came to the door, he stepped out the door and closed the door behind him.
I don't know if they were fighting inside or something. He closed the door behind him. That's when they opened the door and saw these two individuals were in there shot.
LUKE SHEALEY: I know in the interviews -- and we can get to all of those. We're just talking 1,000 feet right now generally for the judge. But I think Ms. Griffin said he closed the door, the door closed, but you understand

the police have propped this table here so the door wouldn't close. It's one of those doors that closes, right?

MR. SCOTT: Judge, I understand we have some leeway as far as leading questions, but some of the difficulties with miscommunication is that Mr. Shealey seems to be stating the facts as he understands them instead of a question to his witness. This is direct examination. I haven't been objecting so far, but it is getting a little confusing when he's editorializing.

LUKE SHEALEY: Your Honor, I apologize, but I would ask you specifically under Rule 611, this is a lead investigator in a double murder case against my client, that allows me to lead with permission from the Court because he is an adversarial witness.

He's a -- when a party calls a hostile witness, an adverse party or a witness identified as an adverse party, interrogation may be done by leading questions. So it's perfectly appropriate under the rules and it will also help us move this thing along faster. If I mischaracterize some evidence, I'm sure the solicitor will object, but I can certainly lead for this witness.

THE COURT: Obviously, he can lead under 611.

MR. SCOTT: Your Honor, this is his witness he's called to the stand in his motion.

THE COURT: I understand, but it's still an adverse witness to his client. I think that's the way the rule reading were amended. Even though he called the witness, it's an adverse witness, so he can lead, however, if there's an objection to a certain question and the format and the form of the question, you object to that. But he can lead under 611.

MR. SCOTT: Thank you, Your Honor.

BY LUKE SHEALEY:

Q So this is not an extremely point for me, but --

MR. SCOTT: Your Honor, that's objectionable, too. I mean, we're not here about what Mr. Shealey feels about the case.

THE COURT: Let's leave out the commentary, but you can lead.

LUKE SHEALEY: And, Your Honor, we don't have a jury here. I'm pretty sure you can sift through any inadvertent commentary from me as I attempt to lead this witness.

THE COURT: Yeah, just go ahead -- y'all go ahead and ask the questions. There's no jury here, but we've still got to follow the rules. So if we can leave the commentary part -- the personal commentary part out, that would be great, but you are more than welcome to lead, I think, pursuant to Rule 611. Not that I think, I know

pursuant to Rule 611.
BY LUKE SHEALEY:
Q Just getting back to Defendant's 13, this table that was set here by a police officer, that was for a reason, you agree with that?
A Yes, to make sure the door didn't lock behind them. We didn't have a personal key from management.
Q Now, I want to direct you to -- just so the judge see on the scene, but this is what -- unfortunately, this is the position of the two decedents, Mr. Eric Griffin here, right?
A Yes.
Q And that would be Mr. Antonio Dash there?
A Yes.
Q Mr. Dash lives there, correct?
A That's correct.
Q You see this big hole in the wall right there, correct?
A Yes.
Q We're going to talk some about what happened there, but here is another example of a larger hole, a larger photo of the hole that Investigator Potash found relevant to his investigation. And this is a TV on the ground and a table flipped over?
A Yes.

Q And we will get to it, but my client generally describes a commotion, a ruckus, what he describes as an altercation, a fight in his living room prior to him talking action that day, right?
A He stated that, yes.
Q And that is a TV down. Another angle of the TV, you see from the side. Do you recognize that?
A Yeah.
Q It's about a 50-inch TV, pretty large?
A I'm not sure. I think it's 42.
Q This is a picture from discovery of Shekila Smalls in your interview room, Defendant's No. 14. It does omit her head. Do you remember her that day, interviewing her?
A Yes, I remember that day.
Q You and McCoy? And that's what she was wearing that day as far as you know?
A Yes.
Q Okay. And this is just a photo of her on scene through body cam standing by a dumpster with her phone up?
A Yes.
Q You recall that? She advised she did a Facebook live post that day?
A Yes, I heard that, yes.
Q She's right there in the center?
A Yes.

Q Do you recognize these gentlemen?
A No. That's not a clear picture.
Q Okay. So we've got this shooting event. Police are responding. You've got this terrible situation where Mr. Griffin's family are in the car and go up and discover this. Mr. Barnes is in the apartment, right?
A Yes.
Q Now, there's numerous witnesses that get to the apartment prior to law enforcement securing it. You would agree with that?
A From my understanding, yes.
Q I mean, two of those would be Iesha Washington, who is Mr. Griffin's girlfriend, right?
A Yes.
Q You have Ms. Wanda Griffin, who is Mr. Griffin's mother, correct?
A That's correct.
Q There is a guy named Javonte Davis who ends up having blood on his shirt. He was there. There is Shekila Smalls, right, we're familiar with her. She enters and takes a gun on the scene, right?
A Yes, Mr. Barnes gave her a gun.
Q We're going to have a conversation about whether she took it or whether he gave it, but for right now, we'll say she ended up being in position of a gun that

Mr. Barnes had that day?
A Yes.
Q We've got Jaquana Jones. Are you familiar with this witness? The assistant apartment manager, does that sound familiar?
A Yes.
Q So she's there. You've got Hamilton Jacobs, are you familiar with that witness?
A Yes.
Q A lot of these witnesses per your investigation are hearing kind of these excited utterances from Mr. Barnes, right?
A Yes.
Q Okay. Many of them note that he still has the gun in his hands? Ms. Smalls, for example?
A Yes.
Q I'm paraphrasing, and we can go through them very specifically, but just for the 1,000-foot kind of review of this case right now, almost all of them basically agree that he says I was asleep. How did they get here? Something to that effect, right?
A I'm not sure what they all said. I can tell you what Mr. Barnes told me.
Q Well, you're the lead investigator on this case?
A Yeah. It varies between different ones because you

talking about something three years ago, but, also, you talking about something where they all say yeah, he was in the room when he got shot. But I think -- I don't want to misquote myself, but I'm pretty sure that Mr. Barnes almost said he was asleep and woke up.

Q Well, we can talk about it specifically, but other witnesses, as well, like Ms. Jones, Jaquana Jones, who's the apartment manager, passes him -- we're going to talk about her statement, but you agree she notes him saying things like, How did they get there? I was asleep. Do you disagree with that? You're not familiar with that?

A Sir, do you know how many statements I went through on video? I'm pretty sure she probably said it, but I haven't seen her statement.

Q Okay, I'll show it to you. But just for the court's reflection, you are the lead investigator in this case?

A I am.

Q And there are a lot of investigators working for you and under you on this particular case?

A With me.

Q With you. We've got McCoy, McDonald, a lot of people being interviewed. And the things that you have at your disposal to review -- and this was scheduled for trial last week, right?

A Yes.

Q Are there reports?
A Yes.
Q There are body cams?
A Yes.
Q Witness written statements?
A Yes.
Q So you're familiar with this case?
A I'm familiar, but like I said, you've got to also understand, too, it's so many different stuff. I don't want to misquote anybody. This person's name was that, okay?
Q I understand.
A That's why I said, if you want to show it to me and I can verify it, yeah.
Q I understand.
A Got no problem.
Q I understand. But one thing we can agree on is Mr. Barnes -- this incident happened at 8:56 and Mr. Barnes is on scene kind of saying hey, I live there, I'm involved as early as 9:06?
A Sir, if you look at the body cam of -- I forget the officer's name, the training officer for Castro.
Q We don't have his body cam, we have his partner's.
A That's what I'm saying, the training officer, he says that yeah, I'm the one living there. He never said I'm

the one involved.
Q You can agree he's making contact with the police very early as soon as they get there?
A Well, he made contact with them, yes.
Q Okay. And then by ten o'clock, he's doing even more and saying, "I'm actually the shooter" as he talks to Investigator Morris and Officer Cantrell. You're aware of that?
A Yes. I know they talk to him, but I don't think it's ten o'clock.
Q Okay, we'll talk about that later. But he ends up approaching them and saying, actually, "Look, I'm the shooter"?
A Yes.
Q "I want to talk to you about what happened"?
A Yes.
Q So you have no evidence that he ran away or went to Argentina or was caught on a manhunt in Georgia two weeks later, right?
A I don't have that, but he wasn't on the scene when we got there. He did leave. He went somewhere. He wasn't out there, unless he went in somebody's apartment or sat in somebody's car.
Q You don't have any information on that?
A Well, I'm just saying he wasn't out there with us.

He saw us all out there. He could have walked back up to us.
Q Well, we're going to talk about it, but you agree he raised his hand and said, I live there at 9:06, right?
A I agree with that, yes.
Q And at ten o'clock, he's turning himself in to investigators saying, I want to talk to y'all. And you took him into the manager's office to get a statement from him?
A I agree he came down.
Q You have no --
THE COURT: Let me do this. Investigator Gilliam, if you can pull that mic and speak directly. Ordinarily -- but there's a whole lot of glass between me and you.
THE WITNESS: Yes, ma'am.
THE COURT: And I can't hear everything you're saying.
THE WITNESS: Yes, ma'am.
BY LUKE SHEALEY:
Q So by ten o'clock, he's giving an official interview, talking with folks. You didn't have to manhunt this guy, find him somewhere with the warrant division, right?
A Not at the time.
Q Now, a little bit so the judge can understand, now Shekila Smalls is an important witness in this case, lives

in Building 17. You told me that?
A Yes.
Q Right. And we're going to maybe disagree about whether she was given a gun by my client or whether she took a gun, but it ends up she is in possession of the gun that was used in this case, right?
A Yes.
Q And he also volunteers that information to Investigator Cantrell and Investigator Morris at ten o'clock?
A Yes.
Q Okay. And based on that, that causes you to take an interest in Shekila Smalls, right?
A Yes.
Q To try to locate the gun, because not only he says she took it and he actually shows who she is on Facebook. This is her account, this is what she looks like, all that, right?
A Yes.
Q And there were seven shell casings found on the scene in that living room area. Do you agree with that generally?
A Pretty much, yes.
Q And once finally SLED did their job and did the firearms comparison, as the lead investigator, you would

know that all seven of those shell casings actually match the test fires from the gun that Shekila Smalls had?
A Yes.
Q And we've got a situation where these young men who were deceased were shot multiple times, right?
A That's correct.
Q And we talked about this before at the preliminary hearing, but Mr. Griffin had six distinct gunshot wounds per the pathologist. Do you agree with that?
A Yes, sir, I -- yes.
Q Just from a 1,000 feet. I'm not asking you to testify about the pathology report. And Mr. Dash had seven distinct gunshot wounds, right?
A Yes.
Q But only seven shell casings were located?
A Yes.
Q And when we talked at the preliminary hearing, we did not have the benefit of all this SLED kind of analysis, but based on the firearms report, as the lead investigator, you're aware that not all the projectiles matched this gun, correct?
A Yes.
Q There's a discrepancy there?
A Yes.
Q Now, after Mr. Barnes talks to Cantrell on the scene,

says, hey, I live there at 9:06, and after -- and at ten o'clock, he presents himself to investigators, gives a body cam taped kind of informal, just verbal interview, right?

A Yes.

Q You then take him down to the City of Columbia to formally interview him, right?

A They bring him to Columbia.

Q Whether you take him personally, he's brought at your instructions because he's saying I did this, right?

A Yes.

Q And just -- you recognize, obviously, this document? That would be his official sworn statement in this case with your advice of rights?

A Yes.

Q And then this two-page statement, that's actually your handwriting. You wrote it for him, right?

A That's right.

LUKE SHEALEY: Your Honor, at this time, I would introduce Defendant's No. 6 into evidence.

MR. SCOTT: Your Honor, I understand this is a hearing outside the presence of the jury, but what is the mechanism for getting extrinsic evidence of a statement in? First of all, it's hearsay, and we've never had anybody testify what his statement was. The proper avenue

would have him testify -- should be testified inconsistently and then extrinsic evidence would be admissible.

LUKE SHEALEY: Your Honor, first of all, it's a statement against interest. The State gets this in evidence all the time. Number two, there's a rule on this, and we can cite the rule, but without having a jury -- I've done about 20 of these hearings and, mostly, the judge wants to see the defendant's statement.

Your Honor, I mean, I can cross-examine him and we can make it confusing about it, but it's the defendant's own statement.

THE COURT: I understand, but we still have to follow the rules for purposes of the hearing. So it's hearsay. You still have to --

LUKE SHEALEY: Well --

THE COURT: I mean, even though the rules -- and I don't want to say relaxed, but maybe a little relaxed, but you still -- we still have to follow rules. If you give me a rule that says a way of getting it in, I'll consider that but...

LUKE SHEALEY: I will. Your Honor, under Rule 803 number -- actually 804, hearsay exceptions, declarant unavailable, statement against interest is number three. And it says, A statement tending to expose the declarant

to criminal liability and offer the exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of a statement.

Number one, it's clearly a statement against interest. We haven't got there yet, but he admits to killing two people. There's really no further admission against interest.

THE COURT: A statement of declarant. The declarant would be your client, right?

LUKE SHEALEY: Right. Statements against interest are appropriate and not hearsay. Now, if the declarant is unavailable, such as invoking the 5th Amendment.

We haven't gotten to that yet, but even so, there's a case on this and we can get into the weeds on it if you want, even though it's just a pretrial hearing, but that can still be admitted even it's tended to exculpate the accused as long as there are corroborating circumstances clearly indicating the trustworthiness of the statement.

Now, this is a recorded interview where Investigator Gilliam actually wrote the statement. It's about as trustworthy in terms of evidence as we could possibly have in this case.

It's against interest because admitting to killing two people. And it's video recorded, which I will show him some excerpts of it. This is also a pretrial hearing

where there's no case regarding immunity hearings that says what rules we go by.

Now, I tend to generally want to play by the rules, but I've also have judges say I just want to hear everything, even stuff that might be a prior bad act or whatever. Your Honor, it's my client's own statement.

MR. SCOTT: We have to hear from the client, Your Honor. That's the easiest way to do it. Have him testify under oath, have him be exposed to cross-examination instead of back dooring any statements in. You have a person who is clearly available. You have him testify from the stand instead of eliciting inadmissible hearsay.

LUKE SHEALEY: Outside of the rule, Your Honor, I think you'd like to read his statement as you make your decision on this pretrial hearing. There's no case or statute that says what rules of evidence apply in this hearing. I don't know what else to tell you, Judge.

THE COURT: All right. For purposes of pretrial, I'm going to allow the statement in only for purposes of the pretrial -- I mean, for purposes of this hearing. I think he's correct that it's very limited case law on the rules of what's admissible at this point and stage in the trial. So I'll allow it. So the objection will be overruled.

LUKE SHEALEY: Thank you, Judge.

BY LUKE SHEALEY:

Q I think you said that you recognize this document --
THE COURT: What number is it?
LUKE SHEALEY: This is 6, Defendant's No. 6.
THE COURT: That would be in over the objection of the State.
LUKE SHEALEY: Yes.
(WHEREUPON, Defendant's Exhibit No. 6 admitted into evidence.)
BY LUKE SHEALEY:
Q And you recognize this? Obviously, we've gone over that. In here, basically -- we'll talk about this more later, I just wanted to get it in evidence. There's another statement that's pretty important to this case that comes from my client. Like you've already testified, you've learned that Shekila Smalls is in possession of the gun that's used in this event, right?
A Yes.
Q And so you go and you -- I think Investigator McCoy interviews her in her apartment and she -- well, quite frankly, she denies it, right? She denies having this gun?
A Yes.
Q Okay. Now, what she tells Investigator McCoy, correct me if I'm wrong, is that she was --
MR. SCOTT: And this is just outright hearsay. Now,

they're asking for a statement by somebody other than the accused, who they can clearly call as a witness. She's on their witness list.

THE COURT: All right. Objection is sustained. Rephrase the question.

BY LUKE SHEALEY:

Q You learned several things from investigating Ms. Smalls, correct?

A Somewhat, yes.

Q That she was at the apartment complex that morning?

A Yes.

Q And that she was unloading her trash, right?

A Yes.

Q And that she was with two gentlemen by the name of Kevin Archie and Richard Charles, right?

A Yes.

Q The maintenance men?

A Yes.

Q And based on learning that, she also -- you learn that when she hears some shots, those three run over to apartment 14G that we're talking about, correct?

A Yes.

Q And you learned from that part of the investigation that she is in the scene witnessing these two bodies, correct?

A Yes.
Q And that at that point, she either is given the gun by my client or that she takes the gun, right?
A Yes.
Q Okay. And now, when Mr. Barnes early on goes to investigators, he says I gave -- she took the gun, she, Shekila Smalls, correct?
A Says she got the gun.
Q What I'm asking you is she initially denied that she had the gun to Investigator McCoy?
A Yes.
Q You denied it at the interview at her apartment, correct?
A Yes.
Q Y'all took her down to the City of Columbia and she denied it again, correct?
A Yes.
Q I mean, she outright lied for 45 minutes?
MR. SCOTT: If I can have some rules for the road. I don't want to keep objecting, but, again, he's classifying statements, again, hearsay as lies. He just continues to backdoor hearsay in in an attempt to avoid putting witnesses on the stand.
THE COURT: All right. The objection is sustained. Please rephrase the question. You can call -- I'm

assuming she's on the witness list. You call her as a witness.

LUKE SHEALEY: She is, but, Your Honor, I'm just asking him generally what he's aware as the lead investigator. He's testified that she was untruthful for a period of time.

THE COURT: Rephrase the question.

BY LUKE SHEALEY:

Q You just agreed that Ms. Smalls was untruthful to you and Investigator McCoy for a period of time, correct?

A She was untruthful, yes.

Q And that period of time when you had her at the City of Columbia police department was approximately 45 minutes, correct?

A I'm not sure of the time slot. It was a lot.

Q All right. We're going to talk about her statement real quick.

MR. SCOTT: No, we're not. It's an objection.

THE COURT: What rule are you trying to get her statement in under?

LUKE SHEALEY: He says he's unclear about the period of time, so I'm going to talk to him about the period of time when he had Ms. Smalls interviewed. I don't think that's a proper objection, no, you're not.

MR. SCOTT: We're going to talk about her statement?

THE COURT: Hold on one second. You can show him this -- before you publish it, you can show him the statement and ask -- if you're trying to get him to rephrase his memory, there's a way to do it. Show him the statement, let him look at it and then ask him the question. You can't put the statement into evidence.

LUKE SHEALEY: I'm not seeking to put it into evidence.

THE COURT: You can't put it up and publish it either. You're putting it up on the screen.

LUKE SHEALEY: I can skip that slide, Your Honor. Again, you're the fact finder here. You're the gatekeeper. Most judges I've been in front of want to hear kind of what's going on in this case. Yes, technically, if we were in front of a jury, her statement would be inadmissible under extrinsic evidence unless she denied the existence of it under Rule 613. I understand that.

This is a relaxed hearing akin to a Jackson vs. Denno. There is no case that says what the Rules of Evidence are. I understand why the State is making their objections. I would hope they would cite a rule when they start doing that. I'm just trying to talk to him about a witness that he's already told me was not truthful.

THE COURT: Yes, sir.

MR. SCOTT: I'm sorry, I don't mean to interrupt, Your Honor. If the door is swinging open, then my cross-examination, who knows where it's going to go. If I elicit any hearsay I want. If we just throw away the rule book, I don't know where my boundaries are going to be.

THE COURT: The objection is sustained. Rephrase the objection. There's a purpose of following the rules in the rule books not just when the jury is here, but also when the jury is not here so that we can have certain order as to the way things are supposed go.

So you can show him the document, ask him to refresh his memory, and then ask him the question again. But I don't need to see her statement. It's hearsay.

LUKE SHEALEY: I won't show you her statement.

BY LUKE SHEALEY:

Q So Investigator Gilliam, you agree Shekila Smalls was interviewed by Investigator McCoy, correct?

A Yes.

Q He is advising her that Mr. Barnes is saying that she has the gun. You agree with that?

A Yes.

Q And she is saying no, I don't. You agree with that?

A Yes.

Q She's denying that. You would also agree that this is a process of kind of the investigators getting her to

feel comfortable, right?
A Yes.
Q And so there -- that's just my computer. I've got a transcript, Investigator, of this interview, but if we --
MR. SCOTT: Same objection.
LUKE SHEALEY: This is inadvertent. It's on my computer, I just wanted him to see it.
MR. SCOTT: Take it off.
BY LUKE SHEALEY:
Q I do have a transcript if you need to see it, we can walk through it, but looking at the transcript of your interview, she advises that she doesn't have the gun and --
MR. SCOTT: Objection, hearsay. How many times do I have to object to this?
THE COURT: All right. Hold on one second and let's save the commentary.
State the objection for the record.
MR. SCOTT: The objection is hearsay again, Your Honor.
THE COURT: All right. Thank you.
Why is it not hearsay? This is the way it works. You state an objection, you tell me why it's not hearsay and then I'll rule.
LUKE SHEALEY: I didn't even finish my question, Your

Honor.

THE COURT: All right. Finish the question. What is the question? You said what did she say, I think.

BY LUKE SHEALEY:

Q When Mr. Barnes is informing police that she has a gun, she advises police that he is, in fact, a liar. You agree with that?

THE COURT: Hold on, don't answer.

You still have the same objection?

MR. SCOTT: Same objection, Your Honor.

THE COURT: All right.

THE WITNESS: I wasn't there.

THE COURT: All right. It's hearsay. Objection is sustained.

Unless you're going give me an exception.

LUKE SHEALEY: Your Honor --

THE COURT: Unless you're going to give me an exception. I can't throw the rule book out. This is an evidentiary hearing. The court has to make a ruling based on the preponderance of the evidence. So we have to follow the rules.

LUKE SHEALEY: I'm not asking him to elicit a direct quote. I'm talking about in terms of his investigation when Ms. Smalls is confronted with the fact that my client is saying she's got the gun, not only does she say no, she

says he's the liar. There's no hearsay about that. That's the course and scope of his investigation and where it went.

THE COURT: If she says he is the liar, how is that not -- what she said not hearsay? I mean, give me an exception, I'll be glad to consider it, but I need to know why that part is not hearsay. If not, rephrase the question.

LUKE SHEALEY: It's what he's learning in the course of his investigation, Your Honor. It's minute details of his investigation, but it's also not in his report. So I'm going to ask him about why it's not in his report in a second, but all I'm asking him is that when informed from my client she's got a gun, her response to law enforcement is that he's, in fact, lying. That's not hearsay.

I'm not asking him to elicit an out-of-court statement for the truth of the matter asserted. This is what they're learning as part of their investigation.

MR. SCOTT: So, Your Honor, as we all know, everybody in this courtroom, the proper avenue is to call Shekila Smalls, call Antonio Barnes and should they testify inconsistently with what they told him, then it comes out. However, they're trying to backdoor all this hearsay in through the investigator instead of putting before Your Honor people who made those statements originally.

THE COURT: And it is case law, it's usually the other way around, where the court says that the State cannot solicit hearsay testimony through an investigator by asking the exact question through the course of your investigation, what did you find.

I can't think of the name of the case, but there's a case where the court has said that the State cannot do that. There is case law that supports you can't ask the investigator during -- because that used to be a practice of the State, during the course of your investigation, did you find. And this is how they got it through hearsay. And the Supreme Court came and said no, you're not going to do that anymore. So same law applies here. You can't ask it. You have to call the witnesses. It's still hearsay.

LUKE SHEALEY: Let's go about it this way, Your Honor. I think I'll make this easier. I'll talk to him about his own report. May I do that?

THE COURT: As long as it doesn't -- your question does not solicit hearsay, but we'll keep it -- if not, we're going to be here all day with objections.

BY LUKE SHEALEY:

Q Investigator Gilliam, do you have your report in front of you?

A Yes.

Q And through various objections, we have learned that Ms. Smalls was not truthful with you for a period of time regarding the gun, correct?
A Yes.
Q Okay. And I've asked you if that was 45 minutes or so, and you -- I think you said you're not sure, it was a while?
A Actually, I don't know exactly how long. She talked to Investigator McCoy.
Q She talked to him at her own apartment. Do you recall that?
A Yes. And also at headquarters, too.
Q At headquarters. And then at headquarters, you actually entered into that interview?
A Correct.
Q And you recall having to pretty much ramp up your -- let's say plea for her to come clean about whether she had the gun or not. Do you recall that?
A Yes.
Q Because she repeatedly denied it, right?
A Yes.
Q Right. She informed you that she actually denied trying to take the gun. It was presented to her and she denied that, right?
A Something like that.

Q Now, these important details, they are not in your report, you would agree?
A I don't know.
Q Well, read your report.
A That is in investigator McCormick's statement, interview.
THE COURT: Speak into the mic, please.
A That's in Investigator McCoy's interview because he did interview her.
Q But you are the lead investigator?
A I am.
Q There are portions in your report about your encounter with Ms. Smalls and what her general account of the case was?
A Yes.
Q You would agree -- you don't even need to look at it, you would there's nothing in there about her lying to you initially?
A No.
Q Okay. Initially, once she decided to be truthful, she advised that she didn't have the gun?
MR. SCOTT: Objection to hearsay, Your Honor. I'm sorry.
THE COURT: What's the question again?

BY LUKE SHEALEY:
Q Eventually, once she decided to be truthful, in your opinion --
MR. SCOTT: "In your opinion" is objectionable, too. He's not an opinion witness.
Q She advised you --
THE COURT: Let me finish hearing the question. Go ahead.
BY LUKE SHEALEY:
Q She eventually told you she had the gun. You learned that from your investigation, right?
A Yes.
THE COURT: Hold on.
The first question, he rephrased it. It was sustained and he rephrased the question.
Move on, please, yes.
BY LUKE SHEALEY:
Q And, ultimately, you did a search warrant in this case for her apartment?
A That's right.
Q And the gun was found under her mattress, correct?
A Yes.
Q And, eventually, she gave a written statement in this case. You agree with that?
A Yes.

Q And that was reduced to writing. And the genesis of what she says is kind of like what we already talked about. She was taking out her trash, right?
A Yes.
Q She was hanging out with Kevin Archie and Richard Charles, right?
A Yes.
Q They all heard shots and went running over there, correct?
A Yes.
Q She runs up the stairs, sees this terrible scene, Barnes gives her the gun, right?
A Yes.
Q She puts that to writing?
A Yes.
Q Okay. And that was the day of this incident over three years ago. Now, as the lead investigator, you're aware she has now provided to the Solicitor's Office a new account of that day?
A Yes.
Q Okay. And that a new -- correct me if I'm wrong, but the new account of that day came out last weekend?
A I think so, yes.
Q And there's a new detail. The part that was in the record at that time was the same, but what's new now --

and help me out if I've got this mistaken, is that she says she went over there a little earlier to that apartment?
A That's correct.
Q Okay. And we know -- again, we know that this incident happened at 8:56 per your report. We know you've already testified that Wanda Griffin and Iesha Washington with Mr. Griffin, who's a victim in this case, shortly before that, right?
A Yes.
Q Do you recall, I guess, Ms. Washington saying it was about five minutes, correct?
A Yes. Something like that.
Q Okay. And that she's parked literally right in front of the apartment and she tells you in interviews, I had eyes on the apartment. No one was coming, no one was going, right?
A Yes.
Q So if we do the math, five minutes prior to 8:56 is 8:51?
A It was five minutes, yes.
Q Okay. But Ms. Smalls in her new account says that she goes over there to buy weed from Antonio Dash?
A Yes.
Q And that when she is let in that apartment that

Mr. Dash is there and Mr. Griffin is there, right?
A Yes.
Q These are the two decedents in the case?
A Yes.
Q And she informs the Solicitor's Office that while there, Mr. Barnes peeks out of his bedroom in the back to see who it is, right?
A Yes.
Q And then closes the door, right?
A Yes.
Q Thereby, letting us -- I guess imply he's awake, correct?
A Yes.
Q And that's critical because what he repeatedly tells you in his written statement is that he was asleep, right?
A Yes, ma'am.
Q He hears this loud commotion and bang, right?
A Uh-huh.
Q That he is certain that his roommates are not there, right? That's what he tells you?
A He said he laid there for a few minutes --
THE COURT: I can't understand what you're saying.
THE WITNESS: Excuse me, I apologize, Your Honor.
He also stated that when he heard the commotion that he laid down a few minutes before he got up.

BY LUKE SHEALEY:
Q We're talking about general concept. He's certain his roommates weren't there, correct? That's what he tells you?
A I can't say that because I can't --
Q We can go over it.
A Yes.
Q He hears a TV crash, he heard that?
A He heard, yes, kind of an altercation going on.
Q That it was so early in the day he hadn't even gotten up to use the bathroom, right? That didn't make the statement, but you recall that kind of sentiment from him?
A Yes.
Q He thinks he's being home invaded or robbed, correct? That's his account.
A Yes.
Q Whether you believe it or not, that's what he told you, right?
A I'm just thinking about it.
Q He lies in bed for about two minutes?
A Yes.
Q He listened, listening for roommates, correct?
A Yes.
Q But he hears like this fighting or tussling going on in the front bedroom?

A Yes.
Q And he advises you that he comes out, sees figures on the ground and starts shooting, right?
A Yes. Yes.
Q So Ms. Shekila Smalls' statement is important to your case because it would imply that he's awake while Mr. Griffin and Mr. Dash are still living, right?
A Yes.
Q Okay. So she would have to be over there by our own math we just did at some point after Mr. Griffin was already dropped off by his family, correct?
A Yes.
Q So somewhere between 8:51 and 8:56. You agree with that?
A Yes.
Q For her statement to be true?
A Yes.
Q And again, this is a woman who has lied to you before. You agree with that?
A Yes.
Q Okay.
Brian, come help me.
I want to play you some videos we have from Statewide Surveillance Security Systems. In Statewide Security Surveillance, you pulled some video or had some video

requested as part of this case, right?
A Yes.
Q Statewide Security has cameras all across the city, correct?
A Yes.
Q But they also have several cameras in this actual apartment complex?
A Yes.
Q Now, do you recognize that right there as Building 17?
A Yes.
Q That's the building number right there?
A Yes.
Q And that is where Ms. Smalls lived?
A That's correct.
Q 17E?
A Yes.
Q That's where you executed that search warrant and found that gun. I'm going to push play on this and I'm going to ask you if you recognize some figures possibly entering the view. Hold on a second. Bear with me. You see that gentleman right there?
A Yes.
Q That's one of the maintenance men, Richard Charles. You recognize him from your investigation?

A Yes.
Q He's got one of those trash picker upper sticks with a bucket. He's one of the guys that said he was with Ms. Smalls that morning?
A Yes.
Q And you note the time as being 8:44?
A Yes.
Q On the Statewide Security video surveillance system?
A Yes.
Q Do you recognize this man right here with Mr. Charles?
A Yes.
Q That would be Kevin Archie?
A Yes.
MR. SCOTT: Your Honor, again, instead of Mr. Shealey testifying to who the individual is, ask him do you recognize this man, if so, who is this man.
THE COURT: Yeah, just ask him if he knows who it is.
LUKE SHEALEY: As far as I'm aware, that's what I did, Your Honor.
THE COURT: You asked him did he know him. Then you didn't ask him who it was. You just said who it was. So go ahead and just ask him if he knows who --
LUKE SHEALEY: We've already covered that I'm allowed to lead, right?

THE COURT: Yes.
LUKE SHEALEY: This witness.
THE COURT: You can lead, but you can ask him who it is and maybe not suggest. But go ahead.
BY LUKE SHEALEY:
Q I think we covered it, but do you recognize this man?
A Yes.
Q Is that Kevin Archie?
A Yes.
Q Now, you have in your possession and control Statewide Surveillance video evidence as a part of this case, correct?
A Yes.
Q I'm going to fast forward this case a little bit up.
Now, it's a different angle, just using a little zoom feature on my BLC player, but this is the same gentlemen we just talked about, the maintenance men?
A Yes.
Q Do you see this young woman wearing the gray top and with the white trash can?
A Yes.
Q Do you recognize her to be Shekila Smalls?
A Yes.
Q And she advised in the case she was taking out trash that morning prior to the shooting?

A Yes.
Q And you see her interacting with the maintenance men a little bit? Do you see that, sir?
A Yes.
Q That's consistent with their accounts of this case, correct?
A Yes.
Q And we see some movement -- let me back it up. Do you see Ms. Smalls walking?
A Yes.
Q And you know from this case that there's a dumpster sister over here, correct?
A Yes.
Q Does it appear as if she's walking the trash to the dumpster?
A Yes.
Q Do you know the timestamp from Statewide Security for the court?
A Yes.
Q What is that?
A 8045 -- excuse me, 48.
Q So 8:48 in the morning. Do you see her walking back with that now empty trash can?
A Yes.
Q She's wearing the same clothes that you encountered

her with when you interviewed her that day, right?
A Yes.
Q And I think that's one of the questions you asked her, did you change clothes, and she said, no, I didn't change clothes, right?
A I can't remember all that. I probably did.
Q I want to fast-forward you a little bit here. Do you see the maintenance men kind of doing their job in the corridor of the building there?
A Yes.
Q All right. Do you see another trash can emerge. Does that look like Ms. Smalls to you?
A Yes.
Q Does it look like she is, perhaps, still engaged in a conversation with the maintenance man?
A Yep.
Q And we can note the timestamp at this point is 8:50:55. Ms. Smalls is still in the corridor?
A Yes.
Q Fast-forward you a little bit. You still see her there standing in the corridor?
A Yes.
Q Now, we see some movement here, don't we? You stopped Ms. Smalls like she's walking upstairs toward the trash can. Is that fair?

A Yes.
Q That's Mr. Smalls and that's the second load of trash that morning. You note the timestamp of 8:53:16 when Ms. Smalls is conducting that activity?
A Yes.
Q She's walking back after emptying her trash. Do you agree with that?
A Yes.
Q There's some folks walking up. It looks like she says hello to them. Looks like she has now reentered the corridor of her building, do you agree that?
A Yes.
Q And the timestamp we're at is 8:54:01?
A Yes.
Q And we talked about for our basic map that Mr. Griffin, based on his family members' statement, have already been at the apartment, approximately 8:50, 8:51. We've already testified to that. Do you agree with that?
A Pretty much, yeah.
Q And we know that you list the incident date as 8:56 a.m. per your report?
A Yes, I do.
Q And we know from 9-1-1 calls that it's about 8:57 that calls are coming in. Do you agree that?
A Yes.

Q I want to take us all the way to about around the time of the incident. So 8:56, you see that timestamp right there, right?
A Yes.
Q Per your investigation, that's when this shooting has happened, correct?
A Yes.
Q Just roam around a little bit. We don't see Ms. Smalls here anymore, do we?
A No.
Q I want you to focus your attention back to Ms. Small's section, okay? Do you see that?
A Yes.
Q Do you see three figures run by at exactly 8:57?
A Yes.
Q I want to look at it one more time with you. I'm just going to try and do it frame by frame. Do you see that one figure running?
A Sure. Yes.
Q Wearing all gray?
A Yes.
Q Followed by a second figure wearing a black sweatshirt, looks like a male build, carrying a bucket and trash picker upper followed by a third person. Do you see that third person?

A Sure.
Q Wearing a gray sweatshirt?
A Yes.
Q You would agree that that is Ms. Smalls and Mr. Archie and Mr. Charles heading for 14G?
A Yes.
Q Okay. And that's consistent with their statements, at least, at the time, correct?
A Yes.
Q I'll note timestamp is 8:57?
A Uh-huh, yes.
Q And we've, basically, looked at some photos of kind of the distance between apartment 17 from an aerial view to 14, right?
A Yes.
Q So noting that those are the -- that's Ms. Smalls there on camera and know that Mr. Griffin is out there, roughly, 8:51, the shooting happened 8:56, 9-1-1 was called at 8:57. If Ms. Smalls is running at 8:57 to that sound, she's not over there conducting a causal drug purchase, is she?
A Not at that time, but I do disagree with you because a lot of times people say five minutes, it's probably ten minutes. Ms. Washington could be off on her time. The second thing is, the backside of the building, if you do

it from 8:15 to the time she took the trash out -- to the second time she took the trash out, we can't even tell she didn't go in.

Q So that's something you attempted to try to piece together yourself?

A Yes.

Q After her new statement?

A Yes.

Q But I mean, you've already -- so, I guess, what you're saying is maybe Ms. Washington --

A I asked her how she got to --

THE COURT: Microphone, please.

THE WITNESS: I'm sorry, Judge.

I asked her about how she went like to the corner of the buildings and went towards. We asked her about could she see Ms. Washington in the car. She said yeah, but she walked from her building, right down to that building and walked in the front the steps. She did say that, yes, so, I mean, I can't say.

Q Wait, wait, wait. You're saying that Ms. Washington told you something about seeing Ms. Smalls?

A No, no, no. We asked her did she see Ms. Washington's car out there. First, she said yes. Then I asked her how did she walk from that building over to the apartments because, you know, for them not to see

her at all. She just said she walked straight down the corner of the building and came over to the -- walked right upstairs and went upstairs and got what she got and came back down.

Q Okay. But you agree with Ms. Washington from the get, she knows how long she was there when Mr. Griffin got dropped off, right?

A Yes.

Q She said repeatedly for your investigation about five minutes, right?

A Yes.

Q Which again, we've done the math. That would put her there about 8:50, 8:51, correct?

A Yes.

Q She concurs at 8:56, correct?

A Correct.

Q And we've got Mr. Smalls dumping her trash and hanging out with Mr. Archie and Mr. Charles at that time per surveillance video, right?

A That's correct.

Q And you testified that we can then see the figures running over. So the point I'm making to you, if she's over there and Mr. Griffin is there for five minutes, she can't also be in apartment 14, right?

A That's correct.

Q She only had that small window while he was there to actually see Mr. Griffin if that is the case, right?
A Yes.
Q So when you tell me some things that you mentioned were being fleshed out by Ms. Smalls, who changed her statement -- you agree with that, she changed her statement?
A She had to, yes.
Q You actually interviewed her?
A When she -- I talked to her for a minute.
Q I mean, recently, like last weekend?
A I was there when she told me about that, yes.
Q Okay. So not just Mr. Scott or Ace with the Solicitor's Office?
A They did an interview on her somewhere else. I was advised of that. When I got note of that, that's when -- we was at the Solicitor's Office, I think, Monday when she talked to me about it.
Q Okay. So you were there talking to her. Did you take any notes?
A Not then.
Q You didn't take any notes?
A Not then because Ace got notes. I just kind of put me and myself what she was saying.
Q Okay. Didn't take her back to any recorded

interview?
A No.
Q Okay. All right. I'm going to talk about Ms. Small's change of statement. I'm going to talk to you a little bit going through some stuff we've already gone through about Mr. Barnes' statement and kind of the unfolding of this case as you know it from being the lead investigator. Again, maybe this seems obvious, but things that are at your disposal are obviously your officers and investigators, correct?
A Yes.
Q Their reports of the witnesses they're interviewing, correct?
A Yes.
Q The witnesses' own statement, correct?
A Yes.
Q Body cams?
A Yes.
Q And we've just seen surveillance videos pretty helpful to your case?
A Yes.
Q Now, I don't want to publish this and run afoul with an objection, but --
MR. SCOTT: Well, it is objectionable because it's a statement by somebody who's not in court to testify.

LUKE SHEALEY: So I just took it down so Your Honor isn't crushed by this information that might distort her view of the case.

THE COURT: I can't read it from here anyway.

BY LUKE SHEALEY:

Q Again, we've gone over this a little bit, but you did interview Jaquana Jones, right? And you seem to not have a great recollection of exactly what she said. She's the apartment manager?

A Yeah, I thought -- if I'm correct, I think Investigator Grant talked to her. I talked to her a little bit.

Q But as the lead investigator, you're aware of her position as a witness in this case?

A Yes.

Q We talked about how she was one of the ones that ran up there and --

A Yes.

Q And Mr. Barnes made kind of excited statement to her, right?

A Yes.

Q And asked him as he's leaving the apartment. So you would agree that he, basically -- she describes seeing a guy in bedroom slippers, right?

A Yes.

Q Because she's trying to figure out who the leaseholder is?
A Yes.
Q And, essentially, what she tells investigators --
MR. SCOTT: Objection, Your Honor. Mr. Shealey is testifying again for an out-of-court witness.
LUKE SHEALEY: What?
MR. SCOTT: I don't know the hearsay exception.
THE COURT: I didn't get to hear the whole question.
LUKE SHEALEY: Well --
THE COURT: Don't answer, Investigator.
LUKE SHEALEY: She is reporting an excited utterance of Mr. Barnes to law enforcement as he's leaving the scene, literally walking out his front door. She's right there at it. So I'm trying to get the information out from his investigation about what Mr. Barnes indicated under the stress or excitement of that day.
THE COURT: She would need to testify as to the excited utterance, not -- under the rules, he wasn't there to witness the excited utterance. So that's the problem with trying to get it in as an excited utterance. She can testify. Let me ask you, are you going to call these witnesses? Are they not available?
MR. SCOTT: Mr. Barnes is right here.
THE COURT: Well, I'm not talking Mr. Barnes. I'm

talking about -- is it Ms. Jones, Ms. Jones we're referring to?

LUKE SHEALEY: I haven't decided yet. Your Honor, just respectfully, as a lead investigator, he's aware of the position of general witnesses, so I'm trying to ask him generally. I don't have to get specific quotes. Generally, there's about seven witnesses that hear the same thing from Mr. Barnes. The same general fundamental position. I don't have to get in direct quotes, but I'm trying to make sure that he's aware of that. I'm sure he is. I just want to know what he knows as the lead investigator in the case.

THE COURT: All right. But you can't get into hearsay. I understand if it was an excited utterance, it would need to come through Ms. Jones as to what Mr. Barnes said because that's like hearsay on hearsay, so the objection is sustained.

You can rephrase the question and ask him what he found during the course of his investigation or something of that sort regarding his findings as a result of him being the investigative officer.

LUKE SHEALEY: Okay.

BY LUKE SHEALEY:

Q Let me backtrack a little bit. After this shooting, we've already established there's several people at his

door, correct?
A Yes.
Q Ms. Jones is one of them, the apartment manager?
A Yes.
Q Hamilton Jacobs is there, correct?
A Yes.
Q Devonte Davis is there, correct?
A Yes.
Q Iesha Washington is there, correct?
A Yes.
Q And Ms. Griffin is there?
A Yes.
Q And they are all noting to police various statements and observations from Mr. Barnes, such as he's holding the gun, correct?
A Yes.
Q There's blood everywhere, correct?
A Yes.
Q And it's important for law enforcement to know what they're observing. You agree with that?
A Yes.
Q And it's documented as part of this investigation through these witnesses that Barnes' general account is how did they get there, right?
A Somewhat.

Q I was asleep, right?
A Yes.
Q That's consistent amongst all these kind of witnesses that are encountering him literally, like, moments after this event, right?
A Yes.
Q So you know that as your investigation -- one of the things you're trying to figure out is whether he's lying or telling the truth or something in between, right?
A Yes.
Q You're trying to figure that out. And you can agree -- it's not always the case, but you can agree when people are consistent in their accounts, that indicates to you that they're not lying, right?
A Not necessarily.
Q Not necessarily, but that's a general indicator of being truthful, being consistent. You don't agree with that general premise?
A You can tell a lie and keep telling it over and over and over, you make it the truth.
Q Okay. So you disagree with the general premise that if a witness is consistent that they're likely truthful?
A No. I'll take that back, no. Usually, they are.
Q Okay. And if someone is inconsistent, that is often, not always, but often an indication that they might be

lying?
A Good chance.
Q Okay. Like Ms. Smalls, for example, correct?
A Yep.
Q So what I'm trying to get at is that Mr. Barnes walks out of his own apartment after this event and is encountering folks. You're learning that he's saying things like why are they here? I was asleep. Right?
A Yes.
Q Okay. Thank you.
I need help finding it.
Have you reviewed everybody who came into contact with this case?
A I tried to.
Q Okay. So we referenced this a little bit. Tell me if you looked at this portion. So the timestamp on that is what? Can you see that?
A 9:07.
Q 9:07. This event happened at 8:56?
A I believe so, yes.
Q And that's Mr. Barnes on scene approaching law enforcement, correct?
A Yes.
Q This is Mr. Castro that we discussed earlier?
A Yes.

Q That's the body cam he's wearing right there?
A Yes.
Q And he's with his partner who is training him?
A That's right.
Q And he's being instructed, I guess, to take biographical information, right?
A That's correct.
Q And Barnes said I live there, right?
A Yeah, he said that part.
Q So you recall that. And that's, again, sometimes when people flee -- let's say you had cases where they go to Alabama, or they go to Georgia, they're caught a year later in the woods, that makes you feel like they might be guilty of something, right?
A Yes.
Q But sometimes when witnesses stay on scene, that obviously helps officers, correct?
A Yes.
Q That could be consistent with innocence? Not always, not always?
A No.
Q Well, at least, consistent with cooperation, we can agree on that?
A Somewhat.
Q Okay. And Mr. Barnes, once you interviewed him,

tells you that I stopped and told them it was me?

MR. SCOTT: Your Honor, where is the hearsay exception? Not only to the testimony, but also the extrinsic evidence that he is publishing?

LUKE SHEALEY: Okay. Back out of that. Let me rephrase.

MR. SCOTT: This just keeps happening, Your Honor. And Rule 1101 does apply all the rules of evidence to anything but prelims. So for him to say he's not bound by rules of court is incorrect.

LUKE SHEALEY: Your Honor, that -- number one, that's not an accurate statement of law. But now, I flipped ahead, now I'm playing by the rules a little bit, as Your Honor wants me to do. That was inadvertent. Let me ask him the question first. He might just remember it.

THE COURT: Let's not show the statements.

LUKE SHEALEY: Okay.

THE COURT: Let's not -- ask the question and let's not show the statements.

LUKE SHEALEY: Okay.

BY LUKE SHEALEY:

Q One of the things that you recall from interviewing Mr. Barnes is that he advises you he talked to officers immediately once they got on the scene, right?

A Yeah.

Q And he says, one was, I think, a white guy and one was, as he called, a Mexican, right?
A Yes.
Q So the evidence, independent of what he says, tends to bear that out. I don't know the nationality or ethnicity of Mr. Castro, but he is a man of Hispanic origin, it would appear, correct?
A Yes.
Q So that would be an example of Mr. Barnes being truthful, do you agree.
A To a point.
Q Well, is there a lie in that statement?
A He did not say I'm the one involved in the case that I lived at. He didn't say anything about I shot anybody or anything.
Q So let me show you this since you brought that up.
MR. SCOTT: Objection.
LUKE SHEALEY: Your Honor, I'm impeaching him with a transcript.
THE COURT: Hold on one second. Do you have a copy to show him and ask him to look at it as opposed to publishing it.
LUKE SHEALEY: I do.
THE COURT: Let me see what you have.
LUKE SHEALEY: I do.

THE COURT: Whatever you put on -- oh, you don't have it.

MR. SCOTT: But, Your Honor, he is trying to impeach on an interview of Mr. Gilliam while he's asking questions of what the defendant said to Mr. Castro. So these are two separate incidents. You can't impeach him on a subsequent interview what he said on the scene.

LUKE SHEALEY: I certainly can, because what we're talking about is Mr. Barnes and whether he's being truthful. Mr. Gilliam has pointed out that he didn't spill his guts about being the shooter, that all he advised was that I lived there.

THE WITNESS: Right.

LUKE SHEALEY: And what I'm pointing is you're correct. He's telling you when he first walked up that he only informs them that I live there. That's all it is.

THE COURT: What's the objection?

MR. SCOTT: So what he's trying to impeach him with is a statement he gave later. The question to him is what did he tell Castro at the scene. We just heard what he told him on the scene. Arguably, that was inadmissible, but it came in anyway. Now, he's attempting to impeach him with a statement he gave hours later.

THE COURT: All right. So if the question is regarding what happened on the scene, you can't impeach

him with another statement if he says something different later.

You can impeach him if he says something different from on the scene. Impeachment is: Isn't it true that he just said this on this video, not something that he said later on. That's if you want to try to show an inconsistent statement, but if you're trying to impeach him, you've got to show what you're trying to impeach him with.

If there's some discrepancy about what was said on the video and what he said, then you show him the video and say look at this video, isn't that what he just said. And then he can answer.

LUKE SHEALEY: Your Honor, what I'm trying to establish is that my client was consistent. Mr. Gilliam has made the point in the middle of my question that he says well,your client didn't say I'm the shooter, he only said I lived there. And I'm agreeing with him. Correct, he is showing consistency in his accounts.

He noted the guy was, as he said, Mexican. He's telling them I live there when they're taking biographical information. We're saying the same thing but we're getting bogged down with all these objections. You can sift through this and determine what's probative or not for this pretrial hearing.

THE COURT: We still have to follow the rules. If you're to impeach him, just go back to the video and impeach him on the video if he has something inconsistent in his document to the video.

MR. SCOTT: And, Your Honor, I'm sorry, I'm not trying to be difficult. I promise you that, but I still need to know what the hearsay exception is for the defendant's statement coming in. It's certainly not his party opponent. It is his party.

It would be my hearsay exception that he's my party opponent if I was admitting his statement. This is a backdoor effort, I guess, to keep him from testifying. If this was me, I could get my whole case out through my lead investigator. I don't have a hearsay exception to do that, neither does he.

LUKE SHEALEY: Your Honor --

MR. SCOTT: What is his exception to get that statement out?

LUKE SHEALEY: Your Honor, his statements, in general, which have been reduced to writing, which are video recorded, you've already acknowledged come in as non-hearsay as a statement against interest because they have a sufficient indicia of reliability because they're coming from law enforcement. So that's a separate objection.

I can move along from this particular question, but his statement is in evidence. If Your Honor would like me to move along from that very minor point of consistency, I will.

THE COURT: I think I ruled under 803 --

LUKE SHEALEY: It was 804 --

THE COURT: 804, the declarant, which would be his client.

MR. SCOTT: Yes, Your Honor.

THE COURT: And a statement against his -- the declarant's interest. He's not the declarant.

LUKE SHEALEY: Right.

THE COURT: He's the investigator. And I think we said 804(3).

LUKE SHEALEY: Correct.

MR. SCOTT: He is claiming immunity, so these statements he is saying, I was asleep. Eventually, it's going to be I guess a mistake of fact. So this is his hearing. This is his party.

These statements need to come from him. He is -- I don't know of any exception that this falls under. Again, I think I can get my entire case up through my lead investigator if I was to apply Mr. Shealey's rules.

LUKE SHEALEY: Your Honor has already ruled on this particular issue. There is a rule about continuing to

object to things that are already ruled upon. I think it's -- let's see. Once I find that rule, I'm going to ask that it be enforced.

But you've already ruled, Your Honor, when someone admits that's my apartment. I shot those guys. That's a statement against interest. And it is at the bottom of the rule, even if it's -- I mean, even if it tends to -- let's say parts of it exculpate the client that as long as there's sufficient corroborating circumstances to indicate its trustworthiness, then it can come in. Meaning, I didn't make it up or there wasn't some jail letter written that might be my client. This is police-issued body camera.

So I'd like to move along since Your Honor has already ruled.

THE COURT: Well, under (b) it says: The following are not excluded by hearsay rule if the declarant is unavailable as a witness. And so we're looking at 804(b)(3).

MR. SCOTT: And I think that's why I keep objecting because he's clearly here and he can clearly testify to his own statements.

THE COURT: I guess the question is that if he's unavailable because he clearly is here, but the question is, is he invoking his 5th Amendment right.

MR. SCOTT: I've got a case, Your Honor, it's State v. Terry, the citation is 339 S.C. 532, that, basically, says invoking your rights to the 5th amendment does not label you as unavailable pursuant to the rules.

LUKE SHEALEY: And Terry also cites State v. Doctor, where offering evidence of statements that were made by that party opponent can be admitted if there's sufficient evidence of reliability, which is the very last sentence of that rule. That's why you already let this evidence in.

There's nothing more reliable than - number one, the interview is a sworn post-Miranda recorded statement that Investigator Gilliam wrote himself. There is nothing more reliable of their capturing what my client said that's consistent with his account on a city-issued body camera.

The rule in saying when someone is unavailable and then putting up all other kinds of evidence that may be self-serving, let's say hearsay, is designed to not allow things that are loose in their evidentiary providence, let's just say. There's nothing wrong with where this evidence is coming from, Your Honor. And you've already ruled on it.

MR. SCOTT: He is certainly available, Your Honor.

LUKE SHEALEY: Here's the more fundamental point on hearsay, Your Honor.

THE COURT: All right. There is the issue. I'm looking at the Terry case. I have had a chance to glance over it. If we're going to use 804, the witness needs to be unavailable. All right. I think the rule is, looking at that case, that under the Terry case that he can't invoke his -- which he has not, but if he did, it can't be used in invoking his 5th amendment privilege against self-incrimination as a reason to be declared unavailable.

So 804(3), tell me how 80 -- so he's not unavailable. So 804(3) wouldn't apply -- 804(b)(3) would not apply. So tell me how it's not hearsay under 803 in which its exception applies. Obviously, eight does not because it clearly says the investigative notes involving opinions, judgments or conclusions are not admissible.

I'm assuming what you all are going to try -- what you -- well, let me say, what I think the State is saying that you're going to try put all these statements in through Investigator Gilliam, not just this statement, but all of them. You said he gave a couple more statements.

LUKE SHEALEY: Well, he gave a lot -- what I was trying to elicit is a pattern of my client's consistency. Telling officers I'm on the scene, telling them that he's involved in the shooting. Because Investigator Gilliam has tried to point out that he's not being entirely truthful. He didn't spill the beans entirely to that

Officer Castro. Although, he's going to be turning himself into the police and talking more in his next interview.

But to your point, Gary Terry is not a bright line rule, that was the result of that particular case. But that case also cites State v. Doctor, which also was an example of where the rule was allowed to be used in this very way in which I'm seeking to use it.

Because, generally, yes, if you make yourself unavailable and the hearsay exception doesn't apply unless you're unavailable is against interest. That's the first question. Yes, admitting to killing two people is a statement against interest. We can all agree to that.

But number two, if it's being offered by -- if it's offered by the declarant, which is Mr. -- us offering it on behalf of Mr. Barnes to -- you know, and it exposes him to criminal liability, which it does, because he admitted to killing two people, and offers to exculpate him is used -- is not admissible unless corroborating evidence clearly indicating the trustworthiness of the statement exists.

So it's a statement against interest. I am bringing it forward in an immunity hearings, ostensibly, yes, to exculpate him because I don't think police got this right when they charged him. The question is, can it be done only if it as an indicia of trustworthiness? This is not

some letter that he wrote from jail to his mama saying look, look, look. This is police interviews, body cam on the scene the day of the incident.

So per the Doctor case, which is an example of how this was used, and that's cited right here by Terry, where I think three juveniles who were codefendants took the blame for some type of property crime, gave a statement to their lawyer's investigator, then rather than -- he couldn't call those juveniles because they invoked the Fifth, but the investigator was allowed to testify that they claimed responsibility. That was perfectly good in the Doctor case. So really --

THE COURT: Yeah, but the Doctor case is also saying an out-of-court statement is against penal interest by unavailable declarant. That's where -- and I'll be glad to hear from Mr. Scott, but that's what I'm trying to figure out, is he's not -- in Terry -- and Terry cites several cases, including Court of Appeals cases, some U.S. Court of Appeals cases that states that he is not available by -- him being able to invoke the Fifth, which he has not done, making him unavailable -- does not make him unavailable. I mean, it cites several cases in Terry.

But Mr. Scott, I'll give you the opportunity to respond.

MR. SCOTT: Your Honor, that was just -- I just think

he fails the first requirement of 804(b) as he's clearly available. So I think -- I was just going to stand up and say that before Your Honor noted it.

LUKE SHEALEY: Here's the other thing that trumps this particular evidentiary rule, Your Honor. It's my right under the 6th amendment to confront this witness and present a complete and full defense.

And this really is the heart of the matter as I try to question Investigator Gilliam what he's learning from my client and how it shapes his investigation and whether he should or should not believe my client when he tells him a certain version of events.

If I'm hamstrung over this state evidentiary rule in this pretrial hearing and not allowed to do that and I am specifically not allowed to present a full and complete defense, as I should be able to question Mr. Gilliam on his decision-making as he investigates this case, as he's receiving statements from my client, as he's receiving statements from other witnesses.

So that is really the constitutional problem that we run into if we have a strict adherence to this particular State rule at a pretrial hearing without a jury.

MR. SCOTT: Your Honor, I think we're covered by Rule 1101. I have no problem, you won't hear me object if he says, did you talk to witness A. As a result of talking

with witness A, what did you do? Where did your investigation lead? Not what did they say. And then the double hearsay is clearly objectionable, but it just keeps coming up.

I hate to keep bringing it up, but it just continues. I won't object if it ask him where did your investigation lead you after that, but hearsay is the problem.

THE COURT: All right. So you can ask him about his investigation. And I think the way you did it earlier, did she give you untruthful response? You can ask him about the course of his investigation as the investigator, but he can't say -- like one of the last questions I think the objection came to, it was double hearsay because you wanted to get an exited utterance in that the defendant said to Ms. Jones and then Ms. Jones said to the investigator, which would all be double hearsay.

So I think the objection is, if I'm clear, Mr. Scott, your objection is to the investigative statements coming into the record?

MR. SCOTT: Correct, Your Honor. I don't know of any hearsay exception where we could ask Mr. Gilliam okay, what did Jaquana Jones say next or what did Ms. Smalls tell you, what did Mr. Barnes say after that.

I don't know of any hearsay exception. And just general out-of-court statements offered for the truth of

the matter asserted by a declarant other than Mr. Gilliam, unless there's an exception, I'm compelled to keep objecting. I hate do it. But it just occurs to me proper declarants are in the room right now, several of them. So we could hear from them instead of asking Mr. Gilliam what they said.

THE COURT: Yes, sir.

LUKE SHEALEY: I'm assuming that Your Honor is contemplating allowing me to question the lead investigator on this case regarding the decision-making he made based on pieces of evidence.

MR. SCOTT: I have no problem that.

THE COURT: Yeah, you that. Yeah, that's fine. I think that's what we've been doing thus far, but we can't get into the actual statements. So you can ask him, did you speak this person and what did you do. And I even let you get into his findings, but saying word for word what the person say gets you into the hearsay. And unless we have an exception.

Now, if he spoke to someone on the scene and they were yelling and screaming and you were able to -- then you can get it in that way under excited utterance or present sense impression or under 803(1) and (2), but it would have to -- you, of course, would have to lay the foundation since these witnesses are available.

LUKE SHEALEY: Okay. I will do my best, Your Honor.
THE COURT: All right.
BY LUKE SHEALEY:
Q All right. Let's backtrack a little bit, Investigator Gilliam. I think we can agree that Mr. Barnes at 9:06, at least, gave --
THE COURT: Hold on one second. He can -- and also, you can ask him about consistency. I'm going to allow for this hearing, even though, obviously, there's case law out there that says it. You can ask him, was his statement consistent. You can ask him those questions. I just want to make sure you are clear on that. Did you find that to be untruthful? Was it not untruthful? For purposes of this pretrial here. Okay.
LUKE SHEALEY: All right. I'll do my best, Your Honor.
THE COURT: All right.
BY LUKE SHEALEY:
Q We've just gone over how my client approached law enforcement at 9:06 and gave them biographical information, correct?
A Yes.
Q Such as, he was the leaseholder of that apartment?
A That's correct.
Q I've already gone over this, but per investigators on

this case, you're aware that by ten o'clock, he had approached Investigator Morris and Cantrell to tell them that not only was it my apartment, I'm involved in a shooting?
A Yes.
Q Okay. And that you began talking to them as they walked him to -- I think the manager's office to have a more private conversation?
A Yes. I think it was just getting to, at the time, Investigator McEntire.
Q And you know from reviewing the files and documents --
THE COURT: You can pull it closer if you want to sit back. I just need you to speak. We've got all this glass in here and it's hard for me to hear.
THE WITNESS: I apologize again.
BY LUKE SHEALEY:
Q And being the lead investigator and having these reports at your disposal and having reviewed them prior to this hearing, you're aware as he's walking with Investigator Morris and Cantrell that he's beginning to advise them about what occurred. He's not even waiting until he gets to the office?
A Yes.
Q Again, consistent with, I was asleep, right?

A Yes.
Q How did they get here, right?
A Yes.
Q And advises of a robbery incident that occurred maybe a week prior?
A I think that robbery was two months prior.
Q You were advised of a robbery incident?
A Yeah, in December.
Q If memory serves, you recall this being between -- Antonio Dash and Samuel Thomas got robbed at the store across the street?
A That's correct.
Q But he's referencing that as relating to his mental state to these officers at the time of the incident, right?
A Yes.
Q And then he's brought into this office and just sat down. He's not advised of his Miranda rights at this point, correct? Are you aware of that?
A No.
Q Have you reviewed Officer Cantrell's body cam on that?
A I didn't know they did advice of rights at that time. I did know he came to the office, yes.
Q You're unsure whether one was given at that point or

not?
A That's correct.
Q But he does speak about what occurred on the body worn camera of Officer Cantrell?
A Yes.
Q Have you reviewed that?
A Most of it, yes, sir.
Q And it's at this point when he -- you know, investigators learned that Shekila Smalls possessed the gun, right?
A Yes.
Q It's at this point investigators learn that he was sleeping?
A Yes.
Q Okay. That he believed he was being robbed, correct?
A Yes.
Q And he is visibly upset and deeply emotional is your observation at this point discussing this event?
A Yes, but also prior to him getting with law enforcement on another body camera -- and I'm trying to think of who it is, when Mr. Barnes spoke to Mr. Samuel through Mr. Samuel's sister's cell phone while he was standing out back --
Q Well, I apologize. That's not my question. My question is as he's being captured by the body worn camera

of Officer Cantrell, which you have testified you reviewed?
A Reviewed quite a few of them.
Q Right. You probably reviewed all of them, right?
A Yes.
Q In your observation, you can agree that he is deeply emotional and personally upset about having killed his roommate and his friend?
A It appears to be.
Q Okay. Crying?
A Appears to be.
Q Now, after that, it's fair to say that law enforcement knows that he's the shooter and he's already talking. Probably the investigative decision by you is let's get him to the City of Columbia to get a formal statement, correct?
A That's correct.
Q And you sit him down in an interview room and began that process, right?
A Yes.
Q You gave him his Miranda rights, which you've already gone over. Now, this is all recorded?
A Yes.
Q Audio and video?
A Yes.

Q You agree that you did not advise him that he's being recorded, right?
A No.
Q Now, I've watched this video a lot, but it seems like there's a formal interview for about an hour while he talks to you about what's happening and then that is reduced to writing by you; is that fair?
A Yes.
Q And during the formal interview, there are some things that he says which are not captured in his statement. I'm going to talk to you about those. You do agree that everything he says is not in the statement?
A Definitely not.
Q Okay.
A That's the reason why we've got the cameras.
Q Right. Let's see.
A I'm also correct that he looked over the statement, too, and said everything was there.
Q Do you have the statement up there?
A No.
Q Somewhere in evidence floating around, but some of the things -- I mean, obviously, the statement is relatively -- it's two pages, right?
A Yes.
Q Again, we've gone over it. You're advised that he

was asleep, correct?
A Yes.
Q In his bedroom, correct?
A Yes.
Q Hears loud bangs, correct?
A Yes.
Q A commotion?
A Yes.
Q TV crash?
A Yes.
Q Waits in his bed for two minutes, and then comes out and begins shooting at the ground, right?
A Yes. Shooting at the individual, yes.
Q He tells you repeatedly and emphatically during the course of this hour or so interview --
MR. SCOTT: Objection as to what the defendant tells him unless there's a hearsay exception.
LUKE SHEALEY: I'll rephrase.
THE COURT: Hold on. Yeah, rephrase.
BY LUKE SHEALEY:
Q You learned that he does not believe his roommates are there, correct?
A Yes.
Q We haven't talked much about Samuel Thomas, but we will. Samuel Thomas is the other leaseholder we already

went over?
A Yes.
Q He, per your investigation, normally gives Antonio Dash a ride to work, right?
A Yes.
Q And Mr. Dash at the time worked at Wendy's, right?
A Yes.
Q But for reasons unknown, you were advised by Mr. Thomas that Mr. Dash did not need a ride to work this morning?
A That's correct.
Q We don't know why, but he was there when normally Mr. Thomas would be taking him to work, right?
A Yes.
Q So Mr. Thomas, per your investigation, goes ahead and goes to a doctor's appointment at the clinic, right?
A Yes.
Q He was not present during this at all?
A Not to my knowledge, no.
Q But he comes back to the scene shortly after and is talking to investigators, crime scene tape is up. They're trying to figure out what his role is in this, right?
A Yes.
Q And so you learned from talking to my client, Mr. Barnes, that he truly believes Mr. Dash is not there,

correct?
A Yes.
Q Because Mr. Thomas' habit is to take him to work every day at that time, correct?
A Yes.
Q And so one of the things that didn't make your statement, but is important to this case is the fact that he is repeatedly listening out for his roommates, right? He doesn't hear their voices prior to taking action. You agree?
A Yes.
Q And one of the things that didn't make your statement is that he emphatically believes that he is being home invaded, right?
A Yes.
Q Okay. Because he doesn't hear roommates and it is --
A He hears a commotion.
Q He hears a commotion. He calls it the hood. I guess in the world of low crime, high crime, this is somewhere -- you get calls out there every once in a while, right?
A Yes.
Q And that you learned from him that he believe that if he's lying in his bed, he will get killed, correct? Someone is going to come smoke him?

A I won't put words in his mouth, but I can't say that.
MR. SCOTT: That's generally the objection. He's asking him to put words in his mouth.
THE COURT: Sustained.
LUKE SHEALEY: Well, if he doesn't remember it, I can refresh his recollection with playing the video for him.
THE WITNESS: Please do.
THE COURT: The video -- his video?
LUKE SHEALEY: His video produced in discovery of the audio-video recorded interview of my client's interview. If he doesn't remember something, I can certainly refresh his recollection.
THE COURT: All right. Just that portion of the video to refresh his recollection.
BY LUKE SHEALEY:
Q Before I get to that --
Brian, pull this up.
You and I had a conversation at the prelim regarding phones in this case, do you recall that?
A Yes, two phones.
Q That Mr. Dash and Mr. Griffin's phones were found on them and were reviewed as part of this case?
A That's correct.
Q But you indicated to me that you were unaware of Mr. Barnes' phone, correct?

A No, I know he had a phone. I was allowing him to use it inside the interview room.
Q Well, do you agree at the time of preliminary hearing you stated that you were -- you could not locate his phone?
A That's six months later. I think his phone -- if I'm correct, I think his phone was picked up by his family.
Q Do you agree that at the preliminary hearing, you advised me that you had not recovered Mr. Barnes' phone as part of this case?
A You're correct. I have not recovered his phone at that time, no, I have not. If I'm correct, I -- if I'm correct, I thought it was, Judge, the jail said his personal property was picked up by his family.
Q That is his phone right there sitting on his lap?
A Yes.
Q You agree that's his phone sitting right there on his lap?
A I already answered that question once.
Q But at the time of preliminary hearing, you said you had not recovered it?
A No, I did not.
Q But it was in your possession?
A Not in my possession, his possession.
Q But he's in custody, you agree with that?

A Sir, I did not take his phone. Simple as that.
Q You agree he's in custody?
A Yeah, he's in custody.
Q From this point on, he would get booked and then travel to the jail.
A Yeah .
MR. SCOTT: I think he's answered the question, Your Honor. It's been asked and answered three times now.
THE COURT: All right. Let's move on. I see the phone.
BY LUKE SHEALEY:
Q And his phone ended up in property at the jail?
A Yes.
Q Would that be a source of evidentiary value to you?
A Yes, it should.
Q Just like --
A Go ahead.
Q Well, I'm just saying just like Mr. Dash's phones were sources of evidentiary value, that would be, as well, right?
A It would be, sir. I did tell the guys taking him to jail to get his phone because I forgot to get it while he was there. It's my fault. Again, I got down to the jail, I'm working everything else and trying to figure out a lot of things, go back on certain things. It slipped my mind.

And then when I tried to go get it, I assumed -- I mean, I tried to get it. And if I'm correct, the jail said his personal effects were picked up by the family.

Q Okay. So that -- you know, there's a picture of you writing the statement right there. You would agree with that?

A Yes.

Q Okay. So after you're taking his statement, he's left in his interview room with the video running for a period of several hours, right?

A Yes.

Q And are you aware that he's making phone calls to various family members?

A Yes.

Q Now, that -- have you reviewed those?

A Those phone calls?

Q Yeah.

A No.

Q You have not reviewed those?

A No, I have not reviewed -- the phone calls to his family, yes, I reviewed that part.

Q And he's discussing the case?

A Somewhat, yes.

Q And those would be sources of investigative value to you?

A If he's telling the same story again, why do I need to go investigate them again saying it wasn't like it was supposed to be. Why do I need to talk to them if he's saying the same thing on video over and over?
Q So you're saying that you reviewed them, and he's saying the same thing over and over?
A Basically, what he's saying is he didn't mean to do it. I don't want to quote the wrong words because I got to see that video again. Things that he said that does not value like talk to such and such, he knows or she knows or anything. And just saying he admitted to what he's done.
Q So he's being consistent with what he already told you generally and what he told police on the scene, right?
A Somewhat, yes.
Q So if he had been -- if you had caught him on tape -- and you've already said he wasn't aware he was being recorded saying mom, I got this cop going. I got in an argument playing cards, but they think I was being home invaded. I'm going to be out of here in no time. That would be certainly be something of true investigative value to you, right?
A Yes.
Q Because that would be him totally inconsistent with what he's told you previously?

A Yes.
Q Okay. But you said you want to see the tape because it's been a while, but you agree he was 100 percent consistent with what he already told you?
A Yes.
Q And again, he's adding details that didn't make the statement, such as I thought I was getting smoked. You agree with that?
A Well, sir, it's very simple. That's the reason why the video was there. There's a lot of stuff I was trying to catch, or wanting to ask questions on, but I didn't catch. That's the purpose of the video or the recording, to make sure it caught everything that was said in the interview.
Q But do you agree that he is telling his family he thought he was going to be killed?
A Yes.
Q They thought he was being robbed and home invaded?
A I agree he said that, yes.
Q That he knew his home boys were not there, right?
A Yeah, but he had plenty of time. This is broad daylight.
Q I'm not asking that question. I'm talking about this investigative tool that you had at your disposal that you looked at. He's crying on the phone. You agree with

that?
A Yes.
Q Saying I loved them like my brothers. Do you agree that?
A I can't agree with that.
Q Okay. Well, let me refresh your recollection.
A I said I can't agree with it. He can say it all he want to say.
(Video was played.)
THE WITNESS: Sir, can I ask you a question? Go to about one minute 30. I want to hear about a minute.
(Video was played.)
THE WITNESS: Your Honor, do you mind if I come down close to that microphone?
THE COURT: You can't hear it?
THE WITNESS: It's kind of muffled. I just want to hear about a minute, that's all.
LUKE SHEALEY: I don't have a problem with that.
THE COURT: No, he can come down.
(Video was played.)
BY LUKE SHEALEY:
Q Does that refresh your memory a little bit having listened to that?
A Yes.
Q So he advised whoever he's talking to he thought he

was getting smoked in his bed?
A Yes.
Q He heard the TV break, and he thought he was being robbed?
A Yes.
Q He grabbed his trip, something about a gun?
A Yes.
Q And that didn't see who it was until after, right?
A Yes.S.
Q He's obviously crying and very emotional saying, "I can't survive," right?
A Yes.
Q And someone -- I imagine in your line of work, you encountered various defendants charged with serious crimes like murder who do not display remorse or emotional at all, right?
A Yes.
Q And then you probably encounter some folks like Mr. Barnes that are truly upset over what has occurred, right?
A Somewhat, yes.
Q Okay. Somewhat you encounter them?
A No, just sometimes his emotion, yeah, he appears to be upset.
Q Do you think he's feigning being upset?

A In my opinion, yes.
Q Okay. So you've already said he's not aware he's being recorded, right?
A Sir, you're inside the police department in an interview room. It doesn't have to be told to you that you're going to be recorded. You should know that.
Q So he should know that. You didn't tell him?
A You're in the police department, right?
Q Okay.
A In an interview room.
Q So having these tapes at your disposal that you believe he's feigning, I want you to listen to this and tell me if you think he's feigning.

MR. SCOTT: Objection, Your Honor. He's asking him for opinion testimony regarding whether he thinks somebody is feigning emotion.

LUKE SHEALEY: He's opened the door to this as it goes to -- this is about believability of my client's statement. He thinks he's feigning remorse and emotion, his direct observations of this man that he's decided to charge with murder. I want to play him another and see if he still holds that opinion. He's brought this issue up.

THE COURT: All right. Well, the problem with it is he can't testify as to whether or not he -- you can ask him a question like you said the last time, did he say he

was being smoked, dada, dada, dada, but he can't testify, give opinion testimony as to whether or not he believed him or not. I think you can ask him if it's consistent, inconsistent, but that would be improper opinion testimony.

Yes, he did -- you asked him a question last time. I think your question, specific question was you've done a lot of these cases and sometimes you find people that are not remorseful and sometimes you find people that are remorseful and remorseful like Mr. Barnes. And he says, yes, and you say yes, meaning you think he's remorseful or yes, you come in contact with people who are remorseful. And he says no, I don't think he's being remorseful. And that's how that came out. If I am recalling that correctly. So you need to ask him a question, if it's something inconsistent, then you can show him the video.

BY LUKE SHEALEY:

Q Okay. Investigator, I think you just stated that you believe Mr. Barnes is faking or feigning being truly remorseful about what occurred here?

A I think so, yes.

Q Did you have a chance to listen to the interview of him talking to his mother?

A Sir, I listened to that a whole bunch.

Q And after doing that, you believe that he's faking or

feigning true remorse about his actions that day?
A Yes.
Q Okay. Allow me to play that to see if that is still your opinion.
MR. SCOTT: Your Honor, it's still --
THE COURT: Hold on one second.
LUKE SHEALEY: Your Honor, this is basic impeachment. I want to play the evidence that he believes and has suggested to the court is not true remorse. He has brought this into question. I believe it's appropriate.
THE COURT: Hold on one second.
Yes, sir.
MR. SCOTT: He asked him do you believe he was feigning, and he said yes. That's arguably inadmissible in and of itself, but now he's asking to play certain excerpts and say now, was that believable. What is your opinion on the believability of this? What about that? How in the world is that even admissible, how an investigator testified as to his belief of truthfulness or untruthfulness in his opinion?
THE COURT: All right. So the objection is sustained. He' not supposed to be giving opinions.
LUKE SHEALEY: Your Honor, he offered his opinion.
THE COURT: You can ask him question -- you asked him his opinion and that's how opinion came up.

LUKE SHEALEY: I did not ask his opinion initially. He brought it up. He believes my client is faking his story, I guess. It's very probative of me to cross-examine him as a lead investigator on this. He says he's faking. So I'm allowed to confront him with the evidence that he believes is showing a fake remorse.

THE COURT: Well, your question just now was after watching this video, do you still think he's faking. He said yes. I don't know how you're going to impeach because you already said after watching the video. He said he watched it. He said that's still his belief.

LUKE SHEALEY: But I get to confront him with the evidence that he thinks is my client faking it. The fact finder, whether it's you or the jury, gets to decide whether that's credible by the witness or not.

So you're the fact finder. He said my client is faking it. I'm going to confront him with that evidence. I'm allowed to do that under the constitution.

THE COURT: I think if you trying to impeach the witness, there's another way to do it.

What's the objection? You're standing up again.

MR. SCOTT: I don't know at this point, Your Honor. It's just he's asking for opinion and it really has no real bearing on this hearing, whether or not Mr. Gilliam thought he was telling the truth or not about his story.

He's already gotten out what the defendant's story was. I don't know that -- it's up to Your Honor whether Your Honor believes his story, but whether Mr. Gilliam believes it or not is really neither here nor there.

THE COURT: And I think he can get the video, but you've got -- you're asking the question about what his opinion is. You can ask him about consistency, but his opinion really as to what he's thinking, I don't think that's even -- I mean, that's not relevant before the court and it's not admissible as to what his opinion is. I think you can rephrase the question.

LUKE SHEALEY: All right. I'll try do that.

BY LUKE SHEALEY:

Q Investigator Gilliam, you would agree that the credibility of the witness, of the defendant that you are interviewing is important in your case?

A Yeah.

Q We talked about this a little bit, a lot already, whether someone is being consistent can add to their credibility?

A Yes.

Q Whether somebody is being inconsistent can detract from their credibility?

A It can.

Q And when someone is providing you a consistent

account, which you agree Mr. Barnes has throughout this case, right?
A Yes.
Q And when he's showing an emotional response to friends and family that is recorded, you would agree that is consistent towards -- and actually corroborates the credibility of what he has to say?
A What he said is one thing, but my opinion, again, goes to what I think about it. You know, he's had plenty of time to sit back and see what's going on and ask questions. By the time you get -- yes, the story is the same, but I can't say yes to that completely on the stand.
Q So you feel he's not credible?
A Yes, I do feel he's not credible.
Q And you've had this evidence in your position and you have watched him sobbing to his mother and friends regarding the event?
A Well, you also look at the nature of what he's facing right now. It's two persons deceased right now.
Q Did you ever hear him talking about that he might be facing a lengthy prison in those videos?
A I believe so.
Q You believe so? Let's listen and see if you can hear for that.
(Video is played.)

So you didn't hear him saying anything about showing concern for the amount of prison time he might be facing in that, did you?
A It's kind of muffled.
Q You agree he was upset?
A Somewhat.
Q Somewhat is your opinion on that?
A Yeah.
Q That he was somewhat upset. And that he was asleep?
A Yeah.
Q And that he doesn't even know how long they were there, right?
A I kind of got that, yes.
Q Consistent with what he told you?
A Somewhat.
Q Somewhat, okay. And that's the evidence that you think shows he's, perhaps, feigning remorse over this event?
A No, there's other things with it.
Q I want to turn your attention a little bit to Samuel Thomas. He's an important witness in this case. Do you agree?
A Oh, yes.
Q Again, Samuel Thomas is a roommate?
A Yes.

Q We've already described how he was not there. He left around 8:00 to go to a doctor's appointment, right?
A That's correct.
Q And normally, he takes Ms. Dash, but not that day. Mr. Dash didn't need a ride, right?
A Correct.
Q And he comes back and he's, basically, trying to figure out what's going on. Law enforcement is figuring out who he is and holding him, wanting to talk to him, right?
A That's correct.
Q Eventually, you would pretty much formally interview him a couple different times and he gives sworn statements to you, right?
A Yes.
Q From an investigative standpoint, the main thing that comes from Mr. Thomas is that when he left, he recalls Mr. Barnes being in his room asleep, correct?
A That's what he said, but it's also in a statement that sergeant more talked to him out at the scene where he tells her that when he left Mr. Barnes was up.
Q I will get to that because I know you brought that up before in our preliminary hearing?
A Yes.
Q But his official counts to you when you interviewed

him twice is that when he left, Mr. Barnes was asleep?
A And also Investigator McDonald, same thing, yes.
Q Same thing. And when we talked at the preliminary hearing, you advised me that you had become suspicious of that because he had spoken with Investigator Moore?
A Yes.
Q Sergeant Moore?
A Sergeant.
Q And that he had hold her something different, right, something inconsistent?
A That's correct.
Q I think the exact words from your prelim were that they were up all laughing and giggling?
A That's right, yes. I believe so.
Q All right. So I went to look at Investigator Moore's report and you're aware that she notes seeing a young male who identified himself as Samuel Thomas, but that she made contact with you to actually interview him, right?
A Yes.
Q I mean, you're familiar with the report. Nowhere in her report does it describe an account of Mr. Thomas as you stated?
A Yes, sir, that comes from when we -- after we get the charge when we was talking, going through stuff about Mr. Thomas, as well. And I recall her -- she said what

she said that night, yeah, he said that he was up. And I was like, he wrote a statement to Investigator McDonald saying that he was in the bed. That was the first -- we went out and looked for him again and brought him back to question him about it, just trying get to the understanding. Yes.

Q All right. So this is a -- what she is advising you as the lead investigator is an inconsistent statement with what he gave you that day?

A That's correct.

Q But yet, she failed to put that in her report?

A That's something I can't understand myself because she didn't even remember herself. Like I said, that's the only reason we went back out and picked him up. Because if he had said that from the beginnings, just from Investigator McDonald's statement, I would not have went back and tried to locate him.

Q And she's not wearing a body worn camera, right?

A No.

Q So we can't really independently verify what happened with that interaction?

A That's correct.

Q That's what she's advising you, but it's not in her record?

A That's the reason we went back to locate Mr. Thomas

and bring him back up there for a second interview, just to try to clarify that point.
Q And I feel like at prelim, you were advising me about some digging into body cams that you had done where you were aware of a family member of Mr. Thomas was getting a call from Mr. Barnes, right?
A That is correct.
Q And then the phone being taken over to Mr. Thomas where they're having a conversation, right?
A That is correct.
Q Now, obviously, you don't have his phone, so you didn't piece that together pursuant to phone records, but that is your belief, right?
A Yeah, that was a little while later. Because I started re-going back through all the body cams when I saw that.
Q And I think the direct quote that you made at the prelim was that that call tainted Mr. Thomas as a witness, right?
A I believe so, yes.
Q Okay. It's your belief that maybe Mr. Barnes told him what to say?
A That's correct.
Q Okay. So, obviously, when you -- I didn't have all the discovery at that point, but, obviously, when you said

that, I wanted to see what you were talking about. And tell me if this is the body camera that you were talking about?

(Body cam is played.)

So this woman right here, she's about to answer her phone, is this what you're talking about?

(Body cam is played.)

Now, that looks like --

A There's another one where a young man is talking to someone saying he's talking to T.B. now.

Q Right. That's Samuel Thomas sitting on the curb there?

A Yes, I believe so.

Q And this woman is taking a phone call. We'll play the rest of it. It looks like she is going to give him the phone?

(Body cam is played.)

Right?

A I think so.

(Body cam is played.)

Q Right, that's Mr. Thomas taking a phone call?

A Yes, an individual walked towards another male -- there's a video where a male says yeah, he's talking to T.B. now.

Q Now, this is -- let's note -- help me out. The

timestamp on that phone call that's given to Mr. Thomas is -- what is that?
A That's 9:58.
Q Okay. Per the body camera?
A Uh-huh.
Q Now, I noticed on Officer Steiner's body camera that you are talking to Mr. Thomas here. Do you recognize yourself?
A I sure do.
Q That's Mr. Thomas?
A Yes.
Q Who is this investigator?
A McDowell.
Q Okay. At 9:34, right?
A Uh-huh.
Q So 9:34 is before 9:58, right?
A That's correct.
Q And we can hear -- tell me if you hear this.
(Body cam is played.)
Did you hear on that body cam Mr. Thomas saying --
A I can't understand that.
Q I'll play it one more time. Because you asked him a question.
A Yeah.
Q You can help me determine what it is.

THE COURT: If you need to step down, you can.
BY LUKE SHEALEY:
Q Tell me if I'm wrong, but it sounds like you said something to the effect of was anybody else over there and then he gives you a response. Let's listen.
(Body cam is played.)
So you agree with that, that you say something like that did anybody else show up while you were over there?
A Yes.
Q Well, listen to the rest of the response. It might help me if you're right there. He tells you directly.
(Body cam is played.)
Did you hear him say, one was about to go to work and one was still in his bed?
A Play it again.
(Body cam is played.)
THE WITNESS: Yeah, he said that.
BY LUKE SHEALEY:
Q Okay. So he is -- and the timestamp on that is 9:36?
A Uh-huh.
Q So 9:36, you agree Mr. Thomas is telling you, the thing he knows for sure is when he left one was about to go to work and one was still in his bed?
A Yes.
Q That was prior to the phone call at 9:58?

A 9:58.
Q Where you believe Mr. Thomas became tainted, right?
A Yes.
Q So he's telling you right off the get-go, one was about to go to work, one was still in his bed?
A Yes.
Q Okay. I asked you at the preliminary hearing -- I asked you a fairly kind of open question trying to figure out if law enforcement had a motive because -- you don't always need a motive, but sometimes, it's nice to know why, right? It helps you kind of try to figure things out. And you told me none that we know of at this time because they all seemed to be friends, right?
A Yes.
Q But you did receive sources of information from various witnesses that suggested there was a conflict between Mr. Griffin and Mr. Dash, right? Let me help you out. Tony Barnes told you that there was a situation where Mr. Dash believed a gun was stolen by Mr. Griffin. Do you recall that? I can play you through every point in the video if you don't?
A I've been trying to play because -- I know about -- you said about the robbery. I can't say that I agree with that. I mean, right now, I can't. There's too much in my head. I'm jumping from one point to another. If you can

play it, play it.
Q All right.
A I really doubt it. I don't remember that.
Q Well, one instance, it starts at the apartment complex when he's being interviewed. Do you want me to play that part?
A At the time, I didn't know nothing about that interview.
Q It's in your possession?
A At the time, I did not know about that interview.
Q Do you know about it now?
A I do now, yeah.
Q Are you aware that he references it might have been a gun problem between Mr. Griffin and Mr. Dash?
A I know that now. At the time when this happened, I didn't know.
Q But you agree he informed the officers that were talking to him that was a possible source of conflict?
A Now, yes.
Q Okay.
A Later on, yes.
Q And he tells that to you in your actual interview. I'm going to find the transcript of it since you ask me to if I can find it.
A Please.

Q All right. This is a transcript of the interview where he is specifically advising you -- you see right here where it says Mr. Barnes and it's highlighted? He's advising you well, he's believing the boys had to start fighting over some shit that happened a couple days ago 'cause first my homeboy, Antonio, was staying with us. And you say uh-huh. You see that, right?
A Uh-huh.
Q I'm not going to use all the expletives. So like two days ago, N word, I was at my homeboy house and N word said somebody stole a gun out the house, not my gun, but they stole Tonio gun. Right?
A Yes.
Q Tonio, meaning Antonio Dash. And you respond uh-huh.
So he tells you right there in your interview, that had to be why they started fighting or whatever. I don't really know. I was asleep. You agree with that?
A That's what he said, yes.
Q So that was something he's telling you in your formal interview that was also advised in his interview in the apartment manager's office, right?
A Yes.
Q And, ultimately, Mr. Griffin's girlfriend was advised the same thing. You agree with that? Ms. Washington?
A Say it again.

Q She would advise you -- you asked her point blank, what could this be about and she told you that she had heard that there was this possible dispute about a gun being stolen by Mr. Griffin?
A I vaguely remember.
Q Do you want me to play it for you?
A Please.
Q Okay.
(Audio is played.)
Do you recall that?
A Yes.
Q Okay. Now, because we can agree on the way -- we've got the photos in evidence. So there appears to be this fight, table is turned over, TV is smashed, a hole in the wall, right?
A Yes.
Q We've got earrings ripped out on the ground, correct?
A Yes.
Q Mr. Barnes doesn't have any visible injuries on him that would indicate that he was involved in a physical altercation, correct?
A No.
Q But these two deceased gentlemen were found on the floor, basically, on top of each other, right?
A That's correct.

Q So when you're hearing about this conflict, possibly about a gun, that would be an investigative lead for you, right?
A What's the date of that?
Q Right, that's the 22nd.
A When did this occur?
Q The 7th.
A When's the first interview?
Q The 7th.
A At that time, she didn't know. She heard that.
THE COURT: I can't hear you.
THE WITNESS: I'm sorry.
The initial interview, she didn't know about that. That's what we were trying -- that was the 22nd.
BY LUKE SHEALEY:
Q But Mr. Barnes is telling you about that during his --
A Yeah, but word got out on the street, people can say anything they want to say then. That's what she hearing on the street.
Q I'm not talking about her now. I'm talking about --
A He says -- that's what I'm saying. She said she heard it on the street.
Q You asked that kind of open-ended question, do you have any idea?

A Right. I have to ask that because I still don't have no reason to understand why this happened the way it did.
Q But what she tells you is --
A She heard it on the street.
Q Let me finish. What she tells you is the same thing Mr. Barnes told you?
A Yes, but that's on the street. We're talking 15 days later.
Q Mr. Barnes told you this dispute about the gun the day of, correct?
A I get you. I understand that. But I'm telling you she stated she heard on the street, so this is 15 days later.
Q What she's hearing on the street is consistent with what he told you the first time he ever talked to you?
A If I put it out there, then that's what you hear. If I put something out there saying that's what it is, that's what people going to think.
Q And that transcript, you read it just with me, he's telling you --
A Well, he says that. I'm not saying he didn't. I'm talking about what she's saying. She said she heard it.
Q Right. They're saying the same things?
A Yeah, but it's 15 days later.
Q Right. So that would be -- as you're trying to

figure out what's happening and as the date of the prelim, you still don't have a motive. These are two people telling you the same thing, right?
A Fifteen days later, yes.
Q And you also got to figure out -- there's some other things that are important. Now, you're aware that there are a couple of projectiles, we talked about this, that do not match Mr. Barnes' gun?
A That's correct.
Q Okay. And we've counted 13 distinct wounds, but only seven shell casings, correct?
A That's correct.
Q So we talked about this at the prelim, that would lend itself the question, there's certainly another gun possibly involved in this scenario?
A Yes.
Q And you heard from Mr. Barnes and Ms. Washington that there is a dispute about a gun between Mr. Griffin and Mr. Dash?
A Fifteen days later after.
Q You've heard about this dispute?
A Fifteen days later.
Q That's a yes?
A Fifteen days later, yes.
Q Okay. And so as an investigator, you want to

determine amongst the parties whether there's conflicts, peace, try to figure out what happened here, right?
A Yes.
Q Because you said you can't determine obvious motive?
A Right.
Q But yet, there is this potential motive there about this stolen gun allegation, right?
A Yes.
Q And we also know that the crime scene evidence tends to yield that there has the potential for there being another gun involved in this altercation, right?
A Yes.
Q So we've listed about seven witnesses that had access to that crime scene prior to police securing it, right?
A That's correct.
Q We've already named their names. We don't have to name them again, but a couple are relatives, loved ones of Mr. Griffin, right?
A Yes.
Q So you also have to figure out every party, what are their motivations, what are they doing, right? Right?
A Yes.
Q And because you know there's another gun likely involved based on the forensic evidence, you have to try to figure out well, where could another gun have gone,

right?
A That's correct.
Q And, obviously, there's seven people there before law enforcement gets there, right?
A Yes.
Q Because you're thinking about this problem and where the other gun might be, you specifically asked Ms. Griffin, the mother of Eric, whether he carries a gun, right?
A I asked him.
Q And she says yes, he is known to carry a gun, but she's very clear he didn't that day, right?
A That's correct.
Q So what you know is he's known to carry a gun, correct?
A Yes.
Q And he was out on bond at that point in time for a gun-related incident, correct?
A Yes.
Q So you, in your investigative bucket, you have this information at your disposal and that tends to point you -- you've got a gentleman whose family says is known to carry a gun, who has a possible conflict with a roommate of this situation and both are dead, correct?
A Possible.

Q Okay.

LUKE SHEALEY: Investigator Gilliam, I think that's all I have for right now. Please answer any questions that Mr. Scott might have for you.

THE COURT: All right. We're going to -- this will be a good point to take a break, and we are going to take our lunch break.

It's ten till 1:00. As I told you, I have a doctor's appointment. We'll start back at 2:30. I've got to sign something for SLED, so right around about 2:30.

LUKE SHEALEY: Your Honor, may the lawyers approach real quick?

THE COURT: Yeah.

And Investigator Gilliam, you can step down. Obviously, you know you can't discuss your testimony with anyone, including the solicitors.

(Whereupon, there was a bench conference.)

(Whereupon, a lunch recess was taken.)

(WHEREUPON, Defendant's Exhibit Nos. 19 through 32 marked for identification only.)

(WHEREUPON, State's Exhibit Nos. 1 through 13 marked for identification only.)

LUKE SHEALEY: Your Honor, may I address a housekeeping matter before Mr. Scott starts?

THE COURT: Yes.

LUKE SHEALEY: I tagged an exhibit that was marked that were Statewide Surveillance Security videos that the witness, Mr. Gilliam, authenticated and he talked about.

I didn't enter it because what I had pre-burned had some other videos that during the course of the objections and your rulings I figured would not be admissible. During the break, I burned it so it's just that particular video we've been over so I could seek to admit it. If Your Honor would allow me, I would seek to admit it at this time.

THE COURT: Any objection?

MR. SCOTT: No, Your Honor.

THE COURT: What's the number on that?

LUKE SHEALEY: It's number 18.

THE COURT: Number 18 without objection.

MR. SCOTT: It's my understanding it's just the video he published?

THE COURT: Just the video from the security cameras.

(WHEREUPON, Defendant's Exhibit No. 18 was marked for identification and received into evidence.)

THE COURT: All right. Yes, sir.

MR. SCOTT: Thank you, Your Honor.

CROSS-EXAMINATION:

BY MR. SCOTT:

Q I've got on the board here, this is State's No. 3.

Investigator Gilliam, can you see that?
A Yes, sir.
Q I think a lot of this was covered during direct examination, but just to orient Your Honor, this would be the front door to the apartment complex?
A Yes.
Q Is that correct?
A That's correct.
Q And then your understanding was this back bedroom was the defendant's bedroom?
A Yes, sir.
Q And then Samuel Thomas would have been in this room, is that your understanding?
A Yes.
Q To your knowledge, where did -- the defendant himself told you that Mr. Dash had been there for about a year, as well, correct?
A That's correct.
Q So we've got Thomas and Barnes listed on the lease, but it's uncontested that Antonio Dash lived there, as well?
A That's correct.
Q Do you know where he was sleeping?
A I believe he was on the couch in the living room.
Q There's no couch in that living room in the picture,

is there?
A No, sir.
Q So do you know, in fact, where he was sleeping?
A No.
Q I'm going to show you -- let me show you State's No. 5. All right. That is a picture taken of Mr. Barnes' room, correct?
A That's correct.
Q And let me see where it is on here. It depicts Mr. Barnes' bed, correct?
A That's correct.
Q And then at the foot of the bed, here it is, you've got a driver's license belonging to Mr. Barnes, correct?
A That's correct.
Q And then do you recall this sort of a pallet laid out beside his bed?
A Yes, sir.
Q It's like a pillow and blanket?
A Yes.
Q Because maybe one time, there was a couch in that living room, but there was not any couch in that living room on the day of this incident; is that correct?
A That is correct.
Q Okay. Did you notice any such pallet like this in Mr. Sam Thomas' room?

A No.
Q Okay. And then I've got a few items you guys recovered. This is going to be State's 6, 7, 8, 9. This is 6, 7, 8 and 9, do you recognize these items?
A Yes.
Q Okay. And what are those?
A Item 6 is a Social Security card, item 7 is a -- excuse me, back up. The Social Security card for Antonio D. Andrea Dash is No. 6. Number 7 is a tax form for Antonio Deandre Dash for that same apartment, 14G. I can't really make out, but it looks like the same form in picture No. 8 eight, which is shoes inside of a box.
Q Okay.
A And No. 9 is an OSHA card for Mr. Dash.
Q Do you remember when these items were selected?
A Not off the top of my head without the search warrant.
Q So these were found in the home indicating that Mr. Dash has a Social Security card, some kind of tax document in Item 7, his OSHA compliance card in State's 9, and then a shoebox that contains this tax documentation in State's No. 8?
A Yes.
Q Okay. And there is a closet at the very end of that hall right next to Mr. Barnes' room. Is that your

recollection?
A Yes, sir.
Q So I'm back to the defense exhibit, but if you go from the doorway straight down the hallway, there's a closet at the end?
A Yes.
Q Is that where the shoebox was or -- with the documents or was it Mr. Barnes' room?
A I'm not sure, but I believe it was in the bedroom of Mr. Barnes.
Q Okay. And then coupled with that pallet from the floor beside Mr. Barnes' bed, did it appear to you that Mr. Dash was staying in Mr. Barnes room?
A Yes.
LUKE SHEALEY: Objection, calls for speculation.
THE COURT: Sustained. Please rephrase the question.
BY MR. SCOTT:
Q Okay. But I guess your testimony was you found Social Security cards, OSHA compliance reports, tax documentation for Mr. Dash. Do you recall where you found it?
A I wasn't there when the search warrant was actually secured, but to the best of my knowledge, it was in Mr. Barnes' room.
Q This is State's 3 and 4. Do you recognize these?

A Yes.
Q Okay. What is State's No. 3?
A State's No. 3 is Social Security card for Antonio Barnes, Jr. and State's No. 4 is a box with green plant substance in it, which appears to be marijuana, and tested marijuana, black box with some other items in it.
Q Okay. Such as?
A Speed stick, like -- that's supposed to be a belt and --
THE COURT: Microphone.
THE WITNESS: I'm sorry. Speed stick, some type of belt, I believe that's what that is, and some type of card, maybe an OSHA card itself. I'm not sure.
BY MR. SCOTT:
Q Take a look at State's No. 4. Can you read what that OSHA card is?
A Not really. I can't read it, not like that, no.
LUKE SHEALEY: Your Honor, I'm just going to -- I know I've been saying that necessarily strict rules might not need to apply because we've got some objection, but I don't think that item is in evidence yet, but it is being published, Your Honor. So maybe it could be admitted before.
THE COURT: Yes.
MR. SCOTT: Let me go ahead and do that, Your Honor.

He testified to State's -- the State moves 3, 4, 5, 6, 7, 8, and 9 into evidence for purposes of this hearing.

LUKE SHEALEY: Without objection.

THE COURT: All right. They'll be entered without objection.

(WHEREUPON, State's Exhibit Nos. 3 through 9 admitted into evidence.)

THE WITNESS: This is a card for Antonio Dash, also, the bullets.

BY MR. SCOTT:

Q Okay. Let me ask you this, when you compare State's 4 and 8, is that the same shoebox?

A Yes.

Q Okay. And you testified there's some bullets, green plant-like material, speed stick and Mr. Dash's OSHA card in that shoebox?

A Yes.

Q Let me show you State's 11. Do you recognize that?

A Yes, this is the hallway.

Q Okay. Is that how it appeared on the date in question whenever you went to the home?

A To the best of my knowledge, yes.

MR. SCOTT: Your Honor, the State offers State's No. 11 for admission into evidence?

THE COURT: Any objections? Any objection to 11?

LUKE SHEALEY: No, Your Honor.
THE COURT: All right. And 11.
(WHEREUPON, State's Exhibit No. 11 admitted into evidence.)
BY MR. SCOTT:
Q So we're looking straight down the hallway. This is a back closet here?
A Yes.
Q And then the very last door on the right, you testified was Mr. Barnes' door?
A That's correct.
Q And Mr. Sam Thomas' door is opened in this picture; is that correct?
A Yes.
Q Okay. And, clearly, for Mr. Barnes -- you get from his bedroom to the front living room, he would have had to passage Sam Thomas' open door?
A Yes.
Q I mean, there's no other way to get in that living room other than come down the hallway?
A That's correct.
Q Okay. And I think you testified earlier, through police investigation, you determined that Mr. Sam Thomas had left some time earlier in the morning and had gone to a doctor's appointment?

A Yes.
Q And then when he came back, police already secured the perimeter?
A That's correct.
Q And y'all actually checked into that. He had been gone?
A Yes, he was at the doctor's office. We verified it.
Q Okay. And the relationship as you understand it, I presume it's uncontested Mr. Sam Thomas, Antonio Dash and Antonio Barnes were friendly with one another?
A Yes.
Q I mean, they all lived together?
A Yes.
Q And was it your understanding that Eric Griffin was a friend of Mr. Barnes, as well?
A Yes.
Q And was it your understanding that Mr. Griffin had been over there just two days prior?
A Yes.
Q Okay. And so there was some indication that a gun had been missing; is that correct?
A That came up -- he stated that in the interview. Mr. Barnes stated that in the interview. And then again, Ms. Washington said something about it during her second interview about the gun.

Q Okay. Now, you don't have the return up there, but do you recall that a nine millimeter was a weapon that Mr. Barnes had given to Shekila Smalls to...
A Yes.
Q And, of course, you said there were seven nine millimeter casings found at the scene?
A Yes.
Q Okay. Was there evidence that there were other firearms or had been other firearms in that home at some other time?
A Yes.
Q Okay. When you looked through the shoebox and some of the belongings, is it fair to say that I believe there was 40 caliber ammunition back there?
A 40 caliber.
LUKE SHEALEY: Your Honor, I'm going to object.
THE COURT: What's the objection.
LUKE SHEALEY: Rule 404, 403, 401. We've got a situation where the investigator has testified about the caliber weapon used in the crime, and we're talking about unrelated loose bullets of different calibers. I don't see how it's relevant. Normally, I wouldn't care because there's not a jury, but because we're insisting on strictly applying the rules. If we were in front of the jury, I'd be saying that to just depict random guns or

bullets not associated with this crime, it kind of -- it violates the rules because of a prior propensity towards violence or the fact that someone has multiple bullets or guns. If it's relevant to this crime, ballistically, forensically matches, that's certainly understandable, but because he also testified it's nine millimeter and 40 Caliber, I have to make those objection under those rules.

MR. SCOTT: I think he elicited testimony earlier about a phantom gun that had potentially gone missing. I'm only responding to some of the issues raised by Mr. Shealey.

LUKE SHEALEY: Well, I didn't discuss the caliber. I brought up that there's allegations of theft by Mr. Griffin against Mr. Dash.

THE COURT: All right. The objection is going to be overruled. I find that it's relevant. I don't think it's a 404(b) issue in terms of any bad acts or other crimes or wrongs. So objection is overruled.

(WHEREUPON, State's Exhibit No. 14 marked for identification only.)

MR. SCOTT: Judge, these are two sheets. I'm going to move to have it entered as one.

BY MR. SCOTT:

Q State's No. 14, do you recognize that?

A Yes, sir.

Q Okay. So what is it?
A It's a receipt for -- excuse me, Academy Sports and Outdoors for a Smith and Wesson 40 Caliber.
Q Okay. Who purchased that Smith and Wesson 40 Caliber?
A Antonio Barnes.
Q Okay. So you have evidence in the apartment that Antonio Barnes had purchased a 40 Caliber pistol. Did you ever locate a 40 Caliber pistol?
A No.
Q So we're missing a 40 Caliber pistol that Mr. Barnes had purchased at some point?
A Yes.
MR. SCOTT: Your Honor, the State offers 14, and if I have not already, State's No. 11?
LUKE SHEALEY: One may be over objection, I guess. No objection except for the one I objected to.
THE COURT: What did you object to? I thought 11 was without objection.
(WHEREUPON, State's Exhibit No. 14 was admitted into evidence.)
LUKE SHEALEY: I don't know where it is specifically, but it's in over my objection.
THE COURT: It wasn't entered in evidence, was it?
MR. SCOTT: I think it's the shoebox picture. It's

going to be State's No. 4, Your Honor.

THE COURT: You're objecting to 4 now? Because earlier, you said no objection.

LUKE SHEALEY: I didn't object to 4. I object to the bullet one. Okay, 4, that's the one I objected to.

MR. SCOTT: It's already in evidence.

THE COURT: We had already entered it earlier when he did all of them together. So now, you're objecting?

LUKE SHEALEY: I'm not reobjecting to it. My recollection was it came later, I objected and it was overruled.

THE COURT: Okay.

BY MR. SCOTT:

Q Let me show you State's Exhibit No. 10. Do you recognize that?

A Yes.

Q Okay. What is that?

A This is the door of the -- to go into the apartment.

Q Okay. That's the entry door to enter the apartment?

A Yes.

Q Okay. Why is State's No. 10 relevant to you?

MR. SCOTT: Your Honor, the State does offer State's No. 10 for admission into evidence.

THE COURT: Any objection?

LUKE SHEALEY: No objection.

THE COURT: Without objection, it's in evidence.

(WHEREUPON, State's Exhibit No. 10 was admitted into evidence.)

THE WITNESS: It looks like damage on the inside of the door right here.

BY MR. SCOTT:

Q Is that the strike plate of the door?

A No.

Q Did the door appear to be kicked open or any other forcible entry made in this apartment?

A No.

Q Did you find any evidence of broken windows or any other of the signs you would normally see as far as like forced entry?

A I didn't see none.

Q Okay. State's 1 and 2, do you recognize these?

A Yes.

Q Okay. Now, the defense had been asking you earlier regarding some statements about Mr. Barnes, but right off the bat, he tells you, I'm going to --

BRIAN SHEALEY: Objection.

THE COURT: What's the objection?

LUKE SHEALEY: Your Honor, 404(b), 403. The investigator has testified that he has no idea why this event occurred in terms of motive. As far as they know,

these guys are friends. The State is seeking to elicit, and I would make the same objection if we were in front of a jury, there are pictures of marijuana that's found there.

Now, it's not relevant to this case. If the State had evidence or Mr. Gilliam had testified that yes, this was a drug transaction and we think that's the motive. We found cell phone records linking that as the cause of this violent outburst, it certainly would be relevant.

Right now, it violates 404(b) regarding the admission of other crimes, wrongs or acts. And it's not probative to this analysis because the State has already testified they don't know why this occurred. So just simply entering evidence of that violates 403 and 404(b).

MR. SCOTT: Your Honor, we still have not really been given any, I guess, hint at which subsection of the immunity statute we're looking at. However, if it's subsection C, which I suspect they will attempt to do, he can't be involved in any unlawful activity.

He has made statements to law enforcement that are highly relevant to an immunity hearing and that will be part of Your Honor's analysis whenever you look at the requirements of the immunity statute and their burden of proof.

LUKE SHEALEY: I mean, Mr. Scott has misstated the

law. We can argue that at the end of the case about immunity. But still, for you as the fact finder listening to evidence when you already have been advised by the lead investigator that they don't know why this occurred. It's not a drug deal gone wrong. It would violate 403 and 404(b) to enter evidence of drug use, drug dealing or whatever it might be.

THE COURT: All right. The objection is overruled.

Let me hear some testimony that somebody went over there --

MR. SCOTT: There was.

THE COURT: -- to buy weed.

MR. SCOTT: He elicited some testimony, he got in some hearsay statement about a Shekila Smalls who had gone over there to purchase marijuana.

THE COURT: So the objection would be overruled. All right.

MR. SCOTT: Thank you, Your Honor.

BY MR. SCOTT:

Q So he tells you, I'm a marijuana dealer and there's traffic in and out of this house all the time. There's always something going on?

A Basically, yes.

LUKE SHEALEY: Objection, hearsay.

MR. SCOTT: He is my party opponent, Your Honor.

Statement by a party opponent is not hearsay.

THE COURT: Objection is overruled.

BY MR. SCOTT:

Q Okay. And he says he's a dope dealer. And then State's 1 and 2, you guys certainly found evidence that he was a marijuana dealer?

A That's correct.

Q There was a large amount of marijuana located in the apartment?

A Yes.

Q Okay. And then we got a receipt for a missing 40 Caliber pistol. We found ammunition for a 380. And we know he used a nine millimeter to kill these people?

A Yes.

Q Okay. Now, there was some testimony earlier about --

MR. SCOTT: Your Honor, the State offers 1 and 2 for admission?

THE COURT: Any objection? Do you need to see them?

LUKE SHEALEY: Those are the ones that were just discussed. That would be with objection.

THE COURT: 1 and 2 will be entered over the objection.

(WHEREUPON, State's Exhibit Nos. 1 and 2 admitted into evidence.)

BY MR. SCOTT:
Q Now, there was some testimony earlier about projectiles that did not match the firearm. Do you remember when Mr. Shealey was asking you about that?
A Yes.
Q Okay. But we actually had SLED analyze all the firearms; is that correct?
A The firearm, yes.
Q And SLED analyzed the projectiles?
A Yes.
Q SLED analyzed the casings?
A Yes.
Q SLED analyzed jackets or bullets?
A Yes.
Q And then SLED tested that pistol, correct?
A Yes.
Q You're not qualified as an expert in firearms?
A No.
Q So if an expert came in here and said I never said projectiles didn't match the gun --
LUKE SHEALEY: Objection.
THE COURT: Sustained. Please rephrase the question.
BY MR. SCOTT:
Q You're not qualified to testify whether or not a projectile matches a gun, are you?

A No.
Q That would be for another witness to testify to?
A That's correct.
Q I want to just begin -- go back to the diagram. This is Defense No. 3. Okay. You, yourself, did you observe the location of the casings? They point to several by the front door and then several, four, at least, around the -- or five around the location where the bodies were found?
A Yes.
Q Okay. But you, yourself, observed these two casings at the front door?
A I did.
Q Let me ask you this, were any casings found in this hallway?
A No.
Q Okay. But the defendant told -- well, what was the defendant's explanation for why he shot these two people?
A He said he heard a commotion going on. He laid there two or three minutes, then he jumps up with a gun and goes around there and starts shooting.
Q He just goes around and starts shooting?
A Yes.
Q And we watched several Shealey Security videos, did you observe it to be daylight?
A Yes.

Q And do you recall whether or not that living room had a window in it?
A Yes, it does.
Q Okay. And were the blinds open to your recollection?
A I can't say yes or no.
Q When you, yourself, went into the room, did you have any difficulty seeing?
A No.
Q Again, he testified Mr. Dash had lived there for an entire year. He testified that was his homeboy, right?
A Yes.
Q Okay. He testified -- or he told you Eric Griffin was his friend, too, correct?
A That's correct.
Q And he said Eric Griffin had just been there two days before?
A Yes.
Q He says he comes out of his room and begins firing?
A He said he comes out of his room and starts firing.
Q Okay. So he wouldn't have seen Mr. Dash on the floor beside him on that pallet?
LUKE SHEALEY: Objection, calls for speculation.
BY MR. SCOTT:
Q Where was that pallet located in Mr. Barnes' room?
THE COURT: Hold on. Objection is sustained. I was

waiting to see if you had a response, but rephrase the question.

MR. SCOTT: I'm sorry, Your Honor.

BY MR. SCOTT:

Q Where was that pallet we showed you in that State's Exhibit located in relation to Mr. Barnes' bed?

A Next to his bed.

Q So he would have had to have gotten out of his bed and gone down the hallway. You already testified he would have had to have walked right by the open door of Mr. Sam Thomas?

A Yes.

Q We know Sam Thomas wasn't there?

A Yes.

Q And I don't -- maybe some questions are too dumb, but Mr. Griffin and Mr. Dash were both black males?

A Yes.

Q And he would have just seen his empty doorway?

LUKE SHEALEY: Objection, calls for speculation.

BY MR. SCOTT:

Q Had to walk by Mr. Sam --

THE COURT: Hold on, objection sustained. Please rephrase the question.

BY MR. SCOTT:

Q He would have had to walk by Mr. Thomas' empty room?

A Yes.
Q And he would have seen two black males in the living room?
A Yes.
Q And his testimony is he just fired just -- three times is what he said, correct?
A I believe that's what he said.
Q Okay. Seven empty shell casings, though, correct?
A That's correct.
Q And did he ever indicate how close he got up to them?
A I think he said he was like, basically, standing over them, but I'm not 100 percent sure.
Q Where was Mr. Barnes between the time that he shot the two men and then when he approached officers at 9:07? Where was he, I don't know, approximately 11 minutes?
A I'm not sure.
Q Did he ever explain where he went?
A No.
Q Did he indicate whether or not he had changed clothes?
A No.
Q Okay. This is State's No. 12. This is just another picture I want to show you. What are we looking at?
A The victims laying on the floor side to side, the hallway, broken chair next to the trash can.

THE COURT: I can't hear you.
THE WITNESS: Excuse me. The victims laying on the floor close to the hallway, broken chair next to the trash can.
BY MR. SCOTT:
Q Okay. And do we know whether or not that chair was already in that state even before this happened?
A No.
Q Okay.
MR. SCOTT: Your Honor, the State offers State's No. 12 for admission?
LUKE SHEALEY: No objection.
THE COURT: No. 12 will be entered without objection.
(WHEREUPON, State's Exhibit No. 12 admitted into evidence.)
BY MR. SCOTT:
Q All right. Did he ever say when he approached these two people -- were they standing up or were they down on the ground when he shot them?
A If I'm correct, he said they were down.
Q Okay. Did they ever make a statement that they lunged toward him?
A No.
Q Did he ever indicate whether either one of them had a weapon?

A No.
Q Okay. It's just I think I'm getting robbed, so I'm going to shoot the first thing that moves?
A That's correct.
LUKE SHEALEY: Objection, that's a mischaracterization of evidence. I don't think that's a direct quote.
THE COURT: Sustained.
BY MR. SCOTT:
Q How did he characterize it? What was his explanation for seeing two black males in his living room when he has two black male roommates, black male roommates, what's his explanation for why he just starts shooting no questions asked?
A He said he just came around the corner and started shooting.
Q He never said that either one of them had a gun?
A No.
Q Did he ever say either one of them threatened him?
A No.
Q Neither one of them made any movements toward him?
A Not to my knowledge. If I'm correct, he never said he heard any gunshots.
Q I don't know if I even need to -- was this in Richland County when this occurs?

A Yes.

MR. SCOTT: Your Honor, this would be -- I'm about to sit down. I just want to make sure I got everything in that I intended on introducing. Okay, Your Honor, I show that I admitted State's 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 14.

THE COURT: That's what I have.

Is that what you have?

THE COURT REPORTER: Yes.

MR. SCOTT: Thank you, Your Honor.

Answer any questions, I guess, redirect that they have for you.

REDIRECT EXAMINATION:

BY LUKE SHEALEY:

Q Investigator Gilliam, just briefly since we spent a lot of time together this morning. You were just telling Solicitor Scott -- you were asking -- answering questions from him about what Tony advised you occurred during this shooting event, right? You just remember that?

A Yes.

Q And what you testified to seems somewhat different than what we talked about this morning. It seemed a little more condensed. Do you agree with that?

A Maybe, I don't know.

Q What was just elicited from you, and correct me if

I'm wrong, is that Tony heard a commotion, he waited two or three minutes and he came out shooting, right?
A Yes.
Q That's not what Tony actually told you. You would agree with that?
A What did he tell me?
Q We went through this morning, but what he told was number one, that he was asleep. You agree with that?
A Yes.
Q Number two, that he believed all his roommates were gone, right?
A Yeah, he said that.
Q Yet, Mr. Thomas usually takes Mr. Dash and he thought they were all gone at work, right? He told you that?
A Yes, he said that.
Q He told you he heard a loud bang?
A A loud noise, yes.
Q And a loud bang?
A I didn't hear no bang.
Q You're saying that he didn't tell you that?
A You talking about bang as in a gun or bang --
Q Bang is the word he used. He didn't say whether it was a gun or not, but you agree he told you a loud bang?
A I can really -- I -- yes, I'll say he said bang.
Q Okay.

A I don't think he meant towards a gun or anything.
Q I mean, we listened to some phone calls after the interview, right? We have some questions about what he was saying with family or his mom, right?
A Uh-huh.
Q And there, he told his family, I listened for my boys and they weren't there, right? That's in that, correct?
A Yep.
Q He thought he was being robbed. You agree with that?
A He said that, yes.
Q He thought he was getting smoked, right?
A That's what he says.
Q Meaning, slang for killed, right?
A Yes.
Q So he just came out and started shooting at the people on the ground, right?
A Yes.
Q So that's a little bit more involved than what you just testified to Mr. Scott, right?
A Basically, the same thing, sir.
Q Okay. I want to touch on some other questions that you were just asked. Looking at the diagram and trying to figure out, you testified that Mr. Barnes slept here, right?
A That's correct.

Q Mr. Thomas slept here, correct?
A Yes.
Q Mr. Scott showed you a picture of what looked like some covers or what he called a pallet down here in the corner, right?
A Yes.
Q And you told him you weren't there when CSI came through and processed it. That wasn't part of your job, right?
A That's correct.
Q You were interviewing witnesses and trying to figure out what was going on, but you didn't actually lay eyes on where that pallet was or whatever Mr. Scott was talking about, correct?
A I went through every room before I even left the scene. I remember some things, and that's why I say it's easy for me to look at the search warrant and photographs.
Q But you don't have a witness in this case, whether it's a family member of Mr. Dash or anybody else that says oh, yeah, Antonio Dash was sleeping in the same room with Barnes?
A No.
Q You don't have that information?
A No.
Q And a couple of different times, Mr. Scott talked

about walking -- Mr. Barnes needed to walk down this hallway, right, before he did the shooting?
A Yes.
Q And he described Sam Thomas' doorway as being opened in that photograph?
A Yes.
Q Now, CSI is in there taking all those photos, correct?
A Yes.
Q We don't have any idea about whether that door was opened during the shooting or not, do we?
A Potash, actually, when he dusts, he dusts the outer scales of every room, how it looked before he ever dusted the crime scene, takes pictures of every room how it looks, if the door is closed, door is open, he takes those pictures first.
Q Sam Thomas didn't tell you anything about leaving his door open, did he?
A No.
Q So you testifying from your own personal knowledge from this witness stand have no idea of knowing whether the door that's open in the crime scene photo was closed earlier during the day?
A No, no.
Q Okay. A photo was introduced into evidence of some

40 Caliber bullets. As far as you know from your -- again, you're not a gun expert in this case, but as far as you know, no 40 Caliber weapon was used in this event?
A As far as what shell casing we got, no.
Q Right. They showed you a picture of the door and the doorjamb. Do you recall that?
A Yes.
Q And the door is a metal door, right?
A I think it's a wood door. I'm not 100 percent sure.
Q Okay. But now, he was asking you to look and see if there's any evidence of the doorjamb being damaged, right?
A That's correct.
Q Because sometimes, if someone were to kick in a door, it would actually break the jambs, locks and all that?
A Yes.
Q We don't have that in this case, right?
A No.
Q And Mr. Barnes didn't specifically tell you that I heard my door being kicked in. He just says I thought I was being robbed, right?
A I heard a bang and then I heard a commotion.
Q He's hearing what he believes is a robbery or home invasion based on his perception from the back bedroom, right?
A Yes.

Q The bang?
A Yes.
Q The commotion?
A Yes.
Q The 50-inch TV breaking or crashing down, as he tells you?
A Yes.
Q Right. You agree he says that. There's some question about Mr. Barnes changing clothes. I can pull it up on my laptop, but do you recall specifically asking him that question in your interview? Did you change clothes?
A No, because I looked at the shirt he had on and it was clean. I said if somebody did a crime like this, the shirt has been washed or cleaned. That's why he changed his clothes.
Q Well, you asked him the question did you change clothes and he says no, right?
A Yes.
Q It's your belief that he changed clothes?
A Yes. Or washed them or something.
Q Don't make me do this?
A It's my belief.
(WHEREUPON, Defendant's Exhibit No. 33 through 36 marked for identification only.)

BY LUKE SHEALEY:
Q All right. I'm going to show you what's marked as Defense's 33, which is a still frame from body cam footage. Do you see Mr. Barnes there?
A Yes.
Q Gray short, white tank top?
A Uh-huh.
Q Black sweatshirt?
A Yes.
Q I want to show you what's marked as Defendant's 34, which is surveillance from the in-car dash camera. Do you see that 9:06?
A Uh-huh.
Q Do you recognize Mr. Barnes there?
A Sure do.
Q Gray shorts, white tank top, black hoodie?
A Yes.
Q Would you agree that looks the same as that other photo, Defense 33?
A Yes.
Q I want to show you've Defendant's 35. It's another still of Mr. Barnes on the scene, same outfit, right?
A Yes.
Q Now, he's taken into custody. This is him in your interview room?

A Uh-huh.
Q Gray pants, right?
A Uh-huh.
Q White tank top?
A Yes.
Q Black hoodie?
A Yes.
Q Same Crocs or bedroom slippers?
A Yes.
Q He looks the same in those photos at 9:06 as he does in your interview room?
A Yes.
Q Okay.
A I still believe he changed shirts.
Q That's your personal belief?
A That's the reason why I didn't take it.
Q Right.
A Thank you.
Q But you're not trained in crime scene analysis?
A No.
Q You have no ability to give an opinion about whether somebody would get blood from a shooting versus blood in a physical altercation?
A You're right.
Q You don't have that ability?

A No.
Q That's just your opinion?
A Right.
Q Everybody has got one?
A Yeah.
LUKE SHEALEY: I would seek to admit 33, 34, 35 and 36 into evidence.
THE COURT: Any objection?
MR. SCOTT: No, Your Honor.
THE COURT: All right. 33, 34, 35, 36 will be entered without objection.
(WHEREUPON, Defendant's Exhibit Nos. 33 through 36 admitted into evidence.)
LUKE SHEALEY: Nothing further from this witness, Your Honor.
THE COURT: Anything else from the State?

RECROSS-EXAMINATION:

BY MR. SCOTT:
Q How would you characterize the amount of blood at the scene?
A Extensive. It was a lot of blood left on the scene.
Q And the Defense Exhibit 36, this is what he was wearing sometime after in the interrogation room?
A That's correct.
Q Okay. And then here's a picture at 9:06?

A Yes.
Q Okay. And so sometime, ten, 11 minutes after the 9-1-1 call are the pictures you were just shown?
A Yes.
Q I'm asking again, do you know what he did between the time he killed those two boys and the time he's seen in those pictures?
A I don't know.
Q Okay. So that wife beater he's wearing in that picture had no blood on it is your testimony?
A That is correct.
Q Okay.
MR. SCOTT: That's all, Your Honor.
THE COURT: All right. You may step down there.
All right. Call your next witness.
MS. YOUNG: Your Honor, briefly, while we mess with the technology and before we call our next witness, I was going to inquire of the Court as to whether any contact had been made with Officer Castro and any progress had been made in getting an answer to the -- the question of getting him up here and answering questions about the body worn camera?
MR. SCOTT: We're summoning him up here now, Your Honor.
THE COURT: He was in the building?

MR. SCOTT: He was working nights, so I think when Sharon called him earlier, she asked him if he could be available this afternoon. So she's letting him know now to come on up here.

THE COURT: All right. Let's call our next witness.

MS. YOUNG: Yes, Your Honor, the defense is going to call Kevin Archie. He is currently sequestered outside the courtroom.

LUKE SHEALEY: Judge, we may need a second to get our equipment set up again.

THE COURT: Okay.

THE BAILIFF: Come forward and be sworn, please. Please your left hand on the Bible, raise your right and face the clerk.

THE CLERK: State your full name, please.

THE WITNESS: Kevin D. Archie.

THE CLERK: A-R-C-H-I-E?

THE WITNESS: Yes, ma'am.

KEVIN ARCHIE, after being duly sworn, testified as follows:

THE CLERK: Have a seat right there.

MS. YOUNG: May it please the Court, Your Honor?

THE COURT: Yes, ma'am.

DIRECT EXAMINATION:

BY MS. YOUNG:
Q Thank you, Mr. Archie for being here and thank you for your patience. We appreciate it. Mr. Archie, what's your job? What do you do for a living?
A HVAC.
Q HVAC, okay. And what did you do for a living back in February of 2019.
A HVAC maintenance work.
Q And where did you do that?
A Willow Run Apartments.
Q And what kind of tasks did you do as maintenance and HVAC maintenance person?
A Like, when the tenants would call, like, if they had a leak plumbing, electrical or anything like that, like refrigerator light go off, clogs, tubs, toilets, sinks, all stuff like that.
Q So as the maintenance HVAC person, did you get to know some of the tenants either by face or by name?
A Yeah.
Q In February of 2019, did you know Antonio Barnes by face?
A I'm not going to say fully, fully knew him, but just started recognizing him because I started working out there August of 2018.
Q Okay. Did you know Shekila Smalls by face and name?

A Uh-huh.
Q And you, in fact, close -- during February of 2019, you had been in her apartment working on her apartment, right?
A In and out.
Q Yeah, fixing a door, I believe?
A Yeah, the front door.
Q And were you working on February 7th of 2019? That would be the day of the shooting.
A Yes.
Q And what time would you have gotten to work that day?
A Eight o'clock.
Q Eight o'clock. And what would you have done once you got to work?
A First thing you do like from about 8:00 to 10:00, we would clean the property up, like walking the grounds and picking up trash.
Q When you say we, were you working with someone that day?
A Yeah, supervisor Richard Charles.
Q I'm going to show you some pictures.
MS. YOUNG: If I may approach, Your Honor, the witness?
THE COURT: Yes.

BY MS. YOUNG:
Q Mr. Archie, so I have three photos for you. Start with these first two. So do you recognize kind of this parking lot the picture is of?
A Uh-huh. That's behind Building 17 and right in the front right there would be Building 20.
Q All right. And that's in the Willow Run Apartments where you work?
A And that's me right there.
Q Perfect, so you see yourself kind of in the black shirt?
A And that's Richard Charles right there.
Q All right. Perfect. That's Defense Exhibit 31 for identification purposes. And then looking at one marked 30 for identification purposes, can you see yourself in that one, too?
A Me, Richard and Shekila.
Q Okay. And looking at the dates on both of these photos, do they say February 7th, 2019?
A Uh-huh.
Q And does this parking lot look like you remember it did on February 7th of 2019?
A Uh-huh.
Q And I have one more photo for you. Do you kind of recognize this area?

A That's building -- that's the dumpster right there beside Building 15 and that's Building 18. That's a breezeway -- not breezeway, but a driveway that goes through there.
Q Do you recognize yourself in this photo?
A Right there.
Q Do you recognize anybody else in this photo?
A Richard and Shekila.
Q All right. I'm going to talk with you and put them up there and I'm going to leave you some copies to follow along?
A All right.
MS. YOUNG: Your Honor, I would like to enter into evidence what's been marked as Defense Exhibit 30, 31 and 32?
THE COURT: Any objection?
MR. FOWLER: No objection, Your Honor.
THE COURT: Those will be entered without objection.
(WHEREUPON, Defendant's Exhibit Nos. 30 through 32 admitted into evidence.)
BY MS. YOUNG:
Q All right. So we're going to look at what is marked as Defense Exhibit 31. And that's the one that you kind of identified just yourself and Richard Charles. So you said you saw yourself right here in the black shirt,

right?
A Uh-huh.
Q And this would be Richard Charles in the hoodie --
A Yeah.
Q -- in the additional photo? And y'all are picking up trash just like you said?
A Uh-huh.
Q And that would have been on February 7th, 2019 at 8:45 in the morning?
A Uh-huh.
Q All right. Perfect. So we're going to look at that next photo of the parking lot near Building 17. And this one is marked as Defendant's Exhibit 30 for the court. So you're looking at this photo, it says February 7th, 2019 up here in the left-hand corner. It says 8:47 in the morning?
A Yeah.
Q And then you see yourself over here?
A And that's Shekila.
Q And that's Shekila?
A Yeah.
Q And so, it looks like Shekila Smalls. She's coming out of Building 17, right?
A Yeah, because she stayed in that top apartment, which is 17E, right above where we standing. The top window at

the top, that's her apartment.
Q So she lived in the apartment. It looks like maybe she had some trash?
A Yeah.
Q So, that morning, did she come down and, I guess, kind of talk to y'all a little bit?
A Yeah, because that morning when we got to work, if you see right there, like, from the first picture where we're in the parking lot, usually, when we get to work, we're usually like good morning, just talking and all that stuff right there. But by the time we made it through there, she came out.

I guess she heard our voice in the breezeway that morning. So she came out and just, like, good morning, how are you doing and started talking.
Q Okay. When you saw her, did she look like she had just woken up?
A Yeah.
Q She looked a little sleepy, I guess. And she comes down and chats with y'all. And does she, I guess, take that trash out next?
A No, she just leaves it right there.
Q Okay. Kind of during that time, she's just milling around talking to y'all; is that right?
A Uh-huh.

Q And when she's talking to y'all, do you remember her saying anything about seeing Antonio Barnes that morning?
A No.
Q What about Eric Griffin?
A Nope.
Q Antonio Dash?
A Nope.
Q Okay. So when y'all were talking, is that about when you heard gunshots?
A Okay. You see where we're standing at in that picture right there?
Q Yeah.
A We walked -- we stood there for a little while talking, maybe five minutes, if that. Then we walked through the breezeway. After we made it through the breezeway, that's when we heard four gunshots.
Q And y'all started running, I guess, towards the gunshots?
A Well, no, no, not at that point. We just kept coming through the breezeway. Then the lady at Building 15 was in her breezeway, which is like -- that building is like -- this is 17 this way and you got 18, then you got 15, which is down there. She came out of 15 as we was on the other side of 17. And she said, Come quickly, there's shooting. So we went over to Building 14.

Q All right. So I'm going to show you a video really quick kind of the same scene. So I'm going to direct your attention over here. It's a little far away, so just bear with me and keep an eye on that area. Really quickly, this says February 7th, 2019, right?
A Uh-huh.
Q And the timestamp says 8:56, almost 8:57 in the morning, right?
A Yeah.
Q I'm going to go ahead and play it if you'll keep an eye right there.
(Video is played.)
All right. You see one, two, three people running in that direction?
A Uh-huh.
Q So is that you?
A Me, Richard and Shekila.
Q Okay. Perfect. So y'all go running to the apartment building and you get up to apartment 14G, right?
A (Nods in the affirmative.)
Q And Antonio Barnes opens the door?
A (Nods in the affirmative.)
Q Okay. When he opens the door, is he holding a gun or anything?
A (Indicating in the negative.)

Q Is he wearing a white tank top?
A I believe so.
Q Okay. That's what you remember?
A That's right.
Q And what you said --
A Uh-huh.
Q -- previously when you've been questioned?
A Yeah.
Q All right. So when you saw kind of into the apartment and you saw the bodies on the floor, you turned around and told someone to call for help, right?
A Yep.
Q And there was lot of commotion in that room, right?
A Well, at that point, it looked like they was in there fighting, to be honest with you.
Q Okay. So there were a lot of people?
A No, it was just Antonio, Antonio and Eric.
Q Okay. So he opens the door wearing a white t-shirt and you asked them to call for help. Barnes kind of stays around the apartment and stays around y'all?
A Well, okay, when it all happened, we -- when I seen Antonio and Eric on the floor, I just took off, turned around and went down the steps. So I called the office and I told Richard, Y'all better call somebody quick. When I'm coming down, commotion just started piling up in

that parking lot.

So we just -- like, the dumpster, we just stood right by that dumpster because a police officer came and was asking us what was going on and we said we worked there. And he told us to stay right there by that dumpster until he find out what was going on. And then once he find out what was going on, he took us to the office.

Q At some point before going to the office and then, I guess, getting to the apartment, Barnes says something to you, right? He talks to you?

A Uh-huh.

Q He, basically, says, I was asleep. He was really confused?

A He said that at first.

Q And he said that people are fighting, right?

A He said that second.

Q Okay. And then he came out -- he thought he was getting robbed and he came out shooting, right?

A Well, that was what he said at the second, but then, you know, this is a roommate right here.

Q If you'll just answer kind of what he said and not what you think --

A Okay, he said -- he said, I'm going to tell y'all the truth. They was in there fighting and I came out the back blasting. Let me change my shirt and I'm going to turn

myself in.
Q Okay. So he said let me change my shirt. Did you see him change his shirt?
A Well, there's a store right up there called Bob's Mart. He walked that direction.
Q When you first saw him --
A No, he had the tank top on when he left and went that way towards Bob's Mart. We was already in the office. And if you come in our office, there's a window coming down Alcott Drive, we got windows right there. I seen him come back, stop by the office and turn himself in.
Q Okay. So he did what he said he was going do, turn himself in?
A Yeah.
Q He was still wearing a white tank top?
A No, he had went and got a shirt. He had went and changed his shirt. So I was under the impression he went to Bob's Mart and bought him -- because they sell -- like, a convenience store sells like shirts and stuff. He came back a white t-shirt on.
So I was under the impression when he kept walking -- because when he talked to us, he kept walking, like, going to Building 19, which is by the office. And that's like going towards the store. So he went that way, you know.
Q All right. We'll leave that alone. When he opened

the door, he was wearing a white tank top, correct?
A Uh-huh.
Q Perfect. So whenever EMS arrived, you said you went over to the dumpster and Richard Charles was there with you and Shekila Smalls was there, too?
A Yeah.
Q Let me show you another picture, that kind of last one. And this is Defendant's Exhibit 32. And so that's you standing right here?
A Uh-huh.
Q Richard Charles?
A Uh-huh.
Q Shekila Smalls? EMS had already arrived and the police had already arrived?
A Yes.
Q Okay. And when Shekila Smalls is standing there next to y'all, she did say, Oh, man, I saw Antonio Barnes earlier that morning, right?
A I never even knew she had been over there.
Q Well, she didn't tell you that?
A She never mentioned it, not to me.
Q Okay. And you only think that because an individual named Ace came over about a week ago and told you that, right?
A No, I came down here and that's when I found out.

Q You came here?
A Yeah, when I had came to court last Monday.
Q All right. Do you see -- I don't see Ace in the courtroom, but Ace is with the Solicitor's Office, right?
A Yes.
Q So he's the one that told you that, correct?
A Uh-huh.
Q She never said anything about seeing any of these people? She never said she was afraid of Barnes that morning, right?
MR. SCOTT: Judge, what is the hearsay exception? She keeps asking what this woman said.
THE COURT: That is an objection?
MR. SCOTT: It is.
THE COURT: So your objection is hearsay?
MR. SCOTT: Right. There's been a number of questions asking what Smalls said, what Ace said. And the objection is hearsay unless there's an exception.
MS. YOUNG: Yes, Your Honor. So I didn't actually elicit a hearsay statement at all. He said no, she didn't say anything. There is no statement. And then for Ace's statement, I'm not offering it for the truth of the matter asserted. I'm offering it to show where his knowledge and notice of that information came from.
THE COURT: All right. The objection is overruled.

MS. YOUNG: Thank you, Your Honor.
BY MS. YOUNG:
Q So did you end up going back to 14G after February 7th, 2019 to maybe clean up the apartment?
A Uh-huh.
Q So when you were there, you saw a hole in the hall, right?
A (Nods in the affirmative.)
Q You saw a broken chair?
A (Nods in the affirmative.)
Q Kind of a mess?
A Yeah.
Q Okay. So you were at apartment 14G prior to February 7th, 2019 for like an inspection, right?
A Yeah, because we -- like, at the beginning of the year, we do something called a react for marketplace. And when the react comes around, like, once a year, we go from apartment to apartment to see what needs to be fixed in each apartment.
Q And when you went into the apartment before February 7th, there wasn't a hole in the hall?
A No.
Q Wasn't a broken chair?
A No.
MS. YOUNG: Okay. That's all I have for you. If

you'll answer any questions the State might have for you.

THE WITNESS: Yes, ma'am.

THE COURT: All right. Yes, sir.

MR. FOWLER: Thank you, Your Honor. May it please the Court.

CROSS-EXAMINATION:

BY MR. FOWLER:

Q Afternoon, Mr. Archie. How are you?

A I'm fine.

Q You said you knew Shekila Smalls, correct?

A Correct.

Q Do you know if she smoked weed?

A Yeah.

MS. YOUNG: Objection, Your Honor, relevance.

THE COURT: Overruled. I think there's been some testimony regarding her smoking weed or buying weed or something. Yeah, it's overruled.

MR. FOWLER: Thank you, Your Honor.

BY MR. FOWLER:

Q You also testified that she appeared sleepy to you that morning when you were talking to her?

A Yeah, I was under the impression that she had just got up. We get to work at eight o'clock. When you see somebody that time of the morning, I don't know if she visiting people. You know, I'm thinking she was just

getting up when I first seen her come out the apartment that morning.

Q Do you think she could have been -- seemed that way because she had just smoked marijuana?

MS. YOUNG: Objection, Your Honor.

THE COURT: Sustained, speculation.

BY MR. FOWLER:

Q After y'all heard the gunshots, the three of y'all ran to the apartment where they came from; is that correct?

A Yes.

Q Did you knock on the door?

A Yes.

Q Who opened the door?

A Antonio Barnes.

Q Did he say anything to you?

A When he opened up the door, he yell out What, what, what.

Q What was his demeanor?

A Wasn't no aggressive demeanor, but it was like rowdy, you know. He had an aggressive tone, but he wasn't physically aggressive.

Q Was he yelling, what, what, what?

A Yes, kind of like that. It was a little loud when he say it. Because I knocked on the door, he opened the door

and then I asked what was going on and he just say, What, what, what. And I looked and I said, Oh, never mind, nothing, and I turned around and left.
Q Did you see inside the apartment when he opened it?
A Uh-huh.
Q And you know who Eric Griffin and Antonio Dash are?
A I know Eric the most because I worked with -- during the time they was remodeling, he worked with Polaris Plumbing and I was with Green's Heating and Air.
Q Right.
A So that's how I met Eric, when we was remodeling, but I got to know him a little bit, but I knew his face very well.
Q But you recognized Antonio Dash, as well?
A Yeah.
Q How were their bodies situated when you looked in the room?
A Like the apartment, you got the living room and, like, a little dining area right here, a big open space, then you got the hallway that goes straight down. Eric was laid down, like his body was covering up like a cross in the walkway, hallway with his face facing the door. He was already dead. And then Antonio was on top of Eric and he was jerk and his brains was coming out of his head.
Q So they were laying on top of one another with --

Eric had his back on the ground, Antonio Dash was on top?
A Uh-huh.
Q I think you just said that after Mr. Barnes greeted you at the door, you left almost immediately?
A Yeah.
Q Where did you go?
A Down, like, in the parking lot.
Q Did you see the defendant after you walked away from the door?
A Antonio Barnes?
Q Yes, did you see Mr. Barnes --
A Yeah, he came -- yeah.
Q Okay. Who were you standing with?
A It was me, Hamilton Jacobs, Jaquana, I can't remember her last name, and Richard Charles.
Q And y'all asked him what happened?
A Uh-huh.
Q And I think you said he gave you three different stories?
A First thing he said was, Man, I don't know, I was sleeping. I was like, Come on, man.
Q What did you say to him after that?
A I said, Man, come on man, there's two dead bodies in here. Then he said, Man, they tried to rob me, man. Then I said, Man, that's your roommate right there. He said,

All right, I'm going to tell you the truth, man. They was in their fighting and I just came out the back blasting. I'm going to change my shirt and turn myself in.

MR. FOWLER: Beg the Court's indulgence.

(Pause.)

BY MR. FOWLER:

Q You said earlier that Shekila told you nothing about seeing Barnes earlier. Did you ever ask her about seeing him earlier?

A No, I didn't have no reason. She was with us when we heard the shots, so I wouldn't have thought she would have been over there.

Q Okay. You were a maintenance man at the apartment complex. Is it possible that some of the damage in the apartment had occurred before the shooting incident?

MS. YOUNG: Objection, speculation.

THE WITNESS: I think --

THE COURT: Objection is sustained. Please rephrase the question.

MR. FOWLER: Your Honor, may I approach the witness?

THE COURT: Yes.

BY MR. FOWLER:

Q Do you recognize where that picture is taken at?

A Yeah, that's where the -- if you look right through there, that's the kitchen right there. Where the chair is

broken over in the corner, that goes into the kitchen. That's the little dining area right there.

Q Do you recognize the person in that picture?

A Uh-huh.

Q But that chair that's in that apartment is broken in that picture?

A Yeah.

MS. YOUNG: If I may see that?

MR. FOWLER: Yeah.

BY MR. FOWLER:

Q Who is the person in this picture, Mr. Archie?

A Antonio.

Q Dash?

A Yeah.

MR. FOWLER: Your Honor, the State would seek to admit State's Exhibit 13?

THE COURT: Any objection?

MS. YOUNG: None, Your Honor.

THE COURT: Entered without objection.

(WHEREUPON, State's Exhibit No. 13 was admitted into evidence.)

MR. FOWLER: No further questions, Your Honor.

THE COURT: All right. Yes, ma'am.

MS. YOUNG: Thank you, Your Honor. May it please the Court.

REDIRECT EXAMINATION:

BY MS. YOUNG:

Q Mr. Archie, so you previously said you did an inspection about a week before February 7th, 2019, right?

A Uh-huh.

Q And there wasn't a hole in the wall then, right?

A No.

Q And then you were kind of talking about what Barnes said whenever he came down from the apartment and you stated he was asleep, right, and you were kind of prompting him, asking him questions?

A Yeah, we were.

Q And so, you know, some of those statements you attributed to him, was that more of like the vibe you were getting from him or do you remember that's what he said verbatim?

A That's just what he said because, you know, he said -- he answered the questions we asked.

Q He said he was asleep, he said he heard fighting, came out shooting, right --

A He said they was trying to rob him and then he said there was fighting.

Q So he's asleep, there's fighting, he believed somebody is going to rob him and he comes out shooting; is that about right?

A Yeah.

MS. YOUNG: All right. Thank you. I have no further questions for you.

THE COURT: All right. Yes, sir.

RECROSS-EXAMINATION:

BY MR. FOWLER:

Q You said that he gave three different versions of the story, correct? And all the versions were words that he spoke out of his mouth to you?

A Yeah.

Q And they were all different, each story he gave you?

A (Nods in the affirmative.)?

THE COURT: Thank you. Answer.

THE WITNESS: I'm sorry, yes.

MR. FOWLER: No further questions, Your Honor.

THE COURT: All right. Thank you. You may step down.

Any objections to this witness being excused?

MS. YOUNG: None, Your Honor.

THE COURT: All right. Any from the State? Any objections to --

MR. FOWLER: No objection, Your Honor.

THE COURT: All right, sir. You're free to leave. Thank you.

All right. We're going to take about a five or ten

minute break.

(WHEREUPON, a short break was taken.)

THE COURT: All right. Are we ready?

BRIAN SHEALEY: Yes.

THE COURT: Call your next witness.

BRIAN SHEALEY: Your Honor, the defense would call Sam Thomas.

SAMUEL THOMAS, after being duly sworn, testified as follows:

THE CLERK: Samuel Thomas.

DIRECT EXAMINATION:

BY BRIAN SHEALEY:

Q Good afternoon, Sam. How are you?

A I'm good.

Q So let's get right to the point. So on this day in question, you were living in apartment 14G with Antonio Barnes and Antonio Dash?

A Yes.

Q Okay. And you were all friends, right?

A Yes.

Q Friends and roommates?

A Yes.

Q And how long approximately had you lived at the Willow Run Apartments?

A Maybe close to a year.

Q Okay. And you were a leaseholder, right?
A (Nods in the affirmative.)
Q And who else was the other leaseholder?
A Barnes.
Q Is that Antonio Barnes?
A Yes.
Q And Antonio Dash was just allowed to stay there, right?
A Right.
Q But he wasn't on a signed lease or anything, but y'all all were friends and let him live there, right?
A Right.
Q Now, what is your normal routine? Are you an early riser?
A Sometimes, yes, it depends on the night before, yes.
Q Sam, make sure you speak into this microphone so this judge and this court reporter can clear you, okay?
A Okay.
Q Now, would you routinely give Antonio Dash a ride to work?
A Yes.
Q Was that your practice, your arrangement with him?
A I mean, I was the only one that had a car at the time, so I provided transportation for everybody.
Q Did he almost always need a ride to his job?

A Yes.
Q And did you almost always take him to his job?
A Yes.
Q But you didn't take him that day, right?
A No.
Q And tell the court why you didn't take him to work that day?
A He told me he had a ride already.
Q Did you think anything of that?
A No.
Q Okay. And you had some place else to be, as well, that morning, right?
A Yes.
Q And where was that?
A I went to the walk-in clinic.
Q And do you know approximately when you would have left your apartment to go to the doctor's office?
A No.
Q Okay. But does 8:15 sound about right in the morning?
A Yeah.
Q Can you speak up, please?
A Yes.
Q Do you think approximately 8:15 sounds about right?
A Yes.

Q And you went to the doctor to?
A Get a checkup.
Q Now, when you left the apartment -- and you told law enforcement this, but what is your understanding of what Antonio Dash was getting ready to do?
A Go to work.
Q And did you see Antonio Barnes up?
A No.
Q Was his door to his room opened or was it closed?
A Closed.
Q In fact, you hadn't seen him at all that morning, right?
A No.
Q Was it your assumption that he was asleep?
A Yes.
Q Was he often asleep when you would take Tonio Dash to work?
A Yes.
Q Okay. Now, y'all were all friends, right?
A Correct.
Q Okay. There was no beef, no bumping heads with anybody, right? I mean, y'all were friends enough to live together, right?
A Right.
Q And Tonio Dash, even though he wasn't on the lease,

he stayed with y'all, right?
A Yes.
Q I'm going to show you a picture and let me know if you can see it up here. This is Defendant's 3. Now, this you may not have seen before, but this was generated by law enforcement to depict the crime scene. But just so the judge knows what we're talking about, do you recognize this as the door, front door?
A Yes.
Q Okay. Now, if this is the front door, this would be the kitchen, right?
A Yes.
Q And this would be your bedroom, this front bedroom?
A Correct.
Q And this would be Antonio Barnes' bedroom, right?
A Correct.
Q And then we got a bathroom, right?
A Yes.
Q Now, there was no third bedroom or anything, right?
A No.
Q Now, there is kind of a storage area in the back of the hallway, correct?
A Yes.
Q And who would sleep in that storage area every night?
A Tonio Dash.

Q Tonio Dash would sleep there, right?
A Right.
Q Did he keep some stuff there in that closet area?
A Yes.
Q Now, he never slept in Antonio Barnes' room, did he?
A No.
Q Now, when he would sleep in this room, how would he sleep? Obviously, there's no bed in the closet --
A Maybe on covers or a blowup bed, whatever.
Q But it was always his practice of sleeping in that little storage closet, right?
A Yes.
Q Now, again, this apartment is a little bit small?
A Yes.
Q Just two bedrooms?
A Two bedrooms.
Q And he wasn't sleeping in your bedroom, right?
A No.
Q Now, again, when you left the apartment that day, there was no arguing, right?
A No.
Q Antonio Barnes' door was closed?
A Correct.
Q And you assumed he was asleep?
A Correct.

Q And the only reason you weren't giving a ride to Mr. Dash is because he said he had some other way to get to work, right?
A Right.
Q All right. I'm going to show you a couple of pictures -- if I may approach, Your Honor -- of your apartment. I'm going to you what's marked as Defendant's Exhibit 20. Do you recognize that as a television and a chair turned over?
A Yes.
Q You recognize that as generally your apartment, right?
A Yes.
Q Do you recognize Defendant's 21 as your television that's flipped over?
A Yes.
Q Also, the table that it was sitting on is upside down, right?
A Yes.
Q Do you recognize this hole in the wall?
A No.
Q Do you understand that that was your apartment?
A Yes.
Q Okay. We'll talk about the hole. Do you recognize Defendant's 23 as an image of yourself?

A Yes.
Q Similarly, an image of yourself on Defendant's 24?
A Yes.
Q Similarly, an image of yourself and some other people on Defendant's 25?
A Yes.
Q Twenty-six?
A Yes.
Q Speak up, please. I'm not trying to yell at you. I just want to make sure they can hear you. Defendant's 27, do you recognize that as a picture of your sister?
A Yes.
Q Twenty-eight, again, your sister on the phone?
A Yes.
Q And then your sister, and then you're sitting down on the corner there, right?
A Yes.
Q Does that fairly and accurately represent what these images looked like on the day of this shooting?
A Yes.
Q Okay.
BRIAN SHEALEY: Your Honor, at this time, I'd seek to admit Defendant's 20 through 29?
THE COURT: Any objection?
MR. WALTON: No objection, Your Honor.

THE COURT: Okay. They'll be entered without objection.

(WHEREUPON, Defendant's Exhibits Nos. 20 - 29 were admitted into evidence.)

BY BRIAN SHEALEY:

Q We've kind of covered some of these with the Court, but I know you have not. I'm just going to show you Defense 20, which is an overturned coffee table and a television. Is that the way that looked in your apartment when you left?

A No.

Q And was your television sitting up on that table?

A Yes.

Q And, again, this is pretty similar, just zoomed out, show you Defendant's 21. And you, again, recognize that as a more blown-up version of this corner. And that's not how it looked, right, when you left?

A Correct.

Q TV was on that stand, correct?

A Correct.

Q Okay. And, again, there was not a giant hole in the wall when you left either, right?

A Correct.

Q There was no arguments, no beef, no fighting when you left that apartment, right?

A No.
Q And certainly not that hole. And I know this is tough because everyone was your friend and I hate showing you these pictures, but it's important. And you're here today to tell the truth, right?
A Correct.
Q Just like you told the truth when you came back from the doctor's office and you, basically, flagged down the first officer that you saw, right?
A Correct.
Q And you did not know his name, but I've shown you these pictures before. Do you recognize yourself in this picture?
A Yes.
Q For the record, this is Defendant's Exhibit 23. Is this, basically, an image of you from a body camera of the first officer that you came across?
A Yes.
Q And are you coming up to your apartment and seeing all this yellow tape?
A Yes.
Q Are you concerned?
A Yes.
Q Okay. That's you trying to get the attention of the officer that was behind that tape?

A Right.
Q Okay. And this will be important, there's a little timestamp. Just for the record, what time does it say on the bottom of this body cam?
A 9:31.
Q So 9:31, you're coming back to the apartment, you're making contact with an officer that's standing behind that yellow tape, right?
A Right.
Q Here's Defendant's 24. You're a little bit closer here, closer to the officer. Obviously, what is your demeanor in this image?
A My demeanor?
Q Yeah, are you upset?
A Confused, distraught, sad.
Q Okay. So that's you, obviously, being very sad to learn about what had happened in the apartment, right?
A Yeah.
Q And on this timestamp right there, what does that say?
A 9:31.
Q All right. So 9:31.
Now, I'm going to show you -- stepping forward a little bit from 9:31, did that officer put you in touch with other investigating officers in this case?

A Excuse me?
Q Did that officer that you talked to and identified yourself, did that officer -- once you told him who you were and you lived in that apartment, did he want you to speak to the investigating officer in this case?
A Yes.
Q Okay. So he directed you to an investigating officer?
A Yes.
Q And so here we are, in this image of you, do you recognize yourself speaking to Investigator Gilliam?
A Yes.
Q And that was the first time you'd ever spoken to Investigator Gilliam, right?
A Yes.
Q And you're telling him everything you know, right?
A Right.
Q Telling him that you didn't give Mr. Dash a ride that day, right?
A Right.
Q And that Antonio was in his room asleep, right?
A Right.
Q And you thought Antonio Dash was getting ready to go to work that day, right?
A Right.

Q So Investigator Gilliam is trying to figure out what's going on, why this occurred and if you're telling him the truth, right?
A Right.
Q And, again, this is at 9:34 per this body cam, correct?
A Yes.
Q And, again, just a little bit more down the line, here you are again speaking to two officers, Gilliam and another officer. And that's at 9:35, right?
A Yes.
Q At the very bottom, that's 9:35. Did they immediately take you down to be questioned at headquarters or did you sit and kind of hang out in the parking lot for a while waiting to be told what to do next?
A Yes, they didn't take me right away.
Q And I'm going to show you a picture, Defense 28. Mind you, you're talking to Investigator Gilliam at 9:35 and the timestamp on this image, Defendant's 28, is at 9:58. Do you recognize anyone in that photograph?
A Yes.
Q Who do you recognize?
A My sister.
Q All right. Is this lady that seems to be holding a phone, she's got something on her head and she's to the

left of this gentleman here in the white shirt, right?
A Yes.
Q And do you know approximately where you were at this time?
A I was sitting down on the sidewalk by that car right there. I was just sitting to the side.
Q Okay. You were sitting down. Again, this is at 9:58. This is after you've already spoken to Investigator Gilliam, right?
A Right.
Q Now, that was 9:58:10, for those that are keeping count, right? Do you see that, 9:58:10, right?
A Yes.
Q I'm going to show you a picture at 9:58:19, is that still your sister?
A Yes.
Q And she had something in her hand?
A Yes.
Q What is that?
A Phone.
Q All right. And does she, basically -- I don't have a picture on that, but is she, basically, giving you the phone and allowing you to speak somebody?
A Yes.
Q And who is that?

A Tonio Barnes.
Q Okay. So that is the first time that you had spoken to your roommate, Antonio Barnes, since this thing happened?
A Yes.
Q Is he telling you what happened?
A No, he's just really apologizing saying he didn't mean for anything to happen.
Q Okay. Did he tell you about any kind of crash or bam or any kind of commotion that caused him to do what he did?
A Yeah, he said he heard a commotion and stuff like that.
Q Okay.
A He thought people was like coming in and robbing the house.
Q So he thought he was getting robbed?
A Yes.
Q Was he upset at this time?
A Yeah, you can hear the frustration.
Q Is he telling you it was a --
A You can hear him upset, sniffling and stuff.
Q So he told you, basically, that he thought he was getting robbed, right?
A Yes.

Q And then that -- now he's come to realize some people he shot -- or people he knows are terrified, right?
A Right.
Q He's telling you, the other roommate, how upset he was about this, right, and how it was an accident?
A Right.
Q Now, again, that was at 9:58:19, right, that you were first talking to Mr. Barnes that day, right?
A Right.
Q Because earlier, the door was closed when you left to go to the doctor and he was asleep, right?
A Right.
Q So you're just taking all that in for the first time?
A Right.
Q I'm going to play you a video that's already been played, but you have not had an opportunity to hear it today.
BRIAN SHEALEY: Beg the Court's indulgence.
BY BRIAN SHEALEY:
Q I'm going to play this for you and see if you can hear it. Again, this was earlier in the day at 9:36, right?
A Right.
(Video was played.)
Q Can you hear your voice on that body cam?

A Yes.
Q You're saying one was about to go to work and one was still in bed?
A Yes.
Q So, again, you're telling Investigator Gilliam that at 9:36 on this officer's body worn camera, right?
A Yes.
Q But you didn't get the phone call from your sister, who had Antonio Barnes on the phone, until later at 9:58, right?
A Right.
Q So you always told anyone that would listen to you on the scene exactly what you knew, right?
A Right.
Q Which was the truth?
A Right.
Q There was no beef, no bumping, as you say?
A Right.
Q And Antonio had his door closed, Tonio Barnes, and that your idea was Mr. Dash was getting ready to go to work, right?
A Right.
Q Now, you didn't see Eric Griffin in the house when you left, right?
A No, I didn't see him at all.

Q And you never told anyone that when you were up that everybody was up giggling and laughing? You never told anybody that, did you?
A No.
Q Repeat that for record?
A No.
Q Do you recall talking to a female investigator or sergeant that maybe would have been in plain clothes telling her that Tonio Barnes was up?
A No.
Q Okay. Do you recall talking to a lot of different officers that day?
A Yes.
Q Okay. Let me ask you this, Investigator Gilliam kind of kept on asking you some questions through that day and, I guess, later on at your mom or grandma's house. Do you recall that?
A Yes.
Q So I know you were talking to him here. And we just determined that you were telling him as far as you know, Antonio Barnes was in bed and Antonio Dash was getting ready to go to work. But did he also take you down there that day and ask you some questions at the Columbia Police Department?
A Yes.

Q Were you in an interview room, small room?
A Yes.
Q Did you tell him the same thing?
A Yes.
Q Now, did he try to, I guess, ask you questions that did Antonio Barnes tell you what to say? Did he ask you that line of questioning?
A Yes.
Q And what did you always tell him?
A No.
Q So you always were consistent that Antonio never told you what to say at all, right?
A Right.
Q And as we can see here, you already told him what you knew, right?
A Right.
Q So on that phone call when your sister gave you the phone and Antonio Barnes was on the other line, he was just telling you roommate to roommate, friend to friend this terrible thing that happened, right?
A Right.
Q And why it transpired that way, right?
A Right.
Q Now, Investigator Gilliam interviewed you again that day; did he not? He interviewed you twice, more along the

lines of questioning about this phone call, right?
A Yes.
Q Trying to insinuate that you were lying, right?
A Yes.
Q Or that Antonio Barnes somehow gave you some story to tell, right?
A Yes.
Q But again, we know that's not the case because you're already telling Investigator Gilliam the truth earlier on, right?
A Right.
Q And I've got transcripts of the interview itself that was recorded and we had a court reporter transcribe it, but do you recall when Antonio Barnes was talking to you that day on the phone him saying things like he thought they were breaking into the crib?
A Yes.
Q And he heard a loud rumble, right?
A Right.
Q And that he didn't come out of the room until he heard the TV slam, right?
A Right.
Q And he thought they were breaking in?
A Right.
Q Do you recall him telling you that on the phone? And

that he was telling you, I really thought he was breaking into the crib. You remember that?
A Yes.
Q And he just woke up and that S-H-I-T woke him up, right?
A Yes.
Q And do you also recall multiple times Investigator Gilliam still kind of asking you just got to make sure he didn't ask you to change anything or say anything, right?
A Right.
Q And you were consistent he didn't. I promise you he didn't, right?
A Right.
Q So you always told Investigator Gilliam that, right?
A Right.
Q You always told Investigator Gilliam the truth, right?
A Right.
Q And, in fact, when he came out again to -- was it your grandma's house or your mom's house?
A My grandmother's house.
Q This would have been like weeks later, right?
A Yes.
Q He showed up again, and really was trying to get down to insinuating that you were lying again, right?

A Right.
Q Can you speak up for this Judge?
A Right.
Q Do you recall telling him I'm just trying to speak facts?
A Yes.
Q Do you recall telling him I did not see Barnes, but I know for a fact his door was closed?
A Yes.
Q Do you recall Investigator Gilliam telling you something like, so he didn't tell you to cover up for him at all, right?
A Yes.
Q And you said no, correct?
A Yes.
Q And he kept on and kept on and kept on with that, right?
A Yes.
Q But again, you always told the truth in this case?
A Correct.
Q That y'all were friends?
A Correct.
Q That you almost always gave Antonio Dash a ride to work, just not that day, right?
A Correct.

Q That y'all had no bad blood between the roommates, no beef or anything, right?
A Correct.
Q And that Antonio Barnes' door was closed that day?
A Correct.
Q Let me talk to you a little bit about, is it Shekila or Shekila Smalls? Do you know who I'm talking about?
A Yes.
Q She lives some place in the apartment?
A Uh-huh.
Q Are you aware that she lives in the apartment complex?
A Yes.
Q And since you've been there about a year, has she ever come over to the apartment?
A Yes.
Q Now, let me ask you this, in all the time you lived there, would she ever pop up at the apartment at like 8:00, 8:30 in the morning?
A No.
Q When, if she ever come over, in your experience would she come over?
A You said when would she come over?
Q Yeah, in your experience living there, when would she --

A Anytime after 12:00.
Q But never popping up?
A Never.
Q At like 8:00, 8:30?
A No.
Q Okay. As long as you lived there?
A As long as I lived there.
BRIAN SHEALEY: Beg the Court's indulgence.
(Pause.)
Sam, I appreciate it. Please answer any questions the State has for you.
THE COURT: Yes, sir.

CROSS-EXAMINATION:

BY MR. WALTON:
Q How are you doing, Mr. Thomas?
A I'm doing good.
Q On the date in question, Antonio Dash borrowed your car, didn't he?
A Uh-huh.
Q Why did he do that?
A He went to the store right up the street.
Q Is it normal for him to do that, borrow your car?
A Yeah, anytime he needed to go.
Q That's because you said you were the only one that had a car, right?

A Right.
Q Just random questions, you lived there over a year together?
A Close to a year.
Q Defendant Antonio Dash and you lived there for about a year. Is it customary for you to lock your doors at night? Do you normally lock your door?
A Yeah.
Q Okay. So let's switch gears to the date in question. You've talk about what's your normal routine. You wake up kind of early, right?
A Uh-huh.
Q So on this particular day, you got up and you said you went to the walk-in clinic?
A Uh-huh.
Q What did you that for?
A I had some concerns, obviously, as a man.
Q Okay.
A I just wanted to go check that out.
Q I'm not trying to pry. You had some concerns, something kind of private?
A Right.
Q Because it was private, you didn't go tell anybody, right?
A No, I didn't mention it.

Q You just got up that morning and went, right?
A Uh-huh.
Q Before you actually, you spoke with Antonio Dash about driving him to work, right? Is that correct? You normally drive him to work?
A Yes.
Q But he told you he didn't need a ride that day?
A Correct.
Q So then you got up and went to the clinic?
A Yes?
Q And do you remember telling law enforcement that it's about 8:15 in the morning that you left?
A Yes.
Q Okay. You also remember that it was about 9:20 that you got back?
A Yes.
Q And now, I know you weren't there, but are you aware that the shooting took place approximately 8:50 in the morning that day?
A Am I aware?
Q Yeah, are you aware?
A Yes.
Q So you're aware it took place while you were gone?
A No.
Q You were not aware that it happened while you were

gone?
A That's not what you asked me.
Q So if it was -- you left at 8:15 in the morning, right?
A Yes.
Q And you got back at 9:20. So was everything okay when you left in the morning?
A Yes.
Q And it wasn't when you come back?
A Right.
Q So is it fair to say the shooting happened while you were gone?
A Right.
Q Okay. On direct, you mentioned that Antonio Dash stayed in the storage area; is that right?
A Uh-huh.
Q You mentioned that you are kind of like an early riser. You always take him to work. So if you will just walk us through, like, explain to us how that procedure works. Do you go get him up? Does he come to you? How did that normally work?
A As soon as I walk out of my room, Dash was already up. He's kind of up before everybody. It's kind of like he doesn't sleep sometimes. So when I come out my room, he would be in the living room already. I wouldn't have

to go get him or nothing.
Q I thought I saw -- where is that storage closet in relation to your room?
A If I was to walk out my room and walk to the right, straight ahead.
Q So fair to say it's easy, not hard to miss that?
A Excuse me?
Q You could see it?
A Yes.
Q Okay. I just want to switch gears a little bit. I'm not going to go through all the pictures, but I wrote down some timestamps Mr. Shealey talked to you about. The first picture I saw had a timestamp of 9:31 in the morning. And that's after you got back from the walk-in clinic?
A Correct.
Q Okay. And you were aware that the shooting happened prior to that?
A No.
Q You're not aware?
A I didn't know that.
Q Prior to 9:31 in the morning?
A I didn't know.
Q You didn't know. So you said earlier that you left at 8:15, right?

A Uh-huh.
Q And you left the clinic at 9:20, 9:15?
A Uh-huh.
Q So when you got back -- you knew it was okay when you left, right?
A Right.
Q And then when you got back, something was wrong, correct?
A Right.
Q So in between those times, you understand what I'm saying? Like --
A You're asking me was I aware at the time when I got there?
Q Right. Like you -- right now, do you know it happened after?
A Now, I know that.
Q Yeah, that's what I'm asking?
A I thought you were asking me when I pulled up, did I have prior knowledge.
Q No, no, no. Sorry about that. Not at all. I'm asking right now, you know now.
The same thing for the picture that had a timestamp of 9:35, the same question, that was while you were -- that was after the shooting had taken place to your knowledge right now; is that correct?

A Correct.
Q And there's a picture that was timestamped 9:58. Same question, that was -- that occurred after the shooting had taken place is your knowledge right now?
A Correct.
Q Okay. So it was also a picture with your sister and your sister had a phone in her hand, correct?
A Uh-huh.
Q And that timestamp was 9:58?
A Yes.
Q Again, that was after the shooting had taken place, according to your knowledge right now?
A Yes.
Q And you spoke with the defendant, Antonio Barnes?
A Yes.
Q And you said on the phone he was upset?
A Yes.
Q And he was apologizing to you?
A Yes.
Q And he started telling you what happened?
A No.
Q He didn't tell you what happened?
A No.
Q So he didn't say there was a loud boom or anything like that?

A Yes.
Q He did say that, okay. He said there was like a burglary or --
A The questions that you're asking me kind of confused me.
Q I'll switch it up for you. Did he tell you about what was happening?
A Yes.
Q Okay. And that's -- is that the first time you learned about that information?
A Yes.
Q Because you weren't there when this happened, right?
A Right.
Q So you learned about the burglary based on your conversation with Antonio Barnes, right?
A Yes.
Q You learned about the potential robbery from your conversation with Antonio Barnes, right?
A Yes.
Q You stated that you saw the picture with the hole in the wall, but you said that picture -- that hole in the wall was not there when you left that morning?
A Correct.
Q Now, you know it happened after you left, but you weren't there when it happened, were you?

A No.
Q So you really don't know what actually happened?
A Correct.
Q Okay. I'm almost done, I promise. So in regards to Shekila, you said you had seen her come over before, right?
A Right.
Q And just never seen her come over that early in the morning, right?
A Right.
Q And about what time you said -- what was the typical time that she would come?
A In the evening.
Q Evening, like approximately?
A 12:00, 1:00.
Q Okay.
A Around time like lunch or something.
Q Never 8:00 in the morning?
A Never.
Q But you left the house at 8:15 on the date in question; is that correct?
A Correct.
Q And you don't typically go -- you don't leave the house typically at 8:15. What time do you typically leave?

A I mean, if I have to go to work, I go to work, but that day, I didn't have to go.
Q Okay.
A So...
Q Is it fair to say you changed your routine a little bit on that day? It's a different routine because of the circumstances?
A Yes.
Q When you left, you also didn't see Eric Griffin in the apartment; is that correct?
A Correct.
Q You did see Dash in the apartment?
A Yes.
Q And you said Antonio Barnes' door was shut?
A Yes.
Q You said Antonio Barnes was asleep?
A Yes, I assume.
Q That's what I was going to ask you, you didn't actually go in there and check to see if he was asleep, right?
A No.
Q Beg the Court's indulgence.
(Pause.)
Just a couple more, Mr. Thomas. Previously, you stated that Antonio Dash would sleep in a storage closet?

A Yes.
Q What would you say he slept on, like a comforter? What would he sleep on?
A Sometimes covers, like lay a pallet down, or he blow up like an air mattress.
Q You said when you wake up in the morning, it's easy for you to see the storage closet where he used to sleep, right?
A Yes.
Q Did he just leave his clothing, like his bed item or the air mattress, he would leave it in the storage closet?
A Yes.
Q He did leave it in there?
A Yes.
Q Okay. So you've never seen -- have you gone into Antonio Barnes' room before?
A Yes.
Q Did you ever notice a comforter on the bed, next to the bed?
A No.
Q Never seen it before?
A No.
Q Last thing, so you lived with Antonio Barnes, Antonio Dash and Samuel Thomas, but you know Eric Griffin, as well?

A Yes.
Q Would you consider him a friend?
A Yes.
Q Was he friends with everybody who lived there?
A Yes.
Q Does he visit the house? Is it normal for him to come visit the house?
A Yes.
MR. WALTON: Thank you.
BRIAN SHEALEY: Briefly, Your Honor.

REDIRECT EXAMINATION:

BY BRIAN SHEALEY:
Q So it was your routine to give Antonio Dash a ride to work pretty much every morning, right?
A Yes.
Q But when you left that day, Antonio Barnes' door was still closed, right, we covered that?
A Yes.
Q So he would not have been able to know that day you were not giving Mr. Dash a ride, correct?
A Correct.
BRIAN SHEALEY: Thank you.
THE COURT: All right. Anything else?
MR. WALTON: Just one, one, Your Honor.

RECROSS-EXAMINATION:

BY MR. WALTON:
Q Mr. Thomas, you stated that it wasn't normal for Shekila to come out --
BRIAN SHEALEY: Objection, Your Honor, that was outside --
THE COURT: What's the question?
MR. WALTON: Asking about his routine.
BRIAN SHEALEY: It outside of my redirect. Therefore, he can't go into it. Outside the scope.
THE COURT: Let me hear the question.
MR. WALTON: Regarding Shekila not coming at 8:15 in the morning, eight o'clock in the morning.
THE COURT: What's the question?
Don't answer, sir.
MR. WALTON: It's not normal for her to come that early.
THE COURT: Yes, that's outside the scope of redirect, so objection is sustained.
BRIAN SHEALEY: And just for housekeeping, Judge. This video that we've been playing, I'm just seeking to move it into evidence.
THE COURT: What's the number?
BRIAN SHEALEY: This is Defense 19.
THE COURT: 19, any objection?
MR. SCOTT: That's already been published, Your

Honor.

THE COURT: All right. You may step down. Any objection to this witness being excused?

BRIAN SHEALEY: No, Your Honor.

THE COURT: All right. Call your next witness.

MS. YOUNG: Your Honor, the defense calls Steven Harper to the stand.

THE CLERK: State your full name, please.

THE WITNESS: Steven Harper.

THE CLERK: Spell your first name, please.

THE WITNESS: S-T-E-V-E-N.

STEVEN HARPER, after being duly sworn, testified as follows:

THE COURT: Are we ready?

MS. YOUNG: Sorry, Your Honor, I was looking for the witness list. I'm sorry, happy to proceed.

THE COURT: You can get it to us tomorrow.

DIRECT EXAMINATION:

BY MS. YOUNG:

Q Good afternoon, Steven. Thanks for working late. Steven, where do you work?

A Public Defender's Office in Richland.

Q Okay. What's your job there?

A Paralegal.

Q Do you do a little bit of everything?

A Yes.
Q In 2019, who were you working for as a paralegal?
A Morgan Drapeau.
Q And anybody else?
A Possibly, even you.
Q That's the answer I was looking for. Is it possible you were my paralegal when I started in 2019?
A Yes.
Q I joined the office I believe in February or early March of 2019.
A Right.
Q On February 27th, 2019, do you recall me asking you to do something?
A I believe that's the day you asked me to go to the jail and get Antonio Barnes' phone.
Q Beg the Court's indulgence real quick. This may help.
Steven, I'm going to show you a couple of documents that might help you remember specifically the day. Does February 27th sound right?
A Correct.
Q What did I ask you to do?
A I just went to the jail and went and picked up Antonio's property. I believe it was a watch, earrings and a phone.

Q Okay.
A Earrings and a phone.
Q And what did you do with that property after you picked it up from the jail?
A I put it in like a manila envelope and put it -- I have like a little drawer, like, deal in my office, labeled it and closed it with tape and put it in there.
Q At some point, did I ask you to then take that phone to Chris Watkins?
A Yes.
Q Let me show you this, too. What day did I ask you to take that phone and deliver it to Chris Watkins?
A That's on March 6th, 2019.
Q Did you, in fact, take the phone and deliver it to his office?
A I did.
MS. YOUNG: Okay. I don't think I have any further questions.

CROSS-EXAMINATION:

BY MR. SCOTT:
Q I haven't met you yet. I've seen you. You're very familiar with all the discovery in this case, aren't you?
A I wouldn't say very familiar, but somewhat familiar.
Q Somewhat?
A Yes.

Q You reviewed all those body cam videos?
A I did not review them. I was with Laura when she was looking through them.
Q I remember you being pretty familiar with which once you had and which ones you didn't have. Are you saying you're not familiar with your discovery?
A We had a list there.
Q What is your job? You work for Ms. Young?
A I do.
Q How do you assist her?
A Well, I'm not her paralegal now. I was her paralegal in 2019.
Q You've been in my office, haven't you?
A Yes.
Q A couple of times?
A Uh-huh.
Q And we've talked a lot about this discovery?
A Yes.
Q Did you review that phone dump?
A No.
Q You have no knowledge of what's on that phone you asked the jail to release to you?
A I have no idea.
Q That's your testimony under oath?
A Yes.

Q And you're not privy to the contents of it?
A No.
Q What are you privy to as far as discovery?
A Statewide Security camera, some of the body cams. That's probably about it.
Q You didn't bother going through that phone dump to assist your boss?
A No, I didn't.
MR. SCOTT: Okay. Nothing further of this witness then.
MS. YOUNG: Yes, Your Honor. Just briefly.

REDIRECT EXAMINATION:

BY MS. YOUNG:
Q Steven, are you in the habit of just helping people when they need something done?
A Yes.
Q And when people are preparing for court and preparing for trial, do they just run around grabbing whoever is available to help with something?
A Yes.
Q And last week when the State failed to turn over 25 hours of video footage that I had to go and spend two-and-a-half hours in their office reviewing and trying to keep track of, did I grab you out of your office at the last minute and ask you to come with me?

A You did.
Q When you had that phone, did you ever open it?
A No.
Q Did you ever look at it?
A No.
Q Did you do anything other than stick it in your drawer and take it to Chris Watkins when I asked you?
A Did not.
MS. YOUNG: Okay. Thank you.
THE COURT: Anything else from the State?
MR. SCOTT: No, Your Honor.
THE COURT: You may step down.
Any objection to this witness being excused?
MR. SCOTT: None from the State.
THE COURT: All right. Who's your next witness?
MS. YOUNG: Your Honor, our next witness is Chris Watkins. He's a phone expert. He's the one who extracted the phone and did some analytics of that.
THE COURT: How long do you think he's going to be?
MS. YOUNG: I can't imagine that my questioning would be more than 15 or 20 minutes, but I always underestimate, so I'm not 100 percent sure, Your Honor.
THE COURT: Is he here?
MS. YOUNG: He is. I believe Officer Castro is here, as well.

THE COURT: All right. Go ahead and call Mr. Watkins. We'll see how far we get.

MS. YOUNG: Okay. The defense calls Christopher Watkins.

THE BAILIFF: Come forward to be sworn. Place your left hand on the Bible, raise your right hand and face the clerk.

THE CLERK: State your full name, please.

THE WITNESS: Christopher James Watkins.

CHRISTOPHER WATKINS, after being duly sworn, testified as follows:

THE CLERK: Have a seat right there, please.

DIRECT EXAMINATION:

BY MS. YOUNG:

Q Good afternoon, Mr. Watkins.

A Good afternoon.

Q Where are you currently employed?

A I am employed at Certified Computer Forensics here in Columbia, located at 1416 Park Street.

Q Okay. What is your current title and position there?

A I am a owner/operator of Certified Computer Forensics. I am SLED licensed investigator and a digital forensics analyst.

THE COURT: Sir, you can pull your mask down if you like so we can hear you.

BY MS. YOUNG:
Q Sorry, I should have told you that?
A All right.
Q And how long have you been working as an investigator and a digital forensics analyst?
A Twelve years. I began my career February of 2010. I certified -- I was employed at a private investigation firm here in Columbia known as Stillinger Investigations. In 2016, I left that company to start my own company, Watkins Digital Forensics Investigations. And in 2019, I dissolved that company and started a new company, Certified Computer Forensic, which is where I'm currently working.
Q Do you have any certifications or qualifications in the field of digital forensics science?
A Yes, I do. I've got two certifications through IACIS, which is the International Association of Computer Investigative Specialists. I am recognized by IACIS as a computer forensic type -- sorry, certified forensic computer examiner and a certified mobile device examiner.
Q Can you tell the court a little bit about what is digital forensics science?
A Yeah, certainly. Digital forensics science is a branch of forensic science that encompasses the acquisition, preservation, recovery, investigation,

examination and analysis of materials found in digital devices, most often in relation to mobile phones and computer-related crime.

Q And who do you typically work for?

A So our office is open to the general public. We're also frequently hired by private attorneys, public defenders' offices. Where it pertains to civil matters, we're most often contracted by a member of the general public or a private attorney. Where it pertains to criminal investigations, we're most often contracted by private attorneys and public defenders. There are some occasions where we can be contracted by a private client. That's just very rare.

I've also testified on two occasions for the State. So our services are available to the State, just that's kind of rare because my understanding is that the State will most often rely upon their own investigators versus contracting an independent examiner. So that's why it's rare for me to be a contractor called upon by the State.

Q And how did you come to be involved in this case?

A So for this case in particular, on March 6th, 2019, I received a cellular device belonging to Mr. Antonio Barnes. It's an Apple iPhone 6 Plus. Serial identifier for that device is, I'll read the phonetic alphabet for the court reporter's accuracy. It's fox trot niner

Charlie Romeo hotel one echo niner golf five Quebec picker. The telephone number pertaining to that cell phone is (803)569-8986.

I received that device from a Mr. Steven Harper with Richland County Public Defender's office. And at the time that I received that device, we did not have a service contract, so I was asked to just hold onto the device. The device was then placed into our CODIS locker, where it remained until June 15th of 2020.

Now, on June 15th, 2020, that was the date that I was contracted by the Richland County Public Defender's Office and I was asked initially to acquire the data from Mr. Barnes iPhone for preservation purposes until I received additional instructions. So that data was acquired on June 15th, 2020.

And then on or about March 11, 2021, I was asked to provide a forensic examination and analysis of that data from that phone. I was asked to do that pursuant to developing a timeline of the events pertaining specifically to the date of incident February 7, 2019. And then later, I was also asked to review additional discovery, which was related to digital evidence collected by law enforcement. And that was received on March 11, 2021. And I later received discovery related to Mr. Dash and Mr. Griffin's mobile devices on December 17, 2021.

Q And did you forensically process Mr. Barnes' Apple iPhone 6 Plus?
A Yes.
Q And how did you exactly do that? What does that mean?
A So what I did is I received the device. It was stored in our evidence locker. On June 15th, 2020, I retrieved the device from our locker. I removed it from the envelope that it was received in and I connected the device to a charger to power the battery enough to power it on.

Once the device was on, I input a pin code to unlock it and I navigated through the settings and engaged airplane mode. This is done to prevent any additional data from being transacted onto the device -- or from the device. And I set auto lock to never, which is an option that allows us to ensure that the device remains unlocked through the duration of the forensic acquisition process.

The tool that I use to acquire an image from this device was Cellebrite UPED 4PC. And I executed two forensic extraction methods on the device. And I did this to ensure that all available extractible data was retrieved from the device. And at the time that this was done on June 15th, 2020, there were two recommended extraction methods, which in this case would be a logical

acquisition method and an advanced logical file system extraction method.

Q Okay. When you say that there were only recommended extraction method available of the device, does that imply that there are other ones now?

A Yes. Technically, at the time, there would have been other extraction methods that I could utilize. I was limited by the device's operating system version, which was 11.2.2. And had it been update to, at least, 12.0, which was available in February of 2019. In fact, the latest version was available in February of 2019 was 12.1.13, that was released on January 22nd, 2019. But had it been upgraded to, at least, 12.0, I would have been able to use a more advanced extraction method known as -- some may refer to it as checkmate. It utilizes an known as Checkra1n. And that's spelled as Checkra1n, one word, with the I positioned as the number one.

Now, had I had the ability to do that, we would have been able to get additional data from the device, including other database files, additional application data, as well as additional data all around.

Q Okay. And can you explain the actual extraction method that you utilized in more detail?

A Sure. So again, there were two utilized. One with you see the logical extraction method. The other one was

the advanced logical file system. Now, the logical file -- I'm sorry, the logical extraction method, the way that works is we connect device to a forensic machine, forensics station using a USB cable.

Once that connection is established, there are various profiles that are transmitted between the forensic work station and the device to, essentially, request a copy of user accessible data. And once that data is copied over, it is packaged into a container file or some kind of series of container files. And that's the data that is ultimately preserved.

The advanced logical file system extraction method is a step above that, because what that does is it request a copy of the file system hierarchy of the user data, so with that, we do get additional application data and some database files, which is useful because that's going to have additional data.

All that being said, it's very technical, so any nontechnical persons may not understand that, so an analogy we use is a logical extraction would be like going to the library and making a copy of all available books in the library and maybe some of the library's catalog, whereas an advanced logical file system extraction would be like going to the library, copying all available books, all the book shelves, the complete library catalog. And

if we were able to do a more advanced extraction method that I mentioned earlier, that would be like copying the entire library, the entire catalog, administrative databases and whatnot, everything.

Q Okay. So after you extracted Tony's phone, Mr. Barnes' phone, what did you do with it?

A So once the extraction method was completed and verified successful, the device was returned back into the evidence locker. It was later picked up by a -- Marilyn Chisholm on July 8th, 2020. And my understanding is that Ms. Chisolm is Mr. Barnes' grandmother.

Q What did you do with the resulting data after it was extracted?

A So the resulting data that was acquired from the device, that was secured on our secure server where it was held until we got the additional information instructions to examine and analyze it. That was on March 11, 2020. Again, I did say that earlier. On that date was the date that I utilized forensics software, forensic protected, to examine and analyze that data.

Q Okay. What, if anything, did you find out about the timeline of events as they relate to the date of the incident, which was February 7th of 2019?

A Okay. So there were a few things, referring to my notes here. I examined the timeline of events for

February 7, 2019, the day of the incident, with the timestamp adjusted throughout the time, of course, because by default they would be EPC.

And on that date in question, I observed that there was a gap in the timeline between 2:59 a.m. and 8:49 a.m. There was an outgoing FaceTime video call that was initiated at 12:25:22 a.m. with the telephone number (803)479-8007. That number was stored as a contact in Mr. Barnes' phone under the name Santonio. That call lasted for two hours, 33 minutes and 39 seconds, so that would mean that the call would have precluded at 2:59:01 a.m.

There's an incoming text message at 8:22:28 a.m. from telephone number (803)339-3224. This number was not stored as a contact on the phone. However, the message read status meta data associated with this record indicated that the message was not read on the date of incident, but actually read later on March 5, 2019 at 4:47:43 p.m.

The next outgoing activity beyond that was at 8:55:24 a.m., and at that time there was a call made from Mr. Barnes' phone to 911 and that call lasted for seven seconds.

Additionally, I observed that there were two records within that timeframe that were logged in the Apple Heath

app activity database. And that activity occurred beginning at 8:49:11 a.m. and ending at 8:49:01 a.m. And the records -- or those two records indicated 121 steps taken covering the distance of 76.6 meters, which is about 250 feet within that timeframe, so about ten-minute timeframe.

Q So the take-away there is from about 3:00 in the morning until 8:49 that morning, Mr. Barnes phone is not in use?

A That's right.

Q And then you said the Apple -- but he did make a call or a call was made from that phone at 8:55 to 9-1-1?

A That's correct, yes.

Q And that lasted seven seconds?

A That's correct.

Q And you said that according to the Apple Heath data, he took some steps and some meters were -- it covered some distance starting at 8:49 and going to 8:59. You know, what can you tell us about -- if anything, about implications of that?

A So what I can't testify to is the accuracy of these values. So while the records do indicate that there were 121 steps over a distance of about 250 feet, the accuracy of the Apple Health data is dependent on multiple factors. It can be anything from whether biometric perimeters have

been set.

Typically, this is going to be -- it's going to require the aid of the Apple watch. The accuracy can also be affected by how the iPhone device is being held, you know, whether it's stored in a pocket, on a jacket or pants pocket or being carried in the individual's hand. Because what's happening is the accelerometer and gyroscopic sensor within these devices, they're trying to calculate movements. So it's trying to determine speed, distance and that rate of travel, so it is estimated.

And there are ways to improve that accuracy, but the biggest take-away here is that the existence of these records do suggest -- not just suggest, it serves to show the device was moved and carried beginning at 8:49:11. And that this wasn't just a simple nudge or just bumping the device. Somebody had to actively carry this device in order for this data to have appeared.

Q And prior to that, the device had not moved?

A That's correct. If the device had been moved prior to that, we would expect to see. And the data covering this app is very inclusive. We have data on this app all the way back to November 2017. So had it been moved prior to that, there would be a record.

Q And you also mentioned the 9-1-1 call at 8:55 that lasted for seven seconds. Do you have enough information

from the phone extraction to determine whether that call was connected?

A So the way that iPhones work, when you're dialing out, the duration of the call does not begin to increment until there is a connected call. So just knowing that, that implies to me or that suggests to me that there was a connected call. The call did connect.

Q Did you also take a look at the extractions that were provided to me by law enforcement of Antonio Dash's phone and Eric Griffin's phone?

A I did, yes.

Q And I think I asked you to just take a look and see if those parties had communicated with each other around this time, right?

A That's right. Okay. Yes, according to the records that I received, the last time that Mr. Dash and Mr. Griffin communicated with each other occurred at 9:43:25 a.m. and 9:45:02 a.m. respectively on February 6th, 2019. The call that occurred at 9:43:02 a.m. was from Mr. Dash to Mr. Griffin, which lasted 52 seconds according to Mr. Dash's records and 53 seconds according to Mr. Griffin's records. The call that occurred at 9:45:02 a.m. was from Mr. Griffin to Mr. Dash, which last nine seconds per Mr. Griffin's records and zero seconds according to Mr. Dash's records.

MS. YOUNG: Beg the Court's indulgence.

(Pause.)

Nothing further for the moment, Your Honor.

Please answer any questions the State has.

THE COURT: How long do you think you're going to be? A lot? If so, we're going to stop for the afternoon and start back in the morning.

MR. SCOTT: Probably reconvene tomorrow morning, Your Honor.

THE COURT: All right. We're going to go ahead and take our evening break.

You can step down. Please to not discuss your testimony with your attorneys -- or with the attorneys or anyone else. Thank you.

MR. SCOTT: Your Honor, we do have Officer Castro here, too.

THE COURT: All right. What do you want to ask Mr. Castro, where -- what happened with his body camera?

You can just stand up, Officer, raise your right hand.

OFFICER CASTRO, after being duly sworn, testified as follows:

THE COURT: You can put your hand down.

Mr. Scott, you wanted to -- I mean, he can come sit on the stand if he needs to.

DIRECT EXAMINATION:

BY MR. SCOTT:

Q Officer Castro, February 7th of 2019, do you remember responding to 511 Alcott?

A Yes, sir.

Q In reference to a double homicide?

A Yes, sir.

Q Do you recall this video that looks like you're being trained by Officer Bosco? Was he your training officer?

A Yes, sir, I was in field training at the time.

Q There is some body cam footage that captures you. Can you estimate how many officers were on the scene that day?

A Not accurately.

Q But you know --

A There was an abundance amount of police presence there.

Q What now?

A There was an abundant amount of police presence there.

Q Do you recall how long you were on the job at that point?

A I know it was around my second or third day of field training, so, roughly, from basic training with the police department to then, roughly, about close to a year.

Q Okay. I guess it looks like in the video you were wearing your body cam?
A Yes, sir.
Q Okay. I don't have and I've never seen your body cam footage. Do you know for certain whether you recorded it and whether or not you downloaded it on that particular occasion?
A As far as the body cam goes, you know, it is part of our job to initiate it as soon as we arrived on the scene. So I'm confident that I did turn on the body cam.
Q It's customary for you to do, is that what you're saying?
A Absolutely, yes, sir, upon arriving on any crime scene. Secondly, to answer the second question is our body cams are uploaded after every shift. So as soon as we get to our office after our shift, we place them on the dock and they start downloading after every shift.
Q If I don't have it in my possession, me representing the State of South Carolina, do you have an explanation of why I don't have it?
A No, sir.
Q But I think your testimony is you believe it does exist or, at least, rather you believe you were recording on that particular occasion?
A Yes, sir.

Q But you can't answer why I don't have it?
A No, sir.
Q Okay.
THE COURT: All right.
LUKE SHEALEY: Do you want to allow me questions from the defense?
THE COURT: If you have a question, now is the time to ask him.
LUKE SHEALEY: I do.

CROSS-EXAMINATION:

BY LUKE SHEALEY:
Q So you were new, but you knew you had your body cam on and it was working to your knowledge?
A Yes, sir.
Q Is part of your duties to activate it when you're at a crime scene like that?
A Yes, sir.
Q Because you were interviewing witnesses, like Mr. Barnes, actually?
A Yes, sir.
Q When you say -- I think you said it automatically uploads when you are done with your shift?
A Yes, sir, as soon as we place it on the dock.
Q On a docking kind of station?
A Yes, sir, it's almost like a charging, slash,

downloading docking station that we have.
Q So it's just -- that's technology. You don't have to push upload, it just does it?
A Right. You just place it to the dock and it automatically starts to download to the server.
Q And it's a server that the City of Columbia maintains?
A Correct.
Q So you don't have any reason to believe or any knowledge of why your body cam wouldn't be available that day and upload to a server, right?
A No, sir.
Q And who would be the person that could have access to those body cameras? Would that be the lead investigator on the case or someone else?
A I believe if you're in a supervisory position, you have access to the body cams.
Q So as far as you know, the City of Columbia possesses that information?
A As far as I know, it was downloaded to the servers, yes, sir.
Q And you probably don't have any specific idea of whether it was purged or erased or still there right now, you don't know?
A No, sir, I haven't looked at the history of that

data.
Q Okay. Thank you. Oh, did you take any notes that day, handwritten notes?
A I believe that I took the criminal -- everyone that arrived on the scene at the front door, the crime scene log.
Q Do you recall Mr. Barnes coming up and talking to you that day saying hey, that's my apartment? I know it was three years ago, but.
A Not off the top of my head.
Q If someone were to give you information like date, biographical, did you write that down?
A Yes, I would.
Q Where does that go?
A In my notebook.
Q And then where does that go?
A Just depending on the notebook, sometimes I throw notebooks away, sometimes I keep them, just depends.
Q Okay. But if something was pertinent to the case, would it be provided to the lead investigator?
A It would have been provided in an incident report.
Q If you did one?
A Right. So I would provide my notebook. I would provide any information I had pertinent to the case on an incident report.

Q And you were training with Officer Bosco at that time?
A Correct.
Q It seems like you guys had a joint report, you remember that at that time?
A Correct.
Q It was just one narrative for you and Bosco?
A Correct.
Q Are you writing that or is he writing that?
A I wouldn't be able to tell you exactly. At the time, I was in training, you know, he could have corrected some things, but I wouldn't be able to answer that accurately.
Q Okay. Thank you.
THE COURT: All right. You can step down.
Anything else from the State? I'm sorry.
MR. SCOTT: No, Your Honor.
THE COURT: You can step down.
All right.
LUKE SHEALEY: Your Honor, on the matter of the missing discovery we brought up this morning, it seems like the officer in question has every reason to believe that he would have turned it on, that it would have automatically uploaded at the conclusion of his shift. Obviously, Your Honor is aware of why it's important to us because he interviews Mr. Barnes immediately, and then his

training officer walks away, so we don't really know what is being said by the defendant in this case.

But I would ask, Your Honor, to instruct, order Mr. Gilliam or whoever is the appropriate person at the City of Columbia go find it and either one, retrieve it, produce it to us; and number two, if it has been purged for some unknown reason identify why, who instructed that and when. Thank you.

THE COURT: All right. I don't know what the database looks like or anything, but if you all can go back and look. I'm assuming his body cam has a serial number or something on it to see if it was uploaded or downloaded -- uploaded and see if you all can locate it. He said he had it on, he thinks he had it on. So see if it was -- it should be some way to be able to tell if it was on or it wasn't on. I don't know does that, but Investigator Gilliam can probably figure it out.

MR. GILLIAM: Your Honor, I can go back, but everything that was located for that case was all on one file. I'll go back and check again. And also, I still have -- they've seen before my whole stack of DVDs, I'll check that again just to make sure that we don't have it.

THE COURT: All right. Thank you.

All right. 9:30.

(There was an overnight recess).

(WHEREUPON, State's Exhibit Nos. 15 through 17 marked for identification only.)

(WHEREUPON, Defendant's Exhibit Nos. 37 through 51 marked for identification only.)

THE COURT: All right. We ready?

MS. YOUNG: Your Honor, very briefly this morning -- oh, man, I just broke my mask. I believe, Your Honor, was in receipt of an e-mail this morning about speaking to Mr. Watkins during the middle of his testimony by Mr. Scott.

He was ordered yesterday not to and I understand maybe Your Honor gave permission to do that this morning. But now I am asking, at least, an inquiry as to what was discussed.

THE COURT: I don't know if I gave permission, I just got an e-mail saying I need to speak Mr. Watkins for ten minutes.

MS. YOUNG: Well, Your Honor, yesterday, in the middle of his testimony, they asked to speak to him for ten minutes, and I believe the e-mail response was that's fine.

THE COURT: It was. I was thinking more -- I thought you all apparently agreed upon that.

MS. YOUNG: No.

THE COURT: The ten minutes was in terms of starting,

we need ten minutes to talk to Mr. Watkins.

MS. YOUNG: I see, Your Honor. Then, no. I was not aware it was going to happen and I certainly did not discuss that with Mr. Scott this morning. He was in the middle -- this is like.

THE COURT: I thought about it afterwards. I was like well, really, he's testifying, but I assumed you all must have agreed on it.

MR. SCOTT: He was not in the middle of testimony. He has finished direct. He has not yet begun cross.

THE COURT: Yeah, but he's still testifying. Once he takes the stand and is sworn, you can't really talk to him about his testimony.

MR. SCOTT: I've never had a chance to -- this person has never met me. I've never had a chance to speak with him.

THE COURT: I know, but it probably should have been before we took his testimony probably should have let you -- before he started. But, technically, once they take the stand, a witness takes the stand, even though he's finished his direct, he's not supposed to talk to anyone. So --

MS. YOUNG: Your Honor --

THE COURT: -- I apologize for the confusion on my part because I thought you all must have agreed. What I

said was fine was in terms of I need ten minutes.

MS. YOUNG: I understand. And, Your Honor, he's had our witness list for over a week with Mr. Watkins' name on it. He never asked to speak to Mr. Watkins.

He never approached Mr. Watkins before being in the middle of his testimony, which is a clear violation of, you know, rules. We thought we were playing by the rules in here, but all that is to say, I would just like to -- I'm fine with moving forward.

I would still -- I mean, if it happened prior to him taking the stand, I would be able to ask him, what did they talk to you about, what did they show you, what did they want to know. Now, I can't do that because he's in the middle of his testimony.

THE COURT: So you want to be able to ask him?

MS. YOUNG: That's correct, Your Honor.

MR. SCOTT: That's fine. I asked him about the contents of the dumpster they provided to me because I've never been able to speak with him before about it.

THE COURT: Yeah, I think the proper process would have been to ask to talk to him before he took the stand. Once he takes the stand, he's not supposed to speak to anyone after. That's my understanding of the rules. After he takes the stand, he can't talk to anyone about his testimony.

MS. YOUNG: Your Honor, if I can just have five minutes to talk with Mr. Watkins, I think that would solve the issue.

THE COURT: Yes, ma'am.

MS. YOUNG: Thank you.

(Pause.)

(WHEREUPON, Defendant's Exhibit Nos. 52 through 56 marked for identification only.)

MS. YOUNG: Okay, Your Honor. We're ready to proceed.

THE COURT: Okay. We're ready for cross-examination.

CHRISTOPHER WATKINS, having been previously duly sworn, continued to testify as follows:

Mr. Watkins, you can take the stand.

CROSS-EXAMINATION:

BY MR. SCOTT:

Q Okay. Mr. Watkins, I just spoke with you briefly for the first time before this court proceeding, correct?

A That's correct.

Q I was asking you sort of -- when we talked yesterday about activity on Mr. Barnes' phone. And if you have your app on, I guess my phone is in my pocket right now, if I'm moving about, theoretically, it's tracking my steps and my movement?

A It is if you have the Apple Health app, if it's

engaged and tracking.
Q So I've got it engaged, it's tracking. If I'm moving, it's tracking my movement, correct?
A Yes.
Q Is it fair to say if I set it down and I'm moving around without my phone on me, it's not necessarily tracking my movements?
A It will stop. If you look at the records, they are usually given in ten-minute increments or approximately ten minutes, but that's how long each tracking iteration is.
Q Okay. So I think yesterday you testified that the first movement you noted on Mr. Barnes' phone was approximately 8:49 a.m.?
A That's correct.
Q But it's only tracking his movement if he's got it on him. Is that fair to say?
A Yes.
Q All right. And you can't testify to whether he was asleep or awake or what time he woke up on February 7th, 2019?
A No, but I did look at the application history for the Apple Health app and did that pursuant to trying to determine the pattern on the phone. And I found that the phone -- there were records on the phone that indicate

that the eight o'clock hour on certain days was consistent with the first time the phone was being moved.

There was some records that were in the seven o'clock hour and there were some at the nine o'clock hour. So when I limited the range down to a four-week period, that became a little bit clearer. We could see there were several records in the eight o'clock hour that show the first time the device is being moved.

And as I limited the range to a shorter time range, you could see that the pattern of usage, it was either the eight o'clock hour or the nine o'clock hour within a four-week period, two-week period and four-day period.

So that would be consistent with somebody who may wake up or if they're asleep during the night, the last use would be around -- per Mr. Barnes' record, around twelve o'clock hour, one o'clock hour, two o'clock hour. And then we have a gap of time when there's no movement at all in the Apple Health app.

So that would be consistent with somebody who is sleeping during that time period, but I cannot testify as to whether somebody is sleeping or not.

Q Okay.

A I can only say it's consistent.

Q Got you. And as part of your analysis of the phone, I think you were telling me that you were able to -- I

guess you -- maybe at the defense's instruction, but you filtered out every time the word gun was mentioned?
A What do you mean?
Q You told me something about filtering out or any time the gun was mentioned?
A Oh, no, you pulled up the messages pertaining to the guns and that was not a primary focus, no. I did look through the phone. I did see that there were pictures of guns and there were some messages involving guns. So that is true.
Q Okay. Well, specifically, February 6th, the day before this incident, is it safe to say that there were several messages that Mr. Barnes sent in regard to a gun that was missing?
A On the 6th, there were messages with that language in it, yes.
Q Okay. So you said that you noted several pictures of Mr. Barnes and guns?
A I did see that, yes, on the image.
Q Okay. Your recollection was that it was just one single gun over and over or was it multiple guns?
A I recall there being multiple guns.
MS. YOUNG: Your Honor, the defense objects to all of these images under 401, 403, 404(b). They are not relevant to anything in question in this case. None of

these images appear -- I mean, I can't say for sure. I guess to clarify about the date, we don't know when they were taken. We don't know what time leading up to the incident, you know, where these were. They just make him look like a gad guy. They're pictures of marijuana and my client with guns. That's not relevant to what happened on February 7th, 2019 at all. And he's just using it for bad guy stuff and bad character, that's it. And we object to it.

THE COURT: Yes, sir.

MR. SCOTT: Your Honor, some of the testimony they were able to elicit yesterday was they claimed he was a drug dealer, he thought he was getting robbed. There's testimony that he was missing a gun or guns.

These are proof that there were other guns than the olive green nine millimeter that was seized on this incident date. I only offer these to confirm what he said. There appeared to be a gun missing that he was concerned about.

He was texting about it the day before. These pictures show that there were multiple guns in that home at one point, or he had access to multiple guns before.

MS. YOUNG: Your Honor, if I may briefly respond, we didn't elicit any testimony about Mr. Barnes being a marijuana dealer. Mr. Scott did under our objection. And

we still think that that is not proper.

Regardless of that, the text messages -- and I'll bring this out since Mr. Scott didn't, they're about Antonio Dash's gun being missing, not Mr. Barnes'. All of these pictures are Mr. Barnes, not Mr. Dash. The alleged gun that was missing that Mr. Washington talked about and Mr. Barnes talked about that are in these text messages are about a man named Antonio Dash having a gun stolen, not Mr. Barnes.

THE COURT: Well, you know, there's been testimony about different shell casings for different guns. There's been testimony about a missing gun. There was testimony on yesterday about marijuana.

And so -- and there was also testimony I think from you all regarding the whole issue of motive. And so I do find that the -- I think under 404, that 404 -- you said 404(b), but I think under 404(2), I find it relevant and that the probative value of the document outweighs any prejudicial effect.

So I'm going to overrule the objection. It will be entered over the objection of the defense.

What exhibit is that?

LUKE SHEALEY: Fifteen.

THE COURT: Okay.

(WHEREUPON, State's Exhibit No. 15 admitted into evidence.)

BY MR. SCOTT:

Q State's Exhibit No. 15, have you seen those before?

A Yes.

Q And where did you recover those pictures?

A These are located on the Apple iPhone that I received.

Q And who does that belong to, do you know?

A Mr. Barnes.

Q But you just testified the day before there was some texts that he was concerned about a gun that had been stolen from his home?

A Yes, there were texts consistent with that.

Q Okay. Were you able to extract any videos from the phone?

A All media, pictures, video, audio was extracted, yes.

Q And had the defendant made some rap videos that you were able to view?

A I did not view the videos and any audio files at the time that I was doing the examination. However, this morning, you had shown me one.

Q And did you recognize that as coming from the phone analysis performed?

A I saw that it came from the image format that I

provided you, yes.
Q All right. And did the defendant indicate what he would do if anybody had stolen from him?
A In the --
Q In the lyrics of the rap video, did he indicate what he would do if anybody ever stole anything from him?
MS. YOUNG: Your Honor, objection. It's not in evidence.
BY MR. SCOTT:
Q Okay. Do you recognize State's No. 17?
A Yes.
Q And what is State's No. 17?
A The video that you played for me this morning.
Q And you recognize that as coming from the phone dump you performed on behalf of the defense on Mr. Barnes' phone?
A Yes.
Q This was a video that came from that phone?
A It did.
Q Did -- and I just want a yes or no answer, did Mr. Barnes in the video indicate what he would do if somebody stole from him?
MS. YOUNG: Objection your, the substance of the video is not in evidence and he's asking him to comment on it.

MR. SCOTT: Your Honor, the State would offer 17 for admission into evidence.

MS. YOUNG: Your Honor, we would object under 401, 403(b), 404 and recent Supreme Court case law. This is a rap video that my client made having, again, nothing to do with this incident.

THE COURT: What is the case law you're citing?

MS. YOUNG: Your Honor, as soon as we find it, I will get it to you. We didn't know this was going to be an issue. We didn't know they were trying to get into it and we will find it.

LUKE SHEALEY: It's also the State's burden of proof how it's admissible.

MS. YOUNG: Your Honor, again, it's just not relevant. What he sings about when he makes music is not relevant to what happened on February 7th, 2019. It's his art, it's his music, it's not relevant.

Again, they're just trying to make him look like a bad guy. That's, basically, what the Supreme Court found in that case, which I will cite to, but it is his burden to prove why it's relevant.

THE COURT: Well, I'll give him a second in a minute to tell me why it's relevant.

MR. SCOTT: Okay. Your Honor, it goes clearly to his state of mind. It shows an intent. Again, motive has

been raised by the defense. The question was, did he indicate what he would do if anybody ever stole from him. It clearly goes to his state of mind, clearly shows motive and it clearly shows intent --

MS. YOUNG: Your Honor --

THE COURT: Let him finish.

MR. SCOTT: Their defense is that it was self-defense, basically. It waivers on accident, it waivers mistake of fact. This shows his state of mind and shows what he has warned others he would do if anybody stole from him.

The testimony was just the day before, a stolen gun was very much on his mind. And, you know, we're trying to explain possibilities of what happened on the day in question.

MS. YOUNG: Sorry, Your Honor. I apologize to Mr. Scott, as well, I did not mean to interrupt. But we don't even know when this was made. It could have been made two years before this incident happened. It doesn't have anything to do with his state of mind. That's like saying when an author writes a book about murder, then they have murder on their mind. That's completely absurd. He wrote a song and he rapped about it. It doesn't have anything to do with what happened in his apartment that day. Just because someone creates art does not mean

that's always their state of mind or it's somehow always in their mind. That is completely absurd.

THE COURT: Can you establish when the video was -- I guess these days, when was it posted? You'd have to be able to lay the foundation. Obviously, you would have to lay the foundation.

I read a case recently and I'm trying to remember what the holding was regarding rap music. Obviously, I do understand things are said in rap music that is not necessarily true. A lot of times, it's a whole lot of bluffing. So I do understand that.

MS. YOUNG: And, Your Honor, just very briefly, I actually don't know when this video appears on his phone, which I'm sure they'll be able to figure out here in a second, I'm sure Mr. Watkins can, but unless they can prove that the video was made with the phone on that date, there's absolutely no telling when that video was made.

THE COURT: And the question is also when was the video posted. So if he posted it on social media -- but he's got to be able to lay the foundation. Whether or not we get into 401, 403, he's still got to lay the foundation to get the video in. And so I have not heard anything thus far to lay any foundation.

MR. SCOTT: Your Honor, it was filmed or created January 18th, 2019, so less than a month before the

incident.

MS. YOUNG: Again, Your Honor --

THE COURT: Hold on a second.

January 18th.

MR. SCOTT: Twenty days before.

THE COURT: All right.

LUKE SHEALEY: And I can cite, at least, one case. It's not in South Carolina, but this issue has taken national stage and I would cite for you a New Jersey case, New Jersey versus Skinner, 95 A.3d 236, in which a man was convicted in part based on his rap lyrics and the Supreme Court in New Jersey indicated that that violated, essentially, our 403 rule, that the lyrics were highly prejudicial and it should not have been admitted. And it, essentially, also violates 404(b) regarding bad character.

Obviously, with a little more time, there is a Supreme Court case that just came out in the past month, the United States. They're all addressing the same issue. That's literally the same issue we have here. At least, the New Jersey Supreme Court said violated 404(b) and 403.

THE COURT: What's the cite? Well, and there's also some case law out there where people have confessed to doing stuff in rap music and it's been admissible, so I can't -- I can't listen to tell you the name of it, but there was a -- I'm sure other people in this courtroom

could probably say it where they was convicted for confessing to a multistate chase and confessing in rap music to murdering people, so -- and where it is admissible. But I'm looking for a South Carolina case or a United States case. I think you said it was a Supreme Court case that came out. There is a case that recently came out.

MS. YOUNG: Your Honor, I haven't had time to review it in full, but State v. Cheeseboro, 346 S.C. 526, I believe excluded some rap lyrics or said that the rap lyrics should have been excluded.

THE COURT: What's the --

MS. YOUNG: I'm sorry, 346 S.C. 526.

THE COURT: What year is that? Cheeseboro, that's --

MS. YOUNG: 2001.

THE COURT: Yeah, I'm familiar with that case.

MS. YOUNG: Your Honor, right, Mr. Scott just said this it appears on his phone a month before this incident happened, so clearly not having anything to do with state of mind regarding any text messages that were on the 6th where there's a stolen gun. And again, it's about Antonio Dash's stolen gun, not Mr. Barnes' stolen gun.

But having said that, unless the phone took the video, there is still no way to know when the video was created. If a videographer is using a video camera, makes

a music video, edits it, whatever, and then sends it to Mr. Barnes, we don't know when it was created. It could have been months before that. It could have been years. We don't know.

THE COURT: Once again, the biggest issue, I guess, first what needs to happen is I need the foundation to be laid and then I can consider 401, 403 and 404(b). But I think under 404(b), the issue in this case -- there is an issue of motive, but before we can even get into any of that, he has to be able to lay the foundation, when was it taken, when was it posted, was it recorded on the phone? And so you would have to do that. Then once you do that, then I need to consider whether or not it is admissible or relevant. All right?

MR. SCOTT: Okay.

BY MR. SCOTT:

Q So Mr. Watkins, back in the office, you were able to review on the laptop the video; is that correct?

A I saw the video content, yes.

Q And you recognize that as coming from the dump you performed on Mr. Barnes' phone?

A Yes, the dump, what's been brought up just a moment ago, I didn't see any of the meta data associated with this particular video, so I can't testify to when it was created. The other issue that was phrased is how do we

verify it was created by this device and not another device and sent to his device, that's also an important distinction.

Because although it may show a created date on the device as being January of 2019, how do we know that it was created by the device and not created as a result of receiving it on the device. Just because the created date says a certain date does not mean that's the date the video originated, just the file was originated on the device. So if it's a copy, it's going to have a new create date.

Q But you certainly pulled that off Mr. Barnes' phone; is that correct?

A I did.

Q It was stored on his phone?

A It did come off the phone.

Q Are you able -- if I showed you your dump on the laptop, are you able to see -- and I understand you're saying there's a possibility that somebody else filmed it on another device and sent it to him?

A That could be possible. Based on what I know, again, the only thing I've seen so far is the content of this video. I haven't seen anything else. I don't know the path, what the application it's associated with, the time and date stamp meta data. I don't know any of that.

Q What could you tell if I showed you the phone dump?
A Well, it would show the meta data, but what I would also need to see is where that file is actually stored, where the directory is for that file. And then I could possibly come up with how it originated on the device.
Q Could you do that if I hand you the laptop with your dump on it?
A That's a good possibility, yes.
Q Okay.
A All right. May I write this down so I can -- my memory is not too good.
Q 2016, I put it up there.
A Oh, okay. So I can look at this and see the modified date stamps read January 18th, 2019, 7:35:56 p.m. The creator bundle ID indicates com.B-U-R-P-N. Instagram, which would indicate that it originated from that particular application, and the source of this item indicates saved from other source. So that tells me this was not a video that was recorded on the device, but by another device and received on this device on this particular date and time.

I'll also add that if it did, in fact, come from Instagram, as it does indicate, any videos, any media content that's indicated by Instagram will be stripped of its original meta data so I cannot see the exact date and

time it was created.
Q All you can testify to is he received it on the 18th of January?
A Or it was downloaded onto the phone at that time.
MR. SCOTT: Okay. I think that's all the questions I have, Your Honor. I would submit that, you know, I think the video comes in. It was pulled directly from his phone. It's content that he has on his phone.
He's making certain statements on it that I think are relevant. He has indicated he can't testify exactly when it was made. It was received or downloaded 20 days before this incident. I would admit it as a State's Exhibit, Your Honor.
THE COURT: Yes, ma'am.
MS. YOUNG: Your Honor, we would make the same objections under 401, 403, 404(b). They can't authenticate it, doesn't know when the video was created. No one has even actually testified or IDed who is on the video. And this is a video that, at most, was downloaded or sent to Mr. Barnes in January of -- more than -- about a month before this incident occurred. And the text messages I guess they're trying to tie it to where there's an exchange about a stolen gun is the day before.
This video was made well before this incident ever happened or there was any argument about it. Plus, we

don't even know when the video was made and they can't authenticate it and we would object to it coming in.

THE COURT: All right. The objection is sustained. The video cannot be authenticated as to time, as to when it was created. He said it originated on Instagram on January 18th, 2019.

Furthermore, the court -- I think the State trying to get it in as to state of mind, under 404, it was posted on January 18th of 2019, which is about a month -- well, a couple of weeks before the incident. And the issue regarding a stolen gun apparently came up based on all the testimony that I've heard thus far a day before or a day or two before the actual incident in this case on February 7th, I think it was the 7th. February 7th.

So for that reason, I think being able to authenticate the video and also under 404, that the relevance of it, because the gun that they are referring to that was stolen -- in the text messages was apparently alleged stolen within a day or two of this incident. So the video posted in January regarding somebody stealing something would not be relevant to this case. And so I'm going to sustain the objection. And that was --

But you can mark that as a Court's Exhibit if you like. Do you want to mark it as a Court's Exhibit.

MR. SCOTT: It will be No. 17, Your Honor.

THE COURT: What Court Exhibit would it be?
THE COURT REPORTER: We don't have Court's -- can we just keep ID 17 or do I need to mark it --
THE COURT: Okay.
THE COURT REPORTER: I mean, it's already marked 17, so I'll just make a note it's ID only.
MR. SCOTT: We did admit 15, correct?
THE COURT: Yes.
MR. SCOTT: Your Honor, that's all, that's all the questions I have of Mr. Watkins.
THE COURT: All right. Thank you.
MS. YOUNG: Very briefly, Your Honor.

REDIRECT EXAMINATION:

BY MS. YOUNG:

Q Mr. Watkins, do you have a copy of the text messages they showed you earlier?
A I have a text message of -- I mean, I have a copy of texts messages that include what they showed me earlier, yes.
Q Can I take a look?
A Yes. Page 1, this section here, page 2, this top section, page 4.
Q So on February 6th, 2019, at 1:42 p.m., there is an outgoing text from (803)479-8007, that says, had to be one of our supposed friends. I don't know, it wasn't my gun.

Is that correct?
A That's correct, yes.
Q Now, right before that -- sorry, these are out of order?
A They are out of order, yes.
Q And then right before that, there's an outgoing text to the same number, still trying to figure out who took the gun. Right?
A I recall that, yes.
Q And then right after that, he said, it wasn't my gun?
A That's right.
MS. YOUNG: Thank you. I don't have anything further, I don't think. Briefly, Your Honor.
(Pause.)
Nothing further.
THE COURT: Yes, sir.

RECROSS-EXAMINATION:

BY MR. SCOTT:
Q The conversation started a little bit before that one particular text message, did it not? It's State's No. 16. Do you recognize this thread?
A Yes. However, it looks like two different conversations, two different contexts.
Q Do you recognize the text being sent by Mr. Barnes?
A Any text, in particular?

Q No, I mean, you know what his phone number is, right?
A I mean, there's incoming and outgoing.
Q Okay, outgoing. Once he makes himself.
A There's outgoing messages from that number, yes.
Q Do you recognize which ones?
A Yeah.
Q Could you read the ones that Mr. Barnes texted?
A In any particular order?
Q Most people go from the front to back.
A Well, you've got two different conversations here.
Q Can I see?
A Yes.
Q Number 16, do you recognize it, I slept good, but we, still trying to figure out who stole gun?
A Yes.
Q You recognize that?
A That's an outgoing message.
Q By Mr. Barnes?
A Yes.
Q Does he indicate somebody else is trying to figure it out? He says we are trying to figure out who stole the gun?
A Yes.
Q And is it safe to say in these messages, he is racking his brain trying to figure out how that gun went

missing? I'll give you a minute to read it.

MS. YOUNG: Your Honor, objection speculation. He doesn't know what's in his head.

THE COURT: Sustained. Rephrase the question.

BY MR. SCOTT:

Q This came off Mr. Barnes' phone, right?

A Correct.

Q So following message was, February 6th, 2019, I slept good, but we're still trying to figure out who stole the gun.

A Yes.

THE COURT: What was the date?

BY MR. SCOTT:

Q February 6th, 2019.

11:59 a.m. I'm unclear if that's UTC or standard Eastern.

A May I see it?

Q That's local time.

A So it's 11:59 a.m. Apparently, he receives one, dang, it got stolen yesterday and I'm just fixing to make breakfast.

Q That's incoming?

A Incoming, yes.

Q Then on February 6th, 2019, that's an incoming, where was it at?

A This is the next conversation. This is a different number. But yes, it's incoming.

THE COURT: What time was that one?

BY MR. SCOTT:

Q February 6th, 1:26 p.m.?

A Yes, that's local time.

Q And there's an outgoing message February 6th, 2019, 1:38 p.m., correct?

A Yes.

Q And it says on the little table in the corner. And the shit so crazy is we was all in the same place when it had to happen?

A Yes.

Q Okay. February 6th, 2019, 1:39 p.m., there's an outgoing message on that phone, like right in front of our face type shit?

A Right. That's on outgoing message.

Q Incoming from February 6th, 2019 at 1:41 p.m., y'all asses must have been playing the game and not paying attention?

A Yes, that exists.

Q Incoming message, February 6th, 2019, 1:41 p.m., you think it was somebody you been serving to. Then February 6th, 2019, 1:42 p.m., it had to be one of our supposed to be friends, I don't know. It wasn't my gun,

but still, how the F. And then incoming, February 6th, 2019, 1:46, shaking my head, is that what you understanding SMH to mean?
A Yes.
Q And this is February 6th, 2019 at 2:09 p.m., do you know what L K R means? It's an acronym.
A It might be IKR, which is I know, right.
Q Just got to keep MS around. This came up in this phone in two different conversations where he's discussing with somebody this missing gun?
A Yes.
Q And he indicates we are trying to figure out who stole the gun?
A That's consistent, yes.
MR. SCOTT: Your Honor, the State would offer 16 for admission into evidence.
THE COURT: Any objection?
MS. YOUNG: No objection.
THE COURT: All right. State's 16 is entered without objection.
(WHEREUPON, State's Exhibit No. 16 admitted into evidence.)
MR. SCOTT: Your Honor, that's all I have.
THE COURT: You may step down.
Any objection to this witness being excused?

MR. SCOTT: None from the State.
MS. YOUNG: No, Your Honor.
THE COURT: You're free to leave.
All right. Ready for the next witness.
LUKE SHEALEY: Yes, Your Honor, I believe he's here. The defense is going to call Dr. Daren Monroe.
THE CLERK: State your full name, please.
THE WITNESS: Daren Monroe.
THE CLERK: Excuse me?
THE WITNESS: Daren Monroe.
THE CLERK: Spell your first name, please.
THE WITNESS: D-A-R-E-N.

DAREN MONROE, after being duly sworn, testified as follows:

DIRECT EXAMINATION:

BY LUKE SHEALEY:

Q Good morning, Dr. Monroe.
A Good morning.
Q Can you tell the court where you work?
A I work for a private physician group called Professional Pathology Services.
Q Okay. That's here in Columbia?
A That's here in Columbia.
Q And what is the primary purpose of this group?
A They do all kinds of pathology, which is a branch of

medicine. I specifically do forensics pathology.
Q So you're a medical doctor?
A Yes.
Q Graduated from med school?
A Yes.
Q And how long have you been at Professional Pathology Services?
A Since 2014.
Q Okay. Is it fair to say you do a lot of autopsies?
MR. SCOTT: I'm stipulating to his qualifications.
LUKE SHEALEY: Yeah, that will save me some time.
THE COURT: So he'll be qualified as an expert in the area of forensic pathologist.
LUKE SHEALEY: Yes, Your Honor.
BY LUKE SHEALEY:
Q Dr. Monroe, did you have occasion to work on a case involving decedents, Eric Griffin and Antonio Dash back on February 7th or thereabouts of 2019?
A Yes.
Q And you obviously performed autopsies and then I think you would prepare autopsy reports, correct?
A Yes.
Q Do you have that information with you today?
A I do.
Q And you and I have discussed this case previously

once, right?
A Yes.
Q Okay. I want to show you some items. Is it fair to say that part of your job is to determine the cause of death?
A That's one of the main ones, yes.
Q Perhaps, preserve evidence that might be collected as part of your autopsy?
A Yes.
Q And particularly in this case, you did preserves a lot of projectile fragments and things of that nature; is that right?
A Yes.
Q Now, just so the court order is clear, when you get a task, such as the one you were given in this case where two deceased gentlemen are showing up in the morgue, are you privy to crime scene documents, accounts of what may or may not have occurred? Is that something you are fully briefed on and aware of?
A The amount of information I get regarding a scene and circumstances is usually very minimal when we're actually starting the autopsies. I do get some information from the deputy coroner who investigates the case and, occasionally, from whatever police department, CPD or sheriff's department, whoever is down there covering, as

well.
Q Do you recall receiving or reviewing any crime scene photos in this case prior to the autopsy?
A Prior to the autopsy, I do not.
Q I want to show you some photographs that you will probably recognize that are associated with this case. I'm going to show you Defendant's No. 37 for ID. Do you recognize this photograph?
A Yes.
Q Do you recognize 38?
A Yes.
Q Thirty-nine?
A Yes.
Q Forty?
A Yes.
Q Forty-one?
A Yes.
Q Forty-two?
A Yes.
Q Forty-three?
A Yes.
Q And do you recognize this, 44?
A Yes.
Q Okay. Are these photographs of Mr. Eric Griffin, do you recall that?

A Yes.
Q And that's one of the gentlemen that you performed an autopsy on?
A Yes.
Q All right. And I have some other photographs I'll briefly show you. Do you recognize Defendant's No. 45?
A Yes.
Q Forty-six?
A Yes.
Q Forty-seven?
A Yes.
Q Forty-eight?
A Yes.
Q Forty-nine?
A Yes.
Q Fifty?
A Yes.
Q And then 51?
A Yes.
Q Are those photographs and items in evidence associated with Antonio Dash; is that correct?
A Yes.
THE COURT: That's 45 through what?
LUKE SHEALEY: It will be 45 through 51.

BY LUKE SHEALEY:
Q Are you taking these photographs or is someone else for the coroner's office taking photographs?
A The deputy coroner in the autopsy room takes photographs and also the investigating police department, as well, takes photographs.
LUKE SHEALEY: Your Honor, at this time, I would seek to introduce those photographs into evidence.
THE COURT: Any objection?
MR. SCOTT: No objection.
THE COURT: All right. So was it 38?
LUKE SHEALEY: It was 37 through 51.
THE COURT: They'll be entered without objection.
(WHEREUPON, Defendant's Exhibits Nos. 37 through 51 admitted into evidence.)
BY LUKE SHEALEY:
Q Now, Dr. Monroe, if you'll bear with me, I'd like to discuss some of these injuries and your findings. As to this photo, which you've already recognized, which would be Defendant's 37, would that be -- well, first let me just ask you right out of the gate, how many distinct bullet wounds do you find to Mr. Eric Griffin?
A Eric Griffin was shot six times.
Q And this is Eric Griffin. This is one of the bullet wounds to the back of his neck; is that correct?

A Yes.
Q And that would be a fatal shot, correct?
A That is, yes.
Q Now, that -- this is also another photo of that shot. You noted in your autopsy report that that would be what you call a contact wound?
A That is a contact wound. It's not very apparent in that picture.
Q Okay. But you recognize it through your medical training as a contact wound, correct?
A Yes.
Q Is part of your job to determine cause of death and, perhaps, you realize that might be a bullet wound, but you're trying to assist in determining, perhaps, how far a shooter might have been, correct?
A Yes.
Q You're also recovering evidence and projectiles to be packaged and sent to other firearms examiners and things like that; is that right?
A Yes.
Q Now, with this contact wound, you and I discussed this before. You don't have a way of determining whether this gentleman was standing when he was shot with this wound or lying on the ground or seated? You don't have that ability, do you?

A I don't, no. That's not something I can say.
Q Is it all relative to the position of the gun and the position of Mr. Griffin?
A The only thing I can say with regard to trajectory is just the relative position of the muzzle of the gun to the body or the part of the body at the time the gun was fired.
Q Right. And there are -- you recognize these two wounds to the right back; is that correct, Defendant's 39?
A Yes.
Q And this is another, probably a little better photo of it, but you were able to pull projectiles out of all three of these wounds, correct?
A That is correct. We recovered projectiles or fragments from all three of those.
Q And you also recognize this wound to the right shoulder of Mr. Griffin?
A Yes.
Q And you also recovered a projectile of that wound?
A Yes.
Q Now, this wound in Defendant's No. 42. Do you see that right there?
A Yes.
Q Would you classify that as kind of a graze wound?
A That's a gunshot wound.

Q The trajectory was a what?
A The trajectory was back to front.
Q But being a graze, you didn't recover a projectile out of that particular wound, correct?
A Correct.
Q And this -- you recognize this wound to the left arm?
A Yes.
Q And that would be a wound that -- these are not two specific shots, but it's a through-and-through; is that right?
A That's correct, one is an entrance, one is an exit.
Q Okay. You did not recover a projectile from that?
A Correct.
Q When it comes to what you can recover in terms of projectiles, I think you told me this before, your job is not to hunt and find every fragment or shard of metal necessarily in a body, is it?
A The major pieces, especially any jagged fragments are the most necessary to recover. If the projectile is fragmented into very many tiny pieces, then we get what we can out of it.
Q For example, you're not going to dissect, let's say, an arm if you get a fragment and you don't know, perhaps, where the rest of the projectile may have traveled. You're not going to do that, are you?

A If there is a fragment noted on an x-ray and it is sizable enough to go after it, then I will.
Q Okay. And part of your job, like we discussed, is to pull these items of relevant evidence and label them?
A Yes.
Q And it looks like you've done that here; is that right?
A Yes.
Q And so this gets packaged and sent on to other experts, but what we've got here is -- this is what you recovered from Mr. Griffin's neck; is that right?
A Yes.
Q And you write that from neck using metal instrument. That's a pretty, you know, one piece kind of chunk of metal, right?
A That's a fairly intact projectile.
Q And these are coming from T4?
A Yes.
Q This is the other back wound?
A Yes.
Q And this would be the one coming from the right arm?
A Yes.
Q Okay. And, again, the left arm was a through-and-through, so you didn't recover anything from there, right?

A Correct.
Q So you package these up and they're preserved for evidence and they go on to other folks to help determine what occurred or what might be ballistically or forensically regarding the firearm, correct?
A Correct.
Q I want to talk to you about Mr. Antonio Dash now. You and I have talked before, but you agree that you have six distinct bullet wounds that you've identified with Mr. Dash?
A Mr. Dash was shot seven times.
Q I apologize. Right, Mr. Griffin was shot six times, Mr. Dash was shot seven times. Thank you for that correction.
Now, in addition to bullet wounds, Mr. Dash -- is it fair to say he had some rather distinct blunt force trauma wounds, as well?
A Yes, I did.
Q I want to show you Defendant's No. 45. Now, you note in your autopsy report that this is a -- this right here would be a bullet wound to his right temple?
A Correct.
Q Before we get to the picture, Mr. Dash has another bullet wound to his left temple, correct?
A Yes, he does.

Q And that would be associated with this entry wound there?
A Yes.
Q Now, one thing I think is important is you note that these bullet wounds off to the side of his head, they enter, but they don't have any exits; is that correct?
A That is correct.
Q So without an exit wound, that would, basically, establish that whatever projectiles you may find in this young man's head cavity are consistent with two bullets?
A Being shot twice, yes.
Q Right. This other wound, you give a very particular pronunciation. You can help me out. Is it stellate, stellate lacerations?
A Yes. It's stellate.
Q All right. Tell the court what a stellate laceration is?
A It just means star shaped.
Q Now, you know that did not come from a bullet, correct?
A Correct.
Q Okay. We've discussed this before, but would this type of wound that you've noted here, would it be possible just to be hit with a flat hand and cause that type of wound or would you need a blunt object?

A A flat hand would be very unlikely to cause that.
Q You note it as blunt force trauma, would it require some hard object hitting his head or either his head hitting some hard object?
A It is most likely from either hitting the hard object or being hit by a hard object.
Q If you got hit with a metal object, like a gun, could that cause that injury?
A Yes.
Q Okay. Now, getting to this wound on the other side of his head, again, that's a second gunshot wound, but what can you tell us about this other blunt injury you note about his left eyebrow?
A That's another blunt force injury, not a gunshot wound.
Q Okay. Now, getting back to these particular wounds to the head, they're going into this young man's brain, correct?
A Yes.
Q Each one of these is a fatal-type wound that could induce a fatal result?
A Yes.
Q If somebody -- if you take, you know, obviously, there's nothing in the record that you're aware of that would indicate which one of these wounds occurred first,

but if you took either one of these wounds, whether it's the left side or the right side, that would be a fatal incapacitating shot; is that right?
A Both are fatal.
Q Based on the damage to the brain, it takes a shot to his right side, is his body going to be in a position to move and do a lot of its normal functioning?
A Fairly instantly, he would be incapacitated with either shot.
Q With either shot, okay. Now, this is a picture, Defendant's No. 47, we discussed previously of his left arm. Do you see that?
A Yes.
Q And do you recognize the four distinct bullet wounds to the left arm?
A Yes.
Q And those were all through-and-through shots, correct? As evidenced by this photo, they were exit wounds on the interior of his arm?
A Yes.
Q And you found one additional shot to his right arm, correct?
A Yes.
Q And you note that it entered from the anterior, his anterior side and exits the left side of his arm?

A Yes.
Q Again, this a very --
Can you help me zoom out on this?
So, again, this would be your way of precisely labeling and identifying different projectiles and fragments from various parts of the body where they were recovered by yourself?
A Correct.
Q And looking at all these in the temporal lobe, the nasopharynx, the parietal lobe, temporal, frontal, ear area, is it fair to say that all of these came out of Mr. Dash's head, but for this fragment that came out of his arm?
A Yes.
Q Just in general layman's terms?
A Yes.
LUKE SHEALEY: Beg the Court's indulgence.
(Pause.)
Dr. Monroe, please answer any questions Mr. Scott may have.
THE WITNESS: Yes.

CROSS-EXAMINATION:

BY MR. SCOTT:
Q Dr. Monroe, I'm probably going to have some exhibits that are duplicates of the defense, but let me start with

Mr. Dash. I think the testimony was you noted a gunshot wound to the left temple?
A Yes.
Q There was one to the right scalp?
A Yes.
Q He had four gunshot wounds in the left arm?
A Yes.
Q And then blunt force trauma to the head?
A Yes.
Q I want to show you State's No. 37.
THE COURT: Any objection? It's already been entered?
LUKE SHEALEY: I believe it's a duplicate. I don't have any objection.
THE COURT REPORTER: State's 37? The last one I have is 18 for the State.
MR. SCOTT: I'm going to remark some of these.
This is Defense 47, I'll withdraw mine.
THE COURT: That's already in.
BY MR. SCOTT:
Q Defense 47, Dr. Monroe, what are we looking at in that particular picture in regard -- that is Mr. Dash, correct?
A Yes.
Q And what are we looking at?

A That is the left upper arm and the outside aspect, right here. And you see in this picture four entrance gunshot wounds and also stippling.
Q All right. You noted that all four of those were through-and-through?
A Yes.
Q All right. You noted all four of those were through-and-through wounds?
A Yes.
Q Is it potential that a through-and-through gunshot wound could enter through one victim and go into another victim?
A That can happen, yes.
Q And stippling, what is stippling? What are these pock marks we're looking at all over Mr. Dash's left arm?
A The lower marks that you can see distributed over the arm there are called stippling. And what that is is when the gun is fired, after the projectile exits the barrel, it's followed by all the gas which is expanding and that's what makes the bullet go fast, and it's also followed by tiny bits of unburned and incompletely burned gunpowder. And those then impact the skin, which you can see there, and cause a little tiny abrasion.
Q What is stippling? I guess it's indicative of unburned gunpowder, but is it helpful for you in

determining gunshot range?
A Yes, it is.
Q Okay. Do you have an opinion as to stippling being formed at any specific distance?
A Yes. So we see stippling, pretty much, it's established for automatic handguns and ammunition types. You see stippling anywhere from about six inches to three-and-a-half feet. And we call that an intermediate range.
Q So the stippling on Mr. Dash's arm indicates that he was shot at or the barrel of the gun was between six inches and three-and-a-half feet away from him?
A Yes.
Q Okay. But you said it's indeterminate or intermediate?
A Intermediate.
Q What does that mean?
A That is just the term we use to describe a gunshot wound where there is stippling present so we can say it's intermediate range.
Q So you can't say it's closer than six inches or closer than three-and-a-half feet?
A It's between six inches and three-and-a-half feet.
Q But your expert opinion is Mr. Dash was shot no further away than three-and-a-half feet?

A Yes.
Q So you testified that some of the -- he had four through-and-through gunshots?
A On his left upper arm, yes.
Q Any other through-and-through?
A His right upper arm had an entrance and exit from a single gunshot.
Q Okay. So potentially, bullets could have gone through Mr. Dash and into Mr. Griffin?
A Potentially.
Q And vice versa, if Mr. Griffin had any through-and-through wounds?
A Potentially.
Q This is Defense No. 39. This is Mr. Griffin?
A Yes.
Q And how many times was he shot in his back?
A Twice.
Q Is that what we're looking at in Defense No. 39 here?
A Yes.
Q Where were the other gunshot wounds Mr. Griffin received?
A Mr. Griffin was also shot in the left upper arm, the posterior upper neck and a graze wound of the right shoulder.
Q This is Defense 43, that's the left upper arm. Is

that how you describe it?
A Yes.
Q And that's a through-and-through?
A Yes, it is.
Q Okay. State's [sic] 41. That's Mr. Griffin's right upper arm?
A Yes.
Q And then Defense 42, this depictures the graze wound to his upper right shoulder?
A Yes.
Q This is Defense 38. You testified a little bit about it. What is noteworthy about this wound on Mr. Griffin? Where is the location of this wound, by the way?
A This is on the posterior right neck.
Q Okay. So somewhere around here?
A Exactly.
Q And what is relevant about this gunshot wound?
A This is a -- first of all, a fatal gunshot wound and it's also a contact gunshot wound.
Q What is a contact gunshot wound?
A A contact gunshot wound is one where the muzzle of the gun is -- has contact with the skin at the time it was shot.
Q Okay. So hold your hand like a gun. Now, show me what a contact gunshot wound looks like. Your hand is a

gun. You're pressing it against my neck right now; is that correct?
A Yes.
Q Is that your opinion of how Mr. Griffin was shot?
A Yes.
Q Somebody pressed a pistol up against the base of his neck and pulled the trigger?
A Yes.
Q Okay. I think you indicated you had some pictures that you may have taken that more clearly illustrated what you are talking about?
A Yes.
(WHEREUPON, State's Exhibit No. 18 marked for identification only.)
BY MR. SCOTT:
Q This is State's No. 18. What is that?
A This is a picture of that same gunshot wound that's in that picture right there after having been shaved, the hair around it.
Q So you shaved some of Mr. Griffin's hair in order to more clearly see the wound, is that what you did?
A Correct.
MR. SCOTT: The State offers State's 18, Your Honor?
THE COURT: Any objection.
LUKE SHEALEY: No.

THE COURT: That will be entered without objection.
(WHEREUPON, State's Exhibit No. 18 was admitted into evidence.)
BY MR. SCOTT:
Q Okay. Can you explain what was in there to Judge Benjamin?
A Yes. What you're seeing there -- actually, could I point?
MR. SCOTT: Your Honor, could he step down and point to a few things?
THE COURT: Yes.
THE WITNESS: So the gunshot wound is right here. That's the entrance. Around it is an abrasion border that we see in entrance gunshot wounds especially. And then there's little bits of soot which might be hard to appreciate from a distance, but there is soot around the edge. There's also this darker rim surrounding around here, that's contusion. And then right here, you have part of an abrasion from part of the muzzle of side of the gun, just any part of the front of the gun.
BY MR. SCOTT:
Q When there's a contact wound such as a -- you talk about the gas and everything going into the skin, could you explain that a little bit?
A So with a contact wound on a flat bone, such as at

the base of the skull where this is, the gases that come out after the projectile have nowhere to go but inside the wound.

When they do that, effectively, they balloon both the skull and the scalp outward and that causes a very quick, basically, a slapping of the skin around the barrel and anything else. So if there's a sight, such as in this case right here, and that's what causes this other abrasion and contusion that's surrounding it there.

Q But your opinion is that right there is caused by an actual sight of the gun?

A This sight or any part of the top of the gun around the barrel, yes.

Q Okay. And you're able to observe, I guess, the imprint of the muzzle of the gun on Mr. Griffin's neck?

A That's what all of that is.

Q Okay. Thank you. Okay. So it's your opinion that that was what killed Mr. Griffin, this wound in State's No. 18?

A That is a fatal shot, yes.

Q And then Defense No. 46 for Mr. Dash, that indicates the gunshot wound to his left temple?

A That is also a fatal shot.

Q That would have been fatal for Mr. Dash, but then Mr. Dash could have also died by the wound shown in

Defense No. 45; is that correct?
A That's correct.
Q So Mr. Dash had two head shots and Mr. Griffin had one?
A Yes.
MR. SCOTT: Okay. I think that's all the questions I have for Dr. Monroe.

REDIRECT EXAMINATION:

BY LUKE SHEALEY:
Q Dr. Monroe, based on your experience and training as a medical examiner, obviously, you have the ability to determine an entrance wound versus an exit wound, correct?
A Yes.
Q And you know from your training and experience when a gun is fired that the bullet is turning, correct, like rifled as we call it?
A If the barrel is rifled, and that's the way most guns are.
Q And kind of like throwing a spiral football, I guess, laymen's terms?
A Yes.
Q And you -- that helps you determine whether there's a wound that's entering because is it fair to say it's more clean, more circular, things of that nature? Describe that, how you determine between an entrance or exit wound?

A So entrance wounds have a number of different characteristics. Generally, they tend to be more round if they're straight onto the skin and not angled. If they are angled, it will be more elliptical. The edges of the wound are more regular and smooth.

Exit wounds can vary wildly in their characteristics. Generally, they are irregular, might be the best way to put it.

Q Okay. Now, I learned a term of medical art when I was consulting with a pathologist on this case prior to talking to you about a wound being atypical. Can you talk to us about that?

A Atypical isn't an official term. That's certainly a good descriptor for any sort of gunshot wound that has -- well, typical findings versus a rough entrance and exit wound, for instance.

Q Now, that rifled, football spiral bullet helps you determine an entrance wound. Based on your training and experience, if it passes through a body or an object, is it continuing to spiral cleanly like that at that point in time?

A Usually, no.

Q Okay. Is it -- can it be tumbling in a different direction?

A It can be tumbling. It can be fragmented, deformed.

Q I'm sure over the course of your work as a pathologist doing autopsies, you've encountered wounds that pass through something, whether it's another body or a wall or something to cause them to not be spiraling and actually be tumbling when they enter a body, correct?
A Yes.
Q And they make a less perfect circle and more atypical wound entrance point, correct?
A Yes.
Q Now, I did not note that you documented or found any wounds of that nature in either of these two autopsy reports, did you?
A I did not think any of them were definitely any sort of reentrance wound.
Q Okay. So the State's question, you -- based on your findings and analysis do not conclude that either of these gentlemen's entry wounds had come through a wall or another body prior to entering these specific points on their bodies?
A Most of the shots were definite clean entrance wounds. I believe -- looking at the pictures when questions were raised by both the prosecution and defense, I believe one shot by each person has the potential to be a reentry wound.
Q The potential?

A Yes. I can't say for sure.
Q You can't say for sure. And the total shot count that we had, seven plus six, is 13, correct?
A Correct.
Q So you're saying not for sure, but there's a potential that two of those 13 maybe could have that ability?
A Potentially.
Q Potentially, but you can't say for sure?
A I can't say for sure.
Q If you had known that for sure, you certainly would have put it in your autopsy report, correct?
A Yes, if it was a home run reentry wound, yes.
LUKE SHEALEY: Okay. That's all I have. Wait one second. I'm being flagged.
(Pause.)
Thank you, Doctor. That's all I have.
THE COURT: Yes, sir, anything?

RECROSS-EXAMINATION:

BY MR. SCOTT:
Q What you're saying, I think I heard, you can't definitively rule out some of these were reentry wounds?
A Correct, I can't rule it out completely.
Q Another thing, you can't tell who was shot first, can you?

A (Indicating in the negative.)
Q Okay.
MR. SCOTT: Nothing further Your Honor?
THE COURT: All right. You may step down.
Any objection to this witness being excused?
LUKE SHEALEY: No, Your Honor.
THE COURT: Okay. Thank you. We're going to go ahead and take about a ten-minute break. We'll start break around 11:30, maybe 11:35.
Let me see the attorneys for second.
(WHEREUPON, a short break was taken.)
THE COURT: Call your next witness.
MS. YOUNG: Sara Goodman.
THE CLERK: Would you state your full name, please.
THE WITNESS: Sara Goodman.
THE CLERK: Would you spell your name, please.
THE WITNESS: S-A-R-A, G-O-O-D-M-A-N.
SARA GOODMAN, after being duly sworn, testified as follows:
THE CLERK: Take a seat.
DIRECT EXAMINATION:
BY MS. YOUNG:
Q Good morning, Ms. Goodman.
A Good morning.
MS. YOUNG: Your Honor, at this point, I'm going to

go ahead and ask that she be offered as an expert. Mr. Scott has indicated he would stipulate to her qualifications?

THE COURT: All right. An expert in?

MS. YOUNG: Oh, sorry, DNA analysis.

THE COURT: All right. She will be qualified as an expert in DNA analysis by stipulation.

BY MS. YOUNG:

Q Ms. Goodman, where do you work?

A I work at the South Carolina Law Enforcement Division, commonly referred to as SLED.

Q Did you as part of your job come to work on the case that we are here for today in the State of State vs. Antonio Barnes?

A I did.

Q Were you asked to look at some DNA?

A Yes, I was.

Q And what were you provided?

A I was provided a few known standards from Antonio Dash and Eric Griffin, as well as fingernail scrapings from the left and right hands of Eric Griffin and Antonio Dash, as well, and then I was provided some cartridge casings.

Q And what did you do with those items?

A So I analyzed all of those items for DNA and

developed a DNA profile from each of those items, and if I could, compared them to the DNA profiles from any of the known standards that I received.

Q And how did you do that?

A So for the items, as far as my analysis, I would take a small portion of the item. So, for example, if it's a swab, I would take a small cutting of the swab. I would take it through my laboratory analysis, which includes extracting the DNA, which is separating it, off of whatever item it's on, purifying it. I would quantify it, which tells me at that point how much DNA is present on that item. I would then make many copies of the DNA to a level that our instruments can detect and then we rerun it through an instrument that separates out the DNA by size and gives us our DNA profile.

So I did that for all of my items of evidence and then separately for all of my known standards. And then I will do my interpretation and make any comparisons I can. And if I can make a comparison, I will calculate a statistic to give a weight to that comparison.

Q And in order to make your comparison, do you make something called STRmix?

A Yes.

Q Can you tell us what STRmix is and how it works?

A So STRmix is a computer program that we use to assist

with our interpretation of the DNA profiles and in calculating our statistics for our comparison.

So what STRmix does is we will input our evidence profiles, so we will tell STRmix -- we will do our interpretation first to determine how many individuals are present in that DNA profile, whether it's single source, which is from one person, or a mixture, which is from more than one person.

So we will input that number of contributors into STRmix and we will then put the DNA profile from the evidence items into STRmix. If it's a mixture, it will break it down into the different possibilities for each contributor. It's called de-convoluting the mixture.

And then once we have reviewed that data and agree with that, we will input the DNA profiles from the known standards and STRmix will compare that to the profile, to the deconvolution to the evidence and calculate a statistic on whether or not that individual could be a contributor to that profile.

Q Okay. So that's what you did in this case?

A Yes.

Q Okay. Do you have your report with you?

A I do.

Q Did you put all your findings in your report?

A I did.

Q Okay. I was just going to go over them kind of item by item?
A Uh-huh.
Q Item 9.1, can you tell us what that is?
A Yes, that is left-hand fingernail scrapings from Eric Griffin.
Q Okay. And what did you find after, I guess, analyzing and comparing those fingernail scrapings to your known standards?
A So for this item, a DNA profile suitable for comparison was developed, likelihood ratios for this profile were calculated using STRmix, which likelihood ratios are the type of statistics that STRmix is calculating.

And what likelihood ratios are is it is comparing two different possible scenarios to explain the evidence. Usually, one scenario is whether a known standard could be included in that DNA profile or whether it's some other unidentified individual. And the result tells you which one of those is more likely. So each proposition in that report is a likelihood ratio comparison.

So for this item, for the proposition set one, this DNA profile was interpreted as a mixture originating from three individuals. Eric Griffin is contributing to the mixture.

So my first scenario that's being compared is that Eric Griffin, Antonio Dash and an unidentified unrelated individual contributed to the mixture. The second scenario is that Eric Griffin and two unidentified unrelated individuals contributed.

The result for that is the DNA profile is approximately 13 trillion times more likely if Eric Griffin, Antonio Dash and an unidentified unrelated individual contributed to the mixture than if Eric Griffin and two unidentified unrelated individuals contributed.

Q So to boil that down, does that mean that it's likely that there was DNA from Antonio Dash in Eric Griffin's fingernail scrapings?

A Yes, that is a strong likelihood for that first scenario of it being Eric Griffin, Antonio Dash and another individual versus if it were just Eric Griffin and two other unidentified.

Q Were you able to exclude anyone from the fingernail scrapings?

A Yes. So for my second proposition set, it's similar, but comparing Eric Griffin and Antonio Barnes, Jr. and Shekila Smalls and they are both excluded as contributors to the mixture.

Q Okay. Meaning that you didn't find any DNA from Mr. Barnes present?

A Correct.
Q So moving onto item 9.2, what did you -- what is that?
A So item 9.2 is right-hand fingernail scrapings from Eric Griffin.
Q Okay. And what happened with those fingernail scrapings?
A The partial DNA profile developed is insufficient for interpretation.
Q Okay. Just meaning you weren't able to develop any profiles to compare?
A Yes. I developed a DNA profile, but there just wasn't enough information there for me to be able to make comparisons.
Q And then moving on to item 10.1, what was that?
A Item 10.1 is left-hand fingernail scrapings from Antonio Dash.
Q And what were your findings with those?
A For this item, again, a DNA profile suitable for comparison was developed and likelihood ratio for this profile were calculated using STRmix. This mixture was interpreted as a mixture originating from two individuals. So from my first proposition set, I'm comparing the scenario that Antonio Dash and an unidentified unrelated individual contributed versus whether it was two

unidentified unrelated individuals. And the result is that the DNA profile is approximately 12,000 times more likely if Antonio Dash and an unidentified unrelated individual contributed to the mixture than the two unidentified unrelated individuals contributed.

And then for my second proposition set, Antonio Dash is contributing to the mixture. So then I'm comparing whether Antonio Dash and Eric Griffin contributed to the mixture versus if Antonio Dash and an unidentified unrelated individual contributed. And the result for that is the DNA profile is approximately 2.6 octillion times more likely if Antonio Dash and Eric Griffin contributed to the mixture that if Antonio Dash and an unidentified unrelated individual contributed.

Q Okay. So, again, sort of in layman's terms, it's very likely that there's DNA from Mr. Griffin under Antonio Dash's fingernails.

A Essentially, yes. That is a very strong likelihood for that first scenario being Antonio Dash and Eric Griffin.

Q Again, were you able to Mr. Barnes as being a contributor?

A Yes. Antonio Barnes, Jr. and Shekila Smalls are excluded from this mixture, as well.

Q Moving on to 10.2, I believe that's the right-hand

fingernail scrapings from Antonio Dash, what were your findings there?

A So for this item, a DNA profile suitable for comparison was developed and likelihood ratios were calculated using STRmix. This was again a mixture originating from two individuals.

So for my first proposition set, I'm comparing whether Antonio Dash and an unidentified unrelated individual contributed versus if it's two unidentified unrelated individuals. And my results for that is the DNA profile is approximately 170 times more likely if Antonio Dash and an unidentified unrelated individual contributed than two unidentified unrelated individuals contributed.

For my second set, I'm comparing whether Eric Griffin and an unidentified individual is contributing versus two unidentified. And the result is the DNA profile is approximately 1.6 octillion times more likely if Eric Griffin and an unidentified individual contributed rather than two unidentified.

And then for my third proposition, I'm comparing whether Antonio Dash and Eric Griffin could both be contributing to the mixture versus if it's just two unidentified individuals. And the results for that is the DNA profile is approximately 720 octillion times more likely if Antonio Dash and Eric Griffin contributed to the

mixture than if two unidentified unrelated individuals contributed.

Q Okay. And you have this little note there at the bottom of proposition set. Can you explain that?

A Yeah, so the note is stating that the LR fourth proposition set three was calculated to confirm that the mixture can be explained by the contribution of DNA from all individuals listed under HB, which is that first scenario. And that due to the disparity and the individual LRs between the contributors for this item, it's recommended to put more weight on the results of proposition set one rather than proposition set three when considering Antonio Dash as a possible contributor.

So, essentially, because the result for the comparison of whether Antonio Dash could be in that mixture was 170. On our chart that's at the end of our report to kind of help give kind of a scale for these numbers, that it would be weak support, but he was contributing. So he may be, but that's kind of weak support of whether or not he is. But for Eric Griffin, his number was 1.6 octillion, which is very strong support. And for them together, it's also 720 octillion.

So, essentially, what it's saying is since Antonio's individual number was weak support and then the number for them together is very strong support, they could be

contributing together, but we don't want to give the false idea that it's definite that they're both contributing together since his individual number was much smaller than that number of them together.

Q Okay. But Griffin is certainly a contributor?

A Yes, there's very strong likelihood that Eric Griffin is contributing.

Q Okay. And then I think the last one is a shell casing. That would be -- sorry. Again, Mr. Barnes was excluded, Mr. Barnes and Ms. Smalls were excluded as contributors to 10.2?

A Yes.

Q And then moving on to 31.1, that was some swabs from a shell casing; is that right?

A Yes, that's correct.

Q And that swab was actually blood?

A I believe so. I can look up that serology report just to make sure. Yes, so presumptive testing for blood was positive for this item.

Q Okay. And then what were your findings there?

A For this item, a DNA profile suitable for comparison was developed and likelihood ratios are calculated using STRmix. This, again, was interpreted as a mixture originating from two individuals.

So for my first set of comparisons and comparing

whether Antonio Dash and an unidentified unrelated individual is contributing versus two unidentified individuals. And the result is that the DNA profile is approximately 62 quintillion times more likely if Antonio Dash and an unidentified unrelated individual contributed versus the two unidentified individuals contributed.

For the second set, I'm comparing whether it be Eric Griffin and an unidentified individual versus two unidentified. And the result is that the DNA profile is approximately 84 trillion times more likely if Eric Griffin and an unidentified individual contributed rather than two unidentified.

And then for my third set of comparisons, I'm comparing whether the mixture would be whether Antonio Dash and Eric Griffin contributing to the mixture versus two other unrelated individuals. And the result is that the DNA profile is approximately 280 undecillion times more likely if Antonio Dash and Eric Griffin contributed than if two unidentified individuals contributed.

And then for my last set, similar comparisons, but Antonio Barnes, Jr. and Shekila Smalls are excluded as contributors to this mixture.

Q So, again, boiling it down, the blood that was swabbed from a shell casing and given to you seems to be from Mr. Griffin and Mr. Dash?

A Yes, there's very strong likelihood for that scenario.
Q And then backing up just in general with the report, it's fair to say that Mr. Griffin and Mr. Dash have each other's DNA under each other's fingernails?
A Yes, there is a very strong likelihood for all of those fingernail scrapings that I could compare that they are contributing.
Q And nothing you analyzed had any DNA for Mr. Barnes?
A That's correct.
MS. YOUNG: Bear with me one second, okay?
(Pause.)
Nothing further, Your Honor.
THE COURT: Yes, sir.

CROSS-EXAMINATION:

BY MR. SCOTT:
Q Just briefly, do you make any kind of distinction on what kinds of DNA you're testing? I heard there was some blood on the casing?
A Yes, sir.
Q Under the fingernails. Just any kind of DNA you can pick up?
A Yes. Either swabs or the whole fingernail forward. So I didn't do any serology testing as far as certain body floods or anything.

Q This is a Defense No. 9. What do you see in that picture?
A I see two people laying on the ground with some red substance around them.
Q Okay. Would you characterize that red substance as being -- I mean, quantity-wise, is that a lot or a little in your observation?
A It appears to be a good amount of red substance around them.
Q Okay. So Eric Griffin and Antonio Dash were lying in a large pool of their combined blood. Is it possible what you're testing is the blood they're lying in under their fingernails?
A That could be possible.
Q And if the crime scene photos indicate that there's a quantity of casings lying in the pool of blood that is a mixture of their blood because they've both been shot multiple times, would that explain their DNA being on the casing?
A That could be a possibility.
Q You're not asking -- or, really, you're not offering an opinion as to how each other's DNA gets under each other's fingernails?
A No, I could never say for certain how the DNA got there. I could just say that it is or is not there.

Q Okay. But, again, if they're lying in a large pool of their combined blood, that's a fair possibility that that's what you're picking up in the DNA?
A That could be a possibility.
Q And if a number of the casings are lying in that pool of combined blood, that could be an explanation of their DNA being on the casing?
A That could be possible, yes.
MR. SCOTT: Thank you.
THE COURT: Yes, ma'am.
MS. YOUNG: A brief moment, Your Honor.
THE COURT: Okay.

REDIRECT EXAMINATION:

BY MS. YOUNG:
Q Ms. Goodman, you're not provided any crime scene photos or anything like that before you do your analysis, right?
A No, I'm not.
Q And I know Mr. Scott just showed you some photos from the crime scene. I'm going to show you some photos, as well, some fingernails. Is there any visible blood that you can see there?
A I do not see anything that looks physically like blood.
Q And then I know you don't actually -- do you know how

they collect fingernail scrapings. I know you don't actually do it, right?
A I do not. So, typically, for fingernail clipping, they will clip the fingernails and send us those clippings. Sometimes for scrapings, they'll use a small pointed plastic stick. But, again, we don't watch them collect it.
Q In this case, were you sent both?
A I believe I was just send scrapings.
Q And if they're doing it correctly, they take the plastic swabs and run it underneath the fingernail?
A Yes.
Q Now, I know in this photo, there's blood on the nails. Is there any visible blood underneath the fingernails?
A I do not see anything that appears to be red under the fingernails.
MS. YOUNG: Thank you, Your Honor. I don't have anything further?
MR. SCOTT: Can I see those pictures?

RECROSS-EXAMINATION:

BY MR. SCOTT:
Q Defense showed you that picture right there?
A Yes.
Q That is a right hand --

THE COURT: Can you identify what you -- document you're showing her?

MR. SCOTT: Oh, it was Defense Exhibit she just showed her to --

THE COURT: Is it marked?

MR. SCOTT: She didn't mark it.

THE COURT: Let's mark it for ID for the record. What's that number? It's going to be Defense's?

THE COURT REPORTER: 57.

THE COURT: Okay. It's for ID purposes.

(WHEREUPON, Defendant's Exhibit No. 57 marked for identification only.)

BY MR. SCOTT:

Q Defense 57, can you tell if that's a right hand or a left hand?

A I cannot. I cannot tell which angle it's taken from.

Q You know what a thumb looks like, don't you?

A I do.

Q Okay. But you don't know?

A I can't tell which angle the photo was taken from or whether the image has been flipped from the camera.

Q The partial DNA profile -- or the right hand of Eric Griffin, you couldn't develop any kind of a DNA profile?

A I did develop a profile, but there was not enough information there to make a comparison.

Q Okay. So could that be a picture of the right hand of Mr. Griffin?
A It's possible.
Q And maybe that's why you didn't get enough mixture because it didn't have blood on it like the other hands did?
MS. YOUNG: Objection speculation.
THE COURT: Sustained.
BY MR. SCOTT:
Q I'm going to show you State's 25. Is that just sort of another image of their hands and their bodies in position?
A Yes.
Q Can you see the casings in the blood?
A I can see items in the blood. I can't identify whether or not there are casings.
Q Okay. But your testimony is that amount of blood could be potentially what you're picking up when you're taking fingernail clippings?
A It's a possibility that the DNA could be from any type of fluid.
MR. SCOTT: Okay. Your Honor, that was State's 25 we would admit into evidence.
THE COURT: Any objection?
MS. YOUNG: Is State's 25 already in?

THE COURT REPORTER: State's 25 is not marked. We left off on 18. It might be the ones you plan to use for the trial, but I don't know. I'm not on 25 yet.

MS. YOUNG: No objection, Your Honor.

THE COURT: Entered without objection.

THE COURT REPORTER: Do you want me to just skip ahead to 25 or --

MR. SCOTT: Oh, I'm sorry. You know what we did, Your Honor. We premarked a lot of these.

Where are we at now?

THE COURT REPORTER: This would be 19. I think that would be better. Otherwise, it's going to look like there are missing exhibits if we don't.

MR. SCOTT: It's 25, Your Honor, we're entering as State's 19.

MS. YOUNG: Still no objection.

THE COURT: Thank you.

(WHEREUPON, State's Exhibit No. 19 was marked for identification and received into evidence.)

THE COURT: Anything else?

MR. SCOTT: I'm sorry, Your Honor. No, nothing further from the State.

THE COURT: All right. You may step down.

Any objection to this witness being excused?

MS. YOUNG: Not at all.

MR. SCOTT: None from the State.

(WHEREUPON, Defendant's Exhibits Nos. 58, 59 were marked for only.)

THE COURT: All right. You're free to leave. Thank you, ma'am.

THE WITNESS: Thank you.

LUKE SHEALEY: The defense is going to call Paul Greer.

THE CLERK: State your full name, please.

THE WITNESS: Paul Greer.

PAUL GREER, after being duly sworn, testified as follows:

LUKE SHEALEY: Your Honor, may it please the Court, Mr. Greer is employed by SLED in their firearms analysis department. I think Mr. Scott is willing to stipulate he is an expert in firearms and firearms analysis.

MR. SCOTT: That's correct.

THE COURT: All right. He will be qualified -- Mr. Greer will be qualified as an expert in the area of firearm and firearm analysis.

DIRECT EXAMINATION:

BY LUKE SHEALEY:

Q Okay.

MR. SCOTT: Firearms identification I think is his typical expert qualification.

THE COURT: Firearm identification and analysis, firearm analysis.

LUKE SHEALEY: Yes.

BY LUKE SHEALEY:

Q Mr. Greer, how are you doing?

A I'm well.

Q You and I talked once before, right?

A Yes, sir.

Q Okay. You know what we're here for, talking about a case with a couple of individuals that are deceased, but is it fair to say you aren't privy necessarily to all the ins and outs of the crime scene or anything like that, right?

A No, sir.

Q You are in receipt of certain evidence and given a specific task within your professional framework, right?

A That's correct.

Q I want to show you some photos as part of this case. Do you recognize item 52 defense?

A Yes, sir.

Q Okay. And do these look like nice little envelopes that you received from the coroner's office?

A Those are envelopes containing evidence that was submitted to SLED.

Q Right. And do you see that they have labels,

individual's name, Antonio Dash?
A Yes.
Q And there's a description of where certain items of evidence would be taken from, right? Do you agree with that?
A Yes, sir.
Q It says left arm or parietal lobe, things of that nature?
A Yes, sir.
Q Is that fairly common for you to receive evidence like when it comes from a pathologist office?
A Yes, sir, a lot of times the packaging will indicate where the item was received from or recovered from.
Q Do you recognize your own handwriting on this photograph?
A Yes, sir.
Q So I guess for your own preparation of ultimately what would be a report, do you give it your own number?
A Yes, sir, everything at SLED when it's received receives a SLED lab number. And that evidence is given a SLED item number.
Q And you also recognize this, Defense 3, as being a closer up of item 17?
A Yes, sir.
Q Okay. Do you recognize my 54 as being a closer up of

item 22?
A Yes, sir.
Q Okay. And do you recognize my Defense 5 as being a closer upshot of your labeling of materials coming from a body by the name of Eric Griffin. Do you see that?
A Yes, sir.
Q And, again, we see your handwriting giving numbers of each of these packages?
A That's correct.
Q And you've got different packages that appear, and correct me if I'm wrong, to be coming from the actual crimes scene itself. Do you recognize this? That's different from what you're seeing in the coroner's office?
A Yes, sir. As far as where it's from, I would reference the chain to see where those items were specifically submitted from.
Q For example, this one says one spent shell casing, number six. You give it your item number 19 -- well, actually, you give it your own item number, right?
A It was given a SLED item number.
Q And this says one spent shell casing from about the room. You don't dispute these are items of evidence coming to you from the crime scene, do you?
A No, sir.
Q And talking about number seven, it says one fired

projectile. When you receive these packages like number seven, is that usually your experience, correspond to an evidentiary item from the crime scene or some marker?
A It often can. Typically, I don't always know what the information on the packages is, the packages reference a lot of times to that marker.
Q And this -- do you recognize that as being a projectile?
A Yes, sir.
Q And would Defense No. 58 look like it's on the floor?
A It appears to be on some wooden surfaces.
Q And we've got item seven that says one fired projectile?
A That is what that envelope says.
Q Does that appear to correlate with items of evidence that you received in this case?
A Yes, sir.
Q Do you see a marker number three right there?
A I do.
Q You recognize that to be a core of a bull?
A I don't know what exactly what item of evidence that --
Q That's going to be --
A -- is represented.
Q You see a marker number three next to it?

A Yes, sir.
Q And you see in the package right here number three where you've given it your item number 15?
A Yes, sir.
Q Can you look on your report and see if item number 15 you recognize if it's core?
A Yes, sir, in my report, item 15 is a bullet core. As to how that relates to item three in that packaging, I don't know that's marker -- what that represents based on how it's collected at the crime scene.
Q Right. You didn't write that number?
A No, sir. So I can't say definitively what that means.
Q But you do recognize that as being a bullet?
A It's possible. It appears it could be some piece of lead, yes, sir.
LUKE SHEALEY: Your Honor, at this time, I would seek to introduce Defendant's 52 through 59?
THE COURT: Any objection?
MR. SCOTT: No, Your Honor.
THE COURT: All right. That will be entered without objection.
(WHEREUPON, Defendant's Exhibit No. 52 through 59 admitted into evidence.)

BY LUKE SHEALEY:
Q All right. Mr. Greer, I'd like you to refer to your report, please. I want to go over some of these items and your findings and what you were tasked with doing.
Just generally speaking, do you recall that you did receive in evidence a gun, specifically, a nine millimeter FN -- FN model MS Nassey (phonetic), right?
A Yes, sir, that's correct.
Q You don't know anything about the gun. You just know you received it and were asked to do some comparisons based on that gun, right?
A That's correct.
Q Do you recall you received seven shell casings in this case?
A Yes, sir, I did receive seven fired cartridge casings.
Q And you received in some of the folders that we just discussed numerous projectiles and projectile fragments and jackets associated with this case?
A That's correct.
Q So I think you told me before that you're given tasks in something called I-Lab; is that right?
A Evidence is submitted to the SLED laboratory either in person or through an online portal that is referred to as I-Lab.

Q Okay. And one of your basic tasks, and correct me if I'm wrong, in this case is to figure out, generally speaking, well, do these shell casings match, let's say, this gun in evidence, right?
A Yes, sir.
Q Do these projectiles match this gun in evidence, right?
A Yes, sir.
Q And is it fair to say that you performed that task and you started by doing some test fires with this particular gun?
A The way I would approach the case, I would examine the fired components of the fired cartridge cases and the fired bullet, determine their characteristics. And then after doing that, I would test fire the firearm to compare those test specimens to the other fired components to see if there was a match or what other conclusions might be possible.
Q Okay. And this gun did test fire and was in working order?
A Yes, sir, that's correct.
Q And allowed you to produce some projectiles and shell casings to test against?
A Yes, sir.
Q And as a result of this testing, you determined that

the seven shell casings in this case did match this particular gun, right?
A Yes, sir, it was concluded that the seven fired cartridge cases were fired by the item one pistol.
Q And there were numerous projectiles that also matched this gun based on your analysis, correct?
A That's correct.
Q In looking at your report, part of the bottom of page three, that last paragraph, it's really going over some of the items that were test fired and matched, specifically item five, item 16, item 19, 24 through 26, correct?
A Yes, sir, and some of those were just fragments of the jacket portion. It wasn't the complete item that we were able to identify as having been fired.
Q Now, but some of these items that you were asked to analyze, you could not match the gun evidence; is that correct?
A There were two items that I was unable to identify as having been fired by the pistol, specifically item 17 and 22, the fired bullet jacket fragment.
Q Okay. We'll get to that in one moment. Just so the judge can see what I'm talking about visually since I've been talking about it without showing her. This is an idea, you see the name Eric Griffin here. This indicates the contents of these envelopes and what's in them,

correct?
A Yes, sir. I don't believe that is my photograph.
Q It's not your photograph, but you trust what comes to you, what you get from the coroner's office, right?
A Yes, sir. If the evidence is submitted, I only have the information that is logged in and how it's labeled, yes, sir.
Q And so that's showing contents -- and this might help you out to be more comfortable about answering this question. But either that's the same photograph, but with your numbers associated reflecting the contents, projectile from T4, and you're going to give it item five?
A Yes, sir.
Q Projectile from back, you're going to give it item 24 and so on, correct?
A Yes, sir.
Q Again, this is the same essential thing. You have no idea where these are coming from other than it's labeled a name and somebody has put a body area on there, correct?
A That's correct.
Q And that's not necessarily -- I mean, that's not really part of your analysis, where it came from. It's identifying it, it is matching, is the casing matching and so, right?
A Right, identifying where it's recovered from and

labeled in the envelope would not be part of my examination.

Q These four items that came from Mr. Griffin here, would you describe these -- particularly these as fairly intact projectiles that have mushroomed out?

A Based on that photograph, those appear to be projectiles that have mushroomed out. That top right one is kind of dark.

Q And this one it's associated with T4, does that look like a jacket to you?

A Yes, sir, it does prepare to be a jacket.

Q And the core?

A Yes, sir, I can't exactly determine what's in that photograph.

Q Okay. Put you can associate that these are four -- in laymen's terms, four bullets that came from that gentleman?

A Yes. Yes, sir.

Q And those ended up matching the item one pistol in evidence, correct?

A The projectiles that matched item one were the item from fired bullet jacket, item 16, the item 19 fired bullet fragment jacket and items 24 through 26.

Q Maybe you can reel them off, but 5, 24, 25, and 26 from Mr. Griffin did all match?

A Yes, sir, the items from a fired bullet jacket specifically.
Q And looking at these packages that include your numbers associated with them, now, we had items 22 and items 17 are contained within these packages, correct?
A Yes, sir.
Q Okay. So this is item 17 that's coming from here. Do you see that?
A Yes, sir.
Q Item 22, nasopharynx, correct?
A Yes, sir.
Q We've got these temporal lobe, parietal lobe, temporal love, you're not a medical doctor, but that seems to all be in the head part of the body, right?
A It's possible.
Q And you know that this upper arm, that's -- you know what an upper arm is, right?
A Yes, sir.
Q Okay. So then kind of superimposing these materials in the same way and cross-referencing, you know that item 17 is from the ear. That would be this hunk of lead right here, plus a little jacket and the core from left ear. And you would agree that item 22 says it's fragments from the nasopharynx. So we cross-referenced that, this is nasopharynx right here and the fragments and jacket

associated with that; is that right?
A Yes, sir. And I'm trying to confirm those locations. Could I look at the photograph with the SLED lab number on it?
Q Yes. SLED lab number 22?
A Yes, sir. Based on the packaging of item 22 was from the nasopharynx location based on the label. And item 17 based on the label was from the left ear, it appears.
Q Okay. This is just a closer up. It might give you a better idea. But this is your SLED lab number 22 and that's the materials associated with that. Do you agree?
A Yes, sir, that's correct.
Q And then 17 SLED lab number and materials associated with that, right?
A Yes, sir, that's correct.
Q So getting to those items on your results page -- and I find your work fascinating, but you helped me understand some things where you -- you're a scientist, right, so certain words have certain meanings in your report, correct?
A Yes, sir.
Q And turn to the last page of your report. When we're talking about 17 and 22, you use this specific phrase, due to damage and insufficient corresponding individual identifying characteristics, the results of these

comparisons had you unable to determine whether they were fired by pistol one or another firearm or firearms, correct?
A That's correct.
Q Okay. So I tried to have you really help me understand exactly what that meant. I think you told me that you generally have four descriptors -- correct me if I'm wrong, but it's pretty -- you would use one as being a match if it's clearly unequivocally a match, correct?
A Yes, sir, that would be positive identification.
Q And the things that help you do that are the specific characteristics involved in that jacket or shell casing or projectile, right?
A Yes, sir.
Q You examined these with a microscope and you can see it distinctly in relation to the item of evidence?
A That's correct.
Q A negative match means that you've got tons of information, right, lots of characteristics. They just don't match your comparison item, right?
A Yes, sir. And that could be from microscopic characteristics we have on those fired components and that could be something even as larger as different calibers or different types of rifling or different number of lands and grooves that are displayed on that bullet.

Q You've got a third type which you told was unsuitable for comparison. Is it fair to say it's because it's not enough material to look at or it could be completely damaged and you can't get anything out of it?
A Yes, sir. Unsuitable could be because the item was too damaged, there were no marks of value when we were looking at it under a microscope that we can use to compare to other items of evidence or other test fires. Item could be just a small portion of per se a jacket that doesn't have any identifiable rifling. So there's no marks at all to begin with on that item. It could just be damaged so that we're not able to compare it. There is no value there for us to compare.
Q And then you have a fourth type, which is inconclusive; is that right?
A That's right.
Q Is that what we're talking about here for 17 and 22?
A Yes, sir.
Q In laymen's terms, I don't know?
A Yes, sir. Inconclusive is kind of a fancier term for I don't know. Based on the evidence that we were looking at and examining and comparing, there's not enough information and markings on a specific item so that we can say it was fired by a specific firearm or it was not. And that's what leads us to the inconclusive result.

Q Correct. So for these items 17 and 22, in your professional opinion, they could have been fired by a different weapon other than item one?
A That's possible.
Q Okay. And regarding these items, I mean, you can gather certain class characteristics out of, I think, number 22, correct?
A Yes, sir.
Q And you've listed on page three of your report that you can tell enough about it to know that it could have been fired as a 38 caliber cartridge, which includes nine millimeter, 38 Special, 357 Magnum, among others; is that right?
A Yes, sir.
Q So it could have been fired by a 357 Magnum?
A That's correct.
Q Or it could have been fired by a 38 Special?
A That's possible.
Q It could have been fired by a nine millimeter?
A That's possible, as well.
Q And based on what you have to look at and analyze, can you tell whether a 22 -- item 22 is fired from a revolver or semi-automatic that would leave a shell casing or can you just not determine?
A No, sir. Based on the rifling characteristics on

item 22, simply the fired bullet jacket fragment, we compared that with the test fire because it did share similar characteristics with the rifling type, but we were unable to say it was fired by the item one pistol. Therefore, it could have been fired by any other pistol or firearm that shares those characteristics.

Q Including a revolver?

A Yes, sir, if it had the same rifling characteristics as the item 22 fired bullet jacket fragment, it's possible.

Q Now, I asked you to do something with me, which was try as best as we can to try to determine how many projectiles are we really talking about here. And you and I have kind of talked about that twice now, right?

A Yes, sir.

Q So let's start with what's easy?

A Yes, sir.

Q These, which we know they don't have your specific corresponding SLED markings on them, but these are the four projectiles that were removed from Eric Griffin's body. You said those are consistent with four different bullets?

A Yes, sir, and specifically that would be item five fired bullet jacket, and items four through 26 fired bullets. Yes, sir that would represent four bullets that

were fired.
Q Okay. Here we go again with SLED numbers, 5, 24, 25 and 26. Now, I've asked you to -- I want to turn your attention to this photo, which represents contents that came from Mr. Dash. Again, we know generally that we're talking about lobes, parietal lobes, nasopharynx, temporal. We're talking about the head whereas the left upper arm is item number four, correct?
A Yes, sir, based on those labels.
Q And I've asked you specifically to look at the material that has come from Mr. Dash's head. And I believe you informed me after reviewing that carefully that that would be consistent with two projectiles coming from Mr. Dash's head amongst that material?
A Yes, sir, based on the evidence that was submitted from Mr. Dash, in looking -- we had a lot of fragments and lead pieces and things involved in those items that were already covered from Mr. Dash. Out of all that, I am able to say there's, at least, two fired bullets in that mix of evidence.
Q At least two?
A Yes.
Q Possibility for more?
A Well, those are all fragments, so based on just the evidence that I have in looking at some of those more

intact jackets, I'm able to say two.
Q Okay. this looks like a fairly pristine in comparison to the others projectile, correct?
A Yes, sir.
Q Has its jacket intact?
A Yes, sir, it appears so.
Q It's number seven, and we've already gone over this, but this is number seven from what you have your number 16 associated with. It says one fired projectile you received as part of the evidence in this case, right?
A Yes, sir.
Q And if we're counting projectiles, that is certainly a projectile?
A Yes, sir, that's a projectile.
Q So that would put us up to seven, correct?
A Yes, sir.
Q And we've talked about this piece where, ultimately, you identified as a core item five on your SLED numbering?
A Was that five or item 15?
Q I got -- you might have me. You're right, item 15.
A Yes, sir, item 15 is the bullet core.
Q The core is like the center. It's like a lollipop. It's the center?
A Yes, sir, the core is the part of the bullet that is enclosed by the jacket material.

Q You don't see any jacket material by it, right?
A No, sir.
Q We do have other jacket material in this case that potentially could be associated with the core, such as that one. For example, here's some jacket material from Mr. Dash's left upper arm. We know that's the only material that didn't come from his head. Is it possible that core could be associated with something like that?
A That core could be associated with some fragment material that was submitted from the victims, yes, sir.
Q Okay. So if that's the case, we would be talking about eight projectiles?
A It's possible that it could be. I mean, it could also have been comprised of some of the other missing pieces of the projectiles that were submitted with the seven that we kind of distinguished so far, but it's possible that belongs to -- that's an answer that I don't know and I've not come across that information.
Q So your best guess is certainly seven, possibly eight projectiles based on the material you got?
A Yes, sir. Based on the material we received, seven, that bullet core, it could have belonged to the other fragments submitted from the victims that were recovered at autopsy to make one of those seven projectiles or it could belong to something else. That's something I don't

know.
Q Beg the Court's indulgence.
(Pause.)
Just to reiterate, I can't remember if I covered this point or not. I think I did. But item 17 and 22, I believe you testified already, the ones that do not match, you can see that they are labeled as belonging to Antonio Dash, 22?
A Yes, sir, that is how they were submitted to the SLED lab.
Q And specifically, 17 is associated with a fragment from left ear, right? Did you read that? Is that how it came to you?
A Yes, based on that photograph and the labeling, yes, sir.
Q 22 is a fragment associated with the nasopharynx, what that is, right?
A Yes, sir.
LUKE SHEALEY: All right. Thank you.
THE COURT: Yes, sir.
LUKE SHEALEY: Thank you, Your Honor.

CROSS-EXAMINATION:

BY MR. SCOTT:
Q Paul, is it typical or atypical to find projectiles that are so badly damaged that you're unable to performed

analysis on them?
A That is something that we see commonly sometimes based on those projectiles have been injured traveling to its target. It's possible and it's common that we see things that we're unable to positively identify.
Q So that's a common occurrence that projectiles are so badly damage, you're uncomfortable forming an opinion?
A Yes, sir.
Q And maybe you have in your mind well, that sure does look like a match, but I'm not going to opine on that because I don't have all the check marks I need?
A Yes, sir. Sometimes the damage sustained by the bullet is so great that we're unable to see enough of those marks of value that we're looking for. It may be missing pieces that we're not able to look at because we don't have that because it's fallen off as it's been striking its target. We're not able to use those markings because they're nonexistent.
Q And a lot of times, upon entering the human body, a projectile will fragment and break apart in multiple pieces?
A Yes, sir, that is possible.
Q Does that kind of damage affect the likelihood of you analyzing it to match it to a specific gun?
A It can.

Q Tell me if this is an accurate statement, it's easier for you to match a fired casing to a known pistol in any given case than it is to match projectiles? I mean, are you more -- I guess, the question is do you find that you are more likely to compare fired casings to a gun as compared to fired projectiles?
A That really depends on the evidence. Sometimes, just depending on how the firing is marked by the evidence, those fired cartridge cases or fired bullet, I can't one way or another.
Q Well, do you think in your career you've matched more projectiles to guns or more casings to guns?
A I'm unable to say.
Q Okay. But in this particular case, you are able to say that seven casings that you tested did match the gun you were given to compare them to?
A That's correct.
Q Let's see. Other than that, you were -- a jacket from Dash, that is your item 19, I believe. You were able to determine that was fired by the pistol you tested?
A That's correct, the 19 fired bullet jacket fragments.
Q All right. And that was recovered from Antonio Dash according to your records?
A Yes, sir.
Q Okay. And then the casings, you were able to

determine came from the gun. And then item five was a fired bullet jacket recovered from Eric Griffin. Likewise, you were able to determine that came from the gun that you tested against, correct?
A Yes, sir, that's correct.
Q Other than that your findings would be -- or the ones where you were able to give an opinion, they were all consistent with nine millimeter Lugers?
A Yes, sir, the items that I was able to determine were nine millimeter Luger were item 16 and 24 through 26. On some of the other items, such as the items fired bullet jacket, item 19, fired bullet jacket fragment, those were consistent with being the jacket portion of the jacket bullet, that was a nine millimeter Luger caliber.
Q And what about 22, was a jacket fragment from Dash's body?
A Yes, sir. Specifically, the item 22, fired bullet jacket fragment, that was most consistent with being the jacketed portion, the jacket bullet loaded into a nominal 38 caliber cartridge. The nominal 38 caliber includes a nine millimeter Luger, 38 Special, 357 Magnum, calibers.
Q So everything you were able to form an opinion on -- in other words, it was something you felt comfortable analyzing because it wasn't too badly damaged or whatever the reason, your opinion on everything was either that it

was consistent with a nine millimeter or 38 Nominal, which could be fired by a nine millimeter, or that, in fact, it was fired from the pistol you analyzed?
A Yes, sir. Those items were consistent with a nine millimeter or nominal 38, which includes a nine millimeter.
Q All right. So, I guess, just to boil it down, you found absolutely no evidence of anything other than a nine millimeter as far as all the ammunition you tested?
A Yes, sir. Based on the evidence that I was able to measure weigh and determine on a specific caliber, those were all nine millimeter or Nominal 38.
Q And everything else you tested, it was just too badly damaged for you to form an opinion?
A That's correct. Due to the damage or their size, I was unable to determine a caliber for those items.
MR. SCOTT: Thank you. That's all the questions I have.
LUKE SHEALEY: Briefly, Your Honor.
THE COURT: Yes, sir.

REDIRECT EXAMINATION:

BY LUKE SHEALEY:
Q Mr. Greer, item 17 and 22, you did not -- we discussed this. They were not part of an unsuitable for analysis category, right? Your opinion was inconclusive

on those items?
A Yes, sir. And that's the item 17 and item 22 fired bullet jacket fragments specifically.
Q Because the solicitor was going -- asking you some questions about evidence and projectiles, in fact, are sometimes just too damaged and you can't -- unsuitable because you can't get a read on them, right?
A Yes, sir.
Q For lack of a better term, but those were not of that distinction. They were not conclusive, which is different, right? Inconclusive?
A They were inconclusive.
Q It's a combination of things. It's due to damage and they just don't have the corresponding identifying characteristics what you're comparing against, right?
A Yes, sir.
Q And you told us that those could mean, items 17 and 22, that they were fired by some gun other than item one, which was the gun in evidence, right?
A Yes, sir.
Q It could have been fired by a revolver?
A They could have been fired by a, you know, any type of firearm that shared the same characteristics that these items exhibited.
Q Which you've stated could have been fired by a 357

Magnum?
A Yes, sir.
Q As far as that class?
A Yes, sir, specifically, the item 22, the fired bullet jacket fragment.
Q Right. Or a 38 Special?
A Yes, sir. And those firearms had the same rifling specifications as the items of evidence.
Q As well as a nine millimeter?
A Yes, sir.
Q So you have all of those different possibilities, correct?
A Yes, sir, that could be possible.
Q Okay.
LUKE SHEALEY: That's all I have.

RECROSS-EXAMINATION:

BY MR. SCOTT:
Q Can a nine millimeter fire other ammunition than a nine millimeter bullet?
A It's possible, depending on the firearm.
Q So I guess Dash could have been shooting nine millimeters, but what else could he have been shooting out of that --
LUKE SHEALEY: Objection, calls for speculation.
THE COURT: Sustained.

BY MR. SCOTT:
Q What other kinds of ammunition --
THE COURT: Sustained. Rephrase the question.
BY MR. SCOTT:
Q What other kinds of ammunition can you fire out of a nine millimeter?
A It may not be specific to all firearms. Typically, it would be a caliber that would be smaller than a nine millimeter so that it would fit properly -- or excuse me, not property, but fit into the chamber of the firearm. It may not function properly, but it would be possible. Such as nine millimeters, sometimes you hear folks firing 380 ammo caliber out of it.
Q Okay. So the shooter of that nine millimeter could have had other ammunition?
LUKE SHEALEY: Objection, calls for speculation.
THE COURT: Objection overruled.
BY MR. SCOTT:
Q Is that possible? You just said, I think, that nine millimeters can fire other ammunition?
A Nine millimeters can sometimes fire 380.
Q Okay.
A Anything that would be a smaller caliber that would fit into that chamber. The firearm may not function properly and that would be specific to each individual

gun.
Q Okay. Got you. Just help me, am I missing something? This paragraph right here, if I'm reading it, in regard to 17 and 22, due to damage and/or their limited size, the caliber or calibers of item 17 and item 22 bullet jacket piece of lead could not be determined. It says due to damage and/or their limited size. What am I missing?
A Yes, sir. Specifically, on item 17, that result is referring to every components of the fire bullet jacket fragment and the two pieces of lead. We were not able to determine any type of caliber for the entire item for all those fragments and lead. Item 22, bullet jacket fragment, that was just one portion of item 22 and we were unable to determine the caliber on that.
Q Okay. So you're not testifying those items were fired from another gun, but you're also saying I can't form an opinion that they were fired from the item one pistol. It's just too damaged or something about those projectiles that you felt uncomfortable testing or were unable to test; is that accurate?
A On item 17 and item 22, they're a fired bullet jacket fragment and a fired bullet jacket fragment for item 22, as well. Item 22 also has one bullet jacket fragment. So the bullet jacket fragment had no rifling impressions that

we were able to gather any information or use for comparison purposes.

The item 22 bullet jacket fragment, that was the portion of item 22 along with the pieces of lead that we were unable to determine the caliber. The item 22 bullet jacket fragment pieces of lead were unsuitable. The portion of item 22, which was the fired bullet jacket fragment, that was inconclusive with our comparisons with the test specimens from item one.

Q Okay. So bottom line, you were just -- you're unable to form any opinion as to those items?

A Not to those fired, no, sir.

Q Okay. And that's just not uncommon, I think you testified earlier?

A No, sir. Inconclusive is a common result?

MR. SCOTT: Thank you.

LUKE SHEALEY: One question?

THE COURT: Yes, sir, you can.

RE-REDIRECT EXAMINATION:

BY LUKE SHEALEY:

Q The solicitor has been asking you about whether smaller caliber bullets can be fired out of a nine millimeter. You did receive a magazine in this case, correct?

A Yes, sir.

Q And it indicates it contained nine millimeter ammunition?
A I did not receive any unfired cartridge casings.
Q Are you familiar with the magazine that was -- the ammunition that was contained in them?
A No, sir, I don't know what the ammunition was loaded into that.
LUKE SHEALEY: Okay. Thank you.
THE COURT: Thank you. All right. You may step down.
Any objection to this witness being excused?
LUKE SHEALEY: No, Your Honor.
THE COURT: All right, sir. You're free to leave.
LUKE SHEALEY: Your Honor, may we take a short break, ever so short?
THE COURT: Yes, ten minutes?
LUKE SHEALEY: Yes, ma'am, run to the restroom.
(WHEREUPON, a short break was taken.)
(WHEREUPON, Defendant's Exhibit Nos. 60 through 72 marked for identification only.)
THE COURT: All right. Call your next witness.
LUKE SHEALEY: May it please the Court. The defense calls Bob Tressel.
THE CLERK: Would you state your full name, please?
THE WITNESS: Ralph Robert Tressel.

THE CLERK: Would you spell your last name, please?

RALPH TRESSEL, after being duly sworn, testified as follows:

DIRECT EXAMINATION:

BY LUKE SHEALEY:

Q Mr. Tressel, good afternoon.

A Good afternoon.

Q How old are you, sir?

A I'm 68 years old.

Q Are you currently employed?

A Semi-employed. I run a consulting service called Forensic Investigative Services.

Q And what do you do at Forensic Investigative Services?

A I provide consulting services to attorneys, defense attorneys and prosecutors, pertaining to crime scene analysis and homicide investigations and a myriad of things dealing with crime scenes.

Q And how long have you been owner of that outfit?

A Since the mid-1990s.

Q Have you ever worked in law enforcement?

A Yes, sir, I have.

Q Briefly describe your experience with that to the court.

A Sure. I went to work with Cobb, C-O-B-B, County

Police Department in July of 1973. I was a uniformed patrol officer. I was in uniform patrol for right at a year-and-a-half where I transferred to the crimes against persons unit. Most agencies commonly refer to that as the homicide/robbery division.

I worked in the robbery/homicide division from 1975 to 1978, when I was promoted to the rank of detective sergeant and left the homicide unit. I then stayed in the homicide unit until February of 1985 where I resigned my law enforcement position and I went to work at the Cobb County Medical Examiner's Office as an investigator. In 1988, I was promoted to operations manager, which is the chief investigator for the medical examiner's office.

Q Tell me about your duties at the medical examiner's office?

A Well, our title was officially a medical, dash, legal investigator. We were, essentially, the eyes and ears of the medical examiners on death scenes throughout the county. We handled everything from natural deaths to homicides, traffic accidents, suicides, unexplained deaths.

Q What kind of specific training would you have regarding that particular job?

A Well, the time I was there, you had to be ex-law enforcement with homicide experience. In other words, how

to process scenes, what to look for at a crime scene. While I was there, I took the advanced training at the University of -- let's see, got to get them in order, University of Miami School of Medicine in medical legal death investigation, University of St. Louis School of Medicine in medical legal death investigation, and the University of Georgia in crime scene and homicide investigations.

Q And what is a medical legal death investigation in laymen's terms?

A It takes the medical aspect of the death, if it's natural try and look for certain key signatures of what that death might be based on medical history, all the way up to working homicide cases. You're looking for evidence that's near or around the body in evaluating the crime scene. It involves looking at the recovery of any evidence, including shell casings, bullets, knives, sticks, anything that could have been used to create an injury that caused somebody's death, and then relating it back to the criminal investigations being parallel conducted by the law enforcement agency.

Q Okay. After the medical examiner's office, where did you go?

A I went out on my own in 1999, just doing consulting work for the next, essentially, ten years. I worked with

a group called Verdin & Associates. We do primarily injury causation analysis.

Q Okay. And then where did you go?

A In April of 2011, I went back to work for the Cobb County District Attorney's office as a chief criminal investigator. I hold a certificate as the chief of police in the State of Georgia.

Q Do you have any training in crime scene analysis or crime scene reconstruction?

A Yes, it's all part of the medical legal investigation of death trying to determine when you're at a crime scene what are the trajectories of bullets, positioning of victims and positioning of suspects who may have been inside a crime scene, blood spatter analysis, what does it tell us about how the incident occurred, and where it occurred and how it travel throughout a residence -- or I should say crime scene versus residence.

Q Have you ever been qualified as an expert in crime scene reconstruction and analysis?

A I've been qualified in 14 states, including South Carolina, Georgia, Alabama, haven't been to Tennessee, North Carolina, Missouri, Texas, Kansas, Pennsylvania, Connecticut, probably a couple more in there somewhere.

Q If memory serves, you've been qualified in this courthouse for that exact --

A At least, three times I know of.
Q Have you ever been qualified as an expert in firearms generally?
A Generally, yes. I do not do firearms identification. I don't look at bullets and shell casing under a microscope, but how a firearm functions, how they work and what evidence can we get from a firearm.
Q Okay.
LUKE SHEALEY: Your Honor, at this time, I would seek to introduce Mr. Tressel as an expert in crime scene analysis and reconstruction and firearms generally?
THE COURT: Any voir dire? You said crime scene analysis?
LUKE SHEALEY: And reconstruction.
THE COURT: Reconstruction?
LUKE SHEALEY: Crime scene reconstruction.
THE COURT: Crimes analysis and reconstruction and what was the last one?
LUKE SHEALEY: Firearms generally.
THE COURT: Yes, sir. Any voir dire?
MR. SCOTT: Okay. What court in South Carolina were you qualified as an expert in?
THE WITNESS: I've been qualified in this courthouse three times, Sumter County, whatever county Moncks Corner is in.

MR. SCOTT: Berkeley County.
THE WITNESS: That's it, Berkeley County, yes. Thank you.
MR. SCOTT: Do you remember the case name? Was it general sessions here?
THE WITNESS: Two were general sessions, one was an appellate hearing.
MR. SCOTT: You're not a doctor, correct?
THE WITNESS: No.
MR. SCOTT: Let me ask you, in forming your opinion, what have you studied in this particular case?
THE WITNESS: Well, I've seen the complete investigative report, crime scene photographs, SLED reports, things of that nature.
MR. SCOTT: Have you been to the scene?
THE WITNESS: No, I haven't.
MR. SCOTT: Why not?
THE WITNESS: Because I got involved in the case too late as far as trying to do a reconstruction.
MR. SCOTT: Okay.
THE WITNESS: According to the incident reports, there's no evidence other than the evidence that was collected inside the scene. There were no bullet holes or anything like that to try to determine trajectories.
MR. SCOTT: So you haven't gone in there and looked

at the dimensions overall --

LUKE SHEALEY: Your Honor, I'm going to object at this point. This voir dire is limited to his qualifications as an expert. That's the question, not what he's done --

THE COURT: But you're asking me to qualify him as an expert in reconstruction.

LUKE SHEALEY: Correct.

THE COURT: But he -- that's why he has a right to ask him -- if he's going to qualify as an expert in reconstruction as to this case, then he needs to -- I think it's appropriate to ask what he's done regarding this case.

LUKE SHEALEY: Well --

THE COURT: I mean, in terms of the reconstruction portion of it.

LUKE SHEALEY: Maybe it's just semantics, but I'm offering him as an expert in crime scene analysis and reconstruction. He has the qualifications to do that. Now, whether he's done that to the State's satisfaction once he's admitted is another question, another line of inquiry, but he's going further than just voir dire as to his qualifications. That's my only objection.

THE COURT: All right. The objection is overruled. I think if you are offering him as an expert in

reconstruction, he has to -- there has to be -- he didn't do any reconstruction. I'm not sure how -- I mean, unless there's another method and he has the right to ask him if there's another method to that in terms of reconstruction without being on the scene. That would be one of the questions that I would ask.

LUKE SHEALEY: Okay. Maybe that's my fault. Maybe I could just seek to admit him as an expert in crime scene analysis and firearms without the reconstruction part. Maybe I confused that.

THE COURT: Unless there's a way that he can reconstruct it without going to the scene is what I'm asking. I think somebody needs to ask him that.

MR. SCOTT: Thank you, Your Honor.

So tell me why you don't think it would have been helpful to actually go to the scene and physically view it. Like pictures are two dimensional, right?

THE WITNESS: Pictures are two dimensional, but three dimensional objects are gone by the time I would get there in this case.

MR. SCOTT: Well, did you check?

THE WITNESS: I didn't even ask.

MR. SCOTT: Okay.

THE WITNESS: Bodies were gone, shell casings were gone, bullets were gone.

MR. SCOTT: Well, could the hallway still have been there? Could the walls have been there still maybe?

THE WITNESS: Possibly.

MR. SCOTT: Possibly?

THE WITNESS: Yeah. I don't know how quickly they would have made any repairs.

MR. SCOTT: You could have probably taken a tape measure and checked general dimensions. Did you see a blueprint of the place, at least?

THE WITNESS: I have not seen one produced in the file.

MR. SCOTT: And you weren't there at the time. You said -- you just got involved recently, is that what you said? You said you got involved too late.

THE WITNESS: Well, I got involved last year, in 2020.

MR. SCOTT: Okay. That was a year after?

THE WITNESS: The incident, approximately. I don't have it in my head.

THE COURT: Last year was 2021.

THE WITNESS: Is that --

THE COURT: No, you said that was a year. This happened in '19.

MR. SCOTT: Right. He said last year, 2020, so I assumed he was mistaken.

THE COURT: Everybody's mixed up the last two years.
THE WITNESS: I've lost two years of my life somewhere.
THE COURT: I think we all have. So you mean 2020?
THE WITNESS: 2021 was when I got involved.
THE COURT: All right. Thank you.
MR. SCOTT: That just sort of answers my question. You weren't there on February 7th of 2019?
THE WITNESS: No.
MR. SCOTT: And I don't know, you are seeking to offer opinion as to how all of this went down?
THE WITNESS: No.
MR. SCOTT: Okay. What are you seeking to --
THE WITNESS: My analysis of the evidence that was collected and the condition of the apartment based on the photographs that were taken at the time of the incident.
MR. SCOTT: Okay. Do you seek to offer an opinion in any way?
THE WITNESS: Well, it depends on the questions that I'm asked.
MR. SCOTT: Okay. Well, you can make general observations like we all can looking at these pictures; can you not?
THE WITNESS: I can.
THE COURT: Okay.

THE WITNESS: And I can offer an opinion if I'm asked to about certain aspects of the photographs.

MR. SCOTT: What do you seek to offer an opinion? I'm just curious. I've never -- we've never met, have we?

THE WITNESS: Not that I'm aware of, no, sir.

MR. SCOTT: What do you seek offer -- because we had a medical doctor in here to talk about trajectories. You didn't examine the wounds, correct?

THE WITNESS: No.

MR. SCOTT: And a pathologist has, are you aware of that?

THE WITNESS: He did the autopsy, yes. I'm not sure anyone has done a true trajectory analysis, but it would be impossible to do in this case.

MR. SCOTT: You didn't examine the bodies?

THE WITNESS: No, I did not.

MR. SCOTT: I'm just trying to get to the bottom of what your testimony -- what do you seek to offer opinion evidence toward in this case?

THE WITNESS: Well, I will offer the opinion that there was obviously some sort of altercation that took place inside of this apartment.

MR. SCOTT: Okay. All right. But you weren't there that day?

THE WITNESS: No.

MR. SCOTT: Judge, I don't -- you know, I don't know that -- I'm fine with observations generally. I'm fine with talking about an overturned TV. It does not seem appropriate for him to opine that an altercation took place. I don't know that we're even really countering that per se, but just opinion evidence based on pictures without even going to the scene, not being there at the time, I don't know he's spoken with officers. I don't think opinion testimony in this case is appropriate. I have no problem with him generally stating his observations as to the pictures and whatnot.

LUKE SHEALEY: And I have an additional question that might help here, Your Honor.

BY LUKE SHEALEY:

Q Mr. Tressel, you were provided complete discovery in this case?

A Yes, sir.

Q Including CSI Potash's diagrams of the crime scene with measurements?

A Some measurements, yes.

Q And diagrams, which are already in evidence, of positions of shell casings and bodies and blood?

A Yes.

Q Okay. Now, if I had hired you on February 7th, 2019, and said go bust up that crime scene based on your history

of law enforcement, would you have been allowed to enter the crime scene, pass the crime scene tape and nudge Investigator Potash aside and say let me do some work in here?

A Not without the court's knowledge.

Q Now, you've testified in this courthouse for me before as a crime scene expert on a double homicide case, do you remember that?

A Yes, sir. Don't ask me the name.

Q The State vs. Todd Parvo (phonetic) ring a bell?

A Yes.

Q Before the Honorable Clifton Newman, who admitted you and qualified you as an expert in crime scene construction and analysis?

A That's correct.

Q Did you in that case go out to the crime scene the day of the incident and look at shell casings and marks in the sand and all that in that crime scene at the home?

A No.

Q Of Woodland Drive?

A I did not.

Q Yet, you were still admitted in this case based on your view of the evidence?

A Of the documentation and evidence that was collected, yes.

Q Which consists of pictures of blood, right?
A Yes.
Q Consists of pictures of blood castoff?
A Yes.
Q Consists of your view of turned over tables and holes in walls?
A Yes.
Q Do you have an opinion to render on wounds and whether they're consistent with a bite or not, correct?
A Yes.
Q And you agree that crime scene with the City of Columbia department did a fairly good job of documenting this house?
A Yes.
Q And based on that documentation, that provides you the ability to render some opinions in terms of crime scene analysis; does it not?
A Yes, and crime scene evaluation.
LUKE SHEALEY: Your Honor, he is qualified and is not disqualifying that he was not able to elbow his way into the crime scene on February 7th, 2019. If that were the standard, we would never have any experts admitted regarding crime scenes, so that is not the standard. He can do it based on the detailed photographs, analysis and diagrams that he's reviewed in this case, quite simply.

And I'd seek to qualify him at this time.

THE COURT: All right. Yes, sir?

MR. SCOTT: Just, you know, you were an investigator for how many years?

THE WITNESS: Been investigating since 1975.

THE COURT: 1975, he said.

MR. SCOTT: Okay. You went straight to investigations in '75.

THE WITNESS: Year and a half as a patrol officer, went straight into homicide.

MR. SCOTT: It just occurs to me, what was the first thing you did as an investigator when somebody said hey, we got a homicide here? What was the very first thing you did?

THE WITNESS: I notified my superiors and I responded to the crime scene.

MR. SCOTT: And that's my point, why didn't you do that here? I mean, I know the bodies are gone. I understand that. And I understand the tables and chairs may be removed, maybe, maybe not, but you always go and check the crime scene. You've been doing that since 1975. That's 48 years.

THE WITNESS: That's what we hope law enforcement does is document the scene correctly.

MR. SCOTT: I know, but if you are here to testify as

an expert and provide an opinion, it just -- I mean, I've been to the scene. I've walked over there. And you've been on -- I think you've been on this case longer than me. I only started in this officer less than a year go.

THE WITNESS: Well, I live in Atlanta, Georgia, and you live here in Columbia somewhere.

MR. SCOTT: I know that, but how much are you getting paid?

THE WITNESS: How much am I getting paid?

MR. SCOTT: Yeah.

THE WITNESS: For this and, potentially, down the road, $3,000, plus 2500 is the initial retainer.

MR. SCOTT: That's plenty to get from Atlanta to here to investigate a scene, isn't it?

LUKE SHEALEY: Your Honor, we're getting into opinion from Mr. Scott about monetary travel arrangements. Let me interject a rule into this case.

THE COURT: Hold on. Let him finish his questions and then I'll you all argue --

LUKE SHEALEY: Well, he's not questioning, he's asserting characterizations about money and what you can do with money.

THE COURT: All right. We're going to move on. The objection is going to be overruled, but please move on. I may have signed the -- I may have been the one that signed

the form to pay him. I don't know. I mean, I know what they pay, so we can move on.

MR. SCOTT: Well, you would have been compensated to come here and visit the scene; would you not?

THE WITNESS: It would have been included in my fee, yes.

MR. SCOTT: So nobody was holding you back from going and checking out the scene.

THE WITNESS: Just the delay from the time of the incident to the time I got involved in the case.

MR. SCOTT: Okay.

THE WITNESS: And we had good documentation of the crime scene.

MR. SCOTT: And you are going to testify to blood patterns, is that what you said?

THE WITNESS: I can talk about some blood patterns.

MR. SCOTT: You've been qualified as an expert in blood --

THE WITNESS: Blood spatter interpretation, yes.

THE COURT: And you seek to do that by looking at photos here?

THE WITNESS: Not on this case, no.

MR. SCOTT: You just generally want to opine about whether or not a skirmish occurred?

THE WITNESS: Well, that and the evidence collected.

MR. SCOTT: But would the person who actually collected the evidence be better suited to talk about the evidence collected?

THE WITNESS: About how he collected it, yes, but not about whether everything was collected or how thorough that collection was.

MR. SCOTT: I don't quite understand how his opinion testimony aids the court in this particular case. Again, I have no problem with just general observations based on the pictures and whatnot. Clearly, Your Honor, can see the same pictures he's going to look at and form opinions, you know, if the court considers applicable. It just does not strike me as an appropriate expert in this particular case.

LUKE SHEALEY: Your Honor, if it please the court?

THE COURT: Yes, sir.

LUKE SHEALEY: It seems like Mr. Scott's main objection seems to be that Mr. Tressel didn't go to this apartment. Obviously, he doesn't -- he's testified he wouldn't have access to that. He wasn't hired in time to do that.

If he had gone there a year ago, what we would find is a cleaned up apartment with someone else living there. I've been there. The holes are fixed in the walls. The blood has been removed. There's been a thorough cleaning

process. The floor has been repaired. So it's not really relevant.

But Rule 703, the basis of opinion testimony by experts allows an expert to base his opinion on the work of other experts. So in this case, the crime scene expert, CSI Potash, who took all these voluminous photos that have already been in evidence, what we can read from the forensic scientist Greer's testimony in his report, these are all what my crime scene analysis expert can base his opinion on. He doesn't have to have access and custody and control of all that evidence and do his own testing.

It's clearly appropriate, clearly proper and certainly good enough for Judge Newman several years ago on a double homicide for this particular expert. So I would object to the State's objection. I don't think it has any merit whatsoever. I would seek to admit him in crime scene analysis and firearms generally.

THE COURT: All right. I'm looking at Rule 701 and 702. The court considers the following things: Is the subject matter beyond the ordinary knowledge of, in this case, the court requiring an expert to explain the matter? I would say yes. Is the substance -- is the witness qualified? This is where -- he is qualified to testify as to crime scene analysis and evaluation. I do not believe

he can testify to reconstruction or give opinion testimony as to reconstruction because he's never been to the scene to reconstruct the scene.

Firearms, I'm not quite sure what opinion testimony he's giving as to firearms. There's not been any -- he's -- obviously, he's a patrol officer, so he's familiar with -- he's been a patrol officer, he's been an investigator, medical examiner. I'm just not sure what you're trying to opine from him regarding firearms. He says that he is not qualified to testify to -- I think he said projectiles --

THE WITNESS: Analysis.

THE COURT: And analysis. So other than -- I'm not sure what you're eliciting from him regarding firearms, other than general knowledge that everybody else has.

LUKE SHEALEY: Well, perhaps, I can flesh that out. What I can establish is he's not like Paul Greer. He doesn't have a microscope and compare striations and rifling characteristics. He has more than just what you and I would know about firearms. And I can flesh this out more with him if it suits the court.

BY LUKE SHEALEY:

Q Tell us what your qualifications and training are concerning handguns, firearms, generally, tell the court.

A Well, the functionality of the firearm, the pistol,

revolver works a particular way by rotating the cylinder. A semi-automatic will eject shell casings to what we call upright rear to some fashion. How far will they throw gun powder based on laboratory testing, we've looked for gunpowder, gunshot residue, it's now called. We called it gunpowder years ago. You know, we look at guns and their functionality and how well they function. What are the characteristics of each weapon and the caliber. And then we have to look at the ammunition that's being used. What is the function of that ammunition, how does it usually react.

Q And have you received training in that?

A Oh, yeah. Matter of fact, my resume as ATF firearm school that I went to where we probably fired 100 different weapons and how they function and what you can expect from them.

Q And are you capable of identifying the difference between jackets, cores, fragments, class and caliber of a projectile?

A Well, I don't do the class and caliber except on visuals.

Q Right. You know what can be fired from a particular gun?

A From particular gun and so forth, yes.

Q But you have certainly more training than being a

patrol officer who happened to be carrying a sidearm?
A Yes. I've dealt with firearms for 40 some years now and on my own firearms and how they react and how they function, what can you expect from them.
Q In addition to the ATF training?
A In addition to the ATF and firearms training.
LUKE SHEALEY: Your Honor, are you more satisfied regarding his qualifications on that?
THE COURT: He's got questions.
MR. SCOTT: Again, I just don't see -- I'm fine with him testifying how a gun works. I don't understand why we need opinion testimony for that.
THE COURT: And you want to keep bringing up Judge Newman, but I've tried numerous murder cases and the guys come in from SLED and they talk about -- let me say, I don't have a problem with the analysis and evaluation. I'm a little troubled with the reconstruction because he's not been to the scene and --
LUKE SHEALEY: I can withdraw that qualification. I think I already have.
THE COURT: Okay. And the firearm, they usually come in and testify that they test the gun and they -- so if he's -- I mean, I don't know if any of that has happened in this case. So that is my concern regarding him testifying.

Now, he can talk about guns and how they work and any differences between different guns, but I'm not sure even what opinions you're going to ask him and maybe we just need to -- I need to go ahead and qualify him and they can object if there's an opinion or question that you're listening to on an opinion that he may not be qualified to testify to. But I think he has to -- I think it has to be some testimony regarding -- if he's getting into trajectory of the gun, I think that's going to be beyond what he's qualified as an expert to testify for purposes --

LUKE SHEALEY: Sure. He has clearly stated and I've not sought to admit him as a firearms ID expert. That is what Paul Greer. Do you routinely -- and I understand you listen to experts all day long in numerous trial, many of them in the custody and employment of the State of South Carolina.

THE COURT: I understand, I understand that, yes. Usually they have the benefit that it is in SLED's custody or it's in the police department's or sheriff's department's custody.

LUKE SHEALEY: And, occasionally, the defense has to seek other experts that may have different opinions. They might have the same opinion, you know, whether it's DNA. You know, we're not going to bring necessarily SLED's DNA

analyst. In this case, we did because she said perfectly fine things. Here, we sought a crime scene analyst, who happens to also be qualified and moved previously as an expert in firearms. That's all I'm seeking to admit. I don't have to be hamstrung and try to call George Potash here in this hearing if I don't want to. The State could call George Potash.

THE COURT: Well, as to CSI, I don't find that to be an issue. I think he is qualified to testify. He's been a medical examiner. He's been an investigator. He's been a parole officer. I mean, I do think he's qualified -- I was going to get to that. I think he can qualify as an expert in CSI. My concern is if you want him to testify as an expert in -- as to the guns and the projectiles and the trajectory, that is where I think you need to develop more expert -- you need top ask him some more questions to get him qualified as an expert in that area.

LUKE SHEALEY: Well, what I sought to qualify him was in firearms generally. I didn't seek to qualify in what Paul Greer does. He's attended the ATF firearms school.

THE COURT: What year did you attend that, sir? I have that written down, but I don't have which year you attended.

THE WITNESS: I'm sorry?

THE COURT: Where and when did you attend the ATF

firearms school?

THE WITNESS: It was while I was with Cobb County PD, so it was prior to '85. I'd have to look on my resume.

THE COURT: They didn't give me -- I need his CV. If you have an extra copy, I'll take a look at it.

LUKE SHEALEY: I'm let him refresh his memory and I will just give you that copy, Your Honor.

THE COURT: Okay.

THE WITNESS: 1981.

LUKE SHEALEY: I can hand this to Your Honor if you'd like to review it. I think he's qualified in firearms. If the State thinks he's exceeding the scope of his expertise, I'm sure they will object and we can pick that up at the appropriate time.

THE COURT: Anything else from the State?

MR. SCOTT: No, Your Honor. I just contend an expert in firearms was overly broad. In 1981, he took some course in firearms investigations techniques from the Department of Treasurer. I was two years old in 1981. I don't see -- for him to testify as an expert generally in firearms, that's far too broad. Again, I think he can talk about the difference in a semi-automatic and a revolver. He can talk about casings being ejected from the right or from the left, but to form opinion testimony just firearms, in general, we don't think it would be

appropriate.

THE COURT: What are you wanting him to testify to? I mean, I guess in terms of firearms, what are opinion are you seeking from him?

LUKE SHEALEY: Shell casings, identifying projectiles.

THE COURT: Well, all of that I think would be a part of his CSI investigation.

LUKE SHEALEY: It's quite a crossover. So if you agree with that -- I'm not asking him to do what Paul Greer does, I'm just not.

THE COURT: Well, I'm going to qualify him as an expert. I do find that based on his education and experience that he is qualified to get in -- to testify as a crime -- in the area of crime scene investigation and evaluation, I believe is what he said. And I assume as a part of crime scene investigation, that is also -- there is, you know, he can discuss shell casings and yes -- but if there's anything that they ask you all have the right to object and I can handle it at that time.

LUKE SHEALEY: Thank you, Your Honor.

THE COURT: All right.

BY LUKE SHEALEY:

Q Mr. Tressel, at some point, were you employed in this case, obviously?

A Yes.
Q It was not on February 7th, 2019, was it?
A No.
Q I think you said about a year ago?
A Yeah, sometime, I believe it was in early 2021 somewhere.
Q And you get paid money for your work?
A I do.
Q Have you received a lot of information from the defense for your review in this case?
A I have.
Q Have those consisted of pretty much all the crime scene photos that were taken in this case?
A Yes.
Q Have you received and reviewed the diagrams in this case from CSI Potash?
A I have, yes.
Q Have you read over and reviewed the pathologist report about his findings?
A I have.
Q Have you read over and reviewed the forensic scientist, Paul Greer's, firearms report in this case?
A I have.
Q And you have no problem reading that and determining what he means in his report?

A No, I did not.
Q Okay. I want to show you some photos. You tell me if you recognize these, Defense 9 through 12 are already admitted, but do you recognize those photos as part of what you see in this case, the crime scene?
A I do, yes, sir.
Q Okay. Part of discovery you reviewed?
A It is.
Q I'm going to show you some more photos and ask if you recognize these as also being part of the crime scene photos in this case. These are items 60 through 72. Take a quick look and see if you recall those?
A I do.
Q Do you recognize those being the CSI photos you received in this case and that you reviewed to help form an opinion in this case?
A Yes.
LUKE SHEALEY: Your Honor, at this time, I would seek to admit Defendant's 60 through 72.
THE COURT: Any objection? Oh, I'll give you chance to look at them.
MR. SCOTT: No objection, Your Honor.
LUKE SHEALEY: Your Honor, that is without objection.
THE COURT: All right. Sixty through 72 will be entered without objection.

(WHEREUPON, Defendant's Exhibit Nos. 60 through 72 admitted into evidence.)

BY LUKE SHEALEY:

Q Mr. Trestle, I want to talk to you more specifically about some of these photos. Obviously, you've seen this photos generally of these two young men dead in the living room of this apartment, correct?

A Yes, sir.

Q You've seen that their legs are kind of crossed over one over the other, correct?

A Yes.

Q And you noted that appears to be what to you?

A It's an impact with the wall fracturing the sheetrock.

Q Does that look like a closer photo of that?

A Closer photograph, yes, sir.

Q And that type of impact -- I mean, obviously, you weren't there that day. You have no personal knowledge about whether that was there before or not, but what would this indicate to you if you're walking through this part of that crime scene?

A Well, the fact it's so broad from the centralized fractures, it's some sort of body impact.

Q Okay.

A Or a large object impact.

Q Okay. And looking at Defense No. 71, do you see any blood there?
A Yes, sir, I see blood drops.
Q What does that tell you?
A Well, by looking at that, you can tell the directionality the blood was coming from. It was coming from the top of the picture towards the bottom of the picture. It impacted and left what we call the tell-tell tail.
Q Okay. Can you glean anything else from that or is that all?
A With no measurements, you can't tell anything from it other than it came from above where the photograph was taken.
Q And you, based on your experience and training, gave an opinion about whether that is -- that type of blood spatter, if you want to call it, appears to be from a gunshot wound or some kind of blunt trauma. Do you have an opinion an that?
A Because of way the top one slides so much with a long tail on it, that's what we call projected blood. It's got movement. An object that had blood on it was shaken in such a way or moved in such a way that the blood came off and traveled down.
Q So not from a gunshot wound, but some object that had

blood?
A Something that had blood. It could be from a bloody hand, it could be a lot of different things, but it was something bloody, had blood on it that created the two stains you see there. And they're probably from the same object at the same time because they're parallel.
Q Now, you've already testified that you reviewed the two autopsy reports in this case, correct?
A Yes.
Q And you're aware that as to Mr. Griffin this wound right here has been listed as a stellate wound?
MR. SCOTT: Just to correct, that's Mr. Dash.
LUKE SHEALEY: I'm sorry, Mr. Dash. Thank you, Mr. Scott.
BY LUKE SHEALEY:
Q You're aware of that?
A Yes.
Q Do you have an opinion about what type of objects or what could make that type of wound?
A Most of the time when the medical examiner talks about a stellate wound, he's talking about a gunshot wound, it's what we call pressed contact. It's where the gases get trapped beneath the skin before they go into the skull. Stellate wounds can be also caused by a blunt object that has some broadness to it.

Q So if I hit you with my hand, is that going to cause that type of wound?
A No. It would have to be an object that would cause that.
Q Something hard?
A Something hard. Classic is the hammer head.
Q The hammer head.
A Like the head of a hammer.
Q Head of a hammer, okay?
A Something like that.
Q If someone was hit with a pistol in a pistol whip kind of motion, could that cause that?
A It can, yes.
Q And if someone is hit like that, would that be responsible for the type of castoff that he described previously?
A It can, yes.
Q I want to show you this photo. Do you recognize this photo with this TV turned over?
A Yes, sir, I do.
Q And you've read my client's statement in this case regarding hearing a TV crash?
A Heard a TV crash. And if I remember it in the correct order, the TV crashed and then a boom.
Q And I want to show you this photo. How does the rug

look to you?
A Well, it's askew underneath the table. The table has been moved and the rug moved with it.
Q Okay. We've got a much closer photo of that phone jack within that body indent that you described earlier. Do you notice anything here?
A Yeah, we've got dropping of blood again coming from above it.
Q Is that still consistent with some type of castoff object?
A Off of an object.
Q That has blood on it?
A Has blood on it.
Q Okay. Now, generally, you have seen photographs documented in this case, I assume, what has been described as an earring. Does that look like that?
A Yes, sir, that's an earring that matches one of the victims. It's a -- it's missing the back to it.
Q Right. And we know -- I can refresh your recollection. Here's the earring on the other ear of Mr. Griffin?
A Yeah.
Q Does that look like a match to you, matching set?
A Yes, sir, it does.
THE COURT: Identify what you're showing.

THE WITNESS: I'm sorry?
THE COURT: For the report, Exhibit 70.
BY LUKE SHEALEY:
Q Exhibit 70 with the earring in the ear and Exhibit 63 with the earring back on the ground, correct?
A Yes.
Q And Exhibit 65 for the record, what does that look like to you?
A It's the right ear. It looks like that the lower lobe has been ripped open.
Q When you have that kind of evidence with an earring that appears to be torn from a person's body, what does that indicate to you?
A That usually indicates there's an altercation going on and during the altercation, the earring got pulled loose physically by the person that was in the altercation with the person or, depending on how well it's seated, it could have come off during some sort of struggle with the bodies rubbing against each other.
Q And this photo right here, do you see some type of -- does that look like a table leg to you?
A That's what I understand it to be, is a table leg.
Q It's broken, not attached to the table?
A It's broken and not attached to the table anymore.
Q Now, we'll talk about this in a little bit, but do

you know, 66, this, what does that appear to be to you, that shiny object?
A It appears to be a projectile.
Q Does it appear to be relatively intact?
A Yes. From the photograph, it appears to be a copper jacketed, fully jacketed bullet.
Q Do you also recognize Exhibit 59 already in evidence? Are you familiar with what that is?
A That appears to be a lead core of a bullet.
Q That's what goes within -- that's within the projectile?
A Yeah, the copper sits over the top of it. When we're talking about ammunition, you have semi-jacketed and you have fully jacketed. And the fully jacketed is what was in this weapon.
Q Okay.
A And semi-jacketed is a jacket that only comes up part of the way leaving the lead exposed at the top.
Q Okay. And, obviously, you've seen various shell casings collected in this case?
A Yes.
Q And you've had a chance to review firearms before in this case?
A I have, yes.
Q Generally do you have an opinion about whether there

was a struggle or a fight in that living room based on what you've testified regarding the holes, the earring ripped, the turned over tables and broken TV, do you have an opinion on that?

A Well, as an investigator, an altercation had taken place in the apartment.

Q That's your opinion?

A Yeah.

Q Okay.

A An altercation had taken place and they were semi-destroyed the place, knocking tables over, busting the legs, busted the wall, things of that nature.

Q And you reviewed the firearms report in this case?

A Yes, sir.

Q And you reviewed the autopsy photographs in this case?

A Yes.

Q Wounds in this case. You're aware that there are 13 distinct wounds in this case?

A That's exactly what my count was based on autopsy report was 13 distinct wounds.

Q And we're talking about bullet wounds, correct?

A That's how the medical examiner reported it.

Q We're not talking about blunt trauma wounds?

A No. These are 13 gunshot wounds.

Q And you're aware there were seven shell casings in this case collected on the scene?
A Yes.
Q So what opinion do you have, if any, regarding 13 distinct bullet wounds, but only seven shell casings in this case?
A Well, then you have to go back and look at the identification done by Mr. Greer and how many bullets he actually identified because we have so many fragments that are taken out of the head. He identifies eight bullets.
Q Okay.
A And there's only seven shell casings. So the question arises as a crime scene investigator, am I missing a shell casing or do I have another weapon involved with the case that's created more wounds that's occurred with one of the victims.
Q Correct. So you know from reading the autopsy report that there are 13 distinct bullet wounds, correct?
A Correct.
Q We're not talking about through-and-through. We're talking about that have a discernible entry point?
A Entrance point and exit point.
Q So we only have seven shell casings. You testified to that?
A Yes, that were recovered.

Q Does that beg the question in your mind as a crime scene analyst that there is another potential gun involved?
A That would be the first key thing is I've got more wounds than I've got bullets for, so there may be a second weapon involved.
Q And do resolvers leave shell casings?
A No, not unless the person totally fires all five or six rounds, depending on what kind of revolver it is, and then decides to dump those rounds and reload while he's present on the crime scene. If he doesn't reload and takes it with him, the shell casings would be on the crime scene.
Q Having fully reviewed the firearms report, you're aware that there are two items in that report that do not match Mr. Barnes' gun, correct?
A That's correct. They're inconclusive.
Q Inconclusive is the term?
A Uh-huh.
Q You're aware from reading it that they are able to get some class characteristics out of some of those items?
A Yes. SLED uses the world nominal, it's what we call a 30 caliber class bullet.
Q And that just means -- and he listed in his report that the item 22, which is associated with Mr. Dash, could

have been fired by a 38 Special, 357 Magnum, amongst others, or nine millimeter?
A Or nine millimeter.
Q And you sat here and listened to Mr. Greer's testimony, right?
A Yes, sir, I did.
Q And this could have been fired by a revolver, as well, correct?
A Yes, sir, could have been.
Q Now, you -- as a homicide investigators, I assume have investigated in your police career multiple crime scenes involving shootings, right?
A Probably in the thousands by now.
Q Okay.
A Between consulting and actually physically working them when I was at the PD and medical examiner's office.
Q And sometimes it takes a while for police to get on the scene and actually secure that crime scene?
A Oh, absolutely. There's -- you can have a delay from anywhere of a couple of minutes from the incident to days later before the incident is called in, then you have response time. And the national average goal with law enforcement on what we call a major incident, which would be a shooting incident, is seven minutes is what their goal is. But you rarely see that occurring anymore

because of short number of officers. Every agency is short of them.

Q Now, in your experience, is it uncommon for weapons to be removed from crime scenes if they are not secured instantaneously?

A No, they can get gone. It depends on other individuals that may or may not be on the crime scene or come to the crime scene shortly after an incident occurs. Guns get missing from crime scenes all the time.

Q From reviewing discovery in this case, are you aware that is, in fact, the case here, that multiple individuals had access to the crime scene prior to it being secured?

A Yes.

Q Having reviewed discovery and looked at the photos, as well of my client and custody, do you have an opinion about whether he's received or had upon his person any wounds indicating that he was in a big drag out fight that day?

A Not that were documented, no, sir.

Q And having reviewed the discovery in this case, you are aware of the DNA results in this case?

A I am, yes.

Q That being that Mr. Griffin and Mr. Dash, the two gentleman on the floor, have each other's DNA under their fingernails?

A Yes.
Q Does that help shape your opinion in any way about whether they were engaged in an altercation?
A It would be an indicator that they were physically involved in an altercation between each other.
Q Okay. So, again, just in summation, you believe we've got too many gunshots for shell casings?
A Yes, sir.
Q We have seven shell casings and, at least, eight identifiable projectiles?
A Yes.
Q And these guys were involved in what appeared to be a very violent altercation, Mr. Dash and Mr. Griffin?
A It does appear that way, yes, sir.
LUKE SHEALEY: Beg the Court's indulgence.
(Pause.)
Mr. Tressel, I don't have any further questions for you right now. Please any questions Mr. Scott may have for you.
THE WITNESS: Certainly.

CROSS-EXAMINATION:

BY MR. SCOTT:
Q Could it be possible some of that broken furniture could have existed before that day?
A Yes, sir, it could have been.

Q Have you looked at that dump you guys did on Mr. Barnes' phone?
A I did not review the phone records, no, sir. It didn't have anything to do with the crime scene.
Q Well, if I said I have pictures from his phone of the crime scene prior to February 7th?
A Prior to February 7th?
Q Yeah. So you could have looked at those and seen what the general appearance of that room looked like before the date in question, correct?
A I could have, yes.
Q Somewhere in there, if I was to show you I've got a picture of Mr. Dash standing beside the broken furniture, would that be compelling to you in any way?
LUKE SHEALEY: Objection. He's going to have to show him a photo.
MR. SCOTT: Let me look for it.
THE COURT: All right.
BY MR. SCOTT:
Q But you did testify that it was noteworthy --
THE COURT: The objection is sustained.
BY MR. SCOTT:
Q Let me just -- you did testify that the broken furniture was noteworthy?
A Well, it was part of the indication as I said an

altercation had taken place inside apartment.
Q Okay. State's No. 13?
THE COURT: What's the number again?
MR. SCOTT: It's 13.
THE COURT: All right.
BY MR. SCOTT:
Q Maybe the place has just always been a pigsty, huh?
A Well, I wouldn't call it a pigsty, but it's got a broken kitchen -- what appears to be a broken kitchen chair.
Q Yeah. Is that something you reviewed in the discovery and you made an assessment that an altercation happened based on that broken furniture?
A Not in this photograph.
Q You've never seen that broken chair?
A You just asked me if I saw the phone dump.
Q Did you see this broken chair in other photographs of the crime scene?
A I saw a broken table, a chair leg.
Q State's No. 12. I thought you had looked at all these pictures?
A Sir, there's 100 pictures and I'm in my third hearing in three weeks.
Q Well, you're an expert, though. I just wanted to make sure you're familiar with everything.

A Yeah, they obviously didn't get rid of the broken chair and it's over in the corner near the trash can.
Q Okay.
A And not near the other damages in the apartment.
Q Okay. So evidence of broken furniture when Mr. Dash is clearly still alive, correct?
A Yes, sir, I imagine so.
Q You recognize who that is?
A Actually, no, I do not recognize him from his autopsy pictures because he doesn't look exactly the same.
Q What have you reviewed again in forming your opinion here? You don't know what the victims look like? That's Antonio Dash.
A Okay. I'll take your word for it.
Q You shouldn't take my word for it. You should take your investigation.
A Is that a question?
LUKE SHEALEY: Your Honor, I'm going to object at this point.
MR. SCOTT: All right.
LUKE SHEALEY: His characterization of the investigation. He's testifying in kind of in a baseless pointless way.
MR. SCOTT: He's an expert.
THE COURT: The objection is sustained. Rephrase the

question.
BY MR. SCOTT:
Q All right. Now, you did -- I know you listened to Mr. Barnes' statements because you testified to that earlier?
A Yes.
Q Remember that point when he said Eric Griffin had a revolver and pointed it at him? Do you remember that part?
A I do remember that.
Q You do?
A Excuse me, my apologize. It's not in his interview.
Q Okay. If I ask something and you need me to repeat it, just --
A I just apologized.
Q Okay. And do you remember that point when he said Antonio Dash pointed a pistol at him?
A No, sir.
Q Okay. Do you remember that time when he said he was in his bed and he kept hearing gunshots coming from the living room?
A No, sir.
Q Okay. Do you remember that time he said he saw a gun on Rick Griffin in his statement?
A I don't remember that, no, sir.

Q Okay. Maybe because he never said that?
A I --
Q You read the statements?
A I don't have everything totally separated out. And the interview, I listened to.
Q You agree with me an expert needs to be held to a high standard?
A And my process was the crime scene, not the interview.
Q But you relied on all the discovery in forming your opinion. That's the basis of your opinion?
A I have the discovery, yes.
Q So how many people were on the scene -- who was the first officer to arrive?
A I don't know off the top of my head.
Q Would you disagree with me that it was Officer Dwyer?
LUKE SHEALEY: I'm going to object to the relevance of this line of questioning, Your Honor.
THE COURT: What's the objection?
LUKE SHEALEY: Relevance, 401.
MR. SCOTT: He's a crime scene expert.
THE COURT: Objection is overruled.
LUKE SHEALEY: He's asking him to list out who is first there amongst legions of officers as a way to try to say he's not a good crime scene expert. He's not a --

THE COURT: I don't know. What's the question after that.
MR. SCOTT: The question after --
THE COURT: He has the right to question the expert. I mean, all of that goes to weight.
LUKE SHEALEY: Ask good questions.
BY MR. SCOTT:
Q Okay, here's a good question. Did you see Officer Dwyer's body cam video?
A Yes.
Q Okay. First officer there?
A Yes.
Q Okay. Do you remember the room was well lit?
A I can't say as I can remember it was well lit.
Q Do you remember the blinds were opened?
A I believe so, yes.
Q State's No. 19. Let me see if this is a good question. Are those blinds open?
A One is and one isn't.
Q Okay. You see the light pouring in through the window?
A Through the one that's on the far right.
Q And when Dwyer gets to the scene, how many people are already in the room, the living room?
A To be honest with you, I do not remember.

Q Several?
A Based on the reports, yes.
Q So you talk about guns sometimes walking off the scene?
A Yeah, guns disappear.
Q Do casings sometimes get kicked around and casings sometime leave the scene or can casings sometimes not be accounted for?
A Well, casings do bounce, roll. They can get picked up under certain conditions. The conditions being intentionally picked up by somebody, or a second would be if somebody is wearing a -- I call it a work-type boot that has the heavy lugs on the bottom. We've had police officers carry shell casings on the bottom of their shoes after they've entered into a crime scene. So there's different ways that it can get out of a crime scene, yes.
Q So there are explanations of how casings can come up missing?
A There are sometimes, yes.
Q Okay. Let me show you what's been admitted as State's No. 15. Do you recognize that individual?
A Do I recognize the photographs?
Q Do you recognize that as Antonio Barnes?
A I couldn't say one way or the other, sir.
Q All right. Well, you are qualified to, what,

firearms identification?
A Yes, sir.
Q How many different guns do you see in that exhibit?
THE COURT: He was not qualified in firearms.
MR. SCOTT: Okay.
THE COURT: He was qualified as an crime scene.
BY MR. SCOTT:
Q Don't offer an opinion. How many different guns do you see in this?
A Readily identifiable, three.
Q Three different guns?
A Three different guns, readily identifiable.
Q Okay. Is it possibly more?
A There could be. But there's not enough detail of the guns themselves.
Q I don't have the exhibit, but the blood dripping?
A Uh-huh, yes.
Q We don't know how that got transferred?
A No, sir, we don't.
Q Your opinion was it dripped off something?
A It's what we call blood in motion, so it had some projection to it. I use the example if you cut your finger and you shake it, blood comes off the end of your finger, that's blood in motion.
Q Okay. Do you recall on the body cam multiple people

touching the bodies, walking through the blood?
A Oh, yeah.
Q Even Officer Dwyer?
A Yes, sir.
Q You don't make any assumptions, certainly, of who cast that blood off, do you?
A No, sir, I don't.
Q All right. I think that's all. It would be wild speculation on your part to say that there was another gun. You have no evidence that there was another gun?
A I have no physical evidence of another gun. I have physical evidence that indicates there might have been another gun.
Q Well, I might walk out of here and get in a 2022 Rolls Royce and drive away from the courthouse, right?
A The answer is, I doubt that.
Q Okay. But it's a possibility, right?
A It could be.
Q Okay. And maybe there was another gun. We certainly -- you listed, at least, three that Mr. Barnes poses with?
A Maybe it was, I don't know.
Q And he was able to -- you understand that he was able to get a friend of his to move his gun away from the scene?
A Yes.

Q Okay. So we don't know what he did with those other guns in those pictures, do we?
A Not unless they were recovered somewhere. I don't have documentation of that, so I would say there is nothing located.
MR. SCOTT: Okay. Well, I appreciate it. Thank you. That's all the questions I have.
LUKE SHEALEY: Briefly, Your Honor.

REDIRECT EXAMINATION:

BY LUKE SHEALEY:
Q In addition to your extensive of crime scene training, you also have powers of deduction, correct?
A I hope so.
Q So just again, you testified we have 13 distinct bullet wounds identified, right?
A Right.
Q And seven shell casings?
A Correct.
Q At least, eight projectiles.
A Yes.
Q It stands to reason based on powers of deduction that something else other than what powered those seven shell casings was fired in this case, correct?
A Yes.
Q There's just too many bullets holes?

A There's too many bullet holes.
Q Too many projectiles?
A And projectiles don't match the number of shell casings and the number of shell casings and the number of projectiles recovered don't match 13 distinct gunshot wounds.
Q Right. Now, we've got -- we know from discovery that after Mr. Barnes did this shooting that he was quickly -- the apartment was quickly approached by family members of one of the decedents, as well as one of the witnesses?
A Yes.
Q Within a couple of minutes, right?
A Apparently so, yes.
Q And you're also aware that nobody indicates that he left or left the apartment prior to them confronting him?
A Not that I've seen anywhere.
Q But then he exits per discovery?
A Yes.
Q He gave one gun to a lady by the name of Smalls?
A Yes.
Q Gave one, but not two?
A According to all the documentation, it was one gun.
Q So I guess if he had two, he could have given two to her if he had two, right?
A I assume he could have.

Q And we know there's very likely another gun in this case, right?
A I would suspect there's another gun involved in this case, yes.
Q And you're aware relatives of the decedent were on the scene before police?
A Correct.
Q Do you have any idea of when this State's 15, kind of selfie photo from his phone was taken?
A I have no idea.
Q You don't any idea? You haven't seen it?
A I haven't seen it. I haven't looked at the data. There is a thing called meta data that you can pull the data, but you have to request it.
Q Now, he asked you to look at a picture of a broken chair by the kitchen?
A Yes.
Q And a photo -- any idea when this photo was taken?
A No, sir, I don't.
Q But that same broken chair appears to be in actual crime scene photos?
A What is marked as State's 12.
Q Is that anyway near to where the actual struggle actually unfolded?
A No. It's opposite, virtually opposite of where the

struggle took place.
Q Does that have any relevance to you regarding this case whatsoever?
A No. Because, like I said, it's sitting with the garbage can. It's going to be taken to the dumpster outside eventually.
Q But what was relevant to you was the broken TV table, broken TV, the huge hold in the wall, shell casings, projectiles, blood?
A That's it.
LUKE SHEALEY: Nothing further, Judge.
THE COURT: All right. Yes, sir, anything else?

RECROSS-EXAMINATION:

BY MR. SCOTT:
Q Were you here when the pathologist testified?
A No, I was not.
Q But you reviewed his autopsy report?
A I've read his autopsy report several times.
Q And did you know there was, at least, five through-and-through wounds between the two of them?
LUKE SHEALEY: I would object, that's a mischaracterization of evidence.
THE COURT: Sustained.
BY MR. SCOTT:
Q You read the pathology report, tell me what your

recollection is, tell me that.
A It appears based on my calculation, it's about seven. Again, it's sometimes hard to tell with graze wounds.
Q But since you're not a doctor, you already told me you weren't, don't rely on your calculations, look at Dr. Monroe's pathology report and tell me how many through-and-throughs there were?
A I'd have to pull the report and count the --
LUKE SHEALEY: Object to the form of the question. I don't think it is a question.
MR. SCOTT: Okay.
THE COURT: Sustained. Please rephrase the question.
BY MR. SCOTT:
Q Would you agree there were -- Dash had five exit wounds?
A Yes.
Q Okay. Do you agree there was one exit wound on Griffin?
A Yes.
Q Okay. All right. Some of these bullets are going in and out of a person?
A Yes.
Q Okay. And just like me and just like that gun possibly being on the scene you're talking about, it's possible some of those bullets passed through one of the

decedent and into the other?
A I believe that's possible, yes.
Q Okay. And?
A Based on the -- excuse me, I'm sorry. Based on the autopsy report, usually, when a bullet passes through say an upper arm or something, it changes the shape of the bullet and you get an irregular entry wound.
Q Right. We had an expert testify to that a little while ago.
A Okay.
Q He said sometimes, just like you?
A Yeah. It's not positively a given. One of the reasons that I started to say it's very difficult when you have if you full metal jackets, bullets because they don't perform rapidly.
Q Okay. And tell me how many bullets the magazine or pistol that Mr. Barnes shot these two men, how many bullets did it hold?
A I believe it's a 15 plus one, isn't it?
Q What does your record show? Was it 17 bullets in the magazine and one in the chamber?
A Seventeen, yes. It was enough to hold 18 rounds.
Q All right. So Mr. Barnes had the capability of firing that weapon and ejecting 18 bullets before he had to reload?

A No.
Q What was his capability then?
A When he made the determination to reload.
Q Oh, correct me then.
A You may not empty the magazine completely. Law enforcement sometimes teaches when there's a lull in the shooting data, drop a dead magazine, it's dead if it's only got four rounds left in it, insert a new one. So you're now back to the 17 plus one.
Q Let me ask this a different way. Fully loaded, Mr. Barnes aiming at those two fellows, how many times can he pull the trigger and fire bullets?
A Eighteen times.
Q All right.
A If there's one in the chamber at the time.
Q Eighteen times. He can shoot 18 bullets at a time with that weapon. Did you examine that firearm?
A No.
MR. SCOTT: Thank you.
LUKE SHEALEY: Nothing further.
THE COURT: You may step down. All right. Thank you.
Any objection to this witness being excused?
MR. SCOTT: No, Your Honor.
LUKE SHEALEY: No.

THE COURT: All right. You're free to leave. Thank you.

All right. Call your next witness.

LUKE SHEALEY: Your Honor, the defense rests in terms of this immunity hearing.

THE COURT: All right. Does the State plan on calling witnesses?

MR. SCOTT: No, Your Honor. We're prepared to -- well, would you have arguments today or -- I've got 2:25 or so.

THE COURT: I was thinking we would. How long do y'all think you're going to argue? And I was going to -- how long do y'all think you're going to argue? I was going give you the opportunity -- well, let me ask you this, does Judge Lee have this scheduled for trial?

LUKE SHEALEY: Not yet, Your Honor. She wanted to see what would happen with the immunity hearing.

THE COURT: And then I was going to give you all an opportunity to present proposed orders. I'll let you argue and present proposed orders.

Okay. Yes, ma'am.

MS. YOUNG: So, Your Honor, if I don't clean this up, I'm going to get yelled at. All morning or all day, I've meant to revisit Officer Castro body worn camera issue. We did get informed this morning by the solicitor's office

that, apparently, this Investigator Gilliam did, in fact, go back and try -- I don't know what he did.

What we got told was that his body warn cam wasn't activated. And given the fact that he testified that he believed it was activated, we just wanted to inquire further as to how they know that? What steps were taken to ensure that it was not activated and does not exist?

THE COURT: All right. State?

All right. You're still under oath.

INVESTIGATOR GILLIAM: Yes, ma'am. Your Honor, what I did was went back and print a copy from 8:20 in the morning of February 7th through, I think, 10:58. I went each line and I made sure when I highlighted one that I put in the next one showing his body cam was, I think, 255 or -- I'm sorry, his body cam number didn't even show up, so that's why I had to contact him again last night to make sure what his number was. And, again, he gave me -- I'm sorry, 2526. And I made a copy of everything from 8:00 something in the morning till 10:00 showing his body cam was never in that -- never even was activated that they can upload to the system.

THE COURT: So he probably thought he activated it, but he didn't. But I think you need to get a copy of those reports to the defense.

THE WITNESS: I sent it to them last night.

THE COURT: You have that?
MS. YOUNG: No, we have not been provided that.
INVESTIGATOR GILLIAM: Here you go.
THE COURT: And his number again was what so she can cross-reference it?
MS. YOUNG: I have it, Your Honor. I do have it.
THE COURT: 2526, I think.
MS. YOUNG: Yes.
THE COURT: I'll be glad to hear from you all. Like I said, proposed orders. I don't know how much time you need. I don't know when she intends on trying to schedule it, but if she's just going to wait on me to get her my order, then I guess it's no rush. How much time y'all need on proposed orders?
LUKE SHEALEY: I hope for, at least, ten days.
THE COURT: I'll give you, at least, ten days, Mr. Shealey.
LUKE SHEALEY: It's pro bono, Your Honor, so I've got to make some money, too.
THE COURT: And I know everybody is busy. Judge Lee said Mr. Scott is supposed to be in Kershaw next week trying a case.
MR. SCOTT: April 11th. Scared me a minute there.
THE COURT: She said next week.
MR. SCOTT: April 11th. We can comply in ten times.

THE COURT: Ten days. If you need more time, just e-mail me.

LUKE SHEALEY: I've got a copy of some case law, Your Honor, for your review, if I may approach?

THE COURT: Yes. Thank you.

LUKE SHEALEY: I took the liberty of tabbing and highlighting two things. You're free to ignore them.

Your Honor, this is my motion, or defense motion, so I'll be happy to argue. We're seeking immunity under the protections of Persons and Property Act, 16-11-440. 16-11-420 describes what the intention of the General Assembly was, and I find that persons residing or visiting in this state have a right to expect to remain unmolested and safe in their homes, businesses and vehicles.

They find that no person or victim of crime should be required to surrender his personal safety to a criminal or should a person be required to needlessly retreat in the face of intrusion or attack. And it establishes the immunity provision if the defense can prove by a preponderance of the evidence in a pretrial hearing that a defendant is entitled to that.

We've come a long way in kind of the evolution of the case from Duncan to Curry to Whitman Jones to State v. Douglas to Isaac. And just in layman's terms, what I will tell you is that we've been instructed by the Supreme

Court to instead of just strictly construe the texts of the act itself, to first look at the common law. I think that makes sense because we've got a couple hundred years of common law regarding the application of self-defense. I'm guessing that the Supreme Court didn't like it and all of a sudden the legislature interjected new language that was relatively specific.

So the latest case that has kind of touched base on where we are right now is State v. Glenn. You've got a copy of that with Your Honor. It should be the first case in your stack. That's 429 S.C. 108 cited in 2019. And in that case, a young man got into a shooting incident, it was an attempted murder charge where he was found guilty at trial. And in pretrial, he sought immunity because witnesses said that he had -- you know, the victim was pulling a gun, someone yelled gun and he shot first. And in seeking immunity, the judge quickly denied him immunity by saying well, look, you're on trespass notice, therefore, we think you're at fault in bringing about the difficulty. You were engaged in unlawful activity. So the Supreme Court took a look at that case and said no, that was not the proximate cause.

So based on that, the Glenn case is very instructive and I've highlighted some portions in that. What the Supreme Court wants us to do now in assessing immunity is

number one, address the common law. The classic elements of self-defense first. If for some reason, there's some aspect of self-defense that fails, like if you brought about the difficulty, or if you were in a public place and you didn't abide by your duty to retreat so long as that didn't put you in more jeopard, then you would fail the common law four-element test. Then the court says that you should then be defaulted into then doing a statutory analysis.

So what we're looking at there, I can refer you to page five of that case, first column, accordingly the trial court should first consider whether the defendant had proved the elements of self-defense by a preponderance of the evidence. If the defendant has failed to meet the element of reasonable fear or duty to retreat, the court should then determine whether 16-11-440(a) or (c) is applicable.

So they really want you to look at the common law first. If somehow you fail, then they want you to, I guess, go through analysis of the text of the act, either (a) or (c), whichever one applies. But very clear in the holding of the case at the conclusion is that the courts must also -- the trial courts, Your Honor's court must also conclude a proximate cause analysis regarding any potential failure of the elements of self-defense.

So in the Glenn case, Mr. Glenn was on trespass notice, but there were no facts in the record that being on trespass notice as a prohibited person at that particular complex had anything to do with the altercation itself. So that was not the proximate cause of the problem. So that is the last thing that we are now instructed to do in these immunity hearing that Your Honor is asked to analyze. If there's some raised issue that might be a problem with one of the elements of self-defense. So that's where we were.

So the other thing that I would ask, I would just say this from the get, we are seeking immunity under both (a) and (c), but I will concede that I do not believe that Mr. Barnes is entitled to immunity under 16-11-440(a) as it relates to his roommate, Mr. Dash. And what section (a) is, it's just codified the defense of habitation law. Section (a) makes it very clear that you don't -- what it's giving you is a presumption that someone is there to kill you. A presumption that you're in fear of death or great bodily injury if someone is unlawfully and forcibly entering your house. But it precludes you from having that against your roommate.

I would cite State v. Whitman Jones where a battered woman ended up killing her abusive boyfriend. He lived there, she lived there. They went up on appeal and they

said look, you can get immunity just under section (c), common law self-defense.

You don't get a presumption because, obviously, it would be against public policy if your wife comes home, you know, hey, I thought she was out of town, you're dead now. That's just a bad public policy.

So they're not giving you that presumption for someone that lives there. And I would submit in this case that we have proven by a preponderance of the evidence that he believed he was in fear of great bodily death or imminent danger and it was a very reasonable belief.

I do think we are entitled to that presumption as contained in section (a) as it relates to Mr. Griffin because he does not live there and all the evidence suggests that he was unexpected. There is evidence of extreme forcible violence. I'll talk about the facts of the case. So I think we would be entitled to both section (a) and (c) as it relates to Mr. Griffin, but I think as it relates to Mr. Dash, only the common law elements of self-defense. So the question is have we proven that?

I will note out for you, as well, as we think about self-defense, State v. Rash, 182 S.C. 42, it's in your packet. It's the third case after Glenn. I highlighted some portions. But as we think about the elements of self-defense, this is the case that sets forth that you

may act on appearances. And they quote as one may act on appearances, he may be mistaken.

The law does not hold him to a refined assessment of the danger, provided, of course, he acted as a person of ordinary coolness and courage would have acted or should have acted in meeting the appearance of danger.

He does not have to wait until his assailant gets the drop on him. He has a right to act under the law of self-preservation and prevent his assailant getting the drop on him. If it is apparent or reasonably apparent his assailant is taking steps to get the drop on him, he must take steps first to prevent such assailant from getting the drop on him.

This case is from 1936. It's very good law. It's cited routinely throughout our self-defense cases and it stands for that assessment as you analyze self-defense. You may act on appearances as a reasonably and prudent man would. You don't to be correct. You can be mistaken. You don't have to make a refined assessment. You just have to do what an average person who is reasonable and of the same, as they say, firmness, coolness and courage would do in that person's same shoes.

State v. Hendrix stands for the proposition that once someone is entitled to self-defense and acts to preserve their own life, they are justified in the shooting. Once

you're justified in firing the first shot, you're justified in continuing to shoot until it is apparent the danger to his life and body has ceased. That's coming from State v. Hendrix, which is in your packet.

It's well known that there is no duty to retreat in your own home. Here's what I would submit to you about the case, Your Honor. You've been very attentive and we've heard a lot of evidence. There's no evidence of motive about why Mr. Barnes would want to kill his best friend, roommate, Mr. Dash, and his friend, Mr. Griffin.

The evidence that we do have from Mr. Barnes' statement from the video that you've heard and played of Mr. Barnes' remorseful account of the event from his roommate, Samuel Thomas, is that time of day, Samuel Thomas, who has the only car takes Mr. Dash to work at Wendy's routinely, and he goes to work. When he left that morning, Mr. Barnes' door was closed and he assumed he was asleep. He had no interaction.

Mr. Samuel Thomas, his story of events has been questioned here, but I think the questioning has been fairly well stamped out. We've proven to you by evidence in this case that when he arrives on the scene, even prior to taking a phone call from his roommate, he's telling Investigator Gilliam when I left, one was about to go to work, one was in his bed. That's a direct quote that

Investigator Gilliam agreed with, that Mr. Barnes was asleep.

Later, he does receive a phone call from Mr. Barnes via his own sister and he's testified they talked about what happened, meaning, this is a stressful thing, he's remorseful. He's explaining, you know, I just killed our roommate. He denied ever being influenced in any way. I know Investigator Gilliam believes -- it's his personal belief that he was somehow tainted, but Mr. Thomas has repeatedly denied that any improper influence. He gave two statements consistently to Investigator Gilliam. And we know that he told Investigator Gilliam the same thing prior to him receiving the phone call. So there's no evidence that he was lying for his friend. He was caught in the middle. One of his roommates is dead and one of his roommates is under investigation for the killing.

In terms of providing --you know, Investigator Gilliam, he agreed and he testified at the preliminary hearing and he agreed even here that he could not determine a motive for why Mr. Dash and Mr. Griffin were apparently engaged in a mortal fight to the death. You heard from crime scene expert, the pictures speak for themselves. You've heard from Mr. Barnes' own account that he was asleep. He heard a loud bang, a commotion. His TV crashed. He listened out for his roommates, did

not hear them and believed them to be gone based on usual patterns of that day, and just sat in his bed for a couple of minutes fearful and then ran out to shoot because he believed he was being robbed, he believed he was being home invaded. He believed that if he laid in his bed and waited, he would get, in his own words, smoked, killed.

That is absolutely what he's entitled to do under the case law that I just described. He doesn't have to wait for an assailant to get the drop on him. He just has to act on appearances. He does not have to have a refined assessment.

In his mind and his evidence and the testimony, he believed he was being home invaded because what else could it be? His roommates were not there. None of this would have happened if his roommates had been there. He lives in what he calls the hood and believed that he was being robbed, and if he laid in his bed that someone was going to kill him.

You've heard from witnesses and from the investigator about some excited utterances and other things that came out even as witnesses are pouring into the crime scene. Within a couple of minutes, Mr. Griffin's family is there, as well as Kevin Archie, janitors, Devonte Davis.

People are entering this crime scene. And Mr. Barnes is just uttering statements consistent with excitement,

stress and remorse. I was asleep. When did they get there? They was fighting. Just right moments after the distress of this.

And what we know from review of his own phone, which the State failed to collect, is that he called 9-1-1. Typically, when I try cases, it might be a generalization, but people who aren't guilty of malice, murder, typically, don't call 9-1-1.

It's the ones that are there that want help from police and aren't trying to hide from police are the ones that call 9-1-1. And as we know, by 9:06, he was given his identifying information to Officer Castro.

The shooting occurred per Investigator Gilliam at 8:56. Mr. Griffin got there, per his family's account, five minutes earlier, so we did the math together, 8:51. Within ten minutes, Mr. Barnes is on the scene talking to police saying, I live here. By ten o'clock, he's turning himself into custody. This is a chaotic scene, saying let me tell you what happened. Consistent and remorseful the entire time. Consistent the entire time that he was asleep, that he heard all this commotion, banging, fighting and he thought he was going to die.

It's clear from the tapes that I played with Mr. Gilliam of his interview that he is distraught by this and Your Honor got to hear that. Mr. Gilliam projected

that he thought he was maybe faking remorse, but I think the tape recordings speak for themselves.

So analyzing -- you know, he did -- a gun was removed from the scene. We took great pains to talk about Ms. Shekila Smalls. But Investigator Gilliam admitted that she was a liar. Mr. Barnes, as soon as he talked to police at the apartment manager's office gave up her up. He said yeah, she took the gun. I was in shock. She just grabbed it and left. He never said he gave it to her. He never said I was trying to get her to get rid of this.

Now, she said he told her to hold it, but only after lying for about 45 minutes, denying she ever had the gun. She never testified, the State never called her. That's where that gun went. He volunteered that information. The gun was covered and it was useful in this case.

Had Mr. Barnes never named Shekila Smalls, this gun would have never been recovered. But he did because he wasn't necessarily trying to hide anything. Just like why he called 9-1-1 and just like why he told about seven or eight consistent accounts to law enforcement and other witnesses.

In analyzing the elements of self-defense in this case, one, Mr. Barnes, we've established that he was not at fault in bringing about this difficulty. He had no personal conflict with who he called his homeboy, his best

friend, Antonio Dash. He didn't have any conflict with Mr. Griffin.

What we have presented as the defense because the State had no identifiable motive was evidence that was ignored by police initially and was even corroborated by Iesha Washington, which is what Mr. Barnes said, I'm hearing that Mr. Griffin may have taken a gun from Mr. Dash. Not his gun, doesn't provide any reason for him to be mad at those guys, but it does provide a reason for those guys to be mad at each other.

Consistent with their fighting wildly that day. Consistent with him being truthful when he says I hear bangs, I hear my TV crash. My roommates aren't supposed to be there, so that's why he thinks he's being home invaded. Those guys are fighting and we just supplied the reason why they might be fighting.

Now, the State ignored that evidence. It was part of his interview. It was ignored. It was discounted even when Ms. Washington was describing what she's hearing later in a followup interview about the missing gun.

But Mr. Barnes has not brought about the difficulty. He's asleep. It's hard to bring about a difficulty when he was asleep. There's been no evidence presented -- although there's evidence that loosely over our objection that he might sell marijuana occasionally or that

marijuana was in the house.

There's no evidence in this case about this incident that has anything to do about drugs. This is not a drug deal gone bad. There's no text messages about that. Mr. Barnes -- no one is saying that Mr. Barnes is up and someone shorted him some money and so he got mad and killed them. That's absent from this case. So he's not at fault in bringing about any difficulty, number one.

Number two, the second element for self-defense is he has to show that he had a reasonable belief that he was in danger of death or great bodily injury. You can get by it by showing actual imminent danger or a reasonable belief that you are in danger. Here we're talking about just reasonable belief. And that is why I read to you the acting on appearances language and why I hope you read it again. He doesn't have to have a refined assessment. It just has to be reasonable.

So someone can't -- it's not reasonable if I pull my hand out my pocket and someone shoots me, that's not a reasonable belief. But when you're in your bed asleep and you crashing and banging and fighting and you know your roommates are gone, that is, I would submit, a reasonable belief. And he's testified to that. He just has to do what an ordinary man of firmness and courage would have done in the same circumstances.

Additionally, the fourth element of self-defense is a duty to retreat. Even that is diminished if retreating would have put you in more danger, but there is no duty to retreat in your own house. Classic defense application of case law says there is no duty to repeat. I think for both of these gentlemen, he's established it under the common law self-defense. I don't think it has fault under a statutory analysis because it doesn't fail any of those elements.

Now, the question is does he get the presumption of imminent danger under section (a) under defense of habitation analysis regarding Mr. Griffin? I would say yes. Now, I think he established a reasonable belief that he's about to be harmed, but he also gets that presumption because Mr. Griffin doesn't live there. He wasn't supposed to be there. He's clearly having a forcible, violent fight to the death with one of the occupants of the home. So, certainly, Mr. Barnes would be entitled to enjoy that presumption.

You know, the case law says you don't have -- the courts are not required to just take Mr. Barnes' word for it. Your Honor has heard his word from his own statement that Investigator Gilliam wrote and you've heard his word in various ways through impeachment evidence and various recordings. But there's a multitude of other evidence

that corroborates his word.

We know from his phone analysis that his phone was not moving until just before the incident. Chris Watkins testified that it was consistent with him being asleep till just before the incident as documented. And then there's motion with his phone.

So the State has tried to insinuate through witness Samuel Thomas that Officer Moore, even though it's not in the report and even though she doesn't have the body cam and even though it's not in any notes told Investigator Gilliam that she recalls Sam Thomas saying I think they were up laughing and giggling. Well, that's been completely debunked because Sam Thomas says no, I never said that. No, I never talked to Officer Moore. And we know he talks to Emit Gilliam right away and says one was about to go to work and one was in his bed. He's not awake. If he were awake as the State might try to suggest, I guess you could say well, if you know that they're there, well, that's not reasonable. There's a dirk of evidence regarding that. There just isn't anything there in the record.

We talked a lot about the wounds in this case because I think they're significant and that we appear to have a missing fun. The reason why the defense has banged that drum is because Mr. Griffin, who seems to have a conflict

with Mr. Dash over a missing gun, there's evidence -- I asked Investigator Gilliam pursuant to his own mother is known to carry a gun. He was on bond at the time for a gun-related offense.

So I think it stands to reason that he could have been armed entering that apartment that day when he got into that fatal encounter. We've got too many gunshots. We've got 13 distinct wounds, seven shell casings and eight projectiles.

It's a very important fact that a projectile that is inconclusive was contained inside Mr. Dash's brain. And that's important because if Griffin were armed in coming over there and getting into a fatal altercation with Mr. Dash, it would make sense that the gun that wasn't Mr. Barnes' gun, if it was a gun possessed by Mr. Dash, it would be a different projectile in the gun possessed by Mr. Griffin, it would make sense that the missing unmatched bullet would be recovered from Mr. Dash's head. He had two opposing bullet wounds in his head that don't have exit wounds, Your Honor. One is from the right side. One is from the left side. Dr. Monroe said each one of those would have been immediately fatal and immediately incapacitating.

Number one, there is no evidence to suggest that Mr. Barnes, Tony Barnes came running out shooting. How would

he get one wound on the left and one wound on the right? No. There's an inconclusive bullet in that head that belongs to another gun. Paul Greer said could have been a revolver. Could have been a 38 Special. Could have been a 357 Magnum. It's not on the scene. And you know from trying cases, but you also heard it from the expert today, that is not uncommon.

The State will probably try to say yeah, Mr. Barnes came out blazing with two guns. Well, why would he give one gun away and not the other? That makes no sense. That makes no sense.

Fundamentally, Your Honor, we have established by a preponderance of the evidence that he did not bring about this difficulty, that he acted as a reasonable man would believing he's about to be killed in his own bed. He did not believe his roommates were there.

He was allowed to act on appearances based on everything that was going on in his living room. He's not required to make a refined assessment. He had no duty to retreat. Both of these classes are clearly proven by common law self-defense and immunity.

Additional, as to Mr. Griffin, he's entitled to the presumption under section (a) of imminent fear and death. We don't even need that presumption because it's already proven, but he is entitled as to the unexpected and

violent entry by Mr. Griffin as he's fighting Mr. Dash.

I do hope that you read the case law. I think it pretty clearly speaks for itself, but there isn't really evidence to the contrary in this case other than what the defense has proven. No other motives, no nothing. Thank you.

THE COURT: Thank you.

All right. Yes, sir.

MR. SCOTT: Your Honor, I feel like we may have been in two different hearings. I just heard about testimony of an unexpected and violent entry by Mr. Griffin. I challenge you to recall any time that was testified to. On the contrary, it was testified there were no signs of forced entry.

Certainly, they elicited testimony there was no damage done to the exterior of the door. There was some question whether it was metal or wooden. Certainly, and you can see, there was no evidence of forced entry.

You just heard there was testimony Dash -- either one of his head shots was immediately fatal. We know that's not true because even Kevin Archie said Eric Griffin was passed on by the time he got there. Antonio Dash was still drawing breath.

There has been no evidence that Mr. Barnes was asleep. The closest we got was Mr. Sam Thomas saying the

door was closed. He assumed he was asleep. Other than that, we have a phone that doesn't show movement until 8:49. We have the 9-1-1 call somewhere around 8:56, 8:57 eight minutes before then, he's already started to move around.

Judge, the -- first, the defendant must be without fault in bringing on the difficulty. There's been no testimony from anyone other than Antonio Barnes who was armed with a firearm on that occasion. That was the only testimony you heard.

You heard some speculation, wild speculation that there may have been another gun. Even their crime scene expert says we can't always account for all the casings. Even their crime scene expert said that gun that Mr. Barnes had was capable of firing 18 bullets.

Even their own experts conceded it was either five or six shot wounds between the two of them that had exit wounds. Everybody, including the pathologist and their crime scene expert testified that it was possible some of the bullets passed through one of the decedents and into the other.

Second, defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury. There's been no testimony that anybody offered violence to Mr. Antonio Barnes. It has

been none. No evidence that anybody made any movements towards him. No evidence that anybody presented any weapons to him. They themselves pointed out he didn't have a wound on him.

Third, if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would entertain the same belief. That, to me, is what this whole case kind of boils down to. This idea of reasonableness. In the light most favorable to the defense, the defendant would have had to exit his room -- and the State had some evidence that there was a makeshift bed beside Mr. Barnes indicated the possibility that Mr. Dash had slept beside Mr. Barnes. However, they had a witness that testified no, Mr. Dash slept in the kind of closet right next to Mr. Barnes' room.

So Mr. Barnes would have had to stand up and realized his roommate was neither beside him on the makeshift bed. He wasn't in the closet right outside of his room. He would have then had to proceed down the hallway and he would have had to pass the open door of Mr. Sam Thomas and realized he wasn't his room either. And then he would have seen two black males in the defense's assertion of fighting on the floor, on the ground was the testimony. Knowing he had two roommates who are not in their rooms

that he would have had to pass, tussling on the floor, would a reasonable person fire into these two individuals? Then on top of that, Your Honor, we had testimony that when he shot Mr. Dash, he was no farther than three-and-a-half feet away. Judge, he pressed the muzzle of that nine millimeter up against the base of his buddy, Eric Griffin, before he fired that fatal shot.

We heard their expert, crime scene expert talk about the blinds were open. There's pictures of the light pouring in. A reasonable person, is that the first thing you do? You've got two roommates.

You walk into the living room, you see two individuals that match the physical characteristics of your roommate, you see two individuals wrestling and fighting on the floor.

Would a reasonable person shoot these people multiple times, including pressing a pistol against their head and firing? I can't -- and the defendant had no probable means of avoiding the danger. It hasn't been established how he was in any danger. The defense's theory is these two individuals are fighting with each other. There's no mention whatsoever that he was ever put in any danger.

This 440, subsection (a), no forceable and unlawful entry. There has been no evidence of any forceable or unlawful entry. The defendant himself indicated Eric

Griffin was his friend. He indicated Eric Griffin had just been there two days prior. Samuel Thomas said they lock their doors. Certainly, somebody that kicked in a locked door, there would have been some evidence of that. So there is no evidence whatsoever of forceable and unlawful entry.

Again, as Mr. Shealey said, subsection (a) doesn't apply when deadly force was used against someone who has a right to be in the dwelling or a lawful resident. That's Mr. Dash. And Mr. Griffin is an invitee over there. He is normally at the house.

He was there two days prior. They elicited testimony that Shekila Smalls said that she saw Eric and Dash sitting together prior to the shooting. According to that statement, she herself saw Mr. Barnes peek at them from the room once she entered the residence.

Subsection (a) doesn't apply when the person who uses deadly force is using the dwelling to further unlawful activity. By his own admission, he thought he was getting -- there was a home invasion. He says, I'm not going to lie to you. I'm a weed dealer. I thought somebody was breaking in. By his own admission and the evidence located in the apartment and testimony, statement by Ms. Small's they elicited, marijuana sales are what that gun was used for.

Subsection (c) -- Your Honor, I'm moving on quickly here. Subsection (c), a person who is not engaged in unlawful activity and who is attacked where he has a right to be has no duty to retreat and has the right to stand his ground and meet force with force. We heard absolutely no testimony that Mr. Barnes was attacked. No evidence that anybody lunged towards him, made any movements towards him. No evidence that anybody else had any weapons.

And attacked where he has the right to be. The defendant has the right to be in his own apartment, of course. By his own admission, was he ever attacked? He said people were fighting on the ground and he shot them. No evidence either Griffin or Dash attacked him.

And stand your ground, meet force with force. The defendant, again, was never attacked, no force was ever used against him, so he can't satisfy this one. No gun was ever recovered. A phantom gun, which is the new theory by the defense. We recovered a gun that he used that matched the casings, but no other gun was recovered.

They say his statements have been consistent. Their witness, Kevin Archie, said he gave three separate accounts of what happened to him right after the event. It was, I was asleep. I don't know what happened. Then it was, I thought I was getting robbed. Then it was, they

were fighting.

Your Honor, I submit to you, there was a lot of objecting going on yesterday. Probably more than I've done in 17 years of prosecuting, but what you heard was from the defense inadmissible hearsay. There was never any exception to the hearsay rule.

They were offering statements or portions of his statement to Your Honor to make their case. I would ask what is the hearsay exception? Excited utterance. Well, it wasn't an excited utterance or admission by party opponent. That's not their party opponent. That's their client.

So hearsay in and of itself, the nature of hearsay is unreliable. That's why we don't allow it. The testimony they've offered in the manner of hearsay, which I objected to I don't know how many times, is unreliable on its face.

Your Honor, I just -- the reasonable aspect of this thing -- you know, even Samuel Thomas said he didn't know I was gone. I didn't tell me anybody I was going to the doctor. I was going for a checkup of a sensitive nature. You know, Mr. Dash is recognizable as his roommate.

When he walks into the living room, sees two black males tussling on the floor, would a reasonable person think to fire at these people multiple times, including at close range and, one instance, contact? It just

doesn't -- I think they had kind of milled it a mistake-of-fact-type of defense into an immunity-type defense, but it occurs to me they're trying to wedge a square peg into a round hole. And this is not a stand your ground case. We think he fails self-defense. We think he fails subsection (a) and subsection (c).

THE COURT: All right. Thank you. As I stated earlier, you all can present proposed orders if you like within the next ten days. Obviously, if anyone needs an extension, just e-mail me.

LUKE SHEALEY: Including weekends on that or do you mean business days?

THE COURT: Which one would you like, Mr. Shealey?

LUKE SHEALEY: Business days, please, Your Honor.

THE COURT: Business days. All right. That's fine.

MS. YOUNG: Thank you, Your Honor.

THE COURT: All right. Thank you.

(Whereupon, the proceedings were concluded.)

STATE OF SOUTH CAROLINA) **COUNTY OF RICHLAND)**	**IN THE COURT OF GENERAL SESSIONS** **Warrant Numbers:**
The State of South Carolina,)	2019A4021600441, 2019A4021600442, 2019A4021600444
	Indictment Numbers:
	2021GS4001292, 2021GS4001293, 2021GS4001294
Antonio Barnes,)	**NOTICE OF PROPOSED ORDER FOR IMMUNITY**
_____Defendant.)	

RICHLAND COUNTY
FILED
2022 APR 18 PM 2:10

TO: THE HONORABLE DEANDREA BENJAMIN

COMES NOW, Mr. Barnes, through undersigned counsel and notifies the court that the attached proposed order has been submitted and filed as ordered at the conclusion of the immunity hearing held on March 30 and 31, 2022.

Laura Young
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Luke A. Shealey
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Columbia, South Carolina
This 18th day of April, 2022

STATE OF SOUTH CAROLINA) **COUNTY OF RICHLAND)**	**IN THE COURT OF GENERAL SESSIONS** **Indictment Numbers: 2021GS4001292,** **2021GS4001293,** **2021GS4001294**
The State of South Carolina)	
vs.)	**PROPOSED ORDER GRANTING IMMUNITY**
Antonio Barnes,) **Defendant.)**	

2022 APR 18 PM 12:11
FILED
RICHLAND COUNTY

This matter came before The Honorable DeAndrea Gist Benjamin on March 30 and 31, 2022, pursuant to Mr. Barnes' motion asserting statutory immunity from prosecution, pursuant to Section 16-11-450 of the S.C. Code Ann. (otherwise known as the Protection of Persons and Property Act, S.C. Code Ann. § 16-11-410 *et seq.* – hereinafter referred to as the "Act"). Mr. Barnes is charged with two counts of murder and possession of a weapon during a violent crime, wherein it is alleged that, on February 7, 2019 Mr. Barnes shot and killed Antonio Dash and Eric Griffin. Mr. Barnes admitted to shooting both Mr. Dash and Mr. Griffin but asserts that he is absolved from prosecution pursuant to the immunity granted in the Act. Present at the hearing were Assistant Solicitors Dale Scott, Nick Fowler and Paul Walton. Mr. Barnes was present and represented by Laura Young, Luke Shealey, Brian Shealey and Caroline Latimer. For the reasons set forth below, I hereby GRANT Mr. Barnes' motion and hold that he is immune from prosecution under the Act.

I. FINDINGS OF FACT

Based on the testimony before the Court, together with the exhibits produced at the evidentiary hearing, the Court makes the following findings of fact:

1. I find that the Court had the opportunity to hear and view statements Antonio Barnes made to law enforcement shortly after the shooting, and personally observe him during the course of the hearing. Taking this into consideration, and the fact that other testimony and exhibits corroborate and are consistent with his statements, I find that Mr. Barnes' statements are credible and worthy of belief.
2. I find that on February 7, 2019 Mr. Barnes resided at 511 Alcott Dr., Apartment 14-G in Columbia, South Carolina. He lived there with two others, Samuel Thomas and Antonio Dash.[1]
3. I find that on the morning of February 7, 2019, Eric Griffin, an acquaintance of the residents, asked his girlfriend, Ieasha Washington, and his mother, Wanda Griffin, to stop by 511 Alcott Dr., Apt 14-G. They agreed to do so and Mr. Griffin arrived at the apartment unannounced sometime between 8:50 and 8:57 a.m. that morning.[2]
4. I find that Mr. Barnes was in his room, still in bed, when Mr. Griffin arrived at the apartment. Samuel Thomas testified that he had not seen or spoken with Mr. Barnes that morning before leaving the apartment at 8:15 a.m. to go to the doctor.[3] Testimony further revealed that Mr. Barnes' phone was not in use or moved that morning until 8:49 a.m. and Mr. Barnes stated that he was awoken that morning shortly before the shooting to a loud noise that he described as a "boom."[4]

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[1] At the evidentiary hearing, it was uncontested that Mr. Barnes and Mr. Thomas were named as tenants on the lease and they allowed Mr. Dash to reside in the apartment as well.

[2] According to the testimony of Investigator Gilliam, Iesaha Washington and Wanda Griffin reported waiting in the car for Mr. Griffin for five to seven minutes before hearing gunshots and becoming concerned.

[3] Investigator Gilliam asserted that he believed Mr. Barnes' called Samuel Thomas, and that after his phone call Mr. Thomas changed his story to be consistent with Mr. Barnes' account; however, Investigator Gilliam was impeached with body camera evidence which showed Mr. Thomas advising Inv. Gilliam himself, prior to Barnes' call, that when he left the apartment "one was about to go to work, and one was in his bed."

[4] Investigator Gilliam testified that Shakihla Smalls told law enforcement on March 20, 2022 (for the first time) that she purchased marijuana from Mr. Dash the morning before he was shot and saw Mr. Griffin there, as well as Mr. Barnes peek his head out of his bedroom door shortly before the gunshots. However, this court does not find Ms. Washington's new account credible. Surveillance footage from the morning of the incident shows Ms. Smalls outside of Building 17 at 8:45

5. I find that it was the routine within the apartment for Mr. Barnes to be the only one present in the morning, as the other roommates would leave to go to work. Samuel Thomas testified that he was the only occupant with a car and that he almost always drove Antonio Dash to work in the mornings. He testified on the morning of the shooting, Mr. Dash woke him up and told him he had another ride to work and didn't need Mr. Thomas to take him. Accordingly, Mr. Thomas decided to go to the doctor.
6. I find that Mr. Barnes, believing his roommates not to be at home, listening for familiar voices and hearing none, continued to hear loud noises in his living room and reasonably concluded that there was an intruder (or intruders) in his home. It is clear from his statements to law enforcement that he lived in a bad neighborhood, and that he reasonably believed that intruders were in his home and that he would be robbed and killed if they got to his bedroom. After hearing his television crash to the floor, Mr. Barnes picked up his gun, walked down the hallway and fired his weapon in the direction of the person (people) he believed to be invading his home.[5]
7. I find that upon learning he shot Mr. Dash and Mr. Griffin, Mr. Barnes called 911 at 8:56 a.m. Mr. Barnes stayed on scene and identified himself to responding officers. He made several consistent statements to multiple people on scene, including Kevin Archie, Ieasha Washington and Wanda Griffin. He stated that he had been asleep, that

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a.m. and then running with two men in the direction of Building 14 for the first time at 8:57 a.m. This footage is consistent with her original account to investigators that she provided the day of the incident, and Investigator Gilliam identifies her in the video footage. Ms. Smalls cannot have been at 14-G to see Mr. Griffin and Mr. Barnes before the shooting because she is on camera at her apartment at Building 17. Furthermore Investigator Gilliam testified that Ms. Washington lied to police during her interviews, highlighting her unreliability.

[5] Photographs presented at the hearing confirm that there was damage consistent with Mr. Barnes' statements about hearing loud noises from his living room – the television was broken on the floor, the table was knocked over and missing a leg, and there was a large hole in the wall. Kevin Archie testified that an inspection had been completed at the apartment the week before and no damage was observed. Samuel Thomas further testified that the television and damaged apartment were not like that when he left at 8:15 a.m. that morning. There was also testimony at the hearing about a potential conflict between Mr. Dash and Mr. Griffin over a stolen gun, indicating that the two may have had reason to engage in an altercation.

he believed he was being "robbed," and that Mr. Dash and Mr. Griffin must have been fighting.[6]

8. The Defense presented numerous expert witnesses in the fields of pathology, firearms, DNA, cell phone forensic analysis and crime scene investigation which corroborated Mr. Barnes' version of events. It is clear that there was a violent altercation occurring between Mr. Dash and Mr. Griffin in the living room of the apartment, and it is also clear that forensic evidence suggests the possibility that another firearm was involved in that confrontation.[7] Investigator Gilliam confirmed that Mr. Griffin was on bond for gun related crimes at the time of the shooting, and his mother, Wanda Griffin, confirmed during the investigation that Mr. Griffin is known to carry a gun; however, she asserted that she did not see him armed that day.

9. I find that Mr. Barnes cooperated with law enforcement, immediately identifying the woman who had taken his gun from the apartment after the shooting and providing officers the location of her apartment building. Mr. Barnes provided a video recorded statement and told multiple officers what happened.

10. I find that no evidence of motive or malice was presented at the hearing and that Mr. Barnes expressed remorse for the killings of his friends.[8]

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[6] In addition to the damage to the apartment, evidence at the scene and testimony from crime scene expert, Bob Tressel, confirm that that Mr. Dash and Mr. Griffin were engaged in a fight. They each had the other's DNA under their fingernails, blood droplets were on the wall near the knocked over television, there was a hole in the wall consistent with a body impact, they were found on top of each other, Mr. Griffin's earring was ripped out, and Mr. Dash had blunt force trauma injuries to his head.

[7] Pathologist Dr. Darren Monroe testified that he identified 13 distinct bullet wounds, with seven to Mr. Dash and six to Mr. Griffin, and that at best two of these could be wounds that passed through one victim and into the other. Only seven shell casings were found on scene attributable to Mr. Barnes' gun. SLED Firearms expert Paul Green was able to identify up to eight distinct projectiles and confirmed that items 22 and 17 were inconclusive when compared to Mr. Barnes' gun. He agreed that they could have been fired by another gun, and that gun could have been a revolver which would not leave shell casings. Crime scene expert Bob Tressel corroborated the other experts in identifying eight projectiles, and with significantly more bullet wounds than shell casings, concluded that a second gun likely was involved in this conflict and it could have been a revolver.

[8] At the hearing Investigator Gilliam testified that he believed Mr. Barnes' remorse was disingenuous, stating that it was

II. CONCLUSIONS OF LAW

A. Standard of Review

As our Supreme Court noted in State v. Jones, 416 S.C. 283, 296, 786 S.E.2d 132, 139 (2016), "the Legislature clearly enunciated its intent and reasons for promulgating the Act in section 16–11–420." The complete text of S.C. Code Ann. § 16-11-420 provides:

> (A) It is the intent of the General Assembly to codify the common law Castle Doctrine which recognizes that a **person's home is his castle** and to extend the doctrine to include an occupied vehicle and the person's place of business.
>
> (B) The General Assembly finds that it is proper for law-abiding citizens to protect themselves, their families, and others **from intruders and attackers** without fear of prosecution or civil action for acting in defense of themselves and others.
>
> (C) **The General Assembly finds that Section 20, Article I of the South Carolina Constitution guarantees the right of the people to bear arms, and this right shall not be infringed.**
>
> (D) The General Assembly finds that persons residing in or visiting this State have a right to expect to **remain unmolested and safe within their homes**, businesses, and vehicles.
>
> (E) The General Assembly finds that **no person or victim of crime should be required to surrender his personal safety to a criminal, nor should a person or victim be required to needlessly retreat in the face of intrusion or attack.**

(emphasis added).

In order to accomplish the objectives set forth in section 16-11-420, the Legislature enacted section 16-11-440. Jones, 416 S.C. at 296, 786 S.E.2d at 139. This section "identifies the circumstances for which a person may invoke the protection of the Act." Id. Specifically, subsection (A) of section 16-11-440 provides:

> ***A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force*** that is intended or likely to cause death or great bodily injury to another person if the person:

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because Mr. Barnes didn't want to go to prison. However, Mr. Barnes' video recorded statement revealed that he broke down sobbing while on the phone with his grandmother in the interrogation room and expressed that he did not mean to kill his friends.

> (1) against whom the deadly force is used ***is in the process of unlawfully and forcefully entering, or has unlawfully and forcibly entered a dwelling, residence***, or occupied vehicle, or if he removes or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle; and
>
> (2) who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred.

Subsection (c) of section 16-11-440 provides:

> A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground **and meet force with force, *including* deadly force**, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60.

(emphasis added).

The General Assembly created a statute providing for immunity from prosecution to "[a] person who uses deadly force as permitted by the provisions of this article or another applicable provision of law." S.C. Code Ann. § 16-11-450(A). The phrase "another applicable provision of law" found within the Act "includes the common law of self-defense." State v. Glenn, 429 S.C. 108, 117, 838 S.E.2d 491, 496 (2019). "Another applicable provision of law" would also include the analogous common law defense of defense of habitation. "A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard." State v. Curry, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013). Thus, a person who proves by a preponderance of the evidence that he satisfied (1) the elements of common law self-defense *or* (2) the elements of the Act is entitled to immunity from prosecution.

According to the Supreme Court, "a trial court should first consider whether the defendant has proved the elements of self-defense by a preponderance of the evidence." Glenn, 429 S.C. at 118, 838 S.E.2d at 496. "If the defendant has failed to meet the elements of reasonable fear or the duty to retreat, the court should then determine whether section 16-11-440(A) or (C) is applicable." Id. Thus, "in cases where the defendant has not proved the duty to retreat element by a preponderance of the evidence, the

court should then consider whether section 16-11-440(C) is applicable because the provision was enacted to extend the protections of the Castle Doctrine to other places where he has a right to be." Id. at 118-119, 838 S.E.2d at 496. "Where this section is applicable, it replaces the duty to retreat element required to establish self-defense." Id. at 119, 838 S.E.2d at 497. "In determining whether a defendant satisfies section 16-11-440(C), the circuit court must analyze whether, at the time of the incident, he was engaged in an unlawful activity and was attacked in another place where he had a right to be." Id. Pursuant to Glenn, if it is determined that the defendant was not in a place he had a right to be, or was acting unlawfully, analysis must be conducted to determine if either of these two issues is the proximate cause of the shooting. Id. at 123.

Additionally, the case law makes clear that witness testimony is likely to differ concerning issues of fact during the course of an immunity hearing. This does not in and of itself create a "quintessential jury question" such that immunity should be denied. Rather, it is more the norm than the exception that both parties will present evidence that is factually incompatible with each other, and it is the Court's duty to sit as fact finder and reach a conclusion regarding immunity under the Act. See State v. Cervantes-Pavon, 426 S.C. 442, 451 (2019).

B. Barnes is immune under the common law Defense of Habitation as to Griffin.

Our common law has long recognized the defense of habitation as analogous, yet distinct to self-defense, and that for the defense of habitation to apply, a defendant need only establish that a trespass has occurred and that his chosen means of ejectment were reasonable under the circumstances. Bradley, 126 S.C. at 533, 120 S.E. at 242. Stated differently, unlike the defense of self-defense, the defense of habitation does not require that a defendant reasonably believe that he (or his property) was in imminent danger sustaining serious injury or damage. Instead, the defense of habitation provides that where one attempts to force himself into another's dwelling, the law permits an owner to use reasonable force to expel the trespasser. Although our precedents properly recognize that

self-defense and habitation are analogous, *see, e.g.,* State v. Sullivan, 345 S.C. 169, 173, 547 S.E.2d 183, 185 (2001), the defenses are not identical. For defense of habitation to apply it is also not necessary to show that the trespasser entered by force:

> A man who attempts to force himself into another's dwelling, or who, ***being in the dwelling by invitation or license refuses to leave when the owner makes that demand, is a trespasser, and the law permits the owner to use as much force, even to the taking of his life, as may be reasonably necessary to prevent the obtrusion or to accomplish the expulsion.***

Bradley. at 533 (emphasis added). The evidence is clear that Mr. Barnes was awakened the day of the incident to a loud "boom," followed by raucous sounds of commotion and fighting. He distinctly hears his television crash, and it was his firm belief that he was being home invaded and would be killed in his bed if the intruders made it to his bedroom. Although Mr. Griffin was a friend of Mr. Barnes and had been invited to the home recently, there is no evidence to suggest he was invited or expected to come over the morning of the incident. It also appears from Mr. Barnes' statement to police, as well as information provided by Ieasha Washington, that there was a dispute between Mr. Griffin and Mr. Dash regarding gun stolen by Mr. Griffin. It is uncertain whether Mr. Griffin used force at the door to gain entry, or whether he was initially permitted entry by Mr. Dash prior to Mr. Dash's violent confrontation with Mr. Griffin. Either scenario is plausible given the loud "boom" heard by Mr. Barnes, and either would also justify defensive action. The only evidence of any motive is provided by the defense, as it relates to the stolen gun allegation, and if this is true it is unlikely that Mr. Griffin would have been welcomed into the home by Mr. Dash. Based on the evidence of the violent struggle in the living room of the home, it is axiomatic that Mr. Dash was in the process of trying to eject Mr. Griffin from the home and viewed him as an unwelcomed intruder. Under the common law defense of habitation, Mr. Barnes would be justified in using deadly force to end the unwarranted intrusion and expel the trespasser. Although Mr. Griffin and Mr. Dash's identities were unknown to Mr. Barnes at the time he sought to end the intrusion into his home, he would be immune from prosecution under

common law defense of habitation as it relates to Mr. Griffin, as it is clear that he was engaged in a violent attack against the home and one of it's occupants, Mr. Dash. Defense of habitation would not be applicable to Mr. Dash as he was a roommate and had an equal right to be in the home under common law and the Act.

C. Barnes is immune under common law self defense as to Mr. Griffin and Mr. Dash

To establish self-defense, four elements must be present: (1) the defendant must be without fault in bringing on the difficulty; (2) the defendant must have been in actual imminent danger of losing his life or sustaining serious bodily injury, or he must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury; (3) if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief, or if the defendant was actually in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life; and (4) the defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in the particular instance. State v. Hendrix, 270 S.C. 653, 657-658, 244 S.E.2d 503, 505-506 (1978); see also State v. Davis, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984).

An individual has the right to act on appearances. State v. Starnes, 340 S.C. 312, 531 S.E.2d 907 (2000); see also State v. Jackson, 277 S.C. 271, 87 S.E.2d 681 (1955). One may act on appearances. He may be mistaken. The law does not hold him to a ***refined assessment*** of the danger, provided, of course, he acted as a person of ordinary coolness and courage would have acted or should have acted in meeting the appearance of danger. ***He doesn't have to wait until his assailant gets the drop on him, he has a right to act under the law of self-preservation and prevent his assailant getting the drop on him; if it is apparent, or reasonably apparent his assailant is taking steps to get the drop on him, he must take steps first to prevent such assailant from getting the drop on him.*** State v. Rash, 182 S.C. 42, 50 (1936),

Starnes at 322. (emphasis added). Furthermore, "when a person is justified in firing the first shot, he is justified in continuing to shoot until it is apparent that the danger to his life and body has ceased." Hendrix, 270 S.C. at 661, 244 S.E.2d at 507. In Douglas v. State, 332 S.C. 67, 72-73, 504 S.E.2d 307, 309-10 (1998), the Supreme Court noted the judge had charged that if the defendant was justified in firing the first shot he was justified in continuing to shoot until any danger to his life and body had ceased. Additionally, a homeowner has no duty to retreat within his own home when invoking the law of self-defense, and this rule applies equally to an intruder or against a co-occupant. State v. Grantham, 224 S.C. 41 at 44, 77 S.E. 2d 291 at 293.

The instant case is similar to the factual and legal findings from State v. Scott, 424 S.C. 463, 819 S.E. 2d 116 (2018), where a homeowner was granted immunity while defending his property under the common law of self-defense, which resulted in him killing an uninvolved party mistakenly. Scott used lethal force while shooting from the curtilage of his home in what he reasonably believed to be a threat against his home and his family, and even though he was mistaken regarding the involvement of the decedent, his actions were reasonable under the circumstances and therefore justified. In Chief Justice Few's opinion he highlights comments made by Justice James during oral argument, and they are particularly instructive as it applies to Mr. Barnes' case. Justice James asked the State, "Does [Scott] have to interview, I'm not being facetious, does he have to interview the perpetrators and ask 'which one of you fired that shot so I can fire my shot accordingly?'" The answer is, "No," because, "A person has the right to act on appearances, even if the person's belief is ultimately mistaken." Dickey, 394 S.C. at 501, 716 S.E.2d at 102 (citing State v. Fuller, 297 S.C. 440, 443-44, 377 S.E.2d 328, 331 (1989)). The circuit court understood this, and found based on the evidence of what Scott knew and observed in the heat of that moment, "[Scott] reasonably believed [Niles] was engaged in an unlawful and forcible act against his home." Scott at 472.

Barnes, like Scott, was acting lawfully at the time of the incident and cannot be said to have brought about the difficulty. He was asleep in his bed when he heard a loud "boom" that was followed by further commotion and his television crashing. This is corroborated by his statements, the physical evidence, and his own cell phone activity. Like Scott, Mr. Barnes had a reasonable belief that he was under threat of imminent death or great bodily injury based on the sounds coming from his living room, combined with his belief that he was home alone with his roommates at work. He laid in bed for a couple of minutes and listened for his roommates and heard no familiar voices. He reasonably believed, based on the nature of his neighborhood, that he was being home invaded and if he allowed the intruders to get back to his room he would be "smoked" or killed. Mr. Barnes was entitled to arm himself with his lawfully owned handgun and take action to defend himself against what he reasonably believed to be a threat to his person and home. He traveled the short distance from his bedroom to the hall and shot at the threat until the threat was extinguished. Like Scott, pursuant to the common law, he had no duty to retreat on his own premises. Like Scott, he was ultimately mistaken regarding the intentions of at least one of the decedents, that being his roommate and best friend Dash; however, it is unclear what the intentions of Mr. Griffin were that day towards Mr. Barnes, if any. The evidence shows that Mr. Barnes called 911 for help, and throughout the day gave consistently shocked and remorseful statements concerning the shooting of his friends. Mr. Griffin and Mr. Dash were engaged in what the evidence shows was a fight to the death, with the only apparent motive being that of a stolen gun allegation, and it was that fight that caused Mr. Barnes to take action to preserve his own life against what he reasonably perceived to be a serious threat by unknown intruders.

D. Barnes would also be immune under 16-11-440(A) for Mr. Griffin

The above analysis confirms that Barnes is entitled to immunity pursuant to common law principles of self-defense and defense of habitation; however, for the purposes of argument, even if Mr. Barnes' common law defense failed in one or more respects, he would then be entitled to seek

immunity by looking to the Act in either 16-11-440 (A) or (C). Glenn at 118. Section 16-11-440(A) is applicable in this case based on the evidence, and it provides the Act's strongest protections. 16-11-440(A) provides:

> A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause death or great bodily injury to another person if the person:
>
> (1) against whom the deadly force is used ***is in the process of unlawfully and forcefully entering***, or has unlawfully and forcibly entered a dwelling, residence, ***or occupied vehicle***, or if he removes or ***is attempting to remove another person against his will from*** the dwelling, residence, or ***occupied vehicle***; and
>
> (2) who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred.

(Emphasis added). The evidence shows that Mr. Griffin had unlawfully and forcefully entered the residence, and that is supported by the loud "bang" heard by Mr. Barnes, as well as the violent and damaged state of the living room. Mr. Griffin and Mr. Dash were engaged in a violent fight to the death, as evidence by the body imprint in the wall, blunt force trauma to Mr. Dash's head, torn earrings and DNA under each other fingernails. Also, as stated supra, the forensic and ballistic evidence suggests that Mr. Griffin was likely armed and shot Mr. Dash during their struggle. This unlawful and forceful entry into Mr. Barnes' residence would entitle him to the presumption of reasonable fear of imminent peril of death or great bodily injury, but as stated above, this is not just a reasonable fear but also one that is proven in fact. State v. Scott at 472. State v. Duncan, 392 S.C. 404. 709 S.E.2d 662 (2011). Mr. Barnes has established immunity under 16-11-440(A) by a preponderance of the evidence against Mr. Griffin; however, he would not be entitled to this under the Act as to Mr. Dash given he is a roommate.

E. Immunity is Established Under 16-11-440(C)

Although immunity has been established by a preponderance of the evidence under common law principles of self-defense and defense of habitation, as well as pursuant to the Act under 16-11-440 (A) regarding Mr. Griffin, for the sake of argument and in keeping with the holding from Glenn, if 16-11-440 (A) is not applicable regarding Mr. Dash then Mr. Barnes has established immunity under 16-11-440 (C). This section states:

> A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground **and meet force with force, *including* deadly force**, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60.

(emphasis added). This portion of the Act specifically does away with any common law duty to retreat[9], so long as an individual can prove he was attacked while acting lawfully and in a place he had a right to be. The evidence shows that Mr. Barnes was in his own bed, in his lawfully rented apartment, and asleep when he heard a loud bang and commotion that he reasonably believed to be home invaders. The evidence reveals through his statements to police, as well as by his phone records, that he was not awake that morning and he believed, as was the custom of the apartment, that his roommates were at work per usual that day. After laying in bed for a couple of minutes listening for any familiar voices, once he heard his television crash, he made the decision to meet force for force and confront his would be assailants. He met what he reasonably believed to be home invaders, using deadly force, as is allowed under the Act. Only after would he realize who he had shot, at which time he called 911 per phone records and was

[9] However, there is no duty to retreat in one's own home. State v. Grantham, 224 S.C. 41 at 44, 77 S.E. 2d 291 at 293.

shortly thereafter confronted by Mr. Griffin's shocked and grieving mother and fiancé.

There is evidence in the record based on Mr. Barnes' own statements, as well as pursuant to the search warrant of the apartment, that he was in possession of an unknown quantity of marijuana and sold marijuana. However, it is clear from the evidence submitted by both the state and the defense during the immunity hearing that possession or sale of marijuana had nothing to do with what transpired between the parties during this shooting event. Investigator Gilliam repeatedly stated that they were "all friends" and he had not identified a motive. The defense presented evidence of animus between Mr. Griffin and Mr. Dash relating to a stolen gun allegation; however, that would appear to be an isolated incident that has nothing to do with the possession or sale of marijuana. As is required by State v. Glenn, a proximate cause analysis must be conducted regarding any failure of the elements of self-defense. Although Mr. Barnes could be said to be acting unlawfully in his possession of marijuana, there is no evidence in the record to suggest that unlawfulness had any part to play in what occurred in the shooting of Mr. Griffin and Mr. Dash, or in the reasons why they were fighting in the first place. Accordingly, as in Glenn, possession or prior sales of marijuana is not the proximate cause of this incident and would not preclude him from otherwise establishing immunity in this case.

II. CONCLUSION

The Court finds that Mr. Barnes is immune from prosecution for the shootings of Mr. Griffin and Mr. Dash on February 7th, 2019 that ultimately resulted in their deaths. Mr. Barnes' actions are immune from prosecution under the Act, as interpreted by State v. Glenn, and Mr. Barnes has proven his immunity by a preponderance of the evidence pursuant to both the common law principles of defense of habitation and self-defense as well as the text of the Act in both 16-11-440(A) and (c). Accordingly, his criminal charges are dismissed.

IT IS SO ORDERED.

The Honorable DeAndrea Gist Benjamin
Chief Administrative Judge, General Sessions
Fifth Judicial Circuit

This _____ day of _____, 2022.

Columbia, South Carolina

STATE OF SOUTH CAROLINA **COUNTY OF RICHLAND** **The State of South Carolina,** **vs.** **Antonio Barnes,** **Defendant.**	))))))))))	**IN THE COURT OF GENERAL SESSIONS** **Warrant Numbers: 2019A4021600441-42, 44** **ORDER**

Hearing Date:	March 30, 2022 – March 31, 2022
Presiding Judge:	DeAndrea G. Benjamin
On Behalf of State:	Dale Scott, Nick Fowler, and Paul Walton
Defendant's Attorneys:	Laura Young, Brian Shealey, Luke Shealey, Caroline Latimer

INTRODUCTION

THIS MATTER is before the Court pursuant to the Defendant's Motion asserting Statutory Immunity from Prosecution. The Defendant has been indicted for two counts of Murder and one count of Possession of a Weapon During the Commission of a Violent Crime, in which it is alleged that on or about February 7, 2019, he killed both Antonio Dash (hereinafter "Dash") and Eric Griffin (hereinafter "Griffin") with a pistol. The Defendant's motion is based on the Protection of Persons and Property Act (hereinafter "the Act"), § 16-11-410, et. seq., of the South Carolina Code of Laws. The Defendant admits to shooting and killing both Dash and Griffin, but asserts that his actions were justified, and that he is entitled to immunity from prosecution pursuant to § 16-11-440 and 16-11-450 of the Act.

The Defendant, by and through his attorneys, filed a Motion to Enforce the Protections of § 16-11-440(A), 16-11-440(C), and 16-11-450 (self-defense)[1]. The Defendant requested an Order

[1] "Subsection 16-11-450(A) provides that "[a] person who uses deadly force as permitted by ... an[ ] applicable provision of law is justified in using deadly force and is immune from criminal prosecution." Self-defense is the classic provision of law that justifies the use of deadly force. It was clearly the Legislature's intent that if a person seeking immunity under subsection 16-11-450(A) could prove the elements of self-defense in an immunity proceeding, immunity must be granted." State v. Scott, 424 S.C. 463, 473, 819 S.E.2d 116, 120–21 (2018).

of immunity from prosecution under § 16-11-450 of the Act and requested a hearing to determine whether the Act applies to this case. The Act codified the long-standing common law Castle Doctrine, which stands for the principle that a person, in his or her own home or another place where he has a right to be, such as his place of business, and acting without fault, has no duty to retreat from an aggressor. § 16-11-450 of the Act provides that a person who uses deadly force, as permitted by the provisions of §16-11-440, "is justified in using deadly force and is immune from criminal prosecution … for the use of deadly force."

The Court presided over the hearing on the Defendant's Motion, on March 30, 2022 through March 31, 2022. The Defendant and his attorneys were present along with Assistant Solicitor Dale Scott; Assistant Solicitor Nick Fowler; and Assistant Solicitor Paul Walton for the State. The question presented to the Court was whether the Defendant was entitled to immunity under § 16-11-450 of the Act, and specifically, whether such immunity should be granted under subsections §16-11-440(A); §16-11-440(C) and 16-11-450 (self-defense). Defendant has the burden of proof and must prove his right to immunity by a preponderance of the evidence. State v. Duncan, 392 S.C. 404, 411 709 S.E.2d 662, 665 (2011).

FINDINGS OF FACT

In February of 2019, the Defendant lived at an apartment located at 511 Alcott Drive, Columbia, SC 29203—apartment 14G (hereinafter "apartment"). These are the Willow Run Apartments. At the time, the Defendant had two roommates—Samuel Thomas and Antonio Dash. Dash was not listed on the apartment lease agreement, but he had been living with the Defendant and Thomas for approximately one year. Additionally, a man named Eric Griffin was a friend of all three roommates, and it was common for him to visit the three individuals at their apartment

On the morning of February 7, 2019, Eric Griffin visited the apartment where the

Defendant, Samuel Thomas, and Antonio Dash lived. Samuel Thomas was not home at the time, so Griffin was let into the apartment by Dash. Ultimately, a fight ensued between Dash and Griffin. The Defendant—who was in his bedroom—heard the commotion from the fight between Dash and Griffin. He then retrieved a pistol, observed the two men fighting on the ground in the living room, and shot both individuals several times at close range. The Defendant made two recorded statements to law enforcement where he admitted to shooting the two individuals that were on the ground fighting. Both individuals died from their respective gunshot wounds.

APPLICATION OF THE ACT TO THE FACTS

After considering the evidence presented and applying the law of South Carolina, I conclude that the Defendant is not entitled to statutory immunity under the Act.

I. The Defendant is Not Entitled to Statutory Immunity Under § 16-11-440(A) of the Act Because: (1) There Was No Unlawful and Forceful Entry into the Apartment; (2) Dash was a Lawful Resident and Griffin was Social Guest of the Apartment; and (3) The Defendant Used the Residence to Further an Unlawful Activity

§ 16-11-440(A) of the Act, commonly referred to as the "Castle Doctrine", provides:

> (A) A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause death or great bodily injury to another person if the person:
>
> (1) against whom the deadly force is used is in the process of unlawfully and forcefully entering, or has unlawfully and forcibly entered a dwelling, residence, or occupied vehicle, or if he removes or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle; and
>
> (2) who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred.

Additionally, § 16-11-440(B), lists circumstances in which the presumptions of § 16-11-440(A) do not apply. § 16-11-440(B) provides:

> (B) The presumption provided in subsection (A) does not apply if the person:

(1) against whom the deadly force is used has the right to be or is a lawful resident of the dwelling, residence, or occupied vehicle including, but not limited to, an owner, lessee, or titleholder; or

(2) sought to be removed is a child or grandchild, or is otherwise in the lawful custody or under the lawful guardianship, of the person against whom the deadly force is used; or

(3) who uses deadly force is engaged in an unlawful activity or is using the dwelling, residence, or occupied vehicle to further an unlawful activity; or

(4) against whom the deadly force is used is a law enforcement officer who enters or attempts to enter a dwelling, residence, or occupied vehicle in the performance of his official duties, and he identifies himself in accordance with applicable law or the person using force knows or reasonably should have known that the person entering or attempting to enter is a law enforcement officer.

§ 16-11-430 provides definitions for dwelling and residence as the following:

(1) "Dwelling" means a building or conveyance of any kind, including an attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging there at night.

(2) "Residence" means a dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest.

The primary and cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. State v. Pittman, 373 S.C. 527, 561, 647 S.E.2d 144, 161 (2007). Unless there is something in the statute requiring a different interpretation, the words used in a statute must be given their ordinary meaning. Mid-State Auto Auction of Lexington, Inc. v. Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996). "Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." Pittman, 373 S.C. at 561, 647 S.E.2d at 161 (citing Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)).

1. No Unlawful And Forceful Entry into Apartment

Under § 16-11-440(A) of the Act, a person is presumed to have a reasonable fear of imminent peril of death and is, thus, justified in the use of deadly force against another person—provided that person has unlawfully and forcefully entered a dwelling. Additionally, the person who uses deadly force needs to know or have reason to know that unlawful and forceful entry has been made into the dwelling.

In the case the case at hand, there is no credible evidence of unlawful and forced entry into the Defendant's apartment. In fact, the evidence demonstrates the exact opposite of forced entry. First, there was no credible evidence that the door to the apartment had been kicked in, pried open, or damaged in any way. Additionally, there was testimony that it was customary for the residents of the apartment to lock the front door. Furthermore, the evidence that was presented demonstrates that Griffin, who is the victim who did not live in the apartment, was invited into the apartment on February 7, 2019.

Shakihla Smalls went to the apartment that morning, and she saw Griffin and Dash sitting together in the living room. Griffin was invited inside by Dash—who had been living there for approximately one year. When Smalls came into the apartment, the Defendant came out of his bedroom to see who had just entered. The Defendant saw Smalls, Griffin, and Dash all in the living room. Griffin did not unlawfully and forcefully enter the apartment. He was a social guest of Dash. Furthermore, the Defendant knew Griffin was a social guest, since he observed the two men sitting together. Because the Defendant knew that Griffin was a social guest, it can be established that he was aware that no unlawful and forceful entry into the apartment had taken place.

2. Dash was a Lawful Resident and Griffin was Social Guest of the Apartment

Under § 16-11-440(B)(1) of the Act, the presumption of reasonable fear of imminent peril

of death or great bodily injury—§ 16-11-440(A)—is inapplicable when the person who uses deadly force against a person who has a right to be in or is a lawful resident of the dwelling. Here, Dash had been living at the apartment with the Defendant and Samuel Thomas for an extended period of time. Samuel Thomas testified that Dash had been living in the apartment for approximately one year. Additionally, the Defendant admitted to law enforcement that Dash had been living in the apartment for more than one year. Ultimately, it is uncontested that Dash lived at the apartment—making him a lawful resident.

Griffin, on the other hand, was not a resident of the apartment. He did, however, have a right to be there. The evidence showed that Griffin came to visit the apartment, Dash allowed Griffin to enter, and they were sitting in the living room together. Because Dash allowed Griffin into the apartment, Griffin then became Dash's social guest. In South Carolina, the presumption of § 16-11-440(A) are inapplicable when deadly forced is used against a social guest who is rightfully in an apartment. State v. Curry, 406 S.C 364, 752 S.E. 2d 263 (2013). Griffin was invited inside the home by a lawful resident. As a result, for purposes of the Act, Griffin had a right to be within the dwelling.

Because Dash is a lawful resident of the apartment and Griffin was a social guest who was rightfully in the apartment, the presumption of reasonable fear found in § 16-11-440(A) is inapplicable.

3. The Defendant Used the Residence to Further an Unlawful Activity

Under § 16-11-440(B)(3) of the Act, the presumption of reasonable fear of imminent peril of death or great bodily injury—§ 16-11-440(A)—is inapplicable when the person, who uses deadly force, is using the dwelling or residence to further an unlawful activity. § 16-11-430 defines a dwelling as a building with a roof over it that is designed to be occupied by people lodging there

at night. Additionally, a residence is defined within § 16-11-430 as a dwelling in which a person resides either temporarily or permanently. In the State of South Carolina, according to § 44-53-370(b)(2), the distribution of marijuana is illegal. In this case, there is no question that the Defendant lives within the apartment—making it a residence. The Defendant, by his own admission to law enforcement, sells marijuana out of the apartment. Furthermore, the Defendant admits to police that there are numerous people who come in and out of the apartment due to the marijuana sales.

In addition to the defendant's admission to law enforcement about selling marijuana from the apartment, it was brought out during the cross examination of Investigator Gilliam that Shakihla Smalls went to the apartment the morning of February 7, 2019 to purchase marijuana. Although the Defendant did not sell the marijuana to Smalls directly on this particular occasion, the fact that she went to purchase the marijuana from the apartment corroborates the Defendant's admission that he sells marijuana out of the apartment—which is an unlawful act.

Because the evidence shows that the Defendant used the apartment as a venue for marijuana distribution, it can be established that he used the residence to further an unlawful activity. Therefore, the presumption of reasonable fear found in § 16-11-440(A) is inapplicable, and this Court cannot grant the Defendant immunity from prosecution under this section of the Act.

II. The Defendant is Not Entitled to Statutory Immunity Under § 16-11-440(C) Because: (1) He Was Engaged in an Unlawful Activity; (2) The Defendant was Not Attacked and Did Not Meet Force With Force; and (3) The Defendant Did Not Reasonably Believe Deadly Force was Necessary

Due to § 16-11-440(A) of the Act being inapplicable, the Defendant is therefore defaulted to seeking immunity under § 16-11-440(C), which deals with the use of force by one who is attacked in a place where he has a right to be. State v. Curry, 406 S.C. 364, 752 S.E. 2d 263 (2013). More specifically, § 16-11-440(C) provides:

(C) A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60.

1. The Defendant was Engaged in an Unlawful Activity

In order for § 16-11-440(C) of the Act to apply and grant immunity from prosecution, the individual who uses deadly force must not be engaged in an unlawful activity. However, in regards to the unlawful activity element of subsection (C), a proximate cause analysis must be applied to the unlawful activity and the use of deadly force. State v. Glenn, 429 S.C. 108, 838 S.E. 2d 491 (2019). As stated above, the Defendant used the residence to further the unlawful activity of selling marijuana. In a statement to law enforcement, the Defendant admitted that he sells marijuana from the residence. Due to the drug sales, several people often frequented the apartment and "something is always going on".

Because of this fact, he stated that he believed someone was breaking into his apartment—when in reality it was a fight between Dash and Griffin. The defendant armed himself with a pistol and shot both Dash and Griffin. The marijuana distribution directly affected the Defendant's mental state by leading him to believe that one of the frequent occupants from the drug sales was breaking into his apartment. As a result, there is an apparent causal nexus between the marijuana distribution from the apartment and the use of deadly force. Therefore, it can be determined that § 16-11-440(C) of the Act in inapplicable, due to the defendant engaging in an unlawful activity.

2. The Defendant was not Attacked and Did not Meet Force with Force

Two additional requirements for § 16-11-440(C) to apply are: an individual who uses deadly must be attacked where they have a right to be, and that person must meet force with force. In the case at hand, it is clear that the defendant had a right to be in the apartment—since he was

a resident. With that said, there is no credible evidence that the Defendant was attacked. Consequently, the Defendant could not have met force with force. According to the Defendant's statement to law enforcement, he observed two individuals in the living room on the ground each other. At this point the Defendant opened fire and shot both individuals while they were still on the ground.

The evidence shows that the Defendant was never threatened or assaulted by either Griffin or Dash. Nor was firearm or any weapon ever pointed at him. In fact, there is no credible evidence that either Dash or Griffin were aware that the Defendant was in the same room as them prior to shots being fired—which would be necessary in order to attack him. Since the Defendant was not attacked in any way, then it is impossible for him to have met force with force. § 16-11-440(C) requires the existence of both aforementioned elements. Because both are nonexistent in this case, § 16-11-440(C) does not apply.

3. *The Defendant Did Not Reasonably Believe Deadly Force was Necessary*

The Defendant did not have a reasonable fear justifying the use of deadly force. Immunity from prosecution under § 16-11-440(C) of the Act also requires a person who uses deadly force to reasonably believe the use of force is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60. § 16-11-430(2) defines great bodily injury as "bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of a bodily member or organ."

Here, the evidence demonstrated that there was a fight taking place between Dash and Griffin in the living room of the apartment. The Defendant told law enforcement that he saw two individuals on the ground fighting and shot them. In order to adequately assess the reasonableness

of Defendant's actions, it is important to consider the testimony that was presented. First, multiple witnesses testified to the fact that the Defendant had two roommates—Samuel Thomas and Antonio Dash. Since the Defendant had two roommates at the time, it was unreasonable for him to observe two individuals on the ground fighting and immediately shoot them. Furthermore, according to Shahkila Smalls, the Defendant was aware that Dash and Griffin were in the apartment shortly before to the shooting took place. A reasonable person in this situation would consider the possibility that it could be either be his two roommates fighting—Samuel Thomas and Dash—or the two individuals he observed earlier that morning—Dash and Griffin.

Another fact that was testified to, which is vital to assessing the reasonableness of the Defendant's decision to utilize deadly, is the time of day that the shooting occurred. The shooting took place at approximately 9:00 in the morning. This is important because the sun is out at this time of day. In fact, photographs and testimony revealed that sunlight was traveling through the windows into the living room the morning of February 7, 2019. A by-product of that sunlight was a well-lit living room. A reasonable person would have considered above-mentioned possible identity of the two combatants and identified them—since they were fighting each other, not him, in a sun-lit living room. Instead of doing so, however, the Defendant used deadly force and shot both men.

An additional factor in considering the reasonableness of the Defendant's actions, is the distance from which he shot Dash and Griffin. Dr. Monroe testified that all shots were fired at close range—the majority being from six inches to three feet away. The only shot that does not fall within this range is the contact wound the back of Griffin's head, which required the Defendant to press the muzzle of his firearm to Griffin's head. A reasonable person who believes deadly force is necessary to prevent great bodily injury or death would not approach two individuals on the

ground fighting in a well-lit living room, get within six inches to three feet of them, overlook the fact that he knows both individuals, and shoot them several times at close range—which is exactly what the evidence shows the Defendant did.

This is corroborated by the testimony of Kevin Archie, a maintenance worker at the Willow Run Apartments that spoke with the Defendant shortly after the shooting occurred. According to Archie, the Defendant gave him three versions of what took place that morning. The Defendant ultimately admitted to Archie that he observed Dash and Griffin on the ground fighting each other, and he shot them. The Defendant was not in fear of great bodily injury or death. He was not protecting another person, since he shot both Dash and Griffin several times. Also, being that there was no credible evidence to the contrary presented, the Defendant did not utilize deadly force to prevent a statutory violent crime.

Therefore, the Defendant has not proven by a preponderance of the evidence that it was reasonable for him to believe the use of deadly force was necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in §16-1-60 and this Court cannot grant immunity to the Defendant under section 16-11-44(C).

III. The Defendant is Not Entitled to Statutory Immunity Under the Act because the Defendant Cannot Prove the Necessary Elements of Self-Defense

In State v. Curry, 406 S.C. 364, 752 S.E.2d 263 (2013), our Supreme Court ruled that when reviewing whether a defendant should be granted immunity under subsection (C), the trial court "must necessarily consider the elements of self-defense…this includes all elements of self-defense, save the duty to retreat." The Court went on to say that a "claim of self-defense presents a quintessential jury question, which, most assuredly, is not a situation warranting immunity from prosecution." *Id*. at 368, 752 S.E.2d 372. Therefore, this Court must evaluate whether the

Defendant has proven by a preponderance of the evidence that the Defendant acted in self-defense when he shot the victim. Self-defense requires that the defendant:

1) be without fault in bringing on the difficulty;

2) be in actual imminent danger of losing his life or sustaining serious bodily injury, or have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury;

3) show that a reasonably prudent person of ordinary firmness and courage would have entertained the same belief and would have struck the fatal blow in order to save himself from serious bodily harm or the loss of his life; and

4) have no other probable means of avoiding the danger.

However, as stated in State v. Jones, 416 S.C. 283, 302, 786 S.E.2d 132, 142 (2016), "the defendant must demonstrate the elements of self-defense, save the duty to retreat" when he is attacked in his own home. Regarding the Defendant's assertion of self-defense, none of the above-mentioned elements have been satisfied.

1. Be Without Fault in Bring About the Difficulty

The Defendant was at fault in bringing about the difficulty, so he cannot satisfy the requirements for self-defense. Here, regarding the first element of self-defense, the difficulty is the Defendant's use of deadly force. The Defendant heard people talking in the living room. He then heard sounds consistent with a physical altercation between those individuals. The Defendant introduced a firearm into the scenario, observed the fight between two people in a sun-lit living room, and made the decision to shoot them both at close range.

As stated above, there is no credible evidence that the Defendant was threatened or attacked—which means there was no justification for the use of deadly force. Based on the evidence that has been presented, had the Defendant not introduced the firearm into the situation, no person inside the apartment would have been shot on February 7, 2019. A person cannot see

two unarmed people fighting, insert themselves into the equation by shooting both individuals, and then claim self-defense—which is what the Defendant is asserting. The Defendant brought about the difficulty by introducing a firearm into the situation and shooting two people without provocation. As a result, the assertion of self-defense has failed, and this Court cannot grant immunity from prosecution.

2. Be in Actual Imminent Danger or Believing in Imminent Danger

Next, there is no credible evidence that either Dash or Griffin presented any imminent danger to the Defendant. Furthermore, there is no credible evidence that the Defendant believed that he was in imminent danger. The evidence shows that the Defendant observed two individuals fighting each other on the ground, and he shot them both. No credible evidence was presented that the Defendant was ever threatened, attacked, or even acknowledged by either Dash or Griffin prior to the shooting. Thus, it is impossible for him to be in actual imminent danger of serious bodily injury or losing his life.

Regarding the Defendant's belief of imminent danger, there was no credible evidence presented demonstrates that the Defendant subjectively felt he was in any danger whatsoever. The evidence demonstrated that the Defendant shot two individuals who were fighting each other on the ground, so it is has not been established that the Defendant actually believed he was in imminent fear of serious bodily injury or losing his life. In South Carolina, a person when asserting a claim of self-defense is permitted to act on appearances—in terms of the belief of imminent danger. State v. Jackson, 227 S.C 271, 87 S.E.2d 681 (1955)

With that said, in this case, there was no credible evidence presented as to what appearance the Defendant was acting on that would have substantiated his belief of imminent fear of serious bodily injury or losing his life. As a result, the Defendant cannot rely on this aspect of the law for

purposes of self-defense. Thus, in regards to actually believing or actually being in imminent danger of losing his life or sustaining serious bodily injury, the Defendant's assertion of self-defense fails. This Court cannot grant immunity from prosecution.

3. Reasonable Person Would Have Entertained the Same Belief

As stated above, there was no credible evidence that Defendant was in actual imminent danger or believed that he was imminent danger of the loss of life or seriously bodily injury. The evidence shows that the Defendant observed two individuals fighting each other, and he shot them. The Defendant's actions were both unnecessary and unreasonable. A reasonable person, in this exact situation, would not have used deadly force. Instead, they would have called the police. Therefore, due to the Defendant failing to prove a reasonably prudent person of ordinary firmness and courage would have believed they were in imminent danger, the requirements of self-defense are not satisfied. Thus, this Court cannot grant the Defendant immunity from prosecution.

CONCLUSION

Based upon the foregoing, I conclude the Defendant's use of deadly force was not justified and that he is not entitled to immunity as enunciated in §16-11-450 of the Protection of Persons and Property Act. Therefore, the Defendant's Motion for Immunity is denied.

IT IS SO ORDERED.

_____
The Honorable DeAndrea G. Benjamin
Presiding Judge

Columbia, South Carolina

_____, 2022

STATE OF SOUTH CAROLINA) **COUNTY OF RICHLAND)**	**IN THE COURT OF GENERAL SESSIONS** **Warrant Numbers: 2019A4021600441-42, 44**
The State of South Carolina,)	
vs.)	**ORDER**
Antonio Barnes,) **Defendant.)**	

RICHLAND COUNTY
FILED
2022 JUN 14 AM 10: 38
JEANNETTE W. WALKER
CLERK, C.C.P., S.C.

Hearing Date:	March 30, 2022 – March 31, 2022
Presiding Judge:	DeAndrea G. Benjamin
On Behalf of State:	Dale Scott, Nick Fowler, and Paul Walton
Defendant's Attorneys:	Laura Young, Brian Shealey, Luke Shealey, Caroline Latimer

INTRODUCTION

THIS MATTER is before the Court pursuant to the Defendant's Motion asserting Statutory Immunity from Prosecution. The Defendant has been indicted for two counts of Murder and one count of Possession of a Weapon During the Commission of a Violent Crime, in which it is alleged that on or about February 7, 2019, he killed both Antonio Dash (hereinafter "Dash") and Eric Griffin (hereinafter "Griffin") with a pistol. The Defendant's motion is based on the Protection of Persons and Property Act (hereinafter "the Act"), § 16-11-410, et. seq., of the South Carolina Code of Laws. The Defendant admits to shooting and killing both Dash and Griffin, but asserts that his actions were justified, and that he is entitled to immunity from prosecution pursuant to § 16-11-440 and 16-11-450 of the Act.

The Defendant, by and through his attorneys, filed a Motion to Enforce the Protections of § 16-11-440(A), 16-11-440(C), and 16-11-450 (self-defense)[1]. The Defendant requested an Order

[1] "Subsection 16-11-450(A) provides that "[a] person who uses deadly force as permitted by ... an[ ] applicable provision of law is justified in using deadly force and is immune from criminal prosecution." Self-defense is the classic provision of law that justifies the use of deadly force. It was clearly the Legislature's intent that if a person seeking immunity under subsection 16-11-450(A) could prove the elements of self-defense in an immunity proceeding, immunity must be granted." State v. Scott, 424 S.C. 463, 473, 819 S.E.2d 116, 120–21 (2018).

of immunity from prosecution under § 16-11-450 of the Act and requested a hearing to determine whether the Act applies to this case. The Act codified the long-standing common law Castle Doctrine, which stands for the principle that a person, in his or her own home or another place where he has a right to be, such as his place of business, and acting without fault, has no duty to retreat from an aggressor. § 16-11-450 of the Act provides that a person who uses deadly force, as permitted by the provisions of §16-11-440, "is justified in using deadly force and is immune from criminal prosecution ... for the use of deadly force."

The Court presided over the hearing on the Defendant's Motion, on March 30, 2022 through March 31, 2022. The Defendant and his attorneys were present along with Assistant Solicitor Dale Scott; Assistant Solicitor Nick Fowler; and Assistant Solicitor Paul Walton for the State. The question presented to the Court was whether the Defendant was entitled to immunity under § 16-11-450 of the Act, and specifically, whether such immunity should be granted under subsections §16-11-440(A); §16-11-440(C) and 16-11-450 (self-defense). Defendant has the burden of proof and must prove his right to immunity by a preponderance of the evidence. State v. Duncan, 392 S.C. 404, 411 709 S.E.2d 662, 665 (2011).

FINDINGS OF FACT

Based on the testimony presented before the Court at the hearing, I make the following findings of fact. In February of 2019, the Defendant lived at an apartment located at 511 Alcott Drive, Columbia, SC 29203—apartment 14G (hereinafter "apartment"). These are the Willow Run Apartments. At the time, the Defendant had two roommates—Samuel Thomas and Antonio Dash. Dash was not listed on the apartment lease agreement, but he had been living with the Defendant and Thomas for approximately one year. Additionally, a man named Eric Griffin was a friend of all three roommates, and it was common for him to visit the three individuals at their apartment.

On the morning of February 7, 2019, Eric Griffin visited the apartment where the Defendant, Samuel Thomas, and Antonio Dash lived. Samuel Thomas was not home at the time, so Griffin was let into the apartment by Dash. Ultimately, a fight ensued between Dash and Griffin. The Defendant—who was in his bedroom at the end of the hallway—heard the commotion from the fight between Dash and Griffin. He then retrieved a pistol, walked down the hallway from his bedroom to the living room, observed the two men fighting on the ground in the living room, and shot both individuals several times at close range. The Defendant made two recorded statements to law enforcement where he admitted to shooting the two individuals that were on the ground fighting. Both individuals died from their respective gunshot wounds.

APPLICATION OF THE ACT TO THE FACTS

After considering the evidence presented and applying the law of South Carolina, I conclude that the Defendant is not entitled to statutory immunity under the Act.

I. The Defendant is Not Entitled to Statutory Immunity Under § 16-11-440(A) of the Act Because: (1) There Was No Unlawful and Forceful Entry into the Apartment; (2) Dash was a Lawful Resident and Griffin was Social Guest of the Apartment; and (3) The Defendant Used the Residence to Further an Unlawful Activity

§ 16-11-440(A) of the Act, commonly referred to as the "Castle Doctrine", provides:

> (A) A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause death or great bodily injury to another person if the person:
>
> (1) against whom the deadly force is used is in the process of unlawfully and forcefully entering, or has unlawfully and forcibly entered a dwelling, residence, or occupied vehicle, or if he removes or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle; and
>
> (2) who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred.

Additionally, § 16-11-440(B), lists circumstances in which the presumptions of § 16-11-

440(A) do not apply. § 16-11-440(B) provides:

> (B) The presumption provided in subsection (A) does not apply if the person:
>
> (1) against whom the deadly force is used has the right to be or is a lawful resident of the dwelling, residence, or occupied vehicle including, but not limited to, an owner, lessee, or titleholder; or
>
> (2) sought to be removed is a child or grandchild, or is otherwise in the lawful custody or under the lawful guardianship, of the person against whom the deadly force is used; or
>
> (3) who uses deadly force is engaged in an unlawful activity or is using the dwelling, residence, or occupied vehicle to further an unlawful activity; or
>
> (4) against whom the deadly force is used is a law enforcement officer who enters or attempts to enter a dwelling, residence, or occupied vehicle in the performance of his official duties, and he identifies himself in accordance with applicable law or the person using force knows or reasonably should have known that the person entering or attempting to enter is a law enforcement officer.

§ 16-11-430 provides definitions for dwelling and residence as the following:

> (1) "Dwelling" means a building or conveyance of any kind, including an attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging there at night.
>
> (2) "Residence" means a dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest.

The primary and cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. State v. Pittman, 373 S.C. 527, 561, 647 S.E.2d 144, 161 (2007). Unless there is something in the statute requiring a different interpretation, the words used in a statute must be given their ordinary meaning. Mid-State Auto Auction of Lexington, Inc. v. Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996). "Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and

the court has no right to impose another meaning." Pittman, 373 S.C. at 561, 647 S.E.2d at 161 (citing Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)).

1. No Unlawful And Forceful Entry into Apartment

Under § 16-11-440(A) of the Act, a person is presumed to have a reasonable fear of imminent peril of death and is, thus, justified in the use of deadly force against another person—provided that person has unlawfully and forcefully entered a dwelling. Additionally, the person who uses deadly force needs to know or have reason to know that unlawful and forceful entry has been made into the dwelling.

In the case at hand, there is no credible evidence of unlawful and forced entry into the Defendant's apartment. In fact, the evidence demonstrates the exact opposite of forced entry. First, there was no credible evidence that the door to the apartment had been kicked in, pried open, or damaged in any way. Additionally, there was testimony that it was customary for the residents of the apartment to lock the front door. Furthermore, the evidence that was presented demonstrates that Griffin, who is the victim who did not live in the apartment, was invited into the apartment on February 7, 2019.

Shakihla Smalls went to the apartment that morning, and she saw Griffin and Dash sitting together in the living room. Griffin was invited inside by Dash—who had been living there for approximately one year. When Smalls came into the apartment, the Defendant came out of his bedroom to see who had just entered. The Defendant saw Smalls, Griffin, and Dash all in the living room. Griffin did not unlawfully and forcefully enter the apartment. He was a social guest of Dash. Furthermore, the Defendant knew Griffin was a social guest, since he observed the two men sitting together. Because the Defendant knew that Griffin was a social guest, it can be established that he

was aware that no unlawful and forceful entry into the apartment had taken place.

2. *Dash was a Lawful Resident and Griffin was Social Guest of the Apartment*

Under § 16-11-440(B)(1) of the Act, the presumption of reasonable fear of imminent peril of death or great bodily injury—§ 16-11-440(A)—is inapplicable when the person who uses deadly force against a person who has a right to be in or is a lawful resident of the dwelling. Here, Dash had been living at the apartment with the Defendant and Samuel Thomas for an extended period of time. Samuel Thomas testified that Dash had been living in the apartment for approximately one year. Additionally, the Defendant admitted to law enforcement that Dash had been living in the apartment for more than one year. Ultimately, it is uncontested that Dash lived at the apartment—making him a lawful resident.

Griffin, on the other hand, was not a resident of the apartment. He did, however, have a right to be there. The evidence showed that Griffin came to visit the apartment, Dash allowed Griffin to enter, and they were sitting in the living room together. Because Dash allowed Griffin into the apartment, Griffin then became Dash's social guest. In South Carolina, the presumption of § 16-11-440(A) are inapplicable when deadly forced is used against a social guest who is rightfully in an apartment. State v. Curry, 406 S.C 364, 752 S.E. 2d 263 (2013). Griffin was invited inside the home by a lawful resident. As a result, for purposes of the Act, Griffin had a right to be within the dwelling.

Because Dash is a lawful resident of the apartment and Griffin was a social guest who was rightfully in the apartment, the presumption of reasonable fear found in § 16-11-440(A) is inapplicable.

3. *The Defendant Used the Residence to Further an Unlawful Activity*

Under § 16-11-440(B)(3) of the Act, the presumption of reasonable fear of imminent peril

of death or great bodily injury—§ 16-11-440(A)—is inapplicable when the person, who uses deadly force, is using the dwelling or residence to further an unlawful activity. § 16-11-430 defines a dwelling as a building with a roof over it that is designed to be occupied by people lodging there at night. Additionally, a residence is defined within § 16-11-430 as a dwelling in which a person resides either temporarily or permanently. In the State of South Carolina, according to § 44-53-370(b)(2), the distribution of marijuana is illegal. In this case, there is no question that the Defendant lives within the apartment—making it a residence. The Defendant, by his own admission to law enforcement, sells marijuana out of the apartment. Furthermore, the Defendant admits to police that there are numerous people who come in and out of the apartment due to the marijuana sales.

In addition to the defendant's admission to law enforcement about selling marijuana from the apartment, it was brought out during the cross examination of Investigator Gilliam that Shakihla Smalls went to the apartment the morning of February 7, 2019 to purchase marijuana. Although the Defendant did not sell the marijuana to Smalls directly on this particular occasion, the fact that she went to purchase the marijuana from the apartment corroborates the Defendant's admission that he sells marijuana out of the apartment—which is an unlawful act.

Because the evidence shows that the Defendant used the apartment as a venue for marijuana distribution, it can be established that he used the residence to further an unlawful activity. Therefore, the presumption of reasonable fear found in § 16-11-440(A) is inapplicable, and this Court cannot grant the Defendant immunity from prosecution under this section of the Act.

II. The Defendant is Not Entitled to Statutory Immunity Under § 16-11-440(C) Because: (1) He Was Engaged in an Unlawful Activity; (2) The Defendant was Not Attacked and Did Not Meet Force With Force; and (3) The Defendant Did Not Reasonably Believe Deadly Force was Necessary

Due to § 16-11-440(A) of the Act being inapplicable, the Defendant is therefore defaulted

to seeking immunity under § 16-11-440(C), which deals with the use of force by one who is attacked in a place where he has a right to be. State v. Curry, 406 S.C. 364, 752 S.E. 2d 263 (2013). More specifically, § 16-11-440(C) provides:

> (C) A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60.

1. The Defendant was Engaged in an Unlawful Activity

In order for § 16-11-440(C) of the Act to apply and grant immunity from prosecution, the individual who uses deadly force must not be engaged in an unlawful activity. However, in regards to the unlawful activity element of subsection (C), a proximate cause analysis must be applied to the unlawful activity and the use of deadly force. State v. Glenn, 429 S.C. 108, 838 S.E. 2d 491 (2019). As stated above, the Defendant used the residence to further the unlawful activity of selling marijuana. In a statement to law enforcement, the Defendant admitted that he sells marijuana from the residence. Due to the drug sales, several people often frequented the apartment and "something is always going on".

Because of this fact, he stated that he believed someone was breaking into his apartment—when in reality it was a fight between Dash and Griffin. The Defendant armed himself with a pistol and shot both Dash and Griffin. The marijuana distribution directly affected the Defendant's mental state by leading him to believe that one of the frequent occupants from the drug sales was breaking into his apartment. As a result, there is an apparent causal nexus between the marijuana distribution from the apartment and the use of deadly force. Therefore, it can be determined that § 16-11-440(C) of the Act in inapplicable, due to the Defendant engaging in an unlawful activity.

2. *The Defendant was not Attacked and Did not Meet Force with Force*

Two additional requirements for § 16-11-440(C) to apply are: an individual who uses deadly must be attacked where they have a right to be, and that person must meet force with force. In the case at hand, it is clear that the Defendant had a right to be in the apartment—since he was a resident. With that said, there is no credible evidence that the Defendant was attacked. Consequently, the Defendant could not have met force with force. According to the Defendant's statement to law enforcement, he observed two individuals in the living room on the ground fighting on top of each other. At this point the Defendant opened fire and shot both individuals while they were still on the ground.

The evidence shows that the Defendant was never threatened or assaulted by either Griffin or Dash. Nor was firearm or any weapon ever pointed at him. In fact, there is no credible evidence that either Dash or Griffin were aware that the Defendant was in the same room as them prior to shots being fired—which would be necessary in order to attack him. Since the Defendant was not attacked in any way, then it is impossible for him to have met force with force. § 16-11-440(C) requires the existence of both aforementioned elements. Because both are nonexistent in this case, § 16-11-440(C) does not apply.

3. *The Defendant Did Not Reasonably Believe Deadly Force was Necessary*

The Defendant did not have a reasonable fear justifying the use of deadly force. Immunity from prosecution under § 16-11-440(C) of the Act also requires a person who uses deadly force to reasonably believe the use of force is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60. § 16-11-430(2) defines great bodily injury as "bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the

function of a bodily member or organ."

Here, the evidence demonstrated that there was a fight taking place between Dash and Griffin in the living room of the apartment. The Defendant told law enforcement that he saw two individuals on the ground fighting and shot them. In order to adequately assess the reasonableness of Defendant's actions, it is important to consider the testimony that was presented. First, multiple witnesses testified to the fact that the Defendant had two roommates—Samuel Thomas and Antonio Dash. Since the Defendant had two roommates at the time, it was unreasonable for him to observe two individuals on the ground fighting and immediately shoot them. Furthermore, according to Shahkila Smalls, the Defendant was aware that Dash and Griffin were in the apartment shortly before to the shooting took place. A reasonable person in this situation would consider the possibility that it could be either be his two roommates fighting—Samuel Thomas and Dash—or the two individuals he observed earlier that morning—Dash and Griffin.

Another fact that was testified to, which is vital to assessing the reasonableness of the Defendant's decision to utilize deadly force, is the time of day that the shooting occurred. The shooting took place at approximately 9:00 in the morning. This is important because the sun is out at this time of day. In fact, photographs and testimony revealed that sunlight was traveling through the windows into the living room the morning of February 7, 2019. A by-product of that sunlight was a well-lit living room. A reasonable person would have considered above-mentioned possible identity of the two combatants and identified them—since they were fighting each other, not him, in a sun-lit living room. Instead of doing so, however, the Defendant used deadly force and shot both men.

An additional factor in considering the reasonableness of the Defendant's actions, is the distance from which he shot Dash and Griffin. Dr. Monroe testified that all shots were fired at

close range—the majority being from six inches to three feet away. The only shot that does not fall within this range is the contact wound the back of Griffin's head, which required the Defendant to press the muzzle of his firearm to Griffin's head. A reasonable person who believes deadly force is necessary to prevent great bodily injury or death would not approach two individuals on the ground fighting in a well-lit living room, get within six inches to three feet of them, overlook the fact that he knows both individuals, and shoot them several times at close range—which is what the evidence presented at the hearing shows the Defendant did.

This is corroborated by the testimony of Kevin Archie, a maintenance worker at the Willow Run Apartments that spoke with the Defendant shortly after the shooting occurred. According to Archie, the Defendant gave him three versions of what took place that morning. The Defendant ultimately admitted to Archie that he observed Dash and Griffin on the ground fighting each other, and he shot them. The Defendant was not in fear of great bodily injury or death. He was not protecting another person, since he shot both Dash and Griffin several times. Also, being that there was no credible evidence to the contrary presented, the Defendant did not utilize deadly force to prevent a statutory violent crime.

Therefore, the Defendant has not proven by a preponderance of the evidence that it was reasonable for him to believe the use of deadly force was necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in §16-1-60 and this Court cannot grant immunity to the Defendant under section 16-11-44(C).

III. The Defendant is Not Entitled to Statutory Immunity Under the Act because the Defendant Cannot Prove the Necessary Elements of Self-Defense

In State v. Curry, 406 S.C. 364, 752 S.E.2d 263 (2013), our Supreme Court ruled that when reviewing whether a defendant should be granted immunity under subsection (C), the trial court

"must necessarily consider the elements of self-defense...this includes all elements of self-defense, save the duty to retreat." The Court went on to say that a "claim of self-defense presents a quintessential jury question, which, most assuredly, is not a situation warranting immunity from prosecution." *Id.* at 368, 752 S.E.2d 372. Therefore, this Court must evaluate whether the Defendant has proven by a preponderance of the evidence that the Defendant acted in self-defense when he shot the victim. Self-defense requires that the defendant:

1) be without fault in bringing on the difficulty;

2) be in actual imminent danger of losing his life or sustaining serious bodily injury, or have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury;

3) show that a reasonably prudent person of ordinary firmness and courage would have entertained the same belief and would have struck the fatal blow in order to save himself from serious bodily harm or the loss of his life; and

4) have no other probable means of avoiding the danger.

However, as stated in State v. Jones, 416 S.C. 283, 302, 786 S.E.2d 132, 142 (2016), "the defendant must demonstrate the elements of self-defense, save the duty to retreat" when he is attacked in his own home. Regarding the Defendant's assertion of self-defense, none of the above-mentioned elements have been satisfied.

1. Be Without Fault in Bring About the Difficulty

The Defendant was at fault in bringing about the difficulty, so he cannot satisfy the requirements for self-defense. Here, regarding the first element of self-defense, the difficulty is the Defendant's use of deadly force. The Defendant heard people talking in the living room. He then heard sounds consistent with a physical altercation between those individuals. The Defendant introduced a firearm into the scenario, observed the fight between two people in a sun-lit living room, and made the decision to shoot them both at close range.

As stated above, there is no credible evidence that the Defendant was threatened or attacked—which means there was no justification for the use of deadly force. Based on the evidence that has been presented, had the Defendant not introduced the firearm into the situation, no person inside the apartment would have been shot on February 7, 2019. A person cannot see two unarmed people fighting, insert themselves into the equation by shooting both individuals, and then claim self-defense—which is what the Defendant is asserting. The Defendant brought about the difficulty by introducing a firearm into the situation and shooting two people without provocation. As a result, the assertion of self-defense has failed, and this Court cannot grant immunity from prosecution.

2. Be in Actual Imminent Danger or Believing in Imminent Danger

Next, there is no credible evidence that either Dash or Griffin presented any imminent danger to the Defendant. Furthermore, there is no credible evidence that the Defendant believed that he was in imminent danger. The evidence shows that the Defendant observed two individuals fighting each other on the ground, and he shot them both. No credible evidence was presented that the Defendant was ever threatened, attacked, or even acknowledged by either Dash or Griffin prior to the shooting. Thus, it is impossible for him to be in actual imminent danger of serious bodily injury or losing his life.

Regarding the Defendant's belief of imminent danger, there was no credible evidence presented demonstrating that the Defendant subjectively felt he was in any danger whatsoever. The evidence demonstrated that the Defendant shot two individuals who were fighting each other on the ground, so it has not been established that the Defendant actually believed he was in imminent fear of serious bodily injury or losing his life. In South Carolina, a person when asserting a claim of self-defense is permitted to act on appearances—in terms of the belief of imminent

danger. State v. Jackson, 227 S.C 271, 87 S.E.2d 681 (1955). In this case, there was no credible evidence presented as to what appearance the Defendant was acting on that would have substantiated his belief of imminent fear of serious bodily injury or losing his life. As a result, the Defendant cannot rely on this aspect of the law for purposes of self-defense. Thus, in regards to actually believing or actually being in imminent danger of losing his life or sustaining serious bodily injury, the Defendant's assertion of self-defense fails. This Court cannot grant immunity from prosecution.

3. Reasonable Person Would Have Entertained the Same Belief

As stated above, there was no credible evidence that Defendant was in actual imminent danger or believed that he was imminent danger of the loss of life or seriously bodily injury. The evidence shows that the Defendant observed two individuals fighting each other, and he shot them. The Defendant's actions were both unnecessary and unreasonable. A reasonable person, in this exact situation, would not have used deadly force. Instead, they would have called the police. Therefore, due to the Defendant failing to prove a reasonably prudent person of ordinary firmness and courage would have believed they were in imminent danger, the requirements of self-defense are not satisfied. Thus, this Court cannot grant the Defendant immunity from prosecution.

CONCLUSION

Based upon the foregoing, I conclude the Defendant's use of deadly force was not justified and that he is not entitled to immunity as enunciated in §16-11-450 of the Protection of Persons and Property Act. Therefore, the Defendant's Motion for Immunity is denied.

IT IS SO ORDERED.

The Honorable DeAndrea G. Benjamin
Presiding Judge

Columbia, South Carolina

6 - 14, 2022

State of South Carolina) In the Court of General Sessions
) Fifth Judicial Circuit
County Of Richland) 2021-GS-40-1292
2021-GS-40-1293
2021-GS-40-1294

The State of South Carolina,)
)
)
vs.) Transcript of Record
)
)
Antonio Barnes, Jr.)
)
)

December 5, 6, 7, 8, 13, 2022
Columbia, South Carolina

B E F O R E:

The Honorable Clifton B. Newman, Judge, and a jury

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Certificate of Merit

MONDAY, DECEMBER 5, 2022

THE COURT: Mr. Solicitor.

MR. SCOTT: Sir.

THE COURT: Yes, sir. You have a case?

MR. SCOTT: Do I have a case?

THE COURT: Yeah.

MR. SCOTT: We're ready.

THE COURT: Go ahead.

MR. SCOTT: I have *State v. Antonio Barnes*. He has been indicted on two counts of murder and one count possession of weapon during violent crime. Those indictments are 2021-GS-40-01292 and 1293, 1294. He is represented by the public defender's office and the Shealey Law Firm.

We had a stand-your-ground hearing that was decided by Judge Benjamin, I believe back in March. At that time, we did agree upon the December 5th term to resolve this case with jury trial. All discovery has been provided to the defense; all *Riddle* information and evidence has been disclosed to the defense.

We are ready to proceed to qualify a jury. That's all I've got right now.

THE COURT: All right. For the defense.

MR. LUKE SHEALEY: Thank you, Your Honor. May it please the court?

THE COURT: Yes, sir.

MR. LUKE SHEALEY: I think just for housekeeping and for the record, I probably have to object to even being here in a trial, given that the immunity hearing was heard by Judge Benjamin. That motion was not granted. Obviously we respectfully disagree the her opinion on that, but I think for the record I covered myself there.

Your Honor, we do have several pretrial motions. I tried to slip them through the slot up there, and they might be behind your computer. I don't -- hopefully they landed in somewhat neat fashion.

One of those pretrial motions in particular might impact what we would ask in voir dire, and that would be the motion, the notice of motion to exclude photos of guns in evidence, of drug use, and/or drug dealing. Obviously, defer to you, how you want to take up any pretrial, but that one would affect voir dire, in my opinion.

THE COURT: You want me to hear some testimony or something?

MR. LUKE SHEALEY: No. I would like to argue to you about it. Whether you want to make some rulings on that or not, it might impact voir dire questions that we seek to ask a potential jury.

THE COURT: From the state.

MR. SCOTT: Judge, just briefly, let me -- let me tell

you as quick as I can Cliff's Notes version of evidence we, we suspect the state will present to the court.

The defendant back in -- during the incident date lived in Willowbrook (sic) Run Apartments. He had two roommates. There was -- one of them ended up being a victim. His name was Antonio Dash, and another one was Sam Thomas. He had a friend named Eric Griffin, which ended up being our other victim. On the incident date, Eric Griffin showed up to the apartment complex, a visit supposedly with the tenants of the Willowbrook Apartments, the room that Mr. Barnes lived in. And Mr. Griffin's mother and girlfriend heard gunshots. They go up to the apartment to find Mr. Dash and Mr. Griffin dead. Died of gunshots wounds. Mr. Barnes exits the apartment complex and has a series of explanations for what happened.

Ultimately, what he tells law enforcement is that he was asleep in the back bedroom. He hears some commotion up front. He says I'm a drug dealer and so one of my greatest fears is people coming in and me being the victim of a home invasion due to me being a drug dealer. People know I have money and drugs in my apartment.

He, he -- and again, I'm kind of giving you paraphrasing here, but he basically describes this commotion. In his mind, being a drug dealer, he's getting his home broken into. So, he goes up to the front of the

apartment, like any drug dealer would do, and starts shooting anybody who's in the apartment. Unfortunately, one of those people ended up being his roommate; the other ends up being his good friend Eric Griffin.

That was the basis of his self-defense claim. So, if that's his explanation, I think the evidence of him being a drug dealer by his own admission, and that being the reason that he killed these two, I do find that to be relevant. And if the testimony goes that way, I think that should be admissible.

THE COURT: All right. Anything else on that issue?

MR. LUKE SHEALEY: Yes, Your Honor. I'd like to argue the motion. Mr. Scott's rendition of the facts is maybe from 10,000 feet. Mine would be 1,000 feet.

I don't dispute that Mr. Griffin came over unannounced that morning. He was driving with his mother.

THE COURT: Was that a statement he gave to the police that Mr. Scott mentioned?

MR. LUKE SHEALEY: That was a portion of the statement my client gave to the police. There are other portions that indicate other ---

THE COURT: Well, does the portion include that he's a drug dealer and that he had a gun and he shot these people?

MR. LUKE SHEALEY: He does admit to shooting people. What he states to police consistently is he thought he was

being robbed. One the one hand, he says he lives in the hood, meaning his neighborhood is dangerous. He repeatedly references how his roommates were robbed not, not just two weeks prior at The Corner Store. He's basically speculating as to why he heard what was going on.

This is important, Your Honor. It's pretty much uncontested that the decedents were locked in some type of fight to the death in the living room of, of the apartment while our client was sleeping. We've heard undisputed evidence ---

THE COURT: That undisputed -- what's undisputed?

MR. LUKE SHEALEY: That the decedents, Mr. Eric Griffin and the roommate, Mr. Antonio Dash, were engaged in a violent, what I would call fight to the death, including crashing of TVs, holes in the walls, ripping out of earrings, blunt force trauma in the front living room. It's undisputed as far as any evidence we've heard so far that our client ---

THE COURT: You know, I haven't heard any evidence.

MR. LUKE SHEALEY: I know.

THE COURT: Everything is disputed as far as I'm concerned.

MR. LUKE SHEALEY: And it -- I can only tell you just based, Your Honor, on what -- the evidence we heard from the immunity hearing. So, obviously we know and -- I'm

asking you to make some decisions that you may not want to make right now. But as you will read in our motion, it's pretty well clear, one, there's no -- law enforcement does not believe that this is a drug deal gone bad. There's no cell phone evidence, no statements by the family of decedents saying that this was a drug deal in progress. Our client was asleep. He was not awake or engaged in the drug dealing progress.

So, now as he spends numerous hours with law enforcement crying, trying to wrack his mind about why his roommates were fighting, trying to explain what was going on in his mind as he was asleep and in bed, one of the things he does say is that I, I, sell weed in the neighborhood. We have foot traffic here. Maybe people could have been coming in here to rob us, but he also references that this is a bad neighborhood. That he -- his roommates were robbed not just, in his words, two weeks ago at The Corner Store at gunpoint. So, he's describing to police his general state of anxiety of fear of being robbed.

There's no objective evidence that this was a drug deal. So, that's why I make the motion I'd be seeking to exclude his own statement concerning his own speculation about maybe people were coming here to rob me because I'm a drug dealer.

THE COURT: Concerning his own state of mind?

MR. LUKE SHEALEY: Parts of his states of mind, yes, because I think it, it, it violates 402, it violates Rule 403, and 404(b).

THE COURT: Well, I can't rule. I can't agree with you as part of the motion in limine.

MR. LUKE SHEALEY: I know. It's hard to -- I understand.

There's, there's also evidence. Here's some other evidence that is uncontested that I will hope Your Honor will consider. My client, after the shooting, walked out of his apartment, and the family members of Mr. Griffin, his mother and his fiancee, came up, saw the scene, and he had a gun in his hand, the gun of the shooting. A witness named Ms. Smalls came, took the gun from him. She later -- was found under her mattress. When she testifies, we'll hear about that.

THE COURT: Wouldn't it -- wouldn't it be important for the jury to know that?

MR. LUKE SHEALEY: I'm not asking to ---

THE COURT: If we're trying to explain to the jury what happened there.

MR. LUKE SHEALEY: Yes, sir. You'll see in my motion, I'm not seeking to exclude that evidence.

THE COURT: Okay.

MR. LUKE SHEALEY: What was brought up at the immunity hearing was evidence from our client's phone that we provided to the state some photos of him holding guns in general at a time unknown, evidence that he had purchased a gun of a .40 caliber variety that's part of the search warrant. In his apartment, there was a receipt from Academy Sports.

We know what the gun is in question. It was recovered. It was ballistically compared. It's an FN .9 millimeter. It left seven shell casings on the crime scene. Those match the test fires.

Two of those projectiles are inconclusive, but they're, you know, to basically -- to show that our client has a propensity to collect or have guns that are unrelated to this event only serves the purpose to try to prejudice our client in the minds of a jury, and that's -- it's articulated in the motion. I know Your Honor probably hasn't had a chance to read the motion, but in addition to the marijuana dealing evidence, as well as unrelated evidence of possession of guns, we would seek to suppress that for reasons outlined in the motion.

There was a quantity of marijuana found pursuant to search warrant in his dresser as well as in the hallway. Would probably be -- it's 50 some-odd grams PWID weight. He's not charged with marijuana. We would seek to exclude

that on the same basis. Thank you, Your Honor.

THE COURT: I deny the motions in limine. Some of these things may be excluded based on evidence as it might be revealed during trial, but as far as me granting these motions in advance of trial, I deny the motions.

MR. LUKE SHEALEY: Yes, sir.

THE COURT: What else do we have?

MR. LUKE SHEALEY: Well, we have several other pretrial motions, just however Your Honor wants to hear it. It you're interested in getting a jury selected sooner than later, I do have one motion on that.

THE COURT: All right.

MR. LUKE SHEALEY: You have a motion before you for attorney-conducted voir dire and supplemental voir dire. And I'm not seeking death-penalty style, individual, sequestered voir dire as Your Honor is well versed with. I do have in the motion thirteen questions which would be -- I would seek to conduct in the form of attorney-conducted voir dire in order to get to the heart of the matter, the biases and prejudices of potential jurors, and I do have supplemental judge-conducted voir dire that I would seek for Your Honor to ask them. They are outlined in my motion after that.

If Your Honor doesn't feel that there's any authority for me to ask questions of the jury, I understand that. I

MS. LATIMER: Your Honor, we have another motion in limine to limit a rap video. This rap video was found on the defendant, Mr. Barnes's, phone on phone dump. It appears that the rap video was downloaded from Instagram on or about January 18th of 2019, and this incident that we're here for the trial happened on February 7th of 2019.

This rap video, while it was excluded at immunity hearing, it was alluded to that the pertinent parts the state would bring out was that defendant rapped about potentially killing someone if he was the victim of a theft. We submit that this should not be admitted into evidence for multiple reasons. One, that it's protected. Music is protected speech under the First Amendment. Second ---

THE COURT: Said music is protected speech.

MS. LATIMER: Lyrics.

THE COURT: Lyrics.

MS. LATIMER: In music it's protected speech.

THE COURT: I imagine there must be some cases on this.

MS. LATIMER: Yes, Your Honor, I do have a case.

THE COURT: If someone says on a rap video that I -- yes, I killed the sucker, then that would be protected speech under your theory?

MS. LATIMER: And, Your Honor, it would be protected

speech. Now, whether or not it would get in under certain rules, that might be a different argument. I submit that this rap video specifically would not get under -- in because of a failure to authenticate. They won't be able to say when this rap video was created, when the lyrics were written, when it was even sent to the defendant. They only know it was downloaded January 19th.

And also it was downloaded before this incident happened. So, before Mr. Barnes was ever a victim or perceived to be a victim of any kind of theft. He wasn't speaking after the incident. So, it's not relevant to this case. You can't say it would go to state of mind if he had never been the victim of a theft.

THE COURT: All right.

MS. LATIMER: There's a lot of bravado in rap where they use -- and I -- this motion goes extensively into, you know, cases where this has been referenced and journals have addressed this issue, but there's a lot of bravado in rap. There, murder is often used as a metaphor, and it's not often autobiographical.

So, I would submit you can't authenticate this. It will be irrelevant. It will also be more prejudicial than probative. It's going to talk about a lot of what we say is bad character evidence, and it's going to talk about a theft and it's going to talk about a murder, but it's going

to talk about it before this event ever even occurred and before Mr. Barnes even perceived he was a victim of a theft. So, it would be highly prejudicial.

Our Supreme Court has also addressed the prejudice of raps in *State v. Cheeseboro*. That was back in 2001. I have that cite if Your Honor would like it. And they did find that the rap was highly prejudicial. And that rap was actually made after the charged crimes occurred, and they still find it -- found it highly prejudicial, and that its probative value could not outweigh the prejudice.

THE COURT: What says the state?

MR. SCOTT: Your Honor, just on Monday before we know where testimony is going, I don't know whether not it will become relevant. Certainly I think it would be fodder for cross-examination should he take the stand.

Some of these lyrics are going to his state of mind. At least one of his rap songs specifically references him killing his two -- the victims in this case. Other ones he, he kind of -- you've seen it from the bench, Your Honor. Some, some people seek a certain amount of clout from saying they've killed people. That could potentially be a motive here. I don't know.

THE COURT: Well, we're going to address that issue later in the trial.

MR. SCOTT: Thank you, Your Honor.

Just so Your Honor knows, my client gave a two-page written statement that was written by Investigator Gilliam, but he was in the -- he gave several on-scene statements regarding this shooting event, as well as in the interrogation room. He was there for about six or seven hours.

He was allowed to have his phone, and he was talking to family members and friends about what had occurred and how it occurred. I don't -- you know, obviously a lot of this will be somewhat of a judgment call in the heat of the moment. I think we have appropriate evidentiary exceptions for admission of this evidence. But this just -- this whole memo just goes to show that this is a constitutional due process right as well to present a complete and full defense to attack the credibility of law enforcement.

THE COURT: What's the caption of that motion?

MR. LUKE SHEALEY: It's captioned Memorandum of Law Supporting Admission of Certain Evidence and Certain Lines of Examination, and it just goes through the cases that analyze that and how the fundamental constitutional due process rights of the federal constitution as well as our state constitution do cause local state rules to bow before them.

I just wanted to have that for your consideration to review. It may not be a problem at all, but again just

like lots of these motions in limine, I do want to put the court on notice. And if you'd like to read it, I would welcome that.

THE COURT: All right. I will review the memorandum.

What else? Mr. Truitt, do we have a jury available?

CLERK OF COURT: Yes, Your Honor. They're waiting down in the jury assembly room.

THE COURT: All right, we're ready for them, and as I listen to various motions and everything, they can -- they can come on.

CLERK OF COURT: Yes, Your Honor.

THE COURT: Ms. Young, you were going to say something? Ms. Young?

MS. YOUNG: Oh. Sorry, Your Honor. It was me.

THE COURT: All right.

Anything about the proposed voir dire questions from either side?

MR. SCOTT: No, Your Honor. You've made your ruling on the defense motions, and we accept that.

MR. LUKE SHEALEY: I think I've made my position clear. I'd like you to ask them all, and I'd like to be the one asking it. You've made your ruling, and I think I understand your ruling.

THE COURT: All right. Do we have some of the prospective witnesses here?

MR. SCOTT: We do, Your Honor.

THE COURT: Can you get them all to raise their hands so I'll know who to look for when I'm dealing with the jury?

MR. SCOTT: Wanda, this is Wanda, Wanda Griffin on Your Honor's right, and on Your Honor's left is Ieasha Washington, and this is Investigator Emmit Gilliam right here. That is all the witnesses we have present right now, Your Honor.

THE COURT: All right.

(A PAUSE.)

THE COURT: Let's all get another stretch in before that jury comes in.

(A PAUSE.)

THE COURT: All right, be seated.

Regarding the defendant's issue, the situation, situation with bond, what is it?

MR. LUKE SHEALEY: Your Honor, he's out on bond. He's made every court appearance. He is on an ankle monitor. His bonding company is happy to stay on his bond. We respectfully request that you allow that.

THE COURT: Are you going to have the bonding company certify that here?

MS. YOUNG: Your Honor, Mr. Harper actually just walked in the room. We were scheduled to start this trial

-- I think Mr. Scott mentioned this -- back in March. And they provided a letter. Titus wasn't in the office over the weekend and this morning, but he did authorize that additional note.

Your Honor, I also have an email from OMS saying that they'll keep that ankle monitor on him until you order them to take it off.

THE COURT: All right. We'll make these a part of the record.

(EMAILS CONCERNING BOND MARKED AS COURT'S EXHIBIT NUMBER 1 RECEIVED INTO EVIDENCE.)

(WHEREUPON, THE JURY PANEL ENTERS.)

THE COURT: Ladies and gentlemen, I am Clifton Newman and I am presiding in this courtroom. You all were sent up here for jury selection in the trial of the case we're about to do in this room.

The state may call its case.

MR. SCOTT: Thank you, Your Honor. May it please the court? The first case that the state intends to call this week is the *State v. Antonio Vashon Barnes, Jr.* I have three true billed indictments for Mr. Barnes. The first one is 2021-GS-40-01293; that is a true billed indictment for murder. The second indictment I have is 2021-GS-40-01292; that is another true billed indictment for murder. Finally, I have indictment 2021-GS-40-01294.