

VOLUME ONE OF TWO

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from York County

G. Edward Welmaker, Circuit Court Judge

RECEIVED

JUN 12 2014

S.C. Supreme Court

HASHIN ALLIE ONEIL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-02126

APPENDIX

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ATTORNEYS FOR RESPONDENT

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State of South Carolina.,) In the General Sessions
) Court of York
)
County of York.) Case No.: 2011-GS-46-00977
2011-GS-46-00977A
2011-GS-46-00978

State of South Carolina.,)
)
Plaintiff.,)
)
-vs-) Transcript of Record
)
Hashin Alli O'Neil.,)
)
Defendant.)

April 16-18, 2012
York, South Carolina

B E F O R E:

Honorable John C. Hayes, III., Judge, and a jury.

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

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Circuit Court Reporter
Sixteenth Judicial Circuit
To The Honorable John C. Hayes, III

I-N-D-E-XE-X-A-M-I-N-A-T-I-O-NWITNESSBY:PAGE NO.

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Solicitor Epting

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11	Investigator Kevin Tolson	Solicitor Collins	P.434-43
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2				
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6	St.4	NC Statute §14-17; Homicide	P.31	
7	St.5	Miranda Rights Form	P.39	P.287
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10	St.7	Incident Interview Report	P.78	
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12	St.8	Photos of Emails	P.78	
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14	St.9	CD	P.140	
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E-X-H-I-B-I-T-S - CON'T

	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
1				
2				
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4	St.21	Photo/Car Interior	P.157	P.158
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10	St.27	Photo/Entrance Door @	P.161	P.355/488
11		[REDACTED] Way		
12	St.28	Photo/Door & Stairs	P.161	P.393
13		in Apartment		
14	St.29	Photo/Closeup of Door	P.161	P.394
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16	St.31	Photo/Living	NOT ENTERED	
17	St.32	Photo/Living room looking		P.492
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19	St.33	Photo/Door to Apartment		P.492
20	St.34	Photo/Stairs in Apartment		P.492
21	St.35	Photo/Stairs	NOT ENTERED	
22	St.36	Photo/Stairs in apartment		P.492
23		and shoes		
24	St.37	Photo/Stairs with shoes	NOT ENTERED	
25	St.38	Photo/Stairs, top to bottom		P.492

	<u>E-X-H-I-B-I-T-S - CON'T</u>			
	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
1				
2				
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4		with blood on wall		
5	St.40	Photo/Stairs with		P.456-457
6		blood on wall		
7	St.41	Photo/Blood on wall		P.456-457
8	St.42	Photo/Bedroom with		P.492
9		Green bedspread		
10	St.43	Photo/Bedroom with		P.465
11		Green bedspread		
12	St.44	Photo/Bedroom with		P.492
13		Green Bedspread		
14	St.45	Photo/Closet		P.492
15	St.46	Photo/Bedroom Closet		P.492
16	St.47	Photo/Closet	NOT ENTERED	
17	St.48	Photo/Bedroom Closet		P.492
18	St.49	Photo/Bedroom floor		P.465
19	St.50	Photo/Apartment Bedroom		P.493-494
20	St.51	Photo/Bedroom with chair		P.495
21	St.52	Photo/Chair in Bedroom	NOT ENTERED	
22	St.53	Photo/from bedroom door		P.492
23		looking into bedroom		
24	St.54	Photo/Bedroom floor with		P.492
25		items in floor at door		

	<u>E-X-H-I-B-I-T-S - CON'T</u>			
	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
1				
2				
3	St.55	Photo/Bedroom door looking		P.492
4		into bedroom		
5	St.56	Photo/Bedroom		P.492
6	St.57	Photo/Bedroom		P.492
7	St.58	Photo/Bedroom	NOT ENTERED	
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9	St.60	Photo/Jeans under bed		P.492
10	St.61	Photo/Jeans in floor		P.492
11		with blood spots		
12	St.62	Photo/Foot board		P.492
13		White and gold bedspread		
14		with blood spots		
15	St.63	Photo/Footboard	NOT ENTERED	
16	St.64	Photo/White and Gold		P.492
17		Bedspread with blood		
18	St.65	Photo/White and Gold		P.492
19		Bedspread with blood		
20	St.66	Photo/Bedspread	NOT ENTERED	
21	St.67	Photo/Bedspread	NOT ENTERED	
22	St.68	Photo/Bedspread	NOT ENTERED	
23	St.69	Photo/Bedspread	NOT ENTERED	
24	St.70	PMC Medical Records	P.202	
25		11/12/10 (DEFENDANT'S 4)		

E-X-H-I-B-I-T-S - CON'T

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St.72	YCSO Permission to Search Form	P.262	P.263
St.73	Photo of Projectile in Chair	P.313	P.315
St.74	Photo of Projectile	P.313	P.315
St.75	YCSO Crime Scene Entry Log	P.350	P.363
St.76	Photo/Volvo	P.352	P.353
St.77	GSR Form	NOT ENTERED	
St.78	Projectile	P.496	P.499
St.79	Victim's clothing	NOT ENTERED	
St.80	SLED GSR Report	P.518	P.525
Closing Argument	Mr. Muckenfuss	P.548-566	
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E X H I B I T S - C O N ' T

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	6:29 p.m (Pretrial only)		
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CT.2	Jury Note		P.615
CT.3	Jury Note		P.615
CT.4	Jury Note		P.615
CT.5	2 Jury Notes.		P.615
CT.6	2 Jury Notes.		P.615
COURT REPORTER'S NOTE: ALL EXHIBITS WERE FILED WITH THE			
YORK COUNTY CLERK OF COURT'S OFFICE.			

1 (ON THE RECORD IN THE MATTER OF STATE V. HASHIN ALLI
2 O'NEIL A/K/A HASHIN ALI O'NEIL ON MONDAY, APRIL 16, 2012 AT
3 02:30 P.M..)

4 (WHEREUPON: STATE'S EXHIBITS NUMBER ONE THROUGH FOUR
5 PREMARKED FOR IDENTIFICATION.)

6 THE COURT: Thank you.. Take your seats.

7 You can get the defendant out.

8 (DEFENDANT, HASHIN O'NEIL, BLACK MALE, ENTERING THE
9 COURTROOM.)

10 THE COURT: Is the State ready?

11 SOLICITOR COLLINS: Your Honor, the State is ready..

12 THE COURT: The Defense ready?

13 MR. MUCKENFUSS: We're ready, Your Honor.

14 THE COURT: All right. We've got -

15 SOLICITOR COLLINS: Your Honor, I apologize.

16 THE COURT: I've got some proposed voir dire, but go
17 ahead you start.

18 SOLICITOR COLLINS: Well there are two matters we need
19 to take up briefly as to the indictment. As we discussed
20 in chambers it was amended to reflect the question in terms
21 of the spelling of the defendant's name. I have provided
22 Mr. Muckenfuss and his client with certified copies of the
23 amended indictment. He tells me that they are willing to
24 waive official arraignment as to the amended direct
25 indictment. Te defendant was previously arraigned on the

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1 original direct indictment. And that is for the weapons
2 offense however I think Mr. Muckenfuss in pursuant to
3 discussions in chambers we will only be going forward today
4 - I understand Your Honor granted a motion to sever and we
5 would not oppose that s to the possession of a weapon by a
6 person previously convicted of a crime of violence.

7 THE COURT: I'm going to hand that one back to the
8 Clerk so it won't get mixed up. And the indictment I have
9 has True Bill on 3/24/11, no 4/12/12.

10 SOLICITOR COLLINS: The amended was True Billed
11 4/12/12.

12 THE COURT: I see. Okay. I got the amended one. I
13 got it.

14 SOLICITOR COLLINS: And then therefore accordingly we
15 would strike the request for State's voir dire in Paragraph
16 1 that references the indictment on which we are not going
17 forward, possession of a firearm by a person previously
18 convicted of a crime of violence. We would strike that if
19 Your Honor sees that.

20 THE COURT: Okay.

21 SOLICITOR COLLINS: And as to the defendant's request
22 we oppose simply just Number 7 as to whether or not the
23 jury would believe a person or find someone's testimony
24 more credible because they are a police officer or law
25 enforcement.

1 THE COURT: All right. Anything else from the State?

2 SOLICITOR COLLINS: That's all from the State, Your
3 Honor.

4 THE COURT: I'm looking at the defendants. I'm not
5 going to ask about the firearms. I have some concern about
6 Three: Serious dispute over property. I think I'm going
7 to ask Three. I'll ask Two about being alleged a serious
8 domestic dispute. I put maybe including disposition of
9 assets. Anything else?

10 MR. MUCKENFUSS: Your Honor, I do. I think when the
11 State's voir dire references in one of their questions
12 being a victim I think of domestic violence perhaps. I
13 don't have it in front of me. I just in light with your
14 concern about our Number Three and they also ask about the
15 NRA.

16 THE COURT: I'm not going to ask about the NRA.

17 MR. MUCKENFUSS: Okay.

18 THE COURT: But I will ask if they or a member of
19 their family has been the victim or charged with these
20 offenses.

21 SOLICITOR COLLINS: Mr. Muckenfuss is correct. The
22 last portion of my paragraph One did include asking "or any
23 crime involving physical assault on a member of his or her
24 household" I did request that.

25 THE COURT: Do you object to that?

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1 MR. MUCKENFUSS: We would object to that, Your Honor.

2 THE COURT: All right. I'll leave that out then.

3 Does the defense have a witness list?

4 MR. MUCKENFUSS: Your Honor, the only additional
5 witness named that we would add is Don Girndt. D-o-n, his
6 first name. Girndt G-I-r-n-d-t.

7 THE COURT: Firearms man.

8 MR. MUCKENFUSS: Yes, Your Honor.

9 THE COURT: Use to be with SLED.

10 MR. MUCKENFUSS: Yes, Your Honor.

11 THE COURT: All right. Anything else before we get
12 the jury up.

13 SOLICITOR COLLINS: No, Your Honor. Thank you.

14 MR. MUCKENFUSS: No, Your Honor.

15 THE COURT: All right. Bring up the jury.

16 SOLICITOR COLLINS: Your Honor, if there is no
17 objection I believe Mr. Muckenfuss and I discussed this, we
18 would request the Court consider sitting two alternates
19 rather than just one in this case.

20 THE COURT: I don't have any objection to that. The
21 strikes on each will be one for the State and two for the
22 Defense.

23 THE COURT: Somebody let me know when the jury gets
24 here.

25 (COURT AT EASE AT 02:35 P.M..)

1 (JURY ENTERS COURTROOM AT 02:40 P.M..)

2 THE COURT: Thank you. Take your seats.

3 Members of the jury panel, --

4 Mr. Anthony, you need to sit down so I can see
5 everybody.

6 My name is John Hayes, along with Judge Baxley I am
7 holding court here this week. Judge Baxley of course is a
8 visiting judge from Hartsville/Darlington area. Judge
9 Alford is our other resident judge, he is not with us this
10 week. I'm starting the first trial for this courtroom for
11 the week and it is the State of South Carolina versus
12 Hashin H-a-s-h-I-n, Alli A-l-l-I, O'Neil.

13 Mr. O'Neil would you stand so the jury can see who you
14 are?

15 (DEFENDANT, HASHIN O'NEIL STOOD.)

16 THE COURT: This is Mr. O'Neil. And he is represented
17 by Mr. Robert Muckenfuss. I'm going to ask Mr. Muckenfuss
18 to introduce the other people who are seated with him.

19 MR. MUCKENFUSS: Thank you, Your Honor.

20 Melissa Timmermans also with my firm. Janie Baldwin
21 also an attorney with my firm, and Antonio Robinson a
22 paralegal.

23 THE COURT: All right. And the State is represented
24 by Ms. Lisa Collins. And I'll ask her to introduce who she
25 has with her.

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1 SOLICITOR COLLINS: Thank you, Your Honor.

2 This is Assistant Solicitor Chris Epting who is also a
3 prosecutor in our office. And this is Detective Eddie
4 Strait with the York County Sheriff's Department. Thank
5 you.

6 THE COURT: All right. Mr. Hashin O'Neil is charged
7 with two offenses in one piece of paper, one indictment.
8 They are attempted murder and possession of a firearm
9 during the commission of a violent crime. It's alleged
10 this occurred on November 12th, 2010, and the alleged
11 victim of the attempted murder was Crystal Caldwell.

12 This happened at [REDACTED] Rock Hill,
13 South Carolina. It's alleged to happen there.

14 First, are any of you related by blood or marriage, or
15 are any of you a close personal friend of acquaintance of
16 Mr. O'Neil, if so, please stand?

17 No one stands.

18 Have any of you heard about this case; read about it
19 in the paper? I don't know if it was even covered in the
20 paper but have you heard about it from work, anything about
21 this case? Have any of you heard about it, if so, please
22 stand?

23 No one stands.

24 Are any of you members of the Grand Jury which passed
25 on this indictment at an earlier time, if so, please stand?

1 No one stands.

2 Are any of you aware of any bias or prejudice that you
3 would have toward individuals to whom you've just been
4 introduced; the attorneys, and Mr. O'Neil, if so, please
5 stand?

6 No one stands.

7 Have any of you been represented by Ms. Collins or Mr.
8 Epting or anyone associated with the Sixteenth Circuit
9 Solicitor's Office, Mr. Brackett's the Solicitor; been
10 associated with that office, been a witness for them,
11 working as a volunteer for them, or in any capacity
12 whatsoever, please stand?

13 All right. Yes, ma'am, your name and number?

14 A. My name is Tabitha Jeffries, I'm Juror Number 126. I
15 haven't worked for them but I work out of a law firm where
16 I've had to just speak to people in the Solicitor's office.

17 THE COURT: Would that affect your ability to be fair
18 and impartial in the trial of this case?

19 MS. JEFFRIES: No.

20 THE COURT: You can be seated. Thank you for sharing
21 that with us.

22 Have any of you been represented by Mr. Muckenfuss or
23 anyone from his - -

24 What's your firm's name?

25 MR. MUCKENFUSS: It's McGuirewoods, Your Honor.

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1 THE COURT: McGuirewoods, a law firm. Have any of you
2 been represented by McGuirewoods or anyone in McGuirewoods
3 Law Firm, if so, please stand?

4 No one stands.

5 Are any of you or a member of your immediate family
6 involved in law enforcement at any level or in the
7 prosecution of criminal cases at any level? Anything from
8 a sheriff, policeman, MP, anything from a solicitor,
9 district attorney, US Attorney; anything like that, if so,
10 please stand?

11 All right. Yes, ma'am, your name and number.

12 A. I'm Patricia Clark my number is 42. My daughter in
13 law is a correction's officer.

14 THE COURT: Where?

15 MS. CLARK: In North Carolina.

16 THE COURT: All right. Would that affect your ability
17 to be fair and impartial in the trial of this case?

18 MS. CLARK: No, sir.

19 THE COURT: All right. Thank you.

20 Yes, ma'am, your name and number.

21 A. I am Joan Burrell, Number 33. Sister and a brother -
22 sister in law and brother in law here with the York County
23 Sheriff's Department.

24 THE COURT: All right. Sister's with the sheriff's -

25 MS. BURRELL: Sister in law and a brother in law.

1 THE COURT: Okay. Would that affect your ability to
2 be fair and impartial in the trial of this case?

3 MS. BURRELL: No, sir.

4 THE COURT: All right. You may be seated. Thank you.

5 Are any of you or a member of your immediate family
6 contributors to or members of organizations such as
7 Students Against Drunk Drivers, Mother's Against Drunk
8 Drivers, Citizens Against Violence sometimes referred to as
9 CAV: Trooper's Association, Sheriff's Association or
10 Fraternal Order of Police; if so, please stand?

11 No one stands.

12 These charges that I've gone over, attempted murder
13 and the possession of a firearm during the commission of a
14 violent crime, and along the lines of attempted murder I'm
15 including such things as any kind of assault and battery.
16 Have any of you or a member of your family been charged
17 with or the victim of any of these type of offenses:
18 Attempted murder, an assault, assault and battery or
19 possession of a firearm during the commission of a violent
20 crime; if so, please stand?

21 All right, your name and number?

22 A. James McDermott, I am 148. I have a nephew that was
23 charged with manslaughter.

24 THE COURT: Would that affect your ability to be fair
25 and impartial in this trial?

1 MR. MCDERMOTT: No.

2 THE COURT: Okay. Thank you, you may be seated.

3 Have any of you or a family member been the victim of
4 a serious domestic dispute including the disposition of
5 marital assets? And I'm not going to ask you to get up and
6 tell me all about it but just if you have been in some sort
7 of serious domestic dispute including the division of
8 personal - well not personal property - of any assets, if
9 so, please stand?

10 All right. Yes, ma'am, your name and number?

11 A. Jill McKinney, 150.

12 THE COURT: Would the fact that you have this as part
13 of your life experience, if that would prevent you from
14 being a fair and impartial raise your hand?

15 (WITNESS RAISED HAND.)

16 MS. MCKINNEY: No.

17 THE COURT: Okay. She will remain with us. Thank
18 you.

19 The next one I'm not going to ask you to go into
20 particulars but this one is are any of you ever been shot,
21 if so, please stand?

22 Fortunately nobody stands.

23 The following are possible witnesses in this case. I
24 do not know - it's a long list - and I do not know that all
25 will testify. However even if they don't testify, their

1 names might pop up in some capacity and so I just need to.
2 ask if any of you know any of these individuals. Go to
3 church with them, related to them, live in the same
4 neighborhood, socialize, go to church, anything like that
5 with any of these individuals, please stand and let me
6 know.

7 Crystal Stevenson Caldwell. She's the alleged victim.
8 Sally Stevenson; William Caldwell; Sandra (Sandy) Martin.

9 The following deputies from the sheriff's department:

10 Chris Doty, Kavin Gwinn, Nathan Clark, Tim Carroll. From
11 the sheriff's K9 Unit, Randy Clinton. Also from the
12 sheriff's office, Sergeant Henry Lee Wright, Sergeant
13 Robert Wooten, Detective Eddie Strait who you just met.

14 Detective Russ Yeager, Detective Chris Bomar. From the
15 Multi-Jurisdictional Forensic Service's Unit: Commander

16 George Weeks, Audra Eddie, Detective Tim Buchanan,

17 Detective John George, Detective Ray Barnwell. Again from
18 the sheriff's office: Lieutenant Pete Mitchum, Officer
19 Patrick Patterson, Officer Jimmy Stiles. From Piedmont

20 Medical Center, Susan Larson who is the custodian of
21 records. From the York County Solicitor's Office:

22 Investigator Martha Parrish, Investigator Kevin Tolson.

23 Additionally David Sanders. From the York County Detention
24 Center: Lieutenant Cheryl Guzman. Also from the detention
25 center Bryan Loncaric L-o-n-c-a-r-I-c; Chad Bailey, Paula

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1 Howze, Carole Gibson Dixon. From the - another York County
2 agency: Barbara Clark, Cindy Smith. From the State Law
3 Enforcement Division: Ila N. Simmons. And then from
4 Piedmont Medical Center, Doctor Michael A. Sundararaman.
5 And from Carolina Medical Center, Doctor Doug Swanson.
6 Finally, Don Girandt G-I-r-a-n-d-t who is not associated
7 with any of those prior entities.

8 Any of you know any of these people or related to
9 them, if so, please stand?

10 No one stands.

11 Anything else from the State?

12 SOLICITOR COLLINS: No, Your Honor. Thank you.

13 THE COURT: Anything from the defense?

14 MR. MUCKENFUSS: No, Your Honor.

15 THE COURT: If any of you know of any reason
16 whatsoever why you could not or should not serve as a fair
17 and impartial juror in the trial of this particular case
18 please stand?

19 No one stands.

20 The way we draw juries in this court is as follows:

21 If you hear your name called please come forward. The
22 bailiff will stand down front sort of in the middle, you
23 will come and stand by him and turn around and face first
24 the table where Ms. Collins and Mr. Epting are seated. She
25 will say either swear the juror - I'm sorry. She will say

1 either excuse the juror which means you may return to your
2 seat. Or present the juror. If you hear the words present
3 the juror turn and face the table where Mr. O'Neil and his
4 counsel are seated. Mr. Muckenfuss will say either excuse
5 the juror which again means you may return to your seat. Or
6 he will say swear the juror. If you hear the word swear
7 the juror, please have a seat in the jury box.

8 Each side has the right to excuse up to five
9 individuals. We will draw two alternates and as to the
10 alternates each side has a right - well first the state has
11 the right to strike one and the defense two. When you come
12 if you hear your name called please when you come forward
13 please bring any personal items you have such as a jacket
14 or a pocketbook or anything like that so that if you are
15 seated on the jury you will not have to go back and fetch
16 it.

17 Madame Clerk.

18 MADAME CLERK: Number 136, Mark Kettlewell.

19 (WHITE MALE COMING FORWARD.)

20 MADAME CLERK: What say you for the State?

21 SOLICITOR COLLINS: Your Honor, I'm sorry. May we
22 approach?

23 THE COURT: Uh-huh.

24 (BENCH CONFERENCE OFF THE RECORD AT 02:54 P.M..)

25 SOLICITOR COLLINS: Thank you. Will you please

1 present the juror.

2 MADAME CLERK: And the Defense?

3 MR. MUCKENFUSS: Please present the juror.

4 MADAME CLERK: Please have a seat in the jury box.

5 Number 55, Emily Lucas.

6 (WHITE FEMALE COMING FORWARD.)

7 MADAME CLERK: What say you for the State?

8 SOLICITOR COLLINS: Please present the juror.

9 MADAME CLERK: And the Defense?

10 MR. MUCKENFUSS: Please excuse the juror, Your Honor.

11 MADAME CLERK: You're excused from this case.

12 Number 210, Patricia Spearman.

13 (WHITE FEMALE COMING FORWARD.)

14 MADAME CLERK: What say you for the State?

15 SOLICITOR COLLINS: Please present the juror.

16 MADAME CLERK: And the defense?

17 MR. MUCKENFUSS: Please present the juror, Your Honor.

18 MADAME CLERK: Please have a seat in the jury box.

19 Number 194, Khamika Sharp.

20 (BLACK FEMALE COMING FORWARD.)

21 MADAME CLERK: What say you for the State?

22 SOLICITOR COLLINS: Please present the juror.

23 MADAME CLERK: And the defense?

24 MR. MUCKENFUSS: Please excuse the juror.

25 MADAME CLERK: You're excused from this case.

1 Number 128, Dennis M. Johnson..

2 (WHITE MALE COMING FORWARD.)

3 MADAME CLERK: What say you for the State?

4 SOLICITOR COLLINS: Please present the juror.

5 MADAME CLERK: And the defense?

6 MR. MUCKENFUSS: Please present the juror.

7 MADAME CLERK: Please have a seat in the jury box.

8 Number 244, Thomas T. Wilson.

9 (WHITE MALE COMING FORWARD.)

10 MADAME CLERK: What say you for the State?

11 SOLICITOR COLLINS: Please present the juror.

12 MADAME CLERK: And the defense?

13 MR. MUCKENFUSS: Please present the juror.

14 MADAME CLERK: Please have a seat in the jury box.

15 Number 71, Lauren M. Eiring.

16 (WHITE FEMALE COMING FORWARD.)

17 MADAME CLERK: What say you for the State?

18 SOLICITOR COLLINS: Please present the juror.

19 MADAME CLERK: And the Defense?

20 MR. MUCKENFUSS: Please excuse the juror.

21 MADAME CLERK: You're excused from this case.

22 Number 153, Michael K. Meyer..

23 (WHITE MALE COMING FORWARD.)

24 MADAME CLERK: What say you for the State?

25 SOLICITOR COLLINS: Please present the juror.

1 MADAME CLERK: And the defense?

2 MR. MUCKENFUSS: Please present the juror.

3 MADAME CLERK: Please have a seat in the jury box.

4 Number 239, Richard J. Wert.

5 (WHITE MALE COMING FORWARD.)

6 MADAME CLERK: What say you for the State?

7 SOLICITOR COLLINS: Please present the juror.

8 MADAME CLERK: And the Defense?

9 MR. MUCKENFUSS: Please excuse the juror.

10 MADAME CLERK: You're excused from this case.

11 That's four strikes for the defense.

12 Number 148, James E. McDermott.

13 (WHITE MALE COMING FORWARD.)

14 MADAME CLERK: What say you for the State?

15 SOLICITOR COLLINS: Please present the juror.

16 MADAME CLERK: And the Defense?

17 MR. MUCKENFUSS: Please present the juror.

18 MADAME CLERK: Please have a seat in the jury box.

19 Number 213, Lisa A. Steinberger.

20 (WHITE FEMALE COMING FORWARD.)

21 MADAME CLERK: What say you for the State?

22 SOLICITOR COLLINS: Please present the juror.

23 MADAME CLERK: And the Defense?

24 MR. MUCKENFUSS: Please present the juror.

25 MADAME CLERK: Please have a seat in the jury box.

1 Number 182, Victoria M. Robbins.

2 (WHITE FEMALE COMING FORWARD.)

3 MADAME CLERK: What say you for the State?

4 SOLICITOR COLLINS: Please present the juror.

5 MADAME CLERK: And the Defense?

6 MR. MUCKENFUSS: Please present the juror.

7 MADAME CLERK: Please have a seat in the jury box.

8 Number 79, Ruby Finch.

9 (WHITE FEMALE COMING FORWARD.).

10 MADAME CLERK: What say you for the State?

11 SOLICITOR COLLINS: Please present the juror.

12 MADAME CLERK: And the Defense?

13 MR. MUCKENFUSS: Please present the juror.

14 MADAME CLERK: Please have a seat in the jury box.

15 Number 1, Donald W. Acker.

16 (WHITE MALE COMING FORWARD.)

17 MADAME CLERK: What say you for the State?

18 SOLICITOR COLLINS: Please present the juror.

19 MADAME CLERK: And the Defense?

20 MR. MUCKENFUSS: Please present the juror.

21 MADAME CLERK: Please have a seat in the jury box.

22 Number 157, Douglas L. Moore, Junior.

23 (WHITE MALE COMING FORWARD.)

24 MADAME CLERK: What say you for the State?

25 SOLICITOR COLLINS: Please present the juror.

1 MADAME CLERK: And the Defense?

2 MR. MUCKENFUSS: Please present the juror.

3 MADAME CLERK: Please have a seat in the jury box.

4 Number 124, Michelle R. Jaworski.

5 (WHITE FEMALE COMING FORWARD.)

6 MADAME CLERK: What say you for the State?

7 SOLICITOR COLLINS: Please present the juror.

8 MADAME CLERK: And the Defense?

9 MR. MUCKENFUSS: Please excuse the juror.

10 MADAME CLERK: You're excused from this case.

11 Number 27, Charles T. Brewer.

12 (WHITE MALE COMING FORWARD.)

13 MADAME CLERK: What say you for the State?

14 SOLICITOR COLLINS: Please present the juror.

15 MADAME CLERK: And the Defense?

16 MR. MUCKENFUSS: Please present the juror.

17 MADAME CLERK: Please have a seat in the jury box.

18 THE COURT: Strikes will be one for the State on each
19 of the alternates are two for the Defense.

20 MADAME CLERK: Number 1-0-4, Carolyn Henderson.

21 (WHITE FEMALE COMING FORWARD.)

22 MADAME CLERK: What say you for the State?

23 SOLICITOR COLLINS: Please present the juror.

24 MADAME CLERK: And the Defense?

25 MR. MUCKENFUSS: Please present the juror.

1 MADAME CLERK: Please have a seat in the jury box.
2 Number 60, Deborah J. Defrancisco.

3 (WHITE FEMALE COMING FORWARD.)

4 MADAME CLERK: What say you for the State?

5 SOLICITOR COLLINS: Please present the juror.

6 MADAME CLERK: And the Defense?

7 MR. MUCKENFUSS: Please present the juror.

8 MADAME CLERK: Please have a seat in the jury box.

9 THE COURT: Anything from the State involving the
10 striking of the panel?

11 SOLICITOR COLLINS: One moment, Your Honor.

12 (PAUSE.)

13 SOLICITOR COLLINS: No, Your Honor. Thank you.

14 THE COURT: Anything from the Defense involving the
15 striking of the panel?

16 MR. MUCKENFUSS: Nothing, Your Honor.

17 THE COURT: All right. Those of you who were not
18 chosen I am going to allow you to leave and ask you or tell
19 you to call back tonight after 7:00 and follow whatever
20 instructions you receive. It may be to report at a certain
21 time, it may be to call at a certain time. It's very
22 important that you follow instructions and be here when
23 you're supposed to be here. I hope none of you have any
24 emergencies. If you have some reason that you can't follow
25 through and be here when you're supposed to, call the

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1 Clerk's office and let them know what your problem is and
2 when we can expect you. We can deal with that but if you
3 are not here when you're supposed to we have to try to find
4 out why and where. So please leave quietly so I can start
5 working with this panel. Thank you.

6 (JURY DISMISSED AT 03:06 P.M..)

7 THE COURT: Those of you who were chosen, I'm going to
8 chat with you just a minute and then I'm going to let you
9 go because we have a fair amount of what - things we have
10 to do outside your presence. So we're not going to start
11 into the meat of the trial and we're not going to swear you
12 in. But even though you are not sworn in you are on this
13 jury panel so I'm going to have to give you some
14 instructions before I let you leave for the evening.

15 First: Do not discuss this case among yourselves or
16 try to make up your own mind until we reached the point of
17 the trial where I instruct you to jointly deliberate and
18 return a unanimous verdict. Prior to that time you are not
19 equipped with all the tools you need to make a fair and
20 reasonable decision so don't discuss the case or try to
21 make up your own mind until we reach that point.

22 Do not let anyone discuss this case with you outside
23 the courtroom. If anyone tries to discuss this case with
24 you tell them you cannot as you are serving as a juror. If
25 someone does try to talk with you, please report that back

1 to me as I will have to take action against anyone trying
2 to discuss a pending case with a juror.

3 I do not know that this case will receive any news
4 coverage but if it does don't let yourself be exposed to.
5 Don't read about it, watch anything or listen to anything
6 that remotely deals with this trial. If anything catches
7 your eye or ear that could deal with this trial or the
8 subject matter of this trial, don't let yourself be exposed
9 to it. Now we have access to the world through all these
10 electronic gadgets we have. It would be a violation of
11 your oath to access any information through the Cloud or
12 through any electronic means or any means whatsoever. Your
13 verdict must be based solely on the law and the evidence as
14 it's developed here in the trial so to access any
15 information about me, or about the case, or about the
16 lawyers, about Mr. O'Neil, about the charge, about
17 evidence, any of that would be improper so do not access
18 any information outside this courtroom about this case
19 electronically or otherwise.

20 Anything further before we excuse the jury for the
21 day?

22 SOLICITOR COLLINS: No, Your Honor, thank you.

23 THE COURT: Mr. Muckenfuss?

24 MR. MUCKENFUSS: No, Your Honor.

25 THE COURT: All right. I'm going - The bailiff's will

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1 show you how to get in and out while you're serving on the
2 panel. We'll start back at 9:30 so be here at 9:30.

3 Mr. Brewer, I'm going to ask you to be the foreperson.
4 When you come in tomorrow you will take this first seat on
5 the first row. That's an assigned seat for the foreperson.
6 The two seats to your right are - would be the alternates.
7 You two ladies will always sit in that seat. The rest of
8 you don't have any assigned seating, just wherever you
9 happen to file in go seven down on the front and of course
10 the two alternates will come in last so go six down because
11 the alternates - the foreman has to take that first row
12 seat. So have a pleasant evening and we'll see you back at
13 9:30 in the morning.

14 (PETIT JURY EXITS COURTROOM AT 03:09 P.M..)

15 THE COURT: Counsel, I've got to step out to get a
16 book, I'll be right back.

17 (THE COURT LEFT THE BENCH MOMENTARILY.)

18 (WHEREUPON: STATE'S EXHIBITS ONE THROUGH FOUR
19 PREMARKED FOR IDENTIFICATION.)

20 THE COURT: The jury has been excused so we'll take up
21 the matters the first being the State has...

22 SOLICITOR COLLINS: Yes, Your Honor.

23 Your Honor, I have ask the court reporter to premark
24 four exhibits. They pertain to the State's service to the
25 Defendant with the intention to seek Live Without Parole if

1 the Defendant is in fact convicted of attempted murder.

2 And that would be the State's Exhibit One. State's Exhibit

3 Two is a Certificate of Service showing where he was served

4 in court, he and his attorney on December 1st with that.

5 And then Exhibit Three pertains to the Qualifying

6 Conviction from North Carolina which would be a prior

7 offense which the LWOP statute is finally Exhibit Four is

8 simply a printout from the North Carolina Code of Laws as

9 to the applicable statute that he was convicted of for

10 second degree murder in 1993. Just a kind of house keeping

11 matter I have put those; we have provided Mr. Muckenfuss

12 with all copies of those.

13 Any objection for the purposes of the pretrial.

14 MR. MUCKENFUSS: Correct. No objection, Your Honor.

15 SOLICITOR COLLINS: Your Honor, the next issue as we

16 discussed in chambers earlier this morning, we anticipate

17 two witnesses for the State as to a Jackson versus Denno

18 hearing. Also we have served the defendant with reciprocal

19 discovery request. I have responded to his discovery

20 request as well as to the prior attorney for the defendant.

21 I personally have an open file policy which is a little

22 beyond that other members of my office they always respond

23 under Brady or Criminal Rule 5 but anything that I have I

24 make available to the defense which is my personal policy.

25 I explained that to Mr. Muckenfuss and I tried to make sure

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1 that he has everything. We've engaged in numerous emails
2 and et cetera back and forth with him and his staff and I
3 believe that they do. I have served them with a reciprocal
4 discovery request for request for notice of alibi and
5 notice of insanity defense or guilty but mentally ill plea.
6 It's my understanding they have no response to any of those
7 request.

8 THE COURT: Is that correct?

9 MR. MUCKENFUSS: That's correct, Your Honor.

10 THE COURT: All right.

11 SOLICITOR COLLINS: As noted earlier we have severed
12 the other indictment and will not be proceeding. I will
13 instruct my witnesses to refrain from any mention as to the
14 other charge to direct indictment for possession of a
15 weapon by a person previously convicted of a crime of
16 violence. Of course we are still going forward on court
17 two on this one but I will instruct them to be careful in
18 terms of their language as count two is in the course of
19 this violent crime possession of a weapon. We anticipate
20 motions regarding jail calls made by the defendant as well
21 as text messages sent from the defendant as well as to the
22 defendant. And then we have an issue as to the search
23 warrant of the defendant's car. Those are all the issues
24 that I'm aware of unless Mr. Muckenfuss has any additional
25 and if not we're ready to go forward with the Jackson v.

1 Denno hearing.

2 THE COURT: All right. Mr. Muckenfuss.

3 MR. MUCKENFUSS: Yes, Your Honor.

4 In addition to the oral statement and Jackson v. Denno
5 hearing, we'll move to exclude the evidence recovered from
6 his vehicle which is the search warrant issue. We'll also
7 move to exclude text messages which the State has indicated
8 they intend to use at trial. The jail - The calls made
9 from the prison we also move to exclude. And I think that
10 pretty much does it in terms of the pretrial for us, Your
11 Honor.

12 THE COURT: All right. Let's start with Jackson
13 versus Denno.

14 SOLICITOR COLLINS: And, Your Honor, I did neglect to
15 - We have no Lyle 404(d) evidence that we'll be submitting
16 regarding prior bad acts. And also as to impeachment of
17 the defendant, if he should chose to testify, the State
18 would intend to cross examine him with whether or not he
19 has previously been convicted in 1993 in North Carolina
20 with a felony conviction we would limit the testimony to
21 that under --

22 THE COURT: All right. We discussed that in chambers
23 and even though that's almost twenty years old my
24 understanding is the State's position - I did not hear it
25 controverted by the defense - that Mr. O'Neil is still

DEPUTY ROBERT WOOTEN: BY SOLICITOR EPTING - IN CAMERA

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1 under some type of repercussions from that which is parol
2 able or probation or still under some consequences of the
3 matter of that conviction even though its from 1993.

4 MR. MUCKENFUSS: Your Honor, I agree.

5 THE COURT: Okay.

6 SOLICITOR COLLINS: Thank you, Your Honor.

7 Your Honor, at this time the State would be ready to
8 call Robert Wooten with the sheriff's department.

9 (WHEREUPON: ROBERT WOOTEN, BEING
10 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

11 MADAME CLERK: Thank you. Please have a seat.

12 DIRECT EXAMINATION - IN CAMERA

13 DEPUTY ROBERT WOOTEN BY SOLICITOR EPTING:

14 Q. Good afternoon, Deputy Wooten.

15 A. Good afternoon.

16 Q. Would you please state your full name for the record.

17 A. Robert Jeffrey Wooten.

18 Q. And how are you employed, Deputy Wooten?

19 A. With the York County Sheriff's Office.

20 Q. How long have you been so employed?

21 A. Ten years.

22 Q. Were you involved in the arrest of an individual named
23 Hashin O'Neil?

24 A. Yes I was.

25 Q. How did

1 you initially become involved in that arrest?

2 A. When I signed on to duty that morning I met officers
3 at the Piedmont Medical Center.

4 Q. Okay.

5 A. And met with the investigators.

6 Q. And at some point was Mr. O'Neil arrested?

7 A. Yes he was.

8 Q. Could you describe that to the Court?

9 A. He was arrested prior - I mean he was in custody on my
10 arrival.

11 Q. Upon your arrival he was in custody.

12 A. Yes.

13 Q. And when you say in custody, was he in handcuffs?

14 A. Yes, sir, he was.

15 Q. Okay. Who else was there?

16 A. Detective Strait, Deputy Doty I believe.

17 Q. And you stated that was at the hospital I believe;
18 correct?

19 A. Yes, sir.

20 Q. At some point did you leave the hospital and go
21 somewhere else?

22 A. Yes, sir, I did.

23 Q. How did you - What did you - What did you drive away?

24 A. My patrol vehicle.

25 Q. And did anyone else drive away with you?

DEPUTY ROBERT WOOTEN: BY SOLICITOR EPTING - IN CAMERA

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1 A. Yes, sir, there was.

2 Q. Could you tell us who that was to the Court?

3 A. The suspect.

4 Q. Okay. Anyone else in the car at that time?

5 A. No, sir..

6 Q. Where did you drive the suspect?

7 A. We came to the Moss Justice Center, Sheriff's office.

8 Q. And during the course of your car trip from the
9 hospital to the Moss Justice Center, did the suspect say
10 anything to you?

11 A. Not that I recall.

12 Q. Okay. And at the Moss Justice Center did you meet up
13 with anyone else?

14 A. Detective Strait.

15 Q. Okay. And at that point what happened?

16 A. We escorted the suspect into the conference room to
17 the Sheriff's office.

18 Q. Okay. Can you describe how big that conference room
19 was?

20 A. It's pretty good size. I mean foot wise no.

21 Q. Okay. You don't have to. When he was brought into
22 the conference room was he handcuffed or not handcuffed?

23 A. He was handcuffed.

24 Q. Was he handcuffed behind his back or in front?

25 A. Behind his back.

DEPUTY ROBERT WOOTEN: BY SOLICITOR EPTING - IN CAMERA

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1 Q. And at some point was he read Miranda Rights?

2 A. Yes, sir, he was.

3 Q. And how were those rights read to him?

4 A. Detective Strait read them from a piece of paper that
5 he had in front of him.

6 Q. Okay.

7 MR. EPTING: I beg the Court's indulgence.

8 (PAUSE.)

9 Q. I'm sorry, I may have missed a part of that. You
10 stated that you - that it was read to him?

11 A. Yes, sir, it was by Detective Strait.

12 Q. And did he sign anywhere on the form that was read to
13 him indicating that he understood his rights?

14 A. Yes, sir, he did.

15 THE COURT: He who?

16 SOLICITOR EPTING: Excuse me, Your Honor.

17 Q. Who was he? You're saying he. Did he sign the form
18 indicating that he understood his rights?

19 A. The defendant.

20 Q. Thank you.

21 SOLICITOR EPTING: Your Honor, may I approach?

22 THE COURT: Yes, sir

23 SOLICITOR EPTING: I believe this is marked as Court's
24 Exhibit One.

25 SOLICITOR COLLINS: I believe it's Five, your Honor.

DEPUTY ROBERT WOOTEN: BY SOLICITOR EPTING - IN CAMERA

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1 SOLICITOR EPTING: Court's Exhibit Five.

2 SOLICITOR COLLINS: State's Exhibit.

3 MADAME COURT REPORTER: Okay. Thank you.

4 (WHEREUPON: STATE'S EXHIBIT NUMBER FIVE PREMARKED FOR
5 IDENTIFICATION.)

6 BY SOLICITOR EPTING:

7 Q. I'm handing you what has been marked as State's
8 Exhibit Five. Would you look at that and tell me when
9 you're satisfied that you understand what it is. Do you
10 recognize that document?

11 A. Yes, sir, I do.

12 Q. What is it?

13 A. It's his - It's a your - Your *Miranda* Rights Form.

14 Q. Okay. And do you recognize the signature on that
15 page?

16 A. Yes I do.

17 Q. Who's signature is that?

18 A. My signature.

19 Q. Okay. And what does your signature indicate?

20 A. That I was a witness to the rights being read to the
21 defendant.

22 Q. Okay. You stated earlier that you saw the defendant
23 sign the form.

24 A. Yes I did.

25 Q. Could you indicate on what part of the page you saw

1 him sign?

2 A. Up underneath the first paragraph where his rights
3 were. And then again below under Waiver of Rights.

4 Q. And approximately how long did you speak with the
5 defendant?

6 A. I never spoke with him.

7 Q. Approximately how long - Did Detective Strait speak to
8 him?

9 A. Yes, sir, he did.

10 Q. Approximately how long did Detective Strait speak to
11 him?

12 A. Approximately thirty minutes.

13 Q. How were you dressed as they were speaking?

14 A. In uniform as I am now today except the winter dress
15 uniform, long sleeves and tie.

16 Q. Did you have a firearm attached to your belt as you do
17 today?

18 A. Yes, sir, I did.

19 Q. Was that firearm holstered while you were speaking to
20 him?

21 A. Yes, sir, it was secured.

22 Q. Was Detective Strait armed in any way?

23 A. Yes, sir, he was.

24 Q. How was he armed?

25 A. His was secured in his holster as well.

DEPUTY ROBERT WOOTEN: BY SOLICITOR EPTING - IN CAMERA

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1 Q. When you say his?

2 A. Detective Straits side arm was in his holster.

3 Q. And you said it was secured?

4 A. Yes, sir

5 Q. During the course of speaking with the defendant, did
6 the defendant ask to eat or drink anything?

7 A. I don't recall.

8 Q. During the course of speaking with him were any
9 promises made?

10 A. No, sir.

11 Q. Any threats?

12 A. No, sir.

13 Q. Any type of inducements to get him to say anything to
14 you?

15 A. No, sir.

16 Q. Okay. Was he denied bathroom breaks if he were to
17 request one?

18 A. No, sir.

19 Q. Had he requested food or drink would you have then
20 given it to him?

21 A. Sure. Yes, sir.

22 Q. And approximately how long did this conversation take
23 place?

24 A. I'd say approximately thirty minutes.

25 Q. Okay.

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BY MR. MUCKENFUSS - IN CAMERA

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1 SOLICITOR EPTING: I beg the Court's indulgence.

2 (PAUSE.)

3 Q. And you may have already testified to this but you say
4 the defendant was cuffed. Was he cuffed in the front or
5 the back?

6 A. When he was brought to the sheriff's office it was in
7 the rear. He was handcuffed in the rear.

8 Q. And at some point did that change from back to front?

9 A. I can't recall. I would say that he was cuffed at all
10 times in the room whether or not it was in the front or the
11 back.

12 Q. Okay. And did an oral conversation take place between
13 Detective Strait and the defendant?

14 A. Yes it did.

15 SOLICITOR EPTING: I beg the Court's indulgence.

16 (PAUSE.)

17 SOLICITOR EPTING: No further questions at this time.
18 Please answer any questions the defense counsel may have
19 for you.

20 CROSS EXAMINATION - IN CAMERA

21 DEPUTY ROBERT WOOTEN BY MR. MUCKENFUSS:

22 A. Mr. Wooten, I believe you testified that you arrived
23 at Piedmont Medical Center; is that correct?

24 A. Yes, sir

25 Q. What time of the day was it when you arrived?

DEPUTY ROBERT WOOTEN: BY MR. MUCKENFUSS - IN CAMERA

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1 A. It would have been around 6:00 in the morning.

2 Anywhere between 5:45 and 6:00. That's when I signed on.

3 Q. And when you arrived you said that Mr. O'Neil was
4 already in custody at that point?

5 A. Yes, sir.

6 Q. So he was handcuffed?

7 A. Yes, sir.

8 Q. Was his hands cuffed in the front or the back?

9 A. That I don't recall.

10 Q. When you were at Piedmont Medical Center where were
11 you; was this in the hospital? Where was it in relation to
12 the hospital?

13 A. I was in the parking lot in front of the door to the
14 emergency room.

15 Q. All right.

16 A. That's where everybody was at.

17 Q. And how many other officers were with Mr. O'Neil when
18 you arrived?

19 A. I can only recall two.

20 Q. It's Mr. Strait. And who was the other one?

21 A. Deputy Doty, Chris Doty.

22 Q. And how long were you there before you left with Mr.
23 O'Neil?

24 A. I don't know how long. It wasn't that long.

25 Q. Did Detective Strait say anything to you before you

1 left?

2 A. He just told me to transport him over to the sheriff's
3 office where he would meet me and we'd go to the conference
4 room.

5 Q. Did you notice any of the other officers talking to
6 Mr. O'Neil or asking him questions when you were at the
7 hospital?

8 A. No, sir.

9 Q. I'm sorry?

10 A. No, sir.

11 Q. When you left and went back - Was it dark outside?

12 A. Yes, sir.

13 Q. This was November 12th; is that correct?

14 A. Yes, sir.

15 Q. When you went back - I think you testified you came
16 back to the Moss Justice Center?

17 A. Yes, sir.

18 Q. Is that correct? And how long from the time you
19 arrived at Moss Justice Center to when - I think you
20 testified you went into a conference room with Mr. O'Neil.
21 What span of time was that?

22 A. From the time we got here to the time we went in the
23 conference room?

24 Q. Yes.

25 A. We went directly to the conference room as soon as I

DEPUTY ROBERT WOOTEN: BY MR. MUCKENFUSS - IN CAMERA

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1 pulled into the parking lot.

2 Q. Okay. Was there any type of booking procedure that
3 you went through? You just went straight to the conference
4 room?

5 A. Straight to the conference room.

6 Q. And were you in charge of taking Mr. O'Neil to the
7 conference room at that point?

8 A. Myself and Detective Strait.

9 Q. And where did you meet up with Detective Strait?

10 A. In the parking lot.

11 Q. Did you talk or did Detective Strait talk with Mr.
12 O'Neil on the way to the conference room?

13 A. I don't recall.

14 Q. Did Detective Strait ask him any questions on the way
15 to the conference room?

16 A. I don't know.

17 Q. And when you got to the conference room, how big of a
18 room are we talking about?

19 A. From me to you.

20 Q. Okay.

21 A. As far as length wise width wise about as wide as both
22 those areas together where you all are sitting.

23 Q. And when you --

24 A. Big table.

25 Q. Thank you. In the conference room it was yourself and

DEPUTY ROBERT WOOTEN: BY MR. MUCKENFUSS - IN CAMERA

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1 Detective Strait. Any other officers, anyone else in the
2 conference room?

3 A. No, sir.

4 Q. When you got to the conference room, did Detective
5 Strait or yourself start asking questions, talking with Mr.
6 O'Neil?

7 A. I don't know what the - I mean the rights form came
8 into play.

9 Q. Do you know when Detective Strait - Did Detective
10 Strait start asking you questions or talk to Mr. O'Neil
11 before discussing the waiver or rights?

12 A. No, sir.

13 MR. MUCKENFUSS: May I approach, Your Honor.

14 Q. I'm going to show you -

15 MR. MUCKENFUSS: Your Honor, we would mark as
16 Defendant's Exhibit One, Incident Interview Report from the
17 interview with Mr. O'Neil.

18 (WHEREUPON: DEFENDANT'S EXHIBIT NUMBER ONE PREMARKED
19 FOR IDENTIFICATION.)

20 THE COURT: What's it called?

21 MR. MUCKENFUSS: I'm sorry, Your Honor.

22 THE COURT: What's it called again?

23 MR. MUCKENFUSS: It's the Incident Interview Report.
24 It's dated November 12th, 2010.

25 Q. Officer Wooten, have you seen this report before?

DEPUTY ROBERT WOOTEN: BY MR. MUCKENFUSS - IN CAMERA

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1 A. Yes I have.

2 Q. And is this the interview report that was prepared
3 from the meeting or interview with Mr. O'Neil in the
4 conference room?

5 A. Yes, sir.

6 Q. Did you prepare this report?

7 A. No I did not.

8 Q. Do you know who did?

9 A. Detective Strait.

10 Q. And how do you know that?

11 A. His name is at the bottom of the page.

12 Q. So at the bottom it has Officer Agent, it has Eddie
13 Strait:

14 A. Yes, sir.

15 Q. That would indicate to you that he typed this out?

16 A. Yes, sir.

17 Q. All right. Looking at the report at the top it has
18 the date of the interview November 12th, 2010, and it has
19 the time of 6:29 p.m.. Do you see that?

20 A. Yes I do.

21 Q. Is that correct?

22 A. On the form?

23 Q. Well let me ask this. Is that - On this form is that
24 intended to indicate when the interview occurred?

25 A. It was - No it wasn't 6:29 in the evening when the

1 interview occurred.

2 Q. Okay. Is that a typo that you'd surmise or?

3 A. It appeared so.

4 Q. Okay. And I believe the exhibit - just to clarify
5 this - the exhibit -

6 If I may approach.

7 State's Exhibit, the Waiver Form..

8 Do you still have the Waiver Form?

9 MADAME COURT REPORTER: Does he have it in his hand?

10 MR. MUCKENFUSS: Oh I'm sorry, you have it.

11 Q. If you look is there a time on the Waiver Form?

12 A. Yes, sir, there is..

13 Q. And what's the time on the Waiver Form?

14 A. 6:29 a.m...

15 Q. Okay. So the numbers are correct, just the time of
16 the day p.m. versus a.m. that's the typo on the Incident
17 Interview Report. Would that be your conclusion?

18 A. Yes, sir.

19 Q. Okay. Now in the Interview Report Detective Strait in
20 the first sentence in it he tells in the interview states
21 "I met with Hashin in a conference room of the detective
22 division." Do you see that?

23 A. Yes, sir, I do.

24 Q. I would just note in reviewing this interview report I
25 didn't see your name mentioned on the Interview Report.

DEPUTY ROBERT WOOTEN: BY MR. MUCKENFUSS - IN CAMERA

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1 Would it be normal for another detective to note who was in
2 the interview who attended the interview?

3 A. I wouldn't know.

4 Q. Okay. Now there's a description of what Mr. O'Neil
5 allegedly said. At the bottom of the report Mr. Strait
6 types out " I then ask what happened when he came back and
7 he stated in quotes whatever she said happened" I ask for
8 his side of the story and he repeated whatever she said.
9 Hashin then ask for a lawyer and the interview was
10 terminated at that time. Do you recall in the interview
11 when Mr. Hashin - I'm sorry, when Mr. O'Neil ask for an
12 attorney?

13 A. Yes, sir, I do.

14 Q. And approximately how long into the interview was it
15 that Mr. O'Neil requested counsel?

16 A. I don't know.

17 Q. Was it - I think you mentioned the interview was
18 thirty minutes is that --

19 A. Approximately.

20 Q. Was it toward the end of that thirty minutes or was it
21 in the middle?

22 A. It was at the very end.

23 Q. Okay. What happened after Mr. O'Neil ask for counsel?

24 A. Myself and Detective Strait escorted him down to the
25 Detention Center.

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1 MR. MUCKENFUSS: I beg the Court's indulgence.

2 (PAUSE.)

3 Q. Officer, were you there the entire time of the
4 interview?

5 A. Yes I was.

6 Q. Did you leave briefly at any point?

7 A. No I did not.

8 Q. Okay.

9 MR. MUCKENFUSS: Nothing further, Your Honor.

10 THE COURT: Redirect?

11 MR. EPTING: Nothing from the State.

12 THE COURT: You can step down. Thank you.

13 OFFICER WOOTEN: Yes, sir.

14 (WITNESS LEAVING WITNESS STAND.)

15 SOLICITOR COLLINS: Your Honor, at this time we call
16 Detective Eddie Strait to the stand.

17 Detective Strait.

18 (WHEREUPON: EDDIE STRAIT, BEING
19 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

20 DIRECT EXAMINATION - IN CAMERA

21 DETECTIVE EDDIE STRAIT BY SOLICITOR COLLINS:

22 Q. Would you please state your name for the record?

23 A. Eddie Strait.

24 Q. And what's your occupation?

25 A. Assigned to the Detective Division at York County

DETECTIVE EDDIE STRAIT: BY SOLICITOR COLLINS - IN CAMERA

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1 Sheriff's Office.

2 Q. Were you on duty on November 12th, 2010?

3 A. Yes I was on call.

4 Q. Okay. And you were on call pursuant to that. Were
5 you actually called out to work on a case?

6 A. Yes.

7 Q. Is that the case before the Court State versus Hashin
8 O'Neil?

9 A. That's correct

10 Q. All right. At this time in regard to the Defendant's
11 Miranda Waiver and statement, I want to direct your
12 attention to those issues. Were you present at the time
13 that the defendant Hashin O'Neil was placed under arrest
14 for attempted murder?

15 A. Yes.

16 Q. And that was at Piedmont Medical Center?

17 A. Yes it was.

18 Q. On November 12th, 2010?

19 A. Yes.

20 Q. And pursuant to that did you meet him there at
21 Piedmont Medical Center? Did you place him under arrest?

22 A. Yes I did.

23 Q. Okay. And did you read the defendant at that time his
24 Miranda rights?

25 A. I didn't read them. I gave them to him verbally at

1 that time.

2 Q. Okay. And can you tell the court as you told the
3 defendant that day the Miranda Rights that you gave him at
4 that time? Do you recall?

5 A. Yes.

6 Q. Okay.

7 A. I told him he had the right to remain silent anything
8 he said could and would be used against him in court. He
9 had the right to an attorney and if he could not afford an
10 attorney one would be appointed to him and he had a right
11 to stop answering questions at any time.

12 Q. And at that time did the defendant indicate to you
13 that he was - that he understood his rights?

14 A. I ask him directly if he understood those and if he
15 wanted to talk to me.

16 Q. And what did he state?

17 A. He said yes he wanted to talk.

18 Q. All right. Now was there any question answer further
19 at that time?

20 A. No. The fact he wanted to talk is - we decided to go
21 or come here to the Moss Justice Center to our conference
22 room.

23 Q. So at that time was the defendant placed in handcuffs?

24 A. Yes.

25 Q. And was he transported here to the Moss Justice Center

DETECTIVE EDDIE STRAIT: BY SOLICITOR COLLINS - IN CAMERA

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1 by Sergeant Wooten?

2 A. Yes he was.

3 Q. And did you ride with them in the patrol vehicle with
4 Sergeant Wooten and the defendant?

5 A. No I did not.

6 Q. And when you arrived here at the Moss Justice Center
7 did you and Sergeant Wooten escort Mr. O'Neil to a
8 conference room?

9 A. Yes we did.

10 Q. And where is the conference room located?

11 A. It's in the Detective Division.

12 Q. Now Sergeant Wooten is wearing a uniform. Was he
13 dressed on that occasion as he is today?

14 A. Yes he was.

15 Q. Did he have a firearm on his side?

16 A. Yes he did.

17 Q. Did it remain holstered at all times?

18 A. Yes it did.

19 Q. Today you are dressed in a suit. Is that how you were
20 dressed on that day?

21 A. No, ma'am.

22 Q. How were you dressed on that day?

23 A. Probably khaki pants and a polo shirt with the
24 sheriff's badge emblem on the shirt.

25 Q. And you identified yourself to the defendant ---

1 A. Yes.

2 Q. --- as a detective?

3 A. Yes. Yes also a badge on my belt and a firearm.

4 Q. All right. And you made it clear to him you work for
5 the York County Sheriff's Department?

6 A. Yes.

7 Q. And that logo is on the Polo shirt?

8 A. Yes.

9 Q. Did you have a firearm on you at that time?

10 A. I did.

11 Q. Did it remain holstered at all times?

12 A. Yes, ma'am.

13 Q. At any time did either you or Sergeant Wooten ever
14 draw your weapon and point it at the defendant?

15 A. No, ma'am.

16 Q. They both remained holstered?

17 A. Yes.

18 Q. Now, we've heard some discussion that you all were in
19 a conference room. Were there any other law enforcement
20 personnel or any other people period in that conference
21 room with yourself, Sergeant Wooten and the defendant?

22 A. No, ma'am.

23 Q. And did you all offer Mr. O'Neil anything to make him
24 comfortable physically?

25 A. I ask him if he wanted anything to drink or eat when

DETECTIVE EDDIE STRAIT: BY SOLICITOR COLLINS - IN CAMERA

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1 we got there.

2 Q. And what was his response?

3 A. He did not.

4 Q. Did you give him the opportunity to refresh himself in
5 the men's room if he needed that?

6 A. I don't remember asking that specifically no.

7 Q. Had he ask for that would you have made arrangements
8 for him?

9 A. Yes we actually have one in our division.

10 Q. Did the defendant appear to be under the influence of
11 any items that night whether alcohol or prescription drugs
12 or other drugs at that time?

13 A. No, ma'am.

14 Q. Did he appear to be fatigued?

15 A. No, ma'am.

16 Q. Did you have any concern that he was not alert and
17 listening to you?

18 A. No, ma'am.

19 Q. Did he ever express that he was having difficulty
20 understanding the conversation with you?

21 A. No he did not.

22 Q. Once you all got to the conference room, can you tell
23 me the first conversation that the defendant was cuffed.

24 Did he - Was he still cuffed at that time?

25 A. Yes he was cuffed behind his back at that time.

1 Q. Okay. And when you got to the conference room was
2 there any change to that made?

3 A. Yes. Took one cuff loose and moved his hands to the
4 front.

5 Q. And then was he re-cuffed?

6 A. Yes.

7 Q. So the cuff position was moved to the front at that
8 time?

9 A. That's correct.

10 Q. Okay. And at that time did Mr. O'Neil was he allowed
11 to sit at the conference table?

12 A. Yes.

13 Q. And were you and Sergeant Wooten also sitting?

14 A. Yes.

15 Q. And at that time was the defendant read his rights
16 again by you?

17 A. Yes he was.

18 Q. And were those rights from the Miranda Waiver Rights
19 Form that's already been premarked as State's Exhibit Five
20 for the purposes of this hearing?

21 Do you have that? Is that the form that you used at
22 that time?

23 A. Yes, ma'am.

24 Q. And did you read that to him or did Sergeant Wooten or
25 did he read it himself?

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1 A. I read it to him.

2 Q. Okay. Will you read it to the Court as you read it to
3 Mr. O'Neil that day.

4 A. It says "Before I ask you any questions I want to
5 advise you of your rights. You have the right to remain
6 silent anything you say can and will be used against you in
7 a court of law. You have the right to talk to an attorney
8 and have him or her present with you while you're being
9 questioned. If you cannot afford to hire an attorney one
10 will be appointed to represent you before any questioning
11 if you wish. If you decide at any time to exercise these
12 rights and not answer any questions or make any statements"
13 - excuse me. "You can decide at any time to exercise these
14 rights and not answer any questions or make any
15 statements." It's followed by "Do you understand these
16 rights that I have explained?" And a box checked either
17 yes or no.

18 Q. Okay. And after you read the defendant those rights,
19 did he answer yes or no as to understanding the rights?

20 A. Yes he would have checked yes and signed it.

21 Q. He checked it himself?

22 A. Yes.

23 Q. In front of you?

24 A. Yes.

25 Q. And in front of Sergeant Wooten?

1 A. Yes.

2 Q. And he signed it at that time?

3 A. Yes, ma'am.

4 Q. And did he date it or did you date it?

5 A. I dated it.

6 Q. And it is dated November 12th, 2010; is that right?

7 A. That's correct.

8 Q. Then at that point what happened? Did you all move on
9 to the Waiver of Rights?

10 A. Yes, ma'am.

11 Q. Okay. Did you read him the Waiver of Rights?

12 A. I did.

13 Q. As it is memorialized on that form?

14 A. Yes.

15 Q. Can you please share, read for the Court - Read for
16 the Court the Waiver of Rights as you read it to Mr. O'Neil
17 on that occasion?

18 A. It says "I am willing to talk to police and answer
19 questions. I do not want an attorney at this time. I
20 understand and know what I am doing. No promises or
21 threats have been made to me and no pressure of any kind
22 has been placed upon me."

23 Q. And at the conclusion of you reading Mr. O'Neil the
24 Waiver of Rights, did he also sign indicating that he was
25 going to waive his rights?

DETECTIVE EDDIE STRAIT: BY SOLICITOR COLLINS - IN CAMERA

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1 A. Yes he did.

2 Q. And he did that in front of you?

3 A. Yes he did.

4 Q. And Sergeant Wooten signed witnessing that signature
5 as well?

6 A. Yes, ma'am.

7 Q. And the November 12th, 2010 below Mr. O'Neil's
8 signature, is that also your handwriting?

9 A. That's my handwriting yes.

10 Q. And did you also date under Sergeant Wooten?

11 A. Yes I did.

12 Q. All right. And then further down we have some
13 background information regarding Mr. O'Neil. Who completed
14 that portion of the form?

15 A. I did.

16 Q. And did you complete it based upon questions you made
17 to Mr. O'Neil and answers he gave you?

18 A. That's correct

19 Q. And the first part states his name; is that right, as
20 the interviewee Hashin O'Neil?

21 A. That's correct

22 Q. And his date of birth he answered you what?

23 A. [REDACTED] of [REDACTED].

24 Q. And he stated his age at that time as forty?

25 A. Forty.

1 Q. And you wrote these down based on his answers?

2 A. Yes.

3 Q. Is that right? What did he tell you his educational
4 level was?

5 A. Twelfth grade.

6 Q. And did he indicate that he can read?

7 A. Yes.

8 Q. And did he indicate that he can write?

9 A. Yes.

10 Q. And you noted the place of interview as MJC?

11 A. That's correct.

12 Q. Standing for?

13 A. Moss Justice Center.

14 Q. And the time?

15 A. Actually ---

16 Q. You've actually got time --

17 A. --- I've got time - Yeah I've got them backwards.

18 Q. Okay, go ahead.

19 A. For time I've got 11/12/10.

20 Q. And the date?

21 A. I have 6:29 am.

22 Q. Okay. And it was in fact am and not pm as we referred
23 earlier?

24 A. That's correct.

25 Q. Okay. And then you signed as Eddie Strait; is that

DETECTIVE EDDIE STRAIT: BY SOLICITOR COLLINS - IN CAMERA

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1 right?

2 A. That's correct

3 Q. As the interviewer; is that right?

4 A. Yes, ma'am.

5 Q. Now was Sergeant Wooten present during this entire
6 time?

7 A. Yes he was.

8 Q. At any time were there any promises made to Mr. O'Neil
9 in order to get him to make a statement?

10 A. No, ma'am.

11 Q. Were there any threats of any type made to Mr. O'Neil
12 in order to cause him to give the statement to you that
13 morning?

14 A. No, ma'am.

15 Q. Any promises or threats made in order to induce his
16 waiver of rights?

17 A. No, ma'am.

18 Q. At the conclusion of that process, after he had signed
19 twice indicating he understood and was waiving his rights,
20 did Mr. O'Neil make a statement to you?

21 A. Yes.

22 Q. And was that an oral statement?

23 A. Yes it was.

24 Q. And was that pursuant to questioning by you?

25 A. Excuse me?

1 Q. Was that pursuant to questioning by you?

2 A. Yes it was.

3 Q. Okay. So did you ask him a question and he gave the
4 answer or was it more for a narrative or tell us what it
5 was?

6 A. I ask a few questions, you know, very general such as
7 tell me what happened and - I don't remember any specifics,
8 you know, question and answer back and forth.

9 Q. Okay. And did you memorialize in an Incident
10 Interview Report your notes from what he told you that day?

11 A. Yes I did.

12 Q. All right. Can you - Do you have that original that
13 you filled out?

14 A. Yes.

15 Q. Okay. I believe this has been offered as a Defense
16 Exhibit.

17 I would ask that this be marked as State's Exhibit Six
18 for the purposes of this pretrial hearing.

19 (WHEREUPON: STATE'S EXHIBIT NUMBER SIX, PREMARKED FOR
20 IDENTIFICATION.)

21 SOLICITOR COLLINS: Thank you.

22 Q. Now, Detective, I'll show you what's been marked as
23 State's Exhibit Six for the purposes of this hearing and
24 ask you, you filled out again the top portion indicating
25 the case number; correct?

DETECTIVE EDDIE STRAIT: BY SOLICITOR COLLINS - IN CAMERA

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1 A. That's correct

2 Q. The person interviewed is the defendant; correct?

3 A. Yes, ma'am.

4 Q. The person interviewed is Hashin O'Neil. Correct?

5 A. That's right.

6 Q. His date of birth. Right?

7 A. Yes, ma'am.

8 Q. His address as he gave that to you at that time.

9 A. That's correct

10 Q. Right? Which is in Conway at that time? .

11 A. Yes, ma'am.

12 Q. And further date of interview - this time you got it
13 right - November 12th, 2010. Right?

14 A. Yes.

15 Q. However time. What did you note at that time?

16 A. It says 6:29 p.m.

17 Q. Okay. And was that in fact a typo?

18 A. Yes, ma'am.

19 Q. Was it in fact a.m.?

20 A. Yes, ma'am.

21 Q. And location of interview. You've already told us
22 what MJC stands for Moss Justice Center. CID?

23 A. It's the Criminal Investigation Division.

24 Q. Criminal Investigation Division?

25 A. Yes, ma'am.

1 Q. And finally you noted the purpose of topic of
2 interview, I want to talk to you about that for a moment
3 but you noted it as Attempted Murder. Again at PMC you
4 told the defendant he was being arrested for attempted
5 murder; is that right?

6 A. That's correct

7 Q. You actually told him the charge at that time?

8 A. Yes, ma'am.

9 Q. Okay. And then when you went over his rights again,
10 did you mention that again so there was no confusion?

11 A. I don't recall.

12 Q. Did he ever indicate he had any confusion as to what
13 the charge was?

14 A. No, ma'am.

15 Q. Okay. So you got it typed here as Attempted Murder.
16 At that time tell us, if you will, what statement did the
17 defendant make to you at that time?

18 A. You want me to read the interview?

19 Q. Yes please.

20 A. "I met with Hashin in the conference room of the
21 detective division and offered Hashin something to drink
22 and he declined. I read him his Miranda Rights from York
23 County Sheriff's Office Waiver of Rights Form. Hashin
24 acknowledged he understood his rights and agreed to talk by
25 signing the form. Hashin stated he and Crystal began to

DETECTIVE EDDIE STRAIT: BY SOLICITOR COLLINS - IN CAMERA

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1 argue when she came home from getting her hair done.
2 Hashin was watching a movie and talking loudly with his
3 son. This is around 6:00 pm. She ask him to be quite and
4 went upstairs for a while. She came back down and left the
5 residence. Hashin stated he did not know where she went or
6 what time this was. He did state they talked on the phone
7 and texted each other a few times while she was gone. When
8 Crystal came back home they began to argue about the ring
9 he had given her. Hashin states he had decided that the
10 relationship was off and ask for the ring back and was
11 going to leave the residence. Hashin then packed his
12 belongings in his car and was preparing to leave when he
13 got the ring back. She told him it was in the console of
14 her car and this is where he found it. Hashin said he then
15 left in his car and drove around for a while and came back
16 to the residence."

17 "I then ask what happened when he came back and he
18 stated whatever she said happened. I ask for his side of
19 the story and he repeated whatever she said. Hashin then
20 ask for a lawyer and the interview was terminated at that
21 time."

22 Q. And was that the first time that Mr. O'Neil had ask
23 for a lawyer at that point at the end?

24 A. Yes.

25 Q. Okay. And did you all immediately terminate the

DETECTIVE EDDIE STRAIT: BY SOLICITOR COLLINS - IN CAMERA

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1 interview?

2 A. Yes.

3 Q. And what did you all do at that time?

4 A. Escorted him down to the booking area of the jail.

5 Q. Escorted Mr. O'Neil to the booking area?

6 A. Yes.

7 Q. Okay.

8 SOLICITOR COLLINS: Your Honor, at this time I would
9 move in for the purposes of this hearing only State's
10 Exhibit Five and State's Exhibit Six.

11 MR. MUCKENFUSS: I'm sorry. What was those exhibits?

12 SOLICITOR COLLINS: I'm sorry. That's the Waiver of
13 Right and...

14 MR. MUCKENFUSS: No objection.

15 THE COURT: In without objection.

16 (WHEREUPON: STATE'S EXHIBITS NUMBER FIVE AND SIX
17 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

18 SOLICITOR COLLINS: One moment please, Your Honor.

19 (PAUSE.)

20 SOLICITOR COLLINS: Thank you, Detective. Would you
21 please answer any questions the defense might have for you.

22 MR. MUCKENFUSS: All right, just as a housekeeping
23 matter I don't think I actually moved to introduce
24 Defendant's Exhibit One which was the Interview Report. I
25 do that now.

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1 THE COURT: Any objection?

2 SOLICITOR COLLINS: No objection.

3 THE COURT: In.

4 (WHEREUPON: DEFENDANT'S EXHIBIT NUMBER ONE IDENTIFIED
5 AND MARKED, RECEIVED INTO EVIDENCE.)

6 CROSS EXAMINATION - IN CAMERA

7 DETECTIVE EDDIE STRAIT BY MR. MUCKENFUSS:

8 Q. Detective Strait, take us back to the hospital when
9 you arrived. When did you arrive at the hospital?

10 A. Time wise?

11 Q. Yeah.

12 A. I'm not exactly sure.

13 Q. I think the Interview Report has 6:29 am as the
14 interview --

15 A. That's correct

16 Q. In relation to that time, is it hours before that that
17 you arrived at the hospital?

18 A. I think the original report has maybe 3:30 am on it.
19 I would have been called sometime after that. Probably
20 close to four o'clock interviewed or talked to Ms. Caldwell
21 in the hospital.

22 MR. MUCKENFUSS: I have marked as Defendant's Exhibit
23 Two.

24 (WHEREUPON: DEFENDANT'S EXHIBIT NUMBER TWO PREMARKED
25 FOR IDENTIFICATION.)

1 Q. Detective Strait, I've marked as Defendant's Exhibit
2 Two a document. This is another Incident Interview Report
3 and I believe you're the author of this report; is that
4 correct?

5 A. That's correct

6 Q. It's dated November 12th, 2010. It also has 6:29 pm
7 time on it; is that correct, or is that --

8 A. That's not correct.

9 Q. That's not correct? Okay.

10 And, Your Honor, we move to introduce Defense Exhibit
11 Two.

12 SOLICITOR COLLINS: No objection.

13 THE COURT: In without objection.

14 (WHEREUPON: DEFENDANT'S EXHIBIT NUMBER TWO IDENTIFIED
15 AND MARKED, RECEIVED INTO EVIDENCE.)

16 BY MR. MUCKENFUSS:

17 Q. Now, Detective Strait, this is an interview of Crystal
18 Caldwell; is that correct?

19 A. That's correct

20 Q. All right. I'll just read from your report here. You
21 state, "I spoke with Crystal Caldwell in the Emergency Room
22 in Piedmont Medical center where she was being treated for
23 a gunshot wound. She stated she did not who shot her?"

24 Is that missing a word?

25 A. Yes. Know.

DETECTIVE EDDIE STRAIT: BY MR. MUCKENFUSS - IN CAMERA

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1 Q. Okay. So she told you, she stated "she did not know
2 who shot her?"

3 A. That's correct

4 Q. Okay. But gave details of an argument between her and
5 her boyfriend Hashin O'Neil; is that correct?

6 A. That's correct

7 Q. "Crystal stated she left the residence around 7:30 or
8 8:00 p.m., because Hashin had said nasty things to her."
9 Now if you skip down to the second to last paragraph. Do
10 you see that?

11 A. Yes.

12 Q. It states "Crystal stated she then went to walk out of
13 the apartment and heard a noise and felt like she could not
14 walk. Hashin then said it looks like you have been shot.
15 Hashin then brought her to PMC to be treated."

16 Is that what she told you?

17 A. That's correct

18 Q. You state, "When I ask her if Hashin had shot her she
19 replied she did not see him shot her but they - Is that a
20 typo there?

21 A. Yeah.

22 Q. Okay. "They were the only two in the apartment." Is
23 that what she told you?

24 A. That's correct

25 Q. Okay. And do you recall what time of the morning this

1 was when you had the interview with Ms. Caldwell?

2 A. I can only guess it was sometime shortly after 4:00
3 am.

4 Q. And where was this?

5 A. She was actually in her bed in a room at PMC Emergency
6 Room.

7 Q. Now from that point how did you come into contact with
8 Mr. O'Neil after that?

9 A. I ask her if she would call Mr. O'Neil back. We found
10 out she was going to have to be transferred to Charlotte
11 because of the seriousness of her injuries and ask her
12 would she call him and ask her to come back - ask Mr.
13 O'Neil to come back to the hospital and see her before she
14 went to Charlotte.

15 Q. Okay. Were you in the room when she made that call?

16 A. Yes I was.

17 Q. And did Mr. O'Neil in fact come back to the hospital?

18 A. Yes he did.

19 Q. And where did you see Mr. O'Neil the first time when
20 he came back to the hospital?

21 A. He pulled into a parking place and myself and Officer
22 Doty approached the car.

23 Q. Did you approach the car in the parking area?

24 A. Yes he was in a parking space.

25 Q. Did you place him under arrest at that point?

DETECTIVE EDDIE STRAIT: BY MR. MUCKENFUSS - IN CAMERA

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1 A. Initially I advised him I was putting him in cuffs for
2 our safety and his safety and I patted him down for
3 weapons.

4 Q. All right. And after you patted him down for weapons,
5 did he have any weapons on him?

6 A. No he did not.

7 Q. Did you take the handcuffs off?

8 A. No. Then I advised him that he was under arrest.

9 Q. Was that still in the parking lot?

10 A. Yes.

11 Q. Did you move Mr. O'Neil from the parking lot to
12 another spot after you placed him under arrest?

13 A. No, sir, he was placed into a patrol car at that
14 point.

15 Q. Okay. I think the other detective testified when he
16 showed up he was - you were in the front of the hospital
17 perhaps.

18 A. Well it was in front of the emergency room.

19 Q. Okay. So the parking area is just right there in
20 front of the ---

21 A. Yeah.

22 Q. --- emergency room. When you placed him under arrest,
23 other than the statements that Ms. Caldwell had given you,
24 did you have any other information related to this
25 incident?

1 A. Well the fact that he had brought her to the hospital
2 and fled the scene along with her car. He actually brought
3 her in her car. Her car was found at the apartment with
4 the flashers on and his car was gone. He had not come back
5 to the hospital to check on her condition and he hadn't
6 called.

7 Q. When you say he fled the scene, you're not talking
8 about the scene at the crime; you're talking about he left
9 the hospital.

10 A. The hospital and the apartment.

11 Q. Well he left the apartment to bring her to the
12 hospital. Correct?

13 A. Correct. And he went back to the apartment and
14 changed cars.

15 Q. Okay. But you didn't know what he had done at the
16 time that you placed him under arrest. You didn't know
17 that he had gone back and changed cars at that point?

18 A. Yes.

19 Q. You did?

20 A. Yes.

21 Q. How did you know that?

22 A. She told us that they came in Ms. Caldwell's car. It
23 was parked in front of the apartment with the flashers on
24 and his car was missing.

25 Q. Okay. So it was logical that he just went there to

DETECTIVE EDDIE STRAIT: BY MR. MUCKENFUSS - IN CAMERA

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1 switch cars and come back and get his car?

2 A. He didn't come back at that time. He switched into
3 his car yes.

4 Q. So other than Ms. Caldwell's statement that she told
5 you she didn't know who shot her, other than that did you
6 have any other information when you placed him under
7 arrest?

8 A. Just the fact that the argument and the fact that he
9 had left the scene.

10 Q. Now I think the other detective testified that he
11 actually transported Mr. O'Neil back to the Moss Justice
12 Center; is that correct?

13 A. Yes, sir.

14 Q. Did you follow them back to the Moss Justice Center at
15 that point?

16 A. Yes, sir.

17 MR. MUCKENFUSS: Mark this as Defendant's Exhibit
18 Three.

19 (WHEREUPON: DEFENDANT'S EXHIBIT NUMBER THREE,
20 PREMARKED FOR IDENTIFICATION.)

21 Q. I'm going to show you another document marked as
22 Defense Exhibit Three. This is another Incident Interview
23 Report, it's dated November 12th, 2010. There is no actual
24 time on it. Is this the report that you prepared?

25 A. Yes it is.

1 Q. It doesn't have a time on it. Do you recall the time
2 that this interview was heard?

3 A. It was part of the initial interview with Ms. Caldwell
4 in the hospital room.

5 Q. All right.

6 MR. MUCKENFUSS: Your Honor, we move to introduce
7 Defense Exhibit Three.

8 SOLICITOR COLLINS: No objection.

9 THE COURT: In without objection.

10 (WHEREUPON: DEFENDANT'S EXHIBIT NUMBER THREE
11 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

12 BY MR. MUCKENFUSS:

13 Q. Now in this interview this relates to Ms. Caldwell
14 calling Mr. O'Neil to have him come back to the hospital;
15 is that correct?

16 A: That's correct

17 Q. And you state in your report that Hashin told Ms.
18 Caldwell that he would come back to see her; is that
19 correct?

20 A. That's correct

21 Q. All right. You also state that "I found Hashin
22 sitting in his car in the parking lot of PMC and ask him to
23 step out. I placed Hashin in handcuffs for officer's
24 safety and ask if he had any weapons on him. He stated
25 that he did not and I could check and see. I did a patted

DETECTIVE EDDIE STRAIT: BY MR. MUCKENFUSS - IN CAMERA

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1 down search of Hashin and did not find any weapons. I then
2 informed him he was under arrest for attempted murder and
3 advised him of his rights. I ask Hashin if he wanted to
4 talk with me at the office and he stated he would."

5 So at that point relating to the testimony you gave at
6 that point you placed Mr. O'Neil under arrest. Correct?

7 A. That's correct

8 Q. And when you got back to the Moss Justice Center, was
9 it yourself and Detective Woody in the conference room?

10 A. That's Sergeant Wooten. Yes.

11 Q. I'm sorry, Sergeant Wooten. And how long did the
12 interview last?

13 A. For twenty or thirty minutes.

14 Q. Now I noticed in your interview report the interview
15 of Mr. O'Neil, at the last sentence you state "I then ask
16 what happened when he came back and he stated," and you put
17 in quotes "whatever she said happened." Why did you put
18 that in quotes?

19 A. So that I could convey his exact words in there.

20 Q. Okay. Is it fair to say that the other - the other
21 things that you put in this report are not his exact words?

22 A. They were summarized from the notes that I took during
23 the interview.

24 Q. Okay. After - Was it shortly after Mr. O'Neil stated
25 "whatever she said happened" that he ask for an attorney?

1 A. He stated that. I gave him one more opportunity for
2 his side of the story and he stated that again and then ask
3 for an attorney.

4 Q. So it was mere seconds after he said that, that he ask
5 for an attorney?

6 A. Right. Just a question back and forth once and that
7 was the end of it.

8 Q. And what did you do at that point?

9 A. I stopped the interview, escorted him down to the
10 booking area of our jail.

11 Q. Going back to the arrest. How did you - When you went
12 out to the parking lot how did you know it was Hashin
13 O'Neil when you arrested him?

14 A. The information on the car had been put out over the
15 air - over our radio. I'm not sure where it originated
16 from. Again I was called out after the crime had occurred.
17 We knew his car was missing and we knew what it looked
18 like.

19 Q. Okay. And that was my next question. How did you
20 know when he drove back that was not the car he was in when
21 he came to the hospital?

22 A. Because Ms. Caldwell had told me that he brought her
23 in her car.

24 MR. MUCKENFUSS: Nothing further, Your Honor.

25 REDIRECT EXAMINATION - IN CAMERA

DETECTIVE EDDIE STRAIT: BY SOLICITOR COLLINS - IN CAMERA

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1 DETECTIVE EDDIE STRAIT BY SOLICITOR COLLINS:

2 Q. And Ms. Caldwell told you what vehicle the defendant
3 drove?

4 A. I don't recall where we got the description from.

5 Q. Okay. But based upon the information you had received
6 you were looking for him and that vehicle outside of PMC;
7 is that right?

8 A. Yes, ma'am.

9 Q. Okay. Now, Mr. Muckenfuss ask you about Defense
10 Exhibit Three, the statement from where it indicates at the
11 bottom about placing Mr. O'Neil under arrest. Do you have
12 that original from your file?

13 A. No I do not.

14 Q. Is this the file --

15 A. It is.

16 SOLICITOR COLLINS: May I hand the witness's file,
17 Your Honor?

18 THE COURT: Yes.

19 MR. MUCKENFUSS: I'm sorry.

20 SOLICITOR COLLINS: Hand the witness his file?

21 MR. MUCKENFUSS: Yes.

22 SOLICITOR COLLINS: I beg the Court's indulgence.

23 Q. Do you have that original from your folder?

24 A. I do.

25 Q. Okay. I'd like to mark that page State's Exhibit

1 Seven for the purpose of this hearing.

2 THE COURT: Any objection?

3 MR. MUCKENFUSS: No objection, Your Honor.

4 (WHEREUPON: STATE'S EXHIBIT NUMBER SEVEN PREMARKED
5 FOR IDENTIFICATION.)

6 BY SOLICITOR COLLINS:

7 Q. Now, in looking at that exhibit you noted that she
8 stated that you have her call the defendant on the phone
9 and ask him to come back and she stated that she was scared
10 as she was going to have to go to CMC and ask him to come
11 back and she was scared; is that right?

12 A. That's correct.

13 Q. Now did you have an opportunity to observe Ms.
14 Caldwell's demeanor at that time?

15 A. Yes, ma'am.

16 Q. And based upon your experience in law enforcement, how
17 did she appear to you?

18 A. She was nervous and scared but I can't say whether it
19 was the situation or the injuries or the whole...

20 Q. Now the defense has ask you regarding what information
21 you had from Ms. Caldwell prior to your arrest of the
22 defendant. Did Ms. Caldwell make you aware of certain text
23 that had been sent back and forth?

24 A. Yes she did.

25 Q. You've already testified that the defendant later told

DETECTIVE EDDIE STRAIT: BY SOLICITOR COLLINS - IN CAMERA

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1 you that they had called and texted some during the
2 dispute.

3 A. That's correct

4 SOLICITOR COLLINS: If there's no objection I'd like
5 this to be marked as one exhibit, State's Exhibit Eight for
6 the purposes of this hearing which is comprised of thirty
7 text messages taken from the victim's phone.

8 (WHEREUPON: STATE'S EXHIBIT NUMBER EIGHT IDENTIFIED
9 AND PREMARKED.)

10 Q. I'll ask you about this, Detective.

11 I show you what's been marked State's Exhibit Eight
12 for purposes of this hearing. Do you recognize those
13 photographs?

14 A. I do.

15 Q. Can you flip through those briefly please and let me
16 know are those fair and accurate depictions of something
17 you observed on November 12th, 2010?

18 A. Yes they are.

19 Q. And what are those fair and accurate depictions of?

20 A. They are text messages from Hashin O'Neil to Ms.
21 Caldwell and there may --

22 Q. Where did you observe those?

23 A. There may also be some from Ms. Caldwell to Hashin
24 O'Neil.

25 Q. All right. But where did you observe those text

1 messages?

2 A. Ms. Caldwell's phone.

3 Q. Okay. Where was that shown to you?

4 A. In the hospital. Actually she had her phone in her
5 room.

6 Q. And was that prior to your arrest of the defendant?

7 A. Yes.

8 Q. That was during your discussion with Ms. Caldwell as
9 to what had happened?

10 A. Yes it was.

11 SOLICITOR COLLINS: I'd like to move those into
12 evidence for purposes of this hearing, Your Honor.

13 MR. MUCKENFUSS: Your Honor, I think it's okay for
14 purposes of pretrial. We do object to the text messages or
15 to the identity of these messages coming from my client to
16 Ms. Caldwell. I do understand this is pretrial but --

17 THE COURT: I understand that is an issue that's going
18 to have to be visited but for purposes of the hearing and
19 the purpose - you do not object I understand?

20 MR. MUCKENFUSS: Yes, Your Honor.

21 (WHEREUPON: STATE'S EXHIBITS ONE THROUGH EIGHT,
22 IDENTIFIED AND MARKED, RECEIVED IN EVIDENCE FOR PRETRIAL
23 ONLY.)

24 BY SOLICITOR COLLINS:

25 Q. And those are - That's information that you had prior

DETECTIVE EDDIE STRAIT: BY SOLICITOR COLLINS - IN CAMERA

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1 to your arrest of the defendant; is that right?

2 A. Yes, ma'am.

3 Q. And do those text messages indicate a verbal dispute
4 going on between the defendant and Ms. Caldwell?

5 A. They do.

6 Q. And you've reviewed those before. Correct?

7 A. I have.

8 Q. Do some of those text messages include language
9 indicating for Mr. O'Neil to Ms. Caldwell that he hoped
10 that the day he died she would die?

11 A. That's correct

12 Q. Or indicating she may be subjected to harm?

13 A. Yes, ma'am.

14 Q. And also the very first one that at 6:00 p.m., the
15 night before November 11th that they love each other.
16 Right?

17 A. Yes.

18 Q. But from there progressing regarding threats ---

19 A. That's correct

20 Q. --- of assault or battery. Correct?

21 A. That's correct

22 Q. I know we separated a little bit and it sounds like
23 those are probable cause for arrest but I have no further
24 questions as to Denno but let me ask you.

25 Prior to your arrest of the defendant, what was the

DETECTIVE EDDIE STRAIT: BY SOLICITOR COLLINS - IN CAMERA
BY MR. MUCKENFUSS - IN CAMERA

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1 last thing that Ms. Caldwell had told you in regard to what
2 had happened resulting in her being shot?

3 A. That her and Hashin were the only two in the
4 apartment.

5 Q. Okay. That her and the defendant were the only two in
6 the apartment?

7 A. That's correct

8 Q. At the time she was shot?

9 A. That's correct

10 Q. And did you ask her who had shot her?

11 A. I did.

12 Q. And her response was?

13 A. That she did not see who shot her.

14 Q. And then she said that they --

15 A. That they were the only two in the apartment.

16 Q. All right. And of course this happened in York
17 County, South Carolina?

18 A. It did.

19 Q. Within your jurisdiction --

20 A. Kensington Square Apartments which is on Herlong
21 Avenue.

22 Q. All right. Thank you.

23 Please answer any questions from the defense.

24 THE COURT: Recross?

25 MR. MUCKENFUSS: Yes. Thank you, Your Honor.

DETECTIVE EDDIE STRAIT: BY MR. MUCKENFUSS - IN CAMERA

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1 RECROSS EXAMINATION - IN CAMERA

2 DETECTIVE EDDIE STRAIT BY MR. MUCKENFUSS:

3 Q. Just to be clear I think when I ask you on cross,
4 Detective Strait, you stated that in your report you wrote
5 that Ms. Caldwell did not know who shot her.

6 A. That's correct.

7 Q. Not that she just didn't see who shot her, she didn't
8 know who shot her?

9 A. At the beginning yes.

10 Q. All right. At the time you placed Mr. O'Neil under
11 arrest that's the statement that she gave you. Correct?

12 A. That was at the beginning of that. By the end of my
13 interviewing her is when she said she didn't see - I ask
14 her directly did Hashin shoot her and she said she didn't
15 see him shot her but they were the only two in the
16 apartment.

17 Q. She also stated to you that she was walking out of the
18 apartment when she heard the gunshot; isn't that true?

19 A. I don't think she said she heard the gun. I think she
20 said she felt something.

21 Q. I think its in the interview report. Well the one I'm
22 looking at says "Crystal stated that she then went to walk
23 out of the apartment and heard a noise."

24 A. , Heard a noise.

25 Q. "And felt like she could not walk."

1 A. That's correct

2 Q. And actually she told you that Hashin said it looks
3 like you have been shot."

4 A. "Looks like you have been shot." Correct.

5 Q. Okay. I think Ms. Collins ask you did Ms. Caldwell
6 appear nervous or scared. I think you admitted that. I
7 mean she was in the hospital having been shot so it would
8 be natural for someone to be nervous and scared.

9 A. That's correct

10 Q. Okay. She never told you that she was scared because
11 Mr. O'Neil had shot her?

12 A. No she never said that.

13 Q. Now the text messages. I think Ms. Collins ask you
14 were there threats of physical harm in the text messages.
15 Is there a particular text? I mean to help this out a
16 little bit we were provided with numerous photographs with
17 text messages, the ones that you have. Let me ask this.
18 Who actually took the photographs of the text messages?

19 A. One of our forensic officers. I believe Audra Eddy.

20 Q. Okay. And I think my account there are probably maybe
21 the solicitor can help, over thirty text messages that you
22 photographed. Is that a fair assessment? You don't need
23 to - just approximate.

24 A. Well the last one I have says thirty-two.

25 Q. Okay. And then in reality do the text messages that

DETECTIVE EDDIE STRAIT: BY MR. MUCKENFUSS - IN CAMERA

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1 were provided to us only two of those were text messages
2 from Ms. Caldwell to Ms. O'Neil; is that correct?

3 A. I'm not sure, I'd have to look through.

4 Q. Well I represent to you that we were only provided two
5 text messages from Ms. Caldwell to Mr. O'Neil.

6 SOLICITOR COLLINS: Your Honor, I don't mind
7 stipulating as an officer of the court that that was all we
8 had to provide to Mr. Muckenfuss.

9 MR. MUCKENFUSS: Thank you.

10 Q. Now I'll ask you are there any particular text
11 messages that you looked at when you were in the hospital
12 room with Ms. Caldwell that you specifically looked at
13 before you placed Mr. O'Neil under arrest?

14 A. I looked at all of these. She was actually scrolling
15 through her phone showing them to me.

16 Q. Okay. And is there any particular email that you see
17 that where Mr. O'Neil actually threatens to shoot Ms.
18 Caldwell or any type of physical harm?

19 A. I know there is none where he threatens to shoot her.
20 There's one that "you are no good, God is going to punish
21 you." "I hate you Crystal for this." "I promise you will
22 not enjoy the ring."

23 Q. And did you have any understanding at that point in
24 time that they had had a fight over an engagement ring?

25 A. Yes.

1 Q. All right. Did Ms. Caldwell tell you that?

2 A. Did she tell me that?

3 Q. Yes.

4 A. Yes.

5 Q. All right. And did you know that before you placed
6 Mr. O'Neil under arrest?

7 A. Yes.

8 Q. And isn't it true that some of those text, several of
9 those text messages they have from Mr. O'Neil to Ms.
10 Caldwell appear to be Mr. O'Neil responding to Ms.
11 Caldwell's text messages; is that fair to say?

12 A. I don't know how I would tell that.

13 MR. MUCKENFUSS: May I approach, Your Honor.

14 Q. Now it may be tough to designate this for you. I know
15 they are not numbered on the pages but can you go to
16 Message 5 of 254? I'm not sure if they're in order.

17 SOLICITOR COLLINS: They are in chronological order.

18 MR. MUCKENFUSS: Okay. Thank you.

19 A. Five of 254?

20 Q. Do you see that one?

21 A. I do.

22 Q. And does this - Well first can you state, read the
23 text message as it's on the page.

24 A. "Just like I" it's XO, I assume this was expected with
25 a typo.

DETECTIVE EDDIE STRAIT: BY MR. MUCKENFUSS - IN CAMERA

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1 Q. So it said the text on her phone says "just like I
2 expected."

3 A. Yes.

4 Q. Did you record any text message from Ms. Caldwell to
5 Mr. O'Neil prior to this text message being sent?

6 A. Prior to Number 2?

7 Q. Yes.

8 A. I had no idea of the order. Like is said she was
9 scrolling through them..

10 Q. Okay.

11 A. I looked at them all and they were photographed
12 shortly after.

13 Q. It's fair to say they were both fighting with each
14 other over this engagement ring?

15 A. Yes.

16 Q. All right. This was not a one sided thing?

17 A. No.

18 Q. All right. I'll show you 32 of 254.

19 A. I have it.

20 Q. Okay. And can you read that text message?

21 A. Its from Hashin. Says "I love you too, Baby." It
22 says 6:04 p.m..

23 Q. Okay. Do you have the text message or any text
24 message that would have preceded this one from Ms. Caldwell
25 to Mr. O'Neil where she says I love you? Did you take a

1 photograph or after any text message from her to him?

2 A. I did not photograph any of them no.

3 Q. Are you aware of any ---

4 A. No.

5 Q. --- that had been photographed? Did you see text
6 messages on her phone where she had been texting him?

7 A. Some were photographed so I assume she had shown them
8 to me prior also.

9 Q. Well you said she was scrolling through text messages?

10 A. Scrolling through.

11 Q. Right?

12 A. Correct.

13 Q. Did you see text messages from her to him?

14 A. Yes.

15 Q. Okay.

16 MR. MUCKENFUSS: Nothing further, Your Honor.

17 THE COURT: All right. You can step down. Thank you.

18 (WITNESS LEAVING WITNESS STAND.)

19 THE COURT: Any further witnesses on this issue?

20 SOLICITOR COLLINS: Not on the Jackson v. Denno issue,
21 Your Honor.

22 THE COURT: Ms. Collins, hand me all the exhibits.

23 SOLICITOR COLLINS: Yes, Your Honor.

24 (EXHIBITS RECEIVED UP BY THE COURT.)

25 THE COURT: All right. Mr. Muckenfuss, what's the

1 position of the defendant?

2 MR. MUCKENFUSS: Your Honor, a couple of points.

3 First that we would contend that the police did not have
4 probable cause to place Mr. O'Neil under arrest. I think
5 the detective stated and it's in the report that Ms.
6 Caldwell specifically told them she did not see Mr. O'Neil
7 shoot her and she did not know who shot her. There was no
8 physical evidence collected by the police at the time that
9 they arrested Mr. O'Neil. I think Detective Strait simply
10 stated that he knew they had an argument. He was aware
11 that Mr. O'Neil was with her at the apartment although Ms.
12 Caldwell stated she was walking out of the door of the
13 apartment when she heard a noise and felt like she couldn't
14 walk. From that standpoint, Your Honor, I think under the
15 case law there was an illegal arrest or an arrest not
16 supported by probable cause, a remedy would be to exclude
17 any evidence collected as a result following the arrest.
18 In this case it would be the statement that he provided
19 orally to Detective Strait in the conference room.

20 Secondly, Your Honor, we would at the time that Mr.
21 O'Neil invoked his rights when he made the statement
22 "Whatever she said happened." If any part of his statement
23 is allowed in we would ask that that statement be excluded.
24 I believe he stated that just before he invoked his rights
25 I would contend that in that instance he was not responding

1 to questions. It wasn't a willing cooperation at that
2 point with the interrogation and that he was at that point
3 going to invoked his rights. And to be honest with you,
4 Your Honor, is confusing I think Detective Strait put it in
5 quotes whatever she said happened in this case Ms. Caldwell
6 has given multiple statements to the police that are
7 inconsistent so it's confusing and not probative I think,
8 Your Honor, of anything of any of the issues in the case.
9 So the first instance we would ask the entire statement be
10 excluded. Secondly if any part of it is we would ask that
11 the final statement whatever she said happened be excluded
12 at trial.

13 THE COURT: What's the State on the probable cause?

14 SOLICITOR EPTING: Your Honor, I apologize. I was set
15 to handle that issue. My understanding is this was to be a
16 Denno Motion that seems to have kind of slid in --

17 THE COURT: Well it is a Denno motion but we move now
18 to stage one.

19 SOLICITOR EPTING: Your Honor, the State's position
20 would be that if you look very carefully at Ms. Caldwell's
21 statement she does state initially that she does not know
22 who shot her. That can be consistent with her lying about
23 who shot her because with her not seeing who shot her. She
24 states that she was going to walk out of the house and
25 somebody shot her as she was going to walk out of the

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1 house. The implication of that is that she had not yet
2 left the house. She stated to officers then that she and
3 Hakim were the only two people in the house. Officer
4 testified that the defendant's boyfriend dropped her off at
5 the hospital and immediately left for parts unknown. If
6 Your Honor looks at the text some of them are very
7 threatening. They do mention death. He does not say I
8 have done it to come to the apartment and shot you but he
9 does say You're no good, God is going to punish you. I
10 hate you Crystal for this." Again, "I hate you, I promise
11 you you will not enjoy that ring. I'm on my way to your
12 mom's house maybe she will be able to get this done."

13 The State would argue that that is an implicit threat.
14 I beg the Court's indulgence.

15 (PAUSE.)

16 SOLICITOR EPTING: He says " I hope the day that I die
17 that you die too." And, Your Honor, as the trial
18 progresses you would hear that as the incident occurs with
19 Crystal he does point the gun to his own head. All over
20 and over, Your Honor, it's just threats. It is vulgar
21 language, it is abusive language, he is clearly very very
22 angry about what happened. If you look at her statement
23 you can see that she is not excluding the fact that he shot
24 her. She's not saying he didn't shoot me. She's saying me
25 and him are there. We're the only two people in the

1 apartment. I got shot. And at that point she says she
2 could not walk.

3 THE COURT: I find there is probably cause - was
4 probable cause for an arrest. I find that the moment the
5 arrest was made the officers had probable cause to make the
6 arrest. At that time they had facts and circumstances
7 within their knowledge which they had reason to consider as
8 trustworthy information at the time and that they were
9 sufficient to warrant a prudent man to believe that the
10 defendant had committed an offense. I'm looking at this
11 through the totality of the circumstances. I'm looking at
12 this based on the totality of the circumstances surrounding
13 all the information that the officers had at their
14 disposal. I find that the officers had reason to believe
15 that a felony had been committed and committed by the
16 defendant and such information and belief would have
17 induced an ordinary prudent and cautious person to man
18 under the circumstances to believe likewise. I find that
19 the arrest was justified.

20 As to the statement, by a preponderance of the
21 evidence I find that Mr. O'Neil freely voluntarily and
22 knowingly and intelligently waived his rights and gave a
23 statement when questioned. And that it can be introduced
24 into evidence. Of course the jury has a right to assess
25 when he made the statement whether it was done freely and

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1 voluntarily by the greater degree of the burden of proof by
2 beyond a reasonable doubt.

3 I find that at the time Mr. O'Neil gave the statement
4 he had been warned of his rights under the Fifth and Sixth
5 Amendment and the rights as outlined in Miranda versus
6 Arizona. He had been advised he had the right to remain
7 silent that anything that he said could and would be used
8 against him in a court of law. That he had the right to
9 talk to an attorney and have them present with him while he
10 was being questioned. That if he could not afford to hire
11 an attorney one would be appointed to represent him before
12 questioning if he wished.

13 I just found out about two weeks ago when I got
14 reversed that the fifth one is not part of Miranda but he
15 was advised that he could decide at any time to exercise
16 these rights and not answer any questions or make any
17 statements. He had indicated he understood the rights and
18 had them explained to him. And signed. He also signed
19 the waiver stating that he was willing to talk to police
20 and answer questions. That he did not want an attorney at
21 that time, that he understood and knew what he was doing.
22 That no promises or threats had been made to him and no
23 pressure of any kind had been placed upon him. That was
24 signed and witnessed.

25 This reflects that he was read his Miranda rights;

1 that there were no promises or threats or any inducements,
2 that he was made comfortable that no un-holstered weapon
3 was displayed, that he was offered the opportunity to have
4 something to drink and declined it. That he had sufficient
5 education having graduated twelfth grade and indicating he
6 knew how to read and write and not under the influence, did
7 not appear to be tired, and did appear to be alert,
8 appeared to understand.

9 And I find that the statement is admissible. Again
10 the jury will have the right to look at the statement and
11 determine whether or not they give it any credence. As to
12 when it stopped it stopped when he ask for an attorney but
13 it was after he had indicated quote whatever she said
14 happened end quote in response to the question by Officer
15 Strait or Detective Strait. So I find that the statement
16 in its entirety is admissible. I find also that there was
17 probable cause for the arrest.

18 Now we also have an issue dealing with the I guess the
19 text. I don't know what the issue is other than there are
20 text I have in front of me and I guess the State wants to
21 tell me first what they have to do with the case.

22 SOLICITOR EPTING: Your Honor, it would be the State's
23 opinion that we have to prove specific intent to kill. We
24 would go that they text go to show both malice and specific
25 intent to kill, events that occurred shortly after those

1 text were sent.

2 THE COURT: "I love you too, Baby" shows malice and
3 intent?

4 SOLICITOR EPTING: Not that particular one though.
5 No. That shows better times but some of the others
6 particularly the ones "when I die you die too. God is
7 going to punish you. What if I go to your mother's house I
8 hope she'll be able to help me, I bet she'll be able to
9 find the ring." Things of that nature, Your Honor.

10 MR. MUCKENFUSS: Your Honor, our objections to the
11 text messages as we alluded to, there are several grounds.
12 Number One: I think under the State it seems clear did not
13 preserve all of the text messages on her phone that would
14 be relevant potentially exculpatory or along the same lines
15 of the emails that you see in front of you. There are many
16 emails from my client or appear to be from my client
17 although these are photographs of the text where he clearly
18 is responding to a text message that Ms. Caldwell had sent
19 him or it appears that way. And I think Detective Strait
20 testified that he saw several text messages on her phone
21 when she was scrolling through it.

22 We've only received two text messages from the State
23 from what they collected. And there is an enormous span of
24 time between the two text messages from her to him. One I
25 believe that the only two text messages are the ones at

1 8:00 p.m., on November 11th so this event flows from the
2 evening hours of November 11th into the morning of November
3 12th. The other text message I believe is at midnight
4 shortly after midnight on November 12th. And I have these
5 text messages marked, Your Honor, there are many of them.
6 And under the - certainly under the rule of completeness
7 and certainly under the State's duty to preserve that
8 evidence in this case they selectively picked text messages
9 relating to my client sending text messages to her.
10 Detective Strait testified that there was clearly a fight
11 going back and forth between Mr. O'Neil and Ms. Caldwell
12 about the engagement ring.

13 She had actually kicked him out of the house and they
14 were obviously both very upset. But the qualm I have is,
15 Your Honor, they're going to use these text messages to
16 show - to try to show my client's very upset, he's
17 threatening, he's a mean guy. We would contend there are
18 probably equal text messages going back to him saying
19 you're never going to get this ring or, you know, all of
20 the other bad stuff that Ms. Caldwell would say. She's
21 equally upset, she's irritated with him and even in her own
22 statement she said she kicked him out of the house. We
23 don't have those.

24 I think the remedy in this situation would be for all
25 the text messages be excluded at trial. It's unfairly

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1 prejudicial to my client not to have the other side of the
2 story. It's not the complete part of the conversation
3 between these individuals. And I can go through these,
4 Your Honor. There are numerous text messages where it
5 appears he's responding to her. There are also gaps. If
6 you look at the top of the text messages they have two at
7 2:54 and that's sort of the chronology of the text messages
8 when you have a phone like that that keeps track of the
9 newest to the oldest. There are gaps in the text messages
10 that were allegedly sent to my client from Ms. Caldwell.
11 And again the text messages from her to him there are only
12 two. There is a four hour span from 8:00 p.m. to 12:00
13 a.m. of those and there no text messages earlier in the
14 evening from her to him. And this whole thing started at
15 like 5:00 or 6:00 p.m. that day. I think she even stated
16 to Detective Strait that she was - they were texting each
17 other constantly during this spat.

18 So again it's a selective view of the conversation
19 and, Your Honor, it's not a complete picture of the
20 conversation it would prejudice our case because we're not
21 able - I could obviously cross examine her on the text
22 messages but they have the upper hand because they decided
23 to take only the pictures of these.

24 THE COURT: Mr. Epting.

25 MR. EPTING: Your Honor, well first of all I would

1 like to say that I believe the State has provided the
2 defense with all the text messages that were made
3 available. Speaking candidly to the Court the phone should
4 have been put through a machine and ripped. Again all the
5 text messages relevant are not placed on a CD. We concede
6 at this point case in chief that we would not use the text
7 messages however should the defendant testify we would ask
8 the court to reconsider that issue for impeachment
9 purposes.

10 THE COURT: Well I don't need to rule then if you're
11 not going to use them in your case in chief until that
12 issue comes up so they will not be introduced or alluded to
13 unless they become relevant after the State's case in
14 chief. All right, what else today?

15 MR. MUCKENFUSS: Your Honor, from the defense the
16 second big area for us is the audio recordings of the jail
17 calls. This one is a bit complex but I'll give I think the
18 over view for us, Your Honor. We were provided a CD of
19 these calls. There are, I think, a hundred and eleven
20 calls on this CD. We spent hours and hours listening to
21 the calls. One of the initial problems we had with the CD
22 we put the CD on your computer and we can demonstrate this
23 if we need to, it pops up a file sort of a list and I think
24 the file - the name of the file is Securis. I think that's
25 what the Moss Justice Center uses to record this.

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1 When we tried to click there is a play symbol to click
2 to call. When we try to click the call it won't play so we
3 had to have the IT people at my firm sort of convert this
4 so we could listen to it. So the first problem is we
5 haven't been able to connect the actual call to what they
6 say is my client's call from the jail. That's one problem.

7 The second problem is there is sort of two categories
8 of calls. The first fifteen calls start from the time that
9 he is placed in the jail is prior to the time he has a pin
10 number. Apparently the jail gives the inmates a pin number
11 at some point and they punch in a pin number and make a
12 call. Well the first fifteen calls Mr. O'Neil doesn't have
13 a pin number yet. Okay. So when he makes a call there is
14 not that identifier that he punches in. Ms. Collins can
15 address this but what she has told me is well the way we're
16 gonna prove that's your client on the phone is Ms. Caldwell
17 can say well I recognize his voice.

18 Secondly Mr. O'Neil provided apparently a list of
19 phone numbers that he would call and so they're matching
20 the phone numbers of that actual call with his phone list.
21 Well the problem with that is Ms. Timberman and Ms. Boswell
22 took the labor on this to look and we created a spread
23 sheet but there are numerous calls on the CD that don't
24 match his phone number list. And if you listen to the CD
25 there are clearly other inmates who are on this CD file

1 that are identified as Hashin O'Neil on their file list.
2 And that's even true for the pin number when he starts
3 using a pin number which is several days later. The pin
4 number on their file list in his name if you listen to it
5 is clearly another inmate. He's calling a different number
6 --

7 How many calls had different pin numbers?

8 MS. TIMMERMANS: Thirty-eight.

9 MR. MUCKENFUSS: Thirty-eight calls out of a hundred
10 and eleven are identified as Mr. O'Neil and his pin number
11 but it's not one of the numbers on his list and if you
12 listen to it its clearly not him. Somebody, you know, it's
13 Miguel White or there's several names that we've
14 identified. So the problem is, Your Honor, I'm having
15 trouble; I know they're going to try to use a select few of
16 these phone calls. Problem is Number One: I don't know
17 necessarily if it's my client Mr. O'Neil Number One.

18 Number Two: They're clearly they're identifying other
19 inmates with his pin number so I think its confusing at
20 best. I mean if the jury's going to listen to it I would
21 obviously cross examine the custodian if he's called at
22 some point but it's our position that this entire phone
23 list is tainted. Its not reliable. I mean maybe they can
24 put up witnesses to you know have the chain of evidence in
25 terms of how they record the calls and how they know it's

1 my client. But in the time that we spent which is hours
2 and hours of listening to this, the calls are
3 unintelligible; at times, you know, you just can't
4 understand what they're saying. And there are multiple
5 inmates on these calls identified with my client so I don't
6 think they're trustworthy and at best it would be confusing
7 to the jury.

8 THE COURT: Let me - What's the plan? You've got
9 relevance issues, you got looks like who's calling who;
10 whom called whom which ever is correct?

11 SOLICITOR EPTING: Your Honor, we would be able to
12 present evidence that the telephone - these telephone calls
13 that we intend to introduce into evidence were made to a
14 number given by the defendant as his brother. He
15 identifies himself as Hakim from the booking calls inside
16 the booking cells. He was in there with two other
17 individuals neither one which was remotely named Hakhim.
18 And we can also -

19 THE COURT: I'm not asking you what you could do.
20 What are you going to do? The speculations are gone. Do
21 you have a certain - some certain ones you want to play
22 then pull those out and let's deal with those but let's
23 don't deal with a hundred and ten.

24 SOLICITOR EPTING: Certainly, Your Honor.

25 THE COURT: Some may not be relevant at all; some may

1 be - you might have some trouble with even getting them in
2 but we'll deal with that one at a time then that's what
3 we'll have to do.

4 SOLICITOR EPTING: Certainly, Your Honor.

5 THE COURT: Incidentally has the State complied with the
6 Victim's Rights Act?

7 SOLICITOR COLLINS: Yes, Your Honor, we have.

8 THE COURT: Okay. Well I didn't see anybody behind
9 you that sits -

10 SOLICITOR COLLINS: She moved for the jury selection.

11 THE COURT: Okay.

12 SOLICITOR COLLINS: She's sitting right there. Thank
13 you, Your Honor.

14 SOLICITOR EPTING: And, Your Honor, just asking the
15 Court. We have made available to the defense and have
16 available two redacted calls. We also have the unredacted
17 calls played on a secured software that we can play for the
18 Court.

19 THE COURT: Well I don't want to listen to a hundred
20 and ten. I only want to listen to the ones that you plan
21 to use and then we can deal with them and we're probably
22 going to have to deal with them one at a time.

23 SOLICITOR EPTING: Certainly, Your Honor.

24 THE COURT: And they have a right not that they want
25 to spend their evening doing this, they got to go through

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1 and listen and have some time to determine which one's you
2 pulled out and assess them.

3 SOLICITOR EPTING: Certainly, Your Honor. At this
4 time I would play -

5 MR. MUCKENFUSS: And, Your Honor, not to - we just got
6 this, the redacted CD today.

7 THE COURT: I think they have - need an opportunity to
8 do it, not right here in open court, and have to choose
9 from the hip so to speak. I think they got a right to do
10 some analysis of it. I know they have done an analysis on
11 the broader ones. When did you give them the redacted
12 copy?

13 SOLICITOR EPTING: The redacted - The redacted copies
14 I believe were given today.

15 SOLICITOR COLLINS: Your Honor.

16 I'm sorry.

17 If I just may say, I sent an email to Mr. Muckenfuss
18 about three weeks ago. I did find three calls that we
19 would use only two of which we would use in case in chief.
20 One was made at 8:03 am to the defendant's mother on the
21 phone as he indicated. And one was made at 8:14 am on
22 November 14th, 2010 to his brother on the phone list that
23 he indicated.

24 And I did tell them for Brady purposes I wanted to
25 make him aware that the next day on November 13th, 2010

1 that there is a call where he says something a little
2 different, says they were kind of scuffling for the phone
3 so I wanted to make him aware of that for Brady purposes.
4 We provided all the calls we had at that time to him but
5 those are the only - We intend to use two.

6 THE COURT: All right, let's listen and analyze those.
7 We got time; can we do that now?

8 SOLICITOR COLLINS: We can. And we can put Ms. Guzman
9 first or if you want to hear them first but we have Cheryl
10 Guzman who's the records custodian available to testify.

11 THE COURT: What's your objection to the two that they
12 plan to use, if you know?

13 MR. MUCKENFUSS: And that is true. Ms. Collins did
14 email me. I'm not trying to suggest that she wasn't
15 communicating at all about this. I haven't heard the
16 redacted two, you know, how they redacted it so I would
17 have to listen to that. The other thing, Your Honor, just
18 to preserve the record on this. There are months missing;
19 on the hundred and eleven calls there are months, spans of
20 months where there are no calls. We don't know if that's
21 because he didn't make a call or what.

22 I would also note although Ms. Collins did identify I
23 think one call that she would describe as a Brady call,
24 potentially exculpatory. In the hours that we've gone
25 through this we've actually found multiple exculpatory

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1 calls, you know, our own work looking through it. I am a
2 little concerned, I think some of those calls may have not
3 been identified on their file as his call.

4 We just found them because we spent the time to
5 actually listen to it. So I am concerned that there are
6 calls missing and they haven't identified the calls on this
7 CD as Mr. O'Neil that would be potentially exculpatory. I
8 mean we found them to be honest with you just by
9 happenstance because we're, you know, literally spending
10 hours and hours listening to these calls which is, you
11 know, it's tough. You have to relisten, it's very
12 difficult to hear.

13 I just don't feel like we have a very accurate - From
14 a Brady standpoint I don't feel like we have a very
15 accurate listing of all the calls either. And there may be
16 ones missing, I don't know. We haven't had an explanation
17 and I haven't ask Ms. Collins but there --

18 THE COURT: We're getting into this embroil
19 frequently. She shared with you everything she's got as I
20 understand it. Now if law enforcement did not provide the
21 other ones or what happened to the other month?

22 SOLICITOR COLLINS: At the time that we downloaded the
23 calls, those were the ones that we had. However Mr.
24 Muckenfuss has subpoena power. He can subpoena those
25 records from the sheriff's department and the detention

1 center. He has not done so. I am merely providing to him
2 everything that I had and pointed out one call that I knew
3 was Brady.

4 With all due respect I do not feel that it's my job to
5 go through the calls and also point out to him or this this
6 or there's this. We've provided him everything we had as
7 I've stated earlier. If Mr. Muckenfuss wishes to question
8 Ms. Guzman regarding what other calls would be available as
9 the custodian of records certainly that's one of the
10 purposes of this hearing. But you know to my knowledge
11 from Ms. Guzman has not ask the detention center or her
12 regarding the reserving the calls.

13 THE COURT: Well I think the way that the Court is
14 going to approach this, we're going to analyze the two that
15 the State intends to introduce and decide whether or not
16 their admissible and then if you feel that there is any
17 Brady violation - I don't know how you prove something you
18 don't have so I can't help you there. All I can do is I'm
19 going to rule on what they intend to introduce and as an
20 officer of the court indicated they've given you what
21 they've got. If there is more I can help you there.

22 MR. MUCKENFUSS: Your Honor, we have several calls we
23 want to play I guess in cross examination but I would like
24 to discuss that in terms of - I think we have maybe three,
25 potentially three calls that we've discovered that are

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1 exculpatory for my client that we would want to play but I
2 want to have some time to address this with Ms. Collins.

3 I don't want to play the calls and open the - us play
4 the calls and open the door somehow for an impeachment
5 because we're playing calls of Mr. O'Neil if that makes
6 sense. But that - I mean we do have calls that we want to
7 play in response to the calls they're gonna play and I just
8 - I guess I'm not objecting I just want some guidance. I
9 don't know if the court wants to hear those today or how we
10 may want to proceed on that.

11 THE COURT: If I'm following, Cheryl Guzman is going
12 to be the custodian that testifies that gets these in.

13 SOLICITOR EPTING: That is correct.

14 THE COURT: And it appears to me that there are other
15 ones that she has had on her records you can cross examine
16 her on the ones that you want too. Again under Rule of
17 Completeness and also if they are exculpatory whether they
18 make completeness or not they are admissible. And if we
19 hit a hitch during that if you ask her about something and
20 the State believes that it is not relevant we'll just have
21 to deal with it as we go through.

22 MR. MUCKENFUSS: Thank you, Your Honor.

23 SOLICITOR COLLINS: And, Your Honor, if I may. At
24 that time I might certainly have some argument regarding
25 the admissibility of hearsay from the State's perspective

1 as a admission by a party or statement against interest and
2 appear to the defendant choosing not to testify but trying
3 to get in and I understand about the Rule of Completeness
4 but I have some case law that says there is a distinction
5 between multiple conversations over when they in that
6 complete conversation certainly we understand that that
7 would be coming in.

8 But I just didn't want my silence to indicate
9 acquiescence on that point. We have case law regarding
10 that if the defendant tries to offer a prior statement that
11 he made out of court that was not under oath and it is
12 exculpatory, if he is offering it, that it is self serving
13 hearsay and he is not allowed to do so.

14 THE COURT: I follow you. Just hand me that case and
15 I'll look at it before we get to that.

16 SOLICITOR COLLINS: I will, Your Honor.

17 MR. MUCKENFUSS: If I can have a copy.

18 SOLICITOR COLLINS: I will of course...

19 Do you want us to go ahead and call Ms. Guzman in or
20 do you just want to play those two first or however you
21 want to proceed?

22 THE COURT: Do you know which two she's talking about?

23 MR. MUCKENFUSS: I think I do yeah.

24 THE COURT: Do you object? You do object to those
25 two?

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1 MR. MUCKENFUSS: We do object.

2 THE COURT: All right, we'll have to listen to it.

3 SOLICITOR COLLINS: Okay. And the only redaction that
4 we had made that we would play with the redacted one in
5 front of the jury is the defendant referencing a prior
6 situation in North Carolina regarding his conviction. That
7 is all that we redacted and do that certainly obviously
8 that was me so that's what I gave Mr. Muckenfuss other than
9 that. But I have the total - we can play the comments
10 entirely as well as the redaction or which ever you wish.
11 The victim --

12 THE COURT: Which ever you plan to introduce, that's
13 all I want to hear is what you plan to introduce.

14 Just what you plan to introduce. About completeness
15 if there's others they want the other in --

16 MADAME COURT REPORTER: Judge.

17 MS. COLLINS: And we do have Ms. Caldwell -

18 THE COURT: Do you need a break?

19 All right, we need to take a break.

20 SOLICITOR COLLINS: Yes, sir.

21 THE COURT: If you'll get that ready when we come back
22 we'll take care of that.

23 SOLICITOR COLLINS: Yes, sir.

24 THE COURT: Sorry.

25 MADAME COURT REPORTER: That's okay, Judge.

1 (COURT IN RECESS AT 04:40 P.M..)

2 (BACK ON THE RECORD AT 04:51 P.M..)

3 THE COURT: You all ready or am I...

4 SOLICITOR COLLINS: We're ready, Your Honor.

5 Your Honor, the first call was made at 11/12 2010 at
6 8:03 a.m.

7 (PAUSE.)

8 SOLICITOR COLLINS: Your Honor, we're going to play
9 the ...

10 (AUDIO PLAYED FOR THE COURT.)

11 SOLICITOR EPTING: Your Honor, I'm trying to figure
12 out which call this is. It's unclear from the file.

13 This is a call that was made on 8:03, Your Honor.

14 SOLICITOR EPTING: On November 12, 2010 to a number
15 that's listed on the defendant's phone list as his mother.

16 (AUDIO PUBLISHED TO THE COURT.)

17 SOLICITOR EPTING: Can Your Honor hear this? Can
18 everyone hear it?

19 THE COURT: It's kind of blurred but I can hear it.

20 SOLICITOR EPTING: The recording is apparently blurry
21 due to the way it was recorded from Securis but you should
22 be able to hear what people say very clearly.

23 (AUDIO PUBLISHED TO THE COURT.)

24 SOLICITOR EPTING: If there are no objections I'll
25 skip through the music. It's rather lengthy, it's

1 approximately ten minutes, unless the defense objects?

2 MR. MUCKENFUSS: No objection.

3 (AUDIO PUBLISHED TO THE COURT.)

4 SOLICITOR COLLINS: Judge, I stand corrected. That
5 was the call at 8:14 am on November 12th, 2010 to the phone
6 number of Mr. O'Neil's brother. The - Mr. Epting - The
7 other call we would offer is at 8:03 am to the defendant's
8 mother.

9 THE COURT: I can't understand it to be honest with
10 you. What's in there that you find that is admissible and
11 relevant?

12 SOLICITOR COLLINS: There were two statements, one is
13 "I squeezed off on her" and then she says or they go - at
14 that point he's referring to as a pull, they go "Yo, Yo,
15 Yo, there it is" and I'm like "why didn't you tell me?"
16 And then he comes back around when he's talking to his
17 brother and saying about "she's in the hospital" and the
18 brother's like "what's she doing in the hospital?" And he
19 says "I banged off on her, man." He said "it was her and
20 she set you up?" "Yeah, man."

21 So that's our position in terms of saying I squeezed
22 off on her or I banged off on her. That he is indicating
23 either that it was an accident or that even if she was
24 holding the gun and there was a struggle that that - he's
25 saying I would submit squeezed the trigger in an effort to

1 get her to tell where it was. And then when she told him
2 it's like well why didn't you tell me that before.

3 MR. MUCKENFUSS: Your Honor, we have Forth Circuit on
4 this but the Court has the discretion to disclude
5 unintelligible or inaudible recordings like this. I
6 understand the State would want to say this is what he said
7 in essence create a transcript on the fly of a recording
8 that's very in my opinion vague and difficult to
9 understand. And I have a lot of concern that when this is
10 played that what the results is gonna be will have the
11 prosecution transcribing what they think they heard. To be
12 honest with you I don't know as Your Honor pointed out to
13 me its - most of it is inaudible and it's very prejudicial.
14 Obviously there is a lot of slang, there is a lot of
15 cussing, there is a lot of interpretation of what that
16 would be.

17 THE COURT: Well unless you can isolate those
18 statements and I can hear them intelligently I'm not going
19 to let them in. I couldn't understand it. I wasn't
20 listening for that but I couldn't understand probably
21 ninety-five percent of it other than the four letter words.
22 I can understand about ever one of those.

23 SOLICITOR COLLINS: Well we had redacted just the
24 portion that referred to the other conviction; that we will
25 certainly stay tonight and isolate just that if Your Honor

1 would hear that in the morning.

2 THE COURT: Yeah I'll be glad to. I just can't - If I
3 can't hear it I'm not going to let the jury try to.

4 SOLICITOR COLLINS: Sure. Just for the rule of
5 Completeness I just want to make it available. The rest
6 didn't prejudice the defendant as to his prior conviction.

7 One moment.

8 (PAUSE.)

9 THE COURT: All right.

10 SOLICITOR COLLINS: Your Honor, we made a decision
11 that that would be the only call then that we would offer
12 and we will stay tonight and play that for Mr. Muckenfuss
13 before you take the bench in the morning so he can hear
14 that.

15 MR. MUCKENFUSS: That's fine, Your Honor. And, Your
16 Honor, I just want to make sure we - I understand Your
17 Honor wants them isolated for your hearing to determine if
18 it should be excluded. We obviously object to them
19 isolating out of the context of the calls to the jury.

20 THE COURT: Well I'll let them play other than
21 anything about his prior record. If you again go into
22 completeness and I still haven't decided what to do about
23 the exculpatory, I haven't read these cases, but if you
24 want to hear all of it, that's fine if they hear the end of
25 it. I just want to be able to hear enough for me to

1 determine that it has some relevance and it's intelligent.

2 MR. MUCKENFUSS: Yes, Your Honor. I don't know if
3 Your Honor wants to hear it tonight, but I would certainly
4 like to address the cases as it relates to our cause at the
5 appropriate time.

6 THE COURT: Let me take a look at the case. I
7 remembered that - I'm aware of that concept and I really
8 hadn't had a chance to look at the cases. Of course the
9 State would be deprived of the right to cross examination
10 if they allow a statement in. I just haven't looked at
11 these cases and we'll talk about that in the morning.

12 MR. MUCKENFUSS: Thank you, Your Honor. I think we
13 can distinguish them but we can address them in the
14 morning.

15 SOLICITOR COLLINS: And I handed up five, at least two
16 of those basically go to the remainder rule and I certainly
17 can see that as to that conversation that the remainder
18 rule applies and he should be able to get in all of that
19 one. But I would point out that there is a State as to
20 numerous conversations he made on Page 3 of the Cabrera
21 decision.

22 They do note that this is not a case in which the
23 defendant gave numerous written and oral statements, they
24 were several hours and days and weeks so we submit that the
25 fact that you can get in the remainder, the one

1 conversation doesn't then indicate you getting in others
2 and again of course that the cases do stand for the premise
3 under Terry that the defendant may not use the Fifth
4 Amendment both as a sword and as a shield if he chooses not
5 to testify. Thank you.

6 MR. MUCKENFUSS: Your Honor, again I don't want to be
7 remissive, I know Ms. Collins addressed Cabrera a little
8 bit, but I would just note for the court, Cabrera actually
9 supports our position that the ----- end. And Cabrera,
10 actually the prosecution questioned a police officer on the
11 stand and opened the door to the defendant's confession and
12 the court actually reversed the lower court and said you
13 should have allowed his other statements to come in on
14 cross because they qualified or explained the previous
15 statement. One of the calls that we would introduce Mr.
16 O'Neil actually talks about the call they just played. He
17 actually is explaining sort of what's going on. And I
18 don't think the court in Cabrera limits it to just that
19 conversation.

20 It says any other statements that qualify or explain
21 his prior statement. So in this case it's not us trying to
22 introduce it in our case. We're not trying to put his
23 statements in in our case in chief. They opened the door
24 they're playing his tape and I think as the Rule of
25 Completeness and certainly in Cabrera we should be able to

1 allow - we should be allowed to play the other statements
2 which are very close in proximity in time to that statement
3 to show the full picture of his conversation with his
4 mother and brother, so that would be our basic position.

5 THE COURT: Well I'll look at these cases and we'll
6 reconvene at 9:30 in the morning. Anything else for the
7 day?

8 SOLICITOR COLLINS: No. Well a search warrant issue?

9 MR. MUCKENFUSS: We do have a search warrant issue.

10 THE COURT: Well my problem now is it depends on how
11 long it takes. It's ten after 5:00; I've got drug court at
12 6:00 but I usually get together with the drug court staff
13 about a quarter till 6:00 to go over what we've got.

14 SOLICITOR COLLINS: I've conferred with Mr. Epting.
15 We do feel like there's some issues with the search warrant
16 and we will concede that there would be no reference to
17 anything as far as the search or anything coming therefrom.
18 We would ask that the defense though opens the door and ask
19 well wasn't it searched and certainly they would be - we
20 should be able to ask.

21 Your Honor, I know you had the jury coming back at
22 9:30. Do you wish for us to meet with you then as to the
23 phone calls at 9:30 or a few minutes before?

24 THE COURT: Let's try to be available around 9:00 and
25 try to get this out of the way.

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1 SOLICITOR COLLINS: Thank you, Your Honor.

2 THE COURT: We'll be at ease until 9:00 in the
3 morning.

4 (COURT IN RECESS AT 05:15 P.M..)

5 (COURT BACK IN SESSION TUESDAY, APRIL 17, 2012 AT
6 09:11 A.M.)

7 THE COURT: Good morning. Take your seats. Get --
8 If we can get Mr. O'Neil.

9 (DEFENDANT, HASHIN O'NEIL, BLACK MALE, REENTERING
10 COURTROOM.)

11 THE COURT: All right. Is the State ready?

12 SOLICITOR COLLINS: The State's ready, Your Honor.

13 THE COURT: Defense? Is the Defense ready?

14 MR. MUCKENFUSS: Yes, Your Honor.

15 THE COURT: I think we're going to start trying to
16 isolate either the call with the two -

17 SOLICITOR COLLINS: That's correct, Your Honor.

18 THE COURT: --- with the two comments and we may have
19 some others.

20 SOLICITOR COLLINS: Yes, Your Honor. This is the call
21 from 8:14 a.m. on November 12th, 2010 the Defendant made to
22 a number that he identifies on his jail call list and on
23 his property list as to his brother. Then we have isolated
24 pursuant to your request we argued that it was relevant as
25 to he says "he squeezed off on her" and "he banged off on

1 her." And the brother says "why is she in the hospital?"

2 "Because I banged off on her."

3 You might hear a little bit better if you step down.

4 THE COURT: I mean the issue is whether I can
5 understand it or not.

6 Not the whole issue but part of it.

7 (COURT LEFT THE BENCH MOMENTARILY.)

8 (AUDIO PUBLISHED FOR THE COURT.)

9 THE COURT: I heard the word "squeezed" but that's
10 squeezed and --

11 (AUDIO PUBLISHED FOR THE COURT.)

12 THE COURT: "You squeezed the "F" off?

13 SOLICITOR COLLINS: "This shit" - If I may?

14 THE COURT: Yeah.

15 SOLICITOR COLLINS: If you'll do the first one and
16 stop.

17 "As soon as I squeeze the Fuck off."

18 (AUDIO CONTINUED TO BE PUBLISHED TO THE COURT.)

19 SOLICITOR COLLINS: "This shit goes."

20 (AUDIO CONTINUED TO BE PUBLISHED TO THE COURT.)

21 SOLICITOR COLLINS: "Fuck, you should have said that
22 shit from the" -- Yo, we ain't got it."

23 SOLICITOR EPTING: Restart it.

24 SOLICITOR COLLINS: Okay. And then the next clip is
25 briefer.

1 (AUDIO PUBLISHED TO THE COURT.)

2 THE COURT: All right. Mr. Muckenfuss.

3 MR. MUCKENFUSS: Well, Your Honor, I know isolating it
4 we're playing it over and over, that's one snippet of the
5 whole conversation which I would contend is unintelligible
6 and I think they're not going to be able to do that in
7 front of the jury. I don't think they're going to be -
8 they shouldn't be allowed to play it, isolate it. I still
9 contend that the entire discussion is first of all it's
10 prejudicial. There's a lot of swearing; there's a lot of
11 other things said. In the midst of all that they've
12 isolated these short snippets which I still think it's
13 confusing and unintelligible. You know I don't see how
14 playing that in the context of this place is relevant. And
15 again, I think for what it's going to achieve that its more
16 prejudicial.

17 THE COURT: Well I'm going to allow it in. However I
18 will require under the requirements of completeness if you
19 want to play the whole tape but I'll - I find that there is
20 certainly prejudicial value based on the language used but
21 I find probative value out weighs the prejudicial value I
22 will allow the use of that tape in it's entirety if - I'll
23 either allow the State to play those portions or play it in
24 its entirety if you the defense wishes to play it in its
25 entirety.

1 MR. MUCKENFUSS: We would ask that it be played in
2 it's entirety. We would also, Your Honor, we would like to
3 play another call with his sister.

4 THE COURT: Well we'll have to do - I've done some
5 research on that and you all gave us some cases on that and
6 why don't we come back up here and I've got those cases and
7 some notes; we'll deal with that.

8 (COURT RETURNED TO THE BENCH.)

9 THE COURT: Mr. Muckenfuss, you want to play those.

10 MR. MUCKENFUSS: Your Honor.

11 THE COURT: Yes, sir.

12 MR. MUCKENFUSS: Just one point. The CD that they
13 played you from what I understand is not the CD they intend
14 to play in front of the jury. Apparently they cleaned up
15 the CD with a technician and I was provided that CD this
16 morning. Now that was not the snippet that they played for
17 you. I think they played the old CD from yesterday. I
18 would object to them playing the cleaned up CD that they
19 provided to me this morning. I think they should have to
20 play the CD that they played for Your Honor yesterday.

21 THE COURT: I agree. I think we keep substituting and
22 changing around. I think at some point we got to say this
23 is it so yesterday it was proffered yesterday and what was
24 proffered yesterday is what we're going to allow - what I
25 will allow.

1 SOLICITOR COLLINS: Yes, sir.

2 THE COURT: All right. Now, you want to play your
3 snippet?

4 MR. MUCKENFUSS: Yes, Your Honor.

5 Your Honor, I apologize. We had to isolate on a CD
6 but we don't have the same capabilities. It's on it's way.
7 The conversation that we intend to play I think Ms. Collins
8 was directing the conversation but its with his sister.
9 And there are two reasons why we want to play it. Number
10 One: He explains in more detail; is's exculpatory and he
11 explains what happened which is in contrast we think, we
12 would contend, to the confusing conversation with his
13 brother that they just played, so it explains it in more
14 detail. It doesn't necessarily contradict it. I think
15 these two conversations are actually compatible but it
16 explains the story in more detail.

17 The other aspect of this we would still contend that
18 the entire conversation with the brother is very
19 prejudicial because they're talking about a lot of things.
20 He's swearing, there is a lot of bravado, you know, from a
21 guy calling from jail to another man. This call is from
22 Mr. O'Neil to his sister. Its much calmer and I think it
23 shows a different kind of conversation. There is not the
24 swearing they have in this call and I think it's fair to
25 the defense to have that contrasted with this tape which is

1 very confusing, a lot of swear words with a much calmer
2 conversation that explains I think in a more clear way what
3 happened. That's the only call we want to use.

4 SOLICITOR COLLINS: I would ask, I don't know the date
5 and time of the call, I know generally he spoke with his
6 sister.

7 MR. MUCKENFUSS: I'm sorry. We have it -

8 I apologize, Your Honor. If we can have a moment. We
9 just have a little bit of a disadvantage because we don't
10 have the - didn't have the prep time to have this set up
11 but if we could have a moment to get this set up we can
12 play it.

13 THE COURT: While she's doing that, the date and time
14 of your - first yours.

15 SOLICITOR COLLINS: My date and time was November
16 12th, 2010 at 8:14 a.m.

17 THE COURT: November 12th. All right, what's the
18 date and time of yours?

19 MR. MUCKENFUSS: We think and again because of the way
20 we received the list of calls from the State we can't pin
21 point precisely but --

22 SOLICITOR EPTING: Your Honor, I believe they want to
23 play theirs from the laptop. I'll help them get set up
24 unless Your Honor has any objection?

25 THE COURT: No.

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1 MR. MUCKENFUSS: We think it's within a couple of days
2 of this call so I think by November 15th. November 12th is
3 a Friday, we believe it's within, over the weekend or at
4 least by Monday.

5 I apologize, Your Honor.

6 (PAUSE.)

7 MR. MUCKENFUSS: One of the problems, Your Honor, we
8 had to take our calls and put in our own CD and identify it
9 because we were analyzing it so that's why we've had to
10 look at our own CD.

11 (PAUSE.)

12 SOLICITOR COLLINS: Your Honor, I will tell you that
13 our call will be offered at the conclusion of the State's
14 case which would be we anticipate to be witnesses in the
15 morning if that's of any assistance in terms of additional
16 time to --

17 THE COURT: What you're saying is you've got time to
18 work on that one before we address this issue.

19 SOLICITOR COLLINS: We would not offer all and we
20 would not reference any of the other ones.

21 MR. MUCKENFUSS: Then that's fine, Your Honor. We
22 would get this figured out and addressed right before.

23 THE COURT: All right. So we put that issue aside.
24 And anything else before we get - The jury is not supposed
25 to be here yet, but anything else this morning?

1 SOLICITOR COLLINS: Nothing at this time.

2 MR. MUCKENFUSS: The photographs of Ms. Caldwell this
3 morning that --

4 SOLICITOR COLLINS: Or I could just put on the record,
5 Your Honor, Ms. Caldwell has some scars from this
6 incident. She has one to her right hip. One and a much
7 smaller on to her left. We gave defense counsel, the
8 attorneys the opportunity to go into a room to see her
9 because it almost at the point where modesty would dictate.
10 Obviously not showing that directly to the jury. We
11 allowed them so they could see this picture is a fair and
12 accurate depiction. Of course we'll have a witness testify
13 to that that took the picture. Of course Ms. Caldwell
14 can't see her back side very well except for the use of
15 mirrors so. But I just wanted to make you aware that's how
16 we intend to handle that and we provided a copy of the
17 picture to Mr. Muckenfuss.

18 MR. MUCKENFUSS: This picture; when was this picture
19 taken?

20 SOLICITOR COLLINS: It was taken this morning about
21 five minutes before you all came so roughly 8:40.

22 MR. MUCKENFUSS: I don't think right now I don't have
23 an objection. We'll see how it goes down at trial I guess,
24 Your Honor, I can reserve it with an objection at that
25 point.

1 THE COURT: All right. Well when the jury is
2 assembled we will be in recess until then.

3 SOLICITOR COLLINS: Thank you, Your Honor.

4 (COURT IN RECESS AT 09:26 A.M.)

5 (COURT BACK IN SESSION AT 09:45 A.M.)

6 THE COURT: Thank you. Take your seats.

7 State, ready?

8 SOLICITOR COLLINS: The State's ready, Your Honor.

9 THE COURT: Defense, ready?

10 MR. MUCKENFUSS: The defense is ready, Your Honor.

11 THE COURT: All right. Bring in the jury.

12 The Defendant is present.

13 (JURY ENTERS COURTROOM AT 09:46 A.M..)

14 THE COURT: Now that you are comfortably seated I'm
15 going to ask you to stand.

16 The clerk will administer the oath. Please raise your
17 right hand.

18 (PETIT JURY SWORN AT 09:47 A.M.)

19 THE COURT: You may be seated.

20 I talked with you a little bit yesterday and basically
21 gave you what I call my admonitions about what not to do
22 mainly during the trial. I'm not going to keep repeating
23 those, I think that you got a good grasp on those, but I do
24 have a few more things to talk about this morning.

25 To this charge of attempted murder, and use of a

1 firearm, or a weapon in a violent crime, Mr. O'Neil has
2 entered a plea of not guilty to both. His plea of not
3 guilty places on the State the burden of proving his guilt
4 beyond a reasonable doubt because Mr. O'Neil as with anyone
5 in our legal system charged with any offense, no matter how
6 serious or how minor is presumed innocent of that offense.
7 They need not prove their innocence. They are presumed by
8 law innocent and the State must prove their guilt beyond a
9 reasonable doubt.

10 Now I have three primary jobs during the trial. One
11 is I'm the logistics person. That is I take care of when
12 we take breaks and hopefully that you can see and hear.
13 The mechanical part of the trial. I also rule on questions
14 of evidence; that is, if one side believes certain evidence
15 should be admissible, allowed into the record for your
16 consideration. And the other side based on some rule of
17 evidence or some legal precedent believes that evidence
18 should not be allowed, it is up to me to decide whether
19 that evidence can be placed in the record and put before
20 you.

21 And we spent yesterday afternoon quite frankly and
22 some time this morning with me making those rulings. And
23 we do that and have to do that outside your presence and we
24 do it up front if we can so that while you are here we can
25 do the trial as promptly as we can. But if anyone makes an

1 objection and I have to ask you to leave the room while we
2 discuss it, don't hold that against the attorney, they are
3 just doing their job. Again I think we've taken care of a
4 good many things that would pop up so we ought to be able
5 to move along fairly promptly..

6 My third job is that I am the sole judge of the law in
7 this case. You must take accept and apply the law as I
8 charge, this is true even if you think I charge the law in
9 error or even if you think the law should be different.
10 Your oath requires you take accept and apply the law as I
11 charge it. I've given you some legal principles now,
12 during the trial I may give you some legal principles and
13 at the end of the trial I will give you a precise and
14 comprehensive charge on the law that you are to apply to
15 the facts as you determine the facts to be.

16 You are not to infer from anything I say or do at any
17 time during the trial as being an indication of an opinion
18 of mine on the facts. Our law does not allow a trial judge
19 to formulate or express to a jury any opinion on the facts.
20 It is solely up to you to examine the evidence and give to
21 the evidence the effect the value, the weight, and the
22 truth you believe it should have. In doing this you may
23 believe one witness as opposed to several, several
24 witnesses as opposed to one. You may believe all or none
25 of a witnesses testimony. Use your common sense, your

1 sense of logic, your sense of reason. Use your
2 experiences in life as you analyze the evidence.

3 As judges of the facts you must necessarily judge the
4 credibility, that is the believability of the witnesses who
5 testify. In assessing believability, use the things I've
6 just been talking about. Use the things that you find in
7 our day to day life as being indicative of truthfulness.
8 And you can use certain evaluators. A witnesses demeanor,
9 that is, how they act on the stand. Are they hesitant or
10 straightforward? Is their testimony consistent and
11 inconsistent? Consider the opportunity a witness had to
12 know those things to which the witness testified. And you
13 can consider any bias or prejudice, that is, whether a
14 witness wished to help or hurt one side or the other. You
15 consider the evidence, determine the true facts, apply the
16 law, and you'll be in a position to return a verdict that
17 speaks the truth.

18 You do not need to take notes. If you can't see or
19 you can't hear let know. Cup your ear, or a voice raising
20 gesture, or a nudging gesture, and I'll make sure those
21 things are corrected. We take breaks about every hour and
22 a half. I find that's a good break time but if anybody
23 needs a break at any time please just raise your right hand
24 and with no questions ask we'll take a break. It's hard to
25 pay attention if you're not comfortable and I assure you

OPENING STATEMENT: BY SOLICITOR EPTING

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1 that if I need a break I'm going to take one so I'm going
2 to give you the same prerogative. So if you need a break
3 simply raise your right hand and we'll take a break and I
4 extend that to counsel and Mr. O'Neil also.

5 Again, we want to move the case along, but if we need
6 to take a break we will do so. Now the attorneys have the
7 right but no obligation at this time to come before you and
8 make opening statements. These opening statements are not
9 evidence because these lawyers are not witnesses. At this
10 time they are not arguing their position. That is they are
11 not trying to convince you of anything. At the end of the
12 trial they will have an opportunity to appear before you,
13 take the facts that's been presented, take the evidence,
14 I'm sorry, take the evidence that's been presented and
15 couple that with their legal arguments and try to convince
16 you to return a verdict of a certain type. But that's not
17 what they're doing now. They are simply giving you an
18 outline or a blue print of the trial, a preview of what to
19 expect. So they are not at this time arguing their case.

20 Now I'll turn it over to counsel.

21 SOLICITOR EPTING: Thank you, Your Honor. May it
22 please the Court.

23 Mr. Muckenfuss.

24 Ladies and gentlemen of the jury, good morning.

25 We're here today with this defendant, Hashin O'Neil,

OPENING STATEMENT: BY SOLICITOR EPTING

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1 seated over there at defense table, shot his ex-fiancé
2 Crystal Caldwell, seated over there next to our Victim
3 Advocate, one time in her torso region. He shot her
4 because he felt that she was holding back an engagement
5 ring that he had given her.

6 Ladies and gentlemen, you're going to hear a great
7 deal of testimony at this trial. You'll hear that November
8 11th of 2010 began as a pretty ordinary day for Crystal.
9 She was working and she was working at a medical clinic.
10 She had plans that night with the defendant. You will hear
11 that she had a whirlwind romance with him, that she had met
12 him at a Sketcher Store in a Tanger Outlet down state in
13 Myrtle Beach; that they feel in love, feel deeply in love.
14 And in short order he moved in with her up here in Rock
15 Hill and in short order they became engaged and he gave her
16 that engagement ring that he later shot her for.

17 And they were doing the things that engaged people do.
18 They were meeting the family. As a matter of fact the day
19 of this incident, the defendant's son was coming up from
20 Columbia to meet with Crystal. You will hear that they had
21 plans to go out to dinner that night to meet each other and
22 get acquainted. She was even going to get her hair done.
23 Her day become a little less normal when she came home.

24 The testimony will show that when she went to her
25 apartment on Kensington Square she noticed her door was

OPENING STATEMENT: BY SOLICITOR EPTING

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1 opened and she will testify it seemed a little odd. She
2 saw the defendant seated on the stairs and he had a gun.
3 Again odd. She told him to put it away the neighbors were
4 gonna call the cops, put it away. His son and daughter
5 were there, they argued. Thus began an argument that
6 continued all day. Shortly after she told him to put the
7 gun away they argued and she left. She comes back, they
8 argue some more. He leaves. They argue some more when he
9 comes back. Finally it gets to the point where she says
10 it's over. She says you can take the ring back, it's in
11 the console of my car, its over.

12 She goes up to her bedroom to change. Hakim, Hashin
13 is still in the house, she will testify she didn't know if
14 he had actually left the house or getting his ring or if he
15 was packing his bags in another bedroom. She put on her
16 night clothes and laid down, wanted to go to sleep.

17 Sleep didn't come easy that night, ladies and
18 gentlemen, because shortly after Hashin O'Neil entered her
19 bedroom he entered her bedroom with a gun in his hand
20 standing in the doorway. He was upset, he was mad, he was
21 angry. But rather than pointing the gun at her at first he
22 points it to his own head. He points it into his mouth and
23 she shut her eyes because she's so terrified she don't want
24 to see it. She pleads with him and begs with him and says
25 "Please don't do it, I love you, just put that gun away,

OPENING STATEMENT: BY SOLICITOR EPTING

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1 put it down." And eventually she's able to talk him down.

2 He doesn't put the gun down. He wants the ring.

3 Where's the ring? Where's the ring? Where's that ring? She

4 says, "Its in the console of the car." He says, "Get it."

5 She's in her night gown as I told you earlier. There are a

6 pair of jeans and you will see a picture of this. There

7 are a pair of jeans and the leg is sticking out underneath

8 their bedframe. She says, "Okay, okay, okay." She goes

9 and gets the jeans, she leans over and bang. Pain in her

10 side, she knows she's been shot. She collapses onto the

11 bed, onto the bedspread. You will see that bedspread, you

12 will see the blood on the bedspread. You will see flesh on

13 the footboard of the bed caused by that wound.

14 Hakim doesn't run up -- Hashin doesn't run over to her

15 and say "Ha, you all right, oh my God I didn't mean to do

16 that?" He says, "Now I've got to kill you." And she's

17 begging him and begging him and begging him, but she

18 doesn't think she can walk. The bullet, the medical

19 testimony will show it went through and went through her

20 torso. She doesn't think she can walk. She says "I need

21 you to take me to the hospital." "I need you to take me to

22 the hospital" begging and begging and begging. "Now I'm

23 gonna have to kill you." "Now I'm gonna have to kill you."

24 Finally she gets him to the point. He says "I don't

25 want to go to jail." So she knows, she will testify that

OPENING STATEMENT: BY SOLICITOR EPTING

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1 if they come up with a story that will keep him out of
2 trouble he will drive her to the hospital she will get
3 treatment so she won't die. They both come up with a
4 story. She comes up with a story with him to say that she
5 was walking out of the house, before they left; exited the
6 house, but as they were walking out they heard a bang and
7 she was shot and that's what they were gonna tell whoever
8 should ask.

9 Then and only then does the defendant put her in the
10 back seat of her car, drive her to PMC, drop her off at the
11 emergency room in that little U before the emergency
12 entrance and she is able to get medical aid. He doesn't
13 stick around though. He doesn't go side by side. He
14 rushes back to the Kensington apartment. He doesn't have
15 the key anymore so he kicks in the door. And, ladies and
16 gentlemen, you will see photos from the house. You will
17 see photos of the shoes strung down the stairway. You'll
18 see photos of the clothes piled on the bed. You will see
19 all of that. You will see his haste. When the police get
20 there his car is gone. Her car is parked there with the
21 emergency blinkers on half way in a parking space, half way
22 not.

23 You will hear that initially Crystal did keep Hakhim
24 and her story, that she did tell officers that even though
25 it was 3:30 in the morning when this occurred and she was

OPENING STATEMENT: BY SOLICITOR EPTING

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1 dressed in night clothes, they were in fact going out for a
2 walk. Officers found that fishy. They had been arguing
3 that night and they knew the defendant left the hospital.
4 They placed him under arrest and when they placed him under
5 arrest they read him his Miranda rights. They take him to
6 the station, again they read him his Miranda rights. By
7 that point they ask the defendant if he wants to speak.
8 They ask him to give his side of the story.

9 Well, ladies and gentlemen, his side of the story was
10 "whatever she says". "What ever she says."

11 Ladies and gentlemen, you'll hear medical testimony
12 she was first treated at PMC and they determined that her
13 injuries were potentially too serious so they took her to
14 CMC in North Carolina, she was treated there. Two doctors
15 will testify, both will tell us that her injuries were
16 potentially life threatening. Any injury to - any bullet
17 wound to a torso is potentially life threatening.

18 And at the close of this case after all of the
19 evidence is in and you've heard all of the testimony, seen
20 all the physical exhibits, we are going to ask you to
21 render a guilty verdict, the only verdict that's just and
22 the only verdict that's warranted by the facts which is
23 guilty of attempted murder and guilty of use of a firearm
24 by the defendant during a violent crime. Thank you.

25 MR. MUCKENFUSS: May it please the Court.

OPENING STATEMENT: BY MR. MUCKENFUSS

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1 THE COURT: Yes, sir.

2 MR. MUCKENFUSS: Good morning, ladies and gentlemen.

3 I've been appointed by the State of South Carolina to
4 represent Mr. O'Neil in this case. The lawyers seated
5 behind me have also volunteered their time to represent and
6 defend Mr. O'Neil in this case.

7 Just like in this country every American has the
8 fundamental right to have a lawyer. In a criminal case
9 another fundamental principle in our country is that every
10 defendant, every person who walks into a courtroom is
11 presumed innocent of the crimes they're charged with. We
12 all can hear the phrase presumed innocent and many times
13 take it for granted. You've been selected as the jury in
14 this case to serve in a unique role of applying this
15 fundamental American rule of law.

16 The State, the State of South Carolina who is
17 represented by Ms. Collins and Mr. Epting, they have the
18 unique and sole burden to prove beyond a reasonable doubt
19 every single element of the crimes that Mr. O'Neil has been
20 charged with. Now the State has to prove every single
21 element of the crimes; not a few of the elements, not a
22 majority of the elements, but every single element of the
23 crimes of attempted murder. They have to prove beyond a
24 reasonable doubt. And you will hear evidence, evidence
25 that will come in, witnesses will testify from the witness

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CRYSTAL CALDWELL: BY SOLICITOR EPTING

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1 chair in this case, and you will hear this evidence through
2 the lens of the reasonable doubt standard.

3 I will submit to you that at the end of this case the
4 State will not be able to prove beyond a reasonable doubt
5 that Hashin O'Neil committed these crimes. And in fact the
6 evidence will show that Mr. O'Neil did not shoot Ms.
7 Caldwell and he is in fact innocent of these crimes. Thank
8 you.

9 THE COURT: All right. The State want to call it's
10 first witness?

11 SOLICITOR EPTING: Thank you, Your Honor.

12 The State calls Crystal Caldwell to the stand.

13 MADAME CLERK: Please raise your right hand, place
14 your left hand on the Bible.

15 (WHEREUPON: CRYSTAL CALDWELL,
16 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

17 MADAME CLERK: You can have a seat right over there.

18 DIRECT EXAMINATION

19 CRYSTAL CALDWELL BY SOLICITOR EPTING:

20 Q. Good morning, Ms. Caldwell.

21 A. Good morning.

22 Q. Would you please state your full name for the record?

23 A. My name is Crystal Stevenson Caldwell.

24 Q. Ms. Caldwell, before we get to the facts of the case
25 I'd like to ask you a little bit about your background.

CRYSTAL CALDWELL: BY SOLICITOR EPTING

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1 Where are you from?

2 A. I'm originally from Chester, South Carolina.

3 Q. And when did you move up here to Rock Hill?

4 A. I moved to Rock Hill in 2000.

5 Q. Do you work?

6 A. Yes I do.

7 Q. What do you do for a living?

8 A. I'm director of Admissions.

9 Q. Okay. For -

10 A. For a medical, private medical physician.

11 Q. Okay. And do you have any children?

12 A. Yes I do I have two. I have a son that is twenty-
13 three - I mean twenty-two and a daughter that is nineteen.

14 Q. And are they from a previous marriage?

15 A. Yes.

16 Q. And could you briefly explain to the jury how you
17 know the defendant Hashin O'Neil?

18 A. I was on vacation with a book club and we were at
19 Tanger Outlet shopping and we went into the Sketchers store
20 and we met each other there and I left my phone number and
21 he later called me.

22 Q. Okay. Do you leave you phone number with every
23 salesman that you - -

24 A. No I didn't no.

25 Q. What was special about Mr. O'Neil?

CRYSTAL CALDWELL: BY SOLICITOR EPTING

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1 A. He was very nice and kind and he went out of his way
2 to kind of help me and my friends when we were in the
3 store.

4 Q. Okay. Did you all end up reconnecting after that
5 incident?

6 A. Yes he began to call me several times a day.

7 Q. Did it progress romantically from there?

8 A. Excuse me?

9 Q. Did it progress romantically from there?

10 A. Yes it did. And he stated that he wasn't happy in his
11 area and he would like to come up and see what the area was
12 like and I said that was fine and he did.

13 Q. So at some point he moves up here?

14 A. Yes he came to see if he would like the area and then
15 later I went back with him to Conway where he's from and he
16 later brought some more things then to see if he could work
17 - to see if he could find a job. He said he had took
18 vacation from his job that he was at and that was it.

19 Q. And at some point during this courtship did you all
20 become engaged?

21 A. Yes. One afternoon after coming home from work
22 Hashin was there and he - when he came he brought a bed
23 with him and I gave him the front bedroom for him to put
24 his own bed in and I moved my things to the spare bedroom
25 that was usually just empty and I had storage things in.

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1 And I said "Can you hang my mirror back on the wall?" And
2 he said, "No, what I can do is cut a hole in the ceiling
3 for you." And I said, "No you can't do that you have to
4 buy a house to do that, you can't cut this apartment up."
5 And he said "Well I could buy you a house for what I paid
6 for this ring" or something. And I said "What ring?" And
7 he gave me an engagement ring.

8 Q. Could you describe briefly this engagement ring for
9 the jury?

10 A. It was very different and unique. It was a diamond in
11 the center and it was surrounded by a cascade of other
12 diamonds.

13 Q. And before this incident occurred did you all have a
14 wedding date set?

15 A. Yes we did. We had went with February. Not sure of
16 the date but I'm sure it was gonna be February.

17 SOLICITOR EPTING: Your Honor, may I beg the Court's
18 indulgence.

19 (PAUSE.)

20 SOLICITOR EPTING: May we approach very briefly, Your
21 Honor.

22 THE COURT: Okay.

23 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF
24 THE JURY AT 10:05 A.M..)

25 SOLICITOR COLLINS: Thank you, Your Honor.

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1 SOLICITOR EPTING: Madame Court Reporter, I would ask
2 that you --

3 MADAME COURT REPORTER: Nine.

4 SOLICITOR EPTING: Thank you.

5 THE COURT: ID?

6 SOLICITOR EPTING: For ID purposes only, Your Honor.

7 (WHEREUPON: STATE'S EXHIBIT NUMBER NINE PREMARKED FOR
8 IDENTIFICATION.)

9 SOLICITOR EPTING: For ID purposes only --

10 SOLICITOR COLLINS: I ask the Court's indulgence.

11 THE COURT: I thought it was raised -

12 (PAUSE.)

13 SOLICITOR COLLINS: Thank you, Your Honor.

14 BY SOLICITOR EPTING:

15 Q. Ms. Caldwell, I want to talk to you about the events
16 that occurred on or around November 11th and November 12th
17 of 2010, 11th.. If you could walk through for the jury
18 beginning on November 11th the sequence of events that day.

19 A. Actually my morning states off I have to be at work
20 at eight o'clock. I went to work at eight o'clock, Hashin
21 had reassured me that his son would be coming up and he
22 wanted me to meet him. I had spoke to him prior on the
23 phone several days ahead of time. And I told him that I
24 would come home on my lunch break like I normally do and
25 fix him breakfast so I came home that day. I usually go to

CRYSTAL CALDWELL: BY SOLICITOR EPTING

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1 lunch at twelve o'clock, I came home a few minutes after
2 twelve, fixed him lunch, ask him had his son came and
3 during that morning I kept, you know, we talked several
4 times and sent messages to see if his son had arrived and
5 he said no and on lunch break I went home and fixed him
6 lunch and he said well he should be here in a little while.
7 I said well that's fine, I'll come back by the house when I
8 get off and I have to go to the hairdresser. He said okay.
9 Everything seemed fine and just a normal day. After I went
10 back --

11 Q. What time did you get off that day

12 A. I got off that day at five o'clock so it was usually a
13 few minutes after five by the time I leave the office and
14 make it home.

15 Q. Okay. And if you could talk a little bit slower
16 because everything you're saying the court reporter is
17 having to write down so...

18 A. Okay.

19 Q. You said you had a hair appointment?

20 A. Yes.

21 Q. Did you go home after the hair appointment?

22 A. Yes I did. I went home and Hashin introduced me to
23 his son and his son's girlfriend.

24 Q. And when you came home was there anything peculiar
25 about anyone's behavior when you went - -

1 A. Yeah Hashin was acting very strange and not normal.
2 He seemed to not understood that I had a hair appointment
3 and he wanted me just to spend time there with his son but
4 I said I've already made this appointment, I have to go get
5 my hair done. And actually the hair dresser from the house
6 is like a block. And I said I'll be right back it
7 shouldn't take that long. And he was like "well go ahead
8 then". I said, "well I'll be back." And he said "we'll go
9 to dinner." And I said "well that's fine I'll be right
10 back." And I went to the hair dresser and while at the
11 hair dresser we corresponded several times and when I got
12 back home from the hair dresser I noticed that my house
13 door was open and Hashin was sitting on the steps holding a
14 gun. And that's --

15 Q. What kind of gun was that?

16 A. I'm not sure because I don't know guns but I can pick
17 it out if I saw one.

18 Q. Okay. And so you come home he's on the steps. When
19 you say steps, do you mean the steps inside the house --

20 A. The steps inside the apartment there was a stair case
21 that's leading to the upstairs. But that stair case is
22 joined to like the front door so you can look straight out
23 and he was sitting there. And at that time my cousin
24 called me from Atlanta and I was talking to him and Hashin
25 - and I told Hashin that they were going to come down and

CRYSTAL CALDWELL: BY SOLICITOR EPTING

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1 visit us the following weekend. And he said I don't want
2 nobody coming. I said well he's nice you'll get to meet
3 him and everything.

4 THE COURT: Slow down a little bit. You are going
5 pretty fast.

6 A. Yes, sir.

7 And at that time my mother had called and I was
8 talking to my mother on the phone and Hashin was so absurd
9 and loud yelling and just acting very strange, sweating
10 ferocious, holding the gun, sitting with the door open and
11 I told him I said you scaring the young lady that's with
12 your son, you're scaring her. And I said can you please
13 close the front door?" And he said "Can't nobody tell me
14 what to do." And my mom said, "tell Calhoun to shut up."
15 And I said, "Calhoun, my mom said shut up." "Cant' nobody
16 tell me to shut up in my own house." I said, "Excuse me,
17 this is not your house, this is my house you're just
18 staying here." And he said "Can't nobody tell me to shut
19 up." That moment there all breaks loose. And from then he
20 began to argue, broke things that was not his that could be
21 broken which was mine.

22 Q. Now earlier you said Calhoun. Tell us, you said
23 something about Calhoun. Who was Calhoun?

24 A. My momma calls Hashin Calhoun. That was a nickname
25 she gave him.

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1 Q. Okay.

2 A. And he was just cursing and wanting to push me around
3 in front of his son and I said, I told his son I said, "you
4 and your girlfriend need to leave my home."

5 "My daddy said we ain't got to go nowhere."

6 Q. Without getting into anything that they say at some
7 point did someone leave the house?

8 A. Yes. I grabbed my pocketbook and said I was leaving.
9 But before I did I told Hashin that he could have his ring
10 and get his things and be gone when I get back.

11 Q. Okay. Did you in fact leave?

12 A. I couldn't hear you?

13 Q. Did you in fact leave?

14 A. Yes I did.

15 Q. And who was left at your house when you left?

16 A. Hashin, his son and his son's girlfriend.

17 Q. Okay.

18 A. And on my arrival when I came back to the house I
19 noticed all of my cabinets were ransacked, the refrigerator
20 things were thrown around, my crystal vases had been broken
21 and once inside the house Hashin comes in and he wants to
22 tussle and choke me and want to fight.

23 Q. And where was all this? You say in the house?

24 A. In the kitchen and the living room.

25 Q. The kitchen and living room, is that downstairs or

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1 upstairs?

2 A. Its downstairs. And from that he goes back outside
3 and I told him your ring is in the console of the car
4 please get your ring and go, take your things and leave.
5 And he said, "I'm not going nowhere." And he just yelling
6 and just would not go. I went upstairs changed clothes
7 went in my bedroom and I got in the bed. And he called his
8 mom on the phone. He was in the hall and he called his mom
9 and he said, "Momma wants to talk to you." And I told his
10 mom that "I was done with Hashin, I could not tolerate his
11 behavior, and the way he was acting, I wanted him just to
12 leave, he had opened up my things and stuff. And she said,
13 I told her "he's waiving a gun around acting crazy". She
14 said, "Hashin, get your things and come home, leave that
15 woman's house."

16 Q. Without going into what anyone else said, you spoke
17 with his mother. Did anything happen after you spoke with
18 his mom?

19 A. Yes. I got back in my bed and assumed Hashin was gone
20 downstairs packing his things or something. I just wanted
21 him to go. I had left my car doors unlocked so he could
22 get his ring out of the console of the car. At that time
23 all I know the room door came open and Hashin stepped in
24 the room with a gun.

25 And if I may stand up, Your Honor, and show them?

1 THE COURT: Yes, you may.

2 A. My bed was facing this way.

3 (WITNESS DEMONSTRATES.)

4 A. And there was a door, he was standing right there at
5 the door and he took the gun and he put it to his head and
6 he said "I'm gonna kill myself." And I said "Hashin,
7 please don't do that, I love you and so do God. That's
8 ugly don't do that." Then he proceeded to put the gun in
9 his mouth and said he was gonna kill himself. I said
10 "Please don't do it in here whatever you do not in my
11 home." And at that time I was still in my bed and Hashin
12 said "No you get up. You just like everybody else. You
13 get up. Nobody's gonna get any sleep around here until you
14 get up and put that ring back on your finger." And I said
15 "No I'm not, I don't care what I'm not gonna put that ring
16 back on." And at that time I - he made me get up out of
17 the bed and I was saying "Please, Hashin, don't shoot me.
18 Please, you promised. Please stop."

19 Q. When he's saying all this, where is the gun pointed?

20 A. Hashin had the gun pointed on me.

21 Q. Okay. And can you demonstrate to the jury how he had
22 the gun?

23 A. Okay. I at the foot of the bed right here and Hashin
24 was standing there with the gun and he holds the gun
25 sideways like you see the guys do on the video.

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1 Q. Okay.

2 A. And as I had some clothes there and I was trying to
3 get my clothes and my shoes the gun went off and I was
4 standing right here and he was right there.

5 (WITNESS DEMONSTRATED.)

6 Q. What did you think when the gun went off?

7 A. At first I thought it had hit the wall and then I
8 realized that I couldn't move. And I sat down like this on
9 the side of the bed.

10 (WITNESS DEMONSTRATED.)

11 A. And I said, "Hashin, you shot me." And he said -

12 Q. How did he respond when Number One you were shot until
13 he said that?

14 A. He said "Oh now I got to kill you. Oh now I got to
15 kill you" and some other things. And everything was like a
16 blur. I said "Okay, I can walk myself to the hospital,
17 I'll drive myself." And I went to get my pocketbook and he
18 was like "No I got to kill you, I got to kill you." I said
19 "Please don't kill me." He was like "Where is that ring?
20 Where is that ring?" It was more that he was focusing
21 still on the ring at that time other than me. I grabbed my
22 pocketbook and just stuck my foot in the any shoes that I
23 saw and began to go on down the stairs regardless and he
24 just kept saying "I'm gonna kill you. I gotta kill you.
25 What am I gonna do with you? I got to kill you." That's

1 what he kept saying. And then when we get downstairs
2 because he was coming behind me and I said "Oh I can't
3 drive I'm just gonna walk. Hashin, please just let me go
4 I'm just gonna walk to the hospital." And at that time he
5 said - Well I said "Hashin, drive me to the hospital and
6 please just drive me to the hospital cause I can't." He
7 said "What am I gonna do with the gun?" I said "I don't
8 know." "What are we gonna tell the people at the
9 hospital?" I said "We'll just tell them I go for a walk.
10 Everybody knows I go for a walk."

11 Q. Slow - I know that was a traumatic event and
12 unbearable but slow down for the court reporter.

13 A. And he was like "But I got to kill you. Or what am I
14 gonna do with the gun?" I said "Throw it away." And
15 across from my apartment there was a bunch of kazook vines
16 so he threw the gun away over in the kazook vine. And uh
17 he proceed to drive me to the hospital but before we get to
18 the hospital right where I could see the emergency room
19 doors in front of the heart center, he stops and he says
20 "Now give me my damn ring." I said, "Hashin, I'm dying and
21 you worried about a ring?" I said, "I told you it was in
22 the console of the car." And at that time I said "Look in
23 the console and he - no matter what he made me open that
24 console and give him the ring. I said, "There's the ring."
25 He said, "No, you put it in my hand like I put it in your

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1 hand." And that's what he done to me. And he drove up to
2 the emergency room and he did not go in and say she needed
3 help. He stopped and yelled help. And they had barely got
4 - I can remember they had barely had got me out of the car
5 --

6 THE COURT: Slow down a little bit. I know it's
7 emotional.

8 A. And he drove off in my car and left me.

9 BY SOLICITOR EPTING:

10 Q. Now I know its emotional. I imagine it was scary.

11 Did you all discuss what he would have - what you or
12 did you all discuss what to say?

13 A. Yes. I was going to say I didn't know who shot me
14 because he had told me he was going to kill me. And trust
15 me, somebody takes you to the hospital and they leave you,
16 and all you know is they took you they got to kill you now.
17 And you don't know what they had? What can you expect that
18 they're gonna kill you no matter what it takes. And every
19 day of my life that I live now, I live on edge because that
20 man said he was gonna kill me and I think that is unfair to
21 me that I have to live that way. And when I had already
22 offered him that ring several times and I told him to take
23 it and leave he would not. And I feel in my heart and my
24 God knows what type of man would have a woman that they
25 just shot, blood is everywhere, and you still make her put

CRYSTAL CALDWELL: BY SOLICITOR EPTING

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1 a ring back in your hand. Is s ring worth more than my
2 life?

3 Q. Ms. Caldwell, would you like a drink of water?

4 A. No.

5 Q. Okay. You need to calm down. I'm going to ask you
6 some questions about it.

7 Now you said the hospital. Are we talking about -
8 What hospital are we talking about?

9 A. Piedmont Medical Center.

10 Q. Were you treated there?

11 A. Yes. And then they transported me to CMC.

12 Q. Do you remember speaking with doctors at the hospital?

13 A. Yes. He told me that they were going to have to send
14 me up there for the extent of my injuries.

15 Q. And what did you tell the doctors about what happened?

16 A. I told them that Hashin - I told them, I said all I
17 know I felt my back and I had been shot. I was too afraid
18 to tell anybody that Hashin had shot me. And I can
19 remember seeing Detective Strait at the emergency room and
20 he kept asking me did I know who did it and all I could do
21 was stare at him and I couldn't say because I was so
22 afraid. But you can best believe when after he was like
23 that Saturday and Sunday he came I was at my parents house
24 and I was so afraid that Hashin would get out of jail or
25 break out or send someone to my parents house and kill

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1 everybody; that I called Detective Strait and I ask him
2 could he please meet with me because Hashin had shot me and
3 he told me he would kill me if I told anybody that he did
4 it.

5 Q. And when you spoke - You said you spoke with Detective
6 Strait over the phone?

7 A. Yes I did.

8 Q. And you told him what you just told us?

9 A. Yes I did.

10 Q. Did you write any of this down at any point?

11 A. Yes I did. When he met me he let me write it on some
12 papers.

13 SOLICITOR EPTING: I beg the Court's indulgence.

14 THE COURT: Yes, sir.

15 (PAUSE.)

16 BY SOLICITOR EPTING:

17 Q. Crystal, I'm going to show you some pictures if that's
18 all right.

19 For identification purposes I would ask that this be
20 marked.

21 (WHEREUPON: STATE'S EXHIBIT TEN, PREMARKED FOR
22 IDENTIFICATION.)

23 SOLICITOR EPTING: Let the record reflect that I am
24 handing Ms. Caldwell State's Exhibit Ten.

25 Ms. Caldwell, if you would look over that and when

CRYSTAL CALDWELL: BY SOLICITOR EPTING

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1 you're done looking at it look up at me please.

2 (WITNESS REVIEWING PHOTO.)

3 Q. Ms. Caldwell, what is that?

4 A. That's my back.

5 Q. And is there anything significant about that picture?

6 A. Yes. It shows the - the three wounds that I have from
7 Mr. O'Neil shooting me.

8 Q. And when was that picture made, Ms. Caldwell?

9 A. This morning.

10 Q. And do you know by whom?

11 A. I can't remember his name but it was a photographer.

12 Q. Did you allow any female attorneys from the defense to
13 be there --

14 A. Yes I did.

15 SOLICITOR EPTING: Your Honor --

16 Q. Is it a fair and accurate representation?

17 A. Yes it is.

18 SOLICITOR EPTING: Your Honor, at this time the State
19 would move State's Exhibit Ten into evidence.

20 MR. MUCKENFUSS: No objection.

21 THE COURT: In without objection.

22 (WHEREUPON: STATE'S EXHIBIT NUMBER TEN IDENTIFIED AND
23 MARKED, RECEIVED INTO EVIDENCE.)

24 SOLICITOR EPTING: Permission to publish, Your Honor.

25 THE COURT: Yes, sir.

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1 (STATE'S EXHIBIT NUMBER TEN PUBLISHED TO THE JURY AT
2 10:23 A.M..)

3 SOLICITOR EPTING: I beg the Court's indulgence.

4 The projector will take a little bit of time...

5 Your Honor, while we're waiting for that to boot up,
6 may I approach again, Your Honor?

7 THE COURT: Yes.

8 SOLICITOR EPTING: May I approach, Your Honor?

9 THE COURT: Yes.

10 SOLICITOR EPTING: I would ask the court reporter to
11 make these exhibits.

12 (WHEREUPON: STATE'S EXHIBITS ELEVEN THROUGH SEVENTEEN
13 PREMARKED FOR IDENTIFICATION.)

14 SOLICITOR EPTING: Let the record reflect I'm handing
15 Ms. Caldwell State's Exhibits Eleven through Seventeen.

16 Q. Ms. Caldwell, would you please review those.

17 (WITNESS REVIEWING EXHIBITS/PHOTOS.)

18 Q. Do you recognize State's Eleven through Seventeen?

19 A. Yes I do.

20 Q. What are they?

21 A. They are my pajama bottoms and my panties that I had
22 on.

23 Q. Do they fairly and accurately - are they fair and
24 accurate representations?

25 A. Yes.

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1 SOLICITOR EPTING: Your Honor, at this time the State
2 would move State's Exhibits Eleven through Seventeen into
3 evidence.

4 MR. MUCKENFUSS: No objection.

5 THE COURT: In without objection.

6 (WHEREUPON: STATE'S EXHIBITS ELEVEN THROUGH SEVENTEEN
7 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

8 SOLICITOR EPTING: Again I would ask the Court
9 permission to publish?

10 THE COURT: Yes, sir.

11 BY SOLICITOR EPTING:

12 Q. Ms. Caldwell, before I grab those from you, I would
13 like to publish State's Exhibit Ten.

14 (STATE'S EXHIBIT TEN PUBLISHED TO THE JURY.)

15 Q. Can you explain to the jury what we're looking at?
16 The resolution is not great.

17 Permission to step down?

18 Ms. Caldwell.

19 THE COURT: Just make sure she is positioned where she
20 is not blocking the jury.

21 A. I can see from here actually.

22 Q. Ms. Caldwell, if you would, walk the jury through
23 this.

24 A. This right here is where the bullet entered. It
25 traveled under my tattoo here and came out right here on

CRYSTAL CALDWELL: BY SOLICITOR EPTING

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1 the left. And down below right here is a metal fragment
2 where the fragments began to come out of my body.

3 Q. Thank you, Ms. Caldwell.

4 SOLICITOR EPTING: And for the record I am placing
5 State's Exhibit Eleven on the projector.

6 (STATE'S EXHIBIT ELEVEN PUBLISHED TO THE JURY.)

7 Q. Ms. Caldwell, it's very blurry, but can you tell what
8 that is?

9 A. My pajama bottom.

10 Q. Are these the pajama bottoms you were wearing on the
11 night you were shot?

12 A. Yes.

13 Q. State's Twelve.

14 A. Another pair -- That's the same pair of my pajama
15 bottoms.

16 Those are my panties that has blood at the top of
17 them.

18 Q. And for the record that's State's Sixteen.

19 Now I noticed that seems to be cut.

20 A. They cut them off at the hospital.

21 SOLICITOR EPTING: I beg the Court's indulgence.

22 (PAUSE.)

23 Q. Were you wearing any....

24 I beg the Court's indulgence.

25 (PAUSE.)

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1 SOLICITOR EPTING: May I approach, Your Honor.

2 (WHEREUPON: STATE'S EXHIBIT NUMBER EIGHTEEN PREMARKED
3 FOR IDENTIFICATION.)

4 Q. Ms. Caldwell, I'm going to show you - I won't hand it
5 to you - but I will show you what's been marked as
6 State's Eighteen.

7 Can you identify for the jury what this item is?

8 A. Yes. It is the tank top that I was sleeping in.

9 Q. Okay. And I noticed this too has been cut.

10 Is it in substantially the same condition as it was
11 when you last saw it?

12 THE COURT: You need to keep your voice up. You're
13 mumbling a little bit.

14 SOLICITOR EPTING: I apologize, Your Honor.

15 Q. Is it the same or substantially the same condition as
16 it was when you personally last saw it?

17 A. Yes.

18 SOLICITOR EPTING: At this time we would move State's
19 Eighteen into evidence.)

20 MR. MUCKENFUSS: No objection.

21 THE COURT: In without objection.

22 (WHEREUPON: STATE'S EXHIBIT EIGHTEEN IDENTIFIED AND
23 MARKED, RECEIVED INTO EVIDENCE.)

24 SOLICITOR EPTING: And, Your Honor, permission to
25 publish.

CRYSTAL CALDWELL: BY SOLICITOR EPTING

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1 THE COURT: Okay.

2 SOLICITOR EPTING: And I beg the Court's indulgence.

3 (STATE'S EXHIBIT EIGHTEEN PUBLISHED TO THE JURY AT
4 10:31 A.M..)

5 Q. Ms. Caldwell, earlier you testified that he drove you
6 in your own vehicle.

7 A. Yes.

8 Q. Is that correct?

9 A. Yes he did.

10 SOLICITOR EPTING: May I approach, Your Honor.

11 THE COURT: Yes.

12 SOLICITOR EPTING: I would ask that these be marked,
13 Your Honor, for identification.

14 (WHEREUPON: STATE'S EXHIBITS NUMBERS NINETEEN THROUGH
15 TWENTY-TWO PREMARKED FOR IDENTIFICATION.)

16 Q. Ms. Caldwell, I am handing you what has been marked as
17 State's Exhibits Nineteen, Twenty, Twenty-one and Twenty-
18 two. If you would please carefully look over these and
19 look up when you're done.

20 (WITNESS REVIEWING EXHIBITS.)

21 Q. Ms. Caldwell, do you recognize those exhibits?

22 A. Yes I do.

23 Q. What are they?

24 A. They are of my vehicle.

25 Q. Are they fair and accurate depictions?

CRYSTAL CALDWELL: BY SOLICITOR EPTING

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1 A. Yes.

2 SOLICITOR EPTING: And, Your Honor, I would ask that
3 State's Exhibits Nineteen through Twenty-two be entered
4 into evidence.

5 MR. MUCKENFUSS: No objection.

6 THE COURT: In without objection.

7 (WHEREUPON: STATE'S EXHIBITS NINETEEN THROUGH TWENTY-
8 TWO IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

9 SOLICITOR EPTING: Request to publish, Your Honor.

10 THE COURT: You may.

11 (STATE'S EXHIBITS NINETEEN THROUGH TWENTY-TWO
12 PUBLISHED TO THE JURY AT 10:33 A.M..)

13 Q. Ms. Caldwell, do you recognize that?

14 A. Yes. That is my phone.

15 Q. Do you recognize that?

16 A. That is the back of the Volvo.

17 Q. Do you recognize the location it's parked at?

18 A. Yes it's parked in front of the apartment.

19 Q. And do you recognize that license tag?

20 A. Yes.

21 Q. How do you recognize - What do you recognize that to
22 be?

23 A. My license plate that was issued to me on the vehicle.

24 SOLICITOR EPTING: And, Your Honor, I apologize. I
25 published State's Nineteen and Twenty respectfully.

CRYSTAL CALDWELL: BY SOLICITOR EPTING

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1 For the record I'm publishing State's Exhibit Twenty-
2 one.

3 Q. Could you please explain to the jury?

4 A. Yes. That is the inside of my Volvo and inside of all
5 of my car. In the console I always keep a testament and
6 it's in the floor from where I had to get the ring out for
7 Mr. O'Neil.

8 MR. MUCKENFUSS: Your Honor, objection. May we
9 approach?

10 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF
11 THE JURY.)

12 BY SOLICITOR EPTING:

13 Q. Ms. Caldwell, finally as to the car. Do you recognize
14 State's Twenty-two?

15 A. Yes. That is the back seat of the car where I was
16 laying to go to the hospital.

17 Q. Okay. Where were you lying? Specifically do you
18 remember where your head faced, where your body faced, or
19 your feet faced?

20 A. Not to my knowledge but I can tell it's somewhere
21 where the blood stain is. My back was where that blood
22 stain is on the back seat.

23 Q. Thank you.

24 SOLICITOR EPTING: I beg the Court's indulgence. I
25 apologize.

CRYSTAL CALDWELL: BY SOLICITOR EPTING

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1 (PAUSE.)

2 Q. And moving back a little bit. Do you recall in your
3 mind what clothes the defendant was wearing during this
4 incident?

5 A. Yes. He had some blue jeans on and a polo shirt.

6 SOLICITOR EPTING: May I approach, Your Honor,
7 briefly?

8 A. And a polo shirt to my knowledge was brown/tan because
9 he had the polo boots on to match.

10 Q. Thank you.

11 (WHEREUPON: STATE'S EXHIBIT NUMBERS TWENTY-THREE,
12 TWENTY-FOUR AND TWENTY-FIVE PREMARKED FOR IDENTIFICATION.)

13 Q. Ms. Caldwell, I'm handing you State's Twenty-three,
14 Twenty-four and Twenty-five. Would you look at that and
15 please tell me...

16 (WITNESS REVIEWING EXHIBITS.)

17 Q. Ms. Caldwell, was that what the defendant was wearing?

18 A. Not when I - -

19 Q. When he assaulted you?

20 A. No it is not.

21 Q. Okay. Thank you.

22 A. And it is not what he was wearing when he took me to
23 the emergency room.

24 Q. Thank you, Ms. Caldwell.

25 Do you recognize these as the clothes that he owns?

CRYSTAL CALDWELL: BY SOLICITOR EPTING

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1 A. Yes he did. They were on the closet in the bedroom
2 which his bed and all his things were in one room and my
3 things were in the other room.

4 SOLICITOR EPTING: Your Honor, I have a large number
5 of pictures to be marked and I ask permission to approach.
6 Or this might be a good time -

7 THE COURT: I think this would be a good time to take
8 a break. We'll take a break at this time and we'll send
9 for you. This is about a ten to twelve minute break.

10 (JURY EXITS COURTROOM AT 10:39 A.M..)

11 THE COURT: We'll be at ease for ten or so minutes.

12 SOLICITOR EPTING: Thank you, Your Honor.

13 (COURT IN RECESS AT 10:45 A.M..)

14 (WHEREUPON: STATE'S EXHIBITS TWENTY-SIX THROUGH
15 SIXTY-NINE PREMARKED FOR IDENTIFICATION.)

16 (COURT BACK IN SESSION AT 10:56 A.M..)

17 THE COURT: Thank you. Take your seats.
18 Bring in the jury.

19 SOLICITOR COLLINS: Your Honor, if we could, if we can
20 have the witness take the stand. We didn't mean to - -

21 THE COURT: I'm sorry, I didn't see she wasn't up
22 there.

23 SOLICITOR EPTING: And, Your Honor, just as a up keep
24 matter, due to potential objections raised by the defense
25 we're going to introduce those pictures through a later

CRYSTAL CALDWELL: BY SOLICITOR EPTING

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1 witness. We just have a couple of followup questions, Your
2 Honor.

3 SOLICITOR COLLINS: And one moment please, Your Honor.

4 (WITNESS RETURNS TO WITNESS STAND.)

5 SOLICITOR EPTING: And we do want to caution the
6 witness about not mentioning text that were made to you ---

7 A. Right.

8 SOLICITOR EPTING: --- by the defendant since that was
9 kept out earlier. No mention about text or earlier
10 communications.

11 A. Okay.

12 THE COURT: Bring in the jury.

13 (JURY REENTERS COURTROOM AT 10:58 A.M..)

14 THE COURT: You may proceed.

15 SOLICITOR EPTING: Thank you, Your Honor.

16 DIRECT EXAMINATION - CON'T

17 CRYSTAL CALDWELL BY SOLICITOR EPTING:

18 Q. Ms. Caldwell, I just have a couple of more questions
19 for you.

20 Are you right handed or left handed?

21 A. I'm right handed.

22 Q. To your knowledge is the defendant Mr. O'Neil right
23 handed or left handed?

24 A. Both.

25 Q. And I think earlier you testified that you were shot.

CRYSTAL CALDWELL: BY SOLICITOR EPTING

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1 How many times were you shot?

2 A. Once. I have an entrance wound and a exit wound and
3 a scrape metal wound.

4 Q. And you talked about a gun that Mr.. O'Neil had when
5 you came home. Whose gun was that?

6 A. His sister Solidine's gun.

7 Q. And do you know what type of gun that was?

8 A. No I don't know because I don't know guns but if I saw
9 a picture I could show it to you.

10 Q. Okay.

11 SOLICITOR EPTING: I beg the Court's indulgence.

12 (PAUSE.)

13 Q. Now you mentioned that the gun was thrown in kudzu?

14 A. Yes, sir.

15 Q. Is there a car wash there where that kudzu is?

16 A. Yes it is.

17 Q. And finally I want to ask you some questions about the
18 bedspreads. You testified earlier I believe that there
19 were two different bedrooms upstairs?

20 A. Yes, sir.

21 Q. What was the color of the bedspread that you and the
22 defendant shared?

23 A. In the room that Hashin slept in was a green and beige
24 and white comforter on that bed.

25 Q. Okay. And what was the color of the bedspread in the

CRYSTAL CALDWELL: SOLICITOR EPTING
BY MR. MUCKENFUSS

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1 room that you were shot in?

2 A. Gold, white and a burgundy red.

3 Q. And which bedspread, which room with the bedspread did
4 the defendant keep his things in?

5 A. The one with the green, white and beige. The one that
6 - the front bedroom facing the street, the car wash.

7 Q. Okay.

8 SOLICITOR EPTING: I have nothing further for you at
9 this time. Please answer any questions Mr. Muckenfuss may
10 have for you.

11 MR. MUCKENFUSS: Thank you, Your Honor.

12 CROSS EXAMINATION

13 CRYSTAL CALDWELL BY MR. MUCKENFUSS:

14 Q. Ms. Caldwell, you testified on direct that when you
15 went to the hairdresser, I believe you stated it was
16 November 11th; is that correct?

17 A. Yes.

18 Q. And what time of the day was this when you went to the
19 hairdresser?

20 A. A few minutes after five. It had to be around 5:30
21 because I had left work and came home and met Hashin's son.

22 Q. And you testified that when you came home that you
23 found Hashin sitting on the steps in your house; is that
24 correct?

25 A. The first time when I came home from work Hashin was

CRYSTAL CALDWELL: BY MR. MUCKENFUSS

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1 standing out - standing up in the middle of the door with
2 the door open.

3 Q. Okay. And so --

4 A. And when I came back from the hair dresser that's
5 where the statement comes from that he was sitting on the
6 stair case looking out the door with a gun.

7 Q. And I believe you testified that you saw Hashin with a
8 gun at that time.

9 A. Yes Hashin always carries a gun.

10 Q. Do you recall after this incident on November 16th
11 that you gave a statement to the police? A written
12 statement to the police; do you recall that?

13 A. I did give Detective Strait a written statement.

14 Q. Okay. And you gave him this written statement four
15 days after this incident. Correct?

16 A. Yes it would have been on the fourth day.

17 Q. And just to give this some context November 12th that
18 was on a Friday?

19 A. Yes.

20 Q. And you gave this written statement on a Tuesday?

21 A. Absolutely.

22 Q. Okay. And in this written statement you never say
23 anything to the police about Mr. O'Neil having a gun or you
24 showing up at the house and he has a gun sitting on the
25 steps did you?

CRYSTAL CALDWELL: BY MR. MUCKENFUSS

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1 A. I can't remember.

2 Q. Well I'm looking at Page 3 of your statement that you
3 gave, Ms. Caldwell.

4 A. I can recall saying to Detective Strait when he met me
5 and taking him to the spot that Hashin threw the gun so I
6 did mention to them that he had a gun.

7 Q. But you didn't say anything to them about him having a
8 gun when you came back from the hairdresser earlier that
9 day; isn't that true?

10 A. I don't recall that I did.

11 Q. Well the first time that you made that statement is
12 today in this courtroom. You didn't make that statement to
13 the police in the written statement that you gave four days
14 after this incident. Isn't that true?

15 A. That may be true but the fact still stands Hashin has
16 always carried a gun. That gun used to lay at the head of
17 the bed when we was sleeping. I said, "Hashin, watch that
18 gun, don't shoot me." And he always had a gun.

19 Q. And in fact you've had a gun before too haven't you?

20 A. I've never had a gun registered to me in my life.

21 Q. I didn't ask you if you had a gun registered to you.

22 A. No I never had a gun ever.

23 Q. You've kept bullets in your house.

24 A. No never.

25 Q. Well let's go back to November 11th.

CRYSTAL CALDWELL: BY MR. MUCKENFUSS

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1 Ms. Caldwell, you testified that you and Mr. O'Neil
2 had gotten engaged before that. Correct?

3 A. Yes.

4 Q. And when had you gotten engaged? What - -

5 A. I don't recall the exact date. It was the day that
6 Hashin was putting up his bed. And as I stated earlier he
7 wanted - I ask him about putting a mirror up and he stated
8 that he could put the mirror in the ceiling and that's when
9 he gave me a ring.

10 Q. And in fact when you got engaged you wanted to have
11 the wedding as soon as possible.

12 A. No that's not true. That wasn't stated. That was
13 more of Hashin. And I wanted a long drawn out wedding and
14 Hashin didn't. He said he wasn't going in a church because
15 Hashin is Muslin and I have a Baptist.

16 Q. Now, Ms. Caldwell, going back to the evening of
17 November 11th when you came home from work. At the time
18 you were at work I think you testified what time did you
19 get off work?

20 A. I got off work at five o'clock and it's usually a few
21 minutes after five.

22 Q. Okay. And did you go home directly --

23 A. I went directly home.

24 Q. Ms. Caldwell, just for the court reporter let me
25 finish my question before you answer so we don't talk over

CRYSTAL CALDWELL: BY MR. MUCKENFUSS

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1 each other.

2 Did you go directly home from work?

3 A. Yes.

4 Q. And how long does it take you to get from work to your
5 house?

6 A. From Ebenezer to Herlong I say six to eight minutes
7 depending on the traffic.

8 Q. And --

9 A. But you also - You also have to consider I have to -
10 I don't log off the computers until five. From there I
11 lock the doors to the office and go out to get in my car so
12 that's like five minutes after by the time I get to the
13 car.

14 Q. Now when you were at work I think you testified that
15 Hashin and his son were at your house?

16 A. Yes.

17 Q. And did they get to your house while you were at
18 work?

19 A. Yes. And Hashin called me once his son had got there
20 because he wanted directions to Zaxby's. He said his son

21 ---

22 MR. MUCKENFUSS: Your Honor, ---

23 A. --- was hungry.

24 MR. MUCKENFUSS: --- may we approach?

25 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF

CRYSTAL CALDWELL: BY MR. MUCKENFUSS

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1 THE JURY AT 11:02 A.M..)

2 THE COURT: Just try to answer the question as asked,
3 okay?

4 A. Yes.

5 BY MR. MUCKENFUSS:

6 Q. Now, Ms. Caldwell, Hashin's son, what's his name?

7 A. To my knowledge Hashin. I'm not sure.

8 Q. Is it Junior?

9 A. I'm not sure.

10 Q. All right. I think you testified that Hashin's son's
11 girlfriend was also at your house?

12 A. Yes.

13 Q. And they got in your house with a key?

14 A. Hashin let them in because I wasn't there.

15 Q. Okay. And when you got home from work how long were
16 you at home before you left again?

17 A. I may have been there ten to fifteen minutes before
18 leaving.

19 Q. And you left your house to go to the hairdresser
20 appointment?

21 A. Yes I did.

22 Q. Now when you got back home did Hashin make a comment
23 to you that your hair looked pretty?

24 A. I ask Hashin what was my hair like, did he like it,
25 and he said it looks nice yes he did.

CRYSTAL CALDWELL: BY MR. MUCKENFUSS

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1 Q. Now were you wearing the engagement ring at this
2 point?

3 A. Yes I was.

4 Q. All right. And at some point in the evening when you
5 came back from the hairdresser, did you break off the
6 engagement with Hashin?

7 A. Yes I did when Hashin began to curse me and act very
8 absurd within my own home. And Hashin knows and I've told
9 him several times before no one will ever disrespect me in
10 my own home and push me around ---

11 Q. Ms. Caldwell, --

12 A. --- just to entertain --

13 THE COURT: Again, just - He's gonna ask a question.

14 A. Okay.

15 THE COURT: Just answer the question. You don't need
16 to go on and on and on about it:

17 BY MR. MUCKENFUSS:

18 Q. So, Ms. Caldwell, up to that point the day was fine,
19 Hashin had said your hair was pretty and you're saying at
20 that point you started arguing with him when you came back
21 from the hairdresser?

22 A. I didn't start - -

23 Q. Is that correct?

24 A. No its not correct. I did not start arguing with
25 Hashin. Hashin started with me.

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1 Q. But up to that point, prior to that point you were
2 engaged to Hashin.

3 A. When I got - before I went ---

4 Q. Ms. Caldwell, ---

5 A. --- got to the hairdresser --

6 Q. --- please answer my question.

7 THE COURT: Let's go back.

8 Let him finish the question.

9 A. Okay.

10 THE COURT: And then just answer the question.

11 A. Okay.

12 BY MR. MUCKENFUSS:

13 Q. Up to that point you had been engaged to Mr. O'Neil.

14 Correct?

15 A. Yes.

16 Q. All right. And you had the engagement ring?

17 A. Yes.

18 Q. And then when you came back from the hairdresser, at
19 that point you told Mr. O'Neil that you wanted him to
20 leave.

21 A. Before I left out of the house to go to the
22 hairdresser Hashin was already acting very strange and I
23 said crazy. I said "Hashin, why are you acting crazy? What
24 are you on? Some things wrong with you. What have you
25 been into? You been drinking?" That's what I ask him.

CRYSTAL CALDWELL: BY MR. MUCKENFUSS

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1 And he said "Naw, naw." Just like that.

2 THE COURT: You answered the question.

3 Now ask the next one.

4 BY MR. MUCKENFUSS:

5 Q. Now, Ms. Caldwell, at that point you told Hashin to
6 leave the house. Correct?

7 A. No I didn't because I was on my way to the hairdresser
8 and we had discussed we would go to dinner. So I went to
9 get my hair done and when I came back from getting my hair
10 done then that's when I ask him to leave. After our
11 conversation - -

12 Q. And that's - Ms. Caldwell, that's the point I'm
13 talking about when you're back from the hairdresser. You
14 told Mr. - -

15 A. That's not what you said.

16 Q. I'll clarify. You ask Mr. O'Neil to leave the house
17 when you came back from the hairdresser. Correct?

18 A. I ask him to leave the house after he began
19 disrespecting me, cursing me and wanting to push me around.

20 Q. Ms. Caldwell, I'm just asking you at that point you
21 ask him to leave the house; is that correct?

22 A. But you have to let me make the statement of why I ask
23 him --

24 THE COURT: No, no. He didn't ask you why. He ask
25 you when.

CRYSTAL CALDWELL: BY MR. MUCKENFUSS

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1 A. I ask him --

2 THE COURT: So you --

3 Excuse me just a minute.

4 When he ask for a specific what happened, he said when
5 did you do something.

6 A. I ask him to leave after I came back from the
7 hairdresser.

8 MR. MUCKENFUSS: Thank you.

9 THE COURT: That's a good way to do it.

10 MR. MUCKENFUSS: Thank you.

11 Q. And at that point after you ask him to leave, you in
12 fact left the house after that didn't you?

13 A. Absolutely.

14 Q. And you left the house and you went to a Kmart; is
15 that correct?

16 A. Yes I did.

17 Q. And you left Mr. - You left Hashin and his son and his
18 girl - and his son's girlfriend in the house when you left.
19 Correct?

20 A. Yes.

21 Q. And in the statement that you gave the police you
22 stated that you went to the Kmart to meet with a friend.

23 A. No I went to the Kmart and after leaving the Kmart
24 then I met with a friend. It said I went to Kmart and met
25 with a friend. It don't say I met the friend at Kmart.

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1 Q. In your statement, Ms. Caldwell, you state "So I left
2 and called my mother and told her I ask him to leave and I
3 went to Kmart and met with a friend."

4 A. And met with a friend. That doesn't mean I met the
5 friend at Kmart. I met the friend at the Luv's Gas
6 Station.

7 Q. All right. And why did you go to the Kmart?

8 A. I went to the Kmart just walking around while talking
9 to my mother hoping that would give Hashin and his family
10 time enough to leave my house.

11 Q. Where - Does your mother live close by?

12 A. No my mother lives in Chester.

13 Q. How far away is that?

14 A. About twenty-three miles.

15 Q. Okay. So it takes what, roughly half an hour to get
16 to your mother's house?

17 A. Yes.

18 Q. You didn't go to your mother's house?

19 A. No I didn't.

20 Q. And what was your friends name that you met?

21 A. William Caldwell.

22 Q. This was a man?

23 A. Yes.

24 Q. And is he any relation to you?

25 A. No he's not related to me. As in blood relative no

CRYSTAL CALDWELL: BY MR. MUCKENFUSS

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1 he's not.

2 Q. Just the same last name but ---

3 A. Yes.

4 Q. --- not related? When you met with Mr. Caldwell how
5 long did you meet with him?

6 A. Maybe a good ten to fifteen minutes.

7 Q. And after you met with Mr. Caldwell, you went back to
8 your house.

9 A. Yes I went back to my house.

10 Q. Now in the statement that you gave the police you
11 stated that you were scared ---

12 A. Yes I was.

13 Q. --- at the time - Let me finish my question.

14 You stated that you were scared when you went to the
15 Kmart; is that correct?

16 A. In my statement I said that I was scared because he
17 was acting crazy so during my whole walk around Kmart I had
18 my mother on the phone talking to her and I said "I don't
19 know what he's capable of because he has his gun and he's
20 waiving it around and stuff." And when I met my friend I
21 told him "If I call you please call the police because I'm
22 unassure of what he is gonna do." I said "because I've
23 already ask him to leave."

24 Q. Okay. And you were so scared that you went back to
25 your apartment and you knew that Hashin could still be

CRYSTAL CALDWELL: BY MR. MUCKENFUSS

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1 there; isn't that true?

2 A. I went back to make sure that my apartment was okay.

3 And I was assured that he was gonna be gone from the way

4 that he was acting.

5 Q. But you didn't know if he was there or not.

6 A. Yes. But when I first got back to the home he was not

7 there at all. He later came back into my home starting

8 with me.

9 Q. And you didn't go to your mother's house; you didn't
10 go to your friends house, you went back to the apartment to
11 confront Mr. O'Neil didn't you?

12 A. I didn't go back to confront Mr. O'Neil about anything
13 because I assumed Mr. O'Neil was gone because I had ask him
14 to leave my home.

15 Q. And in fact when you went back to your house Mr.
16 O'Neil's son was there.

17 A. No Mr. O'Neil's son and daughter in law or son and his
18 son's girlfriend they had already left and his son had
19 already left and told me when I was pulling out of the yard
20 "I'm gonna get my daddy's things, my daddy gonna stay
21 outside, I'm gonna go back in and get his things."

22 Q. Now, Ms. Caldwell, in the statement that you gave the
23 police on November 16th you stated that you came straight
24 home, when I got home his son said "My dad said you give me
25 his ring." So when you got home his son - -

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1 A. That was about --

2 SOLICITOR EPTING: Your Honor, I believe if he keeps
3 referring to the statement and specific since she should be
4 allowed to have a copy of it.

5 THE COURT: Well if she needs to refresh her memory we
6 can do that but otherwise he --

7 MR. MUCKENFUSS: Your Honor, I'm entitled to cross
8 without her looking at the statement.

9 THE COURT: Yes.

10 SOLICITOR EPTING: Thank you, Your Honor.

11 THE COURT: I deny it. Without your objection it's
12 over ruled.

13 MR. MUCKENFUSS: Thank you, Your Honor.

14 Q. In your statement, Ms. Caldwell, you state that you
15 went straight home and you relayed a conversation you had
16 with Hashin's son when you got home.

17 A. I did have it but it was by telephone.

18 Q. So are you saying that when you got home - -

19 A. Hashin's son called me.

20 THE COURT: Wait. Wait, he's got to ask a question.

21 A. Okay.

22 Q. Okay. Ms. Caldwell, you saying you got home and
23 Hashin's son called you. Is that what you're saying?

24 A. Yes. He had been kept continuously calling my phone
25 while I was out the whole time. His son did.

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1 Q. Okay. And in your statement you said "And in fact" -
2 strike that. You - When you had this conversation with
3 Hashin's son, he actually offered to take the ring to Mr.
4 O'Neil didn't he?

5 A. His son said "Give me all my daddy's stuff." I said
6 "You tell your daddy the ring is in the console of my car
7 he can get it out. I'm gonna go in my house and leave the
8 car doors open, he can go get it out of the console of the
9 car." And I had already told Hashin that that ring was in
10 the console of the car because I also spoke with him and
11 told him.

12 Q. And in fact you told Hashin's son that no you didn't
13 want to give the ring to his son to give to Mr. O'Neil but
14 that you were gonna give it to him yourself; isn't that
15 true?

16 A. I told him his dad can get the ring out of my car.
17 The ring was there and I told his son before I left the
18 house I did not - You did not give me the ring I'm gonna
19 put it back in Hashin's hand. He can get the ring or he
20 can get it out of my car because Hashin said he couldn't
21 trust his son. I heard him say that prior to his son
22 coming to visit.

23 Q. In your statement when you relate the conversation
24 with Hashin's son you said "I came straight home when I got
25 home his son said My dad said you give me his ring. I said

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1 I will give it to your dad myself."

2 A. That's right.

3 Q. That's what - Let me ask the question. That's what
4 you told the police on November 16th; isn't that true?

5 A. Until I see the paper I'm not sure of what I put on
6 there but I'm telling you what I know. I told Hashin's son
7 by telephone I'm not giving him the ring. Hashin can come
8 and get the ring or he can come and get it out of the
9 console of my car. I told them I wanted them out of my
10 house and that I wanted Hashin to leave. And I offered
11 Hashin that ring several times. We also had a conversation
12 with Hashin's mother and I told her Hashin can have the
13 ring it's in the console of the car. Hashin didn't believe
14 the ring was there and didn't want to go get it out of the
15 car.

16 Q. Ms. Caldwell, but that's not what you told the police.
17 You told the police that you had the opportunity, you had a
18 conversation with Hashin's son --

19 A. But Hashin --

20 Q. But let me finish my question. You had a conversation
21 with Hashin's son where he offered to take the ring to his
22 father and you refused and you told the police that you
23 told his son "I will give the ring to Hashin myself."

24 A. Yes.

25 Q. Is that correct?

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1 A. Yes. It was verbally over the phone. Hashin's son
2 was not at my house when he called and I did not want him
3 coming back at all. And Hashin had keys --

4 THE COURT: You've answered the question.

5 Go ahead ask the next question.

6 A. Okay.

7 Q. Now at this point after the conversation with Hashin's
8 son, you left the apartment again; isn't that true?

9 A. No its not.

10 Q. In your statement that you gave the police after you
11 related the conversation with the son you state "I rode
12 around the block."

13 A. That was where I rode around the block on my way to
14 Walmart. Not Walmart, Kmart.

15 Q. Well, Ms. Caldwell, you just testified that you had
16 the conversation with Hashin's son - -

17 A. That was verbally - -

18 Q. Let me finish my question.

19 THE COURT: You have to let him - Let's try to go
20 back.

21 You've got to let him finish the question.

22 A. Okay.

23 THE COURT: Then you've just got to answer the
24 question.

25 A. Okay.

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1 BY MR. MUCKENFUSS:

2 Q. You testified in your statement that when you got
3 back to your house you had a phone call with Hashin's son
4 at your house. And then in your statement you say you rode
5 around the block after that.

6 A. Okay.

7 Q. Isn't that true?

8 A. That is true because I had a verbal phone conversation
9 with Hashin's son and while having that conversation I
10 circled around the apartment to make sure no one was
11 standing outside or hid in any areas because I was about to
12 get out of that car and I knew Hashin had a gun and he was
13 acting crazy. I circled around the apartment complex and
14 if you have pictures of the apartment you can see there is
15 a circle where you.- -

16 THE COURT: All right, you've answered the question.

17 Go on and ask the next question.

18 BY MR. MUCKENFUSS:

19 Q. Ms. Caldwell, you testified that you kept telling
20 Hashin's son, Hashin, whoever, that if they wanted
21 the ring they could get it out of the console of your car.

22 A. Yes and it was in the console of the car.

23 Q. And you were in fact in your car at the this time?

24 A. Yes but I told his son I was on my way coming home
25 and he could get the ring out of the car. When Hashin -

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1 when I came home Hashin later showed up. I said "the ring
2 is in the console of the car, go out to the car and get it
3 out of the car."

4 Q. Now when you're riding around the block, again, at
5 that point in time you didn't go to your mother's house;
6 isn't that true?

7 A. No I didn't.

8 Q. You didn't call your friend back at that point did
9 you?

10 A. No I didn't.

11 Q. Ms. Caldwell, at that point you had no intention of
12 giving the ring back to Mr. O'Neil wasn't that true?

13 A. No Hashin could have that ring. I didn't want it ---

14 Q. And --

15 A. --- because I was the one that took it off and told
16 him he could have it and please go. He was the one that
17 refused to take the ring.

18 THE COURT: You've answered the question.

19 A. Okay.

20 THE COURT: He's gonna ask another.

21 BY MR. MUCKENFUSS:

22 Q. Now during that night did you see Hashin's son? And
23 just to give this perspective, when you have the
24 conversation with Hashin's son at your house, what time of
25 the day is this?

CRYSTAL CALDWELL: BY MR. MUCKENFUSS

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1 A. The conversation was by telephone. I was in route on
2 my way back home. It had to be after nine o'clock, after -
3 yeah it had to be after nine, over the telephone.

4 Q. And when did you get back to the house?

5 A. I few minutes after that. I'm not sure of time.

6 Q. And after you get back to the house then you decide
7 to ride around the block?

8 A. No I'm riding around the block: Hashin's son called
9 me in route back to the house and when he called saying
10 that he wanted to pick up a ring that made me circle around
11 the area and watch my perimeters.

12 Q. Ms. Caldwell, I'm just trying to figure out, I'm a
13 little confused. In your statement you say you came
14 straight home and when you got home -

15 A. Straight home? What you mean -

16 Q. Let me finish my question.

17 THE COURT: Whoa, let him ask the question, please.

18 BY MR. MUCKENFUSS:

19 Q. Ms. Caldwell, when you say when you got home you had
20 the conversation with Hashin's son. Isn't it true that you
21 got home and had this conversation with Hashin's son?

22 A. No it's not.

23 Q. So is your statement incorrect to the police?

24 A. You are taking my statement and you are running with
25 it because you won't let me give a correct answer. On my

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1 way home --

2 I'm sure most of you had a conversation when
3 somebody's called you when you're on your way home. There
4 is a entrance way I can go home and there is an exit; it
5 all runs into a U. So on my way going back home I go the
6 long way so I can circle around the apartment and during
7 that time that's when I'm holding the conversation with his
8 son.

9 MR. MUCKENFUSS: One moment, Your Honor.

10 (PAUSE AT 11:20 A.M..)

11 BY MR. MUCKENFUSS:

12 Q. Ms. Caldwell, isn't it true that a couple of weeks
13 before this incident you had been pulled over by the
14 police?

15 A. No I have not.

16 Q. And you were pulled over by the police and you had a
17 gun in your car?

18 A. No, sir.

19 Q. Ms. Caldwell, I'm going to go back to State's Exhibit
20 Ten that you were shown at one point that the jury is here.
21 I believe you testified that you were standing at the foot
22 of your bed?

23 A. Yes.

24 Q. Okay. Were you facing your bed?

25 A. No I wasn't.

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1 Q. Okay.

2 A. The foot of the bed is like where this blue pillow is
3 the only thing. That's like the foot of the bed where the
4 blue is and I was standing just like that.

5 Q. Okay. But you testified that you were bending down to
6 pick up some jeans that were under the bed.

7 A. No I said that I had jeans. I was like this with a
8 pair of jeans. Here.

9 Q. Okay. All right. And you testified that - I believe
10 that you stated that you were shot on the right side.

11 A. Yes.

12 Q. All right. And you believe that the upper - on the
13 left side the upper mark there was where the bullet exited.

14 A. Yes it is.

15 Q. All right. And is it true that the wound that you
16 pointed out on the right side is lower than the one on the
17 left side?

18 A. The wound on the bottom is scrape metal.

19 Q. I'm talking about on the right side of your back where
20 you said the bullet entered.

21 A. That is where the bullet entered.

22 Q. All right. That's lower than the wound that you
23 pointed out where the bullet exited on the left side; is
24 that true?

25 A. Yes.

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1 12th?

2 A. Yes.

3 Q. What time of the morning is it when you're at the
4 hospital?

5 A. 2:30; 3:00. I'm not sure the exact time.

6 Q. And in fact Hashin was arrested that morning.

7 Correct?

8 A. Yes.

9 Q. Right. And you didn't provide another statement to
10 the police until four days after that, after Mr. O'Neil was
11 already in jail; isn't that true?

12 A. Yes and I called him before I even gave my statement.
13 I ask Detective Strait five or six times are you sure he's
14 in jail. And he said - -

15 THE COURT: All right, you've answered the question.

16 A. Okay.

17 Q. In fact, Ms. Caldwell, what happened that night was
18 that you pulled the gun on Mr. O'Neil; isn't that correct?

19 A. No.

20 Q. And you struggled with the gun?

21 A. No.

22 Q. And the gun went off?

23 A. No I never touched a gun.

24 Q. And I fact the wounds that you just demonstrated, a
25 lower wound on your right side, with a wound upward to the

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1 left is consistent with a struggle with a gun; isn't that
2 true?

3 A. No. I love myself it's no way that I would ever do
4 any danger to myself.

5 Q. And you had no intention of giving the ring back to
6 Mr. O'Neil?

7 A. I didn't want the ring from Mr. O'Neil. Had no idea
8 Mr. O'Neil was going to give me a ring. I offered that
9 ring back to Mr. O'Neil on more than one occasion. I
10 didn't want the ring, didn't care about the ring. I also
11 --

12 THE COURT: All right, you've answered the question.
13 BY MR. MUCKENFUSS:

14 Q. In fact when you had the opportunity to give it to his
15 son and be done with it you refused and wanted to confront
16 Mr. O'Neil didn't you?

17 A. I never had the opportunity to hand it to Mr. O'Neil's
18 son because we verbally conversated over the telephone. I
19 never saw his son any more after I left that apartment so
20 you can't say that I had an opportunity to give his son the
21 ring. Now if Hashin - -

22 THE COURT: All right, you've answered the question.
23 BY MR. MUCKENFUSS:

24 Q. Ms. Caldwell, in fact Mr. - Hashin came back to the
25 hospital didn't he?

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1 A. Yes after I called him and my mother spoke with him
2 and begged and pleaded with him if he didn't do anything
3 come on back to the hospital you been missing for a long
4 time.

5 Q. Well in fact what you told him and the police were in
6 the room when you had this conversation with Mr. O'Neil you
7 simply told them that they were going to transfer you to
8 another hospital - -

9 A. Exactly.

10 Q. Let me finish my question. And that you needed him to
11 come and help you go to the hospital; isn't that true?

12 A. Absolutely because our plan was to lure him back to
13 the hospital.

14 Q. Right. And in fact he came back. Correct?

15 A. Yeah he came back but the plan was to get him back.
16 And I'm sure the detective knew that I was holding
17 something back. I was fearing my life because - -

18 MR. MUCKENFUSS: Your Honor, I object to what the - -

19 THE COURT: You've answered the question.

20 Q. Mr. O'Neil didn't flee, he didn't leave. He came back
21 to the hospital didn't he?

22 A. Hours later. After apparently he packed all his
23 stuff. Kicked in the door to the house.

24 MR. MUCKENFUSS: Your Honor.

25 THE COURT: All right, you've answered the question.

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1 MR. MUCKENFUSS: No further questions, Your Honor.

2 THE COURT: All right.

3 Redirect?

4 SOLICITOR EPTING: Just a few, Your Honor.

5 REDIRECT EXAMINATION

6 CRYSTAL CALDWELL BY SOLICITOR EPTING:

7 Q. You stated that at some point Mr. O'Neil had keys
8 to your car?

9 A. Yes.

10 Q. Did he ever have a key to your house?

11 A. Yes he did.

12 Q. And did he give you the key back that night?

13 A. He gave me the keys back. That would be on the 11th
14 he had gave the keys back.

15 Q. Okay. So he gave you his house key back?

16 A. Yes he did.

17 Q. Did he give you back the car key?

18 A. No. He had the car key up until the day Detective
19 Strait gave me the coat for his mother to pick up and I
20 took my key off his key ring at that time.

21 SOLICITOR EPTING: No further questions, Your Honor.

22 THE COURT: Recross?

23 MR. MUCKENFUSS: Nothing further, Your Honor.

24 THE COURT: You can step down. Thank you for your
25 time.

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1 (WITNESS LEAVING WITNESS STAND.)

2 THE COURT: Call your next witness.

3 SOLICITOR COLLINS: Your Honor, the State's next
4 witness is Doctor Mike Sandararaman - a little hard to say
5 - from Piedmont Medical Center.

6 Hello, Doctor. If you would please come forward to
7 the Bible and be sworn.

8 MADAME CLERK: Please raise your right hand and place
9 your left hand on the Bible.

10 (WHEREUPON: DOCTOR MICHAEL
11 SUNDARARAMAN, BEING FIRST CALLED AND DULY SWORN, TESTIFIED
12 AS FOLLOWS:)

13 MADAME CLERK: Thank you. Please have a seat right
14 over there.

15 DIRECT EXAMINATION

16 DOCTOR MICHAEL SUNDARARAMAN BY SOLICITOR COLLINS:

17 Q. Good morning.

18 A. Good morning.

19 Q. Would you please tell the jury your name?

20 A. Doctor Michael Sundararaman.

21 Q. And for the court reporter can you please spell your
22 last name?

23 A. S as in Sam, u-n-d-a-r-a-r-a-m-a-n.

24 Q. What is your occupation?

25 A. I'm an emergency medicine physician.

DOCTOR MICHAEL SUNDARARAMAN: BY SOLICITOR COLLINS

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1 Q. And where are you employed at this time?

2 A. Piedmont Medical Center in Rock Hill, South Carolina.

3 Q. Can you tell the jury about your educational
4 background which allows you to be an emergency medical
5 physician?

6 A. So after you graduate college you do four years in
7 medical school. And after that you do something called a
8 residency which is advanced training in a certain
9 speciality. For emergency medicine that's another three
10 years after that. And then following that I've been a
11 emergency trained physician out of residency for I guess
12 about six years now.

13 Q. All right. Now where did you - Where did you go to
14 college?

15 A. Bradley University in Illinois.

16 Q. Where did you go to medical school?

17 A. University of Sydney in Australia.

18 Q. Where did you do your initial residency?

19 A. That was in Detroit, Michigan.

20 Q. And where did you do the three year residency for
21 emergency medicine?

22 A. That was in Detroit, Michigan.

23 Q. And when did you complete that last residency?

24 A. That was June of 2006.

25 Q. And are you licensed to practice medicine in South

1 Carolina?

2 A. I am.

3 Q. Do you hold any special certifications in that field
4 or is emergency medicine just covered by the general
5 license to practice medicine?

6 A. That is correct.

7 Q. Have you ever been qualified to testify in a court of
8 law as an expert witness in the field of emergency
9 medicine?

10 A. I have.

11 Q. And what courthouse was that in?

12 A. That was this courthouse.

13 Q. And I believe I may have ask this, but since you
14 completed your emergency medical residency, have you worked
15 all that time at Piedmont Medical Center or has there been
16 somewhere else?

17 A. Let's see, I worked at Northeast Medical Center in
18 Concord, North Carolina. And I also occasionally work at
19 Stanley Regional Medical Center in Albemarle, North
20 Carolina.

21 Q. And for all those hospitals is that - are your duties
22 as to emergency medical doctoring?

23 A. Yes.

24 SOLICITOR COLLINS: Your Honor, at this time I would
25 offer Doctor Michael Sundararaman as an expert in the field

DOCTOR MICHAEL SUNDARARAMAN: BY SOLICITOR COLLINS

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1 of emergency medicine.

2 THE COURT: Any voir dire?

3 MS. TIMMERMAN: No objection.

4 THE COURT: All right, I find he is qualified.

5 SOLICITOR COLLINS: Thank you.

6 Q. Doctor, pursuant to your employment with Piedmont
7 Medical Center, do you recall - were you at work on the
8 early morning hours of November 12th, 2010?

9 A. I was.

10 Q. And on that date did you have an occasion to treat a
11 patient named Crystal Stevenson Caldwell?

12 A. I did.

13 Q. Have you had an opportunity to review the Piedmont
14 Medical Center records prior to your testimony today?

15 A. Yes.

16 Q. Do you recall at what time she was admitted to the
17 hospital?

18 A. May I refer to the - -

19 Q. If it would refresh your memory?

20 A. That would be great.

21 SOLICITOR COLLINS: One moment please, Your Honor.

22 I would ask that this be marked as State's Exhibit for
23 identification.

24 Seventy, 7-0?

25 MADAME COURT REPORTER: Yes, ma'am.

1 ID only?

2 SOLICITOR COLLINS: For ID only at this time.

3 (WHEREUPON: STATE'S EXHIBIT NUMBER SEVENTY, PREMARKED
4 FOR IDENTIFICATION.)

5 SOLICITOR COLLINS: And for the record, that's a
6 fifteen page document, I've shown defense counsel.

7 A. Thank you.

8 Q. And in looking at that can you tell me, do you
9 recognize that document before you or that set of papers
10 before you?

11 A. I do.

12 Q. And does that appear to be a copy of the Piedmont
13 Medical Center records regarding Crystal Stevenson
14 Caldwell?

15 A. I does.

16 Q. Referring to that now to refresh your memory, can you
17 tell the jury at what time Ms. Caldwell was admitted to
18 Piedmont Medical Center?

19 A. That would be 3:46 a.m..

20 Q. And when I say admitted, I might be using a term
21 ambiguously, does it say when she first appeared for
22 treatment as opposed to maybe being admitted to a room?

23 A. She first appeared at 3:46 a.m..

24 Q. All right. And do you recall at what time you saw
25 her?

DOCTOR MICHAEL SUNDARARAMAN: BY SOLICITOR COLLINS

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1 A. It would have been within five minutes after that.
2 Probably within two minutes because with any gunshot wound
3 which we consider serious we bring them back immediately
4 and the nurse notifies the doctor and we sort of rush in
5 there and make sure that everything's stable.

6 Q. And was that the case here?

7 A. That was the case.

8 Q. So using your words did you consider this serious?

9 A. Absolutely.

10 Q. And what medical history was presented to you by Ms.
11 Caldwell which you relied upon in making your diagnosis or
12 treatment decision?

13 A. Well she - She said that she was shot and she was
14 hyperventilating and very anxious at the time which
15 is pretty, you know, par for the course. And - And so we
16 did a full head to toe examination. And ask her how many
17 shots she heard.

18 Q. And how many shots did she indicate she had heard or
19 had seen?

20 A. Only one.

21 Q. And you used the word heard. Is that what she
22 indicated? Heard? Is that - Were those words that she
23 heard or she received one?

24 A. She said - I ask her how many gunshots did you hear
25 and she said one.

1 Q. All right. Now you said you did a full head to toe
2 examination; is that right?

3 A. I did.

4 Q. What did you discover upon your examination of Ms.
5 Caldwell's body at that time?

6 A. So she appeared to have two wounds in her lower back.
7 One had the appearance of a entrance wound and one an exit
8 wound. And these were in her lower back/flank region. The
9 exit wound being slightly larger than the entrance wound.

10 Q. And referring to how it's worded, can you tell us
11 exactly from the medical records, is that pursuant to your
12 dictation how it's worded of what you observed to her body
13 what's in the record?

14 A. Yes.

15 Q. Okay. And can you tell us exactly what did you
16 memorialized at that time you saw her?

17 A. I'm sorry, could you repeat the question?

18 Q. Well I know you're saying in terms of - I'm probably
19 not being very clear. Do you make a decision as to what
20 appears to be an exit wound versus an entrance wound or is
21 that something you don't decide?

22 A. That is something that we have strong evidence to show
23 but its not something that we can absolutely prove. But
24 just knowing, you know, something about ballistics and
25 gunshot wounds from my training particularly in the trade

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1 which is not the most pleasant of areas all the time. We
2 do see a lot of gunshot wounds particularly there and -

3 MS. TIMMERMANS: Objection, Your Honor.

4 The witness is not an expert in ballistics. He's here
5 to testify on his medical record.

6 A. Correct.

7 THE COURT: I overrule your objection. He's
8 testifying about his analysis of this lady's situation and
9 her medical condition. I know we're getting into a little
10 bit of ballistics rather -

11 MS. TIMMERMANS: Yes, Your Honor.

12 BY SOLICITOR COLLINS:

13 Q. Were you able to tell or derive an opinion to a
14 reasonable degree of medical certainty as to which of the
15 wounds was an entrance wound versus which of the wounds was
16 an exit wound?

17 A. Yes.

18 Q. And what - What did you determine, Doc?

19 A. In general the smaller of the wounds tends to be the
20 entrance wound and the larger the exit wound.

21 Q. Now going back to referring where I ask you exactly
22 how you worded when you did the head to toe examination you
23 dictate something in terms of musco - musculoskeletal
24 examination; is that right?

25 A. Yes.

1 Q. And can you tell us in terms of her gunshot wound
2 what you dictated at that time you observed in the way you
3 worded it at that time?

4 A. So what I noted was gunshot wound times two noted to
5 left lower lateral back/flank just above the posterior
6 iliac spines. The right side has the appearance of an exit
7 wound.

8 Q. All right. So - I'm just a little confused in terms
9 of gunshot wounds times two. Did it appear to you that
10 there were two wounds or just explain that to us?

11 A. So there were two wounds. So there was two areas
12 where her - her outer skin was broken with a small amount
13 of bleeding and basically a puncture wound.

14 Q. All right. So when you say gunshot wounds times two
15 you're not stating shot twice, you're saying that there
16 were two puncture areas that you observed; is that right?

17 A. Correct.

18 Q. And that was based upon your examination at that time;
19 is that right?

20 A. That is correct.

21 Q. Did you order any x-rays or other types of screening
22 to ascertain if there was still a bullet in the body?

23 A. We did. We ordered a what is known as acute abdominal
24 series which is three x-rays. One of the chest and two of
25 the abdomen, one being lying flat and one being sitting up.

DOCTOR MICHAEL SUNDARARAMAN: BY SOLICITOR COLLINS

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1 Q. And did you receive the report from the radiologist
2 as to what was observed? Did you receive the report or did
3 you view the screen yourself?

4 A. I viewed the screen myself.

5 Q. All right. And based upon your viewing of the screen
6 at that time, did you observe any foreign bodies within the
7 soft tissue of the victim's body?

8 A. I did not.

9 Q. Now talk to me a little bit about x ray films. You
10 said you ordered an x ray film. Are there other further
11 definitive films or test that can be ordered?

12 A. Yes. A CAT Scan is far more definitive and that would
13 be something that if the patient is relatively stable that
14 we can order and that can show us more definitively if
15 there is any bullet fragments. And sometimes also the path
16 of the bullet.

17 Q. And was that ordered in this case by yourself?

18 A. This was not ordered because I had spoken to our
19 surgeon and he recommended immediate transfer of the
20 patient to CMC Main, the trauma center in downtown
21 Charlotte.

22 Q. And was the patient immediately transferred to CMC
23 Main in downtown Charlotte?

24 A. She was.

25 Q. All right. Now in terms of the decision made to

1 transfer her, the gunshot wound, or the entrance and exit
2 wound you described for us where it was located in her
3 body. Do you have an expert opinion to a reasonable degree
4 of medical certainty as to whether or not the wound that
5 you observed whether or not her injuries were consistent
6 with the medical history she had presented about having
7 been shot?

8 A. I do have that.

9 Q. And what is that opinion?

10 A. That opinion was that it was very consistent with the
11 gunshot wound at least times one.

12 Q. Okay. And do you have an expert opinion to a
13 reasonable degree of medical certainty as to whether or not
14 her injuries that you saw on that early morning had a
15 substantial risk of death?

16 A. I do have an opinion.

17 Q. And what is your opinion?

18 A. My opinion is yes those could be life threatening.
19 And any time you have any gunshot wound to the head, neck,
20 or torso, those all can be very serious and life
21 threatening.

22 Q. All right. Now you used the word torso there and I
23 know when we were talking earlier it sounded like in
24 generic terms we're talking about hips or flanks; is that
25 right?

DOCTOR MICHAEL SUNDARARAMAN: BY SOLICITOR COLLINS

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1 A. Yeah. Probably just above ---

2 (WITNESS DEMONSTRATED.)

3 A. --- this area.

4 Q. Okay.

5 A. Yeah.

6 Q. So just now in expressing your opinion you say any
7 time we have to head, neck, or torso, would the area that
8 she was shot that you observed her wounds to fall within
9 medically what you just stated in terms of torso?

10 A. Yes that would be considered her torso.

11 Q. All right. Doctor Sandararaman, do you have an
12 opinion to a reasonable degree of medical certainty as to
13 whether or not the wounds that you observed to the victim
14 are likely to produce death? And if I can just back up, I
15 know I just ask you in terms of those substantial risk of
16 death and you've answered them. But if you'll just bear
17 with me. Do you have an opinion to a reasonable degree of
18 medical certainty as to whether or not the injuries that
19 you observed to the victim was by - inflicted by means
20 likely to produce death or great bodily injury?

21 A. So --

22 Q. Death or a great bodily injury?

23 A. I'm sorry, I thought I had to sneeze for a moment
24 there. I would say yes they could produce death or great
25 bodily injury. In this case I feel like the patient was

1 going to survive those wounds. However they certainly
2 could have produced death or great bodily harm.

3 SOLICITOR COLLINS: One moment, Your Honor.

4 (PAUSE.)

5 Q. And just to tie it back to what you've stated, is a
6 gunshot wound to a torso an injury which is likely to
7 produce death or a great bodily injury?

8 A. Yes.

9 Q. Doctor, I'm going to show you first and then present
10 on the over head an exhibit that has - I've got it marked
11 for ID. I thought it was in evidence.

12 State's Exhibit Ten?

13 MADAME COURT REPORTER: ID.

14 SOLICITOR COLLINS: It's ID?

15 MADAME COURT REPORTER: Yes, ma'am, it is.

16 Go back. Go back.

17 SOLICITOR COLLINS: I know it's been published. I
18 would move at this time.

19 MADAME COURT REPORTER: It is.

20 SOLICITOR COLLINS: It is in evidence?

21 MADAME COURT REPORTER: It is.

22 SOLICITOR COLLINS: Okay. If you'll look at that.

23 Thank you.

24 Q. Doctor, first I'm going to show you what's been
25 entered into evidence as State's Exhibit Number Ten.

DOCTOR MICHAEL SUNDARARAMAN: BY SOLICITOR COLLINS

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1 And I ask you, do you happen to recognize that?

2 A. I do not. Off the top of my head it was a little w
3 while ago.

4 Q. I understand. And you've seen probably a few patients
5 since then I imagine.

6 A. Yes.

7 Q. Okay. Observing that picture which has been entered
8 into evidence as a photograph of the scars on Ms. Caldwell,
9 can you tell us in terms of which one to you appeared to be
10 an entrance wound and which one appeared to be an exit
11 wound?

12 A. I would say the left being the smaller of the wounds
13 would be the entrance wound and the right the exit.

14 Q. Now do you see below the left - I think this may be
15 put up now. Can you step down with me for a moment if you
16 don't mind?

17 A. Yeah.

18 (WITNESS LEFT WITNESS STAND.)

19 Q. Do you see below - I'm going to hand you this pointer
20 and ask you, so in just looking at the scars as you
21 observed them in this picture, at this time which do you
22 believe would have been the entrance and which the exit
23 wound?

24 A. Well so there's three scars here. Here and here and
25 over here. And so - So not remembering exactly where one

DOCTOR MICHAEL SUNDARARAMAN: BY SOLICITOR COLLINS

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1 of these could be an entrance. This one or this one. Or
2 one can be an entrance and exit and - or one of these can
3 be an entrance and exit all the way over here.

4 Q. Hard to tell?

5 A. It can be yes.

6 Q. And in fact can scars heal in such a way that they
7 look larger as known as keloid scars I believe?

8 A. That is actually very possible yes.

9 Q. Okay. So the appearance of the scars themselves would
10 not necessarily indicate which was entrance or exit?

11 A. Correct.

12 Q. Thank you. Please have a seat.

13 (WITNESS RETURNED TO WITNESS STAND.)

14 SOLICITOR COLLINS: I ask the Court's indulgence.

15 (PAUSE.)

16 SOLICITOR COLLINS: Doctor Sundararaman, I stated your
17 name correctly. Thank you for answering our questions.
18 Please answer any questions the defense counsel may have.

19 DOCTOR SUNDARARAMAN: Thank you.

20 THE COURT: We need to take a - We'll take a break
21 before we do cross.

22 All right, I'll let you go to the jury room while we
23 take a break.

24 (JURY EXITS COURTROOM AT 12:04 P.M..)

25 THE COURT: We'll be at ease for about ten minutes..

DOCTOR MICHAEL SUNDARARAMAN: BY MS. TIMMERMANS

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1 (COURT IN RECESS AT 12:05 P.M..)

2 (COURT BACK IN SESSION AT 12:17 P.M..)

3 THE COURT: Thank you. Take your seats.

4 Bring in the jury.

5 (JURY REENTERS COURTROOM AT 12:18 P.M..)

6 CROSS EXAMINATION

7 DOCTOR MICHAEL SUNDARARAMAN BY MS. TIMMERMANS:

8 Q. Good morning, Doctor. How are you?

9 A. Great.

10 Q. Now you testified earlier I believe that you went to
11 medical school in Australia; is that correct?

12 A. That's correct.

13 Q. That sounds pretty interesting. Good time?

14 A. Yes.

15 Q. Now you testified earlier that you're the attending
16 physician at Piedmont Medical Center?

17 A. Correct.

18 Q. I'm going to go ahead and refer to Piedmont Medical
19 Center as PMC. And you testified that you examined Ms
20 Caldwell in the emergency room on November 12th, 2010?

21 A. I did.

22 MS. TIMMERMANS: Your Honor, may I approach the
23 witness?

24 A. Thank you.

25 Q. Doctor, I just handed you a medical report that the

1 State provided to us in this case, and it is a report - It
2 looks like there is an information sheet at the beginning
3 then there's a medical report, it's about fifteen pages I
4 believe and then at the end there are just a couple of
5 pages about the transfer; is that correct?

6 A. Yes.

7 Q. And this is the report that you - This is your report
8 as an attending physician for Ms. Caldwell; is that
9 correct?

10 A. Correct..

11 Q. And that's from that morning November 12th?

12 A. Correct.

13 Q. And you supervised the treatment of Ms. Caldwell on
14 this date. Correct?

15 A. Yes.

16 MS. TIMMERMANS: Your Honor, I would like to admit
17 this medical report as Defendant's Exhibit Four.

18 SOLICITOR COLLINS: No objection.

19 THE COURT: In without objection.

20 (WHEREUPON: DEFENDANT'S EXHIBIT NUMBER FOUR
21 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

22 Q. And you testified that you reviewed the medical report
23 prior to today's testimony. Correct?

24 A. Yes.

25 Q. And did you meet with the prosecutor before testifying

DOCTOR MICHAEL SUNDARARAMAN: BY MS. TIMMERMAN

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1 today?

2 A. Yes.

3 Q. And when was that?

4 A. Last Friday at about 8:45 p.m..

5 Q. Okay. Let's talk a little bit about the report.

6 The medical report says that the patient arrived at
7 around 3:45 a m that morning; is that correct?

8 A. Yes.

9 Q. And she arrived by private auto. Correct?

10 A. That's what this says yes.

11 Q. It says she was accompanied to the hospital by her
12 spouse or significant other; is that correct?

13 A. That's what this says.

14 Q. And Ms. Caldwell told you that she had been shot?

15 A. That's correct.

16 Q. At that time. And was that immediately upon seeing
17 her that she told you that?

18 A. Yes.

19 Q. Okay. And you said that she was taken straight back
20 upon presenting with a gunshot wound. Correct?

21 A. Yes.

22 Q. She told you she was shot right before coming into the
23 hospital?

24 A. She didn't say - She said that I believe so. I can't
25 remember exactly how many minutes she said she was shot

1 before arriving to the hospital.

2 Q. Okay. And isn't it true that Ms. Caldwell told you
3 she was outside getting exercise when she was shot?

4 A. I do not remember those details.

5 Q. Okay. That's fine. Now if you wouldn't mind turning
6 to Page 4 of 15 of the actual medical report. It's 4 of 15
7 at the top. Do you see that?

8 A. Yeah.

9 Q.. Then at the bottom full paragraph do you see the part
10 that says HPI and then there is a colon under history of
11 present illness?

12 A. Yes.

13 Q. What does HPI stand for?

14 A. History of presenting illness.

15 Q. Okay. Would you mind reading those few sentences for
16 me?

17 A. Sure. "Forty year old female presents with a chief
18 complaint of gunshot wound to her right and left lower back
19 which occurred just prior to arrival. She states she was
20 outside getting exercise when she heard a single gunshot
21 and felt pain in her lower back and in her right thigh.
22 Pain severe. Patient as to her injuries status unknown."

23 Q. Okay. So let's just break this part a little bit. So
24 the patient told you she was outside getting exercise?

25 A. That's what this says yes.

DOCTOR MICHAEL SUNDARARAMAN: BY MS. TIMMERMANS

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1 Q. Okay. And that she heard a single gunshot wound?

2 A. Yes. No. She heard a single gunshot.

3 Q. Okay. She heard a single gunshot?

4 A. Yes.

5 Q. And you testified earlier that she never told you that
6 she saw herself being shot. She just heard the shot?

7 A. That's what this - it would indicate.

8 Q. Okay. And she denied having any other injuries at
9 that time?

10 A. Apart from what's stated here correct.

11 Q. Okay. Was Mr. O'Neil in the room when she told you
12 that?

13 A. The patient was by herself in the room at that time.

14 Q. Okay. And she told you that she didn't know who the
15 shooter was?

16 A. That's not stated here so I can't comment on that.

17 Q. If she had told you who the shooter was would you have
18 put that in your report?

19 A. In general I would. I would put shooter known to
20 patient. Although I would not put the exact person's name.
21 I let the police deal with those issues.

22 Q. Right. But it's relevant to your medical treatment if
23 she knew or did not know the shooter?

24 A. Technically no. Whatever injury she has this is what
25 we're gonna deal with. But often times I will put

1 assailant known to victim.

2 Q. Okay. And you mentioned that Mr. O'Neil was not in
3 the room; she was by herself at this time?

4 A. Correct.

5 Q. And she denied any other injuries. Correct?

6 A. Correct.

7 Q. She didn't say that she had been choked?

8 A. Not to me.

9 Q. She didn't say that things had been thrown at her and
10 hit her?

11 A. She did not tell me that.

12 Q. All right. Now just a couple of quick questions about
13 this report before we continue. Next to the entries under
14 History of Present Illness I see that it has little
15 brackets and then it says "MAS" and then there is a date
16 and time. Do you see that?

17 A. Yeah.

18 Q. And MAS are those your initials?

19 A. Yes.

20 Q. So those are entries that you made yourself?

21 A. Yes.

22 Q. Okay. And then on a later page - Do you mind turning
23 to Page 12 of 15 of that report? You see some notations,
24 and it looks like a BB7. Do you see that? A person making
25 those entries.

DOCTOR MICHAEL SUNDARARAMAN: BY MS. TIMMERMAN:

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1 A. Yes.

2 Q. Do you know who that individual is?

3 A. I believe that is Brent Boheler who is one of our
4 nurses.

5 Q. Okay. So it was a nurse that you were supervising
6 that evening during the treatment of Ms. Caldwell?

7 A. Yes I supervise I guess everybody in the nursing
8 department.

9 Q. Okay. But while you were treating Ms. Caldwell Mr. -
10 I'm sorry, you said his name was?

11 A. Brent Boheler.

12 Q. Okay. And he was helping you with the treatment of
13 Ms. Caldwell that evening?

14 A. Yes.

15 Q. Okay. I'm sorry to flip around here but back on Page
16 1 before we get back to Page 12.

17 A. Uh-huh.

18 Q. Under Mental Status you listed that the patient was
19 calm; is that correct?

20 A. No. It says "Brent Boheler at 3:47 said patient is
21 awake, alert and cooperative with an affect that is calm
22 and appropriate. The patient is ---- and speaking
23 coherent."

24 Q. Okay. So I apologize. So it was the nurse that made
25 that entry there?

1 A. Right.

2 Q. And noted that she was calm, awake and alert?

3 A. That's what he noted.

4 Q. Okay. And turning to Page 3 of 15. Ms. Caldwell
5 noted that she lives with her spouse or significant other;
6 is that correct?

7 A. That is what Brent Boheler noted.

8 Q. Okay. Do you have any reason to doubt the accuracy of
9 this statement in this report?

10 A. I have no reason.

11 Q. Okay. All right and turning back to Page 12 where we
12 were a moment ago. Sorry again for all the flipping.
13 About half way down there is - there is an entry 11:12:10
14 and at 3:50 a.m. abuse and neglect screening. Do you see
15 that?

16 A. Yes.

17 Q. Okay. And you said that she entered the hospital
18 about 3:45 am. 3:46 we decided?

19 A. 3:46 yes.

20 Q. Okay. And so four minutes later the nurse was doing
21 an abuse and neglect screening; is that correct?

22 A. Yes.

23 Q. So she was in a physical state where the nurse felt -
24 felt that it was appropriate to question her at that time.
25 Correct?

DOCTOR MICHAEL SUNDARARAMAN: BY MS. TIMMERMAN

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1 SOLICITOR COLLINS: Objection as to the feelings of
2 the witness. This is not before the court.

3 MS. TIMMERMAN: Okay. I'll rephrase.

4 Q. So you said that Ms. Caldwell presented at 3:46 a.m.
5 with serious injuries. Correct?

6 A. Correct.

7 Q. And at 3:50 she was at least able to provide the
8 answers to these questions according to this report?

9 A. That's what the report says.

10 Q. Okay. And let's go through the next few lines. It
11 says "abuse and neglect screening entered." And does that
12 mean that the nurse was just going through this routine
13 screening at this time?

14 A. Yes.

15 Q. Okay. And then the next line says "domestic violence
16 screening" do you see that?

17 A. Yes.

18 Q. There's little parenthesis and a little negative sign.
19 What does that mean?

20 A. That means that the nurse documented that there is no
21 domestic violence if he ask that question.

22 Q. Okay. So the nurse will ask the patient the question
23 and note the response there in the report?

24 A. In general yes.

25 Q. Is that the procedure?

1 A. That is.

2 Q. Okay. And then the next line, "Sexual Abuse
3 Screening" there is a negative sign. Correct?

4 A. Correct.

5 Q. And the line after that "Emotional Abuse Screening"
6 there is a negative sign. Correct?

7 A. Correct.

8 Q. So she reported in this medical report no history of
9 domestic violence, emotional abuse or other abuse?

10 A. That is what Brent Boheler documented.

11 Q. Okay. And again, you noted that you were supervising
12 the treatment of Ms. Caldwell that evening or that morning
13 and this nurse was working for you in that treatment?

14 A. Correct. Although I would - I probably would not have
15 been in the room when he was going through that ---

16 Q. Right.

17 A. --- procedure.

18 Q. All right, and Ms. Caldwell reported to you that she
19 didn't use alcohol that evening; is that correct?

20 A. She did not report that to me.

21 Q. Okay.

22 A. She reported that to the nurse apparently.

23 Q. Okay. So let's turn to Page 3. You're correct, it
24 was Mr. Boheler again. It says "patient does not use
25 alcohol." Do you see that under past initial history?

DOCTOR MICHAEL SUNDARARAMAN: BY MS. TIMMERMAN

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1 A. Yes.

2 Q. And that was at 3:48 am.

3 A. Yes.

4 Q. All right. And then you ordered a tox screen
5 performed on her. Correct?

6 A. Let's see.

7 Q. I believe it's on Page 8.

8 A. All right. Yes.

9 Q. And isn't it true that she did in fact have alcohol in
10 her system that evening?

11 A. Well those are really low values. Zero to ten
12 essentially are negative by our standard so if they say
13 drew any alcohol here if anyone had been drinking it might
14 show up at six.

15 Q. Okay.

16 A. That's just the way that assay works. Its never
17 actually zero.

18 Q. Okay. But there was alcohol in her blood stream?

19 A. I wouldn't necessarily say that based on this because
20 it's so low that - that I can't even say if she even had
21 alcohol in the last twenty-four hours because they often
22 will read zero to ten even if someone has had no alcohol.

23 Q. Okay. So the reading of 10.2 of having alcohol in
24 your system you're saying it's the same as a reading of
25 zero?

1 A. It can be.

2 Q. Okay. And at the time that you performed this
3 toxicology test and Ms. Caldwell reported that she had not
4 used alcohol, do you know if Mr. O'Neil was in the room at
5 that time?

6 A. When I was in the room he was not in the room.

7 Q. Okay. And the police arrived around 4:00 am to begin
8 questioning Ms. Caldwell; is that correct?

9 A. If that's documented there then that would be correct.
10 I don't actually recall what time they arrived.

11 Q. Okay. But you do remember seeing them in the room
12 with her?

13 A. It was - It was a little while ago so I don't recall
14 one way or the other.

15 Q. Okay. So you - You're testifying that you just don't
16 recall seeing the police at all with Ms. Caldwell that
17 evening? You don't know whether they were or they weren't;
18 you just don't recall?

19 A. That's correct.

20 Q. Okay. Now I'd like to get back to the picture. Let
21 me know if you can't see from here.

22 (PAUSE.)

23 Q. All right. Now you testified earlier that based on
24 your experience that you believed Ms. Caldwell was shot on
25 the right. The entrance wound was the right side and the

DOCTOR MICHAEL SUNDARARAMAN: BY MS. TIMMERMANS

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1 bullet exited on the left side; is that correct?

2 A. Well - -

3 Q. Or did I reverse that for you?

4 A. Would you like me to read my physical examination?

5 Q. Sure that would be great.

6 A. Okay. So it says "Gunshot wounds times two noted to
7 the left lower back/flank just above posterior exspines.
8 The right side has appearance of an exit wound."

9 Q. Okay. So I flipped that didn't I. So you testified
10 earlier that she was shot on the left and it exited the
11 right according to your opinion?

12 A. I'm just telling you what I'm reading as far as a
13 physical examination.

14 Q. Okay. Would you mind reading the part again where you
15 said which side was the exit wound?

16 A. Sure. "The right side has appearance of an exit
17 wound."

18 Q. Okay.

19 THE COURT: Ms. TIMMERMANS, you're standing between
20 the jury and the witness.

21 MS. TIMMERMANS: Oh, I'm sorry.

22 Q. And you testified earlier that you did not order a CAT
23 Scan. Correct?

24 A. That is correct.

25 Q. Okay. And you testified that you believed a gunshot

1 wound to the torso could be life threatening. Correct?

2 A. Correct.

3 Q. But you didn't order any extra testing other than the
4 radiology that we discussed to examine the path of the
5 bullet; is that correct?

6 THE COURT: Can we turn the lights back on?

7 (COURTROOM LIGHTS TURNED BACK UP.)

8 A. Yes. Would you like to know why?

9 Q. Sure.

10 A. So in general if the patient is going to stay at our
11 facility then one of two things is going to happen. If the
12 patient is stable enough that she doesn't have a very low
13 blood pressure and a very fast heart rate, then she can go
14 to CAT Scan and see if there's bullet fragments, if there
15 is liver injuries or spleen or intestinal injuries, all
16 those things. If the patient is unstable as in low blood
17 pressure or fast heart rate, just looking extremely in bad
18 condition, then she may need to go directly to the
19 operating room. I spoke to our surgeon and he wanted the
20 patient to be transferred immediately to CMC Main. So in
21 that case any test that we - any further test that we do
22 here including CAT Scan at PMC would delay care at the
23 other facility so that if she actually needed to go to the
24 operating room or if she became unstable that would another
25 hour or two before that she was transported.

DOCTOR MICHAEL SUNDARARAMAN: BY MS. TIMMERMANS

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1 Q. Okay. So you transferred her to CMC around 6:00 am I
2 believe you testified?

3 A. I don't think I noted what time it was but if you have
4 a time there that would be...

5 I think I spoke to Doctor Schroder at 4:46. It looks
6 like I performed a bedside ultra sound to look for internal
7 bleeding at 4:47 and it looks like I discussed with Doctor
8 Bollard from CMC Main, it looks like the transfer at 4:55.

9 Q. Okay. And on Page 15 of 15 under Release Information.

10 A. Uh-huh.

11 Q. Will you read the time there that she was released
12 from the hospital?

13 A. Patient released at 11/12/2010 at 6:06.

14 MS. TIMMERMANS: I beg the Court's indulgence.

15 (PAUSE.)

16 Q. Doctor, isn't it true that you didn't determine the
17 type of gun that shot Ms. Caldwell?

18 A. That is correct.

19 Q. Isn't it true that you didn't analyze the distance
20 from which she was shot?

21 A. That is absolutely correct.

22 Q. Isn't it true that you didn't analyze the bullets
23 projectory?

24 A. That's correct

25 Q. Isn't it true that you didn't test her hands for gun

1 power residue?

2 A. Correct.

3 Q. Isn't it true that you didn't test Mr. O'Neil's hands
4 for gun power residue?

5 A. Correct.

6 Q. Isn't it true that you didn't examine Ms. Caldwell's
7 clothing for gun power residue?

8 A. Correct.

9 Q. Isn't it true that you didn't recover a bullet from
10 Ms. Caldwell's wound?

11 A. Correct.

12 Q. Okay. Isn't it true that the gunshot wound could
13 either be the result of a struggle?

14 A. I cannot determine that as I am not a police officer.
15 That's beyond my medical training.

16 Q. Okay. Isn't it true that the gunshot wound could be
17 the result of a bullet ricochet?

18 A. That is possible.

19 Q. Isn't it true that Ms. Caldwell was released from CMC
20 the same day?

21 A. That is - I don't know what happened from the time she
22 left PMC.

23 Q. Okay. So you didn't have any involvement with Ms.
24 Caldwell after she was discharged at 6:0 am that morning?

25 A. That is correct.

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BY SOLICITOR COLLINS

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1 Q. And you haven't treated Ms. Caldwell since that time?

2 A. That is correct. As far as I know.

3 Q. Okay. And Ms. Caldwell never told you that Hashin
4 O'NEIL had ever threatened her?

5 A. No.

6 Q. She never told you that Mr. O'NEIL had choked her?

7 A. No.

8 Q. She never told you that Mr. O'NEIL had thrown things
9 at her?

10 A. No.

11 Q. She never told you that Mr. O'NEIL had shot her?

12 A. She never - From my remembrance she never mentioned
13 any specific person who shot her.

14 Q. Okay. In fact isn't it true that Ms. Caldwell never
15 mentioned the defendant Hashin O'NEIL at all during your
16 treatment of her?

17 A. No not to me.

18 Q. MS. TIMMERMANS: No further questions.

19 THE COURT: Redirect?

20 SOLICITOR COLLINS: Yes, Your Honor.

21 REDIRECT EXAMINATION

22 DOCTOR MICHAEL SUNDARARAMAN BY SOLICITOR COLLINS:

23 Q. The defense ask you isn't it true that you didn't test
24 Mr. O'Neil's hands for gunshot residue. Do you recall that
25 question?

1 A. I do.

2 Q. And do you recall you answered yes that is true?

3 A. Correct yes.

4 Q. Isn't it true that you didn't even see Mr. O'NEIL at
5 all at the hospital?

6 A. That is correct.

7 Q. Isn't it true that there is no where in your records
8 that indicate that the significant other that brought her
9 to the hospital was ever in the hospital room with her?

10 MS. TIMMERMANS: Objection, Your Honor. We didn't --

11 THE COURT: Rephrase.

12 SOLICITOR COLLINS: I'll rephrase.

13 Q. Do you recall the defense asking you when you all ask
14 whether or not the shooter was known to the victim that at
15 that time or that conversation with the victim, that the
16 defendant was not in the room with the victim at that time?
17 Do you recall the defense asking you that earlier?

18 A. I do.

19 Q. When if at any time do you recall the defendant Hashin
20 O'NEIL ever being in the room with the victim Crystal
21 Caldwell when you saw her?

22 A. I never saw him.

23 Q. Did that surprise you?

24 A. No.

25 Q. It didn't surprise you that the significant other that

DOCTOR MICHAEL SUNDARARAMAN: BY SOLICITOR COLLINS

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1 brought someone to the hospital with a gunshot never stayed
2 to talk to you?

3 MS. TIMMERMANS: Objection, Your Honor.

4 THE COURT: Sustained.

5 You don't have to answer that.

6 BY SOLICITOR COLLINS:

7 Q. The defense ask you regarding the nurse, that the
8 nurse noted that the victim appeared to the nurse to be
9 calm. Do you remember that question?

10 A. Yes.

11 Q. And she ask you in terms of the nurses name was Brent
12 Boheler; is that right?

13 A. Correct.

14 Q. And that is a male nurse; is that right?

15 A. Correct.

16 Q. You replied in direct examination that you observed
17 the victim - you observed the victim hyperventilating; is
18 that right?

19 A. Yes.

20 Q. The defense ask you regarding the domestic violence
21 screening. That if there is a negative sign indicated it
22 would indicate that when ask about that the victim would
23 have answered to the nurse or the patient would have
24 answered to the nurse no denying domestic violence; is that
25 right?

1 A. Correct.

2 Q. And that negative sign is reflective of the victims'
3 answer at the time. Right?

4 A. Correct.

5 Q. What does the term "focal injury" mean?

6 A. So that means an injury from trauma to one specific
7 spot.

8 Q. The defense attorney ask you in terms of the victim
9 never said things had been thrown at her or hit her. Do
10 you recall that question?

11 A. Yes.

12 Q. And she ask you that there was nothing told to you by
13 the victim about the defendant having choked her. Do you
14 recall that question?

15 A. I recall the question.

16 Q. Okay. Based upon your experience as a physician, when
17 a patient reports to the emergency room of a hospital and
18 you are examining her to why she's here, is it consistent -
19 Do you have an opinion to a reasonable degree of medical
20 certainty whether or not it is consistent or inconsistent
21 with history presented if there is not a reference to other
22 lesser assaults?

23 MS. TIMMERMANS: Objection, Your Honor.

24 THE COURT: I sustain the objection.

25 You don't have to answer.

DOCTOR MICHAEL SUNDARARAMAN: BY SOLICITOR COLLINS

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1 BY SOLICITOR COLLINS:

2 Q. The victim presented for treatment to a gunshot wound;
3 is that correct?

4 A. Correct.

5 Q. And that's what you diagnosed her with?

6 A. Correct.

7 Q. And that's what you transferred her to Charlotte
8 Medical Center for ultimate treatment. Correct?

9 A. Correct.

10 Q. That was the focus of your examining her wasn't it?

11 A. It was.

12 SOLICITOR COLLINS: Thank you, Your Honor.

13 THE COURT: Recross?

14 MS. TIMMERMANS: No further questions.

15 THE COURT: All right you can step down and be
16 excused. We appreciate your time.

17 (WITNESS LEAVING WITNESS STAND.)

18 DOCTOR SUNDARARAMAN: Thank you. I appreciate it.

19 SOLICITOR COLLINS: We would ask that this witness be
20 excused.

21 THE COURT: You can be excused.

22 SOLICITOR COLLINS: Thank you very much.

23 THE COURT: We're going to break for lunch until 2:00
24 so have a pleasant lunch and we'll see you back at 2:00.

25 (JURY EXITS COURTROOM FOR LUNCH AT 12:44 P.M.)

1 THE COURT: We'll be at ease until 2:00.

2 SOLICITOR COLLINS: Thank you, Your Honor.

3 MR. MUCKENFUSS: Thank you, Your Honor.

4 (COURT IN LUNCH RECESS AT 12:45 P.M..)

5 (COURT BACK IN SESSION AT 02:05 P.M..)

6 THE COURT: Thank you. Take your seats.

7 Is the State ready?

8 SOLICITOR COLLINS: The State's ready.

9 THE COURT: Is the defense ready?

10 MS. TIMMERMANS: We're ready.

11 THE COURT: All right, bring in the jury.

12 (JURY REENTERS COURTROOM AT 02:06 P.M..)

13 THE COURT: Call your next witness.

14 SOLICITOR COLLINS: Your Honor, the State calls Doctor
15 Doug Swanson to the stand.

16 Doctor Swanson, if you will come forward.

17 MADAME CLERK: Please raise your right hand, place
18 your left on the Bible.

19 (WHEREUPON: DOCTOR DOUG SWANSON,
20 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

21 MADAME CLERK: Thank you. You may have a seat right
22 over there.

23 DIRECT EXAMINATION

24 DOCTOR DOUG SWANSON BY SOLICITOR COLLINS:

25 Q. Good morning. Good afternoon I should say.

DOCTOR DOUG SWANSON: BY SOLICITOR COLLINS

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1 Would you please state your full name for the record?

2 A. Douglas Swanson.

3 Q. And what is your occupation?

4 A. I am a emergency medicine physician.

5 Q. And where are you employed?

6 A. Carolinas Medical Center in Charlotte.

7 Q. How long have you been a physician, Doctor?

8 A. It will be twenty years in July.

9 Q. Can you please relate to the jury your educational
10 background, where you went to college, medical school, did
11 your residency, that type of thing?

12 A. I received an undergraduate degree in Biology at the
13 University of Central Florida in Orlando. Attended medical
14 school at the University of South Florida College of
15 Medicine in Tampa, Florida. I did residency in emergency
16 medicine at Carolinas Medical Center and have been part of
17 the faculty at CMC since that time in 1995.

18 Q. And Carolinas Medical Center is one of the hospitals
19 in the Charlotte, North Carolina area; is that correct?

20 A. Correct.

21 Q. In fact you work at CMC Main?

22 A. Yes, ma'am.

23 Q. Is that downtown Charlotte or?

24 A. Yes.

25 Q. How long have you been there at CMC Main?

1 A. I began in July of 1992 when I started my residency.
2 Upon completion of residency in '95 I joined the faculty
3 and I've been there ever since.

4 Q. Now you say joined the faculty. Tell us about that.
5 Do you help teach; is it a teaching hospital?

6 A. It is a teaching hospital. We have a department of
7 emergency medicine with a emergency medicine residency
8 program. We have fourteen residents per year in a three
9 year program that we train in emergency medicine.

10 Q. And are part of your duties involve training those
11 general residence?

12 A. Yes, ma'am.

13 Q. Now you're licensed to practice medicine in North
14 Carolina I take it.

15 A. Yes.

16 Q. And also as a matter of fact in South Carolina; is
17 that right?

18 A. Yes.

19 Q. Have you ever had an occasion to testify in a court of
20 law as a medical expert?

21 A. Yes I have.

22 Q. As an expert witness?

23 A. Yes.

24 Q. And was that in the field of emergency medicine?

25 A. Yes, ma'am.

DOCTOR DOUG SWANSON: BY SOLICITOR COLLINS

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1 Q. Do you recall was that here or in North Carolina?

2 A. That was in North Carolina.

3 Q. And do you recall how many occasions?

4 A. Three or four.

5 Q. All right. Very good.

6 SOLICITOR COLLINS: Your Honor, at this time the State
7 would offer Doctor Swanson as an expert in the field of
8 emergency medicine.

9 THE COURT: Any voir dire?

10 MS. TIMMERMANS: No. No objections.

11 THE COURT: I find he is qualified.

12 SOLICITOR COLLINS: Thank you, Your Honor.

13 Q. Doctor Swanson, in regard to the case before the
14 court, were you on duty at Carolinas Medical Center Main as
15 we've discussed in downtown Charlotte on November 12th,
16 2010?

17 A. Yes I was.

18 Q. In that capacity did you have an occasion to see a
19 patient named Crystal Caldwell?

20 A. Yes.

21 Q. Have you had an opportunity to review those records
22 prior to coming to court to testify today?

23 A. Yes I have.

24 Q. And if at any time you should need them to refresh
25 your memory, please ask accordingly. Thank you.

1 Do you recall when Ms. Caldwell was transported to
2 Carolinas Medical Center?

3 A. Specifically specific time no. Middle of the night as
4 I only work night shifts but I need to look at the chart to
5 tell you the exact time.

6 Q. All right. One moment please.

7 I ask the Court's indulgence.

8 (PAUSE.)

9 SOLICITOR COLLINS: Your Honor, at this time I would
10 ask that this set of papers be marked for the purposes of
11 identification as State's Exhibit -

12 Seventy-one?

13 MADAME COURT REPORTER: For ID only?

14 SOLICITOR COLLINS: For ID only at this time.

15 (WHEREUPON: STATE'S EXHIBIT NUMBER SEVENTY-ONE
16 PREMARKED FOR IDENTIFICATION.)

17 SOLICITOR COLLINS: And I hand this to you, Doctor
18 Swanson, that has been so marked. They may be in reverse
19 order chronologically.

20 Q. But I'll ask you to flip through those papers that
21 comprise that exhibit and ask you if you recognize what
22 that reports to be?

23 A. Yes. Yes I do. This is our emergency department
24 record.

25 Q. And are those in fact the emergency department records

DOCTOR DOUG SWANSON: BY SOLICITOR COLLINS

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1 regarding the victim Crystal Caldwell?

2 A. Yes they are.

3 Q. As she was seen at CMC Main on November 12th, 2010?

4 A. Yes.

5 Q. Thank you. Now, Doctor, with that before you to
6 refresh your memory, can you tell us at this time what time
7 did she arrive at Carolinas Medical Center?

8 A. She arrived at 06:42.

9 Q. And how did she arrive? What mode of transportation
10 do you have reflected?

11 A. She was brought by ambulance.

12 Q. And had the hospital CMC Main receive notification
13 that this particular patient was on her way to you?

14 A. Yes, ma'am.

15 Q. And what agency or entity did you all receive that
16 notification from?

17 A. We would have received the initial notification from
18 Piedmont Medical Center, the referring hospital, and then
19 subsequently the transferring EMS agency which I'm not sure
20 the exact agency that brought her.

21 Q. But she as you're indicated was a transfer patient
22 from Piedmont Medical Center; is that correct?

23 A. Yes.

24 Q. The hospital here in the Rock Hill area?

25 A. Yes.

1 Q. And what was the purpose for this patient being
2 transported to CMC Main as opposed to being treated at PMC?

3 A. For further evaluation and potential definitive
4 treatment of a gunshot wound.

5 Q. Let's talk about CMC Main for a moment. What level of
6 trauma hospital is CMC Main? And I might not be using the
7 right term.

8 A. It is a Level I Trauma Center. The designations in
9 the state of North Carolina Level I is the highest level of
10 trauma center. They also designate Level's II and Level
11 III.

12 Q. And so one being the highest and then II and III
13 accordingly below that?

14 A. Yes.

15 Q. And you said in North Carolina. Are there
16 corresponding categories in South Carolina?

17 A. Very similar I believe yes.

18 Q. And are you familiar with what levels PMC is right
19 now?

20 A. I do not believe they have any level trauma
21 designation.

22 Q. Okay. And to your knowledge then is CMC Main the
23 level - the Level - I'm sorry - the trauma Level I hospital
24 in this metropolitan region?

25 A. Yes it is.

DOCTOR DOUG SWANSON: BY SOLICITOR COLLINS

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1 Q. Referring to the records there if you need to, Doctor,
2 to refresh your memory, do you recall what time you saw the
3 patient Crystal Caldwell at the CMC ER?

4 A. I would have seen her as she arrived to the emergency
5 department.

6 Q. All right. Very good. And do you know, again,
7 approximately what time? I think you've already stated
8 that.

9 A. 06:42 is the first recorded time.

10 Q. Thank you. 06:42 am.?

11 A. Yes.

12 Q. And at that time what medical history was presented to
13 you as a medical professional for the purposes of diagnosis
14 and treatment?

15 A. That she had been a victim of a gunshot wound,
16 transferred from Piedmont Medical Center for further
17 evaluation.

18 Q. Doctor, at that time did you examine the patient Ms.
19 Caldwell?

20 A. I in conjunction with a number of other physicians in
21 the trauma room yes.

22 Q. Were you the primary attending physician?

23 A. I was the primary attending physician yes.

24 Q. All right. And can you please tell us what you found
25 when you examined her as a treating physician?

1 A. She had two wounds in her lower back. One on the very
2 left lateral position and one on the very right lateral
3 position consistent with gunshot wounds. They were
4 posterior to the pelvis or the iliac crest. The one on the
5 right slightly lower than the one on the left.

6 Q. All right. And posterior meaning?

7 A. Back.

8 Q. The back?

9 A. Yes.

10 Q. All right. Can you tell the jury were her injuries as
11 you noted them that day - Well let me back up. Excuse me.
12 Strike that.

13 At that time what if any treatment did you pursue?
14 Did you order any testing?

15 A. She did have CAT Scans ordered.

16 Q. And what are CAT Scans to us lay people please?

17 A. They are specialized radiographic studies that provide
18 more detail than plain x-rays. They are computerized scans
19 often done with a contrast material to help augment various
20 tissues throughout the body.

21 Q. And pursuant to your request for those test to be done
22 were they done?

23 A. Yes, ma'am.

24 Q. Did you receive a report from Doctor Chang I believe?

25 A. Yes.

DOCTOR DOUG SWANSON: BY SOLICITOR COLLINS

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1 Q. Regarding his - And did you depend upon Doctor Chang's
2 report in ultimately making your decision how to treat this
3 patient?

4 A. Yes we do.

5 Q. All right. And referring to Doctor Chang's report,
6 did it appear to be a through and through wound?

7 A. Yes it did.

8 Q. Were there any - Was there a foreign body noted within
9 the victim's body?

10 A. Yes there was.

11 Q. And what's the notation there in terms of is it a
12 fragment or a solid bullet? Does it say? Do you know?

13 MS. TIMMERMANS: Objection, Your Honor. The exhibit
14 hasn't been entered into evidence and it looks like he's
15 just reading.

16 SOLICITOR COLLINS: Okay. I'll rephrase.

17 A. And again, just using the exhibits to refresh your
18 memory if you would, do you recall at this time in relying
19 upon Doctor Chang's report to make your diagnosis as to the
20 victim Ms. Caldwell?

21 A. Yes.

22 Q. And relying upon Doctor Chang's report, do you recall
23 whether the decision was made by yourself or your treatment
24 team to operate on Ms. Caldwell?

25 A. The decision was to not operate.

1 Q. All right. And why was that? What was the basis for
2 that decision?

3 A. That the track of the bullet appeared to simply
4 involve soft tissue, did not enter the perineal or the
5 abdominal or pelvic cavity.

6 Q. Do you recall, could you tell what the track of the
7 bullet was?

8 A. Not just from physical exam no.

9 Q. All right. From the radiologist report that you
10 relied upon could you tell what the track was whether it
11 was left to right or right to left?

12 A. You cannot tell in which direction it was but you can
13 tell where the track of the bullet went.

14 Q. Okay. And can you tell us that, where the track of
15 the bullet was/

16 A. Yeah. Through the report there is a linear soft
17 tissue track, linear track of soft tissue stranding, some
18 hemorrhage and scattered ---- side gas are noted in the
19 lower posterior trunk consistent with history of gunshot
20 injury. In fact a metallic bullet fragment is seen lodged
21 within the subcutaneous tissues in the right flank.

22 Q. In the right flank. And so that would be referencing
23 the patient's right or the doctor viewing the patient?

24 A. The patient's right.

25 Q. The patient's right. Now you testified you observed

DOCTOR DOUG SWANSON: BY SOLICITOR COLLINS

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1 two wounds to the patient. Correct?

2 A. Yes.

3 Q. Do you feel comfortable as a medical professional -
4 Well let me rephrase that.

5 Would it be within your particular field, Doctor, to
6 make a determination as to whether which was the exit wound
7 or which was the entrance wound?

8 A. No. No we do not attempt to do that to anyone in the
9 department.

10 Q. Is that necessary to treatment?

11 A. No.

12 Q. And so that was not done in this case; is that right?
13 That was not done in this case; is that right?

14 A. Correct. That's right.

15 Q. So based upon your observation of the patient, your
16 examination of the patient, I will ask you, do you have an
17 expert opinion as to a reasonable degree of medical
18 certainty whether or not the wounds of the patient, as you
19 observed them, were consistent or inconsistent with the
20 medical history presented of being shot by a gun?

21 A. Very consistent with being shot by a gun.

22 Q. And, Doctor, do you have an opinion to a reasonable
23 degree of medical certainty whether or not Ms. Caldwell's
24 injuries constituted a substantial risk of death? Do you
25 have an opinion as to that?

1 A. Initially potentially once we determined the full
2 projectory of the bullet and it's track it was evident that
3 it was not life threatening.

4 Q. Okay. So your ultimate determination your saying was
5 that it was not life threatening; is that correct?

6 A. Correct.

7 Q. But again do you have an opinion as to whether or not
8 it contained a substantial risk of death?

9 A. Yes I do and certainly it did.

10 MS. TIMMERMANS: Objection. Ask and answered.

11 THE COURT: I overrule your objection.

12 BY SOLICITOR COLLINS:

13 Q. And you do have an opinion as to that?

14 A. Yes.

15 Q. And what is your opinion?

16 A. Yes it certainly could have been.

17 Q. All right. And if you'll bear with me also, do you
18 have an opinion to a reasonable degree of medical certainty
19 whether or not the wounds of the patient were caused by
20 means likely to produce death or great bodily injury?

21 A. They could yes.

22 Q. So you do have an opinion?

23 A. Yes I do.

24 Q. And your opinion is?

25 A. Yes they could have.

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1 Q. Very good.

2 One moment please.

3 (PAUSE.)

4 SOLICITOR COLLINS: Doctor Swanson, thank you for
5 coming today. Please answer any questions of the defense
6 counsel.

7 CROSS EXAMINATION

8 DOCTOR DOUGLAS SWANSON BY MS. TIMMERMANS:

9 Q. Good afternoon, Doctor Swanson.

10 Doctor Swanson, you testified earlier that you were
11 the attending physician in the emergency room the night of
12 November 12 or the morning of November 12 when Ms. Caldwell
13 came in. Right?

14 A. Yes.

15 Q. And you and your team examined Ms. Caldwell in the ER
16 that morning. Correct?

17 A. Yes.

18 MS. TIMMERMANS: Permission to approach?

19 Permission to approach the witness.

20 Q. Doctor Swanson, I'm handing you a report that is dated
21 November 12th that was provided to us by the State and this
22 document contains the medical record from Ms. Caldwell's
23 treatment on November 12th at CMC or Carolinas Medical
24 Center which if its okay I'll refer to that as CMC. And
25 the document starts with in the lower right hand corner

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1 with Page 3 of 78.

2 A. Yes.

3 Q. And ends with Page 60 of 78. Do you see that?

4 A. Yes I do.

5 MS. TIMMERMANS: And, Your Honor, at this time I would
6 like to admit this document into evidence as a defense
7 Exhibit.

8 SOLICITOR COLLINS: No objection.

9 THE COURT: In without objection.

10 (WHEREUPON: DEFENDANT'S EXHIBIT NUMBER FIVE
11 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

12 Q. And, Doctor Swanson, did you review the medical file
13 before you came here today?

14 A. Yes I did.

15 Q. And did you - Do you know where the missing pages 60
16 through 78 are by any chance?

17 A. No. I have no idea.

18 Q. Okay. Did you meet with the prosecutor before coming
19 here today?

20 A. Yes I did.

21 Q. When did you meet?

22 A. Two or three weeks ago. I don't recall the exact
23 date.

24 Q. Do you know how many times you met?

25 A. Just once.

DOCTOR DOUGLAS SWANSON: BY MS. TIMMERMANS

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1 Q. Do you know how long?

2 A. Approximately a half hour.

3 Q. And as you stated on direct Ms. Caldwell came to CMC
4 for treatment of a gunshot wound; isn't that correct?

5 A. Yes.

6 Q. And at CMC you were talking about the CMC Main being a
7 Trauma Level I and that doesn't mean you don't receive
8 other types of injuries of varying degrees and severity
9 also; isn't that correct?

10 A. Yes, ma'am.

11 Q. And I want to direct your attention to Page 10 of the
12 report in your hand. And there are some handwritten
13 notations towards the top of the page. Is that your hand
14 writing?

15 A. No it's not.

16 Q. Can you read the first sentence of that handwriting?

17 A. In the narrative section?

18 Q. Yes. It starts with admits.

19 A. Admits. "Admits being - admits being shot upon
20 exiting of house."

21 Q. And then if you'll read the next sentence.

22 A. "Does not know who or how."

23 Q. Okay. And then if you'll flip to Page 14 under the
24 section of History of Present Illness there is a sentence
25 that says "admits that she was shot on exiting her house,

1 she does not know who or how it happened." Do you see
2 that?

3 A. Yes I do.

4 Q. And is it fair to say that this is the first
5 handwritten note on Page 10 and then the typed up on Page
6 14 is that a later transcription of contemporaneous notes
7 that were taken or --

8 A. Yes. That would be the same person who hand wrote the
9 initial note, subsequently dictates a formal notation.

10 Q. And the handwritten notes would be something at the
11 time that the patient was being scoping with and
12 interviewed. Correct?

13 A. At the approximate time yes. Not during the interview
14 but immediately thereafter.

15 Q. Okay. So Ms. Caldwell says that she does not know who
16 shot her or - shot her or how it happened; isn't that
17 right?

18 A. That is what Doctor - I believe Doctor Wurmer --

19 Q. The medical notes state?

20 A. Yes that's what Doctor Wurmer obtained.

21 Q. Okay. And if you flip to Page 18. Sorry for all the
22 flipping around. But would you look at Page 18 there is a
23 little section that says "associated symptoms."

24 A. Yes.

25 Q. And it says "Stepping off of doorstep of house when

DOCTOR DOUGLAS SWANSON: BY MS. TIMMERMANS

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1 heard noise and felt stinging in the back." Is that
2 correct?

3 A. Yes.

4 Q. And then if you'll flip again to Page 12 there is a
5 few scales on Page 12 and I direct your attention to the
6 second set where it appears there is a circle under alert
7 oriented interacts consolable. Do you see that?

8 A. Yes I do.

9 Q. So when Ms. Caldwell was at CMC interacting with your
10 team she would alert and oriented; isn't that right?

11 A. Yes she was.

12 Q. And if you'll flip to Page 19 there are similar
13 scales check list and under neuro it says awake alerted
14 oriented and that box is checked; is that right?

15 A. Yes it is.

16 Q. And you personally have no idea what happened that
17 evening to cause the gunshot wound; isn't that right?

18 A. No I do not.

19 Q. And you have no idea other than what Ms. Caldwell said
20 to you and your staff what happened that night; isn't that
21 correct?

22 A. Correct.

23 Q. And you stated on direct that there were two wounds
24 when you treated Ms. Caldwell; isn't that right?

25 A. Yes.

1 Q. And the wound on the left side or flank area was
2 approximately .5 centimeters in diameter; isn't that right?
3 If you look at Page 15 you see what I am referring to.

4 A. Yes.

5 Q. And the wound on the right side was - is marked down
6 as approximately 1 centimeter in diameter; isn't that
7 right?

8 A. Yes it is.

9 Q. And then on Page 11 there's a notation as well about
10 the size of the two wounds. And on Page 11 there is a
11 notation that the flank wound is 1 centimeter in diameter
12 and the buttock wound is 1 centimeter in diameter; is that
13 correct?

14 A. Yes it is.

15 Q. And then on Page 12 there is a diagram showing the
16 same two wounds that I would like you to refer to.

17 A. Yes I see that.

18 Q. And on the diagram the wound on the left hand side is
19 shown as being above the wound on the right hand side;
20 isn't that correct?

21 A. Yes.

22 Q. And the diagram also shows only two wounds not three
23 wounds; isn't that correct?

24 A. Correct.

25 Q. You and your team did not find the bullet still in Ms.

DOCTOR DOUGLAS SWANSON: BY MS. TIMMERMANS

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1 Caldwell's body; isn't that right?

2 A. Correct.

3 Q. But there was a metallic bullet fragment lodged in her
4 right flank; isn't that correct?

5 A. Yes.

6 Q. And you stated this on direct I believe but CMC
7 determined that her injury was a soft tissue injury.
8 Correct?

9 A. Ultimately yes.

10 Q. Okay. And there was no indication of any injury of
11 abdominal injury. Correct?

12 A. Correct.

13 Q. And no indication of any organ injury. Correct?

14 A. Correct.

15 Q. No indication of disruption of the spine; isn't that
16 right?

17 A. Correct.

18 Q. No disruption of bone; isn't that correct?

19 A. Yes.

20 Q. And there was no evidence of trauma to the pelvis
21 region; isn't that correct?

22 A. Yes, ma'am.

23 Q. And there was no - never any evidence of any trauma to
24 her neck was there? And I can direct you to Page 11 for
25 that.

1 A. That would be correct by this note here.

2 Q. And after your team was done examining Ms. Caldwell it
3 was determined that her injuries were not life threatening.
4 Correct?

5 A. Yes.

6 Q. And can you tell from these notes when Ms. Caldwell
7 was discharged from CMC?

8 A. 13:05 that afternoon.

9 Q. So that would be -

10 A. One o'clock in the afternoon.

11 Q. One in the afternoon. Okay. And you testified on
12 direct that she was admitted at 06:42 in the morning.
13 Correct?

14 A. Yes.

15 Q. So after about six hours she was released to go home.
16 Correct?

17 A. Correct.

18 Q. And isn't it true you didn't determine the type of gun
19 that shot Ms. Caldwell?

20 A. That is correct we do not.

21 Q. And isn't it true that you didn't analyze the distance
22 from which Ms. Caldwell was shot?

23 A. No.

24 Q. And you didn't analyze the projectory of the bullet?

25 A. No.

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1 Q. You didn't test Ms. Caldwell's hand for gunpowder?

2 A. We did not no.

3 Q. And you didn't examine Ms. Caldwell's clothing for
4 gunpowder residue?

5 A. No we did not.

6 Q. And you didn't recover a bullet from Ms. Caldwell's
7 body?

8 A. No we did not.

9 Q. And isn't it true that her gunshot wound could be the
10 result of an accidental discharge of a gun?

11 A. Potentially yes it could be.

12 Q. And isn't it true that - -

13 A. I can't determine that.

14 Q. - - - the gunshot wound - -

15 SOLICITOR COLLINS: I'm sorry, I couldn't hear the
16 answer. I believe the doctor was still stating an answer.

17 A. I cannot determine that whether it's accidental or
18 not.

19 SOLICITOR COLLINS: Thank you.

20 BY MS. TIMMERMANS:

21 Q. And isn't it true that the gunshot wound could be the
22 result of a bullet ricochet?

23 A. Potentially could be yes.

24 MS. TIMMERMANS: Indulge the Court.

25 (PAUSE.)

DOCTOR DOUGLAS SWANSON: BY MS. TIMMERMANS
BY SOLICITOR COLLINS

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1 Q. Doctor Swanson, the - were the patient's hands bagged
2 at any point?

3 A. Yes they were.

4 Q. And can you explain to the Court who bagged Ms.
5 Caldwell's hands?

6 A. I do not know specifically. Typically it is one of
7 the nursing or the tech staff that would do that in the
8 trauma room.

9 Q. And what would be the purpose of bagging Ms.
10 Caldwell's hands?

11 A. That is done in case in the future someone would like
12 to test for gunshot residue.

13 Q. Okay. Just a moment.

14 MS. TIMMERMANS: We don't have any further questions
15 at this time.

16 Thank you, Doctor Swanson.

17 THE COURT: Redirect?

18 SOLICITOR COLLINS: Yes, Your Honor.

19 REDIRECT EXAMINATION

20 DOCTOR DOUGLAS SWANSON BY SOLICITOR COLLINS:

21 Q. Doctor Swanson, the defense attorney ask you in terms
22 of just because CMC is a Trauma Level I hospital it doesn't
23 mean that you don't receive other levels of trauma; is that
24 right?

25 A. Yes.

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1 Q. You testified on direct examination in terms of
2 receiving a call from Piedmont Medical Center. Correct?

3 A. Yes.

4 Q. And they ask your permission or the permission of your
5 hospital to transfer this patient to CMC. Correct?

6 A. Yes.

7 Q. So even though CMC Main receives other levels of
8 trauma if its coming from another hospital they have to get
9 permission from your hospital - -

10 MS. TIMMERMANS: Objection, leading.

11 THE COURT: Rephrase the question.

12 BY SOLICITOR COLLINS:

13 Q. What do they have to get to send to you a patient that
14 is already being seen in another hospital?

15 A. They have to have a accepting physician agree to take
16 the patient in transfer.

17 Q. And does it require that the trauma be a certain level
18 for you all to accept that transfer/

19 A. As long as it is essentially beyond the capabilities
20 of the referring hospital to take care of it.

21 Q. All right. And you've already testified in this case
22 you all accepted this patient of course at CMC.

23 A. Yes.

24 Q. The defense attorney ask you in terms of ultimately
25 there was no evidence of actual abdominal injury. Do you

1 recall that line of questioning?

2 A. Yes.

3 Q. Now I might not be using the exact same words or
4 evidence of actual organ injury. Do you recall that?

5 A. Yes I do.

6 Q. But I would ask you, Doctor, given the nature of the
7 injury was there the risk of abdominal injury?

8 A. Yes.

9 Q. Was there the risk of organ injury?

10 A. Yes there was.

11 Q. Was there the risk of trauma to the pelvic region?

12 A. Yes.

13 Q. And fortunately Ms. Caldwell was able to leave the
14 hospital that day?

15 A. Yes she was.

16 Q. She didn't have to stay for treatment?

17 A. No not beyond basic wound care that she received in
18 the emergency department.

19 Q. It could have ended very different couldn't it?

20 MS. TIMMERMANS: Objection, Your Honor.

21 THE COURT: That is another leading question. I
22 sustain the objection.

23 SOLICITOR COLLINS: I'll rephrase.

24 Q. Do you have an opinion to a reasonable degree of
25 medical certainty whether or not, given the nature of the

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BY MS. TIMMERMANS

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1 medical history presented, and the potential for injuries
2 from the gunshot wound, whether or not Ms. Caldwell could
3 have died rather than leaving that hospital?

4 A. Yes.

5 Q. And what is your expert opinion?

6 A. Any gunshot wound to the torso which is essentially
7 head, neck, chest, abdomen, or the chest, abdomen, pelvis,
8 has potential to be lethal.

9 Q. And do her injuries as we've described kind of, to the
10 flank and buttocks region fall within those areas?

11 A. Potentially depending on the projectory of the bullet
12 or the track that the bullet takes.

13 SOLICITOR COLLINS: Thank you, Doc.

14 MS. TIMMERMANS: I just have a couple of questions.

15 RECROSS EXAMINATION

16 DOCTOR DOUGLAS SWANSON BY MS. TIMMERMANS:

17 Q. Doctor Swanson, in fact you don't know - didn't know
18 what the projectory of the bullet is. Correct?

19 A. Not at the time we received the patient no.

20 Q. And it turned out that in fact the wound was not life
21 threatening; isn't that right?

22 A. Yes.

23 MS. TIMMERMANS: No further questions.

24 Thank you.

25 THE COURT: You may step down and be excused, Doctor.

DEPUTY CHRISTOPHER DOTY: BY SOLICITOR EPTING

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1 We appreciate your time. Thank you so much.

2 (WITNESS LEAVING WITNESS STAND.)

3 THE COURT: Call your next witness.

4 SOLICITOR EPTING: The State calls Deputy Doty to the
5 stand.

6 MADAME CLERK: Please raise your right hand, place
7 your left hand on the Bible.

8 (WHEREUPON: CHRISTOPHER
9 DOTY, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS
10 FOLLOWS:)

11 DIRECT EXAMINATION

12 DEPUTY CHRISTOPHER DOTY BY SOLICITOR EPTING:

13 Q. Good afternoon.

14 A. Good afternoon.

15 Q. Would you please state your name for the record?

16 A. Christopher Doty.

17 Q. Is it Sergeant?

18 A. No, sir.

19 Q. Okay. I'm getting ahead of myself.

20 A. That's all right.

21 Q. Deputy Doty. What's your occupation?

22 A. I'm a patrol officer with the York County Sheriff's
23 Office.

24 Q. How long have you been with the sheriff's office?

25 A. Since December of 2004.

DEPUTY CHRISTOPHER DOTY: BY SOLICITOR EPTING

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1 Q. Were you working the late night hours of November
2 11th, 2010?

3 A. Yes, sir.

4 Q. Was that your shift at that time?

5 A. Yes, sir, it was.

6 Q. Did you at some point become involved in the
7 investigation of Hashin O'NEIL?

8 A. Yes, sir

9 Q. Would you please explain to the jury your involvement
10 in that investigation?

11 A. I was called to Piedmont Medical Center in reference
12 to a individual who had been shot, or with a gunshot wound
13 and did the initial contact with the individual and
14 notified the supervisor.

15 Q. Do you remember your conversation with that
16 individual?

17 A. No, sir, not off hand.

18 Q. Do you recall getting permission to search?

19 A. There is a form that we use and it is filled out and
20 it has my writing on it.

21 MR. MUCKENFUSS: Your Honor, may we approach?

22 THE COURT: Yes, sir.

23 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF
24 THE JURY AT 02:40 P.M..)

25 SOLICITOR EPTING: If I could have this marked for

DEPUTY CHRISTOPHER DOTY: BY SOLICITOR EPTING

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1 identification only.

2 (WHEREUPON: STATE'S EXHIBIT NUMBER SEVENTY-TWO,
3 PREMARKED FOR IDENTIFICATION.)

4 BY SOLICITOR EPTING:

5 Q. Deputy Doty, I'm handing you what's been marked as
6 State's Seventy-two. Would you please look at that?

7 A. It's a standard form we use for searching a - any
8 individual piece of property.

9 Q. Okay. And is an address listed on that form?

10 A. Yes, sir, it is.

11 Q. And is a name, is a signature on that form?

12 A. Yes, sir, it is.

13 Q. Can you read the signature?

14 A. Not off hand no, sir. It's not very legible.

15 Q. And the other writing on the form is that - Do you
16 recognize the handwriting on that form?

17 A. Yes, sir, that's my handwriting.

18 SOLICITOR EPTING: I beg the Court's indulgence.

19 (PAUSE.)

20 SOLICITOR EPTING: Your Honor, at this time the State
21 would ask to enter the exhibit into evidence.

22 MR. MUCKENFUSS: Your Honor, I don't know if he
23 recognized the signature or the handwriting on it.

24 SOLICITOR EPTING: I believe he stated he recognized
25 his handwriting.

DEPUTY CHRISTOPHER DOTY: BY SOLICITOR EPTING
BY MR. MUCKENFUSS

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1 A. I recognize my handwriting yes. The signature appears
2 to be the same as the writing across the top. The name
3 across the top.

4 MR. MUCKENFUSS: We would object.

5 THE COURT: I over rule your objection. He's
6 identified it contains his signature - his writing.

7 (WHEREUPON: STATE'S EXHIBIT NUMBER SEVENTY-TWO
8 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

9 MR. MUCKENFUSS: Thank you, Your Honor.

10 BY SOLICITOR EPTING:

11 Q. Now at some point did you make the decision to call a
12 detective to investigate the case?

13 A. I did. I notified my supervisor who made that
14 decision.

15 Q. And what detective was called to the scene?

16 A. Detective Strait.

17 SOLICITOR EPTING: I have no further questions for you
18 at this time. Please answer any questions the defense may
19 have.

20 CROSS EXAMINATION

21 DEPUTY CHRISTOPHER DOTY BY MR. MUCKENFUSS:

22 Q. Deputy Doty, what time did - You testify that you went
23 to the hospital; is that correct?

24 A. Uh-huh.

25 Q. What time did you arrive at the hospital?

DEPUTY CHRISTOPHER DOTY: BY MR. MUCKENFUSS

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1 A. I don't recall the exact time.

2 Q. Was it the early morning hours?

3 A. I believe so yes, sir.

4 Q. And this was November 12th?

5 A. I believe so yes, sir.

6 Q. Were you with another officer at the time?

7 A. Not when I initially responded no.

8 Q. How long were you at the hospital?

9 A. I couldn't give you the exact time amount.

10 Q. Did you talk with Ms. Caldwell?

11 A. Yes, sir.

12 Q. And when you were at the hospital speaking with Ms.
13 Caldwell, this was on November 12th. Correct?

14 A. Uh-huh.

15 THE COURT: You got to say yes or no.

16 A. Yes, sir. I'm sorry.

17 MR. MUCKENFUSS: Thank you.

18 Q. Ms. Caldwell she told you that she had heard a shot
19 walking out the front of her house?

20 A. I don't remember the exact conversation that I had
21 with her.

22 Q. And after you were at the hospital you stated that you
23 went to her residence. Is that where you went after the
24 hospital?

25 A. Yes, sir.

DEPUTY CHRISTOPHER DOTY: BY MR. MUCKENFUSS

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1 Q. Did she consent for you to search the apartment?

2 A. By signing this form yes.

3 Q. Okay. And did you go with another officer to her
4 house when you left the hospital?

5 A. I believe I went with Detective Strait.

6 Q. He was in the car with you?

7 A. No, sir.

8 Q. Okay. Detective Strait was at the hospital when you
9 left?

10 A. He came yes, sir.

11 Q. All right. And at the time that - Roughly what span
12 of time frame when you left the hospital when you got to
13 her apartment?

14 A. Again I can't give you the exact time.

15 Q. And did you in fact search the apartment?

16 A. I personally no.

17 Q. What was your purpose at the apartment when you got
18 there?

19 A. I went back and walk through the residence but I
20 didn't physically search it no, sir.

21 Q. Okay. When you say you walked through the residence,
22 what - what did you do exactly?

23 A. The best of my recollection we walked inside and
24 looked around in the living room and then we went upstairs
25 to a master bedroom I believe.

DEPUTY CHRISTOPHER DOTY: BY MR. MUCKENFUSS

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1 Q. Were you aware that Ms. Caldwell had informed the
2 police that she had been shot walking out of the apartment
3 at that point?

4 A. Not to my recollection.

5 Q. How long were you in the house?

6 A. I don't recall.

7 Q. Was anyone else with you when you were inside the
8 apartment?

9 A. I believe Detective Strait and possibly someone from
10 Forensics.

11 Q. Did you from walking through the apartment were you
12 looking for anything?

13 A. Not off hand no, sir.

14 Q. Why were you walking through the apartment?

15 A. To get a layout of the residence.

16 MR. MUCKENFUSS: No further questions.

17 THE COURT: Redirect?

18 SOLICITOR EPTING: Nothing from the State, Your Honor.

19 THE COURT: You can step down and be excused. We
20 appreciate your time.

21 DEPUTY DOTY: Thank you, sir.

22 (WITNESS LEAVING WITNESS STAND.)

23 THE COURT: Call your next witness.

24 SOLICITOR COLLINS: Your Honor, the State calls
25 Detective Eddie Strait.

DETECTIVE EDDIE STRAIT: BY SOLICITOR COLLINS:

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1 (WHEREUPON: DETECTIVE EDDIE
2 STRAIT, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS
3 FOLLOWS:)

4 DIRECT EXAMINATION

5 DETECTIVE EDDIE STRAIT BY SOLICITOR COLLINS:

6 Q. Would you please tell the jury your full name.

7 A. Eddie Strait.

8 Q. What's your occupation, sir?

9 A. Detective with the York County Sheriff's Office.

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

11 A. Eighteen years.

12 Q. And for all eighteen of those years has that been with
13 the York County Sheriff's Department?

14 A. Yes it has.

15 Q. Did you start off as a detective?

16 A. No, ma'am, I started off as a patrol officer.

17 Q. How many years did you do patrol?

18 A. Eight years.

19 Q. Eight?

20 A. Yes, ma'am.

21 Q. In the detective division for ten?

22 A. Yes, ma'am.

23 Q. Is my math right?

24 A. Yes.

25 Q. Do you have a certain speciality within the detective

DETECTIVE EDDIE STRAIT: BY SOLICITOR COLLINS:

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1 division?

2 A. Yes. I'm assigned to the Violent Crimes Unit.

3 Q. To the Violent Crimes?

4 A. Yes.

5 Q. Were you the on call detective for the York County
6 Sheriff's Department on November 12th, 2010?

7 A. Yes I was.

8 Q. And as such did you respond to a dispatch to go to
9 Piedmont Medical Center in Rock Hill, South Carolina?

10 A. I did.

11 Q. And pursuant to that did you meet with Crystal
12 Caldwell at Piedmont Medical Center?

13 A. Yes I did.

14 Q. Now let me ask you, had you ever met Crystal before?

15 A. No I had not.

16 Q. Okay. So is this the only way you know her through
17 this professional capacity?

18 A. Yes, ma'am.

19 Q. And at the time you arrived at Piedmont Medical Center
20 was there a deputy there with Crystal?

21 A. Yes.

22 Q. And who was that?

23 A. Deputy Doty.

24 Q. Who just testified?

25 A. Yes, ma'am.

DETECTIVE EDDIE STRAIT: BY SOLICITOR COLLINS:

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1 Q. Did you bring your file with you today?

2 A. I did.

3 Q. Do you recall what time you arrived at Piedmont
4 Medical Center?

5 A. No, ma'am.

6 Q. Would it refresh your memory to look at your file?

7 (SOLICITOR PASSED UP FOLDER TO WITNESS.)

8 A. The time of the incident is about 3:30 so I would have
9 been called some time after that.

10 Q. And this was on November 12th, 2010?

11 A. Yes it was.

12 Q. Do you know what day of the week that was?

13 A. Friday.

14 Q. Other than Deputy Doty who just testified and Ms.
15 Caldwell, when you went into her hospital room was there
16 anyone else in that room with her?

17 A. No, ma'am.

18 Q. Can you describe the appearance of the victim or Ms.
19 Caldwell at that time?

20 A. She was in a hospital bed obviously in the emergency
21 room. I believe she had on a hospital gown or a blanket
22 over her.

23 Q. And at that time did you speak with Ms. Caldwell as to
24 why she was there?

25 A. I did.

DETECTIVE EDDIE STRAIT: BY SOLICITOR COLLINS:

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1 Q. And at that time what did she tell you?

2 A. She told me originally that she was walking out of her
3 apartment when she was in the doorway she heard a noise and
4 felt a pain and Mr. O'NEIL stated she had been shot.

5 Q. And Mr. O'NEIL stated she had been shot?

6 A. Yes.

7 Q. Now when you say that I just want to be clear. Did
8 Mr. O'NEIL state to you she had been shot?

9 A. No.

10 Q. Was that at the hospital room?

11 A. No, ma'am. She said that Mr. O'NEIL told her it
12 looked
13 like she had been shot.

14 Q. Okay. So Ms. Caldwell said that Mr. O'NEIL said to
15 her
16 it looks like you been shot?

17 A. That's correct.

18 Q. All right. And pursuant to talking to her did you ask
19 about the nature of her relationship with Mr. O'NEIL?

20 A. I did.

21 Q. Ask about how things had been going that day?

22 A. I did.

23 Q. And did you ask her where Mr. O'NEIL was?

24 A. I did.

25 Q. And what was her response?

DETECTIVE EDDIE STRAIT: BY SOLICITOR COLLINS:

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1 A. She told me that he had brought her to the hospital
2 and dropped her off and she didn't know where he was at the
3 time.

4 Q. Now as a detective who I guess at that time had
5 sixteen years law enforcement experience, what if any
6 action did you then take in this case?

7 A. I called one of the officers at the apartment to see
8 if Mr. O'NEIL was there and he was not. That's when I was
9 informed that he car was actually in front of the
10 apartment.

11 MR. MUCKENFUSS: Your Honor, objection to hearsay.

12 THE COURT: I sustain the objection.

13 Move on.

14 BY SOLICITOR COLLINS:

15 Q. Based upon what you learned what if any action did you
16 then take in this case?

17 A. After speaking to Ms. Caldwell and several times
18 trying to get exactly what happened to her her final
19 comment to me was that when she was shot that herself and
20 Mr. O'Neil were the only two in the apartment. And I ask
21 her did Mr. O'NEIL shot her and she said I did not see him
22 shot me.

23 Q. And after getting that information from Ms. Caldwell,
24 did you make a request of her?

25 A. I did.

DETECTIVE EDDIE STRAIT: BY SOLICITOR COLLINS:

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1 Q. And what was your request to her?

2 A. I ask her if she would call Mr. O'NEIL and see if she
3 could get him to come back to the hospital by telling him
4 that she was going to Charlotte and she'd have to be
5 transferred to Charlotte, she was afraid to go by herself,
6 she just wanted to see him again before she left.

7 Q. At that time had you all learned in fact she was to be
8 transferred to Charlotte?

9 A. Yes.

10 Q. And did Ms. Caldwell make that call in your presence?

11 A. She did.

12 Q. And did she communicate that to Mr. O'NEIL?

13 A. She did.

14 Q. Did she have a phone on speaker phone or just regular
15 at that time?

16 A. Just regular.

17 Q. Were you able to hear the response of Mr. O'Neil?

18 A. No, ma'am.

19 Q. And at the conclusion of that call, did you gather
20 information as to what type of vehicle the defendant might
21 be driving?

22 A. Yes. She also --

23 Q. And - I'm sorry.

24 A. She also told me that he would be coming back.

25 Q. She confirmed indicating he would come back?

DETECTIVE EDDIE STRAIT: BY SOLICITOR COLLINS:

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1 A Right.

2 Q. You gathered information as to what type of car you
3 anticipate he would be driving?

4 A. That's correct.

5 Q. And she - You had also ascertained what type of car
6 she had; is that right?

7 A. Yes.

8 Q. At that time was Ms. Caldwell transferred to CMC Main?

9 A. No she was still at Piedmont.

10 Q. Okay. Did you call for Forensic Service Unit
11 personnel to come out?

12 A. The patrol sergeant had already notified Forensics.

13 Q. All right. And did in fact Officer Audra Eddie from
14 Forensic Services come to the hospital?

15 A. Yes she did.

16 Q. Do you know if she gathered, received the clothing
17 from the hospital that the victim had been wearing earlier?

18 A. I'm not sure if her or Officer George did but one of
19 them collected it.

20 Q. All right. And ultimately when Ms. Caldwell left,
21 what point did you leave the room, the hospital room where
22 Ms. Caldwell was?

23 A. When she told us Mr. O'Neil would be back we went out
24 to the parking lot at that time?

25 Q. And you said we. Who is that?

1 A. Myself and Officer Doty.

2 Q. All right. And when you got down to the parking lot
3 is that the parking lot near the ER?

4 A. Yes. In front of the ER across from the actual ER
5 entrance. It's a road basically behind the hospital and in
6 the general parking lot too.

7 Q. All right. And at the time you got down there did you
8 ultimately see the defendant Hashin O'NEIL?

9 A. I did.

10 Q. And was he already there when you got down there?

11 A. No, ma'am. He pulled up while we were outside.

12 Q. And you say he pulled up. Was he driving the vehicle?

13 A. Yes he was.

14 Q. Was he driving the vehicle consistent with the
15 information you received?

16 A. Yes.

17 Q. That was not hers; is that right?

18 A. That's correct.

19 Q. And was he alone?

20 A. Yes he was.

21 Q. And when Mr. O'Neil pulled up to the vehicle - I mean
22 to the emergency room parking lot, did he park the car?

23 A. He did.

24 Q. Did he get out?

25 A. No, ma'am.

DETECTIVE EDDIE STRAIT: BY SOLICITOR COLLINS:

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1 Q. And what did you do?

2 A. Myself and Officer Doty approached the car; I ask Mr.
3 O'Neil to step out.

4 Q. All right. Now Officer Doty appeared today in a
5 uniform. He's part of the uniform patrol; is that correct?

6 A. That's correct.

7 Q. And if you recall, was he dressed at that time as he
8 was today?

9 A. Yes.

10 Q. And you are in a suit and tie. Let the record reflect
11 and a jacket. Were you dressed at that time as you are
12 today?

13 A. No, ma'am.

14 Q. How were you dressed at that time?

15 A. Our normal attire for on call would be some type of
16 khaki pants, we have polo shirts with the Sheriff's Office
17 badge and emblem embroidered on it. Also I had a badge on
18 my belt and a firearm.

19 Q. Was your firearm holstered?

20 A. Yes.

21 Q. Did Deputy Doty have a firearm on him?

22 A. Yes he did.

23 Q. Was it holstered at that time?

24 A. Yes it was.

25 Q. And when you walked up to Mr. O'Neil in his vehicle,

DETECTIVE EDDIE STRAIT: BY SOLICITOR COLLINS:

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1 did you identify yourself to him as a law enforcement
2 officer?

3 A. I did.

4 Q. You told him who you were?

5 A. Yes, ma'am.

6 Q. You told him who you were with?

7 A. Yes, ma'am.

8 Q. And he got out of the car?

9 A. Yes. Let me back up on Officer Doty. I can't say if
10 his firearm was holstered or not.

11 Q. Okay. All right. In any event Mr. O'Neil got out of
12 the car?

13 A. That's correct.

14 Q. And at that time what did you do, Detective?

15 A. I placed him in handcuffs and patted him down and a
16 weapons search.

17 Q. And was there any weapon found on the defendant?

18 A. No, ma'am.

19 Q. And at the time you placed him in handcuffs was that
20 -- How on his body was that?

21 A. His hands were behind his back.

22 Q. Behind his back. Is that standard?

23 A. Yes.

24 Q. And what did you do at that time with Mr. O'Neil?

25 A. After the pat down then I informed him that he was

DETECTIVE EDDIE STRAIT: BY SOLICITOR COLLINS:

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1 under the arrest for the attempted murder of Ms. Caldwell.

2 Q. All right. And at that time did you read him what we
3 call your *Miranda* Rights?

4 A. I actually gave him to her verbally, I did not read
5 them.

6 Q. Okay. All right. And can you tell us to the best of
7 your ability how you told him that night of his *Miranda*
8 Rights?

9 A. I told him he had the right to remain silent anything
10 he said could and would be used against him in a court of
11 law. He had the right to an attorney if he could not
12 afford one, one would be appointed to him before any
13 questioning. And he had the right to stop talking and
14 exercise those rights at any time.

15 Q. And did Mr. O'Neil indicate that he understood those
16 rights?

17 A. Yes. I ask him after I mirandized him I ask him did
18 he want to talk to me about what had happened.

19 Q. And what was his response at that time?

20 A. He said yes he would.

21 Q. And pursuant to that what did you do, Detective?

22 A. Officer - Sergeant Wooten transported him over here to
23 the Moss Justice Center.

24 Q. Okay. Now who is Sergeant Wooten? This is the first
25 time we've heard about him.

DETECTIVE EDDIE STRAIT: BY SOLICITOR COLLINS:

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1 A. He's a patrol officer. He's actually the supervisor
2 on day shift that was coming on.

3 Q. All right. So that shift starts at what time?

4 A. 5:45.

5 Q. 5:45 a.m.?

6 A. Yes, ma'am.

7 Q. And so Sergeant Wooten is employed with the sheriff's
8 department?

9 A. Yes he is.

10 Q. And so he arrived on scene at that time; is that
11 right?

12 A. Yes, ma'am.

13 Q. And Deputy Doty was still there?

14 A. Yes, ma'am.

15 Q. And do you recall John George with the Forensic's
16 Service Unit coming out?

17 A. Yes.

18 Q. And what did John do?

19 A. I'm not exactly sure what all he did while he was
20 there.

21 Q. All right.

22 A. He did come to the hospital.

23 Q. Okay. But he was there, you remember him being there?

24 A. Yes.

25 Q. And do you recall from your own memory was there an

DETECTIVE EDDIE STRAIT: BY SOLICITOR COLLINS:

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1 effort made to collect gunshot residue from the defendant's
2 hands at that time?

3 A. I did not see it but I have seen the form.

4 Q. All right. And so at that time what happened with Mr.
5 O'Neil? Where was he taken?

6 A. He was placed in the back of a patrol car and a short
7 time later over here at Moss Justice Center to the
8 Detective Division.

9 Q. I'm sorry?

10 A. He was brought over here to the Detective Division at
11 the Moss Justice Center.

12 Q. Okay. Thank you. I'm fighting a cold, if you'll
13 speak up just a little bit more.

14 Now, who brought him here to the best of your
15 knowledge?

16 A. Deputy Wooten, Sergeant Wooten.

17 Q. Okay. And did you follow behind him?

18 A. Not directly behind him. I met him over here. As a
19 matter of fact he was still in the parking lot when I got
20 here.

21 Q. Okay. And when you got here you said he was still in
22 the parking lot, that the - Sergeant Wooten?

23 A. Yes.

24 Q. And the defendant Mr. O'Neil?

25 A. Correct.

DETECTIVE EDDIE STRAIT: BY SOLICITOR COLLINS:

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1 Q. And where did you all go from there?

2 A. The parking behind the Detective Division is just
3 maybe a fifty foot sidewalk into the side door. We got him
4 out of the car escorted him into the building; we have a
5 conference room in the Detective Division and we placed him
6 in there.

7 Q. All right. And by him, you mean Mr. O'Neil?

8 A. Mr. O'Neil.

9 Q. And when you walked him to the conference room in the
10 Detective Division, was Mr. O'Neil still handcuffed at that
11 time?

12 A. Yes he was.

13 Q. How was he still handcuffed, in his back?

14 A. Behind his back.

15 Q. Behind his back?

16 A. Yes, ma'am.

17 Q. And when you all got to the conference room, what if
18 any changes --

19 A. I read him *Miranda* from a *Miranda* Rights form and also
20 the waiver from the waiver form and we moved his hands in
21 front so that he could sign that form.

22 Q. All right. So when you moved his hands to the front,
23 did they remain loose, or what?

24 A. No, ma'am. Recuffed him just with the hands in the
25 front.

DETECTIVE EDDIE STRAIT: BY SOLICITOR COLLINS:

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1 Q. Recuffed with the hands in the front?

2 A. Correct.

3 Q. And who was in the conference room at that time?

4 A. Myself, Sergeant Wooten and Mr. O'Neil.

5 Q. Were there other officers in the building?

6 A. May have been a desk officer up front.

7 Q. And Sergeant Wooten, now was he dressed as Deputy Doty
8 was today in uniform?

9 A. That's correct.

10 Q. Does he carry a firearm?

11 A. He does.

12 Q. Was it at his side?

13 A. It was.

14 Q. Was it holstered?

15 A. Yes, ma'am.

16 Q. While you all were in the conference room talking to
17 Mr. O'Neil, did Sergeant Wooten's firearm remain holstered?

18 A. It did.

19 Q. Did yours?

20 A. Yes, ma'am.

21 Q. At any time did either of you take your firearm out of
22 it's holster?

23 A. No, ma'am.

24 Q. Did you all ask Mr. O'Neil if he was comfortable?

25 A. I ask him if he wanted anything to drink.

DETECTIVE EDDIE STRAIT: BY SOLICITOR COLLINS:

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1 Q. And did he accept that offer?

2 A. No, ma'am, he declined.

3 Q. Had he accepted it would you have provided it?

4 A. Yes, ma'am.

5 Q. Did you ask him if he needed to refresh himself, use
6 the restroom?

7 A. I don't recall asking him that.

8 Q. Had he ask to do that would you allowed him?

9 A. Yes.

10 Q. I believe you stated that you read again his *Miranda*
11 Rights to him. Is this - is that right?

12 A. Yes, ma'am.

13 Q. I think you said earlier you said them from memory; is
14 that right?

15 A. Yes, ma'am.

16 Q. But this time you actually read a form to him; is that
17 right?

18 A. Yes, ma'am.

19 Q. Okay.

20 SOLICITOR COLLINS: I ask the Court's indulgence one
21 moment.

22 (PAUSE.)

23 Q. Detective, I'd like to show you what's been previously
24 marked as State's Exhibit Five for identification purposes
25 and ask you, do you recognize that form?

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1 A. I do.

2 Q. And what is that?

3 A. It's the York County Sheriff's Office Waiver of Rights
4 Form.

5 Q. And is that the form that you used to advise Mr.
6 O'Neil of his rights in the early morning hours of November
7 12th, 2010?

8 A. Yes, ma'am.

9 Q. Did you read those rights to Mr. O'Neil?

10 A. I did.

11 Q. Can you please read them out loud for the jury to the
12 best of your memory as you read them for Mr. O'NEIL that
13 day?

14 A. "Before I ask you any questions I want to advise you
15 of your rights. You have the right to remain silent
16 anything you say can and will be used against you in a
17 court of law. You have the right to talk to an attorney
18 and have him or her present with you while you are being
19 questioned. If you cannot afford to hire an attorney one
20 will be appointed to represent you before any questioning
21 if you wish. You can decide at any time to exercise these
22 rights and not answer any questions or make any statements.
23 Do you understand each of these rights that I've just
24 explained to you?"

25 Q. And after that question "Do you understand each of

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1 these rights as I've explained them to you" what is there
2 on that form?

3 A. There is a block for yes or no.

4 Q. And what did Mr. O'Neil answer?

5 A. Yes is checked.

6 Q. And did you check it or did he check it?

7 A. He checked it.

8 Q. Okay. And at any time did he ask you to explain what
9 those rights meant?

10 A. No, ma'am.

11 Q. At any time did he express any confusion?

12 A. No, ma'am.

13 Q. Did he appear alert?

14 A. Yes, ma'am.

15 Q. After Mr. O'Neil checked that he understood these
16 rights, is there more to the form that you read to him?

17 A. Yes. Then his signature and the date and below that
18 is a Waiver of Rights.

19 Q. So after checking yes he actually signed?

20 A. Yes.

21 Q. And signed in front of you in your presence?

22 A. Yes, ma'am.

23 Q. And tell me about the *Waiver of Rights*. Did you read
24 that portion out to him as well?

25 A. I did.

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1 Q. And read that for us please.

2 A. It says "I am willing to talk to police and answer
3 questions. I do not want an attorney at this time. I
4 understand and know what I am doing. No promises or
5 threats have been made to me. No pressure of any kind has
6 been placed upon me."

7 Q. And is there a check yes or no there?

8 A. No, ma'am, it's a line for a signature.

9 Q. All right. And did in fact the defendant sign that
10 line?

11 A. Yes he did.

12 Q. And he did that in front of you?

13 A. Yes, ma'am.

14 Q. And Sergeant Wooten was present at both of these
15 times?

16 A. Yes, ma'am.

17 Q. There is a date below that I believe; is that right?

18 A. Yes, ma'am.

19 Q. Below the defendant's signature?

20 A. Yes, ma'am.

21 Q. What's that date?

22 A. 11/12/10.

23 Q. And who filled that date in?

24 A. I did. Each of the dates are filled in by me.

25 Q. And to the left a witness signed. Who's that witness?

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1 A. Robert Wooten.

2 Q. That's Sergeant Wooten you've been talking about?

3 A. Yes.

4 Q. And again, also dated November 12th, 2010?

5 A. Yes, ma'am.

6 Q. Did you fill that date in?

7 A. Yes, ma'am.

8 Q. You filled it in then?

9 A. Yes.

10 Q. And below that I believe there is some additional
11 information on that form, some background information; is
12 that right?

13 A. That's correct.

14 Q. Who fills that out?

15 A. I did.

16 Q. Did you read those questions to the defendant?

17 A. I just ask him these questions. I didn't read them.

18 Q. All right. And what are those questions?

19 A. The first one is Interview, you know, put his name
20 Hashin O'Neil. Next: the date of birth, I ask him, it was
21 [REDACTED]. I ask him his age, it was forty. I ask him his
22 education level he replied twelfth. So then I ask him
23 could he read and write with no problem, he replied yes so
24 I circled yes on each of those. The place of interview is
25 MJC which is our Moss Justice Center. I actually had the

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1 date and time in the wrong place. For the time I have
2 11/12/2010 and the date I have 6:29 a.m. And then I signed
3 it as the interviewer.

4 SOLICITOR COLLINS: Your Honor, at this time I would
5 move State's Exhibit Five into evidence.

6 MR. MUCKENFUSS: No objection.

7 THE COURT: In without objection.

8 (WHEREUPON: STATE'S EXHIBIT NUMBER FIVE IDENTIFIED
9 AND MARKED, RECEIVED INTO EVIDENCE.)

10 BY SOLICITOR COLLINS:

11 Q. And after signing that he understood his rights and
12 signing that he waived those rights, did the defendant in
13 fact give you a statement?

14 A. Yes, ma'am.

15 Q. Now before we get there let me ask you, at any time
16 was there any promise made to Mr. O'NEIL to induce him to
17 make a statement?

18 A. No, ma'am.

19 Q. At any time were any threats made to Mr. O'NEIL to
20 induce him to make a statement?

21 A. No, ma'am.

22 Q. And when he made a statement to you was it at that
23 time verbal?

24 A. Yes, ma'am.

25 MR. MUCKENFUSS: Your Honor, we object to the

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1 statement the defendant made.

2 THE COURT: Based on earlier rulings the objection is
3 over ruled.

4 MR. MUCKENFUSS: May I approach, Your Honor?

5 THE COURT: Yes, sir.

6 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF
7 THE JURY AT 03:10 P.M..)

8 BY SOLICITOR COLLINS:

9 Q. So at that time, Detective, the defendant gave a
10 verbal statement; is that correct?

11 A. Yes, ma'am.

12 Q. Do you recall from memory the content of that
13 statement?

14 A. No, ma'am.

15 Q. Detective, I'd like to show you what's been marked as
16 the State's Exhibit Six and ask you, do you recognize that
17 document? For identification do you recognize that
18 document?

19 A. I do.

20 Q. And what is that document?

21 A. It's an Incident Interview Report.

22 Q. And who filed out that report?

23 A. I did.

24 Q. And that's regarding the case before the court today?

25 A. Yes it is.

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1 Q. And when did you fill that document out?

2 A. 11/12/2010.

3 Q. And what is the content of that document?

4 A. The interview of Mr. O'NEIL.

5 Q. After he waived his Miranda rights?

6 A. That's correct.

7 Q. After he agreed to talk to you?

8 A. Yes, ma'am.

9 MR. MUCKENFUSS: Your Honor, we would object. I
10 understand that they're posturing this as refreshing his
11 recollection but essentially they're gonna get a police
12 record into evidence I would assume by him reading it which
13 this record would not be admissible under Rule 803, so I
14 would object to him simply reading this document.

15 THE COURT: All right, let me let the jury go to the
16 jury room for just a minute and we'll take this up.

17 (JURY EXITS COURTROOM AT 03:13 P.M..)

18 THE COURT: What's your objection?

19 MR. MUCKENFUSS: Your Honor, actually I had a case in
20 front of Judge Alford, it was not exactly the same, but the
21 witness essentially ended up testifying to because they
22 couldn't remember the contents in the police report, not
23 for impeachment purposes, but for - the problem is
24 obviously under 803(8) the contents of the police report
25 are specifically excluded even though they might be a

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1 business record. And - I understand they're couching it
2 because Detective Strait can't remember what he said which
3 actually on pretrial Detective Strait had as I recall when
4 we covered this in the pretrial motions had plenty of
5 recollection about what Mr. O'NEIL stated. I think in
6 front of the jury he stated he just couldn't remember
7 anything so I'm just concerned they're using this just to
8 allow Detective Strait to read directly from this report so
9 they're going to be able to get in the entire contents of
10 the report which would otherwise be inadmissible.

11 SOLICITOR COLLINS: Your Honor, I would submit that
12 the content of the report is an admission by a party
13 opponent and a statement against penal interest
14 particularly I realize it doesn't go so far as to say this
15 is the verbal statement that he shot her but it certainly
16 puts him on the scene in her presence earlier that day and
17 notes that they had been arguing about the ring and the
18 relationship was off. I would submit that also - and I
19 might need to lay a better foundation obviously - but in
20 terms of asking, in terms of business records exception but
21 it is a government document and he has indicated he - he
22 has testified that he memorialized this from his meeting
23 with the defendant at or near the time it was taken.

24 THE COURT: What about under 803(8), what is the
25 language excluding however in criminal cases matters by

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1 police officers and other law enforcement personnel? What
2 would that language mean?

3 SOLICITOR COLLINS: I would submit that would normally
4 - respectfully I think that would normally go toward, you
5 know, perhaps talking to a witness that later doesn't
6 testify under proffered or some other exception that they -
7 And again here, I would submit that the statement of the
8 defendant is a statement by a party opponent, admission by
9 a party opponent, a statement against penal interest beyond
10 that but, you know, such as we have cases with children
11 that they might be limited by other portions of the rule
12 that just the mere fact that you've got a government
13 document from a law enforcement agency doesn't swing the
14 door wide and let everything come in that he may have
15 observed. And that is why I'm submitting in terms of the
16 argument that again this is a statement by the defendant
17 after he has waived his rights to remain silent.

18 MR. MUCKENFUSS: Your Honor, they could have - this is
19 not - I think again they're using it to refresh his
20 recollection, they're not trying to get it into evidence.
21 So my point is - and Detective Strait testified in
22 pretrial, I mean he had recollections of Mr. O'Neil's
23 comments, and he testified that these were his notes of Mr.
24 O'Neil's comments. And in fact he only put one thing in
25 quotes and I think he testified those are the only words

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1 that were literally Mr. O'Neil's words. So these were
2 notes, this is a report from Detective Strait which would
3 otherwise be - the State could never get this document in
4 into evidence under this rule and I think they're trying to
5 use the to refresh the recollection path to get the
6 contents of this report into evidence.

7 I think its inadmissible and especially my client
8 doesn't admit any part of this crime. He comments per
9 Detective Straits interpretation of his words, he comments
10 on some of the facts that night but he doesn't say I shot
11 her. Its not an admission and it's simply again, Detective
12 Strait's interpretation and notes of this conversation.
13 It's not his words, it's not his writing and there is no
14 recording of it. And I think the fact that he only put a
15 few words in quotes indicates its his notes, it's his
16 interpretation of what he's saying.

17 THE COURT: Under 804, which is what you're
18 referencing, Ms. Collins, that talks about hearsay
19 exceptions when the declarant is unavailable. Unavailable
20 include situations exempt from testifying on the ground of
21 privilege, persistent refuse to testify, testify for lack
22 of memory, et cetera.

23 SOLICITOR COLLINS: Well certainly I would propose
24 that at this time the defendant who is - has not yet
25 reached this stage, but is not before the court to testify,

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1 and who has a *Fifth Amendment* right regarding testifying in
2 this proceeding or not, is at this time unavailable.

3 THE COURT: You can't force him.

4 SOLICITOR COLLINS: No, no I don't want - I'm not
5 trying --

6 THE COURT: I know that. Just a minute.

7 Unavailable witness includes situation where the
8 declarant is...

9 Doesn't fall under A(1) or (2) or (3) or (4).

10 SOLICITOR COLLINS: Your Honor, respectfully, I do
11 feel that portions of it fall within § 3, a statement
12 against interest.

13 THE COURT: Wait, I hadn't - We hadn't gotten to that.

14 SOLICITOR COLLINS: Oh, I'm sorry.

15 THE COURT: You got to go to A first.

16 SOLICITOR COLLINS: I'm sorry. When you were going
17 through 1 I thought it was - I got ahead of you.

18 THE COURT: Look at 804(a).

19 SOLICITOR COLLINS: Right.

20 THE COURT: That's when you somebody - You got to jump
21 that hurdle before you get to (b). And it doesn't include
22 where the defendant has a Fifth Amendment right.

23 MR. MUCKENFUSS: Your Honor, actually I have a case.

24 THE COURT: All right.

25 MR. MUCKENFUSS: So this is reported in State v. Terry

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1 actually, one of our rule of completeness cases but - -

2 THE COURT: I've got that, hold on just a minute.

3 MR. MUCKENFUSS: Okay.

4 THE COURT: All right.

5 MR. MUCKENFUSS: And I would direct - it's Page 2 of

6 the Lexis printout. It's under - I think it's Page 6.

7 It's basically the second page.

8 THE COURT: All right.

9 MR. MUCKENFUSS: And it starts "several reports states

10 the issue of whether a defendant who has procured his

11 unavailability by evoking his protection against self

12 incrimination is unavailable as a witness, a witness for

13 the purposes of 804(b)(1). And they were analyzing former

14 testimony but still - -

15 THE COURT: I can't find where you are.

16 MR. MUCKENFUSS: I'm sorry.

17 THE COURT: You said Page 2 and I got that.

18 MR. MUCKENFUSS: May I approach, Your Honor?

19 THE COURT: Yes, sir.

20 MR. MUCKENFUSS: It might be easier for me to- I'm not

21 sure what your printout...

22 THE COURT: Okay.

23 MR. MUCKENFUSS: Although this is former testimony

24 they are still trying to decide under (a), § (a) if the

25 witness is unavailable. And it notes the Fifth Circuit

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1 case, it states that US v. Kimball the Fifth Circuit Court
2 of Appeals held "the defendant who creates his own
3 unavailability by invoking his Fifth Amendment privilege
4 against self incrimination is not "unavailable" stating,
5 "while sensitive to the importance of not discouraging or
6 prejudicing a defendant who evokes the Fifth we cannot
7 accept the view proposed by Kimball."

8 I mean obviously they get into other - in this
9 instance they're talking about the cross examination aspect
10 of it.

11 THE COURT: Well this case Terry the defendant was the
12 one trying to get in his own statement saying "I'm
13 unavailable".

14 MR. MUCKENFUSS: Right. But I think - I mean that's a
15 different issue but I think US v. Kimball would be the
16 operative case. I think they're referring to Kimball which
17 states that if you invoke your *Fifth Amendment* right you're
18 not unavailable under Rule 804.

19 THE COURT: Well I'm not familiar with the Kimball
20 case. What are the facts of it? Does - is it again the
21 defendant trying to introduce his own statement?

22 MR. MUCKENFUSS: I'd have to pull it, Your Honor. I
23 got the reference to that case because we had Terry. We
24 could take some time to pull the case.

25 THE COURT: We're gonna take a break anyway so I'd

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1 like to look and see what that says.

2 MR. MUCKENFUSS: Yes, Your Honor.

3 THE COURT: Well it is a Fifth Circuit and not the
4 Fourth nor is it Supreme Court.

5 MR. MUCKENFUSS: We will pull the case.

6 THE COURT: It definitely doesn't fall into the
7 definition under the rule. So we're back - when I look at
8 Kimball so we're back to determining whether or not fall -
9 803 the following are not excluded by the hearsay rule.
10 The records of statements in any form...

11 SOLICITOR COLLINS: Your Honor, if I may?

12 THE COURT: Yes.

13 SOLICITOR COLLINS: I would submit that under 803
14 declarant availability immaterial under 5 or recollection.
15 Although I've couched it as refreshing his memory, § 5 does
16 not require - it simply shows that actually that the
17 witness once had knowledge, now has insufficient
18 recollection to enable him to testify fully and accurately;
19 is shown to have been made or adopted by the witness when
20 the matter was fresh in the witness's memory and reflect
21 that knowledge correct. And it does note that the
22 memorandum itself may not be offered as an exhibit unless
23 offered by an adverse party and that's not my purpose. But
24 it does note it may be read into evidence and that's under
25 803 § 5.

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1 THE COURT: Number 5, it cannot be received as an
2 exhibit.

3 SOLICITOR COLLINS: Yes, sir. But it does note that
4 it may be read into the evidence.

5 MR. MUCKENFUSS: Again, Your Honor, I think that the
6 police record itself - my point was - and I know they're
7 trying to use his for his recollection - but again, they
8 would not otherwise note that the contents of this record
9 in under 803(8).

10 SOLICITOR COLLINS: I'm not under 803(8); I'm under
11 803(5). Respectfully I think we're square with them in
12 that.

13 MR. MUCKENFUSS: Well it is a document that would come
14 in under 803(8). Just I think they want it to be but it is
15 a police report. It is notes, investigative notes of
16 Detective Strait.

17 THE COURT: Are you saying 803 trumps 803(5)?

18 MR. MUCKENFUSS: Well I think you've got clearly a
19 specific reference in 803(8). The statement that obviously
20 the drafters of the Rules of Evidence are concerned about
21 reports like this coming into evidence and specifically
22 note that. I think the recorded recollection you have to
23 have a general statement that yeah if a witness can't
24 recall then you can use a document. I think the more
25 specific trumps the more general. I think the drafters

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1 intended to keep out police reports. You know police
2 reports are obviously one sided. I mean you have the
3 police - again I still don't understand. Detective Strait
4 I would also argue, Your Honor, I don't know why he has to
5 have his memory refresh. He testified at pretrial without
6 looking at the report about what Mr. O'Neil stated.

7 SOLICITOR COLLINS: Your Honor, respectively Detective
8 Strait read the report verbatim in front of Mr. Muckenfuss
9 and I think without objection at that time other than just
10 general - -

11 THE COURT: That was without a jury though.

12 MR. MUCKENFUSS: And I cross examined him. I was
13 impeaching --

14 SOLICITOR COLLINS: But he did read it. He didn't
15 testify from his memory. He read it.

16 THE COURT: Says the followings are not excluded.
17 Again under (8) it says "what record, reports, statements
18 or data commutations in any form are not excluded.

19 MR. MUCKENFUSS: I would contend it's not provided
20 however the investigative notes involving --

21 THE COURT: It is excluding however the following.

22 MR. MUCKENFUSS: Yeah following. Provided however the
23 investigative notes involving opinions, judgments, or
24 conclusions are not admissible. And again my argument,
25 Your Honor, is that these are not the words of Mr. O'Neil.

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1 as he had written the statement. This is Detective Strait
2 interrupting in his notes.

3 THE COURT: All right. Well he's not - these notes
4 involving opinions, judgments or conclusions?

5 MR. MUCKENFUSS: I would contend they are. I think he
6 testified that the only words that he said literally were
7 from Mr. O'Neil were the ones he put in quotes in the
8 report. I think he testified he couldn't recall. I mean
9 these were his interpretation of what Mr. O'Neil stated.
10 The way he puts the words down, the way he structures the
11 words. It's not - the report its not audio recordings, its
12 not Mr. O'Neil's writing, it's Detective Straits the way he
13 wanted to put it down.

14 THE COURT: Even if he wrote it that doesn't make it
15 his opinion, judgement or conclusion. If I wrote down
16 right now at this point in the trial Attorney Muckenfuss
17 objected under Rule 803 (8) that wouldn't be an opinion,
18 judgment or conclusion. That would be a recitation of what
19 just happened and what you did.

20 MR. MUCKENFUSS: Well just reading 803 (8) it says
21 "what would be admissible records, statements, or data
22 computations in any form of public offices or agencies."
23 And under (b) it says "matters observed pursuant to duty
24 imposed by law as to which matters there was a duty to
25 report."

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1 I would contend that - and then it says "excluding
2 however in criminal cases matters observed by police
3 officers and other law enforcement personnel.

4 THE COURT: That's what's hanging me up right there.
5 That's the language that's - -

6 MR. MUCKENFUSS: And I apologize, Your Honor. I think
7 I was focusing maybe on - I think that excludes from the
8 hearsay exception in criminal cases matters observed by
9 police officers or other law enforcement personnel. I
10 don't think 803 (8); I think 803 (8) specifically would
11 keep out the contents under that one the contents of this
12 report.

13 THE COURT: Investigative notes, however, in criminal
14 cases matter observed by police officers are not excluded.
15 If they are not excluded then they would be excluded.

16 MR. MUCKENFUSS: It seems to me that 803 (8) that's
17 the exception but if it's a matter observed in criminal
18 cases by police officers or other law enforcement personnel
19 that would not be - that would fall under the exception and
20 it would be excluded. I think the first part of this it is
21 an exception, so the first part of it's telling you what is
22 not hearsay if the declarant - whether the declarant is
23 there or not. And it says excluding what's observed.

24 THE COURT: Right.

25 MR. MUCKENFUSS: So that would not be an exception.

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1 THE COURT: Well that's what's bothering me, Ms.
2 Collins. I'm repeating myself I know.

3 SOLICITOR COLLINS: And I understand that, Your Honor,
4 but as to - If I may argue.

5 As to § (8) and § (5) I would submit it's not either
6 this one or that. I would submit first of all 5 requires
7 something that 8 doesn't. And it requires that memorandum
8 be done when the witness - when the matter was fresh in the
9 witness's memory and to reflect that knowledge correctly.
10 Now in a perfect world I would like to believe that that's
11 always the case with every law enforcement report. But I
12 would submit where as 5 allows that memorandum to be read
13 into evidence but is not itself an exhibit, that that's the
14 distinction that for these items that had been reported
15 when they're fresh in the witness's memory and to reflect
16 that knowledge correctly that in that case the rule will
17 say okay for those they can be read into evidence but can't
18 be received as an exhibit. But distinguishing that under §
19 (8) for public records and reports, its noting issues of
20 the report itself being offered into evidence. And in that
21 case it does distinguish criminal cases. And I would
22 submit that the writers of the rules could easily have said
23 under § 5 for purposes of law enforcement agencies please
24 refer to § 8.

25 THE COURT: Well I'm gonna allow it under 803(5). All

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1 right, we've gotten a note and I don't know, maybe I don't
2 make myself clear." From the Foreman: "are we allowed to
3 discuss the case when we are out of the courtroom at this
4 time? We have not done so at this time. Signed by the
5 Foreman." My answer is no you may not discuss the case
6 until I instruct you to deliberate at the end of the
7 trial."

8 Any objections to me sending that note back with that?

9 SOLICITOR COLLINS: No, Your Honor.

10 MR. MUCKENFUSS: No objection.

11 THE COURT: All right, let's take a real short
12 refresher break. The jury will be refreshed then we can go
13 forward.

14 (COURT IN RECESS AT 03:33 P.M..)

15 (COURT BACK IN SESSION AT 03:44 P.M..)

16 THE COURT: Anything from the State before the jury
17 comes in?

18 SOLICITOR COLLINS: The State is ready.

19 THE COURT: The Defense?

20 MR. MUCKENFUSS: No, Your Honor.

21 THE COURT: Bring in the jury.

22 (JURY REENTERS COURTROOM AT 03:44 P.M..)

23 THE COURT: Mr. Foreman, members of the jury. I
24 received your note; of course I returned it. If you will
25 before you leave today just give it to the bailiff so he

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1 can give it back to me so I can have it made a part of the
2 record. Just to remind you that you aren't to discuss the
3 case and try to make up your own mind until I instruct you
4 to jointly deliberate and return a unanimous verdict. That
5 will only be after you've heard all the evidence, the
6 arguments of the attorneys and my charge on the law. And I
7 think I told you yesterday as I call it you don't have all
8 the tools you need until we get reached that time. We
9 always like to hear both sides of the controversy before we
10 reach a conclusion so...

11 MR. FOREMAN: Yes, sir.

12 THE COURT: Thank you.

13 You may proceed.

14 SOLICITOR COLLINS: Thank you, Your Honor.

15 DIRECT EXAMINATION - CON'T

16 DETECTIVE EDDIE STRAIT BY SOLICITOR COLLINS:

17 Q. Detective, again you have before you State's Exhibit
18 Six; is that correct?

19 A. Yes, ma'am.

20 Q. And can you read that exhibit as to what the defendant
21 stated to you on November 12th, 2010 when you interviewed
22 him.

23 A. "I met with Hashin in the conference room of the
24 Detective Division. I offered Hashin something to drink
25 and he declined. I read him his Miranda Rights from the

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1 York County Sheriff's Office Waiver of Rights Form. Hashin
2 acknowledged he understood his rights and agreed to talk by
3 signing the form. Hashin stated he and Crystal began to
4 argue when she came home from getting her hair done.
5 Hashin was watching a movie and talking loudly with his
6 son. This is around 6:00 p.m.. She ask him to be quite
7 and went upstairs for a while. She came back down and left
8 the residence. Hashin stated he did not know where she
9 went and what time this was. He did state they talked on
10 the phone a few times with each other while she was gone.
11 When Crystal came back home they began to argue about the
12 ring he had given her. Hashin states he decided the
13 relationship was off and ask for the ring back he was going
14 to leave the residence. Hashin then packed his belongings
15 in a car and was preparing to leave when he got the ring
16 back. She told him it was in the console of her car and
17 this is where he found it. Hashin said he left in his car
18 and drove around for a while and then came back to the
19 residence. I then ask what happened when he came back to
20 the residence and he stated whatever she said happened. I
21 ask again for his side of the story and he repeated
22 whatever she said happened.

23 Q. And that was the extent of the statement that he gave
24 to you?

25 A. Yes, ma'am.

DETECTIVE EDDIE STRAIT: BY SOLICITOR COLLINS:

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1 Q. And you noted on that a time November 12th, 2010, the
2 the time noted is 6:29 p.m.; is that what the document
3 reflects?

4 A. Yes, ma'am.

5 Q. Is that in fact an error?

6 A. Yes, ma'am.

7 Q. And what is the error?

8 A. It should be a.m..

9 Q. But the time 6:29 is correct, it should be just a.m.?

10 A. Yes, ma'am.

11 Q. Detective Strait, at any time prior to talking to the
12 defendant, having the defendant tell you what you just
13 shared with us, had you ever told the defendant what the
14 victim had told you?

15 A. No, ma'am.

16 Q. Had you ever told the victim - the defendant what the
17 victim had reported at the hospital?

18 A. No, ma'am.

19 Q. At the conclusion of the defendant's statement what
20 happened then?

21 A. Myself and Sergeant Wooten escorted him down to the
22 booking section of the jail here at the Moss Justice
23 Center.

24 Q. And at that time was Mr. O'Neil booked into custody
25 officially at the Detention Center?

DETECTIVE EDDIE STRAIT: BY SOLICITOR COLLINS: -

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1 A. Yes he was.

2 Q. And at that time were personal items he had on him
3 taken into property?

4 A. Yes, ma'am.

5 Q. Do you know whether or not the clothing he was taken
6 - was taken into property and he was issued regulation
7 jumpsuit?

8 A. He would - -

9 Q. Or do you know?

10 A. He would have been issued a jumpsuit. I'm not sure
11 about his clothes.

12 Q. All right. What did you do after seeing that the
13 defendant was placed into custody with the Detention
14 Center?

15 A. As I said earlier I was on call which our normal on
16 call time would be 2:00 p.m. to 10:00 p.m., and wherever we
17 were called out after that. We had already gotten in close
18 to regular working hours for that Friday so I stayed on at
19 a regular shift, obtained a warrant but I'm not sure what
20 time they got the two warrants on Mr. O'Neil.

21 Q. Now had you determined that Deputy Doty had received
22 the consent of Ms. Caldwell to search her apartment?

23 A. Yes.

24 Q. And what was the address of her apartment?

25 A. Kensington Square. I'm not sure the numbers without

DETECTIVE EDDIE STRAIT: BY SOLICITOR COLLINS:

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1 looking at it.

2 Q. All right. Can you refresh your memory by looking
3 at your report, your Incident Report regarding her address?

4 A. Yes. Or the Consent to Search either one. I have it
5 here on the regular report. Its [REDACTED]

6 Q. [REDACTED]

7 A. Yes, ma'am.

8 Q. And where are those apartments located?

9 A. They're on Herlong Avenue just below the hospital.

10 Q. Just below Piedmont Medical Center?

11 A. Yes, ma'am.

12 Q. Do you know the mileage distance between Kingston
13 Square Apartments on Herlong and Piedmont Medical Center on
14 Herlong?

15 A. It would be less than a mile.

16 Q. Less than a mile? And for the record is [REDACTED]
17 Square, Rock Hill, South Carolina within York County?

18 A. Yes it is.

19 Q. York County, South Carolina?

20 A. Yes, ma'am.

21 Q. And therefore within your jurisdiction?

22 A. Yes.

23 Q. Did you go out to the scene that day to [REDACTED]

24 [REDACTED]?

25 A. Yes, ma'am. Actually when I left the hospital while

DETECTIVE EDDIE STRAIT: BY SOLICITOR COLLINS:

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1 Sergeant Wooten was transporting him I rode by just to see
2 the apartment.

3 Q. And did you at that time see the apartment?

4 A. Yes I did.

5 Q. Just from the exterior?

6 A. No, ma'am. I walked through quickly, talked to the
7 officers that were there.

8 Q. All right. And had they secured the area?

9 A. Yes, ma'am.

10 Q. Was Forensic Services there yet to process the scene?

11 A. I don't recall if they were there yet or still at the
12 hospital.

13 Q. You walked through the apartment briefly?

14 A. Yes, ma'am.

15 Q. Did you move anything or touch anything?

16 A. No, ma'am.

17 Q. You said you did that before you came out here to the
18 Justice Center to interview the defendant with Sergeant
19 Wooten; is that right?

20 A. Yes, ma'am.

21 Q. What was your next action on this case, Detective?

22 A. After that Friday the next action I was contacted by
23 Ms. Caldwell by phone on that Monday.

24 Q. And was that November 15th, 2010?

25 A. Yes it was.

DETECTIVE EDDIE STRAIT: BY SOLICITOR COLLINS:

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1 Q. And at the time she contacted you, tell us what
2 happened.

3 Q. She told me that she wanted - -

4 MR. MUCKENFUSS: Your Honor, objection to hearsay.

5 THE COURT: I sustain the objection.

6 BY SOLICITOR COLLINS:

7 Q. Based on your conversation with Ms. Caldwell, what
8 action did you take?

9 A. We got - I got permission from her over the phone
10 verbally to go back and look in her apartment.

11 Q. And did you in fact go back to look at the apartment?

12 A. Yes I did.

13 Q. And where - Were you looking within a certain area of
14 the apartment?

15 A. Yes the upstairs bedroom.

16 Q. Which upstairs bedroom?

17 A. I'm not sure right or left, but the that had the -
18 like a white and gold red comforter on the bed.

19 Q. White, gold and red comforter?

20 A. Right.

21 SOLICITOR COLLINS: Your Honor, at this time I would
22 ask to not for the truth of the matter asserted in the
23 phone call to him but to explain his actions for looking in
24 that bedroom what was told to him.

25 MR. MUCKENFUSS: We would object, Your Honor.

DETECTIVE EDDIE STRAIT: BY SOLICITOR COLLINS:

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1 THE COURT: I sustain the objection.

2 SOLICITOR COLLINS: Okay.

3 Q. So you went back to the apartment; is that right?

4 A. Yes.

5 Q. Was it secure?

6 A. Yes.

7 Q. And were you alone?

8 A. Actually FSU Officer Edy was with me. And I also
9 contacted the K9 Unit.

10 Q. Okay. And FSU Officer is Audra Edy; is that correct?

11 A. That's correct.

12 Q. Okay. Compared to Eddie Strait yourself.

13 A. Yeah, last name Edy.

14 Q. Okay. Just to be clear. And you said the K9 Unit
15 also came out?

16 A. Yes, ma'am.

17 Q. Okay. And why apart from looking at the bedroom that
18 you described, where else did you all look around the
19 apartment?

20 A. Outside the apartment across from her apartment is a
21 large gully or a ravine and next to that is a car wash.

22 Q. What were you looking for?

23 A. Looking for a firearm.

24 Q. Why were you looking for a firearm?

25 A. That's where we were told it may have been tossed.

DETECTIVE EDDIE STRAIT: BY SOLICITOR COLLINS:

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1 MR. MUCKENFUSS: Your Honor, objection.

2 THE COURT: I sustain the objection.

3 Disregard the information they obtained from another
4 source. He obtained from another source.

5 BY SOLICITOR COLLINS:

6 Q. Was a firearm located?

7 A. No, ma'am.

8 Q. Can you describe that terrain for us?

9 A. Yes. It appeared to have been maybe a dump at one
10 time. There was large chunks of concrete and asphalt and
11 it was covered with kudzu vines.

12 Q. Is it flat?

13 A. No, ma'am, it was a large ditch or ravine.

14 Q. Does it connect to the apartment parking lot?

15 A. At the edge of their parking lot it goes down and then
16 comes back up at the car wash that's adjacent to it.

17 Q. And is that the area that you all searched for - and
18 what were you looking for?

19 A. A firearm.

20 Q. And that's the area you searched for one?

21 A. Yes.

22 Q. Was one found?

23 A. No, ma'am.

24 Q. Who all was looking for that?

25 A. All three K9 officers which Randy Clinton, McKenzie

DETECTIVE EDDIE STRAIT: BY SOLICITOR COLLINS:

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1 and Carroll.

2 Q. All right.

3 A. Myself and the FSU officer also.

4 Q. And by K9 officers were they utilizing one of their
5 K9?

6 A. One of their dogs yes.

7 Q. Okay. Was any firearm found?

8 A. No, ma'am.

9 Q. All right. And was anything found within the bedroom
10 that you mentioned that had the white, the gold, and the
11 burgundy on the bed?

12 A. Yes, ma'am.

13 Q. And what was found up there?

14 A. A fired cartridge was found in a chair to the right
15 to the foot of the bed.

16 Q. And who found that?

17 A. I located - saw it and had forensic officer photograph
18 it and collect it.

19 Q. And that was Officer Audra Eddy?

20 A. That's correct.

21 Q. One of these has been premarked as State's Exhibit
22 Fifty-one for ID.

23 And I ask that these other two, Madame Court Reporter,
24 also be marked for ID please.

25 (WHEREUPON: STATE'S EXHIBIT NUMBERS SEVENTY-THREE AND

DETECTIVE EDDIE STRAIT: BY SOLICITOR COLLINS:

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1 SEVENTY-FOUR PREMARKED FOR IDENTIFICATION.)

2 SOLICITOR COLLINS: Thank you.

3 Q. Detective, I show you what's been marked for
4 identification purposes first of all as State's Exhibit
5 Fifty-one I believe.

6 A. That's correct.

7 Q. For ID purposes. And ask you do you recognize that?

8 A. Yes.

9 Q. What is that?

10 A. That's the chair to the right of the foot of the bed
11 the projectile was located in.

12 Q. Is that a photograph of the chair?

13 A. Yes.

14 Q. And were you present when that photograph was made?

15 A. Yes.

16 Q. And was that photograph made on November 15th, 2010?

17 A. Yes.

18 Q. And who took that photograph?

19 A. Officer Eddy, Audra Eddy.

20 Q. And is that a fair and accurate picture of the chair
21 at the time you saw it?

22 A. The basket on the bed was actually sitting in the
23 chair the first time I saw it.

24 Q. All right. And who if anyone moved that basket?

25 A. I moved the basket.

DETECTIVE EDDIE STRAIT: BY SOLICITOR COLLINS:

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1 Q. And at that time did you see something?

2 A. Yes.

3 Q. What did you see?

4 A. A fired bullet projectile.

5 Q. All right. Is State's Exhibit Fifty-one a fair and
6 accurate depiction of that chair in that room after you
7 moved the basket and saw that fired bullet?

8 A. Yes it is.

9 SOLICITOR COLLINS: I would move State's Exhibit
10 Fifty-one into evidence.

11 MR. MUCKENFUSS: No objection.

12 THE COURT: In without objection.

13 (WHEREUPON: STATE'S EXHIBIT FIFTY-ONE IDENTIFIED AND
14 MARKED, RECEIVED INTO EVIDENCE.)

15 BY SOLICITOR COLLINS:

16 Q. I ask you to look at State's Exhibit Seventy-three
17 and Seventy-four and ask you, do you recognize those items
18 before you?

19 A. I do.

20 Q. What are they?

21 A. A close up and a closer up of the projectile laying
22 in a blanket in the chair.

23 Q. And are those photographs were those taken in front
24 of you?

25 A. Yes.

DETECTIVE EDDIE STRAIT: BY SOLICITOR COLLINS:

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1 Q. By Officer Audra Eddy?

2 A. Yes.

3 Q. On November 15th, 2010?

4 A. Yes, ma'am.

5 Q. And are those fair and accurate depictions of the
6 projectile or the fired bullet as you saw it at that time
7 November 15th, 2010?

8 A. They are.

9 SOLICITOR COLLINS: I would move State's Exhibit
10 Seventy-three and Seventy-four into evidence.

11 MR. MUCKENFUSS: No objection.

12 THE COURT: In without objection.

13 (WHEREUPON: STATE'S EXHIBITS SEVENTY-THREE AND
14 SEVENTY-FOUR IDENTIFIED AND MARKED, RECEIVED INTO
15 EVIDENCE.)

16 BY SOLICITOR COLLINS:

17 Q. Was that cartridge collected?

18 A. Yes it was.

19 Q. Am I using the right term, a fired cartridge?

20 A. A cartridge would be more the shell casing. That's
21 the projectile or the bullet that came - -

22 Q. That's the actual bullet?

23 A. Yes.

24 Q. Thank you. Now did you meet with some folks at that
25 apartment that day?

DETECTIVE EDDIE STRAIT: BY SOLICITOR COLLINS:

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1 A. I believe the next day I met with Ms. Caldwell and
2 her mother.

3 Q. All right. Did you meet with anyone from the
4 defendant's family?

5 A. Yes.

6 Q. And was it that day or the next day?

7 A. I'm not sure which day that was.

8 Q. All right. But on one of those two days, November
9 15th of November 16th, 2010 did you have an occasion
10 to meet with Mr. O'Neil's family?

11 A. Yes. I believe it was the 16th because Ms. Caldwell
12 had given me a key.

13 Q. All right. And at that time did you allow his family
14 to take some property from that apartment?

15 A. Yes, ma'am.

16 Q. And you stated you also met with Ms. Caldwell. Which
17 day was that?

18 A. I believe that was the 16th.

19 Q. I'm sorry, I couldn't hear you.

20 A. I think that was the Tuesday, the 16th.

21 Q. Tuesday, November 16h? Okay. And at that time when
22 you met Ms. Caldwell you stated her mother was with her?

23 A. Yes.

24 Q. Okay. And where did you all meet?

25 A. At her apartment.

DETECTIVE EDDIE STRAIT: BY SOLICITOR COLLINS:

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1 Q. Okay. Was that before or after the defendant's family
2 came? Do you recall?

3 A. I don't recall. I think it was before because I
4 think she gave me a key to open it up for them.

5 Q. All right. Now what did you do with Ms. Caldwell at
6 that time?

7 A. I got her to give me a written statement.

8 Q. Okay. And did she provide you with a written
9 statement?

10 A. She did.

11 Q. And did she write that in her handwriting?

12 A. Yes.

13 Q. One moment please.

14 (PAUSE.)

15 Q. Was it lengthy?

16 A. Yes.

17 Q. How many pages was it?

18 A. I'm not sure.

19 Q. Can you refresh your memory and look at the item for
20 me?

21 A. Sure.

22 Q. Do you have it with you?

23 A. I do. She wrote a nine page statement and then
24 wrote a one page statement following that.

25 Q. All right. Did she sign both of those?

DETECTIVE EDDIE STRAIT: BY SOLICITOR COLLINS:

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1 A. She did.

2 Q. And at that time she mentioned the apartment and
3 obviously she's out of the hospital. Right?

4 A. Yes, ma'am.

5 SOLICITOR COLLINS: I ask the Court's indulgence.

6 (PAUSE.)

7 Q. And based upon that statement which she gave you,
8 did you do anything to change the status of Mr. O'Neil
9 being in custody?

10 A. No, ma'am.

11 Q. And I believe the - if I'm using the right word -
12 that we've seen on Exhibits Fifty-one, Seventy-three and
13 seventy-four, in particularly Seventy-three and Seventy-
14 four that are marked; was taken into evidence by Audra
15 Eddy; is that right?

16 A. That's correct.

17 Q. You aren't there earlier because you were dealing
18 with the victim at the hospital. I believe you aren't
19 there when FSU was going through the apartment and
20 collecting any other evidence; is that right?

21 A. Correct.

22 Q. On November 12th, 2010?

23 A. Correct I was not there.

24 Q. Of course part of that time you were with Mr. O'Neil
25 at the Detention Center. Right?

DETECTIVE EDDIE STRAIT: BY MR. MUCKENFUSS

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1 MR. MUCKENFUSS: Objection, leading.

2 THE COURT: Rephrase the question.

3 SOLICITOR COLLINS: I will rephrase.

4 Q. You've testified the actions you took on November
5 12th, 2010. Correct?

6 A. Excuse me?

7 Q. You testified what you did on November 12th, ---

8 A. Correct.

9 Q. --- 2010? All right. You are what's known as the
10 case agent on this case; is that right?

11 A. That's correct.

12 SOLICITOR COLLINS: One moment please.

13 (PAUSE.)

14 SOLICITOR COLLINS: Your Honor, I apologize, may we
15 approach briefly?

16 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING
17 OF THE JURY AT 04:00 P.M..)

18 SOLICITOR COLLINS: Thank you, Your Honor.

19 Those are all the questions the State would have
20 at this time of Detective Strait.

21 Detective Strait, please answer any questions of
22 Mr. Muckenfuss or his assistants.

23 CROSS EXAMINATION

24 DETECTIVE EDDIE STRAIT BY MR. MUCKENFUSS:

25 Q. Detective Strait, I want to make sure I'm clear about

DETECTIVE EDDIE STRAIT: BY MR. MUCKENFUSS

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1 the search. When you searched - when you went back to the
2 apartment to assist with the search, that was on November
3 15th. Correct?

4 A. That's correct.

5 Q. And that was three days after the incident. Correct?

6 A. Correct.

7 Q. And in fact detectives, other officers had searched
8 the apartment on November 12th. Correct?

9 A. That's correct..

10 Q. You were not there when the other officers searched
11 on November 12th?

12 A. No. They came from the hospital and stayed there
13 and I left.

14 Q. Okay. Who were the other officers who searched on
15 November 12th?

16 A. I would have to look at their report but I believe
17 Officer Eddy and Officer George were the two there that
18 Friday also.

19 Q. And have you reviewed photographs of the apartment
20 from the search on November 12th?

21 A. I've seen photographs.

22 Q. I show you two photographs.

23 (WITNESS REVIEWING PHOTOS.)

24 Q. Are you familiar with these photographs?

25 A. Yes.

DETECTIVE EDDIE STRAIT: BY MR. MUCKENFUSS

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1 Q. And is that from the search on November 12th?

2 A. I don't know that.

3 Q. Okay. Well looking at the photograph of the chair.

4 A. Yes.

5 Q. And there is a basket in the chair.

6 A. That's correct.

7 Q. Do you see that?

8 A. Yes.

9 Q. Did you take that photograph?

10 A. No.

11 Q. Was that a photograph taken on November 15th?

12 A. It may have been, I don't know.

13 Q. Okay. Have you seen photographs of that chair from
14 the November 12th search?

15 A. Again I don't know which date they were from.

16 Q. Now when you arrived at the apartment you just
17 testified that you took a basket out of the chair; is that
18 correct?

19 A. On the 15th yes.

20 Q. I'm sorry, on the 1th; is that correct?

21 A. Yes.

22 Q. Did you take pictures of the chair before you
23 removed the basket?

24 A. I didn't take any pictures. I'm not sure. Normally
25 FSU would start at the door and work their way in.

DETECTIVE EDDIE STRAIT: BY MR. MUCKENFUSS

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1 Q. Okay. On November 15th was FSU there?

2 A. Yes.

3 Q. Okay. And are you aware if they took pictures before
4 you moved the basket?

5 A. I can't say definitely yes or no. Normally they
6 would start at the door and work their way in which is what
7 that looks like in over all from the door.

8 (WHEREUPON: DEFENDANT'S EXHIBIT SIX AND SEVEN
9 PREMARKED FOR IDENTIFICATION.)

10 MR. MUCKENFUSS: Your Honor, we move to introduce
11 Defendant's Six and Seven.

12 SOLICITOR COLLINS: No objection.

13 THE COURT: In without objection.

14 (WHEREUPON: DEFENDANT'S EXHIBIT SIX AND SEVEN
15 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

16 MR. MUCKENFUSS: One moment, Your Honor.

17 (PAUSE.)

18 Q. I apologize. Now in - if I can just reference
19 the correct number on how she marked them.

20 If you will look at Defendant's Exhibit Six.

21 And I want to contrast this with the photo you were
22 shown of the chair which is State's Exhibit - I'm not sure
23 what number this is.

24 A. Fifty-one.

25 Q. Fifty-one?

DETECTIVE EDDIE STRAIT: . BY MR. MUCKENFUSS

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1 MADAME COURT REPORTER: Yes, sir, Fifty-one.

2 MR. MUCKENFUSS: Okay.

3 Q. State's Exhibit Fifty-one. Are these photographs of
4 the same area of the room?

5 A. Yes.

6 Q. All right. And in State's Exhibit Fifty-one is the
7 basket in the chair?

8 A. No it is not.

9 Q. And Defendant's Exhibit Six is the basket in the
10 chair?

11 A. Yes it is.

12 Q. Do you notice any other differences with the
13 photographs?

14 A. The comforter is pulled back from the corner of the
15 bed.

16 Q. Okay. And you're referencing this gold and white
17 comforter?

18 A. Yes.

19 Q. All right. And in State's Exhibit Fifty-one its
20 pulled back on the bed?

21 A. Yes.

22 Q. And that's the photograph that you took on November
23 15th or that was taken - -

24 A. It was taken yes.

25 Q. All right. And the photograph - the other photograph

DETECTIVE EDDIE STRAIT: BY MR. MUCKENFUSS

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1 Defendant's Exhibit Six, is the comforter on the bed, is it
2 pulled back?

3 A. No it's not.

4 Q. All right.

5 MR. MUCKENFUSS: If I may, Your Honor, use the
6 projector just so to make this a little more...

7 I think if it's blown up I think the jury will see
8 exactly what we're talking about.

9 (DEFENDANT'S EXHIBIT NUMBER SIX PUBLISHED TO THE JURY
10 ON THE OVER HEAD PROJECTOR.)

11 Q. All right, I think we're...

12 This is a little fuzzy, but this is Defendant's
13 Exhibit Six; is that correct, Detective?

14 A. Yes.

15 Q. Now I think it's a little fuzzy but the basket
16 referred to in the chair, is that - you can see its sort of
17 in the middle of the picture. Correct?

18 A. Yes there is a chair in front of the mirror.

19 Q. And what can you tell what's in the basket?

20 A. I think it was like a gift basket, a bottle of wine
21 or champagne and some different things in it.

22 Q. Okay. And so in picture - this picture was taken
23 November 12th?

24 A. I don't know.

25 Q. All right.

DETECTIVE EDDIE STRAIT: BY MR. MUCKENFUSS

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1 A. If you have it stamped somewhere then I will agree
2 with that.

3 Q. I don't know if it's stamped - -

4 SOLICITOR COLLINS: Officer Audra Eddy will be here
5 to testify to all the photographs in the final hearing
6 tomorrow.

7 MR. MUCKENFUSS: All right.

8 Q. Now you also notice in this photograph there is a
9 yellow bag on the dresser. Do you see that?

10 A. Yes.

11 Q. And the comforter that you mentioned on the bed there,
12 the comforter is down on the bed. Correct?

13 A. I'm sorry, the comforter is what?

14 Q. The comforter, we were talking about the bedspread.

15 A. Right.

16 Q. On this picture its completely ---

17 A. Right.

18 Q. --- down on the bed. It's made up.

19 A. Correct.

20 Q. Let me check State's Exhibit Fifty-one really quick.

21 (PAUSE.)

22 Q. I'm going to show you a photograph -
23 If we can get the lights, Your Honor?
24 Just leave it on for a second.

25 (COURTROOM LIGHTS TURNED ON.)

DETECTIVE EDDIE STRAIT: BY MR. MUCKENFUSS

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1 Q. Let me show you a photograph which was taken of
2 the room. And that's a slightly pulled back view of the
3 room. Was that photograph taken on November 15th?

4 A. I don't know.

5 Q. Well if you look at the photograph and compare it to
6 State's Exhibit Fifty-one does it appear to be - -

7 A. Yes the bedspread is back and the basket is moved.

8 Q. Okay. Would you deduce that was taken on November
9 15th when you searched the apartment?

10 A. Yes.

11 Q. Okay.

12 MR. MUCKENFUSS: Mark this.

13 (WHEREUPON: DEFENDANT'S EXHIBIT NUMBER EIGHT
14 PREMARKED FOR IDENTIFICATION.)

15 MR. MUCKENFUSS: Thank you.

16 Q. I want you to hold that.

17 So just to be clear, in Defense's Exhibit Six do you
18 see the yellow bag. Correct?

19 A. Yes.

20 Q. And there is the basket on the chair?

21 A. Yes.

22 Q. And the bedspread. Correct?

23 A. Yes.

24 THE COURT: Has that been offered?

25 MR. MUCKENFUSS: I'm sorry, Your Honor.

DETECTIVE EDDIE STRAIT: BY MR. MUCKENFUSS

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1 THE COURT: Has it been offered into evidence yet?

2 MR. MUCKENFUSS: Defendant's Exhibit Six was. We
3 would offer Defendant's Exhibit Eight.

4 SOLICITOR COLLINS: No objection.

5 THE COURT: In without objection.

6 (WHEREUPON: DEFENDANT'S EXHIBIT NUMBER EIGHT
7 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

8 MR. MUCKENFUSS: Thank you, Your Honor.

9 Q. I show you what I have marked as Defendant's Exhibit
10 Eight. Now obviously it's a little dim there, but do you
11 see - and you're holding the picture in front of you - do
12 you see the yellow bag in Defendant's Exhibit Eight?

13 A. I do not.

14 Q. And that bag had been moved in reference to the
15 Exhibit I just showed you. Correct?

16 A. I don't understand.

17 Q. Defendant's Exhibit Six if you could compare the two
18 photos.

19 A. Yes its there in Six and not in Eight.

20 Q. Okay. So the yellow bag is gone?

21 A. Correct.

22 Q. And this was the photograph that was taken on
23 November 15th when you searched the apartment. Correct?

24 A. Yes.

25 Q. All right. And you mentioned the bedding had been

1 moved back at the corner. Do you see that?

2 A. Yes.

3 Q. And in Defendant's Exhibit Six the bedding is -

4 is it not that way. Correct? The bedding is completely on
5 the bed.

6 A. That's right.

7 Q. All right. And you can't really see it here but in
8 the middle of this picture, Defendant's Exhibit Eight, the
9 basket is not in the chair any more. Correct?

10 A. That's correct.

11 Q. And it's moved onto the bed?

12 A. Correct.

13 Q. And you testified that you moved the basket onto the
14 bed?

15 A. That's correct.

16 Q. Did you move the yellow plastic bag?

17 A. No I did not.

18 Q. Did you move the bedding on the bed?

19 A. I may have moved the bedding to set the basket because
20 of the blood on it.

21 Q. Did - There are no sheets, it looks like the mattress.
22 Correct?

23 A. Yes.

24 Q. All right. Now you mentioned - -

25 MR. MUCKENFUSS: I beg the Court's indulgence.

DETECTIVE EDDIE STRAIT: BY MR. MUCKENFUSS

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1 (PAUSE.)

2 Q. Did you notice if there were sheets on the bed as
3 opposed to just the comforter?

4 A. No I did not.

5 Q. All right. Detective Strait, after you - during the
6 search of the apartment November 15h you stated that you
7 found a bullet. Correct?

8 THE COURT: Are you through with the projector?

9 MR. MUCKENFUSS: I'm sorry. Yes, Your Honor.

10 Thank you.

11 Q. Is that correct?

12 A. Yes.

13 Q. All right. And the bullet that you found was resting
14 on the chair. Correct?

15 A. That's correct.

16 Q. And in State's Exhibit Seventy-four and Seventy-three
17 this is what you testified how you found the bullet.
18 Correct?

19 A. Yes when I moved the basket it was sitting there.

20 Q. And does the bullet - what you say to be the bullet,
21 does it appear to be resting on top of the blanket?

22 A. I think its stuck in there from the ragged edges of
23 the bullet. I don't know what you mean by resting but.

24 Q. Well from appearances is it on top of the blanket?

25 A. Yes.

DETECTIVE EDDIE STRAIT: BY MR. MUCKENFUSS

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1 Q. It's not buried in the blanket. Correct?

2 A. No.

3 Q. And you have no idea what the caliber of this bullet
4 is do you?

5 A. No I do not.

6 Q. And you didn't test it to find out what the caliber is
7 did you?

8 A. No. My understanding you can only get a range of
9 caliber.

10 Q. And isn't it standard protocol for the police to send
11 a bullet like this to a lab to have it tested?

12 A. You can only do ballistics if you have a firearm
13 you want to compare it to.

14 Q. But you have a bullet.

15 A. That's correct.

16 Q. And you can send it to the lab to test it for DNA;
17 isn't that true?

18 A. I assume you could yes.

19 Q. And you didn't test it for DNA in this case did you?

20 A. No.

21 Q. And you didn't test it to find out what the caliber
22 was?

23 A. No.

24 Q. And the caliber is determined by the diameter of the
25 bullet. Correct?

DETECTIVE EDDIE STRAIT: BY MR. MUCKENFUSS

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1 A. Diameter, weight.

2 Q. Right. And that's something you can figure out from
3 testing this bullet; isn't that true?

4 A. You can get a class it was in such as a .380, .38,
5 .357, .9 millimeter.

6 Q And you didn't --

7 a. They all fall into the same category.

8 Q. And you didn't bother to do that in this case?

9 A. No, sir.

10 Q. And in fact you don't even know what type of gun was
11 used.

12 A. No, sir.

13 Q. Now I think you testified you didn't find a gun?

14 A. That's correct.

15 Q. Now I think you testified you didn't find a gun?

16 A. That's correct.

17 Q. And in fact you searched you stated the outside of the
18 apartment. Correct?

19 A. That's correct

20 Q. Was this a wooded area?

21 A. There were trees in it but it's mostly kudzu vines.

22 Q. And you called the K9 Unit came out and searched?

23 A. Yes.

24 Q. And how many officers searched this area?

25 A. Three K9 officers, two forensic officers and myself.

1 Q. Right. And you found not weapon. Correct?

2 A. That's correct

3 Q. In fact sitting here today you have no idea if this
4 bullet was involved in the shooting of Ms. Caldwell or not.

5 A. From her description of the shooting it was found
6 where it should have been for a through and through gun
7 shot.

8 Q. Well you testified you don't know the caliber.
9 Correct?

10 A. That's correct

11 Q. You didn't test the bullet for DNA. Correct?

12 A. That's correct

13 Q. So you have no idea if this is the bullet that
14 actually passed through Ms. Caldwell?

15 A. Positively no.

16 Q. Right. And you found this bullet three days after the
17 police had already searched the apartment. Correct?

18 A. Correct when we found out where the shooting took
19 place.

20 Q. And in fact in looking at the photographs I just
21 showed you the bedroom that you searched had been changed
22 from when it was searched on November 12th.

23 A. As far as the yellow plastic bag yes.

24 Q. And you don't know if anybody was living in this
25 bedroom over the weekend?

DETECTIVE EDDIE STRAIT: BY MR. MUCKENFUSS

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1 A. I believe Ms. Caldwell was.

2 Q Well you don't know if anybody else had been in the
3 bedroom over the weekend?

4 A. No, sir, it was locked when we got there that Monday,
5 or that Tuesday, I'm sorry. Monday, correct.

6 Q. Clearly somebody had moved the yellow bag off the
7 dresser.

8 A. Yes, sir.

9 Q. Somebody - Strike that. What is the - Does SLED have
10 a ballistic's lab?

11 A. Yes.

12 Q. And it would be standard to send the bullet to the
13 SLED ballistic's lab wouldn't it?

14 A. I would say it was standard unless we had a gun to
15 compare it to.

16 Q. But again you could determine things from the bullet?

17 A. Yes.

18 Q. Okay. And what is SLED?

19 A. State Law Enforcement Division.

20 Q. And sitting here today you don't even know the
21 projectory of how Ms. Caldwell was shot?

22 A. Besides what she told us no.

23 Q. Right. And you're not even certain whether she was
24 shot from the left side or the right side?

25 A. I'm not no, sir.

1 Q. Okay. And you didn't - Strike that. Isn't it true
2 that a lab like SLED's lab they can test Ms. Caldwell's
3 clothing for gun residue, nitrates from gun power; lead,
4 things like that. Correct.

5 A. If it was fired close enough yes.

6 Q. Right. And you didn't test her clothing for that did
7 you?

8 A. No.

9 Q. Right. And you don't know how far away the gun was
10 when it went off.

11 A. Outside of what she was telling me no.

12 Q. Right. And you didn't do any type of independent
13 testing to figure out how far the gun was from Ms. Caldwell
14 or the projectory of the bullet?

15 A. No.

16 Q. And isn't it true that there was no testing for any
17 blood at the scene?

18 A. I'm not sure about that.

19 Q. And in fact sitting here today you don't even - you
20 can't even confirm there was blood in the room?

21 A. Confirm there was blood in the room?

22 Q. Yeah, there was not testing to confirm there was blood
23 in the room; isn't that true?

24 A. There was photographs of it.

25 Q. Right. But you didn't take - There's no evidence

DETECTIVE EDDIE STRAIT: BY MR. MUCKENFUSS

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1 taken and tested to determine if it was blood or whose
2 blood it was?

3 A. I don't know if FSU did that or not.

4 Q. Okay. Now there was a photograph of this bullet that
5 was found in the chair. It appears to have sort of a flat
6 tip. Do you see that?

7 A. Yes, sir.

8 Q. Is that because the bullet hit something hard?

9 A. Hit something hard?

10 Q. Yes.

11 A. Most modern ammunition is designed to flatten out on
12 impact, even soft tissue.

13 Q. Okay. And again you didn't do any testing as it
14 relates to why the bullet may have had this appearance when
15 you found it?

16 A. No I didn't. Obviously it had been fired.

17 Q. But you don't know what it hit?

18 A. No.

19 Q. In fact sitting here today there is no physical
20 evidence that was collected from that room that connects
21 Mr. O'Neil to this shooting; isn't that true?

22 A. No.

23 Q. Was there any blood that was tested that connects Mr.
24 O'Neil to this shooting?

25 A. There was blood present, photographed. I'm not sure

DETECTIVE EDDIE STRAIT: BY MR. MUCKENFUSS

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1 what was collected. That would have been FSU.

2 Q. You just testified there was no testing to done to
3 confirm there was any blood in the room.

4 A. That I'm aware of.

5 Q. Okay. You didn't test the bullet?

6 A. No, sir, I did not.

7 Q. Okay. And you didn't discover any fingerprints in the
8 room did you?

9 A. I have no idea. FSU handled that.

10 Q. Okay. Were you aware that fingerprints were in fact -
11 Were you aware that officers tried to find fingerprints and
12 they were negative?

13 A. No, sir.

14 Q. Okay. And you referenced the GSR kit. What is a GSR
15 kit?

16 A. It's gun shot residue.

17 Q. Well let me back track real quick before we get to the
18 GSR kit. Going back to this bullet. Isn't it true that
19 through testing SLED could determine the general rifling
20 characteristics of the bullet by testing the bullet?

21 A. I'm not very familiar with ballistics except matching
22 it to a gun. I know there is rifling you can tell if it's
23 left twist or right twist. Sometimes it will narrow it
24 down to make or model.

25 Q. And in fact SLED can take a bullet and determine a

DETECTIVE EDDIE STRAIT: BY MR. MUCKENFUSS

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1 list of potential weapons?

2 A. By the name brand you're referring to?

3 Q. Well from looking at the bullet, the caliber of the
4 type of gun; isn't that true?

5 A. I assume. I don't know what shape they need the
6 bullet in.

7 Q. I'm sorry.

8 A. I don't know what shape of bullet that they need to do
9 that but I am aware that they can do that.

10 Q. But you didn't even attempt to send this to SLED to
11 figure out if they could do it.

12 A. I did not no.

13 Q. You didn't attempt to send the bullet to SLED to
14 figure out what type of gun you were looking for in the
15 woods next door to her apartment did you?

16 A. I did not. If we found the gun we would send it off
17 with the bullet to match it ballistically.

18 Q. So you would have only sent the bullet to ballistics
19 if you found a gun. Is that what you're saying?

20 A. To see if it was fired from that gun.

21 Q. Now going back to the GSR kit. I'm sorry, what's a
22 GSR kit?

23 A. I don't remember mentioning that it's gun shot
24 residue.

25 Q. And I show you a document that's entitled South

DETECTIVE EDDIE STRAIT: BY MR. MUCKENFUSS

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1 Carolina Law Enforcement Division Forensic's Services
2 Laboratory Report.

3 (WITNESS REVIEWING DOCUMENT.)

4 Q. Have you seen this report before?

5 A. I have.

6 Q. And is this a standard kind of report they would get
7 for a GSR kit analysis?

8 A. Yes.

9 MR. MUCKENFUSS: Your Honor, we would introduce this
10 as Defendant's Exhibit Nine, I believe.

11 SOLICITOR COLLINS: Is that for identification?

12 MR. MUCKENFUSS: I'm sorry?

13 SOLICITOR COLLINS: Is he asking that it be marked for
14 identification? We object to it coming in. It's not this
15 witness's report.

16 MR. MUCKENFUSS: Your Honor, he states the standard
17 report that you would get for a GSR analysis. He's
18 reviewed it before, he testified about the GSR analysis on
19 direct.

20 SOLICITOR COLLINS: Your Honor, it's an expert's
21 opinion, she'll be here to testify tomorrow.

22 MR. MUCKENFUSS: I can lay more foundation.

23 THE COURT: Try to lay more foundation.

24 I sustain the objection at this time.

25 MR. MUCKENFUSS: Thank you, Your Honor.

DETECTIVE EDDIE STRAIT: BY MR. MUCKENFUSS

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1 Q. Now, Detective Strait, you stated you seen this report
2 before?

3 A. Yes.

4 Q. Is this the kind of report you would normally - as a
5 detective you would normally rely on in your investigation?

6 A. Rely on it? No.

7 Q. Or review?

8 A. Review yes.

9 Q. Okay. But this would be part of your investigation?

10 A. Yes.

11 Q. And do you normally received these kind of reports in
12 the course of an investigation where it's appropriate?

13 A. Yes.

14 Q. And again, is this the standard kind of form that you
15 would see from a GSR Report?

16 Q. Yes.

17 MR. MUCKENFUSS: Your Honor, I'm not going to ask
18 about the actual testing but I think he - it's a normal
19 kind of business police record that he would review and
20 consult in his investigation.

21 THE COURT: Any objection?

22 SOLICITOR COLLINS: I don't object, Your Honor..

23 THE COURT: In without objection.

24 (WHEREUPON: DEFENDANT'S EXHIBIT NUMBER NINE
25 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

DETECTIVE EDDIE STRAIT: BY MR. MUCKENFUSS

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1 MR. MUCKENFUSS: Thank you.

2 Q. Now was this - This was the GSR Analysis of Mr.
3 O'Neil?

4 A. Yes it was.

5 Q. And if you look it has - the report has items of
6 evidence, Item No.1, GSR Kit from Hashin O'Neil..

7 A. That's correct

8 Q. Below that it has Item 1.1, right palm.

9 A. Yes.

10 Q. And what does that indicate, that that was testing on
11 the right palm?

12 A. Yes.

13 Q. Of Mr. O'Neil's ---

14 A. Yes.

15 Q. --- body?

16 A. Yes.

17 Q. Okay. And read the results of the - -

18 SOLICITOR COLLINS: Your Honor, I'm going to object.

19 This witness will be here tomorrow.

20 THE COURT: Well it's in evidence now, so I over rule
21 the objection.

22 BY MR. MUCKENFUSS:

23 Q. What are the results of the right palm analysis?

24 A. "Quantities of metal, metals found did not indicate
25 the presence of gunshot residue."

DETECTIVE EDDIE STRAIT: BY MR. MUCKENFUSS

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1 Q. For the right palm the quantities of metals found did
2 not indicate the presence of gunshot residue?

3 A. That's right.

4 Q. Okay. Item 1.2, right back. Does that indicate the
5 right back of - the back of the right hand?

6 A. Right hand, correct.

7 Q. And read the results for Item 1.2.

8 A. "Quantities of metals found did not indicate the
9 presence of gunshot residue."

10 Q. Okay. Item 1.3, left palm, again the same kind of
11 testing for the left palm of Mr. O'Neil?

12 A. That's correct.

13 Q. And what are the results?

14 A. "Quantities of metals found did not indicate the
15 presence of gunshot residue."

16 Q. Okay. Item 1.4 states left back. Is that the back of
17 his left hand?

18 A. That's correct

19 Q. And please read the results.

20 A. "Quantities of metals found did not indicate the
21 presence of gunshot residue."

22 MR. MUCKENFUSS: I beg the Court's indulgence.

23 (PAUSE.)

24 Q. Detective Strait, there was no GSR analysis of Ms.
25 Caldwell's hands performed. Correct?

DETECTIVE EDDIE STRAIT: BY MR. MUCKENFUSS
BY MS. COLLINS

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1 A. I don't believe so.

2 Q. And when you did the search of the apartment on
3 November 15th, the Monday following the Friday of the
4 incident, you didn't test for blood around the front door
5 of the apartment did you?

6 A. I didn't test for anything no, sir.

7 Q. Would that have been the Forensic's Unit?

8 A. Yes.

9 MR. MUCKENFUSS: No further questions, Your Honor.

10 THE COURT: All right. Any redirect?

11 SOLICITOR COLLINS: Yes, Your Honor, briefly.

12 The first matter of housekeeping, Madame Court
13 Reporter, have I moved in State's Exhibit Number Five? Is
14 that in evidence, the *Miranda Waiver*?

15 MADAME COURT REPORTER: Yes, you have.

16 SOLICITOR COLLINS: Thank you.

17 REDIRECT EXAMINATION

18 DETECTIVE EDDIE STRAIT BY SOLICITOR COLLINS:

19 Q. Detective, in terms of this report that Mr. Muckenfuss
20 was just asking you about. Are you an expert -

21 Is that it right here?

22 A. Yes.

23 Q. Okay. What's been marked as Defense's Exhibit Nine
24 which is in evidence. Are you an expert in the field of
25 trace analysis?

DETECTIVE EDDIE STRAIT: BY SOLICITOR COLLINS

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1 A. No, ma'am.

2 Q. Have you been trained as such?

3 A. No, ma'am.

4 Q. Have you ever been qualified in a court of law as
5 such?

6 A. No, ma'am.

7 Q. All right. That's the report you received?

8 A. Yes.

9 Q. And Alice Simmons was the agent at SLED recording to
10 the statement?

11 A. That's correct

12 Q. That prepared that report?

13 A. Yes.

14 Q. Now the defense ask you about several photographs
15 which I guess would still be up here. Do you have them?

16 Number Six, Seven and Eight; is that right?

17 A. I believe so yes, ma'am.

18 Q. May I see those?

19 (DEFENSE EXHIBITS SIX, SEVEN AND EIGHT HANDED TO
20 SOLICITOR.)

21 Q. Thank you. Well I show you what's been marked as
22 Defendant's Exhibit Seven which is in evidence and ask you
23 are there not sheets on that bed?

24 A. Yes.

25 Q. So it's not just the bear mattress. Right?

1 A. That's correct.

2 Q. And on top of the sheets which are white there's a
3 comforter. Right?

4 A. Yes.

5 Q. Which is folded back.

6 MR. MUCKENFUSS: Object to leading, Your Honor.

7 THE COURT: Yeah, I sustain the objection.

8 Rephrase your question.

9 SOLICITOR COLLINS: I will rephrase.

10 Q. And so what's the status of the comforter?

11 A. Its folded back it looks like on one side of the bed
12 and several pillows on top of it.

13 Q. Detective, do you recall on cross examination the
14 defense attorney asking you did you find any forensic
15 evidence tying the defendant Mr. O'Neil to that room? Do
16 you recall him asking you that?

17 A. To the room?

18 Q. To that bedroom?

19 A. No.

20 Q. Do you recall the defense attorney asking you that?

21 A. No, ma'am.

22 Q. Well did you find any forensic evidence tying Mr.
23 O'Neil to that particular bedroom?

24 A. I really don't know what was collected by ESU.

25 Q. All right. Well I think you'll recall Mr. Muckenfuss

DETECTIVE EDDIE STRAIT: BY SOLICITOR COLLINS

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1 asking you did you test blood, do we even know if there was
2 blood in that room? Do you recall that question?

3 A. Yes.

4 Q. Do you recall your answer?

5 A. Yes.

6 Q. Okay. And so as far as you know the defendant's blood
7 wasn't found in that room. Correct?

8 A. Correct.

9 Q. And in fact is it fair to say to the best of your
10 knowledge there's no forensic evidence tying Crystal
11 Caldwell to that right; is that right?

12 MR. MUCKENFUSS: Objection, Your Honor, leading.

13 THE COURT: Rephrase. Rephrase your question.

14 SOLICITOR COLLINS: I'll rephrase. I'll rephrase the
15 question, Your Honor.

16 Q. To the best of your knowledge who if anyone is tied to
17 that room by forensic evidence?

18 MR. MUCKENFUSS: Your Honor, objection. He's
19 testified that he doesn't know of any forensic evidence
20 that was tested.

21 THE COURT: I over rule the objection.

22 BY SOLICITOR COLLINS:

23 Q. Are there other types of evidence? Well let me back
24 up. The objection is over ruled, if you'll please answer
25 the question. Who if anyone - -

DETECTIVE EDDIE STRAIT: BY SOLICITOR COLLINS

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1 A. You said forensic evidence?

2 Q. Yes.

3 A. No one in particular from any test that I'm aware of.

4 Q. But you have other evidence. Correct?

5 A. Yes.

6 Q. You have a statement - -

7 MR. MUCKENFUSS: Your Honor, objection, hearsay.

8 BY SOLICITOR COLLINS:

9 Q. What other evidence did you have?

10 MR. MUCKENFUSS: Your Honor, objection to hearsay
11 statements. I ask specifically by forensic evidence.

12 SOLICITOR COLLINS: Well I'll rephrase.

13 THE COURT: Yeah, rephrase your question.

14 BY SOLICITOR COLLINS:

15 Q. Why were you in that room?

16 A. That's where we were told the shooting took place.

17 MR. MUCKENFUSS: Your Honor, the same objection.

18 THE COURT: I sustain the objection.

19 BY SOLICITOR COLLINS:

20 Q. As a result of your investigation in this case,
21 without any forensic evidence, you returned to that room in
22 search of something; is that right?

23 A. That's correct

24 Q. What were you in search of?

25 A. A bullet because of the wound being a through and

DETECTIVE EDDIE STRAIT: BY MR. MUCKENFUSS

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1 through wound.

2 Q. And you found a bullet?

3 A. Yes.

4 Q. And based upon the information you received up to that
5 point, in addition to just being within the room, within
6 that room did you - where did you expect to find that
7 bullet?

8 A. To the right of the footboard of the bed.

9 Q. And where did you find that bullet?

10 A. In the chair to the right of the footboard of the bed.

11 Q. I believe that Mr. Muckenfuss ask you in terms of
12 fingerprints the defendant gave you didn't know exactly
13 what FSU did, that's their division; is that right?

14 A. That's correct

15 Q. But at that time as you've testified, the defendant
16 had told you that he lived there. Correct?

17 A. Yes.

18 SOLICITOR COLLINS: Nothing further, Your Honor.

19 I - Well I'll wait and see if Mr. Muckenfuss has any
20 questions but I would ask that this witness be excused
21 subject to recall as we discussed - -

22 MR. MUCKENFUSS: I just have one question, Your Honor.

23 Thank you.

24 RECROSS EXAMINATION

25 DETECTIVE EDDIE STRAIT BY MR. MUCKENFUSS:

DETECTIVE EDDIE STRAIT: BY MR. MUCKENFUSS

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1 Q. Detective Strait, just to clarify, you were ask
2 followup questions about this GSR test and that you were
3 not an expert in this kind of testing. Correct?

4 A. Correct.

5 Q. Now I just want you to know if you look at the
6 Exhibit, the GSR document that I gave you, this document
7 was in fact addressed specifically to you. Correct?

8 A. Yes.

9 Q. It was sent to you as part of this case?

10 A. Yes.

11 MR. MUCKENFUSS: No further questions.

12 SOLICITOR COLLINS: Nothing further.

13 THE COURT: You can step down. Appreciate your time.
14 Thank you.

15 (WITNESS LEAVING WITNESS STAND.)

16 THE COURT: Call your next witness.

17 SOLICITOR COLLINS: Your Honor, we have two very brief
18 witnesses in regard to the - maintaining the scene and we
19 would anticipate ending at that point.

20 If Your Honor please, may it please the Court we call
21 Deputy Kevin Gwinn. Deputy Gwinn to the stand. Deputy
22 Gwinn.

23 Deputy Gwinn, if you will come forward to the Bible
24 here please to be sworn.

25 MADAME CLERK: Please raise your right hand, place

DEPUTY KAVIN GWINN: BY SOLICITOR COLLINS

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1 your left hand on the Bible.

2 DIRECT EXAMINATION

3 DEPUTY KAVIN GWINN BY SOLICITOR COLLINS:

4 Q. Deputy, would you please state your name for the
5 record, and if you would spell your first name and your
6 last.

7 A. Kavin Gwinn, K-a-v-I-n, last name G-w-I--n.

8 Q. Thank you. And where are you employed?

9 A. York County Sheriff's Office.

10 Q. How long have you been employed there?

11 A. Seven and a half years.

12 Q. Were you on duty on November 12th, 2010?

13 A. Yes, ma'am.

14 Q. And did you work day shift or night shift? Do you
15 recall?

16 A. Night shift.

17 Q. Night shift? So you would go on at 6:00 p.m. and get
18 off at 6:00 A. M.; is that right?

19 A. Yes, ma'am.

20 Q. And in the course of your duties with the sheriff's
21 department did you have an occasion to go to [REDACTED]

22 [REDACTED] in the Rock Hill area of York County,
23 South Carolina?

24 A. Yes, ma'am.

25 Q. And when you arrived here what did you do?

DEPUTY KAVIN GWINN: BY SOLICITOR COLLINS

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1 A. When I got there I checked the residence to see if the
2 residence was secure or not. And then I stood by waiting
3 for further instructions.

4 Q. All right. And I'd ask that this be marked as State's
5 Exhibit Seventy-five.

6 (WHEREUPON: STATE'S EXHIBIT NUMBER SEVENTY-FIVE
7 PREMARKED FOR IDENTIFICATION.)

8 Q. I'd like to show you, Deputy Gwinn, what has been
9 marked as State's Exhibit Seventy-five for the purposes of
10 identification and ask you, do you recognize that document?

11 A. Yes, ma'am.

12 Q. What is it?

13 A. It's a crime scene log.

14 Q. And who prepared that document?

15 A. I did.

16 Q. Is part of that document in your handwriting?

17 A. Yes, ma'am.

18 Q. And a Crime Scene Log, what's the purpose of a Crime
19 Scene Log?

20 A. Just to make sure the - verify who goes in and out of
21 the crime scene.

22 Q. All right. If you could just speak up just a little
23 bit for me.

24 A. To verify who goes in and out of the crime scene.

25 Q. All right. Very good. And who was the first deputy to

DEPUTY KAVIN GWINN: BY SOLICITOR COLLINS

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1 arrive there per that log?

2 A. Myself and Deputy Yates.

3 Q. Okay. What time did you all arrive?

4 A. 04:08 in the morning.

5 Q. And did you start that log?

6 A. Yes, ma'am.

7 Q. Is that in your handwriting?

8 A. Yes, ma'am.

9 Q. Did you arrive in the same vehicle or separate?

10 A. Separate vehicles.

11 Q. At the time that you arrived - Well first of all did I
12 ask you the address. What was the address you were at?

13 A. [REDACTED]

14 Q. And when you arrived what did you observe in terms of
15 anything out of the usual vehicle wise in the parking lot?

16 A. I don't recall the vehicles. There was a vehicle - I
17 don't recall the vehicles.

18 Q. Okay. You don't recall the vehicles?

19 A. You know there might a been a Volvo outside.

20 Q. Do you remember a Volvo outside?

21 A. Yes, ma'am.

22 Q. Was there something particular about the Volvo you
23 remember?

24 A. Yes, ma'am, it had - there was some blood in the
25 vehicle.

DEPUTY KAVIN GWINN: BY SOLICITOR COLLINS

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1 Q. There was blood in the vehicle?

2 A. Yes, ma'am.

3 Q. And do you recall where in the vehicle the blood was?

4 A. I'm trying to remember. I think it was in the back
5 seat.

6 Q. All right. And do you recall whether or not - Do you
7 recall whether or not the lights of that vehicle were on?

8 A. I don't recall if the lights were on or off.

9 Q. All right.

10 I ask that this be - let me show it to Mr. Muckenfuss
11 first.

12 (DEFENSE ATTORNEY REVIEWING DOCUMENT.)

13 Q. I'd ask that this be marked State's Exhibit Seventy-
14 six for ID purposes.

15 (WHEREUPON: STATE'S EXHIBIT NUMBER SEVENTY-SIX
16 PREMARKED FOR IDENTIFICATION.)

17 BY SOLICITOR COLLINS:

18 Q. And I show you, Deputy Gwinn, State's Exhibit Seventy-
19 six for ID purposes and I ask you is that a fair and
20 accurate depiction of the vehicle you saw in front of
21 Kensington Square on November 12th, 2010?

22 A. Yes.

23 Q. And which of those two cars is the Volvo you stated
24 you observed?

25 A. The silver colored on the right.

DEPUTY KAVIN GWINN: BY SOLICITOR COLLINS

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1 Q. On the right?

2 A. Yes, ma'am.

3 SOLICITOR COLLINS: I would move State's Exhibit
4 Seventy-six into evidence at this time.

5 MR. MUCKENFUSS: May we approach, Your Honor?

6 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF
7 THE JURY AT 04:22 P.M.)

8 MR. MUCKENFUSS: No objection, Your Honor.

9 THE COURT: In without objection.

10 (WHEREUPON: STATE'S EXHIBIT NUMBER SEVENTY-SIX
11 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

12 BY SOLICITOR COLLINS:

13 Q. At that time did you observe the doorway of the
14 apartment at [REDACTED]

15 A. Yes, ma'am.

16 Q. At the time that you arrived do you recall whether
17 the door was closed or shut?

18 A. The door was shut.

19 Q. It was shut?

20 A. Yes, ma'am.

21 Q. Did you enter the apartment or standby for Forensic
22 Services Unit?

23 A. Once forensics came I didn't do anything else.

24 Q. But you didn't enter until they came?

25 A. Yes, ma'am.

DEPUTY KAVIN GWINN: BY SOLICITOR COLLINS

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1 Q. Who would stretch out yellow crime scene tape?

2 A. I did.

3 Q. Pardon?

4 A. I did.

5 Q. You did. I'd like to show you what's been marked
6 previously as State's Exhibit Twenty-seven for
7 identification purposes and ask you if you recognize that?

8 A. Yes, ma'am.

9 Q. Is that the front door to [REDACTED]

10 A. Yes, ma'am.

11 Q. Did you stretch out that yellow crime scene tap?

12 A. Yes, ma'am.

13 Q. Is that a fair and accurate depiction of the scene as
14 you saw it when you arrived?

15 A. Except the door is closed yes, ma'am.

16 Q. Except the door is closed? Okay. And so is it a fair
17 and accurate depiction of that scene prior to you leaving?

18 A. Yes, ma'am.

19 Q. Who opened that door?

20 A. I believe the forensic officer.

21 Q. All right. Somebody with law enforcement?

22 A. Yes, ma'am.

23 Q. In your presence?

24 A. Yes, ma'am.

25 Q. All right.

DEPUTY KAVIN GWINN: BY SOLICITOR COLLINS

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1 SOLICITOR COLLINS: I move State's Exhibit into
2 evidence. I don't know the number. Twenty-seven.

3 State's Exhibit Twenty-seven into evidence.

4 MR. MUCKENFUSS: No objection.

5 THE COURT: In without objection.

6 (WHEREUPON: STATE'S EXHIBIT NUMBER TWENTY-SEVEN
7 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

8 BY SOLICITOR COLLINS:

9 Q. Deputy, referring back to the Crime Scene Log, I think
10 it was the first exhibit. Who came to relieve you from
11 maintaining that crime scene?

12 A. Deputy Clark.

13 Q. Okay. He took over the Crime Scene Log at that time?

14 A. Yes, ma'am.

15 Q. What time did he arrive?

16 A. 06:10 A. M..

17 Q. Did he start - Is his name in your handwriting or his?

18 A. It's in his.

19 Q. All right. Did you stay per your testimony 'till
20 forensic services came?

21 A. Yes, ma'am. After we cleared the residence yes,
22 ma'am.

23 Q. Help them clear the residence?

24 A. Yes, ma'am.

25 Q. Do a protective sweep?

DEPUTY KAVIN GWINN: BY SOLICITOR COLLINS
BY MR. MUCKENFUSS

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1 A. Yes, ma'am.

2 Q. To make sure nobody is in there?

3 A. Yes, ma'am.

4 Q. And what if anything if you recall observing in the
5 residence?

6 A. There was some blood up the stairway and blood on the
7 bed.

8 Q. Okay. And that's when Forensic Services was there?

9 A. Yes, ma'am.

10 Q. What time did you clear the scene?

11 A. I left at 06:15.

12 Q. All right. And Nathan Clark had taken over at 06:10;
13 is that right?

14 A. Yes, ma'am.

15 Q. Was that the extent of your involvement in this case,
16 Deputy?

17 A. Yes, ma'am.

18 Q. Thank you.

19 SOLICITOR COLLINS: Please answer any questions of the
20 defense attorney.

21 MR. MUCKENFUSS: May I approach, Your Honor?

22 CROSS EXAMINATION

23 DEPUTY KAVIN GWINN BY MR. MUCKENFUSS:

24 Q. Deputy Gwinn, if you don't mind I just want to look at
25 the pictures handed to you.

DEPUTY KAVIN GWINN: BY MR. MUCKENFUSS

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1 Now the photo that was State's Exhibit Twenty-seven,
2 that's the front door of the apartment. Correct?

3 A. Yes.

4 Q. And I believe you testified that when you arrived on
5 the scene when the Volvo was there that car was there.

6 Correct?

7 A. Yes.

8 Q. That the front door of the apartment was in fact
9 closed?

10 A. Yes.

11 Q. Okay. And someone from the police department actually
12 opened the door.

13 A. Yes.

14 Q. Okay. Now you testified about seeing blood. Were you
15 involved in any testing of blood?

16 A. No, sir.

17 Q. And you're not aware if anything inside the apartment
18 was tested to determine if in fact it was blood. Correct?

19 A. No, sir.

20 Q. And you don't know whose blood it was ---

21 A. No, sir.

22 Q. --- in the apartment?

23 MR. MUCKENFUSS: No further questions.

24 SOLICITOR COLLINS: Nothing further.

25 THE COURT: You can step down and be excused.

DEPUTY NATHAN CLARK: BY SOLICITOR COLLINS

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1 (WITNESS LEAVING WITNESS STAND.)

2 SOLICITOR COLLINS: Thank you, Your Honor.

3 Your Honor, the last witness for the day is Deputy
4 Nathan Clark.

5 Deputy Clark, if you would come forward to the Bible
6 to be sworn.

7 (WHEREUPON: DEPUTY NATHAN
8 CLARK, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS
9 FOLLOWS:)

10 DIRECT EXAMINATION

11 DEPUTY NATHAN CLARK BY SOLICITOR COLLINS:

12 Q. Please state your name for the record?

13 A. Nathan Clark?

14 Q. What's your occupation?

15 A. Deputy sheriff.

16 Q. How long have you been so employed?

17 A. Seven years.

18 Q. Were you on duty on November 12th, 2010?

19 A. Yes, ma'am.

20 Q. At that time were you working day shift?

21 A. Yes, ma'am.

22 Q. What time did you come on duty/

23 A. We signed on 05:45. I just sign on prior to that.

24 Q. Okay. So approximately 5:00, five in the morning
25 a.m.?

DEPUTY NATHAN CLARK: BY SOLICITOR COLLINS

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1 A. Yes, ma'am.

2 Q. And in the course of your duties with the York County
3 Sheriff's Department did you have the occasion to respond
4 to a scene at [REDACTED] in the Rock Hill area
5 of York County, South Carolina?

6 A. Yes, ma'am.

7 Q. I'd like to show you what's been marked as State's
8 Exhibit Seventy-five at this time for ID and ask you, do
9 you recognize that document?

10 A. Yes, ma'am.

11 Q. What is it?

12 A. It's a Crime Scene Log.

13 Q. And is any of that document in your handwriting?

14 A. Yes, ma'am.

15 Q. And it is Crime Scene Log indicating the address at
16 [REDACTED] is that right?

17 A. Yes, ma'am.

18 Q. Now what part begins your handwriting, Deputy?

19 A. My name which is the third down as well as the time
20 outs for Gwinn, myself, Doty, George and Eddy.

21 Q. Okay. So In Clark is yourself, Nathan Clark; is that
22 right?

23 A. Yes, ma'am.

24 Q. And that reflects your time being was what time?

25 A. 6:10.

DEPUTY NATHAN CLARK: BY SOLICITOR COLLINS

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1 Q. And you all use military time. Right?

2 A. Yes, ma'am.

3 Q. So 6:10 is 6:10 A. M.?

4 A. Yes, ma'am.

5 Q. Had it been otherwise being more than twelve?

6 A. It would have been 18:10 if that would a been 6:00 at
7 night.

8 Q. Okay. All right so in this case 06:10 A.m. Is that
9 the time that you took over maintaining the integrity of
10 the crime scene before Forensic Services would come process
11 it?

12 A. Yes, ma'am.

13 Q. All right. Did you enter the residence?

14 A. I did.

15 Q. Did you enter the residence - -

16 THE COURT: Just one minute.

17 If you all want to do that, the jury is being
18 distracted.

19 SOLICITOR EPTING: I apologize, Your Honor.

20 BY SOLICITOR COLLINS:

21 Q. Did you enter the residence?

22 A. Yes, ma'am.

23 Q. Did you enter the residence prior to Forensic Services
24 coming or afterwards?

25 A. Prior to.

DEPUTY NATHAN CLARK: BY SOLICITOR COLLINS

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1 Q. And why was that?

2 A. Just to insure that nobody else was in the residence.

3 Q. And was anyone in the residence?

4 A. No, ma'am.

5 Q. And when you arrived at the residence at 06:10 a.m.
6 do you recall whether or not the door to the residence was
7 open?

8 A. I do not recall.

9 Q. You don't recall? Okay. Who went in with you,
10 anyone?

11 A. Myself and Chris Doty went in.

12 Q. Okay. All right. And did you all touch anything?

13 A. No, ma'am.

14 Q. Move anything?

15 A. No, ma'am.

16 Q. And after ascertaining no one was in you all went back
17 out?

18 A. Yes, ma'am.

19 Q. And is it that at that time you became head of the
20 crime scene to make sure no one else came in?

21 A. Correct yes, ma'am.

22 Q. Or that anyone who did come in was memorialized in
23 this log?

24 A. Yes, ma'am.

25 Q. Okay. And as indicated later there are two forensic

1 services unit personnel who respond, who come to that
2 scene, is that right?

3 A. Yes, ma'am.

4 Q. And as you indicated one was J. George; is that right?

5 A. Yes, ma'am.

6 Q. And the initial J; is that right?

7 A. Yes, ma'am.

8 Q. And initial A; Eddy?

9 A. Yes, ma'am.

10 Q. Okay. And do you know, is that John George and Audra
11 Eddy?

12 A. Yes, ma'am.

13 Q. Both with Forensic Services?

14 A. At the time yes, ma'am.

15 Q. All right. And you got that they came in at 06:10 A.
16 M.; is that right?

17 A. Correct.

18 Q. And then you're showing your time out at 06:17 A.
19 M.; is that right?

20 A. Correct.

21 Q. And at that time whose hands did you leave that crime
22 scene?

23 A. I stayed at the scene, just not at the scene.

24 Q. All right. So ultimately you indicated in terms of
25 the handwriting did you write when everybody cleared the

DEPUTY NATHAN CLARK: BY SOLICITOR COLLINS

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1 scene?

2 A. Everybody but J. Yates.

3 Q. Okay. And so - -

4 A. He cleared before I was there.

5 Q. All right. So everyone else - So J. Yates cleared it
6 according to this 05:25 before you arrived. Correct?

7 A. Yes, ma'am.

8 Q. And so you entered everyone else that left. Correct?

9 A. Correct.

10 Q. And you've got last people out of the scene itself at
11 - J. George and A. Eddy from Forensic Services at 06:51
12 a.m.; is that right?

13 A. Yes, ma'am.

14 Q. All right. I can't remember the number.

15 SOLICITOR COLLINS: At this time, Your Honor, I would
16 respectfully move State's Exhibit Seventy-five into
17 evidence.

18 MR. MUCKENFUSS: No objection.

19 THE COURT: In without objection.

20 (WHEREUPON: STATE'S EXHIBIT NUMBER SEVENTY-FIVE
21 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

22 BY SOLICITOR COLLINS:

23 Q. Did you have any further involvement in this case,
24 Deputy?

25 A. No, ma'am.

DEPUTY NATHAN CLARK: BY MR. MUCKENFUSS

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1 SOLICITOR COLLINS: Thank you. Please answer any
2 questions of the defense table.

3 CROSS EXAMINATION

4 DEPUTY NATHAN CLARK BY MR. MUCKENFUSS:

5 Q. Deputy, how you doing?

6 A. Yes, sir.

7 Q. Just so I'm clear, this is a crime Scene Entry Log.
8 Is this log kept to reflect the security of the crime
9 scene?

10 A. Correct.

11 Q. Is there any entry log - Strike that. Was there any
12 security of the crime scene after November 12th, 2010?

13 A. When we cleared, when Audra and John George cleared
14 the scene at 06:51 we cleared it as well.

15 Q. So after 06:51 A. M on that Friday there was no
16 security or securing the crime scene after that?

17 A. Correct.

18 Q. And so the Saturday, the rest of that Friday and the
19 Saturday and Sunday and Monday of the following week there
20 would have been no officers there to secure the crime
21 scene. Correct?

22 A. Correct.

23 Q. If Detective Strait had come by the apartment on
24 November 12th would his name - should his name be reflected
25 on this entry log?

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1 A. If he was there prior to 06:51 yes, sir.

2 Q. Do you recall Detective Strait coming by?

3 A. No, sir, I don't recall him being there.

4 Q. And you were there - You weren't there long. Correct?

5 A. I was there from 06:10 hours to 06:51 hours.

6 Q. Okay. And during that time you didn't see Detective
7 Strait?

8 A. I do not recall seeing him to tell you the truth.

9 MR. MUCKENFUSS: I beg the Court's indulgence.

10 (PAUSE.)

11 MR. MUCKENFUSS: Nothing further, Your Honor.

12 SOLICITOR COLLINS: Nothing further.

13 THE COURT: All right. You can step down and be
14 excused. Appreciate your time. Thank you.

15 (WITNESS LEAVING WITNESS STAND.)

16 SOLICITOR COLLINS: Those will be all the witnesses.

17 The next one we would anticipate - we do have another later
18 but we expect he would be rather lengthy.

19 THE COURT: Okay. We'll stop for the day. It's
20 almost 5:00. We'll start back at 9:30. I have another
21 matter at 9:15 but I feel comfortable that will only take
22 about fifteen minutes so we should be able to start back up
23 at 9:30. If I'm running a minute or two late I apologize
24 but be here at 9:30 ready to keeping in mind what I told
25 you not to do as far as obtaining any information outside

1 the courtroom. Have a pleasant and we'll see you at 9:30.

2 (JURY EXITS COURTROOM AT 04:55 P.M.)

3 THE COURT: Anything we need to attend to before we
4 stop for the day?

5 SOLICITOR COLLINS: Not at this time, Your Honor.

6 MR. MUCKENFUSS: Your Honor, we would expect to
7 address the other jail call tomorrow morning.

8 THE COURT: Okay.

9 MR. MUCKENFUSS: I know you have a matter between 9:15
10 and 9:30.

11 THE COURT: You gonna be here at 9:00?

12 SOLICITOR COLLINS: I'll be here.

13 THE COURT: We'll start back at 9:00 and then we'll
14 work in that plea that should not take very long. That
15 will be fine. Everybody have a pleasant evening.

16 SOLICITOR COLLINS: Thank you, Judge.

17 (COURT IN RECESS AT 05:00 P.M..)

18 (COURT BACK IN SESSION AT 09:13 A.M..)

19 THE COURT: Take your seats.

20 I think the first order of business would be to
21 revisit the tapes situation. I think I figured it out as
22 far as what the prosecution contends to make, proceed with,
23 then we have the question I recall that the defense wishes
24 to go into so we need to listen to it and the wrestle with
25 the legal issues and condense them down.

1 MR. MUCKENFUSS: Thank you, Your Honor.

2 And I understand Your Honor has already ruled on the
3 admissibility of their recording. I would renew the
4 objection to their recording. One additional issue, Your
5 Honor, which I think will impact also the admissibility of
6 our recording. I think - and I can be corrected - but I
7 think these phone calls cut off automatically after ten
8 minutes and the call that they intend to use the
9 conversation was cut off after ten minutes so it was not a
10 natural end to the conversation.

11 I wanted to point that out to the Court. I think
12 that's important for a couple of reasons. One you have an
13 incomplete conversation obviously because it was
14 artificially ended because the jail ends it after ten
15 minutes. And we would still contend, Your Honor, although
16 they focused on and replayed several times two snippets
17 from that recording that it's still inaudible and
18 unintelligible and for that reason we would ask that it be
19 excluded.

20 If it were to be admitted, and I understand Your Honor
21 has ruled at least preliminarily before they introduce it
22 that way, we would ask that this recording be allowed in.
23 This is a recording of a conversation with the same person,
24 Mr. O'Neil's brother. We can't precisely identify when the
25 call was made. Again we have the challenge, Your Honor, of

1 not being able to connect the dots. The way we received it
2 we cannot connect the dot of the actual audio recording to
3 the exact date and time. I can tell and represent to the
4 Court that it's at least Sunday or Monday following the
5 Friday that Mr. O'Neil was arrested. Its with his brother,
6 and it's part of the same conversation about what had
7 happened.

8 The other point, Your Honor, we'll play this recording
9 shortly; the snippets they play, if you can even understand
10 the words, banged off on or squeezed off on, I would
11 contend those are at best very - at least confusing or not
12 clear what that means. It's a slang obviously and, you
13 know, there are going to be issues about interpreting that
14 but we would contend this recording is a further discussion
15 and explanation of what happened. It further explains the
16 terms he's using and sort of what happened that night so we
17 think it's appropriate to introduce it.

18 And if Your Honor wants we can go ahead and --

19 THE COURT: Yeah.

20 SOLICITOR EPTING: And, Your Honor, they've ask that
21 we - we cannot start this one from the very beginning and
22 listen to the recording, the Securis warning, warning them
23 that it's being recording. I don't think the State has any
24 problems starting at the point where the conversation
25 begins.

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1 MR. MUCKENFUSS: I think that was just for the second
2 time.

3 (AUDIO RECORDING PUBLISHED TO THE COURT AT 09:15
4 A.M..)

5 MR. MUCKENFUSS: That's it, Your Honor.

6 THE COURT: All right, let me go back just a minute.
7 I don't remember in the earlier call - other call,
8 that there being that one minute - they have one minute
9 left. Is that on that too?

10 SOLICITOR COLLINS: I think so. I do agree that I
11 think time stopped.

12 THE COURT: That wasn't my question. Like the witness
13 yesterday, I'm just asking a question. The question is, on
14 the one the State played, I don't remember it, maybe we
15 didn't play it all the way through, is there the - an
16 alerting that there's only one minute left in the
17 conversation?

18 SOLICITOR COLLINS: I believe so. I'll be glad to
19 play it again. I know we played a snippet and based on
20 that be glad to play it. But again, we - -

21 MR. MUCKENFUSS: Your Honor, I don't want to obviously
22 have an attorney client privilege and Fifth Amendment
23 issue. Although my client he uniquely knows the
24 conversation, I will submit to the Court, I don't recall -
25 the comment was made to me that he believed there were

1 parts missing from that conversation like the one -
2 apparently there's a ten second warning too in addition to
3 the one minute warning which I did not hear in the State's
4 recording.

5 THE COURT: All right. Well let's do this. I'm want
6 to hear that. I want to - it may not be important but
7 they've raised the issue of it being a trumplicated call.

8 SOLICITOR COLLINS: Yes, sir.

9 And if we may also, the call we were introducing was
10 at 08:14 a.m., on November 12th. According to the
11 information we have, we can put up the custodian, there was
12 another call made to the brother at 08:25 am that same
13 morning on November 12th. So if we could play that as well
14 because if that's the situation of the conversation, if the
15 first one started at 08:14 am and last for ten minutes
16 ended at 08:24, then the 08:25 am that same morning I would
17 submit is kind of a continuation of the call not two days
18 later.

19 THE COURT: As long as you want to play it that's up
20 to them to - they haven't submitted that.

21 SOLICITOR COLLINS: To argue against that two days
22 later is the continuation of the call.

23 THE COURT: They haven't told me when the second call
24 or whether that is - Here's where I am as far as the
25 chronology. We got the State's call. Defense has told me

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1 they don't know when this call that they are proffering.

2 It could have been before this one.

3 Well I know you're shaking your head. I don't know.

4 SOLICITOR COLLINS: May I - -

5 THE COURT: You apparently do.

6 SOLICITOR COLLINS: May I submit how I do because -

7 THE COURT: Well yeah, I'd like the chronology.

8 SOLICITOR COLLINS: Thank you.

9 Eddie Strait testified that on Tuesday the defendant's
10 family came up and got his stuff out of the car. There's
11 conversation on that call that we just heard offered by the
12 defense that his son Hashin tried to get it yesterday on
13 Sunday. Couldn't get it yesterday. No, said come back
14 Tuesday or Thursday. We have a property custodian Bryan
15 Loncaric who will testify later this morning that the keys
16 and the locks that are referenced in this call were not
17 picked up by the defendant's brother until Tuesday,
18 November 16th, so that's how I know ---

19 MR. MUCKENFUSS: Your Honor, ---

20 SOLICITOR COLLINS: --- Your Honor, respectfully - -

21 MR. MUCKENFUSS: I'm sorry.

22 SOLICITOR COLLINS: --- from the content of the call
23 the conversation, his brother is referencing yesterday as
24 Sunday when his son tried to get the property. He's got to
25 go back down tomorrow and Eddie Strait said his family met

1 him on Tuesday the 16th.

2 THE COURT: I guess one of the things that I don't
3 understand is, why - How do you have a call precise date
4 and time and then on another one it's just - -

5 SOLICITOR COLLINS: I'll be glad to tell you.

6 THE COURT: You got to go on ---

7 SOLICITOR COLLINS: I'll be glad to tell you.

8 THE COURT: --- the content.

9 SOLICITOR COLLINS: I have provided all this
10 information to Mr. Muckenfuss. I've sent him at least
11 three emails saying, "Mr. Muckenfuss, I personally have an
12 open file policy, anytime you want to come to my office and
13 walk through my stuff and make sure you have everything be
14 glad to do it." He didn't come one time upon that offer.
15 He sent me a CD saying this is what we have. But, but, I
16 heard for the first time at the beginning of this case that
17 the defendant - the defense had difficulty, Your Honor,
18 playing these and had to transfer it with their IT person.
19 Now as I have explained to his staff and Mr. Muckenfuss I
20 hope he has learned from working with me that had he just
21 picked up the call we would have gone there or he could
22 have go - here and we would have had our IT person, with
23 David Sanders, with Cheryl Guzman from the Detention
24 Center, that's why we're here today in terms of how they've
25 transferred it and they haven't with their IT person.

1 I can - Their IT person - -

2 THE COURT: That wasn't - That has nothing to do with
3 what - my question, My question is, Why can you precisely -
4 Why can the State precisely time and date a one call and
5 has no idea other than the content of the call as to when
6 the other one was made? Does not, I guess my question is,
7 Are these not logged and is there another log somewhere
8 that says this call was made at this time on this day?

9 SOLICITOR COLLINS: Yes there is a log and Cheryl
10 Guzman can walk over and bring that. She was going to
11 anyway in a little bit.

12 Your Honor, what I was trying to explain is that they
13 had transformed this with their IT person and as to why
14 their IT person doesn't have that log only they can
15 explain.

16 MR. MUCKENFUSS: Your Honor, if we can just get back
17 to the exact chronology which I think the Court's concerned
18 about. The only other call I know of - And I would agree,
19 we just don't know the precise time. The call we played
20 probably was that Monday and I said that I think at the
21 beginning. The only other call I know of - -

22 THE COURT: I don't care about any other call.

23 MR. MUCKENFUSS: Okay.

24 THE COURT: I just wanted to know the relations of the
25 call you want to the first one ---

1 MR. MUCKENFUSS: I think she - -

2 THE COURT: --- because I hadn't known that it wasn't
3 the first one or that they were flipped flopped. That's
4 all I'm trying to establish is because you keep arguing or
5 are going to argue or at least it's brought up that the
6 second, or this call, your call, was a continuation to some
7 degree of the conversation to the other without me even
8 being able to tell which one came first.

9 MR. MUCKENFUSS: Understood, Your Honor. She just
10 brought up the intervening call, that's all. It's a seven.
11 second call I think but that's the only other one I know
12 of.

13 THE COURT: But everybody concedes that the defense
14 presentation is a subsequent call to the State's
15 presentation?

16 SOLICITOR COLLINS: Yes.

17 MR. MUCKENFUSS: Yes, sir.

18 THE COURT: Okay. Now we can deal with that.

19 All right. I heard the call and I'll be glad now to
20 hear arguments as to it's admissibility. But before we do
21 that, I keep trying to get off track myself.

22 The warning on the call that the State intends to
23 introduce.

24 SOLICITOR EPTING: Yes, Your Honor, I'll play that.

25 THE COURT: Okay.

1 (SECOND AUDIO PUBLISHED TO THE COURT.)

2 SOLICITOR EPTING: That was the one. It's difficult
3 to understand because the way it's been - but she says you
4 got one minute left.

5 MR. MUCKENFUSS: I think I heard that.

6 SOLICITOR EPTING: I can play it again.

7 THE COURT: No, that's fine. All right.

8 Well as to the argument that it shouldn't be
9 introduced, the tape that the State offers shouldn't be
10 introduced because it's a trumplicated call. I find that
11 that fact does not change my earlier ruling as to the
12 admissibility of the two snippets or that the State - or
13 the defense wants the complete tape played. There is
14 nothing in there particularly after having been a warning
15 that indicates that the defendant continued to continue the
16 conversation, had something else he needed to say about it
17 after having been warned he only had one minute left, there
18 is nothing in there that indicates he needed more time.

19 SOLICITOR COLLINS: Well, Your Honor, actually it
20 didn't play through. What you heard was the warning and
21 then Mr. Epting stopped and then brought it to your
22 attention, and in all fairness we should hear that.

23 THE COURT: All right, let me hear the rest of it.

24 SOLICITOR COLLINS: And I believe, I know that a
25 Securis recording guys is weirdly muzzled but then you hear

1 the brother repeat "you got one minute". You see what goes
2 on after that.

3 SOLICITOR EPTING: And, Your Honor, in candor to the
4 Court, what the defense will say, there are parts taken out
5 of this but its parts where he's used to being on parole
6 doing ten years on a second degree and things of that
7 nature, so in candor there are things missing they are
8 things prejudicial to the defense.

9 SOLICITOR COLLINS: And the defense has been given the
10 complete.

11 MR. MUCKENFUSS: Your Honor, we were given that
12 redacted copy.

13 I think it was Monday morning, right?

14 We were given the redacted copy Monday morning. I
15 think - its just for the record.

16 THE COURT: Okay.

17 (AUDIO PUBLISHED TO THE COURT.)

18 SOLICITOR COLLINS: So, Your Honor, as you hear it, it
19 is a continuance and I'm very glad we played that. And
20 again according to my file, and we have it on Securis, you
21 can see the log, he calls his brother back and then warned
22 them of that, and that's the continuation of the
23 conversation. Be glad to play that for all parties.

24 MR. MUCKENFUSS: May I respond, Your Honor?

25 Clearly when it's cut off, I think the words I hear,

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1 he starts to tell his brother how messed up it is and it
2 just cuts off. And the next call is only seven seconds
3 long.

4 SOLICITOR COLLINS: That's not right. The call --

5 THE COURT: Play the second one.

6 SOLICITOR COLLINS: We've got it.

7 If you'll put the Securis original tape...

8 (AUDIO PUBLISHED TO THE COURT.)

9 SOLICITOR COLLINS: Well, Your Honor, as an officer of
10 the court I believe that we have to withdraw our proffer
11 and I'll tell you why. I had ask Cheryl Guzman to print
12 out, and I emailed to the defense attorney the other calls
13 the defendant had made that same morning to his brother
14 when he was in the holding cell before the pin was
15 assigned. He was assigned to a regular cell. And on this
16 list he does call his brother back within a minute of that
17 call because the call last ten minutes. That started at
18 8:14 and went until 8:24 cuts off at 8:25. On our disc
19 that we have from the Detention Center we do not have that
20 call and therefore in all fairness to the defense as a
21 prosecutor I withdraw the offer. And thank you for the
22 patience of everyone involved. I apologize to the Court.

23 MR. MUCKENFUSS: Thank you.

24 THE COURT: Okay. I appreciate that, that kind of
25 respect, and I appreciate you doing that.

1 MR. MUCKENFUSS: Your Honor, I would just note for the
2 record, Ms. Collins did, they were very cooperative with us
3 with the calls. I don't mean to suggest that they were not
4 cooperative. I think there were some technical issues. I
5 think they were - -

6 THE COURT: I never took it to mean from the defense
7 that the defense thought that the State was being
8 uncooperative. I just thought it was sort of a muddled
9 mess or hot mess as my former law clerk used to call it.
10 It just needed to be untangled a little bit. It just took
11 a long time to untangle it. But I don't think it was the
12 fault of either side. It's just dealing with these type
13 things particularly when - I'm not finding fault with law
14 enforcement because law enforcement does a very good job.
15 They don't always understand exactly what the prosecution
16 needs. The prosecution does not understand what's there
17 unless they're informed with it. And so - I don't want to
18 call it a conundrum but it's not a failure to communicate
19 it's just a lack of - of a lack of ability to communicate
20 because of unknowns I guess is the best way to say it. Law
21 enforcement doesn't always know what it needs to give to
22 the prosecution and the prosecution doesn't know exactly
23 what to ask for because they don't know its out there. So
24 we'll take a break and then we'll go back into taking
25 testimony. This will be just a short refresher break.

1 (COURT IN RECESS ST 09:42 A.M..)

2 (COURT BACK IN SESSION AT 09:49 P.M..)

3 THE COURT: Thank you. Take your seats, and get Mr.
4 O'Neil in. Take your seats. Thank you.

5 (DEFENDANT, HASHIN O'NEIL, REENTERS COURTROOM.)

6 THE COURT: All right. Counsel is present, Mr. O'Neil
7 is present. Anything before we get the jury in?

8 SOLICITOR COLLINS: Yes I do have a couple of more
9 things believe it or not.

10 There were several objections made during the course
11 of Detective Strait's testimony yesterday in regard to
12 objections under the hearsay rule as to him testifying, and
13 I argued that wasn't for the truth of the matter asserted,
14 that it was to explain why he went back and checked the
15 apartment for the projectile.

16 I'd like to hand up, if I could, State v. Johnson, and
17 there are two other cases, State v. Brown and State v.
18 Thompson which I submit --

19 I've got copies for Mr. Muckenfuss.

20 Which I submit supports the State's argument yesterday
21 - after I hand this up to the Court.

22 Thank you.

23 In State v. Thompson - and I would know, I think this
24 is before the Crawford decision and that may impact it too
25 in terms of not having the person here to testify because

1 Thompson involved what the officer was told by a bystander.
2 But on Page 3 of Thompson at the bottom of the right hand
3 column it notes that in that case "the officers testimony
4 regarding statements made by the bystander were not entered
5 for their truth but rather to explain and outline the
6 officers' investigation and their reasons for going to the
7 home and thus, the evidence was not hearsay and was
8 properly before the trial court."

9 Above it it talks about relevance. There are two
10 arguments there, one was as to relevance, one was as to
11 hearsay. In the right hand column on Page 3 they address
12 it and say well it's certainly relevant. But further on in
13 the very bottom paragraph in the right column they say
14 that, the Court says, "were not offered for the truth
15 asserted but to explain and outline the officers'
16 investigation and their reasons for going to the Thompson's
17 home was not hearsay and was properly before the court."

18 State v. Brown talks about this issue at the very
19 conclusion on Page 5 of that opinion. In that case the
20 defendant argued that the judge failed to direct a mistrial
21 after two police officers' statements were admitted. He
22 claimed that they were hearsay, that "being familiar with
23 the neighborhood was hearsay, about receiving reports from
24 the neighborhood, receiving information to establish a
25 surveillance."

1 The Court in that case notes that "evidence is not
2 hearsay unless it is an out of court statement offered to
3 prove the truth of the matter asserted.

4 Additionally, an out of court statement is not hearsay
5 if it is offered for the limited purpose of explaining why
6 a government investigation was undertaken.

7 Here, these statements were not entered for their
8 truth but rather to explain why the officers began their
9 surveillance."

10 And then finally, State v. Thompson on Page 3 of that
11 opinion in the very bottom right hand column.

12 THE COURT: I thought we already looked at that.

13 SOLICITOR COLLINS: I'm sorry. We did. Johnson is
14 the one. I'm sorry. You're absolutely right.

15 State v. Johnson, Page 2 of the right hand column the
16 middle paragraph.

17 "Evidence explaining why law enforcement is in a
18 particular area has been held to be relevant", so again
19 they're looking at relevance. And then they go on to look
20 at the hearsay objection. "In a recent case challenging
21 similar testimony on the grounds of hearsay ,our Supreme
22 Court held that such testimony was "not hearsay if it is
23 offered for the limited purpose of explaining why a
24 government investigation was undertaken."

25 And I would submit even if the content of what Ms.

1 Caldwell told the Detective subsequently as being a basis
2 for why he went back, even the content itself is not
3 admitted then I believe redirect of the witness and try to
4 say pursuant to the conversation with Ms. Caldwell did -
5 what step did you take and I believe that also sustained,
6 so I would submit respectfully that I at least should be
7 able to do that if not get into the actual detail of what
8 she told him as a basis for going back. And I'll be happy
9 to limit it to that purpose.

10 THE COURT: Why don't we take a look at these cases
11 while we're - let's go forward, we got a jury sitting out
12 there.

13 SOLICITOR COLLINS: Yes, sir.

14 THE COURT: We don't need to solve that right at this
15 minute.

16 SOLICITOR COLLINS: That's fine. And there's only one
17 other issue before we bring the jury in. This is a brief
18 one.

19 I've got Sandy Martin here, she's one of the managers
20 of the apartment complex, to talk about the condition of
21 the door when it was repaired. We had ask for permission
22 to recall Ms. Caldwell but that was as to the issue of
23 identifying the defendant's voice from the jail call
24 obviously that's not gonna happen now. Ms. Caldwell
25 advised my victim's assistance yesterday, Terra Rose, and

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1 myself this morning that she is the one that moved the
2 yellow bag on the dresser when she came back in to go get
3 her clothes before going to her momma' house as soon as she
4 was released from the hospital. It had curlers in it that
5 she needed for her new hairdo that she does need to do a
6 hair dress for and she had moved it and gotten the curlers
7 out. Now, the - and I realize we didn't ask at that time
8 and I understand it's in the discretion of the court as to
9 whether or not we would recall her. Sandy Martin will
10 testify first and testify that she came back while Sandy
11 was there making sure that the door could secure that
12 morning November 12th after FSU went. And that during that
13 time Ms. Caldwell came back in and got some of her things
14 and left. So we would like to recall Ms. Caldwell
15 regarding that. If Your Honor rules we cannot I respect
16 that decision. I wanted to make you aware of that.

17 MR. MUCKENFUSS: Your Honor, I was thinking about
18 whether it was fine for us to stipulate. I mean if she
19 came back to the room and took the yellow bag that's what
20 she's gonna say. I mean to be honest with you that's what
21 we would assume that she went back in the room.

22 THE COURT: Of course obviously the issue is somebody
23 went in there and there was some opportunity for planting
24 of evidence, somebody could manipulate the scene. We can
25 do it either way. If you just want to stipulate.

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1 Think about that. Let's get through Ms. Martin. We
2 can revisit that.

3 MR. MUCKENFUSS: Thank you.

4 SOLICITOR COLLINS: Thank you, Judge. We're ready
5 now.

6 THE COURT: All right. Bring in the jury.

7 (JURY REENTERS COURTROOM AT 10:00 A.M..)

8 THE COURT: Good morning.

9 All right, call your next witness.

10 SOLICITOR COLLINS: Thank you, Your Honor.

11 Your Honor, the State calls Sandra Martin, she goes by
12 Sandy, to the stand.

13 Ms. Martin, if you would come forward to the Bible to
14 be sworn.

15 MADAME CLERK: Raise your right hand, place your left
16 hand on the Bible.

17 SOLICITOR COLLINS: Ms. Martin, if you will come up
18 here to the witness stand.

19 MS. MARTIN: Thank you.

20 SOLICITOR COLLINS: You're welcome.

21 (WHEREUPON: SANDRA MARTIN,
22 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

23 DIRECT EXAMINATION

24 SANDY MARTIN BY SOLICITOR COLLINS:

25 Q. Would you please state your full name for the record.

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1 A. Sandra Barker Martin.

2 Q. Okay. And, Ms. Martin, how are you employed?

3 A. Currently I'm employed for myself. I own Carolina
4 Rental Resources.

5 Q. And do you have any professional or personal
6 affiliation with the Kensington Square Apartments located
7 in Rock Hill, South Carolina?

8 A. I represent the owner currently in the management of
9 that property.

10 Q. All right. And were you affiliated with Kensington
11 Square in that regard during the month of November, 2010?

12 A. Yes I was an employee of Larimore that was the
13 property management company that represented that property.

14 Q. All right. And if you could if you could direct that
15 microphone a little bit more in your direction and just
16 speak up for me just a little bit.

17 A. Okay:

18 Q. Thank you.

19 A. I'm still a little sleepy.

20 Q. Thank you, Ms. Martin. Ms. Martin, do you know
21 Crystal Caldwell, Crystal Stevenson Caldwell?

22 A. Yes I do.

23 Q. Was she - Does she lease one of the apartments at
24 Kensington Square in 2010?

25 A. That's correct.

1 Q. Have you had an opportunity to review the records
2 regarding that?

3 A. Yes.

4 Q. Do you recall when Ms. Caldwell first began leasing
5 that apartment there?

6 A. She moved in the end of July, 2010.

7 Q. All right. And in that capacity did you meet her at
8 that time?

9 A. Yes.

10 Q. And did you later have an occasion to meet the
11 defendant Hashin O'Neil?

12 A. Yes I did.

13 Q. And did he also move in later to your understanding to
14 Ms. Caldwell's apartment?

15 A. I don't. Officially move in that was never
16 determined. He was staying there, we saw his car
17 frequently but, you know, we have certain ways we determine
18 when a visitor becomes a resident and at that point we were
19 about to request our usual procedure for adding him to the
20 household. I know he pretty much had been staying there
21 for about a month but sometimes they'll stay during the
22 week and go home on the weekends. And since I knew he was
23 from another city I did not know that. ---

24 Q. Okay.

25 A. --- for sure.

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1 Q. So as of November, 2010, November 12th, 2010, to your
2 knowledge had Mr. O'Neil been added to the lease for [REDACTED]
3 [REDACTED]?

4 A. He had not no.

5 Q. In fact - And that was Ms. Caldwell's apartment;
6 right, [REDACTED]?

7 A. Yes she was the sole lease holder.

8 Q. Was the defendant ever added to that apartment on the
9 lease?

10 A. No.

11 Q. Now without going into anything that was said to you
12 because we have rules against hearsay, but did you have an
13 occasion to see a ring on Ms. Caldwell's hand?

14 A. Yes I did.

15 Q. Okay. Can you describe the ring for the jury?

16 A. From what I recall it was a gold ring with some small
17 diamonds. My first impression of it was it may have been
18 someone's family's ring that was passed down and given to
19 her. It was - As far as I can remember it was gold with
20 small diamonds.

21 Q. A very pretty ring?

22 A. Yes very.

23 Q. Do you recall which finger she wore it on and which
24 hand?

25 A. I do not.

1 Q. Okay. All right. Did you first - Did you see that
2 ring when Ms. Caldwell first moved in, in the July month or
3 was --

4 A. She did not have that. She came by the office the
5 first of November around that time to pay her rent and
6 presented the ring, that she was now engaged.

7 Q. All right. And again without going into any testimony
8 about what might have been said, is that the first time you
9 noticed the ring or saw it?

10 A. Yes. Yes.

11 Q. Now do you recall the morning of November 12th, 2010,
12 I believe that was a Friday, in regard to having to check
13 the door of [REDACTED] for necessary repairs?

14 A. When I arrived at the property I did not check the
15 door for repairs. I wasn't aware there were any needed. I
16 was contacted by one of the residents who is my courtesy
17 officer.

18 Q. And without going into what she said, did you have the
19 occasion to then go down to that apartment and look at it?

20 A. The police were down there and I did go in and look
21 around to see if there was any possible damage that I may
22 have to address. I did notice a few things out of place
23 but the police were there and I left and let them continue
24 with their business.

25 Q. Do you recall was the yellow crime scene tape up ---

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1 A. Yes.

2 Q. --- around that area?

3 A. Yes.

4 Q. And so when you arrived there the police were there?

5 A. Yes.

6 Q. And when you left there were the police still there?

7 A. Yes.

8 Q. Did you later return that day in terms of making sure
9 the apartment had been secured?

10 A. Crystal came to the office later that afternoon. I'm
11 thinking around 3:00 or 4:00. Told me that she needed - -

12 Q. Again, just don't say anything in terms of what was
13 said to you, but as a result of Crystal coming was there
14 any action that you took?

15 A. Yes. When Crystal came we went to the apartment. I
16 took my keys, there was no need for the keys because the
17 door came right open.

18 Q. All right. And continue.

19 A. Then I later as soon as their business was finished I
20 went back to the office, I got two extra long screws
21 because I didn't have a maintenance staff there on the
22 property, I got two extra long screws and a hammer and I
23 went down and screwed the screws into the latch where the
24 handle, you know, would open and close into and I hammered
25 the - inside molding to the door back up against the door

1 and I locked it and I checked it and it was secure.

2 Q. And was that the door knob lock?

3 A. Door knob.

4 Q. Or was it the bolt lock?

5 A. I don't remember if the bolt was lockable. I do not
6 remember.

7 Q. All right. And you did that yourself?

8 A. Yes I did.

9 Q. All right.

10 SOLICITOR COLLINS: If I may ask the Court's
11 indulgence.

12 (PAUSE.)

13 Q. I'd like to show you, Ms. Martin, what's been marked
14 as State's Exhibit Twenty-seven.

15 This one I believe, Madame Court Reporter, is in
16 evidence.

17 And ask you, do you recognize what that reports to be
18 a picture of?

19 A. Yes. This is the front of the apartment.

20 Q. Which apartment?

21 A. Unit [REDACTED]

22 Q. And that's the one that Ms. Caldwell leased?

23 A. That's correct

24 Q. All right. And is that a fair and accurate depiction

25 ---

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1 A. Yes.

2 Q. --- of how the front door from a distance of that
3 apartment looked ---

4 A. Yes.

5 Q. --- on November 12th, 2010?

6 A. Yes.

7 Q. Yellow crime scene tape still up?

8 A. Yes.

9 Q. Thank you. Now, I want to show you what has not yet
10 been entered into evidence but has been previously marked
11 for evidence for identification, and these are Exhibits
12 Twenty-six, Twenty-eight, Twenty-nine and Thirty-three.

13 Just take them in that order. You'll see the numbers
14 right there beside State's Exhibit. I'm going to walk
15 through those with you.

16 A. All right.

17 Q. That first picture, can you tell me what that reports
18 to be a picture of?

19 A. I'm sorry, I couldn't hear.

20 Q. I'm sorry too. Can you tell me what that appears to
21 be a picture of?

22 A. This is a picture of the top of the front porch of the
23 townhouse Crystal lived in.

24 Q. Which Exhibit is that; what number is that assigned?
25 Do you see State's Exhibit?

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1 A. Twenty-six.

2 Q. Very good. And does that fairly and accurately depict
3 the top of the front door area?

4 A. Yes.

5 SOLICITOR COLLINS: I would move that into evidence.

6 MR. MUCKENFUSS: No objection.

7 THE COURT: In.

8 (WHEREUPON: STATE'S EXHIBIT NUMBER TWENTY-SIX,
9 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

10 BY SOLICITOR COLLINS:

11 Q. And moving on to the next one. You can just put that
12 up under there. Looking in the bottom right corner, which
13 number is that?

14 A. Twenty-eight.

15 Q. All right. What does that report to be a picture of?

16 A. This is a picture of the door where it appeared to be
17 kicked in. There's damage to the inside of the molding
18 around the door, the door molding and the - It looks like
19 the lock.

20 Q. And does that fairly and accurately depict the
21 condition of the door as you observed it on November 12th,
22 2010?

23 A. Yes.

24 SOLICITOR COLLINS: And I move that into evidence.

25 MR. MUCKENFUSS: No objection.

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1 THE COURT: In.

2 (WHEREUPON: STATE'S EXHIBIT NUMBER TWENTY-EIGHT,
3 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

4 BY SOLICITOR COLLINS:

5 Q. And the next exhibit please, the number in the bottom
6 right corner.

7 A. Twenty-nine.

8 Q. All right. And what does that report to be a picture
9 of?

10 A. This is a picture showing the bottom piece of the
11 interior door molding that was damaged. And also the
12 hardware for the bottom lock that came off.

13 Q. And the bottom lock, is that the knob or the bolt?

14 A. That's the knob.

15 Q. Okay. And the top part is the bolt?

16 A. The bolt.

17 Q. Did they use the same key? Do you know?

18 A. I believe this one did yes.

19 Q. And so you're saying in that picture it appears that
20 the bolt portion where the bolt would enter into the door
21 is still engaged? Is it still in the door?

22 A. That's correct.

23 Q. I don't know what to call it. The little hole - -

24 A. The bolt is intact. In my professional opinion the
25 deadbolt was not locked because of the condition of the

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1 knob bolt. If that same pressure had been put against this
2 door that top knob bolt would be in really bad condition.

3 Q. Which - Well let me before I get ahead of myself.
4 Does that fairly and accurately depict the condition of the
5 door as you saw - the door jam as you saw it that morning
6 November 12th, 2010?

7 A. Yes.

8 SOLICITOR COLLINS: Move that into evidence please.

9 MR. MUCKENFUSS: No objection.

10 THE COURT: In without objection.

11 (WHEREUPON: STATE'S EXHIBIT NUMBER TWENTY-NINE,
12 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

13 BY SOLICITOR COLLINS:

14 Q. Which of those two locks that you just described in
15 the door frame - I guess it's the area where the actual
16 lock itself goes in - which of those two were the ones that
17 you - the one you had to repair with the screw later that
18 morning?

19 A. I repaired the bottom lock, the handle lock. And
20 those appear to be the screws that I put in there.

21 Q. And is that the one you actually see on the floor area
22 just inside the door?

23 A. Yes that's correct.

24 Q. Did you need to do anything at all to the top area,
25 the bolt area, as far as you recall?

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1 A. No. As far as I know there was nothing wrong with the
2 top. Deadbolt, however, with the repositioning of the door
3 frame because of the movement, its possible it may not have
4 been able to latch in the hole that it's supposed to.

5 Q. Okay. And I think you got one more exhibit there that
6 we had not moved in. If you could look at the right bottom
7 corner.

8 A. That's all I have.

9 Q. You have - -

10 A.. Thirty-three. .

11 Q. Do you have four. May I see them for just a moment.

12 Oh.. So we talked about and I believe Number Twenty-
13 nine -

14 Ask the Court's indulgence.

15 SOLICITOR COLLINS: Which ones are in, Madame Court
16 Reporter?

17 MADAME COURT REPORTER: Which one's are in? You just
18 entered Twenty-eight, Twenty-nine and Twenty-six.

19 SOLICITOR COLLINS: Okay. Twenty-eight, Twenty-nine
20 and Twenty-six have just been entered.

21 Q. Yes. Let me show you State's Exhibit Thirty-three,
22 the fourth picture.

23 In looking at State's Exhibit Thirty-three, what does
24 that report to be a picture of?

25 A. That's a picture above the dead bolt and the knob

1 lock.

2 Q. Okay. That's in the door itself?

3 A. In the door itself yes.

4 Q. And does that fairly and accurately depict the
5 condition of those two locks within the door itself as you
6 observed it on November 12th, 2010?

7 A. After I made the repair.

8 Q. After you made the repair. Okay. So not before you
9 made the repair?

10 A. Well I'm not sure. It could have been either one.

11 Q. Do you - -

12 A. It wasn't much damage to that part. Most of the
13 damage was to the interior of the door.

14 Q. The part that goes in the door jam? I guess that's my
15 question and I don't really know what to call it but for
16 lack of a better word, the brass hole that the lock would
17 slide into that's in the door jam.

18 A. Yes.

19 Q. Versus the locking mechanism, the thing that comes out
20 and goes into that hole, that's in the door.

21 A. That's correct

22 Q. Okay. Now earlier you testified as to the door jam.

23 A. Yes.

24 Q. And what you've got in front of you is the door
25 itself?

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1 A. Yes.

2 Q. Okay. Are you able to say, if not just tell us, but
3 are you able to say does that fairly and accurately depict
4 the condition of the locks in the door itself on November
5 12th, 2010?

6 A. Yes.

7 Q. Okay. And do you recall, again just for clarity, was
8 that at the time you first observed it or after you
9 appeared, or do you know?

10 A. I do not know.

11 Q. Okay. All right. I would not move that into evidence
12 at this time.

13 A. Okay.

14 Q. You repaired, you testified that you repaired it after
15 the police left when Ms. Caldwell came back; is that right?

16 A. That's correct.

17 Q. And when Ms. Caldwell came back that was later that
18 day November 12th, 2010; is that right?

19 A. Yes.

20 Q. And at that time do you recall approximately how long
21 Ms. Caldwell was in the apartment?

22 A. The most probably five minutes.

23 Q. All right.

24 A. She was in a hurry.

25 Q. Okay. And did she have anyone with her?

1 A. Yes.

2 Q. Who was that?

3 A. I believe her brother and her mother or her sister.

4 It was a female and a male.

5 Q. And when she left did you notice if she had any items,
6 personal items with her ---

7 A. Yes.

8 Q. --- or any items?

9 A. Yes.

10 Q. And did you happen to recall what those items were?

11 A. I don't. I know there was clothing.

12 Q. All right.

13 A. That's all I recall.

14 Q. Okay. And it was at that time that you repaired a
15 portion of the door; is that right?

16 A. Yes.

17 Q. Correct me if I'm wrong, but you don't exactly recall
18 was it the hole where it goes into the jam or was it the
19 bolts, lock that's coming out the door or both?

20 A. I know I repaired the door jam. I may have tightened
21 the door lock where it came out. Whatever I did I made
22 sure that it was lockable and I left.

23 Q. So at that portion - At that time it was lockable and
24 you left?

25 A. Yes.

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1 Q. Do you recall approximately when that was?

2 A. It was late in the day, I want to say around 4:00 or
3 4:30.

4 Q. All right. Did Ms. Caldwell turn her key in at that
5 point?

6 A. No.

7 Q. Okay. Who in addition to Ms. Caldwell at that point
8 would have had keys to the apartment?

9 A. She is the only one that was issued keys.

10 Q. Do you know how many keys she - you normally issued?

11 A. We give one door key and one mailbox key.

12 Q. All right. Now, in regard to that lock, at that time
13 when you first came up with Ms. Caldwell to the apartment,
14 tell us again, was the door secure or did you all enter
15 without unlocking it?

16 A. It was not secure, it opened.

17 Q. Was it actually standing open?

18 A. No.

19 Q. Okay. So you were able to push it open without
20 unlocking it?

21 A. That's correct. It was unlocked.

22 Q. And after you secured it about 4:00 pm on Friday,
23 November 12th, 2010, did you take further action as an
24 employee of the management there at the apartments to see
25 that the lock was further secured?

1 A. Yes. I created a work order for maintenance to change
2 the locks and to repair professionally what I had done.

3 Q. All right. And do you recall when you filled out that
4 work order request?

5 A. I filled it out Friday, it was completed Monday
6 morning.

7 Q. Okay. So when you say it was completed, was the
8 request completed or was the action taken by the employee
9 to repair it?

10 A. Action was taken yes.

11 Q. On Monday morning of November 15th?

12 A. Yes.

13 Q. And at that time was it repaired such that the same
14 key would work or was there a change made in locks to where
15 a different key would be needed? Do you know?

16 A. There was a different key and the key was left for Ms.
17 Caldwell in her mailbox so that she could use her mailbox
18 key to come by and pick up that new key which is our
19 standard practice when we change locks and the resident is
20 not going to be at home.

21 Q. So the mailboxes themselves are secured by keys?

22 A. Yes.

23 Q. Correct? And those keys don't fit the door. Right?

24 A. That's correct

25 Q. The door key doesn't fit the mailbox?

SANDRA MARTIN: BY SOLICITOR COLLINS
BY MR. MUCKENFUSS

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1 A. That's correct

2 Q. And when you put that key in her mailbox you secured
3 the mailbox and locked it back?

4 A. That's correct

5 Q. And to your knowledge the only one that had access to
6 that would be Ms. Caldwell?

7 A. That's correct

8 Q. All right.

9 SOLICITOR COLLINS: One moment please, Your Honor.
10 (PAUSE.)

11 SOLICITOR COLLINS: That's all the questions I have.
12 Please answer any questions of the defense team.

13 Thank you.

14 CROSS EXAMINATION

15 SANDRA MARTIN BY MR. MUCKENFUSS:

16 Q. Good morning, Ms. Martin.

17 A. Good morning.

18 Q. I'll try to be brief. I just want to go back and see
19 if I can clarify a few things. When - What time of the day
20 was it when you arrived at the apartment at the time of
21 this incident?

22 A. I have to be at work at 9:00 a.m. so it was right
23 around 9:00 a.m.

24 Q. So it was 9:00 am on Friday?

25 A. Friday yes.

1 Q. Okay. And you testified the police were still there
2 at 9:00 am?

3 A. I think they had come and gone. There was a vehicle
4 there, the forensics vehicle.

5 Q. Okay. Did you actually see any police officers there?

6 A. I don't recall.

7 Q. And when you arrived at the apartment did you
8 immediately go in?

9 A. I did not.

10 Q. And where did you go when you arrived?

11 A. To the office.

12 Q. And is that where you met Ms. Caldwell?

13 A. No.

14 Q. Okay. How long were you in the office?

15 A. 9:00 until five o'clock. Ms. Caldwell came to the
16 office around 3:00ish, between 3:00 and 4:00.

17 Q. Okay. In the evening?

18 A. That afternoon, yes.

19 Q. That afternoon. So at the time you arrived at 9:00
20 from 9:00 to 4:00 or 5:00 that afternoon did you make any
21 other trips or walk over to the apartment?

22 A. Yes.

23 Q. You did? And how far is your office from Ms.
24 Caldwell's apartment?

25 A. Probably the distance of this seat to the back of the

SANDRA MARTIN: BY MR. MUCKENFUSS

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1 wall. It's very close.

2 Q. That's close. Okay. And when you go into your office
3 is there a window where you can see her apartment or would
4 you actually have to go out and walk around and - -

5 A. I would have to go out and walk around.

6 Q. Okay. And to give the jury some context here, how big
7 of an apartment complex is this?

8 A. It's a small complex. It's a U shape, we have two
9 entrances off Herlong Avenue. It's like a horseshoe. I'm
10 at the very bottom of the horseshoe and Crystal is right in
11 the curve of the other side of the horseshoe. If I walk
12 out onto my porch I see her back patio, her bay window, but
13 I would have to drive around to the front to see her front
14 porch.

15 Q. And she has a back patio?

16 A. That's correct

17 Q. Is there a door on the back patio?

18 A. Yes, sliding doors to the back patio.

19 Q. Okay. And Ms. Caldwell has keys I would presume to
20 the sliding door on the back patio?

21 A. We do not have keys to the sliding patio doors.

22 Q. When you say we do not, do you mean the office or - -

23 A. The office does not and the residents does not.
24 They're not lockable except from the inside.

25 Q. Okay. Did you at any point between 9:00 and 5:00

1 check to see if the back patio sliding door was locked?

2 A. I don't recall.

3 Q. Okay. So it could have been unlocked?

4 A. Possibly.

5 Q. Okay. Now between 9:00 and 5:00 you just testified
6 that you went back I think a few times to the apartment?

7 A. The first thing I did was walk down, I did not go into
8 the apartment, I walked down, knocked on the next door
9 neighbors door ask them what they knew. I was concerned
10 about her from what I had heard.

11 Q. Okay, we don't want to get into ---

12 A. Okay.

13 Q. --- what other people --

14 A. I was concerned and I knocked on the next door
15 neighbors to try to get some more information as to the
16 events that had occurred. There was police tape
17 everywhere, dust on the door. I went back to the office
18 then --

19 Q. Let me stop you there.

20 A. Yes.

21 Q. That trip how long after you had arrived did you make
22 that trip to the apartment? Or was that the initial - -

23 A. I would say within fifteen to twenty minutes.

24 Q. Okay. On that trip did you notice any police officers
25 or any law enforcement?

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1 A. I don't recall. I would have to say - No I can't
2 recall because sometimes the trucks are there and they just
3 sit in the trucks. There was police tape, I did not want
4 to enter the apartment unless there was an officer there
5 because I did not want to cross police lines in this case
6 and so I waited for someone to actually be inside the
7 apartment.

8 Q. Okay. And so this is around 9:30 a.m. that you made
9 this trip?

10 A. Uh-huh.

11 Q. And - Is that correct?

12 A. Yes.

13 Q. And you testified that you didn't go in the apartment;
14 is that correct?

15 A. That's correct

16 Q. Did you check to see if the door was unlocked?

17 A. I did not.

18 Q. Okay.

19 A. I didn't want to put my fingerprints on anything.

20 Q. I understand. Now, when - In the relation to time
21 when's the next trip - Well let me go back. Did you go
22 back to your office after the 9:15 trip?

23 A. Yes. Yes.

24 Q. And when was the next trip that you made back over to
25 the apartment?

1 A. As soon as I saw police officers actively outside when
2 I knew someone was in the apartment, I took the maintenance
3 - No I went by myself. I went down there by myself. I was
4 curious to see if there was any damage done to the
5 apartment like, you know, that might be typical of the
6 situation that I was told about. I walked in, I looked
7 around, there were a couple of detectives I believe there.
8 And I just noticed the door and I left because I didn't
9 want to be in the way.

10 Q. Okay. And - So your first trip was 9:30 in the
11 morning. What time of the morning or the afternoon is this
12 trip over to the apartment?

13 A. I don't recall.

14 Q. How much time had passed since the last trip? Do you
15 recall?

16 A. Not very long. Maybe a couple of hours.

17 Q. Okay. And you testified - You said you saw some
18 police officers at that time?

19 A. Some detectives yes.

20 Q. Okay. And did you go into the apartment?

21 A. When the detectives were there yes.

22 Q. Okay. And was that the first time you had gone into
23 the apartment?

24 A. That's correct

25 Q. Did you walk in with the detectives?

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1 A. I walked in when they were present yes.

2 Q. All right. And when you walked in did you - was the
3 door closed?

4 A. It was open. They were working in there.

5 Q. All right. So the door is open and you just walk
6 through the front door?

7 A. Yes.

8 Q. And where did you go? Did you walk in the front room?

9 A. I walked straight into the living room, looked around,
10 walked back to the kitchen and looked around and that was
11 really it.

12 Q. Did you go upstairs?

13 A. I don't recall if I went upstairs at that time but I
14 did go upstairs at some point to check to see if there was
15 anything - any damage that I needed to address.

16 Q. And you said the police officers were working inside
17 the apartment while you were walking around inside the
18 apartment as well?

19 A. Yes.

20 Q. Okay. Any of the police officers tell you ha, this is
21 a crime scene get out or anything like that?

22 A. They told me what they were doing and I didn't feel
23 like I was in their way of what they were doing so I just
24 walked in, looked around and left.

25 Q. Okay. How long were you in the apartment?

1 A. Maybe a minute.

2 Q. And did you go straight back to your office?

3 A. I don't recall. That was likely.

4 Q. Okay. When was the next trip that you made to the
5 apartment after that?

6 A. The next trip I made down there was when Crystal
7 arrived in my office.

8 Q. Okay. So is it fair to say that at least the first
9 couple of trips were in the morning?

10 A. That's correct

11 Q. And then it wasn't until before or in the later
12 afternoon that you went back with Ms. Caldwell?

13 A. That's correct

14 Q. And did you observe - Between that time frame did you
15 observe anything happen in the apartment as it relates to
16 the police officers coming and going?

17 A. There was no one there. There was a news truck across
18 the parking lot trying to film her.

19 Q. Okay. So from let's say late - mid to late morning to
20 4:00 or 5:00 when you went back, do you know if the front
21 door was locked or unlocked?

22 A. It was shut. I do not know if it was locked or
23 unlocked.

24 Q. Okay. Well on that point, you testified that when you
25 went to the apartment with Ms. Caldwell and her family that

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1 the door was unlocked; is that correct?

2 A. Yes that's correct.

3 Q. Is it fair to presume that between the late morning
4 and until you went to the apartment that the door was
5 unlocked?

6 A. That's correct

7 Q. And that's roughly five or six hours?

8 A. That's correct

9 Q. Okay. And you don't know what Ms. Caldwell or her
10 family was doing before you saw them at 4:00 or 5:00 at
11 your office; is that correct?

12 A. I do not know exactly what they were doing.

13 Q. Okay. And Ms. Caldwell obviously she's a tenant to
14 the apartment, she has a key to the apartment. Correct?

15 A. The reason she came to the office is because she did
16 not have a key.

17 Q. Okay. And when she came to the office with her
18 family, did you go straight to the apartment?

19 A. Yes we did.

20 Q. And again you testified that when you got to the front
21 door it was open. Correct?

22 A. Yes.

23 Q. It was not locked?

24 A. Yes.

25 Q. Who opened the door?

1 A. I assume the police.

2 Q. Well I'm talking about when you guys ---

3 A. Oh.

4 Q. --- went into - yeah.

5 A. I used the key I had ---

6 Q. Okay.

7 A. --- to attempt to open the door and that's when I
8 discovered it was not locked and was not lockable -

9 Q. And --

10 A. --- because of the damage.

11 Q. Thank you. Did - How many people were or how many
12 people were with Ms. Caldwell when you went into the
13 apartment?

14 A. There were three people. I don't recall if her two
15 companions - both went into the apartment or if they
16 remained in the car. I don't recall.

17 Q. So you don't know that?

18 A. I don't recall.

19 Q. But you testified that Ms. Caldwell went into the
20 apartment.

21 A. Yes she did.

22 Q. Were you in the apartment with her?

23 A. I was not. I stood at the door to try to block the
24 news camera from filming her.

25 Q. Okay. So you were at the front door when Ms. Caldwell

SANDRA MARTIN: BY MR. MUCKENFUSS

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1 goes into the apartment. Correct?

2 A. Yes. And the door is open during the time she's in
3 there.

4 Q. All right. Now I was a little confused and I don't
5 want to...

6 MR. MUCKENFUSS: I beg the Court's indulgence.

7 (PAUSE.)

8 Q. State's Exhibits - Let me get the numbers correct
9 here. It's Twenty-six, Twenty-seven, Twenty-eight and
10 Twenty-nine were shown to you and I'll just hand them to
11 you.

12 A. Okay.

13 Q. If that's okay.

14 A. Yes.

15 Q. Now I just want to - I was a little confused because
16 you testified you were shown a picture that was not
17 admitted into evidence and you were unsure whether that
18 photograph was taken after you had made some repairs or a
19 maintenance made repairs to the door.

20 A. That's correct.

21 Q. Do you recall that?

22 A. Uh-huh.

23 Q. Did you testify that when you reviewed those pictures,
24 the ones I just handed you, are you unsure if those
25 pictures were taken after you had attempted repairs to the

1 door, or can you recall?

2 A. This is exactly the way I remember the door looked
3 because of the piece at the bottom. The wood piece at the
4 bottom actually separated into a point from the door jam.
5 I took a hammer and hammered that back. Then the door
6 appeared to be kicked in and when it was the handle, the
7 mechanism that comes out from the handle that latches into
8 the hole to keep it from opening, that hole had the metal
9 piece thrown off of it and I had to take that and I took
10 some extra long screws just to make sure that it would stay
11 in there. So this is exactly what it looked like before I
12 repaired it.

13 Q. Just for the record, what photograph are you looking
14 at, the State's Exhibit?

15 A. Exhibit Twenty-eight.

16 Q. Okay.

17 MR. MUCKENFUSS: May I approach?

18 Q. All right, in terms of State's Exhibit Twenty-seven,
19 looking at that picture are you - Can you recall whether
20 that picture may have been taken after you had attempted
21 repairs to the door?

22 A. No this was before I attempted repairs to the door.

23 Q. Okay.

24 A. Yes because I repaired this piece of wood. I hammered
25 it back into place and - -

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1 Q. Okay. Let's go to the next - -

2 A. That's what that's showing.

3 Q. Thank you. If you'll go to State's Exhibit Twenty-
4 six. Now State's Exhibit Twenty-six shows the - I guess
5 the --

6 A. The roof of the porch.

7 Q. Thank you. Searching for the word. The roof of the
8 porch, not really the door; correct?

9 A. That's correct.

10 Q. So that doesn't show any apparent damage to the door
11 or anything like that?

12 A. No this would not affect the door at all.

13 Q. And it just shows the numbers at [REDACTED] is that
14 correct?

15 A. Yes. Normally if I take pictures of an apartment I'll
16 get the numbers first before I go in just to help me
17 remember where the photos were taken.

18 Q. Thank you. Let's go to the last photo there which is
19 State's Exhibit Twenty-seven. And just to clarify for the
20 record, are you - Can you recall whether that photo was
21 taken before or after you attempted repairs or can you
22 tell?

23 A. I cannot tell if this was taken before or after.

24 Q. Okay. Thank you. Now, Ms. Martin, after Ms. Caldwell
25 came out of the house, I think you testified that she had

1 something with her. Do you recall noticing if she had
2 something in her hands when she left the apartment?

3 A. I don't recall.

4 Q. Okay. Now in terms of - You testified that you made
5 repairs to lock the door; is that correct?

6 A. That's correct

7 Q. How long did those repairs take?

8 A. About five or ten minutes.

9 Q. All right. Was Ms. Caldwell still there with her
10 family when you were doing that work?

11 A. No.

12 Q. Okay. And you testified - I mean Ms. Caldwell is
13 still the tenant of the apartment. Correct?

14 A. Yes that's correct.

15 Q. And she has a key to the apartment. Correct?

16 A. That's correct

17 Q. And did you provide her - You testified that she came
18 because she didn't have a key.

19 A. Yes.

20 Q. Did you provide her a key?

21 A. The keys were in the apartment from what I recall.

22 Q. Okay. So Ms. Caldwell retrieved the keys within the
23 apartment?

24 A. I don't know for sure.

25 Q. But Ms. Caldwell had a key at the time that you locked

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1 it and left?

2 A. I don't know.

3 Q. Okay. And this was on Friday evening; is that
4 correct?

5 A. Yes. A Friday afternoon yes.

6 Q. And over the span of the weekend, Saturday and Sunday,
7 did you go back to the apartment?

8 A. No.

9 Q. Did you inspect the door over the weekend?

10 A. No.

11 Q. Did you go back to check the patio door over the
12 weekend?

13 A. No.

14 Q. Now on Monday I believe you testified that you put in
15 a work order; is that correct?

16 A. That's correct yes.

17 Q. And this was a work order to have the door repaired
18 correctly?

19 A. Yes and change the locks.

20 Q. And did the locks get changed on Monday?

21 A. Yes.

22 Q. And I think you testified you left the keys for that
23 lock for Ms. Caldwell in a mailbox?

24 A. That's correct

25 Q. Was this the mailbox at the apartment?

1 A. This is a mailbox at our - We have a separate area
2 where we keep the mailboxes. It's up the hill from her
3 apartment.

4 Q. Okay. And you left those keys on Monday for her to
5 pick up?

6 A. That's correct?

7 Q. Do you remember what time of the day on Monday that
8 she picked up the keys?

9 A. I don't know if she picked them up on Monday.

10 Q. Okay. So you're not sure when she actually came and
11 get them?

12 A. That's correct

13 Q. Did you know that the police returned to the apartment
14 on Monday?

15 A. I know they were in and out but I don't recall
16 specifically if they came back on Monday. I recall I had
17 customers and forensics was - the forensic rep was down
18 there and they didn't come back.

19 Q. Okay. Gotcha. So you remember seeing that same
20 truck.

21 A I remember yeah.

22 Q. Okay. So presumably Ms. Caldwell had gotten the keys
23 sometime on Monday if the forensic unit or the police were
24 back in the apartment?

25 A. I don't know.

SANDY MARTIN: BY SOLICITOR COLLINS

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1 Q. Okay.

2 MR. MUCKENFUSS: No further questions.

3 THE COURT: Redirect?

4 SOLICITOR COLLINS: Yes.

5 REDIRECT EXAMINATION

6 SANDRA MARTIN BY SOLICITOR COLLINS:

7 Q. Ms. Martin, you testified that the keys were within
8 the apartment; is that right?

9 A. I don't know.

10 Q. I'm sorry, I thought that's what you testified when
11 Mr. Muckenfuss ask you about the apartment.

12 A. I assumed that she had her set of keys inside the
13 apartment is the reason she didn't have them.

14 Q. So are you saying when she came back on November 12th,
15 2010, - -

16 A. She did not have keys in her possession and I had to
17 let her in the apartment.

18 Q. Okay.

19 A. And but there - -

20 Q. But then when you went to the door and actually could
21 push open.

22 A. Yes.

23 Q. Okay.

24 A. So we really didn't need a key to get in.

25 Q. Okay. All right.

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1 A. Which she did not know either until we go there.

2 Q. So you didn't see keys within the apartment?

3 A. I did not.

4 Q. You're just saying she came to you and you went to
5 unlock the door for her?

6 A. That's correct

7 Q. Okay. Gotcha. Okay.

8 SOLICITOR COLLINS: Thank you very much.

9 That's all I have.

10 MR. MUCKENFUSS: Nothing further.

11 THE COURT: You can step down and be excused. We
12 appreciate your time. Thank you.

13 SOLICITOR COLLINS: Thank you, Your Honor.

14 THE COURT: All your next witness.

15 SOLICITOR COLLINS: May we approach?

16 THE COURT: Yeah.

17 SOLICITOR COLLINS: Thank you.

18 Thank you, Ms. Martin.

19 (WITNESS LEAVING WITNESS STAND.)

20 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF
21 THE JURY AT 10:38 A.M..)

22 THE COURT: I'm sorry, we're not doing secret stuff up
23 here but as opposed when we have some legal matter issues
24 rather than send you out we do them up here. If it's
25 something real difficult where we have to make a record and

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1 have a log dialogue I'll let you go out. We're just doing
2 this to save time. We're not cuttin corners.

3 Go ahead.

4 SOLICITOR COLLINS: Thank you, Your Honor.

5 Your Honor, at this time the State would like to
6 recall to the stand Crystal Caldwell.

7 THE COURT: Ms. Caldwell, you come forward. You're
8 still under oath for purposes of this case.

9 SOLICITOR COLLINS: She doesn't have to be resworn?

10 THE COURT: No she's still under oath.

11 SOLICITOR COLLINS: Thank you, Judge.

12 DIRECT EXAMINATION

13 CRYSTAL CALDWELL BY SOLICITOR COLLINS:

14 Q. Ms. Caldwell, when you got out of the hospital on
15 November 12th, 2010, did you return to your apartment at

16 [REDACTED]
17 A. Yes I did. My mother who had held my cell phone at
18 the hospital assured me --

19 MR. MUCKENFUSS: Your Honor, objection.

20 THE COURT: Remember from yesterday ---

21 A. Okay.

22 THE COURT: --- the answer was yes I did ---

23 A. Yes.

24 THE COURT: --- and you don't need to go beyond that.

25 SOLICITOR COLLINS: And please don't say anything

CRYSTAL CALDWELL: BY SOLICITOR COLLINS

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1 anyone else said.

2 A. Okay.

3 Q. Just talk about your action. Okay. And when you
4 returned to the apartment who if anyone was with you?

5 A. My mom and dad was with me. And --

6 Q. All right. All right. And - All right, very good.

7 And when you got back to the apartment did you go
8 immediately to your apartment or where did you go within
9 the complex?

10 A. I went to see Sandy after I had retrieved a phone call
11 from her.

12 THE COURT: No, no, no.

13 SOLICITOR COLLINS: Okay.

14 THE COURT: The answer is I went to see Sandy.

15 A. I went to the office to see Sandy.

16 Q. Okay. Sandy Martin that just testified?

17 A. Yes.

18 Q. Okay. And did you go anywhere with Sandy after that?

19 A. Yes we went to the apartment.

20 Q. Okay. The apartment being your apartment [REDACTED]

21 [REDACTED] ?

22 A. Yes.

23 Q. All right. And you heard Sandy testify that the
24 office is located in the bottom of the horseshoe away from
25 Herlong?

CRYSTAL CALDWELL: BY SOLICITOR COLLINS

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1 MR. MUCKENFUSS: Objection, leading.

2 THE COURT: Yes.

3 SOLICITOR COLLINS: I'll rephrase.

4 Q. You all walked down to your door; is that right?

5 A. We walked down to my door. I told her I didn't have
6 my keys.

7 Q. All right.

8 A. They were left on the kitchen table.

9 Q. All right.

10 A. My keys --

11 Q. I'm sorry.

12 A. My keys had been left on the kitchen counter due to I
13 always leave my keys on the kitchen counter and when - -

14 THE COURT: That's - She'll ask another question.

15 SOLICITOR COLLINS: All right.

16 Q. And when you went back to the apartment with Sandy,
17 did you go inside the apartment?

18 A. Yes. Me and Sandy stepped inside the apartment.

19 Q. All right. And what did you do when you were in the
20 apartment at that time?

21 A. I went to the laundry room and retrieved the laundry
22 basket of clothes that I had prior a day or two ahead of
23 time and I noticed just my clothes in it. I got that and
24 we went upstairs me and Sandy together. I was afraid to go
25 up there and I told her I needed my hair curlers from up

1 there for my new hair and I went up there and reached in
2 and grabbed the yellow Dollar General bag that contained
3 sponge rollers and we left strait out of the apartment
4 because the news people were there outside and I left.

5 Q. Okay. And were you here in court the other day when
6 the picture of your bedroom or the bedroom with then was
7 being shown and the yellow bag?

8 A. Yes. And at that time I noticed - At that time I
9 notified Tara that that yellow bag contained my hair
10 rollers, my curlers, and I removed the yellow bag with my
11 hair curlers.

12 Q. Okay. And that's Tara Rose the victim assistant who's
13 been sitting with you during the trial?

14 A. Yes.

15 Q. Okay. And for the record she's a member of my office?

16 A. Yes.

17 Q. So the bag that was referenced in terms of having been
18 moved, who moved that bag?

19 A. I moved the bag because it contained my hair curlers.

20 Q. Okay. And did you in fact take those with you ---

21 A. Yes, ma'am.

22 Q. --- also?

23 A. I took the sponge rollers with me.

24 Q. Okay. Other than taking your clothing that had
25 already been washed and prepared in the laundry room

CRYSTAL CALDWELL: BY SOLICITOR COLLINS
BY MR. MUCKENFUSS

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1 basket, and also the hair curlers and the yellow Dollar
2 General bag, what if anything else did you do while you
3 were in the apartment at that time?

4 A. Nothing. Got my stuff and got out of there. I was
5 less than five minutes.

6 Q. All right. Didn't take anything else?

7 A. No.

8 Q. Okay. Didn't disturb anything?

9 A. Didn't want nothing else.

10 Q. Didn't leave anything?

11 A. No, ma'am.

12 SOLICITOR COLLINS: No further questions.

13 THE COURT: Mr. Muckenfuss.

14 CROSS EXAMINATION

15 CRYSTAL CALDWELL BY MR. MUCKENFUSS:

16 Q. Ms. Caldwell, you just testified that when you went
17 into the apartment Ms. Martin went in with you; is that
18 correct?

19 A. Yes.

20 Q. And she went upstairs with you?

21 A. Yes.

22 Q. And --

23 A. She stood right there at the landing at the top of the
24 stair case.

25 Q. Okay. And you went into your bedroom. Correct?

CRYSTAL CALDWELL: BY MR. MUCKENFUSS

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1 A. I reached in yeah, because the dresser - it's a night
2 stand that was there. As far as - I was like right here.

3 (WITNESS DEMONSTRATED.)

4 A. And the yellow bag where the Kleenex's.

5 (WITNESS PULLED TISSUE FROM BOX ON WITNESS STAND.)

6 A. All I had to do was reach in and grab it.

7 Q. Okay. So you went into your bedroom.

8 A. Yes.

9 Q. Correct?

10 MR. MUCKENFUSS: No further questions.

11 THE COURT: Redirect?

12 SOLICITOR COLLINS: Nothing further, Your Honor.

13 THE COURT: You can step back down. Thank you. We
14 appreciate your time.

15 (WITNESS LEAVING WITNESS STAND.)

16 THE COURT: Call your next witness.

17 SOLICITOR EPTING: Your Honor, the State would call
18 Sergeant Robert Wooten to the stand.

19 THE COURT: Put your left hand on the Bible and raise
20 your right.

21 (WHEREUPON: SERGEANT ROBERT
22 WOOTEN, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS
23 FOLLOWS:)

24 MADAME CLERK: Thank you.

25 DIRECT EXAMINATION

SERGEANT ROBERT WOOTEN: BY SOLICITOR EPTING

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1 SERGEANT ROBERT WOOTEN BY SOLICITOR EPTING:

2 Q. Sergeant, good morning.

3 A. Good morning.

4 Q. Sergeant Wooten, would you please state your full name
5 for the record.

6 A. Robert Jeffrey Wooten.

7 Q. And what do you do for a living, Sergeant Wooten?

8 A. I'm employed with the York County Sheriff's Office as
9 a uniform patrol sergeant.

10 Q. How long have you been employed by the sheriff's
11 office?

12 A. Ten years.

13 Q. And in November of 2010 were you involved in the
14 investigation involving Hashin O'Neil?

15 A. Yes I was.

16 Q. Could you please tell the jury the extent of your
17 involvement?

18 A. It was the beginning of my tour of duty that morning,
19 the incident had led over into the oncoming shift so I met
20 the officers at Piedmont Medical Center ER.

21 Q. And once at the ER - Okay, you arrived at the ER?

22 A. Yes, sir.

23 Q. What do you do then?

24 A. I met with Detective Eddie Strait.

25 Q. Okay. And as a result of speaking with Detective

SERGEANT ROBERT WOOTEN: BY SOLICITOR EPTING

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1 Strait what action did you take?

2 A. He ask me if I would transport - -

3 MR. MUCKENFUSS: Your Honor, objection to hearsay.

4 SOLICITOR EPTING: Your Honor, it's being used to
5 explain what his subsequent course of conduct but I will -

6 THE COURT: Okay.

7 BY SOLICITOR EPTING:

8 Q. At some point did you transport a prisoner?

9 A. Yes, sir, I did.

10 Q. Now what prisoner was that?

11 A. Mr. O'Neil.

12 Q. Okay.

13 A. He was taken from one patrol car to my patrol vehicle.

14 Q. Okay.

15 A. And transported him to the sheriff's office.

16 Q. Okay. Did anyone else ride with you?

17 A. No, sir.

18 Q. Did you hear him read his *Miranda* Rights before he was
19 entered into your vehicle?

20 A. No I did not.

21 Q. Once at the Moss Justice Center, what happened then?

22 A. Myself and Detective Strait escorted him into the
23 conference room of the sheriff's office.

24 Q. Okay. And was anyone else in the sheriff's office at
25 this time?

SERGEANT ROBERT WOOTEN: BY SOLICITOR EPTING

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1 A. Inside the conference room?

2 Q. Inside the upper part of the building where the
3 sheriff's office is.

4 A. Yes, sir, there was.

5 Q. Okay. Who?

6 A. There was the duty officer and the front desk
7 receptionist.

8 Q. And you said you took him to a conference room?

9 A. Yes, sir.

10 Q. Who was present in the conference room?

11 A. Myself, Detective Strait and Mr. O'Neil.

12 Q. Okay. And if you could, and I know it's hard to do
13 just from speaking, could you give the jury some idea of
14 the size of this conference - of the conference room you
15 took him to?

16 A. Length wise between myself and you ---

17 Q. Okay.

18 A. --- probably about half that as far as width.

19 Q. While he was inside that conference room was he
20 handcuffed?

21 A. Yes, sir, he was.

22 Q. And for what purpose was he handcuffed?

23 A. For his safety and ours.

24 Q. And just you and Eddie Strait?

25 A. Yes, sir.

SERGEANT ROBERT WOOTEN: BY SOLICITOR EPTING

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1 Q. At some point was he read his *Miranda* Rights?

2 A. Yes, sir, he was.

3 Q. And by whom was he read his *Miranda* Rights?

4 A. Detective Strait.

5 Q. Do you recall if Detective Strait read those rights
6 from memory or from some other source?

7 A. From a piece of paper.

8 Q. Okay.

9 SOLICITOR EPTING: Permission to approach, Your Honor.

10 THE COURT: Yes, sir.

11 SOLICITOR EPTING: I beg the Court's and the jury's
12 indulgence.

13 MADAME COURT REPORTER: *Miranda* Rights is Number Five.

14 SOLICITOR EPTING: Are these in order?

15 MADAME COURT REPORTER: Were.

16 SOLICITOR EPTING: This one marked?

17 MADAME COURT REPORTER: Yeah but I think they're just
18 for ID. Yeah. Look in that pile right there. Right
19 there, look in that right there. No. Let me have it.

20 Which one do you want?

21 SOLICITOR EPTING: Five. There you go.

22 MADAME COURT REPORTER: If it had been a snake it
23 would have bit you.

24 SOLICITOR EPTING: Thank you.

25 May the record reflect I am handing --

SERGEANT ROBERT WOOTEN; BY SOLICITOR EPTING

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1 MR. MUCKENFUSS: Your Honor, may we approach?

2 THE COURT: Yes, sir.

3 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF
4 THE JURY AT 10:47 A.M..)

5 SOLICITOR EPTING: Please let the record reflect that
6 I am handing Sergeant Wooten what's been marked as State's
7 Exhibit Five.

8 Q. Do you recognize State's Exhibit Five?

9 A. Yes I do.

10 Q. What do you recognize that as?

11 A. Miranda Rights Form.

12 Q. And does your signature appear somewhere on State's
13 Exhibit Five?

14 A. Yes, sir, it does. At the bottom.

15 Q. And what does your signature indicate?

16 A. That I was a witness that the rights were read to Mr.
17 O'Neil.

18 Q. And once - Did you witness the defendant sign that
19 form?

20 A. Yes I did.

21 Q. How many times did he sign it?

22 A. Twice.

23 Q. And following that did you or Eddie Strait, Detective
24 Strait, speak with the defendant?

25 A. Detective Strait did.

SERGEANT ROBERT WOOTEN: BY SOLICITOR EPTING

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1 Q. Okay. Detective Strait did?

2 A. Yes, sir.

3 Q. What was your role in sitting in there in the
4 interview?

5 A. My role was basically to be a witness and also there
6 was - basically a security so Detective Strait could do his
7 interview and I could concentrate on the security of Mr.
8 O'Neil.

9 SOLICITOR COLLINS: That's all the questions I have of
10 you right now. Please answer any questions the defense may
11 have.

12 A. Yes, sir.

13 MR. MUCKENFUSS: No questions, Your Honor.

14 THE COURT: You can step down and be excused, Officer.
15 We appreciate your time.

16 SERGEANT WOOTEN: Thank you, Your Honor.

17 (WITNESS LEAVING WITNESS STAND.)

18 THE COURT: Call your next witness.

19 SOLICITOR COLLINS: The State calls Bryan Loncaric to
20 the stand.

21 Thank you, Officer.

22 Bryan Loncaric. Come up and be sworn.

23 MADAME CLERK: Raise your right hand, place your left
24 hand on the Bible.

25 (WHEREUPON: BRYAN LONCARIC,

BRYAN LONCARIC: BY SOLICITOR COLLINS

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1 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

2 DIRECT EXAMINATION

3 BRYAN LONCARIC BY SOLICITOR COLLINS:

4 Q. Would you please state your name?

5 A. Bryan Loncaric.

6 Q. What's your occupation?

7 A. Training sergeant.

8 Q. With the York County Sheriff's Department?

9 A. Sheriff's office.

10 Q. And how long have you been with the sheriff's
11 department?

12 A. Ten and a half years.

13 Q. And in the course of your duties with the York County
14 Sheriff's Department, did you have an occasion to allow
15 Kevin Tolson, investigator with the Solicitor's Office, to
16 come and take photographs of the clothing of Mr. O'Neil
17 that's there at the Detention Center?

18 A. Yes I did.

19 Q. Now when someone is booked into the custody at the
20 Detention Center, at some point he's - the clothes he has
21 are turned in; is that right?

22 A. Yes.

23 Q. And their maintained for him to have later. Right?

24 A. Yes.

25 Q. And is there a process to make sure that I wouldn't

1 get your clothes or you wouldn't get my clothes?

2 A. Every individual has a specific property bag.

3 Q. Okay. And at the request of Investigator Tolson, did
4 you retrieve the bag for Mr. Hashin O'Neil?

5 A. Yes.

6 Q. And that's the bag that has his clothing there at the
7 Detention Center; is that right?

8 A. Yes, ma'am.

9 Q. And that was a few months ago, do you recall?

10 A. About a few months ago yes.

11 Q. All right. And --

12 SOLICITOR COLLINS: I'm sorry, I ask the Court's
13 indulgence.

14 (PAUSE.)

15 Q. And I'm gonna show you what's been marked for ID as
16 State's Exhibit Twenty-three, Twenty-four and Twenty-five
17 and ask you, do you recall looking at the clothing of Mr.
18 O'Neil as Investigator Tolson was taking photographs?

19 A. Yes.

20 Q. And those three exhibits, what do they report to show?

21 A. The shirt, a pair of pants, front and back.

22 Q. The shirt of whom?

23 A. Mr. O'Neil.

24 Q. And a pair of pants front and back of Mr. O'Neil?

25 A. Mr. O'Neil yes.

BRYAN LONCARIC: BY SOLICITOR COLLINS

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1 Q. Those are photographs thereof?

2 A. Yes.

3 Q. And do those photographs fairly and accurately depict
4 the clothing of Mr. O'Neil, the defendant, as they are in
5 custody at the York County Detention Center?

6 A. Yes they are.

7 Q. Thank you, please answer - Oh.

8 SOLICITOR COLLINS: Your Honor, I move those three
9 items into evidence.

10 MR. MUCKENFUSS: No objection.

11 THE COURT: In without objection.

12 (WHEREUPON: STATE'S EXHIBIT NUMBERS TWENTY-THREE,
13 TWENTY-FOUR AND TWENTY-FIVE IDENTIFIED AND MARKED, RECEIVED
14 INTO EVIDENCE.)

15 SOLICITOR COLLINS: Thank you. Please answer any
16 questions the defense attorneys may have for you.

17 MR. MUCKENFUSS: Your Honor, the defense has no
18 questions.

19 THE COURT: All right, you can step down and be
20 excused. Thank you for your time.

21 (WITNESS LEAVING WITNESS STAND.)

22 THE COURT: Call your next witness.

23 SOLICITOR COLLINS: Thank you.

24 The State's next witness is Investigator Kevin Tolson
25 with the York County Solicitor's Office.

INVESTIGATOR KEVIN TOLSON: BY SOLICITOR COLLINS

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1 (WHEREUPON: INVESTIGATOR KEVIN
2 TOLSON, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS
3 FOLLOWS:)

4 DIRECT EXAMINATION

5 INVESTIGATOR KEVIN TOLSON BY SOLICITOR COLLINS:

6 Q. Would you please tell the jury your name?

7 A. Kevin Tolson.

8 Q. And where are you employed?

9 A. I'm employed with the Solicitor's Office here in York
10 County.

11 Q. And how long have you been with the solicitor's
12 office?

13 A. Just over ten years.

14 Q. And where were you before that?

15 A. State Law Enforcement Division.

16 Q. And how long have you been with law enforcement?

17 A. Be twenty years this September.

18 Q. All right. So currently as a member of the
19 solicitor's office just to get this out of the way, you
20 work for me; is that right?

21 A. I work for you and all the other attorneys.

22 Q. Okay. For me. But I don't do your eval; right?

23 A. No.

24 Q. And I don't sign your check?

25 A. No.

INVESTIGATOR KEVIN TOLSON: BY SOLICITOR COLLINS

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1 Q. And you don't report to me in any way; is that right?

2 A. That's correct

3 Q. All right. Now, did you have an occasion to go down
4 to the York County Detention Center to view and photograph
5 some clothing of Mr. O'Neil?

6 A. I did.

7 Q. In that process did you ask Officer Loncaric to make
8 that clothing available for you?

9 MR. MUCKENFUSS: Objection, Your Honor, to leading.

10 SOLICITOR COLLINS: I'll rephrase.

11 Q. Who did you request to show you the clothing of Mr.
12 O'Neil?

13 A. Officer Loncaric who was just on the stand here.

14 Q. All right. And I'd like to show you what's been
15 marked as Defense - I mean as State's Exhibit Twenty-three,
16 Twenty-four and Twenty-five, and ask you - they are already
17 in - what do those photographs show?

18 A. A pair of jeans, a pair of men's jeans front and
19 back, as well as a Arabi style long-sleeve shirt.

20 Q. And was that the clothing of - What if any - let me
21 rephrase. What if any changes had been made to the
22 condition of the clothing at the time you observed them in
23 the detention center and as they are reflected in the
24 picture?

25 A. None that I'm aware of.

1 Q. Thank you. I'd like to show you one other photo if I
2 could. I'd like to show you State's Exhibit Ten that's
3 already in evidence and ask you, Investigator, do you
4 recognize that photograph?

5 A. I do.

6 Q. What's that a picture of?

7 A. That is a picture of Ms. Caldwell's back area, lower
8 back area.

9 Q. And did you take a photograph of her?

10 A. I did.

11 Q. And was Ms. Tara Rose in the room at the time?

12 A. Yes, ma'am.

13 Q. As myself?

14 A. Correct.

15 Q. And does that photograph fairly and accurately depict
16 the condition of Ms. Caldwell's back as you viewed it I
17 believe a day or two ago?

18 A. That's correct it does.

19 Q. Monday I believe; is that right?

20 A. Yes, ma'am.

21 Q. Of this week. And I believe that's already in
22 evidence.

23 A. Yes, ma'am, it is.

24 SOLICITOR COLLINS: One moment please, Your Honor.

25 (PAUSE.)

INVESTIGATOR JOHN GEORGE: BY SOLICITOR COLLINS

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1 SOLICITOR COLLINS: Nothing further. Thank you.

2 Please answer any questions of Mr. Muckenfuss or - -

3 MR. MUCKENFUSS: The defense has no questions, Your
4 Honor.

5 THE COURT: You can step down and be excused. Thank
6 you.

7 (WITNESS LEAVING WITNESS STAND.)

8 THE COURT: Call your next witness.

9 SOLICITOR COLLINS: Your Honor, the State would call
10 Forensic Services Investigator John George to the stand.

11 (WHEREUPON: INVESTIGATOR
12 JOHN GEORGE, BEING FIRST CALLED AND DULY SWORN, TESTIFIED
13 AS FOLLOWS:)

14 DIRECT EXAMINATION

15 INVESTIGATOR JOHN GEORGE BY SOLICITOR COLLINS:

16 Q. Good morning.

17 A. Good morning.

18 Q. Would you tell the jury your name please?

19 A. It's John Robert George.

20 Q. What's your occupation?

21 A. I'm a police officer with the Rock Hill Police
22 Department currently assigned to the York County Forensic
23 Unit.

24 Q. What is the York County Forensic Unit?

25 A. York County Forensic Unit is a crime scene unit

1 comprised of officers from Rock Hill, York County, Fort
2 Mill, York City, Clover and Winthrop P.D.

3 Q. And how long have you worked with the Forensic Unit?

4 A. Approximately eight years.

5 Q. How many years?

6 A. Eight years.

7 Q. And how long have you been with law enforcement?

8 A. Seventeen.

9 Q. And as a member of the Forensic's Unit do you receive
10 special training?

11 A. Yes we do.

12 Q. And what is the Forensic Unit do; what does forensics
13 mean?

14 A. Forensics is - Basically what we do is a crime scene
15 processing, we process everything from car break in's,
16 burglaries, shootings, and homicides.

17 Q. And what does processing mean?

18 A. Look for the scene for evidence, take pictures,
19 collect fingerprints, and that type of...

20 Q. That type thing?

21 A. Yeah.

22 Q. All right.

23 A. Sorry about that.

24 Q. Now in the course of your work with the - not the
25 sheriff's department but with the forensic service unit?

INVESTIGATOR JOHN GEORGE: BY SOLICITOR COLLINS

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1 A. Yes.

2 Q. In the course of your work with the Forensic Service
3 Unit, did you have an occasion to respond in regard to this
4 case before the court on November 12th, 2010?

5 A. Yes I did.

6 Q. Where did you first go and investigate?

7 A. I first went to - First I received a call from
8 Investigator Audra Eddie to assist her with the crime scene
9 shooting at PMC hospital.

10 Q. All right. And so you went where?

11 A. To PMC first.

12 Q. And PMC being Piedmont Medical Center?

13 A. Yes.

14 Q. And when you arrived at Piedmont Medical Center or
15 PMC, what did you do?

16 A. When I first arrived I spoke with Investigator Eddie
17 and she advised that they had a shooting victim in the ER.

18 MR. MUCKENFUSS: Your Honor, objection to hearsay.

19 THE COURT: Yeah. Don't go into what the other
20 officer said.

21 A. I'm sorry.

22 Q. What action did you take?

23 A. The first thing I did was that I actually did
24 collection wise was actually collect gunshot residue test
25 kit from Mr. O'Neil.

1 Q. All right. And that's the defendant here today Hashin
2 O'Neil?

3 A. Yes.

4 Q. Where was he at the time that gunshot residue
5 collection kit was executed?

6 A. Parking lot of PMC Hospital.

7 Q. Do you know approximately when that was?

8 A. I believe it was at 5:50 a.m. is when I actually
9 collected the kit. Yes it was 5:50 a.m..

10 Q. And where was Mr. O'Neil? I know he was at PMC but
11 where exactly?

12 A. In the parking lot. If you're familiar with the
13 emergency room entrance there's a parking lot if you come
14 out the emergency room doors, straight up and it's right
15 there.

16 Q. And at the time you utilized that kit and we're gonna
17 talk about that in a minute, who else was present?

18 A. Investigator Eddie and I believe Investigator - or
19 Detective Strait.

20 Q. Detective Strait. All right. Now tell us, what is
21 the kit? Is there a shorter way to say it than gunshot
22 residue collection kit?

23 A. We call it a GSR Kit.

24 Q. Okay. GSR. What is that?

25 A. It is a kit for trying to collect evidence of someone

INVESTIGATOR JOHN GEORGE: BY SOLICITOR COLLINS

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1 who has fired a firearm.

2 Q. And just walk us through. How is that done?

3 A. You have four different little containers that you
4 unscrew the top of the container and it's actually got
5 little sticky pads on it and you have one for the top of
6 the right hand, one for the bottom of the palm area of the
7 right hand, one for the left hand, full front and back.
8 I'm sorry, one for the palm, one for the back. And then
9 you also have swabs that you would also do each side of the
10 hand.

11 Q. And what's the purpose of that?

12 A. It can collect residue from gunshot, I believe primer
13 power, anything from a firearm that is fired can get on
14 your hands.

15 Q. And who do you test for that? Who do you use that
16 with? I mean what people do you decide to use that kit
17 with?

18 A. Anybody who has possibly fired a gun or if they were
19 in a residence that a gun was fired at, victims and also
20 suspects and witnesses.

21 Q. Did you collect such a kit from the victim in this
22 case Crystal Caldwell?

23 A. No I did not.

24 Q. Why not?

25 A. I'm not sure.

INVESTIGATOR JOHN GEORGE: BY SOLICITOR COLLINS

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1 Q. Okay. But you did collect one from Mr. O'Neil?

2 A. Yes.

3 Q. All right. And is there a form you fill out or that
4 is filled out before that kit is collected?

5 A. Yes.

6 Q. Do you have a copy of that with you?

7 A. Yes I do.

8 Q. Referring to that form - Well let me get it marked if
9 I could.

10 (WHEREUPON: STATE'S EXHIBIT SEVENTY-SEVEN PREMARKED
11 FOR IDENTIFICATION.)

12 SOLICITOR COLLINS: Thank you.

13 Q. Thank you, Investigator. I'd like to show you what's
14 been marked for ID purposes as State's Exhibit Seventy-
15 seven and ask you, what is that form?

16 A. That is the form that comes inside a gunshot residue
17 kit. It's actually a copy of the original form. Basically
18 it tells who collected the kit and then ask some
19 information on the person you're taking the kit from.

20 Q. All right. And whose signature is on the bottom of
21 that form?

22 A. Mine.

23 Q. And does it note the date that the kit was collected
24 that you've already testified to I believe?

25 A. Yes. 11/12/2010 at 05:50 a.m..

INVESTIGATOR JOHN GEORGE: BY SOLICITOR COLLINS

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1 Q. All right. And do you or a member of law enforcement
2 fill out that form?

3 A. Yes.

4 Q. Based upon who gives you the answers to put in that
5 form?

6 A. Correct. You would be asking the person who you're
7 doing the test kit on. In fact Investigator Eddie was the
8 one that actually filled out the middle section of the form
9 while I was doing the test kit.

10 Q. All right. And so this was based on answers given to
11 you by Mr. O'Neil or to Ms. Eddie?

12 A. Yes.

13 Q. Or Mr. O'Neil. Okay. And if you'll just walk through
14 referencing the lines, Investigator, referencing the lines
15 that I direct you to.

16 A. Sure.

17 Q. Obviously noted is subjects full name is Hashin
18 O'Neil; is that correct?

19 A. Yes.

20 Q. You notice that the subject is and there is a block
21 for living or dead. Correct?

22 A. Correct.

23 Q. Are kits sometimes taken from deceased people?

24 A. Yes they are.

25 Q. Okay. But of course in this case unfortunately Mr.

1 O'Neil was alive.

2 A. Yes.

3 Q. And you noted here subject is right handed. That is
4 checked; is that right?

5 A. Yes. That would be from what we were told by that
6 person that we're filling out the case --

7 Q. Okay. And the person you're getting the kit from?

8 A. Right.

9 Q. And in this case Mr. O'Neil?

10 A. Yes.

11 Q. Okay. And the options are right handed, left handed,
12 and unknown; is that right?

13 A. Yes.

14 Q. What do you do when someone says I'm ambidextrous. I
15 think that's the term.

16 A. Never had that come up before but I guess you could
17 check unknown or you could just actually add a line in
18 there saying ambidextrous.

19 Q. Okay. But in this case the information gathered was
20 right handed.

21 A. Correct.

22 Q. And that's what was checked. Right?

23 A. Yes.

24 Q. Now there's a line that says "any debris and or blood
25 on subject's hands question mark".

INVESTIGATOR JOHN GEORGE: BY SOLICITOR COLLINS

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1 A. Yes.

2 Q. And the choices are yes or no; is that right?

3 A. Yes there.

4 Q. And no is checked; is that right?

5 A. Yes it is.

6 Q. Now for this one that's not from information that Mr.
7 O'Neil gave you. You observed that; is that right?

8 A. Yeah we would actually look at the person's hands.
9 Sometimes you'll have blood or you have blood on the
10 person's hands or any kind of extra debris that could
11 actually affect what you would be taking off the person's
12 hands.

13 Q. All right. And so you looked at Mr. O'Neil's hands
14 before executing the stickies and the swabs in the kit?

15 A. Yes.

16 Q. And you did not observe any debris; is that right?

17 A. No.

18 Q. And you did not observe any blood; is that right?

19 A. No.

20 Q. What if any substance did you - What if any other
21 substance, blood, debris or otherwise, what did you observe
22 on his hands prior to executing the kit?

23 A. I did not observe anything on his hands.

24 Q. All right. Now the next question is, has subject
25 washed his or her hands since shooting; is that right?

INVESTIGATOR JOHN GEORGE: BY SOLICITOR COLLINS

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1 A. Correct.

2 Q. Okay. And since shooting that's just referencing
3 since the time of the shooting; is that right?

4 A. Yes.

5 Q. Okay. So that's just the way it's worded. That's not
6 clues in terms of who - -

7 MR. MUCKENFUSS: Objection, leading, Your Honor.

8 SOLICITOR COLLINS: I'll rephrase.

9 Q. What's that mean "since shooting"?

10 A. Since the shooting incident occurred would be how the
11 question is worded. Actually it says "Has subject washed
12 his or her hands since the shooting?" That would be since
13 the time of the shooting incident.

14 Q. Thank you for clarifying that. And the answer to that
15 the choices are yes, no, or unknown; is that right?

16 A. Correct.

17 Q. And the answer checked is what?

18 A. No.

19 Q. And that is from information that Mr. O'Neil gave; is
20 that right?

21 MR. MUCKENFUSS: Your Honor, objection. I think he
22 testified Detective Eddie took this information. It would
23 be speculative.

24 THE COURT: All right. Rephrase the question.

25 Let's --

INVESTIGATOR JOHN GEORGE: BY SOLICITOR COLLINS

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1 SOLICITOR COLLINS: I'm sorry.

2 THE COURT: Go ahead.

3 BY SOLICITOR COLLINS:

4 Q. Were you present at the time this information was
5 being given?

6 A. Yes.

7 Q. Do you recall the answer given by Mr. O'Neil to that
8 question?

9 A. Yes.

10 Q. And what was that answer?

11 A. No.

12 Q. Okay. That he had not washed his or her hands since
13 ---

14 A. Correct.

15 Q. --- the time of the shooting? And why is that
16 important, Investigator?

17 A. Because washing your hands will actually take the
18 powders off of your hands. Gunshot residue test its
19 actually - it goes away pretty quickly within I'd say the
20 first - if you don't do one within the first hour of an
21 incident most of the time it's lost. You do have up to six
22 hours to test somebody that SLED will accept the kit but
23 within the first hour they're pretty much - I don't have
24 much luck with them for that much time.

25 Q. And what was the time again that you took this kit?

1 A. It'd be 5:50 a.m..

2 Q. All right. Now the next line is subjects occupation;
3 is that correct?

4 A. Yes.

5 Q. And Mr. O'Neil advised what is his occupation?

6 A. Played at Skeetchers.

7 Q. Okay. And moving further down to read the description
8 of activities. Do you see where I am?

9 A. Yes.

10 Q. Okay. On that line it says please - well right a
11 brief description of subjects activity between the time of
12 the shooting and the time of the GSR collection.

13 A. Correct.

14 Q. And what response did Mr. O'Neil indicate had been his
15 activities?

16 A. It's listed as in vehicle and he said he was driving
17 around in a vehicle.

18 Q. Okay. Nothing else is listed other than him being in
19 the vehicle and you said saying he was driving around?

20 A. I believe yes.

21 Q. Okay. And why is that important for there to be a
22 description of what activity a person whose kit was being
23 collected off his hands; why's that important from the time
24 of the shooting to the time the kit's collected?

25 A. Somebody who would take a shower, wash their hands,

INVESTIGATOR JOHN GEORGE: BY SOLICITOR COLLINS

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1 would wash away naturally - it's just one of the questions
2 to find out where everything was at the time.

3 Q. Apart from washing the hands is there other activity
4 that someone may take that could result in residue being
5 removed prior to the kit being collected?

6 A. Just putting your hand in your pocket will remove the
7 residue a lot of times.

8 Q. Any other activity?

9 A. Pretty touching anything else, steering wheel, car
10 seats, getting in and out of vehicles.

11 Q. And so it's recorded the information that Mr. O'Neil
12 gave. Correct?

13 A. Yes.

14 Q. And is an effort made at that time or to your
15 knowledge anytime to obtain information about these
16 questions from anyone else?

17 A. I'm sorry, could you repeat?

18 Q. Is there an effort made at any time to obtain answers
19 to those questions about activity, whether washing or
20 otherwise, between the time of the shooting and the time of
21 the kit from anyone else?

22 A. No it would just be from the person that you were
23 taking the gunshot residue kit on.

24 Q. All right. Now moving further down you've got
25 shooting information and the date and time that the

1 shooting occurred as 11/12/2010. Correct?

2 A. Yes.

3 Q. And at that time the time indicated is 3:30 am; is
4 that right?

5 A. Yes.

6 Q. Actually it has something else scratched through it.

7 A. Yes. It originally was 3:30 to 4:30 from what the
8 time we got the call but then I realized that the officers
9 had arrived at the hospital at 4:00 so giving about a
10 thirty minute time span. It's an approximate time because
11 obviously I don't know exactly what time the shooting was.

12 Q. And you've indicated a place of shooting; is that
13 right?

14 A. Yes.

15 Q. And there's an example given from the form, kitchen,
16 parking lot, indoors or outdoors. And did you fill that
17 out or did Officer Eddie?

18 A. That would be my writing.

19 Q. That's your handwriting?

20 A. Yes.

21 Q. Okay. And what information - Where'd you get the
22 information to fill out that answer?

23 A. I'm not sure exactly who told me but I was told.--

24 MR. MUCKENFUSS: Your Honor, objection to hearsay.

25 THE COURT: Sustain the objection.

INVESTIGATOR JOHN GEORGE: BY SOLICITOR COLLINS

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1 SOLICITOR COLLINS: Okay. All right.

2 Q. But you did put a statement there.

3 A. Yes.

4 Q. I'm - All right. Okay. And then there's some other
5 questions such as type of firearm used. Correct?

6 A. Yes.

7 Q. And that answer is unknown. You didn't know?

8 A. Correct.

9 Q. And caliber of the gun?

10 A. Unknown.

11 Q. Okay. And the caliber ammunition used.

12 A. Unknown.

13 Q. Manufacturer of ammunition?

14 A. Unknown.

15 Q. And number of shots fired?

16 A. Unknown.

17 Q. Now why is all that important?

18 A. Why is that --

19 Q. Why is all that important? Why is that on the form
20 for you to - You submit this form to SLED with the kit
21 results. Right?

22 A. Right.

23 Q. Why is all that important?

24 A. Because certain calibers of ammunition are going to
25 put out more powder than other calibers of ammunition, .22

1 you might not get any compared to say a .40 caliber or a .9
2 millimeter. You might get more powder coming back.

3 Q. Okay. So after you get that information did you then
4 utilize the kit? I think you said a sticky thing and then
5 a swab to wipe the defendant's hands, top and bottom of his
6 hands, both hands?

7 A. Yes.

8 Q. Okay. And you did that according to your training and
9 the directions from SLED to perform that kit?

10 A. Yes.

11 Q. And what'd you do after you did that?

12 A. The kit would then be sealed up, information filled
13 out and the sheet would be put back into the kit. It will
14 be sealed with evidence tape and put in a bag and it's sent
15 to SLED for testing.

16 Q. Okay. And the form that you filled out with the
17 answers, was that also put in the kit?

18 A. Yes.

19 Q. So that information would be provided to the analyst?

20 A. Yes.

21 Q. Okay. Now after you did that what was your next step
22 as an investigator in this case?

23 A. The next step was that we responded to the actual
24 incident location at [REDACTED]

25 Q. I'm sorry, can we back up just one moment and ask you

INVESTIGATOR JOHN GEORGE: BY SOLICITOR COLLINS

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1 one more question in terms of activity in between?

2 A. Uh-huh.

3 Q. Apart from activity are - what if any other things
4 would affect the residue remaining on the hands?

5 A. Sweat would be one thing that would if you're
6 perspiring a lot.

7 Q. Okay. Weather? Wet weather as in w-e-a-t-h-e-r?
8 Would the weather?

9 A. Yes. Rain.

10 Q. Okay. Was it raining that night?

11 A. No.

12 Q. Okay. All right. Very good. Now moving back on --
13 I'm sorry to bounce you back. What was your next
14 activity?

15 A. Responded with Officer Eddie to Kensington Square
16 Apartments.

17 Q. Okay. And that's Audra Eddie with the Forensic's
18 Unit?

19 A. Yes.

20 Q. Okay. And when you went to [REDACTED] is
21 that the actual apartment you went to?

22 A. Yes.

23 Q. Okay. And what did you do there?

24 A. Assisted in searching the residence for any items of
25 evidence.

1 Q. When you first got there were there other officers
2 there?

3 A. Yes.

4 Q. And had yellow tape been put up?

5 A. I do not remember if yellow tape had been put up.

6 Q. Okay. Do you recall whether or not the door to the
7 apartment was open or closed?

8 A. I do not.

9 Q. You do not recall?

10 A. No.

11 Q. Okay. What if anything - What was your first action
12 there at the scene coming up to that apartment?

13 A. I waited until photographs were taken of the inside of
14 the apartment before I did anything so I waited outside.

15 Q. And who took those photographs?

16 A. Investigator Eddie.

17 Q. Okay. And after she had taken those photographs did
18 you then enter the apartment?

19 A. Yes.

20 Q. Okay. And then what did you do, Investigator?

21 A. I helped search the apartment for any types of
22 evidence that might be found and relate to this shooting.

23 Q. All right. So - I'm sorry. Did you - Was your first
24 action downstairs in the apartment then when you entered?

25 A. I believe so.

INVESTIGATOR JOHN GEORGE: BY SOLICITOR COLLINS

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1 Q. And what did you do down there?

2 A. Looked around the front door and as far as I remember
3 it was kicked in or knocked in of some sort.

4 Q. Now you used the word processing. What if any
5 processing was done to the front door?

6 A. I believe - Investigator Eddie had taken fingerprints
7 off the front - or attempted to find fingerprints.

8 Q. Okay. Anything other than fingerprints attempted to
9 be found?

10 A. Shoe impressions would normally be attempted to be
11 found also.

12 Q. Why is that?

13 A. When somebody would kick a front door in a lot of
14 times actually the shoe print will show up with fingerprint
15 powder.

16 Q. And did it appear - How did the door appear? Why was
17 that important in this case?

18 A. Because the door did appear to be knocked in of some
19 sort. Kicked in is normally the fashion that is used that
20 we normally find.

21 Q. Okay. When you went through the bottom of the
22 apartment, was there any evidence that you found in the
23 bottom of the apartment, the first floor?

24 A. I did not no.

25 Q. Okay. And then did you proceed to the - up the

1 stairs?

2 A. Yes.

3 Q. And what did you do at that time?

4 A. I do remember on the way up the stairs there was a
5 wipe of blood on the stairs coming down on the wall.

6 Q. I'd like to show you, Officer, what's been marked as
7 State's Exhibit Thirty-nine, Forty and Forty-one for
8 identification purposes and ask you, do you recognize those
9 photographs?

10 A. Yes.

11 Q. And what are those photographs of?

12 A. That would be of a blood mark at the top of the
13 stairs.

14 Q. At Kensington Square ---

15 A. Yes.

16 Q. --- ? And do those photographs fairly and
17 accurately depict the blood mark at the top of the stairs,
18 at the time that you observed it during your investigation
19 on November 12th, 2010?

20 A. Yes it does.

21 SOLICITOR COLLINS: I would move those three items
22 into evidence.

23 MR. MUCKENFUSS: No objection.

24 THE COURT: In without objection.

25 (WHEREUPON: STATE'S EXHIBITS THIRTY-NINE, FORTY AND

INVESTIGATOR JOHN GEORGE: BY SOLICITOR COLLINS

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1 FORTY-ONE, IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

2 BY SOLICITOR COLLINS:

3 Q. As a forensic investigator what can you do if you got
4 a blood mark?

5 A. Uh --

6 Q. What can you do with that?

7 A. You can swab it.

8 Q. Did you?

9 A. I did not no.

10 Q. Why not?

11 A. I don't recall. I believed it was from the victim is
12 the information that we had that we --

13 MR. MUCKENFUSS: Your Honor, objection to hearsay.

14 THE COURT: I sustain the objection.

15 BY SOLICITOR COLLINS:

16 Q. Without going into details --

17 Your Honor, may we approach?

18 THE COURT: This is probably a good time to take a
19 break. Why don't we take our break now.

20 (JURY EXITS COURTROOM AT 11:25 A.M..)

21 THE COURT: The question was?

22 SOLICITOR COLLINS: I was going to ask other than a
23 lot of cases if we could please address that legal issue as
24 to I'm not offering it for the truth of the matter asserted
25 but to ask why an officer did something or did not do

INVESTIGATOR JOHN GEORGE: BY SOLICITOR COLLINS - IN CAMERA

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1 something in the course of his investigation.

2 THE COURT: Well this one is more borderline than some
3 because the answer is to ----- the blood and that would be
4 - I follow what you're saying but its kind of double edge
5 situation because the truth of the matter is not answering
6 it but not being answered for the truth of the matter
7 asserted but it does go to establish the truth of a issue;
8 that is if that was the victim's blood. It's a little
9 different in my way of thinking.

10 SOLICITOR COLLINS: I would ask two fold and maybe we
11 just need to make a proffer.

12 THE COURT: Yeah, why don't you make a proffer.

13 SOLICITOR COLLINS: Okay. All right.

14 DIRECT EXAMINATION - IN CAMERA

15 INVESTIGATOR JOHN GEORGE BY SOLICITOR COLLINS:

16 Q. To the best of your - Why did you not swab the blood
17 that was at the top of the stairs on the wall that we've
18 seen pictures of?

19 A. I really can't answer that.

20 Q. Okay. All right.

21 THE COURT: On the proffer do you have any questions?

22 MR. MUCKENFUSS: No, Your Honor. If she's not going
23 down that line I don't see - -

24 THE COURT: Well she can't. We can't - -

25 SOLICITOR COLLINS: While we got the jury out I would

INVESTIGATOR JOHN GEORGE: BY SOLICITOR COLLINS - IN CAMERA -459-

1 ask similar questions in terms of the blood in the bedroom
2 just to go ahead and see if he knows the answer now.

3 MR. MUCKENFUSS: I don't know if you, Your Honor, you
4 want me to address --

5 THE COURT: Why don't you go ahead and do a proffer.
6 I guess everybody's got their on trial strategy and it's
7 not for me to determine what should and should not be
8 presented but there was only one person shot on the
9 premises so we can struggle with this as long as we want
10 but to what effect I - I mean you all know more about the
11 case than I do. One person was shot there's blood on the
12 wall and there is blood in the bedroom. I don't know
13 what's going to be the defense's position if it was
14 somebody else's blood but go ahead and make a proffer.

15 BY SOLICITOR COLLINS:

16 Q. How many people did you have information on who was
17 shot in that apartment?

18 A. One.

19 Q. I don't know that that's objectionable as to hearsay.
20 That's information that you were given; is that right?

21 THE COURT: Well that goes - That's a little different
22 from saying I went to a room because I was Director - I
23 went to the gully to look. Why did you go to the gully? I
24 got information that led me to investigate and do it in
25 that area. I think this is a little different where you've

INVESTIGATOR JOHN GEORGE: BY SOLICITOR COLLINS - IN CAMERA

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1 got an investigation but you're trying to identify some
2 substance or some fact at issue. Their position may be
3 there were ten people in the room and so it does go to the
4 truth of the matter; that is, there was only one victim and
5 there were only two people in there. I don't know if there
6 was any evidence of any more but we're sort of moving
7 toward the truth of a matter and issue. One victim and one
8 person in the room, somebody's blood, so it's a little
9 different. I see but go ahead and make your proffer.

10 BY SOLICITOR COLLINS:

11 Q. What if any impact - The question that I just ask you,
12 what was your understanding in terms of how many people
13 were shot and you answered one. What if any impact did
14 that have on the steps you took in the course of your
15 investigation?

16 A. That would have an impact because there's only one
17 person bleeding in the actual residence so you would
18 actually only - it would be the victim's blood since she
19 was the only one bleeding at the time.

20 Q. And I will back up and ask you, did you observe
21 whether or not there appeared to be any wounds to Mr.
22 O'Neil when you were swabbing his hands?

23 A. There was no blood on his hands, there was no debris
24 or anything like that so --

25 Q. Did you observe any other --

INVESTIGATOR JOHN GEORGE: BY MR. MUCKENFUSS - IN CAMERA

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1 A. I did not observe any other injuries.

2 Q. Okay. All right.

3 SOLICITOR COLLINS: That would be our proffer.

4 THE COURT: Do you have a question?

5 MR. MUCKENFUSS: Yes, Your Honor.

6 CROSS EXAMINATION - IN CAMERA

7 INVESTIGATOR JOHN GEORGE BY MR. MUCKENFUSS:

8 Q. Is it Detective George? I'm sorry, I want to make
9 sure --

10 A. Investigator.

11 Q. Investigator George: Okay. You testified that you
12 saw the blood. You say it's blood but you didn't swab it.
13 Correct?

14 A. Correct.

15 Q. You don't know if that's blood that was from a week
16 ago. Correct?

17 A. Correct.

18 Q. You don't know if Ms. Caldwell had cut herself, you
19 know, going to the store, came back and touched the wall,
20 you don't know that?

21 A. I do not.

22 Q. Okay. And that's true for any of the blood that you
23 claimed you saw in the house, in the apartment. Correct?

24 A. Correct.

25 Q. And although I understand there's a contention there

INVESTIGATOR JOHN GEORGE: BY MR. MUCKENFUSS - IN CAMERA

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1 was only one person in this apartment bleeding, sitting
2 here today you don't know for sure that's Ms. Caldwell's
3 blood.

4 A. I cannot say that no.

5 MR. MUCKENFUSS: Your Honor, those are key issues in
6 the case.

7 THE COURT: Yeah, I sustain the objection. You got a
8 proffer, I think this goes a little bit beyond the -

9 I'm repeating myself which I ask the lawyers not to
10 do, but to be clear, this is a little beyond these cases
11 that you hand up about a high crime area. Well that was
12 based on hearsay. Why did you investigate, why did you go
13 to that person's house? Because someone who was a
14 bystander said the Camaro that was involved was over there.
15 That's a little different I think so I sustain the
16 objection. Its highly prejudicial.

17 All right, let's take about a ten minute break.

18 (COURT IN RECESS AT 11:32 A.M..)

19 (COURT BACK IN SESSION AT 11:45 A.M..)

20 THE COURT: Thank you. Take your seats.

21 Is the State ready?

22 SOLICITOR COLLINS: State's ready, Your Honor.

23 THE COURT: Defense ready?

24 MR. MUCKENFUSS: Defense is ready, Your Honor.

25 THE COURT: All right, bring in the jury.

INVESTIGATOR JOHN GEORGE: BY SOLICITOR COLLINS

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1 (JURY REENTERS COURTROOM AT 11:47 A.M..)

2 THE COURT: You may proceed.

3 SOLICITOR COLLINS: Thank you, Your Honor.

4 DIRECT EXAMINATION

5 INVESTIGATOR JOHN GEORGE BY SOLICITOR COLLINS - CON'T

6 Q. Investigator George, you testified that you went up to
7 the top of the stairs. Correct?

8 A. Yes.

9 Q. And how many bedrooms were there at the top?

10 A. Two.

11 Q. And have had the chance to refresh your recollection
12 by observing photographs of the scene?

13 A. Yes.

14 Q. Okay. And do you recall is there a distinction
15 between the two bedrooms that we can easily reference in
16 regard to the color of the bedspread?

17 A. Yes but I have to see a picture again.

18 Q. All right. I'd like to show you what's been marked
19 for identification purposes as State's Exhibit's Forty-
20 three and Fifty-nine and ask you, do you recognize what
21 those items are - What those pictures are pictures of?

22 A. They would be the two bedrooms in the residence at
23 [REDACTED]

24 Q. And do those pictures fairly and accurately depict the
25 condition of those two bedrooms at the top of the stairs at

1 the scene?

2 A. Yes they do.

3 Q. As you observed them on November 12th, 2010?

4 A. Yes.

5 Q. Now - -

6 SOLICITOR COLLINS: I would move both those exhibits
7 into evidence.

8 MR. MUCKENFUSS: Your Honor, I was under the
9 impression she was using to refresh recollection
10 eventually. I don't know if there is any foundation as to
11 when the photos were taken specifically. I know he
12 testified that - there were other things in the photo, not
13 just - anyway, I would object at this point.

14 THE COURT: I think he testified that that was the way
15 they appeared when he saw it.

16 Was that not correct?

17 SOLICITOR COLLINS: I believe he did on - -

18 THE COURT: Ask that again.

19 BY SOLICITOR COLLINS:

20 A. Do those photographs fairly and accurately depict the
21 condition of those two bedrooms at the top of the stairs at
22 [REDACTED] Apartments when you observed them
23 the morning hours on November 12th, 2010?

24 A. Yes they do.

25 MR. MUCKENFUSS: I'll withdraw my objection.

INVESTIGATOR JOHN GEORGE: BY SOLICITOR COLLINS

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1 THE COURT: In without objection.

2 (WHEREUPON: STATE'S EXHIBIT NUMBERS FORTY-THREE AND
3 FIFTY-NINE IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

4 SOLICITOR COLLINS: Thank you.

5 Q. Now referencing the item numbers in the lower left
6 hand, do you see the Court's sticker, State's Exhibit?

7 A. Yes.

8 Q. Okay. The one in your left hand which exhibit is
9 that?

10 A. That would be State's Exhibit Fifty-nine.

11 Q. All right. And what color is the bedspread in that
12 one?

13 A. It's an orange color.

14 Q. And turning to the exhibit in your right hand which
15 exhibit number is that?

16 A. Exhibit Forty-three.

17 Q. All right. And what's the color of the bedspread in
18 that picture?

19 A. Green.

20 Q. Did you have an occasion to go into - Did you actually
21 enter into both of those bedrooms during the course of your
22 investigation?

23 A. Yes.

24 Q. When you entered into the bedroom that had the green
25 bedspread, what if any actions did you take?

INVESTIGATOR JOHN GEORGE: BY SOLICITOR COLLINS

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1 A. I actually searched that bedroom. The green one was
2 on the - If you come up the stairs on the right hand side
3 as you come up the stairs it comes up to a landing,
4 bathroom straight ahead, there is a bedroom on the right
5 and a bedroom on the left. The one with the green
6 bedspread would have been on the right hand side and I
7 searched that bedroom.

8 Q. And how many closets were in that bedroom?

9 A. Two.

10 Q. And do you recall were there items, personal items,
11 within those two closets?

12 A. Yes.

13 Q. And how would you characterize those items, if you're
14 able to, did they appear to be those that would belong to a
15 male or a female?

16 A. Male.

17 Q. And there are items on the bed reflected in the
18 picture of the one with the green bedspread; is that right?
19 Is that right?

20 A. Yes.

21 Q. What do those items - What are those items there on
22 the bed?

23 A. Men's clothing.

24 Q. All right. And what if anything evidence did you
25 collect from this bedroom that has the green bedspread?

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1 MR. MUCKENFUSS: Your Honor, may we approach?

2 THE COURT: Yes, sir.

3 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF
4 THE JURY AT 11:52 A. M..)

5 BY SOLICITOR COLLINS:

6 A. Officer George, did you then enter the other bedroom,
7 the room that has as you described you as an orange
8 bedspread?

9 A. Yes I was in there briefly.

10 Q. And where if anywhere in that apartment did you look
11 for a projectile that day?

12 A. I did not.

13 Q.. Are we talking the same language in terms of
14 projectile in terms of a spent bullet, a bullet that's been
15 fired?

16 A. Yes.

17 Q. Okay. So you did not look anywhere within the
18 apartment for a bullet that had been fired that day
19 November 12th; is that right?

20 A. No I actually looked outside by the front porch when
21 you're first walking in, in the bushes for a gun and a
22 projectile or spent shell casings that night.

23 Q. Okay. And did you find any?

24 A. No.

25 Q. Did you find a gun?

INVESTIGATOR JOHN GEORGE: BY SOLICITOR COLLINS.

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1 A. No.

2 Q. And why did you limit your search outside?

3 MR. MUCKENFUSS: Object to hearsay, Your Honor.

4 THE COURT: I sustain the objection.

5 BY SOLICITOR COLLINS:

6 Q. Was there a later time that you returned to the
7 apartment to search for bullets, projectiles, or a gun
8 within the apartment?

9 A. No I did not.

10 Q. Was there a later time that you returned to the scene
11 to search further for a gun?

12 A. Yes.

13 Q. And what day was that?

14 A. That would have been the 15th.

15 Q. Of November 2010?

16 A. Yes.

17 Q. All right. So let's just wrap up the 12th. When you
18 finished in the apartment on November 12th, 2010, did
19 Officer Eddie and yourself leave the apartment?

20 A. Yes.

21 Q. Did you all leave at the same time?

22 A. Yes.

23 Q. Did Officer Eddie take those photographs?

24 A. Yes.

25 Q. I think you testified earlier she went in first?

INVESTIGATOR JOHN GEORGE: BY SOLICITOR COLLINS

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1 A. And photographed.

2 Q. She photographed first?

3 A. First yes.

4 Q. Okay.

5 A. And then - First and then during the time when we're
6 in there too if we would find evidence that would be
7 photographed also.

8 Q. All right. So you all left at the same time?

9 A. Yes.

10 Q. And that concluded your work on this case other than
11 turning in the GSR Kit into evidence so it could be sent to
12 SLED: is that right?

13 A. I did collect evidence from the residence.

14 Q. As to the evidence that you testified for thus far; is
15 that correct? That's the only thing that was sent to SLED;
16 is that right?

17 A. Yes.

18 Q. All right. Now did you do any work on Saturday on
19 this case?

20 A. I did not.

21 Q. How about Sunday?

22 A. I did not.

23 Q. And so you returned to the apartment on Monday,
24 November 15th, 2010, and is that right?

25 A. Yes.

1 Q. And what did you do at that time, Investigator?

2 A. I helped out our K9 Unit with searching for a gun.

3 From where the apartments front door is there is kind of a
4 gully filled with kudzu. We searched that area, they used
5 their K9, I used a metal detector trying to locate a gun or
6 any other evidence we might find there.

7 Q. And did you all locate a gun?

8 A. No.

9 Q. How much time was spent in the effort to locate a gun?

10 A. We were out there several hours, I can't - I'm not
11 sure the exact times that I was out there.

12 Q. Roughly. Several hours?

13 A. I'd say two, two and a half hours.

14 Q. How many officers were involved in that search?

15 A. Three K9 officers, myself, and I believe there was one
16 or two other officers but I'm not positive.

17 Q. I want to back up to Friday. When you all went out
18 there Friday, November 12th, 2010, was it light when you
19 all got out there? Was it daylight or was it still dark?

20 A. It was kind of dawn. I'm trying to remember exactly
21 what time we arrived at the...

22 It was about 6:10 a.m. so it was still kind of that
23 dawn period where it's still dark and just starting the sun
24 to come up.

25 Q. Okay. And what time did you all leave?

INVESTIGATOR JOHN GEORGE: BY SOLICITOR COLLINS

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1 A. We left at I believe - We were signed out of that
2 crime scene log at 6:51 am..

3 Q. So given the lighting or even if it had been bright
4 day light, when you all were looking for a spent bullet
5 outside the apartment November 12th, 2010, other than
6 utilizing the naked eye, was there anything else that you
7 all utilized at that time?

8 A. Flashlight would be the only other thing.

9 Q. And then how about on November 15th, 2010, when you
10 returned to the apartment? At that time you were looking
11 for a gun. Right?

12 A. Yes.

13 Q. You weren't looking for a projectile outside at that
14 time?

15 A. No.

16 Q. And was that the extent of your involvement on Monday,
17 November 15th, looking for the gun?

18 A. Yes.

19 Q. You didn't go back in the apartment?

20 A. I might a went in briefly but not that I recall
21 looking through anything or searching anything.

22 Q. Okay. Do you recall being upstairs in the room with
23 the orange bedspread as you've characterized it on Monday,
24 November 15th, 2010, when as Detective Strait testified a
25 projectile was found? Were you in that room?

INVESTIGATOR JOHN GEORGE: BY SOLICITOR COLLINS
BY MR. MUCKENFUSS

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1 A. I don't remember being in the room.

2 Q. Okay. All right.

3 SOLICITOR COLLINS: One moment please.

4 (PAUSE.)

5 Q. Oh, Investigator George, when you and Audra Eddie left
6 the scene on November 12th, 2010, ---

7 A. Uh-huh.

8 Q. --- what if any actions did you take as a law
9 enforcement officer to secure the door of that scene before
10 you left?

11 A. I don't remember us - I remember shutting the door and
12 I can't remember if a deputy was going to secure it or I
13 don't remember anything about the door being secured.

14 Q. Okay. All right. And so you left. Right?

15 A. Yes.

16 Q. And when you went back on November 15th, 2010, you
17 said you might have gone inside but your main focus was
18 outside; is that right?

19 A. Right.

20 SOLICITOR COLLINS: Thank you, Investigator. Please
21 answer any questions of the defense attorney.

22 CROSS EXAMINATION

23 INVESTIGATOR JOHN GEORGE BY MR. MUCKENFUSS:

24 Q. Good morning, ---

25 A. Good morning.

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1 Q. --- Investigator George. I want to go back to your
2 testimony about the GSR Kit if I might.

3 A. Yes, sir.

4 Q. I think you testified that the GSR analysis was not
5 done of Ms. Caldwell. Correct?

6 A. Correct.

7 Q. Were you aware that Ms. Caldwell's hands had been
8 bagged by medical personnel at CMC?

9 A. PMC or CMC?

10 Q. CMC.

11 A. Okay. I didn't even know she went to Charlotte.

12 Q Okay. So - Well let's back up. Did - Were you aware
13 that she went to Charlotte, to the hospital in Charlotte?

14 A. No.

15 Q. Okay. Were you aware at any point whether in
16 Charlotte or at PMC that her hands had been bagged?

17 A. No.

18 Q. Do you know what that means?

19 A. Yes.

20 Q. And as a forensic office what does that mean?

21 A. Normally in a shooting case or homicide case,
22 something, if somebody is taken to the hospital that has
23 been shot, they normally will bag their hands, the officers
24 will, or actually the hospital staff will do it so it helps
25 us get a - possibly get a GSR Kit done on a person.

1 Q. So that would have helped preserve Ms. Caldwell's
2 hands in the event you conducted a GSR analysis on her
3 hands. Correct?

4 A. It can help. Yes.

5 Q. And a GSR analysis was not done of her hands.
6 Correct?

7 A. Correct.

8 Q. Now you testified that at some point you sent the GSR
9 Kit to SLED. Correct?

10 A. Yes.

11 Q. And I believe you testified that you collected this
12 information in the parking lot at PMC.

13 A. Correct.

14 Q. How long did it take to collect the information or the
15 stuff that you needed to send to SLED?

16 A. To actually do the - -

17 Q. Yes to do the kit. However you would describe that
18 but how much time does it take?

19 A. It takes maybe ten minutes.

20 Q. Okay. And how did you - From that point how did you
21 make arrangements for that to go to SLED?

22 A. What happens at that point the evidence is packaged in
23 evidence envelops or actually the GSR Kit is actually in a
24 evidence envelop. That would be turned into the sheriff's
25 department evidence control area. They would log it in and

INVESTIGATOR JOHN GEORGE: BY MR. MUCKENFUSS

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1 then we would fill out a request for SLED to take the
2 paperwork - take the GSR Kit down there and they would
3 actually take it down. Somebody from the evidence
4 department would take it down and sign it over to SLED.

5 Q. Where's the actual office, SLED office where this
6 goes?

7 A. Columbia.

8 Q. Ms. Collins had ask you some questions about form that
9 was prepared in preparation for the GSR analysis. Do you
10 recall that?

11 A. Yes.

12 Q. I believe you testified that at that time you didn't
13 know the type of firearm that was used. Correct?

14 A. Correct.

15 Q. You didn't know the caliber that was used. Correct?

16 A. Correct.

17 Q. You don't know the caliber or the ammunition that was
18 used. Correct?

19 A. Correct.

20 Q. Or the manufacturer of the ammunition. Correct?

21 A. Correct.

22 Q. And sitting here today you still don't know the answer
23 to those questions. Correct?

24 A. I do not.

25 Q. Now do you know or are you aware of the results after

1 SLED tested or received the GSR Kit from you?

2 A. Yes I have a copy.

3 Q. Okay. And in fact the results from the GSR Kit were
4 negative. Correct?

5 A. Correct.

6 Q. And by negative that means there was no residue found
7 on Mr. O'Neil's hands?

8 A. Correct.

9 Q. Now going to the apartment, Ms. Caldwell's apartment,
10 there was a crime scene entry log that was kept for that
11 scene that evening. Correct?

12 A. That morning yes.

13 Q. That morning. I'm sorry.

14 A. That's okay.

15 Q. All right. Did you - Did you actually make a notation
16 or make an entry on that crime scene entry log?

17 A. Yeah. The officer that was keeping the crime scene
18 log would log you in as you went in the front door of the
19 apartment.

20 Q. Okay. Now would you actually sign your name or would
21 that officer write --

22 A. That officer would write my name.

23 Q. Have you reviewed that entry log?

24 A. Yes.

25 Q. And is that entry log accurate for the time that you

INVESTIGATOR JOHN GEORGE: BY MR. MUCKENFUSS

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1 were there?

2 A. Yes.

3 Q. And just for the record, are you reviewing your file
4 right now?

5 A. Yeah. I'm sorry, this is the copy of the Crime Scene
6 Log from that incident at [REDACTED]

7 Q. Okay. And are you reviewing the Crime Scene Entry
8 Log?

9 A. Yes.

10 Q. And what times were you at the apartment?

11 A. From 6:10 am to 6:51 am.

12 Q. So you were there for forty-one minutes total?

13 A. Yes.

14 Q. And was Investigator Eddie there for the same amount
15 of time?

16 A. Yes.

17 Q. So you both were there from 6:10 to 6:51. Correct?

18 A. Yes.

19 Q. For a total of forty-one minutes?

20 A. Yes, sir.

21 Q. Now you testified that - I think, correct me if I'm
22 wrong, but when you first got there Investigator Eddie went
23 into the apartment first. Correct?

24 A. Yes.

25 Q. Did you both go to the front door initially? Or did

1 Investigator Eddie go in first? How did that work? Did
2 you go check the door or what happened?

3 A. Normally what happens is one of the crime scene
4 officers or who ever is taking pictures will go in first
5 and walk through the apartment and take pictures. I
6 believe we went with the other deputies and the apartment
7 was cleared first to make sure there was nobody else in the
8 apartment when we got to the apartment.

9 Q. How long was Investigator Eddie in the apartment
10 before you went in?

11 A. I am not sure. Probably five minutes maybe.

12 Q. Five minutes? Okay. So the time that you - The time
13 that you were in the apartment would have started at maybe
14 6:15, 6:20, something like that?

15 A. Yes.

16 Q. And then you would have left at 6:51. Correct?

17 A. Yes. I did in between time go through the Volvo that
18 was parked out there with the flashers on.

19 Q. Okay. Gotcha.

20 A. And searched that.

21 Q. But in terms of going into the apartment that would
22 have been five or ten minutes later?

23 A. Yes.

24 Q. All right. Now I think you testified that you looked
25 for shoe impressions on the door. Correct?

INVESTIGATOR JOHN GEORGE: BY MR. MUCKENFUSS

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1 A. I did not.

2 Q. You did not?

3 A. No.

4 Q. Are you aware of anyone did?

5 A. Yes. Officer - Investigator Eddie actually processed
6 the door for shoe prints.

7 Q. And were any shoe prints discovered?

8 A. No.

9 Q. Did you look for any fingerprints in or around the
10 door?

11 A. I did not no.

12 Q. Did anyone?

13 A. Investigator Eddie.

14 Q. Okay. And were any fingerprints discovered?

15 A. None that I'm aware of.

16 Q. Around the front door?

17 A. No.

18 Q. None. Just focused on the front door.

19 MR. MUCKENFUSS: May I approach?

20 THE COURT: Yes.

21 MR. MUCKENFUSS: Let me check a photo here.

22 I'm sorry, beg the Court's indulgence.

23 I think there was a photo of the apartment.

24 SOLICITOR COLLINS: I believe those are Thirty-nine,
25 Forty and Forty-one that you're looking for, Mr.

1 Muckenfuss.

2 MR. MUCKENFUSS: Okay.

3 MADAME COURT REPORTER: There's Forty. There they
4 are.

5 MR. MUCKENFUSS: Thank you. It's my fault.

6 Q. Investigator George, you were shown State's Exhibit's
7 Forty and Forty-one. I'm sorry, and Thirty-nine.

8 Thank you.

9 I'm going to hand those to you. Do you recall being
10 shown those pictures?

11 A. Yes.

12 Q. By Ms. Collins. Now I think you testified that when
13 you - that was what you observed when you went to the
14 apartment. Correct?

15 A. Yes.

16 Q. I think you were ask the question whether - whether
17 that was blood or you testified that was blood coming down
18 the stairs. Do you recall that?

19 A. Yes.

20 Q. You don't know if those - the blood was applied by
21 somebody going up the stairs or down the stairs. Correct?

22 A. Correct there's no directionality to it.

23 Q. Okay. And sitting here today you can't confirm for
24 sure that is in fact blood. Correct?

25 A. No.

INVESTIGATOR JOHN GEORGE: BY MR. MUCKENFUSS

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1 Q. Right. And sitting here today you can't confirm for
2 sure whose blood it is.

3 A. Correct.

4 Q. Sitting here today you can't confirm how long the
5 blood had been there on the wall if it was blood. Correct?

6 A. Correct.

7 Q. It could have been there for a week or a matter of
8 days. You don't know. Correct?

9 A. Correct.

10 Q. Okay. And I believe you testified you didn't take a
11 swab of the blood. Correct?

12 A. Correct.

13 Q. Would that have been your responsibility in the
14 apartment to take any samples of blood or anything like
15 that or would that have been Investigator Eddie?

16 A. Either one or the other one possibly.

17 Q. Now you testified that you returned to the apartment
18 on - Well let's go back to the early morning hours of the
19 12th. You left at 6:51. Correct?

20 A. Yes.

21 Q. And I think you testified that you or Investigator
22 Eddie maybe shut the door.

23 A. Either one of us or the deputy that was still out
24 there with the Crime Scene Log.

25 Q. Okay. Did you ever go to the back of the apartment?

INVESTIGATOR JOHN GEORGE: BY MR. MUCKENFUSS
BY SOLICITOR COLLINS

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1 A. I did not.

2 Q. Did you ever come in and out of the sliding door in
3 the rear patio?

4 A. I did not, no.

5 Q. Now you testified you came back on Monday. Correct?

6 A. Yes.

7 Q. And that was for the purpose of searching what I call
8 the wooded area or the area outside the apartment?

9 A. Yes.

10 Q. And you did not discover any gun. Correct?

11 A. No.

12 MR. MUCKENFUSS: I beg the Court's indulgence.

13 (PAUSE.)

14 MR. MUCKENFUSS: No further questions, Your Honor.

15 THE COURT: Any redirect?

16 REDIRECT EXAMINATION

17 INVESTIGATOR JOHN GEORGE BY SOLICITOR COLLINS:

18 Q. Investigator George, how many occasions have you had
19 in the course of your years with law enforcement to observe
20 blood at a crime scene?

21 A. Probably close to three to four hundred.

22 Q. And what you observed that you testified to today at
23 the top of the stairs, did that appear to you based upon
24 that experience to be blood?

25 A. Yes.

INVESTIGATOR JOHN GEORGE: BY SOLICITOR COLLINS
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1 Q. Was there other blood that you observed? Was there
2 other stuff that you observed that appeared to be blood as
3 well in that apartment?

4 A. I believe on the bedspread in the bedroom.

5 Q. Which bedroom?

6 A. The one with the orange bedspread. I believe it's
7 Exhibit Number Fifty-nine.

8 Q. Thank you, Investigator.

9 RE CROSS EXAMINATION

10 INVESTIGATOR JOHN GEORGE BY MR. MUCKENFUSS:

11 Q. Investigator, did you take any samples of blood from
12 the bedspread?

13 A. No I did not.

14 Q. Thank you.

15 MR. MUCKENFUSS: No further questions, Your Honor.

16 THE COURT: All right. You can step down and be
17 excused. We appreciate your time.

18 INVESTIGATOR GEORGE: Thank you, Your Honor.

19 (WITNESS LEAVING WITNESS STAND.)

20 THE COURT: Call your next witness.

21 SOLICITOR COLLINS: Your Honor, the next witness is
22 Investigator Audra Eddie.

23 If you would, Investigator George, tell her to please
24 come in on your way out.

25 And may we approach on a scheduling issue?

1 THE COURT: Yes, ma'am.

2 SOLICITOR COLLINS: Thank you.

3 Mr. Muckenfuss.

4 MR. MUCKENFUSS: Oh, I'm sorry.

5 (BENCH CONFERENCE OFF THE RECORD.)

6 THE COURT: Thank you, Judge.

7 Investigator Eddie, if you will please come forward to
8 this Bible and be sworn.

9 (WHEREUPON: INVESTIGATOR
10 AUDRA EDDIE, BEING FIRST CALLED AND DULY SWORN, TESTIFIED
11 AS FOLLOWS:)

12 THE COURT: You understand you are a little under the
13 weather and have a little problem, if you need to take a
14 quick break just do so.

15 INVESTIGATOR EDDIE: Yes, sir. That would be great.
16 Thank you.

17 THE COURT: If you need to excuse yourself for a
18 minute just do so and we'll wait until you get back.

19 INVESTIGATOR EDDIE: Yes, sir. Thank you.

20 SOLICITOR COLLINS: And I will make you aware, if you
21 need to be excused, straight out this door to the right is
22 the ladies room.

23 INVESTIGATOR EDDIE: All right. Thank you.

24 SOLICITOR COLLINS: All right.

25 DIRECT EXAMINATION

INVESTIGATOR AUDRA EDDIE: BY SOLICITOR COLLINS

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1 INVESTIGATOR AUDRA EDDIE BY SOLICITOR COLLINS:

2 Q. Ms. Eddie, would you state your name for the record?

3 A. Audra Eddie.

4 Q. What's your occupation now?

5 A. I'm working lost prevention.

6 Q. And how were you employed in November, 2010?

7 A. I was with the York County Forensic Unit.

8 Q. How many years at that time had you been with law
9 enforcement?

10 A. With law enforcement?

11 Q. Yes.

12 A. Approximately twelve, thirteen.

13 Q. All right. And were you on duty with the Forensic
14 Service Unit at the time of November 12th, 2010?

15 A. Yes, ma'am.

16 Q. And what did - What action did you first take as a
17 member of the forensic service unit on this case that's
18 currently before the court?

19 A. I was dispatched to respond to Piedmont Medical Center
20 in reference to a shooting victim.

21 Q. Okay. And at Piedmont Medical Center did you meet
22 with Ms. Caldwell, Crystal Caldwell?

23 A. Yes, ma'am.

24 Q. And was Detective Eddie Strait there?

25 A. Yes, ma'am.

1 Q. Did you take the victim's clothing into evidence from
2 Piedmont Medical Center?

3 A. Yes, ma'am.

4 SOLICITOR COLLINS: Madame Court Reporter, if I could
5 ask you please, is Exhibit Eighteen in evidence?

6 MADAME COURT REPORTER: Yes it is.

7 SOLICITOR COLLINS: It is in evidence.

8 Q. Well, Ms. Eddie, if you could ask you to put on a pair
9 of these gloves and remove from the manila envelop what's
10 been admitted into evidence as State's Exhibit Eighteen and
11 ask you, is that an article of clothing that you recovered
12 from the hospital on November 12th, 2010?

13 (WITNESS COMPLIED.)

14 A. Yes.

15 Q. All right. And I see that it's cut. Was it cut when
16 you received it?

17 A. I don't recall.

18 Q. All right. Were you present when it was removed from
19 the victim?

20 A. No, ma'am.

21 Q. It was given to you by whom?

22 A. Yes. One of the personnel at the hospital.

23 Q. Medical personnel?

24 A. Yes, ma'am.

25 Q. All right. Now, Ms. Eddie, moving from Piedmont

INVESTIGATOR AUDRA EDDIE: BY SOLICITOR COLLINS

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1 Medical Center what did you do next as an investigator with
2 the forensic service unit on this case?

3 A. We responded to the residence at [REDACTED]
4 Square.

5 Q All right. And did you - Was there another forensic
6 service officer there with you?

7 A. Yes.

8 Q. And - I'm sorry.

9 A. Investigator John George.

10 Q. Okay. And did you all arrive at the same time?

11 A. Yes.

12 Q. And do you recall, Ms. Eddie, when you all arrived, do
13 you recall whether or not the door to the residence was
14 open or closed?

15 A. The door of the residence looked like it had been
16 forced open so it was - I believe it was kind of like
17 pulled to the frame but it looked like it had been forced
18 open.

19 Q. Okay. So I'd like to show you State's Exhibit Twenty-
20 seven, and ask you, do you recognize that?

21 A. Yes, ma'am.

22 Q. And what does that report to be a picture of?

23 A. That's the door to the residence.

24 Q. And is that a fair and accurate depiction of the door
25 as you observed it initially?

INVESTIGATOR AUDRA EDDIE: BY SOLICITOR COLLINS

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1 A. Yes, ma'am.

2 Q. All right. Well in that picture the door is standing
3 open; is that right?

4 A. Yes, ma'am.

5 Q. Okay. So when you got there - I just want to ask, was
6 it standing open or pulled to or what? Or do you recall?

7 A. I don't recall.

8 Q. All right. If State's Exhibit Twenty-seven is not
9 evidence I would move it in at this time.

10 MR. MUCKENFUSS: No objection.

11 THE COURT: No objection?

12 MR. MUCKENFUSS: No objection, Your Honor. I'm sorry.

13 THE COURT: In without objection.

14 (WHEREUPON: STATE'S EXHIBIT NUMBER TWENTY-SEVEN,
15 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

16 SOLICITOR COLLINS: Okay.

17 Q. Now who entered that apartment first when you all got
18 there, you and Investigator George?

19 A. Who entered first?

20 Q. Yes.

21 A. I believe I did.

22 Q. And what did you do when you went in?

23 A. We went inside and observed the residence and I took
24 photographs.

25 Q. All right. Okay. I'd like to show you what's been

INVESTIGATOR AUDRA EDDIE: BY SOLICITOR COLLINS

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1 marked as State's Exhibit Thirty-three for ID purposes.

2 I'm going to take that one from you so we don't get
3 confused.

4 And ask you, do you recognize what that appears to be
5 a picture of?

6 A. That would be the front door. The dead bolt and the
7 door knob, latch.

8 Q. All right. And does that appear to be the condition
9 of the door locks area at the time that you observed it on
10 November 12th, 2010?

11 A. Yes, ma'am.

12 Q. Did you take that photograph?

13 A. Yes, ma'am.

14 SOLICITOR COLLINS: I would move that into evidence at
15 this time.

16 MR. MUCKENFUSS: No objection.

17 THE COURT: In without objection.

18 (WHEREUPON: STATE'S EXHIBIT NUMBER THIRTY-THREE
19 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

20 SOLICITOR COLLINS: All right.

21 Q. I show you also already in as State's Exhibit Twenty-
22 seven and Twenty-eight, and ask you do you recognize those
23 photographs?

24 A. Yes, ma'am.

25 Q. And what are those pictures of?

INVESTIGATOR AUDRA EDDIE: BY SOLICITOR COLLINS

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1 A. The door way and just inside the doorway stepping into
2 the apartment.

3 Q. Okay. And the condition of that doorway and door jam,
4 is that what you observed at the time you arrived at the
5 apartment on November 12th, 2010?

6 A. Yes, ma'am.

7 Q. And you took that photo?

8 A. Yes, ma'am.

9 Q. All right.

10 SOLICITOR COLLINS: I ask the Court's indulgence.

11 (PAUSE.)

12 Q. Investigator, I'm going to show you a stack of
13 photographs that have been premarked as State's Exhibits,
14 if you can when you reference each one if you'll look at
15 that red sticker in the bottom right hand corner, can you
16 read that number?

17 A. Yes, ma'am.

18 Q. The Exhibit Number.

19 A. Yes, ma'am.

20 Q. All right. The Exhibit Number, can you read that on
21 the sticker?

22 A. Exhibit Thirty. Yes, ma'am.

23 Q. Okay. Well for each one and we're going to walk
24 through but I'm going to ask you to tell us the number so
25 we all know which one you're looking at. Okay?

INVESTIGATOR AUDRA EDDIE: BY SOLICITOR COLLINS

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1 A. Yes, ma'am.

2 Q. All right. The first one is State's Exhibit what?

3 A. Thirty.

4 Q. And what does that appear to be a picture of?

5 A. That's the living room area of the apartment.

6 Q. Okay.. I'll tell you what, let's simplify this. Will
7 you tell us, flip through those, what are all the exhibits
8 that you have in front of you? Just tell us the numbers.
9 Flip through them.

10 (WITNESS COMPLIED.)

11 A. Thirty, Thirty-two, Thirty-four, Thirty-six, Thirty-
12 eight, Forty-two, Forty-four, Forty-five, Forty-six, Forty-
13 eight, Fifty-three, Fifty-four, Fifty-five, Fifty-six,
14 Fifty-seven, Sixty, Sixty-one, Sixty-two, Sixty-four and
15 Sixty-five.

16 Q. All right. And all of those exhibits what do they
17 appear to be picture of?

18 A. Their photographs of the inside of the residence.

19 Q. All right. Now if you'll take a moment and just look
20 through. Do all of those pictures appear to fairly and
21 accurately depict the inside of the residence at [REDACTED]
22 [REDACTED] on the morning of November 12th, 2010
23 when you arrived there?

24 (WITNESS REVIEWING EXHIBITS.)

25 A. Yes, ma'am.

INVESTIGATOR AUDRA EDDIE: BY SOLICITOR COLLINS

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1 Q. All right. They do appear to fairly and accurately
2 depict that apartment at that time?

3 A. Yes, ma'am.

4 SOLICITOR COLLINS: I would move all of those exhibits
5 into evidence at this time.

6 MR. MUCKENFUSS: No objection.

7 THE COURT: In without objection.

8 (WHEREUPON: STATE'S EXHIBIT NUMBERS THIRTY, THIRTY-
9 TWO, THIRTY-FOUR, THIRTY-SIX, THIRTY-EIGHT, FORTY-TWO,
10 FORTY-FOUR, FORTY-FIVE, FORTY-SIX, FORTY-EIGHT, FIFTY-
11 THREE, FIFTY-FOUR, FIFTY-FIVE, FIFTY-SIX, FIFTY-SEVEN,
12 SIXTY, SIXTY-ONE, SIXTY-TWO, SIXTY-FOUR AND SIXTY-FIVE,
13 IDENTIFIED AND MARKED; RECEIVED INTO EVIDENCE.)

14 SOLICITOR COLLINS: Thank you.

15 Q. When you - Did you later return on a later date to
16 that crime scene at [REDACTED]

17 A. Yes, ma'am.

18 Q: And what day was that?

19 A. That would have been on the 15th.

20 Q. 15th of November, 2010?

21 A. Yes, ma'am.

22 Q. And at that time did you go back into the residence?

23 A. Yes, ma'am.

24 Q. Okay. And at that time was there another picture
25 taken?

INVESTIGATOR AUDRA EDDIE: BY SOLICITOR COLLINS

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1 I believe I've shown you this already.

2 I'd like to show you what's been marked as State's
3 Exhibit Fifty, and ask you at that time November 15th,
4 2010, did you take a photograph?

5 A. Yes, ma'am.

6 Q. Did you take several photographs?

7 A. Yes, ma'am.

8 Q. And what you have there which is marked as State's
9 Exhibit Fifty, I believe; is that right, for ID purposes?
10 A. Yes, ma'am.

11 Q. Does that fairly and accurately depict a room within
12 that apartment on November 15th, 2010?

13 A. Yes, ma'am.

14 Q. I would direct your attention, you can see the
15 reflection of a window in a glass of a picture hanging on
16 the wall; is that right?

17 A. Yes, ma'am.

18 Q. And from that can you see whether or not there's
19 daylight shining in?

20 A. Yes, ma'am.

21 Q. All right. And when you went out November 12th, 2010,
22 do you recall if it was still dark?

23 A. Yes it was.

24 Q. Okay. All right.

25 SOLICITOR COLLINS: I would move that Exhibit into

INVESTIGATOR AUDRA EDDIE: BY SOLICITOR COLLINS

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1 evidence.

2 MR. MUCKENFUSS: No objection.

3 THE COURT: In without objection.

4 (WHEREUPON: STATE'S EXHIBIT NUMBER FIFTY IDENTIFIED
5 AND MARKED, RECEIVED INTO EVIDENCE.)

6 BY SOLICITOR COLLINS:

7 Q. Do you recall at that time was there an effort to
8 locate a projectile within the apartment?

9 A. Yes.

10 Q. And do you recall whether or not a projectile or spent
11 bullet was recovered at that time?

12 A. Yes, ma'am.

13 Q. And can you recall from where?

14 A. It was located on a chair in the upstairs bedroom on a
15 blanket.

16 Q. All right. I'm going to show you what's been
17 previously marked as State's Exhibits Fifty-one and
18 Seventy-four, I believe, at least Seventy-four is still for
19 ID purposes, but ask you to take a look at these pictures
20 and do you recognize what that appears to be a picture of?

21 A. Yes, ma'am.

22 Q. And what is that?

23 A. That's the chair that's in the upstairs bedroom.
24 There's like a blanket or a throw over the top of it.

25 Q. And that first one you're looking at is Fifty-one?

INVESTIGATOR AUDRA EDDIE: BY SOLICITOR COLLINS

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1 A. Fifty-one yes, ma'am.

2 Q. And the next one State's Exhibit Seventy-four?

3 A. Yes, ma'am.

4 Q. What's it show?

5 A. A projectile that was found on the throw that was over
6 the chair.

7 Q. And does that - Do both of those photographs fairly
8 and accurately depict that chair, the throw or blanket
9 thereon and the projectile that you saw there November
10 15th, 2010?

11 A. Yes, ma'am.

12 Q. Who was with you at that time? Do you recall?

13 A. I believe Detective Strait was there that day.

14 SOLICITOR COLLINS: I would move these items into
15 evidence at this time.

16 MR. MUCKENFUSS: No objection.

17 THE COURT: In without objection.

18 (WHEREUPON: STATE'S EXHIBIT NUMBER FIFTY-ONE AND
19 SEVENTY-FOUR IDENTIFIED AND MARKED, RECEIVED INTO
20 EVIDENCE.)

21 BY SOLICITOR COLLINS:

22 Q. Was the projectile or spent bullet itself taken into
23 evidence?

24 A. Yes, ma'am.

25 Q. Who collected it?

1 A. I did.

2 Q. All right. I'd like to show you --

3 Well I ask that this be marked as State's Exhibit
4 first.

5 (WHEREUPON: STATE'S EXHIBIT NUMBER SEVENTY-EIGHT
6 PREMARKED FOR IDENTIFICATION.)

7 MADAME COURT REPORTER: Seventy-eight.

8 SOLICITOR COLLINS: Seventy-eight.

9 Q. I'd like to show you what's been marked as State's
10 Exhibit Seventy-eight for identification purposes and ask
11 you do you recognize that first off all the manila envelop
12 you're holding?

13 A. Yes, ma'am.

14 Q. And what is that?

15 A. It's the evidence envelop that the projectile was
16 placed into.

17 Q. And is that envelop sealed?

18 A. Yes, ma'am.

19 Q. And did you write on that envelop?

20 A. Yes, ma'am.

21 Q. Okay. And you placed that item into evidence?

22 A. Yes, ma'am.

23 Q. On what date?

24 A. On the November 15th.

25 Q. Of 2000 --

INVESTIGATOR AUDRA EDDIE: BY SOLICITOR COLLINS

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1 A. Of 2010.

2 Q. Of 2010.

3 A. Yes, ma'am.

4 Q. Now there's some red tape on the back of that. Tell
5 us about that. Do you seal that up?

6 A. Yeah. Whenever we place something in evidence red
7 evidence tape is placed across the seal and it's then
8 initialed and dated.

9 Q. All right. And does that have your initials and dates
10 on there?

11 A. Yes it does.

12 Q. Okay. I would ask you, that is sealed right now.
13 Correct?

14 A. Yes, ma'am.

15 Q. All right. Do you need a utensil to open that or...
16 I have Detective Strait's knife if you need it.

17 A. Yeah I think so.

18 Q. Here you go.

19 A. Thank you.

20 (WITNESS OPENED ENVELOP WITH KNIFE.)

21 Q. Now, Ms. Eddie, if you wish to use gloves there's a
22 fresh pair, and I ask you to look within that envelop and
23 ask you to remove that item.

24 (WITNESS COMPLIED.)

25 Q. Do you recognize the item that's in that envelop?

INVESTIGATOR AUDRA EDDIE: BY SOLICITOR COLLINS

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1 A. Yes, ma'am.

2 Q. And what does that appear to be?

3 A. This is a evidence tin that we commonly use for
4 projectiles. It includes the case number and the date and
5 time that it was collected. It's also sealed with evidence
6 tape.

7 Q. Can you open that up for us please?

8 Do you need the knife back.

9 (WITNESS COMPLIED.)

10 Q. Thank you. All right. Have you looked in that
11 evidence can?

12 A. Yes, ma'am.

13 Q. And what's therein?

14 A. The projectile that was collected.

15 Q. And does that appear to be substantially in the same
16 condition as it was at the time that you collected it?

17 A. Yes, ma'am.

18 Q. And that's the projectile you collected from the
19 bedroom with the orange or burgundy bedspread?

20 A. Yes, ma'am.

21 Q. At [REDACTED] November 15th, 2010?

22 A. Yes, ma'am.

23 SOLICITOR COLLINS: I would move that item into
24 evidence.

25 MR. MUCKENFUSS: No objection.

INVESTIGATOR AUDRA EDDIE: BY MR. MUCKENFUSS

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1 THE COURT: In without objection.

2 (WHEREUPON: STATE'S EXHIBIT NUMBER SEVENTY-EIGHT,
3 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

4 Q. All right you can put that back now and...

5 SOLICITOR COLLINS: Let me just look through my notes
6 if you'll bear with me for one moment.

7 I ask the Court's indulgence.

8 (PAUSE.)

9 SOLICITOR COLLINS: Ms. Eddie, thank you for your time
10 today. Please answer any questions of the defense counsel.

11 INVESTIGATOR EDDIE: Yes, ma'am.

12 CROSS EXAMINATION

13 INVESTIGATOR AUDRA EDDIE BY MR. MUCKENFUSS:

14 Q. Afternoon, Ms. Eddie. If you need to take a break let
15 me know.

16 A. Thank you.

17 Q. I think you testified that you collected Ms.
18 Caldwell's clothing at the hospital; is that correct?

19 A. Yes, sir

20 Q. And you received that clothing from someone at the
21 hospital, medical personnel?

22 A. I believe so yes.

23 Q. And did you place - What did you put the clothing in
24 after you received it?

25 A. Its generally put in a paper bag.

1 Q. Okay. And I believe we had the paper bag here today
2 when we pulled out a blue shirt?

3 A. Right.

4 Q. Is that correct? Is that correct?

5 A. Yes, ma'am.

6 Q. Okay. After you put it in the envelop at the hospital
7 and sealed it did you ever touch the clothing after that?

8 A. When it was - When it was collected from the hospital
9 it was taken to the York County Sheriff's Office, placed in
10 a drying chamber and then was taken from the drying chamber
11 and placed in a evidence envelop and turned in.

12 Q. I'm sorry, it was placed into evidence?

13 A. And then it was placed into the package to be turned
14 into evidence.

15 Q. Gotcha. What's a drying chamber?

16 A. Essentially its - It looks like a small closet. It's
17 specifically for any items, clothing, anything that's got
18 blood, or any kind of fluid on it. It's put into that.
19 It's put into that drying chamber and sealed with evidence
20 tape and zipped tight shut until whatever items are in
21 there can dry and then be put into evidence.

22 Q. Thank you. Did you ever send or did anyone ever send
23 the clothing to SLED for any type of testing?

24 A. I'm unaware. Not that I'm aware of.

25 Q. Did you?