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SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM CHEROKEE COUNTY  
Court of General Sessions

Roger L. Couch, Circuit Court Judge

Case No. 2010-GS-11-00607

The State of South Carolina,..... Respondent,

v.

Hayword Tony Chambers,..... Appellant.

RECORD ON APPEAL  
VOLUME I

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STATE OF SOUTH CAROLINA

COUNTY OF CHEROKEE

State of South Carolina,

vs.

Hayword Tony Chambers,

Defendant.

) IN THE COURT OF GENERAL SESSIONS

) SEVENTH JUDICIAL CIRCUIT

VERDICT FORM

Case Numbers: 2010-C-11-0607

FILED IN OFFICE OF  
CLERK OF COURT  
CHEROKEE COUNTY, S.C.  
2012 DEC 10 AM 9 21  
BRANDY W. MCBEE

- 1. We the jury, unanimously find the Defendant, Hayword Chambers, concerning the offense of Murder (Indictment No. 2010-GS-11-0607):

X Not Guilty

\_\_\_\_\_ Guilty

- 2. Should you find the Defendant not guilty of Murder, then you must consider the lesser included offense of **Voluntary Manslaughter**; As to the Lesser included offense of **Voluntary Manslaughter**, we the jury unanimously find the Defendant Haywood Tony Chambers:

\_\_\_\_\_ Not Guilty

✓ Guilty

I certify this decision was the unanimous decision of the jury.

Bena Henderson

Foreperson  
December 11, 2012

WITNESSES

Gaffney Police Dept.

*Brian Blount*

ARREST WARRANT NUMBER

1068954

ACTION OF GRAND JURY

**TRUE BILL**

Foreperson of Grand Jury

Date: *Patricia Dufon 8/15/10*

VERDICT

Foreperson of Petit Jury

Date:

10-GS-11-0607

The State of South Carolina

County of Cherokee

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

AUG 05 2010

TERM

THE STATE

vs.

Hayword Tony Chambers

Indictment for

MURDER

SC Code: 16-03-0010, 0020

CDR CODE: 116

CLASS: FEL-EXM

ROA\_002

STATE OF SOUTH CAROLINA )  
COUNTY OF CHEROKEE )

INDICTMENT

AUG 05 2010

At a Court of General Sessions, convened on \_\_\_\_\_, the  
Grand Jurors of Cherokee County present upon their oath:

**Murder**

That Hayword Tony Chambers, did in Cherokee County between November 28, 2009 and November 29, 2009, feloniously, willfully, and with malice aforethought, kill one Calvin Todd Morgan by shooting the victim, and that the victim died as a proximate result thereof, all in violation of §16-3-0010, 0020, *CODE OF LAWS OF SOUTH CAROLINA*, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
ASSISTANT SOLICITOR

ARREST WARRANT

I-068954

STATE OF SOUTH CAROLINA

County/ [X] Municipality of GAFFNEY

THE STATE against

CHAMBERS, HAYWORD TONY

Address: [REDACTED]

Phone: [REDACTED] SSN: [REDACTED]

Sex: M Race: B Height: 510 Weight: 195

DL State: SC DL#: [REDACTED]

DOB: [REDACTED] Agency ORI #: [REDACTED]

Prosecuting Agency: POLICE

Prosecuting Officer: BRIAN BLANTON

Offense: MURDER - 16-3-20

Offense Code: 16-3-20

Code/Ordinance Sec. 16-3-20

This warrant is CERTIFIED FOR SERVICE in the

[X] County/ [ ] Municipality of

CHEROKEE The Accused is to be arrested and brought before me to be dealt with according to law.

Signature of Judge (L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Chambers, Hayward Tony on 11-30-09

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

KAYE ALLISON 201 N. LIMESTONE ST. GAFFNEY SC 29340

STATE OF SOUTH CAROLINA

County/ [X] Municipality of GAFFNEY

AFFIDAVIT

Form Approved by S.C. Attorney General April 21, 2003 SCCA 618

Personally appeared before me the affiant BRIAN BLANTON being duly sworn deposes and says that defendant CHAMBERS, HAYWORD TONY did within this county and state on 11/28/2009 violate the criminal laws of the State of South Carolina (or ordinance of County/ [X] Municipality of GAFFNEY) in the following particulars:

DESCRIPTION OF OFFENSE: MURDER - 16-3-20

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts: ON 11/28/2009, THE DEFENDANT, HAYWORD TONY CHAMBERS, DID WITH MALICE AFORETHOUGHT MURDER CALVIN TODD MORGAN BY SHOOTING HIM WITH A PISTOL. THE INCIDENT OCCURRED AT 311 SARRATT AVE. WHICH IS WITHIN THE CITY LIMITS OF GAFFNEY SC, COUNTY OF CHEROKEE. PROBABLE CAUSE BASED UPON THE INVESTIGATION OF THE GAFFNEY POLICE DEPT. DETECTIVE DIVISION.

CASE # 09-015809

Signature of Affiant

[Signature]

STATE OF SOUTH CAROLINA

County/ [X] Municipality of GAFFNEY

Affiant's Address 201 N. LIMESTONE ST. GAFFNEY SC 29340

Affiant's Telephone 864-487-8524

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on 11/28/2009 defendant CHAMBERS, HAYWORD TONY did violate the criminal laws of the State of South Carolina (or ordinance of

County/ [X] Municipality of GAFFNEY) as set forth below.

DESCRIPTION OF OFFENSE: MURDER - 16-3-20

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on November 30, 2009 Kaye Allison (L.S.)

Signature of Issuing Judge

Judge Code: KS

Judge's Address 201 N. LIMESTONE ST. GAFFNEY SC 29340

Judge's Telephone 864-487-8524

Issuing Court: [ ] Magistrate [X] Municipal [ ] Circuit

ORIGINAL

ROA\_004

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STATE OF SOUTH CAROLINA )  
 ) IN THE COURT OF GENERAL SESSIONS  
COUNTY OF CHEROKEE )

THE STATE )  
 )  
-vs- ) TRANSCRIPT OF RECORD  
 ) 2010-GS-11-00607  
HAYWORD TONY CHAMBERS, )  
 ) DECEMBER 4, 2012  
DEFENDANT. ) GAFFNEY, SOUTH CAROLINA

(VOLUME I)

B E F O R E :

THE HONORABLE ROGER L. COUCH, JUDGE. ; And a Jury.

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

KIMBERLY LESKANIC, ASSISTANT SOLICITOR  
MATT KENDALL, ASSISTANT SOLICITOR  
ATTORNEYS FOR THE STATE

MITCH SLADE, ESQUIRE  
ATTORNEY FOR THE DEFENDANT

MICHAEL R. WATTS  
CIRCUIT COURT REPORTER

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1 (PROCEEDINGS, DECEMBER 4, 2012)

2 (Photograph marked as State's Exhibit No. 1 for  
3 identification)

4 (Diagram marked as State's Exhibit No. 2 for  
5 identification)

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7 identification)

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8 identification)

9 (Photograph marked as State's Exhibit No. 20 for  
10 identification)

11 (Photograph marked as State's Exhibit No. 21 for  
12 identification)

13 THE COURT: All right, ladies and gentlemen of the  
14 jury panel, we are about to begin the trial of the State of  
15 South Carolina versus Hayword Tony Chambers.

16 We are going to go over a series of questions that  
17 will apply to this particular case. As part of that  
18 questioning I'm going to go over with you the document that  
19 bring the case into this court. That document is referred  
20 to as an indictment.

21 The indictment states the charge that's been  
22 lodged against the defendant and informs this court of the  
23 charge to be tried. It informs the defendant of the charge  
24 that's been lodged against him.

25 Now, an indictment does not constitute evidence in

1 came out while they were gone and talked to Kevin and was  
2 upset. Don't know what it was about. So he didn't hear any  
3 of the conversation.

4 THE COURT: Uh-huh.

5 MS. LESKANIC: And then he is saying Kevin said he  
6 was mad because "Pookie" left with "New York", but it wasn't  
7 a statement made by Todd. This is a statement made by Mr.  
8 Wallace. I don't know if it's his impression of what was  
9 going on, if something was said -- we are not going to have  
10 an opportunity to cross-examine any of Mr. Wallace --

11 THE COURT: Well, I'm going to reserve ruling on  
12 this until Mr. Mayberry is presented as a witness and we  
13 will take a proffer at that time and see exactly what the  
14 background is for the statement before I make a ruling. I  
15 would like to hear exactly what the foundation is. This  
16 doesn't really spell out the foundation as clearly as I  
17 would like to see it.

18 MR. SLADE: Yes, sir.

19 THE COURT: So I'll reserve ruling on that until  
20 Mr. Mayberry is presented as a witness.

21 MR. SLADE: Yes, sir.

22 MR. SLADE: The last motion is a motion I told you  
23 about yesterday. I don't believe that this murder  
24 indictment is sufficient as an indictment for the State to  
25 get a request to charge manslaughter in this case. The

1 . reason I don't believe this murder indictment is sufficient  
2 is because the rules for determining the sufficiency of the  
3 indictment are three. There are three of them, and  
4 it's does it put the defendant on notice of what he's being  
5 tried for? Does it inform the judge of what sentence to  
6 impose, should he be convicted? And the third one is does a  
7 conviction or an adjudication under that indictment bar  
8 double jeopardy? Is it sufficient to be a bar for double  
9 jeopardy?

10 My argument is this isn't -- and that's -- that's  
11 the test in South Carolina for sufficiency of an indictment.  
12 And my argument is this indictment is not sufficient to bar  
13 a subsequent prosecution on manslaughter, because the only  
14 test we have in South Carolina for double jeopardy, in other  
15 words, were Mr. Chambers found not guilty of murder,  
16 manslaughter, whatever, or if he were convicted under this  
17 indictment, is either of those events a bar to double  
18 jeopardy under the Blockburger Test, which is the only test  
19 we use in South Carolina. And the Blockburger Test is a  
20 straight elements test. And in the Blockburger Test what  
21 the court does is line up the two -- line up the previous  
22 prosecution and put beside it what are the elements that the  
23 person is being prosecuted for now. And if these elements  
24 in the previous prosecution include all of the elements of  
25 the subsequent prosecution, that's the only way it can be a

1 bar for double jeopardy.

2 It can't be a bar to double -- a conviction or an  
3 adjudication -- an acquittal on a murder indictment can't be  
4 a bar to double jeopardy under the test we use, because if  
5 they compare elements --

6 THE COURT: Now, if manslaughter is submitted to  
7 the jury in this case --

8 MR. SLADE: Yes, sir.

9 THE COURT: -- and I don't know if it will be or  
10 not, because I haven't heard all the evidence. That's when  
11 I decide whether or not --

12 MR. SLADE: Right.

13 THE COURT: -- there's sufficient evidence to  
14 justify submitting a lesser included. Our Supreme Court  
15 says that it is a lesser included --

16 MR. SLADE: Yes, sir.

17 THE COURT: -- if it's a murder, that the rulings  
18 of it.

19 MR. SLADE: By tradition we've always treated it  
20 that way. And despite the fact that I think -- I think it's  
21 fair to say the Supreme Court recognizes that the  
22 elements --

23 THE COURT: Oh, I think they do, but then they  
24 went on to say it is a lesser included.

25 MR. SLADE: Despite the fact that the elements

1 aren't the same.

2 THE COURT: They are the Supreme Court.

3 MR. SLADE: I'm not -- I'm not arguing that, Your  
4 Honor. I'm just pointing out that when as much as we would  
5 like to adhere to tradition, when tradition meets the rules  
6 of reason, and we have to stick to that under the --

7 THE COURT: I understand your point.

8 MR. SLADE: Yes, sir.

9 THE COURT: But where we are at this point in time  
10 is if, for example -- talking about double jeopardy. If,  
11 for example, I did submit the case to the jury on the  
12 question of murder, and if you don't convict of murder, then  
13 you must consider. If that question is submitted to the  
14 jury, I can't imagine it not being a bar to a subsequent  
15 prosecution on the same request.

16 MR. SLADE: Well, if the analysis got that far,  
17 but the analysis begins with -- you may --

18 THE COURT: By the same token -- let me finish my  
19 statement, though, the only way they get to manslaughter is  
20 if they don't convict on murder.

21 Now, if they convict on murder, the question is  
22 moot anyway. He's convicted on murder, and so I'm not sure  
23 how that ever becomes a double jeopardy problem.

24 I understand what you are saying, but if it were  
25 submitted to a jury on both questions, on the question of do

1 you convict of murder? And if you don't, then you must  
2 consider manslaughter, and they are charged on manslaughter  
3 and they render a verdict, guilty or not guilty.

4 MR. SLADE: Right.

5 THE COURT: You know, I can't -- I can't imagine  
6 the court allowing them to subsequently prosecute your  
7 client on manslaughter because there is no verdict on that  
8 issue.

9 MR. SLADE: But my point is, Your Honor -- and I  
10 see what you are saying, because that -- when I was thinking  
11 through this, that bothered me too.

12 If the jury is specifically charged on the  
13 elements of manslaughter and the court says you can consider  
14 this and they come back and they either acquit him or  
15 convict him of that, wouldn't that be a bar?

16 THE COURT: Uh-huh.

17 MR. SLADE: And the answer to that is no, it  
18 wouldn't, because the issue is is this indictment  
19 sufficient.

20 For instance, Your Honor, you have heard enough  
21 testimony now to know that there is going to be a whole lot  
22 of drug talk about drug transactions in this case.

23 THE COURT: I suspect that will be true.

24 MR. SLADE: Yes, sir.

25 And so there is going to be enough talk in this

1 case that they could say that we have sufficient evidence  
2 here to charge the jury on distribution of crack cocaine.  
3 Well, if the jury is charged on it and they come back and  
4 they convict him, or they don't convict him, that's true,  
5 that may be double jeopardy, but that doesn't change the  
6 fact that on the indictment --

7 THE COURT: The fact that is not a lesser  
8 included. Our Supreme Court is saying that manslaughter is  
9 a lesser included to the charge of murder. I know you don't  
10 agree with that.

11 MR. SLADE: Yes, sir.

12 THE COURT: That's where we are.

13 MR. SLADE: Yes, sir, I understand.

14 THE COURT: And, you know, I try to follow the  
15 rulings the best I can.

16 MR. SLADE: I just needed to make a record.

17 THE COURT: I think you have made a record and  
18 your point is taken and I have not yet submitted it to the  
19 jury on anything other than murder.

20 MR. SLADE: I understand.

21 THE COURT: And so your objection has been raised  
22 prior to the swearing of the jury and that question is  
23 preserved and I'm going to save that ruling until the end of  
24 the trial.

25 MR. SLADE: Thank you, Your Honor.

1 MS. LESKANIC: Thank you, Your Honor.

2 Good afternoon, ladies and gentlemen. I'm Kim  
3 Leskanic. I introduced myself to you earlier. I'm an  
4 assistant prosecutor here in Cherokee County.

5 You are here today because Hayward Chambers,  
6 seated at the defense counsel, has been charged with the  
7 crime of murder. He was arrested for that. He's been  
8 indictment for that. The judge has read the indictment to  
9 you.

10 What I want to do now during the opening is just  
11 give you a brief overview of why he was arrested.

12 Calvin Todd Morgan was shot and killed on November  
13 28th, 2009, by that man. He died when a bullet went through  
14 his head and lacerated his brain, and he was left in a room  
15 at 311 Sarratt Avenue, which is here in Cherokee County. He  
16 was left there to die.

17 After the defendant shot him in the head he left.  
18 He didn't live at that house. He got in his car with his  
19 gun and he left the house, and he didn't drive to the police  
20 station. He drove to a relative's house. And when he got  
21 there he hid his car and he had his relative drive him to  
22 his house on Broad Street, back to Mr. Chambers house on  
23 Broad Street.

24 When he got to his house he didn't call the  
25 police. He took the gun that he had used to kill Todd

1 Morgan and he put it in a bag and tied up the bag. He took  
2 off the clothing that he was wearing that had Todd Morgan's  
3 blood on it and he changed his clothes.

4 The actions that he took after the shooting are  
5 very important.

6 Now, where is 311 Sarratt Avenue? I don't know if  
7 any of you know, but it's a party house. People sell crack  
8 there. People use crack there. People drink alcohol there,  
9 and that's where our witnesses were, and a lot of them were  
10 using crack cocaine, but that's where Mr. Chambers was also  
11 and he was using crack cocaine. This was about three  
12 o'clock in the morning. He told his girlfriend he was going  
13 to get a pack of cigarettes about 11:00, 11:30, and at three  
14 o'clock in the morning he shot Calvin Todd Morgan in the  
15 head.

16 You are going to hear from the people that were in  
17 the house, some of the people that were in there, and I will  
18 tell you right now no one was in the room, except for Todd  
19 Morgan and the defendant, at the time the shot was fired.  
20 There were two women that were in there right before the  
21 shot was fired. They both had been using crack cocaine.

22 And I'm not -- and I want you all to listen to  
23 each person's testimony. I'm not going to go into any  
24 detail about what each person is going to tell you, because  
25 those are the important facts of the case.

1           I think when I stand back up here at the time of  
2 closing, the question that I think you are going to have to  
3 answer is did he have a right to pull the trigger. That's  
4 what it's all going to come down to.

5           You are going to hear a lot of evidence. Now, we  
6 have people from the South Carolina Law Enforcement Division  
7 that looked at the defendant's coat that he was wearing when  
8 he shot the gun and this gunshot residue. We have the DNA  
9 analysis. A forensic scientist is coming in and she's going  
10 to say that it was the victim's blood that's on the  
11 defendant's pants. And we have the gun, and we have  
12 pictures of the scene, and you are going to get to see all  
13 that, but the question that I think you are going to have to  
14 answer and to focus on, and that's why I don't want to tell  
15 you what each person is going to say. I want you to listen  
16 to what each witness is going to say. Did he have a right  
17 to pull the trigger? Based on law enforcement's  
18 investigation, absolutely not, or we wouldn't be here today.

19           I can tell you Todd Morgan, when he was shot, was  
20 unarmed. Nothing found by his body, and no witnesses are  
21 going to tell you that he had anything in his hand when he  
22 was shot.

23           You will hear from EMS, you will hear from the  
24 officers, and you will hear from the SLED personnel, but he  
25 shot an unarmed man in a room, in a home he didn't belong

1 to. He was there to get crack cocaine and something went  
2 wrong. When he pulled the trigger, he didn't stay. He  
3 didn't call police. He left. He hid his car and he put the  
4 gun in a bag and he changed his clothes.

5 And I just ask, and I will ask you again at the  
6 close of the case, use your common sense. That's how he  
7 reacted when he shot someone. And then listen to the  
8 testimony and the people that tell you what happened in that  
9 room just prior to the shooting, and I think it would lead  
10 you to the same conclusion that has led to the State of  
11 South Carolina and that is that Hayward Chambers is guilty  
12 of murder. Thank you.

13 THE COURT: Mr. Slade, you may proceed for the  
14 defense.

15 MR. SLADE: Thank you, Your Honor. May it please  
16 court?

17 THE COURT: Yes, sir.

18 MR. SLADE: Good afternoon. My name is Mitch  
19 Slade. I realize that you have been told who I am, but I  
20 just think when you start talking to somebody, you ought to  
21 introduce yourself, and I represent Hayward Chambers.

22 And what the State has Hayward Chambers charged  
23 with is a killing with malice aforethought. Murder. And  
24 whether or not Hayward had the right to shoot Calvin Todd  
25 Morgan that night in that house on Sarratt Avenue depends on

1 what happened in that three, or four, or five minutes that  
2 Hayward and Todd Morgan and two women named Michelle Davis  
3 and "Pookie" Byers were in that room. And the State's case  
4 is to convince you that this is a murder case depends on  
5 what the witnesses in that room saw, what the witnesses in  
6 that room observed, and what those witnesses in that room  
7 heard.

8 So what that means is the State's case depends on  
9 what one of their witnesses, "Pookie" Byers, who was in that  
10 room when this confrontation began is going to come into  
11 this courtroom and swear to you she heard it and swear to  
12 you she saw it and swear to you that she observed it. And  
13 what you hear her swear to on this stand may indicate that  
14 the State has a case or not. But if you look at what their  
15 witness, "Pookie" Byers, told the State when they first  
16 began to investigate this case, when you hear what Ms. Byers  
17 told the police that she heard and saw that night, you are  
18 going to see that what she swears to you from this stand she  
19 heard is not what she said she heard when she first talked  
20 to the police two days after this happened. What she is  
21 going to swear to you that she heard is not what she heard  
22 the first time she talked about it. And what she swears to  
23 you -- what she's going to swear to you is the facts are  
24 that she observed are not the facts that she said happened  
25 the first time she talked about it, because what you are

1 going to see in this case is in this state people have a  
2 right to self-defense.

3 Now, at the end of this case, as Judge Couch has  
4 told you, he's going to tell you what the law is and he's  
5 the voice of the law. He speaks for the law in this case,  
6 but I have the right at this point to just tell you briefly  
7 what self-defense is about. And what self-defense is is  
8 when somebody else starts a confrontation and you have  
9 reason to fear that you are going to be seriously injured  
10 and turning your back on them is going to make it more  
11 dangerous rather than less dangerous, you have a right to  
12 use self-defense.

13 And what "Pookie" Byers told Detective Blanton  
14 when she first talked about this case was that Calvin Todd  
15 Morgan -- when they were in that room that night, Calvin  
16 Todd Morgan and "Pookie" Byers, his girlfriend, and another  
17 woman, an eyewitness to this that you are going to hear  
18 from, says that Todd Morgan was sitting on a couch in the  
19 room and that Hayward Chambers was on the other side of the  
20 room standing in the doorway. And Todd said to "Pookie"  
21 "give me my shit, bitch."

22 Now, what you are going to understand from this  
23 case is that they are talking about crack cocaine. Todd  
24 Morgan, the decedent in this case, is getting after his  
25 girlfriend, and -- because he believes that she has stolen

1 his crack cocaine, and he says "give me my shit, bitch."

2 "Pookie" said "I told Todd I didn't have his  
3 dope."

4 Todd once again said, "bitch, give me my shit."

5 You can see that the evidence shows a very angry  
6 person.

7 And I stop right here from telling you all what an  
8 eyewitness told Detective Blanton two days after Mr. Morgan  
9 was shot. I stop right here to tell you this is some bad  
10 language. You are going to hear some more bad language, but  
11 the point is you can't change what the witnesses are going  
12 to say, okay? You can't change what witnesses are going to  
13 say.

14 So she goes on to say "Hayword told Todd that I  
15 didn't take his dope," "Pookie" talking.

16 Todd said to "New York", to my client, to Hayword,  
17 "this ain't none of your motherfuckin business, so stay out  
18 of this."

19 "New York", that's Hayword, once again said, told  
20 Todd "to back up off of me. I didn't take his dope."

21 And at that time Todd stood up and started toward  
22 "New York".

23 And what she also told him was at that point that  
24 you are going to see from the witnesses, from the  
25 eyewitnesses in this case, Todd Morgan was very angry, and

1 he was on one side of the room and he starts toward Hayward.

2 Hayward has a gun. He has a CPW, concealed  
3 weapons permit. He's entitled to carry a gun. And he sees  
4 that Hayward is coming -- he sees that Todd is coming toward  
5 him. He points the gun at him and tells him "this ain't  
6 none of your business," or "stop," or something, and the  
7 eyewitnesses are going to tell you Todd Morgan kept coming.  
8 The eyewitnesses are going to tell you that Todd Morgan was  
9 fixing to hurt him.

10 Now, just a moment ago you heard that the  
11 solicitor tell you that she didn't want to get into telling  
12 you what the witnesses are going to say. Well, what the  
13 witnesses have to say about this is key to this case. And  
14 what you are going to see that their witnesses told  
15 Detective Blanton at the very beginning of this case sounds  
16 like self-defense; that Todd Morgan was very angry. He is  
17 starting over to attack Hayward Chambers, because he's  
18 angry. He thinks he's interfering with his argument with  
19 his girlfriend about this stolen crack cocaine.

20 And you are going to see from other witnesses in  
21 this case that when Todd Morgan gets that angry, his intent  
22 is to hurt somebody.

23 You are going to hear from the eyewitnesses who  
24 was in that room that Todd Morgan has beaten another person  
25 senseless, to the point she had to have a plate in her head

1 when he got that angry, and he was that angry then.

2 So that makes a self-defense case, because one of  
3 the elements of self-defense is that somebody like Todd  
4 Morgan is starting out towards you and you got good reason  
5 to think he's fixing to really hurt you.

6 So to make a case for intentional -- excuse me,  
7 unlawful killing with malice aforethought, some of the facts  
8 are going to have to change.

9 And so what you are going to hear when "Pookie"  
10 Byers, the decedent Todd Morgan's girlfriend takes the  
11 stand, is that she has changed her statement from what she  
12 told Detective Blanton two or three days after this  
13 shooting.

14 You know, after she begins preparing for her  
15 testimony in this case, the prosecutor sent me a summary of  
16 what she has to say. That's what they have to do. And now  
17 what Ms. Byers is going to tell you is rather than Todd  
18 Morgan starting toward Hayward Chambers intending to hurt  
19 him in his anger, in his fury, she has changed those facts.  
20 And what she's going to testify to is that Todd never came  
21 from around the coffee table. There was a coffee table  
22 right in front of that sofa where he was sitting, where they  
23 were talking about sitting there watching a movie. She's  
24 going to say Todd never came from around the coffee table.  
25 Instead she's going to say Chambers came toward him and

1 stated something like "motherfucker, I will blow your brains  
2 out." She has changed the facts of what she said; changed  
3 the facts of what she heard; changed the facts of what she  
4 observed, in order to get a murder conviction.

5 Can you get a murder case when eyewitnesses change  
6 the facts of what they said they saw?

7 Well, the judge is going to tell you at the end of  
8 this case, and he's alluded to it in his beginning, that you  
9 have an obligation to look for to what these witnesses are  
10 telling you and swearing to you is true. You have a right  
11 to weigh what these witnesses are saying against one  
12 another. And what you are going to hear from the other  
13 eyewitness who was in that room, Michelle "Big Momma" Davis,  
14 is they only subpoenaed sometime a little earlier today to  
15 bring to court. We subpoenaed her much earlier, to bring  
16 her here to tell you that what she saw was Todd Morgan  
17 sweating with rage. Todd Morgan, so angry as he was coming  
18 across that room. He was just as angry, according to the  
19 eyewitness that they didn't subpoena until this afternoon,  
20 he was so angry, he was just as angry as the day he stomped  
21 Debra Littlejohn's head so badly she had to put a plate in  
22 it. That's what she saw in that room. That's why they  
23 don't want to get into the details of what happened in that  
24 room.

25 So what you are going to hear in this case from

1 the eyewitnesses who was in that room is that Todd Morgan  
2 was in a rage, and Hayward saw him coming at him. He was  
3 angry. He just -- that's just the way he was. When he got  
4 angry, he was going to hurt somebody. He advanced on his  
5 own.

6 You are going to hear from another person who he  
7 beat on that she got a gun, knowing he was fixing to beat on  
8 her, to protect herself; went back into their house, knowing  
9 that Todd was angry, bringing her gun in to protect herself,  
10 but there wasn't any protection. Todd could see the gun and  
11 he still jumped on her.

12 So that's the details of what happened in that  
13 room that night. And what you are going to see in this case  
14 is that the facts show that Hayward Chambers acted in  
15 self-defense.

16 What you are also going to hear from the judge in  
17 this case is that when a person exercises the right to  
18 self-defense or uses deadly force in what they believe is  
19 self-defense, then the State has to disprove beyond any  
20 reasonable doubt that they had the right to use  
21 self-defense. In other words, you have got a right to use  
22 self-defense. And when you use it, if they want to bring a  
23 murder charge against you, try to convict you of unlawful  
24 killing with malice aforethought, they got to disprove it  
25 beyond any reasonable doubt.

1           So in order to get a murder conviction where  
2 somebody has acted in self-defense, they have to disprove  
3 that Todd Morgan initiated this violence or this fury. They  
4 have to disprove that it was reasonable to believe that when  
5 Todd Morgan got in this kind of rage, where he stomped a  
6 woman's head in, where he attacked a woman trying to protect  
7 herself with a gun, they got to disprove that it's  
8 reasonable to believe that Todd Morgan wants to hurt  
9 somebody. They got to disprove it beyond any reasonable  
10 doubt if you turn your back on him, you are safer than him  
11 coming across the room in that kind of fury than you would  
12 be if you had to use a gun.

13           This is a case of self-defense, and we ask you at  
14 the end of this case to find the State has not disproved  
15 beyond any reasonable doubt. They have not proved their  
16 case beyond a reasonable doubt. Hayward Chambers acted in  
17 self-defense. Thank you.

18           THE COURT: Ladies and gentlemen, that completes  
19 the opening comments by counsel and at this time we are  
20 going to break for the evening. I know it's almost five  
21 o'clock.

22           The same instructions that I gave you when we  
23 broke earlier in the day when you left the courthouse and  
24 that is don't attempt to gather any information on your own.  
25 Don't listen to, watch, or read any media reports. Don't

1 THE COURT: What I'm going to do is I'll allow you  
2 to use it -- and it says it's not to scale.

3 MS. LESKANIC: That's correct.

4 THE COURT: As long as you lay the foundation that  
5 this is not exactly where those items were or those -- I say  
6 items of furniture and that sort of thing.

7 MS. LESKANIC: Yes, sir.

8 THE COURT: And I'm allowing the witnesses to  
9 testify as to where those were.

10 THE COURT: Thank you, Your Honor.

11 THE COURT: I'll overrule the objection to that  
12 exhibit and I'll allow it in.

13 MR. SLADE: Thank you.

14 THE COURT: Now, as to the photographs, give me a  
15 minute to look at them. I'm looking at 10, 11, and 20.

16 Yes, sir.

17 MR. SLADE: My objection to the picture of the  
18 defendant -- of the decedent is that it is far more  
19 inflammatory than is probative of anything. I don't know  
20 what the State wants to introduce it for, but we don't --  
21 obviously since this is a self-defense case, we don't  
22 contest that the decedent was shot. We don't contest he was  
23 shot in the head.

24 There's going to be other testimony, oral  
25 testimony, from the pathologist or the medical examiner, who

1 going to be some blood, and the State needs to be able to  
2 show that, Your Honor. This is a murder trial.

3 THE COURT: It's a case where, however, they are  
4 admitting that he was shot and they did the shooting.

5 I'm trying to find out what the probative value of  
6 this photo is, because you are going to have somebody is who  
7 going to testify about an entrance wound at some location.  
8 I'm sure that they drew a diagram that --

9 MS. LESKANIC: Yes, Your Honor, but the State,  
10 with all due respect, has the burden of proof. And if their  
11 defense -- and again --

12 THE COURT: I'm going back to the Torres case  
13 which I tried, which the Supreme Court warned solicitors  
14 about putting in photos such as this.

15 MS. LESKANIC: Well --

16 THE COURT: And that's what I'm thinking about,  
17 and I tried that case, so I read the case very carefully,  
18 and so -- I mean, they have -- they have cautioned  
19 prosecution about putting in inflammatory photos, unless it  
20 has some probative value. And I'm trying -- I have asked  
21 that question three times and all you say is, well, that  
22 proves he was shot in the head. Well, he's admitting he was  
23 shot in the head.

24 MR. SLADE: Yes, sir.

25 MS. LESKANIC: But to show the jury where that

1 jury panel, and when we come back later on we will give you  
2 a regular seat. You won't have that special seat.

3 JURY ALTERNATE: I like it.

4 THE COURT: You can sit anywhere that you want to.  
5 You can keep that one, if you would like, however you want  
6 to do it. At any rate, you no longer have to sit right  
7 there. You are a member of the jury panel. You can sit  
8 anywhere.

9 All right, when we took our break yesterday we had  
10 completed the opening statements. At this time the  
11 attorneys have the right to call witnesses and present  
12 evidence. The State will be going first.

13 You may call your first witness.

14 MS. LESKANIC: Thank you.

15 May it please the court, the State calls Kevin  
16 Ward.

17 THE COURT: Come forward, please, to be sworn.

18 KEVIN WARD, having been first duly sworn,  
19 testified as follows:

20 THE COURT: Sir, have a seat on the witness stand.  
21 Speak into the microphone. Once you are been seated, state  
22 your name for us, please.

23 THE WITNESS: Kevin Ward.

24 THE COURT: Thank you, sir.

25 Your witness, Ms. Leskanic.

1 MS. LESKANIC: Thank you, Your Honor.

2 THE COURT: Yes, ma'am.

3 DIRECT EXAMINATION BY MS. LESKANIC:

4 Q. Where are you employed, Mr. Ward?

5 A. With the City of Gaffney fire department.

6 Q. And how long have you been a firefighter?

7 A. This is coming up on four years.

8 Q. What type of training did you have to receive to become  
9 a firefighter?

10 A. There were lots of classes. Just -- like two years  
11 worth of class that you have to take.

12 Q. Okay. Do some of your duties include being a first  
13 responder to --

14 A. Yes, ma'am.

15 Q. -- accidents or injuries?

16 A. Yes, ma'am.

17 Q. All right. And were you called out to 311 Sarratt  
18 Avenue on November 28th of 2009?

19 A. Yes, ma'am.

20 Q. Do you know what time you received that call?

21 Please, if you need to refer to your notes.

22 THE COURT: You can refer to your notes to refresh  
23 your memory.

24 A. On my report it says 3:21:09 a.m..

25 BY MS. LESKANIC:

1 Q. So about 3:30 in the morning --

2 A. Yes.

3 Q. -- of November the 28th?

4 A. Yes, ma'am.

5 Q. And what was the nature of the call?

6 A. It was given out over the radio as an EMS assignment,  
7 gunshot wound.

8 Q. All right. Let me first show you what has been marked  
9 as State's Exhibit 1. Can you tell me if you recognize  
10 that?

11 A. Yes, ma'am.

12 Q. And what is that?

13 A. That's the residence that I responded to.

14 Q. Okay. And do you know -- well, let me -- and this is  
15 the residence that you went to?

16 A. Yes, ma'am.

17 Q. Did you go inside this residence?

18 A. Yes, ma'am.

19 Q. All right.

20 MS. LESKANIC: Your Honor, at this time I would  
21 offer State's Exhibit 1 for admission.

22 MR. SLADE: No objection.

23 THE COURT: Without objection, it would be  
24 admitted as it's been marked, and I will give you the right  
25 to publish that, if you would like.

1 (Whereupon, State's Exhibit No. 1 was admitted as  
2 evidence into the record)

3 MS. LESKANIC: Thank you, Your Honor.

4 THE COURT: By publish it, I mean she can now show  
5 it to you folks. That's what she's going to be doing.

6 BY MS. LESKANIC:

7 Q. So this is 311 Sarratt Avenue, the home that you  
8 responded to?

9 A. Yes, ma'am.

10 Q. All right. And do you know what door you went into  
11 when you responded to the home?

12 A. We went in the front door.

13 Q. Okay. If you want --

14 MS. LESKANIC: May I have the witness step down,  
15 Your Honor, so he can --

16 THE COURT: Yes, ma'am.

17 MS. LESKANIC: Thank you.

18 THE COURT: You may.

19 (Witness off the witness stand)

20 BY MS. LESKANIC:

21 Q. I'll give you this laser pointer and if you can, if you  
22 will just be careful not to point it in anyone's face, but  
23 show us where you went in.

24 A. There.

25 Q. So you went in the front door of the residence. And

1 what room in the residence did you enter?

2 A. We entered the --

3 COURT REPORTER: Speak up, please. Speak up,  
4 please.

5 THE COURT: Sir, you have to speak up so everybody  
6 can hear you.

7 A. We went into a living room area and then made a left  
8 into the room where the person was.

9 BY MS. LESKANIC:

10 Q. All right. Can you see the window of that room in this  
11 photograph?

12 A. (Witness pointing).

13 Q. And that's the room where you found the gunshot wound  
14 victim?

15 A. Yes.

16 Q. All right. You can have a seat. Thank you.

17 (Witness back on the witness stand)

18 BY MS. LESKANIC:

19 Q. Now, you actually entered the room where Todd Morgan  
20 was found?

21 A. Yes.

22 Q. Can you briefly describe that room for us or what you  
23 saw when you walked into the room?

24 A. It wasn't very big. There was -- when you go in, there  
25 was a table and the couch, and the victim was on the floor

1 between the couch and the table.

2 Q. Let me now show you what's been marked State's Exhibit  
3 2, and can you tell me what that appears to be?

4 A. That's pretty much a diagram of how the room was laid  
5 out.

6 Q. Okay. Is that an accurate -- I understand it's not to  
7 scale, but is that an accurate diagram showing how you saw  
8 the furniture when you walked in the room?

9 A. Yes, ma'am.

10 Q. Okay.

11 MS. LESKANIC: Your Honor, at this time we would  
12 offer State's Exhibit 2 for admission.

13 THE COURT: Subject to your prior objection?

14 MR. SLADE: Objection to that, Your Honor.

15 THE COURT: Yes, sir, subject to those objections  
16 I will admit it as marked.

17 (Whereupon, State's Exhibit No. 2 was admitted as  
18 evidence into the record)

19 THE COURT: You may publish.

20 MS. LESKANIC: Thank you, Your Honor.

21 BY MS. LESKANIC:

22 Q. I'm now going to publish State's Exhibit 2.

23 Could I have you step down again, please?

24 (Witness off the witness stand)

25 BY MS. LESKANIC:

1 Q. And, if you would -- were you one of the first  
2 individuals to go into the room from EMS or fire?

3 A. Yes, ma'am.

4 Q. Okay. If you would, just walk the jury -- we have it  
5 labeled front door where you came in, and then walk the jury  
6 through where you were in the room and where you found Mr.  
7 Morgan.

8 A. We -- we entered through this door, came down and went  
9 into this room, and the victim was in this right here,  
10 between the table and the couch on the floor in this area  
11 right here.

12 Q. Was the table knocked over?

13 A. No, ma'am.

14 Q. Okay. Did you notice things on the table knocked onto  
15 the floor?

16 A. No, ma'am.

17 Q. How much room was there between the couch and the table  
18 where Mr. Morgan was found?

19 A. Eighteen inches, maybe. A foot. Not very much.

20 Q. So would you say the table was close to the couch, or a  
21 long distance from the couch?

22 A. It was close to the couch.

23 Q. Okay. And Mr. Morgan was found between the couch and  
24 the table?

25 A. (Witness pointing).

1 Q. All right. What did y'all have to do to get Mr. Morgan  
2 out of the room?

3 A. We physically moved this table over out of the way in  
4 order to access the patient to get him up and to get him  
5 out.

6 Q. Okay. Thank you very much.

7 Now, you say patient. What was Mr. Morgan's condition  
8 when he came into the room?

9 (Witness back on the witness stand)

10 A. The subject was semi -- well, semi-conscious and  
11 anginal breathing, like gasping.

12 Q. What does that mean?

13 A. Anginal breathing is ah, ah, ah, like that. Gasping  
14 for air, more or less.

15 Q. Okay. Can you describe what things looked like around  
16 him, how he appeared?

17 A. He was -- between -- well, laying there he was kind of  
18 balled up in a way like almost in a fetal position --

19 Q. Okay.

20 A. -- with his hands up.

21 Q. All right. Do you know which way his -- was he laying  
22 face down, or on his back?

23 A. Kind of on his side and his head would have been  
24 facing --

25 Q. Here you go.

1 A. -- that way. His head would have been right here.

2 Q. And which way was -- and he was on his side facing the  
3 table or the couch?

4 A. He was facing the table on his side this way.

5 Q. Okay. Could you tell what sort of injuries he had?

6 A. Yes, ma'am.

7 Q. And what was that?

8 A. It was a gunshot wound to the head area.

9 Q. Was he able to speak?

10 A. No, ma'am.

11 Q. Was he able to move?

12 A. No, ma'am.

13 Q. Now, I want to show you what's been marked State's  
14 Exhibit 3. Tell me if you recognize that, please.

15 A. Yes, ma'am.

16 Q. And what is that?

17 A. That would be the couch that was in the room where the  
18 body was, or where the subject was. That would be the couch  
19 that he was in front of.

20 Q. All right. Now, when this photo was taken, is the  
21 table still in this photograph?

22 A. No, the table is back over. We had already moved the  
23 table.

24 Q. All right. Let me show you State's Exhibit 4. Tell me  
25 if you recognize that.

1 A. Yes, ma'am, that would be the table.

2 Q. All right. That's the table that you and other workers  
3 moved out of the way to work on Mr. Morgan?

4 A. Yes, ma'am.

5 Q. All right. And that's the way that the table -- it  
6 wasn't in that position, but the items that are on the table  
7 were on the table at the time that you moved it?

8 A. Yes, ma'am.

9 Q. Okay.

10 MS. LESKANIC: Your Honor, at this time we offer  
11 State's Exhibit 3 and 4 for admission.

12 MR. SLADE: I don't have any objection to those.

13 THE COURT: Without objections, they will be  
14 admitted as marked and you may publish those photos, if you  
15 would like.

16 (Whereupon, State's Exhibit No. 3 was admitted as  
17 evidence into the record)

18 (Whereupon, State's Exhibit No. 4 was admitted as  
19 evidence into the record)

20 MS. LESKANIC: Thank you.

21 BY MS. LESKANIC:

22 Q. I'm going to start with State's Exhibit 3.

23 I know we have had the diagram --

24 MS. LESKANIC: Dim the lights, please.

25 BY MS. LESKANIC:

1 Q. If you can step down one more time.

2 (Witness off the witness stand)

3 BY MS. LESKANIC:

4 Q. And show me where you found Mr. Morgan.

5 A. He was lying right in this area right in here.

6 Q. But the table -- has the table already been moved in  
7 this photograph?

8 A. Yes. Yes, ma'am, we have already moved the table at  
9 this point. It's over there in the other picture.

10 Q. Okay. When you got to Mr. Morgan and moved the table  
11 and moved him, did you notice any sort of weapon around his  
12 body?

13 A. No, ma'am.

14 Q. Okay. All right. Now, if you will stay there, I'm  
15 going to now show you what's been marked State's Exhibit 4.  
16 And, if you will, please tell the jury what we are looking  
17 at there.

18 A. That would be the coffee table that was in front of the  
19 couch where the victim was, and we moved it out of the way  
20 to gain access to the victim.

21 All the things that are on the table were there. We  
22 didn't move anything. We just picked the table up and moved  
23 it out of the way.

24 Q. Now, when you found -- and you can have a seat. Thank  
25 you very much. Sorry to make you get up and down so much.

1 (Witness back on the witness stand)

2 BY MS. LESKANIC:

3 Q. When you found Mr. Morgan, was he dressed?

4 A. Yes.

5 Q. Did he have a shirt on?

6 A. Yes, ma'am.

7 Q. All right. And what did you do after you -- you came  
8 in, you assessed the situation, y'all moved the table and  
9 then what?

10 A. We loaded him on the stretcher, secured him, and took  
11 him out to the ambulance.

12 Q. Did you take him back out the same route that you came  
13 in?

14 A. Yes.

15 Q. Back out the front door?

16 A. Back out the front door, back out to the front of the  
17 house to the ambulance.

18 Q. And do you know what happened after that?

19 A. They loaded him, and the helicopter met them at Upstate  
20 Medical and they flew him to Spartanburg.

21 Q. Were you ever advised further of what happened to Mr.  
22 Morgan?

23 A. Not that night, no.

24 Q. Later on were you?

25 A. Later on, yes, ma'am, we had found -- I guess it was in

1 the paper. We read it that he had passed away.

2 Q. Now, there were EMS workers and firefighters that came  
3 to the scene, is that correct?

4 A. Yes, ma'am.

5 Q. Do you know how many, approximately?

6 A. There would have been four of us firefighters and three  
7 maybe EMS.

8 Q. Did all of the firefighters come into the room at the  
9 same time?

10 A. No, ma'am.

11 Q. Did all of the EMS workers come into the room at the  
12 same time?

13 A. No, ma'am.

14 Q. So how many either firefighters or EMS would have been  
15 in this room at one time?

16 A. Counting myself, two EMS. There would be three of us.

17 Q. Thank you very much. Please answer any questions that  
18 Mr. Slade has for you.

19 THE COURT: Your witness, Mr. Slade.

20 MR. SLADE: Thank you, Your Honor.

21 THE COURT: Yes, sir.

22 CROSS EXAMINATION BY MR. SLADE:

23 Q. You got to this house on 311 Sarratt Avenue at 3:21  
24 that morning?

25 A. Yes, sir.

1 Q. All right. And y'all were called at 3:18?

2 A. Yes. Somewhere 3:18. It usually takes two to three  
3 minutes for us to process the call.

4 Q. All right. And there were -- were you in the first  
5 group or the second group?

6 A. Meaning which? First to the house?

7 Q. Well, according on the incident report, there were  
8 seven EMS responders or firefighters at the scene in the  
9 first five minutes or so, correct?

10 A. Yes, sir.

11 Q. All right. And according to the information that I  
12 have in the incident report, y'all arrived in two separate  
13 groups, is that right?

14 A. Yes, sir, the fire department arrives in the fire  
15 engine and EMS arrives in an ambulance.

16 Q. All right. How many of y'all were in the first group?

17 A. There were four of us on our truck.

18 Q. All right. And y'all pulled up to the front?

19 A. Yes.

20 Q. Didn't know what exactly was going on at the house?

21 A. We had been advised that the scene was secured by law  
22 enforcement.

23 Q. Didn't know exactly what you were going to see in the  
24 house, correct?

25 A. That's correct.

1 Q. All right. So the four of y'all go in the front door?

2 A. Me and the EMS, yes, sir.

3 Q. Who all went in the front door with you?

4 A. Myself and EMS. I can't recall names. It's been that  
5 long ago. I know they are EMS, but I can't recall their  
6 names.

7 Q. How many of them were there?

8 A. Me -- there was me and two others at first and then --

9 Q. And you and the two people whose name you can't -- I  
10 mean, y'all work together all the time, right? Y'all show  
11 up at the same scenes, etcetera?

12 A. They change shifts a lot.

13 Q. All right. But you don't remember their names?

14 A. No, I sure don't.

15 Q. Have you ever reviewed your notes at all in preparation  
16 for your testimony here today?

17 A. Just my incident report.

18 Q. All right. Let me take a look at that. That's just  
19 that two page printed document?

20 A. Yes, sir.

21 Q. And you drew this up or you wrote -- you wrote this up,  
22 correct?

23 A. Yes, sir.

24 Q. And that was about, what, the following day from when  
25 you went over there to 311 Sarratt Avenue?

1 A. It was later that night.

2 Q. Okay. Or earlier that morning?

3 A. Yes, sir.

4 Q. Okay. Because this was three o'clock in the morning?

5 A. Yes.

6 Q. And then when you left there you went and made a  
7 report, right?

8 A. Yes.

9 Q. And the extent of your report just says you arrived on  
10 the scene to find a gunshot victim with a wound to the head.  
11 Medic arrived and we assisted in packaging patient and  
12 loading patient for transport, correct?

13 A. Yes, sir.

14 Q. And then you detailed which trucks went out there,  
15 correct?

16 A. Yes, sir.

17 Q. And you didn't draw any diagram or anything on your  
18 report at the time, right?

19 A. No, sir.

20 Q. And when you were preparing --

21 MR. SLADE: Greg, can you put that diagram back up  
22 on the screen for me, please?

23 BY MR. SLADE:

24 Q. Now, the first you saw of this diagram was when you  
25 went to prepare your testimony for the jury with the

1 solicitor, right?

2 A. The first time I saw that one?

3 Q. Yes, sir.

4 A. Yes, sir.

5 Q. Okay. And you and she discussed where you were going  
6 to testify that the body was, correct?

7 A. Yes, sir.

8 Q. All right. And you were working just from your memory?

9 A. Yes, sir, what I recall.

10 Q. And you didn't have any notes from that time in the  
11 notes you just went over about where the body was, where Mr.  
12 Morgan was, correct?

13 A. That's correct, there is -- there is nothing in the  
14 report that -- any diagrams or anything.

15 Q. Okay.

16 A. We are not required to do that.

17 Q. I understand. And -- and I'm just -- we are just  
18 explaining to them how you came to some of the testimony  
19 that you got here.

20 And when you take those classes that you were telling  
21 the jury about in the earlier part of your testimony, there  
22 is no -- there is no classes in drawing diagrams and showing  
23 where people are when you go to a scene, right?

24 A. Not for general firefighting, no.

25 Q. Okay, that's fine. I just -- nothing wrong with that.

1 I just -- we just need for them to know what your training  
2 was.

3 Now, when you get to any kind of scene like that -- you  
4 said y'all heard on the radio -- you heard on the radio that  
5 it was some type of gunshot thing, right?

6 A. Yes, sir.

7 Q. And so you knew that there was somebody there with a  
8 gunshot wound, correct?

9 A. Yes, sir.

10 Q. And the primary reason that you are there is to try to  
11 help them, right?

12 A. That's correct.

13 Q. So as soon as you got there and saw where Mr. Morgan  
14 was, you went over there and started trying to do the things  
15 that you have been trained to do to take care of him, right,  
16 to take care of a gunshot victim?

17 A. Yes, sir.

18 Q. All right. And you and two people, whose names you  
19 can't remember, right?

20 A. Right.

21 Q. Rushed over there, correct?

22 A. Yes.

23 Q. And --

24 MR. SLADE: If you could, put this one back up  
25 there.

1 BY MR. SLADE:

2 Q. And wherever this -- I'm not going to ask you to come  
3 down here. Can you see it okay?

4 A. Yes, sir.

5 Q. I mean, you can get up if you need to.

6 (Witness off the witness stand)

7 BY MR. SLADE:

8 Q. I apologize.

9 Now, this thing with the water bottle, and the wrinkled  
10 up aluminum foil, and the book, and all that, that's what's  
11 on the coffee table, right?

12 A. Yes, sir, that's the coffee table.

13 Q. So you and these two people whose name you can't  
14 remember got there, saw where Todd Morgan was and y'all  
15 picked that coffee table up and moved it as quick as you  
16 could, didn't you?

17 A. Yes, sir.

18 Q. Because you were trying to help this fellow.

19 Whatever was on this coffee table was unimportant,  
20 right?

21 A. At the time we didn't disturb anything. As you see it  
22 is how we left it.

23 Q. I'm going to let you explain whatever you need. You  
24 just need to answer my question.

25 What was on that coffee table wasn't important, was it?

1 A. Not at the time.

2 Q. Okay. And y'all picked it up and slung it over to  
3 wherever you put it and not an item moved, right?

4 A. You are right, we didn't move anything. We just picked  
5 it up and moved it.

6 Q. Okay. That's what I'm saying, all those things.

7 So it's pretty clear that you can move that coffee  
8 table around without upsetting stuff that's on there, right?

9 A. Yes, sir.

10 THE COURT: I'm going to ask you not to be moving  
11 the furniture in the courtroom.

12 MR. SLADE: Yes, sir.

13 THE COURT: Thank you, sir.

14 BY MR. SLADE:

15 Q. So y'all moved that as quick as you could and nothing  
16 was upset?

17 A. Right.

18 Q. Now -- you can resume your seat.

19 (Witness back on the witness stand)

20 MR. SLADE: I beg the indulgence of the court one  
21 more time.

22 THE COURT: Yes, sir.

23 (Off the record)

24 (Back on the record)

25 BY MR. SLADE:

1 Q. Now, when you got into the room, there were some items  
2 that had been turned over, correct?

3 A. Turned over?

4 Q. Yeah, or do you recall? If you don't recall, you can  
5 just tell me.

6 A. The only thing that I remember turned over was the  
7 couch cushions off the couch.

8 Q. Okay. Now --

9 MR. SLADE: Your Honor, I am going to ask that  
10 this be admitted as a defendant's exhibit.

11 THE COURT: Do you have any objection --

12 MS. LESKANIC: No objection.

13 THE COURT: -- to it submitted as a defense  
14 exhibit?

15 Is it marked yet?

16 MR. SLADE: No, sir.

17 THE COURT: Please have it marked.

18 (Photograph marked and admitted into evidence as  
19 Defendant's Exhibit No. 6 for identification)

20 MR. SLADE: It's admitted as Defendant's No. 6.  
21 You may proceed.

22 MR. SLADE: Thank you, Your Honor.

23 BY MR. SLADE:

24 Q. Take a look at that, please, sir.

25 Have you had a chance to look at Defendant's Exhibit

1 No. 6?

2 A. Yes, sir.

3 Q. Okay. Let's put this on the screen.

4 Now, let's take a look at this item.

5 Now, this is the chair that you were describing when  
6 the solicitor was conducting your direct testimony. That's  
7 a plastic chair, isn't it?

8 A. Yes, sir.

9 Q. And that was in the room when you got there?

10 A. Yes, sir.

11 Q. And there is a wooden chair behind it, correct?

12 A. It appears to be, yes.

13 Q. It's turned over?

14 A. Yes, sir.

15 Q. Now, let's show -- or let's -- let me ask you some  
16 questions about the location of that broken chair and that  
17 turned over chair.

18 Now, if you would, Officer Ward, if you would -- if you  
19 could just come down here a minute.

20 (Witness off the witness stand)

21 BY MR. SLADE:

22 Q. Now, this turned over chair is the one that's at the  
23 end of the couch there, correct?

24 A. Yes.

25 Q. And the busted up chair, the white one, is the one that

1 y'all have drawn in the block that's the chair beside the  
2 fireplace, right?

3 A. Yes, sir.

4 Q. And it was in those positions when you got there?

5 A. Yes, sir. All we moved was the table.

6 Q. All right. You can resume your seat.

7 (Witness back on the witness stand)

8 BY MR. SLADE:

9 Q. So this turned over chair is at the end of the coffee  
10 table and sofa where Todd Morgan was lying, correct?

11 A. Yes.

12 Q. And you don't know if before you went in there --

13 You know Calvin Wallace went in there before you got  
14 there, correct?

15 A. I don't.

16 Q. Do you know who Calvin Wallace is?

17 A. (Shaking head no).

18 Q. Okay. Did you meet or talk with anybody who was a  
19 resident of the house when y'all went in?

20 A. No, sir, we just --

21 Q. Who showed y'all where to go? Did Officer Sizemore  
22 tell y'all, show y'all where to go?

23 A. An officer was standing at the doorway --

24 Q. Right.

25 A. -- and he said that the victim was in the room. And we

1 went in to find the victim.

2 Q. Okay. Was that Sizemore, or was that -- do you  
3 remember?

4 A. No, not clearly, not to say yes or no.

5 Q. Okay. Not enough to testify to?

6 A. Right.

7 Q. Right.

8 A. I just know the officer did say that he was in there.

9 Q. Okay. And you know Officer Sizemore, right?

10 A. Yes, sir.

11 Q. You know the other officer who was the first at the  
12 scene, Steve Green, Officer Green, right?

13 A. Yes, sir.

14 Q. You can't remember which one of those it was?

15 A. It's been so long ago.

16 Q. Right.

17 MR. SLADE: I don't have any other questions for  
18 this witness, Your Honor.

19 THE COURT: You may redirect.

20 MS. LESKANIC: Thank you, Your Honor.

21 REDIRECT EXAMINATION BY MS. LESKANIC:

22 Q. What was the purpose for you coming out to 311 Sarratt  
23 Avenue?

24 A. To assist EMS with a gunshot victim.

25 Q. All right. Were you there to take in everything in the

1 room and work crime scene with law enforcement?

2 A. No, ma'am, not my job.

3 Q. All right. When you first went in the room, were you  
4 running in the room oblivious to everything around you?

5 A. I would say you get a little bit of tunnel vision,  
6 because there is a person that needs help, and you see  
7 certain details in the room, but you remember the big ones,  
8 not the smaller ones.

9 Q. And do you remember how Todd Morgan was laying when you  
10 went to help him with the gunshot wound to the head?

11 A. Yes, ma'am.

12 Q. Is that something that you think you will ever forget?

13 A. Probably not.

14 Q. Now, when you and the other EMS officers moved the  
15 table, were you just trying to throw it across the room and  
16 get it out of the way --

17 A. No.

18 Q. -- as Mr. Slade tried to make it appear?

19 A. No, ma'am.

20 Q. All right. What are you trying to do?

21 A. Make as little mess as possible to get it out of the  
22 way.

23 Q. All right. And why make as little mess as possible?

24 A. Because you don't want to disrupt anything that may be  
25 a crime scene.

1 Q. So you are thinking about that while you are in there.  
2 Is that part of your training and is that part of what you  
3 respond to that may have to be worked by police officers  
4 when you leave?

5 A. Yes, ma'am.

6 Q. All right. So --

7 MS. LESKANIC: And I won't move the furniture  
8 around, Your Honor.

9 BY MS. LESKANIC:

10 Q. But were you and the other officers just picking it up  
11 as hard as you could and just flinging it over to the other  
12 side of the room?

13 A. No, ma'am.

14 Q. What were you doing? How did you move the table?

15 A. We just picked it up and eased it over just out of the  
16 way so we could get to the patient.

17 Q. All right.

18 A. But we were careful enough not to knock anything over,  
19 because we didn't want to disturb anything.

20 Q. Thank you very much.

21 All right. Now, did you and EMS workers work on Todd  
22 Morgan in that room? Did y'all bring in a lot of equipment  
23 and try to give him any assistance while he was in the room?

24 A. No, ma'am, it was basically load him up, strap him to  
25 the stretcher and get him out to the ambulance as quick as

1 possible.

2 Q. Okay. And why? Why didn't you work on him in the  
3 room?

4 A. The nature of the injury, the gunshot wound to the  
5 head. It was severe enough to warrant getting him to the  
6 hospital quick.

7 Q. Okay. So your main objectives were to preserve the  
8 crime scene and get help for Mr. Morgan, not necessarily in  
9 that order, but those were the two main objectives?

10 A. Yes, ma'am.

11 Q. Thank you very much.

12 THE COURT: Recross?

13 MR. SLADE: Nothing.

14 THE COURT: You may step down, sir.  
15 Do you wish to excuse the witness?

16 MS. LESKANIC: Yes, Your Honor.

17 THE COURT: Any objection to his being excused  
18 from the trial?

19 MR. SLADE: No, sir.

20 THE COURT: Sir, you are free to go. Thank you  
21 for coming today.

22 THE WITNESS: Yes, sir.

23 THE COURT: The State may call its next witness.

24 MS. LESKANIC: State calls the Detective/Sergeant  
25 Brian Blanton.

1 THE COURT: Sir, if you will come forward and be  
2 sworn, please.

3 DETECTIVE BRIAN BLANTON, having been first duly  
4 sworn, testified as follows:

5 THE COURT: Have a seat, sir.

6 Once you are seated, I would ask that you state  
7 your name, please.

8 THE WITNESS: Christopher Brian Blanton.

9 THE COURT: Thank you.

10 DIRECT EXAMINATION BY MS. LESKANIC:

11 Q. And where are you employed, Detective Blanton?

12 A. Gaffney City Police Department.

13 Q. How long have you been with Gaffney City Police  
14 Department?

15 A. A little over fifteen years now.

16 Q. All right. Can you tell the jury a little bit about  
17 what you have done during your fifteen years in law  
18 enforcement?

19 A. I was assigned to patrol probably nine years. Actually  
20 worked in narcotics for a year. I have been in detectives  
21 probably for the last three and a half, going on four.

22 Q. All right. And do you have any special training to  
23 become a detective, or how do you get that position?

24 A. Yes, ma'am, I have taken several detective courses at  
25 the Criminal Justice Academy in Columbia.

1 Q. And did you also have to go through the academy to  
2 become a police officer?

3 A. Yes, ma'am.

4 Q. And what does that entail?

5 A. Well, they have changed it, as far as the length of the  
6 academy now, but when I went through it, it was eight weeks  
7 of training.

8 Q. And what type of training did you go through?

9 A. Everything from like responding to a wreck, traffic  
10 offenses, investigations, anything. It covers everything.

11 Q. Okay. Now, when this occurred in November of 2009,  
12 what was your position with the Gaffney City Police  
13 Department?

14 A. I was a detective.

15 Q. Okay. Did you get a call that you needed to respond to  
16 311 Sarratt Avenue?

17 A. Yes, ma'am.

18 Q. Now, how does that work when you are a detective and a  
19 call comes in at three in the morning?

20 A. At the time the shift lieutenant notifies me of what  
21 their findings are, once they arrive on the scene. I  
22 respond to the scene to begin an investigation.

23 Q. All right. So you go out to 311 Sarratt Avenue,  
24 State's Exhibit 1. Is that the location where you  
25 responded?

1 A. Yes, ma'am.

2 Q. Do you know what time you arrived?

3 A. About 3:50, 3:53, something like that, a.m..

4 Q. And what did you find when you arrived?

5 A. Upon my arrival I spoke with Officer Sizemore, who  
6 advised me of we had a shooting victim that had already been  
7 carried out by EMS, because of the severity of his injuries,  
8 and was in the process of being airlifted.

9 At that time he showed me the room in which they found  
10 the victim. I did just a quick walk-through, came back out  
11 and waited on crime scene to respond.

12 Q. Now, is this house located in Cherokee County?

13 A. Yes, ma'am.

14 Q. Who was at the home when you arrived, as far as  
15 potential witnesses?

16 A. The only gentleman that I was introduced to upon my  
17 arrival was a gentleman by the name of Calvin Wallace, who  
18 lived in a back room of the residence.

19 Q. Can you describe -- in speaking with Mr. Wallace, were  
20 you able to get an understanding of who lived in the house  
21 and what the living arrangement was?

22 A. Yes, ma'am.

23 Q. All right. Can you explain that to the jury?

24 A. Yes, ma'am, it was a -- it was a one residence, but  
25 like there was three people that occupied a different

1 bedroom in the residence and they shared the kitchen of the  
2 residence. So there was actually three people living in the  
3 house and they shared the kitchen of the house.

4 Q. And were you able to determine who the three  
5 individuals were that had their own room in this house?

6 A. Yes, ma'am.

7 Q. And who were those people?

8 A. Calvin Wallace, Calvin's brother Stevie, I think, or  
9 Steve Wallace, I think, or I think that was his brother, and  
10 then "Pookie" and Todd.

11 Q. Now Pookie", is that --

12 A. Claudette Byers.

13 Q. Claudette Byers.

14 Okay. So Calvin Wallace has a room.

15 A. Yes, ma'am.

16 Q. Do you know where his room was located?

17 A. It was in the very back of the residence, the very back  
18 right corner away from that door you are looking at there.

19 Q. Okay. Detective Blanton, let me show you what's been  
20 marked as State's Exhibit 17. If you would take a look at  
21 that and tell me if you recognize it.

22 A. Yes, ma'am.

23 Q. And what is that?

24 A. That's the back door of the residence.

25 Q. Okay. And looking at that picture, would you be able

1 to tell where Mr. Wallace's room was?

2 A. Yes, ma'am.

3 Q. All right. And this is an accurate photograph of the  
4 back of the residence?

5 A. Yes, ma'am.

6 MS. LESKANIC: The State offers Exhibit 17 for  
7 admission as evidence.

8 THE COURT: Any objection?

9 MR. SLADE: None from us, Your Honor.

10 THE COURT: Without objection it will be admitted  
11 as marked and you may publish it.

12 (Whereupon, State's Exhibit No. 17 was admitted as  
13 evidence into the record)

14 MS. LESKANIC: All right.

15 BY MR. SLADE:

16 Q. So State's Exhibit 17 you say is the back of the  
17 residence.

18 And where -- if you need to step down, can you show the  
19 jury where Mr. Wallace's bedroom was located, where he  
20 lived?

21 (Witness off the witness stand)

22 A. Yes, ma'am. Mr. Wallace's bedroom would have been  
23 right here. You come in the back door of the residence.

24 BY MS. LESKANIC:

25 Q. Okay. And then the room where the shooting took place,

1 looking at State's Exhibit 1, can you identify where that  
2 room is?

3 A. It would have been this bedroom right here.

4 Q. Okay. Now, do you know where Stevie Wallace, where his  
5 bedroom was located?

6 A. From my recollection of the residence, this would have  
7 been like a -- I guess like a living room area. It was kind  
8 of vacant at the time.

9 There was a hallway. As you come in this front door  
10 there was a hallway there. Stevie's bedroom would have been  
11 the next bedroom on your right.

12 (Photograph marked as State's Exhibit No. 27 for  
13 identification)

14 BY MS. LESKANIC:

15 Q. Let me show you State's Exhibit 27. Can you tell me  
16 what that is?

17 A. Yes, that was the living room. It's kind of right  
18 here.

19 Q. And where is that located in regard to "Pookie" Byers  
20 room?

21 A. Directly across the hall. That's the door to this  
22 bedroom. You would walk into this room.

23 MS. LESKANIC: Your Honor, I offer State's Exhibit  
24 27 for admission.

25 THE COURT: Without objection?

1 MR. SLADE: Without objection.

2 THE COURT: Without objection, it would be  
3 admitted as marked and you may publish.

4 (Whereupon, State's Exhibit No. 27 was admitted as  
5 evidence into the record)

6 (Witness back on the witness stand)

7 BY MS. LESKANIC:

8 Q. So this is the room right across from the area where  
9 Todd Morgan was found?

10 A. Yes, ma'am.

11 Q. All right. And so we have three bedrooms where the  
12 individuals lived.

13 And you spoke with Calvin Wallace?

14 A. Yes, ma'am.

15 Q. Were you able to get -- without telling me what he  
16 said, were you able to get any information from Mr. Wallace  
17 to develop a suspect?

18 MR. SLADE: Your Honor, I have an objection to  
19 that.

20 THE COURT: All right. Do you want to take that  
21 up outside the listening of the jury?

22 MR. SLADE: Well, basically a hearsay objection,  
23 Your Honor.

24 THE COURT: I'll hear from you.

25 MR. SLADE: All right. Your Honor, what is about

1 THE COURT: Well, I'll allow her to do that.

2 MR. SLADE: Yes, sir.

3 THE COURT: Okay. You can do that.

4 MS. LESKANIC: Thank you, Your Honor.

5 THE COURT: Bring the jury in.

6 It's overruled to that extent.

7 (The following takes place in the presence of the  
8 jury panel)

9 THE COURT: The record will reflect the jury has  
10 returned to the courtroom.

11 I have overruled the objection from the defense,  
12 with instructions to the State.

13 You may proceed.

14 MS. LESKANIC: Thank you, Your Honor.

15 BY MS. LESKANIC:

16 Q. So you spoke with individuals that were in the home?

17 A. Yes, ma'am.

18 Q. And you continued your investigation?

19 A. Yes, ma'am.

20 Q. All right. During the course of that investigation  
21 were you able to get a name of a possible suspect?

22 A. Yes, ma'am, we were looking for a gentleman by the  
23 nickname of "New York".

24 Q. Did you have any other information about him, other  
25 than "New York"?

1 A. No, ma'am, not at the time.

2 Q. Was there an individual by the name of "New York" at  
3 the home when you arrived?

4 A. No, ma'am.

5 Q. Were you given any information by other officers that  
6 there was an individual by the name or nickname of "New  
7 York" when they arrived?

8 A. No, ma'am.

9 Q. What did you do with that --

10 Well, how soon after you began your investigation did  
11 you receive that name?

12 A. Maybe five minutes at the most after I arrived.

13 Q. Okay. What did you do with that information?

14 A. Basically just started taking some notes, I guess, as  
15 far as what I had been advised at the time.

16 Q. Did you have any idea whether this individual left on  
17 foot or in a vehicle?

18 A. We were advised that he had left in a Volvo station  
19 wagon, that he had left the scene.

20 Q. And how did you receive information about this vehicle?

21 A. From someone at the residence.

22 Q. Okay. And was there any other information about the  
23 vehicle that came in?

24 A. I think they described it as a burgundy or red one  
25 time.

1 MR. SLADE: I continue my objection just from a  
2 minute ago to.

3 THE COURT: I understand. It's noted.

4 BY MS. LESKANIC:

5 Q. Do you know if there was a call to 911 from an  
6 individual that may have had information?

7 A. Yes, ma'am, a short time later 911 called me and  
8 advised me that they had a gentleman that had called over  
9 the telephone and advised them that evidently he was  
10 listening on the scanner or had some --

11 MR. SLADE: Your Honor, I object.

12 THE COURT: I'm going to sustain the objection to  
13 any statement as to what that individual may have said in  
14 that call. I'll sustain that objection.

15 BY MS. LESKANIC:

16 Q. Did you get a possible description of a vehicle --

17 A. Yes, ma'am.

18 Q. -- during your investigation?

19 A. Yes, ma'am.

20 Q. All right. Were you also able to get a possible  
21 location for an individual by the name of "New York"?

22 A. Yes, ma'am.

23 Q. What was that information?

24 A. 911 had advised that --

25 Q. And just tell me where the location is.

1 A. It was at a yellow house behind Bronco's off Floyd  
2 Baker Boulevard.

3 Q. And once you received that information, what did you  
4 do?

5 A. I notified Lieutenant Hughes and Sergeant Green,  
6 advised them what I had been told by 911, asked them to go  
7 by and do a knock and talk at the residence.

8 Q. And do you know whether or not they did that?

9 A. Yes, ma'am.

10 Q. All right. And do you know -- without going into what  
11 exactly they did, were they able to find an individual by  
12 the name of "New York"?

13 A. Yes, ma'am.

14 Q. What did you ask them to do?

15 A. I asked them at that time if they would escort him from  
16 that location to the city police department.

17 Q. And how soon after you were notified of the shooting  
18 did they bring this individual to the police department?

19 A. Just guessing, maybe forty-five minutes to an hour, I  
20 guess, something like that.

21 Q. When he came to the police department, were you able to  
22 determine his real name?

23 A. Yes, ma'am.

24 Q. And what is that name?

25 A. Hayward Chambers.

1 Q. All right. Did you meet with him at the police  
2 department?

3 A. Yes, ma'am.

4 Q. All right. Is the person that you met with at the  
5 police department in the courtroom now?

6 A. Yes, ma'am.

7 Q. Could you please point him out?

8 A. The gentleman sitting beside Mr. Slade.

9 Q. In the blue shirt?

10 A. Yes, ma'am.

11 Q. Thank you.

12 Did you meet with him in a well lit room?

13 A. Yes, ma'am.

14 Q. Did you notice any injuries to him?

15 A. No, ma'am.

16 Q. In looking at him, did you see any evidence to indicate  
17 that he had been in a physical altercation?

18 A. No, ma'am.

19 Q. Was any evidence turned over to you that was recovered?

20 A. Yes, ma'am, Sergeant Green advised me that they had  
21 recovered a firearm. It was in a white plastic bag. It was  
22 turned over to me, as far as evidence.

23 Q. And what did you do with that after you received it?

24 A. I turned it over to Captain Segina to be put into  
25 evidence.

1 Q. Okay. Did you prepare any search warrants in this  
2 case?

3 A. Yes, ma'am, I prepared one for the vehicle, Mr.  
4 Chambers vehicle, and also prepared for the clothing that he  
5 had on.

6 Q. The clothing that he had on when?

7 A. The night of the incident when we spoke at the police  
8 department.

9 Q. So the clothing he was wearing when he came to the  
10 police department?

11 A. Yes, ma'am.

12 MR. SLADE: Your Honor, I have another objection I  
13 think we need to discuss.

14 THE COURT: All right, ladies and gentlemen of the  
15 jury, I will ask you to step back to the jury room. Again,  
16 don't begin any discussions I'll until I ask you to do so.

17 (The following takes place outside the presence of  
18 the jury panel)

19 THE COURT: Yes, sir.

20 MR. SLADE: Your Honor, in response to one of the  
21 State's question just prior to this one, and -- I don't  
22 think the solicitor elicited this specific response, but  
23 Detective Blanton response was "when we spoke at the city  
24 police department." He's clearly referring to Hayward, and,  
25 of course, at that point he exercises his Fifth Amendment

1 MS. LESKANIC: I have, Your Honor, and I'm trying  
2 to be very careful on how I word my questions to not  
3 elicit --

4 THE COURT: Okay. They are going to try not to go  
5 there.

6 MR. SLADE: Yes, sir.

7 Thank you, Your Honor.

8 THE COURT: Bring the jury in.

9 MR. SLADE: Thank you, sir.

10 THE COURT: That's all right.

11 (The following takes place in the presence of the  
12 jury panel)

13 THE COURT: The jury has returned to the  
14 courtroom.

15 I have not made any rulings as a result of my  
16 discussion with counsel.

17 You may proceed.

18 MS. LESKANIC: Thank you, Your Honor.

19 BY MS. LESKANIC:

20 Q. Detective Blanton, I'm going to show you what's been  
21 marked State's Exhibit 13 and just tell me if you recognize  
22 this.

23 A. Yes, ma'am.

24 Q. And what is this?

25 A. That's the coat that Mr. Chambers had on.

1 Q. Okay. And this is the coat that he was wearing when he  
2 came -- when you saw him on the early morning hours of  
3 November 28th?

4 A. Yes, ma'am.

5 MS. LESKANIC: Your Honor, I offer State's Exhibit  
6 13 for admission as evidence.

7 THE COURT: Any objection?

8 MR. SLADE: No, sir, no objection.

9 THE COURT: Without objection, it would be  
10 admitted into evidence as marked.

11 (Whereupon, State's Exhibit No. 13 was admitted as  
12 evidence into the record)

13 MS. LESKANIC: Thank you.

14 BY MS. LESKANIC:

15 Q. Is this one of the items that was seized pursuant to  
16 your search warrant?

17 A. Yes, ma'am.

18 Q. I think that's all the questions I have for you.  
19 Please answer any questions of the defense.

20 A. Yes, ma'am.

21 THE COURT: Your witness, counselor.

22 MR. SLADE: Thank you, Your Honor.

23 THE COURT: Yes, sir.

24

25 CROSS EXAMINATION BY MR. SLADE:

1 Q. Detective Blanton, you have been the investigating  
2 officer in charge of this case since 3:53 in the morning of  
3 November the 28th, correct?

4 A. Yes, sir.

5 Q. And you got to the house at Sarratt Avenue -- you got  
6 to this house at 3:53 in the morning, correct?

7 A. Yes, ma'am.

8 Q. And according to your testimony on direct, when Ms.  
9 Leskanic was asking you questions, at 5:33 in the morning  
10 you arrested Hayward Chambers, correct?

11 A. Yes, sir.

12 Q. So your investigation up to the point that you arrested  
13 Hayward Chambers was an hour and forty minutes, correct?

14 A. Yes, sir.

15 Q. And when you first arrested Hayward Chambers -- when  
16 you first arrested Hayward Chambers, Mr. Morgan was at  
17 Spartanburg Regional?

18 A. Yes, sir.

19 Q. And so you arrested Mr. Chambers for assault and  
20 battery with intent to kill, correct?

21 A. Yes, sir.

22 Q. And that was an hour and forty minutes after you  
23 started investigating this case?

24 A. Yes, sir.

25 Q. Then you were notified the next day, roughly twelve

1 noon, 12:30 or so, that Mr. Morgan had passed away?

2 A. Yes, sir.

3 Q. Correct?

4 A. Yes.

5 Q. And then you upgraded the warrant that you had arrested  
6 Mr. Chambers on from assault and battery with intent to kill  
7 to murder, correct?

8 A. Yes, sir.

9 Q. You knew within five minutes of getting there that  
10 there were at least two witnesses to what went on in that  
11 room, correct?

12 A. Yes, sir.

13 Q. One of them was "Pookie" Byers, Claudette Elaine Byers,  
14 "Pookie", right?

15 A. Yes.

16 Q. And one of them was Michelle Davis, "Big Momma",  
17 correct?

18 A. Yes, sir.

19 Q. Tell the jury whether or not you had talked to either  
20 one of those witnesses when you arrested and charged Hayward  
21 Chambers with assault and battery with intent to kill.

22 A. No, sir.

23 Q. You hadn't talked to either one of them?

24 A. No, sir.

25 Q. Tell -- and they are the only two witnesses in that

1 room, correct?

2 A. Yes, sir.

3 Q. Calvin Wallace wasn't in there, right?

4 A. No, sir.

5 Q. You knew that?

6 A. Uh-huh.

7 Q. Luis Callazo was also in the back room with Calvin? He  
8 wasn't in the room, right?

9 A. Yes, sir.

10 Q. Didn't see what was in the room.

11 Now, tell us whether or not you had talked to the two  
12 witnesses, to the two eyewitnesses that you knew were in the  
13 room, before you charged Hayward Chambers with murder a day  
14 later?

15 A. No, sir.

16 Q. One the most important things in determining whether  
17 you can use deadly force lawfully in self-defense is  
18 determining who the initial aggressor is, right?

19 A. Yes, sir.

20 Q. And as far as you knew, the two people who knew that  
21 were "Pookie" Byers and Michelle Davis, correct?

22 A. Yes, sir.

23 Q. And you didn't talk to either one of them before you  
24 charged Hayward with murder?

25 A. No, sir.

1 Q. So that wasn't a top priority for you in charging  
2 Hayward, determining who the aggressor was, correct?

3 A. Yes, sir, it was a priority as we had tried to locate  
4 them.

5 Q. Let's look at some of the things that you did in the  
6 meantime before you talked to either one of the witnesses,  
7 the eyewitnesses who were in that room.

8 You ran Hayward Chambers driving record, correct?

9 A. Yes, sir.

10 Q. Can you tell us what that has to do with helping you  
11 determine who the initial aggressor is?

12 A. It doesn't have anything to do with determining the  
13 aggressor, no, sir.

14 Q. Okay. And before you talked to either one of the two  
15 eyewitnesses in this room, did you run Todd Morgan's driving  
16 record?

17 A. Yes, sir.

18 Q. Can you tell us what that has to do with determining  
19 who the initial aggressor is?

20 A. No.

21 Q. All right. You searched -- you went over to the  
22 magistrate's office or the city judges's office and got a  
23 search warrant for Mr. Chambers car, correct?

24 A. Yes, sir.

25 Q. And you searched it.

1           Can you tell us what that has to do with determining  
2 what went on in that four or five minutes in that front room  
3 on Sarratt Avenue?

4           A.    I was looking for evidence of a crime, evidence of what  
5 happened in that room. It was the basis for the search  
6 warrant.

7           Q.    Did you have anything more specific than that that  
8 would have helped you determine who the initial aggressor  
9 was?

10          A.    No, sir.

11          Q.    You also ran a Department of Motor Vehicles search on  
12 Hayward Chambers car, correct, before you talked to either  
13 one of the eyewitnesses in this case?

14          A.    Yes, sir.

15          Q.    Right?

16          A.    Yes.

17          Q.    Can you tell us what that has to do with determining  
18 who the initial aggressor is?

19          A.    It doesn't have anything to do with the aggressor part,  
20 no, sir.

21          Q.    Now, sometimes when you make a decision in an hour and  
22 forty minutes, sometimes you make a wrong decision, correct?

23          A.    It's possible, yes, sir.

24          Q.    And you have learned since you began this investigation  
25 what the testimony is about who the initial aggressor is,

1 right?

2 A. Yes, I have heard testimony, yes, sir.

3 Q. And it's certainly possible you made a mistake in  
4 charging Hayward Chambers with unlawful use of deadly force,  
5 correct?

6 A. No, sir. Not during the course of my investigation,  
7 no, sir.

8 Q. You haven't learned anything in the last three years  
9 you have been investigating this case that would make you  
10 think that you made a mistake in charging him?

11 A. I'm not going to say I have made mistake, but as far as  
12 this charge, no, sir.

13 Q. Okay.

14 MR. SLADE: I don't have any other questions, Your  
15 Honor.

16 THE COURT: Ms. Leskanic, you may redirect.

17 REDIRECT EXAMINATION BY MS. LESKANIC:

18 Q. Detective Blanton, why didn't speak with "Pookie" Byers  
19 at 311 Sarratt Avenue when you arrived?

20 A. I was advised at the time that they had fled the scene.

21 Q. So "Pookie" Byers isn't there?

22 A. No, ma'am.

23 Q. All right. Why didn't you talk to Michelle "Big Momma"  
24 Davis at 311 Sarratt Avenue when you arrived at three in the  
25 morning?

1 A. She had also fled the scene.

2 Q. So she's not there?

3 A. No, ma'am.

4 Q. And what did you do, or did you do anything, to attempt  
5 to locate those two individuals?

6 A. Yes, ma'am. Claudette Byers, "Pookie", her family  
7 lives maybe two-tenths of a mile from the incident location,  
8 so we went by and spoke with her family to see if she -- if  
9 that's where she was at and she was not.

10 Q. Did you leave any sort of message with the family?

11 A. Yes, we advised her kind of what was going on and we  
12 needed to speak with her as soon as possible.

13 Q. And how soon after you arrived on the scene did you do  
14 that in attempt to find "Pookie" Byers?

15 A. Shortly thereafter. I don't remember the exact time,  
16 but maybe twenty minutes, thirty minutes, something like  
17 that.

18 Q. And how about Michelle Davis? What efforts were made  
19 by law enforcement to locate Michelle Davis?

20 A. At the time we were trying to identify Michelle.

21 When I arrived on the scene, we kept hearing the street  
22 name "Big Momma" and I was unfamiliar with who they were  
23 talking about.

24 Q. So was anybody telling you that Michelle Davis was on  
25 the scene?

1 A. No.

2 Q. Did anybody tell that you Claudette Byers was on the  
3 scene?

4 A. It seems like they did refer to "Pookie", as far as  
5 being there, yes.

6 Q. Did he use the name "Pookie", or did he use the name  
7 Claudette Byers?

8 A. I think he referred to "Pookie", yes.

9 Q. Okay. So what law enforcement is receiving are  
10 nicknames?

11 A. Yes, ma'am.

12 Q. But those individuals are not on the scene --

13 A. Yes.

14 Q. -- is that correct?

15 A. Yes, ma'am.

16 Q. All right. Why did you run a driving record of the  
17 defendant?

18 A. Just basically for identity purposes.

19 Q. Why? Tell me what goes on.

20 When you are an investigator and you come to a crime  
21 scene, what did you have to work with in this case?

22 A. Not very much. I was unfamiliar with Todd Morgan, I  
23 didn't know him, and I was unfamiliar with "New York". So  
24 basically just running the names trying to put a face with  
25 the name.

1 Q. Trying to identify the people that are --

2 A. Yes.

3 Q. -- involved?

4 A. Yes, ma'am.

5 Q. All right. So why did you run Todd Morgan's driving  
6 record?

7 A. Just for identity purposes, like I said, so see if I  
8 was familiar with the victim.

9 Q. Okay. And you did a search warrant for the vehicle?

10 A. Yes, ma'am.

11 Q. So at some point were y'all able to determine the  
12 vehicle that the defendant left the scene in?

13 A. Yes, ma'am.

14 Q. All right. And so you executed a search warrant and  
15 what was the purpose of that?

16 A. Yes, ma'am. Just look for any kind of evidence;  
17 clothing, DNA, blood, weapons, anything like that.

18 Q. Okay. And based on everything that you had before you  
19 at the time, was the charge of assault and battery with  
20 intent to kill the appropriate charge?

21 A. Yes, ma'am.

22 Q. And when you found out that Todd Morgan had died on  
23 November 29th, was the upgrade to murder the appropriate  
24 charge, based on everything that you had before you?

25 A. Yes, ma'am. At the time, yes, ma'am.

1 Q. All right. Were you later able to speak with Claudette  
2 "Pookie" Byers?

3 A. Yes, ma'am.

4 Q. Was she able to give you a statement, verbal or  
5 written, as to what happened in that room while she was  
6 there?

7 A. Yes, ma'am, she did.

8 Q. All right. Were you able to speak with Michelle "Big  
9 Momma" Davis after this happened?

10 A. Yes, ma'am.

11 Q. And was she able to give you a verbal or written  
12 recollection of what happened in that room?

13 A. Yes, she did.

14 Q. Based on statements that you received from those two  
15 individuals, did that change your mind as to what charge  
16 would be appropriate for Hayward Chambers?

17 A. No, ma'am.

18 Q. Okay. Thank you very much.

19 THE COURT: You may recross.

20 MR. SLADE: I have brief recross.

21 THE COURT: Yes, sir.

22 MR. SLADE: A couple of questions that the State  
23 asked.

24

25 RECROSS EXAMINATION BY MR. SLADE:

1 Q. Detective Blanton, I'm going to show you some notes  
2 that you took. I ask you not to --

3 MS. LESKANIC: Do you mind if I see those, Mr.  
4 Slade?

5 MR. SLADE: Sure. I apologize.

6 MS. LESKANIC: I may have some -- may we approach  
7 just a moment, Your Honor?

8 THE COURT: Yes, you may.

9 (Whereupon, the lawyers approached the bench for  
10 an off-the-record discussion)

11 THE COURT: You may proceed, Mr. Slade.

12 MR. SLADE: Thank you, Your Honor.

13 THE COURT: Yes, sir.

14 BY MR. SLADE:

15 Q. I'm showing you some notes that you took when you went  
16 over there to Sarratt Avenue that morning. Referring to  
17 those notes, Detective Blanton, by 4:15 in the morning you  
18 knew that "Pookie" Byers and Michelle Davis were in that  
19 room when Todd Morgan was shot, correct?

20 A. Yes, sir.

21 Q. Okay. And Ms. Leskanic asked you about your efforts to  
22 talk with them, right?

23 A. Yes, sir.

24 Q. And the way that you find Ms. Byers and the way that  
25 you find Ms. Davis is because they are often in the street

1 is just go up and down -- this is Sarratt Avenue, right?

2 A. Yes, sir.

3 Q. And it runs perpendicular to Marion Street or Marion  
4 Avenue, right?

5 A. Yes, sir.

6 Q. And that's the area where Ms. Byers hangs out? That's  
7 her neighborhood, right?

8 A. Uh-huh, yes.

9 Q. And that's kind of the neighborhood where Ms. Davis  
10 hangs out, right?

11 A. I'm not familiar with her, but yes, sir.

12 Q. You have learned that?

13 A. Yes, sir.

14 Q. And the way that you find them is you just ride through  
15 that neighborhood until they show up, right?

16 A. Yes, sir.

17 Q. That's basically the way that you run them down?

18 A. Yes, sir.

19 Q. I mean, you did it. I mean, that's how you find them?

20 A. (Shaking head yes).

21 Q. And rather than spending your efforts and time doing  
22 that for the first couple of days to find them and talk to  
23 them, to see what went on in that room, you were doing these  
24 other things - running driving records, looking through  
25 clothes, looking through cars - correct?

1 A. Yes, sir.

2 Q. Your emphasis was more on that than doing the leg work  
3 or the chasing to find these two witnesses, right?

4 A. No, sir, we -- we made several attempts to locate them.  
5 We just were unable to do so at the time.

6 Q. Thank you.

7 MR. SLADE: Your Honor, I have no further recross.

8 THE COURT: All right.

9 Anything further from this witness?

10 MS. LESKANIC: Nothing further, Your Honor.

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

12 Thank you very much.

13 THE WITNESS: Thank you.

14 THE COURT: The State may call its next witness.

15 MS. LESKANIC: The State calls Tommy Kennedy.

16 THE COURT: Come forward, sir, to my left and be  
17 sworn.

18 OFFICER TOMMY KENNEDY, having been first duly  
19 sworn, testified as follows:

20 THE COURT: Sir, have a seat.

21 Once you are seated state your name, please.

22 THE WITNESS: Tommy Kennedy.

23 THE COURT: Thank you very much.

24 Ms. Leskanic, your witness.

25 MS. LESKANIC: Thank you, Your Honor.

1 DIRECT EXAMINATION BY MS. LESKANIC:

2 Q. Where are you employed?

3 A. The Gaffney Police Department.

4 Q. And how long have you been employed with the Gaffney  
5 Police Department?

6 A. Fourteen years.

7 Q. Can you tell the jury a little bit about your training  
8 to become a police officer?

9 A. Well, I went through the Criminal Justice Academy.  
10 It's a nine week academy. Just general training, like  
11 Detective Blanton said.

12 Q. Okay. And at some point were you working crime scene  
13 with the Gaffney City Police Department?

14 A. Yes. And I believe it was May of 2009, I moved into  
15 crime scene, and Detective Blanton moved over into the  
16 detective division.

17 Q. Now, what sort of training did you have to work crime  
18 scene?

19 A. I have been through numerous, numerous classes, as far  
20 as crime scene; blood collection, evidence collection, tire  
21 tread photographs.

22 Q. All right. And were you working crime scene on  
23 November 28th, 2009?

24 A. Yes, I was.

25 Q. How were you notified about this case?

1 A. For me I get called after everybody else. It was  
2 probably approximately ten to four, four o'clock in the  
3 morning I got a call from 911 saying I needed to respond.

4 Q. Now, let's just back up so that the jury understands.  
5 Does crime scene respond to every case that police officers  
6 work?

7 A. No. No, we do not.

8 Q. How is the decision made that crime scene is needed to  
9 respond to a location?

10 A. Patrol will get to a scene. They will determine that  
11 this is beyond our scope of what we can do. They will in  
12 turn notify the detective division.

13 Q. And that would have been Detective Blanton, who we just  
14 heard from?

15 A. Yes, ma'am.

16 Q. Okay.

17 A. Upon the detective arriving on the scene, if it's  
18 something that he can deal with within his scope, he will  
19 deal with it. If it's something more major, he will call in  
20 extra detectives and he may call in the crime scene unit.

21 Q. All right. And did he, in fact, call you to respond to  
22 311 Sarratt Avenue?

23 A. Yes, he did.

24 Q. All right. What did you do when you arrived on the  
25 scene?

1 A. I -- I get out. I start photographing. Of course,  
2 people are directing me as to where the crime scene is, that  
3 sort of thing, what I'm going into, so that I don't walk  
4 into a surprise, as it were.

5 Q. All right. So what were you told in this case just to  
6 assist you with your job?

7 A. That there had been a shooting, that the victim was no  
8 longer on the scene, that he had been transported by EMS,  
9 and that I needed to deal with that.

10 Q. And you came out and one of the things you did was take  
11 photographs?

12 A. Yes, ma'am.

13 Q. Did you enter through the front door of 311 Sarratt  
14 Avenue, or the back door?

15 A. I entered through the front door.

16 Q. Let me show you what's been marked State's Exhibit 6.  
17 If you would take a look at that and tell me if you  
18 recognize it?

19 A. Yes, ma'am.

20 Q. And what is that?

21 A. That is the residence as I saw it when I pulled up to  
22 the crime scene that night.

23 MR. SLADE: No objection, Your Honor.

24 THE COURT: Without objection, it will be admitted  
25 as marked.

1 How is it marked?

2 MS. LESKANIC: This is marked as State's Exhibit  
3 6, Your Honor.

4 THE COURT: Thank you.

5 (Whereupon, State's Exhibit No. 6 was admitted as  
6 evidence into the record)

7 MS. LESKANIC: I ask to publish?

8 THE COURT: You may.

9 MS. LESKANIC: Thank you.

10 BY MS. LESKANIC:

11 Q. Could you tell the jury a little bit about what you see  
12 around the residence and where you went in?

13 A. That is the front of the residence, as you saw earlier.  
14 It was dark. It's surrounded by crime scene tape, and the  
15 vehicles that you are looking at are unmarked police  
16 vehicles.

17 Q. Okay. And which -- could you please just walk the jury  
18 through where you went into the house and what room that you  
19 went into?

20 A. That is the front door of the residence. That's where  
21 I entered in.

22 And then as soon as you turn in, there is a doorway  
23 right there and you enter into this bedroom right here.

24 Q. All right. Now, what did you see when you entered into  
25 that bedroom?

1 A. Furniture moved around. A chair knocked over. There  
2 was cushions disturbed on the couch. There was a large  
3 amount of bedding on the floor near the couch. There was  
4 blood, tissue. The room was just kind of turned over.  
5 That's how I saw it.

6 Q. Let me show you what has been marked State's Exhibit 7,  
7 8, 9, 10, and 11. If you would take a look at those for a  
8 moment.

9 MR. SLADE: I don't have any objection to any of  
10 these, Your Honor.

11 THE COURT: All right. Without objection, they  
12 will be admitted as marked.

13 MS. LESKANIC: Thank you, Your Honor.

14 (Whereupon, State's Exhibit No. 7 was admitted as  
15 evidence into the record)

16 (Whereupon, State's Exhibit No. 8 was admitted as  
17 evidence into the record)

18 (Whereupon, State's Exhibit No. 9 was admitted as  
19 evidence into the record)

20 (Whereupon, State's Exhibit No. 10 was admitted as  
21 evidence into the record)

22 (Whereupon, State's Exhibit No. 11 was admitted as  
23 evidence into the record)

24 BY MS. LESKANIC:

25 Q. So, Officer Kennedy, did you take these photographs?

1 A. Yes, I did.

2 Q. And is this the way that you found the residence when  
3 you arrived?

4 A. Yes. Yes, it was.

5 Q. Okay. Let me show you what's been marked State's  
6 Exhibit 7, and can you tell us what you were photographing  
7 in this picture?

8 And if you need to step down, I'm going to put all of  
9 these up. If you want to step down with the laser pointer,  
10 or if you can do it from there.

11 A. All right. This is the sofa. It's up against the far  
12 wall in the room. So as you step into the doorway, that is  
13 the wall adjacent to you.

14 Q. So if you step in the doorway, what do you see the  
15 minute you walk in the door of the room?

16 A. This is going to be almost straight across from you.

17 Q. Okay.

18 A. There is, of course, the cushions and bedding.

19 You have blood on the sheets here.

20 Blood on the sofa here.

21 Some more bedding.

22 Q. Now, did you arrive after Mr. Morgan had been  
23 transported by EMS?

24 A. Yes.

25 Q. Were you advised by anyone as to where he was found in

1 the room, or are you just taking photographs as you find the  
2 room?

3 A. No, I'm just taking photographs as I find the room.

4 Q. Okay. Let me now show you State's Exhibit 8. What do  
5 we see here?

6 A. This is the far end of the sofa. Cushions.

7 A chair that's overturned on its side.

8 A white plastic -- I call it patio furniture. I don't  
9 really know how to describe it. It's kind of broken up a  
10 little bit.

11 Q. All right. This is how you found it? You didn't move  
12 anything inside the room?

13 A. No, this is exactly how I saw it when I walked into it.

14 Q. State's Exhibit 9.

15 A. A different view, same photograph. End of the sofa.

16 The cushions with the chair turned over and the plastic  
17 patio chair.

18 Q. State's Exhibit 10.

19 A. That is the sheet from in front of the couch where it  
20 has a large amount of blood, and then blood on the sofa.

21 Q. And State's Exhibit 11?

22 A. The same sheet that we are looking at, but we have -- I  
23 might have to come around.

24 (Witness off the witness stand)

25 A. It's just blood and tissue here, but right here is the

1 shell casing.

2 BY MS. LESKANIC:

3 Q. So you were able to recover the shell casing?

4 A. Yes, ma'am.

5 Q. Now, in State's Exhibit 10 -- put these up together, if  
6 possible. Was that photograph taken first?

7 And what I'm asking is did you have to move the blanket  
8 in order to find the shell casing?

9 A. Yes.

10 A crime scene is sort of in layers. As you peel it  
11 back, you find things, and that was -- when we actually  
12 moved the sheet, the shell casing was underneath.

13 Q. And what did you do with that shell casing?

14 A. Collected it, put it in a paper evidence bag.

15 Q. Let me show you what's been marked as State's Exhibit  
16 12.

17 MR. SLADE: Is that the casing, the shell casing?

18 MS. LESKANIC: Yes.

19 MR. SLADE: I don't have any objection to that,  
20 Your Honor.

21 THE COURT: Without objection, it would be  
22 admitted into evidence as marked.

23 (Whereupon, State's Exhibit No. 12 was admitted as  
24 evidence into the record)

25 (Witness back on the witness stand)

1 THE COURT: You may proceed.

2 MS. LESKANIC: Thank you, Your Honor.

3 BY MS. LESKANIC:

4 Q. If you would just take a look at State's Exhibit 12 --

5 A. All right.

6 Q. -- and tell us what that is?

7 A. That is a shell casing from a .380 auto. That's the  
8 one that we recovered from in front of --

9 Q. How do you know that's the one that you recovered?

10 A. This is the bag that I sealed it in.

11 When we collect evidence, we use sterile gloves to  
12 collect evidence. We put it in an evidence bag and then we  
13 seal it with this tape. And this tape only gets broken when  
14 it goes to SLED and they break it to test the evidence.  
15 That's how we know that it's secure, and it comes back to us  
16 like this from SLED.

17 Q. How many shell casings did you find in this room?

18 A. One.

19 Q. And what is the purpose for taking these photographs?

20 A. Everybody gets a different point of view, but when I  
21 get there, this is my point of view, so I'm taking it of the  
22 scene as I see it so that it's preserved for courtroom  
23 purposes.

24 Once we leave, this is all going to be cleaned up and  
25 you will never see it again, so --

1 Q. So it's just to preserve the area as you found it when  
2 you walked in the room?

3 A. That's correct.

4 Q. Okay. Now, later in your job as a crime scene  
5 investigator did you perform a gunshot residue kit on  
6 Hayword Chambers?

7 A. I did.

8 Q. All right. Could you please tell the jury what a  
9 gunshot residue kit is?

10 A. It is a kit that we use. There is several different  
11 vials with a sticky pad on it that we will use to dab on the  
12 subject's hands to see if a gun has been fired by that  
13 subject.

14 Q. Okay. Where do you get the gunshot residue kit?

15 A. They come from SLED.

16 Q. Is it a sealed package?

17 A. It is a sealed package.

18 Q. So walk us through the procedure for performing a  
19 gunshot residue kit on an individual.

20 A. I hate to do it without the sheet in front of me, but  
21 basically you do a pad for your palm, a pad for the back, a  
22 pad for the palm, a pad for the back, and then a swab.

23 And then you have to do a test site that is away from  
24 the hands. And I generally prefer the lower leg when I do  
25 it. And that is a standard, so that they know for a fact on

1 the standard that this is a swab from this person that is  
2 not going to have gunshot residue on it.

3 Q. And did you perform that gunshot residue kit on the  
4 defendant?

5 A. I did.

6 Q. Did you test that to determine whether or not there was  
7 gunshot residue on his hand?

8 A. No, that goes -- that goes to SLED.

9 Q. All right. And did you that go to SLED in this case?

10 A. It did.

11 Q. Now, Detective Blanton testified about doing a search  
12 warrant, preparing a search warrant for the defendant's  
13 vehicle, as well as the defendant's clothes that he was  
14 wearing when he came to the police department. Are you the  
15 officer that, number one, collected the clothes that he was  
16 wearing at the time that he came to the police department?

17 A. Yes.

18 Q. And what did you do with those clothes?

19 A. They were taken to SLED for testing.

20 Q. Okay. So you collected them and put them in evidence?

21 A. It's -- evidence either goes directly into the custody  
22 of our evidence custodian; or if it's going to SLED, then  
23 I'll take it down to SLED.

24 Q. Okay. And did you also execute the search warrant on  
25 the defendant's vehicle?

1 A. I did.

2 Q. Did you find anything of evidentiary value in his  
3 vehicle?

4 A. No, I did not.

5 Q. Thank you very much, Officer Kennedy. If you would,  
6 please answer any questions that Mr. Slade has for you.

7 A. Yes, sir.

8 THE COURT: Mr. Slade, your witness.

9 MR. SLADE: Thank you, Your Honor.

10 THE COURT: Yes, sir.

11 CROSS EXAMINATION BY MR. SLADE:

12 Q. Sergeant Kennedy, let me start with your gunshot  
13 residue swabbing.

14 Since you have been in the department, the city police  
15 department that you are in that handles that, have you got  
16 some idea of how many you have done?

17 Dozens? I'm not trying to pin you to a specific  
18 number, but --

19 A. I have done -- I have done several. I really don't  
20 know.

21 Q. Several?

22 A. Yes.

23 Q. Okay, that's fine.

24 More than six, less than a hundred?

25 A. Yes, that would probably be accurate, yes, sir.

1 Q. Okay. And in your experience with gunshot residue  
2 testing, does it do anything to determine who the initial  
3 aggressor is?

4 A. It only tests to see if a weapon was fired.

5 Q. Okay. The only thing the gunshot residue test will do  
6 is tell you if the person you are getting these swabs from  
7 has fired a weapon, correct?

8 A. That is correct.

9 Q. And the basic way it works is when you fire a weapon,  
10 like a handgun, then some of that powder, the explosive  
11 material that drives the slug out of the end of the barrel  
12 comes out of different parts of the weapon, doesn't it?

13 A. That is correct.

14 Q. I mean, it just escapes out of the side of the pistol?  
15 If my pen is a pistol and that's the -- I'm going to point  
16 at you.

17 Anyway, the point is that there are different points  
18 along the barrel and along the explosive chamber where the  
19 gas from firing the gun, the powder comes out, right?

20 A. That is correct.

21 Q. In my various scientific rendition of it, but that's  
22 roughly right?

23 A. That's correct.

24 Q. And so what do you when you are doing this gunshot  
25 residue swab thing is as you swab both hands and see if

1 any -- and I realize you didn't test it yourself, but the  
2 point is to get whether or not they got any gunshot residue  
3 on them?

4 A. That is correct.

5 Q. And that's what we are talking about?

6 A. Yes, sir.

7 Q. And it doesn't have anything to do with determining who  
8 the initial aggressor is, as far as you know --

9 A. That is correct.

10 Q. -- in your experience with it.

11 All right. Now, talking about the things that you  
12 examined from Mr. Chambers car, you did that pursuant to the  
13 search warrant that you heard Detective Blanton testifying  
14 about, right?

15 A. That is correct.

16 Q. The one he got before he talked to any of the  
17 eyewitnesses?

18 A. Yes.

19 Q. And you didn't find anything of evidentiary value in  
20 that, right?

21 A. No, we did not.

22 Q. I believe that was your testimony.

23 A. That's correct.

24 Q. Now, I'm going to ask you to take a look at -- and I'm  
25 going to -- I have one copy of your crime scene report here.

1 Do you have it in your packet?

2 A. Yes, sir.

3 Q. Okay. And let me show you the part of it I'm --

4 MS. LESKANIC: Your Honor, I was going to object.

5 If he has a question that Officer Kennedy isn't able to

6 answer, then he can refresh his recollection with his crime

7 scene report, but I don't think the question has been asked

8 yet where he needs to be refreshed.

9 THE COURT: I'll sustain the objection.

10 MR. SLADE: Thank you, Your Honor.

11 MS. LESKANIC: Thank you, Your Honor.

12 BY MR. SLADE:

13 Q. Let me ask you some specific questions about the  
14 disarray that you found in the room. That's your term,  
15 correct, the room was turned over?

16 A. I believe I said it was in disarray.

17 Q. I would -- I would like just to make sure that we  
18 orient everybody to where this is. This chair is turned  
19 over here. That my finger is on there is the chair that --  
20 is the chair that's right here at the end of this sofa,  
21 correct?

22 A. Yes.

23 Q. And this piece of -- I'm going to put it on top of  
24 that. This piece of what you had referred to as patio  
25 furniture, and that's a good name for it, was kind of busted

1 up, right?

2 A. Yes, sir.

3 Q. And it's the chair that you are referring to right  
4 there, right?

5 A. Yes, sir.

6 Q. Now, when you got there -- let me get my notes on that.  
7 Now, you got there at 04:23, 4:23 in the morning, is  
8 that fair to say?

9 A. That would be a good approximation, yes, sir.

10 Q. Okay. And when you got there, all seven of the EMS or  
11 firefighter first responders had left, right?

12 A. Yes, sir, that's correct.

13 Q. And so what -- what you saw there was -- what you saw  
14 there was what you saw at 4:23 after they had left, right?

15 A. That is correct.

16 Q. Now, I'm going to you ask to take a look at this item,  
17 this white cloth looking item here, and ask you isn't that a  
18 piece of equipment from the firefighters or from the first  
19 responders of some kind of cloth that they use in treating  
20 these folks when they respond to a shooting?

21 A. It very well could be.

22 Q. Okay.

23 A. I can't tell you from the photograph, but it could be,  
24 yes, sir.

25 Q. Okay. And that would have been left there by them when

1 they left the scene, right?

2 A. Yes.

3 Q. Now, let me take a look at several of these other  
4 pictures that the solicitor has asked you about.

5 We are looking at State's Exhibit No. 7, and this is a  
6 picture that I believe, correct me if I'm wrong, that you  
7 had said that you had found a shell casing between this  
8 sheet right here, is I believe the word that you used to  
9 describe it, and the sofa right here, right?

10 A. Yes, sir.

11 Q. Now, when you got there, you don't know if -- or do you  
12 know if that sheet had been moved around by EMS or the  
13 firefighter first responders?

14 A. No. I mean, they -- they will tell you sometimes if  
15 they are on the scene that we have moved this. However,  
16 they weren't on the scene for this.

17 I believe one of the initial officers had told me that  
18 the table had been moved by them. That's --

19 Q. Okay. Well, I'm specifically asking you about this --

20 A. No.

21 Q. About the sheet.

22 A. No, I wasn't told anything about the sheet at all.

23 Q. You don't have any idea?

24 A. No, I do not.

25 Q. All right. So the position it's in now might well not

1 have been the position it was in when the first responders  
2 got there?

3 A. That is correct.

4 Q. And this sofa -- I'm taking it -- and, again, you  
5 correct me if I'm wrong, Sergeant Kennedy, I'm taking that  
6 this from your observation was a sofa cushion, correct?

7 A. Yes, sir.

8 Q. And do you have any idea whether it was in that  
9 position when the first responders got there?

10 A. No. As I said earlier, this is how I see it when I get  
11 there. How it was before me, I don't know.

12 Q. So from the position it's in in your photograph, can  
13 you draw any conclusion on how it was when the first  
14 responders got there?

15 A. No, I can't.

16 Q. And I'm going to ask you about what I believe is  
17 State's Exhibit No. 10.

18 I'm sorry, let me use No. 11 here.

19 MR. SLADE: And, Greg, if you could turn that up.

20 BY MR. SLADE:

21 Q. Sergeant Kennedy, what I'm trying to focus your  
22 attention on here is the casing that Ms. Leskanic was asking  
23 you about. Do you have any idea whether any of that  
24 material, the casing, or the sheet, or anything, was in that  
25 position when the first responders got there?

1 A. No, sir, I -- I mean, anything could have been moved.

2 Q. Right.

3 A. It's feasible.

4 Q. And obviously do you have any idea if it was in that  
5 position when these witnesses we have been talking about ran  
6 out of the room?

7 A. No, sir.

8 Q. Just no way to tell, is there?

9 A. No, sir.

10 Q. Certainly not from this picture?

11 A. No, sir.

12 MR. SLADE: I don't have any other questions for  
13 this witness, Your Honor.

14 THE COURT: Redirect?

15 MS. LESKANIC: Nothing further, Your Honor.

16 THE COURT: All right, sir, you may step down.  
17 Thank you very much.

18 Ladies and gentlemen of the jury, we are going to  
19 take a short break. You have had one, but the people in the  
20 courtroom haven't, so we are going to take a short break.

21 During the break I would ask that you not discuss  
22 the case, even amongst yourselves. At this time the  
23 bailiffs will show you back to the jury room. Thank you  
24 very much.

25 (The following takes place outside the presence of

1 sworn, testified as follows:

2 THE COURT: Have a seat, please, sir, and state  
3 your name.

4 THE WITNESS: Steve Green.

5 THE COURT: Thank you.

6 Your witness, counsel.

7 MS. LESKANIC: Thank you, Your Honor.

8 DIRECT EXAMINATION BY MS. LESKANIC:

9 Q. Where are you employed?

10 A. Gaffney City Police Department.

11 Q. And how long have you been employed with Gaffney City?

12 A. Fourteen years.

13 Q. Could you please tell the jury a little bit about your  
14 time in law enforcement, where you have worked and what your  
15 duties have been?

16 A. I have been on the patrol division with the police  
17 department fourteen years.

18 I started off as a regular patrol officer, moved up in  
19 MPO, and was promoted to sergeant, and I still work on the  
20 road as a sergeant on a crew.

21 Q. So you are on a sergeant on patrol?

22 A. Yes, ma'am.

23 Q. And was that your position in November of 2009?

24 A. I was master patrol officer in 2009.

25 Q. Can you briefly go over what your duties would be as

1 master patrol officer?

2 A. Just basically do the same duties that a patrol officer  
3 would. Just you have been there longer than they have, so  
4 if, need be, you make decisions, since you have seniority  
5 over the other officers.

6 Q. And so on patrol you respond to calls?

7 A. Yes, I do.

8 Q. And how are you notified about those calls?

9 A. We are radio called by our 911 dispatchers and they  
10 tell us what calls we have and where to go to for those  
11 calls.

12 Q. And did you have receive a call on the early morning  
13 hours of November 28th of 2009, to respond out to 311  
14 Sarratt Avenue?

15 A. Yes, sir, I did.

16 Q. All right. And did you respond to that location?

17 A. Yes, I did.

18 Q. What was going on when you arrived?

19 A. When I arrived, Officer Sizemore was right before I  
20 did, but it was like only a second in between there. We  
21 basically arrived on the scene at the same time.

22 He stopped and talked to someone and I went in through  
23 the door to see where the subject was. I walked in and seen  
24 he was still breathing and told him to go ahead and send EMS  
25 on in.

1 Q. I'm going to show you what's been marked State's  
2 Exhibit 2.

3 Now, did you arrive on the scene prior to EMS or fire?

4 A. Yes.

5 Q. All right. If you would, can you walk the jury through  
6 where you came into the house? What door did you come in,  
7 the front door or the back door?

8 A. I came in through the front door, came down the  
9 hallway, just a small hallway, went to my left and went into  
10 the room and found the subject laying there between the  
11 coffee table and the couch.

12 Q. All right. So when you arrived, is this -- I know it's  
13 not to scale for the exact distance, but is this essentially  
14 how you found the room with the table in front of the couch?

15 A. Yes.

16 Q. All right. And where was Todd Morgan?

17 A. He was in between the couch and the coffee table there.

18 Q. All right. Can you -- using the laser pointer, can you  
19 step down for just a moment?

20 (Witness off the witness stand)

21 BY MS. LESKANIC:

22 Q. Can you show the jury where you saw Mr. Morgan  
23 positioned, where his head was and his feet?

24 A. He was in between the couch and the table. His head  
25 was up this way, feet was down towards the bottom of the

1 couch here.

2 Q. And what did you notice about him?

3 A. That he had blood coming from his head and he was doing  
4 a deep breathing, but he was still breathing. That's when I  
5 called EMS to come, in because he was breathing.

6 Q. Were you able to communicate with him at all?

7 A. No, I was not.

8 Q. Could he move?

9 A. He wasn't moving at that time.

10 Q. Okay. Was there any indication of life, other than the  
11 breathing?

12 A. No.

13 Q. All right. And the table was still in that position?

14 A. Still there when I arrived.

15 Q. Do you remember -- and you can have a seat.

16 (Witness back on the witness stand)

17 BY MS. LESKANIC:

18 Q. -- if the cushions were off of the couch at this time?

19 A. I think one of the cushions was kind of like sit  
20 halfway down, but not all the way off the couch.

21 Q. Let me show you State's Exhibit 3, and this is after  
22 EMS has come in and fire. Does that -- other than the table  
23 being moved, does that appear to be similar to how you saw  
24 the room when you came in, or do you notice any differences?

25 A. It's similar to the way it was when I came in.

1 Q. All right. Do you know if he was on his stomach, back?  
2 Do you remember how Todd Morgan was positioned?

3 A. To me it looked like he was laying on his stomach,  
4 maybe like -- because his arms was underneath him. He was  
5 like leaned up on one arm, but he was like almost face down.

6 Q. Almost face down with his arms under him?

7 A. Underneath.

8 Q. Did you see any kind of weapon within reach of him?

9 A. No.

10 Q. All right. While you were on the scene, were you asked  
11 to do anything by the Detective Brian Blanton?

12 A. He asked over the radio could we go out to the yellow  
13 house on Broad Street near Bronco's.

14 Q. All right. Let me show you State's Exhibit 14. Do you  
15 recognize that?

16 A. Yes.

17 Q. And what is that?

18 A. That's the house we went to on Broad Street.

19 Q. Okay.

20 MR. SLADE: I don't have any objection to that  
21 picture, Your Honor.

22 THE COURT: All right.

23 MS. LESKANIC: We offer State's Exhibit 14 for  
24 admission.

25 THE COURT: It would be admitted as marked.

1 (Whereupon, State's Exhibit No. 14 was admitted as  
2 evidence into the record)

3 THE COURT: You may proceed.

4 MS. LESKANIC: Thank you, Your Honor.

5 May I publish Exhibit 4?

6 THE COURT: You may do so.

7 (Witness back on the witness stand)

8 BY MS. LESKANIC:

9 Q. All right. Is this the home that you went to Broad  
10 Street?

11 A. Yes, it is.

12 Q. Did you go yourself?

13 A. No, Lieutenant Hughes went with me.

14 Q. Did you drive together or separate vehicles?

15 A. We was in separate vehicles.

16 Q. Did you arrive at the same time?

17 A. Yeah, at the same time.

18 Q. All right. Why did you go to 104 Broad Street?

19 A. We was informed that the shooter may be at this house.

20 Q. And what did you see when -- or what did you and  
21 Lieutenant Hughes do when you first arrived?

22 A. When we first arrived, we got out. We looked around  
23 the house to see if any vehicles was there or anything, but  
24 we didn't see none.

25 Q. And was there a vehicle at the house?

- 1 A. We didn't see no vehicles at the house.
- 2 Q. All right. And then what did you do?
- 3 A. We came to the front door. You could hear crying
- 4 inside the house as we come to the front door.
- 5 Q. All right. Do you remember if there were lights on at
- 6 the house?
- 7 A. If there were, there wasn't many on. Maybe a dim
- 8 light, but not a lot of lights on.
- 9 Q. Not a lot of light on, but you could hear crying inside
- 10 the house?
- 11 A. Hear crying inside.
- 12 Q. All right. What do you do?
- 13 A. Knock on the door.
- 14 Q. And what happened?
- 15 A. A man comes to the door. Lieutenant Hughes asked him
- 16 "do you know "New York"?"
- 17 Q. All right. The man that came to the door, do you see
- 18 him in the courtroom?
- 19 A. Yes.
- 20 Q. And where is he?
- 21 A. He's sitting over there at the defense table.
- 22 Q. Wearing the blue shirt?
- 23 A. Yes, ma'am.
- 24 Q. The defendant Hayward Chambers?
- 25 A. Hayward Chambers.

1 Q. All right. He came to the door and then what happened?

2 A. We asked "do you know "New York"?"

3 Q. And why were you asking for "New York"? Did you have  
4 any other information available to you, other than that  
5 name?

6 A. That's the only name we had at the time --

7 Q. Okay.

8 A. -- is "New York".

9 Q. And how did you respond?

10 A. At first he said "no."

11 And then Lieutenant Hughes asked him "was anybody else  
12 in the house with you?"

13 And then he said just his wife and child.

14 And after he said that, he says "I'm the one that you  
15 are looking for."

16 Q. All right. Did you make notes on specifically what he  
17 said?

18 A. Just in my inter-departmental report where he said he  
19 was the one we was looking for.

20 Q. Okay. And what did you do at that point?

21 A. At that point, since we had just came from a shooting  
22 and he told me we was the one we was looking for him, I go  
23 ahead and place him in cuffs for safety reasons.

24 Q. Did you Mirandize him?

25 A. No.

1 Q. Okay. What happens after you placed him in cuffs?

2 A. After I placed him in cuffs, he turns to me and says  
3 "do you want the gun?" I hadn't asked him anything. He  
4 just says "do you want the gun?"

5 I said "yes."

6 Q. Okay.

7 A. So he told me where it was at.

8 Q. Where was it?

9 A. He said it was in his bedroom.

10 We walked through the front door, go to the left and  
11 it's in that bedroom on the mantle in a bag.

12 Q. All right. And so did you go and retrieve that?

13 A. He allowed me to go in the house and retrieved the gun  
14 and came back out.

15 Q. And how was the gun packaged?

16 A. It was in what I call a Wal-Mart bag, grocery bag. It  
17 was inside of it and I got it and brought it out.

18 Q. All right. And that was on the mantle in the bedroom?

19 A. On the mantle in the bedroom.

20 Q. All right. Did he say anything else?

21 A. Once I came back with the gun, he turned and says "do  
22 you want to know where the car is?"

23 I said "yes", and he told us where the car was at.

24 Q. And where was that?

25 A. It was on Rutledge Avenue.

1 Q. All right. Did you go out to that scene?

2 A. I did not go to that scene.

3 Q. What did you do?

4 A. I then went and advised Detective Blanton that we had  
5 the subject there, said he was the one. We was asked to  
6 escort him to the police department. So I then asked him to  
7 go to the police department and we went to the police  
8 department.

9 Q. Did he agree to go with you to the police department?

10 A. He agreed to go to the police department. I took him  
11 down there and Detective Blanton interviewed him, or came to  
12 interview him.

13 Q. Did you actually take him into the police department?

14 A. Yes.

15 Q. Okay. When you took him into the police department,  
16 did you notice any injuries or visible marks on the  
17 defendant?

18 A. No.

19 Q. Did you notice anything from his clothing where he  
20 appeared to be in some sort of fight or struggle?

21 A. Not from what I seen, no, ma'am.

22 Q. Let me show you what's been marked State's Exhibit  
23 12 -- excuse me, State's Exhibit 5. Would you take a look  
24 at that and tell me if recognize that?

25 A. Yes.

1 Q. And what is this?

2 A. That's the handgun recovered from 104 Broad Street.

3 Q. This is the handgun that the defendant asked you if you  
4 wanted the gun?

5 A. Yes, that's the one I got.

6 Q. And you collected it and did what with it?

7 A. I collected it and took it to the police department  
8 and done a property sheet and turned it over to Detective  
9 Blanton.

10 MS. LESKANIC: Your Honor, at this time we would  
11 offer State's Exhibit 5 for admission.

12 MR. SLADE: No objection.

13 THE COURT: No objection, it would be admitted as  
14 marked.

15 (Whereupon, State's Exhibit No. 5 was admitted as  
16 evidence into the record)

17 BY MS. LESKANIC:

18 Q. Do you know what type of weapon this is, or did you  
19 examine the weapon at all?

20 A. Just basically. The caliber is .380.

21 Q. Okay. .380 caliber?

22 A. Yes.

23 Q. Can you tell in looking at it, is this an automatic or  
24 a revolver? What do we --

25 A. It's a semiautomatic.

1 Q. And what does that mean?

2 A. It means that you can keep pulling the trigger and it  
3 will keep shooting with it. Fully automatic would just  
4 shoot them all at one time. You can just keeping pulling  
5 the trigger and it will keep shooting.

6 Q. So you don't have to -- you don't have to cock the gun  
7 or do anything like that to shoot a second round?

8 A. Not to shoot a second round, you don't.

9 Q. Now, on the way to the police department -- at any time  
10 that you were with Mr. Chambers, did you read him his  
11 Miranda Rights?

12 A. No.

13 Q. Officer Green, when you went into the room at 311  
14 Sarratt Avenue and saw the victim Todd Morgan, do you recall  
15 whether or not he was wearing a shirt?

16 A. He was -- he was clothed. He had a shirt on, yes.

17 Q. All right. Thank you very much. Please answer any  
18 questions that Mr. Slade has for you.

19 THE COURT: Mr. Slade, your witness.

20 MR. SLADE: Thank you, Your Honor.

21 CROSS EXAMINATION BY MR. SLADE:

22 Q. I want to take you back to the earlier part of your  
23 testimony with Ms. Leskanic.

24 You have testified that when you went into the room, it  
25 was your recollection that only one cushion on the sofa was

1 moved?

2 A. I said one cushion. It could have -- I seen a cushion  
3 that was like off the couch.

4 Q. Okay. It's been, what, three years now, right?

5 A. Three years, yes, sir.

6 Q. So it's hard to remember all the details.

7 You didn't make any notes about that, did you?

8 A. About -- not the condition of the room, no, sir.

9 Q. About the scene.

10 You are holding some notes there. I'm assuming that's  
11 the notes --

12 A. It's the incident report.

13 Q. Right.

14 And then the --

15 A. And the inter-departmental report I wrote.

16 Q. Yeah.

17 Could I see that for just a second?

18 And this is something you wrote up I assume that  
19 morning?

20 A. Yes.

21 Q. It has 11-28 --

22 A. Yes.

23 Q. -- at the top.

24 And that's just to record what -- that's just to record  
25 what went on when you got over there to the house, right?

1 A. To Broad Street, yes.

2 Q. Right.

3 Because you knew that -- you knew you might need to  
4 recall things down the line, right?

5 A. Yes.

6 Q. But you didn't make any notes of what the scene looked  
7 like when you got into the room at Sarratt Avenue?

8 A. No, I did not.

9 Q. So it might have been one cushion moved, two cushions  
10 moved, you just don't remember?

11 A. I know one at least.

12 Q. At least one. What -- my point is it could have been  
13 more?

14 A. Possibly.

15 Q. Yeah.

16 I mean, when we -- when we look at this scene after EMS  
17 and first responders leave, I believe you testified, correct  
18 me if I'm wrong, that there was only one cushion moved and  
19 this scene looked roughly as it did, except for the table  
20 being moved, when you got there, right?

21 A. Yes.

22 Q. Okay. So when you got there, this cushion was right  
23 here?

24 A. Uh-huh.

25 Q. This sheet was right there? Those cushions were moved

1 off of that? Right?

2 A. I --

3 Q. It was your testimony this is the way it looked.

4 And the table --

5 MR. SLADE: Could I have your pointer?

6 MS. LESKANIC: Mr. Phillips has it.

7 BY MR. SLADE:

8 Q. And the table is right -- the coffee table is right  
9 along here, right?

10 A. Somewhere there close to the front of the couch, yes.

11 Q. Okay. And this chair right here --

12 A. Uh-huh.

13 Q. -- was broken, right?

14 A. It was there.

15 Q. And do you recall if that chair behind it was turned  
16 over?

17 A. I don't recall the time of the chair, but I knew  
18 something was turned over there.

19 Q. Some disarray, right.

20 A. I don't know about disarray, but I noticed a chair or  
21 table there was turned over.

22 Q. Okay. Would you call all that disarray? Is that a  
23 term that you would apply to that?

24 A. I would call it a cushion off the couch.

25 Q. Okay. Now, let me ask you about when you went over

1 to --

2 MR. SLADE: Could you put that up?

3 BY MR. SLADE:

4 Q. When you went over here, this is where Hayward lived  
5 with his girlfriend Tynisha Poole, correct?

6 A. That's where we picked Hayward up from.

7 Q. Okay. You later learned that the lady in there is his  
8 girlfriend?

9 A. I later learned that he lived there. I don't know the  
10 relationship of the lady in there.

11 Q. I'm sorry?

12 A. I later learned that he lived there, but I didn't know  
13 relationship of the lady that was in there.

14 Q. Okay. And in order to record or to preserve some notes  
15 so you would have a recollection of what all went on, you  
16 wrote down this inter-departmental report that you are  
17 holding in your hand, right?

18 A. Yes.

19 Q. And in preparation for your testimony, you also  
20 reviewed the incident report, correct?

21 A. I read over it, skimmed over it.

22 Q. Okay. But you read or skimmed over it in preparation  
23 for your testimony?

24 A. Yes.

25 Q. Right?

1 A. Yes.

2 Q. And when you testified and when you were talking to Ms.  
3 Leskanic about when y'all first went up to the house, you  
4 and Lieutenant Green --

5 A. Hughes.

6 Q. -- are standing right there at the door, right?

7 A. When we first pull up?

8 Q. When you first went up to knock on the door, y'all are  
9 standing at the door, right?

10 A. Yes.

11 Q. And Mr. Chambers comes to the door?

12 A. Yes.

13 Q. Right?

14 A. Yes.

15 Q. You are standing here and Green -- I mean Hughes is  
16 standing here, right?

17 A. I'm standing to the left, Hughes is at the right.

18 Q. Okay. And you heard the lieutenant ask him if he knew  
19 "New York", right?

20 A. Yes.

21 Q. And he said -- the words that came out of his mouth  
22 were -- "Lieutenant Hughes asked Hayward if he knew anybody  
23 called "New York" and who else was in the house?

24 "And Hayward stated just his kids and that he was "New  
25 York," right?

1 He never said "no."

2 In your earlier testimony you say you and Lieutenant  
3 Hughes, when you were talking with Ms. Leskanic, do you  
4 recall a few minutes ago?

5 A. Yeah, I recall.

6 Q. Okay. And you said y'all went up to the door.

7 Lieutenant Hughes asked him "do you know somebody named  
8 "New York"?"

9 And your testimony was he said "no"?

10 A. At first he said "no".

11 Q. Well, I'm going to just ask you to take a -- take a  
12 look and that's nowhere in here, is it?

13 A. Not that where he said "no" part, no.

14 Q. Okay. And that's important to y'all for this case,  
15 right?

16 A. Important?

17 Q. Okay. And when did you -- when did you decide that he  
18 said -- that he also said "no", in addition to what you put  
19 here? Was that in preparation for this case?

20 A. No, it was not in preparation for this case. It  
21 happened that night.

22 Q. Okay. Let's take a look at the incident report that  
23 you reviewed in preparation for testifying here today, and  
24 take a look at the -- I believe this is the third page,  
25 Officer Green, and is this the part of --

1 MS. LESKANIC: Your Honor, I'm going to object. I  
2 don't believe he prepared this report. I don't think the  
3 report is his.

4 MR. SLADE: It's -- I apologize.

5 THE COURT: Whose report is it?

6 MR. SLADE: It was written by the officer who went  
7 to the scene first, Sizemore.

8 The reason I believe that I can question him about  
9 it is because he just testified he skimmed it over or read  
10 it in preparation for this.

11 THE COURT: I'll let you ask him about it.

12 Now, the purpose of looking at a report -- what he  
13 has to use to refresh his memory are his notes.

14 MR. SLADE: Right.

15 THE COURT: And it can only be used to refresh his  
16 memory. He still has to testify from his memory.

17 MR. SLADE: Yes, sir.

18 THE COURT: And so I don't know how you intend to  
19 ask the questions. I don't know which way you are going to  
20 go with that --

21 MR. SLADE: Sure.

22 THE COURT: -- but that will be my consistent  
23 ruling is that the reports can be used to refresh memories,  
24 if it's his report.

25 MR. SLADE: Right.

1 THE COURT: And even though he has to testify from  
2 his memory as it's been refreshed by the report.

3 MR. SLADE: Thank you, Your Honor.

4 THE COURT: Yes, sir.

5 BY MR. SLADE:

6 Q. I'm going to return to your inter-departmental report.  
7 And you state that Hayward Chambers came to the door with  
8 two females, correct, in your report?

9 A. No, sir, two females in the house.

10 Q. Well, I'm asking --

11 A. And he opened the door.

12 Q. -- you what you stated in your report so that you would  
13 be writing down important things that happened right in  
14 front of you about, what, 5:15 that morning? Y'all got the  
15 over there about 5:15?

16 A. I can't remember the exact time.

17 Q. Okay. It was certainly before 5:30, correct?

18 A. Yes.

19 Q. All right. Is 5:15 a rough approximation?

20 A. I --

21 Q. Okay.

22 A. I really couldn't say on that one.

23 Q. Now, you wrote down your inter-departmental report so  
24 you could -- so you could have a recollection --

25 A. Uh-huh.

1 Q. -- of what happened right in front of you, right?

2 A. Yes.

3 Q. And you wrote down --

4 MS. LESKANIC: Your Honor, again, I'm sorry, I'm  
5 going to object. He has a question. If he can't remember  
6 or he needs to impeach him with something, that would be  
7 fine, but instead of Mr. Slade reading from the report, I  
8 would like him to ask the officer a question.

9 THE COURT: I would too.

10 MR. SLADE: Yes, sir.

11 THE COURT: If you will ask him a question.

12 BY MR. SLADE:

13 Q. You never put in your report that when Hayward came to  
14 the door and Lieutenant Hughes asked him if he knew "New  
15 York", you never put he said "no", right?

16 A. I didn't put it in this report. That's not in this  
17 report, but that's what happened that night.

18 Q. And the first thing that you put that he said -- what  
19 was the first thing that you put in your report that he  
20 said?

21 A. That he was the one we was looking for.

22 Q. Okay. So when you wrote it down that morning, you put  
23 his first response was -- Hayward's first response is he was  
24 the one that y'all were looking for?

25 A. He stated he was the one we was looking for.

1 Q. At 5:15 that morning?

2 A. I don't know what time.

3 Q. And then he told you where the gun was and the car was,  
4 correct?

5 A. Yes, he told me where the gun and the car was.

6 MR. SLADE: I don't have any other questions for  
7 this witness, Your Honor.

8 THE COURT: Redirect?

9 MS. LESKANIC: Nothing further of this witness,  
10 Your Honor.

11 THE COURT: Sir, you may step down. Thank you  
12 very much.

13 I'll ask the attorneys to approach briefly.

14 (Whereupon, the lawyers approached the bench for  
15 an off-the-record discussion)

16 THE COURT: All right, ladies and gentlemen, at  
17 this time we are going to take a break for lunch.

18 I will give you the same instructions I have given  
19 you every time that you leave from the courthouse, and that  
20 is not attempt to gather information on your own. Don't  
21 listen to, watch, or read media reports. Don't discuss this  
22 case with anyone. Don't allow anyone to discuss the case  
23 with you. Should anyone try to contact you about your  
24 service on this jury, please report that upon your return.

25 I'll ask you to be back in the jury room at one

1 comply with the court's instructions thus far.

2 We had completed the testimony of this witness.  
3 However, I have granted a defense request to continue its  
4 examination briefly.

5 So you may proceed, Mr. Slade.

6 MR. SLADE: Thank you, Your Honor.

7 CONT'D CROSS EXAMINATION BY MR. SLADE:

8 Q. Officer Hughes, do you have a copy of your  
9 inter-departmental report?

10 A. I didn't bring it back with me.

11 Q. I'm just going to hand you a document that is his  
12 inter-departmental report.

13 MS. LESKANIC: I have that.

14 BY MR. SLADE:

15 Q. And I would like to continue a line of questioning that  
16 we went into in your cross-examination earlier.

17 You testified in direct examination with the assistant  
18 solicitor, Ms. Leskanic, that the first thing that Hayward  
19 Chambers told you, or told you and Lieutenant Hughes as  
20 y'all got to his door, was -- the first question that  
21 Lieutenant Hughes asked was "do you know somebody named "New  
22 York", " or words to that effect, correct?

23 A. Along those lines he asked did he know anybody by the  
24 name of "New York".

25 Q. And your testimony was Hayward says "no", right?

1 A. At first he said "no".

2 Q. All right. Now, you prepared your inter-departmental  
3 report?

4 A. Yes.

5 Q. That very same day, right?

6 A. When --

7 Q. And you prepared -- is that a yes?

8 A. Yes.

9 Q. The very same day that you went to Hayward's door with  
10 Lieutenant Hughes, right?

11 A. Yes.

12 Q. And you prepared your inter-departmental report to  
13 write down the important facts so you could recall them  
14 later on, correct?

15 A. Yes.

16 Q. And as we discussed in your previous cross-examination,  
17 you didn't write down anything about that, did you?

18 A. Anything about what?

19 Q. About Hayward saying "no" --

20 A. I didn't write it down.

21 Q. -- that you go testifying to now?

22 A. I didn't write down in my inter-departmental that he  
23 said "no" at first and --

24 Q. All right. Let's look at what you wrote down that  
25 Hayward said first when you wrote it down that same day.

1            "Lieutenant Hughes asked Hayward if he knew anybody  
2 called "New York" and who else was in the house.

3            "Hayward stated that just his kid and he was "New  
4 York", and stated to" -- I believe that's "MPO Green".  
5 That's you, right?

6 A.    Yes, sir.

7 Q.    So he stated to you that "he was the one we was looking  
8 for"?

9 A.    Yes, he did.

10 Q.    And according to your note, that's the first thing he  
11 said, right?

12 A.    According to this.

13 Q.    All right. So --

14 A.    My inter-departmental.

15 Q.    Right.

16            And so when you were writing all this down to be able  
17 to record it so you could tell people what Hayward said in  
18 the very beginning later on, a year, or two years, or three  
19 years down the line, were you thinking this is important  
20 that he said "no", but I'm just going to leave it out?

21 A.    I just had a lot going on, so I wrote down the best  
22 that I that could do.

23 Q.    And decided to leave that out?

24 A.    I didn't decide to leave it out intentionally, no, I  
25 did not.

1 Q. All right. Then you have a trial preparation meeting  
2 with the assistant solicitor, Ms. Leskanic, correct?

3 A. Yes.

4 Q. And that was in preparation for your testimony here  
5 today, right?

6 A. Yes.

7 Q. And you went over your inter-departmental report in  
8 preparation for that, correct? In preparation for your  
9 testimony?

10 A. I don't know if she had a copy of the one, but I didn't  
11 have one with me.

12 Q. Right.

13 You went over what's in it, correct?

14 A. I went over the facts of the case.

15 Q. Right.

16 And you didn't tell her that the first thing Hayword  
17 told y'all when you asked him if he knew anybody named "New  
18 York" was "no", correct?

19 A. I may not have, or I might have. I can't really  
20 recall.

21 Q. And when was that meeting?

22 A. I don't remember the exact day.

23 Q. Last week?

24 A. Sometime last week, yes.

25 Q. So between last week and now you have decided that the

1 first thing Hayward said, or your memory is that the first  
2 thing Hayward said when y'all asked him if he knew "New  
3 York" was "no"?

4 A. That ain't when I decided it, no. It happened that  
5 night. I just failed to put it in the inter-departmental  
6 report.

7 Q. And failed to tell Ms. Leskanic when y'all had your  
8 pretrial?

9 A. That would be my fault. I may have forgot to tell her.

10 Q. Well, let's talk about that just a moment.

11 I mean, you want to win this case, right?

12 A. I want to testify to the best of my knowledge.

13 Q. Well, my question is you want to win this case?

14 A. It's not about winning or losing.

15 Q. Detective Blanton is a detective in your department,  
16 right?

17 A. Yes, sir.

18 Q. Has Hayward charged with murder?

19 A. Uh-huh.

20 Q. That's part of y'all's team, correct?

21 A. Yes.

22 MR. SLADE: I don't have any other questions.

23 THE COURT: Anything on redirect?

24 MS. LESKANIC: Briefly, Your Honor.

25 THE COURT: Yes, ma'am.

1 REDIRECT EXAMINATION BY MS. LESKANIC:

2 Q. When you got to the house to knock on the door, did the  
3 man seated over there in the blue shirt, the defendant, tell  
4 you that he was "New York"?

5 A. Yes, he did.

6 Q. And was "New York" the name of the person that you had  
7 that shot Calvin Todd Morgan?

8 A. Yes.

9 Q. And did he tell you that "I'm the guy you are looking  
10 for"?

11 A. Yes, he did.

12 Q. All right. And was that prompted by any questioning by  
13 law enforcement?

14 A. No.

15 Q. Other than "do you know someone by the name of "New  
16 York"?

17 A. That's the only questions.

18 Q. And did he then give you a gun, State's Exhibit 5?

19 A. He did.

20 Q. All right. Do you recall if the gun was loaded when  
21 you received it?

22 A. I can't recall if it was loaded, but the magazine and  
23 bullets were in with the gun.

24 Q. All right. Let me show you State's Exhibit 24 and see  
25 if you recognize that?

1 A. The magazine and the bullets that go with the gun.

2 Q. All right. And these were together at the time they  
3 were handed to you by that man?

4 A. Yes.

5 Q. By the defendant?

6 A. Yes.

7 MS. LESKANIC: All right, Your Honor, I would  
8 offer State's Exhibit 24 for admission.

9 THE COURT: Any objection?

10 MR. SLADE: No.

11 THE COURT: Without objection it will be admitted  
12 as marked.

13 (Whereupon, State's Exhibit No. 24 was admitted as  
14 evidence into the record)

15 BY MS. LESKANIC:

16 Q. And how was this packaged when you received it from  
17 him?

18 A. It was all in a -- the white Wal-Mart bag, as I call  
19 them, grocery bag, plastic bag.

20 Q. And was his vehicle at his house when you arrived?

21 A. No, there was no vehicles at the house.

22 Q. And he told you where he had -- where the vehicle could  
23 be located?

24 A. Yes, he told us where it was at.

25 Q. Thank you.

1 M. LESKANIC: Nothing further.

2 THE COURT: Anything further, Mr. Slade?

3 MR. SLADE: One point on the last part the  
4 solicitor redirected him on.

5 RECROSS EXAMINATION BY MR. SLADE:

6 Q. Officer Green, she was asking you about what you picked  
7 up or what Hayward showed you when y'all got there?

8 A. Uh-huh.

9 Q. And I'm referring to the gun and to the clip, Exhibits  
10 No. 5 and 24.

11 Exhibit No. 24 is the clip, right, that was in his gun?

12 A. The magazine that was in the bag.

13 Q. The magazine, I apologize. That's a better term.

14 And there were five live rounds in that magazine,  
15 correct?

16 A. The bullets that you see there with the gun.

17 Q. All right. Thank you.

18 MR. SLADE: I don't have any other questions.

19 Thank you.

20 THE COURT: Anything else?

21 MS. LESKANIC: No, sir.

22 THE COURT: You may step down.

23 The State may call its next witness.

24 MS. LESKANIC: The State calls James Wade.

25 THE COURT: Sir, if you will come over here to my

1 left to be sworn, please.

2 JAMES WADE, having been first duly sworn,  
3 testified as follows:

4 THE COURT: Sir, have a seat on the witness stand,  
5 please.

6 State your name.

7 THE WITNESS: James A. Wade.

8 THE COURT: Thank you, sir.

9 Ms. Leskanic, your witness.

10 MS. LESKANIC: Thank you, Your Honor.

11 DIRECT EXAMINATION BY MS. LESKANIC:

12 Q. Mr. Wade, where do you live?

13 A. I live on -- in Gaffney on [REDACTED].

14 Q. And were you living at that address in November of  
15 2009?

16 A. Yes.

17 Q. All right. Did -- well, do you know the defendant  
18 Hayward Chambers?

19 A. Yes.

20 Q. How do you know him?

21 A. He's my first cousin.

22 Q. How often have y'all seen each other during the course  
23 of your life?

24 A. Oh, often throughout the years. We lived in different  
25 states, but I always went to New York with my mother. My

1 mother is his father's sister.

2 Q. Okay. Is he originally from New York, Mr. Chambers?

3 A. Originally, yeah. Well, he wasn't -- he wasn't born  
4 there.

5 Q. But lived there when he was younger?

6 A. Yes.

7 Q. And so, I mean, are you close relatives?

8 A. Yes.

9 Q. All right. Did he come to your home on the early  
10 morning hours of November 28th, 2009?

11 A. The night of that incident?

12 Q. Yes, sir.

13 A. Yes.

14 Q. All right. Let me just show you -- I'm going to show  
15 you State's Exhibit 18 and just tell me if you recognize  
16 that?

17 A. That's my house.

18 Q. That's a picture of your house?

19 A. Yes.

20 MS. LESKANIC: Your Honor, the State would offer  
21 State's Exhibit 18 for admission.

22 MR. SLADE: I don't have any objection to that  
23 picture.

24 THE COURT: Without objection, it would be  
25 admitted as marked and you may publish the document, if you

1 wish to.

2 (Whereupon, State's Exhibit No. 18 was admitted as  
3 evidence into the record)

4 MS. LESKANIC: Thank you, Your Honor.

5 BY MS. LESKANIC:

6 Q. I am showing you Exhibit 18, State's Exhibit 18. This  
7 is your home on West Rutledge Avenue, Mr. Wade?

8 A. Yes.

9 Q. All right. And this is the location where Mr. Chambers  
10 came.

11 Do you have any idea what time he came to your home?

12 A. Oh, maybe two, three or so in the morning, somewhere  
13 around there. I was sleeping at the time.

14 Q. All right. Were you -- not telling me what he said,  
15 but were you aware that some incident had happened just  
16 prior to him arriving at your house?

17 A. No, I wasn't aware that any incident happened until --

18 Q. All right.

19 A. -- I spoke to him.

20 Q. Was it unusual for him to come to your house at that  
21 hour?

22 A. No, because sometimes like if he have an argument with  
23 his woman, he will come over to my aunt's house, who lives  
24 next door, and he will go over there and spend the night.

25 Q. Okay. Well, when he came to your house on this night,

1 November the 28th, what did he do?

2 A. Well, I heard a car, so I got up to see what was going  
3 on, because when I looked out the window I saw that it was  
4 his car and I thought that maybe he got in an argument with  
5 his girl again and was going next door to sleep.

6 Q. Okay. And where did you hear the car? Where was the  
7 car pulling in?

8 A. It pulled past my window. He had to go past my bedroom  
9 window to get in.

10 Q. And looking at this picture, can you give me any idea  
11 where your bedroom --

12 A. On the right, the right side.

13 Q. Let me show you State's Exhibit 16 and see if this will  
14 help. Is that a photo?

15 A. Uh-huh.

16 Q. What does that show?

17 A. That's the -- it's my house and my car and the right  
18 side of the house.

19 Q. All right. Will this photograph show your bedroom, the  
20 window to your bedroom?

21 A. Yeah, right here.

22 Q. Okay. All right.

23 MS. LESKANIC: Your Honor, at this time I would  
24 like to offer State's Exhibit 16.

25 THE COURT: Any objection?

1 MR. SLADE: I don't have any objection to that.

2 THE COURT: Without objection, it's admitted as  
3 marked and it may be published.

4 (Whereupon, State's Exhibit No. 16 was admitted as  
5 evidence into the record)

6 MS. LESKANIC: Thank you, Your Honor.

7 BY MS. LESKANIC:

8 Q. Mr. Wade, do you mind, can you step down for just a  
9 moment? It may be easier for you to see.

10 (Witness off the witness stand)

11 BY MS. LESKANIC:

12 Q. I have a pointer. Push the button, the green light.

13 Could you show the jury where your bedroom is where you  
14 heard -- when you heard the car go by?

15 A. (Witness pointing).

16 Q. All right. And where did the car come to a stop?

17 A. It was somewhere around in there.

18 Q. Okay. Down near the building?

19 A. Yes.

20 Q. Okay. All right. Thank you very much.

21 A. Uh-huh.

22 (Witness back on the witness stand)

23 BY MS. LESKANIC:

24 Q. Let me show you one more, State's Exhibit 15. Do you  
25 recognize that?

1 A. Yes.

2 Q. And what is that?

3 A. This car? That's my cousin's car.

4 Q. Okay. So that's Mr. Chambers car?

5 A. Yes.

6 Q. And whose vehicle is this?

7 A. That was my old car that I used to let me daughter  
8 drive.

9 Q. Okay. And where was that car parked at the time?

10 A. Right there where it is.

11 Q. Okay. I mean, I can't tell from this.

12 In looking at this photograph --

13 A. Next to that shed.

14 Q. -- can you tell me?

15 I'm going to let you point it out instead of me.

16 A. Right there.

17 Q. So the white car is there, and then Mr. Chambers car is  
18 next to it?

19 A. Right, uh-huh.

20 MS. LESKANIC: Your Honor, I would like to offer  
21 State's Exhibit 15.

22 MR. SLADE: I don't have any objection.

23 THE COURT: Without any objection, it is admitted  
24 as marked. You may publish it, if you wish to.

25 (Whereupon, State's Exhibit No. 15 was admitted as

1 evidence into the record)

2 MS. LESKANIC: Thank you, Your Honor.

3 BY MS. LESKANIC:

4 Q. I know it's difficult to see, it's a nighttime photo,  
5 but this is Mr. Chambers car as it was parked that night, is  
6 that correct?

7 A. Yes.

8 Q. Okay. And then this is your vehicle?

9 A. Yes.

10 Q. And they are both -- and then if we could see further  
11 over here would be the building?

12 A. Yes.

13 Q. In the other photo?

14 A. Uh-huh.

15 Q. Thank you, Mr. Wade.

16 What did you -- I guess what happened after you saw Mr.  
17 Chambers drive by your window? What did you do or what did  
18 he do?

19 A. I opened my door and said -- I, you know, spoke to him.

20 Q. Okay. And --

21 A. I asked me -- you know, he seemed upset and I asked him  
22 what was going on.

23 Q. Okay. Without telling me what he said, did you end up  
24 taking him somewhere?

25 A. Yeah, I took him home.

1 Q. All right. And where is that?

2 A. On Broad Street.

3 Q. Do you know why he needed a ride home?

4 A. Well, because he was going to go to the police station.  
5 He said he wanted to see his children first.

6 Q. Okay. Did you get a good look at Mr. Chambers that  
7 night?

8 A. I looked at him, but I didn't notice -- I didn't even  
9 pay attention to his physical appearance.

10 Q. Okay. So you didn't notice anything unusual, any marks  
11 or anything that appeared that he had been in a physical  
12 altercation?

13 A. I didn't notice, but I hadn't looked --

14 Q. Okay.

15 A. -- actually.

16 Q. Nothing that stood out to you?

17 A. I wasn't paying attention. I had just woke up. I was,  
18 you know, kind of upset myself about, you know, what he had  
19 mentioned happened and that's what I was more focused on  
20 mentally.

21 Q. Okay. And then after you dropped him off at his house  
22 on Broad Street, did you go back home?

23 A. Yes.

24 Q. All right. Thank you. Please answer any questions  
25 that Mr. Slade has.

1 THE COURT: Mr. Slade, your witness.

2 MR. SLADE: Thank you, Your Honor.

3 THE COURT: Yes, sir.

4 CROSS EXAMINATION BY MR. SLADE:

5 Q. Mr. Wade, after Hayward came to your door, Ms. Leskanic  
6 was asking you about what he was upset about or where he  
7 wanted to go and you said he wanted to go to the police  
8 department?

9 A. Yes.

10 Q. How did you know that?

11 A. Because we talked about it. After he told me what  
12 happened, we discussed that's the best thing to do.

13 Q. All right. And why did you take him -- instead to the  
14 police department, why did you take him to his house?

15 A. He said he wanted to go see his children first.

16 Q. Okay.

17 A. And then he was going to call me and I would take him  
18 to the police station.

19 Q. Okay. Now, how many children does he have?

20 A. Three.

21 Q. Okay. He's got two by a previous --

22 A. Yes.

23 Q. Or by his wife?

24 A. Yes.

25 Q. And then he and Ms. Poole had a --

1 A. A baby --

2 Q. Yeah.

3 A. -- at the time.

4 Q. Okay.

5 MR. SLADE: That's all the questions I have of  
6 this witness, Your Honor.

7 THE COURT: Anything further?

8 MS. LESKANIC: No redirect.

9 THE COURT: You may step down.  
10 Do you wish to excuse the witness?

11 MS. LESKANIC: Yes, Your Honor.

12 THE COURT: Any objection?

13 MR. SLADE: None.

14 THE COURT: You are free to go, sir. Thank you  
15 for coming today.

16 You may call your next witness.

17 MS. LESKANIC: The State calls Claudette Byers.

18 Just so the court knows, Mr. Wade asked me if he  
19 would be permitted to remain in the courtroom.

20 THE COURT: He has a right to stay in the  
21 courtroom.

22 Ma'am, come forward to my left here and be sworn,  
23 please.

24

25 CLAUDETTE "POOKIE" BYERS, having been first duly

1 sworn, testified as follows:.

2 THE COURT: State your name, please, ma'am.

3 THE WITNESS: Claudette Elaine Byers.

4 THE COURT: Thank you.

5 Ms. Leskanic, your witness.

6 MS. LESKANIC: Thank you.

7 DIRECT EXAMINATION BY MS. LESKANIC:

8 Q. Ms. Byers, were you living at 311 Sarratt Avenue on  
9 November 28th of 2009, when Calvin Todd Morgan was shot?

10 A. Yes, ma'am, I was.

11 Q. Let's start with a few things with you.

12 This is State's Exhibit No. 1. Do you recognize that?

13 A. Yes, ma'am.

14 Q. And what is that?

15 A. That's the front of -- that's the front of Sarratt  
16 Street, at 311 Sarratt Street, the white house.

17 Q. Can you tell me kind of the living arrangements at that  
18 house; tell the jury who lived in the house and how things  
19 were divided up?

20 A. Calvin Wallace, Steven Wallace and myself stayed in  
21 this home, in this house.

22 Calvin Wallace room was at the back where this  
23 garage -- where the carport was right here. You go through  
24 the back door, come through the back door, this was Calvin  
25 Wallace's room.

1           Come through the kitchen, through the den, pass the  
2 bathroom, it's Stevie Wallace room.

3           Come on down the hallway is my -- was my room on the  
4 left. Well, on your right coming through the back, but  
5 going through the front it was on the left.

6 Q. All right. So is this the bedroom that you -- or the  
7 room that you stayed in?

8 A. Yes, ma'am.

9 Q. All right. And is that where you slept, ate, did  
10 everything?

11 A. Yes, ma'am.

12 Q. Okay. And then Mr. Stevie Wallace had a room where he  
13 took care of his business and slept?

14 A. Yes, ma'am.

15 Q. And Calvin Wallace had his own room?

16 A. Yes, ma'am.

17 Q. All right. I want to go back to the early morning  
18 hours of November 28th, all right?

19           First tell the jury how you know Calvin Todd Morgan.

20 A. I have been knowing Todd Morgan all my life. I started  
21 dating Todd at the age of fifteen. And when Todd got out of  
22 prison in March, I think it was, came out and started back  
23 seeing each other.

24 Q. All right. Was he staying with you?

25 A. No, ma'am, he was not.

1 Q. All right. Did he sometimes stay with you -- or why  
2 was he there?

3 A. He was there visiting me. Sometime he might stay all  
4 night, but he did not live there at that address. No, he  
5 did not.

6 Q. Okay. Was he staying with you on that night?

7 A. Well, he was going to go home. He was not going to  
8 stay all night.

9 Q. All right. So did he just come to visit you?

10 A. Yes, ma'am.

11 Q. Was there any special occasion?

12 A. My birthday was [REDACTED] and he came over. He  
13 didn't come on my birthday. He came over the 28th.

14 Q. All right. I need you to walk the jury through what  
15 you remember.

16 Now, first of all, there has been some testimony and  
17 statements. Were you using crack cocaine at this time?

18 A. Yes, ma'am, I was.

19 Q. Do you know whether Michelle "Big Momma" Davis was  
20 using crack cocaine at that time?

21 A. Yes, ma'am, she was.

22 Q. All right. Calvin Todd Morgan, the deceased in this  
23 case, was he using crack cocaine?

24 A. No, ma'am, he never has done crack. To my knowledge,  
25 he never have done no type of drugs, that I know of.

1 Q. Okay. How much crack had you done on this day?

2 A. I really can't say.

3 Q. A lot?

4 A. (Shaking head yes).

5 Q. You have to answer so he can take it down.

6 A. Yes, ma'am.

7 Q. All right. To the best of your recollection, okay, the  
8 best that you can remember, when do you first see the  
9 defendant Mr. Chambers?

10 A. Well, it was during a Friday night football game.  
11 Dorman and Spartanburg had played -- Dorman and Gaffney had  
12 played that night. So Todd and I was witting back in my  
13 room, and "Big Momma", Michelle, was sitting in my room, and  
14 I heard a lot of noise in the back, so I jumped up and I go  
15 back there and I'm like "what's all this noise back there in  
16 the back?" That's when I seen Mr. Chambers back there. And  
17 it startled with me, because this man never been inside that  
18 white house. Never. He always had pulled up, let a female  
19 out to come in and get his dope and leave. He never --

20 Q. All right. Let me just -- you are good. I just want  
21 to make sure everybody is following along.

22 I'm showing you State's Exhibit 17.

23 Now, when you say you heard noise in the back of the  
24 house, does this picture show where the noise was coming  
25 from?

1 A. Yes, ma'am, the room on your left right here.

2 Q. This one?

3 A. Yes, ma'am, that's Calvin Wallace room right there.

4 Q. Okay. And is this where you walked from the front of

5 the house, and this is the back door to the house, right?

6 A. Yes, ma'am, and I went into Calvin's room.

7 Q. All right. And what did you see when you went into

8 Calvin's room?

9 A. When I go into Calvin's room, I saw Mr. Chambers,

10 Scottie Mayberry and Calvin Wallace.

11 Q. All right. Then did you know him as Mr. Chambers?

12 A. No, ma'am, I did not.

13 Q. How did you know him?

14 A. I always heard his name "New York".

15 Q. "New York".

16 Okay. So you see "New York", Scottie Mayberry and

17 Calvin Wallace?

18 A. Yes, ma'am.

19 Q. Anyone else?

20 A. That's all I seen.

21 Q. Okay. And what do you see? What's going on?

22 A. They was back there making a whole lot of noise. And I

23 asked Calvin what was going on and Calvin says he's back

24 there having fun about the game. So I spoke to everybody,

25 the ones that was in there, and that's when Mr. Chambers was

1 like "what's up?"

2 And I said "what's up with you?"

3 He was like "I'm out to get some money", like that, so  
4 I went on back there to my room.

5 So about ten or fifteen minutes later him and Scottie  
6 Mayberry -- him and Scottie Mayberry came back there and  
7 bought a piece of crack. I never seen this man smoke until  
8 this night.

9 Q. Who did he buy the crack from?

10 A. He bought it from me.

11 Q. Okay. Who bought the crack?

12 A. He did.

13 Q. Okay. How much?

14 A. He bought a dime, but I gave him a whole twenty.

15 Q. Okay. And then what do they do with the crack?

16 A. He asked did someone have something to smoke it on, I  
17 said "Big Momma". I pointed to him out to "Big Momma". So  
18 "Big Momma" gave him the stem and him and Scottie stood in  
19 there and smoked it.

20 Q. All right. So you saw "New York", the defendant, smoke  
21 crack in your room?

22 A. Yes, ma'am, I did.

23 Q. And you are the one that sold him the crack cocaine?

24 A. Yes, ma'am, I did.

25 Q. Okay. And then what do you remember happening?

- 1 A. After that Todd and I were sitting there. "Big Momma"  
2 was sitting there. So later on I had counted my money and I  
3 asked Todd, I said "is it okay, could I get a ride to Paul's  
4 house to take the money and re-up," and he was like "be back  
5 in twenty minutes."
- 6 Q. Okay. We got to let everybody know what's going on.  
7 You went to Paul's house to re-up. Who is Paul?
- 8 A. My godbrother.
- 9 Q. Where did he live at the time?
- 10 A. Villa Drive.
- 11 Q. And did you have a car?
- 12 A. No, ma'am, I didn't.
- 13 Q. Do you want some water?
- 14 A. Yes.
- 15 Q. All right. So Paul lives on Villa Drive?
- 16 A. Yes, ma'am.
- 17 Q. And you needed a ride to Paul's to re-up?
- 18 A. Yes, ma'am.
- 19 Q. What's re-up mean?
- 20 A. To get some more dope.
- 21 Q. All right. So you were out of crack cocaine?
- 22 A. Yes, ma'am.
- 23 Q. And was Paul your supplier?
- 24 A. Yes, ma'am. I was selling it for him at the time.
- 25 Q. Okay. So how do you get to Paul's house?

1 A. Well, I asked Mr. Chambers would he carry me and I'll  
2 pay him and he said yes.

3 So I had "Big Momma" to ride with me down there.

4 So I go in and get the dope, get me a plate of food,  
5 and I come back out and I stopped at the store on Cherokee  
6 Avenue. I got a pack of cigarettes and I got Todd another  
7 beer and I came on home.

8 So when I got in the house, Todd was like -- he stood  
9 up and asked me where is his stuff, and I was like what  
10 stuff?

11 And he was like "my dope."

12 I said "baby, what dope?" I say "I don't know nothing  
13 about your dope," like that, "I got my own." I said "I just  
14 went down to Paul's to re-up," but like --

15 I don't know -- Todd was talking to me. I don't know  
16 what "New York" said to Todd, response to him, but the only  
17 thing Todd said "man, I'm not talking to you. I'm talking  
18 to my old lady."

19 Q. All right.

20 A. So the second time -- the second time when Todd -- "New  
21 York" said "well, motherfucker --

22 Q. No, please say what they said.

23 A. Okay, he said --

24 Q. When you are quoting what someone said, please say what  
25 they said.

1 A. He said -- "New York" said, "well, motherfucker, I'm  
2 talking to you," like that.

3 So -- so Todd said "man, where did that come in at?  
4 I'm not talking to you. I'm talking to my old lady."

5 So "New York" -- Todd stood up at my couch. He never  
6 once walked away from the couch up towards this man.

7 "New York" walked up on Todd, had went in his back and  
8 pulled out the pistol. He walked up on Todd and Todd  
9 grabbed him. When he walked up on Todd, Todd grabbed him.  
10 So I pulled Todd, I said "no, baby, somebody is going to get  
11 shot."

12 So Todd pushed me and told me to run.

13 When I got ready to run out my door, "New York" looked  
14 at me and said "bitch, you better run because I'm going to  
15 kill you too. We don't leave witnesses where I'm from."

16 Q. Okay. Where was Michelle Davis when you ran out of the  
17 room?

18 A. She was sitting in the chair next to my couch.

19 Q. All right. I'm going to show you State's Exhibit 9.  
20 Because I see two possible chairs by the couch. Can you  
21 tell me which one "Big Momma" was sitting in?

22 A. The wooden chair that flipped over by my closet right  
23 there.

24 Q. Okay. That's where "Big Momma" was sitting?

25 A. Yes, ma'am.

1 Q. All right. And looking at this chair, is that the  
2 condition that it was in before this incident?

3 A. Yes, ma'am.

4 Q. So you had a broken piece of patio furniture?

5 A. Yes, ma'am, I had that chair sitting there just to be  
6 sitting there..

7 Q. Okay. So this isn't something that happened that  
8 night?

9 A. No, ma'am.

10 Q. This chair was already broken, is that correct?

11 A. Yes, ma'am.

12 Q. All right. And "Big Momma" was sitting in this  
13 chair --

14 A. Yes, ma'am.

15 Q. -- when you run out of the room?

16 A. Yes, ma'am.

17 Q. Where did you run?

18 A. I ran into Stevie's room and jumped in the closet.

19 And after I got in Stevie's room, I can't recall how  
20 many seconds or minutes "Big Momma" come running through the  
21 room and she slammed the door. And when she slammed the  
22 door, the door jammed. And when the door jammed, I -- when  
23 the door jammed, that's when I heard two soft shots, pop,  
24 pop. So after that I heard him running down the -- "New  
25 York" running down the hallway talking about "where that

1 bitch at? Where that bitch at, I'm going to kill her too."

2 So after he left and started speeding up the road, you  
3 could hear his wheels kick, he was kicking the wheels going  
4 up the road. Whichever way he was going, you could hear him  
5 spinning out.

6 I come out of the room and I went and looked at my  
7 corner of my door and I seen Todd laying there. He reached  
8 for me and blood started coming out of his mouth and I got  
9 to crying and I ran out the door. And when I ran out the  
10 door, I fell down on Peeler Street right there and they  
11 found me at 11:45 the next morning.

12 Q. Did you see any kind of weapon in Todd's hand?

13 A. Todd did not have no weapon at all. No, ma'am, he did  
14 not.

15 Q. At what point did the defendant pull the gun?

16 A. On the third time when he said "motherfucker, I'm  
17 talking to you," and Todd said "man, where did that come  
18 from? I'm not talking to you, I'm talking to old lady," he  
19 come from my bedroom door, pulled out the pistol and walked  
20 up on Todd. Todd never once walked up on this man. This  
21 man walked up on Todd.

22 Q. Let me show you State's Exhibit 2. This is a diagram  
23 that's been admitted of your room. Do you see something  
24 that needs to be changed, we have got the front door here,  
25 and bedroom door here.

1           If you could step down for just a moment.

2                       (Witness off the witness stand)

3 BY MS. LESKANIC:

4 Q.    You may want to step back.  It may be easier to see  
5 from back here.  This is a laser pointer, Ms. Byers.  Just  
6 push that button.

7           Can you first point out where Todd was?

8 A.    Todd was on this end of the couch right here.  This is  
9 where he always sat at, and I always sat on this end of the  
10 couch.

11 Q.    And where was "Big Momma" sitting?

12 A.    "Big Momma" was sitting in the chair right here.

13 Q.    All right.  And where was "New York"?

14 A.    "New York" was standing in the hallway -- in the  
15 doorway right here.

16 Q.    Why was "New York" in the doorway?

17 A.    He was waiting on me to pay him for carrying me down  
18 there.  I asked him did he want money, did he want all  
19 money, or he wanted dope.  He said give him half and half.

20 Q.    All right.  Had you given him the money?

21                       (Witness back on the witness stand)

22 A.    I hadn't had a chance to pay him.  That's when they  
23 started arguing.

24 BY MS. LESKANIC:

25 Q.    So he hadn't gotten his money or his dope?

1 A. No, ma'am.

2 Q. And that's the reason he was in your doorway, waiting  
3 on his money and crack cocaine?

4 A. Yes, ma'am.

5 Q. How much were you going to give him?

6 A. I was going to give him ten dollars -- ten dollars in  
7 cash and a ten dollar rock.

8 Q. Where was "New York" standing when he pulled the gun?

9 A. When he pulled the gun, he was coming -- after -- like  
10 I said, he come out my --

11 (Witness off the witness stand)

12 A. The corner of the doorway is right here. He got along  
13 right here at the end of the table with the gun in his hand  
14 and walked up on Todd right along in here and they got to  
15 scuffling.

16 BY MS. LESKANIC:

17 Q. Where was he standing when he first pulled the gun?

18 A. Right in here.

19 Q. At the doorway?

20 A. Yes, ma'am.

21 Q. Was Todd advancing on him?

22 A. No, ma'am, Todd did not walk, move, leave the area from  
23 my couch, period.

24 (Witness back on the witness stand)

25 A. He did not move, period.

1           The only thing he was asking him why he did he say --  
2 why did he get in that conversation, because Todd was not  
3 talking to him. Todd was talking to me.

4 BY MS. LESKANIC:

5 Q. Did Todd put his hands on you?

6 A. No, ma'am, he did not.

7 Q. Did Todd put his hands on "New York"?

8 A. After he walked up to Todd, yes, with the gun. Todd  
9 grabbed him to defend himself, yes, ma'am, but he didn't  
10 have no weapon at all.

11 Q. So did you go back to your house when you left, or  
12 where did you go after this?

13 A. I ran down the street. I was going to my house on  
14 Marion Avenue, but I ran down Peeler Street and I fell right  
15 there and "Killer" found me the next morning right there.

16 Q. Who did?

17 A. "Killer".

18 Q. Who is that?

19 A. I can't think of his real name.

20 Q. Okay. And what did -- and where did you go from there?

21 A. I called Skinner and Skinner came and picked me up and  
22 brought me down to the police station and give my statement.

23 Q. All right. And that's Captain Skinner with the Gaffney  
24 City Police Department?

25 A. Yes, ma'am.

1 Q. Now, did Todd have any crack cocaine that night?

2 A. He had a little, but he gave it to me for my birthday.

3 He had bought it for me for my birthday. Yes, he did.

4 Q. And had he given it to you?

5 A. Yes, ma'am, he did.

6 Q. Was he upset when y'all came back?

7 A. He -- I don't know what he was upset about, but he  
8 asked me where was his stuff and I'm like "what stuff?" I  
9 said "baby, you went to sleep when I left, and I told you  
10 about falling asleep here when I'm not here." But other  
11 than that he wasn't upset, or hit me, or put his hands on  
12 me, or none of that, because when me and Todd argued, I  
13 always called his sister Kathy and tell Kathy to tell him to  
14 come home. Other than that, Todd did not put his hands on  
15 me or none of that.

16 Q. All right. Well, when he is saying "give me my stuff,"  
17 is he talking about crack?

18 A. I guess, yes, ma'am.

19 Q. And why would he be saying that?

20 A. I don't know, because Todd was drinking.

21 Q. What was "New York's" demeanor when he was in the  
22 doorway? How was he acting? How did he respond when Todd  
23 said those things to him?

24 A. Said -- he -- when Todd --

25 Q. The MF?

1 A. Ma'am?

2 Q. Called him an FM?

3 A. No, he called Todd a motherfucker when --

4 Q. Okay.

5 A. He -- when Todd --

6 Like I say, when Todd was talking to me, I don't know  
7 what he had said for Todd to say something to him, but the  
8 only thing Todd said to him was "man, I'm not talking to  
9 you. I'm talking to my old lady."

10 That's when he said "well, motherfucker, I'm talking to  
11 you."

12 And so Todd was like "where did that come from? Man,  
13 I'm only talking to my old lady."

14 So the third time he said "motherfucker," like I said,  
15 he pulled out the pistol and walked up on Todd and that's  
16 when Todd grabbed him.

17 Todd never once walked around our couch. Todd stood  
18 right there and he walked up on Todd and that's when Todd  
19 grabbed him to protect himself.

20 And after he grabbed Todd -- when Todd grabbed him, I  
21 grabbed Todd and I said "no baby, somebody is going to get  
22 shot." Todd pushed me and said "run."

23 And so when I got ready to run out of my room, that's  
24 when "New York" said "bitch, you better run, because I'm  
25 going to kill you too, because we don't leave witnesses

1 where I'm from."

2 Q. So you were in there when the gun was fired?

3 A. I was in Stevie's room when the gun was fired.

4 Q. And where was "Big Momma" when the gun was fired?

5 A. She was in Stevie's room also. She had ran through  
6 there.

7 Q. So neither one of you were in there when Todd was shot?

8 A. (Shaking head no).

9 Q. Thank you, Ms. Byers. Please answer any questions that  
10 Mr. Slade has for you.

11 THE COURT: Mr. Slade, your witness.

12 MR. SLADE: Thank you, Your Honor.

13 THE COURT: Yes, sir.

14 CROSS EXAMINATION BY MR. SLADE:

15 Q. Ms. Byers --

16 A. Yes, sir.

17 Q. -- I believe earlier in your testimony with Ms.  
18 Leskanic just a moment ago you said that after this  
19 situation at Sarratt Avenue happened and you ran out of the  
20 house, you ran towards your house but you fell on Peeler  
21 Street, is that right?

22 A. Yes, sir.

23 Q. Okay. And as soon as you got up, or as soon as  
24 "Killer" found you and you got up, you called Chris Skinner,  
25 a captain with the city police department --

1 A. Yes, sir.

2 Q. -- to go down to the city to make a statement, right?

3 A. Yes, sir, I did.

4 Q. Now, had you heard from -- your momma --

5 A. My momma?

6 Q. -- lives right around the corner from Sarratt Avenue,  
7 right?

8 A. My mother lives on Marion Avenue.

9 Q. All right. Marion Avenue is down at the end of Sarratt  
10 Avenue, right?

11 A. Yes, sir.

12 Q. And your momma lives right down there. And when you  
13 were referring to your house, that's where you were talking  
14 about, right?

15 A. I don't live with my momma. My momma live in a  
16 trailer. I live in the house.

17 Q. You live in your mom's house on Marion Avenue?

18 A. No, my momma lives next door to us. I don't live with  
19 my mother. I live in my family home.

20 Q. That's on Marion Avenue?

21 A. Yes, sir.

22 Q. Right around the corner from here?

23 A. Yes, sir.

24 Q. Were you told by anybody that Detective Blanton was  
25 hunting for you?

1 A. The next day "Possum" Skinner told me and Mr. -- I call  
2 him "Oppie" was looking for me, that he thought I was hurt,  
3 or something, or whatnot, yes, sir.

4 Q. Okay. So you went down there the next day right after  
5 this happened?

6 A. I think it was -- I can't remember whether it the next  
7 day or the day afterwards. I can't quite remember, but I  
8 think it was the next day, though.

9 Q. All right. So you called Chris Skinner and got him to  
10 give you a ride down there?

11 A. Yes, sir, I did, because I was in fear for my life,  
12 yes, sir.

13 Q. Because you were afraid for your life?

14 A. Yes, sir.

15 Q. Who were you afraid of?

16 A. Well, I was afraid of Mr. Chambers. I didn't know if  
17 y'all caught him or not, and I was afraid of Todd's family.

18 Q. You were afraid for your life because of Hayward  
19 Chambers?

20 A. I didn't know have y'all caught him or not, and I was  
21 afraid of Todd's family.

22 Q. My question is you said that you were afraid for your  
23 life because of Hayward Chambers?

24 A. Yes, sir.

25 Q. At the time that you gave your statement, your first

1 statement, to Detective Blanton, Todd Morgan had been dead  
2 for about a day, right?

3 A. I can't quite remember if he had passed or not.

4 Q. You gave a statement on December the 1st, correct?

5 A. Okay, yes, sir.

6 Q. And Mr. Morgan passed away about mid day on November  
7 29th, right?

8 A. Yes, sir.

9 Q. He was your boyfriend?

10 A. Yes, sir.

11 Q. You were grieving for him?

12 A. Yes, sir.

13 Q. You were very upset?

14 A. (Shaking head yes).

15 Q. And you wanted -- I'm assuming you wanted at the time  
16 to help the police with a case against Hayward Chambers,  
17 right?

18 A. To tell the truth of what happened, yes, sir.

19 Q. Now, in your statement when you sat down and talked  
20 with Detective Blanton on December the 1st, two days after  
21 your boyfriend had passed away, while you say that you are  
22 afraid for your life for Hayward Chambers, you didn't tell  
23 Detective Blanton that Hayward came across the room and,  
24 your words are, "pulled out a pistol and walked up on Todd."  
25 You didn't tell him that, did you?

1 A. I can't remember -- I can't remember what I said, sir,  
2 because I was so upset, and I was still out of it and I was  
3 still cracked up, and I'm not going to tell you no lie, so I  
4 can't remember what I wrote down or what I said, but since  
5 when I come to my senses and I come to my knowledge without  
6 being on crack, I remember what happened. I can't remember  
7 what I wrote down right then, because I was upset, but I do  
8 remember what happened. I'm not going to lie for Todd and  
9 I'm not going to lie for that man. I know what happened.

10 Q. Would you take a look at your first statement, or the  
11 statement that you --

12 A. This is not my handwriting.

13 Q. Well, take a look down at the bottom of the first page.  
14 Do you see a name right above signature of the person giving  
15 voluntary statement?

16 A. Brian Blanton.

17 Q. Do you see the line that says signature of person  
18 giving voluntary statement?

19 A. Claudette Byers, but it's not my handwriting.

20 Q. You didn't sign your name?

21 A. I signed my name, but it's not my handwriting.

22 Q. Now, on the next page --

23 Have you ever seen this statement before?

24 A. Excuse me, repeat what you said.

25 Q. Have you ever seen this statement before?

1 A. I haven't seen this one until I came -- I talked to Ms.  
2 Kim and she showed it to me, but this is not my writing.

3 Q. Would you look at the bottom of the second page right  
4 above signature of person giving voluntary statement. Is  
5 there a name there?

6 A. Claudette Elaine Byers.

7 Q. Did you sign that?

8 A. No, not right here I didn't.

9 Q. That's not your signature?

10 A. No, sir.

11 Q. On the bottom of the page?

12 A. Oh, at the bottom, yes, sir. That's not the top, yes,  
13 sir.

14 Q. Now, at the end of the statement there is an initial  
15 that says CB? That's your handwriting, correct?

16 A. Yes, sir.

17 Q. And you put that there, right?

18 A. Yes, sir.

19 Q. And, as you said, this isn't your handwriting of this  
20 statement. This is Detective Blanton's handwriting, right?

21 A. I -- I guess.

22 Q. You sat there and described for him on December the 1st  
23 what you said were the facts of this case, right?

24 A. Right.

25 Q. And he wrote down what you were saying, right?

1 A. Right.

2 Q. And then he handed it to you and asked you to look it  
3 over, correct?

4 A. Right.

5 Q. And you read it?

6 A. Right.

7 Q. You read this page that has your signature at the  
8 bottom?

9 A. Right.

10 Q. And you read this second page that has your signature  
11 at the bottom?

12 A. Right.

13 Q. Now, in your direct testimony you said, and correct me  
14 if I'm wrong, that one, you testified Todd never walked up  
15 on this man, meaning Hayward Chambers, right?

16 A. Right.

17 Q. You never told Detective Blanton that in this  
18 statement, did you?

19 A. No, I did not.

20 Q. In your testimony to Ms. Leskanic you said, I have  
21 three times, that Hayward pulled out the gun and walked up  
22 on Todd, meaning walked across the room to this sofa we have  
23 been talking about, with his gun pointed at him, right?

24 A. Yes, sir.

25 Q. And you didn't tell Detective Blanton that once on

1 December the 1st of 2009, three days after this happened,  
2 did you?

3 A. No, sir.

4 Q. In fact, you told Detective Blanton a very different  
5 story, didn't you?

6 A. Sir, like I said, what I told him, I was -- the only  
7 thing that I told him -- like I said, I was still upset, but  
8 I do know what happened. Todd did not walk up on that man,  
9 up on Mr. Chambers. That man walked up on Todd, and I know  
10 that for a fact. Todd never once moved from that couch.  
11 That man walked up on Todd, and that's not the first time  
12 that this man has threatened to shoot somebody. Right  
13 before this three months --

14 MS. LESKANIC: Your Honor, I have an objection at  
15 this point --

16 THE WITNESS: Okay.

17 MR. SLADE: -- that we may need to discuss.

18 THE COURT: Outside of the jury's presence?

19 MR. SLADE: Yes, sir.

20 THE COURT: All right. Ladies and gentlemen, I'll  
21 ask you to step back to the jury room. As always, I'll ask  
22 you not to begin any discussions until I have asked you to  
23 do so. You may retire.

24 (The following takes place outside the presence of  
25 the jury panel)

1 THE COURT: Yes, sir.

2 MR. SLADE: Your Honor, my objection is her last  
3 statement was "that's not the first time he's done that."  
4 She started to talk about some him pulling a gun on -- that  
5 is -- she can't --

6 THE WITNESS: I apologize.

7 MR. SLADE: She can't offer any testimony about  
8 the defendant's character, or anything like that. They  
9 can't get into that.

10 I mean, she can defend herself however she wants  
11 on these changed statements, but she can't get into any  
12 instances like that, whatever they are. I'm not saying they  
13 happened. I'm just saying she can't start talking about it.

14 MS. LESKANIC: I don't know if they happened. If  
15 she personally viewed them, Your Honor, then it may become  
16 relevant.

17 THE WITNESS: I did.

18 THE COURT: Why don't we find out what her answer  
19 would have been.

20 MR. SLADE: Thank you, Your Honor.

21 THE COURT: And we will see where that goes.

22 Ma'am, you can speak freely, whatever you want to  
23 say right now.

24 You were trying to answer a question and it was  
25 interrupted.

1           THE WITNESS: This man, "New York", has -- it's  
2 like four months before -- four months prior to before this  
3 happened he pulled up in the backyard with Diane Futrell in  
4 the car, sent her in the house to buy some crack. She had  
5 six dollars. I sold her a dime. She stood in there and she  
6 cut the dope and -- she cut the dope and I asked her "why  
7 are you stealing dope from yourself?"

8           She said she was taking a piece. I didn't know it  
9 was his dope.

10           I walked -- I got a call to come down the street  
11 to sell a forty. This man pulled up on me. I was right in  
12 front of the gentleman that's out there now, Mr. Lewis. I  
13 was right in front of his brother's house. This man pulled  
14 up on me in his burgundy Volvo and told me to give him his  
15 shit, because if not, he will shoot me. He reached in his  
16 back to get his pistol, I guess. So what I done, I went in  
17 my pocket, I gave him the money. He tried to give me the  
18 dope back. I told him he could have the dope, he could have  
19 the money, and don't even come back to buy -- bring nobody  
20 back there to buy anything else from me. Nothing else from  
21 me.

22           That's why I said, I don't even know why he was in  
23 this white house, period, because this man never came inside  
24 this white house at all, never. Never. He always pulled up  
25 with females to come in to buy his crack.

1 I never known this man to smoke crack until this  
 2 night. I seen it out of my own eyes. He stood there and  
 3 him and Scottie Mayberry was smoking this crack.

4 Todd never once walked up on this man. This man  
 5 walked up on Todd. He didn't have to shoot Todd.

6 MR. SLADE: Is that all you have to say about this  
 7 previous incident you were talking about?

8 THE WITNESS: (No response).

9 THE COURT: Ma'am, you have to answer that  
 10 question.

11 THE WITNESS: Yes, sir.

12 THE COURT: All right. I think that's --

13 Your Honor, they can talk about the dope dealing,  
 14 because that's part of the res gestae of this whole event,  
 15 but they can't get into evidence of the defendant's  
 16 character until the defendant testifies. Whether.

17 She saw it or not is immaterial. There is a  
 18 larger hurdle that they have to get over before they get to  
 19 even whether that's relevant, so --

20 THE COURT: Ms. Leskanic, do you wish to be heard?

21 MS. LESKANIC: Your Honor, I will say, you know, I  
 22 didn't plan on getting -- well, I'm not doing the  
 23 questioning, so I didn't plan on getting into this with Ms.  
 24 Byers. It may become relevant at a later time.

25 THE COURT: Well, at this point in time I'm going

1 to ask her not to testify concerning that prior incidence at  
 2 all. Confine your testimony to this case, this situation.  
 3 And later on if that would become relevant, then she would  
 4 be recalled.

5 MR. SLADE: Yes.

6 THE COURT: I don't know what might be said in the  
 7 future testimony.

8 MR. SLADE: Certainly, Your Honor.

9 THE COURT: We will find out.

10 Do you understand what we are doing, ma'am?

11 THE WITNESS: Yes, sir.

12 THE COURT: Okay. Thank you.

13 Bring the jury back.

14 (The following takes place in the presence of the  
 15 jury panel)

16 THE COURT: All right, I have sustained an  
 17 objection by the defense and given instructions concerning  
 18 future testimony.

19 You may proceed, Mr. Slade.

20 BY MR. SLADE:

21 Q. In giving a statement to Detective Blanton on December  
 22 the 1st, you never said Hayward walked up on Todd Morgan,  
 23 did you?

24 A. No, sir. If I can remember, I did not.

25 Q. Now, today you say that's a fact that actually

1 occurred?

2 A. And it did. Yes, sir, it did.

3 Q. At the time you told Detective Blanton that you and  
4 Todd got into an argument over you stealing Todd's dope?

5 A. That's what -- that's what -- that's what Michelle said  
6 happened, yes, sir.

7 Q. That's what you told him at the time.

8 A. That's what I told him, because Michelle said that we  
9 was arguing over it, yes, sir.

10 Q. And you said that Todd told you "bitch, give me my  
11 shit," right?

12 A. Yes, sir.

13 Q. And he was very angry with you, wasn't he?

14 A. No, sir, Todd was not angry.

15 The only thing he said "bitch, give me shit," but Todd  
16 was not -- after that Todd -- me and Todd ended it at that.  
17 That's when him and Chambers got into it.

18 Q. You ended it at that?

19 A. Yes, sir.

20 Q. Actually what you -- that's your testimony today?  
21 Today you are telling the jury that's a fact?

22 A. That's -- we ended it because they got into it.

23 Q. The next thing you told Detective Blanton on December  
24 the 1st that happened after that, "after Todd said bitch,  
25 give me my shit, I," that's you, "started taking off my

1 clothes." You were going so far as to take off your clothes  
2 to show Todd "I didn't take his dope."

3 A. Yes, sir. Yes, sir.

4 Q. He was angry with you, wasn't he?

5 A. At first, yeah, but like I said, we had dropped it.

6 Q. And he was so angry with you that you wanted to take  
7 your clothes off to show him you didn't have it, right?

8 A. Right.

9 Q. Okay. Today you are saying that didn't happen?

10 A. I did not say it didn't happen. I said we ended it at  
11 that.

12 Q. Then you told -- on that day you are saying -- now you  
13 are saying it ended after you started taking off your  
14 clothes. Is that what you are saying today?

15 A. Todd and I had stopped our argument like that, okay?  
16 When me and Todd had got into it, that's when Chambers and  
17 him -- Chambers dipped his mouth in it and said something to  
18 Todd. And when Chambers said something to Todd, that's when  
19 Todd said "man, you don't have nothing to do with this. I'm  
20 talking to my old lady." So Todd and I never had a chance  
21 to finish our conversation. Chambers and Todd --

22 Q. After you told Detective Blanton that you started to  
23 take off your clothes to show him you didn't take any of his  
24 dope, Hayward, "New York", told Todd you didn't take his  
25 dope, right?

1 A. I don't know what Chambers said.

2 Q. You were standing right there.

3 A. I -- I can't recall what Chambers said. If I said  
4 that, I can't recall what Chambers said.

5 And like I told Ms. Kim, I couldn't recall what  
6 Chambers said to Todd, but Todd told him "I'm not talking to  
7 you. I'm talking to my old lady."

8 And during this time when these things were said in  
9 here, like I said, I was so upset, I can't remember what I  
10 said in here, but I knew after I come in and talked to them  
11 later on and got myself together when I come and talked to  
12 her, I told her everything that happened.

13 Q. Now, when you were telling Detective Blanton what you  
14 saw and heard in that room --

15 A. Some things in here --

16 Q. -- how far were you away --

17 You said you couldn't hear what Hayword said?

18 A. Because Todd and I was talking. I can't -- when  
19 Todd -- when Todd and I was talking, that's when he said  
20 something to Todd and that's when Todd said something to  
21 him. I can't remember -- I can't recall what he was saying.

22 Q. How far away --

23 A. I was back at my couch.

24 Q. How far away were you from Hayword?

25 A. I was back at my couch.

- 1 Q. And he was standing in the doorway?
- 2 A. In my doorway.
- 3 Q. Across the room?
- 4 A. Yes, sir, but Todd and I was talking.
- 5 Q. As far as from me to the wall?
- 6 A. No, my couch is back.
- 7 Q. If the couch is over there, where --
- 8 A. From this door --
- 9 Q. -- the bailiff is sitting --
- 10 A. To that stand back there..
- 11 Q. So your room is about this big, right?
- 12 A. It's bigger than that. It's to that stand back there.
- 13 To the end of that.
- 14 Q. To this stand where my stuff is?
- 15 A. Yes, sir, right there.
- 16 Q. The room is this size?
- 17 A. Uh-huh.
- 18 Q. And your couch, being right there where the bailiff is
- 19 sitting?
- 20 A. Right.
- 21 Q. And you are telling us today it's a fact you couldn't
- 22 hear what "New York" was saying?
- 23 A. I couldn't hear what Chambers said to Todd. No, sir, I
- 24 did not hear what he said to Todd.
- 25 Q. But back on December the 1st of three years ago you

1 told Detective Blanton Hayward told Todd that you didn't  
2 take his dope, right?

3 A. I can't remember, because, like I said, there is some  
4 things in here -- some things I said in here I was --

5 I mean, like I said, I was cracked up and I was out of  
6 it. But I come to this lady right here and I told this lady  
7 the truth. And I talked to some other people and I told  
8 them what happened, and I never -- I never talked to "Oppie"  
9 after that. But, like I said, he walked up on Todd with the  
10 pistol and he shot Todd.

11 Q. In fact, in your testimony a few minutes ago with Ms.  
12 Leskanic you said, and correct me if I'm wrong, "Todd did  
13 not move, period."

14 A. He did not move. Todd stood up from my couch.

15 Q. My question -- go ahead, I didn't mean to cut you off.

16 A. Todd did not move. He stood up at the couch. And when  
17 he stood up and said the third time he was not talking to  
18 this man, he was talking to his old lady, that's when "New  
19 York" said "motherfucker, I'm talking to you," and pulled  
20 out the pistol and walked up on Todd.

21 Q. Okay.

22 A. And when he got up on Todd, Todd battled him, and I  
23 grabbed Todd and said "no, baby, somebody is going to get  
24 shot." That's when Todd pushed me and told me to run.

25 And when I got ready to run out the door, Chambers

1 looked at me and said "bitch, you better run, because I'm  
2 going to kill you too, because we don't leave witnesses  
3 where I'm from."

4 Q. And your testimony with Ms. Leskanic, you said "Todd  
5 did not move, period." You wanted to emphasize that, right?

6 A. Yes, sir, he did not move from the couch.

7 Q. Okay. When you were talking with Detective Blanton on  
8 December the 1st, three years ago, you told him "it was a  
9 fact that "New York" told Todd to back up off of me, that I  
10 didn't take his dope," right?

11 A. I don't -- I don't remember. If I said that, I was  
12 talking --

13 Q. Well, you were talking to Detective Blanton. He wrote  
14 it down. You read it and then you signed it, right?

15 A. Okay, but I said I don't --

16 Q. And after "New York" told Todd that he needed to back  
17 up off you and you didn't take his dope, you said --

18 A. Todd never walked up on me, though.

19 Q. You said "at that time Todd stood up and started  
20 towards "New York"."

21 A. No, "New York" started towards Todd.

22 Q. Okay. Then you told Detective Blanton --

23 Now, let me back up one step.

24 At the time that this is going on, you and Todd are  
25 over here on the couch, right?

1 A. Uh-huh.

2 Q. And Hayword is standing in the door --

3 A. Uh-huh.

4 Q. -- right?

5 That is, according to you, the distance between me and  
6 the wall, right?

7 A. Yes, sir.

8 Q. And you said on December the 1st of 2009, that Todd  
9 stood up and started toward "New York".

10 A. No.

11 Q. You told him that was a fact.

12 And the next fact that you told him about where Todd  
13 was in that room --

14 Turn the page, please, ma'am.

15 You told him that Todd had come across that room and  
16 grabbed "New York". And you told him that was a fact.

17 A. When Todd grabbed "New York", "New York" walked up on  
18 Todd.

19 Yes, Todd grabbed him, but Todd did not walk up on "New  
20 York".

21 Like I said, when I went down there to talk to them  
22 people, talk to Mr. Blanton and them, I was doped up and  
23 everything, so -- and I really was out of my mind, because I  
24 was worried about Todd and I was worried about my own life,  
25 like I said, but Todd did not walk up on this man. This man

1 walked up on Todd.

2 Q. Now, on that day, you told Detective Blanton "it was a  
3 fact that before I fled the room where the shooting  
4 occurred, I do remember Todd and "New York" wrestling in the  
5 doorway."

6 A. I have two doors --

7 Q. The doorway is on opposite side --

8 A. I have two doors in my room, sir.

9 Q. Right.

10 A. The front door as you enter, where he is standing in my  
11 hallway right there at the doorway, and I have a door right  
12 here near my fireplace, okay?

13 When Todd grabbed -- when he walked up on Todd and Todd  
14 grabbed him, they got to struggling and they ended up right  
15 there by my fireplace, at the door right there, not at the  
16 door as you are coming into my room. There is two doors to  
17 my room.

18 Q. On December the 1st of 2009, you didn't tell Detective  
19 Blanton that, did you?

20 A. What?

21 Q. What you just said. You didn't tell him any of that,  
22 did you?

23 A. Yeah, I said there was -- there was wrestling. They  
24 was wrestling, because when I pulled Todd -- Todd had  
25 grabbed him and there was wrestling, yeah, so they wrestled

1 to the doorway.

2 Q. Would you like to change your statement in your earlier  
3 testimony that Todd did not move, period?

4 A. He did not move until the man walked up on him, sir.  
5 When he walked up on him, he grabbed the man.

6 Q. Now, you said that as Hayward was leaving -- excuse me,  
7 as you were leaving the room, that Hayward told you --

8 A. "Bitch, you better run because I'm going to kill you  
9 too, because where I'm from we don't leave witnesses."

10 Q. Do you remember --

11 Would you take a look at the statement that you gave  
12 Detective Blanton on December the 1st of 2009, and tell me  
13 where that's written?

14 A. It's not in here.

15 Q. No reference to it whatsoever, is there?

16 A. No, it's not, but I know what he said.

17 Q. Now, at the time that you called Captain Skinner and  
18 told him you were coming down to the police department to  
19 give a statement against Hayward Chambers, you told us just  
20 a minute ago that you were afraid for your life of Hayward  
21 Chambers.

22 A. I said I was afraid of him and Todd's family. That's  
23 exactly what I stated a few minutes ago.

24 Q. You were -- well, you certainly were afraid of him,  
25 right?

1 A. Yes, sir.

2 Q. That's what you are saying now.

3 And you forgot -- in all that fear for your life, you  
4 forgot to tell Detective Blanton that as you were leaving  
5 the room Hayward said what?

6 A. "Bitch, you better run, because I'm going to kill you  
7 too, because we don't leave witnesses where I'm from," and I  
8 have a witness that said that he stated that.

9 Q. And you forgot to tell him that?

10 A. I can't recall if I told him or not, sir, because, like  
11 I said, I was cracked up and I was so -- and I was upset. I  
12 don't remember, and I was on Xanaxes.

13 Q. In your testimony today you say it's a fact that  
14 Hayward Chambers kept telling Todd "motherfucker, I'm  
15 talking to you," right?

16 A. He told Todd "motherfucker, I'm talking to you."

17 Q. Not just once, right?

18 A. He said it three times.

19 Q. Not just twice? Three times?

20 A. Yes, sir, he did.

21 Q. And you wanted to help them do something about Hayward  
22 Chambers, right?

23 A. For killing Todd, yes. He -- I mean --

24 Q. For killing Todd.

25 And look in your statement and tell me where you find

1 that, what you allege to be a fact today.

2 A. Like I said, sir, some things I probably did leave out,  
3 but I'm telling it in court today.

4 Q. All right. So is your answer you left out the three  
5 times that?

6 A. Yes, sir, I did.

7 Q. -- Hayword Chambers said --

8 A. Yes, sir, I did. "Motherfucker, I'm talking to you."

9 Q. Yeah.

10 A. He said it three times.

11 Q. And you didn't even put it in your statement?

12 A. No, sir, I did not.

13 Q. Forgot all three times?

14 A. Uh-huh.

15 Q. Now, when did you start remembering these facts that  
16 you have testified to in your direct testimony?

17 A. Sir, I'm still not to the best today, okay?

18 If you was there at the house and seen what happened --  
19 I can't sleep, I can't -- I mean, I think about this all the  
20 time, okay?

21 I really -- I mean, I'm not -- everything is  
22 everything. It's the same. The man walked up to Todd,  
23 dipped his mouth in our conversation. Todd was not talking  
24 to that man. Todd was talking to me, not that man.

25 Q. We were notified of these new facts you were claiming,

1 oh, November of last year. Did you start telling these new  
2 facts that you told the jury?

3 A. Ms. Kim -- I came and talked to Ms. Kim during -- the  
4 trial was supposed to start last year, whenever. I forgot  
5 what day it was supposed to have started, but the trial  
6 didn't start because they found his clothes and they had to  
7 send them back, whatever, whatever, so that's when I talked  
8 to Ms. Kim and everything and I told her everything that  
9 happened.

10 Q. Is that when you first started claiming these new facts  
11 that you testified to?

12 A. I didn't claim. I just told her everything that  
13 happened.

14 Q. Is that when you first started claiming the facts that  
15 you testified to --

16 A. Telling everything what happened.

17 Q. -- during your direct testimony?

18 A. Yes, sir, I told everything what happened.

19 Q. That was the first time during your trial preparation?

20 A. I guess during the whatever trial that, preparation.

21 MR. SLADE: I don't have any other questions for  
22 this witness.

23 THE COURT: Ms. Leskanic, you may redirect.

24 MS. LESKANIC: Thank you, Your Honor.

25 REDIRECT EXAMINATION BY MS. LESKANIC:

1 Q. Are you telling the ladies and gentlemen of the jury to  
2 the best of your recollection what happened in those early  
3 morning hours?

4 A. Excuse me?

5 Q. Are you telling the ladies and gentlemen on this jury  
6 the best that you can remember what happened in that room  
7 the night Todd was killed?

8 A. Yes, ma'am, I am.

9 Q. All right. Did anybody tell you to say what happened,  
10 or are you just telling what happened?

11 A. I'm telling what happened. No one told me to say  
12 anything. I'm telling what happened. I feel like justice  
13 needed to be served.

14 Q. Okay. How certain are you of the facts that you are  
15 relating to the jury today that that's --

16 How certain are you that the facts that you are telling  
17 the jury today is accurate of what happened in that room?

18 A. The facts are true facts.

19 Like I said, Todd did not walk up on that man. That  
20 man walked up on Todd, pulled that pistol out and Todd --  
21 when Todd grabbed that man, that's when they got to  
22 wrestling.

23 And when I pulled Todd back and said "baby, no,  
24 somebody is going to get shot," that's when Todd pushed me  
25 and said run.

1 I ran out the room into Stevie's room, and that's when  
2 "Big Momma" ran in and slammed the door. The door got  
3 jammed and I'm kicking on the door and I was telling I can't  
4 open the door. I heard two soft shots. I heard Chambers  
5 running down the hallway talking about "where that bitch at?  
6 Where that bitch at. You better -- where that bitch at?"

7 Q. Okay. And were you still using crack cocaine or high  
8 on the effects of crack cocaine when you gave your first  
9 statement?

10 A. Yes, ma'am, I did.

11 Q. All right.

12 A. I did.

13 Q. Are you today?

14 A. No, ma'am, I'm not.

15 Q. Have you been using?

16 A. No, ma'am.

17 Q. All right. Did you write your first statement, or was  
18 it written for you?

19 A. I can't remember. I think it was written for me. I'm  
20 not for sure.

21 Q. Was that your --

22 A. I know that's not my hand.

23 Q. -- handwriting?

24 A. No, ma'am.

25 Q. Okay. So you didn't write that statement?

1 A. No, ma'am.

2 Q. All right. Did Todd ever get loud?

3 A. No, ma'am, he didn't. Todd couldn't hear out of one of  
4 his ears. And, you know, he wasn't talking loud at all, not  
5 at all, until he, Chambers, dipped his -- "New York" dipped  
6 his mouth in it.

7 Like I said, I can't recall what was said. If I said  
8 that he said something about some dope, I can't recall what  
9 he was saying.

10 But "Big Momma" said that he said something about some  
11 dope, that Chambers said something about some dope. I can't  
12 recall what this man said, but I know the only thing Todd  
13 told this man "I'm not talking to you, I'm talking to my old  
14 lady."

15 That's when he got an attitude and said "motherfucker,  
16 like I said, I'm talking to you." He said it three times.  
17 The third time he said, that's when he went in his back and  
18 pulled out the pistol. I thought it was a .25, or a .22,  
19 but to my knowledge they said it was a .380.

20 That's when -- when he walked up on Todd with the  
21 pistol, Todd grabbed him. And when Todd grabbed -- like I  
22 said, when Todd grabbed him, Todd told me to run.

23 And he told me "I better run, bitch. If you don't, I'm  
24 going to kill you too."

25 Q. All right. You said Todd was hard of hearing or

1 deaf --

2 A. He was --

3 Q. -- in one ear?

4 A. He was hard of hearing in one ear, yes, ma'am.

5 Q. Do you know what happened to cause that?

6 A. No, ma'am, I don't.

7 And Todd didn't bother nobody unless you bothered him.  
8 People talking about he threatened people. It don't matter,  
9 but he is a good person.

10 Q. Was he doing anything towards you that day?

11 A. No, ma'am, he was not.

12 Me and Todd just had got through eaten and all of that.  
13 His mother had cooked I think it was steak and mash  
14 potatoes, or something, and he brought me a plate over and I  
15 eat that. And, like I said, when I got ready to go get my  
16 dope, I got another plate down there, because I had already  
17 eaten a plate that he had brought me.

18 Q. I show you State's Exhibit 4. Is that the plate of  
19 food that you are talking about?

20 (Witness off the witness stand)

21 A. That's the food that I had gotten from my brother's  
22 house. And this stuff that --

23 BY MS. LESKANIC:

24 Q. Here you go. Come back here. You can use this, Ms.  
25 Byers.

1 A. This is stuff right here that Todd had gotten me from  
2 his mom. And this is stuff that I had bought and that's the  
3 movie we was watching right there.

4 Q. All right. And how close was your table to the couch?

5 A. It was -- like this is the couch right here, and my  
6 table was like right there. My couch was right here.

7 Q. All right. Using this as a reference point, this being  
8 the table?

9 A. About right here.

10 Q. Okay. So not much room between the two?

11 A. No, ma'am.

12 Q. All right.

13 (Witness back on the witness stand)

14 MS. LESKANIC: I think that's all I have. Thank  
15 you, Your Honor.

16 THE COURT: Recross.

17 MR. SLADE: One issue, Your Honor.

18 RECROSS EXAMINATION BY MR. SLADE:

19 Q. Ms. Byers, are you claiming -- are you --

20 Excuse me, are you testifying here that you told  
21 Detective Blanton that Todd stood up and started toward "New  
22 York" and he wrote it down wrong?

23 A. Excuse me?

24 Q. Are you claiming that Detective Blanton wrote down what  
25 you said wrong, or you just forgot?

1 A. Todd -- like I said, he could have misunderstood what I  
2 said, because Todd never once walked up on "New York". "New  
3 York" walked up on Todd.

4 Q. All right. And then you read --

5 A. We are allowed to make a mistake, though.

6 Q. And then you read over this statement that says --

7 A. Like I said, sir, when I was reading over the  
8 statement, I was on dope and Xanaxes. I really --

9 Q. Okay. So Detective Blanton misunderstood what you  
10 said?

11 A. I said he could have.

12 Q. Right,

13 A. I don't know. And, I mean, I could have said it like  
14 that, but I know for sure what happened.

15 Q. And then you read over it where it says "Todd stood up  
16 and started toward "New York". And before I fled the room,  
17 I do remember Todd and "New York" wrestling in the doorway,"  
18 and you read over those statement.

19 A. I have two doors in my room, like I -- like I just  
20 stated. When they got to wrestling --

21 When Todd grabbed "New York", they came to be around my  
22 table. When they grabbed -- when Todd grabbed "New York"  
23 they end to my door in my room. I have a door in my room  
24 right beside my fireplace, not the door as you enter into my  
25 room. Not the doorway as you enter into my room.

1 Q. And then you read over this statement to sign your name  
2 and to write these initials right beside that statement and  
3 you misunderstood the word --

4 A. Sir, like I said, I was on crack and I was ready to go  
5 back home and lay back down when I was looking at this  
6 statement, because I had been up all night long, sir.

7 Q. And it's your statement today that Hayward pulled out a  
8 gun, pointed it at Todd and walked all the way across the  
9 room --

10 A. Yes, he did, sir. He pulled --

11 Q. -- so that -- so that Todd Morgan could grab him,  
12 right?

13 A. Well, he pulled out his pistol. He pulled out his  
14 pistol and walked up on Todd. And when Todd -- that's when  
15 I grabbed Todd and Todd told me to run.

16 Q. But you are saying Hayward walked all the way across  
17 the room to point the gun at him?

18 A. Yes, he did. That's how he shot him in the head when  
19 they got to wrestling.

20 Q. All right.

21 MR. SLADE: I don't have any other questions for  
22 this witness, Your Honor.

23 THE COURT: Anything further?

24 MS. LESKANIC: No, Your Honor. Thank you.

25 THE COURT: You may step down, ma'am. Thank you.

1 THE WITNESS: Thank you.

2 THE COURT: All right, we are going to take a  
3 short break, ladies and gentlemen. I'll ask you to retire  
4 to the jury room. Don't begin your discussions until I ask  
5 you to do so. You may retire to the jury room. Thank you  
6 very much.

7 (The following takes place outside the presence of  
8 the jury panel)

9 THE COURT: I note there is some -- a person in  
10 the gallery is having a hard time controlling emotions. I'm  
11 happy to have anyone stay in the courtroom and observe the  
12 trial. I will, however, instruct you that if you cannot  
13 control your emotions while you are here, and I understand  
14 it's a very emotional situation, I'm going to ask you to  
15 step outside of the courtroom and stay out of the courtroom  
16 until you can control your emotions. I'm not going to allow  
17 people in the gallery, or anyone else, to in any way  
18 influence the trial as it goes along. So I'll caution you  
19 at this time and I will have to get involved next time. So  
20 please stay out of the courtroom if you can't controlled  
21 your emotions.

22 We're in recess. Thank you.

23 (Whereupon, proceedings were recessed)

24 (Whereupon, proceedings were reconvened)

25 THE COURT: Is the State ready to proceed?

1 MS. LESKANIC: Yes, sir.

2 THE COURT: Defense ready?

3 MR. SLADE: Yes, sir, we are.

4 THE COURT: All right, let's bring the jury in.  
5 Order please.

6 (The following takes place in the presence of the  
7 jury panel)

8 THE COURT: The record will reflect that the jury  
9 has returned to the courtroom, and at this time the State  
10 may call its next witness.

11 MS. LESKANIC: Thank you, Your Honor.

12 The State calls Luis Callazo.

13 THE COURT: Sir, come forward to my left, please,  
14 right over here. Right here.

15 LUIS CALLAZO, having been first duly sworn,  
16 testified as follows:

17 THE COURT: All right, sir, if you will have a  
18 seat in the witness stand. Take your time. I notice that  
19 you are having a little trouble there with the steps. Don't  
20 fall.

21 All right, state your name for the record, please.

22 THE WITNESS: My name is Luis Callazo.

23 THE COURT: Thank you.

24 Your witness.

25 MS. LESKANIC: Thank you, Your Honor.

1 DIRECT EXAMINATION BY MS. LESKANIC:

2 Q. Mr. Callazo, where do you live?

3 A. Right now I live in Spartanburg.

4 Q. All right. I just want to take you back to November  
5 28th of 2009. Were you at 311 Sarratt Avenue visiting  
6 Calvin Wallace the night that Todd Morgan was shot?

7 A. Yes, ma'am.

8 Q. All right. Why were you at the house?

9 A. I had a phone call. My nephew wanted to use my truck,  
10 and I told him okay, and I sit down there waiting for my  
11 truck.

12 Q. Where were you living at that time?

13 A. Spartanburg.

14 Q. All right. So --

15 THE COURT: Let's try now.

16 (Off the record)

17 (Back on the record)

18 BY MS. LESKANIC:

19 Q. All right. You were living in Spartanburg at the time?

20 A. Yes.

21 Q. Where did your nephew live?

22 A. Here in Gaffney.

23 Q. And he needed to use your truck?

24 A. Yes, ma'am.

25 Q. So where did you meet him?

1 A. Over there in the white house.

2 Q. So he came to the white house. You went to the white  
3 house, which is 311 Sarratt Avenue?

4 A. Yes, ma'am.

5 Q. And he took your truck?

6 A. Yes, ma'am.

7 Q. And how long was he going to be gone with your truck?

8 A. Oh, he'd been gone for a little while. He go to a  
9 club, you know.

10 Q. All right. So how long had you known Calvin Wallace?

11 A. Who?

12 Q. I'm sorry, how long -- how long had you known Calvin  
13 Wallace?

14 A. Oh, a little while.

15 Q. Six months? Two years?

16 A. More than that. A few years.

17 Q. Three or more years?

18 A. Uh-huh.

19 Q. Okay. How often did you go over to his house on  
20 Sarratt Avenue?

21 A. Well, I have been visiting him a few -- a couple times.  
22 A few times.

23 Q. Approximately how many times had you been over to  
24 Sarratt Avenue?

25 A. I would say about three or four times.

1 Q. Okay. Now, when you went over there that night, what  
2 time did you get there?

3 A. I don't know. I don't recall too fast. I don't really  
4 know. I don't really know what time it was.

5 Q. Do you think it was before midnight?

6 A. Around 9:30, ten o'clock, something like that.

7 Q. Nine or ten at night?

8 A. Yes, ma'am.

9 Q. Okay. So that would have actually been on the 27th,  
10 November 27th?

11 A. Yes, ma'am.

12 Q. Okay. And then were you still there when Calvin Todd  
13 Morgan was shot?

14 A. Yes, ma'am.

15 Q. All right. I want to go back to that.

16 What were you doing in Calvin Morgan's room?

17 A. We was just talking. Talking, you know. Had  
18 conversation, you know, waiting for my car to come on. I  
19 wanted to go home, you know what I'm saying.

20 Q. You are waiting on your nephew to come back?

21 A. Yeah.

22 Q. And you are just talking with Calvin?

23 A. Calvin and Scottie.

24 Q. Scottie who?

25 A. I forgot his last name. It was me and Scottie and

1 Calvin in the room.

2 Q. Okay. So you -- was it maybe Scottie Mayberry, or do  
3 you know his last name?

4 A. No, ma'am.

5 Q. Okay. Someone named Scottie and Calvin.

6 And the three of you were in Calvin's room in the back  
7 of the house?

8 A. Yes, ma'am.

9 Q. Okay. At some point did you see "New York" come in?

10 A. Yeah, he come into the back door and talking to  
11 Scottie.

12 Q. All right.

13 A. And --

14 Q. Let me -- let me show you State's Exhibit 17. Is this  
15 the back door of 311 Sarratt Avenue?

16 A. Yes, ma'am.

17 Q. And is this the door that you went in when you went  
18 into the house?

19 A. Yes, ma'am.

20 Q. Where is Calvin Wallace's room when you walk in this  
21 back door?

22 A. The single -- it's the single window in there.

23 Q. So go in and turn to the left?

24 A. Yes, ma'am.

25 Q. And that's the room that you were in with Scottie

- 1 Mayberry and Calvin Wallace?
- 2 A. Uh-huh.
- 3 Q. All right. And then "New York" comes in?
- 4 A. "New York" come in.
- 5 Q. All right. And he comes in this back door also?
- 6 A. Yes, ma'am.
- 7 Q. Do you know whether he had a vehicle there?
- 8 A. Yes, ma'am, he had a vehicle.
- 9 Q. Okay. Do you know if he parked in the front of the  
10 house or around back?
- 11 A. In the back.
- 12 Q. So he parks around back, he comes in the back door and  
13 he steps into Calvin Wallace's room?
- 14 A. Yes, ma'am.
- 15 Q. Do you know why he is there?
- 16 A. No, not really. They started a conversation, you know,  
17 and he go to the other room where "Pookie" and "Big Momma"  
18 was.
- 19 Q. Did both he and Scottie go to that room?
- 20 A. He go one time, but he come back to Calvin's room.
- 21 Q. All right. Take me through that again.
- 22 A. He go to "Pookie's" room one time.
- 23 Q. Okay. Did Scottie and "New York" go to "Pookie's"  
24 room, or just "New York"?
- 25 A. Well, "New York" go first. Later Scottie go second.

1 Q. Okay. Do they -- are they in there at the same time?  
2 Are they in "Pookie's" room at the same time, even if they  
3 don't walk down the hall together, or are they both in the  
4 room together?

5 A. Both walk in the room together.

6 Q. Okay. Now, do you go down to "Pookie's" room?

7 A. No, ma'am.

8 Q. Okay. And what was your physical condition at the  
9 time?

10 A. By that time I don't have no leg.

11 Q. Okay. So both of your legs had been amputated?

12 A. No, I got one leg amputated.

13 Q. Okay. And because --

14 A. I was walking in a walker.

15 Q. So did you stay in Calvin Wallace's room --

16 A. Yeah, because --

17 Q. -- the entire time?

18 A. Yeah, because I can't go no farther.

19 Q. Okay.

20 A. Too tired for me moving around.

21 Q. Had you ever seen "New York" before?

22 A. No, the first time.

23 Q. All right. After he went down to "Pookie's" room with  
24 Scottie, what's the next thing that you remember?

25 A. Well, I remember they come up to the hall, "Pookie",

1 "New York" and "Big Momma", they get in the car, they left.  
2 Twenty minutes later they come back to the house. Twenty  
3 minutes, maybe a half hour they come back to the house.  
4 They go to their room again. Maybe they stay fifteen,  
5 twenty more minutes, come back out again, leave in the car  
6 and come back again to the house. And, you know, "New  
7 York", he come out mad, talking junk.

8 Q. All right. When he -- when he first came out mad,  
9 where was he coming from when he came out and he was mad?

10 A. Out of "Pookie's" room.

11 Q. All right. So he had already come back into the house,  
12 gone down to "Pookie's" room, and then he starts walking  
13 back towards Calvin's room?

14 A. To Calvin's room.

15 Q. Is Calvin's door open?

16 A. Yeah, the door is wide open.

17 Q. How do you know he's mad?

18 A. They -- I guess they started a fight or something. I  
19 don't know. I don't know what happened.

20 Q. How do you know he was mad? What did you see that made  
21 you think he was mad?

22 A. Well, he was talking junk.

23 Q. What did he say?

24 A. Well, I can't say what he say. He said some cuss word.

25 Q. Well, if you don't -- and I understand it's not you

1 saying it. I don't like to say them either, but if you  
2 don't mind telling me what you heard, it's important to know  
3 what you heard him say.

4 A. He say "I'm going to kill this bitch."

5 Q. "I'm going to kill this bitch?"

6 A. Yeah.

7 Q. Did he seem angry when he said it?

8 A. Oh, yeah, pretty angry.

9 Q. And did you see a weapon on him at the time?

10 A. Not at that time.

11 Q. What did he do after you heard him say "I'm going to  
12 kill this bitch?"

13 A. He turned around and he go back to "Pookie's" room  
14 again.

15 Q. Okay. What's the next thing that you remember?

16 A. The next time I remember I heard a gunshot.

17 Q. How long did -- how long was it from the time that you  
18 heard him say "I'm going to kill this bitch" until you heard  
19 the gunshot?

20 A. Seconds.

21 Q. Okay.

22 A. Maybe ten seconds, fifteen seconds, whatever.

23 Q. Did you see "New York" again?

24 A. He come out of their room. He said "I got to get out  
25 of here." He jumped in his car and he left.

1 Q. Did you see a weapon at that time?

2 A. I see it in the hand, because I had my back turned, but  
3 I turned like that, yeah, I seen one hand with a weapon in  
4 the hand. He was walking to the door.

5 Q. What did you see in his hand?

6 A. A gun.

7 Q. And then you saw him get in his car and drive away?

8 A. Drive away.

9 Q. All right. Now, we have heard from a Claudette  
10 "Pookie" Byers and she's told us that she was using crack  
11 more than she can talk about. Were you using crack cocaine  
12 that night?

13 A. No, ma'am.

14 Q. Were you using any illegal drugs that night?

15 A. No, uh-uh, because I had my leg amputated. I was on a  
16 lot of medication. I can't do no drugs, you know what I'm  
17 saying? I was sitting down in there waiting for my truck.

18 Q. And is the man that you saw that night with the gun, do  
19 you see him in the courtroom now?

20 A. (No response).

21 Q. Okay. Was that the only time that you saw him?

22 A. I seen him maybe ten seconds. I don't really know him.

23 Q. All right. You didn't know him, and have you seen him  
24 since?

25 A. Uh-uh, I never seen him before, and I maybe for five,

1 ten seconds. I don't remember him.

2 Q. All right. But you knew -- how did you find out his  
3 name was "New York"?

4 A. Oh, everybody talking to him. Everybody talking to  
5 him.

6 Q. Okay. And those are the statements that you heard him  
7 make and what you saw that night?

8 A. (No response).

9 Q. This is everything that you saw happen that night?

10 A. Yes, ma'am.

11 Q. Okay. Did you see when "Pookie" and "Big Momma" left  
12 the house?

13 A. Yeah, I seen a couple of times they left with "New  
14 York".

15 Q. After the shooting did you see them?

16 A. Before the shooting.

17 Q. Right. Did you see them after the shooting?

18 A. After the shooting, "Big Momma" left first.

19 "Pookie" hide somewhere in the house and the second  
20 when "New York" left.

21 Q. So "Big Momma" left and "Pookie" was hiding and then  
22 left?

23 A. Yeah, Scottie left too. Everybody gone except me and  
24 Calvin.

25 MS. LESKANIC: Nothing further of this witness,

1 Your Honor.

2 THE COURT: Your witness, Mr. Slade.

3 MR. SLADE: Thank you, Your Honor.

4 CROSS EXAMINATION BY MR. SLADE:

5 Q. Mr. Callazo, am I pronouncing that correctly? I  
6 apologize.

7 A. Yes.

8 Q. Callazo?

9 A. Callazo, yes.

10 Q. Mr. Callazo, you were in the house on November the 28th  
11 of 2009, when this happened, correct?

12 A. Yes, sir.

13 Q. And you were there for a short period of time after  
14 Officer Sizemore and Officer Green got there, right?

15 A. I didn't see no police in there.

16 Q. Well, the police got there at 3:23. Had you left  
17 before then?

18 A. I can't go nowhere because -- I mean, my car -- once my  
19 car was there, I had another police question me.

20 Q. I apologize. You had another policeman question you?

21 A. Yes, sir. Everybody in the living room. I was in the  
22 back.

23 Q. Okay.

24 A. The officer come up to me. He questioned me.

25 Q. All right. And you talked to him?

1 A. Yes, sir, I talked to him.

2 Q. And he didn't take a statement from you, right?

3 A. Yeah, he take my driver's license and my address,  
4 everything.

5 Q. Did he --

6 A. My phone number.

7 Q. Did he ask you some questions about what happened?

8 A. So, so, so.

9 Q. Okay. Did he ask you the questions like Ms. Leskanic  
10 asked you?

11 A. None that kind of questions.

12 Q. Like "what did you see Hayward Chambers doing?" Did he  
13 ask you those questions?

14 A. I ain't talked to him.

15 Q. I'm not asking you if you talked to Hayward Chambers.  
16 I'm asking you what you told one of the policemen who was  
17 there at the scene that night.

18 A. Oh, well they asked me what I be doing there. Well, I  
19 say I come and visit and --

20 Q. And did they ask you "did you see anything about the  
21 shooter?"

22 A. I -- I don't think -- I don't remember too good. They  
23 got my address and phone number and I just go home. He told  
24 me you can go. That's it.

25 Q. So you are in a house where a shooting occurs, right?

1 A. Yes, sir.

2 Q. You are there when the shooting occurs?

3 A. Yes, sir.

4 Q. Right?

5 A. Uh-huh.

6 Q. And your testimony is no police -- there were a lot of  
7 policemen there pretty quick, right?

8 A. Oh, yes.

9 Q. And you told them that you were there, right?

10 A. Uh-huh.

11 Q. And nobody asked you any of these questions about what  
12 did you see Hayward Chambers do or say?

13 A. They don't -- they don't ask me about him. Only they  
14 got my information, my ID, my phone number.

15 Q. Okay. So when was the next time that you talked with a  
16 policeman about this case, or did you ever talk to another  
17 policeman about this case after November the 28th of 2009?

18 A. Only I talk to the lady and she called me.

19 Q. You talked to Ms. Leskanic?

20 A. Yes, ma'am -- yes, sir.

21 Q. And you talked to her, say, in the last two weeks?

22 A. I talked to her the last two weeks. I talked to her  
23 before the last two weeks.

24 Q. All right. When before the last two weeks did you talk  
25 to her?

1 A. I don't require too good, but it was sometime this  
2 year.

3 Q. Now -- in preparation for this trial?

4 A. Yes, sir.

5 Q. Now, have you told this story that you told today to  
6 anybody in -- did you tell it to anybody in 2009?

7 All this you told about Hayward being up and down the  
8 hall and all that, have you told anybody that? Did you tell  
9 any policeman that from 2009?

10 A. I ain't talked to the police.

11 Q. Did you tell anybody that in 2010?

12 A. Uh-uh.

13 Q. Did you tell anybody that in 2011?

14 A. Uh-uh.

15 Q. Just now in the last couple of weeks, or whenever the  
16 first time that you talked with Ms. Leskanic?

17 A. I talked to her.

18 Q. Now -- right? You hadn't told anybody else this story?

19 A. Uh-uh, I ain't told nobody nothing. Anyway, I didn't  
20 live here in Gaffney. I live in Spartanburg.

21 Q. The first time you ever told it was when you talked to  
22 Ms. Leskanic --

23 A. Yes, sir.

24 Q. -- in preparation for this case?

25 A. Yes, sir.

1 Q. Sometime this year, but before two weeks ago?

2 A. Yeah, after and before.

3 Q. I apologize, I missed the last thing.

4 A. After and before.

5 Q. Okay. Your testimony is that you were in the back  
6 room, back here, of this house and that's where you stayed  
7 the entire time, correct?

8 A. Yes, sir, I ain't moved nowhere. I stayed in that room  
9 the whole time.

10 Q. And according to what you testified to earlier, you saw  
11 "Pookie" and "Big Momma", Michelle Davis, and Hayward get in  
12 his car and leave --

13 A. He leave and he come back.

14 Q. -- and come back?

15 A. Uh-huh.

16 Q. And you saw him do that a couple of times, right?

17 A. They did it twice.

18 Q. Right.

19 So your testimony that you told this story for the  
20 first time to Ms. Leskanic sometime in preparation for this  
21 case is that "Pookie" and Michelle and Hayward got in the  
22 car and rode off, not once, but they got in the car and rode  
23 off twice?

24 A. Yes, sir.

25 Q. No question of that? No question about that?

1 A. Uh-uh.

2 Q. Now, you said that a policeman came and talked to you  
3 in this back room, right?

4 A. Yeah, I was close to the door.

5 Q. And you observed the police -- were they wearing these  
6 kind of uniforms like Officer Sizemore has on here, the gray  
7 ones with the --

8 A. Uh-huh.

9 Q. -- dark pants?

10 A. Uh-huh.

11 Q. Captain Segina?

12 A. Uh-huh. Oh, the middle-aged police.

13 Q. The what?

14 A. The middle-aged police. 50. 50 some.

15 Q. Middle-aged police?

16 A. Old police.

17 Q. All right. And they took the officer people that were  
18 in the house to another part of the house, right?

19 A. What other people?

20 Q. To talk to them.

21 I thought in your testimony you said they took somebody  
22 else in another part of the house to talk to them. Did I  
23 misunderstand you?

24 A. Uh-uh.

25 Q. I apologize.

1 A. Ain't nobody in the house but me and Calvin.

2 Q. You and Calvin. That was it when all the police got  
3 there?

4 A. Yes, sir.

5 Q. Okay. And you talked to the police about it, right?  
6 You talked to the police that night about being there?

7 A. Uh-huh.

8 Q. And you never told them that you saw Hayward Chambers  
9 coming down the hall saying "I'm going to kill the bitch?"

10 A. No, he come in. He come into the room to the door. He  
11 stopped in the door and told Calvin that.

12 Q. "I'm going to kill the bitch?"

13 A. Yeah, "I'm going to kill her."

14 He go back to "Pookie's" room and a few seconds later I  
15 hear a gunshot.

16 Q. And you never thought that was important to tell the  
17 police that night?

18 A. They don't ask -- well, they asked me questions. It's  
19 been so long, you know.

20 Q. Right.

21 A. I ain't --

22 Q. Right.

23 Did it seem to you that they were interested in trying  
24 to investigate this thing?

25 A. I guess so.

1 Q. Right?

2 A. Yeah.

3 Q. And you didn't think there was any reason to tell them  
4 what you just told us?

5 A. I don't know.

6 Q. And did it appear to you that they were hunting for the  
7 person who had shot Calvin Morgan, Todd Morgan?

8 A. Uh-huh.

9 Q. And you didn't think it was important to tell them that  
10 you saw Hayward coming down the hall with a gun in his hand?

11 A. That's the only place I saw it.

12 Q. My question is you didn't think it was important to  
13 tell the police that then?

14 A. Well, they -- they don't ask -- I don't -- I don't  
15 require to do what the police told me. Only they asked me  
16 for my ID, the place where I stayed, where I lived and my  
17 phone number. That's the only thing they require. That's  
18 almost three years. That's a long time ago.

19 Q. Well, who did you first tell this story that you told  
20 today to? Ms. Leskanic? Who is the first person that you  
21 told?

22 A. Her. That's the only person I was talking to.

23 Q. And you don't know what happened in that room?

24 A. I know what happened in the room.

25 Q. In the room where Todd Morgan was shot?

1 A. Yeah.

2 Q. You know what happened?

3 A. Hundred percent -- ninety percent I know what happened.

4 Q. You saw --

5 A. I didn't saw it. I ain't saw it, but I can hear it. I  
6 can see people back and forth.

7 Q. Right.

8 Did you hear an argument up there?

9 A. No quite I hear arguing, you know.

10 I see "Big Momma" come into the room and he told Calvin  
11 "this man go crazy," or something, and they fight. "Big  
12 Momma" just flew out of the door, you know.

13 Q. And you stayed back in the back room the whole time?

14 A. The whole time. I can't move. I don't have but one  
15 leg, walking.

16 MR. SLADE: I don't have any -- oh, I do have  
17 another question.

18 BY MR. SLADE:

19 Q. You said that you weren't using any crack cocaine that  
20 night?

21 A. No, sir. I'm -- I'm sober for a little while.

22 Q. For a little while?

23 A. About over three years.

24 Q. You have used crack cocaine?

25 A. Oh, yeah, I used to.

1 Q. And now you say that you have been clean or sober for  
2 three years?

3 A. Three years. When they take my leg I'm sober.

4 Q. It just -- it just happens this occurred a little over  
5 three years ago?

6 A. Yeah.

7 Q. Are you sure you weren't using crack cocaine then?

8 A. Not no more.

9 Q. Okay.

10 A. I can take a drug test right now.

11 Q. Okay. I'll take your word for that. I'm asking about  
12 back in November of 2009.

13 A. No, that night, uh-uh. I been quit before that.

14 Q. You have been convicted of possession of cocaine,  
15 correct?

16 A. Yeah, yeah. I got busted twice.

17 Q. All right.

18 A. Yeah.

19 Q. Now, there is a lot of talk in the street about this  
20 case, right?

21 A. I don't know. I don't live here.

22 Q. All right. When did your nephew come pick you up?

23 A. I don't require too good, but it was close to three  
24 o'clock in the morning.

25 Q. Close to three o'clock?

1 A. Uh-huh.

2 Q. Was it before or after three o'clock that morning that  
3 you nephew picked you up?

4 A. He brought me truck close to three o'clock in the  
5 morning.

6 Q. I said was it before or after?

7 A. After.

8 Q. After?

9 A. Uh-huh.

10 Q. After you didn't tell any of this to the police who --

11 A. Yeah, I already told the police everything. I was  
12 talking to everybody, and my nephew come up and he give me  
13 my key and said "I'm going to go home."

14 Q. All right.

15 MR. SLADE: I don't have any other questions, Your  
16 Honor.

17 THE COURT: Redirect?

18 MS. LESKANIC: Thank you, Your Honor.

19 REDIRECT EXAMINATION BY MS. LESKANIC:

20 Q. Mr. Callazo, when the police spoke with you on the  
21 night of the shooting --

22 A. Uh-huh.

23 Q. -- you said that you gave them -- they just asked you  
24 your name and your driver's license and things like that?

25 A. Yeah, and my phone number.

1 Q. All right. Did you tell them that your name was Luis  
2 Antonio Callazo?

3 A. Yet, that's correct.

4 Q. And your date the birth is [REDACTED]?

5 A. That's correct.

6 Q. And your address at the time was 266 Goldmine Springs,  
7 Apartment D-18?

8 A. That's incorrect.

9 Q. Okay. What was your address?

10 A. 111 Hanover Place, Spartanburg, South Carolina.

11 Q. And was it -- and it wasn't Goldmine Springs in --

12 A. I already moved to the other place.

13 Q. Okay. Is it possible that you gave -- did you at one  
14 time live at 266 Goldmine Springs?

15 A. Yes, ma'am, I lived in there about two years.

16 Q. Was that possibly on your driver's license?

17 A. I changed my address a long time ago.

18 Q. Okay. But at one point that was your address?

19 A. Before.

20 Q. Okay. And did the police ask you anything else that  
21 night?

22 A. No. I -- really -- first I was a little scared.

23 Second, I was ready to go home, you know what I'm  
24 saying.

25 Q. So you didn't stick around and say "hey, I need to talk

1 to y'all?"

2 A. Uh-uh.

3 Q. Okay. But when I contacted you back in November of  
4 2011, when we were preparing this case for trial back then,  
5 did you come in and speak with me?

6 A. I -- yeah, I talked to you.

7 Q. Okay. And then you came in again when we were  
8 preparing the trial this time?

9 A. Yes, ma'am.

10 Q. All right. Has anybody else contacted you, other than  
11 me, to ask you what happened?

12 A. No, uh-uh.

13 Q. All right. And that crack cocaine conviction, that was  
14 back in 1994, right?

15 A. Yeah.

16 Q. And when did you stop using crack cocaine?

17 A. Oh, '95, '96, something like that.

18 Q. Was there an event that made you stop using?

19 A. Not really.

20 Q. Did it have anything to do with losing your leg?

21 A. Well, it got to do something like that.

22 Q. Okay. But at this night you weren't using crack  
23 cocaine?

24 A. No, I been quit.

25 Q. All right. And you are certain of what you saw and

1 what you heard that night?

2 A. Yeah.

3 Q. All right. Thank you.

4 A. Of what I heard and what I saw.

5 Q. Thank you, Mr. Callazo.

6 THE COURT: Recross?

7 MR. SLADE: Nothing, Your Honor.

8 THE COURT: You may step down, sir. Thank you  
9 very much. You can step down.

10 THE WITNESS: Thank you.

11 THE COURT: The State may call its next witness.

12 MS. LESKANIC: Your Honor, may we approach for  
13 just a moment?

14 THE COURT: You certainly may.

15 (Whereupon, the lawyers approached the bench for  
16 an off-the-record discussion)

17 THE COURT: You may call your next witness.

18 MS. LESKANIC: The State calls Tynisha Poole.

19 THE COURT: Ma'am, come down front over here to my  
20 left and be sworn in, please.

21 TYNISHA POOLE, having been first duly sworn,  
22 testified as follows:

23 THE COURT: Ma'am, once you are seated, state your  
24 name, please.

25 THE WITNESS: Tynisha Poole.

1 THE COURT: Tynisha Poole. All right.

2 Your witness.

3 MS. LESKANIC: Thank you, Your Honor.

4 DIRECT EXAMINATION BY MS. LESNANIC:

5 Q. Ms. Poole, where do you live?

6 A. 104 Broad Street.

7 Q. All right. And were you living at 104 Broad Street  
8 with the defendant Hayward Chambers back in 2009?

9 A. Yes, ma'am.

10 Q. And were y'all girlfriend and boyfriend?

11 A. Yes, ma'am.

12 Q. Do y'all have a child together?

13 A. Yes, ma'am, a four year old daughter.

14 Q. All right. Let me just show you State's Exhibit 14,  
15 and is that a photograph of your home on Broad Street?

16 A. Yes, ma'am.

17 Q. All right. How long were you and the defendant Hayward  
18 Chambers together?

19 A. About four years.

20 Q. Are y'all together now?

21 A. No, ma'am.

22 Q. Is Mr. Chambers married?

23 A. Yes, ma'am.

24 Q. Was he married at the time that you two were --

25 MR. SLADE: Your Honor, I have an objection.

1 Could we approach?

2 THE COURT: Yes.

3 (Whereupon, the lawyers approached the bench for  
4 an off-the-record discussion)

5 THE COURT: You may proceed.

6 THE COURT: Thank you, Your Honor.

7 BY MS. LESKANIC:

8 Q. Now, did you and Mr. Chambers live together at 104  
9 Broad Street?

10 A. Yes, ma'am.

11 Q. And did y'all live there for the entire time during  
12 your four year relationship?

13 A. No, ma'am.

14 Q. Where else did y'all live together?

15 A. I lived at F-22 Granard Courts, and he lived at -- it  
16 was either H-32 or H-33 in Granard Courts.

17 Q. I want to take you back to the evening of November  
18 27th, 2009. Do you remember that night, in the early  
19 morning hours of November 28th?

20 A. Yes, ma'am.

21 Q. All right. Did you see the defendant that night?

22 A. Yes, ma'am.

23 Q. All right. When he left the house, do you know what  
24 time he left the house that night?

25 A. About eleven. Between eleven and 11:30.

- 1 Q. Did he tell you where he was going?
- 2 A. To get a pack of cigarettes.
- 3 Q. Anything else?
- 4 A. No, ma'am.
- 5 Q. All right. Did you go to bed?
- 6 A. Yes, ma'am.
- 7 Q. Do y'all have children in the house at this time?
- 8 A. Yes, ma'am.
- 9 Q. How many kids are in the house?
- 10 A. My two -- I'm sorry, his two, my son, and our daughter
- 11 that we shared together.
- 12 Q. All right. His two children, your son, and then your
- 13 daughter that you had with him?
- 14 A. Yes, ma'am.
- 15 Q. Do you go on to bed?
- 16 A. Yes, ma'am.
- 17 Q. Now, when he left the house, did he have a gun with
- 18 him?
- 19 A. Yes, ma'am.
- 20 Q. Was that unusual for him to have a gun with him?
- 21 A. No, ma'am.
- 22 Q. Did he take it everywhere he went?
- 23 A. Yes, ma'am.
- 24 Q. To your knowledge, did Mr. Chambers have a job?
- 25 A. No, ma'am.

1 Q. What's the next thing that came to your attention that  
2 night?

3 A. When the phone started ringing.

4 Q. What time was that?

5 A. About three in the morning.

6 Q. So three o'clock in the morning on November the 28th?

7 A. Yes, ma'am.

8 Q. Who was calling you?

9 A. Mr. Chambers.

10 Q. What did he say?

11 A. "I just shot somebody."

12 Q. And what happened?

13 A. Then the phone went dead. Then probably about twenty,  
14 thirty minutes he came home.

15 Q. How did he get home?

16 A. Jimmy. His cousin Jimmy.

17 Q. Did Jimmy come into the house?

18 A. No, ma'am.

19 Q. Did Mr. Chambers come into the house?

20 A. As he was coming in the door to open the door, I was  
21 opening the door as well.

22 Q. Okay. What was our demeanor?

23 A. Pissed off.

24 Q. Why?

25 A. Because he told me he was going to get some cigarettes

1 and come back home, but he didn't, so I was pissed off at  
2 him. He didn't do what he was supposed to do.

3 Q. And did you know where he had gone or what he had done?

4 A. No, ma'am.

5 Q. Do you have any ideas? Based on your relationship with  
6 him and the amount of time that you have known him, did you  
7 have a -- did you suspect what had happened?

8 A. Well, I knew when he didn't come home, I figured he was  
9 getting high.

10 Q. Did he use crack cocaine?

11 A. Yes, ma'am.

12 Q. Did he use it on a regular basis?

13 A. Well, I can't say. When we lived separate, I can't  
14 say, but he did we when lived together. But, I mean, he  
15 wasn't the type like to smoke in front of us or nothing like  
16 that, but I -- because I have been with him I could tell  
17 when he --

18 Q. Okay. Now, when he called and said "I just shot  
19 somebody," do you know was he calling from a cell phone,  
20 or --

21 A. Cell phone.

22 Q. Okay. Do you know if he was at someone's house or  
23 using a cellular phone?

24 A. It was the cell phone. He had a cell phone.

25 Q. All right. And then Jimmy brought him home?

1 A. Uh-huh. Yes, ma'am.

2 Q. So when he comes in the door, you are mad?

3 A. Yes, ma'am.

4 Q. And do you two have a conversation?

5 A. He was like -- he had came in and I was like "what the  
6 hell is going on? What the hell do you mean you shot  
7 somebody? You are supposed to go get some fuckin  
8 cigarettes. I mean, you know, what the hell is going on?"

9 I mean, he really didn't get to say much. You know, he  
10 went to our bedroom and started changing his clothes, but he  
11 really didn't get to say, you know, much to me then.

12 Q. All right. So he didn't tell that you night what  
13 happened?

14 A. No, ma'am.

15 Q. All right. And did he take his clothes off?

16 A. Yes, ma'am.

17 Q. What did he do with those clothes?

18 A. Just dropped them on the floor.

19 Q. All right. Did you see a gun?

20 A. It was not on his waist. It wasn't on his waist. The  
21 gun wasn't on his waist, where it usually be at.

22 Q. Do you know where it was?

23 A. It was on our mantelpiece.

24 Q. Okay. Did you see him put it in a bag, or did you see  
25 him bring into the house?

1 A. I can't remember if he -- I -- I'm assuming that he had  
2 the bag already, because he didn't go throughout our house  
3 when he came in. He just came in that room changing his  
4 pants and shirt.

5 Q. All right. Did you have another car at the house?

6 A. No, ma'am, just the red Volvo is our car.

7 Q. And Jimmy left --

8 A. Yes, ma'am.

9 Q. -- after he dropped him off, right?

10 A. Yes, ma'am.

11 Q. Okay. What happened next soon after he got home and  
12 changed his clothes?

13 A. Like I said, me and him and me and the kids were still  
14 hollering and screaming, you know, like "what do you mean?"  
15 You know, we basically was in shock.

16 Maybe two or three minutes later we heard a knock on  
17 the door and the police flashed the light. It was like "is  
18 everything okay, because we heard screaming and hollering as  
19 we came up on the porch."

20 And I was like "yes, sir."

21 And he was like "we are looking for a guy named "New  
22 York"."

23 And that's when Hayward came out from behind the door  
24 and he said "I'm the guy that you are looking for and the  
25 gun is in the room."

1           The police came on in.

2           Q.    All right.  So he admitted that he was "New York", he  
3           was the guy they were looking for?

4           A.    Yes, ma'am.

5           Q.    And then he offered them the gun?

6           A.    Yes, ma'am.

7           Q.    All right.  Did he also tell them where the car was  
8           located?

9           A.    I don't -- not in front of me he didn't.

10          Q.    Okay.  Now, the clothes that he was wearing that night,  
11          what happened to those?

12          A.    Well, when he left, after -- you know, after the police  
13          looked him up, and I just picked them up and threw them in  
14          the bag and set them in the corner.

15          Q.    So the clothes that he was wearing when he went to the  
16          police department were not the same clothes that he was  
17          wearing when he was at 311 Sarratt Avenue?

18          A.    No, ma'am.

19          Q.    All right.  At some point did someone -- did you talk  
20          to somebody about those clothes?

21          A.    Well, the clothes situation didn't come back up until  
22          Hayword was about to go to trial and nobody ever said -- you  
23          know, came to my house about the clothes, so I was like  
24          "what am I supposed to do with the clothes?"

25                And then they advised me to bring the clothes to the

1 detention center, so that's what I did.

2 Q. All right. Who did you speak with about the clothes?

3 A. Mr. Chambers lawyer.

4 Q. Did you ever tell the police that you had his clothes  
5 that he was wearing from the night of the shooting?

6 A. Nobody from the police never talked to me.

7 Q. So it was only his lawyer that knew that you had those  
8 clothes?

9 A. Me and my kids.

10 Q. I'm going to show you what's been marked State's  
11 Exhibit 23 and see if you recognize this. Let me grab one  
12 more glove.

13 Does this appear to be the shirt?

14 A. I think that was the undershirt, I think.

15 Q. Okay.

16 A. I think that was the undershirt, because Hayward always  
17 wore like a T-shirt and a shirt.

18 Q. And this was a shirt that he was wearing, though --

19 A. Uh-huh.

20 Q. -- and part of the clothing that you turned over to law  
21 enforcement?

22 A. Yes, it is.

23 Q. All right. And do you recognize these?

24 A. Yes, ma'am.

25 Q. And what are these?

1 A. Mr. Chambers pants.

2 Q. All right. And these are the pants that you collected  
3 off the floor and then turned in --

4 A. Yes, ma'am.

5 Q. -- to police?

6 And you can identify these as the clothing that he was  
7 wearing that night when he came home?

8 A. Yes, ma'am.

9 MS. LESKANIC: Your Honor, at this time we would  
10 offer State's Exhibit 23 for admission.

11 THE COURT: Any objection?

12 MR. SLADE: No objection, Your Honor.

13 THE COURT: Without objection, they will be  
14 admitted.

15 (Whereupon, State's Exhibit No. 23 was admitted as  
16 evidence into the record)

17 BY MS. LESKANIC:

18 Q. That's all the questions that I have. Please answer  
19 any questions that Mr. Slade has for you.

20 THE COURT: Mr. Slade, your witness.

21 MR. SLADE: Thank you, Your Honor.

22 THE COURT: Yes, sir.

23 CROSS EXAMINATION BY MR. SLADE:

24 Q. Ms. Poole, we have talked several times in the several  
25 years that I have been representing Hayward, correct?

1 A. Yes, sir.

2 Q. And when -- the last time that we talked was several  
3 weeks ago?

4 A. Yes, sir.

5 Q. Over at your house?

6 A. Yes, sir.

7 Q. And you are still living there in that house on Broad  
8 Street, right --

9 A. Yes, sir.

10 Q. -- the solicitor pointed out.

11 And that night Hayward called you and told you he had  
12 shot someone?

13 A. Yes, sir.

14 Q. And when he got home, he told you he was going --

15 MS. LESKANIC: Objection, Your Honor. He's  
16 getting in -- I'm not sure where he's going, but if he's  
17 going to say what Hayward told her, it's going to be  
18 hearsay.

19 THE COURT: The only thing he said was when he got  
20 home. I don't know where he was going from there.

21 MS. LESKANIC: He said he said.

22 MR. SLADE: That's right, and I was going to where  
23 she anticipates me to be going, Your Honor.

24 THE COURT: All right. Ladies and gentlemen of  
25 the jury, I'll ask you to step back to the jury room at this

1 time. Don't begin your discussions until I have asked you  
2 to do so.

3 (The following takes place outside the presence of  
4 the jury panel)

5 THE COURT: All right. Yes, ma'am, I'll hear from  
6 you.

7 MS. LESKANIC: I just -- in Mr. Slade's  
8 questioning I heard him say I think when he got home he  
9 said, and I don't think she is permitted to testify for the  
10 defense as to what he said. It's an admission by a party  
11 opponent.

12 I can ask, and I asked if he said what he had told  
13 her. He said "I shot somebody."

14 I don't know what the next question is, but if we  
15 could do a proffer.

16 THE COURT: I don't know where he is going into  
17 either, so --

18 MR. SLADE: That's my question, Your Honor.

19 BY MR. SLADE:

20 Q. When he got home, he told you that he had shot  
21 somebody -- I'm sorry, when he was on the phone he told you  
22 that he had shot somebody?

23 A. Yes, sir.

24 MR. SLADE: And that's a followup on the question  
25 she asked her.

1 THE COURT: Yes, sir.

2 MR. SLADE: That was established in her's.

3 BY MR. SLADE:

4 Q. The next question is when he got home, he told you he  
5 was going to jail, didn't he?

6 A. Yes, sir.

7 MR. SLADE: That's what I would like to get into.

8 And my position, Your Honor, is she has opened the  
9 door to what he has said at that house by, one, questioning  
10 her about what he told her when he called; and opened the  
11 door because she asked Ms. Poole what Hayward said when the  
12 police got there.

13 So we have two instances where she has opened the  
14 door to what he has told Ms. Poole that night in this  
15 sequence of events, as well as what he's told the police.  
16 If she thinks that helps her, fine, but if we are going to  
17 get into it, I get to get into the things that he said that  
18 help me.

19 MS. LESKANIC: I would just like a proffer, Your  
20 Honor. I know that the rule is admission by a party  
21 opponent. If he's trying to admit what his client said or  
22 did through this witness, I think --

23 THE COURT: This is your witness, though.

24 MS. LESKANIC: I understand, and I'm getting into  
25 what the defendant said, but I don't think the defense can

1 get into what his client said through another witness. His  
2 client would have been the one to state that, but if we  
3 could just do a proffer, I may not have an objection.

4 THE COURT: Well, let's see where we are going.

5 MS. LESKANIC: If we can see where we are going.

6 MR. SLADE: Your Honor, what he told her -- what  
7 she just testified he told her, that he told her he was  
8 going to jail, that's about the extent of what he told you,  
9 wasn't it?

10 THE WITNESS: That night, yes.

11 MR. SLADE: Yes, ma'am.

12 That's it. I mean, that's what I want.

13 THE COURT: Any objection to that?

14 MS. LESKANIC: I have no objection to him saying  
15 "I'm going to jail." I just wasn't sure where it was going  
16 and felt like the objection was appropriate.

17 THE COURT: All right, it sounds like we can get  
18 the jury back.

19 Wayne, if you will bring them in, please.

20 (The following takes place in the presence of the  
21 jury panel)

22 THE COURT: All right, the jury has returned to  
23 the courtroom.

24 I have not made any rulings in this matter.

25 You may proceed.

1 MR. SLADE: Thank you, Your Honor.

2 BY MR. SLADE:

3 Q. When Hayward got home that night, he told you he was  
4 going to jail, didn't he?

5 A. Yes, sir.

6 Q. Now, when the solicitor was asking you some questions,  
7 she asked you about whether or not Hayward had a job?

8 A. Yes, sir.

9 Q. He had been working at Limestone Mill and got laid off,  
10 right?

11 A. Yes, sir.

12 Q. He worked at Magnolia for awhile?

13 A. Yes, sir.

14 Q. And he got laid off there?

15 A. Yes, sir.

16 Q. And he was drawing unemployment, right?

17 A. Yes, sir.

18 MR. SLADE: I don't have any other questions for  
19 this witness.

20 MS. LESKANIC: No redirect.

21 THE COURT: All right, ma'am, you may step down.  
22 Thank you very much.

23 The State may call its next witness.

24 MS. LESKANIC: The State calls Dr. Ross.

25 THE COURT: Ma'am, if you will come forward to my

1 left and be sworn, please. Thank you.

2 DR. JANICE ROSS, having been first duly sworn,  
3 testified as follows:

4 THE COURT: Ma'am, once seated, state your name  
5 for the me, please.

6 THE WITNESS: Janice Edwards Ross, R-O-S-S.

7 THE COURT: Thank you, ma'am.

8 Your witness.

9 DIRECT EXAMINATION BY MS. LESKANIC:

10 Q. Thank you for being here, Dr. Ross.

11 A. Sure.

12 Q. If you could, tell the jury a little bit about where  
13 you are employed and what you do.

14 A. I am a forensic pathologist and a hospital pathologist  
15 in Newberry, South Carolina.

16 Q. All right. And what type of education and training do  
17 you have to have to become a forensic pathologist?

18 A. I have a Bachelors Degree from the University of South  
19 Carolina, and an MD from Upstate Medical Center at Syracuse,  
20 New York.

21 I did further training in the area of pathology.

22 A pathologist is a doctor who specializes in  
23 identifying diseases by looking at tissue under the  
24 microscope or doing blood work. We run hospital  
25 laboratories and look at tissue that comes from surgery.

1           We are also trained to do an autopsy.

2           And a forensic pathologist is further trained in the  
3 area of legal matters, such as homicides, suicides, and  
4 accidents, and rapes. We are trained to identify patterns  
5 of injury.

6           We do special more thorough autopsy called forensic  
7 autopsy, where we collect fluids, do photographs and collect  
8 evidence for a court of law.

9           Q.   And did you do an autopsy in this case?

10          A.   Yes.

11          Q.   And what exactly is an autopsy? What does that entail?

12          A.   It's a detailed examination of a deceased, a dead  
13 person. We first look at the person on the outside to see  
14 if there is any pattern of injury or any evidence of  
15 diseases, and then we do an internal examination of each  
16 organ, again looking for tissue for diseases and/or injury.

17          Q.   And approximately how many autopsies have you performed  
18 throughout your career?

19          A.   Over six thousand.

20                 MS. LESKANIC: Your Honor, at this time I would  
21 like to offer Dr. Janice Ross as an expert in the field of  
22 forensic pathology.

23                 THE COURT: Any objection?

24                 MR. SLADE: I don't have any objection, Your  
25 Honor.

1 THE COURT: All right, ladies and gentlemen, let  
2 me explain to you what we are doing at this point in time so  
3 that maybe you will understand what this process is about.

4 Generally under the Rules of Evidence that govern  
5 the testimony of witnesses, lay witnesses are not allowed to  
6 give opinions concerning matters. They are required to  
7 testify concerning facts within their knowledge.

8 An exception to that general rule is made for  
9 witnesses who are declared by the court to be an expert  
10 within some field or calling, profession, science, something  
11 of that nature. For those witnesses who are declared to be  
12 experts, they are allowed to state their opinions within the  
13 area of their expertise. They are also allowed to state the  
14 basis or the reasons for their holding those opinions.

15 In this particular case this witness is being  
16 offered as an expert as a forensic pathologist.

17 Without objection, I'm going to qualify her as an  
18 expert within that field. That will allow her to state her  
19 opinion within that field and also state the basis or the  
20 reasoning behind that opinion, so I'm going to declare she's  
21 an expert within that field.

22 I'll give you some further instructions concerning  
23 how you can accept testimony from expert witnesses when I  
24 charge you concerning the law.

25 Ms. Leskanic, you may proceed with the witness.

1 She's been declared to be an expert.

2 MS. LESKANIC: Thank you, Your Honor.

3 BY MS. LESKANIC:

4 Q. Dr. Ross, did you perform an autopsy on Calvin Todd  
5 Morgan on November 30th of 2009?

6 A. Yes, I did.

7 Q. And where did that autopsy take place?

8 A. In the morgue of Newberry County Memorial Hospital.

9 Q. Can you start by walking us through? When you first  
10 receive a body to do an autopsy, how do you begin the  
11 examination?

12 A. Yes, we receive the body in a body bag, which we open  
13 and then we take photographs of the body while it's clothed.

14 We take an inventory of the clothing and any valuables  
15 on the person.

16 We then take photographs of the outside the body,  
17 externally and internally.

18 In this case, for instance, we saw evidence of a  
19 gunshot wound, so we did x-rays on that part of the body,  
20 the head, so that we could identify whether the bullet was  
21 still in the body.

22 We then do an internal examination and save the chest  
23 organs, the abdominal organs, the neck organs, and the head.

24 Q. Do you also measure the individual for height, weight,  
25 those types of things?

1 A. We measure the height. We don't have a scale inside  
2 the morgue, so we do an estimate of the weight.

3 Q. Can you tell us what the height was of Mr. Calvin Todd  
4 Morgan?

5 A. 68 inches, which is 5'8".

6 Q. I'm sorry?

7 A. 5'8".

8 Q. Thank you.

9 All right. When you did the x-ray of the skull area,  
10 were you able to determine whether there was some projectile  
11 still in his head area?

12 A. Yes, and there was bullet, still lead metal still in  
13 the head.

14 Q. Now, before -- I assume that at some point you have to  
15 go in and remove that from him during the autopsy?

16 A. Yes.

17 Q. Before you do that, do you do a thorough examination of  
18 the outside of the body?

19 A. Yes.

20 Q. All right. In doing that examination, did you note in  
21 your report any injuries that indicated a recent physical  
22 altercation, other than the gunshot wound to the head?

23 A. No, I did not.

24 Q. And where exactly was the gunshot wound to Mr. Morgan's  
25 head?

1 A. It was in the forehead just to the right of midline,  
2 and the bullet path went to the right. A little fragment  
3 came out and had an exit wound more towards the side of the  
4 head, but the major part of the bullet was still in the head  
5 and lacerated the brain.

6 Q. When you look at a gunshot wound, what are you looking  
7 for to make determinations on cause of death and maybe  
8 distance that the gun may have been away?

9 A. We just look at the entrance wound and the exit wound,  
10 try to get direction.

11 And in order to get range of it, range is how far away  
12 the gun was from the body, where it struck, we look for  
13 evidence of soot and tattooing and stippling.

14 That means when a bullet comes out of the gun, also  
15 there is soot and little fragments of particles that come  
16 out also, but the soot and the particles, the powder  
17 particles, only go a certain distance. That depends on the  
18 type of weapon and the ammunition, etcetera, but if there is  
19 no evidence that that soot or tattooing or the powder hit  
20 the skin, then we can say -- we call that a distant-range  
21 gunshot wound, meaning it's at least two feet -- the gun was  
22 at least two feet away from the place where it hit.

23 Q. And based on your examination of the entrance wound on  
24 Todd Morgan's head, were you able to make a determination of  
25 whether this was a close gunshot wound, or would you

1 consider it a distant gunshot wound, being at least two feet  
2 away?

3 A. Yes.

4 Q. And what was that determination?

5 A. That it was a distant wound.

6 Q. So there was no sign of soot or tattooing as if the gun  
7 were closer than two feet to Mr. Morgan's head when the gun  
8 fired?

9 A. Correct.

10 Q. Could you determine where the bullet went, once it  
11 entered Mr. Morgan's skull?

12 A. It went from -- it went towards the right and slightly  
13 backwards.

14 Q. And did it go through the brain?

15 A. Yes. Yes, it lacerated the brain.

16 Q. And what effect would that have on an individual when a  
17 bullet lacerates the brain?

18 A. Depending on where it is, but most likely when the --  
19 it causes immediate unconsciousness and death within minutes  
20 to hours.

21 Q. Were you able to determine the cause of death of Calvin  
22 Todd Morgan, based on your autopsy?

23 A. Yes.

24 Q. And what is the cause of death, in your opinion?

25 A. It was a laceration of the brain due to the gunshot

1 wound to the head.

2 Q. And no other signs of physical injury of a recent  
3 altercation on the body of Mr. Morgan?

4 A. No, there were not.

5 Q. Were you able to go in and recover the lead that you  
6 saw on the x-ray that was in Mr. Morgan's skull?

7 A. Yes, we found the lead and part of the bullet, as well  
8 as the jacket.

9 Q. I'll show you State's Exhibit 21. Would you take a  
10 look at that, Dr. Ross, and tell me if you recognize that?

11 A. Yes, that's a photograph of a lead bullet and the  
12 copper jacket that we retrieved out of the head of the  
13 deceased Calvin Morgan.

14 Q. All right.

15 MR. SLADE: I don't have any objection to this,  
16 Your Honor.

17 THE COURT: Without objection then, it would be  
18 admitted as marked.

19 (Whereupon, State's Exhibit No. 21 was admitted as  
20 evidence into the record)

21 MS. LESKANIC: Just one moment, Your Honor. I  
22 apologize.

23 THE COURT: That's all right.

24 (Off the record)

25 (Back on the record)

1 MS. LESKANIC: I'm not sure if I have offered this  
2 for admission as evidence, Your Honor. I'm trying to find  
3 the actual exhibit --

4 THE COURT: All right.

5 MS. LESKANIC: -- other than the photograph.

6 That's all right.

7 Without objection?

8 MR. SLADE: Yeah.

9 THE COURT: It's already been admitted. It's in  
10 the record.

11 MS. LESKANIC: Thank you, Your Honor.

12 I'm going to publish State's Exhibit 21?

13 THE COURT: You may do so.

14 BY MS. LESKANIC:

15 Q. Dr. Ross, would you please explain to the jury the  
16 procedure that you had to go through in order to recover  
17 this from Mr. Morgan?

18 A. We actually take the brain out.

19 First of all, the x-ray would give us an idea where the  
20 fragments, these fragments were in the head.

21 Q. Where was that?

22 A. In the right side of the head, the right -- it's called  
23 the parietal lobe of the brain.

24 And the lead part -- the silver -- the gray metal part  
25 was more up towards the side, and the copper jacket was

1 closer up to the forehead area.

2 Q. And it's your opinion, after doing the autopsy and  
3 seeing the wounds, that most probably at the time Mr. Morgan  
4 was struck with the bullet that he would have been rendered  
5 unconscious?

6 A. Yes.

7 Q. Thank you very much. Please answer any questions that  
8 the defense asks.

9 THE COURT: Your witness, Mr. Slade.

10 MR. SLADE: Thank you, Your Honor.

11 CROSS EXAMINATION BY MR. SLADE:

12 Q. Dr. Ross, did you bring your notes with you?

13 A. Yes, sir.

14 Q. You described a number of things here in your case  
15 history and the items that followed that; the external  
16 investigation -- or excuse me, external examination, and it  
17 looks like a four page report, is that correct?

18 A. Yes.

19 Q. According to your report, your autopsy of Calvin Todd  
20 Morgan began at ten o'clock?

21 A. Yes.

22 Q. How long did it last?

23 A. It was probably an hour.

24 Q. Okay. In an hour?

25 A. Yes.

1 Q. When you finished the autopsy, did you ever see his  
2 body again?

3 A. After he left the morgue, no.

4 Q. Okay. So I guess the point of my question is you were  
5 with the decedent's body from ten o'clock to eleven o'clock  
6 and then moved onto whatever your next task was?

7 A. Correct.

8 Q. And I assume you wrote up your case history sometime  
9 after that?

10 A. Yes.

11 Q. So in that period of time, that hour that you were  
12 there, you did the things that you described to Ms.  
13 Leskanic, or did the things as part of your job that you  
14 described in your direct testimony?

15 A. Yes.

16 Q. That is, measuring Calvin Todd Morgan's body.  
17 You, I believe, described each of the internal organs,  
18 correct?

19 A. Yes.

20 Q. You took out the thyroid, you weighed it?

21 A. Yes.

22 Q. You took out the heart, weighed it, 400 grams?

23 A. Yes.

24 Q. The lungs?

25 A. Yes.

1 Q. Liver?

2 A. Yes.

3 Q. Gallbladder?

4 A. Yes.

5 Q. Did the x-rays that you talked about to find the bullet  
6 particle that is in that last exhibit we were hunting around  
7 for, right?

8 A. Yes.

9 Q. All of that was part of that hour?

10 A. Correct.

11 Q. Then you, I don't know the term, resected the brain or  
12 took the brain from the skull?

13 A. Yes.

14 Q. And did the examination that you did to find the bullet  
15 fragments?

16 A. Correct.

17 Q. And as part of that, your testimony is you didn't find  
18 any soot on Mr. Morgan's skin, is that correct?

19 A. That's correct.

20 Q. And by that you mean the powder that would have come  
21 out of the gun that would have landed on, I guess, the area  
22 around where the bullet entered, is that correct?

23 A. Correct.

24 Q. Now, what did you know about where Calvin Todd Morgan  
25 had been prior to the time that you did your autopsy?

1 A. At the time of the autopsy, I just get information from  
2 the coroner that they did -- that this occurred at a  
3 residence and then he was taken to a Spartanburg hospital.

4 Q. Did you have any idea where he -- how long he had been  
5 in the hospital?

6 A. I had the time of the incident and the time of the  
7 death, yes.

8 Q. Okay.

9 A. Several hours.

10 Q. And the time of the incident is three o'clock in the  
11 morning on November the 28th?

12 A. Correct.

13 Q. And you were aware that he was taken to Spartanburg  
14 Regional?

15 A. Yes.

16 Q. And sometime around noon the following day, on November  
17 the 29th, he passed away?

18 A. Correct.

19 Q. Now, even though your specialty is forensic pathology?

20 A. Yes.

21 Q. I want to make sure I get that correct.

22 You are aware -- I mean you trained as a medical  
23 doctor --

24 A. Yes.

25 Q. -- right?

1 A. Yes.

2 Q. And you know that a brain injury, a gunshot wound to  
3 directly to the brain, is about one of the most dangerous  
4 conditions a human being can face, right?

5 A. Yes.

6 Q. And there is an open wound into the skull, right?

7 A. Yes.

8 Q. And the brain is very susceptible to any type of  
9 infection, right?

10 A. Yes.

11 Q. And, in fact, there is a barrier, I think is, what, the  
12 meninges?

13 A. Yes.

14 Q. Am I pronouncing that correctly?

15 A. Correct.

16 Q. And that's the barrier that keeps infection out of your  
17 brain?

18 A. That's one of them, yes.

19 Q. It's part -- one of the barriers to infection, correct?

20 A. Yes.

21 Q. So when a person comes into the hospital with an injury  
22 of the type that Calvin Todd Morgan has, it's important to  
23 keep that site from becoming infected, right?

24 A. Yes.

25 Q. It's reasonable to assume that when Calvin Todd Morgan

1 was helicoptered into Spartanburg Regional from Gaffney,  
2 that he went into some type of neuro-intensive care unit,  
3 right?

4 A. Correct.

5 Q. And they would have taken steps to make sure that he  
6 didn't get infected, right?

7 A. Yes.

8 Q. From that very open dangerous wound?

9 A. Yes.

10 Q. And one of the steps that they take is wiping off that  
11 area, correct?

12 A. Yes.

13 Q. They wipe it off with disinfectants, right?

14 A. Yes.

15 Q. They bandage it?

16 A. Yes.

17 Q. And those bandages, because you are in a neuro-ICU  
18 unit, are changed fairly frequently?

19 A. Yes.

20 Q. They have to watch that, because the primary thing that  
21 they don't want to get any infection in there. So --  
22 correct?

23 A. Yes.

24 Q. That's one of the main hazards they are trying to guard  
25 for, right?

1 A. Yes.

2 Q. So periodically in the, let's see, twenty-one hours  
3 that he was in the hospital, or twenty some odd hours that  
4 he was in the hospital on November the 28th, and the twelve  
5 hours that he was in a neuro-ICU unit on the 29th, there  
6 would have been periodic cleansing of this area, correct?

7 A. I assume so.

8 Q. That's a fair assumption, correct?

9 A. Yes.

10 Q. And the point of that would have been to wipe off his  
11 skin to make sure no infection gets in there, right?

12 A. Yes.

13 Q. And when they are wiping off his skin to make sure no  
14 infection gets in there, what happens to the powder that  
15 would have hit the skin?

16 A. Well, some of the powder is burning and some is not.  
17 So the powder that doesn't burn could be washed away, but  
18 the powder that's burning would hit the skin and actually  
19 form a little tiny pinpoint burning areas and those would  
20 not be washed away.

21 Q. You don't know how much powder came out of the gun --

22 A. No.

23 Q. -- right?

24 A. No.

25 Q. You don't know anything about the gun that was used,

1 correct?

2 A. No, it would have to be tested ballistically.

3 Q. Right, to determine whether there is any burning powder  
4 that comes out of it, right, or how much burning powder?

5 A. Generally every gun has some burning and some  
6 non-burning powder coming out.

7 Q. But you don't know about this gun. It could have less,  
8 could have more, right?

9 A. Correct.

10 Q. And in the hour that you were working on this case, you  
11 didn't make any determination in that regard, right, about  
12 how much burning powder would have been coming out of this  
13 gun?

14 A. No, I just analyzed the skin and saw that there was  
15 none there.

16 Q. And you just looked at the skin, right?

17 A. Yes.

18 Q. And do you know how many times, in the course of his  
19 treatment at Spartanburg Regional, the area around his wound  
20 would have been cleansed?

21 A. No, I do not.

22 Q. And each time that it was cleansed, it would have  
23 removed powder, correct?

24 A. Yes, but if the skin was burned underneath, it would  
25 not remove the burned area.

1 Q. And what you did in examining his body in this case was  
2 to just glance at the skin? You didn't -- you didn't put it  
3 under a microscope, did you?

4 A. No, we took close-up photographs.

5 Q. Okay. You didn't -- you didn't talk to any of the  
6 doctors who had treated him to see what all they had cleaned  
7 his wound area off with, right?

8 A. Correct.

9 Q. So you don't know how much powder was taken off,  
10 correct?

11 A. Correct.

12 MR. SLADE: I don't have any other questions.

13 THE COURT: Ms. Leskanic, your witness.

14 MS. LESKANIC: May we approach just a moment?

15 THE COURT: You may.

16 (Whereupon, the lawyers approached the bench for  
17 an off-the-record discussion)

18 THE COURT: Ms. Leskanic, you may redirect.

19 MS. LESKANIC: Thank you.

20 REDIRECT EXAMINATION BY MS. LESKANIC:

21 Q. Dr. Ross, you have performed over six thousand  
22 autopsies?

23 A. Yes.

24 Q. Do you have any how many of those would have been  
25 gunshot wound victims?

1 A. Probably a couple hundred. I don't know for sure.

2 Q. Is it something that you are accustomed to dealing with  
3 and looking at in your profession?

4 A. Yes.

5 Q. And I don't believe you were just glancing at Mr.  
6 Morgan's body.

7 Can you, I guess, give us a little bit more detail? I  
8 tried to go into that, but although it's maybe one hour with  
9 him when you are in there, is that the only thing that you  
10 are working on?

11 A. Yes.

12 Q. Are you in there by yourself to perform the autopsy?

13 A. No, I have a team of people helping; some doing the  
14 computer, some doing the actual dissection. I take my own  
15 pictures and do my own diagrams and examine the body myself.

16 Q. Okay. And when you did that examination, it included  
17 his entire body, not just the gunshot wound?

18 A. Yes.

19 Q. And you stated your findings on that.

20 And with regard to the gunshot wound, Mr. Slade asked  
21 you about soot that you were looking for, and we may think  
22 soot is something that comes from a fireplace, but you are  
23 also looking for tattooing and muzzle imprint, is that  
24 correct?

25 A. Yes.

1 Q. All right. Would you please explain the different  
2 things that you would look for on a gunshot wound victim to  
3 determine the distance?

4 A. Yes, a muzzle imprint is the actual end of the gun next  
5 to the skin that will leave abrasions. It will leave a  
6 pattern. That was not present.

7 If a soot, it's like soot in a fire, comes out of the  
8 gun, along with little tiny fragments or particles of  
9 powder. Some of the powder is burning and some is not  
10 burning. And when the burning powder hits the skin, it will  
11 actually leave little red marks where there is actual  
12 burning, like a fire of the skin.

13 The powder that's not burning, if it hits the skin,  
14 will very often stay in the skin. Some of it will fall off.

15 Q. And in this case did you do a close examination of this  
16 gunshot wound, due to the fact that you had to give a cause  
17 of death?

18 A. Yes, we always -- we look at it closely and we take  
19 close photographs to look for just the powder and soot.

20 Q. All right. And the fact that this happened the early  
21 morning hours of November 28th, at three a.m., and you  
22 didn't do your autopsy until November 30th, at ten a.m.,  
23 based on your experience and the autopsies that you have  
24 performed, would you still see the muzzle imprint or  
25 tattooing or indications of burn powder with that amount of

1 time passing?

2 A. Well, I would expect to still see some of the burn  
3 effect.

4 Q. And you did not?

5 A. No, I did not.

6 Q. And that, just like a burn on someone's skin, I assume  
7 cannot be washed away, no matter how much it's cleansed,  
8 once the skin is burned?

9 A. No, but it will -- it will heal and disappear after, I  
10 don't know, several days, probably.

11 Q. Okay. Do you think it would heal and disappear from  
12 the time frame that we are looking at, from the time of the  
13 incident to the time of your autopsy --

14 A. I wouldn't --

15 Q. -- based upon your experience?

16 A. I wouldn't expect it, no.

17 Q. Approximately how many photographs did you take during  
18 the autopsy?

19 A. Twenty-three.

20 Q. I'm sorry?

21 A. Twenty-three.

22 Q. Twenty-three?

23 A. Yes.

24 Q. And was that -- were some of those while the victim was  
25 clothed?

1 A. Yes.

2 Q. And some were after he was unclothed?

3 A. Correct.

4 Q. And did some of those also include the brain area,  
5 where you had to go in and retrieve the lead?

6 A. Yes.

7 Q. Did you also collect blood from the deceased in this  
8 case, Calvin Todd Morgan --

9 A. Yes.

10 Q. -- and turn it over to law enforcement?

11 A. Yes. We collected our toxicology. It was taken by  
12 Tommy Kennedy, the toxicology, the blood, etcetera, along  
13 with the bullet.

14 Q. Thank you very much, Dr. Ross.

15 THE COURT: Recross?

16 MR. SLADE: I have one issue on that part of it.

17 RECROSS EXAMINATION BY MR. SLADE:

18 Q. Dr. Ross, you said that you take your own pictures?

19 A. Yes.

20 Q. And so there are twenty-three pictures that you told  
21 Ms. Leskanic that you took pictures of, that you, yourself,  
22 took within that hour?

23 A. Correct.

24 Q. All right.

25 MR. SLADE: I don't have any other questions.

1 THE COURT: Ladies and gentlemen, there is a  
2 matter that I'm going to take up concerning this witness  
3 outside of your hearing. Again, I'll ask you to step back  
4 to the jury room and not to begin your discussion until I  
5 advise you to do so.

6 (The following takes place outside the presence of  
7 the jury panel)

8 THE COURT: All right, Ms. Leskanic, I indicated  
9 to you that I would give you an opportunity to make a  
10 proffer concerning the photograph that was presented at the  
11 beginning of the trial. At that time I ruled that the  
12 prejudicial effect would outweigh its probative value. Of  
13 course, I'll be glad to hear from you on that, once you have  
14 made your proffer, and we will see where we go from there.

15 REDIRECT EXAMINATION BY MS. LESKANIC:

16 Q. Dr. Ross, I would like to approach, if I may, and just  
17 show you what's been marked State's Exhibit 20. Do you  
18 recognize that?

19 A. Yes.

20 Q. And what does that show?

21 A. It shows the entrance and partial exit wound of this  
22 gunshot wound on autopsy.

23 Q. Okay. And is that a photograph that you took during  
24 the autopsy?

25 A. Yes.

1 Q. All right. And was this examination while you were  
2 taking this photograph part of the determination or what  
3 helped you determine that there was no soot, tattooing, or  
4 muzzle imprint on the victim's skull?

5 A. Yes.

6 Q. Okay.

7 THE COURT: Anything further?

8 MS. LESKANIC: No, Your Honor.

9 THE COURT: Do you wish to examine?

10 MR. SLADE: Well, I'm assuming what she would like  
11 to do is introduce that and show it to the jury.

12 My argument is this, Your Honor. Dr. Ross is an  
13 expert. She's the person who is supposed to interpret. An  
14 expert interprets facts and things that lay people aren't  
15 able to interpret. So she can -- she has testified that she  
16 looked at it and didn't see anything. There is nothing  
17 there for them to see. So this -- showing a picture of the  
18 decedent, this picture of the decedent, doesn't show  
19 anything that lay people, that's relevant to the decision  
20 that they have to make that's not already in with her  
21 testimony.

22 She's testified that there is no stippling,  
23 tattooing, soot, anything like that, so there is nothing for  
24 them to see to interpret it for themselves.

25 She's saying that her expert opinion, which no

1 layman is qualified to draw or to make, is that it's -- she  
2 looked at this and found nothing, so there is nothing for  
3 them to look at.

4 THE COURT: Counsel?

5 MS. LESKANIC: Your Honor, he went into a lengthy  
6 discussion with Dr. Ross about the hospital and the cleaning  
7 of the wound and how her examination, she glanced at the  
8 body. At this point I want the jury to know it's more than  
9 a glance, and these are the things that she is looking at in  
10 order to make her determination.

11 She took twenty-three photographs. This was not a  
12 glancing review during autopsy. And based on what she saw  
13 while she was doing this examination of the gunshot wound to  
14 his head, she was able to make a determination in her expert  
15 opinion that there was no soot, tattooing, or muzzle  
16 imprint, but this is something that she used in order to  
17 come to her determination.

18 THE COURT: Well --

19 MR. SLADE: But only she can interpret it. I  
20 mean, the whole reason that we have her here is she looks at  
21 various things on a person, a decedent's body, and, you  
22 know, interprets those things to reach her testimony. So  
23 there is nothing -- there is nothing there for laymen to  
24 look at.

25 MS. LESKANIC: Your Honor, just because she's an

1 expert, they are still allowed to take what they want to  
2 believe from an expert and take what they don't want to  
3 believe.

4 THE COURT: I charge them that at the close of the  
5 trial, so the fact that an expert's opinion may not be  
6 contradicted or in controversy doesn't mean the jury has to  
7 accept it. That is the charge.

8 MR. SLADE: I agree with that, Your Honor, but --

9 THE COURT: Uh-huh.

10 MR. SLADE: -- we are talking about the methods  
11 and the items that she uses in reaching her opinion, so --  
12 and plus she says there is nothing there, so there is  
13 nothing for them --

14 THE COURT: Well, the lack of tattooing or  
15 gunshot -- it's burn marks is what I heard her, or muzzle  
16 marks, is a fact that is taken into consideration by an  
17 expert in determining the distance of the -- the potential  
18 distance of the weapon from the injury. This photo does  
19 show that.

20 Of course, you did question her very extensively  
21 on that point.

22 MR. SLADE: I did, yes, sir.

23 THE COURT: You also questioned her fairly  
24 extensively about the cleaning of the wound and what effect  
25 that may have had.

1 MR. SLADE: I agree.

2 THE COURT: I'm going to allow it in.

3 MS. LESKANIC: Thank you, Your Honor.

4 THE COURT: I'll now determine that the probative  
5 value will outweigh its prejudicial effect, since the  
6 testimony received thus far does indicate that there is a  
7 difference in the testimony as to the locations of the  
8 parties when the shot was fired. We have had testimony that  
9 he was anywhere from the door to in a bear hug, so there has  
10 been a wide range of testimony in the distance of a weapon  
11 from the wound may now be a very important factor, in my  
12 opinion.

13 MR. SLADE: Thank you, Your Honor.

14 THE COURT: I'm going to allow it in.

15 MS. LESKANIC: Thank you, Your Honor.

16 THE COURT: So I'll allow you to ask her about  
17 that when the jury returns.

18 MS. LESKANIC: Thank you, Your Honor.

19 THE COURT: You may bring the jury back.

20 (The following takes place in the presence of the  
21 jury panel)

22 THE COURT: All right, the record will reflect the  
23 jury has returned to the courtroom.

24 Ladies and gentlemen, I have made a ruling  
25 concerning a contested piece of evidence, and I am going to

1 allow the State to now question the witness concerning that  
2 contested item.

3 You may proceed.

4 MS. LESKANIC: Thank you. May it please the  
5 court?

6 THE COURT: Yes, ma'am.

7 MS. LESKANIC: May I approach the witness?

8 THE COURT: You may.

9 BY MS. LESKANIC:

10 Q. Dr. Ross, I would like to show you what's been marked  
11 State's Exhibit 20. Do you recognize that?

12 A. Yes, this is a photograph I took at the time of the  
13 autopsy on Calvin Morgan.

14 Q. Okay. And this is a photograph that you personally  
15 took?

16 A. Yes.

17 Q. All right.

18 MS. LESKANIC: At this time, Your Honor, we would  
19 offer State's Exhibit 20 for admission.

20 THE COURT: Subject to your previous objections?

21 MR. SLADE: It is, Your Honor.

22 THE COURT: I'm going to admit it subject to those  
23 objections. It would be admitted as marked.

24 (Whereupon, State's Exhibit No. 20 was admitted as  
25 evidence into the record)

1 MS. LESKANIC: May I publish it to the jury, Your  
2 Honor?

3 THE COURT: You may.

4 BY MS. LESKANIC:

5 Q. Dr. Ross, if you don't mind, could you come down here?

6 (Witness off the witness stand)

7 BY MS. LESKANIC:

8 Q. Thank you.

9 I'm going to hand you this laser pointer, and if you  
10 can please explain to the ladies and gentlemen of the jury  
11 what you saw when you took this photograph and what you were  
12 looking for?

13 A. Yes, this photograph is taken from the right side of  
14 the deceased.

15 This is the entrance wound and this is that partial  
16 exit wound.

17 The bullet went this way. A little fragment came out,  
18 but the rest of it stayed inside the skull, inside the  
19 brain.

20 Q. Now, what would you expect to see, as far as powder  
21 burns or muzzle imprint? What would that look like?

22 I understand you didn't see any in this case, but can  
23 you explain to how you came to that conclusion?

24 A. Well, depending on how close the muzzle would be, you  
25 would have little tiny red marks, which would be tattooing

1 of the burning powder.

2 If the skin were not washed, you might see soot, black  
3 soot, and little tiny fragments of powder, which is  
4 basically white on there too, but the burning powder or even  
5 the tattooing, which would be little tiny red marks around  
6 this entrance wound.

7 Q. And those were absent in this case?

8 A. Yes.

9 Q. Thank you very much.

10 (Witness back on the witness stand)

11 BY MS. LESKANIC:

12 Q. Based on your experience, the absence of the tattooing  
13 indicates that the gun was at least two feet away at the  
14 time it was fired?

15 A. It all depends on the type of weapon, the length of the  
16 barrel, the type of ammunition, all kind of things, which a  
17 ballistics expert would have to target shoot to get an exact  
18 distance, but in general we can say it's at least two feet,  
19 or beyond --

20 Q. Okay. Thank you.

21 A. -- from a wound -- from the wound.

22 Q. Thank you very much, doctor.

23 THE COURT: You may cross-examine, subject to your  
24 objection.

25 MR. SLADE: Thank you.

1 RECROSS EXAMINATION BY MR. SLADE:

2 Q. In the photograph we just looked at, you, I think,  
3 conceded that if there wasn't any washing, there would be  
4 soot, right?

5 A. Correct.

6 Q. So what you are admitting is some of any powder that  
7 would have been seen there, according to you, if it had been  
8 close, could have been washed off in the procedure of taking  
9 care of Mr. Morgan, right?

10 A. Yes.

11 Q. And as far as any other hot powder -- all the powder  
12 that wasn't hot would have been certainly washed off in the  
13 procedure taking care of him, right?

14 A. Yes.

15 Q. No issue with you on that, right?

16 A. Right, but sometimes the powder is actually imbedded in  
17 the skin also, the non-burning powder. I have seen that.

18 Q. Of course you have seen that. I'm not arguing that  
19 point with you. I'm not contesting that point with you, but  
20 in order to know if this particular gun has those  
21 characteristics, as you said a moment ago, a ballistics  
22 expert would have to fire it a number of times to develop a  
23 pattern for that, right?

24 A. Yes.

25 Q. So you don't know if the gun involved here is one that

1 would leave that kind the pattern or not, right?

2 A. Well, I know that any burning powder would leave those  
3 tattoo marks.

4 Q. But my point was you don't know how much burning powder  
5 would come out of a gun like that, do you?

6 A. Not that particular gun, no.

7 Q. And what you said a moment ago when Ms. Leskanic was  
8 asking you questions is a ballistics expert would have to  
9 test to know if a little or a lot comes out, right?

10 A. To see what the range is, yes.

11 Q. And this -- because it's in general, you are testifying  
12 in general, these shots could have come from closer than --  
13 or this shot could have come from closer than two feet,  
14 right?

15 A. I don't have any evidence of that.

16 Q. Did you --

17 A. Well --

18 Q. -- find out -- go ahead.

19 A. I didn't understand your question.

20 Again, it depends on the weapon, yes.

21 Q. All right. So it could have been closer than two feet.

22 And you don't have any idea what other treatment, other  
23 than washing, would have taken place in the area of that  
24 wound?

25 A. No, I do not.

1 Q. That certainly would have had the effect of removing  
2 any items that were in the -- any foreign items that were in  
3 the skin, right?

4 A. Correct.

5 Q. Because removing foreign items that are in the skin, or  
6 getting them off, is of primary consideration for keeping  
7 the wound clean, right?

8 A. Yes.

9 Q. And it's very vital to keep the wound clean because of  
10 the potential for infection?.

11 A. Correct.

12 Q. Thank you.

13 THE COURT: Anything further concerning this  
14 point, Ms. Leskanic?

15 MS. LESKANIC: No, Your Honor. Thank you.

16 THE COURT: All right. Ma'am, you may step down.

17 THE WITNESS: Thank you.

18 THE COURT: I assume you would like to have the  
19 witness excused?

20 MS. LESKANIC: Yes, Your Honor, please.

21 THE COURT: Any objection?

22 MR. SLADE: No objection.

23 THE COURT: Ma'am, you are free to go. Thank you  
24 very much.

25 THE WITNESS: Thank you.

1 STATE OF SOUTH CAROLINA )  
 2 COUNTY OF CHEROKEE ) IN THE COURT OF GENERAL SESSIONS  
 3  
 4 THE STATE )  
 5 -vs- ) TRANSCRIPT OF RECORD  
 6 HAYWORD TONY CHAMBERS, ) 2010-GS-11-00607  
 7 DEFENDANT. ) DECEMBER 6, 2012  
 8 GAFFNEY, SOUTH CAROLINA

9 (VOLUME III)

10 B E F O R E:

11 THE HONORABLE ROGER L. COUCH, JUDGE. ; And a Jury.  
 12

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2				
3	S-1	PHOTOGRAPH		244
4	S-2	DIAGRAM		246
5	S-3	PHOTOGRAPH		250
6	S-4	PHOTOGRAPH		250
7	S-5	PHOTOGRAPH		334
8	S-6	PHOTOGRAPH		302
9	S-7	PHOTOGRAPH		303
10	S-8	PHOTOGRAPH		303
11	S-9	PHOTOGRAPH		303
12	S-10	PHOTOGRAPH		303
13	S-11	PHOTOGRAPH		303
14	S-12	SHELL CASING		306
15	S-13	JACKET		285
16	S-14	PHOTOGRAPH		329
17	S-15	PHOTOGRAPH		366
18	S-16	PHOTOGRAPH		364
19	S-17	PHOTOGRAPH		272
20	S-18	PHOTOGRAPH		362
21	S-19	911 TAPE	12	
22	S-20	PHOTOGRAPH		485
23	S-21	PHOTOGRAPH		465
24	S-22	CUTTINGS FROM PANTS		526
25	S-23	PANTS		452

	EXHIBITS		
	NO.	DESCRIPTION	ID. EV.
1			
2			
3	S-24	GUN MAGAZINE AND BULLETS	358
4	S-25	GSR KIT	512
5	S-26	VICTIM'S BLOOD	548
6	S-27	PHOTOGRAPH	274
7	S-28	FINGERPRINTS	692
8	S-29	PHOTOGRAPH	698
9	S-30	PHOTOGRAPH	698
10	S-31	HAT	710
11	S-32	INCIDENT REPORT	803
12			
13	D-1	CALVIN WALLACE STATEMENT	47
14	D-2	CLAUDETTE BYERS STATEMENT	61
15	D-3	PHOTOGRAPHS	84
16	D-4	INDICTMENT 2002-GS-11-670	158
17	D-5	DARRELL MAYBERRY STATEMENT	152
18	D-6	PHOTOGRAPH	261
19			
20	CT-1	INCIDENT REPORT	620
21	CT-2	JURY NOTE	977
22			
23			
24			
25			

1 sworn.

2 SLED AGENT ILA SIMMONS, having been first duly  
3 sworn, testified as follows:

4 THE COURT: Please have a seat on the witness  
5 stand.

6 State your name, please.

7 THE WITNESS: My name is Ila Simmons.

8 THE COURT: Thank you.

9 Your witness, Ms. Leskanic.

10 MS. LESKANIC: Thank you, Your Honor.

11 DIRECT EXAMINATION BY MS. LESKANIC:

12 Q. Where are you employed, Ms. Simmons?

13 A. I am employed at the South Carolina Law Enforcement  
14 Division in the forensics laboratory trace evidence  
15 department.

16 Q. All right. And what are your duties in that  
17 department?

18 A. We analyze gunshot residue, gunpowder residue. We  
19 perform fiber, paint, and glass comparisons, as well as  
20 analyzing post-blast residue from explosives and fire  
21 debris.

22 Q. How long have you been employed with SLED?

23 A. Thirteen years.

24 Q. Have you been in the trace evidence lab for the entire  
25 thirteen years?

1 A. Yes, ma'am.

2 Q. Okay. Could you tell the jury about your education,  
3 training and experience to work in the trace evidence lab at  
4 SLED?

5 A. Yes, ma'am.

6 I have a Bachelors of Science Degree in Chemistry.  
7 After completing that I came to work at SLED.

8 My first three years there I worked with a  
9 court-qualified SLED certified trace evidence examiner.  
10 During that time I had to learn how to process and analyze  
11 trace evidence. I had to prove this by taking practical and  
12 written examinations and completing them with all one  
13 hundred percent efficiency.

14 I'm a member of the Southern Association of Forensic  
15 Science, the American Academy of Forensic Science, and each  
16 year I have to take a test submitted from an external agency  
17 to prove that I'm still proficient in every area of trace  
18 evidence that I analyze.

19 Q. And what exactly is trace evidence?

20 A. It is the analysis of many things in forensics. We  
21 analyze gunshot residues, or any small items that may be  
22 found, generally microscopic items that can be found, or  
23 small items that are found at a scene.

24 Q. Okay. And what -- specifically as it links to this  
25 case, what is gunshot residue?

1 A. Gunshot residue is a mixture of microscopic chemicals  
2 that come out of a gun when it's discharged.

3 In the movies you usually see a big cloud of smoke come  
4 out of the gun. The microscopic chemicals are in that  
5 cloud. They can get on anything that makes contact with  
6 that cloud, including the hands of the person who is  
7 shooting the weapon, or the clothing of the person who is  
8 shooting the weapon.

9 Q. All right. So you get gunshot residue when you fire a  
10 gun?

11 A. Yes, ma'am, that is one way.

12 Q. All right. And what are other ways that you can get  
13 gunshot residue?

14 A. If you are in close proximity to a gun when it's  
15 discharged. If the gun is very close to you, it may be on  
16 the side of you, or in front of you; or if you handle  
17 something that has gunshot residue on it.

18 Q. Okay. And how do you get rid of gunshot residue?

19 A. Gunshot residue has the consistency to salt. It's very  
20 easily removed. If you get it on your hands and you wipe  
21 your hands on your pants, wipe them on a rag, wash them, use  
22 hand sanitizer, shower. Even sweating can cause the gunshot  
23 residue to be completely removed.

24 Q. Okay. Have you ever testified as an expert in trace  
25 evidence in a courts South Carolina?

1 A. Yes, ma'am, I have.

2 Q. And approximately how many times have you been  
3 qualified as an expert?

4 A. Over two hundred times.

5 Q. Okay.

6 MS. LESKANIC: Your Honor, at this time I would  
7 offer Ila Simmons as an expert in the field of trace  
8 evidence, specifically detection of gunshot residue.

9 THE COURT: Any objection?

10 MR. SLADE: None, Your Honor.

11 THE COURT: All right, ladies and gentlemen, I  
12 will qualify this witness as an expert within that field. I  
13 have explained to you what that means.

14 You may proceed, Ms. Leskanic.

15 MS. LESKANIC: Thank you, Your Honor.

16 BY MS. LESKANIC:

17 Q. Did you receive some items in this case that you were  
18 asked to test for gunshot residue?

19 A. Yes, ma'am, I did.

20 Q. And what were those items?

21 A. I received a gunshot residue kit and I also received a  
22 coat.

23 Q. Okay. And we will start with the gunshot residue kit.  
24 Can you tell us what that is?

25 A. A gunshot residue kit is a standardized kit that is

1 composed of two portions.

2 The first portion is a double-sided sticky tape that  
3 has a handle. This double-sided sticky tape is dabbed over  
4 the hands of the person believed to have come in contact  
5 with gunshot residue. A sample is collected from the right  
6 palm, another sample from the back of the right hand, a  
7 sample from the left palm, and a sample from the back of the  
8 left hand.

9 After that is completed, each vial is labeled right  
10 palm, right back, left palm, left back. They are sealed,  
11 put away.

12 And then the second portion is two cotton-tip swabs  
13 with a small amount of nitric acid placed on them. They are  
14 also kind of rubbed over the same areas and put in vials  
15 that are labeled.

16 Q. Okay. And I know that you have already gone over it  
17 briefly, but gunshot residue on the hand, is there a certain  
18 amount of time in which SLED will not even test for gunshot  
19 residue on the hand?

20 A. Yes, ma'am, on a living individual gunshot residue will  
21 not remain on the hands longer than six hours. Even if you  
22 don't do any of the things that I mentioned before, like  
23 washing your hands or hands sanitizing, it will not remain  
24 on the hands more than six hours. So on a living individual  
25 we won't even analyze the kit that's submitted six hours

1 after a shooting incident.

2 Q. Okay. What if someone puts their hand in their pocket  
3 to get a set of car keys? Would that take the gunshot  
4 residue off of the their hands?

5 A. Yes, ma'am.

6 Q. All right. Now, in this case you received that gunshot  
7 residue kit from our law enforcement agency, right?

8 A. Yes, ma'am.

9 Q. The Gaffney City Police Department?

10 A. Yes, ma'am, I believe so.

11 Q. All right. And did you analyze that?

12 A. I did.

13 Q. And what were the results of your analysis?

14 A. The quantities of metals that we found did not indicate  
15 the presence of gunshot residue.

16 Q. Okay. And that was a kit on Hayward Chambers, is that  
17 correct?

18 A. Yes, ma'am, it was labeled as Hayward Tony Chambers.

19 Q. Okay. Did you receive another item --

20 A. Yes, ma'am.

21 Q. -- for gunshot residue?

22 A. Yes.

23 Q. And what was that?

24 A. It was a denim coat jacket.

25 Q. Let me show you what's labeled as State's Exhibit 13.

1 Take a moment and look at that and tell me if you recognize  
2 that.

3 Take your time. Put your gloves on, if you need to.

4 A. Yes, ma'am.

5 Q. Is that the coat that you received belonging to the  
6 defendant Hayward Chambers --

7 A. Yes.

8 Q. -- and you were asked to test that for gunshot residue?

9 A. Yes, ma'am, it is marked with my initials, our  
10 laboratory identification number, as well as an item number  
11 and date.

12 Q. I'm going to hold that for a moment.

13 When you received this, what do you do first, if you  
14 can walk the jury through that procedure?

15 A. Okay. I would take the garment out, lay it on clean  
16 butcher paper and just look at the garment. And then I  
17 would take sticky tabs or the double-sided sticky tape that  
18 I was talking about before from the chest area and the arms.

19 Q. Okay. Let me show you what's been marked State's  
20 Exhibit 25. Would you take a look at those and tell me if  
21 you recognize that?

22 A. Yes, ma'am.

23 Q. And can you tell the jury what that is, please?

24 A. These are the particle lifts or the double-sided sticky  
25 tape that I removed from the jacket.

1 Q. Okay. So you first do a visual examination of the  
2 jacket?

3 A. Yes, ma'am.

4 Q. And when you did a visual examination of the jacket,  
5 did you notice anything that stood out to you that you would  
6 need to send to the forensics department of SLED after you  
7 finished your GSR testing?

8 A. I did not notice anything, but I'm not necessarily -- I  
9 was looking mainly for just anything that's outstanding.

10 Q. Okay. You didn't notice anything outstanding and then  
11 you began your test for gunshot residue?

12 A. Yes, ma'am.

13 Q. And you placed the sticky tape --

14 Can you come down and just show the jury exactly what  
15 you would do with the coat when it's laid out?

16 (Witness off the witness stand)

17 A. I take the sticky tape, which is on a handle.  
18 Therefore, I would never -- my hand would never touch the  
19 tape, the sticky tape. And I would take it and I would just  
20 dab it over the areas of the jacket. I would take a sample  
21 from the front of his sleeve, a sample from the back of the  
22 sleeve, a sample from the chest area, and also from this  
23 sleeve, and they would all be six separate samples.

24 Q. Okay. Thank you.

25 (Witness back on the witness stand)

1 BY MS. LESKANIC:

2 Q. After you took those samples, what did you do with the  
3 samples?

4 A. I then placed them on a scanning electron microscope,  
5 which is a microscope that can see down a hundred thousand  
6 times greater than the human eye can see, and I would  
7 analyze them for the presence of gunshot residue.

8 Q. And what were the results of your examination?

9 A. Gunshot residue was found on the samples collected from  
10 the jacket.

11 Q. From all of the samples, or just certain areas of the  
12 coat?

13 A. It was -- I found round lead and gunshot residue on  
14 every sample that was collected.

15 Q. So the chest area and both samples from both arms?

16 A. Yes, ma'am.

17 Q. Okay.

18 MS. LESKANIC: Your Honor, at this time the State  
19 would offer State's Exhibit 25 for admission as evidence.

20 MR. SLADE: No objection.

21 THE COURT: Any objection?

22 MR. SLADE: No.

23 THE COURT: Without objection, it would be  
24 admitted as it's been marked.

25 (Whereupon, State's Exhibit No. 25 was admitted as

1 evidence into the record)

2 THE COURT: You may proceed.

3 MS. LESKANIC: Thank you, Your Honor.

4 BY MS. LESKANIC:

5 Q. When you are looking for gunshot residue, and correct  
6 me if I'm wrong, I don't believe it tells you how much  
7 gunshot residue is there? It just -- you are testing for  
8 the presence of gunshot residue, is that correct?

9 A. That's correct.

10 Q. Thank you. Please answer any questions that Mr. Slade  
11 has for you.

12 THE COURT: Mr. Slade, your witness.

13 MR. SLADE: Thank you, Your Honor.

14 THE COURT: Yes, sir.

15 CROSS EXAMINATION BY MR. SLADE:

16 Q. Agent Simmons, I have a report here that I believe you  
17 did in this case. If you could just take a look at it and  
18 make sure we are on the same page here?

19 A. Yes, sir.

20 Q. Okay. Did you do any other formal report in this case?

21 A. No, sir, I did not.

22 Q. And I'm not asking about your notes or anything that  
23 you need to compile it, just this two page report is the  
24 full extent of your written report on what testing that you  
25 did?

1 A. That's correct.

2 Q. That you just testified to?

3 A. Yes, sir.

4 Q. Okay. Now, in the first part of your testimony, Agent  
5 Simmons, you said that the basis for doing this type of  
6 analysis you did is that -- I think you described it as a  
7 cloud of smoke comes out of the barrel of a fired weapon,  
8 correct?

9 A. That's correct.

10 Q. And that cloud -- it's not really a cloud like in the  
11 movies, but it's still a cloud of gunpowder dust. Is that a  
12 fair way to describe it?

13 A. Yes, sir, it's the burning components of the gun.

14 Q. Yeah.

15 And that cloud of gunpowder just comes out of the  
16 barrel and goes in whatever direction it's going in, right?

17 A. Yes, sir, it's usually in a cone shape.

18 Q. Right.

19 A. It goes out like this and some of it envelops back over  
20 the hands of the person shooting the gun.

21 Q. And it can go in the direction -- most of it goes in  
22 the direction that the projectile is fired, right?

23 A. That's correct.

24 Q. So between a shooter and the person who is being shot,  
25 most of the powder is going to go in the direction of the

1 person being shot, correct?

2 A. That's correct.

3 Q. And you know the person who was shot in this case was a  
4 man named Calvin Todd Morgan?

5 A. I only know that from the notes that I received.

6 Q. Of course. You only know what you are sent from the  
7 agency that gathers the information in this case, correct?

8 A. That's correct.

9 Q. And from that you know that the decedent in this case  
10 is Calvin Morgan, and I think that's listed right up here on  
11 the front page of your formal report, right?

12 A. Yes, sir.

13 Q. My question for you, Agent Simmons, is did you test any  
14 article of clothing from Calvin Todd Morgan?

15 A. No, sir, I did not.

16 Q. All right. You didn't test his pants, his shirt, his  
17 shoes, jacket, anything?

18 A. No, sir.

19 Q. All right.) And if Calvin Todd Morgan was the  
20 shooting -- the person who was shot in this, most of the  
21 powder and projectile would have been -- excuse me, most of  
22 the powder would have been coming towards his body, his  
23 clothing, correct?

24 A. Yes, sir, it should have been, unless there was a  
25 strong --

1 Q. Right.

2 A. -- wind or something blowing it in a different  
3 direction.

4 Q. And so had you had any of Calvin Todd Morgan's  
5 clothing, you could have performed the same electron  
6 microscope test on his clothing, his pants, whatever he had  
7 on his upper body, caps, shoes, etcetera, to test for  
8 whether or not there was gunpowder residue on him, correct?

9 A. On a victim's clothing, anyone who has sustained a  
10 gunshot wound, we won't analyze the garments where the  
11 gunshot wound is, because any gunshot residue -- we wouldn't  
12 be able to determine if that person was shooting the gun or  
13 if it came from the fact that they were being shot at.

14 Q. If the person was shot in the head?

15 A. It -- that is a possibility. We could have analyzed a  
16 garment that was farther away.

17 Q. Right, you could analyze the shirt, or his pants, or  
18 jacket?

19 A. That's a possibility.

20 Q. So where we are now, we are not going to know if there  
21 was any of that gunpowder residue on Mr. Morgan's clothing,  
22 correct?

23 A. No, sir, I do not.

24 Q. And who makes the decision about sending the items to  
25 be analyzed by your electron microscope to you?

1 A. It would be made by the submitting agency.

2 Q. Okay. And I didn't mean -- I wasn't trying to ask for  
3 a name. I just meant which agency, but it would be the city  
4 police department in this case, correct?

5 A. It would be the agency handling the case is the ones  
6 that sends in the evidence.

7 Q. So you just test what they send you?

8 A. Yes, sir, when the requests are made.

9 Q. My next series of questions, Agent Simmons, concerns  
10 the gunpowder residue itself. I think you said that  
11 gunpowder residue can leave the body that it's on by sweat,  
12 right?

13 A. Yes, sir.

14 Q. You can sweat it off?

15 A. Uh-huh.

16 Q. It can be wiped off or washed off?

17 A. Yes, sir.

18 Q. If some type of, say, antibiotic, or any other agent,  
19 chemical agent, used to clean a wound, would that clean off  
20 gunpowder residue?

21 A. Yes, sir, it can.

22 Q. And, in any case, gunpowder residue doesn't stay very  
23 long?

24 A. No, sir.

25 Q. So since you are expert on gunpowder residue, I think I

1 can ask you a question, a hypothetical question, about  
2 gunpowder residue.

3 If someone were shot in the head and received a bullet  
4 wound to the head and was then transported to say a neuro IC  
5 unit, ICU unit of a hospital, and the medical staff there  
6 took the procedures that are normally taken to clean a  
7 bullet wound to the head, would that have the effect of  
8 cleaning off gunpowder residue?

9 A. Yes, sir, it can.

10 Q. And my last series of questions is when you were  
11 explaining to us about how you test for gunpowder residue,  
12 and particularly when you tested it here, you used an  
13 electron microscope that I believe you said magnifies how  
14 many times?

15 A. It can magnify down a hundred thousand times greater  
16 than the human eye can see.

17 Q. Okay. And would you say that's the best method of  
18 looking for gunpowder residue on any surface?

19 A. Yes, sir.

20 MR. SLADE: I don't have any other questions for  
21 this witness, Your Honor.

22 THE COURT: Redirect, Ms. Leskanic?

23 MS. LESKANIC: Yes, Your Honor, briefly.

24 THE COURT: Yes, ma'am.

25

1 REDIRECT EXAMINATION BY MS. LESKANIC:

2 Q. How far can gunshot residue travel?

3 A. It's dependent upon the weapon and the type of  
4 ammunition, but with a large caliber handgun, like a .45,  
5 maybe five to six feet. With a smaller caliber handgun,  
6 like a .22, maybe a foot to a foot and a half.

7 Q. This was a .380, I believe.

8 A. That's probably more in the mid range. That's probably  
9 going to be around three feet.

10 Q. Okay. Now, gunshot residue I think you have testified  
11 that has the consistency of salt, is that right?

12 A. Yes, ma'am.

13 Q. So that is not the same thing as what would be left --  
14 and you may not know the answer to this. I just want to  
15 make sure that we are clear. The gunshot residue is not the  
16 same thing that would leave tattooing or burn imprints on  
17 someone's head that had been shot with a gun? Are those  
18 different things?

19 A. Yes, ma'am, they are.

20 Q. So the gunshot -- if you will explain it, please.

21 A. Stippling and tattooing occurs from gunpowder.

22 Gunpowder is also a component in a cartridge and comes  
23 out of the gun when it's discharged. It's much more dense  
24 than gunshot residue. In fact, it can be seen with the  
25 human eye.

1           And stippling and tattooing occurs when this gunpowder  
2 strikes the skin and either gets embedded under the skin or  
3 is so close to the skin that it burns the skin. So it isn't  
4 like gunshot residue can just be wiped away. It's actually  
5 embedded or burned onto the skin.

6 Q.    Thank you very much.

7           THE COURT:   Recross?

8           MR. SLADE:   I don't have any further questions.

9           THE COURT:   Thank you. You may step down, ma'am.

10          I would assume that you would like to have the  
11 witness excused?

12          MS. LESKANIC:  Yes, Your Honor.

13          THE COURT:   Any objection?

14          MR. SLADE:   No objection.

15          THE COURT:   You are free to go, if you would like,  
16 ma'am. Thank you very much.

17          The State may call its next witness.

18          MS. LESKANIC:  The State calls Verona Gibson.

19          THE COURT:   Ma'am, come forward and be sworn,  
20 please.

21          SLED AGENT VERONA GIBSON, having been first duly  
22 sworn, testified as follows:

23          THE COURT:   Please have a seat. And when you are  
24 comfortable, state your name for us.

25          THE WITNESS:  Verona Gibson.

1 THE COURT: Thank you.

2 Ms. Leskanic, your witness.

3 MS. LESKANIC: Thank you, Your Honor.

4 DIRECT EXAMINATION BY MS. LESKANIC:

5 Q. Ms. Gibson, can you please tell the jury where you are  
6 employed?

7 A. I'm employed with SLED or the South Carolina Law  
8 Enforcement Division.

9 Q. All right. And how long have you been employed with  
10 SLED?

11 A. Approximately four and a half years.

12 Q. And what have you done during your four and a half  
13 years at SLED?

14 A. I am, and have always been, a forensic technician in  
15 the DNA evidence processing department.

16 Q. And what does that entail?

17 A. Usually we get larger pieces of items, such as  
18 clothing, bed linens, car parts, and process those for  
19 either body fluids or what we call touch or ownership, which  
20 is skin cells.

21 Q. All right. And what is your education or training in  
22 order -- or just experience in order to be able to perform  
23 your duties?

24 A. I have an Associates's Degree from Tri-County Technical  
25 College, an Associate's Degree from Greenville Technical

1 College in Criminal Justice with an emphasis on forensics.

2 We go through a training process at SLED. My training  
3 was done under two court-qualified experts, and then we must  
4 pass a test before we are allowed to do case work that shows  
5 that we know how to do our job.

6 Q. So you for the last four and a half years have been  
7 doing evidence processing in the DNA lab with SLED?

8 A. Yes, ma'am.

9 Q. All right.

10 MS. LESKANIC: Your Honor, at this time I would  
11 offer Ms. Gibson as an expert in the field of DNA evidence  
12 processing.

13 MR. SLADE: I don't have any objection to her.

14 THE COURT: All right, without objection then we  
15 will qualify her as expert within the field.

16 You may proceed.

17 MS. LESKANIC: Thank you, Your Honor.

18 BY MS. LESKANIC:

19 Q. Ms. Gibson, in this case did you receive some items  
20 from the Gaffney City Police Department to do an analysis  
21 on?

22 A. Yes, ma'am, I did.

23 Q. And when did you receive those items?

24 A. Those items came into my custody on 6-15 of 2012.

25 Q. And what did you receive?

1 A. A pair of blue jeans, T-shirt, socks, and underwear.

2 Q. I'm going to show you what's been marked State's  
3 Exhibit 23.

4 You need to take the items out. This has previously  
5 been admitted into evidence, but I just want to see if these  
6 are the items that you looked at in this case.

7 And in looking at this bag, does this appear to be  
8 something that you have seen before?

9 A. Yes, ma'am, that is labeled with our item number, my  
10 initials, the case number that SLED gives each case, and  
11 then the date it was processed. The same information is on  
12 the paper on the outside.

13 Q. Okay.

14 A. Yes, ma'am, these are the items that I received in this  
15 case.

16 Q. And can you tell the jury again what items those are,  
17 what's contained in there?

18 A. It is a pair of jeans, T-shirt, socks, and underwear.

19 Q. All right. And what analysis did you do on each of  
20 these items?

21 A. The request for these items was for blood, so we  
22 visually examined the items to see if there is any spots  
23 that could possibly be blood stains.

24 Q. All right. Do you do anything other than a visual  
25 examination?

1 A. Some items we may use what's called an alternate light  
2 source. It's a violet light that helps us see the stains  
3 that could possibly be blood.

4 Q. All right. When you looked at the shirt --

5 A. Yes, ma'am.

6 Q. -- can you tell the jury what your findings are with  
7 this item?

8 A. There were no apparent stains that could possibly be  
9 blood.

10 Q. Okay. So no blood on the shirt?

11 A. No, ma'am.

12 Q. Okay. Did you do an analysis on the socks?

13 A. No, ma'am.

14 Q. All right. And did you do an analysis on the  
15 underwear?

16 A. No, ma'am.

17 Q. All right. Did you do an analysis on the blue jeans?

18 A. Yes, ma'am.

19 Q. Okay. And what -- how did you begin your analysis with  
20 the blue jeans?

21 A. This paper is the butcher paper that Ms. Simmons  
22 referred to. We also use that to cover the table.

23 The items are spread out and it's a visual exam on most  
24 items, just to see if there is any areas that look like it  
25 could possibly be a blood stain.

1 Q. Okay. If you see something that looks like it could be  
2 blood, do you do further testing?

3 A. We do. We have -- it's just a simple chemical color  
4 change test. We swab the area with a morrison. It looks  
5 like a big Q-Tip. We drop two chemicals on it and if it  
6 turns bright pink, there is a possibility that it could be  
7 blood.

8 Q. Okay. And then what do you do with that?

9 A. Some of those areas are then cut, packaged in another  
10 envelope, heat sealed in a plastic bag and then forwarded to  
11 the DNA department for further testing.

12 Q. Okay. And did you make cuttings in this case?

13 A. Yes, ma'am, I did.

14 Q. Okay. Let me show you what's been marked State's  
15 Exhibit 22. Take a look at that.

16 A. Yes, ma'am, this is the cuttings from the jeans. The  
17 cuttings are sealed in the coin envelopes. My initials and  
18 the date are also on the seal on the back. Then we put it  
19 in the plastic heat-sealed pouch for transport to the other  
20 departments. My initials and the date are up here, as well  
21 as the information I filled out on the front.

22 Q. Okay.

23 MS. LESKANIC: Your Honor, at this time we would  
24 offer State's Exhibit 22 for admission.

25 THE COURT: Any objection?

1 MR. SLADE: I don't have any objection.

2 THE COURT: Without objection, it would be  
3 admitted as it's been marked.

4 You may publish.

5 (Whereupon, State's Exhibit No. 22 was admitted as  
6 evidence into the record)

7 MS. LESKANIC: Thank you.

8 BY MS. LESKANIC:

9 Q. Ms. Gibson, if you don't mind, I'm going to ask you to  
10 step down and I'm going to take the pants out and let you  
11 tell the jury what you did with this item.

12 (Witness off the witness stand)

13 A. Here you can see these are the positive areas. This is  
14 a negative area. This is a positive area. This is another  
15 positive area.

16 I cut this area out, sealed it up and sent it on.

17 We marked the positive areas so that we know they're  
18 sample lifts, and as we have to take other cuttings, we know  
19 where to go.

20 This is another cutting I took. There is more stains  
21 in there.

22 And then there is another cutting, and then there is  
23 more staining in there. There is another positive area that  
24 I marked.

25 BY MS. LESKANIC:

1 Q. And I see a mark up on the top right side?

2 A. That's another negative area.

3 Q. So the equal sign --

4 A. Means negative. We use an equal so that it's not one  
5 line, which could alternatively made into a positive.

6 Q. Okay. So if we see an equal sign, that means that the  
7 portion you thought may have been blood actually was not  
8 blood?

9 A. Correct.

10 Q. And if we see a positive, that means that you left  
11 that, that is blood in that area?

12 A. That's positive for blood, yes, ma'am.

13 Q. And then you cut out each of these cuttings to test  
14 positive for potential blood?

15 A. Correct.

16 Q. And the same thing on the back of the pants. You have  
17 one positive blood --

18 A. Yes, ma'am.

19 Q. -- there and this was a cutting of potential blood.

20 A. And there were no areas there.

21 Q. No areas there?

22 A. Right.

23 Q. So these are all of the areas. If they had a positive  
24 or they are cut, those were the areas in which found blood,  
25 or potential blood on this item?

1 A. Yes, ma'am.

2 Q. Thank you.

3 (Witness back on the witness stand)

4 BY MS. LESKANIC:

5 Q. If you would, on Exhibit 22 can you just show the jury  
6 what the cuttings look like?

7 A. This is the cutting that was marked 17.1. That's the  
8 area that I cut.

9 Q. And then what do you do with that cutting? That goes  
10 to someone else --

11 A. It is --

12 Q. -- in the DNA department?

13 A. It is sealed in this envelope. You can still see my  
14 initials and the date on the back, and then forwarded onto  
15 the DNA department.

16 Q. So you don't do any of the testing to determine whose  
17 blood that is? You are just making an initial determination  
18 that this is possibly blood and needs to be further  
19 analyzed?

20 A. Yes, ma'am. The DNA department really doesn't have  
21 room for really large items, so we take them down to  
22 manageable smaller pieces for the DNA department to handle.

23 This is the 17.2, the area that was marked 17.2.

24 And this is the area that was marked 17.3.

25 Q. And those are the three cuttings that you then sent to

1 Amanda Webb to perform the DNA testing on?

2 A. Yes, ma'am.

3 Q. Thank you. Please answer any questions that Mr. Slade  
4 has.

5 THE COURT: Mr. Slade, your witness.

6 MR. SLADE: Thank you, Your Honor.

7 CROSS EXAMINATION BY MR. SLADE:

8 Q. Did you send 17.3 to Ms. Webb for testing as well?

9 A. Yes, sir.

10 MR. SLADE: I don't have any other questions, Your  
11 Honor.

12 THE COURT: Anything on redirect?

13 MS. LESKANIC: No, Your Honor.

14 THE COURT: Ma'am, you may step down, and I would  
15 assume you would like to excuse the witness?

16 MS. LESKANIC: Yes, Your Honor.

17 THE COURT: Any objection, Mr. Slade?

18 MR. SLADE: No, Your Honor.

19 THE COURT: Ma'am, you are free to go when you  
20 would like. Thank you very much.

21 You may call your next witness.

22 MS. LESKANIC: The State calls Amanda Webb.

23 SLED AGENT AMANDA WEBB, having been first duly  
24 sworn, testified as follows:

25 THE COURT: Have a seat. Once you are seated,

1 please state your name, please.

2 THE WITNESS: Amanda Webb.

3 THE COURT: Ms. Leskanic, your witness.

4 MS. LESKANIC: Thank you.

5 DIRECT EXAMINATION BY MS. LESKANIC:

6 Q. Ms. Webb, could you please tell the jury where you are  
7 employed?

8 A. I'm employed with the South Carolina Law Enforcement  
9 Division in the DNA department.

10 Q. And what are your duties in the DNA department?

11 A. I receive items of evidence from criminal cases and  
12 test those to try to develop a DNA profile.

13 Q. And what is your education, training and experience to  
14 allow you to do that?

15 A. I have a Bachelors of Science in Chemistry. I have a  
16 Masters of Science in Forensic Science.

17 And after I graduated, I was employed at SLED and I  
18 trained for approximately a year and a half under a  
19 qualified analyst. And I have also had to take written  
20 exams to prove my competence or ability to perform the  
21 tests, and I do have to retest annually to make sure that  
22 I'm still able to perform the duties.

23 Q. Okay. How long have you been employed with SLED?

24 A. Approximately five years.

25 Q. Have you been in the DNA department for the entire five

1 years?

2 A. Yes, I have.

3 Q. And you are actually a forensic scientist in the DNA  
4 department, is that correct?

5 A. Yes, that's correct.

6 Q. Have you been asked to testify in other cases in South  
7 Carolina?

8 A. Yes, I have.

9 Q. And have you been qualified as an expert in those  
10 cases?

11 A. Yes, ma'am.

12 Q. Approximately how many times?

13 A. About twelve times.

14 MS. LESKANIC: Your Honor, at this time we would  
15 offer Amanda Webb as an expert in DNA analysis as a forensic  
16 scientist.

17 THE COURT: Any objection?

18 MR. SLADE: No, sir.

19 THE COURT: All right. Without objection, she  
20 would be qualified as an expert within that field, and you  
21 may proceed.

22 BY MS. LESKANIC:

23 Q. Ms. Webb, I would like to start by showing you what's  
24 been marked State's Exhibit 26, the blood standard of the  
25 victim in this case. Can you tell me if you received that?

1 A. Yes, I did. I can tell because I recognize the lab  
2 number and the item number. And also where I opened the  
3 pouch, I have sealed it back and dated and initialed that.

4 Q. Okay. So you received a blood standard belonging to  
5 Calvin Todd Morgan, the victim in this case?

6 A. Yes.

7 Q. Did you also receive cuttings that we just heard  
8 about --

9 A. Yes, I did.

10 Q. -- from the pants, and that is State's Exhibit 22? Did  
11 you receive those from Ms. Gibson?

12 A. Yes, I did.

13 Q. And what did you do when you received those two items  
14 of evidence?

15 A. When I received the cuttings from the evidence, I look  
16 to see if there is --

17 In this case there was a blood request, and so I look  
18 on the items to see if I can see a stained area, and I would  
19 cut from any stained area that looks like it could be blood,  
20 and then I do my testing to try to develop the DNA profile,  
21 which I did in this case. So then, therefore, I work the  
22 standards.

23 And the standard is simply, it's a DNA collection from  
24 either a victim or the suspect. That way we know who the  
25 DNA is from. We can develop a profile from that and then

1 compare the evidence to the standards to try to determine  
2 which person that it came from.

3 Q. So the first thing that you are going to do is take the  
4 cuttings and develop a DNA profile from what you find on the  
5 cuttings, is that correct?

6 A. Yes, that's correct.

7 Q. All right. Is the material that was found on the  
8 cuttings, was that blood?

9 A. I did not test it for blood, but Verona Gibson in the  
10 evidence processing department did, and her test was  
11 positive for blood.

12 Q. Okay. So you received this cutting for blood and then  
13 you develop a DNA profile from that to try to determine who  
14 that blood belongs to, is that correct?

15 A. Yes, that's correct.

16 Q. Okay. What is DNA? How do you do this?

17 A. Sure. DNA is a chemical in the body. It's -- you get  
18 half of it passed down from your mom and half of it passed  
19 down from your father, and it's unique to each individual,  
20 except in the case with identical twins. Identical twins  
21 will have the same DNA profile. Other than that, every  
22 individual has their own DNA profile. And then that way we  
23 can use it to compare the evidence to try to determine whose  
24 DNA was left at a crime scene.

25 Q. Okay. So were you -- so first you developed this DNA

1 profile from the cuttings?

2 A. Yes.

3 Q. But you don't have anything to compare it to at that  
4 point?

5 A. Correct.

6 Q. All right. So what's your next step?

7 A. To see if I do have something to compare it to any  
8 standards, and in this case I did. So that's when I at a  
9 later date got a DNA profile from the standards submitted in  
10 this case.

11 Q. Okay. And what were the results? Did you have to then  
12 perform a DNA profile of the blood standard that was  
13 submitted on Calvin Todd Morgan?

14 A. Yes, I did.

15 Q. All right. So you have a DNA profile from the blood  
16 found on the clothing, and then you have a separate DNA  
17 profile on Calvin Todd Morgan?

18 A. Yes, correct.

19 Q. And what do you do with those two profiles?

20 A. I do a comparison of those to see if they could either  
21 match or non-match.

22 Q. And what were your results in this case?

23 A. In this case I developed a DNA profile from the  
24 cuttings from the blue jeans. I did 17.1 and 17.2 and they  
25 matched the DNA profile of Calvin Morgan.

1 Q. And what was the reliability of that test?

2 A. After we declare that there is a match to a person, to  
3 an evidence sample, you have to calculate the statistical  
4 calculation. And in this case the probability of randomly  
5 selecting an unrelated individual having a DNA profile  
6 matching these items is approximately 1 in 1.2 quadrillion.  
7 And essentially what means is how rare or unique the DNA  
8 profile is, and in this case it was 1.2 quadrillion. And to  
9 put that in perspective, I know it's large numbers, is it  
10 goes million, billion, trillion, quadrillion.

11 Q. So very unlikely that this belonged to anyone other  
12 than Calvin Todd Morgan?

13 A. Yes, that's correct.

14 Q. Do you know what the population, the world population,  
15 is at this time?

16 A. It's approximately seven billion.

17 Q. So it's not even in the quadrillions?

18 A. No, it's not.

19 Q. Now, let's look at the items that you tested, the  
20 cuttings. You tested 17.1?

21 A. Yes, correct, and 17.2.

22 Q. All right. Could you show the jury, please, where  
23 those cuttings were located on the pants?

24 A. Yes, ma'am.

25 (Witness off the witness stand)

1 A. 17.1 is from this lower hem region. I can tell that  
2 because it's marked. It's been numbered by the evidence  
3 processing technician.

4 And 17.2 is this cutting from the front on the other  
5 leg.

6 BY MS. LESKANIC:

7 Q. All right. Now, let me ask you while you are here, you  
8 also received a cutting on sample 17.3, is that correct?

9 A. Yes, that's correct.

10 Q. And did you test that sample?

11 A. I did not test that sample.

12 Q. Why?

13 A. We -- it's a policy of SLED to take a representative  
14 sampling of items, and in this case I already had two items  
15 that I tested and was able to develop a profile from. And  
16 with those profiles I was able to make a connection, if you  
17 will, from the victim to the suspect. And once we are able  
18 to make that connection, then it's just SLED policy that we  
19 don't perform any other testing.

20 Q. So the testing that you had, the fact you at 1 in 1.2  
21 quadrillion that the blood on the pants belonged to Calvin  
22 Todd Morgan?

23 (Witness back on the witness stand)

24 A. Yes, that's correct.

25 BY MS. LESKANIC:

1 Q. So at that point you have another sample that's tested  
2 positive for blood in the same location --

3 A. Yes.

4 Q. -- and you just didn't run another test on that sample?

5 A. That's correct.

6 Q. Okay. Thank you.

7 Please answer any questions that Mr. Slade has for  
8 you.

9 THE COURT: Mr. Slade, your witness.

10 MR. SLADE: Thank you, Your Honor.

11 THE COURT: Yes, sir.

12 CROSS EXAMINATION BY MR. SLADE:

13 Q. Agent Webb, I believe we talked a couple weeks ago, or  
14 last week?

15 A. Yes.

16 Q. Can you tell us when you did the testing, the DNA  
17 testing, on the two swatches or the cuttings that you  
18 tested?

19 A. Yes, sir. I tested those on October 25th of this year.

20 Q. Okay.

21 MR. SLADE: I don't believe I have any other  
22 questions for this witness, Your Honor.

23 MS. LESKANIC: Nothing further, Your Honor.

24 I would ask that she --

25 THE COURT: You may step down and I imagine you

1 wish to have her excused?

2 MS. LESKANIC: Yes, Your Honor.

3 THE COURT: Any objection?

4 MR. SLADE: No.

5 THE COURT: Ma'am, you are free to go when you  
6 would like.

7 THE WITNESS: Thank you.

8 THE COURT: Thank you very much for coming today.  
9 The State may call its next witness.

10 MS. LESKANIC: The State rests, Your Honor.

11 THE COURT: All right, ladies and gentlemen of the  
12 jury, that concludes the evidence to be presented in this  
13 matter by the State.

14 At this time there is some things that I have to  
15 take up with the attorneys before we go into the next stage  
16 of the trial, so I'm going to ask you to step back to the  
17 jury room, and as always don't begin your discussions until  
18 I have asked you to do so.

19 You may retire now.

20 (The following takes place outside the presence of  
21 the jury panel)

22 THE COURT: Any motions?

23 MR. SLADE: Yes, sir.

24 Your Honor, we move for a directed verdict on the  
25 indictment for murder.

1 any evidence it would like to present.

2 Mr. Slade, you may call your first witness.

3 MR. SLADE: Thank you, Your Honor.

4 We call Darrell Mayberry, Your Honor.

5 THE COURT: All right, sir, come forward to my  
6 left and be sworn, please.

7 DARRELL MAYBERRY, having been first duly sworn,  
8 testified as follows:

9 THE COURT: Sir, once you are seated, state your  
10 name, please.

11 THE WITNESS: My name is Darrell Mayberry.

12 THE COURT: Thank you, sir.

13 Mr. Slade, your witness.

14 DIRECT EXAMINATION BY MR. SLADE:

15 Q. Your full name is Darrell Mayberry?

16 A. Yes, sir.

17 Q. And just so we can explain your cough drop, you have  
18 been sick this week, haven't you?

19 A. Yes, sir.

20 Q. Pull that thing back to you.

21 What do you have?

22 A. Excuse me?

23 Q. I said what kind of illness do you have?

24 A. The flu.

25 Q. Okay. Now, how old are you?

1 A. Fifty-three.

2 THE COURT: You don't have to talk right into it.

3 THE WITNESS: Oh, okay.

4 THE COURT: Just speak up loud enough. It will  
5 pick you up.

6 A. Fifty-three.

7 THE COURT: If you get too close, then we can't  
8 hear you.

9 Go ahead.

10 BY MR. SLADE:

11 Q. Where do you live at, Darrell?

12 A. Excuse me?

13 Q. Where do you live?

14 A. Downtown at Harold Tindall's, Commercial.

15 Q. Okay. And do you know the house at 311 Sarratt Avenue?

16 A. Yes, I do.

17 Q. It's basically called the white house, correct?

18 A. Yes.

19 Q. That's what everybody that hangs around there calls it?

20 A. Uh-huh.

21 Q. And who all lived there?

22 A. Calvin Wallace and another guy. I forgot his name.

23 Q. His brother?

24 A. Yeah, his brother.

25 Q. All right. Do you know -- do you know Hayward

1 Chambers?

2 A. Yes, I do.

3 Q. Now, on the night that Todd Morgan got shot, were you  
4 out at the white house?

5 A. Yes.

6 Q. Had you been out to the white house some before?

7 A. Yes, I have.

8 Q. And did you know Calvin Wallace?

9 A. Yes.

10 Q. How long had you known Todd Morgan?

11 A. I really didn't know him personally, but I know of him.

12 Q. Could you recognize him? You knew who he was?

13 A. Yes, I could.

14 Q. Now, when you got to the white house, where did you  
15 stay? What part of the house did you stay in? Were you in  
16 the house, or were you in the backyard? Tell us where you  
17 were.

18 A. I was in the left -- the first left room.

19 Q. That would be Calvin's room?

20 A. Yes.

21 Q. And did you later on leave the house and go to the  
22 backyard?

23 A. Yes, I did.

24 Q. Now, tell us -- you met with the prosecutor's office in  
25 this case sometime, what, last year?

1 A. Yes, last year.

2 Q. I think you met with Investigator Greg Phillips, right?

3 A. Yes, sir.

4 Q. Now, I would like to talk about what went on after  
5 Hayword and "Pookie" and "Big Momma" left. Just take it  
6 from there.

7 A. When they left?

8 Q. Whose car did they leave in?

9 A. Hayword's.

10 Q. All right. Do you know roughly how long they were  
11 gone?

12 A. Not roughly, no.

13 Q. Okay. Was it -- could it have been twenty minutes?

14 A. Roughly right -- I guess it could have been twenty or  
15 thirty minutes.

16 Q. Okay. Now, while they were gone where were you?

17 A. I was in the first room with Calvin and then I went  
18 outside.

19 Q. Okay.

20 A. I went in the backyard.

21 Q. What were you doing out in the backyard?

22 A. I had been drinking, drinking beer. I had some beer in  
23 my car, so I went out there and sat on the hood of my car  
24 drinking beer.

25 Q. And was Calvin out there with you?

1 A. Not -- not at first, but then he came out.

2 Q. So let's take it from where you and Calvin are standing  
3 in the backyard.

4 A. Okay.

5 Q. Before "Pookie" and "Big Momma" and Hayward get back,  
6 does the decedent in this case, Calvin Todd Morgan, come to  
7 the back door?

8 A. Yeah, he came to the back door and called Calvin  
9 through the door.

10 Q. Okay. Did Calvin go up to speak to Todd Morgan?

11 A. Yeah, they went back in the house.

12 Q. Okay. Did Calvin go up and speak to Todd Morgan?

13 A. Yes.

14 Q. And then Todd went back in the house?

15 A. Both of them went in the house and talked.

16 Q. Okay. Did Calvin return to the backyard where you  
17 were?

18 A. Yes.

19 Q. And did Calvin Wallace have an observation about Todd  
20 Morgan's state of mind or disposition at the time?

21 A. He came back and said he was --

22 MS. LESKANIC: Your Honor, I'm going to object as  
23 to Calvin Wallace's impression.

24 It is my understanding from the testimony that  
25 Calvin and the victim went into the house and Mr. Mayberry

1 was outside. I don't know how he could testify to what  
2 someone else saw.

3 MR. SLADE: It's a present sense impression to the  
4 hearsay rule, Your Honor. He's testifying to the fact that  
5 Calvin Wallace talked to the decedent, came back out and  
6 told him that Todd Morgan was --

7 MS. LESKANIC: I -- may -- I don't want him saying  
8 anything.

9 THE COURT: Ladies and gentlemen of the jury, this  
10 is one of the occasions I'll ask you to step back to the  
11 jury room. Don't begin any discussions until I have asked  
12 you to do so.

13 (The following takes place outside the presence of  
14 the jury panel)

15 THE COURT: Now, I don't know who wants to go  
16 first with their complete argument.

17 Your objection, Ms. Leskanic, so I'll let you go  
18 first.

19 MS. LESKANIC: My objection, Your Honor, is that  
20 this is double hearsay. It's Mr. Mayberry's testimony that  
21 Calvin Wallace and Todd Morgan went back into the house  
22 and -- I don't know what they did. They went back into the  
23 house and he was outside, and then they came back out, and  
24 now Mr. Slade is trying to get Mr. Mayberry to testify as to  
25 what Mr. Wallace told him was a conversation inside the

1 house and what Mr. Todd Morgan said. That's double hearsay  
2 and I don't think he has an exception for both of those.

3 MR. SLADE: Your Honor?

4 THE COURT: All right.

5 Yes, sir.

6 MR. SLADE: It's not double hearsay in any regard.  
7 I'm not trying to get him to say, and he doesn't say what  
8 the conversation between Calvin Wallace and Todd Morgan was.  
9 All he is saying as a declarant in a recognized exception to  
10 the hearsay rule, the declarant came back -- Calvin Wallace  
11 came back and said that Todd Morgan is angry.

12 The basis for a present sense impression to the  
13 hearsay rule is the declarant, Calvin Wallace, is in a place  
14 to observe what he is saying; and, two, that it is very  
15 close in time.

16 So what I'm asking him to testify to is solely the  
17 fact that Todd Calvin Wallace, the declarant, says Todd  
18 Morgan is angry.

19 He goes on to say, and I think we have discussed  
20 this in chambers as well in giving the court a heads up on  
21 where we are going, he also -- Calvin Wallace says that  
22 "last week he got so mad he bashed out a guy's windshield  
23 who rode off with "Pookie"."

24 Now, I don't think that fits under the present  
25 sense impression.

1 THE COURT: I don't either.

2 MR. SLADE: So we are not getting into that, and I  
3 don't think -- I'm just going by the notes of what he told  
4 Greg. He's never said what conversation went on between  
5 Calvin Wallace and Todd Morgan. He's just saying Calvin  
6 Wallace came back, declarant, and said "he's angry," and  
7 that's the extent of what I'm looking for.

8 THE COURT: He's talking about exception number  
9 one under Rule 803.

10 MS. LESKANIC: And I understand that, Your Honor,  
11 if Mr. Mayberry is going to testify as to Calvin Wallace's  
12 demeanor. He could give a present sense impression to what  
13 he saw Calvin Wallace --

14 THE COURT: Well, it says "the statement is  
15 describing or explaining an event or condition made while  
16 the declarant was perceiving the event or condition, or  
17 immediately thereafter." So I think he's trying to bring it  
18 in under describing a condition.

19 MR. SLADE: The declarant, Calvin Wallace, was  
20 observing an event or condition of Todd Morgan's demeanor.

21 MS. LESKANIC: And I wouldn't have any objection  
22 to Calvin Wallace coming in and testifying as to what --  
23 under his present sense impression what Calvin Morgan's  
24 demeanor was, but to say that Calvin Morgan perceived that  
25 and he just told somebody else about it and now that person

1 gets to testify to Calvin Wallace's perception is double  
2 hearsay and the rule does not permit that.

3 Calvin Wallace can testify --

4 THE COURT: Well --

5 MS. LESKANIC: -- that Todd Morgan was mad.

6 THE COURT: We are assuming the statement was made  
7 by whoever made it, in this case Mr. Wallace, is going to  
8 be -- is hearsay.

9 MR. SLADE: It is hearsay. No question.

10 THE COURT: We are saying it is hearsay.

11 MS. LESKANIC: Yes, and I think there is an  
12 exception to that present sense impression. He was there --

13 THE COURT: My understanding is that the  
14 testimony, he's not trying to quote what Mr. -- what the  
15 victim said to him.

16 MR. SLADE: That's correct.

17 THE COURT: He's just saying "he's mad."

18 MR. SLADE: He's just -- that's right. He's  
19 not -- he's not recounting whatever Calvin Wallace and Todd  
20 Morgan talked about. He's just saying "Calvin came back and  
21 said he's mad."

22 THE COURT: He went out and he's mad.

23 MS. LESKANIC: I just think Calvin Wallace is the  
24 one that made that observation, so he would have to be the  
25 one to testify.

1 THE COURT: Well, it is hearsay. The question is  
2 is it an exception to the hearsay rule.

3 MS. LESKANIC: I think it is if Calvin Wallace is  
4 here and able to testify. I do not think it is when another  
5 party --

6 THE COURT: I'm going to overrule your objection.  
7 I'm going to allow him to testify only to the fact --

8 MR. SLADE: Hold on, hold on.

9 THE COURT: -- only to the fact he was mad. Not  
10 trying to quote anything that was said from Mr. Wallace or  
11 the victim.

12 MR. SLADE: I'm just going to ask you. What did  
13 Calvin say about Todd's state of mind, okay?

14 THE WITNESS: He said he was mad.

15 THE COURT: Okay.

16 MR. SLADE: That's it.

17 THE COURT: All right.

18 Bring the jury in.

19 (The following takes place outside the presence of  
20 the jury panel)

21 THE COURT: All right, the jury has returned to  
22 the courtroom.

23 I have overruled an objection and you may proceed.

24 MR. SLADE: Thank you, Your Honor.

25

1 BY MR. SLADE:

2 Q. When Calvin Wallace got back to where you were in the  
3 backyard, did he tell you anything about Todd Morgan's state  
4 of mind?

5 A. I thought we couldn't discuss it.

6 No, he didn't. I mean --

7 THE WITNESS: Can I say?

8 THE COURT: Yes, sir.

9 A. He just said he was mad.

10 BY MR. SLADE:

11 Q. Okay. Were you still in the backyard when Hayward and  
12 "Pookie" and Michelle got back?

13 A. Uh-huh.

14 Q. All right.

15 THE COURT: You have to answer verbally. Uh-huh  
16 doesn't work. Yes or no.

17 A. Yes, sir.

18 THE COURT: Thank you.

19 MR. SLADE: I don't have any other questions of  
20 this witness, Your Honor.

21 THE COURT: You may cross-examine, Ms. Leskanic.

22 MS. LESKANIC: Thank you, Your Honor.

23 THE COURT: And it would be subject to your  
24 previous objection.

25 MS. LESKANIC: Thank you, Your Honor.

1 THE COURT: Yes, ma'am.

2 CROSS EXAMINATION BY MS. LESKANIC:

3 Q. Mr. Mayberry, how long have you known Hayward Chambers?

4 A. Not long. Not long. I don't have no -- I don't know  
5 how long I knew him. About a year, I guess.

6 Q. All right. And what did you call him?

7 A. "New York".

8 Q. Where did you meet him?

9 A. At a -- up in Quail Hollow. In Quail Hollow. We  
10 played pool up there, and a friend of his -- Tim brought him  
11 up there and we played pool.

12 Q. How many times had you seen him before this night at  
13 Sarratt Avenue?

14 A. I can't remember that. I don't know. Roughly --

15 Q. Do you have any idea, just roughly?

16 A. Two or three times.

17 Q. Okay. Do you know his telephone number?

18 A. No.

19 Q. Did you know where he lived?

20 A. No.

21 Q. Where were you living in November of 2009, when this  
22 happened?

23 A. When the incident happened?

24 Q. Yes.

25 A. I was at the white house.

1 Q. Where did you live at the time?

2 A. Oh, I was moving -- oh, I stayed in Greenville. I was  
3 living in Greenville at the time.

4 Q. Okay. So what were you doing at the white house that  
5 night?

6 A. It was just a hang-out place.

7 Q. Describe that for me. What would I see if I went  
8 there?

9 A. People hanging out. I mean, people being in the  
10 backyard, inside the house. Different drugs. I know it's a  
11 drug house, I mean, you know.

12 Q. Okay. So people came there to use drugs?

13 A. Use drugs, yes.

14 Q. Buy drugs?

15 A. Buy drugs.

16 Q. Sell drugs?

17 A. I imagine.

18 Q. And were you using drugs?

19 A. No, I wasn't.

20 Q. Were you buying drugs?

21 A. I was drinking.

22 Q. You was drinking.

23 Did you and "New York" go into "Pookie's" room at some  
24 point together?

25 A. I can't -- like I was telling that incident, I can't

1 really remember. I can't recall. I know when I got there I  
2 was the first one there. I went to Calvin's room.

3 Q. How much did you drink that night?

4 A. Whew, a lot. I'm not going to cut it.

5 Q. No, I'm just trying to get an idea.

6 And what's a lot?

7 A. A lot of beer and alcohol.

8 Q. Were you drunk?

9 A. Not drunk, sloppy drunk, but I was drunk.

10 Q. What were you drinking?

11 A. Beer and gin, Extra Smooth, whatever that call it.

12 Extra Smooth.

13 Q. Smooth?

14 A. Yeah.

15 Q. All right. And you stated that Calvin and his brother  
16 lived in the house. Did you know "Pookie" Byers?

17 A. Yeah, I knew her.

18 Q. Did she stay in the house also?

19 A. "Pookie" stayed everywhere, but I think she did stay  
20 there.

21 Q. Okay. Was she there that night?

22 A. Yeah, she was there.

23 Q. When did you see her?

24 A. When she was coming out the room when she was --

25 because I was in Calvin's room. She walked out the room. I

1 believe her and "New York" and Michelle was leaving at that  
2 time.

3 Q. All right. Now, Calvin's room is at the back of the  
4 house, is that right?

5 A. Yeah, that's the back. That's the back.

6 Q. I'm showing you State's Exhibit 17?

7 A. Right. His room is right here.

8 Q. That's Calvin's room and that's the room that you were  
9 in?

10 A. Right.

11 Q. And when they left the house -- when "Pookie", "Big  
12 Momma" and "New York" left the house, did they leave out  
13 this door?

14 A. They left out that door.

15 Q. All right. And where was "New York's" car?

16 A. I can't remember.

17 Q. Was it out the back door?

18 A. It was out in the back.

19 Q. Okay. So he pulled up in his car at some point during  
20 the night --

21 A. Right.

22 Q. -- and parked out back?

23 A. Right.

24 Q. And how do you know the three of them left in his car?

25 A. I -- I really don't know what car they left in, if you

1 really want to be honest, but I imagine they did leave in  
2 his car.

3 Q. All right. Do you know where they were going?

4 A. No.

5 Q. Nobody told you?

6 A. No.

7 Q. All right. They were gone you say about twenty to  
8 thirty minutes?

9 A. Yes, ma'am.

10 Q. And came back.

11 What happened when they came back in? What did you  
12 see?

13 A. They came back in, all of them went -- they came in the  
14 house. I was still on the -- I was -- I was still sitting  
15 outside. There was some more people outside.

16 They came in and went straight to the back. I guess  
17 they went back to the back room.

18 Q. All right. So "New York", "Pookie", and "Big Momma"  
19 all go back past Calvin's room? They come back in the back  
20 door?

21 A. Right, yeah.

22 Q. And they walk past that room all together?

23 A. Yeah.

24 Q. Do you know how long they were in there?

25 A. No.

- 1           Before the shooting went down?
- 2       Q.    Yes, sir.
- 3       A.    I would say ten to fifteen minutes.
- 4       Q.    Now, during that time did you go back outside before --
- 5       where were you when the shooting took place?
- 6       A.    I was standing -- I was outside. I was on top of the
- 7       car, sitting on the hood of the car drinking.
- 8       Q.    So when they first returned, you are in Calvin's room?
- 9       A.    Right.
- 10      Q.    How long do you think that you stayed in Calvin's room
- 11      before you went outside?
- 12      A.    About five minutes.
- 13      Q.    Was Luis Callazo still in Calvin's room --
- 14      A.    Yes.
- 15      Q.    -- when you went out?
- 16      A.    Yes, he was still there.
- 17      Q.    Had you ever --
- 18      Well, let me ask you this. How many times had you been
- 19      to the house on Sarratt Avenue?
- 20      A.    Six, seven times.
- 21      Q.    Okay. Was it sort of a usual weekend hangout?
- 22      A.    Yes. Yeah.
- 23      Q.    And who invited you there that night?
- 24      A.    Nobody.
- 25      Q.    So people would just show up?

- 1 A. Yes.
- 2 Q. Do you know if anybody invited "New York" that night?
- 3 A. No.
- 4 Q. You don't know, or they didn't?
- 5 A. I don't know.
- 6 Q. Would most people just show up?
- 7 A. Yes, people just show up.
- 8 Q. Now, did you hear the gunshot?
- 9 A. Yes, I did.
- 10 Q. But you were not in the house when that happened?
- 11 A. No, I wasn't.
- 12 Q. And you were not in the house maybe ten or fifteen
- 13 minutes before it happened.
- 14 How long -- let me ask you. How long were you outside
- 15 before you heard the gunshot, if you remember?
- 16 A. Like I say, I was intoxicated, but I would say roughly
- 17 ten minutes.
- 18 Q. All right. When you heard the gunshot, did you see
- 19 anybody come out of the house?
- 20 A. "New York".
- 21 Q. Is he the first one that you saw come out?
- 22 A. As I can remember.
- 23 Q. What was his appearance to you?
- 24 A. Mad.
- 25 Q. I'm sorry?

- 1 A. It seemed like he was mad. He was angry.
- 2 Q. And what makes you say that?
- 3 A. I mean, just the way he came out of the house.
- 4 Q. How did he come out of the house?
- 5 A. Could I say it? You told me when I was in the chambers  
6 certain things I can't say on the stand.
- 7 Q. Just tell me what you saw. Not what anybody said, but  
8 tell me what you saw that made you come to the conclusion  
9 that he was mad?
- 10 A. He came out of the house and he slammed the door.
- 11 Q. Then what did he do?
- 12 A. Got in the car and left.
- 13 Q. What did you do?
- 14 A. Got in the car and left.
- 15 Q. How come?
- 16 A. Because I heard a gunshot.
- 17 Q. Did you see anybody else come out of the house?
- 18 A. Calvin Wallace, and that's when I was pulling off.
- 19 Q. Okay. Did you ever see "Pookie" or "Big Momma" come  
20 out of the house?
- 21 A. Uh-uh.
- 22 Q. You were gone before they come out?
- 23 A. Right.
- 24 Q. In looking at "New York's" appearance, did it look to  
25 you like he had been in any sort of altercation?

1 A. Yeah. I mean, it seemed like his clothes was straggly,  
2 you know.

3 I don't know. Like I say, I was intoxicated. I  
4 don't -- and it was dark. I don't know.

5 He wasn't bleeding or nothing like that.

6 Q. Okay. Did he have a coat on, do you remember?

7 A. I can't remember.

8 Q. Okay. Did he have a hat on?

9 A. I can't remember.

10 Q. So you don't really remember what he looked like or  
11 what his clothes looked like?

12 A. Right.

13 Q. Is that -- I don't want to put words in your mouth.

14 A. Right.

15 Q. That's a question.

16 A. That's right.

17 Q. Do you remember what his appearance looked like?

18 A. I can't really -- I can't remember. I can't really  
19 remember.

20 Q. Do you know what "New York" was doing at the house that  
21 night?

22 A. No.

23 Q. Did you have a telephone on you that night?

24 A. I -- I'm -- I can't remember. I don't think I did.

25 Q. Were there other people out there?

1 A. Yeah, there was some more people out in the yard.

2 Q. Did they stick around, or did they leave also?

3 A. Everybody left. When I was pulling off, there was a  
4 couple more cars out there, people standing around.

5 Q. All right, that's all the questions that I have for  
6 you. Thank you.

7 THE COURT: Redirect?

8 MR. SLADE: Your Honor, we have a matter to take  
9 up, Your Honor, what I think --

10 THE COURT: Do I need to excuse the jury?

11 MR. SLADE: Yes, sir.

12 THE COURT: Ladies and gentlemen of the jury, I  
13 ask you to step back to the jury room. Don't begin any  
14 discussions until I ask you to do so. Thank you.

15 (The following takes place outside the presence of  
16 the jury panel)

17 THE COURT: I have got a copy of that.

18 MR. SLADE: Okay, I'm sorry, I didn't realize that  
19 you had it.

20 THE COURT: All right, go ahead.

21 MR. SLADE: Your Honor, here is the reason I  
22 actually discussed this. You will see towards the bottom  
23 of -- I believe you are looking at Defendant's Exhibit No.  
24 5, which is a copy of the summary or the interview that Greg  
25 Phillips took from this witness last year. And, Your Honor,

1 (The following takes place in the presence of the  
2 jury panel)

3 THE COURT: All right, the jury has returned to  
4 the courtroom.

5 I have made a ruling concerning some offered  
6 testimony.

7 At this time you do have the right to redirect  
8 this witness, if you would like to.

9 MR. SLADE: No, sir.

10 THE COURT: Do you have any further questions?

11 MR. SLADE: No, thank you, Your Honor.

12 THE COURT: You may step down, sir. Thank you  
13 very much.

14 THE WITNESS: Uh-huh.

15 THE COURT: The defense may call its next witness.

16 MR. SLADE: We call Michelle Davis.

17 THE COURT: Come forward, please, ma'am.

18 MICHELLE DAVIS, having been first duly sworn,  
19 testified as follows:

20 THE COURT: All right, ma'am, state your name,  
21 please.

22 THE WITNESS: Sandra Davis.

23 THE COURT: Thank you.

24 Your witness, Mr. Slade.

25 MR. SLADE: Thank you.

- 1 THE COURT: Yes.
- 2 DIRECT EXAMINATION BY MR. SLADE:
- 3 Q. Ms. Davis, let's introduce you to the jury.
- 4 How old are you now?
- 5 A. I'm forty-five.
- 6 Q. And where did you grow up?
- 7 A. I grew up in Gaffney.
- 8 Q. All right. Have you lived here most of your life?
- 9 A. Yes, sir.
- 10 Q. Tell us how you know Todd Morgan.
- 11 A. I grew up with Todd Morgan. I mean, we grew up on west
- 12 end. I mean, Connecticut Park. I just -- I knew him. I
- 13 knew his family.
- 14 Q. Okay. You know his mom?
- 15 A. I -- yes, I know them. They are good people, yeah.
- 16 Q. And did you hang around at the white house over on 311
- 17 Sarratt Avenue?
- 18 A. Yes, sir.
- 19 Q. All right. What were you doing over there?
- 20 A. Smoking crack.
- 21 Q. All right. Have you been a crack user for some time?
- 22 A. Twenty-three years.
- 23 Q. Have you done anything recently to deal with that
- 24 issue?
- 25 A. I have been a year clean.

1 Q. How did that happen?

2 A. Stuff like this.

3 Q. All right. Now, let's tell the jury about the night  
4 that you were up at the white house when Todd Morgan was  
5 shot. About what time of day did you get there?

6 A. About ten o'clock that morning.

7 Q. And did you stay there most of the day?

8 A. I stayed all day.

9 Q. Now, when did Todd Morgan get there?

10 A. About 9:30, ten o'clock that night.

11 Q. Let's talk about the people that were typically or  
12 routinely in the house. Did Calvin Wallace live there?

13 A. Yes.

14 Q. Did his brother live there?

15 A. Yes.

16 Q. What did his brother go by?

17 A. Stevie.

18 Q. Now, did "Pookie" Byers live there?

19 A. No. No.

20 Q. Did she stay there some or spend the night?

21 A. She stayed there some. I stayed there some. We didn't  
22 live there at the time.

23 Q. Okay. You indicated just by your demeanor some  
24 uncertainty and I just wanted to clear that up.

25 You stayed there sometimes?

- 1 A. Yeah, but "Pookie" had a room there.
- 2 Q. And "Pookie's" room was the room where this happened?
- 3 A. Yes, sir.
- 4 Q. Did she stay there a little more frequently than you,  
5 or less frequently?
- 6 A. She stayed a little more frequently than me.
- 7 Q. All right. What was her relationship with Todd Morgan?
- 8 A. She was his girlfriend.
- 9 Q. And had she been in a relationship with him for awhile?
- 10 A. No.
- 11 Q. Can you give us some time frame? Just the time frame  
12 now.
- 13 A. Maybe two months at the most.
- 14 Q. Okay. And what kind of relationship did they have?
- 15 A. Todd had just got out of prison and he was being  
16 good -- I'm sorry, but he was good to her. He was good to  
17 her. She was smoking crack and running around, doing stuff.  
18 He was good to her.
- 19 Q. Okay. And let's talk about the day that this happened.  
20 You got there about ten o'clock?
- 21 A. Uh-huh.
- 22 Q. You said Todd got there about, what, 9:30 that night?
- 23 A. 9:30, ten o'clock that night.
- 24 Q. Was "Pookie" there when he got there?
- 25 A. Yes, she was.

1 Q. All right. Had you and "Pookie" been staying in her  
2 room?

3 A. Yes, sir.

4 Q. What had y'all been doing?

5 A. Smoking crack.

6 Q. Was that just about it? I mean, not going out and  
7 doing anything else?

8 A. Nothing else.

9 Q. Okay. And do you know Scottie Mayberry, the guy who  
10 just testified, the man who just testified?

11 A. Yes.

12 Q. Was he there that evening?

13 A. He had came in earlier that evening, about eight  
14 o'clock, but he had left back out.

15 Q. Okay. Now, do you know what time he got back?

16 A. It was late. It was after the Good Times had closed  
17 up. Right before the Good Times was closing.

18 Q. The Good Times is a club over on South Rutledge?

19 A. Yes, sir.

20 Q. Over near I guess Granard Courts?

21 A. (Shaking head yes).

22 Q. Now, do you know Hayward Chambers?

23 A. No, sir.

24 Q. Did you know him by another name?

25 A. No, sir.

1 Q. So were you there when he got there?

2 A. Yes.

3 Q. And tell us what happened when he got to the white  
4 house.

5 A. Him and Scottie came into the room.

6 Q. Let me interrupt you there, Ms. Davis. You are  
7 referring to Scottie Mayberry?

8 A. Yes.

9 Q. Darrell Mayberry?

10 A. Yes.

11 Q. He and Scottie came in the room?

12 A. Him and Scottie came in the room where me, "Pookie",  
13 and Todd was.

14 Todd had ate his Subway sandwich. He was laid back on  
15 the couch.

16 "Pookie" was sitting on the end of the couch. I was  
17 sitting in the white chair on the corner by the end table.

18 They came in. They asked us to buy a five. They  
19 bought a five. They asked "Pookie" to use her stem. She  
20 wouldn't let them use it. They asked me to use mine and I  
21 told them to go ahead. They used mine.

22 After they got through using my stem, "Pookie" asked  
23 Scottie Mayberry would he give her a ride to Paul Linder's  
24 to pick up some more dope. Scottie said no, his car was  
25 hot. About that time she looked at Hayward and asked him

1 would he give her a ride. He said, yeah --

2 THE COURT: I'm not sure this was in response to  
3 any particular question, so I'm going to ask you that you  
4 ask some questions and, ma'am, you answer them.

5 THE WITNESS: Okay.

6 THE COURT: Don't ramble on.

7 THE WITNESS: Okay.

8 THE COURT: Thank you.

9 BY MR. SLADE:

10 Q. So when did -- when did Scottie and "New York" come in  
11 the room?

12 A. About 10:30.

13 Q. All right. And you said they asked for a five. That's  
14 a five dollar rock?

15 A. Yes, sir.

16 Q. They didn't have, or did they have a pipe, or whatever,  
17 to smoke it?

18 A. They didn't have one.

19 Q. How did they get one?

20 A. I gave them mine.

21 Q. All right. Then after that did "Pookie" have anything  
22 to say to Hayward?

23 A. Yes, she asked Hayward would he give her a ride.

24 Q. Okay. And did Hayward have -- did Hayward have a  
25 response to that?

1 A. Yeah, he stated "you are going to pay me."

2 Q. Pay me for the ride?

3 A. Uh-huh.

4 Q. Is that what you are indicating?

5 A. Uh-huh.

6 Q. Is that what was understood?

7 A. Uh-huh.

8 Q. And --

9 THE COURT: Ma'am, you need answer yes or no.

10 Q. Yes, sir.

11 THE COURT: Not uh-huhs or uh-uh's. The court  
12 reporter doesn't know sometimes how to take that down, so  
13 you have to answer yes or no.

14 THE WITNESS: Yes, sir.

15 THE COURT: You may proceed.

16 MR. SLADE: Thank you, Your Honor.

17 BY MR. SLADE:

18 Q. So did Hayward and "Pookie" leave the white house at  
19 that point?

20 A. Me, Hayward and "Pookie" left the white house.

21 Q. Okay. Why did you go with them?

22 A. To ride.

23 Q. All right. Did you -- did Hayward ask you, or "Pookie"  
24 ask you, or did you just decide to go, or how did that go?

25 A. I can't remember whether it was Hayward asked me or

1 "Pookie" asked me, but someone asked me to go.

2 Q. Okay. Where did y'all go?

3 A. To Paul Linder's.

4 Q. And is that close to Sarratt Avenue?

5 A. No, it's not. It's across town.

6 Q. About how long did it take y'all to make this trip,  
7 round trip?

8 A. About twenty to thirty minutes.

9 Q. When you got to Paul Linder's house, did you go in?

10 A. No, sir.

11 Q. Did Hayward go in?

12 A. No, sir.

13 Q. "Pookie" went in?

14 A. Yes, sir.

15 Q. And what was the purpose of her going in there?

16 A. To get more dope. To re-up.

17 Q. To re-up?

18 A. Yeah.

19 Q. Get some more crack cocaine?

20 A. Yes, sir.

21 Q. Where did y'all go after she came back with whatever  
22 she re-upped with?

23 A. Went back to the white house.

24 Q. Okay. And where did -- y'all were riding in Hayward's  
25 car, correct?

1 A. Yes, sir.

2 Q. And where did y'all park Hayward's car or where did he  
3 park his car when you got back?

4 A. In the driveway.

5 Q. In the --

6 A. In the back.

7 Q. I apologize, I guess -- in the back or the front?

8 A. In the back.

9 Q. Okay. And what did y'all do then, the three of y'all  
10 do who had gone to Paul Linder's?

11 A. Me, "Pookie", and Hayward -- well, "Pookie", then  
12 Hayward, then me went in the door. Hayward and "Pookie"  
13 went onto the back. I stopped.

14 Q. Okay. You stopped at Calvin's room?

15 A. Yes.

16 Q. How long were you at Calvin's room?

17 A. Just long enough to tell -- for them to tell me that it  
18 was something going on in back because Todd was mad.

19 Q. Now, when you got back to "Pookie's" room was Todd  
20 angry?

21 A. Yes.

22 Q. Was he just a little angry, or a lot angry, furious?  
23 How would you describe it?

24 A. He was furious.

25 Q. All right. Could you observe anything about him that

1 showed he was furious?

2 A. His shirt was off and he was sweating.

3 Q. Now, have you ever seen him angry before?

4 A. Yes, I have.

5 Q. And when you got back to the room and Todd was angry,  
6 describe where Hayward was in the room.

7 A. Hayward was standing there at the door. He was a  
8 little bit in the doorway. He was a little bit in the  
9 doorway.

10 Q. Okay. Now, let's -- so we can describe the scene for  
11 these folks, if Hayward is in the doorway, where are -- and  
12 I'm representing Hayward here, where are Todd and "Pookie"?

13 If that's the other side of the wall where the sofa  
14 is --

15 A. Uh-huh.

16 Q. -- and this is the doorway into the hallway --

17 A. Uh-huh.

18 Q. -- and I'm Hayward, where is Todd and "Pookie"?

19 A. Todd is right over here behind the coffee table.

20 Q. Okay. Would that be right about here, if this is the  
21 couch?

22 A. Yeah.

23 Q. Okay.

24 A. And then "Pookie" is on the side of the coffee table.

25 Q. All right. Toward the back?

1 A. On this side over here.

2 Q. Toward the television set?

3 A. Yes.

4 Q. All right. So was that where the people were when you  
5 walked into the room?

6 A. Yes, sir.

7 Q. All right. Describe what Todd was doing when you  
8 walked into the room.

9 A. He was -- he was telling her to give him his dope  
10 because he knew she had stole his dope.

11 Q. What was he saying to her?

12 A. He was saying "give me my stuff. Give me my stuff."

13 Q. Okay. You need to say the words that the folks were  
14 saying. I realize there is some bad language involved here,  
15 but you need to say what the folks were saying.

16 A. He was telling her "give me my shit, bitch. I know you  
17 got my shit. Give me my shit."

18 Q. And what was "Pookie's" response to that?

19 A. "I don't got your stuff. I don't got your stuff."

20 Q. All right. Did this go on for awhile?

21 A. No, because I -- I stepped in and said "yes, you do  
22 have his stuff. I seen you pick it up."

23 Q. All right. When had you seen "Pookie" pick up  
24 Todd's --

25 A. She had picked up his stuff --

- 1 Q. -- dope?
- 2 A. -- before --
- 3 Q. Go ahead.
- 4 A. -- before Scottie Mayberry and "New York" had come in.
- 5 Q. Where was his dope that she picked up?
- 6 A. It was in a Subway wrapper, because he was eating a
- 7 Subway sandwich.
- 8 Q. All right. Now, after they had this discussion, did
- 9 Hayward Chambers have anything to say?
- 10 A. Yeah, after they -- they went on and went on and went
- 11 on, he -- he -- he told "Pookie", he said "I'm going to step
- 12 out," he said "but you are going to pay me." He got ready
- 13 to turn --
- 14 Q. Okay. So Hayward is in the door?
- 15 A. Uh-huh.
- 16 Q. And he says to "Pookie" "I'm going to" what? "I'm
- 17 going to leave?"
- 18 A. "I'm going to leave, but you are going to pay me."
- 19 Q. All right. Did he appear to you to be angry or
- 20 upset --
- 21 A. No.
- 22 Q. -- at that point?
- 23 A. No, he was just wanting to get paid.
- 24 Q. Right.
- 25 And is Todd still angry?

1 A. Yes, because he wanted his stuff.

2 Q. Is he furious?

3 A. Yeah.

4 Q. Okay. And "Pookie" is still over here on the other end  
5 of the couch?

6 A. Yes.

7 Q. And Hayward says he's leaving, but he's going to get  
8 paid?

9 A. Yes.

10 Q. And what happens then?

11 A. When he turned to leave, "Pookie" grabbed him and tell  
12 him "don't leave, don't leave, he's going to beat me."

13 About this time Todd --

14 Q. She's referring to who?

15 A. To Todd.

16 Q. All right. And what happened next?

17 A. Hayward -- when he -- when she say "don't leave, don't  
18 leave, he's going to beat me, he's going to beat me,"  
19 Hayward turned back around and that's when Todd fired off on  
20 Hayward and went to calling him all kind of --

21 Q. All right. You need to tell these folks what Todd  
22 Morgan was saying to Hayward.

23 A. He was just telling him he needed to stay out of his  
24 business. He was calling Hayward all kind of motherfucker.  
25 Hayward told him "I'm not going to be too many of your

1 motherfuckers. You don't even know me."

2 And then -- I mean, I can't say exact words that were  
3 spoke that were said because I was high.

4 Q. All right.

5 A. I was high, but it was to the point where Todd was  
6 calling Hayward motherfucker and going -- he was up going  
7 towards Hayward, and Hayward --

8 Q. Let's stop right there.

9 Hayward is on the other side of the room, right?

10 A. Uh-huh.

11 Q. And Todd is by the sofa?

12 A. Uh-huh.

13 Q. Now, you said Todd starts towards Hayward?

14 A. Uh-huh.

15 Q. How far do you see him go towards Hayward?

16 A. I see him go far enough where I tell Hayward  
17 he needed -- Hayward, he got -- he stepped maybe two steps  
18 and that's when Hayward pulled the gun.

19 Q. All right. And so after Hayward pulled the gun, is  
20 Todd calling Hayward names?

21 A. Yeah.

22 Q. What's he calling him?

23 A. Motherfucker.

24 Q. Does he continue towards Hayward Chambers?

25 A. Yeah.

1 Q. What kind of state of mind is Todd Morgan in at this  
2 point?

3 A. He's mad. Now he's mad. He's mad. I don't know  
4 whether he thought "Pookie" smoked that dope with Hayword,  
5 or -- I don't know. I was not Todd. I don't know what was  
6 in Todd's mind, but I know Todd was tired too. And the  
7 scene that Todd was in, that was not his lifestyle. He  
8 didn't condone it.

9 Q. The scene with "Pookie"?

10 A. The scene with -- the crack scene, period. That was  
11 not him.

12 Q. Was he just up there smoking crack?

13 A. No, he was not -- no. Todd Morgan did not smoke crack.  
14 He did not sell crack. He was not a crackhead. He was not  
15 a crack dealer. He was just a man up there with a woman.

16 Q. Now, when you saw Todd going toward Hayword, was  
17 Hayword continuing to point the gun at him?

18 A. Yeah.

19 Q. So Todd is coming across the room, Hayword is pointing  
20 a gun at him.

21 Had you ever seen Todd Morgan that angry before?

22 A. I seen him angry like that at the incident that did  
23 happen on Pryor Street.

24 Q. All right.

25 MR. SLADE: I'm not getting into at this point,

1 Your Honor.

2 BY MR. SLADE:

3 Q. Now, as Todd Morgan advances across the room, was he  
4 calling Hayward these names?

5 A. Yeah.

6 Q. What did you think was going to happen?

7 A. I -- once I seen the gun pulled and Todd coming, like I  
8 say, I asked Hayward to put the gun up and I asked Todd to  
9 stop too, but it wasn't nothing I could do, so I run out the  
10 room.

11 Q. Did Todd continue to be angry?

12 A. Yeah.

13 Q. Did he continue to be furious?

14 A. Yeah.

15 Q. Did he continue to advance towards Hayward?

16 A. Yeah, I run out the room.

17 Q. All right. Did Hayward ever advance, go towards Todd?

18 A. No, Hayward just pulled the gun.

19 Q. Did Hayward stay in the doorway or around the doorway?

20 A. Yeah.

21 MR. SLADE: I'm begging the indulgence of the  
22 court, Your Honor. I was looking for that exhibit that they  
23 have a layout of the room. It will take me just a moment?

24 THE COURT: Yes, sir.

25 MR. SLADE: Greg, could you turn this thing on,

1 please?

2 Well, if you don't mind, if you could turn it on.

3 THE COURT: Do you want him to turn it on to get  
4 it warmed up?

5 MR. SLADE: Yes, sir, if you don't mind, Greg. I  
6 apologize.

7 THE COURT: That's fine.

8 BY MR. SLADE:

9 Q. Now, I'm going to just show you an exhibit here that  
10 the State has used to sort of lay out where the furniture  
11 was in this room.

12 This is the couch, as you can see here.

13 A. Uh-huh.

14 Q. And if you have any questions, let me know.

15 Now, the doorway -- was the doorway that Hayword was  
16 standing in, was it across the room.

17 A. (No response).

18 Q. If this is the couch and the TV is here --

19 A. Yeah, it's across the room. It's down here.

20 Q. Okay.

21 A. He was right along in there.

22 Q. Okay. Do you need to step off the witness stand, Ms.  
23 Davis, to see up here?

24 A. No, I can see.

25 Q. Okay. Now, I have just showed you State's Exhibit No.

1 2 as you sat there at the stand and I'm going to point out  
2 is this roughly the position of where the couch was?

3 A. Yes, sir.

4 Q. And is this the doorway here?

5 A. Yes, sir.

6 Q. Was Hayword Chambers standing in this doorway?

7 A. Yes, sir.

8 Q. Did he ever advance towards this table --

9 A. No, sir.

10 Q. The couch?

11 A. No, sir.

12 Q. All right. Now, this is the front door and Sarratt  
13 Avenue is out here, correct?

14 A. Uh-huh.

15 Q. Now, did Todd Morgan advance across this direction?

16 A. When I left out the room Todd had come to the table.

17 Q. All right.

18 A. Maybe come to that table right there.

19 Q. All right. Did he continue towards Hayword?

20 A. Yes, but I left out the room.

21 Q. All right. And where did -- where did you go?

22 A. I went to Stevie's room.

23 Q. All right. And why did you do that?

24 A. Because I was scared.

25 Q. What did you think Todd was going to do, based on your

1 experience and seeing him in that level of fury?

2 A. I -- I -- I don't know what was going to happen, but I  
3 knew it wasn't going to be good, with this man standing here  
4 with a gun and Todd standing on the other side.

5 Q. All right. And --

6 MR. SLADE: Could we approach just for a moment,  
7 Your Honor.

8 THE COURT: Yes, sir.

9 (Whereupon, the lawyers approached the bench for  
10 an off-the-record discussion)

11 MS. LESKANIC: May we approach one more time?

12 THE COURT: Yes, ma'am.

13 (Whereupon, the lawyers approached the bench for  
14 an off-the-record discussion)

15 THE COURT: All right, ladies and gentlemen, I  
16 want to ask you to step back to the jury room. There is  
17 some matters I have to take up with the attorneys.

18 As always, I'll ask you not to begin your  
19 discussions until I have advised you to do so. You may  
20 retire to the jury room.

21 (The following takes place outside the presence of  
22 the jury panel)

23 THE COURT: During the bench conference, of  
24 course, Mr. Slade made me aware that he was getting ready to  
25 go into a prior incident.

1 Ms. Leskanic has raised the issue that this  
2 witness in her testimony just previous to this stated that  
3 the incident that she observed was on I think Pryor Street.

4 Was it Pryor Street, ma'am, you said?

5 THE WITNESS: It was on -- I thought it was on  
6 Oakland Avenue. It might have been on Pryor Street.

7 THE COURT: Pryor?

8 THE WITNESS: What I'm saying with that is I was  
9 high and out of my mind. I remember "Puddin" laying down on  
10 the ground. I remember Todd stomping. I remember saying "I  
11 ain't got nothing to do with that." I remember going back  
12 in the trailer, getting my stuff and leaving the scene,  
13 wherever the scene was at.

14 You know, as far as saying I seen his eyes, I  
15 never seen Todd's eyes.

16 THE COURT: I just --

17 THE WITNESS: Okay.

18 THE COURT: -- asked you what street you said.  
19 All right.

20 Now, I was made aware at the bench conference that  
21 there may have been some other incident involving the victim  
22 in this case and this particular lady. I wasn't aware of  
23 that until just now, so maybe you ought to help me with  
24 that, Ms. Leskanic. I don't know what she's referring to,  
25 so let's just put all this on the record.

1 MS. LESKANIC: Your Honor, Ms. Davis testified at  
2 pretrial hearing, and I had pulled this file originally for  
3 Mr. Slade, we have a case file against Calvin Todd Morgan  
4 where Debra Littlejohn was the victim, and that was the  
5 stomping case, if I can refer to it as that. It apparently  
6 occurred on Oakland and Mill Street.

7 There is also an incident report in that file that  
8 I presume was pulled just during the investigation of that  
9 case where there was a prior incident or -- yes, a prior  
10 incident that occurred at 202 Pryor Street involving Debra  
11 Littlejohn. I have no idea what the disposition was and  
12 that was not the case that was prosecuted by our office.

13 THE COURT: So this is a third incident?

14 MS. LESKANIC: But it is another incident, and I  
15 just wanted to make sure I knew what everyone was testifying  
16 to.

17 MR. SLADE: I'm not -- I'm not getting into any  
18 other incidences except the one that's been the subject of  
19 these discussions, Your Honor.

20 What had happened is the decedent, as Ms. Smith  
21 said, and not getting into that either, but obviously a  
22 number of warrants have been taken out against him for  
23 assaults of various types, CDV, that kind of thing. I don't  
24 know what's happened with them. I'm not getting into that.  
25 I'm getting into the incident that she testified to where

1 she saw "Puddin" Littlejohn get stomped and that's it. I'm  
2 not trying to get into any --

3 THE COURT: Well, I -- so this was -- there has  
4 been more than two incidences prior?

5 MS. LESKANIC: I had no idea whether --

6 THE COURT: I'll get back to my original question.  
7 Apparently there is a third one?

8 MS. LESKANIC: I don't know if charges were even  
9 brought on this.

10 THE COURT: I understand that, but is there a  
11 different --

12 MS. LESKANIC: It's a different incident report  
13 and a different incident location.

14 THE COURT: Apparently there is even another  
15 incident that she's aware of?

16 MR. SLADE: Yes, sir, and Ms. Smith said that  
17 there were times she would take out warrants against him  
18 when they were living together. And, you know, I just  
19 didn't get into those, because the ones I had had records on  
20 them, so --

21 THE COURT: There's apparently a record of that  
22 one. She holding it in her hand.

23 MS. LESKANIC: I mean, there is, Your Honor. I  
24 have let Mr. Slade look through the file.

25 I just wanted -- when she said Pryor Street, I

1 wanted to make sure that I knew what she was going to be  
2 testifying to.

3 THE COURT: Well, I can understand what you are  
4 asking the court. The court is curious about --

5 Let me check on something. Give me a minute here.

6 (Off the record)

7 (Back on the record)

8 THE COURT: I assume that the proffer of evidence  
9 that you have given me thus far from this witness has all  
10 been concerning whatever she saw, and now she's saying that  
11 was on --

12 Give me the street name. On Pryor Street,  
13 P-R-Y-O-R.

14 MS. LESKANIC: Yes, Your Honor.

15 THE COURT: Pryor Street.

16 And she's now saying that it was definitely Pryor  
17 Street, and apparently there is an incident report that  
18 backs up an incident that occurred on Pryor Street.

19 MR. SLADE: Your Honor --

20 THE COURT: Pull that incident report and make it  
21 a Court's Exhibit.

22 (Incident Report marked as Court's Exhibit No. 1  
23 for identification)

24 THE COURT: Court's Exhibit No. 1, I guess.  
25 That's for my purposes.

1 COURT REPORTER: Yes, sir.

2 THE COURT: All right. Do you need to see it?  
3 Have you seen it?

4 MR. SLADE: I have seen a number of incident  
5 reports on Calvin Todd Morgan, Your Honor. I don't know  
6 that I have seen this one.

7 (Off the record)

8 (Back on the record)

9 MR. SLADE: I think I have. I don't recall.  
10 There was an incident report that I filed with the  
11 court on the party's admission -- admission of a party  
12 opponent that contained an incident report for the incident  
13 that I'm asking her to testify about.

14 THE COURT: Okay. Well, my ruling is going to be  
15 the same, regardless of what's previously happened on it.  
16 It shows --

17 And one thing I have lost in my previous  
18 discussion and I now recall it, after having looked at it,  
19 there is really two basis for my rulings on this, and that  
20 is 404(2), which says exception to the general rule in 404  
21 is that "evidence of a pertinent trait of character of the  
22 victim of a crime offered by an accused," which is what you  
23 are trying to do, I think.

24 MR. SLADE: Yes. In part, yes, sir.

25 THE COURT: As well as to show his intent in this

1 particular situation, under 404(b).

2 It's becoming more and more clear to me that this  
3 particular victim did have a character trait that included  
4 domestic violence, so I'm going to allow her to testify as  
5 to what she saw on this particular case.

6 MR. SLADE: Yes, sir.

7 THE COURT: We are not going to get into any  
8 prosecutions.

9 MR. SLADE: Yes, sir.

10 THE COURT: Again, I don't want to go there. I  
11 don't think that matters.

12 MR. SLADE: Right.

13 THE COURT: But I think under 404(2) and -- (b) --  
14 (a)(2) and (b), I will continue to allow it.

15 Now, apparently she's testifying about this  
16 incident you just took the report before the court on. I  
17 don't know.

18 MS. LESKANIC: I don't know, Your Honor, because  
19 earlier during my proffer it was Oak Street and then now  
20 it's Pryor Street.

21 THE WITNESS: But I'm not for sure what street it  
22 was. Like I say, I was high out of my mind. The only thing  
23 I did with that incident was looked and seen what was  
24 happening and left. I didn't --

25 THE COURT: Ma'am, don't voluntary testimony.

1 THE WITNESS: Okay.

2 THE COURT: Let the lawyers finish their argument.

3 MS. LESKANIC: So I don't know, Your Honor. I  
4 just -- when she said Pryor Street after we have just had  
5 testimony that it was Oak Street, it caught my attention.

6 THE COURT: Well, I was unaware when you did that  
7 that there might have been other instances that involved the  
8 police and involved violence against that -- who was the  
9 victim in that case?

10 MR. SLADE: That was Ms. Littlejohn, Your Honor.

11 THE COURT: Ms. Littlejohn.

12 MR. SLADE: That's correct.

13 THE COURT: If it happened on -- he was prosecuted  
14 for one and he was wasn't prosecuted for that one, that may  
15 be very well be the one that she observed. She never  
16 testified he was prosecuted for it or she got arrested. She  
17 said she left. She didn't stay. She didn't report it to  
18 the police. You asked her about that and she said she  
19 didn't. I can understand somebody on crack maybe not  
20 calling the police, I don't know.

21 MR. SLADE: Yes, sir. Well, I just wanted you to  
22 know I just focused on the ones that I thought were  
23 convictions and proven.

24 THE COURT: Oh, I understand that, but what I'm  
25 learning is not changing my ruling. If anything, it's

1 reinforcing my ruling.

2 MR. SLADE: Yes, sir. I just wanted you to  
3 understand why I wasn't bringing more stuff.

4 MS. LESKANIC: Could we just -- I just want to  
5 understand where she's testifying about Pryor Street or  
6 Oakland and Mill? I know --

7 MR. SLADE: I don't mean to interrupt you, but I  
8 don't know that it makes any difference. She saw him stomp  
9 a domestic partner in a very vicious manner. I mean, if the  
10 street is critical, she can cross-examine her about it. I  
11 don't know that -- she's stuck with her story all this time  
12 that that's what happened, and so I just --

13 THE COURT: What's the matter, Mr. Kendall?

14 MR. KENDALL: I'm sorry, Your Honor, but I think  
15 that -- I don't want to -- but I think the difference would  
16 be on one of those cases she goes to a hospital for a couple  
17 of months. On the other case it doesn't appear that  
18 anything happened. So if we are using her to get to Ms.  
19 Littlejohn --

20 THE COURT: Well, we may be putting all three in.

21 MR. KENDALL: And that --

22 THE COURT: I mean, it wouldn't change the fact.  
23 It wouldn't change my ruling.

24 MR. SLADE: We are not talking about whether -- I  
25 mean, we have already limited the hospital testimony and the

1 damages testimony.

2 THE COURT: I'm not going to let that go in. I'm  
3 going to let her say she was hospitalized, but it doesn't  
4 have to be the same incident. It could be a separate  
5 incident, if that's the character trait of this victim.

6 MS. LESKANIC: Thank you, Your Honor.

7 THE COURT: If anything, I have learned more about  
8 him and it's not pretty.

9 All right.

10 MR. SLADE: Thank you, Your Honor.

11 THE COURT: Bring the jury in.

12 (The following takes place in the presence of the  
13 jury panel)

14 THE COURT: The jury has returned to the  
15 courtroom.

16 I have reaffirmed the ruling I had made  
17 previously.

18 You may proceed, Mr. Slade.

19 MR. SLADE: Thank you, Your Honor.

20 BY MR. SLADE:

21 Q. When the -- when the jury left we were discussing Todd  
22 Morgan's anger and his state of mind. You had testified he  
23 was very angry in a room at the white house that night.

24 Had you ever seen him at that level of anger and fury  
25 before?

- 1 A. Yes, sir.
- 2 Q. Tell us what you saw him do or how he acted?
- 3 A. I only seen him mad --
- 4 Q. State of mind.
- 5 A. Excuse me.
- 6 Q. Let me -- hear me out.
- 7 A. I'm sorry.
- 8 Q. Tell us what you have seen him do when he is at that
- 9 level of anger and fury.
- 10 A. I have just seen him mad to the point where he had
- 11 Debra Littlejohn down stomping her. I don't know to what
- 12 point of view he did, but when I seen that I left.
- 13 Q. Was he angry then?
- 14 A. Yes, sir.
- 15 Q. Was he furious then?
- 16 A. Yes, sir.
- 17 Q. Was he at the same level of anger and fury you saw --
- 18 A. I thought so, yes, sir.
- 19 Q. -- in the white house that night?
- 20 A. Yes, sir.
- 21 Q. Is that why you left the room?
- 22 A. Yes, sir.
- 23 Q. Tell us what you did after you left the room.
- 24 A. I went into Stevie's room.
- 25 Q. What did you do there?

1 A. Listened. I was just listening and then I heard  
2 "Pookie" in the closet. She had run in Stevie's room too,  
3 but she had got up in the closet.

4 Q. All right. Did you hear the gunshot?

5 A. Yes.

6 Q. And what did you do then?

7 A. Nothing. I come out the room when the room -- the room  
8 doors was jimmed, so somebody has to let out that room once  
9 you go in there and shut the door.

10 Q. Okay. How did you get out?

11 A. Stevie let us out.

12 Q. All right. And did you go and talk to the police?

13 A. No, sir.

14 Q. Okay. Did you talk to the police within several days  
15 of this happening?

16 A. Yes, sir.

17 MR. SLADE: I don't have any other questions for  
18 this witness, Your Honor.

19 THE COURT: You may cross-examine, Ms. Leskanic.

20 CROSS EXAMINATION BY MS. LESKANIC:

21 Q. So Ms. Davis, when you left the room, Todd was standing  
22 at the -- beside the table?

23 A. Yes, ma'am.

24 Q. And "New York" was in the doorway?

25 A. Yes, ma'am.

- 1 Q. And "New York" had a gun pulled?
- 2 A. Yes, ma'am.
- 3 Q. And "Pookie" Byers ran out of the room?
- 4 A. Before me.
- 5 Q. Did "New York" already have the gun pulled when she ran  
6 out of the room?
- 7 A. Yes, ma'am.
- 8 Q. And then how long were you in the room after "Pookie"  
9 ran out?
- 10 A. Maybe a minute.
- 11 Q. All right. So for one minute you are standing there,  
12 after "Pookie" has left, "New York" has the gun, and Todd is  
13 still at the table?
- 14 A. Yes, ma'am.
- 15 Q. And what did you do during that one minute?
- 16 A. I tried to talk to "New York" and I tried to talk to  
17 Todd.
- 18 Q. Did "New York" put the gun down?
- 19 A. No, ma'am.
- 20 Q. And would Todd quit calling him --
- 21 A. No, ma'am.
- 22 Q. -- a motherfucker?
- 23 A. No, ma'am.
- 24 Q. Was Todd still standing at the table when you left the  
25 room?

1 A. No, he was coming towards "New York". He was coming  
2 over towards "New York". When I left the room, Todd was  
3 coming towards "New York".

4 Q. All right. And "New York" had a gun pulled on him?

5 A. Yes, ma'am.

6 Q. And "Pookie" had left the room?

7 A. Yes, ma'am.

8 Q. And you were able to leave the room?

9 A. Yes, ma'am.

10 Q. And he stayed in there with the gun?

11 A. Yes, ma'am.

12 Q. And what's he saying?

13 A. I can't even remember.

14 I can remember Todd calling him a motherfucker.

15 And I can remember him telling Todd "you don't know who  
16 you are playing with. You don't know who you are messing  
17 with. I ain't going to be too many of your motherfuckers."

18 Q. So he was angry too?

19 A. Yes.

20 Q. All right. It wasn't just Todd that was mad?

21 A. Yes, ma'am.

22 Q. Yes, it was just Todd?

23 A. No, ma'am, it was both of them was mad, yes, ma'am.

24 Q. Both of them were mad?

25 A. Yes, ma'am.

- 1 Q. And "New York" had a gun?
- 2 A. Yes, ma'am.
- 3 Q. What kind of weapon did Todd have?
- 4 A. Todd didn't have a weapon.
- 5 Q. And "Pookie" is able to get out of the room.
- 6 A. Yes, ma'am.
- 7 Q. And you are able to get out of the room?
- 8 A. Yes, ma'am.
- 9 Q. But "New York" doesn't leave the room?
- 10 A. (Shaking head no).
- 11 Q. He's in there when you leave?
- 12 A. Yes, ma'am.
- 13 Q. And he's in there when "Pookie" left?
- 14 A. Yes, ma'am.
- 15 Q. And he's got the gun drawn and pointed at Todd
- 16 Morgan --
- 17 A. Yes, ma'am.
- 18 Q. -- the entire time?
- 19 A. Yes, ma'am.
- 20 Q. And if you are in there for a minute and he's at the
- 21 table, Todd is not going at him like that, is he?
- 22 A. Uh-uh.
- 23 Q. Because that wouldn't take a minute.
- 24 A. Uh-uh.
- 25 Q. So it's "motherfucker" this and "motherfucker" that --

- 1 A. Yes, ma'am.
- 2 Q. -- but it's not charging at somebody?
- 3 A. No, ma'am.
- 4 Q. And it's like this?
- 5 A. Yes.
- 6 Q. With this gun pointed at him?
- 7 A. Yes, ma'am.
- 8 Q. And "you're not going to call me too many  
9 motherfuckers. I'm not going to be your motherfucker," is  
10 that right?
- 11 A. Yes, ma'am.
- 12 Q. So you stated --
- 13 Let me ask you this. Did you see the defendant use  
14 crack cocaine that night?
- 15 A. Yes, ma'am.
- 16 Q. All right. Tell me about that. Tell these people  
17 about that.
- 18 A. Him and Darrell came in and bought a five. Darrell hit  
19 first and then Hayward hit --
- 20 Q. All right.
- 21 A. -- crack.
- 22 Q. So you personally saw him use it?
- 23 A. Yes, ma'am.
- 24 Q. All right. Did he know why y'all were going to Paul  
25 Linder's house?

- 1 A. Yes, ma'am.
- 2 Q. So he knew y'all were going there to get more crack?
- 3 A. Yes, ma'am.
- 4 Q. So he's driving you there so you can transport some  
5 crack back to the white house?
- 6 A. Yes, ma'am.
- 7 Q. And how is he going to get paid for that?
- 8 A. In crack.
- 9 Q. So this is all about crack?
- 10 A. Yes, ma'am. Yes, ma'am.
- 11 Q. All right. And I -- we have talked about this case?
- 12 A. Yes, ma'am.
- 13 Q. And "Pookie" was high on crack?
- 14 A. Yes, ma'am.
- 15 Q. And you have been very forthcoming that you were high  
16 on crack?
- 17 A. Yes, ma'am.
- 18 Q. And during one of our telephone conversations you even  
19 told me that you didn't remember anything because you were  
20 so high on crack?
- 21 A. Yes, ma'am.
- 22 Q. You stand by that statement? Do you know not remember  
23 what happened now?
- 24 A. Yes, I remember what happened.
- 25 The reason I didn't want to come forth was because,

1 like I say, I have been knowing Todd all my life. I have  
2 been knowing him all my life. I don't know Hayward. I did  
3 not want to say anything against Todd, because I have been  
4 knowing him all my life. His family, his aunt, they --  
5 these -- these people has been nothing but good to me. Todd  
6 was nothing but good to me.

7 The angry side of Todd I did not know. He was the type  
8 of guy that if he seen me, he would say "go sit down  
9 somewhere "Pug". You need to go sit down somewhere. You  
10 need to get yourself together. You are getting too old."

11 You know, I didn't want to say anything against him,  
12 but to let -- not the truth be told, I wasn't going to do  
13 that. I have been all the way to El Paso, Texas and back  
14 off this.

15 Q. All right. And are you telling the truth to the jury  
16 today?

17 A. Yes, ma'am.

18 Q. All right. So even though you had told me at one time  
19 you didn't remember --

20 A. Yes, ma'am.

21 Q. -- because you were so high on crack --

22 A. Yes, ma'am.

23 Q. -- what you are telling them is the best that you can  
24 recall?

25 A. Yes, ma'am. The best I can remember, yes, ma'am.

1 Q. All right. So what -- correct me if I'm wrong, okay,  
2 but what you are testifying to is that "New York" is  
3 standing in this doorway?

4 A. Yes, ma'am.

5 Q. All right. And Todd is here on the couch?

6 A. No, on the other side.

7 Q. On this side of the couch?

8 A. Yes, ma'am.

9 Q. All right. Where is "Pookie"?

10 A. "Pookie" is on the other -- take -- over on the other  
11 side. Right there, yes, ma'am.

12 Q. Right there?

13 A. Yeah.

14 Q. Where are you?

15 A. I'm over there on the other side.

16 Q. This chair, or that broken patio furniture?

17 A. That -- that -- the white chair, it was not -- it was  
18 sitting right there at the table.

19 Q. All right. And at some point it gets knocked over?

20 A. Yes, ma'am.

21 Q. All right. Why is "New York" standing in the doorway?

22 A. I don't know.

23 Q. Well, what did he -- he said he was going to -- he  
24 needed to get paid, right?

25 A. Yes, ma'am. He was standing there waiting on getting

1 paid. That's the only reason he come back there to that  
2 room is because she was going to pay him.

3 Q. Okay. And pay him in crack?

4 A. Yes, ma'am.

5 Q. For going to get crack?

6 A. Yes, ma'am.

7 Q. And he had already used crack?

8 A. Yes, ma'am.

9 Q. Had Todd Morgan used any crack?

10 A. No, ma'am.

11 Q. Was Todd Morgan a crack user?

12 A. No, ma'am. No, he was not. He was very much against  
13 it.

14 Q. Did he try to talk you out of using crack?

15 A. Yes, ma'am.

16 Q. Try to get "Pookie" out of using crack?

17 A. Yes, ma'am.

18 Q. All right. So he's here on the couch, from what you  
19 remember --

20 A. Yes, ma'am.

21 Q. -- right?

22 And then the argument, the verbal argument begins?

23 A. Uh-huh.

24 Q. Is that right?

25 A. Yes.

- 1 Q. And Todd makes his way to the table?
- 2 A. Right there, uh-huh, where I was at.
- 3 Q. Right there at the table?
- 4 A. Uh-huh.
- 5 Q. Okay. And at that point did "New York" pull the gun?
- 6 A. Yes, ma'am.
- 7 Q. This door open?
- 8 A. Yes, ma'am.
- 9 Q. And there is the front door right there?
- 10 A. Yes, ma'am.
- 11 Q. All right. So he's standing in the doorway and Todd
- 12 has called him a motherfucker and he pulls the gun, is that
- 13 right?
- 14 A. Yes, ma'am.
- 15 Q. Todd hadn't hit him?
- 16 A. No.
- 17 Q. Todd hit "Pookie"?
- 18 A. No.
- 19 Q. Todd hit you?
- 20 A. No.
- 21 Q. So he hadn't doing anything violent?
- 22 A. No.
- 23 Q. But "New York" pulls a gun?
- 24 A. Yes, ma'am.
- 25 Q. Because he's called a name?

1 A. (Shaking head yes).

2 Q. Because he's called a motherfucker?

3 A. Yeah, and Todd was moving towards him too, I guess. I  
4 don't -- I don't know, but that's what happened.

5 Q. All right. But when you say he was moving toward him  
6 when you were -- when you were talking to Mr. Slade, you  
7 said that when you left the room, that Todd was at the  
8 table?

9 A. Uh-huh.

10 Q. And you had been in the room for awhile while they were  
11 back and forth talking, or --

12 A. Me and "Pookie" -- me and "Pookie" -- me, "Pookie",  
13 Todd and Hayward had been in that room for like five  
14 minutes, you know what I'm saying, rapping back and forth.

15 I'm telling "Pookie" to give him his dope, "you got his  
16 stuff. Give him his stuff," in which he wasn't no dope  
17 dealer. It was her -- it was for her. He had got the stuff  
18 for her. He just was not going to give it to her without  
19 her sitting down for it.

20 Q. Okay. But at this point -- I just want to make sure we  
21 all know everybody is. You are in this chair, but you are  
22 telling me this chair was up here at the table?

23 A. Yes, ma'am.

24 Q. All right. And Todd is here and "New York" is here?

25 A. Yes, ma'am.

1 Q. And that's where Todd was, somewhere in here at the  
2 table when you left the room?

3 A. Uh-huh.

4 Q. And where was Todd when "Pookie" left the room?

5 A. As soon as "New York" pulled the gun "Pookie" left the  
6 room. As soon as the gun got pulled she left.

7 Q. Where was Todd when "Pookie" left the room, from what  
8 you remember? Was he sitting down?

9 A. Uh-uh, he was standing up.

10 Q. All right. He was -- but here at the couch?

11 A. Yeah, he was standing up. He was never sitting down  
12 when I come in that room.

13 Q. So when you said he went toward "New York" --

14 How close is the table and the chair -- I mean the  
15 couch and the table to each other?

16 A. About like that right there.

17 Q. All right. So is that a long distance, a lot of steps  
18 to get to the table when you were standing at the couch?

19 A. No, ma'am.

20 Q. Or when you stand up, are you pretty much at the table?

21 A. Yes, ma'am.

22 Q. All right. So he stood up?

23 A. He -- he was already up.

24 Q. Okay.

25 A. He just started coming towards -- he was right there at

1 the end of the couch when the argument first -- when he  
2 first started calling "New York" mothefucker and stuff, he  
3 was right there.

4 Q. Okay.

5 A. Okay. As the argument escalated, Todd come on up to  
6 the table where I was at.

7 Q. All right.

8 A. Okay. When I seen I couldn't get no sense out of him,  
9 I run out the room.

10 Q. No sense out of either one of them?

11 A. Neither one of them, I run out the room.

12 Q. Okay. And then you heard a gunshot?

13 A. Yes, ma'am.

14 Q. Did you look back in the room?

15 A. No, ma'am.

16 Q. How long after you ran out of the room did you hear the  
17 gunshot?

18 A. I don't know. It wasn't long.

19 Q. Seconds, minutes?

20 A. About a minute. About a minute.

21 Q. Did "New York" say anything to you when you ran out of  
22 the room?

23 A. No, he didn't. I didn't see "New York". After he ran  
24 out of the room I was shut up in Stevie's room. I never did  
25 see "New York".

1 Q. Did he say anything to you when you ran out of the room  
2 before he did?

3 A. No, ma'am.

4 Q. Do you remember telling me at one point that he said  
5 something to you?

6 A. I read on a report where it said that I said "New York"  
7 said he wasn't no joke, but I don't remember saying that,  
8 because he did not say that to me.

9 Q. Do you remember if "New York" was wearing a hat that  
10 night?

11 A. He wasn't.

12 Q. I think that's all the questions that I have for you.  
13 Thank you, ma'am.

14 THE COURT: Redirect?

15 MR. SLADE: Thank you, Your Honor.

16 REDIRECT EXAMINATION BY MR. SLADE:

17 Q. In the beginning of this Todd calling people these  
18 names, who was Todd's anger and fury focused on?

19 A. When he started calling people motherfucker?

20 Q. Yes.

21 A. It was focused on "New York".

22 Q. Did the argument start out or did Todd start out with  
23 calling "Pookie" names or saying stuff to her?

24 A. Yeah, he was telling her to give him his stuff.

25 Q. Right.

1 A. So, yeah, he was calling her names.

2 Q. Was that the original source of his rage or the  
3 beginning?

4 A. Because "Pookie" --

5 Q. -- for his anger?

6 A. Yeah, yeah. And it the wasn't that she had took it.  
7 It was just the way she had took it from him, because he  
8 wasn't no drug dealer. He was going to give it to her  
9 anyway.

10 Q. Right.

11 But is that what ignited his anger?

12 A. Yeah.

13 Q. And then did he focus his anger on someone else?

14 A. Yes, on "New York".

15 Q. All right. And as he -- as he -- when he came -- when  
16 Todd came -- stood up at the end of this couch, was his  
17 anger focused on "New York" at that point?

18 A. Yes, he -- Todd never sat down. When I came in the  
19 room he was standing. He always stood standing. He was  
20 never sit.

21 Q. And as he moved toward -- in your testimony, as he  
22 moved toward Hayward, was his anger focused on Hayward?

23 A. Yes, sir.

24 Q. Was it focused on you?

25 A. No, sir.

1 Q. Was it focused on "Pookie"?

2 A. Yeah, he was mad at "Pookie", because -- yeah, his  
3 anger was focused on "Pookie" too.

4 Q. All right. And what was Todd -- given the fact that  
5 you have seen Todd at this level of anger and rage before,  
6 what did you think Todd was about to do?

7 A. I didn't know. I didn't know what Todd was about to  
8 do. I know once that gun got pulled, it wasn't going to be  
9 nothing pretty in that room.

10 Q. All right. And did you run past Todd on your way out  
11 of the room?

12 A. No, I run past Hayward on my way out the room.

13 Q. Was Todd still advancing toward Hayward when you left?

14 A. Yes, sir.

15 Q. Was he still calling -- well, when he was -- when you  
16 left the room, was Hayward -- excuse me, was Todd still  
17 going toward Hayward?

18 A. Yes, sir.

19 Q. Was he still at that level of anger and rage?

20 A. He was mad.

21 Q. And as Todd was advancing towards Hayward, Todd was  
22 angry?

23 A. Yes, sir.

24 Q. Was he calling him those names?

25 A. Yes, sir.

1 Q. And Hayward didn't shoot --

2 A. No.

3 Q. -- right?

4 And Todd kept coming toward him?

5 A. Yeah.

6 Q. And you knew, given Todd's rage, something bad was  
7 going to happen?

8 A. Yes, sir.

9 MR. SLADE: I don't have any other questions.

10 MS. LESKANIC: Briefly, Your Honor.

11 THE COURT: Yes, ma'am.

12 RE-CROSS EXAMINATION BY MS. LESKANIC:

13 Q. Your testimony earlier was that when you left the room,  
14 Todd was at the table.

15 A. Yes, ma'am.

16 Q. Is that correct?

17 A. Yes, ma'am.

18 Q. So when you ran out of the room, I assume your back was  
19 then facing Todd?

20 A. Yes, ma'am.

21 Q. So you don't know what Todd was doing when you left the  
22 room. He might have sat back down on the couch.

23 A. You're right. You're right.

24 Q. Is that correct?

25 A. That's right. That's right, because I don't know what

1 he did when I left that room. I don't know what happened  
2 after I left that room.

3 Q. Okay. So you leave the room and he's here?

4 A. Yes, ma'am.

5 Q. So what we know is Todd is here calling "New York", who  
6 is here with the gun in his hand, a motherfucker?

7 A. Yes, ma'am.

8 Q. And "New York" is here with the gun pointed at Todd  
9 saying "I'm not going to be your motherfucker," is that  
10 right?

11 A. Yeah.

12 Q. And then you leave the room?

13 A. (Shaking head yes).

14 Q. And is it possible Todd sat back down on the couch?

15 A. I don't know whether he sat back down.

16 When I left Todd was at the table. I was at the table.  
17 I had talked to Todd "that stop. Come on, man, please," and  
18 I talked to "New York". Neither one of was hearing what I  
19 had to say and I left out.

20 I don't know if he sat back down, if he stood up,  
21 whether he leaped towards him. I don't know what happened.  
22 I left out the room.

23 Q. Okay. While you were in the room, Todd was just in  
24 this furious rage at "Pookie", right?

25 A. Uh-huh.

1 Q. How many times did he hit her?

2 A. How many times did who hit "Pookie"?

3 Q. How many times did Todd hit "Pookie"? He was enraged.

4 A. Todd -- Todd never hit "Pookie". He never hit  
5 "Pookie".

6 Q. All right. Well, how many times did he hit you?

7 A. He didn't hit me.

8 Q. How many times did he hit "New York"?

9 A. He didn't hit "New York".

10 Q. Thank you.

11 THE COURT: Anything further?

12 REDIRECT EXAMINATION BY MR. SLADE:

13 Q. The solicitor asked you if you knew if Todd sat down.  
14 Given what you saw of the level of Todd's rage, is that what  
15 you expected Todd to do?

16 A. No, sir.

17 Q. Okay.

18 MR. SLADE: I have no other questions.

19 THE COURT: Anything further?

20 MS. LESKANIC: No, Your Honor.

21 THE COURT: You may step down. Thank you very  
22 much.

23 THE WITNESS: Thank you.

24 THE COURT: All right, ladies and gentlemen, we  
25 have reached about 12:30, so we are going to stop at this

1 MR. SLADE: We are, Your Honor.

2 THE COURT: State ready?

3 MS. LESKANIC: Yes, Your Honor.

4 THE COURT: Bring the jury in.

5 (The following takes place in the presence of the  
6 jury panel)

7 THE COURT: The record will reflect that the jury  
8 has returned to the courtroom.

9 If anyone had any difficulty in complying with my  
10 instructions during the lunch break, please stand.

11 It appears everyone has been able to comply.

12 When we stopped earlier the defense was in the  
13 process of calling its witnesses and you may call your next  
14 witness.

15 MR. SLADE: Thank you, Your Honor.

16 We call Hayward Chambers.

17 THE COURT: Come forward, sir, and be sworn.

18 HAYWORD TONY CHAMBERS, having been first duly  
19 sworn, testified as follows:

20 THE COURT: Sir, have a seat. And once you are  
21 seated, I ask that you state your name, please.

22 THE WITNESS: My name is Hayward Tony Chambers.

23 THE COURT: Thank you.

24 Mr. Slade, your witness.

25 MR. SLADE: Thank you, Your Honor.

1 DIRECT EXAMINATION BY MR. SLADE:

2 Q. Hayward, I'm going to ask you a series of questions  
3 just to begin with just so we can get some idea of who you  
4 are, your background, where you grew up, that kind of thing.

5 Can you tell us where you were born and where you lived  
6 through high school and those years?

7 A. Well, I was born in Hickory, North Carolina.

8 Q. Right.

9 A. I'm fifty-three years old. I was born in 1959, May.

10 Q. Right.

11 That's okay. I'll move the microphone a little closer  
12 to you.

13 A. At five months old my mother moved to Brooklyn, New  
14 York. I have been in New York, moved around for most of my  
15 life.

16 Q. Moved around in the New York area?

17 A. In the New York area, yes.

18 Q. You lived in New Jersey?

19 A. New Jersey.

20 Q. You lived in Brooklyn?

21 A. Brooklyn, Bronx, Manhattan, Rockland County,  
22 Westchester County.

23 Q. Okay. Where did you finish -- where did you go to high  
24 school?

25 A. The first place I went to high school Queens, Brooklyn,

1 Rockland County. That's about it.

2 Q. Okay. Did you finish high school?

3 A. No, I didn't. I dropped out in the 11th grade.

4 Q. Okay. And what kind of work did you do while you lived  
5 in New York?

6 A. Various jobs. I worked for Staples Company. I worked  
7 for Rockland State Hospital Psychiatric Center. I worked  
8 for car dealerships. I had various jobs, sir.

9 Q. Okay. Did you get married when you were living there?

10 A. Yes, I did.

11 Q. Do you have children?

12 A. Yes, I do.

13 Q. Are they here today?

14 A. Yes, they are.

15 Q. That's them sitting over there on the other side of Ms.  
16 Poole?

17 A. Yes, they are.

18 Q. And did you have any associations with Gaffney or  
19 Cherokee County? You just said you grew up basically in New  
20 York.

21 A. Yes.

22 Q. Tell us what your -- tell us what your connections with  
23 Cherokee County are.

24 A. My father's background, he's originally from  
25 Blacksburg.

1 Q. Right.

2 A. And he has -- had thirteen brothers and sisters, which  
3 only one of them is alive now. They moved to Gaffney many  
4 years ago.

5 I have a house in what they Tank Branch on Willis  
6 Avenue.

7 Q. Right.

8 A. That house has been in the family for over fifty-three  
9 years.

10 Q. Is that the house where your aunt lives?

11 A. Yes, it is. She's --

12 Q. Ms. Corey?

13 A. Yes. She's my father's sister. She's the last sibling  
14 alive. She's eighty-nine years old. She couldn't be here  
15 today.

16 Q. Okay. And do you have cousins living here now?

17 A. Yes, I do.

18 Q. And James Wade, I think, is sitting on the other side  
19 of your children is one of them?

20 A. Yes, his mother and my father were brothers and  
21 sisters.

22 Q. All right. James grew up somewhere else too, right?

23 A. Yes, he grew up in Massachusetts.

24 Q. So as your generation gets older, y'all are moving  
25 back, or moving down here?

1 A. Yes.

2 Q. Now, what prompted you to return or move to Gaffney?

3 A. Well, at the time me and my wife, Patricia's mother, we  
4 had separated. She moved to Georgia. I had sent my kids  
5 down here with her for the summer of '06. She in turn came  
6 from Georgia to Gaffney at my aunt's house.

7 Q. Right. Over there on Rutledge Avenue?

8 A. Yes.

9 Q. All right.

10 A. And then I came from New York and stayed there too.

11 Q. Okay.

12 A. And --

13 Q. Did you have --

14 A. I had custody of --

15 Q. Did you have a legal separation --

16 A. Yes.

17 Q. -- with your wife?

18 A. When me and my wife separated, I acquired custody of my  
19 two kids.

20 Q. How old -- roughly how old were they then?

21 A. Oh, she was in the 5th or 6th grade. Ten, eleven,  
22 something like that.

23 Q. Now, when you moved down here with your children, to be  
24 with your children, where did you -- where did you and they  
25 live?

1 A. At my aunt's house on Rutledge Avenue.

2 Q. All right. And where did you start working when you  
3 got here to Gaffney?

4 A. I got a job at Stouffer's.

5 Q. All right.

6 A. Two weeks after I got down here.

7 Q. All right. How long did you -- how often -- that's  
8 Nestle's now?

9 A. Nestle's, yes.

10 Q. How long did you work there?

11 A. I worked there for approximately five weeks. I was  
12 hired as a prep waiter.

13 Q. Right.

14 A. And it was killing my back. My back was killing me,  
15 the position I was in for certain amount of hours.

16 Anyway, my cousin works at Milliken and --

17 Q. Worked at Magnolia?

18 A. Magnolia, yes, and he told me that they was hiring, for  
19 me to put an application in, and I did. So I left  
20 Stouffer's on a Friday and I started Magnolia on Monday.

21 Q. All right. Now, roughly when did you move down here?

22 A. Around the end of October of '06.

23 Q. Okay. So that means in November of '06 you were  
24 working at Magnolia?

25 A. Yes.

1 Q. And how long did you work there?

2 A. About a year and a half, close to two years.

3 Q. And why did that job -- why did you -- why did that job  
4 end?

5 A. They was having layoffs at the time and I got laid off.

6 Q. All right. So that takes us a year and a half, '07, to  
7 the early part of '08?

8 A. Yes.

9 Q. And where did you work after you got laid off at  
10 Magnolia?

11 A. I worked in the summer at Limestone Mills.

12 Q. Right.

13 A. I think it's on Sixth Avenue -- Sixth Street.

14 Q. Right.

15 A. Somewhere in that area.

16 Q. Right.

17 A. I worked there for the summer. It was a temporary  
18 thing, and I was drawing unemployment until this happened.  
19 As a matter of fact, I was drawing unemployment when this  
20 happened.

21 Q. You said that you were drawing unemployment?

22 A. I was drawing unemployment when this happened.

23 Q. All right. So when did you and Tynisha Poole begin  
24 your relationship?

25 A. I want to say sometime in '07.

1 Q. All right.

2 A. I don't know exactly the month, but it was sometime in  
3 '07, I believe.

4 Q. All right. Where were you living then?

5 A. I was living with -- I was still living at 609 Rutledge  
6 Avenue.

7 Q. And where was Ms. Poole living?

8 A. Granard Courts.

9 Q. Right down the street?

10 A. Yes.

11 Q. Now, did y'all have a child together?

12 A. Yes, we did. We began a relationship. Eventually I  
13 moved out of 609 and I got an apartment at Granard Courts  
14 also.

15 Q. Right.

16 A. She lived in the front and I lived in the back.

17 Q. Did you have your car then, the red Volvo station wagon  
18 that we have been talking about the last couple of days?

19 A. I think I got it after I moved to Granard Courts.

20 Q. And actually who owns the red Volvo?

21 A. Well, my aunt. It's in her name.

22 Q. Right. She helped pay for it?

23 A. Yes.

24 Q. Now, once you met and began a relationship with Ms.  
25 Poole, how much longer did you live -- you lived in one

1 apartment at Granard Courts and she lived in another?

2 A. Yes, sir.

3 Q. And at some point y'all moved in together on Broad  
4 Street?

5 A. Yes, because the rent that she was paying and the rent  
6 that I was paying, it didn't make sense by us having a  
7 relationship, and we found a house and moved in together  
8 with her kids and mine. Well, her son, our daughter, and my  
9 two kids.

10 Q. So were you laid off and drawing unemployment at the  
11 time that y'all moved into the yellow house --

12 A. Yes, I was.

13 Q. -- on Broad Street?

14 A. Yes, I was.

15 Q. Was she working?

16 A. Yes, she was.

17 Q. Where was she working?

18 A. I want to say she was working at the Super 8 Motel.

19 Q. Down on Baker Boulevard?

20 A. Yes.

21 Q. So how did you spend your day? What did you do then?

22 A. I stayed with Destiny, our daughter. When the kids  
23 went to school, I baby-sat.

24 Q. Well, I should have asked you this earlier. When did  
25 Ms. Poole go to work in the morning?

1 A. 8:00, 8:30. 8:30 in the morning. Around 8:00 and  
2 8:30.

3 Q. And how long was her day?

4 A. Well, the type of job she had, it wasn't a set time  
5 when she got off. When she finished doing her duties at the  
6 hotel, at the motel then, she came home and or I went and  
7 picked her up.

8 Q. All right. No set time?

9 A. No.

10 Q. So what were you doing off for those days -- or how  
11 would you spend a typical day, I guess? We don't need to go  
12 through all of it.

13 A. Taking care of the baby; feeding her, changing her  
14 diapers. You know, things that normally somebody would do.

15 Q. How -- I mean, was this from the time Destiny was born?

16 A. The time she was born, yes.

17 Q. Did you take her to the doctor appointments and all  
18 that stuff you do with children?

19 A. Yes, I did.

20 Q. I'm sorry?

21 A. Yes, I did.

22 Q. Now, tell me about the day that this happened. How did  
23 that day start?

24 A. Well, it started as normal. I took Tynisha to work.  
25 Baby-sitted Destiny. I picked Tynisha up from work.

1 Q. Were you children -- were your children in school?

2 A. Yes, they were.

3 Q. Okay. Now, who does -- who did the cooking for your  
4 family?

5 A. Well, I liked to cook. I did a lot of cooking.

6 Q. All right.

7 A. Being at home and not working and being that I liked to  
8 cook, it kind of worked out.

9 Q. All right.

10 A. I mean, that day me and my cousin went to Shelby. It  
11 was the day after Thanksgiving.

12 Q. Okay.

13 A. His daughter was living in Shelby at the time.

14 Q. Uh-huh.

15 A. And we went to get some of her macaroni and cheese.  
16 She makes excellent macaroni and cheese.

17 Q. Are you talking about you and James --

18 A. Yes.

19 Q. -- went up to Shelby?

20 A. Yes, we did.

21 Q. All right.

22 A. And picked up a bowl of that. I forget what time we  
23 came back, but it was pretty late.

24 Q. Late, being seven o'clock in the evening?

25 A. No, it was later than that. Nine, ten o'clock,

1 somewhere in that area.

2 Q. All right.

3 A. I'm trying to recall. I guess I came back, sat around  
4 the house for awhile.

5 Q. And after you took -- did y'all ride up to Shelby in  
6 your car or James' car?

7 A. No, we rode in James' car.

8 Q. So y'all go back to James' house?

9 A. Right.

10 Q. And let me stop you right there.

11 A. Sure.

12 Q. Did you know Scottie Mayberry?

13 A. Yeah, I mean we are associates. We were associates to  
14 a degree.

15 Q. Okay. Where would you run into Scottie Mayberry, or  
16 how would you run into Scottie Mayberry?

17 I mean, just give us a brief idea of what that  
18 relationship is like.

19 A. Well, sometime I see him on Tank Branch, or ride by. I  
20 might see him in his car, see him in my car.

21 Q. Right.

22 A. I mean, just coincidentally, I mean, you know.

23 Q. Okay.

24 A. And we would hang out, have a couple of beers.

25 Q. Smoke any crack?

1 A. We did at one time, yes.

2 Q. Okay. Now, when you were living in Granard Courts,  
3 were you working anywhere at that point?

4 A. No, I was not.

5 Q. Drawing unemployment?

6 A. Yes.

7 Q. Was there anything you did to try to help earn some  
8 money?

9 A. Well, being that I had a vehicle, people needed rides  
10 to various places and --

11 Q. A lot of people in Granard Courts --

12 A. Yes.

13 Q. -- that don't have cars?

14 A. Yes.

15 Q. All right.

16 A. And I would ride them rides and they would pay me.

17 Q. All right. How much?

18 A. It really depends on how far I would take them. I  
19 would never charge them too much.

20 Q. Sometimes they would pay you with money?

21 A. Yes.

22 Q. Sometimes they would give you a crack rock?

23 A. Yes.

24 Q. Okay. Now, what -- you were telling us about getting  
25 back from James daughter's house and you went back to your

1 house?

2 A. Yes.

3 Q. Now, how long were you at your house that evening?

4 A. Maybe an hour, hour and a half.

5 Q. Okay.

6 A. Give or take.

7 Q. So you got some idea roughly what time you left?

8 A. It was pretty late. Around 11:00, 11:30.

9 Q. Now, let me ask you this. Do you know what a concealed  
10 weapons permit is?

11 A. Yes, I do.

12 Q. How do you know that?

13 A. Because I had one.

14 Q. When did you get it?

15 A. I can't remember the exact date, but I believe it was  
16 in '07.

17 Q. All right. Why did you get it?

18 A. Well, being that the type of neighborhood I was in and  
19 it was protection for me and my family and --

20 Q. Right.

21 A. And I be able to carry it legally.

22 Q. Right.

23 How did you carry it?

24 A. I had a little small holster. I put it on my waist on  
25 my belt.

1 Q. Okay. We don't need to do anything elaborate, but just  
2 show the folks on the jury -- just stand up and show them  
3 where you carry it.

4 A. I carried it right here.

5 Q. Okay. Did you have a holster?

6 A. Yes, I did.

7 Q. All right. You can sit back down.

8 Do you have to take a class to get your CWP?

9 A. Yes. It's an eight hour class. I think it -- I think  
10 it's \$150.

11 Q. Right.

12 A. You have to wait ninety days to see if you are going to  
13 be approved or not.

14 Q. Right.

15 A. And you receive it in the mail.

16 Q. Okay. Did you have that, whatever that thing is? It's  
17 like a little driver's license, like a picture?

18 A. Exactly.

19 Q. Did you have it with you?

20 A. Yes, I do.

21 Q. Did you keep that with you?

22 A. Yes.

23 Q. Did you take your gun with you?

24 A. Yes, I did.

25 Q. Frequently or often?

1 A. Yes, I did.

2 Q. Once you got the CWP?

3 A. Exactly.

4 Q. Now, you were telling us that you sat around the house  
5 for an hour and a half, or so. Was Ms. Poole there?

6 A. Yes.

7 Q. And who else was there at your house?

8 A. Everybody was home. The kids was home.

9 Q. Okay. Now, you left. What did you leave for?

10 A. I went -- actually I left out to get me some cigarettes  
11 at the time.

12 Q. Okay.

13 A. While I was out I rode around for a little while.

14 Q. Where did you go to get the cigarettes?

15 A. I went to Walgreens.

16 Q. Okay. Just right there --

17 A. Floyd Baker.

18 Q. Yeah, right there in the neighborhood?

19 A. Yes.

20 Q. Did you have any idea of going anywhere else when you  
21 left the house?

22 A. Well, that wasn't my intention when I left the house,  
23 no.

24 Q. Okay. So tell us what happened.

25 A. I rode around. Since I was out already, I was bored,

1 and just -- I can't exactly -- I can't remember exactly my  
2 exact movements --

3 Q. Right.

4 A. -- but I went to Granard Courts, I think.

5 Q. Did you run into anybody, any of your friends or people  
6 that you hung out with over there?

7 A. Yeah, stopped and talked. You know, a little chit-chat  
8 here and chit-chat there.

9 Q. Okay. This is what time? Midnight, twelve --

10 A. Yeah, 12:30, one o'clock, maybe.

11 Q. Now, Granard Courts, or at least one side of Granard  
12 Courts, runs down Rutledge Avenue, South Rutledge Avenue,  
13 right?

14 A. Yeah.

15 Q. And right before you get to Granard Courts, on the  
16 right as you are going out of town there is a club, right?

17 A. Yes.

18 Q. What's the name of that?

19 A. Good Times.

20 Q. Did you stop by Good Times?

21 A. Yes, I did.

22 Q. Okay. Run into anybody there?

23 A. I ran into Scottie Mayberry.

24 Q. And did you stay at Good Times any length of time?

25 A. Not very long.

1 Q. All right. Well, where is the next place that you  
2 went?

3 A. To the white house.

4 Q. Have you ever been to the white house before?

5 A. Not inside, no.

6 Q. Okay. Now, what led you going over there? I mean,  
7 what kind of -- take us through the decision process of what  
8 you were thinking about when you went over there.

9 A. Well, Scottie wanted to go over there, so I gave him a  
10 ride over there.

11 Q. You ran into Scottie at the Good Times?

12 A. Yes.

13 Q. All right. So -- you said you had never been inside?

14 A. The white house, no.

15 Q. Where did y'all go when you got there to Sarratt  
16 Avenue? Did you go in the front? Did you go in the back?

17 A. We went in the back.

18 Q. Who was there?

19 A. I didn't know really anybody when I got there.

20 Q. Okay. And --

21 A. But --

22 Q. That's -- hold on. That's fair enough.

23 Over the course of this case you learned the names of  
24 some of these people?

25 A. Yes.

1 Q. Now, did you -- other than Scottie Mayberry, who was a  
2 friend of yours, did you know anybody at the white house  
3 when you got there?

4 A. No.

5 Q. Now, did you -- when you left the house that night,  
6 11:30, twelve o'clock, did you take your gun with you?

7 A. Yes, I did.

8 Q. Why?

9 A. I guess I got into a habit taking it.

10 Q. Right.

11 A. To be honest with you, I got in the habit of taking it  
12 with me.

13 Q. Okay. Now, you got to the white house. You go around  
14 to the back. Are y'all in your car?

15 A. Yes.

16 Q. I mean, Scottie has a car, right?

17 A. Yes.

18 Q. And when you get there, you go in the back, tell me  
19 what you did.

20 Do you see anybody whose name you know now?

21 A. Whose name I know now?

22 Q. Yes.

23 A. Yes.

24 Q. I mean, we have heard these names. If you can identify  
25 these people for me.

1 A. Calvin Wallace.

2 Q. Did you know him at the time?

3 A. No, not at the time I did not.

4 Q. The first time you had ever seen him?

5 A. Yes.

6 Q. Who else was there?

7 A. "Big Momma", Michelle Davis.

8 Q. Ever seen her before?

9 A. Never seen her before.

10 Q. Not before that night?

11 A. No.

12 Q. Know her name?

13 A. No.

14 Q. Okay.

15 A. Calvin Todd --

16 Q. Calvin Todd --

17 A. Yes.

18 Q. -- Morgan, right?

19 A. Yes.

20 Q. Ever seen him before?

21 A. No.

22 Q. And?

23 A. "Pookie". "Pookie" Byers.

24 Q. Okay. Now, were they all back there in Calvin's room,

25 or -- you just tell us.

1 A. No, I'm just telling you who I seen when I went in  
2 there.

3 Q. Okay. So when y'all -- when you and Scottie first went  
4 in the house -- what are y'all going over there for?

5 A. Well, I was giving Scottie a ride. It's where he was  
6 going. It's where he was -- it was his destination.

7 Q. Right.

8 A. On the way we decided to go and see if we can get a hit  
9 of crack.

10 Q. Okay. And a hit of crack is smoking a rock?

11 A. Yes.

12 Q. Okay. Now, when y'all got in the house, what did you  
13 do?

14 A. We went to the back room. Well, we first got there we  
15 stopped at Calvin's room, that I now know was his room.

16 Q. Right.

17 A. Then we went into the back where Michelle, "Pookie",  
18 and Todd were at.

19 Q. Okay. The room we have been talking about now --

20 A. Yes.

21 Q. -- for two days.

22 And what happened in there once you got in that room?

23 A. Well --

24 Q. Well, first, tell me how you got back there. Had you  
25 ever been in --

1 A. No.

2 Q. Have you ever been in that house before?

3 A. No, I have never been in there.

4 Q. Did you know the layout at all?

5 A. No.

6 Q. All right. How did you get from the back door -- just  
7 take us through the house. I mean, does the hallway go all  
8 the way to the room, or what? To the room where "Pookie"  
9 was?

10 A. We -- when we came out of Calvin's room, we walked to  
11 the back to where "Pookie" and Michelle and --

12 Q. Were there other rooms there?

13 A. Yes, there were.

14 Q. Did you know where you were going from one room to the  
15 other?

16 A. No.

17 Q. Now, had you ever been in the front door?

18 A. No.

19 Q. Did you know the front door was there?

20 A. I had no idea.

21 Q. All right. Now, once you got in the room and you saw  
22 the people you now know as "Pookie" Byers, Todd Morgan, and  
23 Michelle Davis, tell us what happened.

24 A. Scottie Mayberry did most of the talking, being that I  
25 didn't know anybody.

1 Q. Right.

2 A. So he eventually got a crack rock from "Pookie".

3 Q. Right.

4 A. And --

5 Q. Do you remember what y'all paid for it? Did you have

6 any money?

7 A. It was about five or six dollars.

8 Q. Okay.

9 A. It was very little money.

10 Q. Okay.

11 A. Anyway, "Pookie" sold it to him and she -- Scottie

12 asked for this -- for her stem.

13 Q. That's the little pipe --

14 A. Yes.

15 Q. -- you smoke crack with?

16 A. Yes. And --

17 Q. Y'all didn't have one?

18 A. No.

19 So Michelle let us use hers.

20 Q. Have you ever kept one?

21 A. No.

22 Q. Okay.

23 A. Anyway, after we smoked that, "Pookie" wanted a ride to

24 get some more crack.

25 Q. Right.

1 A. So she asked me and I said, yeah, I would give her a  
2 ride.

3 Q. Well, let's stop right there. Was Michelle Davis in  
4 the room?

5 A. Yes, she was.

6 Q. All right. Did she ride with y'all?

7 A. Yes, she did.

8 Q. How did she wind up riding with y'all?

9 A. I'm not exactly sure, but she did wind up riding. How  
10 she got in the car I don't know. I didn't have any  
11 objection to it. I mean --

12 Q. Right.

13 A. It was fine with me.

14 Q. Had you ever met her before?

15 A. No, I hadn't.

16 Q. Did you like her?

17 A. She's all right, yeah.

18 Q. Did you have any conversation at that point with Todd  
19 Morgan?

20 A. No, I hadn't.

21 Q. Did he say anything to you?

22 A. No, he hadn't.

23 Q. Did you get any idea that Todd Morgan was angry?

24 A. No, I didn't.

25 Q. Was "Pookie" angry?

1 A. No.

2 Q. Did you get any idea they were having any kind of hard  
3 feelings between each other or anything?

4 A. No, I knew nothing about them.

5 Q. Okay. And y'all left?

6 A. Yes.

7 Q. Left in your car?

8 A. Uh-huh.

9 Q. Went to the person we now know as "Pookie's" relation  
10 of some sort?

11 A. Right.

12 MS. LESKANIC: Your Honor, I'm just going to  
13 object. If he could ask him questions that are not leading.  
14 Thank you.

15 THE COURT: I would ask that you not lead the  
16 witness. Thank you, sir.

17 MR. SLADE: Yes, sir.

18 BY MR. SLADE:

19 Q. How long were y'all at Paul Linder's house?

20 A. Not long at all. "Pookie" got out, went into the  
21 house. Me and Michelle stayed in the car. Maybe about five  
22 minutes --

23 Q. Okay.

24 A. -- if that. She came back. We drove back to the white  
25 house.

1 Q. Do you know if she got anything?

2 A. No, I don't. I don't know if got anything. I don't  
3 know what she did when she went into the house.

4 Q. Was there any mention by her or Ms. Davis of "Pookie"  
5 Byers stealing Todd Morgan's dope --

6 A. Not at all, no.

7 Q. -- or taking Todd Morgan's dope?

8 A. No.

9 Q. Did you have any kind of arrangement with Ms. Byers on  
10 being reimbursed or paid for this ride?

11 A. Well, it was never really discussed at first, but --

12 Q. Right.

13 A. -- it was like, you know, when she asked me for the  
14 ride, you know, she was going to give me a hit --

15 Q. Okay.

16 A. -- for giving her a ride. She was giving me something  
17 for giving her a ride. That was pretty much it.

18 Q. Let's talk about getting back.

19 A. Uh-huh.

20 Q. You got back to the house?

21 A. Yes.

22 Q. Where did you park when you got back to the house?

23 A. In the back.

24 Q. And did all three of you go in at the same time?

25 A. Basically, yes.

- 1 Q. So where did "Pookie" Byers go, or could you tell?
- 2 A. To the back room.
- 3 Q. How about Michelle Davis?
- 4 A. To the back room.
- 5 Q. And where did you go?
- 6 A. I let Scottie know I was back and then I went to the  
7 back room.
- 8 Q. Now, where was Scottie?
- 9 A. He was in Calvin's room.
- 10 Q. Now, had you ever used any entrance other than this  
11 back entrance?
- 12 A. No.
- 13 Q. All right. If I'm understanding you right, was this  
14 the second time now that you had been into the white house?
- 15 A. Yes.
- 16 Q. Did you see any of the other rooms?
- 17 A. No.
- 18 Q. Like -- at some point the prosecutor put in some  
19 pictures of some of these other rooms, like State's Exhibit  
20 No. 27? Did you ever see this room?
- 21 A. No, I never did.
- 22 Q. Have you ever seen that room?
- 23 A. Not until now. Not until it came here to this  
24 courtroom.
- 25 Q. All right. That's been identified as the living room.

1 A. Yes.

2 Q. It's been identified as being right here.

3 A. Yes.

4 Q. On the opposite side of "Pookie's" room.

5 A. Yes.

6 Q. It's a room that's been identified as Stevie's bedroom,  
7 Stevie Wallace's bedroom.

8 A. Uh-huh.

9 Q. Have you ever seen that?

10 A. No.

11 Q. Do you know Stevie Wallace?

12 A. No, I don't.

13 Q. So you're in "Pookie's" bedroom, "Pookie's" room?

14 A. Yes.

15 Q. What we call for the last three days "Pookie's" room.  
16 Tell us what happen when you walk in the room.

17 A. Todd Morgan is arguing with "Pookie" about some drugs,  
18 about some crack.

19 Q. Okay. Now, tell us exactly what -- well, if you can,  
20 as close as you can, what you recall about what he is saying  
21 to her and what she's saying to him.

22 A. Well, I can't remember word for word --

23 Q. Right.

24 A. -- but he was -- he was pretty agitated, pretty upset,  
25 and he was saying that she stole his crack.

1 Q. Okay. And I'm not trying to get you to say them, but  
2 was he using curse words or bad words?

3 A. Well, yeah.

4 Q. The words that you heard described by the other two  
5 people that were in the room?

6 A. Yes, "bitch, where is my shit" --

7 Q. Okay.

8 A. -- is basically what he said.

9 Q. All right. What did his state of mind appear to be at  
10 that point?

11 A. He was angry. He was pretty upset.

12 Q. Was Ms. Byers, his girlfriend, was she angry?

13 A. No. She didn't appear angry, no.

14 Q. Was she talking back to him?

15 A. Yeah. She was more scared.

16 Q. I'm sorry?

17 A. She was more scared than angry.

18 Q. Okay. What do you draw that from? How do you make  
19 that observation?

20 A. From the back and forth conversation. She was trying  
21 to state her case that she did not steal his drugs.

22 Q. Uh-huh.

23 A. And he was steady saying that she did.

24 Q. Now, we have had --

25 MR. SLADE: Greg, do you want to turn that on?

1 BY MR. SLADE:

2 Q. We have had some testimony about the arrangements of  
3 this room.

4 Now, can you see this okay, Hayward?

5 A. Yes.

6 Q. I know you have been looking at it for a while now.

7 Now, direct me to where you were -- to where you were  
8 standing when you came into --

9 A. I was standing at the TV.

10 Q. -- Todd Morgan's -- excuse me, "Pookie" Byers bedroom.

11 A. I was standing at the TV.

12 Q. This is the TV here?

13 A. Yes.

14 Q. What -- what door -- there is a door right and there is  
15 a door right here. Which one did you enter by?

16 A. The door -- that one. That's the door.

17 Q. Okay. Is that the door that y'all always used -- 5?

18 A. That's the door that we used --

19 Q. -- for the two trips in?

20 A. That's the door that I used that I know of, right.

21 Q. Had you seen anybody using this front door?

22 A. No.

23 Q. Had you been in this room that's been identified over  
24 here, this living room, or whatever?

25 A. No.

1 Q. Had you been in the kitchen area that's been identified  
2 as back here?

3 A. No.

4 Q. Now, when you walk in, are Ms. Byers and Ms. Davis  
5 already in the room?

6 A. Yes.

7 Q. Where are they?

8 A. If I'm not mistaken, Ms. Byers and Mr. Morgan were  
9 sitting on the couch.

10 Q. Okay. Right here?

11 A. Yes.

12 Q. All right.

13 A. I think Michelle was sitting over there in the chair.

14 Q. This turned-over chair --

15 A. Yes.

16 Q. -- or this patio chair?

17 A. I think that patio chair.

18 Q. All right. Now, why were you standing in the room at  
19 that point? Did you want to smoke crack, or what did you  
20 want to do?

21 A. Well, I was waiting for "Pookie" to give me what she  
22 was going to give me.

23 Q. All right. And you said that when you got in the room,  
24 she and Mr. Morgan were arguing. How long were you standing  
25 there while this argument goes on?

1 A. Three, four minutes, but five minutes at the most.

2 Q. Now, you had seen Scottie Mayberry back here in  
3 Calvin's room?

4 A. Yes.

5 Q. When you were observing this argument, did it appear to  
6 you that Todd Morgan was angry?

7 A. Yes.

8 Q. Can you describe for us what level of anger you saw in  
9 him?

10 A. Well, he was wanting his -- his cocaine, his crack.

11 Q. Right.

12 A. And he was -- he was mad.

13 Q. Okay.

14 A. I mean --

15 Q. Did he ever -- in the course of this argument with  
16 "Pookie" Byers, did he say anything to you?

17 A. Yes, he told me to mind my business and shut the fuck  
18 up.

19 Q. Had you said anything to him --

20 A. I hadn't said a --

21 Q. -- as you stood right there?

22 A. No, I hadn't said a word to him.

23 Q. Now, to give the folks an understanding of the size of  
24 this room that you are in, can you just tell us roughly how  
25 far it is from this couch right here back over here to the

1 side of the room that you were on?

2 A. I could say from that chair from to the beginning of  
3 the table.

4 Q. To right here?

5 A. Approximately, yeah.

6 Q. All right. So while this argument is going on between  
7 "Pookie" and Todd and you are right here, are you roughly  
8 this distance?

9 A. Yeah.

10 Q. When he first said whatever he said to you, did you do  
11 anything?

12 A. I didn't say anything. I just didn't do nothing.

13 Q. Well, you could tell he was angry. Why did you stay in  
14 this room?

15 A. Well --

16 Q. Why didn't you just leave out this door here and go?

17 A. I guess because I wanted to get paid.

18 Q. Did you have any idea how he would act when he was  
19 angry?

20 A. No, I had no idea.

21 After that, as I seen that it was escalating, I decided  
22 I better get out of here.

23 Q. You decided what?

24 A. I had better get out of here.

25 Q. Okay.

1 A. So --

2 Q. How do you mean it was escalating? He was getting --

3 A. He was getting angrier and angrier.

4 Q. Was he swinging at her?

5 A. No, no, no, he was just getting angrier and angrier.

6 His voice was rising. He stood up and --

7 Q. Uh-huh.

8 A. It seemed -- it was getting pretty ugly in there.

9 Q. Were you paying any attention to wherever Ms. Davis was

10 over --

11 A. Not at the time, no.

12 Q. Was she getting in this argument at all?

13 A. No, she wasn't.

14 Q. Okay. Now, you said he was getting angrier and

15 angrier. What did you do?

16 A. I started to leave.

17 Q. Okay. You started to go out this door?

18 A. Yes.

19 Q. Now, where would you have gone if you had left?

20 A. I -- if -- I went out and went down the hallway.

21 Q. Right, because that's the only way that you knew?

22 A. Yes.

23 Q. Go ahead.

24 A. So "Pookie" called me back, told me said, "wait, wait."

25 When she --

1 Q. Did she say anything else?

2 A. She said -- she told me to "wait, don't leave."

3 So when she said that, that's when he said to me again

4 "motherfucker, you ain't got nothing to do with this shit.

5 This ain't none of your business."

6 Q. Uh-huh.

7 A. And I said -- I told him "I'm not the one you are angry

8 with. It's with her."

9 Q. Are they still over here in this sofa area?

10 A. Yes, that's when -- after I say that, that's when he

11 starts coming around the table.

12 Q. Coming around this coffee table here?

13 A. Yes.

14 Q. Okay. What did you do?

15 A. Now, the anger is not toward "Pookie", it's toward me

16 now.

17 Q. All right. So he's about here where the bailiff is --

18 or where is he?

19 A. He's standing up now. He's not sitting. He's standing

20 up.

21 Q. Uh-huh.

22 A. He's moving around the table --

23 Q. Uh-huh.

24 A. -- in my direction.

25 Q. Now, where are you?

1 A. I'm still standing by the door.

2 Q. Okay. Well, point me -- are you close to the TV?

3 A. Close to -- yeah.

4 MS. LESKANIC: Your Honor, I'm going to have an  
5 objection. Mr. Slade is using the pointer for the  
6 defendant.

7 THE COURT: Let's give that to him and let him  
8 point, if you would.

9 MS. LESKANIC: Thank you, Your Honor.

10 THE COURT: You can step down.

11 MR. SLADE: You can come on down here, Hayward.

12 (Witness off the witness stand)

13 A. I'm standing here. I start to leave "Pookie". Asked  
14 me not leave.

15 BY MR. SLADE:

16 Q. Right.

17 A. So I come back and I stand right back over here.

18 Q. Right.

19 A. Then when I come back, he says to me "this is not --  
20 "you ain't got nothing to do with this shit."

21 Q. Uh-huh.

22 A. "Shut the fuck up."

23 So that's when I told him I'm not the one he's mad at.

24 Q. Right.

25 A. It's toward her.

- 1           Then he comes around and comes toward me.
- 2       Q.   All right.  What did you do at that point?
- 3       A.   I pulled -- I pulled my weapon out then.
- 4       Q.   All right.  Did you point it at him?
- 5       A.   Yes, I did.
- 6       Q.   Now, show us again where you were standing when you
- 7       pulled your weapon out.
- 8       A.   I'm standing right -- right about here.
- 9       Q.   Uh-huh.
- 10       And is he coming towards you?
- 11       A.   Yes, he is.
- 12       Q.   Does he appear to be angry?
- 13       A.   Very angry.
- 14       Q.   So as he's coming towards you, are you pointing your
- 15       weapon at him?
- 16       A.   Yes.
- 17       Q.   Does it appear to you that he can see your weapon?
- 18       A.   Yes.
- 19       Q.   Does he slow down?
- 20       A.   No, he doesn't.
- 21       Q.   Does he stop?
- 22       A.   No, he doesn't.
- 23       Q.   Is he cursing you?
- 24       A.   Yes, he is.
- 25       Q.   So does he get to you?

1 A. Yes, he does.

2 Q. Now, at any point, Hayward, did you advance toward him?

3 A. No.

4 Q. Did you advance toward the coffee table?

5 A. No.

6 Q. Did you call him one of these names? I apologize again  
7 for bringing it up. Did you call him a motherfucker? "I  
8 have heard enough motherfuckers from you," or anything?

9 A. I might have.

10 Q. Okay.

11 A. I might have called him a motherfucker.

12 Q. Okay.

13 THE COURT: Sir, you can be seated now.

14 (Witness back on the witness stand)

15 BY MR. SLADE:

16 Q. Now, as you are holding your gun, are you pointing it  
17 at him?

18 A. Yes.

19 Q. And does he stop at any point before he gets to you?

20 A. No, he doesn't.

21 Q. What happens when he gets to you?

22 A. He grabs at my gun.

23 Q. Well, let me ask you this. He's coming the distance  
24 that you have described to us. He's angry.

25 A. Yes.

1 Q. How many bullets do you have in that weapon, in this  
2 weapon here?

3 A. It's about six.

4 Q. Okay. Was it fully loaded?

5 A. Yes.

6 Q. And he's coming towards you. Why don't you just pull  
7 the trigger then?

8 A. Because I don't want to pull the trigger.

9 Q. Well, why did you point the gun at him?

10 A. I don't want to shoot him.

11 Q. Go ahead.

12 A. I don't want to shoot him. I pointed the gun so that  
13 he stops coming toward me, but he never stops.

14 Q. Well, he's just steps -- a step away from you. He's  
15 angry.

16 A. Yes.

17 Q. You don't pull the trigger?

18 A. No.

19 Q. Does he get to you?

20 A. Yes, he does.

21 Q. Does he put his hands on you?

22 A. Yes, he does.

23 Q. Where does he put his hand on you?

24 A. He grabs my gun.

25 At the same time "Pookie" and Michelle are leaving the

1 room.

2 Q. Show us with the pointer where they are going.

3 A. They are running out this way.

4 Q. Where did they start from in this?

5 A. Michelle was here.

6 Q. Right.

7 A. "Pookie" came from around this way.

8 Q. Okay. Well, why didn't you leave at that point?

9 A. Excuse me?

10 Q. Why didn't you leave at that point?

11 A. Well, Mitch, I didn't get a chance to.

12 Q. Okay. Does he have ahold of you?

13 A. Now he does, yes.

14 Q. So what is he trying to --

15 Tell us where his hands are, where his feet are,

16 what -- describe for us what he's doing?

17 A. We are struggling for the gun now.

18 Q. Okay. Where are his hands?

19 A. On my hand.

20 Q. Okay. You are using your pointer hand as the gun hand?

21 A. Yes.

22 Q. All right. Does he have a hand on that?

23 A. He has a hand on this hand.

24 Q. What are you doing with your other hand? Aren't you

25 trying to get his hand off of that gun now?

1 A. Both our hands are --

2 MS. LESKANIC: Your Honor, again he is testifying  
3 for his client.

4 THE COURT: I'll ask you not to lead the witness.  
5 Let him tell what happened.

6 A. We are struggling to get control of this gun.

7 BY MR. SLADE:

8 Q. Right.

9 A. Exactly where his hand was and my hand was I really  
10 can't tell you, but that was not a concern of mine. My  
11 concern was to stay alive.

12 Q. Are you afraid?

13 A. I got to the point I was scared to death.

14 Q. What were you --

15 A. I guess I was in shock, because this man never stopped  
16 coming at me.

17 Q. Okay.

18 A. Then when I realized my position and what could happen  
19 and I started losing my balance.

20 Q. Where are you when you start, do you know?

21 A. I have no idea where I'm at in this room.

22 Q. Okay.

23 A. I'm -- I wasn't paying attention where I was at in this  
24 room.

25 Q. Go ahead.

1 A. All I know is --

2 Q. Go ahead.

3 A. -- I felt that he was overpowering me and I pulled the  
4 trigger to get him off. I had no idea where the gun was  
5 pointed at the time. It didn't matter. I just wanted him  
6 to get off me.

7 Q. Were you trying to aim at any part of his body?

8 A. Not at all, no.

9 Q. Just anywhere?

10 A. I just wanted the gun to go off and maybe he would get  
11 off me.

12 Q. And when the gun went off what happened?

13 A. He fell.

14 Q. Where did he fall?

15 A. On the floor.

16 Q. Okay. Do you know where about in the room?

17 A. No, I don't.

18 Q. How many times did you pull the trigger?

19 A. Once.

20 Q. And when you pulled the trigger, what happened to him?

21 A. He fell.

22 Q. What did you do?

23 A. I got out of there.

24 Q. All right. Where did you -- where did you go? How did  
25 you exit this house?

1 A. I left this door, went down the hallway and out the  
2 back door.

3 Q. Okay. Are you saying anything as you walk down the  
4 hallway?

5 A. Yes, I seen Scottie Mayberry. I told him "this nigger  
6 just jumped on me, man."

7 Q. Did you see Luis Callazo?

8 A. No.

9 Q. Did you say anything to Mr. Callazo?

10 A. I didn't see him. No, I didn't say anything to him. I  
11 had never saw him.

12 Q. When you got back to the back door what did you do?

13 A. I got in my car and left.

14 Q. Where did you go?

15 A. I went to my cousin James Wade's house.

16 Q. Why did you go there?

17 A. He's the first person that popped in my head. Me and  
18 him got our concealed weapons permit at the same time.

19 Q. Uh-huh.

20 A. So I went there and explained to him the situation of  
21 what happened. We decided I got to go to the police  
22 station. I said "well, I want to go home first and tell my  
23 family."

24 Q. Now, at the time that you pulled the trigger and Todd  
25 Morgan dropped, what was your state of mind?

1 A. I was panicked. I was in -- I was -- just panicked. I  
2 panicked. I couldn't believe what had happened.

3 Q. You got to James' house?

4 A. Yes. And --

5 Q. Why did you leave the car?

6 A. Excuse me?

7 Q. Why did you leave your car at James' house?

8 A. Well, because we decided that I was going to have to go  
9 tell the police and more than likely I would be arrested.

10 Q. Uh-huh.

11 A. So where else would I leave it?

12 Q. Okay. The car belonged to Ms. Corey?

13 A. Yes.

14 Q. You knew that you were going to jail?

15 A. Yes. Nobody else could drive it at my house, so --

16 Q. Did Tynisha have a driver's license?

17 A. No, she didn't.

18 Q. She doesn't drive?

19 A. Not at that time she didn't, no.

20 Q. Now, when you left James' house where you did go?

21 A. I went home.

22 Q. Okay. And what did you do when you got home?

23 A. I explained to my family what had happened, that I was  
24 going eventually go to jail, I just wanted to go to the  
25 police station and turn myself in.

1 Q. You took off your clothes that you had on?

2 A. Yes.

3 Q. Tell us about that. Why did you do that?

4 A. Well, Tynisha seen blood on my pants --

5 Q. Uh-huh.

6 A. -- and it just kind of freaked me out, so I took them  
7 off, took off the clothes that I had on.

8 MR. SLADE: I don't have any other questions for  
9 this witness, Your Honor.

10 THE COURT: Your witness.

11 MS. LESKANIC: Thank you, Your Honor.

12 CROSS EXAMINATION BY MS. LESKANIC:

13 Q. Mr. Chambers, the car actually belonged to you, didn't  
14 it?

15 A. My aunt paid for the car. She had a lien on it.

16 Q. Right, but the owner's name is Hayward Tony Chambers,  
17 and it was issued to you -- let's see, purchased on June  
18 30th of 2009, is that correct?

19 A. Yes.

20 Q. Okay. So it wasn't Ms. Corey's car.

21 A. Well, not on paper, no. It was my car.

22 Q. Okay. You just told the jury it was her car. I just  
23 want to establish it was your car.

24 A. Well, I said that because she paid for it.

25 Q. It was given to you. The title was transferred to you

1 on June 30th of 2009, is that correct?

2 A. Yes.

3 Q. All right. So it was your car. It was in your name.

4 A. Yes.

5 Q. All right.

6 Now, when did you get your concealed weapons permit?

7 A. I'm not exactly sure. Sometime in 2007.

8 Q. All right. And you got it because you lived in Granard  
9 Courts at the time and that it was a dangerous area?

10 A. Well, that and protection.

11 Q. Okay. Then why do you have 609 West Rutledge Avenue on  
12 your application for the concealed weapons permit, if you  
13 got it because of the dangerous situation in Granard Courts  
14 where you were living at the time?

15 A. I actually got it for protection. When I was living in  
16 Granard Courts, it's a dangerous area.

17 Q. So you lied on your application about your address?

18 A. No.

19 Q. Let me show you what's been marked --

20 MS. LESKANIC: Could I have this marked, please?

21 (Fingerprints marked as State's Exhibit No. 28 for  
22 identification)

23 MR. SLADE: I don't have any objection to that,  
24 Your Honor.

25 BY MS. LESKANIC:

1 Q. I'll show you what's been marked as State's Exhibit 28.  
2 Will you take a look at that, please, Mr. Chambers?

3 A. Yes.

4 Q. And what's the address on your application for the  
5 concealed weapons permit?

6 A. 609 Rutledge Avenue.

7 Q. Okay. So either you were still living at 609 West  
8 Rutledge Avenue and you didn't get it for protection at  
9 Granard Courts? What's the story?

10 A. I was dating Ms. Poole at the time, but I was living at  
11 609 West Rutledge Avenue.

12 Q. Wait, you testified earlier to these ladies and  
13 gentlemen that you had a place at Granard Courts and she had  
14 a place at Granard Courts.

15 A. Yes.

16 Q. Then y'all moved into Broad Street together?

17 A. Yes.

18 Q. But now you are telling these ladies and gentlemen that  
19 you were living at 609 and she was living at Granard Courts?

20 A. At one time, yes, and then I moved to Granard Courts.

21 Q. And you testified that when you moved to Granard Courts  
22 is when you got your concealed weapons permit because of the  
23 dangerous area, is that correct?

24 A. Well --

25 Q. Is that what you have told this jury?

1 MR. SLADE: Your Honor, I would ask that she allow  
2 him to answer the question. He was starting to answer.

3 THE COURT: Let's ask one question at a time, Ms.  
4 Leskanic.

5 MS. LESKANIC: Thank you, Your Honor. I  
6 apologize.

7 THE COURT: That's all right.

8 A. Maybe -- maybe I made a mistake on how I refrained --  
9 how I phrased that, but I bought -- I got the concealed  
10 weapons permit so I could carry it legally for protection  
11 for me and my family, Ms. Leskanic.

12 BY MS. LESKANIC:

13 Q. And who were you afraid of, Mr. Chambers?

14 A. Who was I afraid of?

15 Q. Yes, sir.

16 A. I said protection. I'm not afraid of anybody. I got  
17 it for protection.

18 Q. All right. And you were driving people around and  
19 getting paid in crack rocks, is that correct?

20 A. Sometimes.

21 Q. And that's dangerous, isn't it?

22 A. Sometimes.

23 Q. To deal in drug activity, illegal drug activity is  
24 dangerous?

25 A. It can be, yes.

1 Q. And guns and drugs don't mix very well, do they, Mr.  
2 Chambers?

3 A. No, they don't.

4 Q. What legal business were you conducting that you needed  
5 a concealed weapons permit?

6 A. I didn't get it for a legal business. I got it for  
7 protection.

8 Q. So that when you went into drug houses you could  
9 protect yourself?

10 A. No. Not particularly, no. I don't go into drug  
11 houses.

12 Q. I'm sorry?

13 A. I didn't go into drug houses.

14 Q. You didn't go into 311 Sarratt Avenue? It wasn't a  
15 drug house --

16 A. That's one night I did.

17 Q. -- the night you shot Tony Chambers (sic) in the head?

18 MR. SLADE: I ask -- again, I would ask --

19 MS. LESKANIC: I was still asking the question.

20 THE COURT: One second. This is not a street  
21 argument.

22 She had not finished her question. I will allow  
23 her to do so.

24 MS. LESKANIC: Thank you, Your Honor.

25 THE COURT: Finish your question, Ms. Leskanic.

1 BY MS. LESKANIC:

2 Q. Is 311 Sarratt Avenue a drug house?

3 A. Yes.

4 Q. Did you go inside that house?

5 A. On that one occasion, yes, I did.

6 Q. Did you take your gun inside that house with you?

7 A. On that one occasion, yes, I did, Ms. Leskanic.

8 Q. Now, you told Mr. Slade that that was the first time  
9 that you had been inside that house, and you were very  
10 particular about that word?

11 A. Yes.

12 Q. How many times had you been to that house?

13 A. I can't count them.

14 Q. Too many to count?

15 A. Five, six maybe.

16 Q. Why?

17 A. To drop people off.

18 Q. For what?

19 A. Crack cocaine, I imagine.

20 Q. And then you got paid how?

21 A. Sometime in money, sometime in crack.

22 Q. So you didn't see the living room area in the house?

23 A. No, I did not go into that living room.

24 Q. I'm sorry?

25 A. I did not go into the living room.

1 Q. I didn't ask you if you went into the living room. I  
2 asked if you saw the living room.

3 A. No.

4 (Photograph marked as State's Exhibit No. 29 for  
5 identification)

6 (Photograph marked as State's Exhibit No. 30 for  
7 identification)

8 BY MS. LESKANIC:

9 Q. I'll show you State's Exhibit 29, together with State's  
10 Exhibit 30.

11 Now, you have testified that you were going into --  
12 well, first do you recognize this?

13 A. Vaguely, yes.

14 Q. All right. Is this the door that you went into?

15 A. I used that door, yes.

16 Q. It was that door?

17 A. I believe so.

18 Q. All right. And what's this right here?

19 A. I believe that's the front door.

20 Q. All right. And what's this over here?

21 A. I have no idea.

22 Q. Okay. Does that appear to be a living room area  
23 right --

24 A. Yes, it does.

25 Q. -- across the hall?

1 A. Yes, it does.

2 MS. LESKANIC: Your Honor, I would offer State's  
3 Exhibit 29 and 30 for admission.

4 MR. SLADE: I have no objection, Your Honor.

5 THE COURT: Without objection, they will be  
6 admitted as marked.

7 (Whereupon, State's Exhibit No. 29 was admitted as  
8 evidence into the record)

9 (Whereupon, State's Exhibit No. 30 was admitted as  
10 evidence into the record)

11 THE COURT: You may proceed, Ms. Leskanic.

12 MS. LESKANIC: May it please publish, Your Honor?

13 THE COURT: You may publish.

14 MS. LESKANIC: And I'm going to publish 29 and 30  
15 at the same time, Your Honor. They both show the picture of  
16 the front door; one depicting the living room area and  
17 another depicting "Pookie" Byers room, and I just want to  
18 show how that looks here.

19 THE COURT: All right.

20 BY MS. LESKANIC:

21 Q. So, Mr. Chambers, when you come down the hallway, this  
22 is "Pookie" Byers door, is that correct?

23 A. Yes.

24 Q. And there is the front door right there in front of  
25 you, is that right?

- 1 A. Yes.
- 2 Q. And right over to the left, if you just turn your head,  
3 is the living room, is that right?
- 4 A. Yes.
- 5 Q. And you never saw the living room?
- 6 A. No.
- 7 Q. Did you see the front door?
- 8 A. Yes.
- 9 Q. Now, you left your girlfriend and children about 11:30  
10 that night?
- 11 A. Approximately, yes.
- 12 Q. Okay. And you went to a crack house?
- 13 A. No, that's not why I left. I went to buy me some  
14 cigarettes --
- 15 Q. You went to a crack house?
- 16 A. -- at Walgreen's.  
17 Eventually that's where I went, yes.
- 18 Q. And you picked Scottie Mayberry up and took him with  
19 you in your car?
- 20 A. Yes.
- 21 Q. So he didn't have a car there?
- 22 A. He had a car already there.
- 23 Q. I'm sorry?
- 24 A. His car was already there.
- 25 Q. Okay. So you were just giving him a ride back to the

1 white house?

2 A. Exactly.

3 Q. Okay. And you two used crack cocaine together while  
4 you were in the white house?

5 A. Yes, we did.

6 Q. And you knew you were taking "Pookie" Byers to pick up  
7 more crack cocaine?

8 A. Yes.

9 Q. And you were going to get paid in crack cocaine for  
10 doing that?

11 A. Well, that, or money. It wasn't really established  
12 from the beginning. She said she was going to pay me.

13 Q. Were you used to getting paid in crack cocaine?

14 A. No.

15 Q. So now you don't get paid in crack cocaine?

16 A. I didn't say I didn't get paid in crack cocaine. I'm  
17 not used to getting paid in crack cocaine. That's what I  
18 said.

19 Q. Well, didn't you tell your attorney on direct  
20 examination that you were waiting to get your crack?

21 A. I said I was waiting to get paid.

22 Q. You were waiting to get a hit of crack. You don't  
23 recall saying that?

24 A. I might have said that.

25 Q. So were you waiting on money or were you waiting on

1 crack?

2 A. Well, you can say that.

3 Q. I'm not going to say anything. I'm asking you.

4 A. I was waiting to get paid, either crack or money. I  
5 was just wanting to get paid for giving her a ride.

6 Q. And you had never seen Todd Morgan before in your life,  
7 did you?

8 A. No, I haven't.

9 Q. Didn't know anything about him?

10 A. No.

11 Q. Now, after you shot Todd Morgan -- and he fell where he  
12 was shot, is that correct?

13 A. Yes.

14 Q. You left the house?

15 A. Yes.

16 Q. Did you have a cell phone?

17 A. Yes.

18 Q. Did you call the police?

19 A. No, I didn't.

20 Q. Did you call your girlfriend?

21 A. I don't recall that, no.

22 Q. And you went to a relative's house?

23 A. I went to my cousin's house, yes.

24 Q. And you hid your car there?

25 A. I put -- yeah. I don't want to say hid, but I put it

1 there.

2 Q. Well, you could have driven your car home, but you  
3 drove it to your relative's house?

4 A. Yes.

5 Q. And you put your car --

6 This is a daytime photo. I'm showing you State's  
7 Exhibit 16. You parked your car back here next to this  
8 building, didn't you?

9 A. Yes.

10 Q. So -- and the road is up here? Rutledge Avenue is up  
11 here, right?

12 A. Yes.

13 Q. You didn't leave it on the street?

14 A. No.

15 Q. And you didn't park it in this area up front. You hid  
16 it back here by the building?

17 A. Well, I put it back there out of the way because I know  
18 I wasn't going to drive it.

19 Q. And why weren't you going to drive it?

20 A. Because my cousin took me home.

21 Q. Why?

22 A. Because I had intended on going to the police station.  
23 Nobody can drive the car. I took it home.

24 Q. Why didn't you drive your car to the police station?

25 A. Because nobody would be able to drive my car. It would

1 have been stuck at my house -- at my house. I left it at my  
2 aunt's house.

3 Q. Why didn't you drive the car to the police station?

4 A. Because I wanted to see my family.

5 Q. Then why didn't you drive your car home?

6 A. Because I had my cousin drive my car home. I mean, I  
7 had my cousin drive me home.

8 Ms. Leskanic, I was panicked. I didn't know what I was  
9 doing, to tell you the truth. I was scared.

10 Q. And you were high on crack?

11 A. I ain't going to say I was high and scared on crack. I  
12 was scared.

13 Q. And you had been using crack?

14 A. A little bit.

15 Q. And you hid your car here and you could have driven it  
16 to the police station?

17 A. I could have, but I panicked.

18 Q. And when you get into your house, when your relative  
19 drives you home, because you take your car and leave it at  
20 his house; you had a cell phone, but you don't call the  
21 police; you get home and you tell your girlfriend that you  
22 shot somebody and you are going to jail, is that right?

23 A. Yes.

24 Q. And how did the gun get in the plastic bag?

25 A. I put it in a plastic bag at James house.

1 Q. And you brought it home and you put it on your mantle  
2 and you took off your clothes that you were wearing?

3 A. Because they was clothes on my -- there was blood on my  
4 clothes.

5 Q. But you -- you said that you wanted to go to the police  
6 station?

7 A. I was -- yes, I was.

8 Q. Don't you think that would have been important for them  
9 to see?

10 A. At the time I wasn't thinking. I was panicked. Like I  
11 said, I was scared, Ms. Leskanic.

12 Q. What were you scared of?

13 A. What happened. I mean, during the circumstances I was  
14 very scared.

15 Q. Why did you say that you were going to jail?

16 A. Because of what happened.

17 Q. Why would you say that you were going to jail?

18 A. Because of what happened, Ms. Leskanic.

19 Q. Because you shot an unarmed man --

20 A. Well, not necessarily.

21 Q. -- in a crack house?

22 A. Not necessarily that. Because of what happened.

23 That's why I thought I was going to jail. I mean --

24 Q. You thought you were going to jail because of what  
25 happened in that room at Sarratt Avenue that led to the

1 death of Calvin Todd Morgan, is that right?

2 A. Basically.

3 Q. So your version is that Todd Morgan advanced on you and  
4 you two are struggling over the gun while "Pookie" and "Big  
5 Momma" are still in the room?

6 A. No, they was running out of the room.

7 Q. But I think you testified, and correct me if I'm wrong,  
8 that the struggle had begun while they were still in the  
9 room --

10 A. Yes.

11 Q. -- is that right?

12 A. Yes.

13 Q. All right. And that struggle was taking place in this  
14 area?

15 A. Well, no -- more or less over here.

16 Q. I thought he charged at you?

17 A. Yes, he did. He came -- he came at me here --

18 Q. Uh-huh.

19 A. -- and we were struggling.

20 Now, how we end up where we end up I don't know, I  
21 wasn't paying attention to where we were at. That was not  
22 my concern.

23 Q. Okay. So you are -- I just want to get your story  
24 straight. You are somewhere in this area?

25 A. No, I'm more to the TV.

- 1 Q. Over here?
- 2 A. Over there.
- 3 Q. You are over here and Todd is at first seated on the  
4 couch?
- 5 A. When I come in the room, yes.
- 6 Q. And then later --
- 7 A. If I can remember that correctly.
- 8 Q. -- he stands up?
- 9 A. If I remember that correctly, he was seated, if I can  
10 remember correctly.
- 11 Q. All right. And then at some point he stands up?
- 12 A. Yes.
- 13 Q. And he comes at you all the way over here?
- 14 A. Yeah. Well, no, more to the front.  
15 No, no.  
16 Give me the pointer.
- 17 Q. Yes, sir.
- 18 A. Approximately right here.
- 19 Q. Okay. So you are here and he's here?
- 20 A. He's coming this way.
- 21 Q. He's coming --
- 22 A. He's coming toward me, right.
- 23 Q. All right. And where do you two meet? Right here, you  
24 say?
- 25 A. Right about there, yes.

- 1 Q. So you are no longer here?
- 2 A. No.
- 3 Q. You have moved this way?
- 4 A. Yes.
- 5 Q. In the same direction that he's coming?
- 6 A. If I can remember correctly, yes.
- 7 Q. You have got your weapon drawn at that point?
- 8 A. Yes.
- 9 Q. And "Pookie" and "Big Momma" are still in the room?
- 10 A. They are -- yeah, when I pulled my weapon, they are in
- 11 the process of running out.
- 12 Q. All right. And then in this point where you were
- 13 struggling, he starts to overpower you?
- 14 A. Right.
- 15 Q. And you realize --
- 16 A. I don't know where we are. Whoa, whoa, whoa. I don't
- 17 know exactly where we were.
- 18 Q. All right. Well, this is where the struggle started.
- 19 Let's go with what you do know.
- 20 A. Yes.
- 21 Q. You start the struggle here and at some point you
- 22 become overpowered?
- 23 A. Yes.
- 24 Q. And you pull the trigger? You make a decision to pull
- 25 the trigger?

1 A. I don't where I was when I pulled the trigger. I don't  
2 know where we were when I pulled the trigger.

3 Q. Did you pull the trigger -- did you know what you were  
4 doing when you pulled the trigger?

5 A. I was trying to get him off of me.

6 Q. All right. So what we do know -- let's go with what we  
7 do know is that -- what your story is you start here and you  
8 say Todd came and somehow then you are here? You are from  
9 here and you are here? And the struggle starts and you  
10 don't know where y'all go, but you are overpowered and Todd  
11 Morgan ends up dead, shot in the head right here between the  
12 couch and the table, is that right?

13 A. I don't know how that ends up like that. I really  
14 don't.

15 Q. I don't either.

16 Have you ever pulled your gun on anyone else, Mr.  
17 Chambers?

18 A. No.

19 Q. Never?

20 A. Never.

21 Q. You never remember a situation where you have had to  
22 pull your gun on someone?

23 A. No.

24 Q. All right. Now, what was your intention on getting to  
25 the police station?

1 A. I was going to call my cousin. He was going to drive  
2 me.

3 Q. Your cousin was already at your house. He drove you  
4 there, so why did he leave?

5 A. Because he wanted to go back home.

6 Q. Why? You wanted a ride to the police station.

7 A. No, I wanted to go home and see my family and explain  
8 to them my situation and let them know what was going on.  
9 Then I was going to call my cousin and ask him to take me to  
10 the police station.

11 Q. How long was that going to take, to explain to your  
12 family what was going on?

13 A. After all the crying and stuff. I mean, I had -- I  
14 don't know. I can't tell you.

15 Q. Were you wearing your hat when you were at Sarratt  
16 Avenue?

17 A. Yes.

18 Q. Okay. Is this the hat that you were wearing?

19 A. Yes, it is.

20 MS. LESKANIC: Your Honor, I would like to --

21 Let me get this marked, please.

22 (Hat marked as State's Exhibit No. 31 for  
23 identification)

24 BY MS. LESKANIC:

25 Q. This is State's Exhibit 31. Do you recognize this?

1 A. Yes.

2 Q. And what is that?

3 A. That's my hat.

4 Q. And this is the hat that you were wearing at Sarratt  
5 Avenue?

6 A. Yes.

7 Q. And also when you went with officers?

8 A. Yes.

9 MS. LESKANIC: Your Honor, at this time we offer  
10 State's 31 for admission.

11 THE COURT: Any objection?

12 MR. SLADE: None from us, Your Honor.

13 THE COURT: All right, it would be admitted as  
14 marked.

15 (Whereupon, State's Exhibit No. 31 was admitted as  
16 evidence into the record)

17 THE COURT: You may proceed.

18 MS. LESKANIC: Thank you.

19 BY MS. LESKANIC:

20 Q. So James Wade was going to come back and pick you up  
21 and take you to the police station?

22 A. Yes.

23 Q. But then there is a knock at the door?

24 A. Yes.

25 Q. And the police are there?

- 1 A. Yes.
- 2 Q. And Officer Green and Officer Hughes have come to you?
- 3 A. I answered the door.
- 4 Q. Yes, and they have come to your house?
- 5 A. Yes.
- 6 Q. And they asked about "do you know anybody by the name  
7 of "New York"?"
- 8 A. Yes.
- 9 Q. And you tell them "I'm "New York". I'm the one that  
10 you are looking for."
- 11 A. Yes.
- 12 Q. They don't ask you any questions and you said "do you  
13 want the gun?"
- 14 A. Yes.
- 15 Q. And they say sure?
- 16 A. Yes.
- 17 Q. And they get the gun?
- 18 A. Yes.
- 19 Q. And then at some point you say "do you want the car?"
- 20 A. I'm not sure about that part. I was giving Tynisha my  
21 keys. And if I'm not mistaken, one of the officers asked me  
22 about the car and I told him where it was at.
- 23 Q. Okay. And at this point you agree to go with Officer  
24 Green?
- 25 A. Yes.

1 Q. But you didn't tell him the story that you are telling  
2 the ladies and gentlemen of the jury today?

3 A. No.

4 MS. LESKANIC: One moment, Your Honor.

5 THE COURT: Yes, ma'am.

6 (Off the record)

7 (Back on the record)

8 BY MS. LESKANIC:

9 Q. Now, I believe you testified that Todd Morgan and  
10 "Pookie" Byers were arguing for about three to five minutes,  
11 a verbal argument back and forth, is that right?

12 A. Yes.

13 Q. And you were hanging out in there while they were  
14 arguing because you wanted your crack?

15 A. I wanted to get paid.

16 Q. Now, how afraid are you for your life when you pulled  
17 that trigger?

18 A. Very afraid. I was afraid to of losing my life. I was  
19 afraid he was going to get the gun when he was on me.

20 Q. And how does your gun work? Can you pull the trigger  
21 and then pull it again and pull it again?

22 A. Yes.

23 Q. And you were afraid for your life from a man that you  
24 have never met before?

25 A. Yes.

- 1 Q. Correct?
- 2 A. Yes.
- 3 Q. And he was in a violent rage?
- 4 A. Yes.
- 5 Q. And you are in fear of losing your life and you pull  
6 the trigger one time?
- 7 A. Yes.
- 8 Q. And shoot him in the head?
- 9 A. I didn't know where the gun was pointed.
- 10 Q. Sorry?
- 11 A. I didn't know where the gun was pointed. We was  
12 struggling.
- 13 Q. The gun was fully loaded?
- 14 A. Yes.
- 15 Q. It's possible to fire it more?
- 16 A. Yes, I could have.
- 17 Q. Did Todd Morgan have any weapon in his hand?
- 18 A. I couldn't see any. I don't know if he did or he  
19 didn't.
- 20 Q. Did you see one?
- 21 A. Well, when he came at me, I didn't know what was on his  
22 hand, but I know it wasn't good.
- 23 Q. I didn't ask you what was on his mind. He didn't have  
24 a weapon, did he?
- 25 A. Not that I could see.

1 MS. LESKANIC: Nothing further, Your Honor. Thank  
2 you.

3 THE COURT: Redirect?

4 REDIRECT EXAMINATION BY MR. SLADE:

5 Q. Earlier on your cross-examination, Hayward, Ms.  
6 Leskanic was asking you about some of these other rooms and  
7 she put, I believe, this Exhibit 30 and Exhibit 29 up and  
8 I'm just going to use 29.

9 Thank you.

10 And this being the front door here -- you can't see my  
11 finger. This being the front door and this being the window  
12 in the living area, correct?

13 A. Yes.

14 Q. All right. Now, this appears to be sunlight coming  
15 through this window and this window. Was it daytime or  
16 nighttime when you were over there?

17 A. It was nighttime.

18 Q. Did there appear to be any light or anything on in this  
19 room?

20 A. Not to my recollection, no.

21 Q. Now, when you were -- she was asking you about changing  
22 your clothes. When did you realize you had blood on your  
23 pants?

24 A. Tynisha made me aware of it.

25 Q. And where did you see -- did you see the blood

1 yourself?

2 A. After she showed me.

3 Q. And it was on these pants here?

4 A. Yes.

5 Q. On the front?

6 A. On the -- by the knees, yes.

7 Q. She was asking you a minute ago about what you saw when  
8 he was coming towards you, did he have a weapon, and you  
9 were answering. What was your -- what was your perception  
10 of what he was fixing to do?

11 A. Well, when he didn't stop after I drew my weapon --

12 Q. Right.

13 A. -- I didn't know what was on his mind. I just knew he  
14 didn't stop and I got scarer and scarer.

15 Q. But you let him come all the way to you --

16 A. Yes.

17 Q. -- without pulling that trigger?

18 A. Yes, I did.

19 Q. She was asking you how many times you pulled it and why  
20 you -- if you could have pulled it more. Why did you just  
21 pull it once?

22 A. Because he fell after I pulled the trigger.

23 Q. He let go?

24 A. Yes.

25 Q. And you could run then?

1 A. Yes.

2 Q. And you ran?

3 A. Yes.

4 MR. SLADE: Thank you.

5 RE-CROSS EXAMINATION BY MS. LESKANIC:

6 Q. Were there lights on in "Pookie's" room?

7 A. Yes, there were.

8 Q. And the door was open?

9 A. Yes..

10 Q. So it wasn't complete darkness in the house?

11 A. No.

12 Q. And you could see when you left and you ran out of the  
13 house how to get back out, right?

14 A. Yes.

15 Q. And Calvin was there in his room with lights on?

16 A. I guess so, yeah. Yeah, his lights on.

17 Q. There were lights on in the house?

18 A. Yes.

19 Q. Okay. So you could see?

20 A. (Shaking head yes).

21 Q. You have to answer.

22 A. Yes.

23 Q. All right. How tall are you, Mr. Chambers?

24 A. About 5'9 and a half, 5'10".

25 Q. How much do you weigh?

1 A. About 185.

2 Q. Thank you.

3 MR. SLADE: No further questions.

4 THE COURT: Anything further?

5 MR. SLADE: No further questions.

6 THE COURT: You may step down, sir.

7 We will take a short break.

8 MR. SLADE: Yes, sir.

9 THE COURT: All right, ladies and gentlemen of the  
10 jury, at this point in time we are going to take a short  
11 break and I'll ask that you to retire to the jury room.

12 As always, I will ask you not to begin any  
13 discussions until I have asked you to do so.

14 You may retire.

15 (The following takes place outside the presence of  
16 the jury panel)

17 THE COURT: Court will be in recess for about ten  
18 minutes.

19 (Whereupon, proceedings were recessed)

20 (Whereupon, proceedings were reconvened)

21 THE COURT: All right, is the defense ready to  
22 proceed at this time?

23 MR. SLADE: Yes, sir, Your Honor.

24 THE COURT: Is the State ready?

25 MS. LESKANIC: Yes, Your Honor.

1 THE COURT: Bring the jury in.

2 (The following takes place in the presence of the  
3 jury panel)

4 THE COURT: The record will reflect the jury has  
5 returned to the courtroom.

6 At this time the defense may call its next  
7 witness.

8 MR. SLADE: Thank you, Your Honor.

9 We call Debra Littlejohn.

10 THE COURT: Come forward, please, ma'am, and be  
11 sworn, to my left.

12 DEBRA LITTLEJOHN, having been first duly sworn,  
13 testified as follows:

14 THE COURT: State your name, please, ma'am.

15 THE WITNESS: Debra Littlejohn.

16 THE COURT: Thank you.

17 Your witness, Mr. Slade.

18 MR. SLADE: Thank you, Your Honor.

19 DIRECT EXAMINATION BY MR. SLADE:

20 Q. Ms. Littlejohn, where do you live?

21 A. Sir?

22 Q. Where do you live?

23 A. (No response).

24 Q. Where do you live?

25 A. In Lockhart Lane Apartments, C-6.

1 Q. And how long have you lived here in Gaffney?

2 A. Just about all my life.

3 Q. Okay. Now, did you know Todd Morgan?

4 A. Yes.

5 Q. And how did you know him? What was the nature of your  
6 relationship? What kind of relationship did you have with  
7 him?

8 A. We were -- we were seeing each other.

9 Q. And how long a period of time did y'all see each other?  
10 How long were y'all in that relationship?

11 A. I don't know. We -- I don't know. We were just seeing  
12 each other.

13 Q. Sure. Was it months, or years, or --

14 A. Yes. I would say about a year.

15 Q. About a year.

16 Was Todd Morgan a violent person when he was angry?

17 A. When he was drinking.

18 Q. Now, during the course of your relationship with Todd  
19 Morgan, did he get very angry with you?

20 A. Yes.

21 Q. What did he get very angry with you about?

22 A. Trying to tell me what I can do and what I can't do.

23 Q. Did you have a regular boyfriend, a main boyfriend?

24 A. Yes, I did.

25 Q. And your relationship with Todd was you were

1 supposed --

2 A. We -- we was -- my relationship with him, we was  
3 just -- we just saw each other when we wanted to see each  
4 other.

5 Q. Okay. And did -- in the course of seeing each other  
6 when you wanted to see each other, did your relationship  
7 with your main boyfriend cause a problem with Todd?

8 A. Yes, it did.

9 Q. Tell us about how that happened.

10 A. He just -- he just didn't want me around -- around --  
11 around other people.

12 Q. Around other men?

13 A. Yes.

14 Q. Would he get angry when you were around other men?

15 A. Yes.

16 Q. And was there an occasion where he came by to see you,  
17 Todd Morgan came by to see you, and you refused to go out  
18 with him?

19 A. Well, at the time when he came wanting me to go out  
20 with him I was already out. I was over to my friend's  
21 house.

22 Q. What did he want you to do with him? What was he  
23 asking you --

24 A. He -- he --

25 Q. Excuse me, what -- I apologize, go ahead.

1           What was he asking you to do?

2           A.    He asked made -- he went and made some money and he was  
3           wanting to take me out to eat.  And I told him that I was  
4           not going out to eat with him that particular day, because I  
5           had a date with my main friend boyfriend.

6           Q.    All right.  Did that make him angry?

7           A.    Yes, it did.

8           Q.    Did it make him very angry?

9           A.    Yes, it did.

10          Q.    And what did he do when he got very angry with you over  
11          refusing to go out with him and going out with your other  
12          boyfriend instead?

13          A.    The only thing I remember what he did, after I told him  
14          that, he choked me out.  After anything else I don't  
15          remember.

16          Q.    Did he stomp your head?

17          A.    Yes, he did.

18          Q.    Did he stomp it a number of times?

19          A.    Yes, he did.

20          Q.    Did you have to go to the hospital?

21          A.    Yes, I did.

22          Q.    And that was on account of his anger and rage?

23          A.    Yes.

24          Q.    Because you were insisting on going out with someone  
25          else?

1 A. He got mad because I wasn't going to go out with him to  
2 eat.

3 Q. And tell us how long ago that was.

4 A. I can't -- I can't -- I can't remember.

5 Q. Okay.

6 MR. SLADE: I don't have any further questions of  
7 this witness, Your Honor.

8 THE COURT: You may cross-examine.

9 CROSS EXAMINATION BY MS. LESKANIC:

10 Q. Ms. Littlejohn, you were in a personal relationship  
11 with Todd, is that right?

12 A. It wasn't no personal relationship. We was just seeing  
13 each other.

14 Q. Okay. But sometimes as boyfriend and girlfriend?

15 A. No, we weren't --

16 Q. Or --

17 A. It was no boyfriend and girlfriend. We were just  
18 seeing each other. I had a boyfriend.

19 Q. Okay.

20 A. Things that girls do. You know, like if you got a  
21 friend and you want to sneak off and see somebody else, you  
22 know, things that womens do.

23 Q. Right.

24 A. The majority of womens.

25 Q. Right.

1 A. But that's what I did.

2 Q. All right. So you just kind of had him on the side?

3 A. Yeah, he was just -- just a friend, you know.

4 Q. Okay. Was it romantic at all? I'm trying to  
5 understand the nature of your relationship. I'm not trying  
6 to make this difficult.

7 A. Friends.

8 Q. Okay.

9 A. That was our relationship, friends.

10 Q. No kissing and hugging, or --

11 A. Oh, yeah, we -- we -- we kissed.

12 Q. Okay. So a little bit of intimacy?

13 A. Yes.

14 Q. Okay. I'm just trying to establish so I make sure I  
15 understand.

16 And y'all were in that intimate seeing each other every  
17 once in a while for how long?

18 A. I can't remember. I didn't even kept count of it.

19 Q. Okay. You don't know how long that y'all saw each  
20 other and how long you knew him?

21 A. I would say about a year. We saw each other about a  
22 year, you know.

23 Q. And the incident that you talked to Mr. Slade about,  
24 that happened maybe in about 2002?

25 A. I can't remember.

1 Q. Was it a long time ago?

2 A. Yes.

3 Q. Okay. You weren't at Sarratt Avenue on November 28th  
4 of 2009, were you, the night that Todd Morgan was shot and  
5 killed?

6 A. No, ma'am, I was not over there.

7 Q. And did you see him that day?

8 A. I -- I don't know nothing about what went on over  
9 there. I was not over there.

10 Q. Thank you very much, Ms. Littlejohn.

11 A. Uh-huh.

12 THE COURT: Redirect?

13 MR. SLADE: None, Your Honor.

14 THE COURT: You may step down, ma'am. Thank you.

15 MR. SLADE: Your Honor, may she be excused?

16 THE COURT: Any objection to this witness being  
17 excused?

18 MS. LESKANIC: No, Your Honor.

19 THE COURT: Ma'am, you are free to leave the  
20 courthouse. Thank you very much.

21 THE WITNESS: Thank you. Thank you.

22 MR. SLADE: And may Ms. Davis be excused as well?

23 THE COURT: Any objection to Ms. Davis being  
24 excused?

25 MS. LESKANIC: No objection, Your Honor.

1 THE COURT: Ms. Davis, you may leave the  
2 courthouse, if you wish to do so.

3 All right, you may call your next witness.

4 MR. SLADE: Georgia Smith.

5 THE COURT: Come forward, please.

6 GEORGIA SMITH, having been first duly sworn,  
7 testified as follows:

8 THE COURT: State your name, please, ma'am.

9 THE WITNESS: Georgia Ann Smith.

10 THE COURT: Thank you.

11 Your witness, Mr. Slade.

12 DIRECT EXAMINATION BY MR. SLADE:

13 Q. Ms. Smith, where do you live?

14 A. 517 Sixth Street.

15 Q. And where do you work?

16 A. Nestle's.

17 Q. How long have you lived here in Gaffney?

18 A. Forty-six years.

19 Q. Okay. Do you have children?

20 A. Two girls.

21 Q. They are grown now?

22 A. Yes, sir.

23 Q. I'm going to ask you about Calvin Todd Morgan. Did you  
24 know Calvin Todd Morgan?

25 A. Yes.

- 1 Q. And how did you know him?
- 2 A. We dated.
- 3 Q. How long did you date?
- 4 A. I think it was from about mid '91 --
- 5 Q. Right.
- 6 A. -- up to January of '94.
- 7 Q. To January of '94?
- 8 A. Yes. It was off and on.
- 9 Q. When Todd Morgan was angry and furious, was he a  
10 violent man?
- 11 A. Yes.
- 12 Q. I'm going to ask you about an experience that you had  
13 with Calvin Todd Morgan. Was there a time when you wanted  
14 to do something and he asked you not to?
- 15 A. Yes.
- 16 Q. Now, tell us about that.  
17 Your mom's car had gotten stuck?
- 18 A. Yes.
- 19 Q. What happened?
- 20 A. My brother had my mother's car --
- 21 Q. Right.
- 22 A. -- and he called and told me he was stuck --
- 23 Q. Right.
- 24 A. -- that could I come and help him get it out.
- 25 Q. Let me stop you right there for a moment, Ms. Smith.

1 You said that you were in a relationship with Todd Morgan.  
2 You were living on Sixth Street?  
3 A. Yes.  
4 Q. With your two girls?  
5 A. Yes.  
6 Q. And did Todd stay there with you?  
7 A. Off and on.  
8 Q. Off and on?  
9 A. Yes.  
10 Q. Okay, go ahead.  
11 You got a call from your brother?  
12 A. Yes.  
13 Q. Go ahead.  
14 A. So he asked me would I come and help him get unstuck.  
15 Q. All right. And did you tell Todd that that was what  
16 you wanted to do, help your brother?  
17 A. When he called, and he told me I better not go nowhere.  
18 Q. Are you referring to Todd?  
19 A. Yes.  
20 Q. He told you not to go anywhere?  
21 A. Yes.  
22 Q. All right. And what did you do as a result of Todd  
23 not -- or excuse me, Todd telling you not to go anywhere? I  
24 guess meaning help your brother.  
25 A. I went anyway.

1 Q. And you helped your brother?

2 A. Yes, sir.

3 Q. You came back home?

4 A. Yes, sir.

5 Q. What did Todd say to you then?

6 A. He come in and he was angry and he --

7 Q. Let me interrupt you again, Ms. Smith. I apologize.

8 A. Yes.

9 Q. What was he angry about?

10 A. Because I had left anyway to go help my brother.

11 Q. After he told you not to?

12 A. Yes.

13 Q. Now, in the course of your relationship with him, was  
14 he violent towards you?

15 A. Yes.

16 Q. And on this occasion, you came back and he was angry  
17 when he found out what you had done?

18 A. Yes.

19 Q. Is it in the evening now or nighttime?

20 A. It was at night.

21 Q. So you were -- were you working then?

22 A. Yes, sir.

23 Q. Where were you working?

24 A. At Hamrick's Mill down on Cherokee Avenue.

25 Q. And what time did you have to be at work?

1 A. Eight a.m..

2 Q. So at the time when you got ready to go to bed to go to  
3 work the next day, was Todd still angry?

4 A. Yes.

5 Q. How did -- how did he demonstrate that anger? What did  
6 he do so that you could see or tell that he was angry?

7 A. Well, after I had got back and he came -- he told me  
8 that he had told me not to go.

9 Q. Right.

10 A. And I had went anyway.

11 So as I went in my room to get ready for bed, he was  
12 still fussing and he was still mad and he told me that I  
13 better hope that he don't hit me, that I better hope that he  
14 don't get madder, which he threw a fan off the bucket.

15 Q. I apologize. I hope he doesn't get what, madder?

16 A. Madder.

17 Q. Madder?

18 A. Yes.

19 Q. Go ahead.

20 A. And so I didn't say nothing, because I know how he can  
21 just escalate from one mood to another.

22 Q. Right.

23 A. So as I went on in progress getting ready for bed, he  
24 was still, you know, fussing at me about because I had left.

25 Q. Still angry?

1 A. Yes, sir.

2 Q. What did he do then?

3 A. He just kept on talking and stuff, so I really didn't  
4 want to say anything, because I knew that if I did he will  
5 jump on me.

6 Q. Right.

7 A. And so as I got ready to lay on my bed, I had a fan  
8 sits on top of a small bucket.

9 Q. You had a fan sitting on top of a small bucket?

10 A. Yes, sir.

11 Q. The fan is while you were in the bed?

12 A. Yes.

13 Q. All right.

14 A. So he set the bucket off the fan and he sat down on the  
15 bucket.

16 Q. So does that mean he's sitting beside your bed?

17 A. Yes, like my bed is right here, like that panel.

18 Q. Right.

19 A. The bucket would be where I'm sitting.

20 Q. Right.

21 A. So he sat on this bucket with his hand on like that  
22 with his chin.

23 Q. Uh-huh.

24 A. And he would just stare at me and he would like "well,  
25 you better hope I don't get angry," or, "you better hope I

1 don't hit you."

2 So I just laid there and looked at him. And keep in  
3 mind, I had worked eight hours --

4 Q. Right.

5 A. -- the day before.

6 Q. Sure. Now, you are trying to go to sleep? I mean,  
7 this is ten, eleven o'clock at night?

8 A. Yes, it was about 11:30 or twelve then.

9 Q. Is he sitting beside your bed as you are lying in bed?

10 A. Yes, sir.

11 Q. Now, take us through the night. Does he sit there on  
12 that bucket beside your bed the whole night?

13 A. Yes, sir.

14 Q. Is he talking to you through the night?

15 A. Yes, sir.

16 Q. What's he saying to you?

17 A. He just kept repeating that I better be glad that he  
18 don't get mad enough to hit me. And if I say something or  
19 looked the wrong way, you know. And then he just kept on,  
20 but it was just --

21 The torture of knowing that at any minute I could get  
22 beat.

23 Q. Right.

24 A. And so I just laid there.

25 Q. What time did you get up in the morning?

1 A. I got up about five out of the bed.

2 Q. Did he sit beside your bed telling you that all night?

3 A. All night.

4 Q. So you got up at five o'clock?

5 A. Yes.

6 Q. Were your children there?

7 A. Yes, they had -- my room is up the hall. Their room is  
8 down, and so they had went to sleep by then.

9 Q. Right.

10 Did you have to get them ready for school?

11 A. Yes, sir.

12 So when I got up at five, I just went ahead and got up  
13 and I started ironing their school clothes, as well as my  
14 work clothes.

15 Q. Was Todd still angry with you after sitting beside you,  
16 sitting beside your bed all night?

17 A. Yes, sir.

18 Q. What is he saying to you?

19 A. He was still telling me "when I tell you not to go  
20 somewhere, that's what I meant, you know, but since you  
21 wanted to go anyway, you better hope that you don't have to  
22 pay the price, you know, that I don't hit you," or whatever,  
23 so I still didn't say anything.

24 And I just kept ironing in the kitchen on my  
25 countertop, because that's where I always do my ironing.

1           And he just walked up to me like "say something", and I  
2 would just look at him, I said "Todd, go on," you know.

3 "I'm not trying to fight with you about that."

4 Q.    What time did you have to be at work?

5 A.    At eight.

6 Q.    Did you try to go to work?

7 A.    Yes, sir.

8           My children left to go to school at 6:30.

9 Q.    Right.

10 A.    So after they left, I knew by me being in the house by  
11 myself, that being he would get the chance to jump on me.

12 Q.    Right.

13           So did he stay mad from that evening through the night  
14 into the morning?

15 A.    From the time he had called me and told me not to go to  
16 the time when he got there he was upset, because I had went  
17 anyway, so yes, sir.

18 Q.    Okay. Now, did you try to leave to go to work or did  
19 you leave to go to work?

20 A.    Well, I was in the bathroom putting my eyeliner on, he  
21 hit me. So after he had hit me and I got mad. So, yes, I  
22 grabbed my pocketbook and my keys and I ran out and I said  
23 I'll just go to work earlier got --

24           Without my daughters and them being there, I didn't  
25 know what could happen to me, because when he get angry, he

1 get angry. So --

2 Q. When he gets angry, he gets angry?

3 A. Yes, sir.

4 Q. Did he hit you with his fist?

5 A. Yes, sir.

6 Q. So you got your keys and you got out?

7 A. Yes, sir.

8 Q. What happened then?

9 A. So as I started to go towards my job --

10 Q. You mean you are in the car going down the road going  
11 towards Hamrick's?

12 A. Yes, sir.

13 Q. What does he do then?

14 A. It's a red light. So the light was red, so I had to  
15 stop. When I looked I seen him running up the hill towards  
16 that way.

17 Q. Running towards you?

18 A. Yes.

19 So when I turned to go to Hamrick's, he cut across  
20 Hardee's parking lot coming towards Cherokee Avenue, coming  
21 down towards Cherokee Avenue, which would have been towards  
22 my job, so I turned and came back.

23 Q. When he was angry with you, would he ever come to your  
24 work?

25 A. Yes, he had walked out there just to see who I would be

1 walking out beside me.

2 Q. See if any men were walking out beside you?

3 A. Yes.

4 Q. So you said -- did you turn around?

5 A. Yes.

6 Q. Did you go back to your house?

7 A. I went to my mother's house, which is where my grandma  
8 and my momma lived together at the time.

9 Q. They lived across the street from you?

10 A. Yes, sir.

11 Q. And what did you do there?

12 A. I knocked on the door, because usually my grandmother  
13 be up.

14 Q. Right.

15 A. And so I said momma will come to the door. I won't be  
16 able to get in, but I couldn't get her to the door, so I got  
17 in my car and went back home to my house.

18 Q. Now -- go ahead. We can wait.

19 A. So when I got to my house, I ran in my house and locked  
20 my doors back.

21 Q. Did you have a gun?

22 A. Yes, sir.

23 Q. And where was your gun at the point that you went in  
24 your house, ran in your house?

25 A. I had hid it down in some bags of clothes under my

1 children's -- in my children's closet, everything clothes.  
2 And so I would take their clothes out of the bag, like  
3 summer clothes, or whatever, that I would have bagged up,  
4 and I had put it in a bag at the very bottom of their  
5 closet.

6 Q. Right.

7 Did you go get your gun?

8 A. Yes, sir.

9 Q. What did you get your gun for?

10 A. Because I had a window unit air conditioner and I was  
11 afraid that he was going to snatch it out and come in on me.

12 Q. All right. So you're at your house. You got -- it's a  
13 mobile home on Sixth Street?

14 A. Yes.

15 Q. You got your gun?

16 A. Yes.

17 Q. What happens next?

18 A. So I was standing there and I went in my bedroom, got  
19 two pillows, which I laid my gun in between.

20 Q. Right.

21 A. And I was like, you know, please don't let him get in  
22 on me. So, you know, I kept watching to see.

23 So then a neighbor that -- he used to own a radiator  
24 shop.

25 Q. Right.

1 A. He had went down there to get him to come up there,  
2 because he said he just wanted to get some stuff out of  
3 there and he was going to go home.

4 Q. Todd was telling your neighbor --

5 A. Yes, sir.

6 Q. -- that he just wanted to come in your house and get  
7 some stuff out?

8 A. Yes, sir, this guy named Jimmy Upchurch.. He used to  
9 own the radiator shop.

10 Q. No problem.

11 And that's how Todd got in the house?

12 A. Yes, sir.

13 Q. So he gets in the house. What do you do then? Is he  
14 still angry?

15 A. Yes, he's still angry.

16 Q. Is he even more angry?

17 A. Yes, and then he turned and told Jimmy --

18 Q. Told who?

19 A. Jimmy. That's the guy that owned the radiator shop  
20 that came up there.

21 He said that "you ain't got to stay up in here. You  
22 know, this is between us."

23 And so I told Jimmy, I said "Jimmy, please don't leave  
24 me," I said, "because he's going to jump on me and momma and  
25 them will be out for just a few minutes," and I said "could

1 you stay?"

2 Q. You asked the radiator man to stay?

3 A. Yes.

4 Q. Go ahead.

5 A. So he stayed.

6 And then by then my mother and them had got off and  
7 stopped by.

8 And then I called the police. And then the police came  
9 out there and he investigated on what was going on. And I  
10 had explained to him, and he said that he couldn't make Todd  
11 leave my house unless I had to come down here and take an  
12 eviction or restraining order out.

13 Q. So nothing -- the bottom line of that is the policeman  
14 left and nothing happened, right?

15 A. Yes.

16 Q. So you and Todd are still in the house?

17 A. Yes.

18 Q. Now, did the policeman make you take your gun out of  
19 the house?

20 A. Yes, sir.

21 Q. Where did you -- where did he make you put it?

22 A. In the trunk of my car.

23 Q. All right. So you put the gun -- you put your gun in  
24 the trunk of your car?

25 A. Yes, sir.

1 Q. And you and Todd Morgan are back in your mobile home,  
2 right?

3 A. Todd was still in my mobile home. My brother was there  
4 at that time then.

5 Q. Okay. You went back in and Todd and your brother are  
6 in the mobile home?

7 A. Yes, sir.

8 Q. What happens then?

9 A. So I told my brother not to leave me. And I said "but  
10 I don't want you to get involved," because he was on two  
11 years probation.

12 Q. Right.

13 A. And I said "just stay with me."

14 Q. Your brother?

15 A. Yes.

16 And so I was trying to wait until nine o'clock hit so I  
17 could come up here --

18 Q. Right.

19 A. -- and do what the officer had advised me to do.

20 Q. Right.

21 A. So when it got like ten minutes to nine, or something  
22 like that, I was standing, and then Todd took his feet,  
23 which he was sitting on my counter, and then he jumped off  
24 and took his feet and knocked all the whatnots off my --

25 Q. Knocked the what off?

1 A. All my whatnots off my center table.

2 Q. Okay. All your whatnots off your center table?

3 A. Yes.

4 Q. Little figures and things?

5 A. Yeah, little figures that my momma and grandma and them  
6 had been bringing on the table.

7 So I told him that I was tired of him. I was tired of  
8 going through the beatings, and I'm tired of going through  
9 the anger of my children seeing me get beat --

10 Q. Right.

11 A. -- you know, if I go through this stuff with my mom or  
12 anything.

13 Q. So did you go back out to your car and get your gun?

14 A. Yes.

15 Q. When you come back into your house, do you have the gun  
16 out?

17 A. Yes.

18 Q. Did you have the gun where Todd could see it?

19 A. Yes.

20 Q. You walked in your house, you are holding your gun?

21 A. Yes.

22 Q. What does Todd do?

23 A. Leaped toward me.

24 Q. All right. You are holding your gun where Todd Morgan  
25 can see it and he leaped toward you?

1 A. Yes, sir.

2 So he ran up on me --

3 Q. Right.

4 A. -- and he said "what are you going to do?" You know,  
5 and then that's when he had grabbed my hand. So when he ran  
6 on me I smacked him first.

7 Q. With the gun?

8 A. Yes.

9 Q. Trying to get him off of you?

10 A. Yes, sir.

11 Q. Now, when you first walked in, where was Todd in your  
12 room, in that little living area where you were talking  
13 about?

14 A. In my living room?

15 Q. Right. Was he sitting on your sofa?

16 A. No, sir, he was sitting on the countertop.

17 Q. Standing on the countertop?

18 A. Sitting on the countertop.

19 Q. I apologize, sitting on the countertop.

20 All right. As soon as you walked in with the gun, did  
21 he rush up on you?

22 A. Yes, sir.

23 Q. Was he trying to get the gun?

24 A. When he ran towards me, I swung --

25 Q. Right.

1 A. -- and I smacked him. So I be standing this way, your  
2 way, so I would have smacked him on the right side of the  
3 head --

4 Q. Uh-huh.

5 A. -- with it.

6 Q. Was he -- did that slow him down or stop him?

7 A. No, sir. He just grabbed me. And then -- my  
8 bedroom -- like this is my front door.

9 Q. Right.

10 A. My bedroom door right here.

11 Q. Uh-huh.

12 A. So I was braced between the framing of my bedroom door  
13 and my living room.

14 Q. Are you still able to hold onto your gun?

15 A. Yes, sir.

16 Q. Is he still trying to get it?

17 A. Yes, sir.

18 Q. What happened then?

19 A. So when he was trying to get it, I had this hand  
20 pushing away, and he was pulling towards him. We was -- and  
21 I was like don't let him take my gun. I could take a lick,  
22 but I can't take it loaded. So I just say, well, Lord I can  
23 replace my own house, my own material stuff. And so I just  
24 squeezed the trigger, because I knew I didn't have nothing  
25 like maybe four or five bullets in there. So, you know, the

1 bullets started firing.

2 Q. What were you trying to do?

3 A. Unload my gun.

4 Q. You were trying to unload your gun?

5 A. Yes.

6 Q. Because of what?

7 A. So if he took it, there wouldn't be no bullets in there  
8 for him to either shoot towards me with or my brother.

9 Q. Okay. Were you afraid if he got the gun he would shoot  
10 you?

11 A. I -- I felt like he would have.

12 Q. But you start pulling the trigger. What happened?

13 A. We was still wrestling.

14 Q. Okay.

15 A. And so a bullet -- my brother was catty-corner to me  
16 like this gentleman.

17 Q. Right.

18 A. So when I first smacked him, it was one bullet went in  
19 the ceiling.

20 Q. Right.

21 A. So when we were wrestling and it was right there, which  
22 would be straight down the hall is a wall with my  
23 furtniture.

24 Q. Yes.

25 A. One bullet hit there, and then one hit on the far wall

1 right beside the back door.

2 Q. Is he letting go of you at this point --

3 A. No, he was still --

4 Q. -- the gun was going off?

5 A. We were still struggling over the gun.

6 Q. So you fired three shots. Is he still trying to get  
7 your gun?

8 A. Yes, sir.

9 Q. What happens next?

10 A. And so then he was trying to bring it, to take it out  
11 of my hand. And when he did, by he having to come across  
12 him, one hit --

13 Q. Did it come across his body?

14 A. Yes.

15 Q. He pulled the gun across his body?

16 A. He was pulling this way.

17 Q. I see.

18 A. And so when it hit, one hit him in the shoulder.

19 Q. Right.

20 A. And the other hit there, because by then I had slipped.  
21 I was face forward. I was -- the -- somewhere's between my  
22 living room wall and my bedroom wall, the facing of the  
23 door.

24 Q. So the fourth shot out of your pistol as you and he  
25 were struggling went in his shoulder?

1 A. Yes.

2 Q. And then the next one went somewhere in his chest?

3 A. Yes, but I didn't find that out until --

4 Q. Right, I understand.

5 Now, did that stop him?

6 A. No.

7 Q. What did he keep doing?

8 A. Even after we was still struggling and I slipped --

9 Q. Yes.

10 A. -- off the facing board --

11 Q. And let me just make sure. This is after you -- after

12 he had been shot twice, right?

13 A. Well, at that time I didn't know.

14 Q. I know, but you know -- do you know now he was shot

15 twice?

16 A. I --

17 Q. I apologize. Let me ask it a better way.

18 Did he keep struggling with you after he was shot in

19 the chest?

20 A. Yes, because where we were struggling and I slipped off

21 the door face.

22 Q. Right.

23 A. I went into my bedroom, which was my bed. So when we

24 fell, I fell on the bed like that and he was on top of me

25 and we were still struggling.

1           So then my brother come in the room and he say "Calvin,  
2 man, stop. Get up," he said "because you are bleeding."

3           And so he was still struggling with me and I was like  
4 "Lord, give me strength." And I was trying to where I was  
5 free. So I as were, I finally got enough strength up to  
6 pull off under him while my brother was pulling him up to  
7 come out, and then I went across the street and got my momma  
8 and came back.

9 Q.    That's fine. Thank you.

10           THE COURT: You may cross-minute.

11           MS. LESKANIC: Could we approach just a moment?

12           THE COURT: Yes, ma'am.

13           (Whereupon, the lawyers approached the bench for  
14 an off-the-record discussion)

15           MS. LESKANIC: Thank you, Your Honor.

16           THE COURT: Yes, ma'am.

17 CROSS EXAMINATION BY MS. LESKANIC:

18 Q.    Ms. Smith, when did this incident happen?

19 A.    I know the other day I stated January of '93, which it  
20 would have been January the 28th of '94.

21 Q.    So this happened in 1994?

22 A.    Yes, ma'am.

23 Q.    And were you at 311 Sarratt Avenue --

24 A.    No.

25 Q.    -- on November 28th of 2009?

1 A. Uh-uh. I don't hang out nowhere in them areas. No,  
2 ma'am.

3 Q. Do you have any idea what happened inside one of the  
4 bedrooms at 311 Sarratt Avenue?

5 A. I don't even know where that at.

6 Q. Okay. Now, just briefly on this, because you were not  
7 there on the case we are in court for today, the police came  
8 out and they told you to put the gun in the car, is that  
9 right?

10 A. Yes. Are you talking about at my house?

11 Q. Yes, ma'am. I'm going back to 1994.

12 A. Okay.

13 Q. Okay. And the police came out after you had brought  
14 the gun in the house, or you had the gun in the kids  
15 clothes, and the police, I guess, were advised that you had  
16 the gun and told you to put it out in the car?

17 A. Yes, because when he came in, he seen I had the gun.

18 Q. Okay. The police officer did?

19 A. Yes, ma'am.

20 Q. All right. And he said "you need to put that out in  
21 the car?"

22 A. Yes.

23 Q. All right. And then at some point there was a man  
24 named Jimmy there, is that right?

25 A. Yes, ma'am.

1 Q. And you asked Jimmy to stay?

2 A. Yes, ma'am.

3 Q. And Jimmy did stay?

4 A. Yes, ma'am.

5 Q. All right. Todd and Jimmy didn't have any  
6 confrontation? It was you and Todd, is that right?

7 A. Yes, ma'am, but he turned to Jimmy and told him that he  
8 could leave, because he didn't have nothing to do with it.

9 You see, me and Jimmy, though, he knew of, because  
10 Jimmy and my mother and I lived in the same area, so we  
11 always watched out over each other.

12 Q. Okay. But the physical struggle and everything, that  
13 was between you and Todd, not between Todd and Jimmy?

14 A. Correct.

15 Q. And your brother was there too at one point. You had  
16 asked your brother to the stay. I just want to make sure I  
17 understand.

18 The physical altercation was between you and Todd? It  
19 wasn't between Todd and the person that you had asked to  
20 stay, your brother?

21 A. Correct.

22 Q. Is that right?

23 A. Yes.

24 Q. Now, after the police had told you to put the gun in  
25 the car, you went out and got the gun anyway?

1 A. Yes.

2 Q. And you knew that Todd was in the house when you went  
3 and got the gun?

4 A. Yes.

5 Q. All right. So when you came in, were you pointing the  
6 gun at Todd, or how did Todd first see the gun when he came  
7 up to you?

8 A. When I came back, because he knew what I was going back  
9 out to the car to get.

10 Q. Okay.

11 A. Because he was there when the officer told him. So he  
12 more or less like boasted about the idea that because the  
13 officer made me take the gun out of my house to put it in my  
14 car. And so he was more or less like bolsterous about I had  
15 to take the gun out, so what am I am going to do now?

16 He looked at my brother like, "yeah, I want you to do  
17 something."

18 And I said "brother, don't do nothing," which at the  
19 time I called Kim. I said "brother, don't do nothing," I  
20 said, "because he knows you are on probation and all he  
21 wants you to do is violate it, but just don't leave me  
22 because this is my battle. I got to put an end to it,  
23 because I'm tired of my girls seeing me get beat and going  
24 through this."

25 Q. And when you went out to the car, though, and got the

1 gun --

2 You left the house, right, and Todd was in the house  
3 and you went outside to your car and you got the gun out of  
4 the trunk?

5 A. Yes.

6 Q. And then you came back into the house where Todd was?

7 A. Yes.

8 Q. All right. And your brother was there too?

9 A. Yes.

10 Q. All right. Now, when you came in the house with the  
11 gun and Todd saw the gun, were you pointing the gun at him,  
12 or did you have it down by your side? Where was --

13 A. When I came through the door, I had it downward.

14 Q. And is that when he came up to you?

15 A. Yes.

16 Q. And tried to get the gun away from you?

17 A. When I came through the door -- my door opened back  
18 this way.

19 Q. Yes, ma'am.

20 A. The counter that Todd was sitting on, I got a TV on the  
21 counter right here. So when I came back through the door --  
22 he could see my car from where I parked through my living  
23 room window because my blinds was open. So as I stepped  
24 back through the door, that's when he got off the counter,  
25 knocked my whatnots off the table, came towards me and then

1 that's when I said "I'm tired of you beating on me. I'm not  
2 going to let you hurt me this time." And so when he got up  
3 on me, I smacked him.

4 Q. All right. But when you first came in the door, and  
5 maybe I'm not -- did you -- did he -- he knew you had the  
6 gun before you walked in the door, is that right?

7 A. Yes.

8 Q. All right. So were you pointing the gun at him when he  
9 came towards you?

10 A. No, ma'am.

11 Q. You just had it down by your side?

12 A. By my side.

13 Q. And he came up and he tried to get the gun away from  
14 you and that's where --

15 A. Well, he ran up to me to attack me. That's what I  
16 meant. That's when I didn't think about being a gun. I  
17 smacked him with the gun, because I just swung. I didn't  
18 shoot. I swung.

19 Q. Okay. Now, do you remember testifying earlier this  
20 week?

21 A. Yes, ma'am.

22 Q. All right. And I think you told me that when he came  
23 at you, he wasn't trying to hit you, he was trying to get  
24 the gun, is that correct?

25 A. That's when we was struggling over the gun.

1 Q. Okay. So when he first came up to you, you don't have  
2 the gun pointed at him, is that correct?

3 A. That's correct.

4 Q. All right. And you think he's getting ready to hit you  
5 and so you hit him?

6 A. I knew -- I knew him. I knew what he was capable of,  
7 so yes.

8 Q. All right. So in your mind you think you are getting  
9 ready to get hit?

10 A. I knew I was getting ready to get hit.

11 Q. Okay. And so you hit him?

12 A. When he got up on me to grab, I smacked him.

13 Q. Okay.

14 A. So when I smacked him, it knocked the safety off the  
15 side of my gun, because I had a button safety on the side.

16 Q. Certainly.

17 A. So it knocked the safety off. So as I smacked him and  
18 when it came off, that's when it went off as it was  
19 automatic and it went off into my ceiling.

20 Q. All right.

21 A. So then I started back peddling. That's how I winded  
22 up on the --

23 Q. Because I'm sure it scared you when the gun went off as  
24 well?

25 A. Exactly.

1 Q. Okay. And you and Todd were in a relationship for how  
2 long?

3 A. I started going out with him about mid '91, maybe late  
4 summer of '91, somewhere in there.

5 Q. All right. So sometime between -- y'all dated from '91  
6 until sometime in 1994?

7 A. To '94, January.

8 Q. Okay. So y'all were together for three years?

9 A. Off and on.

10 Q. Okay.

11 MS. LESKANIC: Thank you.

12 THE COURT: Redirect?

13 MR. SLADE: Yes, sir.

14 REDIRECT EXAMINATION BY MR. SLADE:

15 Q. Ms. Leskanic was asking you about the physical  
16 altercation between you and Todd.

17 Right before this -- before he jumped on you, there  
18 were two men there at your home, right? There was Jimmy,  
19 the radiator guy?

20 A. He was there first.

21 Q. Right.

22 And your brother was there?

23 A. Well, my brother got there. He left.

24 Q. I see.

25 Todd told Jimmy to leave, correct?

1 A. He told Jimmy that he could leave now because he didn't  
2 have nothing to do with that.

3 Q. He told him he didn't have nothing to do with that?

4 A. Right, that's before my brother got there.

5 Q. Okay. And then when your brother got there, did Todd  
6 Morgan try to get your brother into this fight that was  
7 going on between you and him?

8 A. He tried to get my brother to the point that my brother  
9 would hit him so he can get him violated, because he say  
10 "yeah, you are" -- my brother didn't have but two more weeks  
11 to go.

12 Q. I understand. Your brother was on probation?

13 A. Yes.

14 Q. He had two weeks to go before he would be terminated  
15 with his probation?

16 A. Right.

17 Q. All right. What did Todd say to him?

18 A. He said "yeah, I want you to hit me," he said, "because  
19 I will go up there tell them you violated."

20 So I said "brother, stay out of this." Well, "Kenneth,  
21 stay out of this, because it's my battle. I'm the one that  
22 got to put an end to this," I said, "because I don't want  
23 you going to jail, as far as what I got to go through."

24 Q. I believe you said you knew what he was capable of?

25 A. I knew very well what he was capable of, because it

1 ain't the first two times that we talked about here --

2 Q. Yes.

3 A. -- this week. It was from the time we started dating.  
4 all the way up to then.

5 Q. Yes, ma'am.

6 A. And I think anybody knows me, they know the  
7 circumstances. It ain't my first time with being beat by  
8 him.

9 Q. Yes. Thank you.

10 THE COURT: Anything further from the witness?

11 MS. LESKANIC: No, Your Honor. Thank you.

12 THE COURT: You may step down.

13 Do you wish to have the witness excused?

14 MR. SLADE: Yes, sir.

15 THE COURT: Any objection to her being excused?

16 MS. LESKANIC: No, Your Honor.

17 THE COURT: You are free to go, ma'am.

18 THE WITNESS: Thank you.

19 THE COURT: You may call your next witness.

20 MR. SLADE: That's our case, Your Honor.

21 THE COURT: Ms. Leskanic, the defense has rested.

22 Does the State wish to call any witnesses in reply?

23 MS. LESKANIC: We will, Your Honor. May we have  
24 just a few moments?

25 THE COURT: Yeah, we will take a short break.