VOLUME I OF II

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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Honorable Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DON LEEQUIN BROWN,

APPELLANT

APPELLATE CASE NO. 2023-001336

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA * GENERAL SESSIONS
*
COUNTY OF HORRY * TRANSCRIPT OF RECORD

STATE OF SOUTH CAROLINA, *
*
Plaintiff, *
*
vs. * Case No. 2021-GS-26-05564,
* et al.
CHE RANSOM, *
*
Defendant. *

STATE OF SOUTH CAROLINA, *
*
Plaintiff, *
*
vs. * Case No. 2023-GS-26-00279,
* et al
TRAVONTAE J. MITCHELL, *
*
Defendant. *

STATE OF SOUTH CAROLINA, *
*
Plaintiff, *
*
vs. * Case No. 2022-GS-26-02891,
* et al.
DON LEEQUIN BROWN, *
*
Defendant. *

May 22-25, 2023

JURY TRIAL

B E F O R E:

The Honorable Benjamin H. Culbertson, Presiding Judge; and a jury.

Court Reporter: Bobbi Fisher, RPR
SC Official Court Reporter III

2

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(General Jury Qualifications were completed by Judge Culbertson and a lunch recess taken from 12:55 p.m. to 1:31 p.m.)

(The trial commences at 1:31 p.m.)

(State's Exhibit Nos. 1 through 51 were marked for identification.)

MOTIONS/MATTERS OF LAW

THE COURT: All right. On State vs. Che Leon Ransom, Jr. -- do we have the indictments? Because the charges on the roster y'all printed out doesn't match what's been published as far as -- conspiracy to kidnap is not even on the roster, the published roster or this roster.

On the published roster, you've got a murder and three attempted murders. On the roster y'all gave me, you had murder, two attempted murders, and a possession of a weapon during the commission of a violent crime. Now, the indictments she just gave me is a murder, three attempted murders, and a conspiracy to kidnap.

MS. LIVESAY: The only ones we intend on going forward with, Your Honor, is the murder and the conspiracy to kidnap.

THE COURT: All right. So for Che --

MR. GARDNER: Your Honor, if I may. I'm aware of

the murder and the three counts of attempted murder. I have not been served with an indictment for conspiracy to kidnap. In fact, I hadn't been served with the indictment for the firearm charge, but I understand they're not going forward on it, so that's moot.

THE COURT: Conspiracy to kidnap, indicted on March the 22nd.

MR. GARDNER: Of this year, Your Honor?

THE COURT: Yeah.

MR. GARDNER: In March of this year?

THE COURT: March 22 of 2023, was true billed.

MR. GARDNER: That was also not part of the original arrests and warrants.

THE COURT: I mean, did they know about this charge?

MS. LIVESAY: We included it on the subpoena that we served them and the defendant the indictment numbers for the murder, the attempted murder, as well as the conspiracy of kidnap to put them on notice.

THE COURT: When did you serve them with this indictment?

MS. LIVESAY: We never served them with that. We sent them a subpoena, and on the subpoena, it had all the indictment numbers on it that we were moving forward with.

THE COURT: All right. Let me see -- have you got a copy of that subpoena?

MR. HELMS: Court's indulgence, Your Honor.

MR. BOUCHETTE: Even if they do have the subpoena, that's not notice, Your Honor.

THE COURT: Well, if they're subpoenaed to come to court to be here this week and it's got the indictments and the charges, then I think that's sufficient.

MS. LIVESAY: Do you want me to mark this or hand it up?

THE COURT: No, let me just see them.

Well, I see where you have got the indictment number on this subpoena. Have you charged all of them with conspiracy to kidnap?

MS. LIVESAY: Yes, sir. And that indictment number was on the subpoena that went out --

THE COURT: The indictment number is on the subpoena, but where do you let them know the charge against them?

MS. LIVESAY: On the subpoena, Your Honor.

THE COURT: Where on this does it tell them what the charge is? It's got a subpoena number.

MS. LIVESAY: It's got an indictment number.

THE COURT: But how does the number let them know what they're being charged with?

MS. LIVESAY: But that's the only way to identify the indictment on the subpoena is through the number.

That number is an indication belonging to a particular indictment.

THE COURT: Other than putting this indictment number on this subpoena, have you ever told these defendants or their attorneys that they were being charged with conspiracy to kidnap and that it would be tried this week?

MS. LIVESAY: No, sir. Only on the subpoena that we sent them.

THE COURT: Well, you can't go forward with the conspiracy to kidnap. Okay? They don't have notice other than a subpoena number that they were even charged with conspiracy to kidnap. They have never been told. They have never been served with the indictment. All they have been done is given a subpoena with an indictment number on it that makes no mention of conspiracy to kidnap, and you just did that a little over a month ago.

MS. LIVESAY: Your Honor, the subpoena includes the indictment numbers for all the charges that we're here to move forward on.

THE COURT: I understand.

MS. LIVESAY: The murder and the three attempted murders.

THE COURT: Exactly.

MS. LIVESAY: As well as the conspiracy.

THE COURT: Well, but you've never told them about the conspiracy. You just stuck an indictment number on a subpoena and say this is what we're trying. They don't have an obligation to go track it down and see what they're charged with. They have the right for the State to inform them, these are the charges against you, this is what we're going forward with. And you haven't done that other than just said we're going forward with Indictment 2023-GS-26-01647.

MR. HELMS: I understand, Judge. If that's the ruling of the Court, we understand completely. We're prepared to move forward on the original murder and three attempted murders.

THE COURT: Okay. All right. Now, having said that -- so we have got murder, three attempted murders, Che Leon Ransom. That's what I have got to see. Because on the roster you gave me, it had a possession of a weapon, but you're not doing possession of a weapon.

MS. LIVESAY: No, sir.

MR. HELMS: No, sir.

THE COURT: Gotcha. Okay.

All right. So now I have got all this, I think, straight. State versus Don Leequin Brown going forward on the Indictment 2022-GS-26-02891 for murder; 2022-GS-26-02898, 2901, and 2902 for attempted murder.

MR. HELMS: Yes, sir.

THE COURT: State versus Che Leon Ransom, Jr., going forward on the 2021-GS-26-05562 for murder; 05561, 05563, and 05564 for attempted murder.

MR. HELMS: Yes, sir.

THE COURT: State versus Travontae J. Mitchell, 2023-GS-26-00279 for murder; 277, 278, and 266 for attempted murder.

MR. HELMS: That's right, Judge.

THE COURT: Now, you also list a possession of a weapon on him but you're not going forward on that?

MS. LIVESAY: No, sir.

THE COURT: Gotcha. All right. Now, do you want a copy of these back?

MR. HELMS: Yes, sir.

THE COURT: Now, I understand we have got some Jackson v. Denno, if we're ready to go forward. I can tell you-all right now, we're not going to be able to pick a jury until close to 3:00 because Judge Mullen just let her jury panel go to lunch not even ten minutes ago. So I told them to be back at 2:45 for the panel for us to get our jury.

MR. HELMS: Yes, sir. If we could pick a jury today, I think that would be progress.

THE COURT: All right. So this is a Jackson v.

Denno. You have two Jackson v. Denno hearings?

MS. LIVESAY: Yes, sir.

THE COURT: And they are for who?

MS. LIVESAY: Travontae Mitchell and Che Ransom.

THE COURT: All right. Now, are these together or do we need to have two separate?

MS. LIVESAY: We're having two separate hearings.

THE COURT: All right. Which one do you want to do first?

MS. LIVESAY: If you don't mind, Travontae Mitchell.

THE COURT: Okay. Anything before we go forward with the Jackson v. Denno on Travontae Mitchell?

MR. PINKERTON: No, Your Honor.

JACKSON V. DENNO HEARING

THE COURT: All right. At this time, the State can call your first witness.

MS. LIVESAY: Thank you, Judge. At this time, the State calls Detective Sean Wydra to the stand.

DETECTIVE SEAN WYDRA (HEARING PORTION),

after having been duly sworn, was examined and testified to as follows:

THE COURT: Before we get started, I think all of you have been in front of me, but I'll allow direct examination, cross-examination, and redirect only as to matters that were addressed on cross that were not

addressed on direct. No recross. Okay?

And with this being Mr. Mitchell, I guess the order we'll go in on this one would be the State and then Mr. Pinkerton and then Mr. Gardner and Mr. Bouchette and redirect and do it that way. Okay?

All right, sir. If you'll state your name, please.

MS. LIVESAY: Yes, sir.

DIRECT EXAMINATION

BY MS. LIVESAY:

Q Detective Wydra, where are you currently employed?

THE COURT: Excuse me for a second. Let me get him to state his name and spell it for the court reporter.

THE WITNESS: Detective Sean Wydra. It's S-e-a-n. Last name is W-y-d-r-a.

BY MS. LIVESAY:

Q And, Detective Wydra, where are you employed?

A Horry County Police Department.

Q And how long have you been employed there?

A I have been with the Horry County Police Department for approximately 11 years.

Q And what kind of training have you undergone to be with the police department and while you've been with the police department?

A I mean, to be a police officer, you've got to go to the police academy. Beyond that, I've gone through other

advanced training and also training yearly, basically, just to keep your certification.

Q And what are your current responsibilities?

A I'm in the Homicide Unit.

Q And how long have you been with the Homicide Unit?

A Approximately four years.

Q And were you with the Homicide Unit when you talked with Travontae Mitchell?

A Yes, ma'am.

Q And when you say your responsibilities are with the Homicide Unit, what does this include?

A Obviously, we investigate homicides, but we also investigate any death investigations, suicides, overdoses. Sometimes you have natural deaths, so if there's something that seems suspicious about it or they have questions about it. We also do attempted murders. Sometimes we do armed robberies, kidnappings. Kind of just depends on --

Q So anything where there's loss of life?

A Oh, yes.

Q Okay. And did you have an occasion to assist on an investigation involving Travontae Mitchell?

A Yes, ma'am.

Q Okay. And as part of your assistance, did you speak with Travontae Mitchell?

A Yes, ma'am.

Q Okay. And where did you talk with him at?
A The M.L. Brown Public Safety Building in Conway.
Q And at the time, was he in custody?
A Yes.
Q And due to the fact he was in custody, did you read him his Miranda rights?
A He was read his Miranda rights.
Q I'm going to show you now what's been marked as State's Exhibit No. 51. Tell the Court if you recognize that.
A That's the Miranda form that Mr. Mitchell completed during the interview. He signed. And also this was read to him by the other detective in the interview room with me. I was present when it was read to him in the interview room. I signed it as a witness down here at the bottom.
Q Okay. And if you don't mind, tell the Court what's included on that form.
A So included at the top is subject's name, date of birth, case number, officer's name, badge number, date and time, location. There's other questions on there, whether or not they graduated, what year they were in, if they're under the influence of alcohol of drugs, if they can read and write, if they're under any physical discomfort. And then you have the actual Miranda rights. Would you like

me to read them?

Q Please.

A It says, "You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to talk with a lawyer and have him present with you while you are being questioned. If you can't afford to hire a lawyer, one will be appointed to represent you at not cost to you before any questioning, if you so desire. If you make a statement or answer any questions, you have the right to stop at any time."

Underneath that, it asks, "Do you understand these rights?" And it gives you a section to sign yes or no.

Q Okay. And did Travontae Mitchell indicate that he understood his rights?

A Yes, he did. He initialled next to each one of those rights that I just read. He then signed it and printed his name at the bottom.

Q Okay. And did he indicate that he wanted to speak with law enforcement?

A No, ma'am.

Or with -- are you saying with law enforcement?

Q Yes.

A He did not say that he did not want to speak to us. He spoke with us.

Q And at any time, did he invoke any of those rights?
A No, ma'am, not while I was in the interview room.
Q And during the time he was there, was he ever denied going to the restroom or getting anything to eat?
A No, ma'am. We gave him the opportunity to use the restroom, offered him something to drink, something to eat.
Q Okay. And at any time while he was in the room with you and the other investigator, was he ever threatened?
A No, ma'am.
Q Did anybody ever put their hands on Mr. Mitchell?
A No, ma'am.
Q Did anybody indicate that he would be given something in exchange for talking to law enforcement?
A No, ma'am.
Q When you talked with him, were his answers responsive to your questions?
A Yes, ma'am.
Q And during the time he was in there, did he appear to understand what was going on?
A Yes, ma'am, he did.
Q Did he appear to be in any pain or discomfort?
A No, ma'am.
Q Did he appear to be under the influence of any drugs or alcohol?

A No, ma'am.
Q At any time when you were in the room, did he ask for a lawyer?
A No, ma'am.
Q Did he ask to invoke his right to remain silent?
A No, ma'am.
Q Did he freely converse with you during the time he spoke with you at M.L. Brown?
A Yes, ma'am.
Q And in the course of that conversation, did he speak with you freely and voluntarily?
A Yes.
Q Did anything ever happen while you were in the room to indicate that he didn't want to speak with you?
A No.
Q How about that he wanted a lawyer?
A No.
Q And did he initial beside, "Yes, I understand the rights"?
A Yes.
Q Did you have any reason to believe, when he was in the room, he didn't understand what was going on?
A No.
Q Did you have any reason to believe that he did not want to speak with law enforcement?

A No.
Q And was the conversation kind of at a normal pace of asking questions, answering questions, that sort of thing?
A Yes.
MS. LIVESAY: No further questions.
THE COURT: All right. Mr. Pinkerton?

CROSS-EXAMINATION

BY MR. PINKERTON:
Q Thank you for being here, Detective.
So you interviewed Mr. Mitchell?
A Yes.
Q How old was he at the time?
A Sixteen, I believe.
Q He was sixteen?
Did you talk about what grade he was in at school?
A Yeah.
Q But he was not a high school graduate; correct?
A No.
Q 11th grade sound correct?
A I don't recall exactly what grade he got to, but he did not graduate. He was still in school.
Q But he was not a high school graduate at the time?
A No. He was in alternative school at the time.
Q How long was he in custody before you began questioning him?

A I don't know.
Q You don't know? Okay.
And you said you did not deny him going to the bathroom?
A No. We gave him an opportunity to use the restroom.
Q Okay. And how long into the questioning was that?
A I don't recall.
Q But you asked him right at the beginning of the questioning, correct, whether or not he wanted to go to the restroom; correct?
A I don't recall exactly when it was.
Q Now, as far as your questioning my client that day, this was not in relation to an emergency; right?
A It was not --
Q Not in relation to an emergency; right?
A I'm not sure I understand.
Q This was not in relation to, like, an ongoing emergency; correct?
A I mean, it was in relation to a murder investigation.
Q Yes, but not an ongoing -- like an active emergency; correct?
A I don't know what you would consider an active emergency, so I don't know really how to answer that question, sir.

Q You weren't questioning him because you needed to render aid to somebody; correct?
A No. There was nobody at that point in time that needed medical attention.
Q Was he ever allowed to make a phone call to his mother previous to questioning?
A I don't recall us ever calling his mother.
Q Was he given the option?
A No, I don't believe so.
Q And was he handcuffed the whole time he was in custody and being interviewed?
A I don't recall whether he was handcuffed the whole time or not. He was handcuffed when he came in there and when we left. I don't remember during the course of the interview how long the cuffs were on or off.
Q And who all was in the interview room with you besides my client?
A Detective David Dudley.
Q So just to reiterate, he was 16 and not a high school graduate at the time?
A That's correct.
Q And once he left y'all's custody, where did he go?
A I don't know where they brought him after that, because I'm not the one that took him anywhere after that, sir.

Q Okay.

MR. PINKERTON: Court's indulgence.

THE COURT: All right.

MR. PINKERTON: No further questions, Your Honor.

THE COURT: All right. Mr. Gardner, any questions?

MR. BOUCHETTE: I think Jarrett is going to go next, Your Honor, if it's all right with the Court.

CROSS-EXAMINATION

BY MR. GARDNER:

Q Officer, I'm trying not to duplicate efforts; I apologize if I ask you some of the same questions.

A Sure. That's all right.

Q Just trying to go through my notes.

With regard to the defendant's age, did you undertake any efforts to ascertain what level of education or sophistication he had obtained?

A We asked him where he went to school, whether he finished school, things like that.

Q Like I say, you don't know, beyond that -- other than the fact that he went to school at some point, you don't know what, if any, learning disabilities or what level of achievement he obtained; is that right?

A No, I don't.

Q Now, I want to talk about -- when this interview occurred, this was how long after the murder had occurred?

A I don't recall exactly how many days afterwards it was. But it was September of 2020. So it wasn't that long afterwards.

Q This wasn't, obviously, the same night?

A No.

Q It was well after; right? And I think that's what Clay was asking you about earlier. When you say with regard to an emergency, obviously, we understand you were investigating a murder, but it was not -- you were not in an emergency situation at that time; correct?

A There was nobody that needed any immediate care for an injury or anything like that.

Q Okay. And when you had the defendant in the police station, was there already a warrant out for his arrest?

A I don't know if there was at the time or not. I can't recall.

Q So it's possible there was already a warrant out?

A I don't know. I'm not sure. I'm not the one that obtained the warrant. I couldn't answer whether or not it was obtained before or after that.

Q Given that it had been a period of time, in fact, there may have been -- already been an arrest warrant out, safe to say that the questioning or the interview that you conducted was for purposes of investigating this murder?

A Yes.

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Q And, in fact, the interview itself and the information that you were eliciting was for possible future use in a prosecution such as this one; correct?

A Yes.

MR. GARDNER: No further questions at this time, Your Honor.

THE COURT: All right. Mr. Gardner?

MR. BOUCHETTE: No, Your Honor. No questions.

THE COURT: Anything on redirect?

MS. LIVESAY: Nothing further from the State.

THE COURT: All right. You may step down.

THE WITNESS: Thank you, Your Honor.

THE COURT: The State can call your next witness.

MS. LIVESAY: Thank you, Your Honor.

At this time, the State calls Detective Ken Marcus.

THE CLERK: Please raise your right hand and place your left hand on the Bible.

DETECTIVE KEN MARCUS (HEARING PORTION), after having been duly sworn, was examined and testified to as follows:

THE COURT: Please state your name and spell it for the Court.

THE WITNESS: Ken Marcus. Last name is M-a-r-c-u-s.

DIRECT EXAMINATION

BY MS. LIVESAY:

Q And, Detective Marcus, tell this Court where you're currently employed.

A With the Horry County Police Department.

Q And how long have you been with the police department?

A Almost 16 years now.

Q And what kind of training have you undergone?

A Went through the basic criminal justice academy training to be certified as a law enforcement officer. Every year we have to go there for an annual training to keep our certification. I've also gone through several advanced courses for investigations of violent crimes, sex crimes, homicides, cold case investigations, school resource officer duties. Several other things, including some digital forensics.

Q And did you assist on the case that we're here today for?

A I was the case agent for the case that we're here today for.

Q Okay. And what were your responsibilities at that time?

A As the case agent, I was the one who was ensuring that the investigation went in the different directions that it needed to go. I would send different

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investigators out to follow up on certain leads. I would send people to go and find witnesses, search for suspects, try to obtain evidence from different places. And then they would bring all that information back to me, and I would sort it out and organize it and decide where we were going to go next as a group, as a team.

Q And as part of this investigation, did you participate in the questioning of Travontae Mitchell?

A Yes. I did participate in the questioning of Travontae Mitchell.

Q Okay. And while you were questioning Mr. Mitchell, did he ever invoke any of his rights?

A No.

Q Did he ever ask for a lawyer?

A No.

Q Did he ever invoke his right to remain silent?

A No.

Q Was he ever denied use of the bathroom or something to eat?

A No, not at all. In fact, I was the person who took him to the bathroom prior to the interview starting with Detective Wydra.

Q And when you were in the room, did anybody from the police department put their hands on Defendant Mitchell?

A No.

Q And did anybody at any time promise him anything in exchange for his statement?
A No.
Q When you were in there, did he appear to understand what was going on?
A Yes, ma'am.
Q And were his questions -- or were his answers responsive to your questions?
A Yes, they were.
Q Okay. And at any time, did he appear to be in any kind of pain or discomfort?
A No.
Q And if he had invoked any of his rights, would you have terminated the interview?
A Absolutely, the minute he invoked them.
Q And did he ever invoke any of his rights?
A No, ma'am, he did not.
Q And did he speak with you freely and voluntarily?
A Yes, ma'am.

MS. LIVESAY: No further questions, Your Honor, for Mr. Marcus.

THE COURT: All right. Mr. Pinkerton?

CROSS-EXAMINATION

BY MR. PINKERTON:

Q Thank you for being here, sir.

A Thank you.
Q Once again, how old was my client when you interviewed him?
A I believe he was 16.
Q So he was not an adult?
A No.
Q Did he mention how far he went in school?
A I was not present during that part of the interview.
Q But you would agree he was not a high school graduate?
A That's correct. What information I reviewed said he was not a high school graduate.
Q Was there a warrant out for his arrest at the time you interviewed him?
A No. Because he was 16 years old, the juvenile justice system works differently. You detain a juvenile at that time -- at this particular time and age.
Q So there was no warrant out for murder at the time or attempted murder at the time?
A No, no. The detention process for juveniles is different. There are no charging documents issued in that instance.
Q So he was in the custody of DJJ at the time, technically?
A So after the interview, he was released into the

custody of DJJ.

Q At any point was he given a chance to call his mom or his dad?

A He didn't request to speak with his parents. I know, at one point in time -- because I was monitoring the interview -- right before I entered the interview and actually spoke with Mr. Mitchell himself, I know officers had left the interview to make contact or attempt to make contact with their parents to let them know we had picked them up.

Q Do you know if that was successful or not?

A I don't know. I do believe that he was taken into custody at his home. I'm not sure if his parents were present at the time or not. That was a different officer who brought him to the M.L. Brown building.

Q And that was before the interview; correct?

A That's correct.

Q Do you know how long it was between being arrested until the time of the interview?

A Not very long. I think total time that he was in the M.L. Brown building in the interview room was only about two hours, two and a half hours. And the total time that the actual interview took place where there was questioning maybe was an hour and a half at the most. I think there was about 30 minutes he was sitting, attended,

but no one in the room prior to the interview starting, and then I believe the DJJ process took about 30 minutes after that for screening purposes before he left the building.

Q And, once again, the interview, it was not for the purpose to render aid to any victims in the case?

A No.

Q And it wasn't a state of emergency at the time; correct?

A Well, it was a murder investigation, but...

Q But you didn't think you'd find more victims out that were hurt, laying in a ditch, or something?

A No, that's correct.

Q And do you recall if he was handcuffed or not during the interview?

A He was. Initially, when he was brought into the room, he had his hands cuffed behind him. Prior to him going to the restroom, we removed the cuffs, and then the cuffs were placed in front of him. They remained in front of him so that he could freely move his arms about and be in a more comfortable position during that interview.

Q But he did remain handcuffed during the interview?

A Yes.

MR. PINKERTON: Court's indulgence, Your Honor.

No further questions, Your Honor.

THE COURT: All right. Mr. Bouchette?

CROSS-EXAMINATION

BY MR. GARDNER:

Q Officer, how long after the murders did this interview with Mr. Mitchell occur?

A The exact date, I don't recall. I know it was a couple of days afterward. Maybe four or five at the most.

Q And you heard the prior officer testify that this interview that was conducted at the police station was to gather information in conjunction with this prosecution for the murder; correct?

A Correct.

Q And you anticipated, in the course of gathering that information and then conducting the interview, that it might be used for a prosecution in a trial such as this one; correct?

A He was in custody at the time for this incident, yes.

Q And I understand he was in custody, but part of the purpose at least in asking the questions and in making note of what he said and recording the interview was for the potential, at least, to use it in a trial such as this one; correct?

A We wanted to know what occurred that day. We didn't have a clear picture of his involvement. We did have

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information that he was involved, so we were trying to ascertain what had occurred. We asked him for his side of the story.

Q I understand it was an investigation, but you had already spoken to a number of other codefendants; correct?

A We had spoken to at least one.

Q At least one.

And you had DJJ lined up to take him into custody following your discussions with him; correct?

A We called DJJ after our interview, yes.

Q All right. So, safe to say, then, that that was -- this interview and the statements that you're eliciting from him was for at least the potential use in this prosecution and in a trial like this one?

A Oh, yes, sir.

Q Okay.

MR. GARDNER: No further questions, Your Honor.

THE COURT: All right. Mr. Gardner?

MR. BOUCHETTE: No, Your Honor. No questions.

THE COURT: Redirect?

MS. LIVESAY: Nothing from the State, Your Honor.

THE COURT: All right. You may step down.

The State can call your next witness.

MS. LIVESAY: Not as to the interview of Travontae Mitchell. We have presented all the witness testimony.

THE COURT: Okay. I don't even know what the statement is.

MR. BOUCHETTE: I don't either.

THE COURT: We don't have an exhibit. We don't have a statement introduced.

MR. HELMS: Well, no, sir, Your Honor. And, to be honest with you, we have done it both ways depending on the judges that we have had. We've had judges that wanted to hear the statement after the voluntariness was testified to, and we have had judges that just wanted to hear the testimony as to the voluntariness of the statement, since that is the core of the Jackson v. Denno.

THE COURT: Well, I'll let you do it either way you want. I mean, I have always had them put the statement in at the Jackson v. Denno hearing.

MS. LIVESAY: Yes, sir, Your Honor. Just for -- because we were only disputing voluntariness --

THE COURT: Okay.

MS. LIVESAY: -- we feel like the testimony's been presented and cross-examination's been presented.

THE COURT: I'll let you do it however you want to do it.

Mr. Pinkerton, anything you want to present?

MR. PINKERTON: No, Your Honor.

THE COURT: Mr. Bouchette, anything you want to

present?

MR. GARDNER: The only thing -- again, I don't -- I know we have an objection as to voluntariness, and I know they're going to get into the specifics of what statements they're trying to get in, but I do have an objection insofar as to representing a codefendant that this testimony is testimonial hearsay under Crawford v. Washington that -- whether it's voluntarily or not, any of these statements from this interview cannot be introduced in this trial due to the fact that we now have a codefendant who will not be able to cross-examine the statements that were made.

So whether they're voluntary or not, those statements are allowed to come in. This is a category -- the subcategory the Supreme Court has outlined as to testimonial statements. That's why I kept asking the officer was it for investigative purposes or was it for use at trial. It clearly was and clearly is. So we would object under Crawford for the admission irrespective of --

THE COURT: That's a separate issue. This is just a Jackson v. Denno hearing to determine the voluntariness. If there is another grounds, you know, that affects his admissibility, we don't address that in the Jackson v. Denno. The sole purpose of this hearing is to determine whether or not rights should have been given; if they were

deemed to have been given, were they given; and was it a voluntarily statement given freely and voluntarily with full knowledge of their rights.

MR. GARDNER: I'll allow the Court to rule on that and then raise our objection at a later time.

THE COURT: All right. Mr. Gardner, anything you want to present?

MR. BOUCHETTE: Judge, I believe the record is protected that, regardless of how you rule on this -- if you do rule that it comes in, then we'll be able to address whatever issues are left with it. Thanks, Your Honor.

THE COURT: All right. I find that it is a voluntarily statement or given voluntarily with his -- fully advised of his rights, so I'll allow that statement as to voluntariness.

MS. LIVESAY: I understand.

THE COURT: Now, if they've got other grounds to object, they'll raise that, I'm assuming, when you try to introduce it. All right.

MS. LIVESAY: Yes, sir.

THE COURT: Now, the next one is...

MS. LIVESAY: Che Ransom, Your Honor.

THE COURT: All right. The State can call your first witness.

MS. LIVESAY: Before we call the next witness, Your Honor, Detective Wydra has a matter outside of court. Can we excuse him for today?

THE COURT: If you don't need him for this hearing.

MS. LIVESAY: I don't, Your Honor.

THE COURT: Yes.

MS. LIVESAY: Thank you.

At this time, we'd call Detective Edwards to the stand.

THE CLERK: Please raise your right hand and place your left hand on the Bible.

DETECTIVE CHRISTOPHER EDWARDS,

after having been duly sworn, was examined and testified to as follows:

THE CLERK: Please state your name and spell it for the Court.

THE WITNESS: It's Christopher Edwards. E-d-w-a-r-d-s.

DIRECT EXAMINATION

BY MS. LIVESAY:

Q And, Detective Edwards, where are you currently employed?

A The Horry County Police Department.

Q And how long have you been with Horry County Police Department?

A 16 years.
Q And what are your current responsibilities?
A I'm currently assigned to the Narcotics and Vice Unit.
Q And what were your responsibilities in 2020?
A I was assigned to the Violent Crimes Unit.
Q And what were your responsibilities when you were on the Violent Crimes Unit?
A We would either respond or get called out to or be assigned violent crime cases, homicides, attempted murders, robberies. During the course of that, we would do normal investigative techniques such as interviews, canvassing.
Q And as part of your interviews, would you talk with suspects and potential defendants?
A Yes, ma'am.
Q And in the case we're here today, did you talk with Defendant Che Ransom?
A I did.
Q And where were you when you spoke with that particular defendant?
A At the M.L. Brown building in Conway.
Q Okay. And was he in custody?
A He was.
Q And because he was in custody, did you read him his

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Miranda?

A Yes, ma'am.

Q And I'm going to show you now what he says has been marked as State's Exhibit No. 50. Tell the Court if you recognize that document.

A I do.

Q And tell the Court what's on the document.

A That's the Horry County Police Department Advisement of Miranda Rights Form. It's basic information about the person we're talking to and their Miranda rights.

Q And did Che Ransom indicate whether or not he understood his rights on the document?

A He did.

Q And did he check yes?

A He did.

Q And did he sign the document?

A He did.

Q Okay. And did somebody at the police department sign the document to say, "Hey, I witnessed it"?

A Detective Marcus.

Q And if you don't mind, tell the Court what rights are on that document that you read to Defendant Ransom.

A It says, "You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to consult with a lawyer

and have him present with you while you're being questioned. If you cannot afford to hire a lawyer, one will be appointed to represent you at no cost to you before any questioning if you so desire. And if you make any statement or answer any questions, you have the right to stop at any time."

Q And he initialled he understood that?

A Yes.

Q And during the time you spoke with him, did he ever ask for a lawyer?

A No.

Q Did he ever indicate to you that he wanted to remain silent?

A No.

Q Now, let's talk about when you were in the room with him. Did you ever deny him the ability to go to the bathroom or get something to eat?

A No, ma'am.

Q So, if he wanted it, you would have gotten it?

A Yes.

Q Now, let me ask you something: Was his family present at the police department?

A He had two family members present that came with him.

Q Okay. And, in fact, did you let those two women

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talk with the defendant at the police department?

A I did.

Q Okay. And did you and the other policeman leave the room so they could be in there alone with Defendant Ransom and talk with him?

A Yes, ma'am.

Q Okay. So he asked for his family, and you let him talk to his family?

A I can't remember if he asked for them, but we let them go in and talk to him.

Q Okay. But, either way, you let his mama back there?

A Yes, ma'am.

Q Okay. And was there a policeman in the room when the mama and Defendant Ransom were talking?

A No, ma'am.

Q And, at some point, did they leave the room and you come back in the room?

A I did.

Q And when you came back in, did he still continue to want to talk with you?

A He did.

Q Okay. And at any point during the course of this interview before or after his mama talked to him, did you ever -- or anybody else -- put your hands on the defendant?

A No, ma'am.
Q Did you ever threaten him in any form or fashion?
A No, ma'am.
Q Okay. Did you ever promise him anything in exchange for his statement?
A No, ma'am.
Q Did he ever, at any time, act like he was under the influence and didn't understand what was going on?
A No, ma'am.
Q Did he ever act like he was in any pain or discomfort?
A No, ma'am.
Q Okay. At the end of the interview, after you talked to him, did you let his mama and the other family member go back in and speak with him?
A We did.
Q So, in the middle of the interview, you let him talk to his family?
A Yes, ma'am.
Q And after you talked to him, you let the family back in to talk to him?
A Yes, ma'am.
Q At any time did he indicate that he didn't want to talk with you?
A No.

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Q At all times were his answers responsive to your questions?

A They were.

Q Did he freely and voluntarily talk with you?

A He did.

MS. LIVESAY: No further questions, Your Honor.

THE COURT: Mr. Bouchette?

MR. GARDNER: Very briefly, Your Honor.

CROSS-EXAMINATION

BY MR. GARDNER:

Q Officer, your interview with Mr. Ransom was about ten days or so later from the date of the murders?

A Yes, sir.

Q Okay. All right. And one of the waivers that's indicated on the Miranda form was the right to have an attorney; correct?

A Yes, sir.

Q Okay. Now, at this point when the interview initiates, did you already have a warrant for his arrest?

A Detective Marcus had obtained arrest warrants.

Q So the arrest warrants were already signed off by the judge; correct?

A Yes, sir.

Q So the decision to charge Mr. Ransom had already been made well before he volunteered himself to the police

station; correct?
A Yes, sir.
Q All right. When during the course of the investigation did you alert him to the fact that the warrants had been obtained and the decision had been made to charge him?
A I believe we went that morning and attempted to locate him, and that was how he found out he had warrants and that's why he came to the police department.
Q So he came in. During the course of your interview, you never told him that, "We've warrants for you, that you're under arrest"?
A I believe we told him he had arrest warrants.
Q In the interview or afterwards?
A Sometime at the police department.
Q Well, the reason I ask that, I didn't see that on the video. Are you testifying that, outside of the interview, there was some communications regarding possession of warrants?
A It would have been during, like, the taped portion while we were talking to him.
Q During the taped portion. Okay.
That would have been the only time you would have alerted him to the existence of a warrant; correct?
A Yeah, that wouldn't have been beforehand.

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Q Okay. So if that wasn't told to him, was there a reason why you wouldn't have alerted him to the fact that the warrants had already been obtained for the murder charge?

A The U.S. Marshals task force went to find him. So, I mean, he would have known there were warrants.

Q Well, I know you're presuming he knew there were warrants, but he was alerted by the marshal service. He presented himself to the sheriff's office; right?

A To the county police.

Q To the county police. Sorry?

A Yes, sir.

Q And then you began your interview with him; correct?

A Yes, sir.

Q Because he showed up. He said, "Hey, I'm Che Ransom. I think you want to talk to me"?

A Yes.

Q Okay. And then you began talking to him; right?

A Yes.

Q And the whole time, obviously, you had a warrant; correct?

A Yes, sir.

Q You did not serve that on him at the beginning of the interview; correct?

A Correct.

Q It was only after the interview had concluded and he had provided whatever testimony or statements that he had provided that you then alerted him and told him that, "Hey, we had this warrant the whole time." Correct? At least from your standpoint. I know it's a possibility somebody else may have said something --

A Yes, sir.

Q -- but from your standpoint, that's what you did?

A Yes, sir.

Q You only alerted him to the existence of the warrant after the interview had concluded?

A I believe so.

Q Okay. Now, I have to ask: Given that he has the right to an attorney, was it a conscious decision to not present that warrant to him at the beginning of the interview but, instead, wait until -- an hour or two hours after you had been talking to him to then serve him with the warrant?

A I wouldn't say so.

Q Did you believe that it be more or less likely that he would invoke his right to counsel if he was served with the warrant after you had elicited testimony from him?

A It's been my experience it goes -- I have served people with warrants at the beginning of interviews, and they have still spoken with us.

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Q Okay. All right. But you chose not to do that in this case, though; right?

A I don't know if it was, like, a decision that was made.

Q Well, you made a point to say that, you know, his parents were in the area or were in the police station, actually; right?

A Yeah, they were there. They came with him.

Q And, obviously, you know that he had spoken to them at some point; correct?

A Yes, sir.

Q But, in fact, y'all left the recording camera on during those discussions?

A We did.

Q Okay. All right. Were you monitoring those discussions?

A I was not.

Q Okay. All right. But let me just ask it this way: In your years as a detective, do you believe it would have been more likely to -- for him to have invoked his right to counsel had he known at the beginning of the interview that the decision had already been made to charge him with the crime of murder and attempted murder?

A In my course of doing homicide investigations, I have had it go both ways.

Q With it going both ways, was it your choice here to withhold it until the end in the hopes that that would be less likely that he would invoke his right to counsel?

A No, sir, that's not a choice I made.

MR. GARDNER: Court's indulgence.

THE COURT: All right.

BY MR. GARDNER:

Q Very briefly. Officer, did you speak with Mr. Ransom's parents during this interview process?

A I did.

Q Okay. And notwithstanding what you assume some other party may have conveyed, did you convey to them the fact that you had a warrant for his arrest already signed off by the judge at the start of the interview?

A I don't remember.

Q You don't remember one way or another, or you don't believe that you did?

A I don't remember one way or another.

MR. BOUCHETTE: No further questions, Your Honor.

THE COURT: All right. Mr. Bouchette -- I mean, Mr. Pinkerton. I apologize.

MR. PINKERTON: No, Your Honor.

THE COURT: Mr. Gardner?

MR. BOUCHETTE: No, sir.

THE COURT: Anything on redirect?

MS. LIVESAY: No, sir, Your Honor.

THE COURT: You may step down.

State can call your next witness.

MS. LIVESAY: Mr. Edwards is the only witness we're going to call as to Defendant Ransom's statement.

THE COURT: All right, Mr. Bouchette. Anything to be presented by your client?

MR. GARDNER: No, sir.

THE COURT: Mr. Pinkerton?

MR. PINKERTON: No, sir.

THE COURT: Mr. Gardner?

MR. BOUCHETTE: No, Your Honor.

THE COURT: Any arguments?

MS. LIVESAY: Yes, sir, Your Honor, just very briefly. The defendant was in custody. When he was served the warrant is irrelevant as to Jackson v. Denno and irrelevant as to Miranda. He was in custody, therefore, he was read Miranda. He indicated on the form, which is State's Exhibit 51, that he understood his rights. He did not invoke his rights. In fact, not only that, but he was allowed to talk with his mom and aunt in the course of the interview, and after that, the police came back in and he freely and voluntarily talked more to the police. And then when the police walked out, the family came back in.

He was never denied anything. In fact, like I say, he saw his family. He was never promised anything or threatened, and all his answers were responsive to the questions. Therefore, the State believes that the statement meets what's required under Jackson v. Denno.

THE COURT: All right. Mr. Bouchette, any argument?

MR. GARDNER: Just very briefly, Your Honor. Obviously, a number of factors for the Jackson v. Denno is going to be the age and the surrounding circumstances. Any concealment or misrepresentation is a factor which I submit that the withholding of a murder warrant, which has already been obtained, already been signed off on by the judge, in entering the question of this 18-year-old defendant, I submit represents a conscious effort to conceal given an advantage of eliciting testimony. I understand the State's argument, but we would ask the Court to suppress the statement on that basis.

THE COURT: All right. Mr. Pinkerton, anything from you or your client?

MR. PINKERTON: In regard to Mr. Bouchette's client?

THE COURT: Yes.

MR. PINKERTON: No, Your Honor.

THE COURT: All right. Mr. Gardner, anything?

MR. BOUCHETTE: Yes, Judge. I join with Mr. Bouchette on everything that he argued, but I would

add to that, Your Honor, you brought in -- not you -- they brought in additional characters into this hearing, in this procedure, this statement or interrogation, and I don't know what was told to who. You know, it may have been, "Tell your boy to cooperate, and we'll make sure he gets to go home today. The other boys are cooperating, and we won't charge him with murder."

And I don't know if maybe I didn't hear what was addressed on that part, but from that, I would ask you to rule in favor of the defense if there's a question there and grant the motion to suppress that.

THE COURT: All right. Well, I don't have any evidence to that effect, and so I'm going to rule that it is a voluntary statement given and satisfies the requirements of Jackson v. Denno.

All right. Anything? I have got the jury panel coming back in at 2:45. Anything before then?

MR. HELMS: Your Honor, there is one pretrial matter, and I don't know if it's a motion in limine or just something I wanted to bring to the attention of the Court, but these are three of six codefendants whose cases have to be disposed of. One of those cases have been disposed of, Your Honor, pursuant to a trial where he was found guilty.

It is almost inevitable in my mind that mention of

that defendant will come up by one of the five attorneys in this room. My question to the Court is this: How is that to be addressed? I would like it to be addressed uniformly by all the attorneys pursuant to the advice of the Court.

So in terms of, Can we refer to Mr. Whittington as being convicted already? If not, I understand; I just want guidance from the Court.

Is reference to his status prohibited, I guess is my ultimate question.

THE COURT: I'm assuming, just because of the multiple defendants, this is a "hand of one is the hand of all" situation?

MR. HELMS: Yes, sir.

THE COURT: Well, let me hear from the defense. I'm inclined to believe one of two things: either -- who was the one that's been convicted?

MR. HELMS: Tronahz Whittington.

THE COURT: Whittington. I think he can refer to Mr. Whittington's participation without saying he was convicted, or the defendants are going to be entitled to a jury charge that says Mr. Whittington's conviction is not any evidence of their guilt, and they are not bound -- in other words, just because a jury convicted Mr. Whittington of the crime does not mean that these defendants committed

the crime.

Mr. Bouchette, let me hear from you on that issue?

MR. GARDNER: My inclination would be -- I don't think there's any dispute that Mr. Whittington was the bad actor in this group. The question is what relative culpability do these defendants have.

And so, yes, I think we would be able to acknowledge his -- Mr. Whittington having been tried and having been convicted, and the Court would charge at the end of the case that that's not to be used against these codefendants.

THE COURT: All right. Mr. Pinkerton?

MR. PINKERTON: Your Honor, I would join Mr. Bouchette on that argument.

THE COURT: Mr. Gardner?

MR. BOUCHETTE: I would join with them also, but I would add, just for my clarification, I believe that Mr. Helms is correct; I think it's going to come out even if we try not to get it out because I understand -- I might be wrong, but I believe the State is going to call two witnesses that testified in the prior trial, and I believe that the evidence in the prior trial was the defendant who was ultimately convicted was the shooter in this case. And I believe that that's going to come out at some point in time.

And I do believe that neither the State nor the defendants need to be prejudiced by that, and they should be able to go forward with this case, and certainly, we would need some kind of instruction to the jury that, just because one of the people in the car was convicted of murder, does not mean that these three defendants are guilty or should be gone against in any way.

THE COURT: Well, and I think -- and I'll certainly give them the charge when I charge them on the law, but I think the hand of one charge in and of itself basically explains that; that you have to be an aider, an abetter, and an active, you know, participant, and just presence at the scene of a crime in and of itself is not evidence of guilt.

MS. LIVESAY: And I would imagine you're going to give a mere presence charge probably too?

THE COURT: Yeah, I mean, I generally do. I don't know that I will, but usually, every time there's a multiple defendant and there's a hand of one, hand of all theory, then I give the charge of mere presence alone that there has to be a prior intent.

MR. BOUCHETTE: I think that takes care of it. I don't want -- you know, I'm trying to be completely fair. I don't want the State to say, "We have got one fellow convicted; that means these guys are guilty of aiding and

abetting." Likewise, and I don't want us to be able to say, "He's the shooter, he's the one who is guilty. Go home. That's the end of the case."

So I think what you just said is fair, and I think that will take care of it.

THE COURT: All right. I think that will handle it then.

MR. HELMS: Thank you.

THE COURT: It can be brought up, "Mr. Whittington has been tried and he's been convicted." But then, when I charge the jury, I'll charge them that his conviction is not evidence of their guilt.

MR. HELMS: Understood. Yes, sir, Your Honor.

THE COURT: All right.

MR. BOUCHETTE: Are we at ease until 3:00?

THE COURT: I don't know. We're checking to see.

MR. HELMS: I was just reading the case law; I think your ruling is spot on.

THE COURT: Okay. All right. Anything further from the State before we take a break?

MR. HELMS: No, Your Honor.

THE COURT: Anything? All right. And y'all decide -- it doesn't matter to me, but I do want to do it uniform throughout the trial of the case as far as on cross-examination or when it's time to present defenses

and I question whether or not your clients want to testify, whenever, if that comes up, which order we're going to go in.

MR. GARDNER: Judge, I think we're going to go with me, Mr. Pinkerton, and then Mr. Gardner.

THE COURT: All right. Mr. Bouchette, Mr. Pinkerton, and then Mr. Gardner. Okay. We'll do it that way.

Also, I understand that multiple defendants with charges, the State gets ten strikes?

MS. LIVESAY: That's right.

THE COURT: Defense gets 20 total.

MS. LIVESAY: That's right.

THE COURT: So three doesn't go into 20 equally, so y'all --

MR. BOUCHETTE: We'll just confer and we'll --

THE COURT: Okay. All right.

When it comes time to strike, are y'all going to have one spokesperson, or do you want me to go Mr. Bouchette, Mr. Pinkerton, Mr. Gardner, knowing that, once you hit 20 total, that's it?

MR. GARDNER: Your Honor, ideally, I think we'd like to have one speaker. The only thing about that, obviously, is we're trying to coordinate this. We'll need to have the three attorneys close together. My

understanding is that the sheriffs want, I think for security purposes, attorney, defendant, attorney, defendant. So we'd ask if we can circle around to the front here, we can have it to where the three attorneys would be next to each other so that we could --

THE COURT: And I don't have a problem with that. We can do it that way.

MR. GARDNER: The only other point that I'd make, Your Honor, before the jury comes in is counting, for purposes of the record, one, two, three, four, five sheriff's deputies in the lower right-hand corner of the courtroom between the bar and the defense table. It would seem to give an impression to the jury pool when they come in as sort of a prejudicial show of force.

Now, I know we have to have security measures that we have to take. I'm concerned that such an overwhelming show may be very prejudicial to any potential jurors that come in may immediately, based on that showing, view these three young men as exceptionally dangerous, needing such extraordinary protection.

THE COURT: Well, I mean, the security is what it is. I'm going to let them stay as it is. They're back from the defendants, and so I'm going to allow them to stay there.

I mean, we have got security over here, security in

the back, and security over here. So I'm going to allow them to make that decision.

All right. Anything until we take a break?

MR. HELMS: No, sir.

THE COURT: All right. We'll be in recess. The jury is coming back at 2:45. As soon as they all get back and they all get here --

MS. LIVESAY: Okay. So we're picking from up here?

THE COURT: Yeah, we'll pick here. I'm assuming -- what do y'all think? 55 jurors?

MS. LIVESAY: I'd like -- as many as we have got, I'd like to bring them up, Judge.

THE COURT: Okay.

MS. LIVESAY: Just because we're going to have 20 -- you know, 10, 30 strikes and then 12, it's going to be 42, alternates. We're getting close.

THE COURT: Well, I know we had 80-something jurors, and Judge Mullen has 12 of them.

MS. LIVESAY: Right.

THE COURT: So I guess we'll just bring whatever jurors we have left on the panel, we'll bring them all up and do it that way.

MS. LIVESAY: Thank you, Judge.

(A discussion was held off the record between the Court and the Clerk.)

MR. BOUCHETTE: We have a Batson motion because of striking Juror No. 37 and Juror 295, but I wanted to explain to my clients that it may be that we --

THE COURT: All right. Go ahead. Go ahead and discuss it with them.

(A discussion was held off the record between the defendants and their attorneys.)

MR. GARDNER: Your Honor, as to Defendant Ransom, we have no motion regarding the jury.

THE COURT: Say that again.

MR. GARDNER: Regarding Mr. Ransom, we have no objection to the jury.

THE COURT: All right. Mr. Pinkerton?

MR. PINKERTON: No objection for Mr. Mitchell.

MR. GARDNER: None for Mr. Brown either.

THE COURT: All right. Ladies and gentlemen, those of you who remain in the jury panel, we have our jury for this first case, so I'm going to excuse you for the remainder of the evening. You should have been given a phone number to the Clerk of Court's office. You'll need to call that number after 6 p.m. today -- after 6 p.m. -- I guess it would be tomorrow, because we'll definitely go into tomorrow. So after 6 p.m. tomorrow, if you would call that number for some further instructions.

Again, I look forward to working with you this week.

I thank you for being here, and if you don't get selected on a jury, you have still fulfilled your duties as jurors.

So you're free to go for the remainder of the day, but please call that number after 6 p.m. Thank you very much.

(The remaining prospective jurors exited the courtroom at 4:25 p.m.)

MOTIONS/MATTERS OF LAW

THE COURT: All right. I want to go ahead and put on the record why we met in chambers. It came to our attention at the sidebar from Mr. Helms that, during questioning -- voir dire questioning, one of the jurors responded to one of the security personnel -- not to the Court but that he -- was it he or she? She. Juror 282, Ashley Rabon, said that she knew the victim and the victim's family.

So we met back in chambers. I went ahead and excused her from this case. I don't know why she didn't stand and respond to the Court, but as soon as I asked the question if anybody knew any of the victims or victim's family or anything of that nature, she responded to one of the security personnel.

Anything the State wants to put on the record in regard to that?

MR. HELMS: No, sir.

THE COURT: Mr. Bouchette, anything you want to put on the record regarding that?

MR. GARDNER: No, sir.

THE COURT: Mr. Pinkerton?

MR. PINKERTON: No, Your Honor.

THE COURT: Mr. Gardner?

MR. BOUCHETTE: No, sir.

THE COURT: All right. Let's take about a five- or ten-minute break. Let's see if the jury can select a foreperson, and we'll bring them back in.

Now, I don't know that we're going to have time to get the opening arguments in. I think we do have time for me to do the opening charges if you want me to go ahead and do the opening charge. I didn't know if you want me to do the charge and then y'all come in and just do your opening statements tomorrow or if you want to do them all at the same time.

What's the State's position?

MR. HELMS: I think the first option is the best.

THE COURT: Doing the charge before?

MR. HELMS: Yes, sir.

MR. GARDNER: I think so as well, Judge.

THE COURT: Mr. Pinkerton?

MR. PINKERTON: Yes, Your Honor, I agree with that.

THE COURT: Mr. Gardner?

MR. BOUCHETTE: Yes, I agree with that, but we have two motions that are very brief that we would like to put on the record before we start going into the -- certainly before we go into the opening. One is --

MR. PINKERTON: Your Honor, I want to make a motion to have witnesses sequestered during the trial.

THE COURT: All right. Any defense? Defendants oppose that motion?

MR. GARDNER: No, we agree with it.

MR. BOUCHETTE: Agree and join in.

THE COURT: What's the State's position?

MR. HELMS: Your Honor, we would not disagree with defense counsel's motion. We would only ask that exceptions be made for the witnesses who are also statutory victims as well as the motion be reciprocated.

MS. LIVESAY: Hold on now...

So Che Ransom's mom is on the witness list, but I have spoken with her because she is under subpoena, and I told her that this motion may be made, and I also told her I would not object to her staying in the courtroom. So I want to stay true to my word because she is his mother.

THE COURT: Yeah, well, still we're either going to -- we're not going to make exceptions. We're either going to sequester them or we're not going to sequester them.

So with that in mind, any objection from the State?

MS. LIVESAY: No, Your Honor.

THE COURT: All right. So who is the lead investigator?

MS. LIVESAY: Ken Marcus.

THE COURT: And who are the statutory victims?

MS. LIVESAY: Jacob Hill, Your Honor, Orlin Lopez, and Britney Milam.

THE COURT: And who was the last one?

MS. LIVESAY: Britney Milam. And of course Jaime's family.

THE COURT: Are they witnesses?

MS. LIVESAY: I'm sorry?

THE COURT: Are they witnesses?

MS. LIVESAY: No, sir.

THE COURT: If they're not witnesses, they can stay here. I'm just talking about witnesses who are either -- the defendants get to stay, the lead investigator gets to stay, and statutory victims get to stay.

MS. LIVESAY: Okay.

MR. GARDNER: Sorry, Your Honor, the prosecutor identified Mr. Che Ransom's family. Apparently, I didn't notice it on the witness list or didn't recognize the name. Apparently, there's been some conversations at some point that I have not been privy to, but now that they have identified who is going to be a witness and subject

to sequestration, am I understanding Your Honor correctly that you have not allowed, with consent of the State, to allow his family to be present?

THE COURT: If they are witnesses -- I mean, they cannot testify in this case unless they are sequestered.

MS. LIVESAY: They're witnesses for the State, Your Honor. Whatever you rule, we respect.

MR. GARDNER: In that situation, if the sequestration goes forward where my client is not going to be able to have his family who -- I don't know why they would be witnesses or what relevance they'd have, but I would object on that basis for sequestration. I wasn't under the impression we had Mr. Ransom's mother or family being possible State witnesses.

THE COURT: Well, were they on the witness list?

MR. BOUCHETTE: They may have. I did not --

MS. LIVESAY: Let me tell you this just in transparency, Judge, since this has come up. I do intend to call that lady as a witness, but I'm just telling you what I have told her. I know she is the mother of Che Ransom, so I respect she wants to be in here. And that lady's name is Crystal Vereen. That is Che Ransom's mom. She's on the witness list.

THE COURT: All right. Any objection to Crystal Vereen being in the courtroom?

MS. LIVESAY: I'm not objecting because she is the defendant's mom. And just for your clarity, Judge, her portion of testimony is on video.

THE COURT: All right. The State does not object to Crystal Vereen.

Mr. Bouchette, do you object to Crystal Vereen being in the courtroom?

MR. GARDNER: No, sir.

THE COURT: Mr. Pinkerton?

MR. PINKERTON: I would not object to that, Your Honor.

THE COURT: Mr. Gardner?

MR. BOUCHETTE: No, sir, no objection.

THE COURT: All right. So I will grant the motion to sequester the witnesses. The defendants can be in the courtroom. Ken Marcus, as lead investigator, can be in the courtroom. Jacob Hill, Orlin Lopez, Britney Milam as victims can be in the courtroom. And Crystal Vereen, with stipulation of the parties, can be in the courtroom.

Everyone else, if they're going to testify, they're going to need to be sequestered.

MR. HELMS: Yes, Judge.

THE COURT: All right. I think we have got a foreperson.

THE BAILIFF: Yes, sir.

THE COURT: All right. Charles P. Gardiner, Juror No. 117, has been selected as the foreperson. And he evidently misunderstood my instruction because rather than writing his juror number, he wrote his phone number. Strike through the phone number. Well, we don't need to make this a Court's exhibit. Charles P. Gardiner, Juror No. 117, is the foreperson.

MR. HELMS: Yes, sir.

THE COURT: All right.

Anything else?

MR. BOUCHETTE: The other motion, Your Honor, I would make on behalf of Mr. Don Brown is, in the last trial, the solicitor, I believe, improperly introduced the victim's mother to the jury as a non-witness, and that serves no legitimate purpose other than to inflame the jury and appeal to their bias and their passion, which is all improper.

And the other thing is it's improper, personalizing the case saying she's not a witness but she knows what this case is about, she's been here every day. I understand all that, but I think there are rules that that's highly prejudicial and completely improper. And that is my motion, to keep the solicitor from doing that.

THE COURT: All right. What's the State's position?

MR. HELMS: Your Honor, I'm not aware of any rule

that introducing the victim of the mother violates.

THE COURT: I mean, why are you introducing her?

MS. LIVESAY: Because he gave a statement to her saying that he fired. So, of course, we want to introduce that. He gave a party opponent --

THE COURT: Well, if she's testifying as a witness -- Mr. Gardner said that you just introduced her as the victim's mother and never called her to testify.

MS. LIVESAY: Oh, the victim's mother.

MR. HELMS: Your Honor, that's it. That's all that was done. She was introduced to the jury.

THE COURT: And what was the reason?

MR. HELMS: Because she is the mother of the murdered victim. I thought that she had a right to be introduced to the jury.

THE COURT: All right. I'm going to grant the motion. If you're not calling her as a witness, I'm not going to just let you introduce her as the victim's mother. All right?

MR. HELMS: Understood.

THE COURT: Anything else from the defense?

MR. HELMS: No, Your Honor.

THE COURT: Mr. Bouchette?

MR. GARDNER: No, sir.

THE COURT: Mr. Pinkerton?

to listen to any news reports or anything to find out anything about the case. Everything you need to make a decision will be presented to you during the trial of this case.

I hope everyone has a good evening. Please rest tight, and we'll see you back at 9:00 a.m. tomorrow morning. Thank you very much.

(The jury exited the courtroom at 4:51 p.m.)

THE COURT: All right. Anything from the State before we recess?

MR. HELMS: No, sir.

THE COURT: Mr. Bouchette?

MR. GARDNER: No, sir.

THE COURT: Mr. Pinkerton?

MR. PINKERTON: No, sir.

THE COURT: Mr. Gardner?

MR. GARDNER: No, Your Honor.

THE COURT: They're coming back in at 9:00. I'll try to take the bench at 9:15. We'll see you then.

(The trial adjourned at 4:51 p.m.)

TUESDAY, MAY 23, 2023

(The trial resumed at 9:18 a.m.)

JUROR ISSUE

THE COURT: Thank you very much. Please be seated.

All right. Good morning, ladies and gentlemen.

Anything preliminary before we bring the jury in?

MS. LIVESAY: I do Judge. So it was brought --

THE DEPUTY: The other defendant is not here yet. He's on the way, Your Honor.

THE COURT: I apologize; we're still waiting for a defendant to get here.

MS. LIVESAY: It was brought to my attention --

MR. HELMS: Hang on; we have got to wait on the defendant.

(Pause in the proceedings.)

THE COURT: All right, Ms. Livesay.

MS. LIVESAY: Thank you. Just very quickly.

It was brought to my attention this morning when Jacob Hill arrived to court that he knew the juror that is on the end, and the juror contacted him yesterday after we all left just to say, "Hey, I'm on that trial. I heard your name in court." So I had to bring that to the Court's attention. I apologize, but --

THE COURT: Which juror is it?

MS. LIVESAY: It's the young man on the end, the third alternate.

THE COURT: The alternate? Okay.

And Jacob Hill is a witness?

MS. LIVESAY: He is the victim of an attempted murder.

THE COURT: Oh, he's a victim.

MS. LIVESAY: He is here; he's probably in the side room. But as soon as he came in this morning, him and his mom let me know that that had occurred.

THE COURT: All right. I mean, I'm inclined just to excuse him.

What's the -- Mr. Bouchette, what's your position?

MR. BOUCHETTE: I think excusal makes sense, Your Honor.

THE COURT: All right. Mr. Pinkerton?

MR. PINKERTON: Yes, Your Honor. I believe excusal is appropriate.

THE COURT: All right. Mr. Gardner?

MR. GARDNER: Yes, sir. I mean, this is pretty bold for him to reach out to a juror by telephone. So, yes, I'm more interested, though, if he had any discussions about the nature of the case with any other jurors.

THE COURT: Yeah. What's the State's position?

MS. LIVESAY: If the Court deems it appropriate to excuse him, then we certainly understand. I mean, he has already reached out to one of the potential witnesses.

THE COURT: All right. I'm assuming that's James Tyler, the alternate? He was the last one picked?

MS. LIVESAY: Yes, sir. The young man on the end.

THE COURT: Let's bring Juror No. 356, James Tyler

in, please.

(Pause in the proceedings.)

(Juror No. 356 entered the courtroom at 9:22 a.m.)

THE COURT: All right, sir, if you'll come forward. Your name is James Tyler?

JUROR NO. 356: Yes, sir.

THE COURT: All right. Mr. Tyler, I understand that you -- or it's come to our attention that you know one of the victims in this case; is that correct?

JUROR NO. 356: Yes, sir.

THE COURT: All right. Why didn't you respond when I asked the voir dire question as to whether or not anybody knew --

JUROR NO. 356: I didn't know that was him.

THE COURT: You didn't? But, as I understand, you telephoned him last night?

JUROR NO. 356: Yes, sir.

THE COURT: Okay. So how did you find out it was him?

JUROR NO. 356: Like, me and him was talking. Like, I texted him.

THE COURT: Why would you reach out to him and text him?

JUROR NO. 356: I didn't know that was him. I said, "You got court tomorrow?" He said, "Yeah." I said, "Oh,

I got court too." And that's all I said.

THE COURT: Have you discussed this with anyone else in the jury room?

JUROR NO. 356: One of the other -- I forgot what his name was.

THE COURT: You don't know -- is he an alternate or part of the 12-panel jury?

JUROR NO. 356: He was the head guy.

THE COURT: The foreperson?

JUROR NO. 356: Yes, sir.

THE COURT: And what did you say to him?

JUROR NO. 356: That I knew Jacob Hill.

THE COURT: And what else?

JUROR NO. 356: That was it.

THE COURT: Are you talking about Mr. Gardiner, the person who is sitting here on the front row in the first seat?

JUROR NO. 356: No, it was no one in here. It was like a head person in charge.

THE COURT: No, I'm talking about out of this jury.

JUROR NO. 356: Oh, no, sir.

THE COURT: Have you talked to anybody about it?

JUROR NO. 356: No, sir.

THE COURT: So none of the other jurors that are on this jury with you, you haven't spoken to any of them at

all?

JUROR NO. 356: No, sir.

THE COURT: All right.

(Deputy hands note to judge and conferred with the judge off the record.)

THE COURT: Okay. So this is the note from Mr. Bobby?

Okay. So you talked to the bailiff about it?

JUROR NO. 356: Yes, sir.

THE COURT: Okay.

All right. Mr. Tyler, I'm going to excuse you from this particular jury.

JUROR NO. 356: Yes, sir.

THE COURT: What I'm going to do is I'm going to excuse you for the remainder of the week, but I'm going to put you back on the next jury panel for you to come back and serve your jury duty. Okay?

JUROR NO. 356: Okay.

THE COURT: All right. So we're going to transfer Mr. Tyler to another term of court.

Have you got anything in the jury room?

JUROR NO. 356: Yes, sir.

THE COURT: All right. Let her know what you have got in there, and she'll go in and get it for you. Okay?

JUROR NO. 356: Yes, sir.

THE COURT: And you'll receive another summons as to when you need to come back to do your jury duty.

JUROR NO. 356: In the mail?

THE COURT: I'm assuming. Is that how -- yeah, that will be in the mail.

JUROR NO. 356: Yes, sir. Thank you.

THE COURT: Thank you.

(The juror exited the courtroom at 9:26 a.m.)

THE COURT: All right. Anything further from the State?

MR. HELMS: No, Your Honor.

THE COURT: Mr. Bouchette?

MR. BOUCHETTE: My only concern is -- and I hate to keep making the jury reaffirm or take another oath, but it's essentially the second juror that we have had not bring forth information from the Court. We've excused one juror yesterday for not disclosing knowledge to somebody; I forget what exactly it was.

Given what just happened, I think it probably would be appropriate for the Court to inquire to the jurors when they come in that they reaffirm that nobody has spoken neither to Mr. Tyler about the case or anybody else about the case and to reaffirm that they don't know any of the witnesses that have been identified now that they have had a chance to perhaps see some of the people and put faces

so we don't cover this again.

THE COURT: All right? Mr. Bouchette [sic], anything?

MR. PINKERTON: Your Honor, I would join Mr. Bouchette on that.

THE COURT: All right. Mr. Gardner?

MR. GARDNER: Yes, sir, Your Honor. We agree.

THE COURT: All right. What's the State's position?

MR. HELMS: My position is I'd defer to the discretion of the Court. I think you can best handle this.

THE COURT: All right. When we bring them in, I'll just ask them -- I'll say, "It turns out that one of our alternates had turned out, in hindsight, did know something about the case that was not disclosed to the Court; therefore, I have excused him." And, "Does anybody else have any information about this case, know any of the parties, know any of the victims, or know any of the witnesses?" We'll handle it that way. Okay?

MR. HELMS: Yes, sir.

MR. PINKERTON: Your Honor, I would also add to ask, if you will, if he's discussed that with any of the other jurors back in the jury room this morning.

THE COURT: All right.

MR. GARDNER: A couple of preliminary matters.

First related to discovery, as we were doing -- going through testimony in the Jackson v Denno hearing yesterday, we learned that the State had had some type of interview with my client's mother, who is present in the courtroom.

Upon speaking with her today, it's my understanding that there was a review or interview here at the solicitor's office, multiple people present. I believe it was last Thursday, according to her.

Judge, I would anticipate that there were notes or recordings or something taken of that interview with the witness. And, if so, I'd like to be provided with that. They have identified her as a witness. They indicated they might seek to call her. I'd like to know what she said and what was discussed at that meeting.

THE COURT: All right. What's the State's position?

MR. HELMS: If I'm not mistaken, Mr. Bouchette is asking for my work product, and I object to that.

THE COURT: Did you identify her as a witness in this case?

MR. HELMS: She is identified as a potential witness. She's on the witness list, yes, sir.

THE COURT: I know on the witness list, but in discovery, did you identify her as a potential witness who might testify in this case when they requested discovery?

MR. HELMS: Yes, sir.

THE COURT: I think that's all they're required to do.

MR. BOUCHETTE: Well, I guess my concern is that this was taken -- if they have any statements that are recorded that might be used for impeachment purposes, then, I think, under that, we would be entitled to have it for discovery purposes. I think this was done with law enforcement present --

THE COURT: You're talking about recorded statements of your client's mother?

MR. BOUCHETTE: As I understand it, it was done -- I presume it was recorded. There would have been third-party witnesses there. If it was just a discussion with the solicitor, then that might be work product. But if it's recorded something they might intend to use either for impeachment purposes or otherwise, then I think we're entitled to have that.

MR. HELMS: He's got everything I have, Judge.

THE COURT: Okay. He says you have got everything he's got.

MR. BOUCHETTE: All right. So the solicitor is just affirming that there was no recording or statements, notes kept or anything along those lines other than the communication between the solicitor and potential witness.

THE COURT: Did you record her statement or was her statement recorded?

MR. HELMS: Did we record her statement?

(Counsel conferring off the record with co-counsel.)

MR. HELMS: No, Your Honor. Her statement was recorded by the surveillance camera that was in the interview room, just like Mr. Che Ransom's was recorded. That's the only memorialization we have of her potential testimony.

MR. BOUCHETTE: Okay. And I do have that, Your Honor.

THE COURT: All right. Sounds good.

Anything else?

MR. BOUCHETTE: And only one other thing, Your Honor. I submitted a motion to the Court. This was just a heads-up so we can get to it whenever the appropriate time is, but what we began going over yesterday during the Jackson v. Denno hearings were certain objections that we anticipate regarding statements that may be elicited and attributed to Mr. Pinkerton's client or to Mr. Gardner's client. I don't know what the best way is to address that. The Court probably doesn't want to hear it now, but I'm trying to give a heads-up for the purposes of the State planning their opening, however they wish to address that, but we do anticipate an objection whenever the State

seeks to elicit that testimony.

And so, if the Court doesn't want to get into it now, then I would just ask that we be given a heads-up when they plan on calling a witness that would seek to introduce the statements --

THE COURT: You're talking about pretrial statements of Mr. Brown and Mr. Mitchell?

MR. BOUCHETTE: That's correct.

THE COURT: I mean, the law is pretty clear. If Mr. Ransom is a nontestifying defendant, then any statement given by Mr. Brown or Mr. Mitchell that implicates Mr. Ransom violates his confrontation -- his rights to confrontation. So any statements given by Mr. Brown or Mr. Mitchell is going to have to redact any statements at all to Mr. Ransom --

MR. HELMS: I understand.

THE COURT: -- or anything that the jury might imply as a reference to it.

MR. HELMS: Absolutely, Judge. And we understand Bruton's ruling, and we intend to comply completely. We do not intend to introduce a statement by a non-testifying codefendant implicating the codefendant.

MR. BOUCHETTE: Not to argue the motion right now but with regard to Bruton, that's a Bruton requirement. You can redact and you can limit.

My motion is pursuant to Crawford that says, if it falls into one of these specific categories, which has been deemed as testimonial, then you don't do the prejudice analysis. No matter what Mr. Brown or Whittington says, those statements are inadmissible if they are, in fact, testimonial, which we believe they are.

And so I just want to make that distinction that Bruton allows limitation if it implicates the defendant, but Crawford makes clear that, if it falls into the category of testimonial, then it doesn't come in.

THE COURT: I mean, Crawford, is that a trial with codefendants?

MR. BOUCHETTE: Yes, sir. So Crawford, 2004, I believe, U.S. Supreme Court, you've got a CDV case wherein the spouse --

THE COURT: Oh, that was with the two-year-old child.

MR. BOUCHETTE: Not in Crawford. In Crawford, I believe it was a CDV case wherein you have a wife invoking her marital immunity so she could not be compelled to testify.

And so the attempt to put in her statements that were testimonial -- again, this is the specific category the Supreme Court outlines that says preliminary hearings, prior trials, and police interrogations that are likely to

be used in a prosecutorial setting, that, if it falls into one of those categories, then, no matter what they're saying, we don't have the ability to cross-examine them, and that's a distinction from, for example, statements made that are contained on a body cam or a 911 call. If it's one of those statements, non-testimonial, then Bruton controls, and you can redact and you can take certain mitigating efforts if there's prejudice.

But under Crawford, if it's testimony, there's not a prejudice analysis or redaction can't cure it. If it's a testimonial statement, then -- and we don't have the opportunity to cross-examine, that's the only analysis, and they don't come in.

So I'm not trying to argue the motion right now, but I'm trying to give a heads-up as to --

THE COURT: I'll have to double-check Crawford because I think they're going to be able to use it with the proper redaction, but I'll need to take -- I'll take another look at Crawford and see what it says.

MR. BOUCHETTE: Thank you, Judge. And I think I cited a couple of South Carolina cases that go into one that identifies -- sort of goes into this discussion of testimony on Crawford: State vs. Ladmer, L-a-d-m-e-r, a Court of Appeals, and then a little bit more recent or around the same time is State v. Mitchell, but that's our

courts sort of applying and analyzing the Crawford standard.

THE COURT: All right. I'll take a look at it.

All right. Anything else?

MR. BOUCHETTE: No, sir.

THE COURT: Mr. Pinkerton, anything?

MR. PINKERTON: No, Your Honor.

THE COURT: Mr. Gardner?

MR. BOUCHETTE: No, sir.

THE COURT: All right. Anything else before we bring the jury in?

MR. HELMS: No, sir.

THE COURT: All right. Let's bring the jury in.

(The jury entered the courtroom at 9:38 a.m.)

THE COURT: All right. Ladies and gentlemen, welcome back. I hope everybody had a good evening. We're getting ready to start or resume the trial of this case.

First of all, I want to thank you for being prompt this morning. That's a great assistance to the Court. No. 2, I want to apologize for keeping you in the jury room for so long, but that happens at times when we have scheduling matters.

Now, I do have a matter I need to address with you. It turns out that we found out overnight or one of the jurors, the alternate, Mr. Tyler, discovered overnight

that he did know something about the case or knew some of the parties, and it was brought -- he brought it to the Court's attention, and so I have had to excuse him.

That being the case, I need to ask each of you: Has anybody -- and just raise your hand if you have. Nobody's in trouble or anything of that nature, because as I said, sometimes when you get into a trial, you find out you know more about a case than you thought when you went through voir dire questioning. Has anybody discussed anything about this case with Mr. Tyler?

(No response given.)

THE COURT: All right. Now, since you have been placed on this jury, has anybody come to realize that they know the defendants, they know anybody else involved in the case, they know witnesses, they know victims, or they know something about this case? Does anybody know anything about the case or any of the parties, victims, or witnesses?

(No response given.)

THE COURT: All right. Anything further from the State in that regard?

MS. LIVESAY: No, sir.

THE COURT: Anything from Mr. Bouchette?

MR. BOUCHETTE: No, sir.

THE COURT: Mr. Pinkerton?

MR. PINKERTON: No, Your Honor.

THE COURT: Mr. Gardner?

MR. GARDNER: No, sir.

THE COURT: Let the record reflect that none of the jurors have spoken with Mr. Tyler or knows anything further about this case.

All right. Ladies and gentlemen, we are now going to begin the case with the attorneys' opening statements, and as I told you yesterday during my opening charges to you, these statements are not evidence in this case. It is simply the attorneys' contentions as to what they think the evidence will show in this case and the law to be applied. But these are not evidence. It's just their opinions and their contentions as to what this case is about.

Ms. Livesay or Mr. Helms, who wants to open for the State?

MR. HELMS: I do, Judge.

THE COURT: All right, sir. Let me hear from you.

MR. HELMS: Thank you very much, Your Honor.

OPENING STATEMENT ON BEHALF OF THE STATE

MR. HELMS: When I was a criminal defense attorney and I did the job that those three gentlemen are going to do this week, I would tell my client sometimes that your most valuable resource, your most valuable commodity is

not your money, it's not your family, it's not your home, your car. Your most valuable resource and commodity that you have -- that I have -- is your time. Your time is finite. It cannot be replaced. It cannot be added to.

You have a finite number of days on this earth, and so do I. And you are giving a week of your time this week because these three gentlemen -- Don Brown, "Quan," "Chucky"; Travontae Mitchell, "Tip," "Baby Klutch," and Che Ransom -- got together with three of their friends in one car on September 12th of 2020 and committed a felony. They took time away from the dead victim in this case, Jamie Johnson. But they didn't take a week of his time like they're taking from you today. They took all of his time.

So I want to thank in advance for trading your week for the rest of his life because that's what these gentlemen demand. They're standing here together unified just like they always have been, and you have a decision to make.

On September 12th, they got into a light blue Chevy Caprice. Kind of looks like a cop car, an old Crown Vic. They don't even make them anymore. They got into a light blue Chevy Caprice not far from this courthouse -- a couple of miles down the road -- and they went for a ride on the back roads of Conway. Six of them in one car.

Didn't belong to any of them. They borrowed it. Because you don't commit a felony in your own car. They borrowed the car. I'll let you hear from who they borrowed it from.

They got into this car -- and this is going to be a very poor representation of a car but stay with me. This is going to be our car for this trial. These are the headlights so you know that's the front. Okay? Here is the steering wheel. And there are one, two, three, four, five, and six occupants of this blue Chevy Caprice.

Three of them are sitting right here. The evidence will show you that this one is the driver and that these two are shooters. Driver and shooters.

Now, he ain't a shooter because it's hard to drive and shoot. And he didn't need to; there's five other people to do the shooting.

This is his weapon. And when I say "him," I'm talking about Don Brown. This is his weapon right here, and it's effective as any AR-15 you have ever seen.

This is what happens. On this day, just before dusk around 7:00, just after 7:00, they see the victims in this case. And there are four victims. Four. I'm going to introduce you to them. You're going to hear from Britney Milam. She's going to tell you what she saw, what she heard, and what she experienced. You're going to hear

from Jacob Hill, the deceased's best friend. He's going to tell you what he saw, what he heard, what he experienced. And then you're going to hear from Orlin Lopez -- these three victims, to tell you what they saw, what they heard, and what they experienced.

Who you're not going to hear from is this young man. I have to show you a picture of him because they took his time. He can't be here to testify for you because he's been murdered.

When they saw the vehicle that these four people were occupying, these four friends -- Jamie, Britney, Orlin, and Jacob -- they got in behind them. If I can't prove this, you cut them loose, but I can, so listen.

They got in behind them on the back roads of Conway that they knew very well, when they saw their Chevy Tahoe. Squatted, like the kids do. I hate it but they like it so....

And they got in behind them. I can prove this to you. All six of them in the car are following the victims down the back roads of Conway, down Wayside Drive to be specific. They waited and they wait and follow and stalk their victims until they are at their most vulnerable, until they feel like they can get the drop on them, until Quan makes the decision to act, for whatever reason. They're a team.

Quan the driver -- Don Brown -- takes the vehicle that he is operating, the blue Chevy Caprice, wheels around the victim's car at a stop sign where Rose Moss meets D Street. Some of you know this area as good as I do, back behind Tractor Supply and all that, near Brown Swamp.

And where Rose Moss meets D Street -- we'll show you a map later -- they stopped at the stop sign, the victims. Don Brown takes the vehicle he's using and goes around them at this stop sign and parks directly in front of him, so that they can't go anywhere, to cut off their escape.

And then the shooters -- Che, Travontae, and Tronahz Whittington -- he's not here; don't worry about him. He'll get his day; he's entitled to his day in court -- get out and blast away. Blast away. Shoot that car up.

The first bullet makes it inoperable. The car can't go anywhere. Radiator fluid leaking all down the front. They can't go anywhere. They can't get away. There's a car in front of them, and the car can't back up. And they're shooting into the Tahoe as a team.

Despite his best efforts, he can't get away without catching a bullet right here. One of the many, many bullets that were fired went through his head and out the back. I suspect the defense is going to try and jump on that as a benefit to them, that we can't tell you exactly

what bullet went through Jamie Johnson's head. I'm here to tell you, we don't have to, because they're a team. And each one is just as guilty as the next for their preparation, starting from the driver, Don Brown, who cut him off, to "Tip" Travontae Mitchell to Che Ransom to the rest of them who get out to shoot. They're all equally guilty. But that is for you to decide. And to decide that, you will listen to the evidence that we present.

I've got to show you what I know because I'm making a bold statement to you. I know that. It is not lost on me what I am accusing them of, but I can prove it and we will by the evidence.

You'll have a decision to make as to whether you believe the people you're hearing from, whether they want to be here to testify, whether they have reasons to lie to you, or whether they're telling the truth as to what happened and whether we drew these three names out of a hat. Because we didn't. They're standing strong together like they always have. They're a team.

Now, I'm not a big football fan like most guys, but I'm going to tell you this. There is no doubt that Tom Brady is one of the best football players to ever play the game. He has been to ten Super Bowls, more than any other player in the history of the NFL. You don't have to be a football fan to appreciate this. He's won seven of those

Super Bowls. Two-thirds of them, he's won them, give or take. And in five of those Super Bowls, Tom Brady was the most valuable player. Killed it. He's won 251 regular season NFL games. That is 30 more than the second place guy. That's two whole seasons.

My point is, Tom Brady is the man. Because in every group, on every team, somebody got to be the man. I'm not telling you all three of them are the man over here. Not all three of them are Tom Brady. But here's the thing about Tom Brady and his football team: He can't do it by himself. As great as he is, if he goes out there alone, he will fail against the worst team, the Cleveland Browns.

He can't play by himself because he would get slaughtered. So when he goes to a Super Bowl, when he wins that Super Bowl ring and he gets MVP, guess who else gets the Super Bowl ring? Every player on his team, from the wide receiver who didn't play, to the kicker who didn't make the field goal. But they joined together and they accomplished their goal, and they all reap what they sow together.

This is no different except they didn't do an admiral thing like win a Super Bowl. No. They joined together with three of their friends to commit a felony, and they accomplished it whenever they put a bullet in Jamie Johnson.

Now, after the murder took place, they didn't stay and wait for police. The six guys in the car didn't split up and say, "Oh, man, something bad happened. I'll stay here and wait for the police and explain." No. They fled because that's what you do when you commit murder. You run.

And if it was up to them, that would have been the end of the story. They would not be sitting here right now as a team still. But there's evidence. When you get six people together, you're going to leave evidence, and the truth is, you might not be a team anymore.

So you're going to hear from some of the six people, two of the six that were in that car. You're going to hear from there. You're going to hear whether or not they have been promised anything or threatened in any way, and you have a decision to make as to whether or not you believe they were in that car and saw what they're going to tell you they saw.

I want to make something clear to you: You are not here to decide anyone's fate. That is the purview of this Court. You don't decide what happens to anyone, so rest your mind at ease. No, that's not what you decide. You decide what has already happened based on what you see. That's all you have got to do, determine whether or not the witnesses are telling you the truth. And the evidence

says this group of boys murdered that young man and tried to kill the other three members of the car or the other three people that were inside the car. Because if you're unloading guns into a car, what are you trying to do? You're trying to kill them. You're not trying to scare them. You're trying to kill them. And they didn't just try, they succeeded. That's why you can't hear from Jamie this week, but you will hear from the other three.

And, in the end, when it's all said and done -- you'll hear this a lot during the course of the trial about laws and the hand of one is the hand of all. I'm not going to discuss that with you now; that will come later. But the bottom line is this: When you play as a team, you win as a team or you lose as a team. These boys are still a team. Some of them jumped ship. Some of them ain't on the team no more. These boys are ride or die. And the hand of one is hand of all. Thank you.

THE COURT: Mr. Bouchette?

OPENING STATEMENT ON BEHALF OF DEFENDANT RANSOM

MR. BOUCHETTE: Your Honor, if it please the Court?

THE COURT: Yes, sir.

MR. BOUCHETTE: Madam Court Reporter and solicitors. Ladies and gentlemen of our jury, good morning.

We have got three defendants here this morning and three defense lawyers. None of us have to give an opening

statement this morning, but I anticipate we all will, and so I'm not going to belabor points. I'm not going to try to take up more of your time than necessary.

As you've heard, the evidence that you're going to hear is going to come from that stand here in just a few moments. All right?

But I do want to reintroduce myself. I know I gave you my name in jury selection, but I'm Jarrett Bouchette, and I have the pleasure of representing that young man.

Che, if you don't mind standing up.

That is Che Ransom. And I've been appointed by the Court to represent him.

Now, some lawyers might hesitate to tell you they have been appointed because they'd be worried that you might think I really don't want to be here or that I don't believe in my client's case. Let me tell you something, folks: We have asked for this court date today. We have asked for your time because, with all respect to my colleagues sitting over here, we believe this case is an overreach. There was a cold-blooded killer in the vehicle that day, but it wasn't one of these gentlemen.

Now, Mr. Helms sort of glossed over this fellow's name: Tronahz Whittington. Again, he's not seated here. He's in jail having been convicted of murder.

Now, I anticipate at the end of this case you are

going to find that Mr. Ransom, Mr. Mitchell, Mr. Brown, you're going to find that they are guilty. The question is, guilty of what? And I don't think it's going to be murder. I don't think it's going to be attempted murder, because certainly not Mr. Ransom -- I don't think Mr. Mitchell or Mr. Brown are cold-blooded killers capable of doing that.

I think, at the end of this case, you're going to find that, particularly as it relates to Che Ransom, he's guilty of being at the wrong place at the wrong time with the wrong person.

Now, most of you -- or some of you, at least -- are probably going to be wondering, "Well, if this fellow is a cold-blooded killer, how did it come to be that Mr. Ransom ended up in the vehicle with him?" Folks, all I can tell you about that is try to give you a little bit of background on the life that Mr. Ransom has led.

Now, at the time this happened, he was 18 years old. Lifelong resident here in Conway, Horry County. And it's worth pointing out because Horry County and Conway, Myrtle Beach, this area has grown and changed a lot over the last several years. We have got new people, hotels, beaches, shopping, restaurants, new houses and subdivisions, all these kinds of things, and that's great. But it's easy to forget sometimes that there are parts of our community

that -- guns, violence, other struggles are a part of daily life, and that's the environment that Che Ransom came up in.

And we all have people in our lives -- we've all had friends, associates, people we've been around, particularly when we're 17, 18 years old, that we probably shouldn't have been. But in Che Ransom's neighborhood, those kind of people might very well be cold-blooded killers like Mr. Whittington.

Now, Mr. Helms outlined to you a little bit of what he thought the facts in this case would indicate, and you're going to make up your own mind on that, but I want to point out a few things, and these things are going to be undisputed. I anticipate they'll be undisputed.

Number one, you heard about the allegation that they all borrowed a car. They didn't borrow a car. There was no plan that day. Nobody is going to testify that, when they got the vehicle and they left the fellow that they borrowed the car from, there's not going to be any allegation that this was a preplanned, premeditated assault, that they had had this scheme whenever they left and got in the vehicle. That's not going to be the case.

In fact, you're going to hear that there was no -- these fellows didn't know Mr. Johnson. You're going to hear that Tronahz Whittington did. You're going to see

that, whenever the vehicle pulled up and Mr. Johnson was identified, you're going to hear that these guys didn't know who he was but Tronahz Whittington did. You're going to hear that there was one rifle. Tronahz Whittington had it.

And the reason why that's important is Mr. Helms pointed out to you -- and, again, I hope that you remember how much -- what we say in opening is not evidence, but I do hope that you hold us accountable for this in terms of what comes from the jury [sic] stand. I believe he said that the vehicle was riddled with bullets; that is, Mr. Johnson's vehicle. Folks, that's not going to the case at all.

Mr. Johnson died from one shot to the head. There will be no other testimony of any other shots fired in that vehicle. This is not a situation where there was multiple gunshots entered the vehicle and only one made contact that had the fatal shot. There's only going to be evidence that one bullet -- possibly two -- hit the vehicle with Mr. Johnson.

Now, let's talk about guns. I anticipate we're going to have conflicting testimony about who had guns and what was going on. It may give you pause at the end of this case, but I think it's going to be very clear that no one, other than Tronahz Whittington, fired any shots at

the victim.

Now, there's not going to be any eyewitness other than -- Mr. Helms described it as the teammates on this case. And I anticipate that you're going to evaluate and promise -- not even what they have been promised, what they expect. All right? I anticipate that what we're going to hear is that these guys know what the solicitor is looking for, they know what is expected of them, and you're going to see sort of how their stories sort of shifted a little bit over time, and you're going to use that to evaluate whether or not it's credible, but ultimately, you're going to use your common sense and determine what portions of their testimony is true and what might have been added to a little bit between September of 2020 and as we sit here today.

Now, you hear a lot about this burden of proof, and the State has the burden of proof. Have to prove it beyond a reasonable doubt. And any ambiguity regarding the facts or the evidence in the case has to be construed against the State.

Now, folks, that is the defendant's right. That is for Che Ransom. But I want to point out to you what that really means. It's one of those legal terms of art. And so it's difficult to ask you to do that because we don't do that in our everyday lives. We don't see a headline or

an article of somebody being charged or somebody being arrested and say, "Well, man, I wonder if the science is credible. I wonder if the witnesses are telling the truth. I wonder if he had any motive." You know, a lot of times, we don't do that. All right?

We look at it and we start talking about we hope he'll get sentenced, things along those lines. All right? We all do that to some extent. And so what I'd just ask you to do is sort of have an exercise that, as we go through this case, think of somebody that you admire, whether it be a parent, a spouse, co-worker, whoever it may be, and I want you to imagine, when you come in that front door each and every day, I want you to imagine that it's that person sitting there facing these charges with these allegations, and think of what your reaction might be. It's probably not going to be "hope he gets" -- it's probably going to be, "It's got to be some mistake; that doesn't sound right."

And it's only if the State convinced you beyond any possible doubt, answered every question that you possibly had and every concern that got raised got answered to your absolute satisfaction, would you cast your vote for guilty at the end of that trial for that person?

Now, you don't know Che Ransom. You have never met him. But as you sit here today, with your obligation to

the Court, you have to be sitting there with that thought that says, "Mr. Solicitor, there's got to be some mistake. This can't be right." And he's going to have to prove to you and firmly convince you that that's not the case.

And, folks, that burden of proof isn't just for Che Ransom. Obviously, that's his right, and that's who it's intended to protect. But jury service -- there's a quote that always gets floated around that says it's the highest act of citizenship. And that's not just because you're being inconvenienced, you're being someplace you don't want to be, and having to take time out of your day. It's because of the burden that rests on your shoulders.

Now, that case has been all throughout South Carolina, and everybody always talks about -- talks about the lawyers and the prosecutors or the judges. Nobody talks about the jurors.

See, we have got it somewhat easy because myself, Mr. Gardner, and Mr. Pinkerton, all we have to try to do is do our very best and present to you everything we know and make every argument that we know to make to advocate for our client. Mr. Helms and Ms. Livesay, they have a different job in presenting their case in trying to meet their burden of proof, and Judge Culbertson has the difficult job of trying to referee everybody and trying to give you the correct instructions on the law, but,

ultimately, when we do that, we don't have to make the final decision. That burden rests on you. And I know how heavy a burden that is. Nobody that sits on a jury wants to wake up years from now wondering if they made the wrong choice.

And so if, during the course of the case, if you feel that the solicitor is asking you to make inferences or to draw conclusions that you don't think are quite there, I want you to think in your mind that, "Uh-uh, Solicitor, I'm not giving up any of my sleep."

Folks, that's a right for the defendant, but it's your benefit as well, and so don't you dare let them try to take that away from you during the course of this case.

Now, one final thing. As you can tell, the solicitor and I are probably going to disagree during the course of this case. We're going to probably disagree with witnesses. This is a very serious matter. But I hope that, during the course of this case, if I do something that either offends you or embarrasses Mr. Ransom, I hope you don't take that and hold that against me. As I said before, it can be a very difficult job to try to present a case like this and to try to get everything to you that we think is important, but I want to thank so much for your service here today. And all we ask at this point is just to keep an open mind until all

the evidence has been presented and, at that time, apply the law that the judge gives you, including the burden of proof. And I think, if you do that, you won't have to worry about losing any sleep. Thank you so much.

THE COURT: All right. Mr. Pinkerton?

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

THE COURT: Yes, sir.

OPENING STATEMENT ON BEHALF OF DEFENDANT MITCHELL

MR. PINKERTON: Ladies and gentlemen, thank you for being here today. As the jury, you are the most important people in this courtroom this morning. You're more important than the solicitors, myself, and even the judge. That's because you are the finders of facts in this case.

Now, I'm not going to get up here and be long-winded and bore you with sports analogies or anything like that.

As we go through this case, you're going to hear a lot of testimony, see a lot of facts. That's what I want you to be concerned with, not sports analogies and not stories. Y'all are not robots. Y'all can think analytically.

As you know, you'll hear testimony and you'll hear facts. You have got to decide what, in your mind, is true with this.

Now, my client, Mr. Travontae Mitchell --

Can you stand up, Mr. Mitchell? Thank you, sir.

-- is not guilty of this crime he's being accused of by the State. You'll hear in testimony, at the time, he was only 16 years old. He was hanging out with his older brother and some of their friends. The State tried to paint this as some common scheme, some plan, but as you've heard, they've already convicted the shooter, Mr. Tronahz Whittington.

As you've heard, he was the only person in that car that even knew the dead person, Jamie Johnson. He didn't know anybody else in that Tahoe. Didn't know anybody else besides his brother and a few people that were in the car with him. There was no common scheme, no plan. This was all Tronahz Whittington.

They're going to get up there and make it sound like it was some kind of big shootout right in the middle of the street. However, also what y'all see is that only one shot hit that Tahoe.

Now, it's very unfortunate that Mr. Johnson did lose his life in this; however, Mr. Mitchell was not the shooter. He was merely present. The same thing goes for Mr. Brown and Mr. Ransom. They were merely present. They were not the shooters. They were not the instigators. They had nothing to do with the killing of Ms. Johnson or the attempted murder of anybody else in that Tahoe that

day. My client was merely trying to get a ride home with his older brother. Had no idea any of this was going to go down.

And as you've heard already, the burden of proof is on the State, so I'd ask you to keep an open mind. And once this trial is over, we pray you come back with a verdict of not guilty for my client, Mr. Mitchell, for Mr. Brown, and for Mr. Ransom. Thank you.

THE COURT: All right. Mr. Gardner?

MR. GARDNER: May Your Honor, please?

THE COURT: Yes, sir.

OPENING STATEMENT ON BEHALF DEFENDANT BROWN

MR. GARDNER: Mr. Foreman, ladies and gentlemen of the jury, I represent Don Brown. Y'all figured that out because the two are...

Don, stand up. How old are you? About 16?

I think he was 16 at the time this happened.

THE DEFENDANT: 17.

MR. GARDNER: Okay. 17. So it's a while back. These are young boys.

The question that we're going to ask you to decide for Don Brown is whether or not a driver, merely present, with no preplanning, with no premeditation, with no conspiracy, with no game plan can be found guilty of murder or attempted murder. And at the end of this case,

the only answer that you can come up with, if you follow the law and if you listen to the facts, is not guilty.

Don Brown is not guilty. He's merely the driver. The evidence will show he's the only one that had a driver's license so he was told to drive.

The person sitting beside him told him to pull over. The person sitting beside him knew the victim. Don Brown did not. The person sitting beside him got out of the car with the gun, shot the victim and killed him, got in the car with the gun, told Don to drive. That's what this case is about. That's going to be the evidence pretty much in total.

So back to the question. Somebody merely driving, with no preplan, with no conspiracy, with no premeditation, who is told by somebody with a gun, "Pull over," is he guilty of murder?

And I want you to listen to the judge, who is going to tell you that mere presence is not guilt. You only have one verdict to come back, and that would be not guilty for Don Brown.

And these other two fellows, they're just in the car. They're not the killers, they're not the shooters, and the same will apply to them, but I don't represent them. But they're here.

Now, this nonsense about a team from the solicitor?

I'm disappointed. They're on trial together because it's easier to try three or more people than it is to try -- do three different trials.

But each of these defendants are on trial individually. Okay? So you will apply the law and the facts to each one of them individually. There's no team here. There's no conspiracy. There will be no evidence of a conspiracy.

The solicitor did get one thing right: that Don Brown did not get out of the car. Don Brown did not have a gun. Don Brown did not have a bullet. Don Brown did not shoot anybody. Don Brown did not agree to go on some kind of felony.

When they got in this car, there was no -- the evidence will be uncontradicted, when they got in this car, there was no plan to go look for somebody and kill them. That's nonsense.

Listen to the facts, remember the questions, and at the end of the case, there will only be one verdict.

Now, I'm not going to have a lot of questions. I'm not going to say a lot. I go last because I don't have a lot to do, but it doesn't mean that I don't care. I'm here, and I care a great deal, but I'm not going to be disputing what caliber weapon was used to kill the victim because Don didn't have a gun. That's not relevant for

what he's here for.

So it may be that I don't ask the question. If I don't ask the question, I don't want you to be concerned about that. I may not have any questions for anybody. I mean, I think we pretty much talked about this case, but we have got to have some kind of evidence because you have got to hold these solicitors to a standard, and that standard is not -- is beyond a reasonable doubt, and it's going to be not guilty, so I'm not too worried about that.

I will have a couple of questions for the two codefendants. The two codefendants who are going to testify -- and it's common sense -- they're not up here out of the goodness of their heart. They're up here to testify to hope that they're going to get some kind of deal from the prosecutor. And if you don't believe anything that you hear this week, believe that. These two codefendants are going to get on that stand, and they're going to tell the story that they think the solicitor wants them to tell. The truth? Throw out the window. Because they're doing it for one reason: to get themselves a deal, so they don't go to the penitentiary for the rest of their lives. That's what they're trying to do. And you can take that into consideration.

The judge will tell you at end of the trial, when you're trying to figure out who is telling you the truth,

look at what they're -- did they have a bias? Are they trying to get something by their testimony? Are they expecting something? And that's what those two -- so I'll have some questions for them. It shouldn't be much because I think it's pretty self-evident in what they're trying to accomplish. And at the end of this case, like I said, there will only be one verdict you can come back with. Thank you very much.

THE COURT: All right. Ladies and gentlemen, we'll now begin the evidentiary portion of the trial with the State's case.

The State can call your first witness.

MR. HELMS: At this time, the State would call Mr. Peter Garland to the stand.

THE CLERK: Please raise your right hand and place your left hand on the Bible.

PETER GARLAND,

after having been duly sworn, was examined and testified to as follows:

THE WITNESS: Peter J. Garland, IV. P-e-t-e-r, J., G-a-r-l-a-n-d.

DIRECT EXAMINATION

BY MR. HELMS:

Q Mr. Garland, where do you live?

A [redacted] Street in Conway.

Q How long have you lived there?
A Just over three years.
Q And is that a generally residential area?
A Yes.
Q What kind of homes? Big, giant homes there?
A No. Mobile homes.
Q Mobile homes. Yes, sir.
Were you living there -- well, you lived there how long? Say it again.
A Just over three years.
Q Were you living there back in September of 2020?
A Yes, I was.
Q Okay. And did you have an occasion or reason to call 911 emergency services on that day?
A Yes, I did.
Q I would like you to tell this jury about what happened and transpired that day.
A It was late afternoon, evening. I heard gunshots out in front of my house, so I dialed 911.
Q Okay. Have you had an opportunity to listen to that 911 call?
A Yes, I have.
MR. HELMS: May I approach, Judge?
THE COURT: All right.

BY MR. HELMS:

Q I have already shown defense counsel what I'm showing the witness now, and it's been marked as State's Exhibit No. 13. Sir, do you recognize what I'm showing you?

A Yes, I do.

Q And what am I showing you?

A My signature on a CD of the 911 call.

Q Okay. And you listened to that?

A Yes.

Q And is your 911 call on this disc?

A Yes, it is.

Q Has it been altered in any way?

A No, it has not.

Q And that is the call you made September 12th of 2020?

A Yes.

Q And that was in reference to a shooting in front of your home?

A Yes, it is.

MR. HELMS: Your Honor, I will seek to introduce into evidence State's 13 and publish to the jury.

THE COURT: All right. Mr. Bouchette?

MR. BOUCHETTE: No objection.

THE COURT: Mr. Pinkerton?

MR. PINKERTON: No objection.

THE COURT: Mr. Gardner?

MR. GARDNER: No objection, Your Honor.

THE COURT: All right. State's Exhibit 13 is admitted into evidence without objection.

MR. HELMS: Very good, Judge.

(State's Exhibit 13 was received into evidence.)

BY MR. HELMS:

Q While she's getting that ready, tell these folks what you saw and heard in as much detail as you can that caused you to call 911.

A Multiple gunshots. Different calibers.

Q How do you know that? That's kind of important. How do you know that?

A I was prior military, so I know different sounds of weapons.

Q That's fair. I won't ask you to expand. That's fair.

And you heard different sounding weapons?

A Yes.

Q How many?

A It sounded like two different weapons.

Q Okay. Do you know -- two different weapons, but do you know about how much shots you heard in all?

A No, I do not.

Q Was it more than two?
A Yes.
Q Did you see anything after the fact at the scene?
A When I came around the corner of the house, I saw a light gray vehicle speeding away from the incident.
Q And what kind of car was that? Was that a truck or a car?
A It was car.
Q Two-door or four-door?
A Four-door.
Q Okay. How was that car driving? Was it driving slowly?
A No, it was not. It was speeding away.
Q Now, you saw that car. Did you see any bullet holes in that car?
A No, I did not.
Q Did you see if the windows in that car, that light gray car, were up or down?
A I could not tell. I could not see the driver's side.
Q About how much time elapsed between the gunshots and you seeing the car drive away fast?
A A matter of seconds.
MR. HELMS: Go ahead, Lacy.
(State's Exhibit 13/audio plays.)

BY MR. HELMS:

Q Mr. Garland, was that your 911 call?

A Yes, it was.

Q On September 12th of 2020?

A Yes.

Q All right. Me and my co-counsel have a couple more questions I'm going to ask you. At some point during that call, you were asking -- it sounds like you were asking if he's awake. You were talking to someone. Who were you talking to?

A It was his girlfriend.

Q Okay.

MR. HELMS: Brittany, stand up.

BY MR. HELMS:

Q Was that her?

A Yes, it was.

Q Okay.

MR. HELMS: Jacob, raise your hand. Just raise your hand.

BY MR. HELMS:

Q Did you see that young man?

A Yes, I did.

Q How about Orlin?

MR. HELMS: Raise your hand, Orlin.

BY MR. HELMS:

Q Was he there?
A Yes.
Q Okay. Let me ask you this: The other car -- and when I say "the other car," you described the gray car, but the car the victim was driving, what kind of car was it?
A It was a Chevy Tahoe.
Q What color was it?
A Green.
Q Could it have been black?
A It could have been black.
Q Was it --
A It was a dark color.
Q Dark color? Fair enough.
You saw the victim. You personally -- well, first of all, you saw that Tahoe; right?
A Yes.
Q Did it appear operable to you?
A No.
Q Why not?
A Because the fluids that were all over the ground.
Q What kind of fluid?
A Radiator fluid. Looked like oil.
Q Okay. A lot of fluid on the ground?
A Yes.

Q Was it under the car?

A Yes, it was.

Q Do you know if anyone tried to operate the vehicle there?

A Not to my knowledge.

Q Did you ever see the vehicle operate after you saw the fluid on the floor?

A No.

Q Did you see a bullet hole in the windshield?

A Yes, I did.

Q So was the bullet hole close to the radiator?

A No. It was about mid windshield.

Q All right. So you have got a bullet hole up here in the windshield and then you've got radiator fluid down here?

A Yes.

Q I guess there goes that one-shot theory.

So what did you see going on at that victim's car -- at the Tahoe? How did the victim appear to you? How was Jamie Johnson reacting?

A He wasn't reacting. They were pulling him out of the front door, trying to put him into the backseat, and then they laid him on the ground.

Q So he was in the front seat?

A Yes.

Q The driver's seat?
A Yes.
Q And they were trying to pull him in the backseat, you said?
A Yes.
Q Do you have any idea -- and if you don't know, it's okay. What made them decide to go from the backseat to the ground?
A No, I do not know.
Q Did you see any injuries on Jamie?
A Yes.
Q Tell the jury what you saw.
A I saw a bullet hole in the front of his head.
Q When you approached -- did you have any communication with any of those guys other than "Is he awake?"
A No.
Q How did they appear to you? Were they calm?
A No, they were not.
Q Were they angry?
A No. They were scared.
Q How many guns did they have?
A None.
Q How many guns did you see beside the Tahoe?
A None.

Q How many weapons did you see in the Tahoe?
A None.
Q Beside the Tahoe?
A None.
Q On the victims?
A None.
Q Talk about the casings. You said you heard multiple guns but you saw multiple casings; right?
A Yes.
Q Did you see only two casings on the ground?
A No. Multiple.
Q I'm sorry?
A Multiple.
Q Multiple casings?
A Yes.
Q Did you see sign that anybody had shot a gun from the Tahoe?
A No.
Q Please answer any question the defense has. Thank you.
A Okay.

THE COURT: All right. Mr. Bouchette, cross-examination?

MR. BOUCHETTE: Very briefly, Your Honor.

CROSS-EXAMINATION ON BEHALF OF DEFENDANT RANSOM

BY MR. BOUCHETTE:

Q Mr. Garland, just to be clear, you came up on this incident after the shooting had occurred; is that right?

A Yes.

Q All right. So you didn't witness the actual exchange of gunfire?

A No, I did not.

Q Or the shooting, rather. You didn't see that?

A No, I didn't.

Q All right. Now, on the 911 call, it sounded like -- and correct me if I'm wrong -- it sounded like you conveyed to the 911 operator that -- I wrote it down -- they didn't know the suspect.

Did somebody convey to you that they didn't know who had shot them?

A No.

Q Is that a yes, somebody conveyed to you they didn't know who they were?

A Yes, they did.

Q All right. So, just to be clear, somebody conveyed to you affirmatively at the time of the shooting that they didn't recognize --

MR. HELMS: Your Honor, I think he's trying to elicit hearsay, and that's my objection.

MR. BOUCHETTE: It's already in the record from the

911 call.

THE COURT: All right. I'll allow it. Overruled.

BY MR. BOUCHETTE:

Q So just to be clear, somebody -- or one of the folks that's mentioned by the State, at the time the shooting had occurred, while all this was going on, conveyed to you that they didn't recognize or know who the suspect was?

A Yes.

Q And you relayed that to the 911 operator?

A Yes, I did.

Q Now, there was some talk briefly about a number of casings. Now, the casings, that's what was on the ground; correct?

A Yes.

Q And you saw a bullet hole in the window; correct?

A Yes, I did.

Q Did you see multiple bullet holes in the window or just the one?

A Just saw one.

Q Just saw one.

On the front driver panel, how many bullet holes did you see on the front driver panel?

A I wasn't looking at the driver panel.

Q Did you notice any?

A No, I did not.

Q And I know you came up on the scene afterward, so if you don't know, that's okay. When the shots were fired into the victim's vehicle, do you know approximately how far the other vehicle was, or did you come up --

A No, I don't know the distance.

Q All right. Very good.

MR. BOUCHETTE: I don't have any further questions, Your Honor.

THE COURT: All right. Mr. Pinkerton?

MR. PINKERTON: Thank you, Your Honor.

CROSS-EXAMINATION ON BEHALF OF DEFENDANT MITCHELL

BY MR. PINKERTON:

Q Thank you, sir. Just to reiterate, you didn't see the shooting itself occur, did you?

A No, I did not.

Q You didn't see any of the suspects leaving the scene physically? Just the car leaving the scene?

A Yeah.

Q You didn't see anybody actually out shooting?

A No.

Q And you said you only saw one bullet in the Tahoe?

A In the windshield.

Q In the windshield.

And you said there was radiator fluid on the ground?

A Yes.

Q Did you see any other shots into the Tahoe that would have pierced the radiator or anything, to your knowledge?

A No, it could have went straight through the grille without touching the grille.

Q Okay. Thank you. No further questions.

THE COURT: All right. Mr. Gardner?

MR. GARDNER: No questions, Your Honor.

THE COURT: Anything on redirect?

MR. HELMS: No, sir.

THE COURT: All right. You may step down.

MR. HELMS: Can he be released, Judge?

THE COURT: Any objection, Mr. Bouchette?

MR. BOUCHETTE: Oh, I'm sorry. No, sir, not at all.

THE COURT: Mr. Pinkerton?

MR. PINKERTON: No objection.

THE COURT: Mr. Gardner?

MR. GARDNER: No objection, Your Honor.

THE COURT: He's free to go. Thank you very much.

All right. The State can call your next witness.

MR. HELMS: We'll call Mr. Danny Wright with the Horry County dispatch.

THE CLERK: Please raise your right hand and place your left hand on the Bible.

DANIEL WRIGHT,

after having been duly sworn, was examined and testified to as follows:

THE CLERK: Please be seated and state your name and spell it for the Court.

THE WITNESS: Daniel, D-a-n-i-e-l, Wright, W-r-i-g-h-t.

DIRECT EXAMINATION

BY MR. HELMS:

Q Mr. Wright, with whom are you employed?

A I'm with Horry County 911 Communications.

Q And what did do you do there, sir?

A I'm a quality assurance specialist.

Q And what does your duties as that specialist entail? What do you have to do?

A I review calls that our telecommunicators take according to standards, policies and procedures; also custodian of records and provide FOIA requests and listen to those calls and send them out to relevant agencies.

Q So you're the man at 911.

A Well, one of them. I'm not the only one.

Q Have you testified as it concerns this case before?

A I have.

Q Okay. And have you had an opportunity to -- well, tell this jury, first of all, what happens whenever someone calls 911? How is that memorialized?

A When somebody calls 911, the recording actually starts immediately. It's not something that you turn on or do anything. It automatically starts when the communicators will pick up the 911 call. We find out the address. Verify that with the caller. Verify the phone number, in case they get disconnected that we can call them back, and then we ask them to tell us exactly what happened so we have an idea of what's going on. And from there, we can determine which or what we need to send to that incident, whether it be police or fire or what have you.

Q That makes sense to me. That makes sense to me.

Other than the recorded audio 911 call, is anything else documented for a 911 call?

A Yes, we call it the CAD report. It's the computer-aided dispatch report that lists everything that that incident occurs in the way of documents and that sort of thing.

Q How is that CAD report created?

A It's immediately started with the first call. We initiate the form. That form is, obviously, computerized. And once we start putting that information in, anything that happens with that call, a person who is taking the call documents in there, and then we drop it so it goes into Dispatch. So it's in our review column, so the

dispatcher will then pick up the call. From there, we can determine, again, which agency it needs to go, who needs to respond, what resources are needed, and we go from there.

Q So correct me if I'm wrong, but the call is audio recorded. So you have the actual audio recording, and then you've got a black-and-white version?

A That is correct.

Q Fair enough. All right.

No. 13 -- State's 13 has already been entered into evidence. So I'm going to ask you, do you recognize that?

A I do.

Q And what is that?

A That's the envelope that contained the CD recording that I initialled when we reviewed it.

Q And that's the 911 call for this event?

A That is correct.

Q And I'm showing you now what's been marked for identification purposes only as State's 14. Please tell this jury what that is, if you know.

A This would be the CAD report that was generated at the time that this call took place.

Q All right. So that's the CAD report for this call.

A That's correct.

Q Does that CAD report tell what you said it would

tell? Does it tell the time, the date, the people, the event?

A Yes, sir, it does.

Q Okay. Can you look at that CAD report and tell this jury what date and time this event occurred on?

A It occurred on 9/12/2020 at 7:16:26 p.m.

Q Hang on.

MR. HELMS: Ms. Lacy is kind enough to write because y'all couldn't read mine.

BY MR. HELMS:

Q Has that report been altered in any way?

A It has not.

Q Okay. Can it be altered?

A No, it cannot.

MR. HELMS: Your Honor, at this time, I would seek to introduce State's 14 into evidence.

THE COURT: Mr. Bouchette?

MR. BOUCHETTE: No objection.

THE COURT: Mr. Pinkerton?

MR. PINKERTON: No objection, Your Honor.

THE COURT: Mr. Gardner?

MR. GARDNER: No objection, Your Honor.

THE COURT: All right. State's Exhibit 14 is admitted into evidence without objection.

(State's Exhibit No. 14 was received into evidence.)

BY MR. HELMS:

Q So just to clarify to this jury, this call came in on September 12th at 7:16 p.m.; is that correct?

A Yes, sir.

MR. HELMS: 14's in. Judge, I have no further questions.

THE COURT: Mr. Bouchette, cross-examination?

MR. BOUCHETTE: Your Honor, I have no questions for this witness.

THE COURT: Mr. Pinkerton?

MR. PINKERTON: Your Honor, I have no questions.

THE COURT: Mr. Gardner?

MR. GARDNER: No, sir.

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

The State can call your next witness.

MS. LIVESAY: Thank you, Your Honor. At this time, the State calls Justin Jones to the stand.

THE CLERK: Please raise your right hand and place your left hand on the Bible.

JUSTIN JONES,

after having been duly sworn, was examined and testified to as follows:

THE CLERK: Please state your name and spell it for the Court.

THE WITNESS: Justin Jones. J-u-s-t-i-n J-o-n-e-s.

DIRECT EXAMINATION

BY MS. LIVESAY:

Q Officer Jones, if you don't mind, tell these folks where you're currently employed.

A Currently employed with the Horry County Police Department.

Q And how long have you been employed there?

A Over 16 years.

Q And what are your job responsibilities?

A I'm a patrol sergeant on the road.

Q Okay. And just tell these folks what you do as a patrol sergeant.

A I answer calls for service. I supervise other officers in the same area, make sure calls for service are being answered and responded to for incidents.

Q And were you a patrol sergeant in September 12th of 2020?

A I was.

Q And at the time, did you wear a body camera?

A Yes, ma'am.

Q And did that body camera capture what you saw when you arrived to a particular location?

A It did.

Q Okay. And do you remember being called out on

September 12th of 2020 to D Street?

A I do.

Q Okay. And was it still daylight?

A It was.

Q And do you remember about what time it was?

A It was in the evening time after 6 p.m.

Q Okay. But the sun was still up?

A It was.

Q And if you don't mind, tell these jurors what you saw when you arrived.

A When I arrived, there was another officer on the scene. There was a Tahoe parked in the middle of the road --

MR. BOUCHETTE: I'm sorry, Your Honor. Can I ask the witness to speak into the microphone? I'm having a little difficulty hearing him over on this side.

THE COURT: Speak up just a little. Thank you.

A When I arrived, there was another officer on the scene that was assessing the situation. There was a Tahoe parked in the middle of the street on Rose Moss Road just down from D Street. There was a male laying beside the Tahoe, and there was another gentleman rendering aid to him.

Q So there were already people on-scene before you got there?

A Yes, ma'am.
Q And was there only one car in the roadway?
A There was only one car in the roadway.
Q And did you see any shell casings out there?
A Yes, ma'am.
Q Okay. And about how many did you see?
A It was at least a handful or more.
Q So definitely more than two?
A Definitely.
Q Okay. Now, these shell casings, tell these folks where the shell casings were located.
A The shell casings were located on D Street at the intersection of Rose Moss Road.
Q Okay. And where was the Tahoe located?
A On Rose Moss Road.
Q Now, I'm going to show you what's been marked as State's Exhibit No. 16. Now, you have worked for the County for 16 years?
A Yes, ma'am.
Q And you have patrolled the entire 16 years?
A Yes, ma'am.
Q Okay. So you're riding the roads every day, eight hours a day?
A 12 hours a day.
Q 12 hours a day. Excuse me. I'm sorry.

Can you take a look at this map and tell me if the map is accurate?

A It appears to be accurate of the Conway section of Horry County.

Q Okay. And does the map indicate where Rose Moss and D Street are in the Conway area?

A Yes, ma'am, it does.

Q And would this map assist you in your testimony of showing where the casings were located?

A Yes, ma'am.

MS. LIVESAY: At this time, the State wishes to put State's Exhibit 16 into evidence and publish it at the appropriate time.

THE COURT: All right. Mr. Bouchette?

MR. BOUCHETTE: No objection, Your Honor.

THE COURT: Mr. Pinkerton?

MR. PINKERTON: No objection.

THE COURT: Mr. Gardner?

MR. GARDNER: No objection, Your Honor.

THE COURT: All right. State's Exhibit 16 is admitted without objection.

(State's Exhibit No. 16 was received into evidence.)

BY MS. LIVESAY:

Q Before we get into that, Officer Jones, were there any shell casings around the Tahoe?

A Not that I have seen.
Q Okay. And you say the shell casings were where D Street and Rose Moss meet?
A Correct.
Q Okay. Is that in front of where the Tahoe was?
A It would have been in the direction where the Tahoe was, yes.
Q Okay. And did you see anything leaking from the Tahoe?
A Appeared to be antifreeze coming from the engine.
Q And did you see any additional damage to the Tahoe other than that?
A I noticed there was what appeared to be a bullet hole through the windshield.
Q Now, the area of D Street and Rose Moss, is that a residential area?
A It is.
Q Okay. And were there houses along Rose Moss?
A Yes, ma'am.
Q And are there homes along D Street?
A Yes, ma'am.
Q Okay. So tell me how many bullet holes you saw in any of the homes on Rose Moss or D Street.
A I did not see any bullet holes in any homes.
Q So all the bullet holes were in the Tahoe?

A Correct.
Q Now, what you have described and talked about to these folks, is that on your body camera?
A Yes, ma'am.
Q And does the body camera show the location of the shell casings in relation to the Tahoe?
A Yes, ma'am.
Q Okay. Does it show how the Tahoe appeared when you arrived?
A Yes, ma'am.
Q Does it show how the victim appeared when you arrived?
A Yes, ma'am.
Q Did it show the folks standing around the Tahoe?
A Yes, ma'am.
Q Will it show if the Tahoe windows are up or down?
A It should, yes, ma'am.
COURT REPORTER: State's 52 marked.
MS. LIVESAY: Thank you.
(State's Exhibit 52, Body Cam Video, was marked for identification.)
BY MS. LIVESAY:
Q Now, I'm showing you what's been marked as State's 52. Do you recognize it?
A Yes, ma'am.

Q How do you recognize it?
A It's got my initials on it.
Q Okay. And have you viewed the video footage?
A Yes, ma'am.
Q And does it show the time you arrived?
A It does.
Q Does it show exactly what you saw upon arrival?
A Yes, ma'am.
Q Has it been altered in any form or fashion?
A No, ma'am.

MS. LIVESAY: Your Honor, at this time, the State wishes to place State's No. 52 into evidence and publish a portion of it to the jury.

THE COURT: Mr. Bouchette?

MR. BOUCHETTE: Your Honor, may we approach?

THE COURT: All right.

BENCH CONFERENCE

(The following bench conference was held outside the hearing of the jury and others:)

MR. BOUCHETTE: Your Honor, my understanding is this video shows aid being tendered to the victim, bleeding. You know, blood coming from the head. It's a pretty prejudicial image to see for the jury for what they're trying to do. I don't see it as relevant. It's more prejudicial than probative to see the victim in that

state. I think they're putting bandages to his head and he's bleeding out and that kind of thing, so I'd object.

THE COURT: Well, I don't know. I'll need to take a look at it. Let me excuse the jury and we'll review it.

(Open court resumes as follows:)

THE COURT: Ladies and gentlemen, we've got an issue of law that has come up, and I'm going to need to address it with the attorneys, so I'm going to excuse you back to the jury room for just a few minutes.

And I'll tell you why we do this. It's not that we're trying to hide anything from you or keep anything from you, but as I told you in the opening charges, you and you alone decide the facts of this case, and you decide those facts based upon the testimony of witnesses placed under oath and any other exhibits that might be introduced into evidence.

I decide the law in this case. Well, often, when I discuss the law with the attorneys, it requires me as the judge and the attorneys to reference factual issues. But what we say is not evidence, and so we don't want you to be influenced by anything that I might say or anything that the attorneys might say when we discuss the law. We don't want that to influence your decision on what the facts in this case are, and that's why we excuse you to the jury room.

So, in any event, it will give you an opportunity to take a short break, use the restroom, get something to drink, whatever the case may be, and we'll bring you back in just a minute.

Do not discuss the case. It's still too early for deliberations. Thank you very much.

(The jury exited the courtroom at 10:50 a.m.)

THE COURT: Well, wait a minute. We need to wait for Mr. Gardner to get back. Let's hold up.

(Pause in the proceedings.)

THE COURT: All right. You can go ahead and play it now.

MR. HELMS: Yes, sir, Your Honor. Playing now.

(State's Exhibit No. 52/Video plays.)

MR. BOUCHETTE: Your Honor, in the interest of time, if they want to fast-forward it to the point where they arrive on-scene and begin rendering aid, I'm fine with that. I'm not sure how much time that will save.

THE COURT: All right.

MR. BOUCHETTE: If they want to do that. Or if they want to just let it play through, that's fine.

THE COURT: How long is it? If we're talking about a couple of minutes, just play it. If we're talking about 30 minutes --

MS. LIVESAY: Well, we're getting ready to see right

now. It's probably two minutes from the part that Mr. Bouchette's --

THE COURT: Your Honor, then we'll just let it go.

MR. HELMS: Your Honor, the camera doesn't activate until the siren -- the lights are activated. So he's in close proximity to the scene.

(State's Exhibit No. 52/Video plays.)

MS. LIVESAY: That's all we want to show, Judge. Just enough to show who was out there, what was going on, help show the location.

THE COURT: All right. Mr. Bouchette?

MR. BOUCHETTE: Your Honor, my objection -- I think this can be -- any prejudicial effect can be limited by -- I counted right at the 6-minute mark until approximately the 7-minute mark. There's almost a continuous view of seeing the young man on the ground. He's visible. I believe you can see blood from his head during that segment.

I also note the stretch approximately 7:48 to 7:53, the same thing. He's then removed from the scene.

I note at 14:48, the camera pans around and sees a pretty distinct pool of blood still sitting on the ground.

We'd request that the Court redact or skip through those sections of the video that would be more prejudicial than probative. They're tendering of aid, and these

aren't necessarily relevant to what they're trying to show.

The coroner is going to say what the injuries were and how he died and that kind of thing. This is just putting the dead young man -- his blood right in front of the jury, so we'd object to that portion.

THE COURT: All right. Mr. Pinkerton, any argument? I mean -- yeah, Mr. Pinkerton, any argument?

MR. PINKERTON: Your Honor, we would just join in with Mr. Bouchette on that motion in regards to Mr. Mitchell.

THE COURT: Mr. Gardner?

MR. GARDNER: Yes, Your Honor. We join with Mr. Bouchette.

THE COURT: All right. What's the State's position?

MS. LIVESAY: The State's position, Your Honor, is the rule that says that it has to be unduly gruesome. If it's unduly gruesome, it becomes more prejudicial than probative because it arouses the passions of the jury. Nobody should be convicted over the arousal of the jury's passions from a gruesome picture.

These are not gruesome pictures. These are pictures of what the scene are. These are not autopsy pictures. These are not close-up pictures.

Mr. Garland testified that there was blood from the

head. I have got to show is Mr. Garland a liar or not. His testimony -- he was cross-examined. His truth is for the jury to decide. He told a fact. We have got to decide is that fact true or not. Did Mr. Garland have a good view of what was going on when he says he saw more than two casings? Does Mr. Garland have good eyesight when he says he saw bleeding from the head? Is that what he saw?

His credibility is for this jury to decide. My job is to corroborate his testimony to show him to be truthful. Their job is to cross-examine, which they did, to put doubt in these jurors' minds as to Mr. Garland's truthfulness.

These pictures are not here as unduly gruesome. He's not cut open. It's not a close-up. It is merely to show how he appeared when the police arrived, and that, indeed, Mr. Garland is telling the truth. He had good vision. It was light outside, and he conveyed just what he saw.

THE COURT: All right. Mr. Bouchette, anything in reply?

MR. BOUCHETTE: They can, without question, address all those items: the location of the bullets, the time of day, the location of the vehicle, damage of the vehicle, all those things without question. Our problem is, in so

doing, they're going to seek to point out that, in conjunction with that, is that him sitting there with blood coming out of his head?

I believe that's exactly what was asked in the prior trial or something to that effect. He can assert -- and I don't think it's disputed -- that he saw decedent pass away; he was clearly deceased at that time. Our position is that, even within this otherwise admissible video -- even within the video that establishes everything they're trying to do, the image of the young man laying there in the road, clearly deceased, blood coming from his head, is the type of image that the rule is meant to do. Of course it's gruesome. You can't get any more gruesome than a dead body with blood coming out of his head on the side of the road.

So, again, we think the Court can -- it's a reasonable request to redact those portions that do have an inflammatory effect and certainly a potential to inflame the jury and prejudice the jury and proceed with the rest of the video. So we'd ask the Court to do that.

THE COURT: All right. I'm going to overrule the objection. I'll allow it. I don't see --

MR. GARDNER: I'm sorry to interrupt --

THE COURT: I have already given you an opportunity.

MR. GARDNER: I know, but I wanted to follow up

on -- if you allow me just to put it on the record.

THE COURT: Not on reply. No, you didn't make any argument. You just joined in his argument.

MR. GARDNER: All right.

THE COURT: I find that the probative value outweighs any prejudicial effect, so I'll allow it.

MR. GARDNER: Your Honor, can I make -- for the record, can I just proffer what my objection would be?

THE COURT: All right. What is it?

MR. GARDNER: In addition to what's been said to you earlier, this has nothing to do with the cause or manner of death. The body had already been moved by some other people, so it gives no value to the jury. That's for the record, Your Honor.

THE COURT: All right. Which should have been made earlier when I gave you the opportunity. That's not in reply to theirs.

So I'm going to allow it over the defendants' objections. I think that the probative value does outweigh any prejudicial effect. And I have reviewed it, and I don't see that it's unduly prejudicial.

Anything from the State before we bring the jury back in?

MS. LIVESAY: Thank you, Judge.

MR. HELMS: No, sir, Judge.

THE COURT: All right. Mr. Bouchette, anything before we bring the jury back?

MR. BOUCHETTE: No, sir.

THE COURT: Mr. Pinkerton?

MR. PINKERTON: No, Your Honor.

THE COURT: Mr. Gardner?

MR. GARDNER: No, sir.

THE COURT: All right. When we come back in, you can reintroduce it, and I'll go ahead and I'll rule at that time.

(The jury entered the courtroom at 11:16 a.m.)

THE COURT: All right. Ladies and gentlemen, welcome back.

Ms. Livesay, you may continue with your direct examination.

MS. LIVESAY: Thank you, Your Honor.

THE COURT: I believe you were introducing Exhibit 52.

MS. LIVESAY: Yes, sir.

BY MS. LIVESAY:

Q Officer Jones, this video cover, does it have your initials?

A It does.

Q And have you seen the video?

A I have.

Q And is the video the one keyed up on the TV now?
A Yes, ma'am.
Q And is this your body camera?
A Yes, ma'am.
Q And have you reviewed it?
A I have.
Q And has it been altered in any form or fashion?
A It has not.
Q And does it show your arrival of 9/12/2020 to D Street and Rose Moss?
A It does.

MS. LIVESAY: Your Honor, at this time, the State wishes to publish -- put into evidence 52 and publish the relevant portion.

THE COURT: All right. State's Exhibit 52 is admitted into evidence over the defendants' objection.

You can go ahead.

MS. LIVESAY: Thank you, Your Honor.

(State's Exhibit No. 52 was received into evidence.)

(State's Exhibit 52/Video plays.)

BY MS. LIVESAY:

Q Mr. Jones, I have a couple of questions for you.

MS. LIVESAY: Can he step down, Your Honor?

THE COURT: As long as he's near a microphone so the court reporter can pick him up.

MS. LIVESAY: Yes, sir.

BY MS. LIVESAY:

Q First of all, the date is 9/12/2020; is that correct?

A Yes, ma'am.

Q Okay. Now, 19:28:02, military time?

A Yes, ma'am.

Q Convert that for me.

A 7:28 p.m.

Q So around at this point, 7:28?

A Yes, ma'am.

Q Okay. Now, when I'm looking here, what street is this here?

A That's D Street.

Q Okay. And the street that's coming back this way is what street?

A Rose Moss.

Q Okay. What is this man here doing?

A He's pointing out the shell casings laying in the roadway.

Q And are the shell casings on D Street?

A Yes, ma'am.

Q Okay. So he's showing you here with the flashlight?

A Correct.

Q And pointing to it with his finger, hey, this is a

casing?
A Correct.
Q Okay. Same thing there?
A Yes, ma'am.
Q Now, could you stop it? Any bullet holes in any of the residences back here?
A No, ma'am.
MS. LIVESAY: Could you -- actually, just hold tight. Stop, please.
BY MS. LIVESAY:
Q So this stop sign here and the road that goes back, what is that?
A Rose Moss.
Q And show this jury, I'm sorry, where the shell casings were located.
A They were concentrated in this area here on D Street.
Q Were there any shell casings around the Tahoe?
A No, ma'am.
Q So they were all on this road here on D Street?
A Correct.
MS. LIVESAY: Could you take me to 19:33:25, please. Would you go back just a hair? There you go. Just hang right there. Did it stop? Okay.

BY MS. LIVESAY:

Q You walked all along here?

A Yes, ma'am.

Q Correct? All along here?

A Correct.

Q How about the other side of the Tahoe?

A Yes, ma'am.

Q Did you see any shell casings around the Tahoe?

A No, ma'am.

Q Did you see any weapons around the Tahoe?

A No, ma'am.

MS. LIVESAY: 19:34:59. Actually, hit stop. I apologize.

BY MS. LIVESAY:

Q So here's the stop sign; correct?

A Correct.

Q Here's the Tahoe?

A Yes.

Q Now, where are the shell casings in relation to the Tahoe and the stop sign?

A It would have been up here on D Street behind my vehicle.

Q Okay. Do you see any bullet holes in this car?

A No, ma'am.

Q Do you see any bullet holes in this house?

A No, ma'am.
Q Could you tell if the windows were down on this side of the Tahoe?
A They were.
Q Okay. So both the front and the back windows were down?
A Yes, ma'am.
Q Do you know what that is leaking out of the Tahoe?
A It appeared to be antifreeze.
Q Now, did you see -- were you out there looking for a corresponding bullet hole?
A We did look.
Q And was there damage to the Tahoe?
A There was damage to the windshield and also the front grille.
Q And was there any of this fluid anywhere else other than right under here?
A No, ma'am. It started running from underneath the engine compartment, and it ran to the ground.
Q So you didn't see a lot of fluid up here like it had leaking the whole time?
A No, ma'am.
Q Okay. Just right along in here --
A Correct.
Q -- where the Tahoe had stopped?

A Correct.

MS. LIVESAY: Now, can you take me all the way to the beginning.

BY MS. LIVESAY:

Q 19:19 is when you were heading to the scene?

A Yes, ma'am.

Q Okay. And what -- that's 7:19?

A Yes, ma'am.

MS. LIVESAY: Lacy, if you don't mind, can we add that to the pad?

BY MS. LIVESAY:

Q If you don't mind, Mr. Jones, have a seat; I have just a few more questions.

I'm showing you now State's Exhibit 17. I have already shown it to the defense. Do you recognize this?

A Yes, ma'am.

Q What is it?

A It's the normal time, military time.

Q So this shows that, when the tape says 19, when you convert that, that's really 7 p.m.?

A Yes, ma'am.

MS. LIVESAY: Your Honor, at this time, the State wishes to put 17 into evidence.

THE COURT: Mr. Bouchette?

MR. BOUCHETTE: No objection, Your Honor.

THE COURT: Mr. Pinkerton?
MR. PINKERTON: No objection, Your Honor.
THE COURT: Mr. Gardner?
MR. GARDNER: No, Your Honor, no objection.
THE COURT: All right. State's Exhibit -- you said 17?
MS. LIVESAY: Thank you.
THE COURT: Is that correct?
MS. LIVESAY: Yes, sir. 17.
THE COURT: State's Exhibit 17 admitted into evidence without objection.
(State's Exhibit No. 17 was received into evidence.)
BY MS. LIVESAY:
Q Mr. Jones -- Officer Jones, I apologize, on the driver's side, the front window was down and the back window; is that correct?
A Yes, ma'am.
Q And the passenger window was down?
A The front passenger window, yes, ma'am.
Q I understand. So three of the four were down?
A Correct.
Q Could you see inside the Tahoe?
A I did look inside the Tahoe at one point at the request of the fire department to make sure the vehicle was in park.

Q I understand.

And when you looked inside the Tahoe, did you see any weapons of any kind?

A No, ma'am.

Q Did you see any shell casings of any kind?

A No, ma'am.

Q Did you see any evidence that a firearm was fired from the Tahoe?

A No, ma'am.

Q And did you see any bullet holes in anything out there other than the Tahoe?

A No, ma'am.

Q Now, the shell casings, you testified earlier that they were on D Street?

A Correct.

Q Okay. Now, tell me, are they just -- let me look at this map here. Showing you now State's Exhibit No. 16. So show me D Street.

A This is D Street. It goes from 501 and around, makes a loop.

Q Okay. So it loops around?

A Yes, ma'am.

Q Where were the shell casings?

A Right about where this red dot is where Rose Moss is at the intersection, right in this area.

Q Okay. Did you see any shell casings up here -- all along in here?
A No, ma'am.
Q How about along in here?
A No, ma'am.
Q So they were all at that intersection?
A Correct.
Q Now, as a patrolman, do you have the responsibility to actually pick up the shell casings?
A No, ma'am.
Q That's for somebody else to worry about?
A For this particular incident, such as the magnitude, we would not do it. That would be for our Crime Scene.
Q And are part of your responsibilities to interview any of the witnesses?
A We may speak with them, trying to get preliminary information as far as maybe a suspect or a vehicle or anything, but that would be the extent of it.
Q So your responsibility is to get out there and mark everything off?
A Correct.
Q And try to get some foundation of what's going on?
A Yes, ma'am.
Q But you don't do any kind of sit-down interview with anybody?

A No, ma'am.
Q You don't collect any shell casings or anything like that?
A No, ma'am.
Q Officer Jones, at the time you were -- what was your position?
A I was a sergeant.
Q Okay. And as a sergeant, is that a supervisory position?
A Yes, ma'am.
Q So did you do any kind of report?
A No, ma'am.
Q Okay. And would you normally do any kind of report?
A No, ma'am.
Q Okay.

MS. LIVESAY: Thank you. No further questions, Your Honor, for this witness.

THE COURT: Mr. Bouchette?

CROSS-EXAMINATION ON BEHALF OF DEFENDANT RANSOM

BY MR. BOUCHETTE:

Q All right. Officer Jones, good morning.
A Good morning.
Q A couple of things. I know that you're not the crime scene investigator or the ballistics experts, so if I ask you something that wasn't within in your

investigation, feel free to let me know. All right?

Now, when you arrived on the scene -- I think you saw it in the video -- this Tahoe had sort of a squat-type; correct?

A Yeah.

Q It was lifted in the front and kind of squatted in the back?

A Correct.

Q Now, if I understand you right, you saw what you believe to be clearly a bullet hole through the windshield; is that correct?

A Yes.

Q Any other bullet holes through the windshield?

A I only noticed the one.

Q Okay. You also indicated that you saw damage to the grille area; is that right?

A Correct.

Q And you saw some type of fluid leaking out of the bottom?

A Correct.

Q And based on that, you concluded that there was a second shot; right?

A Yes, sir.

Q But did you recover or see any bullet hole or any actual shell in the grille itself of the vehicle?

A No, sir. I would not have been a part of that.
Q All right. So, if there was one, that would have been collected by the Crime Scene guy or ballistics guy?
A Somebody other than myself.
Q Somebody other than you. Okay. Fair enough. All right.

So given that we have got the two shots -- so the classification of this vehicle having been riddled with bullets would be incorrect?
A Yes, sir.
Q Okay. All right. Now, I want to get a little gauge for distance. Obviously, we have the vehicle, and if we understood your testimony, there's a cluster of shell casings at a different location; correct?
A Correct.
Q And give me some idea. Approximately how far -- and I know it's a cluster so they're not in an exact location, but how far approximately from the vehicle to the cluster of shell casings are we talking?
A I'd say at least from where I'm sitting to the wall.
Q To the wall in the back of the courthouse?
A Yes, sir.
Q So fairly close range; correct?
A Yes, sir.
Q Close range.

And, obviously, the front end of this Tahoe is -- would you say about six feet or so wide?

A That would probably be a good estimate.

Q A good estimate. Okay.

Fairly large object, target; correct?

A Yes, sir.

Q So if we're standing back and you get -- at least with regard to the vehicle, your investigation indicated no more than two shots; correct? Or two shots that hit the vehicle?

A There appeared to be two shots that hit the vehicle that I noticed. I didn't thoroughly go through and look.

Q Sure. You didn't observe any more than two shots?

A No, sir.

Q So with regard to that distance -- let me do this. So two shots. You have indicated that you did not see any other shots that, for example, hit a house nearby?

A Correct.

Q You did not see any shots that had maybe hit the ground to the left of the vehicle; correct?

A I did not notice any shots in the ground, no, sir.

Q In other words, you saw no shell casings or bullet fragments to the left or the right of the vehicle; correct?

A Correct.

Q No bullet fragments off to any of the houses that were nearby to the left or right of the vehicle; correct?

A Correct.

Q So understanding that we have a cluster of shell casings some distance away from the vehicle, indicating there may have been additional shots fired, is there anything that you uncovered during your investigation that would indicate that more than at most the two shots that hit the vehicle were fired in the direction of the vehicle?

A No, sir. There was woods behind the vehicle, but we did not go looking in the woods to see if could find any.

Q Okay. But as you sit here today, you have uncovered nothing that would indicate more than the two -- at most the two shots in the vehicle that were fired in the direction of the vehicle?

A Correct, two shots.

Q At most, based on your investigation.

A From what I have seen, yes.

Q Sure. Okay.

MR. BOUCHETTE: I don't have any further questions of this witness.

THE COURT: All right. Mr. Pinkerton?

MR. PINKERTON: Thank you, Your Honor.

CROSS-EXAMINATION ON BEHALF OF DEFENDANT MITCHELL

BY MR. PINKERTON:

Q You were not the first officer on the scene; correct?

A No, sir.

Q Was EMS on the scene by the time you got there?

A No, sir.

Q They were not? Okay.

But it was pretty chaotic when you got out there; correct?

A Considering the circumstances, actually, it wasn't that chaotic, no, sir.

Q But you don't collect casings or anything like that? You said that's Crime Scene?

A Correct.

Q Were they on the scene when you got there yet?

A No, sir.

Q To your knowledge, had the scene been manipulated in any way?

A I'm sorry?

Q Had the scene been manipulated in any way by passing-by people, people trying to render aid, or anything like that?

A No, sir, it did not appear to be.

Q And you said you only saw one bullet hole actually in the windshield of the Tahoe; correct?

A That's the only one I noticed.
Q That's the only one you noticed? Okay.
A In the windshield.
Q Okay. And you said there was radiator fluid leaking from the bottom of the Tahoe?
A Yes, sir.
Q Did both --

MR. PINKERTON: No further questions, Your Honor.

THE COURT: All right. Mr. Gardner?

MR. GARDNER: No questions, Your Honor.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MS. LIVESAY:

Q Just a couple of quick questions, Officer Jones. Defense counsel was asking you about the close proximity between where the cases were and the Tahoe.
A Yes, ma'am.
Q Do you know where the Tahoe was when the shots were fired? Do you know if it was at the stop sign? If it was halfway -- where it ended -- where it ultimately ended up at? Do you know where it was when the shots were fired?
A No, ma'am.
Q Do you know whether or not the Tahoe was moving when the shots were fired?
A Yes, ma'am.

Q And was it moving?
A Yes, ma'am. It was reported to have been moving.
Q And is it more difficult to hit a moving target?
A From my experience, yes.
MS. LIVESAY: No further questions.
THE COURT: All right. You may step down.
MR. HELMS: Can he be excused?
THE COURT: Mr. Bouchette, any objection?
MR. BOUCHETTE: Be excused? No objection to that, Your Honor.
THE COURT: Mr. Pinkerton?
MR. PINKERTON: No objection, Your Honor.
THE COURT: Mr. Gardner?
MR. GARDNER: No objection, Your Honor.
THE COURT: All right. He's free to go.
All right. Let's take about a ten-minute break, and we'll come back and resume.
Ladies and gentlemen, I'm going to excuse you back to the jury room for just a few minutes. Do not discuss the case, even among yourselves. It's too early for deliberation. But we'll take a short break and we'll come back. Thank you very much.
(The jury exited the courtroom at 11:53 a.m.)
THE COURT: All right. Anything from the State before we take a short break?

MS. LIVESAY: No, sir.

THE COURT: All right. Anything, Mr. Bouchette?

MR. BOUCHETTE: No, sir.

THE COURT: Mr. Pinkerton?

MR. PINKERTON: No, sir.

THE COURT: Mr. Gardner?

MR. GARDNER: No, sir. No, Your Honor.

THE COURT: All right. Let's take about a ten-minute break, and we'll come back and resume.

MR. HELMS: Yes, sir.

(A recess was taken from 11:54 a.m. to 12:10 p.m.)

THE COURT: All right. Anything from the State before we bring the jury back in?

MS. LIVESAY: Nothing, Your Honor.

THE COURT: Mr. Bouchette?

MR. BOUCHETTE: Nothing, Your Honor.

From a scheduling standpoint, I don't know if the State knows how long they anticipate the first witness to be, but given the hour, it may make sense to break for lunch and start with a new witness fresh.

THE COURT: Well, we're going to go ahead -- I have got lunch coming for the jury and it's not here yet. Once it gets here, then we may have to break during direct or cross or something of that nature.

Mr. Pinkerton, anything?

MR. PINKERTON: No, Your Honor.

THE COURT: Mr. Gardner?

MR. GARDNER: No, sir.

THE COURT: All right. Let's bring the jury in.

MS. LIVESAY: Judge, do you mind if we go ahead and move the TV? We got a video to show.

THE COURT: That would be fine.

MS. LIVESAY: Save some time when they're in here.

THE COURT: That would be good.

(The jury entered the courtroom at 12:12 p.m.)

THE COURT: All right. Ladies and gentlemen, welcome back. We're ready to resume with the trial of this case.

The State can call your next witness.

MS. LIVESAY: Thank you, Your Honor. At this time, the State calls Jacob Hill.

THE CLERK: Please raise your right hand. Place your left hand on the Bible.

JACOB HILL,

after having been duly sworn, was examined and testified to as follows:

THE CLERK: Please state your name and spell it for the Court.

THE WITNESS: Jacob Hill. J-a-c-o-b, H-i-l-l.

DIRECT EXAMINATION

BY MS. LIVESAY:

Q And if you don't mind, Mr. Hill, tell these folks how old you are.

A 22.

Q And where are you from?

A Conway, South Carolina.

Q And did you go to school here in Conway?

A Yes, ma'am. Conway High School.

Q And where are you currently working?

A A candle (ph) shop.

Q Okay. And you lived in Conway all your life. About what area do you live in?

A The Dunn Short Cut area.

Q Okay. And do you know the victim, Jamie Johnson?

A Yes, ma'am.

Q And how did you know Jamie?

A He was my best friend.

Q And how long had y'all been best friends?

A Probably about five or six years.

Q And where was he living in September of 2020?

A Off of 378.

Q At that time, did he have a car?

A Yes, ma'am.

Q Tell these folks what kind of vehicle he had.

A Chevy Tahoe.

Q And how long had he had it?
A Probably not even a year.
Q And did you have a vehicle?
A No, ma'am.
Q Okay. And how often would you hang out?
A Every day.
Q And if you wanted to go somewhere, what car would you drive?
A The Tahoe.
Q Now, do you remember September 12th of 2020?
A A little bit, yes, ma'am.
Q And do you remember the roads that y'all were on that day before the incident occurred?
A Yes, ma'am.
Q And is that a road that you were on all the time?
A Yes, ma'am.
Q And where were you going?
A To Henry's, the gas station on 501.
Q And is that a gas station y'all would frequent often?
A Yes, ma'am.
Q And did you take the same route every time you went?
A Yes, ma'am.
Q And why did you take that particular route?
A Less cops. Off the main highway.

Q And why did you have to stay off the main highway?
A There was not the right tag on the back of the Tahoe.
Q So every time you went to Henry's, you took those back streets?
A Yes, ma'am.
Q Which included Wayside road?
A Yes, ma'am.
Q And every time you went did you take the Tahoe?
A Yes, ma'am.
Q Now, tell me a little bit about the Tahoe. Was there anything about Jamie's Tahoe that was distinguishing?
A I mean, it was squatted and it was -- I mean, it had a spare tire on the back driver's side.
Q And what does squatted mean?
A (Indicating).
Q So the back end is down?
A Yes, ma'am.
Q Okay. Did it have any stickers?
A It had a "Big Steppa" sticker across the back glass.
Q And how long had he had that sticker?
A A good minute.
Q Okay. And how long had it been squatted?
A The whole time since he's had it.

Q So let me tell you something -- let me ask you something. Squatted means the back end of the vehicle is low to the ground --
A Yes, ma'am.
Q -- and the top part is high?
A Yes, ma'am.
Q So when you would stand by the hood, where would that strike you?
A The top of the hood would come to my shoulders.
Q Okay. If you don't mind, stand up.
And so the top of the hood was all the way up here?
A Yes, ma'am.
Q So if you wanted to put your arm on the hood, you'd be kind of like this?
A I'd have to... (indicating)
Q Okay. That's pretty tall.
Now, do you remember going to Henry's on September 12th, 2020?
A Yes, ma'am, but we didn't make it there.
Q I know. And who was in the car with you?
A It was Jamie, me, Orlin, and Brittany.
Q And you were in the Tahoe?
A Yes, ma'am.
Q Tell these folks where everybody was sitting in the Tahoe.

A Jamie was driving. I was in the passenger seat. Brittany was behind me, and Orlin was behind Jamie.

Q And did you-all -- you were on your way to Henry's?

A Yes, ma'am.

Q Did you take the route you normally took?

A Yes, ma'am.

Q And what happened?

A We got shot up.

Q And where did that happen?

A At the intersection of D Street and Rose Moss at the stop sign.

Q Tell these folks a description. Shot up how? Were these people on motorcycles? Were they walking? Were they in a car?

A No, ma'am. They was following us, and when we got to the stop sign, they cut around us and cut us off where we couldn't go anywhere, and then a bunch of dudes got out and shot us up.

Q And did anybody in your car have a gun?

A No, ma'am.

Q Describe the vehicle that came around and cut you off.

A It was like a bluish-grayish Crown Vic-type car.

Q Two-door or four-door?

A Four-door.

Q Tell me about the people that got out of the car that fired or that just out of the car.
A There was one that got out of the driver's seat, and then there was about three or four of them that got out the backseat. The one that go out of the front seat had no shirt on and pants. And then the ones in the back, I don't really remember.
Q Okay. So slow down. How many people got out of the front part of the car?
A Just one.
Q And what did he look like?
A He had a little bit -- he had, like, short dreads, probably about that long (indicating). No shirt.
Q Was he black or white?
A He was black.
Q Did anybody get out of the back of the car?
A Yes, ma'am, about three of them.
Q Okay. And were they women or men?
A Men.
Q And what did they look like?
A Black males.
Q And do you remember anything else about the men that got out of the back?
A No, ma'am.
Q Could you tell me about how old they were?

A It looked like they was about they were teenagers or early 20s.

Q Did you see anybody with a gun that got out of the car?

A The only one I saw with a gun, like, eye-to-eye contact was the one that got out the passenger side.

Q And so do you know whether or not the other people had guns?

A I have no clue.

Q Okay. And tell me if you know the guy that got out of the front passenger side.

A Yes, ma'am. It was Tronahz.

Q I'm going to show you State's Exhibits 27, 28, 29, 30, and 31. I have already shown it to defense counsel. Look at this and tell the Court whether or not you recognize what that's a picture of.

A Yes, ma'am.

Q What is it? And tell the Court what it is.

A Messages between me and Tronahz.

Q And what is the Facebook name?

A Draxo Da Mobb.

Q And are these the messages and pictures that you showed the police department?

A Yes, ma'am.

Q And why did you show the police department these

particular pictures?

A Because that's the dude I saw get out the passenger side of the car.

Q In order to show them and identify who it was?

A Yes, ma'am.

Q And the three black males that jumped out of the back, you didn't recognize?

A No, ma'am.

Q And tell me what you did and what the people in the car did when this car cut you off. What happens inside your car?

MR. GARDNER: Objection to leading, Your Honor.

THE COURT: That's not leading. I'll allow it.

Go ahead.

BY MS. LIVESAY:

Q What happened inside your car?

A Well, when the car originally tried to cut us off, Jamie went to back up to get us out of there, and when he went to turn around, he got shot in the back of the head. And then I get in the floor, and then Orlin and Jamie get in the back of the floorboard too until it's over.

Q Okay. So when you say "the floorboards," you mean you're down?

A Yes, ma'am.

Q Okay. So how quick are you -- how much time passes

between when you are cut off and you're down in the floorboard?

A By the time he stepped out and pointed the gun, I was in the floor.

Q Okay. Okay. I would have been too.

And 27 through 31 is the information off your phone that you gave to the police department?

A Yes, ma'am.

Q And, in fact, these are photographs of your phone showing the conversation in the pictures?

A Yes, ma'am.

MS. LIVESAY: Your Honor, at this time, the State wishes to place 27 through 31 into evidence and publish it to the jury.

THE COURT: All right. Mr. Bouchette?

MR. BOUCHETTE: No objection, Your Honor.

THE COURT: Mr. Pinkerton?

MR. PINKERTON: No objection, Your Honor.

THE COURT: And Mr. Gardner?

MR. GARDNER: No, sir, no objection.

THE COURT: All right. State's Exhibits 27, 28, 29, 30, and 31 are admitted into evidence without objection.

(State's Exhibit Nos. 27 through 31 were received into evidence.)

BY MS. LIVESAY:

Q Mr. Hill, if you don't mind, can you step down?

MS. LIVESAY: Do you mind, Judge? I apologize.

THE COURT: As long as he's near a microphone where the court reporter can pick up his testimony.

BY MS. LIVESAY:

Q Mr. Hill, what are we looking at?

A My phone and the messages between me and Draxo Da Mobb.

Q Okay. And tell me -- because I can never figure it out -- who is in the gray and who is in the blue?

A The gray would be Draxo Da Mobb, and the blue messages would be me.

Q And it's September 3rd?

A Yes, ma'am.

Q And do you know this person?

A No, ma'am.

Q Okay. And is this the first communication you had?

A Yes, ma'am.

Q Okay. Tell me -- well, what is this?

A That's where, like, if somebody sends you a friend request and, like, you accept it or whatever, it says that you can now call each other and stuff like that.

Q Okay. So did he send you a friend request?

A Yes, ma'am.

Q And did you accept it?
A Yes, ma'am.
Q And that happened on September 3rd?
A Yes, ma'am.
Q Now, what am I looking at here?
A These his profile picture and his Facebook name.
Q Okay. So these messages are off what? Facebook? Text?
A Facebook Messenger, yes, ma'am.
Q Okay. And if you don't mind, publish to the jury the message you received from Draxo Da Mobb.
A You mean, like, read it out?
Q Yes, sir.
A He had texted me, "Yo."
And I texted him back, "Yeah."
And then he tried to video-chat me type stuff.
And I sent a question mark.
And he was like, "Yo, you gotta problem with my peoples?"
And I was like, "Who? JJ?"
And then --
Q Did the conversation --
A It kept going.
Q Okay.
A And then he's saying, "Yeah and Josh."

I was like, "I don't know who Josh is. JJ was talking crap to my brother, and JJ got his butt beat. Nothing else to it."

And he was like, "Where's the video?"

I said, "What video?"

And then he said, "Ain't no video?"

I was, like, "Nah."

He was like, "But y'all jumped my boy; right?"

I was like, "Nah, not that I know of. I only pulled up so my little brother wouldn't get jumped."

Q So what's going on in your conversation?

A Me and him talking about the fight that happened between his buddy and my little brother.

Q And the fight happened between who?

A JJ Fowler and my little brother.

Q Okay. Were you involved in the fight?

A No, ma'am.

Q Was Jamie Johnson involved in the fight?

A No, ma'am.

Q Okay. Tell me what's going on here.

A They were just still texting back and forth about the fight. He wanted to know if anybody, whatever, jumped him.

I was like, "Nah."

And he was like, "Who did he fight?"

I was like, "My little brother."

And then I was like -- I told him, "All I did was pull up so my little brother wasn't going to get jumped. I ain't touched JJ."

He was like, "Word. So what's up with that dude Jamie?"

And then he got my phone.

He was like, "Shit, you got my Facebook. This is Jamie."

And then Tronahz said, "Say less."

And then they texted back and forth on Jamie's phone.

Q Okay. So do you know why he was looking for Jamie?

A No, ma'am.

Q Okay. And all of this happened September 3rd?

A Yes, ma'am.

Q And the shooting happened a couple of weeks after?

A Yes, ma'am.

Q Okay. Had you had any more contact with him other than this?

A No, ma'am.

Q So all the contact was about an altercation between your brother and one of his friends?

A Yes, ma'am.

Q If you don't mind, have a seat.

A Yes, ma'am.
Q Who do you know Draxo Da Mobb to be?
A Tronahz Whittington.
Q Now, was Tronahz Whittington the only guy that jumped out of the car?
A No, ma'am.
Q Was Tronahz Whittington driving the car?
A No, ma'am.
Q The car came from what direction?
A Behind us.
Q And they passed you?
A They cut us off. They pulled in front of us and cut us off.
Q Could you have gone anywhere once the car had cut y'all off?
A No, ma'am.
Q Could Jamie have taken a left?
A No, ma'am.
Q Could he have taken a right?
A No, ma'am.
Q The car in the picture, the Tahoe, is somewhat back from the stop sign.
A Mm-hmm.
Q Is that where the car was shot up? Did y'all ever make it to the stop sign?

A Yeah, we made it to the stop sign, and then Jamie tried to back up. And then where the truck was stopped, that's where it all happened at.

Q When Jamie is backing up, are there shots being fired at the Tahoe?

A Yes, ma'am.

Q Did that make a difference as to whether or not y'all could get away?

A Yes, ma'am.

Q If no shots were fired, could Jamie have just backed up?

A Yes, ma'am.

MR. BOUCHETTE: Objection to speculation.

THE COURT: Overruled. I'll allow that.

BY MS. LIVESAY:

Q How many shots did you hear?

A A lot.

Q How many is a lot? Is it more than one?

A It was probably more than a handful.

Q How many?

A Probably more than a handful.

Q Okay. More than a handful?

A Yes, ma'am.

Q So more than two?

A Yes, ma'am.

Q More than three? More than four?
A More than six.
Q Okay. When you're in the car, do you hear the bullets hitting the truck?
A Mm-mmm.
Q Do you hear anything?
A The only thing you can hear is the gunshots going off.
Q Can you remember how long it lasted, the shots being fired?
A A matter of seconds.
Q And tell me what it sounded like. Was it pop and then a long pause and pop? What did it sound like?
A Like one right after another.
Q Just pop, pop, pop, pop, pop?
A Mm-hmm.
Q And you heard at least over six shots?
A Yes, ma'am.
Q When the shots stopped, what happens next?
A I looked back at Orlin and asked him if they're gone. And as soon as he says they're gone, we jump out and tried to put Jamie in the back of the truck. And then once we realized the front of the truck has been shot and you can't drive up, we pulled him out and put him on the ground.

Q So why were y'all trying to put him in the back?
A To take him to the hospital.
Q And then you realized you couldn't drive the car?
A Yes, ma'am.
Q So what do y'all do next?
A We pull him out and sit him on the ground, and then we called the law or called the cops.
Q And who all helps get him out of the car?
A Me and Orlin.
Q What happens next?
A Once we get him out the car -- I don't remember who calls the cops, but somebody calls the cops, and then we sit there, and I call my mom and I call Jamie's mom. And then we just sit right there until the law gets there.
Q Did anybody leave before the law got there?
A Orlin did, yes, ma'am.
Q And do you know why?
A Yes, ma'am. Because he's an illegal immigrant.
Q I'm sorry?
A He's an illegal immigrant.
Q The same Orlin is the one that helped him get out of the car?
A Yes, ma'am.
Q Once y'all get Jamie out of the car, is there really anything to do at that point to assist?

A No, ma'am.
Q Did you see where he was injured?
A Yes, ma'am.
Q Where?
A In the back of the head.
Q If I showed you a picture -- or pictures of the Tahoe, would you recognize it?
A Yes, ma'am.
Q Did the Tahoe suffer damage other than just the windshield?
A I think there was another shot on the driver's side somewhere.
Q And how about in the front? Do you know?
A Not that I know of, except for the one that made it leak the antifreeze or the coolant.
Q So maybe three?
A Yes, ma'am, maybe three.
Q Did you fully inspect the car?
A No, ma'am.
Q That's just what you saw standing out there?
A Yes, ma'am.
Q I'm going to show you 18 through 24. Take a look and tell me if you recognize them. And No. 26. I apologize.
A Yes, ma'am.

Q Okay. And are those all photographs of the Tahoe?

A Yes, ma'am.

Q And is that how it appeared the last time you saw it?

A Yes, ma'am.

MS. LIVESAY: Your Honor, at this time, the State wishes to place 24 through 26 into evidence and publish it to the jury.

MR. BOUCHETTE: No objection.

THE COURT: All right.

MR. PINKERTON: No objection, Your Honor.

MR. GARDNER: No objection, Your Honor.

THE COURT: All right. State's Exhibits 24, 25, and 26 are admitted into evidence.

MS. LIVESAY: I'm sorry, Judge; I apologize. I gave you the wrong numbers. 18 through 26.

THE COURT: Is there a 25?

MS. LIVESAY: There is a 25, Judge.

THE COURT: All right. Mr. Bouchette?

MR. BOUCHETTE: No objection.

THE COURT: Mr. Pinkerton?

MR. PINKERTON: No objection, Your Honor.

MR. GARDNER: I'm trying to keep track. Can you tell me the exact numbers again?

THE COURT: 18, 19, 20, 21, 22, 23, 24, 25, and 26.

MR. GARDNER: Thank you. No objection, Your Honor.

THE COURT: All right. State's Exhibits 18, 19, 20, 21, 22, 23, 24, 25, and 26 are admitted into evidence without objection.

MS. LIVESAY: Thank you, Your Honor.

(State's Exhibit Nos. 18 through 26 were received into evidence.)

BY MS. LIVESAY:

Q Can you see this from where you're sitting?

A Yes, ma'am.

Q What am I looking at?

A Jamie's Tahoe.

Q Is that the front?

A Yes, ma'am.

Q And were any of the tires flattened?

A No, ma'am.

Q And this here, when did that happen?

A When Jamie was shot in the head.

Q What am I looking at here?

A Just the driver's side of Jamie's Tahoe.

Q And does this show the squat?

A Yes, ma'am.

Q And the front end here is lifted up; is that right?

A Yes, ma'am.

Q How about now?

A Backside -- back driver's side of Jamie's Tahoe.
Q About how about this sticker?
A Hashtag 843.
Q Had that been up there awhile?
A Yes, ma'am.
The backside of it.
Q And this is a sticker you were talking about before?
A Yes, ma'am. Big Steppa.
Q And how long had that been there?
A Not that long. Probably like not even a month.
Q And let me ask you something: You have lived in Conway all your life?
A Yes, ma'am.
Q And you drive the Tahoe sometimes?
A Yes, ma'am.
Q And did other people have this "Big Steppa" sticker?
A Only one other person, but it wasn't a Tahoe. It was a full-size truck.
Q So this isn't something that comes on every car -- every Tahoe?
A No, ma'am.
Q Are there any bullet holes in the back?
A No, ma'am.
Q How about here?
A Passenger side of his Tahoe.

Q And, again, does this show that slant?
A Yes, ma'am.
Q How about here?
A The front -- front passenger side.
Q And is this where it's lifted up?
A Yes, ma'am.
Q When did that happen?
A When he was shot.
Q Now, have you seen a video of y'all driving on Wayside Road to Henry's on 9/12 of 2020?
A Yes, ma'am.
Q And you can identify that was y'all on the day of the shooting at that time?
A Yes, ma'am.
Q And, in fact, you can see the driver's window down?
A Yes, ma'am. And you can see Jamie's red hair.
Q Jamie had red hair?
A Yes, ma'am.
Q And you can see it in the video?
A Yes, ma'am.
Q The car behind you in the video, did you recognize that car?
A No, ma'am.
Q Did you see --
MR. BOUCHETTE: Your Honor, I'm going to object to

any reference to evidence which isn't in the record.

THE COURT: Overruled.

Go ahead.

BY MS. LIVESAY:

Q If you saw the car that cut y'all off in the video, would you recognize it?

A Yes, ma'am.

Q And is that car in the video?

A Yes, ma'am.

Q And where is it?

A Following us, behind us.

Q Had you ever seen that car before that day?

A No, ma'am.

Q I'm going to show you now State's 32 and 33. Do you recognize what I'm showing you?

A Yes, ma'am.

Q And do both of these videos have your initials?

A Yes, ma'am.

Q And what does that indicate?

A That I have seen it and witnessed it.

Q And is that y'all on the way to Henry's?

A Yes, ma'am.

Q And you recognize the car behind you?

A Yes, ma'am.

Q And that was y'all on Wayside Drive?

A Yes, ma'am.

Q And that was the time y'all were on your way to Henry's?

A Yes, ma'am.

MS. LIVESAY: Your Honor, at this time, the State wishes to put 32 and 33 into evidence and publish it to the jury.

THE COURT: All right. Mr. Bouchette?

MR. BOUCHETTE: I'd further object. I don't believe this witness qualifies as a custodian of that particular video. He testified he's reviewed it, the facts that are presumably captured in the video, but I don't think we have got a foundation laid for him to actually introduce that particular video.

THE COURT: Mr. Pinkerton?

MR. PINKERTON: Your Honor, I'm going to agree with Mr. Bouchette on that. We'd also add, he's not the one that made these videos, and he's not the custodian of record. He's not the proper person to introduce these videos through.

THE COURT: All right. Mr. Gardner?

MR. GARDNER: I would concur with those objections. We don't know where the videos came from, Your Honor.

THE COURT: All right. State's Exhibit 32 and 33 are admitted into evidence over defendants' objections.

MS. LIVESAY: Thank you, Your Honor.

(State's Exhibit Nos. 32 and 33 were received into evidence.)

(Video plays.)

BY MS. LIVESAY:

Q Mr. Hill, do you see y'all's Tahoe in the video?

A Yes, ma'am.

Q And how about the car behind you?

A Yes, ma'am.

Q And did you see the car behind you again at some point?

A Yes, ma'am.

Q And when?

A In the next video.

Q And the car behind you, is that the car that cut y'all off?

A Yes, ma'am.

MS. LIVESAY: If you don't mind, go back just a hair.

BY MS. LIVESAY:

Q Who is this?

A Jamie Johnson.

Q Is his window up or down?

A Down.

Q And can you tell the red hair?

A Yes, ma'am.
Q And can you tell whether or not the back window is up or down?
A It's halfway down. It stops halfway.
Q And was that because it was broken or --
A No, that's just how they are. They stop halfway.
Q And is your window down?
A Yes, ma'am.
Q So you can see, even from this far away -- I mean, we're a yard away. You can see inside the car?
A Yes, ma'am.
Q And is that the spare tire?
A Yes, ma'am.
Q And it's not clear on this big TV, but do you recognize what's right there?
A The hashtag 843 sticker.
Q And can you tell, is this the squat?
A Yes, ma'am.
MS. LIVESAY: Hit it just one minute and then stop, if you don't mind. Just a split second. Stop.
BY MS. LIVESAY:
Q Is this the car that cut you off?
A Yes, ma'am.
Q Did y'all realize this car was even behind you?
A No, ma'am.

MS. LIVESAY: And I apologize, Lacy. Can you hit it back one more time for me?

BY MS. LIVESAY:

Q And were y'all on the way to Henry's around 7:11 that night?

A Yes, ma'am.

Q Still daylight?

A Yes, ma'am.

Q And y'all are on Wayside Road?

A Yes, ma'am.

MS. LIVESAY: Thank you. Can you play the other video?

BY MS. LIVESAY:

Q Can you see what she wrote up here, Jacob?

A "Drove down Wayside."

Q Is that correct?

A Yes, ma'am.

Q Can you see it?

A Yes, ma'am.

(Video plays.)

BY MS. LIVESAY:

Q Do you recognize that car?

A Yes, ma'am.

Q Whose car is it?

A The Tahoe.

Q I'm sorry?
A The Tahoe.
Q And were y'all in that car?
A Yes, ma'am.
(Video plays.)
BY MS. LIVESAY:
Q Do you recognize that car?
A Yes, ma'am.
Q And is that the car that pulled in front of you?
A Yes, ma'am.
Q And are y'all on Wayside Drive?
A Yes, ma'am.
Q Now -- I'm sorry.
MS. LIVESAY: Gear it up one more time. I apologize. Okay. Stop.
(Video plays.)
BY MS. LIVESAY:
Q The time down here says 7:13. Y'all were on Wayside. Is that when y'all were on your way to Henry's?
A Yes, ma'am.
Q Okay. So you're still trying to get to Henry's?
A Yes, ma'am.
Q And this other car is still behind you?
A Yes, ma'am.
Q I'm going to write 7 -- see what I wrote up here,

Mr. Hill?

A Yes, ma'am.

Q Is that correct?

A Yes, ma'am.

Q Now, you have watched both of those videos?

A Yes, ma'am.

Q Both of them are accurate?

A Yes, ma'am.

Q And both of them show y'all, that day, on your way to Henry's?

A Yes, ma'am.

Q Was it light outside?

A It was still daylight but not really, like, bright light. It was, like, dusk.

Q Okay. And in that video, was it light enough for you to see who was driving the Tahoe?

A Yes, ma'am.

Q And how quick did the shooting happen when y'all got off Wayside Road?

A Probably within a matter, like, not even five minutes.

Q And it's still light?

A Yes, ma'am.

Q Okay. And was it light enough for you to see that people jumped out of the car?

A Yes, ma'am.
Q And give the description you gave?
A Yes, ma'am.
Q And, in fact, you recognized one of them?
A Yes, ma'am.
Q When did the shooting stop?
A Probably, like, five minutes after it started, not even five minutes.
Q So it happened quick?
A Yes, ma'am.
Q And when you popped your head back up, was the car still around?
A No, it was gone.
Q Were any of the people that were in the car, did you see any of them standing around?
A No, ma'am.
Q So they were gone?
A Yes, ma'am.
Q Did you even see the taillights of the car?
A No, ma'am.
Q You stayed until the police came?
A Yes, ma'am.
Q And after -- how long were you out there after the shooting happened when the police were out there?
A Probably like 20, 30 minutes.

Q 20 or 30 minutes.

Did you see the car that cut you off, did you see that car come back to the scene?

A No, ma'am.

Q Did you see anybody matching the description of the car come back to the scene?

A No, ma'am.

Q Okay. So none of those people are around to give any information to the police?

A No, ma'am.

Q Where did you go that night after you left the scene where it happened?

A To the M.L. Brown building to give my statement.

Q And did you give a statement?

A Yes, ma'am.

Q And did you let him take pictures of your phone?

A Yes, ma'am.

Q Who did you see jump out of the passenger side of the car?

A The front?

Q (Nodding head in the affirmative.)

A Tronahz Whittington.

Q And is that the picture you gave to police?

A Yes, ma'am.

Q Have you got any doubt about that?

A No, ma'am.
Q Did you ever see the driver of the car jump out?
A No, ma'am.
Q How many people -- did you see anybody jump out the back?
A Yeah, three of them.
Q Three people jumped out of the back. Can we just put one, two, three.

Okay. Help me out. The three people that jumped out of the back, give me a description. Were they women or men?
A Men.
Q What color?
A Black.

MR. GARDNER: Your Honor, I'm going to object to this. He started doing this at the beginning of her direct examination, and now she's repeating it. It's been asked and answered.

THE COURT: You have already gone over --

MS. LIVESAY: I'm sorry, Judge?

THE COURT: You have already gone over the description.

MS. LIVESAY: I'm just doing it for the board, and then we're sitting down.

THE COURT: All right.

MS. LIVESAY: And I'm going to let him look at it.

THE COURT: I'll allow it so that she can write it on the board.

MR. GARDNER: Well, I would -- while we're doing it, I'm objecting to this board. I started to say it again, but I think that was another time. But I object to this board too. It's confusing, it's delaying, and it's blocking, and I think it's disrupting the flow of the court.

THE COURT: All right. Overruled.

Go ahead.

BY MS. LIVESAY:

Q At about what age?

A Late teens, early 20s. Not much younger than me.

Q I'm going to show you this board. Do you see it?

A Mm-hmm.

Q Is the information on it accurate as to the description you have given?

A Yes, ma'am.

MS. LIVESAY: No further questions, Your Honor.

THE COURT: All right. Ladies and gentlemen, it's almost 1:00. We're going to go ahead and break for lunch. We have ordered lunch for you, so it will be here -- it should be here and ready for you to eat now.

I'm going to excuse you to the jury room. We'll

take probably about an hour break. We'll give you plenty of time to eat your lunch, so don't feel rushed or anything of that nature.

I'll remind you again: do not to discuss the case, even among yourselves. It's too early for deliberation.

We'll take about an hour lunch break, and then we'll come back and get started again. Enjoy your lunch.

Everyone else please remain seated while the jury is excused.

(The jury exited the courtroom at 12:56 p.m.)

THE COURT: All right. Mr. Hill, we're in the middle of your testimony, so the law says you cannot discuss your testimony with anyone. You cannot discuss it with any family, friends, any attorneys; you cannot even discuss it with the State's attorney, whether that be what you have testified to thus far or what you anticipate testifying to in the future. Okay?

THE WITNESS: Yes, sir.

THE COURT: So don't talk about the case or your testimony or anything of that nature to anyone. Okay?

THE WITNESS: Yes, sir.

THE COURT: All right. Anything from the State before we break for lunch?

MS. LIVESAY: No, sir.

THE COURT: Mr. Bouchette?

MR. BOUCHETTE: No, Your Honor.

THE COURT: Mr. Pinkerton?

MR. PINKERTON: No, Your Honor.

MR. GARDNER: No, Your Honor.

THE COURT: All right. We'll take about an hour break and then we'll come back from lunch. Thank you very much.

(A lunch recess was taken at 12:57 p.m. to 2:03 p.m.)

MOTIONS/MATTERS OF LAW

THE COURT: Thank very much. Please be seated. All right. Anything from the State before we bring the jury in?

MS. LIVESAY: Yes, sir.

THE COURT: All right.

MS. LIVESAY: So it's been brought to my attention by an Horry County deputy that Shamontae Graham was in the courtroom this morning. My understanding was he was sitting over there on the front row. He's not there now. Travontae Mitchell is his brother. I didn't know he was in here because I don't correspond with any of the folks on this side. I only correspond with our folks.

Shamontae Graham, the only way we correspond with him is through Brana Williams because he's a represented defendant. He has already testified one time. He

testified at the last trial.

As to sequestration, there's nothing in this trial that's going to be new to him because he is a codefendant so he has already received discovery in the case. So he would have already received all the statements by the witnesses.

THE COURT: All right. Mr. Bouchette?

MR. BOUCHETTE: Obviously, I wasn't paying attention behind me. I don't know when he was here or how long he was there. If he's been present for the bulk of the morning's testimony then my concern would be that's substantial enough to violate the Court's sequestration order.

The question would be, you know, why, number one, was he not informed by the State? If he wasn't informed by the State, then I sort of put that burden on them. If he did and he just misunderstood or something like that, then, you know, maybe -- I do need to have a little more information, I feel, to make that determination.

THE COURT: I mean, the question is -- I said, if they're in the courtroom, they can't testify.

Mr. Pinkerton?

MR. PINKERTON: Court's indulgence one second, Your Honor.

THE COURT: All right.

(Counsel conferring off the record.)

MR. BOUCHETTE: Judge, I understand the State's position, but I'm presuming from what they're telling me and from what they've learned, he was in here at least through the bulk or substantial portion of the testimony today. If that was the case, I think it's a violation of the sequestration order, and I'd ask him not be allowed to testify.

THE COURT: Mr. Pinkerton?

MR. PINKERTON: Your Honor, I'll abide by the Court's decision with this. I have no objection with him testifying as long as he remains sequestered for the bulk until he testifies.

THE COURT: All right. Mr. Gardner?

MR. GARDNER: I just think that the rules are the rules, Your Honor. We have had several variations of compliance in the short time this trial has been going on; therefore, I'd ask that he not be allowed to testify.

THE COURT: All right. And I don't know what his testimony is going to be, but I do know that we had a motion to sequester. Everybody agreed to it. I said make sure your witnesses are not in here, so neither side will be able to call him.

MR. HELMS: Your Honor, if I may put this on the record.

THE COURT: All right.

MR. HELMS: Mr. Graham -- Shamontae Graham is here -- was here this morning because he is brothers with one of these young men at the table. He is here to support them. We had no way to know he was coming in the courtroom today because we don't communicate directly to him, because we can't; that, in and itself, would be a violation.

He came here today without our knowledge, without our direction. He additionally came without their knowledge or direction but to support them.

We had no way of preventing him from coming because we can't -- we don't communicate with him directly, and we did not -- we're not over here paying attention to their group of people. We're looking at our group of people.

He basically came in and blended in with the defense, Your Honor.

Additionally, as Ms. Livesay said, he has testified one time. As a matter of fact, all three defendants have a transcript -- full transcript of his prior testimony in front of them right now to cross-examine him with. So any variation that he came from -- or comes off of is going to -- they're going to be able to jump on it with a quickness.

MS. LIVESAY: And let me say this, we spoke with

Brana Williams, his attorney, and we were crystal clear that we wanted him here at a certain time and not before then. We have corresponded with her. That is her client. We cannot correspond with him because he's represented. But we corresponded with her. We told her when he needed to be here, and it was not yesterday and it was not today.

MR. HELMS: More importantly --

MS. LIVESAY: So I can't -- we can't control the correspondence between Brana and her client.

And let me say this: He was sitting over there. Mr. Bouchette, Mr. Pinkerton, and Mr. Gardner, who made the motion, saw him sitting over there --

MR. GARDNER: I object to that.

MS. LIVESAY: -- with the rest of their defendants' family, or at least they had a better idea than we did. And they never asked him to leave the courtroom. And he was not sitting anywhere where we had a visual. He was sitting over there behind the defendants and the defense attorney.

So we didn't have any idea he was here. We told Ms. Williams when we wanted him to show up and that he was to show up with her since she represented him. We had no way of knowing that he was here. We have done everything we could to have him here with his attorney at the appropriate time.

THE COURT: All right. It is every attorney's responsibility, if they are calling a witness in this case, to ensure that they're not in the courtroom. It's not the defendant's responsibility to make sure the State's witnesses are not in the courtroom. It is the State's responsibility. It is not the State's responsibility to make sure the defendant's witnesses are not in the courtroom. It is the defendant's responsibility.

So the fact that the State's witness was sitting over there does not absolve the State. The fact that you cannot communicate directly with him because he has an attorney does not absolve the State. It is the State's responsibility, if you were going to call a witness to testify in this case, to look at everybody in the courtroom to ensure that that person is not in the courtroom during -- in violation of the sequestration order that we did at the start of the trial. So all of your argument in that regard is irrelevant.

Now, the question I have is, if you have his transcript from the prior trial, then what is the prejudice by letting the State call him as a witness in this case? I understand the purpose of sequestration is so that you don't have a witness in the courtroom listening to the testimony of another witness in case

there is a conflict of testimonies, they won't change it or whatever the case may be. But if everybody already has Mr. Graham's transcript from his testimony at the prior trial, what harm or prejudice is it to the defendants in this trial?

MR. BOUCHETTE: Well, I think having the transcript, obviously, would allow us to impeach his testimony, but impeachment is merely a mitigating effort. In other words, we can say, "Well, you changed your testimony," but we won't be able to get into the fact of, well, he was sitting in here and, you know, he heard testimony, so that's how he crafted it or how his story might have changed.

We can try to mitigate it by virtue of the fact that we have transcripts -- we'd have that -- but, again, we don't want to get having to mitigate damage if we don't have to.

So I would say the reason for the sequestration is to prevent any kind of issues with testimony based on what they hear in the courtroom. True, we have got the transcript, but if they start changing, that's just a -- that's trying to mitigate it after the fact.

THE COURT: Mr. Pinkerton, anything you want to place on the record?

MR. PINKERTON: Your Honor, I will abide by the

Court's ruling in this.

THE COURT: Mr. Gardner, anything you want --

MR. GARDNER: Just for the record, Your Honor, I believe that the testimony at the prior trial was geared towards the shooter, not these defendants. So if they want to call him to gear his testimony towards these defendants, then it will be a little bit different than the prior testimony.

So you couple that by the fact that he's been here all day listening to the testimony, I just think that the proper remedy is what you said earlier, just not allow any side to call him.

THE COURT: Well, let me ask the State: Does the State intend to elicit any testimony from Mr. Graham in the trial against these defendants that was not elicited from him in the other trial?

MR. HELMS: Yes, Your Honor, because we had to comply with Bruton.

THE COURT: Okay. All right. Well, if you're going to get some additional testimony, then he's not going to be able to testify if he was in the courtroom. If his testimony was limited strictly to his testimony in the prior trial, then they have got the transcript of that, and I don't see any prejudice to their client. But if you're going to get some testimony from Mr. Graham that

was not presented in the prior trial, then the fact that he was in the courtroom --

MR. HELMS: No, we're not.

MS. LIVESAY: The same.

MR. HELMS: I understand what you're saying. We're not. The same testimony. What he testified to in the prior trial will be his testimony today.

MS. LIVESAY: That's right.

THE COURT: So there will not be any additional testimony against these defendants that was not elicited in the first trial?

MS. LIVESAY: He testified last time -- because there's no Bruton issue, he was subject to cross-examination. So he testified to everybody that was in the car, everybody that got out of the car, everybody everything. So that's what -- I mean, because he is subject to cross-examination.

THE COURT: If that's in the -- if that's in his transcript from the prior trial, then I'm going to allow him to testify.

MS. LIVESAY: Thank you, Judge.

MR. GARDNER: If his testimony is not going to deviate from the last trial, I have no objection.

THE COURT: Okay. And that's what the State's telling me is that his testimony is not -- they're not

going to elicit any additional information during this trial that they did not get -- and what was the other defendant's name that's already been tried and convicted?

MR. HELMS: Tronahz Whittington, sir.

THE COURT: Whittington.

They're not going to elicit any additional information in this trial that was not presented in Mr. Whittington's trial.

MR. GARDNER: I understand. So I should be able to hold the transcript, while he's testifying, and if she makes him deviate out of that, I should be able to ask for a mistrial?

THE COURT: Well, the fact of the matter is it doesn't have to be verbatim. The fact of the matter is, is if he said in Mr. Whittington's trial that he saw your client get out of the car and shoot a gun, then he's going to be able to say in this trial that he saw your client get out of the car and shoot a gun.

MR. GARDNER: And I think we are on the right track. I think that there was no testimony from him about Don Brown, and I don't want that changing today.

THE COURT: I understand. All right.

MR. BOUCHETTE: Not to belabor the point, but my only sort of additional concern is that now that we have got three different defendants, each of which has their

own attorney, him having been in the courtroom and seeing the mode of cross-examination and various things in the case.

My concern, in addition to whatever the State may elicit, is whether one of these other attorneys on cross-examination elicit something that was not brought up directly by the State, and then now we're into something that, granted, the State didn't elicit, but it's still new testimony in this case that wasn't in the last case that may have been tainted by his appearance in court.

THE COURT: I note your objection, but I'm going to overrule it. I'll allow him to testify.

Before we go forward, every attorney needs to look at every person in this courtroom and make sure you do not have a witness in this courtroom; otherwise, they're not going to be able to testify.

MS. LIVESAY: The only other witness that I would not even recognize if she was in here or not but that is on the witness list is Don Brown's girlfriend, which is Yakira Owens.

THE COURT: Well, you need to call and find out if she's here.

MR. HELMS: Is Yakira Owens in this courtroom?

(Ms. Owens raises her hand.)

MR. HELMS: We're going to need you step out, ma'am,

please. Thank you.

THE COURT: How long has she been in the courtroom?

MR. GARDNER: All morning?

THE COURT: How long has she been in the courtroom?

MR. GARDNER: The crowd is saying all morning, Your Honor.

THE COURT: Okay. She won't be -- what's her name?

MR. HELMS: Yakira Owens.

THE COURT: All right. Yakira Owens will not be allowed to testify. But I'm assuming she did not testify in the first trial against Mr. Whittington and there is no transcript of her testimony.

MS. LIVESAY: She didn't testify, Your Honor.

THE COURT: All right. So Ms. Owens cannot testify.

All right. Anything further from the State before we bring the jury in?

MS. LIVESAY: No, sir.

THE COURT: Anything from Mr. Bouchette?

MR. BOUCHETTE: Nothing further.

THE COURT: Mr. Pinkerton?

MR. PINKERTON: No, Your Honor.

MR. GARDNER: No, sir, Your Honor.

THE COURT: All right. Let's bring the jury in.

(Pause in the proceedings.)

(Deputy and the Court confer off the record.)

THE COURT: Who was that?

THE DEPUTY: Mr. Graham.

THE CLERK: Graham.

THE COURT: Has he been in the courtroom?

THE DEPUTY: This morning, yes, sir.

THE COURT: All right. Hold the jury up.

Mr. Brown, they say he's been in the courtroom all morning.

THE DEPUTY: No, Mr. Graham.

THE COURT: Oh, Mr. Graham.

THE DEPUTY: The one you were talking about.

THE COURT: Well, just keep him sequestered. He can't be in here. All right.

All right. You can bring them in.

(The jury entered the courtroom at 2:19 p.m.)

THE COURT: Ladies and gentlemen, welcome back. Hope everybody had a good lunch. We had just finished the direct testimony of Mr. Hill when we broke for lunch.

All right. Mr. Bouchette, cross-examination.

MR. BOUCHETTE: Thank you.

CROSS-EXAMINATION ON BEHALF OF DEFENDANT RANSOM

BY MR. BOUCHETTE:

Q Good afternoon, sir.

A Good afternoon.

Q First off, let me begin by sending my condolences.

I understand the victim in this case and you had grown up together.

A Yes, sir.

Q And y'all were best friends. Please accept my condolences on that. I do have to ask you some questions about some things the solicitor asked you about. Okay?

First off, so the individual that was identified in the Facebook profile as -- and I'm sorry, Chico Da Mobb, I think is what --

A Draxo Da Mobb.

Q Draxo Da Mobb, yeah. That's the individual -- or at least that's the picture -- that's the individual you now know to be Tronahz Whittington; is that right?

A Yes, sir.

Q All right. And this person reached out to you to try to get information on who again?

A My little brother and JJ Fowler.

Q Okay. So he reaches out to you out of the blue trying to follow up on some kind of beef that his sibling has; is that right?

A Pretty much, yes, sir.

Q Okay. All right. So he's got some kind of axe to grind, and he reaches out to you out of nowhere; is that right?

A Yes, sir.

Q Okay. All right. And then it goes into -- he starts asking you about Jamie?

A Yes, sir.

Q Well, did he have some kind of beef or something with Jamie?

A Not that I know of.

Q Well, did you know any at the time?

A No, sir.

Q Since then, have you come to learn of some kind of altercation or beef between those two?

A Something about dab carts.

Q Well, explain to the jury what that is, in case they don't know.

A What? Dab carts?

Q Yes, sir.

A It's a little THC, little vape things that you get high off of.

Q So elaborate on that a little bit for us if you don't mind. The beef that dealt with Jamie and Tronahz regarding the --

A Dab carts.

Q -- dab carts, what was it in relation to? Give us some context.

A I guess Jamie robbing him or something like that.

Q So Jamie -- there was some kind of dispute about

maybe money or somebody taking drugs or money or something along those lines?

A Yes, sir.

Q And when I say "drugs," I understand that it may or may not be legal. I'm not sure what the status of those are.

A Yes, sir.

Q And did Jamie -- did he sell marijuana or marijuana-type products?

A No, sir. We didn't sell it. We smoked it.

Q Okay. But this dispute that arose at some point, that had to do with -- I think your words was he had robbed or taken it from somebody?

A Yes, sir.

Q So he didn't sell it, but he might have robbed or taken it from somebody?

A Yes, sir.

Q And, again, we're not here to get into that on him, but that was the basis for which the individual we now know to be Tronahz Whittington was requesting information about Jamie?

A Yes, sir.

Q So he had a beef with Jamie for taking his dab carts, taking his weed, and that's why he's reaching out to find out information about it?

A Yes, sir.

Q Now, did you receive any communications or anything from Che Ransom?

A No, sir.

Q To your knowledge, did Che Ransom have any kind of similar beef or issue with Jamie?

A Not that I know of, no, sir.

Q To your knowledge, did he and Jamie -- even know Jamie?

A Not to my knowledge, no, sir.

Q Now, I understood your direct testimony was that you cannot identify anybody other than the man without the shirt you now know to be Tronahz Whittington; is that correct?

A Yes, sir.

Q All right. And I would imagine -- correct me if I'm wrong -- that part of that was due to the fact that, when these events started, it all happened pretty quickly; right?

A Yes, sir.

Q Pretty scary thing to have happen?

A Yes, sir.

Q An individual gets out of a car with no shirt?

A Yes, sir.

Q That's an individual that has been making overtures

to you through social media?
A Yes, sir.
Q And that individual that's been making overtures to you through social media and has a beef with your friend, he has a rifle?
A Yes, sir. Well, I don't know what kind of gun he had. I know he had a gun. I don't know if it was a rifle, pistol, whatever.
Q Well, you knew it was a gun?
A Yes, sir.
Q You were able to see a gun?
A Yes, sir.
Q And then, in the midst of all that was happening -- correct me if I'm wrong -- I imagine you would have ducked down?
A Yes, sir.
Q Okay. Pretty scary thing; right?
A Yes, sir.
Q And you probably did that pretty quick; is that correct?
A Yes, sir.
Q Pretty much as soon as you saw Tronahz Whittington get out of the car, you ducked down?
A Yes, sir.
Q And this is kind of a squatted vehicle, so when you

duck down, you lose all sight of what's in front of you?
A Yes, sir.
Q Okay. All right. And I know there's a lot of testimony about shots being fired, and we'll hear from experts later, but you didn't -- you didn't see the shots fired, did you?
A No, sir.
Q All right. Didn't see what was shot at the vehicle or shot somewhere else or anything along those lines?
A No, sir.
Q Now, we heard some testimony earlier about the distance between where the vehicle was and where the shooting occurred. If I understand you correctly, when the first shots started, Jamie put it in reverse and sped backwards; is that right?
A Yes, sir.
Q All right. Now, we heard some testimony earlier that when the -- when it ultimately came to a stop, it was from where you're sitting to about the end of the courtroom. I'm going to say that's 30, 35 feet; would that be approximate?
A That's about correct, yes, sir.
Q When the shooting began, was it closer?
A It was probably about me to you.
Q Okay. All right. So we're going to let the record

reflect that that is I'm going to say approximately 12 to 15 feet. Sound about right to you?

A Yes, sir.

Q So the shooting began approximately 12 to 15 feet when you hear these shots going off -- and you're in the Tahoe, about six feet wide; is that correct?

A Yes, sir.

Q So very close range whenever it comes off; correct?

A Mm-hmm.

Q Now, other than, like I say, the fact that you now know that at least one bullet entered the windshield of the vehicle, are you able to testify for certain as to any additional shots that were fired in the direction of the vehicle other than the fatal one -- other than the shot that went through the windshield?

A Like, do I know about any more shots?

Q Yes, sir.

A No, sir. But there had to be one in the front because it was leaking.

Q But I understand that you're drawing a conclusion. Did you see a bullet or see a shell?

A No, sir.

Q When you talk about the vehicle leaking -- you're familiar with this vehicle; right?

A Yes, sir.

Q It was a Tahoe?
A Yes, sir.
Q You have driven it yourself?
A Yes, sir.
Q You have probably known Jamie since he got it?
A Yes, sir.
Q What year was the Tahoe?
A '01. It was a 2001.
Q It was an '01. So this was in 2020. It was a 19-year-old car?
A Pretty much, yeah. 19-, 20-year-old.
Q Okay. All right.
MR. BOUCHETTE: Court's indulgence.
BY MR. BOUCHETTE:
Q One -- I would imagine -- and correct me if I'm wrong -- that the -- when these events started, you weren't able to hear what was going on in the vehicle where the shooters were located; is that right?
A What do you mean?
Q In the Caprice.
A Did I hear any of them talking in the car?
Q Correct.
A No, sir.
Q So you're not in a position to know what, if any, kind of directives Tronahz Whittington or anybody else was

giving to the other occupants of the car?
A No, sir.
Q Did you know anything about Tronahz Whittington prior to this incident?
A No, sir.
Q But based on what you did observe, you saw him get out within about 15 feet or so?
A Yes, sir.
Q Point at the -- you were in the front passenger seat; correct?
A Correct.
Q Did you see him point directly at Jamie?
A No. I just saw him pointing toward the vehicle.
Q You saw him with a gun pointed towards the car?
A Yes, sir.
Q At about this distance. Did you see it discharge?
A Mm-mmm. I didn't see none of the weapons discharge.

MR. BOUCHETTE: No further questions for this witness.

THE COURT: All right. Mr. Pinkerton?

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

CROSS-EXAMINATION ON BEHALF OF DEFENDANT MITCHELL

BY MR. PINKERTON:

Q Thank you for being here today, sir.

A Yes, sir.

Q Sorry I have to put you through this again, but I only have a few questions for you.

So you said it was Tronahz Whittington who had contacted you on a Facebook messenger, I believe?

A Yes, sir.

Q And the beef was between him and Jamie?

A Yes, sir.

Q Did he ever mention anybody named Travontae Mitchell?

A No, sir.

Q And you testified that you recognized Tronahz as being the one that got out of the car, correct --

A Yes, sir.

Q -- directly in front of the Tahoe?

A Yes, sir.

Q Okay. Got a good look at him?

A Yes, sir.

Q Knew it was him, 100 percent?

A Yes, sir.

Q Okay. When Jamie went to back the Tahoe out, was he zigzagging or was he going straight back?

A What do you mean?

Q Like, when he went to try to put the Tahoe in reverse, was he going straight back or was he kind of

zigzagging?
A He was going straight back.
Q Straight back?
A Yes, sir.
Q Okay. And, once again, you said you saw Tronahz with a weapon?
A Yes, sir.
Q But you don't remember if there was a long gun, handgun, or anything like that?
A (Witness nodding.)
Q Okay. And you only remember actually one shot hitting the vehicle?
A That's all that I seen.
Q All you saw was one shot?
A All I saw was one hole through the Tahoe.
Q Just one hole?
A Yes, sir.
Q And that was from the direct- -- from where Tronahz would have been standing?
A Yes, sir.
MR. PINKERTON: Court's indulgence.
THE COURT: All right.
MR. PINKERTON: No further questions, Your Honor.
THE COURT: All right. Mr. Gardner?
MR. GARDNER: Thank you, Judge.

CROSS-EXAMINATION ON BEHALF OF DEFENDANT BROWN

BY MR. GARDNER:

Q Good afternoon, Mr. Hill. I'll be very brief. When I go last, all the questions have been asked already, I guess.

A Yes, sir.

Q First of all, my condolences for the loss of your best friend and everything that you're going through.

A Yes, sir. Appreciate it.

Q I just got a couple of questions.

I didn't understand half of this Facebook stuff that was here earlier, but you did, and the bottom line is none of that had anything to do with Don Brown; is that right?

A No, sir.

Q Okay. And you know who Nahz is?

A The Tronahz Whittington dude?

Q Yeah.

A Yes, sir.

Q Somebody called him Nahz but Tronahz Whittington, you know what kind of guy he is; right? You know where he is now?

A Yeah.

Q Where is he at?

A He's in jail.

Q Prison?

A Yes, sir.
Q For killing your friend?
A Yes, sir.
Q Okay. And you saw him get out of the car?
A Yes, sir.
Q He got out of the front passenger seat?
A Yes, sir.
Q All right. And that was -- and, like, I think Jarrett asked you, that was probably a pretty scary event; right?
A Yes, sir.
Q Okay. But you don't know what he told Don Brown while y'all were driving down the road?
A No, sir.
Q You have no way of knowing.
A No, sir.
Q Okay. We know what kind of guy he was. We know what he did. We don't know what he told Don.

You were in there when the truck or the Tahoe backed up?
A Yes, sir.
Q Backed straight back up.

You didn't see anybody doing the shooting but you heard gunfire.
A Yes, sir.

Q Okay. If I get it wrong, let me know. Okay?

You heard the gunfire. You ducked down.

Do you know why -- were you watching the road when Jamie started backing up?

A No, I was watching Jamie the whole time.

Q So you didn't see the road in front of you?

A Mm-mmm.

Q So you don't really know where -- I don't know what kind of car that was. The other car. You know what I mean when I say "the other car"? You don't know exactly where it was parked at?

A It was parked, like, right here in front of us when the -- Tronahz got out of the passenger seat.

Q Okay. All right. So you saw it pull up?

A Mm-hmm.

Q But then you started watching --

A That's when I got down, when the dude got out of the car, and then that's when Jamie started to back up.

Q Started to back up.

A Yes, sir.

Q So the car is in front of you.

A Yes, sir.

Q And that's a pretty wide road, isn't it?

A Yeah.

Q I'm sure the solicitor has got pictures and blow-ups

and everything else, so we'll be able to tell. But D Street is the one that runs to 501 and loops down and goes somewhere else; right?

A If I'm not mistaken, yes, sir.

Q And then the other one, I think, is Ross --

A Rose Moss.

Q Rose Moss goes into it at the intersection?

A Yes, sir.

Q All right. And, correct me if I'm wrong, but doesn't D Street have a big, wide angle? We saw some videos of it earlier. I don't know if you were in here for that, but it's a wide turn; right?

A It's like a U, basically, or something like that.

Q Yeah. And Rose Moss comes into it?

A Yeah. And basically a U, and then Rose Moss comes straight up to it.

Q Okay. So you can go either direction?

A Yeah. Pretty much, yeah.

Q All right. And, no offense -- I mean, I would have probably been diving down, too, but when the car pulled up and you saw the guy with no shirt on and a gun get out, you ducked down?

A Yes, sir.

Q All right. Did I leave anything out?

A No, sir.

Q All right. Thank you, sir.

A Yes, sir.

THE COURT: Redirect?

MS. LIVESAY: Yes, sir, just briefly.

REDIRECT EXAMINATION

BY MS. LIVESAY:

Q Mr. Hill, do you remember Mr. Bouchette, Che's attorney, asking you about some dab carts?

A Yes, sir. I mean, yes, ma'am. Sorry about that.

Q That's okay.

MS. LIVESAY: I saw that smile, Judge. I saw that.

BY MS. LIVESAY:

Q That's why I normally don't wear pants; it threw you off.

So let me ask you something. So he asked you about the dab carts; correct?

A Yes, ma'am.

Q And he asked you if Jamie had taken some dab carts from somebody?

A Yes, ma'am.

Q Okay. Did Jamie take the dab carts from Tronahz Whittington?

A No, ma'am.

Q Did that conversation you had with Tronahz Whittington have anything to do with anything about dab

carts?
A No, ma'am.
Q Okay. Did Jamie take anything from Che Ransom?
A No, ma'am.
Q Did he take anything from Don Brown?
A No, ma'am.
Q Did he take anything from Travontae Mitchell?
A No, ma'am.
Q And were there any messages between you and Tronahz Whittington about any kind of dab carts?
A No, ma'am.
Q Did he even bring up anything about dab carts?
A No, ma'am.
Q Did he allude to you at all he was upset about dab carts?
A No, ma'am.
Q Okay. So that had nothing to do with nothing; is that right?
A Yes, ma'am.
Q Never even been to --
MR. BOUCHETTE: Objection to the speculation as to what Mr. Whittington was intending to convey or communicate with this witness.
THE COURT: Overruled.
Go ahead.

BY MS. LIVESAY:

Q Now, we saw the messages earlier between you and Tronahz Whittington.

A Yes, ma'am.

Q Is that all the messages y'all have ever exchanged?

A Yes, ma'am.

Q Okay. Okay. And nobody said anything about dab carts?

A No, ma'am.

Q Okay. Now, did Jamie go to jail over these dab carts?

A No, ma'am.

Q Did anything come of these dab carts?

A No, ma'am.

Q Did he use a gun to rob somebody for the dab carts?

A No, ma'am.

Q Okay. Okay. Now, Mr. Bouchette asked you some questions about the Tahoe. Do you remember that?

A Yes, ma'am.

Q Now, how old was the Tahoe?

A It was a 2001, so probably about 19, 20 years old.

Q Okay. Did the Tahoe run before the shooting?

A Yes, ma'am.

Q Okay. Was that the Tahoe we saw in the video on Wayside Drive?

A Yes, ma'am.
Q Okay. So you were driving it right on Wayside Drive?
A Yes, ma'am.
Q Okay. Could you drive it after the shooting?
A No, ma'am.
Q So there's no reason to believe anything was wrong with the car until after it was shot up?
A Yes, ma'am.
Q Okay. Was there any fluid leaking before the shooting?
A No, ma'am. I mean, it leaked oil a little bit because it was squattèd, but that's normal for a squatted truck.
Q But could you still drive it?
A Yeah.
Q Okay. And did you drive it every day?
A Yes, ma'am.
Q Okay. When did the car become inoperable?
A When it was shot up.
Q Okay. Okay. Now, Mr. Gardner asked you about D Street. Do you remember that?
A Yes, ma'am.
Q Okay. And tell me again how D Street goes.
A It's like a U, basically, and then Rose Moss comes

up to the middle of the U.

Q Okay. Okay. And so there's some sort of intersection?

A Pretty much, yes, ma'am.

Q Okay. Okay. And I think he asked can you go take a right and can you take a left?

A Mm-hmm.

Q And can you take a right or can you take a left?

A Mm-hmm.

Q Okay. Now, the car that pulled in front of the Tahoe --

A Yes, ma'am.

Q -- once that car pulled in front of the Tahoe, could you take a right?

A I mean, you could have, yes, ma'am.

Q With the car in front of it?

A Mm-hmm.

Q Why didn't Jamie take a right? Could he have taken a left?

A No.

Q How did the car pull in front of the Tahoe?

A Diagonal in front. At an angle.

Q Okay. So what do you mean, at an angle?

A Like here's the Tahoe and here's the car (indicating).

Q Okay. So it was directly in front of the Tahoe?
A Mm-hmm.
Q Okay. Could he have -- how quick did the people jump out of the Tahoe after it pulled in front of him?
A As soon as it stopped.
Q I'm sorry?
A As soon as the car stopped.
Q Okay. Okay. As soon as the car stopped?
A Yes, ma'am.
Q So could you have taken a right?
A Yes, ma'am. I mean, we could have went left, but we would have had to run him over.
Q I'm sorry?
A We would have had to run him over if we would have went left.
Q Okay. So they were standing in the way?
A Yes, ma'am.
Q Now, was Tronahz Whittington standing in the way?
A Yes, ma'am.
Q And were the three black males that jumped out of the back standing in the way?
A Yes, ma'am.
Q And how about the bullets? Was that in the way of y'all taking a right?
A Yes, ma'am.

Q Now, you said you saw Tronahz Whittington jump out the front passenger; is that correct?

A Yes, ma'am.

Q Is that what you told this defense --

MR. BOUCHETTE: Your Honor, I'm going to object.

THE COURT: Hold for a second.

MR. BOUCHETTE: I think we have gotten beyond the scope of cross.

MR. GARDNER: It's redirect.

THE COURT: What was your last question?

MS. LIVESAY: Did he tell defense counsel that he saw Tronahz Whittington jump out of the front passenger.

MR. BOUCHETTE: That was brought up on direct.

THE COURT: Okay. You brought that up on direct examination.

MS. LIVESAY: I'm sorry?

THE COURT: I sustain the objection.

MS. LIVESAY: Okay. I understand.

THE COURT: Redirect is only on matters that you have not already covered that they covered on cross.

MS. LIVESAY: I understand.

BY MS. LIVESAY:

Q Do you remember Mr. Gardner here asking you if he saw -- if you saw Don Brown?

A Yes, ma'am.

Q He asked you that?
A Yes, ma'am.
Q Okay. Did you see the driver of the car that pulled in front of y'all?
A No, ma'am.
MS. LIVESAY: No further questions.
THE COURT: All right. He may step down.
MR. GARDNER: Your Honor, I need to take up a matter with you, if I may. We can just come to the bench.
THE COURT: All right.

BENCH CONFERENCE

(The following bench conference was held outside the presence of the jury and others:)
MR. GARDNER: I never asked him if he saw Don Brown. I asked him if the conflict with social media had anything to do with Don Brown. I didn't ask him if he saw Don Brown because Don Brown never got out of the car. Why would I ask him that?
THE COURT: So what are you asking him?
MR. GARDNER: We have fraudulent -- or error in testimony from the question and the answer. I don't know how to fix it since I don't get to do recross.
THE COURT: Okay. Well, you can put it on the record when we break. I'm just going to keep it moving.
(Open court resumes:)

THE COURT: All right. The State can call your next witness.

MR. HELMS: At this time, the State would call Britney Milam.

THE CLERK: Please raise your right hand and put your left hand on the Bible.

BRITNEY MILAM,

after having been duly sworn, was examined and testified to as follows:

THE CLERK: Be seated and state your full name and spell it for the Court.

THE WITNESS: Britney Milam. B-r-i-t-n-e-y M-i-l-a-m.

DIRECT EXAMINATION

BY MR. HELMS:

Q Britney, I want your address. Where do you live?

A I live in Florence.

Q Did you move -- when did you move?

A About a year ago.

Q Why did you move?

A Just to get away from everything.

Q Where did you used to live before you moved to Florence?

A In Conway beside John Deere.

Q How old are you, Britney?

A I'm 20.
Q And do you work?
A No.
Q Were you working anywhere in 2020?
A I was working at the Sonic in Marlow (ph).
Q Okay. And you were living in Conway?
A Yes.
Q Were you dating anyone in 2020?
A I was dating Jamie Johnson.
Q The picture I showed the jury at the beginning, that was you with Jamie?
A Yeah.
Q How long did y'all date?
A We were dating for ten months when he passed.
Q When the shooting happened?
A Yeah.
Q Did you live together?
A Yes, we did.
Q So you and Jamie were very close?
A Yeah, we were.
Q And you know Jacob?
A I do.
Q And Orlin?
A I do.
Q How old was Jamie when he died?

A Jamie was 19.
Q Did Jamie have a vehicle?
A He did.
Q Describe to this jury what that vehicle looked like.
A He had a black Chevy Tahoe that was squatted --
Q And --
A -- and it had a Blue Chevy symbol.
Q I'm sorry; finish that thought.
A I had a Blue Chevy symbol.
Q Anything on the back of it?
A It said "Big Steppa" on the back.
Q And anything --
A It had our names on -- his name was on the driver's side, and my name was on the passenger side.
Q Is the Tahoe that we saw in the video his Tahoe?
A Yes.
Q And that belonged to Jamie?
A It did.

THE COURT: Excuse me; could you pull that microphone closer and speak more into it, please?

THE WITNESS: Sorry.

THE COURT: Thank you.

BY MR. HELMS:

Q Do you know how long he had that truck?
A Not very long.

Q Did it work okay?
A Yeah, it did.
Q Before the shooting?
A Yeah.
Q Did it have a problem leaking antifreeze?
A No.
Q You have seen the video that was shown to the jury?
A Yes.
Q You're in that video? Yes or no?
A Yes.
Q You saw the truck?
A Yes.
Q You saw it leaking antifreeze?
A Yes.
Q Was that the first time you have ever seen it do anything like that?
A Yes.
Q Was that before or after it got shot?
A That was after.
Q Where did Jamie live in September of 2020?
A We lived off of 378.
Q In Conway?
A In Conway.
Q And did Jamie work anywhere?
A He was doing roofing at one point, but he stopped.

Q Okay. What all did you -- first of all, how did and Jamie know Orlin and Jacob?

A He was friends with Orlin for awhile.

Q Who is "he"?

A Jamie was friends with Orlin for a long time, and I don't know when we met Jacob. I don't remember.

Q Were they close?

A Yeah, we were all very close.

Q So you have heard testimony that you-all were together on September 12th in a car; is that correct?

A Yes.

Q Is that abnormal?

A No. That's usual. We're usually together.

Q Whose car you in?

A Jamie's.

Q The black Tahoe?

A Yes.

Q Do you remember who was sitting where?

A Jamie was driving. Jacob was in the passenger seat. Orlin was behind Jacob and -- no, I was behind Jacob, and Orlin was behind Jamie.

Q So Jamie is driving. Jacob is in the passenger seat -- front seat?

A Mm-hmm.

Q Orlin is behind Jamie?

A Right.
Q You're in the middle?
A I'm in the middle at the beginning.
Q And who is on the window seat, passenger?
A Nobody is there.
Q Did you guys have a routine? I mean, what did y'all do? What was your normal day like?
A Usually, in the morning, I would go to work. So that's usually what I did.

The boys? I don't know what -- usually, they'd sit at the house and play video games.

When Jamie was working, he would usually just go to work and come back to the house -- well, come and get me from work and then we'd go back to the house.

Q Do you remember what you were all doing that day in particular?
A That day, Orlin had came over to the house, and we were all just going to go to Henry's gas station.
Q All right. So you-all were going to go to Henry's gas station?
A Yeah.
Q And where is Henry's gas station?
A In Conway.
Q End of D Street?
A Yeah, end of D Street.

Q When you went to Henry's gas station, did you take the main road to Highway 501?

A No, we took the back road.

Q Why?

A Well, Jamie didn't have a driver's license, and it wasn't a right tag on the Tahoe.

Q All right. So y'all took the back roads?

A Right.

Q Did he ever have a right tag on that car?

A No. He never did.

Q So did he always take the back roads?

A Yeah, he was always driving the back roads.

Q So the back records [sic] was not y'all's normal stomping ground?

A Sorry?

Q I mean, is that how y'all got to Henry's, the back roads?

A Yeah.

Q All right. Makes sense.

So that day that you took D Street and Wayside and all that to get to Henry's, that was not the first time you took that route to get to Henry's?

A No.

Q Okay. Do you remember the last day you saw Jamie alive?

A Yeah, I do.

Q All right. I'm going to interrupt you as few times as possible, but I want you to tell this jury exactly what happened.

A We were on the way to Henry's gas station, and a car had pulled up beside us and pulled in front of us. I saw a person get out of the passenger seat and three people get out the backseat. I was in the middle. And whenever I was in the middle seat, I saw a person wearing white pants, a guy had some type of scratch or something underneath his eye, and one of the guys had short hair.

At this point is when Jacob was screaming for everyone to get down. He was saying, "Get down, get down." So Jamie had turned around and pushed me to the window, and I had slid down to, like, duck down. By then, everyone that was standing in front of us has already started shooting.

Jamie has -- he's, like, slouched down to not get shot, and then he pops up to reverse the truck. And when he does get in reverse, he turns around just, you know, to make sure there was nobody there, I guess; it's a usual thing for people to do whenever they're turning around. And he turned around, and as soon as he did, he got shot in the back of the head.

And I was looking at him, so I saw his blood go

everywhere, and at this point, we're all screaming, like, and freaking out. We don't know what to do.

The car takes off, and Jacob and Orlin both pop up. And I'm scared and I'm shocked, so I didn't move at first, and I kind of just was looking at Jamie because I was scared.

And they both got out and grabbed Jamie, and they were like, "We got to get to the hospital." So when Orlin had got out and got to Jamie, Jacob had to walk around the front of the truck to get to Jamie, and he saw all the stuff on the ground because they just shot at us so, like, the truck couldn't have moved.

So, by then, they realized that we couldn't have moved the truck, so they had to put Jamie on the ground. And there was a lot of blood everywhere.

And, at that point, someone had come out and the cops were getting called. So we all just kind of stood there with Jamie and did the best I could to make sure that he was okay. I didn't know what to do. So I kind of sat there.

Q I understand.

You testified at a previous trial and the defense has brought this up numerous times that Tronahz Whittington was convicted. You know about that; right?

A Right.

Q Did you see him get out of the car?
A Yes.
Q Okay. Where did he get out?
A He was in the passenger seat.
Q The front passenger seat?
A Right.
Q Okay. But you saw three other people get out of the backseat; right?
A Correct.
Q What race were they?
A They were all black.
Q Okay. Male or female?
A All males.
Q Could you tell how old they were?
A Two of them were really short, so I figured they were young. And the other -- Tronahz is tall, and the other one is pretty tall. I just thought they were all teenagers.
Q What was Tronahz wearing?
A Nothing.
Q What do you mean, "nothing"? Did he have a shirt on?
A He didn't have a shirt on.
Q Okay. So Tronahz had no shirt.
What was on his bottom? Do you remember what he was

wearing down here?

A I don't remember.

Q And if you don't, that's okay.

And he was the front passenger you say; right?

A Right.

Q Did he have a weapon?

A Yeah.

Q Okay. And I'm not going to get too specific because it's hard, but was it a little weapon or a big weapon?

A It was a big weapon. Long.

Q A long gun?

A Right.

Q So he got out the front passenger seat, but you said then -- and that's only one. But then there's three others that got out; right?

A Correct.

Q And they all got out the backseat?

A Right.

Q So no one got out of the driver's seat; right?

A Right.

Q Okay. Can you tell me the second person to get out? Do you remember that, where they got out?

A From the back.

Q From the back. Okay. So we'll just say all from the back. So they all three got out of the back.

Do you remember if the second person to get out of the car got out of the driver's side or the passenger side?

A I think they all just came from the one side.

Q So you think they all got out of one side?

A Yeah, like they all slid out from one side.

Q Okay. Do you remember -- can you tell me what any of those guys were wearing, please?

A Someone had white pants on. I'm not sure who.

Q All right. So we're not sure, but somebody had on white pants.

Do you remember anything else?

A Something under someone's eye, like a scratch or a mole.

Q Okay. So there was an identifying mark under someone's eye?

A Yeah.

Q Was that the person with white pants or no?

A No, that was somebody else.

Q All right. Do you remember which eye? If not, it's okay.

A I'm not real sure. I'm assuming it's this one (indicating).

Q Do you remember the person with the eye mark -- well, let's go back.

The person with the white pants, do you know what kind of gun that person had?

A I'm not sure.

Q Okay. Did anyone else have a long gun other than the first guy, Nahz? Did you see any long guns other than --

A I saw another long gun, but I know --

Q You couldn't --

A -- I think that person was tall.

Q Okay. So you don't know what kind of gun the person with the white pants had on?

A A short gun.

Q Okay. What about the person with the eye mark? Do you know what kind of gun he had?

A I'm not sure.

Q Okay. So we have got a person with white pants and a person with an eye mark. Were there anything about identified -- any identifying characteristics about the fourth person that got out? Do you remember anything about that person?

A They had short, pouffy hair.

Q All right. Short hair.

Do you remember what kind of gun that person had?

A Short gun. No, that person had the long gun.

Q So the person with the short hair that got out of

the back also had a long gun?
A Right.
Q Okay. Now, did any of the three guys that got out of the back not have a gun?
A No, they all had a gun.
Q Everyone had a gun that got out of that car.
When those guys that had those guns got out of that car, what did they do?
A They started shooting at us.
Q Okay. Did they take turns. Did they talk to each other?
A No. They just kind of got in a row and just started shooting.
Q Were they beside the Tahoe, behind it, or in front of it?
A In front.
Q So they were all in front of the Tahoe.
Were they in a line?
A Yes.
Q And did each one just shoot one time?
A No, it was a lot of shots.
Q Do you remember how many or not really?
A No.
Q Was it more than, say, two?
A Way more than two.

Q Way more than two. All right.

All right. Could you leave?

A No.

Q Why not?

A There was nowhere to go.

Q Say that again.

A There was nowhere to go.

Q There was nowhere to go.

Why didn't you drive straight ahead down the road?

A We would have ended up hitting them.

Q Hitting them -- when you say "hitting them," do you mean the people in the road or the car in front of you?

A The people in the road and the car.

Q So both?

A Yeah.

Q So are you telling me they were between you and their car?

A Yeah.

Q Okay. That makes sense. That makes sense.

What's Jamie doing?

A Jamie is trying to back up.

Q Now, let me ask you this question, why doesn't Jamie drive left?

MR. GARDNER: Your Honor, I don't know if she can answer that question.

MR. HELMS: We're about to find out.

MR. GARDNER: She doesn't know what's going through his head.

THE COURT: I sustain that objection, unless she knows of her own personal knowledge. I mean, how would --

MR. HELMS: I'll rephrase it.

BY MR. HELMS:

Q Did Jamie drive left?

A No. There was people standing there. Like, they were all in a line, so he couldn't go that way or this way. There was nowhere to go. The car was right here, and there's people right here. So, either way he would have went, he would have ended up hitting people or hitting the car.

Q That's what I was asking. So the only way to go was backwards?

A Correct.

Q Let me ask you this question: You have got four people in front of you shooting at you. What kept you from going forward? Was it the number of people? If there had been just one person, could you have gone?

A No.

MR. GARDNER: Objection. He's already covered this.

THE COURT: Overruled.

BY MS. LIVESAY:

Q Were you in fear for your life?

A Yes, I was scared.

Q Who were you scared of out of those four people?

A All of them.

Q Why?

A Because they were shooting at us, trying to kill us, for no reason.

Q That's fair.

A Didn't say anything.

Q You saw the video of you guys driving -- it's a Ring doorbell video -- on Wayside Drive. Do you agree that's what that is?

A Mm-hmm.

Q Did you see the video of the blue Caprice behind you on Wayside Drive?

A Yes, I did.

Q Let me ask you this question: When you were in the Tahoe at the time, did you know the blue Caprice was following you?

A No, I didn't.

Q At what point did you realize that car was behind you?

A When they had came beside us to get in front of us.

Q So you didn't see them until they cut you off?

A Right.
Q And I may have asked you this, but did you see the driver get out?
A No.
Q Did you have any weapons in the car?
A No.
Q Did Jamie have any weapons in the car?
A No.
Q How about Jacob?
A No.
Q How many guns did Orlin have?
A None.
Q How many times did you fire a weapon at the other car?
A Zero.
Q Did you know those guys in the other car?
A No.
Q Did you -- you -- have any problems with those guys in the other car?
A No.
MR. HELMS: Court's indulgence, Your Honor.
BY MR. HELMS:
Q I think this is my last question: Had the car and these four guys not been in front of you, could you have gotten away?

A Yes.

MR. HELMS: Please answer any questions they may have.

I'll move this, Your Honor.

THE COURT: All right. Mr. Bouchette, cross-examination?

CROSS-EXAMINATION ON BEHALF OF DEFENDANT RANSOM

BY MR. BOUCHETTE:

Q Ms. Milam, good afternoon.

A Hi.

Q I'm going to do my best not to try to duplicate testimony; we just heard from Mr. Hill.

You were in the courtroom when he testified a moment ago?

A (Witness nodding.)

Q Is that a yes?

A Yes.

Q Okay. That's all right.

He testified that this -- when they got out of the vehicle and you saw the individuals get out of the first car, particularly Tronahz Whittington, that he ducked down pretty quick. Did you hear that?

A Yes, I did.

Q Almost immediately; is that correct?

A Yes, that's correct.

Q Okay. All right. Now, as I understand it, somebody from the front sort of pushed or made a protective movement towards you to duck down as well; is that correct?

A Yes.

Q Okay. So, from your standpoint, did you duck down and hit the ground pretty much the same time as Mr. Hill did?

A No.

Q Do you think that you stayed up?

A Yeah, I was still up for a good, like, minute or two. Not a minute or two. Like a good couple of seconds I was still up before -- Jacob was already down when he started telling everyone else to get down.

Q Jacob got down. And I guess that's my point. Are you testifying that you were up while all the rounds were being discharged?

A Not while the rounds were being charged, but while the people got out of the vehicle, yes, I was up.

Q Okay. That's what I'm kind of getting to.

You're up and have a visual while the individuals get out of the car; is that right?

A Right.

Q Okay. But you duck down prior to the guns being discharged; is that correct?

A Correct.

Q Okay. All right. So there was some testimony earlier about people standing in line and firing off shots. You didn't see that because you had already --

A I did see them in a line, yes, but I didn't see them shoot, no.

Q So, again, other than, you know, the -- let me ask you this: Other than what you have learned subsequent to this trial, you don't have any way of knowing what bullets hit the vehicle; is that right?

Well, let me ask it to you this way: After Jamie got shot -- and one bullet, obviously, went through the windshield; correct?

A Correct.

Q Is that correct? Madam Court Reporter has to jot down everything.

A Sorry. Yes, that's correct.

Q That's okay.

And so we know that, but other than the fact that you know rounds went off, no other shots, at least to your knowledge, came through the vehicle in any other place other than the windshield; right?

A Right.

Q Okay. And, obviously, we know guns were discharged, but you weren't looking at any of the people with those

weapons to be able to say where they were pointing them or where they were shooting them or where their shots went to; correct?

A Can you ask your question a different way?

Q Well, we hear your testimony that a number of shots were discharged; right?

A Correct.

Q A number of shots were fired.

Now, you ducked down fairly quickly after this happens; right?

A When I see them get in a line with their guns, yeah. That's when Jamie pushed me, and I ducked down.

Q And that's when you ducked down.

And you know that one shot went through the windshield, and that's what, unfortunately, hit Jamie; right?

A Yes.

Q But anything beyond that, you don't know because you were ducking down; right?

A Yes.

Q I also want to talk briefly. You and him had been dating for some period of time before this incident occurred; correct?

A Ten months, yes.

Q Fairly long time.

At that point, to your knowledge, was there any beef or problem that Jamie had with Che Ransom?

A No.

Q To your knowledge, did he know Che Ransom?

A No.

Q And I don't want to get into the background of it, but did Jamie have a beef or was there some dispute between Tronahz Whittington and Jamie?

A No, not that I know.

Q Did you know of one at the time?

A No, I didn't know at the time.

Q But subsequent to that, have you come to learn that there was some type of dispute, however petty or however insignificant it may be, between Tronahz Whittington and Jamie?

A Yes.

Q Okay. And that was the dispute about dab carts or some kind of marijuana product?

A Yeah.

Q All right. I don't have any further questions for this witness.

THE COURT: Mr. Pinkerton?

MR. PINKERTON: May it please the Court?

THE COURT: Yes, sir.

CROSS-EXAMINATION ON BEHALF OF DEFENDANT MITCHELL

BY MR. PINKERTON:

Q Ma'am, I'll be very brief; I hate to put you through this again.

You said when people exited the vehicle, you said that Tronahz exited the front passenger seat?

A Yes.

Q Did you know Tronahz prior to that day?

A No.

Q And where did all the other individuals exit?

A From the backseat.

Q Passenger or driver's side backseat?

A Passenger.

Q Passenger side?

And you said they were all lined up kind of in a row?

A Yes.

Q But you ducked down before you actually saw who actually started shooting; correct?

A Correct.

Q So you didn't actually see the shots be fired?

A No.

Q Okay. Did Jamie ever mention anybody to you by the name of Travontae Mitchell?

A No.

Q But he did have beef with Tronahz; correct?

A At the time, I didn't know about it.

Q You didn't know about it at the time.

And do you know about how many people were in the car total, the alleged shooter's car?

A From what I know, six altogether.

Q Six altogether. But you said only four people actually got out?

A Correct.

Q And only four people had guns?

A Correct. To my knowledge, yes.

Q To your knowledge. Okay. Thank you.

MR. PINKERTON: No further questions, Your Honor.

THE COURT: All right. Mr. Gardner?

CROSS-EXAMINATION ON BEHALF OF DEFENDANT BROWN

BY MR. GARDNER:

Q Good afternoon, ma'am. I will be brief. All the good questions have probably been asked. I do have a couple, though.

First of all, my condolences for the loss of your boyfriend and what you're going through today.

A Thank you.

Q The solicitor asked you what y'all did that day, and I don't know if you answered him or if I didn't hear it, but what y'all were doing -- or at least the boys were doing that day were smoking marijuana and drinking beer;

is that right?
A Yeah.
Q Okay. And they ran out of beer, and they went to do another what we used to call a beer run; is that right?
A Right.
Q Is that fair?
A Yes, that's fair.
Q So they were headed to Henry's to get more beer because they had drank all the beer they had already?
A Correct.
Q And they smoked marijuana?
A Correct.
MR. GARDNER: All right. Thank you, ma'am.
THE COURT: All right. Redirect?
MR. HELMS: Nothing further, Your Honor. We'd just ask that she be released from her subpoena at this time.
THE COURT: Any objection?
MR. BOUCHETTE: No, Your Honor.
THE COURT: Mr. Pinkerton?
MR. PINKERTON: None, Your Honor.
MR. GARDNER: No, sir.
THE COURT: All right. You may step down. You're free to go.
The State can call your next witness.
MR. HELMS: Your Honor, at this time, the State

would call Mr. Orlin Lopez.

THE CLERK: Please raise your right hand and place your left hand on the Bible.

ORLIN LOPEZ,

after having been duly sworn, was examined and testified to as follows:

THE CLERK: Please state your name and spell it for the Court.

THE WITNESS: Orlin Lopez. O-r-l-i-n L-o-p-e-z.

DIRECT EXAMINATION

BY MR. HELMS:

Q Mr. Lopez, how old are you?

A I'm 22.

Q Do you work anywhere?

A Yes, sir.

Q What do you do? You don't have to tell us where you work. What do you do?

A I do concrete -- concrete boxes.

Q Were you working anywhere in 2020?

A Yes.

Q What were you doing back then?

A I was doing roofing in 2020.

Q That's hard work.

A Yes. Hard work.

Q You knew the victim in this case, Mr. Jamie Johnson?

A Yes, sir.
Q And I say you knew the victim. You're also listed as a victim. You understand that? But when I say "victim," I'm referring to the victim of the murder. You knew him?
A Yes, sir.
Q How did you know of him?
A He was my best friend. We went to school together and basically did everything together.
Q How long had y'all been friends?
A For seven or eight years.
Q How old was Jamie when he was killed?
A 19.
Q Did Jamie have a vehicle?
A Yes.
Q What kind of --
A A black Tahoe.
Q It's the Tahoe that we have been all been talking about and seen in the videos?
A Yes.
Q The one that's squatted?
A Yes.
Q Did you have a vehicle in 2020?
A No.
Q When y'all went somewhere, whose vehicle did you

take?

A Jamie's.

Q Were you and Jamie together on September 12th of 2020?

A Yes.

Q Who else was with you?

A Jacob and Britney.

Q And where were you going?

A We were going towards Henry's.

Q Why were you going to Henry's?

A We were going to Henry's to go pick up some stuff from the gas station.

Q That's fair. Beer?

A Yeah.

Q Like Mr. Gartner said, a beer run?

A Yeah.

Q We have all done it.

Tell me about that truck he had. How long had he had that truck?

A He had it for a while. Not too long but a good bit.

Q Be more specific, Orlin.

A Like -- maybe like a year or so.

Q Okay. It was a distinctive truck, yes?

A Yes.

Q Did you know anybody else in Conway that had a truck

like that?
A No.
Q When you saw Jamie coming down the road, could you point and say, "Hey, that's Jamie"?
A "That's Jamie."
Q Okay. Now, where did Jamie live back then?
A On 378.
Q Did you ever hang out with Jamie over there at his house?
A Yes.
Q Who lived with him?
A His girlfriend, and he had a roommate with him.
Q Is his girlfriend that lived with him in the courtroom today?
A Yes.
Q Is it the young lady that just got done testifying?
A Yes.
Q And y'all knew each other?
A Yes.
Q Did you ever spend the night over there?
A Maybe once or twice.
Q Okay. And y'all got along, you and Britney and Jacob and Jamie?
A Yeah.
Q Y'all were friends.

A That was our friend group.
Q What did you usually do? What did y'all do normally during the day? What do you do?
A Just hang out usually at either my house or his.
Q What were you doing on September 12th?
A September 12th? We were drinking and just hanging out at his house.
Q You were drinking. Run out of beer?
A Yes.
Q All right. When you go to Henry's, do you take Highway 501?
A No.
Q Why not?
A The back roads were better, less cops.
Q Less cops.
Is it true that the tags were bad?
A Yes.
Q All right.
A Yes.
Q That explains it. So you took the back roads. Did you always take the back roads?
A Yes.
Q So that was the routine?
A Yes.
Q How about specifically Wayside Drive to Rose Moss to

D Street and all that? Was that the routine?
A Yes.
Q So y'all were following your routine on September 12th?
A Yes, correct.
Q Who was driving your car -- the car you were in? Who was driving?
A Jamie.
Q Who was in the passenger seat?
A Jacob.
Q And you and Britney in the back?
A Yes, sir.
Q You have seen the video from the Wayside Drive Ring doorbell cameras, yes?
A Yes.
Q Is that y'all in the Tahoe?
A Yes.
Q In that video, there's a light blue/gray -- it's been called gray -- Chevy Caprice behind you. Did you see that in the video?
A Yes.
Q Did you know that car was following you on September 12th?
A No, I didn't think nothing of it.
Q On September 12th, did you see that car?

A Yes.
Q Tell this jury about when you saw that vehicle.
A I first saw it when it passed us and when it basically stopped right in front of us, blocked our way. That's what I remember seeing.
Q All right. So the vehicle got around you and blocked your way. Then what happens?
A Then I seen, like, three or four guys get out the car and start shooting our way. After that happened, I just -- when I first heard the couple -- the first shots and actually seen them, I just -- I ducked down because I'm in the back. I ducked, like, on the floor board.
Q Why did you duck down?
A Because they were shooting at us. I didn't want to get hit.
Q That's fair. That's fair.
How many people did you see get out of that car?
A Like three, four.
Q Not one?
A No.
Q Did you recognize any of them?
A Not off the bat, no.
Q Now, you have testified previously at Tronahz Whittington's trial as well?
A Yes.

Q And you know he's since been convicted as being the one in the front passenger seat?
A Yes.
Q So three to four get out. How many get out the front?
A The front?
Q Yeah.
A One.
Q One person.
And we know that now to be Tronahz Whittington; right?
A Yes.
Q How many get out the back?
A The back that I seen at first -- two at first because that's why I ducked down.
Q Okay. And the one in the front, what's he holding?
A A gun.
Q Big one or little one?
A All I seen was just a gun.
Q You saw a gun?
A Yeah.
Q The guys in the back, what are they holding?
A Guns.
Q They're holding guns?
A Yeah.

Q Do you know what kind?
A No.
Q Just guns?
A Yeah.
Q What do they do with those guns?
A Started shooting as us.
Q Start shooting at you?
A Yeah.
Q Now, they're not shooting at the woods?
A No.
Q They're not shooting at other cars?
A No.
Q They're not shooting at other people?
A No.
Q They're shooting at you?
A Yeah.
Q Do bullets hit the car you're in?
A Yes.
Q Do you hear bullets hitting your car?
A Yes.
Q Did you see a bullet hit Jamie?
A I didn't see when it hit Jamie, no.
Q Okay. Did you see Jamie get shot?
A Yes.
Q Okay. What did you do then?

A Well, after everything was done, I was the one who took his foot off the gas because it was still revving. So I took his foot off the gas. Next thing I notice, you know, he wasn't responding. So I got out of the car and ran to his side and got him out with Jacob.

Q So hang on. The gas was still revving?

A Mm-hmm.

Q Was the car in gear?

A Yes.

Q Was the car going anywhere?

A No. It was -- I don't think he ever made it to reverse. It stayed in neutral. Because I was waiting for, like, us to hit something or something because I kept hearing it rev, but then I noticed --

Q Let me ask this --

A I notice --

Q Oh, go ahead. I'm sorry; I didn't mean to interrupt.

A I noticed we weren't going nowhere. And after the gunshots were done, I look up, and Jamie is just -- he's just laying there. And that's when I took his foot off the gas.

Q Did you ever put the car in a different gear?

A No. I just -- I just took his foot off the gas.

Q You just took his foot off the gas.

When you took his foot off the gas, had he already been shot?

A Yes.

Q Where was the wound?

A In his head.

Q Could he talk?

A No.

Q You said the first thing you do was go over and take his foot off the gas. Then what do you do with Jamie?

A With Jamie? I get out the car, and I run to his side and check on him. And Jacob comes behind me, and we're trying to get him in the backseat.

Q Why?

A Because we're trying to take him to the hospital.

Q Did you get him in the backseat?

A We were trying to, but no.

Q What happens next?

A We laid him on the ground.

Q Now, why did you take him out of the backseat and lay him on the ground?

A Because there was nothing we could do. We couldn't move the car, so we just laid him on the ground.

Q Talk to me about that for a second. So you can't move the car why?

A It was just -- it was shot up. We couldn't -- we

couldn't move it.

Q So now, wait a minute. You drove the car to the D Street intersection.

A Mm-hmm.

Q But after you got to the D Street intersection and it got shot up, it couldn't move anymore?

A No, it couldn't move.

Q Do you know why?

A I guess where it got hit in the radiator because that's where -- that's where all the fluids was coming out of.

Q Did you see the fluid?

A Yeah.

Q Was that car always like that?

A No.

Q Did it always leak radiator fluid out the front?

A No. Jamie fixed it.

Q Now, after law enforcement got -- do you remember how long it took for law enforcement to get there?

A No.

Q After you put Jamie on the ground with Jacob's help, what do you do?

A I run to -- I run to my house.

Q And back then, where did you live?

A Back then --

Q Not the address, just in proximity.
A Like two blocks away.
Q So you left from the scene and went home?
A Yes, sir.
Q Was anybody home?
A No. My grandma.
Q Orlin, you were just involved in a shootout and somebody tried to kill you. Why would you leave and go home?
A I was scared.
Q What did you have to be scared of?
A I was just -- one because, you know, I was scared he was going to come back.
Q That's fair.
Now, Britney and Jacob stayed. You know that?
A I mean, that too, of course.
Q Yeah. I want you to come clean. I want you to tell this jury why you left that scene.
A Because I'm an illegal immigrant, and I didn't want to be caught up in, you know, everything going on.
Q And just to be clear, did you have a gun that day?
A No, sir.
Q Did Jamie have a gun that day?
A No, sir.
Q What kind of gun did Jacob have?

A He didn't have a gun.
Q How about Britney?
A No.
Q None of y'all had a gun?
A None of us.
Q Did any of you in that car have a weapon?
A No.
Q So no weapons were fired at all from that day in that car?
A Not at all.
Q So you didn't run because you thought you did something wrong there.
A No.
Q You are an illegal immigrant?
A Yes, sir.
Q Where are you from?
A I'm from Honduras.
Q And when is the last time you lived in Honduras?
A The last time? I was three.
Q So you've lived here in the United States of America since you were three?
A Yes, sir.
Q Do you want to be shipped to Honduras?
A No.
Q Did you think that was a possibility if law

enforcement came and found you?

A Yes, sir.

Q Since then, have you learned that that is not the principal concern here?

A Yes.

Q And have you ever told any untruths to law enforcement?

A No.

Q Did you recognize any of the guys that got out of the car from Facebook?

A Yes.

Q Who?

A Tronahz.

Q And what did you do in regards to that? Did you tell law enforcement that?

A I showed them who I thought I recognized.

Q So wait a minute. You did talk to law enforcement?

A Yes.

Q And you showed them -- when you say you showed them, how did you show them?

A Through my phone.

Q You had a picture of Tronahz in your phone?

A Yeah. Well, we looked -- we were looking through Facebook.

Q Facebook?

A Yes, sir.
Q So you pulled up a guy that you thought you recognized and showed it to law enforcement?
A (Witness nodding.)
Q Were you confident that was him?
A Not 100 percent, but that's the guy who, you know, I seen.
Q And you told them that?
A Yes.
Q Did you show them a picture of Don Brown?
A No.
Q Did you show them a picture of Travontae Mitchell?
A No.
Q How about Che Ransom?
A No.
Q Why?
A I didn't recognize them.
Q I'm sorry?
A Because I didn't -- I didn't recognize them.
Q You didn't recognize them.
Had you recognized the other people, would you have shown law enforcement?
A No.
Q My point is this, Orlin: Did you have anything against these guys before this occurred?

A No.

Q Did they have anything against y'all?

A No.

Q To this day, if it wouldn't have been for this shooting, would you have anything to do with these guys?

A No.

Q Okay. Okay. Do you remember of the name of the guy you showed them on the Facebook page? Do you remember what the Facebook page name was?

A Draxo, yeah.

Q Did you testify to that in the last trial?

A Yes, sir.

MR. HELMS: Court's indulgence, Your Honor. I'm looking for a photograph.

BY MR. HELMS:

Q If I showed you the picture that you showed law enforcement, would you recognize it?

A Yes, sir.

Q I'm going to show you what's been marked for identification purposes only as State's Exhibit twenty --

MR. HELMS: May I approach, Judge?

THE COURT: Yes.

BY MR. HELMS:

Q Take a look at that. Do you recognize it?

A Yes.

Q And who is that a picture of?
A Tronahz.
Q The guy that got out of the front seat?
A Yes.
Q Is this the picture you showed law enforcement?
A Yes.
MR. HELMS: Permission to enter into evidence State's 27, Your Honor, and publish to the jury.
THE COURT: Mr. Bouchette?
MR. BOUCHETTE: I haven't seen it.
No objection, Judge.
THE COURT: Mr. Pinkerton?
MR. PINKERTON: No objection.
THE COURT: Mr. Gardner?
MR. GARDNER: No objection, Your Honor.
THE COURT: State's Exhibit 27 is admitted into evidence without objection.
BY MR. HELMS:
Q So you showed a picture of the person you could identify; right?
A Yeah.
Q If you could identify the others and had a picture of them, would you have shown it to law enforcement?
A Yes.
Q But you didn't do that, did you?

A No.

Q Because you couldn't identify them by their face; right?

A No.

Q Did you see the driver?

A No.

Q Did the driver ever get out of the car?

A No.

Q When the shooting was happening, how long did it take?

A Maybe like two -- two minutes. Felt like forever but, you know, it happened quick.

Q Quickly.

Do you remember the guys that got out of the car, the orientation they were standing in? And when I say that, I mean how were they spaced out when they were shooting? Were they close together? Were they side-by-side? Were they in a circle? Tell me.

A Kind of like side-by-side.

Q Side-by-side?

A Yeah.

Q In front of the Tahoe?

A Yes.

Q At any time when the Tahoe was getting shot at, was it moving backwards?

A He was trying to move backwards.
Q Trying to move backwards.
Why?
A He was trying to get us out of the way.
Q Orlin, why didn't he drive straight?
A They were blocking us.
Q Why didn't you drive left?
A They were blocking us. We were blocked out.
Q I'm sorry?
A We were blocked out.
Q Why didn't you drive right?
A We were blocked out.
Q What was the only direction you could have gone?
A Back.
Q Had the cars and those boys with the guns not been in front of you, could you have went forward?
A Yes.
Q And got out of the way.
A And got out of the way.
Q Please answer any questions the defense may have.
THE COURT: Mr. Bouchette?
CROSS-EXAMINATION ON BEHALF OF DEFENDANT RANSOM
BY MR. BOUCHETTE:
Q Good afternoon. I'm going to do my best, again, not no duplicate testimony that we've already had here today,

but if I do go back -- and you have been in the courtroom this afternoon; is that correct?

A Yes, correct.

Q Okay. Our court reporter has to take down what you're saying, so...

You have been in the courtroom; is that right?

A Yes, sir.

Q You have heard the prior testimony of Britney and Jacob before that?

A Yes, sir.

Q All right. So the first thing with regard to -- do you agree with the approximate distance that it was from when you initially encountered the vehicle with the shooter, Tronahz Whittington, and the visual distance between when the vehicle became disabled?

A Yes.

Q When it first -- in other words, when the vehicle first encountered the vehicle with the shooters and shots were fired, it was approximately 15 feet or so away?

A When we first encountered it?

Q That's correct.

A They came right behind us.

Q Once they came around and the individuals got out and you went to put it in reverse, you were about 15 feet or so away?

A Yes.
Q And then by the time the vehicle became disabled, it was a little bit further? More like 25, 30 feet maybe?
A Yeah, a little bit further back.
Q Okay. All right.
Now, you were sitting in the backseat behind Jamie the driver; correct?
A Yes.
Q And, again, since this is a squatted vehicle, we've heard that it makes it a little more difficult to see out through the front; is that correct?
A No, not through his.
Q What's that?
A Not through his truck.
Q Not through his truck?
A Yeah.
Q So you think the tilt, at least according to you, from the backseat you could see as well as if it not had been squatted?
A Yes.
Q Well, I want to ask you about -- I couldn't quite get your testimony regarding the changing of gears. Am I correct, then, that, when Jamie encountered the shooting, he put the vehicle in reverse?
A Yes.

Q And he went in reverse for some period of time?
A Yeah, he was trying to, yeah.
Q All right. And when you ultimately had to take Jamie's foot off the gas, you changed it into gear or out of gear; is that right?
A No, I didn't change it. It was in neutral because all I kept hearing was it revving.
Q That's my point. So it had gone into neutral?
A I guess, yeah, when he was trying to back up, yes.
Q And that's kind of what I -- I mean, so the shot to the vehicle, he's in reverse -- he's hitting the gas, going in reverse; correct?
A Yes.
Q And, at some point during this interaction, it switches from reverse, harsh transition into neutral, and that's where it was whenever you took his foot off the gas?
A Yes.
Q Now, if I understand you correctly, when you saw the vehicle get in front of you, you saw the person in the front driver's seat get out; is that right?
A Mm-hmm.
Q That's the person we now identified as Tronahz Whittington; correct?
A Passenger seat.

Q Excuse me. Front passenger, Tronahz Whittington; correct?
A Yes, sir.
Q Okay. All right.
So he gets out and you're able -- you see him pretty clearly; right?
A Yes.
Q Now, we have heard other testimony that Jacob in the front seat gets down, and the girlfriend in the back also gets down shortly after that.
A Yes.
Q Is that what happened?
A Yes.
Q Okay. And I would imagine, given what was going on, that you got down pretty soon after that; is that correct?
A Yes.
Q Everybody is hitting the deck; right?
A Yeah.
Q So you weren't looking up whenever you saw these various shots being discharged; correct?
A Whenever I see them firing at us, I just ducked down.
Q Well, that's what I said. You saw Tronahz -- the individual you now know to be Tronahz Whittington discharge his weapon; correct?

A Yeah, when I seen the other ones get out, that's when I ducked down too.

Q Okay. So Tronahz Whittington fires, you see the other ones with the guns, and that's when you hit the ground; is that right?

A Yeah, when I started hearing all the shots going off, yeah.

Q Okay. You're hearing the shots. I certainly understand that. And you know that a lot of shots are being discharged; right?

A Mm-hmm.

Q But you're not watching them being shot to where they're being shot because you're on the ground for safety.

A No. When I saw them start shooting, that's when I go down.

Q Well, that's what I'm trying to get --

A Yeah.

Q You're certainly not saying that you were sitting -- standing up the entire time watching all these rounds being discharged into the vehicle.

A No, not all of them, no.

Q All right. So that's what I'm trying to get at. You saw Tronahz Whittington, correct -- discharge?

A Yes.

Q All right. And then, after that, are you saying that you continued to stay up and continued to watch the shots be discharged --
A No --
Q -- or you hit the ground pretty much --
A When Tronahz -- when Tronahz got out, the rest of them got out too. That's when all of them started firing. That's when I ducked down.
Q Well, so did you duck down before or after the shot you saw from Tronahz?
A What do you mean? All of them started shooting.
Q Well, I guess let me ask it this way: When you saw Tronahz shooting -- right? -- did you continue to stay up and watch the other shots be fired or did you hit the ground then?
A They all started shooting then around the same time.
Q You're saying they all shot at the same time?
A Around the same time, yeah. First, Tronahz got out. He didn't start shooting just right away. I mean, when they all got out, they started shooting. That's when I ducked down. I didn't know what was going on at first.
Q Well, that's kind of what I'm getting at. You're saying that the -- if I understand you correctly -- and you can certainly correct me if I'm wrong -- that they all got out of the vehicle, and four or five people were

firing at the car; is that correct?

A Like three or four, yeah.

Q Okay. And the solicitor took a lot of effort to elaborate that they weren't shooting at the nearby area; they were shooting at the vehicle.

A Yes.

Q Okay. Well, you have seen the pictures and all that's been introduced into testimony in this trial; right?

A Yes.

Q And you know it seems like at this point there's no shots -- no more than one shot to the windshield; right? You have seen that?

A I was there when it happened. I saw the car when it got shot, so I seen where it got shot.

Q And that's what I'm asking for --

A The pictures don't show it. I seen the car -- the front of the car.

Q And I'm asking based on your recollection from the time of anything that you may have come to learn since then.

A Mm-hmm.

Q So we know now -- if you'd agree with me -- that the front windshield only had the one shot in it; correct?

A Yes.

Q All right. It may have had another shot into the body of the front of the vehicle; right?
A It did. It had one.
Q But you have not seen -- we don't have any other shots to the side of the vehicle or anywhere else -- right? -- that you have seen?
A Yes.
Q That's correct? So when this first started, you're about 15 feet away?
A Mm-hmm.
Q But you're saying, according to you, all three -- at least three people were somewhere around 15 feet and firing at this Yukon -- or, excuse me, Tahoe?
A Directly in front of it.
Q You know, we have heard testimony a moment ago that this was a pretty traumatic thing, happened real quickly. Would you agree with that assessment?
A Yes.
Q Okay. It happens real quick?
A Yes.
Q This wasn't a 30- or 45-minute ordeal. It happened fairly quickly; right?
A Yes.
Q Okay. And we're not here to dwell on that, but during the rest of the -- earlier in the day, y'all had

been drinking and smoking all day; right?

A Drinking.

Q Drinking? All right.

Had anybody else been smoking weed, smoking marijuana?

A I don't know.

Q Okay. Well, you were with them all day; right?

A Yeah, I was drinking.

Q Okay. And I appreciate you were drinking. Were you smoking any marijuana with Jamie or with anybody else earlier in the day?

A Earlier in the day, yes.

Q Earlier in the day. Okay. And that's fair enough.

So during the afternoon and the hours preceding this traumatic, quick event that occurred, you had been drinking, you had been consuming marijuana with your friends. How long had you been doing that approximately?

A By the time we were already going to Henry's, we had been drinking, like, early on in the day, but the time that that happened, it was later on. I had just come from work, so it wasn't too long that I was drinking.

Q So from early on in the day, at least a couple of hours -- several hours?

A Yeah.

Q Okay. All right. And when that happened, you

weren't anticipating -- there was nothing that was alerting you to being alert as to needing to take note of what was happening?

A No, it was just a normal day.

Q And to kind of make matters worse, on top of drinking and smoking in the afternoon, you also had this additional fear of police involvement due to your immigration status; is that right?

A Yeah.

Q And, again, we're not here for that, but I mean, that was an additional thing going on in your mind in conjunction with trauma and in conjunction with the -- whatever you had been drinking and whatever you had been smoking during that time; right?

A Not really. It was just a normal day.

Q It was just a normal day, but you obviously had -- you know, you were obviously very concerned about your status -- your immigration status and any possible law enforcement activity; correct?

A Yeah. I wasn't doing anything wrong, so I wasn't worried.

Q And I'm not saying you are doing anything wrong, but, obviously, following a shooting and a death of your best friend, you immediately leave the scene and go back to your house; right?

A After that, yeah.
Q Right. And, again, my only point in saying that is that, obviously, that was something that was weighing pretty heavy on your mind during the course of this brief event?
A No.
Q So it was not a concern? Is that what you're saying?
A Yeah. I mean, I shouldn't be really concerned if I'm not doing anything wrong.
Q And I'm not necessarily indicating that you did do anything wrong but --

MR. HELMS: Your Honor, he keeps saying "but." At this point, we're arguing with the witness. Can we move on? He's back and forth when he's asked and answered the question.

THE COURT: One more question.

BY MR. BOUCHETTE:

Q And, again, I'm not saying that you did anything wrong. My question was, given that we know that immediately following your observation of the death of your best friend and going to your house immediately following the incident, is it safe to say that your concern about your immigration status and any possible law enforcement activity was a considerable factor of your

mental state at that time?
A After the fact.
Q After the fact. Okay. All right.
MR. BOUCHETTE: Judge, I don't think I have any further questions of this witness.
THE COURT: All right. Mr. Pinkerton?
CROSS-EXAMINATION ON BEHALF OF DEFENDANT MITCHELL
BY MR. PINKERTON:
Q Thank you, Mr. Lopez, for being here. I'm sorry to put you through this again. I'm actually going to keep this as brief as I can. Okay?
You were in the back passenger seat; correct?
A Yes, sir.
Q Okay. And you have heard testimony and you have seen pictures of Jamie's truck. It was what they called squatted; correct?
A Yes, sir.
Q That basically means the front end is significantly higher than the back end?
A Yes, sir.
Q But you're telling us you can easily see off the front, even though it's sitting roughly like this and you're in the backseat?
A Yeah, it's not to -- it's not to the point where you can't see.

Q Even if you're ducked down?

A If you're ducked down, I mean, you still can see outside. I mean, if you're all the way down, you can't see, yeah, you're right.

Q And you said -- and I'm not judging you, but you said you were under the influence of alcohol and marijuana at the time?

A Come again?

Q You were under the influence of alcohol and marijuana at the time?

A No, I was sobered up by that time. Or by the time -- I smoked earlier in the day, but...

Q When was that in the day?

A Like around, like, 10:00, 11:00 that morning.

Q In the morning?

A Yeah.

Q And when was the last time you had drink?

A The last time I drank was around, like, 5:00 or 6:00.

Q 5:00 or 6:00?

A Yeah.

Q How much had you had to drink at that point?

A Probably like about four -- four beers.

Q About four beers at that point?

A Yeah.

Q That was before you got into Jamie's truck to go to Henry's?
A Yeah.
Q All right. And how many people did you say got out of the other car?
A About three or four, that I can remember.
Q Three or four that you remember.
And the only person you recognize is Tronahz; correct?
A Yes, sir.
Q And you said Tronahz had a gun?
A Yes, sir.
Q Did you actually see him fire, or at what point did you duck down?
A After I seen him fire.
Q Just him fire, though? That's when you ducked down?
A No. When I seen all of them firing.
Q And about how far away were they from you?
A About -- probably like from here to where -- probably like where the officer is at.
Q And you said the car was in neutral when you took his foot off the gas?
A Yes, sir.
Q Not in reverse?
A No.

Q Had he reversed at all?
A Yes.
Q Then how did the car get in neutral?
A I don't know.
Q Don't know? Okay.
MR. PINKERTON: Court's indulgence.
THE COURT: All right.
MR. PINKERTON: No further questions, Your Honor.
THE COURT: Mr. Gardner, cross-examination.
CROSS-EXAMINATION ON BEHALF OF DEFENDANT BROWN
BY MR. GARDNER:
Q I want to follow up on the squatted vehicle. I heard a lot of stuff going on there, but I heard that but didn't understand it. Tell me, squatted vehicle, it doesn't obstruct the view of the driver when he's driving down the road?
A No.
Q And the person in the backseat would be even lower than the driver; right?
A Yeah.
Q And it doesn't obstruct his view?
A Not really, if you don't have it too squatted.
Q You saw this one. It's too squatted. I mean --
A Yeah.
Q What do you mean -- let me just ask you, what do you

mean by "too squatted"? Not --

A To the point where you can still see.

Q Okay. Well, that's a pretty big angle. You have seen it. You've driven it?

A Yes.

Q You know what I'm talking about?

A Yes.

Q That's a pretty severe angle. Are you telling the jury that the driver's view is not obstructed?

A No, he's still over it.

Q Okay. So the driver is closer up here and then the passenger or the back passenger -- backseats would be even lower to the windshield; right?

A It's not like it's all the way up. It's, like, squatted, but --

Q Well, hold on. Let me see if I can find a picture.

A People in the back can still see.

Q Hold on a second. Let me see if I can find a picture of it. Because if I'm wrong, I want to make sure that I know it. I thought they had a picture of it. But it's on the video, and we'll be able to look at it at the end of this case. I'm sure we'll have a thousand pictures before it's all over.

Tell me if I'm wrong. The front end of this vehicle was jacked up high in the air.

A Mm-mmm.
Q And the back is lower?
A Yeah.
Q And my question to you was: Doesn't that obstruct the view of the driver when he's driving down the road?
A No.
Q No? Okay.
And the backseat passenger would be even lower. Are you still telling the jury that his view out the windshield would not be obstructed?
A No.
Q No.
A Yeah.
Q So his view is not obstructed?
A No.
Q And the driver's view is not obstructed?
A No.
Q All right. Somebody testified earlier that the vehicle had the wrong tag on it.
A Yes.
Q What does that mean?
A Got the wrong tag.
Q What does that mean?
A What do you mean?
Q Did the highway department give y'all the wrong tag?

A I don't know how Jamie had it set up. He just -- all I know is he had the wrong tag.
Q He had a tag registered to a different vehicle put on this vehicle; is that right?
A I don't know. I think it was just the sticker or something.
Q Didn't pay the taxes?
A I guess not.
Q But it was something illegal, though. You know that for sure; right?
A It's not my truck.
Q But you know it was an illegal tag because that was mentioned earlier.
A Yeah. I mean, I don't know if it was illegal. I just know it didn't have the right stickers on it.
Q You have been sitting in this courtroom all morning; right?
A Yes.
Q You've heard all the testimony?
A Yes.
Q You went through the trial the last time?
A Yes.
Q So this is not new to you. You know exactly what I'm talking about, don't you?
A Yes.

Q All right. So, just to review -- oh, you do know that the squatted trucks are illegal now; right?

A I do.

Q Okay. So just a quick review. Drinking, smoking marijuana, driving with an illegal vehicle, driving down the back roads to avoid the police; is that right?

A Yes.

Q Going back to get more beer because you've already drank all the beer you had; is that right?

A Yes.

MR. GARDNER: Nothing further, Your Honor.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. HELMS:

Q Any of the things that Mr. Gardner just named to you, is the penalty for any of those a bullet to the brain?

A No.

Q Thank you. Nothing further.

THE COURT: You may step down.

All right, ladies and gentlemen. We're going to give you a 10- to 15-minute break to give you an opportunity to stretch your legs, get something to drink, whatever the case may be.

Do not discuss the case, even among yourselves.

We'll take about a 10- or 15-minute break and come back in just a minute. Thank you very much.

(The jury exited the courtroom at 3:46 p.m.).

MOTIONS/MATTERS OF LAW

THE COURT: All right, sir. I understand that there might be some people going in the room where the witnesses are sequestered; is that correct?

MS. GRAHAM: Me? My son --

THE COURT: No, ma'am, you can't -- only witnesses can be in the room where the sequestration is. If you're not a witness, you can't go in that room. All right?

All right. Anything from the State before we take a recess?

MS. LIVESAY: Just briefly, Your Honor. We do intend to call Shamontae Graham either as soon as we come back or the very next witness. I'd just ask that we receive a copy of the transcript of his statement so we can all be working off the same document. I'm assuming that's -- if there's any impeachment, that's what they're going to use to impeach him.

The State does not have a copy of that transcript, so we're just asking for a copy of it.

THE COURT: Well, I mean, why don't you get a copy?

MS. LIVESAY: I'm sorry?

THE COURT: You're wanting the defendants to provide

you with a copy as opposed to you going and getting a copy yourself?

MS. LIVESAY: To provide we with the same copy that they'll be working off, yes, sir.

MR. HELMS: In light of the Court's ruling that we stick to the prior testimony.

MS. LIVESAY: That's right.

MR. HELMS: In light of that ruling.

THE COURT: Well, I'm not telling you to stick to that prior testimony. I told you that if that was -- if you were sticking to the prior testimony, then he could testify. But if he was not sticking to the prior testimony, then he could not testify because he violated the Court's order regarding sequestration of the witnesses.

You're the one that told me he was sticking to the prior testimony. I'm not ordering him to stick to the prior testimony. I'm just telling you that he can't testify if you're eliciting any additional from you -- from him that you did not elicit at the first trial.

MR. HELMS: I understand. But there's no way to make sure that we abide by that unless we have -- I mean, they could object to him saying the word "and" instead of "but" or "yellow" instead of "light blue."

THE COURT: Well, I'm sorry. He's --

MR. HELMS: So, to avoid doing that, I was just asking -- what we would do for them would be to give them a copy of the transcript they have.

THE COURT: But you have a different obligation representing the State. You have a different obligation than they do.

MR. HELMS: Okay.

THE COURT: I'm not going to make them give you a copy of the transcript.

MS. LIVESAY: That's fine, Judge.

THE COURT: All right. Mr. Bouchette, anything before we take a recess?

MR. BOUCHETTE: No, sir.

THE COURT: Mr. Pinkerton?

MR. PINKERTON: No, Your Honor.

THE COURT: Mr. Gardner?

MR. GARDNER: No, sir.

THE COURT: All right. Now, if they're going to introduce it as a prior inconsistent statement or anything of that nature, then there might have to be a production or something to that nature. I don't know to what extent it's going to be used or if it's going to be used at this point in time, but the only reason they're getting to use is that because the State's witness violated the Court's order regarding sequestration.

All right. Let's take about a 10- or 15-minute break, and we'll come back and get started.

(A recess was taken from 3:50 p.m. to 4:09 p.m.)

(State's Exhibit No. 53, DVD of Apartments, was marked for identification.)

THE COURT: All right. You said the State intends to call Mr. Graham next?

MS. LIVESAY: Yes, sir.

THE COURT: All right. Let's go ahead and bring him in so I can go over his rights with him. As I understand, these charges are still pending against him; is that correct?

MS. LIVESAY: Yes.

THE COURT: All right. Let's go ahead and bring Mr. Graham in.

(Pause in the proceedings. Mr. Graham enters the courtroom.)

THE COURT: All right, Mr. Graham. If you'll come forward, please. If I can get you to stand right here at the podium and raise your right hand.

SHAMONTAE GRAHAM,

after having been duly sworn, was examined and testified to as follows:

THE COURT: All right. Thank you very much. You can put your hand down now.

All right. Your name is Shamontae Graham?

MR. GRAHAM: Yes, sir.

THE COURT: Mr. Graham, you have been called as a witness to testify in this case, and I now advise you that, as a witness, you have a right to invoke protections given to you by the Fifth Amendment to the United States Constitution which states in part that no person shall be compelled in any criminal case to be a witness against himself. This provision means that you cannot be required to be a witness against yourself. This is a personal right which can only be claimed by you.

You have the right to refuse to answer any question asked of you which you think gives you reasonable cause to believe that the answer to the question if given might tend to incriminate you. If you wish to exercise this right, when the question is asked, you will state to this Court that you refuse to answer the question because the answer may tend to incriminate you.

I also advise you that you are not the final decision-maker on this issue of whether or not to answer a question or whether or not a question will violate the protection afforded to you by the Fifth Amendment. It is for the Court to determine if silence on your part is justified or pursuant to the United States constitutional right against self-incrimination.

Now, do you understand what I have explained to you?

MR. GRAHAM: Yes, sir.

THE COURT: Now, do you have any questions about what I have explained to you?

MR. GRAHAM: No, sir.

THE COURT: All right. Now, I'm going to ask you to have a seat back there behind the prosecution table, and then, when the jury comes in, they'll be calling you as a witness, and we'll bring you forward and swear you in, and then you'll take the stand at that time. Okay?

MR. GRAHAM: Yes, sir.

THE COURT: All right. Thank you very much.

All right. Is there anything the State wants on the record in that regard?

MS. LIVESAY: We're ready for the jury.

THE COURT: All right. Anything, Mr. Bouchette, from you or your client?

MR. BOUCHETTE: No, sir.

THE COURT: Mr. Pinkerton?

MR. PINKERTON: No, Your Honor.

THE COURT: Mr. Gardner?

MR. GARDNER: No, Your Honor.

THE COURT: All right. Let's bring the jury in.

(The jury entered the courtroom at 4:14 p.m.)

THE COURT: All right. Ladies and gentlemen,

welcome back. We're ready to resume with the trial of this case.

The State can call your next witness.

MS. LIVESAY: Thank you, Your Honor. At this time, the State calls Shamontae Graham.

THE COURT: All right.

THE CLERK: Please raise your right hand and place your left hand on the Bible.

SHAMONTAE GRAHAM,

after having been previously duly sworn, was examined and testified to as follows:

THE CLERK: If you can state your name and spell it for the Court.

THE WITNESS: My name is Shamontae Graham. S-h-a-m-o-n-t-a-e. Graham, G-r-a-h-a-m.

DIRECT EXAMINATION

BY MS. LIVESAY:

Q Mr. Graham, how old are you?

A 22.

Q Okay. And where are you from?

A Conway.

Q And you've always lived in Conway?

A Yes, ma'am.

Q Where did you go to high school?

A Aynor High School.

Q You went to Aynor High School?
A Yes, ma'am.
Q Okay. And do you currently have pending charges?
A Yes, ma'am.
Q And what are those pending charges?
A Murder, three attempted murders, and possession of a firearm during a violent crime.
Q Okay. And did that arise from the incident involving Jamie Johnson?
A Yes, ma'am.
Q Okay. And do you remember the day that he was killed on September 12th of 2020?
A Yes, ma'am.
Q Tell these folks what happened that day.
A Okay. Me and a group of friends were at the house, chilling as usual. Me and my brother needed a ride home, and Tronahz also needed a ride home. Tronahz then called someone and borrowed their car. He was supposed to take me and my little brother home after he went home. So we all rode with Tronahz towards his mom's house, and we ended up being behind the victim. It was on the way to Tronahz's house, so we were already behind the Tahoe with Jamie Johnson in it.

Tronahz stated that he knew Jamie Johnson and that he would have weed and that he wanted to rob them or take

what he had.

So we were still behind him at this point, which is on the way to Tronahz's mother house. We was behind the Tahoe for awhile on the road, and then they turned, made a right by the stop sign. We made a right as well, which is still on the way to Tronahz's house. Either way, it was still where we all ended up in the same area towards Tronahz's house.

Jamie Johnson stopped at a stop sign on D Street. Tronahz then told the driver to pull in front of him. So we pulled in front of the victim's Tahoe. Tronahz opened the door, got out the car, and he fired an AR at the Tahoe and shot the victim's car in the windshield, and that's when I saw the blood from the victim. I saw, like, his head, like, go down. Got hit with the gun.

Q Where did y'all go after you pulled in front of the Tahoe and fired?

A We went to Tronahz's friend house after that. It's on the back road right close -- closer to his mother's house. We went there. There, I called the mother of my child and told her to come pick me and my little brother up. Then she came to pick us up.

Q Who did she pick up?

A She picked up me, my brother Travontae Mitchell. She picked up Dime, Che, and Mikkie. And she dropped them

off to their designated area in Crabtree Apartments, and me and my girlfriend and my daughter and my brother, we went to my cousin's house.

Q And let me show you something that's been marked --

MS. LIVESAY: Where is that CD? I think I had you mark it. Hold on one second.

One second, Judge.

THE COURT: All right.

MS. LIVESAY: I have got it right here.

MR. BOUCHETTE: What is it?

MS. LIVESAY: The video from the apartment.

BY MS. LIVESAY:

Q I'm showing you State's No. 53. Do you see your initials on that video?

A Yes, ma'am.

Q And have you watched the video?

A Yes, ma'am.

Q And does it show you and the codefendants going over to the car that you were driving?

A Yes, ma'am.

Q And you say that after it was all over, your baby mama, Sarah Hemingway, picked you up?

A Yes, ma'am.

Q What kind of vehicle was she driving?

A A minivan.

Q A minivan?
A Yes, ma'am.
Q And the video also shows y'all coming back in the minivan to that apartment; is that correct?
A Yes, ma'am.
Q And it also shows Tronahz bringing the car back to the apartments; correct?
A Yes, ma'am.
Q Okay. So it shows all of y'all going to the vehicle that was used in this shooting; correct?
A Yes, ma'am.
Q Okay. And that is the car that was borrowed to get behind Jamie Johnson; correct?
A It wasn't borrowed to get behind but that's what happened.
Q Okay. So, ultimately, it was used to get behind Jamie Johnson?
A Correct.
Q Okay. And you have seen the video on Wayside Drive; is that correct?
A Yes, ma'am.
Q Does that video show y'all in that car behind Jamie Johnson and the people in his car?
A Yes, ma'am.
Q Okay. So that video is dead accurate, that Ring

camera video?

A Yes, ma'am.

Q Okay. And I'll show that.

Now, you tell these folks, who was in the car when y'all were behind the victim on Wayside Drive?

A Me, Travontae, Don, Che, Tronahz, and Mikkie McLeod.

Q And was Che Ransom in the car?

A Yes, ma'am.

Q So six of y'all?

A Yes, ma'am.

Q Okay. And let me make sure I got it right. Don Brown?

A Yes, ma'am.

Q You?

A Yes, ma'am.

Q Tronahz Whittington?

A Yes, ma'am.

Q Che Ransom?

A Yes, ma'am.

Q Mikkie McLeod?

A Yes, ma'am.

Q And your brother Travontae Mitchell?

A Yes, ma'am.

Q Okay. So y'all are all in that car behind Jamie; correct?

A Yes, ma'am.
Q Okay. At some point, y'all passed the Tahoe; correct?
A Yes.
Q Okay. And you pull in front of it; is that right?
A Correct.
Q Okay. Now, when you looked over to the right when you were passing the car --
A Yes, ma'am.
Q -- did you see Jamie Johnson in the Tahoe?
A Yes, ma'am.
Q And what color is his hair?
A Red. Reddish.
Q So you got a good look inside the Tahoe?
A Yes, ma'am.
Q Okay. Okay. And this State's Exhibit No. 53 shows y'all all going to the car used; correct?
A Yes, ma'am.
MR. GARDNER: Your Honor, this is her witness. I'd object to the leading.
THE COURT: All right. Let's don't lead.
MS. LIVESAY: I'm sorry. I'm just trying to expedite.
THE COURT: I understand, but don't lead.
MR. GARDNER: I'm sorry. I couldn't hear what the

solicitor said, Your Honor.

THE COURT: She said she was trying to expedite, and I still sustained the objection and told her don't lead the witness.

BY MS. LIVESAY:

Q You have seen the video?

A Yes, ma'am.

Q Is everything on the video accurate?

A Yes, ma'am.

Q And are you on the video?

A Yes, ma'am.

Q The car y'all used on the video?

A Yes, ma'am.

Q Your baby mama's car on the video?

A Yes, ma'am.

MS. LIVESAY: Your Honor, at this time, the State wishes to place State's evidence -- I'm sorry, Exhibit 53 into evidence and publish it to the jury.

THE COURT: All right. Mr. Bouchette?

MR. BOUCHETTE: Your Honor, pursuant to objection on one of the last requests. This was not a video camera that he maintains. He is not a proper person to authenticate it or the custody of the record, so we'll object on that basis, at least for it coming through this witness.

THE COURT: All right. Mr. Pinkerton?

MR. PINKERTON: Your Honor, we would join Mr. Bouchette on that motion. He's not the custodian of this material. He's not the one that generated this material. It's not proper to introduce it through him.

THE COURT: All right. Mr. Gardner?

MR. GARDNER: The objection is lack of foundation, Your Honor.

THE COURT: All right. I'm going to admit State's 53 over defendants' objections.

MS. LIVESAY: Thank you, Your Honor.

(State's Exhibit No. 53 was received into evidence.)

BY MS. LIVESAY:

Q Can you see this, Mr. Graham?

A Yes, ma'am.

Q Okay.

(State's 53/Video plays.)

BY MS. LIVESAY:

Q Mr. Graham, does that show the car that y'all borrowed that day?

A Yes, ma'am.

MS. LIVESAY: And if you don't mind, could you get me back to the front?

(Video plays.)

BY MS. LIVESAY:

Q Now, the time -- the time on the video. I have got to have my little chart here for military time. It says 18:27. That would be around 6:27. Is that about when y'all borrowed the car?

A Yes, ma'am.

Q Daylight hours?

A (Witness nods head in the affirmative.)

Q Okay.

THE COURT: You need to answer yes or no.

A Oh. Yes, ma'am.

MS. LIVESAY: Skip it just ahead until the folks are walking over, if you don't mind.

(Video plays.)

BY MS. LIVESAY:

Q Do you recognize this man walking over?

A Yes, ma'am.

Q Who is it?

A Tronahz Whittington.

Q Okay. Have you seen this video before?

A Yes, ma'am.

Q Do you know who these fellows are here walking over to the car?

A Yes, ma'am.

Q Tell these folks who they are.

A Don, Che, Travontae, Nahz, KJ (ph) --

Q I'm sorry?
A That's my cousin. That's the house we was at. He was over there too.
Q So, if you don't mind -- can you see from where you're at?
A Yes, ma'am.
Q Okay. Who is this fellow here in the dark pants and blue shirt?
A That's Che Ransom. Che Ransom.
Q Okay. And who is this fellow in the white pants and the dark hoodie?
A The gray? Actually, gray pants. That's Travontae. Travontae, and they're actually gray pants.
Q Okay. So right here, the white pants, is Travontae Mitchell, which is your brother?
A Yes, ma'am.
Q Okay. And who is this fellow in this kind of stone-washed shorts?
A That's Mikkie McLeod.
Q Mikkie McLeod.
And then who is this fellow behind Mikkie McLeod?
A Is that khaki pants? Is that khaki pants? I can't really see.
Q I'm sorry?
A Are those khaki pants? I can't really see.

I said, are those khaki pants? I can't really see.

Q Okay. Keep playing it.

A Okay. I can see now.

Q Do you know who that is in the khaki pants?

A Yes, ma'am. That's Don.

Q Who?

A Don Brown.

Q Don Brown. Okay.

Now, Tronahz is the man that already walked over with the basketball shorts and no shirt?

A Yes, ma'am.

Q Okay. Now, have we seen you on the video yet?

A No, ma'am.

Q Okay. Where are you?

A I'm in the white --

Q By the white car?

A Yes, ma'am.

Q So who is this walking up to the car now?

A I think that's me.

Q That's you?

A Yes, ma'am.

Q Okay. And the time up here is 6:30. Is that accurate as to when y'all met up with the owner of the car?

A Yes, ma'am.

Q Okay. And who is the owner of the car? Do you remember?
A De'Shon Samuels [sic].
Q Okay. De'Shon Samuels [sic].
A Yes, ma'am.
Q And that's who y'all borrowed the car from?
A Yes, ma'am.
Q And that happened around 6:30?
A Yes, ma'am.
Q Okay.
MS. LIVESAY: Do you mind adding that right here? Just hit pause real quick. I apologize.
I'm sure yours is better than mine.
BY MS. LIVESAY:
Q Y'all made contact and borrowed the car around 6:30?
A Yes, ma'am.
Q And that's what's going on right here in the video?
A Yes, ma'am.
Q So what Mr. Helms wrote up here, "Borrowed car at 6:30 approximately," is that correct information?
A Yes, ma'am.
Q Okay.
MS. LIVESAY: Now, do you mind fast-forwarding it until the black van comes back into the apartment?
(Video plays.)

BY MS. LIVESAY:

Q Do you recognize that black van?

A Yes, ma'am.

Q Hold on, hold on. Do you recognize that black van?

A Yes, ma'am.

Q Who is it?

A That's my baby mother's van.

Q And are y'all in the van?

A Yes, ma'am.

Q Okay. And it says here --

MS. LIVESAY: Could you stop it, Lacy?

BY MS. LIVESAY:

Q It says here 20:55. So that would be around 8:55. Is that around the time y'all arrive back to these apartments?

A Yes, ma'am.

Q Okay. It was dark by the time you arrived back?

A Yes, ma'am.

MS. LIVESAY: Okay. If you don't mind, just write around here "8:55." Thank you, sir.

BY MS. LIVESAY:

Q Who is this here?

A Tronahz.

Q Okay. Now, the video doesn't have any sound. So what is going on at this point?

A Okay. I pulled up to get me -- some buddies from Tronahz is there. He wanted us to take him to his baby mother's Daija's (ph) house. I told my baby mother, No, I wasn't taking him anywhere. I didn't tell her why. I just told him I wasn't taking him anywhere. That's why he's coming to the car.

Q And y'all said, "No, you can't get no ride with us"?

A Yes.

Q Now, let me ask you something: You've already told me who was in the car; correct?

A Yes, ma'am.

Q Okay. And do you remember where everybody was sitting?

A Yes, ma'am.

Q Okay. So I want to write it down, and I want you to look at it, and you tell me if what I have wrote down is correct. Okay?

A Yes, ma'am.

Q Okay. So who was driving the car?

A Don Brown.

Q Okay. Now, does Don Brown have any nicknames?

A Quan. Call him Quan.

Q Quan? And what is his Facebook name?

A I really don't remember his Facebook name.

Q And who is sitting beside Don Brown?

A Me.
Q And what did they call you?
A Ray-Ray.
Q And who is sitting beside you?
A Tronahz.
Q And what do they call him?
A Draxo.
Q I'm sorry?
A Draxo.
Q Draxo.
Now, who was in the back of the car?
A Che, Mikkie, and Travontae.
Q And who was sitting beside Don Brown?
A Che Ransom.
Q And who was sitting beside Che Ransom?
A Travontae Mitchell.
Q And what did they call Travontae Mitchell?
A Tip.
Q How about Baby Klutch?
A I never called him that. I just called him Tip.
Q Is that his Facebook name?
A Used to be.
Q Used to be. Okay.
And then who is sitting beside Travontae Mitchell?
A Mikkie McLeod.

Q Now, you have told us -- pointed out in the video who was who in the video. Do you remember that?
A Yes, ma'am.
Q Okay. Can you remember what everybody was wearing?
A Yes, ma'am.
MS. LIVESAY: Okay. If you don't mind, Mr. Helms...
BY MS. LIVESAY:
Q Tell me what you remember Don Brown was wearing.
A Black shoes, khaki pants, black shirt.
Q Black shirt and khaki pants.
And what were you wearing?
A I was wearing a black Champion windbreaker and blue jeans.
Q I'm sorry?
A I was wearing a black Champion windbreaker and blue jeans.
Q Okay. And what was Tronahz Whittington wearing?
A Black shorts and no shirt.
Q Okay. And what was Che Ransom wearing?
A Black pants and a blue shirt.
Q Okay. And what was your brother Travontae wearing?
A Light gray pants and I want to say a black -- black hoodie. Black shirt, black hoodie.
Q Okay. So he was wearing light gray pants?
A Yes, ma'am.

Q Almost looked white in the video, didn't they?
A Yeah, from the sun reflection.
Q And how about Mikkie McLeod?
A Light shorts and a blue shirt.
Q Okay. I'm sorry; who was wearing the -- it looked like white pants. You're saying light gray?
A They were gray. They were gray.
Q Okay. Who was that?
A Travontae.
Q Okay. And if we can -- okay.
So was anybody else wearing light gray pants other than your brother?
A No. Well, Mikkie had gray and white shorts.
Q Okay. White shorts on. Stone-washed.
And would you agree, when you looked at the video, the pants that your brother was wearing looked white?
A Kind of. Kind of.
Q Now, who all had a gun in the car?
A Me, Che, Mikkie, Tronahz.
Q And how about your brother Travontae?
A I didn't see Travontae with a gun.
Q Have you said in the past he had a gun?
A No. I said the same thing. I haven't seen Travontae with a gun.
Q You never told the police he had a gun?

A No.
Q And what kind of gun did you have?
A A MAC-11.
Q And what kind of gun did Tronahz have?
A AR-15.
Q And what kind of gun did Che have?
A A .45.
Q A .45? And what kind of gun did Mikkie McLeod have?
A A 9mm handgun.
Q Now, you and Travontae are brothers?
A Correct.
Q Okay. Got the same mom?
A Correct.
Q And did y'all grow up together?
A Correct.
Q And is your mama here today?
A Yes, ma'am.
Q So we know Tronahz Whittington was in the car. We know Travontae Mitchell was in the car. We know you were in the car; correct?
A Correct.
Q And we know Che Ransom was in the car, Don Brown, and Mikkie McLeod; is that right?
A Correct.
MS. LIVESAY: You don't have to fill it in. We can

wait and fill it in as we go.

BY MS. LIVESAY:

Q Now, I'm going to show you something that's already put into evidence, 32. State's evidence No. 32. You have seen the Ring camera?

MR. GARDNER: Excuse me, Your Honor. Do you mind if I move this? We can't see what's going on over there.

MR. HELMS: Oh, I'm sorry.

BY MS. LIVESAY:

Q Can you see this, Mr. Brown?

A Yes, ma'am, I can see.

(Video plays.)

MS. LIVESAY: Just a little bit, if you don't mind.

(Video plays.)

MS. LIVESAY: I'm sorry. Go ahead and hit that.

BY MS. LIVESAY:

Q Do you recognize those two cars that just passed by?

A Yes, ma'am.

Q Is that y'all behind the victims on Wayside Drive?

A Yes, ma'am.

Q And was it still daylight?

A Yes, ma'am.

Q And is that time correct? Was it around 7:11 p.m.?

A Yes, ma'am.

Q Okay. So around 6:30, y'all are borrowing the car;

is that correct?
A Yes, ma'am.
Q And y'all are behind them on Wayside Drive by 7:11; is that correct?
A Yes, ma'am.
Q And you were back at the apartments after dropping everybody off before 9:00?
A Yes, ma'am.
And when you say, "Y'all borrowed the car," no one borrowed the car but Tronahz. We just got a ride. We didn't borrow the car. We had -- we didn't even know he was given the car.
Q Okay. So who --
A So he borrowed the car. Tronahz borrowed the car. We didn't borrow the car.
Q Okay. But you got in the car.
A Correct.
Q Okay. And everybody else got in the car.
A Correct.
Q Okay. Was anybody forced to get in the car?
A No, ma'am.
Q Okay. Okay. And you have already said that five of you had a gun; is that correct? I'm sorry. Four of you. You, Tronahz, Che, and Mikkie?
A Correct.

Q Okay. And did you have the gun when you got in the car?

A Correct.

Q Did everybody else have their gun when they got in the car?

A Correct.

Q Okay. So everybody gets in the car. You're saying now four have a gun?

A Correct.

Q Okay. You get in. At some point, the Tahoe was spotted; correct?

A Yes, ma'am.

Q Okay. And at some point, y'all get in behind the Tahoe; correct?

A Yes, ma'am.

Q Okay. Now, supposedly, you're on the way to somebody's mama's house; right?

A Tronahz's mother's house.

Q And at some point, you take a right off Wayside to get on D Street; correct?

A Yes, ma'am.

Q And y'all are staying right in behind the victim's house --

A Yes, ma'am.

Q -- the victim's car; correct?

A Yes, ma'am.
Q Okay. And the truth is, if you kept going straight, you'd be able to get to Tronahz's mama's house?
A Both ways will get us to Tronahz's mama's house.
Q Okay. But y'all decided to take a right and keep on behind the Tahoe; correct?
A Correct.
Q Okay. So what is the plan?
A Well, honestly, it wasn't really a plan. We didn't really have a group discussion of what may happen. It wasn't no plan. It was just -- it just happened. It just happened. It was never a group discussion or a plan from the start.
Q Now, at one time did you tell the police that a robbery was discussed --
MR. GARDNER: Objection, Your Honor.
BY MS. LIVESAY:
Q -- prior to stopping the car?
MR. GARDNER: This is her witness. She's impeaching her own witness.
THE COURT: I'm going to allow it.
Go ahead.
A Correct. Tronahz did state he wanted to rob the car. Nobody else made a discussion about a robbery but Tronahz.

BY MS. LIVESAY:

Q Okay. But the idea was brought up?

A Correct.

Q Okay. And, at some point, y'all passed the Tahoe; is that right?

A Correct.

Q Okay. And you are able to see into the Tahoe?

A Correct.

Q Okay.

MR. BOUCHETTE: Objection to the leading of the witness, Your Honor. We have been giving some leeway up to this point. She's been leading now for an extended period of time.

THE COURT: All right. Let's don't lead.

BY MS. LIVESAY:

Q At some point, does your -- the car you're in cut the Tahoe off?

A Yes, ma'am.

Q And could the Tahoe go anywhere?

A No, ma'am.

Q Okay. So you had the Tahoe trapped in, the car did?

A Yes, ma'am.

Q Now, more than just Tronahz got out of the car?

A Correct.

Q How many people are you saying today got out of the

car?
A Three people. Three people.
Q Okay. At least three people?
A Correct.
Q So who are you saying today got out of the car?
A The same people I said when I got picked up three years ago. Tronahz got out of the car. Che Ransom got out of the car. Mikkie McLeod got out of the car. Travontae stepped out of the car and quickly got back in, so I guess you could count that as getting out of the car.
Q Now --
A I also leaned my head out of the car.
Q How many people fired?
A Three people.
Q Three people fired?
A Correct.
Q Okay. And so we should find three different shell casings; correct?
A Correct.
Q Okay. Okay. And what is the car doing while everybody is outside firing?
A Still there.
Q Just sitting there?
A Yes, ma'am.
Q And do you see when the Tahoe ultimately stops?

A Yes, ma'am.

Q Okay. And once the Tahoe ultimately stops, what does everybody in your car do?

A Everybody -- I mean, everybody -- like I said, three people got out. Travontae stepped out and got back in. Don didn't even get out of the car, so...

That's the status of everybody.

Q So once the Tahoe stopped, did everybody get back in the car?

A When the Tahoe stops?

Q Yes. Did you see ultimately when the Tahoe stopped, quit moving?

A Yes, ma'am. He stopped at a stop sign. He was at a stop sign.

Q Okay. And, at that point, did Tronahz and the people in the back get back in the car?

A When he stopped? They wasn't out the car until -- he was already stopped before they got out of the car. The Tahoe was at a stop sign before they even stepped out of the car.

Q How about your car?

A No.

Q After the shooting, did people get back in the car?

A Yes, ma'am.

Q Okay. And then did the car take off?

A Correct.
Q Okay. So when the people get out of the car, start firing at the Tahoe, it's not like Quan takes off and leaves anybody; correct?
A Correct.
Q He's sitting there waiting?
A Correct.
Q And when people get back in the car, he takes off?
A Yes, ma'am.
Q Now, how long does the shooting last?
A A couple of seconds.
Q Quick?
A Yes, ma'am.
Q Okay. During the shooting, at any point, do you see the Tahoe moving?
A Well, he did drive back up. I think the car, like, kind of jerked a little bit.
Q Okay. So, at some point, the Tahoe is trying to move back up?
A Correct.
Q Okay. Now, you have said kind of two little different things, and I want to make sure we're clear. Okay?
A Okay.
Q And I could have misheard it. You know, I'm trying

to keep up with you.

When I asked you a minute ago about people getting out of the car, you said Travontae hopped out and then hopped back in; is that correct?

A Correct.

Q Okay. So is your testimony today that Travontae hopped out and then hopped back in?

A Yes. He stepped out and stepped back in the car.

Q Okay. So did everybody in the back at some point get out of the car?

A Yes, until the shooting.

Q Did, at some point, Che get out of the car?

A Yes, ma'am.

Q And, at some point, did Travontae jump out and then jump back in the car?

A Correct.

Q And did Mikkie McLeod get out of the car and then get back in the car?

A After the shooting, he got back in, correct.

Q And did Tronahz get out of the car and get back in the car?

A Correct.

Q Okay. So a total of -- let me -- and you correct me if I'm wrong; I'm trying to make sure I'm getting the right information. So when y'all cut that Tahoe off --

A Yes, ma'am.
Q -- a total of one person jumps out of the front, and that's Tronahz Whittington?
A Correct.
Q Okay. And a total of three people jump out the back?
A Correct.
Q Now, what did Tronahz say before jumping out of the car?
A He didn't say anything before he jumped out the car. He just jumped out.
Q He just jumped out?
A Correct.
Q Okay. He didn't say nothing to you?
A No. Not before.
Q Okay. He just -- the car pulls in front of the Tahoe --
A And he just gets out.
Q -- and he just jumps out?
A Correct.
Q Okay. And he don't say nothing to you?
A No, ma'am.
Q He don't say nothing to Don Brown?
A No. He just told Don Brown to stop the car. That's all he did, told Don Brown to stop the car.

Q And that was after the shooting?
A No, that was before the shooting.
Q Before the shooting he said what?
A He told him to stop the car.
Q Okay. Did he say anything else to him?
A No, ma'am.
Q Okay. Did he say anything to Che Ransom?
A No, ma'am.
Q Did he say anything to your brother Travontae Mitchell?
A No, ma'am.
Q Did he say anything to Mikkie McLeod?
A No, ma'am.
Q Okay. So he jumps out, and he never says, "Hey, you better get out of the car"?
A No, ma'am. Never said that.
Q Okay. And then the three in the back file out?
A Correct.
Q Okay. So he didn't threaten anybody in the car?
A No, ma'am.
Q Okay. So whoever got out, got out on their own free will?
A Correct.
Q And he didn't threaten to kill Don Brown?
A No, ma'am.

Q Okay. Okay. And when everybody gets back in the car and y'all drive off, where do you drive to?
A To Tronahz's friend's house closer to his mom's house on the back road. Ashlyn Estates, a trailer park.
Q Okay. Okay. And when you were there, what happens?
A Well, when I get there, Tronahz went in the house and came out with his friend and then told everybody else to come in. I called my baby mother to come get me from Brown Swamp. Come get me and my little brother, actually. I told her that, when she got to the store -- the gas station, Henry's, to call on the phone so I can direct her there because I didn't really know how to explain it without directing her there. And I saw a whole bunch of police. They already had the other road blocked off, so I had to direct her to the house.
Q So you have to give her directions to how to you get to y'all because all the police and everything are up there?
A Yes, and I didn't know any other way. I didn't know the road name or how to get there without directing her to it, without directing her there. I didn't know how to tell her how to get there without actually directing her the whole way after Henry's.
Q Okay. So let me ask you something: I'm showing you now State's 16. This area up here, are you familiar with

this area?

A Yes, ma'am.

Q Okay. Now, where did the shooting happen?

A D Street and Rose Moss.

Q If you don't mind, stand up and describe and point it out to us.

A (Indicating).

Q Okay. And then where did y'all go after the shooting?

A (Indicating).

Q Okay. So really right around the corner?

A Yes, ma'am.

Q And could you hear the sirens?

A Yes, ma'am.

Q And who all got in the car with Sarah Hemingway to get a ride away from the area?

A Me, Travontae, Che, Mikkie, and Don.

Q So everybody other than --

A Tronahz, yes, ma'am.

Q Okay. Okay. And the black van is the van that we saw on the video earlier?

A Correct.

Q But when we saw the video, Mikkie and Don and Che had already been dropped off?

A Yes, ma'am.

Q Okay. And where were they dropped off?
A Crabtree Apartments.
Q Okay. Okay. Now, the three boys sitting at that table --
A Yes, ma'am.
Q -- who are they?
A Don Brown, Travontae, and Che.
Q And these are the boys, correct, that were in the car with you that day?
A Correct.
Q Okay. And that's the Don Brown that was driving that cut the Tahoe off?
A Correct.
Q And that's the Travontae and Che that hopped out the back?
A Correct.
Q Now, you are here testifying. Have you been promised anything from myself or anybody at the solicitor's office?
A No, ma'am.
Q Have any of your charges been dismissed?
A No, ma'am.
Q Have you received any kind of plea offer on any of the charges?
A No, ma'am.

Q Okay. And do you have an attorney?
A Yes, ma'am.
Q Okay. And have you ever spoken with me or anybody from the solicitor's office without your attorney present?
A No, ma'am.
Q And did you talk to the police at some point?
A Yes, ma'am.
Q Okay. And did you tell the police what you're telling us?
A Three years ago when I first got picked up, the exact same statement I'm giving now.
Q And do you expect anything at all in return for your testimony?
A Leniency.
Q That's what you're hoping for?
A Yes, ma'am.
Q But has anybody promised it to you?
A No, ma'am.
Q Mr. Graham, before I sit down, I want to make sure what I wrote on that other pad is correct. Okay?
A Yes, ma'am.
Q So I want you to take a look at it and you tell me. Is this where the -- this is the steering wheel, so this is driver's side, this is the passenger side. Is this correct as to how you testified as to everyone's location

in the vehicle?

A Yes, ma'am.

MS. LIVESAY: Your Honor, at this time, the State wishes to mark this and enter it into evidence.

THE COURT: Mr. Bouchette?

MR. BOUCHETTE: Oh sorry, Your Honor.

THE COURT: Any objection?

MR. BOUCHETTE: No objection.

MR. PINKERTON: No objection, Your Honor.

MR. GARDNER: No objection, Your Honor.

THE COURT: All right. How is it going to be marked?

COURT REPORTER: State's No. 54.

THE COURT: State's No. 54, admitted into evidence without objection.

(State's Exhibit No. 54, Enlarged Chart, was marked for identification and received into evidence.)

MS. LIVESAY: One second, Judge, please.

No further questions, Your Honor. We're going to move all this stuff.

THE COURT: All right. Mr. Bouchette, cross-examination?

MR. BOUCHETTE: Your Honor, in full disclosure, given the length of the witness's testimony, I'm not sure how long cross-examination may extend. This might be a

good breaking point for the day if the Court's agreeable to it.

THE COURT: All right. Any objection from the State for going ahead and recessing for the day?

MS. LIVESAY: Can we approach just one second?

THE COURT: All right.

BENCH CONFERENCE

(The following bench conference was held outside the hearing of the jury and others:)

MS. LIVESAY: I have no objection, but let me just tell y'all, I have no control over this man.

THE COURT: That's exactly right. And he may go out and he may discuss everything.

MS. LIVESAY: I'm just saying, I have no control over him. I don't know who that woman was walking back there.

THE COURT: I understand that.

MR. BOUCHETTE: All things being equal.

THE COURT: Do you want to cross-examine him first or break for the day?

MR. BOUCHETTE: I'd rather still do him in the morning, and plus I have a -- I represent the Town of Surfside Beach. I have a meeting later on this evening, so I'd like to --

THE COURT: Well, that's fine. And I don't mind

breaking for the day, but you're doing so -- I'll tell him not to discuss his testimony.

MR. BOUCHETTE: Yes, sir. I understand.

THE COURT: But if it's out of control, that's just a chance you're taking.

MR. BOUCHETTE: Yeah, I understand.

(Open court resumes:)

THE COURT: All right. Any objection from the State?

MR. HELMS: No, Your Honor.

THE COURT: Mr. Pinkerton, any objection?

MR. PINKERTON: No, Your Honor.

THE COURT: Mr. Gardner, any objection?

MR. GARDNER: No, sir. No objection.

THE COURT: All right. Ladies and gentlemen, we're going to go ahead and recess for the evening. I'm going to ask tomorrow that you please be back again at 9:00.

Do not discuss the case. Do not conduct any independent investigations. I hope everybody has a good evening, and we'll see you back at 9:00 tomorrow morning. Thank you very much.

(The jury exited the courtroom at 5:18 p.m.)

THE COURT: Mr. Graham, we're still in the middle of your testimony, so the law says you cannot discuss your testimony or anything about this case with anyone. You

cannot discuss it with any friends. You cannot discuss it with any family members. You cannot discuss it with the State's attorney, the defense attorneys, the defendants, or anyone. You cannot talk about this case over tonight with anyone. Do you understand that?

THE WITNESS: Yes, sir.

THE COURT: All right. If you do discuss it with anyone and if the Court finds out that you discussed it with anyone, you are subject to being held in contempt. And if you're held in contempt, I could sentence you to a year in prison, fine you $1,500, and/or subject you to 300 hours of community service. Do you understand that?

THE WITNESS: Yes, sir.

THE COURT: The best thing is do not discuss this case with anyone at all until you take the stand again tomorrow. Do you understand that?

THE WITNESS: Yes, Your Honor.

THE COURT: Anything further from the State?

MR. HELMS: Yes, Your Honor.

THE COURT: All right.

MR. HELMS: As the Court is well aware, this witness is the brother of one of the defendants on trial. They have constant communication with each from the jail. I would like and I would ask, respectfully, that they be instructed that not occur tonight.

THE COURT: Yeah. You are to have no contact with anybody -- any defendants or any witnesses involved in this case. Okay?

THE WITNESS: Yes, sir.

THE COURT: All right. Anything further from the State?

MR. HELMS: Mr. Gardner had an issue.

MR. GARDNER: I have an issue.

(Counsel conferring off the record.)

MR. GARDNER: Since the jury has been sworn, my client is on an ankle monitor. He's not missed any court. He doesn't have any problems showing up. I have met with him many times in preparation. I still need to meet with him a couple more times, and I would respectfully ask the Court that he stay out until the end of the trial.

THE COURT: State's position?

MR. HELMS: I don't have any grounds to object. I don't have any grounds.

THE COURT: And who is -- this is --

MR. HELMS: Don Brown.

MR. GARDNER: He's on a house arrest ankle monitor.

THE COURT: All right. So he remains on ankle monitor. And I'm assuming he was out on bond?

MR. GARDNER: Yes, sir.

THE COURT: Oh, okay. And since we have started --

MR. GARDNER: Since we've started and sworn the jury, I just wanted to bring it to your attention.

MR. HELMS: My biggest concern, Your Honor, in all honesty, would be appearing for trial.

MR. GARDNER: Yeah, he's been here.

THE COURT: All right. I'll allow him to stay out.

MR. GARDNER: Thank you, Judge.

Thank you, Solicitor.

THE COURT: Anything, Mr. Bouchette, before we recess?

MR. BOUCHETTE: No, sir.

THE COURT: Mr. Pinkerton, anything before we recess?

MR. PINKERTON: No, Your Honor.

THE COURT: Anything else from the State before we recess?

MS. LIVESAY: No, sir.

THE COURT: All right. So we'll go ahead and we'll stand in recess. I'll take the bench at 9:15 tomorrow morning. Thank you very much.

(The trial adjourned for the day at 5:21 p.m.)

WEDNESDAY, MAY 24, 2023

(The trial resumed at 9:20 a.m.)

THE COURT: Anything from the State before we bring the jury in?

MS. LIVESAY: No, sir.

THE COURT: All right. Can we move these over? I can't see the defense.

MR. HELMS: Yes, Your Honor. Of course.

THE COURT: All right. Mr. Bouchette, anything before we bring the jury?

MOTIONS/MATTERS OF LAW

MR. BOUCHETTE: Your Honor, I don't have anything. Just for planning purposes, it seems like we're going in the same pattern as we did in the last trial. I would just remind the Court and request that, before we get any witnesses, that we discuss testimony with -- codefendants, that I may have my Crawford motion heard. But I don't know when they're going to call those witnesses and what the scheduling plan is, but I just wanted to remind the Court of that.

THE COURT: Okay. Well, and I'll be honest with you. I have gone back and I've read Crawford, and Crawford was a totally different issue. Crawford -- I mean, this is a Bruton issue. Crawford dealt with you had hearsay -- whether or not an out-of-court statement --

MR. BOUCHETTE: Correct.

THE COURT: -- that was a hearsay exception because it was an excited utterance, whether or not that violated the defendant's confrontation clause.

MR. BOUCHETTE: Correct.

THE COURT: It was not a codefendant's statement. I think Bruton is the one that's right on point here. They can use a codefendant's statement as long as it is redacted to where it does not implicate any of the other codefendants.

MR. BOUCHETTE: Is that the Court's ruling now or would you like to, when they call that witness, go through it at that time.

THE COURT: Well, I mean, I have gone back and read Crawford, and I made the ruling last time and you said that Crawford applied, and so, I went back and reread it, and it doesn't apply, in my opinion.

MR. BOUCHETTE: With regard to the Court's reason, we'd like to put on the record State v. Mitchell, that South Carolina case that dealt with the codefendant's testimony in a case. Again, not arguing with the Court's ruling.

THE COURT: But what I'm saying is, is if it doesn't implicate your client -- if there is nothing in the statement that implicates your client or whatever implicates your client in the statement has been redacted, then there's no confrontation problem.

MR. BOUCHETTE: I mean --

THE COURT: How can your client -- how can there be

a violation of your client's right to confront his accuser when there's nothing in the statement that accuses him?

MR. BOUCHETTE: Well, Crawford doesn't draw as much of a distinction about it having to be prejudicial and be incriminating. Crawford just says if it's testimonial. If it falls in that testimonial category and has the right to cross-examine him, then it triggers it. If it's not in testimony, then we go into the Bruton.

THE COURT: But, in Crawford, it was still a confrontation problem because the out-of-court statement implicated the defendant. Here, the out-of-court statement is not going to implicate your client.

MR. BOUCHETTE: I certainly understand the Court's ruling. I'm not arguing with it, but as I read Crawford, I think you don't have to go through necessarily the implication if he is testifying in a testimonial capacity about anything relevant in this case, then we don't have to a right to cross-examine him about anything he says because he's taking the Fifth. Therefore, that category of statements -- police interrogations -- then that's what Crawford says, even if it's not -- you don't go through the prejudice analysis, that it's not admissible.

THE COURT: But how does that violate your client's constitutional right to confront his accuser when the statement is not accusing? There's no prejudice to your

client created by the statement. It doesn't say he did it. Everything's been redacted. It's no evidence of guilt against your client.

MR. BOUCHETTE: But it's still a witness against the client. And so if the witness is providing whatever testimony is favorable to the State, which presumably it will be favorable to the State or they wouldn't be introducing it, that that is what we then don't have a right to cross-examine.

THE COURT: Well, I mean, I'm sure it's going to be prejudicial to the defendant that made the statement because they can use it as a confession or whatever. They're entitled to do that as long as -- Bruton just says that, if they do that, they have to make sure that it does not violate a codefendant's right to confront an accuser. That's why you have to redact any reference to the codefendant.

I mean, it used to say it was just by name and then it went to now you can't even say another person. You can't do anything that implicates another person sitting there at the defendant's table, is the way I read it.

I mean, I understand your argument. I disagree with it, because I don't know that your client's constitutional right to confront an accuser is violated -- the statement being introduced is nothing -- no evidence against your

client. It doesn't implicate your client in any way.

MR. BOUCHETTE: Well, I certainly understand the Court's ruling. I'll renew it at the appropriate time, but I presume that, if we are proceeding under the Bruton redaction, we're going to have some kind of hearing that's going to figure out where we -- or at least have a statement showing this is what they intend to introduce in advance of the actual showing.

THE COURT: I mean, is that what y'all -- are we going to do that, play the statement first so the Court can ensure that it doesn't violate Bruton?

MS. LIVESAY: We're not going to play the statement just for that purpose. We're not going to use any recording. We are only going to use the testimony of the officer to ensure that there are no Bruton issues.

We have already discussed with the officer -- one officer -- well, actually two, because two different people questioned one of the defendants. They will only testify as to that one defendant, and we're calling a separate investigator to testify to the statement as to the other defendant. So there's no crossover at all.

So two will come in and say, "Hey, I just talked to Travontae Mitchell. This is what Travontae told me he did." That will be over. And then we will call a separate investigator that will say, "Hey, I talked to Che

Ransom. This is what Che told me he did." And that will be it.

MR. BOUCHETTE: We'll just cross him -- my concern, as I'm thinking out loud, is that, if they do that, Mr. Gardner, for example, elicits testimony from the officer that says -- as an example, I heard Officer Jones in regards to Mr. Mitchell. He took certain actions. He did that based on the information that was provided to him about Che Ransom. And what was the information Che Ransom gave you that made you take these actions?

Now, that's a statement that gets elicited on cross-examination, which he's entitled to do, which may very well implicate Mr. Ransom.

THE COURT: I don't know. We'll have to wait and see. I mean, there are a million possibilities out there but that doesn't make it inadmissible. I mean, if they violate the rules -- if they violate Bruton, you'll be entitled to a mistrial -- okay? -- if it's unduly prejudicial to your client. But I'm not going to rule that a statement that is clearly admissible under the Rules of Evidence and under Bruton is not going to be admitted because you think they might exceed Bruton. All right?

MR. BOUCHETTE: Thank you, Judge.

THE COURT: All right. Mr. Pinkerton, anything

further?

MR. PINKERTON: Your Honor, on behalf of Shamontae Graham, we just join Mr. Bouchette on that objection.

THE COURT: All right. And Mr. Gardner?

MR. GARDNER: Thank you, Your Honor. I have three matters I need to take up with you, if I may.

THE COURT: All right.

MR. GARDNER: First of all, for impeachment purposes, we would like the criminal record of the defendant -- the criminal defendant that testified or is about to be cross-examined.

THE COURT: All right. Do you have his criminal record?

MR. HELMS: Yes, sir.

THE COURT: Mr. Graham's criminal record.

(Counsel conferring off the record.)

MR. GARDNER: On the record, Your Honor, I'm sorry. The solicitor has shared with me what appears to be the NCIC criminal history information of the witness, Shamontae Graham, and it looks like he has a conviction of unlawful carrying of a weapon, and that's a misdemeanor. It carries up to --

MR. HELMS: A year.

MR. GARDNER: -- one year.

THE COURT: And when was that from?

MR. GARDNER: That is from --

MR. HELMS: 2020.

MR. GARDNER: -- 2020.

THE COURT: Okay. You can use that to impeach him.

MR. HELMS: Your Honor, with respect, the rule says if it doesn't carry over a year, it can't be used.

THE COURT: Oh, is it over a year?

MR. HELMS: Yes.

THE COURT: Okay. Well, then, if that's what the rule says, then that's what it says, unless it's a crime of moral turpitude.

MR. GARDNER: And I don't see anything else on there. I'll let y'all look at it.

Thank you, Solicitor.

Thank you, Your Honor.

No. 2, Your Honor, yesterday during the redirect of Jacob Hill, the question was posed to the witness by the solicitor that "Mr. Gardner asked you a certain question," and I wasn't able to -- because of the procedures on recross, I wasn't able to address that, but I did address it at the bench, and you said I could put it on the record later.

There's a dispute over what that testimony was. I think it's critical. We had a similar issue in a trial that we did -- it seems like yesterday but it was probably

last year. I believe you might have been the judge. It was a three-week-long trial.

And the court reporter on her own said, "I can produce the statement of what the witness said and email it to the State and to the defense." I would ask, as a remedy to this issue, that if the court reporter could provide the State and the defense with this transcript of the direct -- I'm sorry, let me rephrase -- of my cross-examination of Jacob Hill and the solicitor's redirect.

THE COURT: What is it you're saying they elicited that was incorrect?

MR. GARDNER: She said, "Mr. Gardner asked you" -- let me find it; I had it tabbed. "Mr. Gardner asked you if you saw Don Brown," and he said yes, that he did ask you that.

I don't believe I asked that question because why would I? Because nobody saw Don Brown. Don Brown is the alleged driver. He didn't get out. Why would I ask that and why would the solicitor ask that?

THE COURT: Well, based upon you're saying you don't remember that, I'm not going to require --

MR. GARDNER: Well, I think what's important, Your Honor, is the witness said I did, so that's what the jury just heard. And they didn't get a chance to hear me

recross on that one issue.

THE COURT: Are you saying that you didn't say that?

MR. GARDNER: I'm saying I didn't say that. Why would I, Your Honor?

THE COURT: Well, I don't remember whether you said it or not. It's going to be up to the jury to remember what you said.

MR. GARDNER: And I think the transcript would clear it up, and if the transcript says I said it, my apologies to everybody and it's a moot point. If the transcript says that he said it, then I'll at least be able to use it in my closing.

THE COURT: Well, I don't think you can use it in your closing anyway. If you're saying you didn't say it, then, in your closing, just say you didn't say that.

MR. GARDNER: Okay. That's the Court's ruling?

THE COURT: They're going to say you did say it, and it's going to be up to the jury to recall what you actually said.

MR. GARDNER: Very well, Your Honor. Thank you.

The next one is just as serious as those two are, not more serious but as serious. There's been an allegation or at least -- maybe "allegation" is not the correct word, but we've had difficulties with this jury all week long, and my client has brought to the sheriff's

attention that -- and I don't know which juror it was, but the jurors on two occasions made some type of gesture or eye contact or something with one of the witnesses that testified yesterday.

I don't know if it's just a "hey, how are you" or if it's they know each other or they're making a connection. But this is a murder trial, and I thought I would bring it to the Court's attention, especially in light of the fact that we have had prior issues with this jury.

THE COURT: So what did the juror do?

MR. GARDNER: Where is Mr. Hargrove?

I can have my client say what he --

Stand up. What exactly did the juror do?

DEFENDANT BROWN: (Inaudible; talking to Mr. Gardner.)

THE COURT: I didn't hear him.

MR. GARDNER: You have to say it --

DEFENDANT BROWN: He looked at him in the eye.

THE COURT: He looked at him in the eye? Okay. Jurors often look at witnesses in the eye.

All right. Anything else?

MR. GARDNER: How many times did he do it?

DEFENDANT BROWN: He did it to him, and then when he was walking out.

MR. GARDNER: One time or two times?

DEFENDANT BROWN: When he was walking up.

MR. GARDNER: When he was walking one time or walking out more than one time?

DEFENDANT BROWN: One time.

MR. GARDNER: Just one time?

THE COURT: Jurors are supposed to observe the witnesses. They're supposed to look at them.

MR. GARDNER: I think what my client is concerned about, Your Honor, is when they're walking out, they've been dismissed for the day and they're walking out, and he gives him the nod as he's walking out.

THE COURT: Well, he didn't say he gave him a nod. All I heard him say is that he looked at the witness.

MR. GARDNER: All right.

(Counsel conferring with Defendant Brown off the record.)

DEFENDANT BROWN: It was a nod, sir.

THE COURT: What did he do?

DEFENDANT BROWN: When he was walking out and they was going out, he just nod at him, and Jacob Hill was just smiling.

THE COURT: All right. I don't think that's sufficient.

MR. GARDNER: Thank you, Judge. Thank you.

THE COURT: All right. Anything else?

MR. GARDNER: Oh, and for the record, we would join with any objections and motions made by the other two lawyers for the defense.

THE COURT: All right. Let's bring the jury in.

MS. LIVESAY: Do you want Mr. Graham on the bench?

THE COURT: No, when the jury gets back in, I'll recall him and put him under oath again, and then we'll start with cross-examination.

MR. PINKERTON: Your Honor, before the jury comes in --

THE COURT: Hold for a second. Hold them up.

MR. PINKERTON: I would join Mr. Gardner on his objection.

THE COURT: Do what? I'm sorry; say that again.

MR. PINKERTON: I would join with Mr. Gardner on his objection with the juror for the record.

THE COURT: All right. So what is it you're asking me to do?

MR. PINKERTON: Your Honor, we would like the juror questioned if he knows Jacob Hill, if he has any contact with Jacob Hill, any personal relationship with Jacob Hill, because it seems he does seem to know one of the victims in this case, Your Honor, according to Mr. Gardner's --

THE COURT: Because he looked at the witness and

nodded?

MR. PINKERTON: Yes, Your Honor. I would just join him on that motion.

THE COURT: All right. I don't think that's sufficient.

All right. Anything else from the defense before we bring the jury in?

MR. BOUCHETTE: No, sir.

THE COURT: Anything from the State before we bring the jury in?

MS. LIVESAY: No, sir.

THE COURT: All right. Let's bring the jury in.

(The jury entered the courtroom at 9:38 a.m.)

THE COURT: Ladies and gentlemen, welcome back. I hope everybody had a good evening. Again, I want to thank you for being so prompt this morning. That's of great assistance to the Court. We're now ready to resume the trial of the case.

I'm going to ask, Mr. Graham, if you would come back up and take the stand.

Let's put him under oath again.

THE CLERK: Please raise your right hand and place your left hand on the Bible.

SHAMONTAE GRAHAM

after having been duly sworn, was examined and

testified to as follows:

THE CLERK: If you'd state your name and spell it for the Court.

THE WITNESS: My name is Shamontae Graham. S-h-a-m-o-n-t-a-e G-r-a-h-a-m.

THE COURT: All right, Mr. Bouchette. Cross-examination.

MR. BOUCHETTE: Thank you, Your Honor.

CROSS-EXAMINATION ON BEHALF OF DEFENDANT RANSOM

BY MR. BOUCHETTE:

Q Mr. Graham, good morning, sir.

A Good morning.

Q Let me start off a little bit from your testimony yesterday. If I understood you, your testimony, both yesterday and in prior trials, was that you saw the fatal shot to Mr. Johnson; is that correct?

A Yes, sir.

Q Okay. You were standing nearby when Mr. Whittington fired the shot from the AR-15?

A No, sir. I wasn't standing by. I was sitting in the car.

Q You were in the car. But you saw the shot from Mr. Whittington; correct?

A Yes, sir.

Q You saw it hit the windshield?

A Yes, sir.

Q You saw -- I believe your testimony is that you saw blood?

A Blood spatter.

Q Blood spatter. Okay.

And you were watching the whole time?

A Not the whole time.

Q Let me rephrase that. From the time the bullet shot until the time you saw the blood spatter, you were watching that entire series of events?

A Yes, sir.

Q And you're confident that that was the kill shot?

A Yes, sir.

Q You're certain about that?

A Most definitely.

Q All right. Now, obviously, you didn't fire that shot?

A Of course not.

Q And Che Ransom didn't fire that shot?

A Of course not.

Q Now, when the day began back in September of 2022, did you have any plans of getting in any altercation or have any kind of issue with Mr. Johnson?

A 2022, I was in --

Q Excuse me, I apologize. 2020, when the incident

occurred.

A Did I have any problem with Mr. Johnson?

Q Correct.

A No, sir.

Q Okay. And that's what I'm saying. When the day began, was there anything -- any contemplation in your mind about getting into any kind of altercation with Mr. Johnson?

A No, sir.

Q All right. And as far as you know, did Che Ransom have any --

A No, sir.

Q Okay. All right. When you got in the car with Mr. Whittington, did you have any plan or desire to get into any kind of altercation with Mr. Johnson?

A No, sir.

Q To your knowledge, did Che Ransom have any beef or plan to get into any kind of alteration with Mr. Johnson?

A No, sir.

MS. LIVESAY: Your Honor, I'd object. That's going to call for speculation as to whether or not another person in the car had a plan --

THE COURT: He said to his knowledge. I'll allow it.

Overruled. Go ahead.

BY MR. BOUCHETTE:

Q At any point in time prior -- well, let me ask you this: During the drive on the way towards D Street, prior to Tronahz Whittington identifying the squatted Tahoe as being that of Jamie Johnson, did you have any plan to get into an altercation or have any issue with Mr. Johnson?

A No, sir.

Q To the best of your knowledge, did Che Ransom?

A No, sir.

Q In fact, nobody other than Tronahz Whittington was able to point out or even identify Mr. Johnson's car; correct?

A Nobody --

Q At least to the best of your knowledge.

A Not really. Tronahz really knew the car and the person. He knew exactly who it was. So, I mean, I didn't know. I never saw the car before.

Q And, to the best of your knowledge, Che Ransom didn't?

A No.

Q Okay. And that's no, he didn't?

A No, he didn't.

Q Okay. Very good.

Now, you didn't provide the vehicle for Mr. Whittington?

A No, sir.
Q Che Ransom didn't provide the vehicle for Mr. Whittington?
A No, sir.
Q You didn't drive the vehicle?
A No, sir.
Q Che Ransom didn't drive the vehicle?
A No, sir.
Q You didn't supply Tronahz Whittington in advance of this incident with the AR-15 that he used to shoot, did you?
A No, sir.
Q Che Ransom didn't?
A No, sir.
Q You didn't dispose of Tronahz Whittington's weapon, did you?
A No, sir.
Q Che Ransom didn't, did he?
A No, sir.
Q Do you know who did?
A No, sir.
Q You didn't provide any sort of advance information or intelligence regarding where Mr. Johnson may be on that day, did you?
A No, sir.

Q To the best of your knowledge, Che Ransom didn't, did he?

A No, sir.

Q Now, when Mr. Whittington identifies Jamie's truck, how long was it before he ultimately got out of the car and opened fire?

A A minute or two minutes. A minute and a half down the road. 60 seconds. 75 seconds.

Q All right. So let's talk about it. So within -- you agree fairly quickly?

A Yes, sir.

Q Between 60 and 75 seconds, he made the decision to spontaneously get out of the car and fire at Mr. Whittington -- or, excuse me, at Mr. Johnson; is that correct?

A Correct.

Q Mr. Graham, you would agree with me those are the actions of somebody who would be classified as a cold-blooded killer; wouldn't you agree?

A Correct.

Q And after it was over, you didn't want him riding with you and your child's mother, did you?

A No, sir.

Q You didn't want that cold-blooded killer riding in the vehicle with you after what you had just seen, did

you?
A No, sir.
Q Was Che Ransom in the vehicle whenever you got in the car with your child's mother?
A Yes, sir.
Q You weren't worried about Che Ransom, were you?
A No, sir.
Q Because he wasn't a cold-blooded killer like Tronahz Whittington, was he?
MR. HELMS: Objection. Argumentative.
THE COURT: Overruled.
A No, sir.
BY MR. BOUCHETTE:
Q That's why you were comfortable with him getting in the car, but you didn't want Tronahz to get in; correct?
A Correct.
Q Now, obviously, you and Che are associated or riding with Mr. Whittington on this day back in September of 2020. How did you know Mr. Whittington?
A We grew up with him, juveniles, play together back in the day.
Q Y'all just basically grew up together in the neighborhood, that kind of thing?
A Yes, sir.
Q Now, to be fair to the jury, I mean, you knew in

advance of this incident that Mr. Whittington was no angel; correct?

A That's correct.

Q Would that be a safe way to say it? He's had run-ins with the law and that kind of thing?

A Correct.

Q All right. But was there anything in your mind at the time of this incident that he would have been capable of something like this, that he was that much of a cold-blooded killer?

A No, never. Not for him to just kill somebody, no, sir.

Q To the best of your knowledge, would that have been something Che Ransom would have been aware of?

A No, sir.

Q No, he wouldn't have?

A No, he wouldn't have.

Q Okay. All right. Very good.

So, for purposes of this jury, you might not be able to place themselves in a situation like you-all found yourselves in back in September of 2020 in, you know, the community you grew up in and the environment you're in. It's entirely possible for somebody, with no desire to commit a murder or have any bad acts, to find themselves in a vehicle with a cold-blooded killer --

MS. LIVESAY: Your Honor, I'll have to object.

THE COURT: Hold for a second. We have got an objection.

When she raises an objection, stop your question.

MR. BOUCHETTE: I didn't hear the objection, Your Honor.

MS. LIVESAY: At this point, Mr. Bouchette is testifying.

THE COURT: Sustained. Don't testify.

BY MR. BOUCHETTE:

Q Let me ask it this way: Would you agree that it would be entirely possible or is entirely possible, based on your experience, for somebody to be in a vehicle with Mr. Whittington with no preplanned malice or plans to commit a murder?

A Correct.

Q Okay. Because that was the case with you; correct?

A Yes, sir.

Q To the best of your knowledge, that was the case with Mr. Ransom?

A Yes, sir.

Q I want to discuss one other issue that the jury might be struggling with. When you were in the vehicle, with no plan to commit a murder, you had a weapon still; correct?

A Correct.
Q And it was a MAC-10; right?
A MAC-11.
Q MAC-11. I'm sorry.
So, I mean, Mr. Graham, that's a pretty serious weapon. Are guns fairly common in your circle, in your community, and the people you associate with?
A No, sir. Me, with the world today -- I was 19. I was unlawfully carrying, not with the intent just to hurt anyone but to protect myself.
Q Okay. Well, when you say to protect yourself, what were you protecting yourself from?
A Anything. Getting robbed, getting harmed. You know, just the world today. The place I live in, it's kind of rough in the area. And I have been attacked before, so I just wanted to prevent that from happening.
Q You have been robbed or attacked in your neighborhood?
A No. I have been shot at before though.
Q Okay. All right. And your brother --
A And with my family, at that.
Q So you had a MAC-11 for purposes of self-protection?
A Yes, sir.
Q And your brother had a gun too; correct?
A I'm not sure if my brother had a gun or not.

Q Well, didn't you say your brother had a handgun?
A I don't recall saying that he had a handgun.
Q Have you testified before that he had a handgun?
A No, sir.
Q Okay. You testified previously in the trial of Mr. Whittington; correct?
A Yes, sir.
Q Did you testify in that trial that your brother had a handgun?
A No, sir.
Q Give me just a moment.
Mr. Graham -- let me ask you this, Mr. Graham, if you saw a transcript of your proceedings, would that refresh your recollection as to what you testified?
A Yes, sir.
Q All right. Let me show you -- see if that would refresh your recollection. I want you to look at for me page 352. If you'll look at the paragraph beginning at No. 7 --
MS. LIVESAY: May I ask what he's showing the witness?
THE COURT: He's showing him the transcript.
Give her the page and number.
MS. LIVESAY: Thank you.

BY MR. BOUCHETTE:

Q What I want you to do is, if you'll look at paragraphs for me starting with 7 and then go down to the end of the page. Don't read it out loud or say anything. Just read it and see if that refreshes your recollection.

A Yes, sir. (Witness reads document.)

Q Particularly look at 13 through 17.

A Yes, sir. (Witness reads document.)

Q Okay. In that case, did you say that he had a -- well, let me ask you this: Does that refresh your recollection that --

A Yes, sir.

Q -- that you did say that he had a handgun?

A Yes, sir. But a clarification: I didn't know he had it at the scene. I found out he had a gun at the second scene where me and my family was attacked, and they asked me questions about both interviews.

Q Well, with regard to this incident, I mean, your brother had his access to a handgun; correct?

A I didn't know that at the scene, just afterwards.

Q But as we sit here now, you know he had access to a handgun; is that safe to say?

A Yes, sir.

Q Okay. All right. And you testified that you and your brother -- let me ask you this: Did he have a

handgun for the same reasons that you did, if you know?
A Of course.
Q Okay. Is that a fairly common thing in your community?
A No, sir, not -- it's not common. I mean, not my community. Not in the area we're stationed in. Just our area in the whole.
Q All right. In that area. Okay.
But, again, it was for self-protection purposes; right?
A Yes.
Q Okay. All right. Now, so you would agree with me that it's entirely possible for somebody to be in a vehicle with someone like Tronahz Whittington, even armed, and had no intent or had no desire to commit a murder; true?
A Yes, sir. That's true.
Q And that's true for you; correct?
A Yes, sir.
Q And that would be true for Che Ransom as well; correct?
A Yes, sir.
Q Okay. I want to talk a little bit about when the shooting occurred. I would imagine that's a pretty traumatic thing to witness; would you agree?

A Yes, sir.

Q All right. Were you paying pretty close attention to what was going on?

A I mean, I can't say close attention. It was like a shock really, but...

Q And were you -- let me ask you this: While you were watching the shot that Mr. Whittington fired and the aftermath of it, you didn't see where Che was firing; correct?

A That's correct. That's correct.

Q Okay. For all you know, he was firing in an entirely different direction from the direction of the vehicle?

A That's correct.

Q For example, for all you know, he could have been consciously trying to not shoot at the vehicle; correct?

A Correct.

Q All right. Because you didn't see that; correct?

A That's correct.

Q Okay. You have nothing in your testimony that you can offer that would indicate that Che Ransom pointed and directed that firearm and fired at that vehicle; correct? Directly at the vehicle?

A Correct.

Q Okay. One last question: Mr. Ransom had a --

excuse me. It's your testimony Mr. Ransom has a gun as well?

A Correct.

Q Was it a .45?

A Yes, sir.

MR. BOUCHETTE: No further questions, Your Honor.

THE COURT: All right. Mr. Pinkerton?

CROSS-EXAMINATION ON BEHALF OF DEFENDANT MITCHELL

BY MR. PINKERTON:

Q Mr. Graham, thank you for being here today.

Travontae Mitchell, what relation is he to you?

A That's my brother.

Q Your brother?

To your knowledge, how old was he at the time?

A 16.

Q He was 16 at the time? So a juvenile?

A Yes, sir.

Q He was just trying to get a ride home that day; right?

A Yes, sir.

Q To your knowledge, had he mentioned anything about robbing or killing Jamie Johnson?

A No, sir.

Q To your knowledge, did he know Jamie Johnson?

A No, sir.

Q To your knowledge, did he know anybody else in Jamie Johnson's car?

A No, sir.

Q You testified yesterday that he was wearing gray pants; correct?

A Yes, sir, they were gray.

Q Not white pants, but gray pants?

A It wasn't white. It was gray.

Q It was gray pants.

A We still have them at the house.

Q All right. You also testified yesterday you didn't see my client, Mr. Mitchell, with a gun at all, did you?

A Not at the scene, no, I did not.

Q Not at the scene?

You say you had no knowledge he had a gun?

A No, sir.

Q And you stated he got out of the car but then immediately got back in?

A Yes, sir.

Q You never saw him fire a shot, did you?

A No, sir.

Q Never once saw a gun in his hand at the scene?

A No, sir.

Q Never once saw him fire a shot?

A No, sir.

Q But you did see Tronahz Whittington fire a shot; correct?
A Correct.
Q What kind of gun did he have?
A AR-15.
Q And you stated he was the one that fired the kill shot, as they say?
A Yes, sir.
Q Not Travontae?
A No, sir.
Q Never saw Travontae fire a shot?
A No, sir.

MR. PINKERTON: Thank you, Your Honor. No further questions.

THE COURT: All right. Mr. Gardner?

MR. GARDNER: Thank you, Your Honor.

CROSS-EXAMINATION ON BEHALF OF DEFENDANT BROWN

BY MR. GARDNER:

Q I'll be brief. Once again, I think all the good questions have been asked, but I want to make sure -- I think some of the lawyers asked you about their client. I represent Don Brown, so I just want to ask you about Don Brown, same type of questions.

To your knowledge, Don Brown didn't have any issue with Jamie; right?

A No, sir.
Q And there was no plan to kill Jamie?
A No, sir.
Q And Don didn't have a weapon?
A No, sir.
Q And Don didn't get out of the car?
A No, sir.
Q Okay. I do have to go into one thing. I told the jury -- I don't know if you were here the first day -- that you and one other fellow would be testifying.
A Yes, sir.
Q And I told -- and you went into it. One of the last things you said yesterday before we broke, that you're expecting leniency?
A Yes, sir.
Q And that's why you're testifying?
A Yes, sir.
Q So, just for the record, you're charged with murder and three types -- or three counts of attempted murder; is that right?
A Yes, sir.
Q And that's the same thing that these three are charged with?
A Yes, sir.
Q Okay. And murder -- they carry the same offense or

the same amount of time. Murder carries 30 --

MR. HELMS: Objection, Your Honor.

THE COURT: Can't get into the sentence.

MR. GARDNER: He's asking for leniency on a sentence that carries a range.

THE COURT: Okay. I will allow that, because it doesn't -- and I'll instruct the jury on that, because this defendant is not on trial, but he is looking to seek leniency. So I'll allow that. Go ahead.

BY MR. GARDNER:

Q So if you were to plead to the murder, you would get somewhere between 30 years and life without parole; is that right?

A Yes, sir.

Q And when you say "leniency," you're looking for -- what are you looking for, for leniency? You're looking for less than murder; right?

A Yes, sir, because I didn't murder anyone.

Q So you're looking to get less than 30 because murder would be 30?

A I'm looking to get what I deserve.

Q Because you didn't murder anybody?

A Correct.

Q Okay. And those three boys didn't murder anybody; did they?

A Correct.

Q All right. Thank you, sir?

THE COURT: Redirect?

MS. LIVESAY: Just briefly, Judge.

REDIRECT EXAMINATION

BY MS. LIVESAY:

Q Good morning, Mr. Graham.

A Good morning.

Q Now, Mr. Bouchette asked you a question about who fired the fatal shot. Do you remember that question?

A Yes, ma'am.

Q Okay. And you said you knew?

A Yes, ma'am.

Q Well, how many people were firing?

A Three.

Q Three people were firing?

A Yes, ma'am.

Q Okay. And were you inside or outside the car?

A Inside.

Q You were inside the car; right?

A Yes, ma'am.

Q Only one person got out the front; correct?

A Yes, ma'am.

Q Okay. Okay. And you're telling these folks, from inside the car, with three people firing --

MR. GARDNER: Objection, Your Honor.
BY MS. LIVESAY:
Q -- you can tell in the air --
THE COURT: Hold --
MR. GARDNER: This is leading.
BY MS. LIVESAY:
Q -- which bullet --
THE COURT: Hold for a minute.
BY MS. LIVESAY:
Q -- hit the --
THE COURT: When they raise an objection, quit asking your question. I don't know why I keep telling y'all that. But when an objection is raised, quit asking your question and let me rule on the objection.
MS. LIVESAY: Sure.
THE COURT: All right. What's the objection?
MR. GARDNER: Leading the witness. This is her witness, Your Honor.
THE COURT: Overruled.
MR. BOUCHETTE: Also beyond the scope of cross. She went into that, what he saw, the shooting. Asked him about it and confirming on cross. She's now going back and doing the same thing and/or trying to impeach him on redirect.
THE COURT: Overruled.

All right. Go ahead.

MS. LIVESAY: Thank you.

BY MS. LIVESAY:

Q Did you tell Mr. Bouchette that you saw the fatal shot?

A Correct.

Q Okay. And were you inside the car?

A Yes, ma'am.

Q And how many people were firing?

A Three people.

Q So bullets just bam, bam, bam; right?

A Yes, ma'am.

Q Okay. And you're telling these people that you saw which particular bullet -- all these bullets flying through the air, and you saw the particular bullet that fired the fatal shot?

MR. GARDNER: Your Honor, I object.

MR. BOUCHETTE: Objection to leading.

MR. GARDNER: She's leading. She's cross-examining this witness.

THE COURT: Overruled. Go ahead.

A Could you ask me again, please?

BY MS. LIVESAY:

Q I'm sorry?

A Could you ask me that question again, please?

Q Sure. You're telling these folks that, with three guns firing, you could tell exactly which bullet killed the victim?
A Yes, ma'am, because Tronahz got out first, and he fired before anybody else. So, I mean, I was looking, and I saw it. I saw the bullet hit the car and the windshield and the blood. All the other shots went off.
Q And you were where in the car?
A In the front middle seat.
Q But you were inside the car?
A Yes, ma'am.
Q And how many people were firing?
A Three people.
Q Now -- and did you see the bullet in the air?
A No, ma'am.
Q Okay. Just kind of putting circumstances together?
A Yes, ma'am.
Q Okay. Okay. Now, he asked you -- Mr. Bouchette asked you about a plan. Do you remember that?
A Yes, ma'am.
Q And he asked you if Che Ransom had a plan?
A Yes, ma'am.
Q Okay. Can you read Che Ransom's mind?
A No, ma'am.
Q Okay. So you don't know what he was thinking?

A Correct.
Q Is that right?
A Yes, ma'am.
Q So you don't know if he had a plan in mind or not, do you?
A Not in his mind. I can't read his mind.
Q Did he get out and fire?
A Yes, ma'am.
Q So does that indicate to you if he had a plan or not?
A I don't know if he had a plan or not. I mean, it wasn't planned out loud. I wouldn't know if he had a plan or not.
Q Did you have a plan?
A No, ma'am.
Q But can you read Che Ransom's mind?
A No, ma'am.
Q So you don't know if he had a plan or not?
A Correct.
Q I'm sorry?
A That's correct.
Q Okay. But he got out and fired, didn't he?
A That's correct.
Q Okay. Now, Mr. Bouchette asked you several questions kind of about a plan, what kind of guns

everybody had. Do you remember that?
A Yes, ma'am.
Q Okay. What kind of gun did you tell Mr. Bouchette that Tronahz had?
A AR-15.
Q Okay. How big is an AR-15 or how big is the AR-15 that Tronahz Whittington had?
A Full size.
Q Full size?
A Medium size, full size.
Q So tell me again, how big was it?
A Like this size (indicating).
Q Okay. Okay. So a long gun?
A Yes, ma'am, a long rifle.
Q Okay. Long gun is pretty big to have a car, isn't it? It's about like a rifle?
A Yes. It's pretty awful big.
Q Okay. Did everybody get in the car at the same time?
A One after another.
Q But right there at the car together?
A Yes, ma'am.
Q Okay. And did you see him put the gun in the car?
A Yes, we did. Yes, we did.
Q Okay. And you knew everybody else had a gun?

A I can't -- I can't really say. Yeah, I did. I mean, I know certain people had a gun.

Q So you did know other people in the car had a gun?

A That's correct.

Q Okay. And you knew this ol' boy had a rifle?

A That's correct.

Q But you're unsure if there was a plan?

A Yes, ma'am.

Q Okay. Okay. Now, there was a lot of talk with Mr. Bouchette about your brother Travontae Mitchell; correct?

A Yes, ma'am.

Q Okay. And he showed you an excerpt from the last time you testified; is that correct?

A That's correct.

Q Okay. And did you read it?

A Yes, ma'am.

Q Okay. And what did it say that you said about Travontae Mitchell?

A He had a small handgun.

Q Okay. He had a small gun.

A Mm-hmm.

Q Now, tell these folks, was your mama here when you gave that statement --

A No.

Q -- the last time?
A No.
Q Okay. Was Travontae Mitchell in the courtroom the last time during that statement?
A No, ma'am.
MR. GARDNER: Your Honor, I believe this exceeds -- I object. I believe this exceeds the scope of cross-examination. It would be improper redirect. Nobody talked about mothers and witnesses being here.
THE COURT: All right. Overruled.
I'll allow it. Go ahead.
BY MS. LIVESAY:
Q So things are different this time as to Travontae Mitchell, your brother; correct?
A No. It's just, now that he's here and my mom's here.
Q So that's the only difference is now your mom is here and now he's here?
A Yes.
Q Okay. And so now, all of a sudden, this time you're saying he didn't have a gun?
A Well, it was kind of asked funny in that trial because they were both -- were also talking about the second shooting that happened out on 501 --
MR. PINKERTON: Objection, Your Honor. He's

speaking to an incident that happened that's not related to this incident.

THE COURT: Let me see the attorneys.

BENCH CONFERENCE.

(The following bench conference was held outside the hearing of the jury and others:)

MR. PINKERTON: Your Honor, that second shooting that happened is not related to this incident whatsoever. It is doing nothing but tainting the jury about this.

MS. LIVESAY: I'm not getting into that. I'm just asking him --

MR. PINKERTON: She asked about the second incident. It is not related to this case.

THE COURT: That happened after this one?

MR. PINKERTON: Yes.

MR. HELMS: Same night. She's not asking that. That's not what she's asking. She's asking if he had a gun in the first incident, nothing about the second incident.

MR. PINKERTON: But then she asked about a shooting that happened at the second incident.

MS. LIVESAY: That's not true.

MR. HELMS: That's not true.

MS. LIVESAY: That's not true. We can play it back.

THE COURT: I'll sustain the objection. Don't get

into the second incident.

(Open court resumes as follows:)

THE COURT: All right. Sustained.

BY MS. LIVESAY:

Q Mr. Graham, I'm going to ask you two very direct questions. Okay?

A Yes, ma'am.

Q The last time you testified, Mr. Bouchette asked you about it?

A Yes, ma'am.

Q Okay. And he showed you the transcript?

A Yes, ma'am.

Q And you looked at the transcript?

A Yes, ma'am.

Q And you see that the last time you said that Travontae Mitchell did have a gun?

A Just not -- I didn't see it on the scene, but the second incident that's not related, that's when I know --

MR. PINKERTON: Your Honor, I would object --

MR. GARDNER: Your Honor, we need to --

THE COURT: Sustained.

MR. PINKERTON: Your Honor, I would move for a mistrial at this point.

THE COURT: All right. Ladies and gentlemen, we need to take up a matter of law. I'm going to excuse you

back to the jury room. We'll bring you back out in just a minute. Do not discuss the case, even among yourselves.

(The jury exited the courtroom at 10:09 a.m.)

MOTIONS/MATTERS OF LAW

THE COURT: All right. Let me hear your objection.

MR. PINKERTON: Your Honor, you specifically told the solicitor not to go into the second incident. She elicited more testimony about a second incident that's not related to the case here at hand that involves handguns, it involves shootings. The jury has heard that. They're absolutely tainted at this point because now they know there's a second incident involving my client and the two other clients here on trial, involving handguns, involving shootings that is not related to this here, so now they're absolutely tainted.

THE COURT: All right. Mr. Bouchette?

MR. BOUCHETTE: Your Honor, I join the motion.

THE COURT: Mr. Gardner?

MR. GARDNER: Yeah, Your Honor, I would join in the motion, and I would just make sure that the record is clear that you did instruct the solicitor not to go into this, and it's highly prejudicial. And the bell has been rung, and there's no way to unring that bell.

THE COURT: All right. The State's position?

MS. LIVESAY: Your Honor, I have never asked him --

and we can run the tape back; this lady here says she can run it right back. I never asked him about the second shooting. All we were trying to get out is the first time you said that the boy had a gun. Your mama was not here. Travontae was not here.

Now, you have changed your story, but the change is the fact that your mom is here and your brother is here. I'm just trying to show it's difficult now to say the boy had a gun because he's in the courtroom and their mother -- they have the same mom -- is also in the courtroom. That's all we're trying to show.

THE COURT: I know what you're trying to show, but what you showed is that there was another separate incident that involved shootings, that involved guns that has nothing to do with this case.

MS. LIVESAY: I didn't ask him about that. I never asked him about --

THE COURT: But it came out.

MS. LIVESAY: I'm sorry?

THE COURT: It came out.

MS. LIVESAY: Well, I never asked him.

THE COURT: But it still came out. The question is, is that inadmissible evidence that has now tainted the jury in this case?

MS. LIVESAY: The only thing that came out about the

second shooting was nothing in regards to who was even involved in the second shooting. I mean, I could be wrong and maybe we need to play it back.

MR. HELMS: Furthermore, Your Honor --

MR. GARDNER: Well, hold on. I object, Your Honor.

THE COURT: Hold on. Wait a minute. Only one of y'all argue at a time. We're not going to have two people arguing for the State.

All right. Go ahead.

MS. LIVESAY: We can play it back, but no details of the second shooting have aired to prejudice any of the three people here.

THE COURT: All right. Can we just read me back Ms. Livesay's last question and then what his answer was, please.

(The court reporter replays the requested portion.)

THE COURT: She didn't ask about the second incident, so I'm just going to instruct the jury to disregard the witness's last response. It was unresponsive to the question asked.

MR. PINKERTON: Your Honor, if I may, she asked that question to absolutely elicit that testimony. Your Honor, I can't help what the witness said, but she elicited that testimony to get that reaction. The jury has already heard now twice that there was the second incident

involving guns involving these clients. That is not related here today to this trial. It absolutely should be a mistrial, Your Honor, and we would renew our objection.

THE COURT: All right. Your objection is noted and overruled. I'm going to instruct the jury to disregard this witness's last statement, as it was unresponsive to the question asked. All right?

MR. GARDNER: Your Honor, the problem we have is that we had a bench conference about this issue, and so she knew to be careful about it. She went right back into it. So it's a complete disregard for the ruling at the bench.

THE COURT: I didn't hear her ask anything about the second incident.

MR. GARDNER: She kept going on about the gun, which she knew was going to elicit the second incident.

THE COURT: Okay. Overruled.

MR. GARDNER: She knew that.

THE COURT: All right. Overruled. I have made my ruling on that issue.

MR. GARDNER: Yes, sir.

MR. BOUCHETTE: With our objection having been noted, I would make a request, just in the interest, that -- to minimize my potential prejudicial effect that has been here. Obviously, Your Honor's rule is that, once the

reply testimony is done, there's no further recross. I would request a narrow exception to that rule for the following reasons: the shooting he referenced upon questioning by the State references a second incident wherein they were the victims, where somebody was shooting at them. And so I think it would be proper to at least ask that question as a mitigating effort for any prejudicial effect that might have come in at this point.

THE COURT: And I'm going to tell them to disregard it, and that's the instruction to the jury is to disregard his response.

MS. LIVESAY: If we can, if the Court deems it appropriate, we'd just ask the Court to instruct Mr. Graham not --

THE COURT: No. You know my ruling. He can't get into it. If it comes up again, then you're looking at a mistrial. So you need to frame your questions to make sure it doesn't elicit that testimony. All right?

MR. HELMS: I have something I have to ask in light of that. If the witness is unresponsive to her questioning -- if she asked what time of day it was, and his response was "second shooting," that would elicit a mistrial?

THE COURT: Yes.

MR. HELMS: How is that attributable to us, the

State?

THE COURT: Well, I don't know that it's attributable to you, but it does violate the defendants' rights when it brings something into the issue. You're the one that called this witness, you're the one that put this witness up, and if you put up a witness that's not going to respond to your questions, you bear the consequences of that.

MR. HELMS: But we're asking the Court to instruct this witness to respond to the question appropriately.

THE COURT: Well, I think he knows, because we have been arguing. You cannot get into that other incident in any way, shape, or form.

MR. HELMS: Then what is the harm of instructing him of that?

THE COURT: [To the witness:] Don't get into the second incident in any way, shape, or form.

MR. HELMS: Thank you.

THE COURT: All right. Still, if he does, even if it's unresponsive -- you have called the witness at your own peril. You know who the witness -- what the propensities of the witness is. If he asks [sic] the question, that's on y'all. All right?

MR. HELMS: Yes, Your Honor.

THE COURT: All right. Let's bring the jury in.

(The jury entered the courtroom at 10:18 a.m.)

THE COURT: All right, ladies and gentlemen. Welcome back. I have sustained an objection by the defense. The jury is to disregard the witness's last response to Ms. Livesay's question. It was unresponsive to the question she asked; therefore, you're to disregard his response in its entirety.

Ms. Livesay?

MS. LIVESAY: Thank you, Your Honor. Just two real quick questions.

CONTINUING REDIRECT EXAMINATION

BY MS. LIVESAY:

Q You are familiar with this transcript; correct?

A Yes, ma'am.

Q Okay. And you would agree it includes your answers from the last time you testified?

A Yes, ma'am.

Q Okay. And you were asked about Travontae Mitchell?

A Correct.

Q Okay. And I want you to look right here and tell these folks what you told on this date when you were asked about Travontae Mitchell.

A It says, "A small handgun. I'm not sure what kind. It was just a handgun."

Q Okay. Now, Mr. Gardner asked you about what kind of

time you were looking at. Do you remember that?
A Yes, ma'am.
Q And you understand what you're charged with?
A Yes, ma'am.
Q And do you understand that entails taking a 19-year-old boy's life? Do you understand that?
A Yes, ma'am.
MS. LIVESAY: No further questions, Your Honor.
THE COURT: All right. You may step down.
State can call your next witness.
MS. LIVESAY: Sandy Lowe.
THE CLERK: Please raise your right hand and place your left hand on the Bible.

SANDY LOWE,

after having been duly sworn, was examined and testified to as follows:

THE CLERK: State your name and spell it for the Court.
THE WITNESS: Sandy Lowe, S-a-n-d-y L-o-w-e.

DIRECT EXAMINATION

BY MS. LIVESAY:
Q Ms. Lowe, where are you employed?
A J. Reuben Long Detention Center.
Q Okay. And with the Sheriff's Office?
A Yes.

Q And do you keep records for the Sheriff's Office?
A Yes.
Q Okay. And do those records entail photographs and information about people that are charged with a crime?
A Yes.
Q Okay. I'm going to show you some pictures, and you tell me if you recognize who those are pictures of. Okay?

(State's Exhibit Nos. 55 through 60, Photographs, were marked for identification.)

COURT REPORTER: State's 55 through 60 marked.

BY MS. LIVESAY:

Q If you don't mind, look at pictures 55 through 61 [sic].

And if you don't mind, have those photographs been kept in the ordinary course of business?
A Yes.
Q Have they been tampered with in any form or fashion?
A No.
Q If you don't mind, tell the Court who those are photographs of.
A Shamontae Graham, Che Ransom, Travontae Mitchell, Don Brown, Mikkie McLeod, and Tron [sic] Whittington.
Q I'm sorry?
A Tron [sic] Whittington.
Q Okay.

MS. LIVESAY: At this time, Your Honor, the State wishes to put 55 -- I'm sorry --

COURT REPORTER: Correction: It ends at 60.

MS. LIVESAY: Okay. 55 thorough 60 --

COURT REPORTER: Yes, ma'am.

MS. LIVESAY: -- into evidence and publish to the jury.

THE COURT: All right. Mr. Bouchette?

MR. BOUCHETTE: Your Honor, I guess my only objection would be as to relevance. It's a picture at some later point.

THE COURT: What's the relevance?

MS. LIVESAY: Description of the individuals from Britney Milam and Orlin Lopez and Jacob Hill.

MR. BOUCHETTE: The defendants are sitting right here. They can see what they look like. I'm not sure what the relevance is.

THE COURT: Mr. Pinkerton?

MR. PINKERTON: Yes, Your Honor. This is not relevant at all. These are booking photos. The witnesses have already described the people they saw on the scene. This is doing nothing but inflaming the jury.

THE COURT: Mr. Gardner?

MR. GARDNER: The objection is relevance, Your Honor. This won't help the jury decide anything.

THE COURT: All right. State's Exhibit 55, 56, 57, 59, and 60 are admitted into evidence over defendants' objection.

MS. LIVESAY: Thank you, Your Honor.

(State's Exhibit Nos. 55 through 60 were received into evidence.)

COURT REPORTER: State's 61 marked.

MS. LIVESAY: Actually, you better mark them all, just to make sure.

(State's Exhibit Nos. 61 through 64, Alias Names, marked for identification.)

BY MS. LIVESAY:

Q And, Ms. Lowe, along with photographs, are other records kept on individuals?

A Yes.

Q Okay. And as part of those records, are alias names kept in the records?

A Yes. If those are available, yes.

Q And what is considered kind of an alias name?

A Another name that the individual may go by or that someone has called them or a name that they used previously.

Q And I'm going to show you 61 through 64. And does that record indicate alias names for certain individuals?

A Yes.

Q And I want you to look at this board up here. And does it include alias names for some of the individuals on this board?
A Yes.
Q And tell me what is -- and has that been tampered with, that record?
A No.
Q And is that record kept in the ordinary course of business in the Sheriff's Office?
A Yes.
Q Tell me what, if any, record there is for an alias name for Don Brown.

MR. GARDNER: Your Honor, I'm going to object. She's reading information that's not in evidence to try to answer a question. I think that's improper. She hasn't laid a good foundation for this to get into evidence.

THE COURT: Where did the information come from?

MS. LIVESAY: I can ask this young lady.

THE COURT: All right. Let's lay a better foundation to authenticate it.

MS. LIVESAY: Certainly.

BY MS. LIVESAY:

Q Where did the information come from, Ms. Lowe?
A From RAP sheets. Most of the time, it comes from a RAP sheet when the person is booked and the RAP sheet is

ran. If the RAP sheet has aliases --

MR. BOUCHETTE: Objection, Your Honor. Matter of law.

THE COURT: Sustained. Sustained.

MR. BOUCHETTE: Move to strike the testimony.

THE COURT: All right. The last testimony is stricken from the record.

BY MS. LIVESAY:

Q Let me ask it this way: Are there other records that you get --

MR. BOUCHETTE: Your Honor, matter of law.

THE COURT: All right, ladies and gentlemen. I'm going to excuse you back to the jury room for just a few minutes while we address this matter of law. We'll bring you back out in just a second. Do not discuss the case, even among yourselves.

(The jury exited the courtroom at 10:30 a.m.).

MOTIONS/MATTERS OF LAW

THE COURT: All right. Mr. Bouchette?

MR. BOUCHETTE: Thank you, Your Honor. I am cognizant of the Court's time, so I hope the Court realizes I wouldn't request this unless necessary. Your Honor sustained our objection to striking from the record; however, it has now gotten to the jury the information that they have a RAP sheet, which implies some kind of

prior record. What they have done is incorrectly give to the jury that these people have criminal records, which was not otherwise admissible through 804, I believe it is, Rules of Evidence.

I was anticipating an objection for the aliases due to the fact that she might be the business records custodian, but she doesn't have any personal knowledge of the aliases or how that came about; however, it didn't stop there. They went into asking if it came from booking information or RAP sheet, rather, and that information, obviously, is highly prejudicial. It's a backdoor way to get in a criminal record. The jury has already heard it.

I submit to the Court that, number one, I would request as a minimum -- a corrective jury instruction, and that's even if we can cure it or we'd request a mistrial.

THE COURT: All right. Mr. Pinkerton?

MR. PINKERTON: And, Your Honor, I would also join in Mr. Bouchette, and I'd also like to point out, at the time, my client was a juvenile. He was 16. Your Honor, his record should not be admissible in this court at all, and now the jury has been tainted completely by hearing my client has a RAP sheet because they have his name on record and he was a juvenile.

THE COURT: Mr. Gardner?

MR. GARDNER: Your Honor, I join with both of my

colleagues, but I would add to that, Your Honor, that this is highly prejudicial, improper. And RAP sheet -- for example, we had the last witness's RAP sheet. It's one -- it's five pages long, and none of it was admissible.

THE COURT: All right.

MR. GARDNER: So none of this should be admissible, plus it's irrelevant. I don't know what they're bringing this in for, and at this point in time, Your Honor, again, we have the bell that's rung. It can't be unrung. So I join with their motions, and I had my own motion based on this that you grant my motion for a mistrial.

THE COURT: All right. State's position?

MS. LIVESAY: Yes, sir, Your Honor. I think we can clear it up with the full answers of Ms. Lowe, but first of all, Don Brown doesn't have an alias in the system. Che Ransom doesn't have an alias in the system. And Travontae Mitchell cannot have a RAP sheet because he was a juvenile that was waived up.

So I know that was the answer she gave, but in this case, none of those names came from any kind of RAP sheet. They had to have come from another source, because, like I say, Travontae Mitchell is a minor. He has no adult record, and waiver of hearing was had. So he doesn't have a RAP sheet. Che Ransom does not have any kind of alias name under her documents and neither does Don Brown. So

it cannot come just from the RAP sheet.

THE COURT: So the State would be willing to stipulate to the jury that none of these three defendants have a RAP sheet from which an alias could have come?

MS. LIVESAY: Yes. And that's what I was trying to -- that's why she was saying, when I first asked her -- and she'll tell you -- she was saying what people call them. Information is gathered from all different places.

THE COURT: All right.

MS. LIVESAY: So there's no -- I mean...

THE COURT: Let me hear your response. The State is willing to stipulate on the record to the jury that none of these defendants have a RAP sheet from which an alias could have come, and so any alias would have come from some other source.

MR. BOUCHETTE: I apologize, Your Honor. I'm trying to think through this. I have not heard what other basis there could be for them to have a known criminal alias other than what we have heard as the RAP sheet. And so, I suspect that we're still going to be getting into some type of known criminal activity in some way, shape, or form to do that.

So I don't think, if they stipulated and have a quote/unquote RAP sheet, that that cures it. I'm going to stick with my original objection.

MR. PINKERTON: And, Your Honor, I would join Mr. Bouchette on that. And also, once again, my client was a juvenile. Where would they have gotten aliases from if it wasn't on a RAP sheet at that point? Why would the jail have that information?

THE COURT: I mean, where did the -- if they don't have a RAP sheet from which an alias could come, where did this information come from?

MS. LIVESAY: My understanding from what she first initially answered was it's information they gathered as to what this person is called by other people, maybe a Facebook name.

THE COURT: Yeah, but that's where you have got an authentication problem. Who gathers the information and where does it come from? I understand your business record, but still, you have got to authenticate that the information on that business record is accurate. Who collected it and where did they collect it from?

MS. LIVESAY: When I asked her, she's saying -- again, she tells me that it's collected from either a name they have given --

THE COURT: Who gave them? A name they have given. So who gave the name?

MS. LIVESAY: I would have to ask Ms. Lowe that.

THE COURT: All right. Let's proffer her testimony.

Go ahead and go through your questions.

PROFFERED DIRECT EXAMINATION

BY MS. LIVESAY:

Q Ms. Lowe, where does the information come from that's ultimately put on the record?

A It's either from, like I said, the RAP sheet or if the individual told the person booking them in, you know, here's another name I go by.

MS. LIVESAY: There you go, Judge.

THE COURT: Okay. So any names that are on here -- aliases on here would be aliases given to them by these defendants?

MS. LIVESAY: It would have -- as far as I understand it, Travontae Mitchell cannot have an adult record; he's a juvenile. And the other two don't have aliases.

THE COURT: All right. Listen to my question. Any aliases that these three defendants have, the only way they have gotten those aliases is because that's what these defendants told them when they were booked?

MS. LIVESAY: That is what I gathered from Ms. Lowe, yes, sir.

THE COURT: Well, I know that's what you gathered. Is that the truth? Is that what -- is that authentic? Or is that what you believe or that's what you think or you

just can't explain any other --

MS. LIVESAY: I can only take the information she gives me. I don't know. I have to accept what she tells me. But I know that Travontae Mitchell does not have any kind of adult record, and he's the only one at the table with an alias.

THE COURT: All right. Well, I don't think this has been sufficiently authenticated. I'm going to sustain the objection as to the aliases, and we'll stipulate to the defendants [sic] that none of these defendants have a RAP sheet from which an alias can be derived.

MS. LIVESAY: Yes.

THE COURT: Unless you can say -- unless she's going to testify, "Travontae Mitchell told me his alias was this, Che Leon Ransom, Jr., told me his alias was this, and Don Leequin Brown told me his alias was this," we're not going to get into that.

MS. LIVESAY: Okay. I'm not going to get into it.

THE COURT: All right.

MS. LIVESAY: Because she can't do that.

THE COURT: All right. Anything from the State before we bring the jury back in?

MS. LIVESAY: Do you want her off the stand, Judge?

THE COURT: No. I mean, not until -- I mean, she hasn't even been cross-examined yet.

MS. LIVESAY: That's fine. I'm not going to do anything further on the document. I'll just ask her about the pictures and sit down.

THE COURT: Mr. Bouchette, anything further?

MR. BOUCHETTE: Just prior objection. For preparation purposes, when the jury comes in, the Court is going to instruct regarding stipulation and proceed with her --

THE COURT: Proceed with her direct examination. I have ruled outside the presence of the jury that they cannot authenticate where the aliases came from.

MR. PINKERTON: Your Honor, I'll just join Mr. Bouchette on that argument.

THE COURT: All right. Mr. Gardner?

MR. GARDNER: I join with them, but I also want to ask the Court for guidance. I'd refer to the last witness's, Graham, five-page RAP sheet. Do you want this to be marked as a Court exhibit for identification?

THE COURT: I mean, if you want to put it in, you can put it in. I don't see the need for it.

MR. GARDNER: Okay. I just know that when people in Columbia are reading records, they always get a little upset when somebody is referring to a document that's not in the record. But we're not in front of the jury, so I'm okay with it, Your Honor, if you are.

THE COURT: All right.

MR. HELMS: Your Honor -- I don't have anything.

THE COURT: All right. Let's bring the jury in.

Oh, wait a minute. Wait a minute. Let's take about a ten-minute break, and we'll come back in just a second.

MR. BOUCHETTE: And, Your Honor, before we do that, the Court's ruling is the mistrial is denied?

THE COURT: Yeah, I'm denying the mistrial.

MR. GARDNER: Oh, for the record --

THE COURT: Hold for a second. Everybody sit down. Everybody have a seat. Come on back, have a seat. Let's have order. I thought we were recessing, but we're not recessing yet.

MR. BOUCHETTE: My mistrial motion, as well as the other three, has been ruled upon as denied.

THE COURT: All right, Mr. Gardner. What would you --

MR. GARDNER: Oh, I was just going to join with him. I wanted to make sure that we're keeping a good record. We have renewed our motion based on your ruling, but no disrespect or argument, but just keeping the record straight that the motion for a mistrial has been denied.

THE COURT: All right. It has been.

All right. Mr. Pinkerton, anything --

MR. PINKERTON: Your Honor, I would just join

Mr. Gardner.

THE COURT: All right. Mr. Bouchette, anything before we recess?

MR. BOUCHETTE: No, sir.

THE COURT: All right. Anything from the State before we recess?

MS. LIVESAY: No, sir.

THE COURT: All right. Let's take about a ten-minute recess.

THE COURT: You can step down but do not discuss your testimony.

THE WITNESS: I'll just sit here.

THE COURT: All right.

(A recess was taken from 10:41 a.m. to 10:56 a.m.)

THE COURT: Anything from the State before we bring the jury in.

MS. LIVESAY: No, sir.

THE COURT: All right. Mr. Bouchette, anything before we bring the jury in?

MR. BOUCHETTE: No, sir.

THE COURT: Mr. Pinkerton?

MR. PINKERTON: No, Your Honor.

THE COURT: Mr. Gardner?

MR. GARDNER: No, sir.

THE COURT: All right. Let's bring the jury in.

(The jury entered the courtroom at 10:57 a.m.)

THE COURT: All right. Ladies and gentlemen, welcome back. We did take a break after I dealt with this matter of law. We're getting ready to continue with the direct examination, but I do need to let you know that the parties have stipulated, which is a fact that you must accept during this case, is that none of these three defendants have a RAP sheet, and therefore, any alleged alias could not have come from a RAP sheet because none of them have a RAP sheet.

All right. You can continue with your direct examination.

MS. LIVESAY: Just one question, Judge.

THE COURT: All right.

(SANDY LOWE) CONTINUING DIRECT EXAMINATION

BY MS. LIVESAY:

Q I just want to make sure, these pictures -- 58, 55, 60, 56, 59, 57 -- are all pictures kept in Records?

A Yes.

Q And not been tampered with any form or fashion?

A No.

MS. LIVESAY: No further questions.

THE COURT: All right. Mr. Bouchette, cross-examination?

MR. BOUCHETTE: Judge, I don't think I have any

questions for this witness.

THE COURT: All right. Mr. Pinkerton?

MR. PINKERTON: One question.

CROSS-EXAMINATION ON BEHALF OF DEFENDANT MITCHELL

BY MR. PINKERTON:

Q To your knowledge, these are not pictures from the scene itself, are they?

A No.

Q Thank you.

MR. PINKERTON: No further questions.

THE COURT: Mr. Gardner?

MR. GARDNER: No questions, Your Honor.

THE COURT: All right. Redirect?

MS. LIVESAY: No, sir.

THE COURT: All right. You may step down.

State can call your next witness.

MR. HELMS: De'Shon Samuels [sic].

THE CLERK: Please raise your right hand and place your left hand on the Bible.

DE'SHON SAMUEL,

after having been duly sworn, was examined and testified to as follows:

THE CLERK: Please state your name and spell it for the Court.

THE WITNESS: De'Shon Samuel. D-e-s-h-o-n

S-a-m-u-e-l.

DIRECT EXAMINATION

BY MR. HELMS:

Q I'm sorry, sir; I just want to make sure I have got everything I need.

You're De'Shon Samuels [sic]?

A Yes.

Q Mr. Samuels [sic], have you ever met me before?

A Yes.

Q When did we meet?

A At the last trial.

Q Okay. So you testified in the previous trial for Tronahz Whittington's trial?

A Yes.

Q Okay. How old are you, Mr. Samuels [sic]?

A 25.

Q And where are you from originally?

A Here.

Q Here? Horry County?

A Yes.

Q Where do you live now?

A In Florida.

Q Okay. And when did you move to Florida?

A A couple of years back.

Q Was it after September of 2020?

A Yes.
Q Okay. And in September of 2020, where were you living?
A With my mother here.
Q Here in Horry County?
A Yeah.
Q In what city? You don't have to give the address, just the city.
A Conway.
Q In Conway. Okay. So you're a native of Conway.
Did you have a car at that time?
A Yes.
Q Okay. And what kind of car did you have?
A A Caprice.
Q And what color was that Caprice?
A Bluish-gray.
Q Bluish-gray. Okay.
How long had you had that car?
A Probably about seven years now.
Q Do you still have the car?
A Yeah.
Q Wow, wow. Would you recognize that car if you saw a picture of it?
A Yes.
MR. HELMS: I'm just going to use this one.

MR. GARDNER: That's fine.

Your Honor, if it would help expedite the trial, we will stipulate that he was the owner of the car and he loaned it, rather than play all these videos again that the jury has already seen, if that will help.

THE COURT: I'll allow them to do what they want to do.

MR. HELMS: I will take what he said and try to expedite the testimony. Thank you, Judge.

BY MR. HELMS:

Q I'm showing you now what's been marked for identification purposes as State's Exhibit 41. Do you recognize the car in that picture?

A Yes.

Q And what -- whose car is that?

A It's my car.

Q Okay. Do you know where it is here?

A No.

Q But you know it's your car?

A Yes.

Q Okay. And is this before or after the incident that the defendants are here for?

A I believe after.

Q Okay. Be sure to talk into that microphone.

THE COURT: Yes, you need to speak up a little bit

louder. All right?
BY MR. HELMS:
Q Everybody's got to hear you.
Okay. So this is taken after, but this is definitely your car?
A Yeah, that's my car.
MR. HELMS: Your Honor, at this time, I would try to enter State's 41 -- and publish to the jury -- into evidence.
MR. BOUCHETTE: No object- -- sorry. No objection.
THE COURT: Mr. Pinkerton?
MR. PINKERTON: No objection, Your Honor.
MR. GARDNER: No, Your Honor. No objection.
THE COURT: All right. State's Exhibit 41 admitted into evidence without objection.
(State's Exhibit No. 41 was received into evidence.)
MR. HELMS: Thank you, Your Honor. Permission to publish?
THE COURT: All right.
MR. HELMS: Thank you, sir.
BY MR. HELMS:
Q So, De'Shon, this is your blue Chevy Caprice.
On September 12th of 2020, did you loan this car to someone?
A I don't remember. I don't remember specifically

that day, but...

Q Well, let me ask you like this. That's fair. That's fair. Because you weren't involved in the shooting, were you?

A No.

Q Okay. In September of 2020, did you loan your car to Tronahz Whittington?

A Yes.

Q Was that a common occurrence?

A Yes.

Q How often did you loan your car to Mr. Whittington?

A Probably a few times.

Q Okay. Was the last time you loaned your car to Tronahz Whittington the day of the shooting?

A Yes.

Q After that shooting and all that took place, did you ever loan your car to him again?

A No.

Q Now, after you loaned your car to Tronahz Whittington, did you stay with the car or did you leave?

A I stayed with my car.

Q Okay. So did you stay with the car the whole time Tronahz had it or did you let him have it?

A Oh, no. I kept it. I didn't let him have it.

Q So you never let Tronahz Whittington borrow your

vehicle?

A Oh, yes, I did, but -- I'm kind of confused on that second question you just asked me.

Q Okay. I'll try to rephrase it.

When Tronahz borrowed your car, did y'all split ways?

A Oh, yes.

Q Where did you go?

A I went to McDonald's.

Q Okay. What did you do at McDonald's?

A I sat there on the Wi-Fi.

Q On the Wi-Fi?

A Yes.

Q Did you like to do that?

A Yes.

Q Free Wi-Fi?

A Yes, free Wi-Fi.

Q That's fair. That makes sense.

And how long would you stay at the McDonald's and use the free Wi-Fi?

A Probably two to three hours, I believe.

Q Oh, okay. So you sat there for a minute?

A Yes.

Q Okay. I want to show you what's already been entered into evidence as State's Exhibit 36.

MR. HELMS: And this is already entered into evidence, Your Honor, and I'm publishing that with the permission of the Court.

THE COURT: All right.

MR. HELMS: Thank you, sir.

BY MR. HELMS:

Q I'm going to stand over here. Can you see that?

A Yes.

Q All right. Let's wait on Ms. Miller to pull it up.

While she's doing that, though --

MR. HELMS: And, Lacy, pause it when you come to it.

BY MR. HELMS:

Q While she's doing that, why did you loan your car to Tronahz?

A Well, it wasn't the first time that I loaned it to him, so it was a common occurrence.

Q Did he have a car?

A No, sir, not that I know of.

Q Okay. Now, when you let him borrow your car, did he tell you what he was going to do with it?

A No, he didn't.

Q Did you ask?

A No, I didn't.

Q Did you tell him that he couldn't have anyone else in the car?

A No, I didn't tell him that.
Q So you didn't prohibit him from using the car to take people around?
A No, sir.
Q He was allowed to use the car for whatever he wanted?
A Yes.
Q Okay. Did you know that he was going to have six people in the -- five other people in the car?
A No.
Q If you had known that, would you have let him use it anyway?
A No.
Q Okay. That's fair.
Do you remember when you loaned him the car in September? Do you remember the day of the shooting?
A Was it the 12th that you're talking about?
Q Yes, sir. September 12th. I believe you said you went to McDonald's.
A Yes, sir.
Q Okay. Do you remember what time you loaned Tronahz the car?
A I believe it was like sometime in the afternoon or the evening.
Q Before dark?

A Yes.
Q Okay. And where did you take the car to him?
A Downtown Conway.
Q Okay. Was it EME Apartments?
A I'm not sure of the name of the apartments, but it was the apartments.
Q Do you know it as the Cherry Hill Apartments?
A No. Where is that at?
Q That's fair. I'll show you a video. I want you to take a look at this video --

MR. HELMS: And go ahead, Ms. Miller, if you don't mind. Just press play for us.

(Video plays.)

BY MR. HELMS:

Q Have you seen this video, Mr. Samuels [sic], before?
A Yes.
Q Okay. Do you know what we're about to see here?
A Somewhat. I believe my car pulling up.
Q Do you recognize that car right there?
A Yeah, that's my car.
Q Who is driving?
A I am.
Q And why are you -- what are you doing here?
A Parking.
Q But what are you doing here? Why are you here?

A I'm there to meet Nahz.
Q You're there to meet Nahz?
A Yes.
Q Okay. And Nahz is Tronahz Whittington?
A Yes.
Q Okay. The fellow coming over here to you, who is this? Do you know who this is coming to you?
A Not specifically.
Q Okay. Who did you loan the car to?
A Nahz.
Q Would you have given the car to anyone else out here?
A No.
Q Did you give the car to anyone else out here?
A No.
MR. HELMS: Pause it for me for a second, Lacy. Thank you.
BY MR. HELMS:
Q Do you know who the folks are walking up to the car behind that fellow right there?
A No, sir.
Q Okay. And that's you on the video; right?
A Yes.
Q Okay. Now, after Tronahz borrowed the car from you this day, did he bring the car back?

A Yes.
Q Do you remember about how long it took him to bring the car back?
A Not specifically.
Q Okay. Was it five minutes?
A No.
Q Longer than that?
A Yes.
Q Longer than an hour?
A Yes.
Q And when he brings the car back to you -- we're getting there, hang on. Obviously, it's later in the day; right?
A Yes.
Q When he brought the car back to you, did he tell you anything?
A He let me know I had a flat tire on the right side.
Q A flat tire on the right side?
A Yes.
Q What did you think about that?
A Well, I was just trying to figure out how to get it fixed and how it happened.
Q Do you know how it got a flat tire?
A No. I physically seen the nail in it when I examined it myself.

Q So you examined the car?
A The tire, yes.
Q The tire. Okay.
Let me ask you this question: When you examined the tire and the car and you got it back -- and you still have it to this day -- did you ever find any bullet holes in this car, De'Shon?
A No.
Q No bullet holes. And the tire had a flat because you said there was a nail in it?
A Yes.
Q Could you drive the car home whenever he returned it to you?
A No.
Q So what did you do? He returned it to you. Where did he return it? Same apartments?
A Yes.
Q When he returned it to you with a flat tire and you couldn't drive it home, what did you do?
A Ended up finding a ride home.
Q You rode with somebody else?
A Yes.
Q And did the person that picked you up also pick up Tronahz?
A Yes.

Q So y'all rode together?
A Yes.
Q Where did you go?
A To my house to drop me off.
Q Just to drop you off?
A Yes.
Q And he went on his way?
A Yes.
Q During that time, did he say anything to you about a shooting that happened in your car?
A No.
Q Let me ask you this: At any time did you talk to Tronahz after? Did you wipe down the car?
A Yes, I did wipe down the car.
Q How did you wipe it down? Explain to this jury what you wiped it down with.
A I wiped my car down with bleach.
Q With bleach.
De'Shon, why would you wipe your car down with bleach?
A Because he asked me to.
Q Who did?
A Nahz.
Q Did you think that was strange?
A Somewhat, but I also knew that it was COVID at the

time, and I didn't know if he had anybody with him or not, so I took it under precaution of myself.

Q Okay. So you wiped down -- so Tronahz gives you the car and you wipe it down. Then, at some point after that, do the police take the car from you?

A Yes.

Q So the police took the car after you wiped it with bleach?

A Yes.

Q Okay. After you wiped the car down with bleach and the police came and got it, did you ever talk to Tronahz again?

A No.

Q So you haven't talked to Tronahz Whittington since this day that you loaned him that car?

A Yes, that's correct.

Q Okay. When you loaned him the car, did you know that all these other fellows was going to show up and get him?

A No.

Q When you -- and you said you loaned the car to him in the past; right?

A Yes.

Q When you loaned the car to him in the past, is that what happened? Did he return it with flat tires and

damage to it?

A No, he didn't.

Q Okay. Is there any particular reason why you haven't -- well, let me ask you this: Do you know any of these fellows?

A No, sir, not personally.

Q Well, let's do it like this: How about Che Ransom? Do you know Che Ransom?

A No. Who is that?

Q How about Travontae Mitchell? Do you know him?

A No, sir.

Q Do you know Don Brown?

A No, sir.

Q All right. Do you know why you haven't talked to Tronahz Whittington since that day? Is there any reason?

A No, sir. We kind of just popped on and off together.

Q That's fair.

De'Shon, did you have any involvement or did you do anything on D Street in terms of shooting at anyone?

A No.

Q Were you even there?

A No.

Q Please answer any questions defense has.

THE COURT: Mr. Bouchette?

MR. BOUCHETTE: Thank you, Your Honor. Court's indulgence.

CROSS-EXAMINATION ON BEHALF OF DEFENDANT RANSOM

BY MR. BOUCHETTE:

Q Good morning, Mr. Samuel. I'll be brief.

You mentioned earlier you don't know Che Ransom; correct?

A No, sir.

Q Okay. And can you speak up a little bit into the microphone so the jury can hear you.

A Yeah.

Q Okay. Thank you.

So you don't know Che Ransom; correct?

A No. I don't.

Q Okay. And on this incident day that we have been talking about back in September of 2020, you haven't received any communications or requests or any type of correspondence with Mr. Ransom; correct?

A No. Yes, that's correct.

Q Okay. All right. You only knew Tronahz Whittington; correct?

A Yes.

Q All right. And in the evening when Mr. Whittington returns the vehicle, he asked you to wipe the car down; correct?

A Yes.
Q He asked you to wipe the car down and wipe it down with bleach; correct?
A Yes.
Q Now, is it your testimony that you thought wiping the car down with bleach after having loaned it to Mr. Whittington was purely because of a COVID protocol?
A Yes, sir, on my end.
Q Okay. Had you ever -- do you wipe the car down with bleach for COVID protocols before?
A No, sir.
Q Okay. This was the only time?
A Yes, sir.
Q Okay. And, again, that was at Tronahz's request; right?
A Yes.
Q Okay. Now, subsequent to that evening, you have learned that a shooting occurred where somebody died; correct?
A Yes.
Q And you have learned that it occurred in your vehicle; correct?
A Yes.
Q All right. And you don't dispute that you wiped that vehicle down with bleach; correct?

A Yes, I did.
Q Okay. Have you been charged with any crime -- accessory or anything -- related to this incident?
A No, sir.
Q Were you ever charged with accessory or aiding or abetting or anything related to this incident?
A No.
Q But you don't deny that you wiped down the vehicle at Mr. Whittington's request following this shooting; true?
A Yes, sir.
Q Okay. All right.

MR. BOUCHETTE: No further questions, Your Honor.

THE COURT: All right. Mr. Pinkerton?

CROSS-EXAMINATION ON BEHALF OF DEFENDANT MITCHELL

BY MR. PINKERTON:

Q Mr. Samuels [sic], thank you for being here.

You stated earlier you do not know my client, Travontae Mitchell?
A Yes.
Q You don't know him at all?
A Yes.
Q Okay. And when the car came back to you, it was Tronahz that borrowed the car; correct?
A Yes.

Q Did he pay you any money -- any kind of compensation for using the car?

A No.

Q Just out of the goodness of your heart, you just let him have it?

A Yes.

Q Okay. And when the car was returned, it had a flat tire?

A Yes.

Q What was the reason for the flat tire; do you know?

A There was a nail in the tire.

Q There was a nail in the tire?

A Yes.

Q They actually found the nail? Did it get fixed or --

A Yes.

Q But, once again, you don't know my client, Travontae; correct?

A Yes.

MR. PINKERTON: No further questions.

THE COURT: All right. Mr. Gardner?

MR. GARDNER: No, Your Honor. No questions.

THE COURT: Redirect?

MR. HELMS: Nothing, Your Honor. I would just ask that he be released.

THE COURT: All right. Any objection?
MR. BOUCHETTE: No, sir.
MR. PINKERTON: No, Your Honor.
MR. GARDNER: No, Your Honor.
THE COURT: All right. You may step down. You're free to go.
The State can call your next witness.
MS. LIVESAY: Drew Edwards. Detective Drew Edwards.
THE CLERK: Please raise your right hand and place your left hand on the Bible.

DETECTIVE DREW EDWARDS,

after having been duly sworn, was examined and testified to as follows:

THE CLERK: Please state your name and spell it for the Court.
THE WITNESS: Christopher Drew Edwards. E-d-w-a-r-d-s.

DIRECT EXAMINATION

BY MS. LIVESAY:

Q Detective Edwards, where are you employed?
A Horry County Police Department.
Q And how long have you been with the police department?
A I have been employed at the County Police for 16 years.

Q Go ahead and pour you some water.

And what kind of training have you undergone with the police department?

A I attended the South Carolina Criminal Justice Academy in 2006. We have yearly in-service to maintain our certification. I have been to interview schools, investigation schools in reference to, like, special victims cases, homicide cases, and the narcotic cases.

Q Now, tell these folks what your current responsibilities are.

A I'm currently assigned to the Narcotics and Vice Unit.

Q Okay. And what were your responsibilities in September of 2020?

A I was assigned to the Violent Crimes Unit.

Q Okay. And did you have an occasion to assist on the case we're here for today?

A Yes, ma'am.

Q But were you the lead investigator?

A No, ma'am.

Q Okay. So you were just there to assist in whatever the lead needed done?

A Yes, ma'am.

Q Okay. And before you worked on this case, had you undergone training to be in that particular division?

A Yes, ma'am.
Q Okay. And what did that particular division work on?
A We investigated any type of violent crime, murder, attempted murders, robberies, sometimes stalkings, stuff like that.
Q And what happened here fell under that umbrella?
A Yes, ma'am.
Q Okay. And as part of your assistance, did you talk with the defendant, Che Ransom?
A I did.
Q And I'm going to show you now what's been marked as State's Exhibit 50. Do you recognize that document?
A Yes, ma'am.
Q And what is it?
A It's Horry County Police Department Advisement of Miranda Rights Form.
Q And was that document read to Mr. Ransom?
A Yes, ma'am.
Q Now, tell me, on the document, is there a space to indicate whether or not Che Ransom understood his rights?
A Yes.
Q And did anybody sign the document?
A Che Ransom did.
Q And did anybody from the police department sign the

document?

A I did and Detective Marcus.

Q And does that indicate that you were in the room and present when the rights were read?

A Yes, ma'am.

Q And did he appear to understand these rights?

A He did.

Q And, in fact, he initialled and signed them?

A He checked that he understood and then he printed his name and signed it.

MS. LIVESAY: Your Honor, at this time, the State wishes to put State's Exhibit 50 into evidence and publish it at the appropriate time.

THE COURT: All right. Mr. Bouchette?

MR. BOUCHETTE: Your Honor, I don't have an objection. I anticipate the other attorneys would.

THE COURT: Mr. Pinkerton?

MR. PINKERTON: Your Honor, I would have an objection. He could be speaking to hearsay and also our previous objection pursuant to Crawford and Bruton, Your Honor, involving the other non-testifying codefendants in this case.

THE COURT: All right. Mr. Gardner?

MR. GARDNER: No objection, Your Honor.

THE COURT: All right. State's Exhibit 50 is

admitted into evidence over the objection of Defendant Ransom and without objection from the other defendants.

MS. LIVESAY: Thank you, Your Honor.

MR. PINKERTON: Your Honor, that would actually be on behalf of Mr. Mitchell and not Mr. Ransom, Your Honor.

THE COURT: Oh, I apologize. Over objection of Mr. Mitchell. Okay. I apologize.

All right. Go ahead.

(State's Exhibit No. 50 was received into evidence.)

MS. LIVESAY: You ready for me, Judge?

THE COURT: Yeah.

MS. LIVESAY: Okay. Thank you.

BY MS. LIVESAY:

Q Now, Detective Edwards, if you don't mind, the document's into evidence. Did you read all the rights to Che Ransom?

A Yes, ma'am.

Q Okay. Tell these folks the rights that you read to the defendant.

A "You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to talk with a lawyer and have them present with you while you're being questioned. If you cannot afford to hire a lawyer, one will be appointed to represent you at no cost to you for any questioning if you

so desire. If you make any statement or answer any questions, you have the right to stop at any time."

Q And he indicated that he understood those rights?

A Yes, ma'am.

Q Okay. Now, talk to me about when he was in the room. When he was in the room, did he appear to be impaired in any form or fashion?

A No, ma'am.

Q Okay. Under the influence of drugs or alcohol?

A No.

Q Okay. And did he appear to be in any pain or discomfort while he was in the room?

A He did not.

Q Was he ever denied going -- being able to go to the bathroom, get a drink of water, or anything like that?

A No, ma'am.

Q And, in fact, was Che Ransom's family at the police department?

A They were.

Q Okay. And, at some point, when you spoke with him, did his family have the opportunity to go in there and talk to him?

A His mom and aunt went and talked to him.

Q Okay. And you allowed for that?

A Yes.

Q Okay. And when you allowed for his family to go in there and talk to him, was there anybody from law enforcement in there?
A There wasn't.
Q Okay. So you let them go in there and talk to their family member?
A Yeah, we did.
Q Okay. During the course of your conversation with Mr. Ransom, did you ever put your hands on him?
A No.
Q Did you ever threaten him in any form or fashion?
A No.
Q Did you ever promise him anything in exchange for his statement?
A No.
Q After you informed him of his rights, did he acknowledge he understood?
A Yes.
Q Did he, in any way, act like he did not understand what was going on?
A No, ma'am.
Q Did he even have any questions about his rights?
A No.
Q After reading his rights to him, after -- did you ask him any questions about education, how he felt,

anything like that?

A Yeah. We asked him if he had used any drugs or alcohol, to which he indicated he didn't. We asked if he could read or write, and we asked him if he was in any discomfort or pain, and he said no.

Q And what did he answer?

A He said no alcohol or drugs, that he could read or write, and that he wasn't in discomfort or pain.

Q And why do you ask him those questions?

A I guess just judging where -- his mental status, I guess. See if he's able to answer questions.

Q Okay. And was he able to able to answer the questions?

A Yes.

Q And did he acknowledge he could read or write?

A He did.

Q Did he tell you he wasn't in any pain?

A He did.

Q Okay. Was there any reason for you to believe that he was not speaking with you freely and voluntarily?

A No.

Q In the course -- ultimately, did he have a conversation with you?

A He did.

Q Okay. And, ultimately, did he have a conversation

with you about his participation in what happened on September 12th, 2020, involving the murder of Jamie Johnson?

A He did.

Q And do you have any reason to believe that he did not voluntarily speak with you and give you that information?

A No.

Q In fact, you talked to him before his mama went in there; correct?

A Yes, ma'am.

Q After his mama talked to him, they discussed whatever they discussed, you walked back in there, and he continued talking?

A Yes.

Q During your conversation with Che Ransom, did he tell you whether or not he was in the vehicle that fired at Jamie Johnson?

A He did.

Q What did he tell you?

A That he was an occupant of that vehicle.

Q Okay. Did he tell you if he had a gun?

A He did.

Q And tell these folks what gun he told you he had.

A A KelTec 9mm handgun.

Q And is that -- did he tell you whether or not he fired a handgun on 9/12/2020 at the intersection of D Street and Rose Moss?

A He did.

Q And what did he say?

A He said he got out of the vehicle, he attempted to fire but the gun jammed, so he got back in the vehicle, racked the slide, and fired shots as they were pulling off.

Q Did he tell you how many shots he fired?

A It was a few. I don't remember the exact number.

Q More than one?

A More than one.

Q Okay. And did he tell you where he went after he fired the shots?

A He went to a house that was close by to where the incident occurred and then got a ride to another person's house.

Q And did he tell you who gave him a ride?

A He did.

Q Okay. And who gave him a ride?

A I can't remember her name, but it was somebody he was with. Girlfriend to a guy named EK's house.

Q Okay. So he got a ride from somebody's girlfriend?

A Yeah.

Q A female?
A Yeah.
Q Did he tell you the car that she was driving?
A It was a minivan.
Q So the car that picked him up was somebody's girlfriend driving a dark van?
A Yes.
Q Now, did he tell you whether or not there was a plan?
A Yes.
Q What did he tell you was the plan?
A He said he knew the victim in this case from Snapchat and they had -- he had saw that he had weed money, and a plan was formulated to rob him for money and/or weed.
Q So he told you he had a plan?
A Yep.
Q And did he tell you when he got the gun? Did he have it when he got the car? Did he tell you he got it when he was in the car?
A He said he acquired it in the car.
Q Okay. Did he ever indicate to you that anybody threatened him?
A No.
Q And what did he tell you about the shots he fired?

A That he wasn't really aiming, I guess. Kind of just stuck it out the window.

Q And he says initially -- was he able to fire the gun initially?

A He said it malfunc- -- it jammed on him. That was his words. And that he got back in the car and corrected it.

Q And then after he corrected it, what?

A As they were pulling off, he shot out the window.

Q Mr. Edwards, we talked about -- Detective Edwards, I apologize. We talked about ultimately what Che Ransom told you in the conversation; correct?

A Yes, ma'am.

Q And we discussed at some point his mom and aunt were allowed to talk to him?

A Yes.

Q Okay. Did he tell you that he was in the car and fired prior to his mom and aunt going in there and talking to him?

A No, ma'am. Initially, when he came to the police department to turn himself in, he initially told us he was in Columbia to visit a different aunt.

Q And did y'all look into that?

A Yeah. I went and asked his mom, and she said he was --

MR. BOUCHETTE: Objection to hearsay, Your Honor.

THE COURT: Sustained.

MS. LIVESAY: I understand. That's fine.

BY MS. LIVESAY:

Q Did she confirm the story?

A No.

Q And since she didn't confirm the story, did you let her go in there and talk to her son?

A We did.

Q And after she talked to her son, did you go back in there and talk to Che Ransom again?

A We did.

Q Okay. And when you went in the second time, did his story change?

A It did. It changed to the -- he was in the car and told us what happened.

Q Okay.

MS. LIVESAY: No further questions of this witness, Your Honor.

THE COURT: Mr. Bouchette?

CROSS-EXAMINATION ON BEHALF OF DEFENDANT RANSOM

BY MR. BOUCHETTE:

Q Detective Edwards, good morning.

A Good morning.

Q You interviewed Mr. Ransom. At that point in time,

you received information that indicated he had a .45; correct?

A I believe that's what was told to us, yes.

Q And let's just talk about what he said when he began telling you about the shots fired. If I understand you correctly, his statement to you was that he got out and the gun he had jammed; correct?

A Correct.

Q And according to what you said a moment ago, he fired off the shots as he was leaving the scene; correct?

A Yes, that's what he said.

Q So, again, according to the testimony you've elicited and testified to, he gets out, the gun jams, meaning it did not fire; correct?

A Yeah. When he pulled the trigger, it jammed and did not work, and so he gets in the car to fix it.

Q He gets in the car. And fires as he's leaving the scene; correct?

A That's what he told me.

Q All right. Now, he's sort of firing out the window as they're leaving?

A That's what he indicated he did.

Q That's what he indicated. Okay.

And have you reviewed any of the ballistics or the crime scene evidence in this case?

A I have not.
Q Anything where shots were -- or cases were found or anything along those lines?
A No, sir.
Q But he says he was firing up in the air as they were leaving; correct?
A Yes.
Q All right. You spent a fair amount of time talking about the plan. As a detective particularly in a murder case, I imagine you -- prior to and even after speaking to a defendant, you try to gather as much information as you can; correct?
A Yes, sir.
Q And you're trying to corroborate what people are saying to see if it matches with any other evidence that you might uncover; correct?
A Yes.
Q You probably looked through things like text messages, social media stuff, things along those lines; correct?
A Yes.
Q Did you do that in this case?
A I did not.
Q Did somebody do that?
A I believe Detective Marcus did.

Q All right. Well, you talked about this plan to rob. Was the -- who originated this supposed plan to rob Jamie?

A I believe he said Tronahz Whittington.

Q So he told you Tronahz wanted to rob Jamie; correct?

A Yes.

Q Okay. And that plan originated after they were already in the car; correct?

A Yes.

Q Okay. All right. So they're in the vehicle. You have uncovered no evidence that indicated the discussions about a robbery with Tronahz Whittington occurred before they got in the vehicle; correct?

A I have not.

Q Okay. And they're in the vehicle. Tronahz Whittington indicates that there's the desire to rob Mr. Johnson; is that right?

A Yes, sir.

Q Okay. And is it accurate to say that, other than him getting out, at least according to his testimony, getting out of the car and the gun jamming and then firing shots out the window as he's exiting the scene, there's nothing that you have uncovered to indicate he did anything else in furtherance of some effort to rob Mr. Johnson; is that safe to say?

A Yes, sir.

Q And, again, you're not a crime scene person. You didn't go out to investigate. You're just here to testify about the interview you had with him; is that --

A That's all I'm here to testify to.

Q Okay. Very good.

MR. BOUCHETTE: No further questions for this witness, Your Honor.

THE COURT: Mr. Pinkerton, cross-examination?

CROSS-EXAMINATION ON BEHALF OF DEFENDANT MITCHELL

BY MR. PINKERTON:

Q Just one question: You did not interview Travontae Mitchell; correct?

A No, sir, I did not.

MR. PINKERTON: Thank you. No further questions.

MR. GARDNER: No questions.

THE COURT: All right. Redirect?

MS. LIVESAY: Yes, sir, Your Honor. Just one quick question.

REDIRECT EXAMINATION

BY MS. LIVESAY:

Q Detective Edwards, Mr. Bouchette, do you remember, asked you about when the plan originated; correct?

A Yes, ma'am.

Q And he asked you if the plan came about while they were in the car?

A Yes, ma'am.
Q And is that when the plan came about?
A To the best of my knowledge, I believe so.
Q And you told Mr. Bouchette, correct, that's when the plan came about?
A Yes.
Q And that's what Che Ransom told you?
A Yes. That's what he told me.
Q So the question wasn't if there was a plan; correct?
A Right.
Q Just when the plan originated?
A Yes, ma'am.
Q And the answer was, when they were in the car?
A Yes, ma'am.
Q No further questions, Your Honor.

THE COURT: All right. You may step down.

The State can call your next witness.

MS. LIVESAY: Thank you, Your Honor. At this time, the State calls Detective Sean Wydra to the stand.

MR. HELMS: Your Honor, may Mr. Edwards be released, please?

THE COURT: Any objection?

MR. BOUCHETTE: No, sir.

MR. PINKERTON: No, Your Honor.

MR. GARDNER: No, Your Honor.

THE COURT: All right. He's free to go.

MR. HELMS: Thank you, Judge.

THE CLERK: Please raise your right hand and place your left hand on the Bible.

DETECTIVE SEAN WYDRA,

after having been duly sworn, was examined and testified to as follows:

THE CLERK: State your name and spell it for the Court.

THE WITNESS: Detective Sean Wydra. S-e-a-n. Wydra, W-y-d-r-a.

DIRECT EXAMINATION

BY MS. LIVESAY:

Q Detective Wydra, where are you currently employed?

A The Horry County Police Department.

Q I'm going to give you an opportunity to go ahead and take a sip.

And how long have you been with the police department?

A Approximately 11 years.

Q And what kind of training have you undergone to work with the police department?

A We attend the South Carolina Criminal Justice Academy when we first start as a law enforcement officer. Beyond that, we have to do annual training each year to

keep our certification. And then we also have advanced training classes like homicide classes, sexual assault classes, street crimes classes, things like that.

Q And what are your current responsibilities?

A I'm a homicide detective.

Q And what were your responsibilities in September of 2020?

A Same thing. I was a homicide detective then.

Q And have you had training particularly in homicide investigations?

A Yes, ma'am.

Q And did you assist on the case we're here today with involving the death of Jamie Johnson?

A I did.

Q And as part of your assistance, did you talk with Travontae Mitchell?

A Yes, ma'am.

Q I'm going to show you now what's been marked as State's No. 51. I have already shown it to defense counsel.

A Yes, ma'am.

Q If you don't mind, tell the Court what you're looking at.

A It's a Miranda rights form.

Q And who signed the Miranda rights form?

A Travontae Mitchell.
Q And did anybody from the police department sign it?
A Yes, ma'am. I did.
Q And does that indicate that you read that document to Mr. Mitchell?
A The document was read by the other detective in the room with me, but I was present when it was read.
Q Okay. And did Mr. Mitchell sign the document?
A He did.
Q Okay. And has that document been altered in any form or fashion?
A It does not appear to have been altered.

MS. LIVESAY: Your Honor, at this time, the State asks to place State's Exhibit 51 into evidence.

THE COURT: Mr. Pinkerton?

MR. PINKERTON: No objection, Your Honor.

MR. BOUCHETTE: Your Honor, may we approach?

THE COURT: All right.

BENCH CONFERENCE

(The following bench conference was held off the record and outside the hearing of the jury and others:)

MR. BOUCHETTE: Your Honor, I want to do this as efficiently as possible without causing undue delay, but I want to make sure I'm protected. I'm going to object to any -- in any statements that this witness is going to be

introducing that are the statements of a codefendant in this case, Travontae Mitchell, under hearsay, Bruton and Crawford. If the Court would allow it as a running objection through his testimony, then I don't need to object each time that they --

THE COURT: I'll allow a running objection on that, yep.

MR. BOUCHETTE: Okay. Very good. Thank you, Judge.

(Open court resumes as follows:)

THE COURT: All right, Mr. Bouchette. Any objection?

MR. BOUCHETTE: No other objection.

THE COURT: All right. Mr. Gardner?

MR. GARDNER: No, Your Honor.

THE COURT: All right. State's Exhibit 51 is admitted into evidence over Defendant Ransom's objection and without objection by Defendant Brown or Mitchell.

MS. LIVESAY: Thank you, Your Honor.

(State's Exhibit No. 51 was received into evidence.)

BY MS. LIVESAY:

Q Mr. Wydra, if you don't mind -- that document is now in evidence -- read that document to the folks in the jury.

A At the top, there's a section for -- where we fill out some information. It has Travontae Mitchell's name,

his date of birth, case number, date and time, where it was filled out.

It also asks if he graduated high school; what year, if he did. If he's under the influence of any alcohol of drugs at the time, which he said no. If you can read or write, to which he said yes. If he was in any physical discomfort, to which he indicated no. He was still in school at the time.

Below is the section for the advisement of Miranda rights. It says, "You have the right to remain silent. Anything you say can be and will be used against you in a court of law. You have the right to talk with a lawyer and have him present with you while you are being questioned. If you cannot afford to hire a lawyer, one will be appointed to represent you at no cost to you before any questioning if you so desire. If you make a statement or answer any questions, you have a right to stop at any time. Do you understand these rights?"

Q And did he indicate that he understood the rights?

A Yes, ma'am. There's a section where he checked yes or no, where you can check or write your initials. And he initialled next to "yes." And then he also initialled next to each one of those Miranda rights and signed and printed his name at the bottom of the form.

Q Now, let me ask you something: When he was in the

room with you, did he appear to be impaired in any form or fashion?

A No, ma'am.

Q Did he appear to understand what was going on?

A Yes, ma'am.

Q Did he appear to understand your questions?

A Yes, ma'am.

Q Did he appear to be in any sort of pain or discomfort?

A No, ma'am.

Q Was he having any issues at all to keep him from understanding what was going on?

A No, ma'am.

Q And was he denied -- if he wanted to go to the bathroom or get a drink of water, was he denied any of those things?

A No, ma'am. He actually was allowed to use the restroom at one point. I don't recall exactly when, but...

We also offered him food and water and those things.

Q And when he was in the room, did you ever put your hands on Travontae Mitchell?

A No, ma'am.

Q Did anybody from the police department put their hands on Travontae Mitchell?

A No, ma'am.
Q Did you threaten him in any way?
A No, ma'am.
Q Did anybody from the police department threaten him?
A No, ma'am.
Q Did you promise him anything in exchange for talking to you?
A No, ma'am.
Q Did he talk to you freely and voluntarily?
A Yes, ma'am.
Q Okay. Now, you read him those rights; correct?
A I believe Detective Dudley read them, but I was present when they were read in the room.
Q While you were in the room with Travontae Mitchell, did he ever ask for a lawyer?
A No, ma'am.
Q Did he ever indicate to you that he wanted to remain silent?
A No, ma'am.
Q Were his answers responsive to your questions?
A Yes, ma'am.
Q So nothing to indicate he didn't want to talk to you?
A No, ma'am.
Q And did he talk with you?

A He did.
Q Okay. Now, were you present for the entire interview of Travontae Mitchell?
A No, ma'am.
Q Okay. So, at some point, you left?
A I did.
Q And do you know who came in?
A Detective Marcus.
Q Was anybody in the room with the defendant between the time you left and the time Detective Marcus came in?
A I don't know if Detective Dudley remained in there or not. I don't recall who came in or left at the time.
Q Okay. While you were in there, did anybody ever pressure him or anything inappropriate happen?
A No, ma'am.
Q While you were in there, did he ever admit to you any involvement in the shooting of Jamie Johnson?
A No, ma'am.
Q Did he indicate to you whether or not he was present for the shooting?
A No. He said he was in his house or his mom's house.
Q So he said he don't know nothing about nothing?
A For the most part. I mean, he said he wasn't present and that we could reach out to his mother to confirm that or deny that.

Q And said he was at his mama's house?
A Yeah.
Q Okay. Two things, Mr. Wydra. First of all --
A Sure.
Q -- did anybody ever verify whether or not Travontae Mitchell was home during the time of the shooting?
A I don't know. I did not. I can't answer that.
Q And at the time, were you the lead investigator?
A No, I was not.
Q So the lead probably would have had more information?
A That's correct.

MS. LIVESAY: No further questions, Your Honor.

THE COURT: All right. Mr. Bouchette, cross-examination?

MR. BOUCHETTE: I don't think I have any questions for this witness, Your Honor.

THE COURT: Mr. Pinkerton?

MR. PINKERTON: Yes, Your Honor. Briefly.

THE COURT: All right.

CROSS-EXAMINATION ON BEHALF OF DEFENDANT MITCHELL

BY MR. PINKERTON:

Q Detective Wydra?
A Yes, sir.
Q So you participated in the interview of my client,

Travontae Mitchell?

A I did.

Q And at no time he ever told you he had a gun?

A No, sir, he did not.

Q He told you he was at his mom's house the whole time?

A Yes.

Q But never admitted to taking place in the shooting or have any part in the shooting?

A No, not to me.

Q And, once again, never had a gun?

A No, he did not tell me he had a gun.

Q Thank you.

MR. PINKERTON: No further questions, Your Honor.

THE COURT: All right. Mr. Gardner?

MR. GARDNER: No, sir. No questions.

THE COURT: Redirect?

MS. LIVESAY: No redirect, Your Honor.

THE COURT: Thank you. You may step down.

THE WITNESS: Thank you, Your Honor.

THE COURT: The State can call your next witness.

MS. LIVESAY: Certainly, Your Honor. At this time, the State calls Detective Ken Marcus to the stand.

DETECTIVE KEN MARCUS

after having been duly sworn, was examined and

testified to as follows:

THE WITNESS: It's Detective Ken Marcus. And the last name is M-a-r-c-u-s.

DIRECT EXAMINATION

BY MS. LIVESAY:

Q Detective Marcus, if you don't mind, where are you currently employed?

A With the Horry County Police Department.

Q And how long have you been employed with the police department?

A About 16 years now.

Q And tell these folks how much training you have had.

A Initially, we have to go through the criminal justice academy. It's about 9 weeks to 12 weeks depending on when you go. There is continuous training throughout the year to keep our certifications up. I have gone through several advanced courses through the criminal justice academy and through other accredited programs like the Southern Police Institute and the International Homicide Investigators Association, as well as some training through -- for digital forensics field.

Q And what are your responsibilities currently?

A Currently, I'm a cold case investigator associated with our homicide division.

Q And what were your responsibilities in September of

2020?

A In September of 2020, I was a detective assigned with our Violent Crimes Division, specifically in the field of robbery and homicide.

Q And did you assist in investigating the murder of Jamie Johnson?

A I was actually the lead investigator for this particular incident or investigation.

Q Okay. And if you don't mind, tell them what that means to be the lead investigator.

A So the lead investigator case agent is the gentleman who or the lady who is in charge of directing the investigation, where they go. Typically, for cases of this magnitude, we work as a team. There's just too much for one person to, you know, follow up at one point in time. Everything is fluid moving.

So I would be the gentleman who is in charge of making sure certain things are looked into. If there was evidence over here, I would send someone to go and look for it and collect it. If a canvass needed to be done in a neighborhood, I would send investigators to do that. If there were people to be interviewed, I would send investigators to do that.

Now, I would be a part of some of these items, but, obviously, I could not be a part of every single one of

them, and all that information is brought back to me, and I organize it and then decide where the team is going to go based off the information or evidence provided to me by the other investigators.

Q And you were the lead investigator in this particular case?

A Yes, ma'am.

Q And at some point, as an investigator working on the case, did you talk to Defendant Travontae Mitchell?

A I did.

Q And did you know that Sean Wydra was in there talking to him first?

A Yes. I actually monitored the majority of that interview. There were two interviews going on at that time, so I was monitoring both.

Q And, at some point, did Sean leave the interview and you come in?

A Both Detective Dudley and Detective Wydra left at one point in time, and then myself and Detective Dudley entered the interview room.

Q Okay. And when you were in the room with Defendant Mitchell, did you ever put your hands on him or threaten him in any form or fashion?

A No, ma'am.

Q Okay. Was he promised anything in exchange for

talking with you?

A No.

Q Okay. And when you and David Dudley -- Detective Dudley come back in, does he continue to speak with you guys?

A Yes.

Q Okay. Now, why did you come in?

A There was information that was mentioned to me --

MR. BOUCHETTE: Objection, Your Honor.

THE COURT: All right. No hearsay.

A During my investigation, I learned facts about this case --

THE COURT: Well, you can't get into what anybody told you. You can say what you did and what you personally observed, but if it's based upon what somebody else told you, you can't get into that.

MS. LIVESAY: I'll rephrase the question.

THE COURT: All right.

BY MS. LIVESAY:

Q Detective Marcus, did you have additional information that Mr. Wydra did not have?

A Yes, ma'am.

Q And as part of the investigation, did you want to confront Defendant Travontae Mitchell with that information?

A Yes, ma'am.
Q And did you take over the interview when Detective Wydra left to confront him with the information?
A Yes, ma'am.
Q Okay. And you already knew what he was telling Detective Wydra?
A I heard some of it, yes, ma'am.
Q Okay. Now, when you come in and speak with him and confront him with this information, does he tell you whether or not he was a participant in the murder of Jamie Johnson?

MR. BOUCHETTE: Objection, Your Honor. If the Court is going to -- would extend my continuing objection from the prior witness.

THE COURT: You have got your objection. Overruled.

MR. BOUCHETTE: Okay. And it's continued throughout this testimony, Your Honor?

THE COURT: Yes.

MR. BOUCHETTE: Very good. Thank you.

BY MS. LIVESAY:

Q I'm sorry, Mr. Marcus. Let me go back. Okay?

Where we left off was, you had come in the room because you had additional information.

A Yes, ma'am.
Q In the course of the talking to Defendant Travontae

Mitchell, did he tell you whether or not he was a participant of the murder of Jamie Johnson?

A Yes, ma'am.

Q Did he tell you whether or not he was in the car?

A He stated he was in that vehicle on the -- at the time of the shooting, yes, ma'am.

Q And, in fact, did he tell you where he was sitting in the vehicle?

A Yes, ma'am.

Q And tell these folks where he told you he was sitting.

A He stated he was sitting in the backseat in the center -- center backseat of that vehicle.

Q Okay. And did he tell you whether or not he hopped out of the car and hopped back in?

A He did.

Q So he tells you he hops out and hops back in?

A Yes, ma'am.

Q Did he tell you whether or not he fired a weapon?

A He stated at that time he did not fire a weapon.

Q Did he tell you whether or not he had a weapon?

A He stated at that time he did not have a weapon.

Q Now, did he tell you if anybody picked him up after the shooting?

A He did.

Q And who picked him up?
A The baby's mama or girlfriend of another individual.
Q Okay. So somebody's girlfriend?
A Yes.
Q Okay. And was this different than what he told Sean Wydra?
A Yes.
Q Did he tell you what he was wearing?
A I don't recall. I don't believe he could recall during that interview.
If you'd give me just a moment.
Q Okay.
A (Witness reviews documents.) He could not recall during that interview.
Q And he says he didn't have any kind of weapon?
A Correct. He stated he did not have a weapon.
Q And he's sitting in the middle, between two people?
A He stated he was sitting in the backseat between two people.
Q Okay. And he admits he makes the effort to slide through and hop out of the car?
A He stated he exited the vehicle for a moment and then got back in the vehicle.
Q And did he indicate that he exited the vehicle while the shooting was going on?

A He stated he exited the vehicle at the time of the shooting and got back in the vehicle.

Q So he didn't tell you that he was home with his mom when Jamie Johnson was murdered?

A No, ma'am.

MS. LIVESAY: No further questions.

THE COURT: All right. Ladies and gentlemen, I have got another matter of law I need to address with the attorneys. I'm going to excuse you back to the jury room for just a few minutes. Okay? We'll bring you back out in just a second.

(The jury exited the courtroom at 12:02 p.m.).

MOTIONS/MATTERS OF LAW

THE COURT: All right. Mr. Bouchette had a running objection to this witness's testimony as to the statements given by one defendant. He said he's sitting in the back of the car between two other people. So how does that not implicate the other defendants in this case?

MS. LIVESAY: He didn't name any names and Shamontae --

THE COURT: You don't have to name other names. The fact of the matter is, if you're sitting -- anything that indicates that these other defendants -- you can't -- I mean, in the leading case, where they just said "other person," without naming the defendant.

MR. HELMS: Okay. Your Honor --

THE COURT: And they held that that violated Bruton because it was easy for the jury, when they said "other person" to know that he was talking about the codefendants that were being tried with that defendant who gave the statement.

Here, he said he's sitting in the backseat between two other people.

MR. HELMS: May I?

THE COURT: All right.

MR. HELMS: Your Honor, this has been litigated. What you're talking about and what has been addressed in Richardson v. Marks -- that is a U.S. Supreme Court case from 1987 -- it was decided after Bruton and it takes Bruton into consideration. And here's what it says, [as read] "If limited to facially incriminating confessions, Bruton can be complied with by redaction. If extended to confessions incriminating by connection not only possible but it is not even possible to predict the admissibility of a confession in advance of trial. Compliance with the Court of Appeals' overbroad reading of Bruton could not be achieved without enormous cost to the criminal justice system."

This case deals with what you're discussing right now, whether by implication the codefendants are involved

in the confession. And this says facially is what needs to be determined; whether facially the statement implicates the codefendant. And I would ask the Court, prior to ruling on this, to read Richardson v. Marks because it's right on point, Judge.

THE COURT: Well, I want you to read State v. McDonald, a South Carolina Supreme Court case from 2015. "Admission of codefendant's statement using the phase 'another person' to refer to codefendant and two other male individuals violated the defendant's right under confrontation clause."

MR. HELMS: May I have that notation, Your Honor?

THE COURT: 412 S.C. 133 and 771 S.C.2d 840, State v. McDonald. It does a good explanation of Bruton and everything. Because, at that time, the law was that, as long as they didn't name the defendant, they didn't say the defendant's name, then it didn't violate the defendant's confrontation clause, and the Supreme Court says no. When you can discern from the witness's testimony that the defendant's statement implicates the codefendants, then that is a violation of the codefendant's right -- constitutional confrontational clause.

MR. HELMS: And I understand, Your Honor, and I'll certainly read that during the break, but my contention --

the State's contention is it didn't implicate any codefendant.

THE COURT: He says he's sitting in the backseat between two other de- -- people.

MR. HELMS: Two people. That's right. You almost said "defendants," but that's right. He said, "People."

THE COURT: But what's the difference between saying he's sitting in the backseat between two other people and McDonald when he -- if he said he's sitting in the backseat with another person? "Another person" and "two people," State v. McDonald says you can't do that.

MR. HELMS: Well, and again, Your Honor, I'm going to read State v. McDonald, but I don't think that this violates Bruton, is my position.

THE COURT: All right. Let me -- go ahead and put your argument on --

MR. BOUCHETTE: I'd incorporate everything that Your Honor said. The only thing I would add to it is that, subsequent to the case cited by the State, obviously, Crawford was cited, and Crawford deals with -- again, I disagreed with Your Honor earlier -- respectfully, of course -- that the Court viewed this confrontation of what statements triggered confrontation clause too narrowly.

But now -- just as Your Honor stated earlier, now they have implicated by virtue of a statement from a

nontestifying codefendant of -- you know, that is now -- even under Your Honor's view of the confrontation clause now, it has been incriminating, and I think that's supported by McDonald.

And so I would submit both under Bruton, McDonald, Crawford, Mitchell, all those cases, that Your Honor is absolutely correct that they have -- and, again, I'll point out this fact to the Court: When this trial came up the previous time with Travontae Mitchell, we moved for severance. Judge DeBerry granted the severance. The State has subsequently moved for a motion to joinder, which Your Honor granted, and so now we're here.

So the State has bent over backwards to have this as a joint trial, and we were opposing it in large reason because we were fearing these issues may come up. So, you know, they wanted to do it this way, and I think they have created a problem that I don't think you can come back from.

THE COURT: All right, Mr. Pinkerton. Anything you want to put on the record?

MR. PINKERTON: Your Honor, I would concur with Mr. Bouchette with everything he said. These statements implicate other codefendants. Your Honor, there's no way around Crawford and Bruton at this point.

THE COURT: Mr. Gardner?

MR. GARDNER: I agree with you, your earlier assessment of it. I agree with the solicitor when he said, "You, Your Honor, almost said two defendants." And guess what? That's what the jury heard: two defendants. I agree with the motion made by Jarrett --

THE COURT: Well, I don't think he said two defendants. He said two -- between two people.

MR. GARDNER: He did. He did say, "Two people."

And when you were repeating it, the solicitor said, "You almost said two people" I mean, "two defendants."

My point is, that's what the jury is going to assume that he was saying when he said "between two people." He's going to say "between two defendants."

And that's why we have this law. And I join with the motion by Jarrett and by Pinkerton, and I think that we're in this pickle because of the way the case was framed. I don't know what the answer is except for --

MR. BOUCHETTE: I think the only answer at this point, Your Honor, is having -- I mean, crossed over that is a mistrial.

THE COURT: All right. Let's take a little -- take a short break. I'm going to let the State review State v. McDonald, which I think is right on point, and come back, and I'll hear you reply, and then we'll go forward on that.

MR. HELMS: And, Your Honor, State v. McDonald actually quotes Richardson v. Marsh. It doesn't overturn it, so I would like the Court -- I would like to hand this up to the Court.

THE COURT: Okay. I mean, I'll take a look at it.

MR. HELMS: Thank you.

THE COURT: I want to hear about State v. McDonald where it says that violated the confrontation clause.

MR. HELMS: I understand. But that distinguishes from this State -- from this case. It distinguishes it; it doesn't overturn it. So I would like to hand it up to the Court.

THE COURT: All right. Let's take about a ten-minute break and we'll come back in just a second.

MR. HELMS: Thank you, Judge.

(A recess was taken from 12:10 p.m. to 12:42 p.m.)

THE COURT: Before we do anything, we had a little glitch in our lunch for the jury, so I'm going to bring the jury in and let them go to lunch. And then we'll go ahead and take up these other issues. Okay?

MR. HELMS: Yes, sir.

THE COURT: All right. Let's bring the jury in.

(The jury entered the courtroom at 12:44 p.m.)

THE COURT: Ladies and gentlemen, welcome back. I apologize for keeping you in the jury room for so long,

but these legal issues have -- are taking us a little bit longer than I anticipated.

In that, it's a quarter to 1:00, I'm going to let you go ahead and go to lunch on your own today. We're going to break here and let you go to lunch. I'm going to ask you that you please be back at 2:00 and then we'll resume the trial at that time.

Again, do not discuss the case even among yourselves. I hope you have a good lunch, and we'll see you back at 2:00. Okay? Thank you very much.

(The jury exited the courtroom at 12:45 p.m.)

THE COURT: All right. Now, before we get into this other issue, the court reporter brought to my attention that we played State's Exhibit 36, but it was not in evidence. It is not in evidence. State's Exhibit 53, which the court reporter is telling me is the same as State's 36, is what's in evidence, the video of the car and all of that that came in during Mr. Samuel's testimony when you showed it.

Mr. Gardner said, you know, we'll stipulate that he loaned the car, and I said, "Well, I'll let them present it however they wanted to." And Mr. Helms said, you know, "We'll play State's Exhibit 36. It's already in evidence." Well, it was not in evidence. But --

MS. LIVESAY: The same video is in evidence. Are we

talking about the EME Apartments?

MR. HELMS: Yes.

MS. LIVESAY: Yes, sir. The same one is in evidence.

MR. HELMS: I'm sorry.

MS. LIVESAY: It is right here. So the one that is State's 53 is in evidence.

THE COURT: Yes. 53 is in evidence.

MS. LIVESAY: That's right. That's the identical video that is marked as State's 36.

THE COURT: Yes. But 36 is not in evidence. Mr. Helms said 36 was in evidence, and I don't know which one he played. I assume he was playing the one that was in evidence. According to the court reporter, he played the one that was not in evidence.

MS. LIVESAY: Well, they're identical.

THE COURT: Well -- but, still, you have got to have a record. If he's saying, "We're playing 36," and 36 isn't in evidence...

So I just wanted to put on the record that he played State's 36, which is not in evidence. State's Exhibit 36 is identical to State's 53, which is in evidence.

MS. LIVESAY: Yes, sir.

MR. HELMS: I apologize.

THE COURT: That's all right. So he played

something that is identical to something in evidence but it wasn't in evidence.

MS. LIVESAY: Yes, sir.

THE COURT: All right. Anything with regards to that issue?

MR. BOUCHETTE: If they are identical, then I don't think I have an objection.

THE COURT: I'm going to be honest with you. When I saw, when they were playing it, and it was the exhibit that I saw -- I thought it was the exhibit I saw yesterday.

MS. LIVESAY: It was.

THE COURT: And it looked the same, but they're marked differently.

MR. BOUCHETTE: If it's identical, I don't have an objection.

THE COURT: All right. Mr. Pinkerton?

MR. PINKERTON: Yes, Your Honor. If it's identical, I don't have an objection either.

THE COURT: Mr. Gardner?

MR. GARDNER: Why do we have two exhibits if they're identical?

MR. HELMS: That's a good question. What we did was we asked the Clerk of Court to bring back from the first trial all of the exhibits that were entered into evidence,

and that was a just a copy they brought back from the first trial. 36 was in the first trial.

THE COURT: I see. Okay.

MR. GARDNER: So 36 is -- I'm trying to keep a record too, and apparently not a good one since I let that get by. But 36 is identical to what?

THE COURT: 53.

MS. LIVESAY: That's right.

MR. GARDNER: 53. Okay. Thank you, Your Honor.

MR. HELMS: Thank you, Judge.

THE COURT: All right. Now, back -- let me hear from the State regarding the defendants' motion for a new trial based upon a violation of Bruton, after, I'm assuming, you've now reviewed State v. McDonald. How is this different from State v. McDonald?

MR. HELMS: Your Honor, it is different, and I have read State v. McDonald, and I understand what the Court's concern there was. What they did in State v. McDonald was they took the statement from the codefendant, the entire statement, and all they did was redact out the codefendant's names that were in the trial with him and put "other person."

So he was allowed to give context to "other person" in any way he wanted just throughout his statement. "Me and the other person robbed a person," "Me and the other

person killed a person." Those are facially -- facially incriminating.

That is not what we have here, Your Honor. What we have here is where the witness indicated from what a -- the defendant said, that he was sitting between two people.

Now, the question is, does that violate the defendant's -- the other codefendants' confrontation clauses. Well, to do that, it would have to implicate them first and foremost, and it does not.

In opening statements, Mr. Gardner conceded to the jury that his client was there, and the driver of the vehicle. So it can't possibly implicate Mr. Don Brown because he's in the front. So he can't be in the back of one of the other people on either side of the defendant.

Furthermore, we have testimony from the codefendants' own mouths, Che Ransom and Travontae Mitchell, they were, in fact, in the car. They agreed -- their own statements say that they were in the car. We produced evidence to that effect outside of this, Your Honor.

Additionally, we'll have another codefendant, Mikkie McLeod, testify to the same thing later on in the trial.

The statement itself "being in the middle" is not incriminating because you yourself, Your Honor, you're

going to give an instruction to this jury that mere presence is not a crime. Mere presence is a defense. And that is what the defense has been alluding to the entirety of this trial up to this point.

They conceded, in all honesty, that their claims were there. We have overwhelming evidence that their clients were there. So the fact that, on its face, it does not implicate any impropriety or culpability, the statement itself "were sitting between" -- it's not saying "were sitting between two people that shot and killed." "I was sitting between two people."

It can't be Mr. Garnder's client, by his -- by the testimony. It can't be because everybody has already identified him as the driver.

Mr. Mitchell's statement puts him -- and we have that in testimony -- in the car.

Mr. Ransom's statement puts him in the car. Furthermore, Mr. Ransom's statement puts him as a shooter. Now, what he shot at, that's up for debate and that's up for the jury to determine.

But being merely in the car is ancillary to what's already been published to the jury in terms of him being a shooter by his own statement, Your Honor.

And, in closing, I would just point this out to the Court. Despite them going through all that in McDonald

and they letting in the entire statement and just replacing and redacting the codefendants' names with the word "other person," which, again, I agree with that, despite doing that and pointing to the codefendants and their illegalities, on the face of the statement, it was deemed harmless error.

THE COURT: All right. But it was error. You said "harmless error," but it was error and improper to let it in.

MR. HELMS: Yes, sir, but it was different facts. And, again, the evidence of their presence was overwhelming.

But even presence here is not indicative of guilt. They're going to argue that. And they have been arguing it the whole time, Judge.

THE COURT: All right. Mr. Bouchette, anything in reply?

MR. BOUCHETTE: Yes, sir, Your Honor. First, as to facially incriminating, their presence in the back of the vehicle is the thrust of the State's case. They're arguing to the jury that their presence is indicative of criminal intent, criminal actions.

So placing them in the backseat is, in the context of this trial, in the context of the testimony -- of this trial, incriminating.

Now, there's a lot of testimony that's already come out but that's not really the standard. Again, we're still going through a Bruton analysis, and I don't want to beat that horse to death. We have already --

THE COURT: Well, I mean, the thing is, is you still have Mr. Graham's testimony that puts -- he put -- this is where this person sat, this is where this person sat, that's where this person sat, this is who was driving, this is who was in the first seat.

So how is your client prejudiced by the fact of him just saying, "I jumped back in the car between two people," in light of Mr. Graham's testimony that's also in?

MR. BOUCHETTE: Well, any time we go through this, we don't look to -- we don't deem improperly admitted evidence to be properly admitted simply because it came in through a proper witness.

The fact that this was improper came in over objection. Again, it's one more piece of evidence tending to put -- and, again, I'll point out too, Mr. Mitchell's statement came in over objection. So this is yet another -- it's putting in a statement. It's putting him there at the scene. It's, I would argue, facially incriminating; if not facially incriminating, certainly incriminating in the context of this case.

And, again, respectfully disagreeing with the Court earlier, I view that the Crawford decision is more expansive and now, with this statement we put in, even if it's not facially incriminating, now he has put in, you know, the statement that does incriminate Mr. Ransom. He said two other people sitting in the back; it can only lead to somebody here.

So I submit that, now, having this testimony that we have met that. I'd maintain my same request.

THE COURT: Mr. Pinkerton?

MR. PINKERTON: Your Honor, I would mirror what Mr. Bouchette said and join in with him on that.

Your Honor, even if one witness has already testified, as in Mr. Graham, it certainly doesn't get around the fact that this was improperly put into evidence through testimony through the detective, who was a State agent.

THE COURT: All right. Mr. Gardner?

MR. GARDNER: Your Honor, I agree with both of them and join my motion as part of their motion. I just also add that me conceding in opening statement is not evidence, as you already told the jury or somebody has told the jury. So that shouldn't be used against my client to let the State get by with a violation of the law.

And you have got -- at best, you may have pitting of witness. One witness said this person was there, and then now you have got the police officer saying two others were there. So it kind of uses a codefendant's statement to get at other codefendants.

So I think it's overwhelming. It's different than what the State is saying. I still think we're back to where we were before, and I'd join with everything they've said and also join with the motion for a mistrial.

THE COURT: All right. Well, I'm going to deny the motion for a mistrial. I acknowledge the statement "jumped in the backseat between two people," that was improper. It shouldn't have come in. But in light of Mr. Graham's testimony, as well as the victims who said there were multiple people, it doesn't identify the defendants.

Mr. Graham's testimony does, and so, because that was already in, I find that this error does not rise to the level that would justify granting a new trial. It doesn't prejudice your client to any extent that they're entitled to a new trial, so I'm going to deny the motion.

All right. We're going to have to break since the jury has gone to lunch. Anything from the State before we break for lunch?

MR. HELMS: No, Your Honor.

THE COURT: Mr. Bouchette?

MR. BOUCHETTE: No, sir.

THE COURT: Mr. Pinkerton?

MR. PINKERTON: No, Your Honor.

THE COURT: Mr. Gardner?

MR. GARDNER: No, sir.

THE COURT: All right. We're going to break for lunch. I'll be back at 2:00.

Officer Marcus, we're in the middle of your testimony. You cannot discuss any part of your testimony with anyone, whether it be what you've testified to thus far or what you anticipate testifying to in the future. Okay?

THE WITNESS: Yes, sir.

THE COURT: All right. Thank you very much.

We'll be in recess until 2:00.

(A lunch recess was taken at 12:58 p.m. to 2:06 p.m.)

THE COURT: All right. Anything from the State before we bring the jury in?

MS. LIVESAY: No, sir.

THE COURT: All right. Mr. Bouchette?

MR. BOUCHETTE: Nothing new, Your Honor. Just since we have had a break in the action, we'd renew our prior objections that we already made prior to the break.

THE COURT: All right. Mr. Pinkerton?

MR. PINKERTON: Yes, Your Honor. I would just renew all prior objections.

THE COURT: All right. Mr. Gardner, anything before we bring the jury in?

MR. GARDNER: Join with whatever motions were made --

THE COURT: All right.

MR. GARDNER: -- and objections made, Your Honor.

THE COURT: I'll stick by my prior rulings.

All right. Let's bring the jury in.

(The jury entered the courtroom at 2:09 p.m.)

THE COURT: All right. Ladies and gentlemen, welcome back. Hope everybody had a good lunch. We're ready to resume with the trial of the case.

The State will continue with your direct examination.

MS. LIVESAY: No further questions, Judge.

THE COURT: Mr. Bouchette, cross-examination?

MR. BOUCHETTE: Your Honor, I don't have any questions for this witness.

THE COURT: Mr. Pinkerton?

MR. PINKERTON: Yes, Your Honor, briefly.

CROSS-EXAMINATION ON BEHALF OF DEFENDANT MITCHELL

BY MR. PINKERTON:

Q Detective Marcus, thank you for being here.

So Travontae Mitchell never told you he had a gun; correct?

A I'm sorry?

Q Travontae Mitchell never told you he had a gun?

A That's correct. He said he had no gun.

Q He had no gun? He was just merely present in the car?

A He said he was inside the vehicle, yes.

Q So he was just merely present, just there, basically, is what he told you?

A He said he was present for -- at the time of the incident, yes.

Q Okay. But at no point he told you had a gun?

A No.

Q At no point he told you he fired a shot?

A No.

Q In earlier testimony, I believe you stated that he told you he got out of the car, then he got in after the shots were done being fired? Is that what you testified to earlier?

A No. I said that he got out of the vehicle at the time that everybody arrived and then got back in the vehicle as the shots were being fired.

Q As the shots were being fired.
A Yes.
Q At no point he told you he had a gun?
A No.
Q At no point he told you he shot him?
A No.
Q Thank you.

MR. PINKERTON: No further questions, Your Honor.

THE COURT: All right. Mr. Gardner?

MR. GARDNER: No questions, Your Honor.

THE COURT: Redirect?

MS. LIVESAY: No further questions, Judge.

THE COURT: All right. You may step down.

The State can call your next witness.

MR. HELMS: The State would call Jayla Boone.

THE CLERK: Please raise your right hand and place your left hand on the Bible.

JAYLA BOONE,

after having been duly sworn, was examined and testified to as follows:

THE CLERK: Please state your name and spell it for the Court.

THE WITNESS: Jayla Boone. J-a-y-l-a B-o-o-n-e.

DIRECT EXAMINATION

BY MR. HELMS:

Q Ms. Boone, thank you for being here.

A Thank you for having me.

Q Let me get this out of the way. If you had your choice today, would you be here?

A No. No.

Q You're here because you got a subpoena to be here?

A Yeah.

Q That's fair.

How old are you?

A I'm 21.

Q So, three years ago, you were 19?

A Yeah.

Q In 2020?

A Yes, sir.

Q Do you work anywhere now?

A I work at Paula Deen's Kitchen.

Q Oh, I like it.

Jayla, I want you to look at this table. Do you recognize any of the defendants -- not the attorneys, but any of the defendants, do you recognize them?

A Yes.

Q Which one?

A All of them.

Q You recognize them?

Who is this?

A I can't even see that far. That look like --

THE COURT: I'm sorry; you're going to need to speak into the microphone and speak up a lot louder and a lot more clear. All right?

A I can't --

BY MR. HELMS:

Q Who is that?

A That's Travontae.

Q Okay. Travontae.

How do you know Travontae, ma'am?

A Well, I met him in school a few years ago, and we were all cool, and then we got into a relationship.

Q Okay. So y'all were in a relationship?

A Mm-hmm, yes, sir.

Q How long?

A I would say, like, three months. Like three months.

Q Okay. But sure to do me a favor. You speak very soft. Try to speak up. Okay?

A Like three months.

Q Thank you, ma'am.

So y'all were boyfriend and girlfriend?

A Yes, sir.

Q Okay. And what school? You said school. Y'all went to school together?

A Conway High School.
Q Conway High.
Were y'all dating in September of 2020?
A Yes, sir.
Q Okay. Do you know about the incident we're here for?
A I mean, yeah.
Q Okay. And on September 12th of 2020, were you with Travontae Mitchell?
A Can you repeat that?
Q The day of the shooting, the date of the incident that we're here for, were you with him?
A No, sir.
Q Okay. Why not?
A We just didn't hang out that day.
Q Did you normally hang out?
A Yes, sir. I was home.
Q What's that?
A I was home.
Q You were home?
A Yes, sir.
Q Did you plan to hang out with him?
A Yes, sir.
Q Okay. Did you get to?
A No, sir.

Q Who cancelled those plans?

A Travontae.

Q He did?

And how did he cancel them? Did you talk to him?

A Yeah. He said he had somewhere to go and that, whenever he got back, I would come over there.

Q And about what time was this?

A 2:00 or 3:00.

Q In the afternoon?

A Yes, sir.

Q Okay. 2:00 or 3:00 in the afternoon. So it was daylight?

A Yes, sir.

Q Okay. Okay. And he called you? Yes?

A We texted. I think we texted.

Q Yes, ma'am. Fair enough.

And just said he can't come.

A Told me to wait. Because I didn't have a car at the time --

MR. BOUCHETTE: Objection, Your Honor. May we approach?

THE COURT: All right.

BENCH CONFERENCE

(The following bench conference occurred outside the hearing of the jury and others:)

MR. BOUCHETTE: Again, same thing with this witness. If the Court would allow a continuing objection as to this witness as to any statements that Mr. Mitchell made to her. I'm not sure exactly where the State is going with this, but I anticipate it to be other incriminating statements by Mr. Mitchell, so I want to make sure that we have objected to it, and we have got a continuing objection, the way we did on the prior witnesses.

THE COURT: All right.

MR. PINKERTON: Your Honor, we would join on that.

THE COURT: All right. Objection's overruled.

MR. GARDNER: Same objection.

(Open court resumes:)

THE COURT: All right. Objection overruled. I'll allow it.

BY MR. HELMS:

Q You texted him?

A Yes, sir.

Q When you texted, did he tell you where he was or where he was going that day?

A No.

Q Did you discuss Brown Swamp?

A He said he was going somewhere with his friends.

Q Did you talk to him again that night?

A Yes, sir.

Q How? Was that via text or was that via telephone call?

A FaceTime.

Q FaceTime. Okay.

And what did you and him talk about?

A What went on that day, how was his day, where he was.

Q What did he tell you?

A He was on -- well, when we FaceTimed, he was at his brother's baby mother's house, going to the beach. He was going to the beach at that time, on FaceTime.

Q Did he tell you what he did the prior -- previously?

A Not exactly.

Q What did he --

A He just said he was with his brother in Conway in Brown Swamp, and then they went to the beach.

Q What time are y'all talking now? Later that night?

A Yeah. I would say around, like, 7:00 or 8:00. 8:00 p.m. The sun was going down. Or the sun was down, yeah.

Q The sun was down. Yes, ma'am.

Were with you aware at this time that a murder had just occurred in Conway?

A Yes.

Q How were you aware of it?

A Facebook. You know, they put in news reports, and I seen it.
Q You saw it?
A Yes.
Q What did you think about that when you saw it? Anything in particular; do you remember?
A I was --
MR. PINKERTON: Your Honor, objection. Speculation.
THE COURT: Overruled. Go ahead.
BY MR. HELMS:
Q What did you think about that when you saw it?
A I was just worried.
Q What were you worried about?
A Making sure that he was safe or that anybody else that I knew was safe in that area.
Q So you saw on social media that a murder had taken place in Conway?
A Yes, sir.
Q And your first thought was you were worried about your boyfriend?
A Correct.
Q Okay. Did you ask him about that murder?
A Yes, I did.
Q Tell this jury what he said to you.
MR. BOUCHETTE: Objection, Your Honor.

MR. PINKERTON: Objection.

THE COURT: Overruled.

BY MR. HELMS:

Q Tell this jury what he said to you.

A He said he couldn't talk about it.

Q He said he couldn't talk about it. And what did you think about that?

MR. PINKERTON: Objection. Speculation, again, Your Honor.

THE COURT: Overruled.

BY MR. HELMS:

Q What did you think about that?

A I mean, I just wanted to make sure he was okay. I mean, I know if I'm walking down the street and I see someone getting murdered, I mean, I don't want to talk about it.

Q So when you heard about the murder, who else were you concerned about that might be in Conway? Who else, by name?

A I have a few friends that live around Brown Swamp.

Q Did you call those friends and ask them if they were involved with the murder?

A No.

Q So the only person, after you heard about the murder that you talked to about it, was him?

A Yes, sir. Well, not -- no, not just him. I would talk to him about other homeboys that maybe weren't in the area or were. I talked to them to see if they heard about it --

Q Well, you can't talk about what other people said, so stop right there.

That night, did you talk to anybody else about that murder?

A Yeah.

Q You did?

A Everybody was talking about it, yes, sir.

Q That night, did you ask anyone else if they were involved in a murder?

A Oh, no, sir.

Q Okay. Okay. Now, when you talked to him and you asked him if he was involved or okay, and he said, "I can't talk about it," did you ask him where he was?

A Yes, I did.

Q And where was he?

A At that moment, he was on the way to the beach. He was in the car, driving to the beach.

Q Did you advise him to go to the police?

A No.

Q Okay. Did you ever see him that night?

A No, sir.

Q Are y'all still dating?

A No, sir.

Q How long after that night did y'all split up?

MR. BOUCHETTE: Objection to the relevance, Your Honor.

THE COURT: Overruled.

A We broke up in November of 2020.

BY MR. HELMS:

Q Okay. Were you with him when he went to the police station?

A No.

Q Ms. Boone, thank you for being here. Please answer their questions.

THE COURT: Mr. Bouchette?

MR. BOUCHETTE: Your Honor, I don't have any questions for this witness.

THE COURT: Mr. Pinkerton?

MR. PINKERTON: Your Honor, I have no questions for this witness.

THE COURT: All right. Mr. Gardner?

MR. GARDNER: No, sir, no questions.

THE COURT: All right. You may step down.

MR. HELMS: Your Honor, I'd just ask she be excused.

THE COURT: Any objection?

MR. BOUCHETTE: No, sir.

MR. PINKERTON: No objection, Your Honor.

MR. GARDNER: No, Your Honor.

THE COURT: All right. She's free to go. Thank you.

MR. HELMS: Thank you, ma'am.

THE COURT: The State can call your next witness.

MS. LIVESAY: Thank you, Your Honor. At this time, the State calls Sarah Hemingway.

THE CLERK: Please raise your right hand. Place your left hand on the Bible.

SARAH HEMINGWAY,

after having been duly sworn, was examined and testified to as follows:

THE CLERK: Please state your name and spell it for the Court.

THE WITNESS: Sorry; I didn't hear you.

THE CLERK: State your name and spell it for the Court, please.

THE WITNESS: Sarah Hemingway. S-a-r-a-h H-e-m-i-n-g-w-a-y.

DIRECT EXAMINATION

BY MS. LIVESAY:

Q Ms. Hemingway, where do you live?

A Myrtle Beach.

Q And where are you from?

A Myrtle Beach.
Q Okay. And where are you currently working?
A Surfside.
Q And do you know the young man that was in here earlier, Shamontae Graham?
A Yes.
Q And how do you know Shamontae Graham?
A He's my child's father.
Q He's who?
A My child's father.
Q How many children do y'all have in common?
A Two.
Q Okay. And so, at some time, were y'all in a relationship together?
A Yes.
Q Are you in a relationship together now?
A No.
Q Okay. And were you in a relationship with Shamontae Graham in September of 2020?
A I believe so, yes.
Q Okay. And have you seen this video that I have already in, State's evidence No. 53?
A Yes, ma'am.
Q Is that your signature on the video?
A Yes, ma'am.