

ORIGINAL

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Beaufort County

D. Craig Brown, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

RAJERICK LOVELLE KNIGHT,

APPELLANT.

APPELLATE CASE NO. 2012-213529.

RECORD ON APPEAL

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THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:

STATE'S EXHIBIT #10 (DVD)

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF BEAUFORT	)	2011-GS-07-1673
	)	
	)	
	)	
State	)	)
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
Rajerick Lovelle Knight	)	)
DEFENDANT	)	November 26-29, 2012
		Beaufort, South Carolina

B E F O R E:

THE HONORABLE D. CRAIG BROWN, JUDGE; and a jury.

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Attorney for the Defendant

KESHIA REED
Official Court Reporter

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3	S-24	Photograph		307
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1 THE COURT: Is the State ready to proceed?

2 MR. STONE: State's ready, Your Honor.

3 THE COURT: Defense counsel ready to proceed?

4 MR. BAX: Yes, Your Honor, we are.

5 THE COURT: Mr. Solicitor, call your first case
6 please.

7 MR. STONE: Thank you, Your Honor. Your Honor,
8 the State calls the case of The State of South Carolina
9 vs. Rajerick Lovell Knight, indictment 2011-GS-07-1673
10 charge of murder. As well as indictment 2011-GS-07-1674,
11 charging Rajerick Lovell Knight with the charge of
12 possession of a firearm during the commission of a violent
13 crime. I will hand those indictments up to you, Your
14 Honor.

15 THE COURT: All right, ladies and gentlemen, the
16 State has called the case of The State of South Carolina
17 vs. Rajerick Lovell Knight. As previously stated, Mr.
18 Knight has been charged with the offense of murder and
19 possession of a weapon during a violent crime. The murder
20 indictment reads as follows: That in Beaufort County on
21 or about July 26, 2011, with malice aforethought Rajerick
22 Lovell Knight did kill and murder Travis Holmes, by means
23 of shooting said victim with a firearm and that Travis
24 Holmes did die in Beaufort County as a proximate result
25 thereof on July 26th 2001 in violation of the South

1 Carolina code of laws.

2 The possession of a weapon during a violent
3 crime indictment reads that in Beaufort County on or about
4 July 26, 2011, the defendant, Rajerick Lovell Knight, did
5 possess a knife or visibly display what appeared to be a
6 gun during the commission or attempted commission of a
7 murder. A violent crime in violation of the South
8 Carolina code of laws.

9 Now, ladies and gentlemen, let me emphasize to
10 you all, the indictments that I hold in my hand is not
11 evidence in this case. It is not evidence in this case.
12 These indictments are simply the method and manner that a
13 case was brought into this court and these indictments are
14 in no way evidence in this case. To these charges,
15 Mr. Knight has pled not guilty. He has pled not guilty.
16 Therefore, the State of South Carolina bears the burden of
17 proving his guilt beyond a reasonable doubt. The State of
18 South Carolina bears the burden of proving his guilt
19 beyond a reasonable doubt. Before we go any further,
20 there certain questions that I need to ask you all before
21 you are qualified to serve as a juror in this case.
22 Please listen very carefully.

23 Is there any member of the jury panel related by
24 blood, connected by marriage, have a close personal,
25 social or business relationship with Mr. Rajerick Lovell

1 going to go ahead and mark them, Your Honor, in the order
2 that I plan on presenting them and handle it that way.

3 THE COURT: Let me address -- and this is
4 addressed to everybody in the courtroom. I spoken to the
5 lawyers at side bar here. I know there family members in
6 here of the defendant. I don't see any family member of
7 the victim. They may have been in here previously.

8 MR. STONE: They just let, Your Honor. I'll be
9 glad to obviously tell them anything you instruct.

10 THE COURT: Well, my instructions are I realize
11 that this is a very serious case. I realize it's a very
12 serious case and that emotions can run high in these types
13 of cases. But I'm telling you in the courtroom right now
14 that you better keep your emotions in check, that you
15 better keep them in control. If you do not believe that
16 you can do so, then you don't need to be in here. Your
17 failure to do so could result, could result in this court
18 holding you in contempt of court and sentencing you to a
19 term of incarceration. If I'm not clear on that, I'm
20 being abundantly clear at this point, abundantly clear.
21 So you are on notice of what could happen. We'll stand at
22 east until 2:15.

23 (WHEREUPON, a lunch break was taken.)

24 THE COURT: State ready to proceed?

25 MR. STONE: We are missing one of the two

1 witnesses on the first hearing. We do have another matter
2 that however we like to bring up briefly. And I don't
3 know if this is going to be something we have to rule on
4 -- that, Your Honor, has to rule on at this point or not.
5 And it really depends on if the defense -- what the
6 defense is intending to do during their opening argument.
7 There was some discussion back in chambers. The State
8 does not intend to call any 404(B) evidence in this trial
9 and our case in chief. The question I have and I don't
10 know a good way to verse this is how much information is
11 coming in concerning the victim in this case and whether
12 there's any prior history that the defense plans on
13 talking about in their opening. If they don't plan on
14 talking in opening, I have no motion at this time. But if
15 they do, we like to be heard on that?

16 THE COURT: Mr. Bax.

17 MR. BAX: Well, Your Honor, obviously that is at
18 a little at odds for me because, you know, kind of
19 requires me to say what I'm putting in my opening and
20 there's two problems with that. Number one, kind of gives
21 them a preview of how to prepare their argument. And
22 number two, I don't always know exactly what my opening
23 arguments going to be. Frankly, I do kind of -- I don't
24 rehearse these or write them down in notes. I kind of
25 wing it to some degree. However, I do -- I have discussed

1 with my defense team and have considered talking about
2 Mr. Holmes. And the fact that, you know, he is -- his
3 actions have a lot to do with what they're going to be
4 deciding on. And how he behaved leading up to this case.
5 So I can't say that I wouldn't go into that. I guess, is
6 a best way to respond to it, Your Honor.

7 THE COURT: Here's the issue and I certainly
8 understand Mr. Stone's position and I understand yours as
9 well. However, what I would caution defense counsel is
10 don't presuppose what my ruling may be with regards to
11 this 404(b) material, if you open that door. And if you
12 open it and I rule that the State can go down that road
13 based upon you opening that door, then you may have some
14 problems. If you presuppose that I'm going to allow
15 something and I don't allow it, then that certainly come
16 back and bite you as well. So I'll leave it at that right
17 now and let you make that decision. However, if you open
18 the door, we will cross that bridge when we get there.
19 And I'll have to decide whether or not the State can
20 adequately respond to it during their case in chief.

21 MR. BAX: In light of your ruling, Your Honor
22 ---

23 THE COURT: I don't know that I made a ruling
24 right now. I can't make a ruling until I hear something.

25 MR. BAX: Right. In light of that information

1 to the counsel here, I believe from the defense standpoint
2 it would be best for us to go ahead and just address it
3 because I think it's going to be the gorilla in the room.
4 And I think it would be best for both sides especially for
5 the defendant. We minds well just get it out there and
6 address it, so that everybody can plan their cases
7 accordingly.

8 THE COURT: All right. And I need to know what
9 the State would intend to put up, so that I can make a
10 ruling.

11 MR. THORNTON: Your Honor, if I might argue on
12 behalf of the State?

13 THE COURT: Yes.

14 MR. THORNTON: Your Honor, in this case ---

15 THE COURT: Please identify yourself for the
16 record.

17 MR. THORNTON: Apologize, Judge. Sean Thornton
18 Deputy Solicitor Fourteenth Circuit. Your Honor, it's not
19 so much what Mr. Stone was referring to is not what we
20 would attempt to put up as 404, but the intent by the
21 defense to start putting in 404 information with regards
22 to the victim and, you know, we can't unring that bell.
23 If he gets up and starts talking about any specific
24 instances of conduct on behalf of the victim, which we
25 would want to analyze under the Day case and Mekler, which

1 I know Your Honor is familiar with. And you haven't ruled
2 on it yet. It would be he's getting ready to ring the
3 bell prior to you even ruling on it. We're not seeking to
4 introduce anything at this point. What we are concerned
5 with is Mr. Bax's attempt to assassinate for a lack of a
6 better word, the character of the victim in the case --
7 the character of the victim with any specific incidents of
8 conduct or his reputation in the community without having
9 an evidentiary hearing on whether it comes in or not. So
10 our only concern was in his opening if he was going to
11 start addressing anything specific to the victim, we had
12 some concerns of which should be analyze under Day and
13 Mekler before we decide -- before Your Honor decide what
14 is and is not going to be admissible. That was I believe
15 that is our objection I think is kind of the wrong word,
16 Judge, but we're just trying to get in front of the train
17 and not be run over by it.

18 THE COURT: I understand. Well, let me ask this
19 question, is it the State's position that none of that
20 should be gone into or that if it's gone into that a
21 limited amount of it should be gone into?

22 MR. THORNTON: Your Honor, the State's position
23 is -- and I'm sorry for throwing out case names and not
24 give you the cite. State vs. Day is 341 South Carolina
25 410 and State vs. Mekler, Your Honor, is 368 South

1 Carolina one. Basically what those cases say, Judge, is
2 that if you're talking about specific instances of
3 conduct, there has to be -- it has to fall into one or two
4 categories and that's only if it becomes relevant
5 pursuant to some type of self-defense or an agreement --
6 it's not an agreement, but argument as to voluntary
7 manslaughter. You have to get by the relevance aspect of
8 it first.

9 The second prong of that is is it either
10 specific instance of conduct that's directed toward the
11 defendant or one that is so close in time as to go to the
12 victim's state of mind at the time of the shooting. The
13 Day case and the Mekler case -- Mekler was an incident
14 three months prior. Day was an incident four months
15 prior. Both of those were upheld because they met the
16 relevance test first and they were not directly at the
17 defendant as any prior difficulty. Both of those were
18 held to be admissible. There is another case -- I'm
19 sorry, Your Honor. It is a 1996 case State vs. Brown,
20 which is 321 South Carolina 184, that talked about an
21 incident some 20 years earlier that said it does not.
22 It's the State's position that's where the law is. You
23 got four months, it's okay cause it's close in time.
24 Clearly, once you get into the years, it is not. So it
25 has to fall into those categories, so the State would

1 argue, Judge, that first of all I need to know what, if
2 any, specific instances of conduct that Mr. Bax may seek
3 to introduce and then I would ask the Court to analyze it
4 under the Day and Mekler cases.

5 Second, Judge, as to any reputation nonspecific
6 incidence of conduct, but the reputation of the victim for
7 peacefulness that has to be done. As, Your Honor, knows
8 he's got to get into that with each witness as to what
9 they know, how they know him, how long they've known him
10 and do they know what his reputation is. And I think it
11 would be inappropriate to allow him to go into general
12 reputation of the victim because he may get up and not
13 able to produce that and then he's got to ring that bell.
14 And we can't unring it and then you may not let it in
15 later, so those would be two -- the 404 evidence, Your
16 Honor, and that's what the State's position would be on
17 those.

18 THE COURT: All right. Mr. Bax.

19 MR. BAX: Well, Your Honor, there is evidence
20 that we intend to try to go into about Mr. Holmes' past
21 and his actions and I can go into the arguments about
22 those. I'm a little confused frankly, Your Honor, because
23 what I thought we were talking about is what the State
24 would intend to try and introduce under Lyle about my
25 client. And it's turned into what I am trying to

1 introduce against the victim. So it's kind of the
2 situation well they're saying if he's going to tell us
3 everything he's going to do, then we'll talk about what
4 we're going to do and it's kind of forcing that situation.
5 You know, it's kind of the situation where it seems like
6 they want to get preview of the case when this is how they
7 want to do it. They're concerned about what I'm going to
8 put in my opening. And I certainly wouldn't think they
9 have any knowledge what I intend to put in my opening at
10 all. It would just be conjecture.

11 The problem is I do have evidence that I would
12 intend to go into about Mr. Holmes' past and I have no
13 doubt that it's going to qualify under the cases that Mr.
14 Thornton has cited to Your Honor. We have situations
15 where the conduct would be directly at my client and the
16 majority of the Beaufort County Sheriff's Office personnel
17 that I have on the defendant's witness list are here to
18 testify to those events and the actions they took and the
19 incident reports that they that I have obtained and that
20 they were the officers of. But to some degree, the
21 problem is if we're going to have an evidentiary hearing
22 about that, that's a little bit different than what I
23 expect to be doing right now obviously. And I'm not sure
24 if they're going to want to try -- we're going to have to
25 go into the facts of each one of the incidents, that's

1 going to take me a few minutes to get that all ready to
2 make that argument and I need to know whether or not we're
3 going to be calling witnesses because I got all those
4 sheriff's officers on phone standby because I did not
5 anticipate them being called in a pretrial hearing, Your
6 Honor.

7 THE COURT: Well, I mean all I've heard to this
8 point is simply that you attend to put up something. I
9 still don't know what you intend to put up for me to make
10 a ruling to it. I need to see it. I can't sit here and
11 make a ruling until I know what you -- and I say that --
12 is there a record of the victim that I need to look at to
13 look at and see whether or not I believe that something
14 you might can go into. I don't have that yet. And I
15 can't make a ruling on that at least look at some of that
16 stuff.

17 MR. BAX: I understand, Your Honor, I was trying
18 to get some clarification as to whether we're going to go
19 down that road as far as giving Your Honor -- the report
20 -- incident reports and whether I need to get witnesses
21 here, I guess, that was my question, I apologize. I mean,
22 the problem is I don't know what the motion is here. I
23 mean, is it a motion to say what I'm going to do?

24 THE COURT: I don't mean to -- my understanding
25 of what they're concern is is you getting up in opening

1 and saying that Mr. Holmes ---

2 MR. STONE: Yes, sir.

3 THE COURT: Mr. Holmes did A, B and C and X, Y,
4 Z. And if therefore, your client had a right to do what
5 he did. At least that's the perception of the argument,
6 I'm getting from them.

7 MR. BAX: I understand, Your Honor.

8 THE COURT: And therefore, they want to know
9 whether or not it is your intention in opening to get up
10 and say Mr. Holmes did A, B, C, X, Y, Z. And therefore,
11 my client was justified in doing what he did, that is the
12 concern of you having the opportunity to go into that
13 without me making a ruling on it. And they want to know
14 if that's your intention. If that's your intention, I
15 understand that. However, you may be able to go under
16 some of that, but I need to see whether it's a record. I
17 assume that's what the State's talking about. Again, I
18 don't know of prior acts, that you want go into. Maybe,
19 we do need to have a hearing, but I can't make a ruling --
20 at least am I wrong about that, Mr. Stone and Mr.
21 Thornton?

22 MR. STONE: That's exactly right. Your Honor,
23 the issue is this if the defense -- and I don't
24 necessarily need to know what the defense's position is.
25 However, the issue is whether or not the victim's past

1 comes into evidence. It's got to be relevant. If the
2 defense is this is not my client, then that's irrelevant
3 and no big deal. If on the other hand, it is exactly what
4 as you mentioned that he was justified in doing the
5 killing because this guy was a horrible person, then we
6 would have an objection. But at that point in time,
7 there's some standards that the Court would have to know
8 that, so that was our concern is that before we get into
9 opening argument that he didn't stand up and say, Hey, he
10 killed him, but he was justified in doing so, that is
11 exactly correct.

12 MR. BAX: If I may respond, Your Honor, I want
13 to try to be as clear as I can for the Court's purpose as
14 well as for the records purposes. I see two issues. One
15 is the issue that they're talking about, but the other is
16 the issue procedurally under the law. What gives the
17 Solicitor's office or any prosecuting agency the right to
18 ask the defendant and the defense counsel to say what
19 they're going to do in an opening before they've ever done
20 it. I mean, what they quoted and what they cited may be
21 the subject of an objection when something gets -- and if
22 they want to object during my opening, there's nothing
23 that stops them under the procedures and they get to
24 object. The problem I see proceeding first and foremost
25 before we get to that question is the fact that if I don't

1 stand up and object to this and say where's the law that
2 gives them the ability to question me and my defense
3 theory, then I give up that issue to any appeal or any
4 other defense attorney because, you know, to me that is as
5 important from a procedural standpoint, from a defense
6 attorney standpoint as any issue would be about the
7 admissibility or the admissibility of evidence in general?

8 THE COURT: Well, and I understand the State's
9 concern and position here. You know, if the State wants
10 to object to anything that you bring out, like I said
11 earlier until I hear it, then I can't make a ruling on it.
12 But you run the risk when it's your decision however you
13 see fit to defend the case for the defendant. If you open
14 the door, then that may result in some other issues or
15 matters coming out. And I will tell each of you and I
16 told you back in chambers, I want you to try your case.
17 Don't ordinarily hear objections in opening and don't
18 ordinarily like them, but again each side you got to
19 protect their clients and protect their interest and
20 that's what you feel like you need to do. Do whatever you
21 need to protect the record?

22 MR. STONE: Thank you, Your Honor, I apologize
23 for the delay. Thank you. Your Honor, I think we can get
24 a good bit of the Neil vs. Biggers hearing done. In fact,
25 it all may be able to be done through the investigator.

1 He's already here, so I like to go ahead and do that if
2 you like.

3 THE COURT: All right.

4 (WHEREUPON, Court's Exhibit No. 1 was marked for
5 the record.)

6 MR. STONE: State calls investigator Tony Re.

7 THE CLERK: Do you solemnly swear truthfully
8 answer all questions ask of you by this court, so help you
9 god?

10 THE WITNESS: Yes, I do.

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

13 THE WITNESS: Name is Anthony Michael Re, R-E.
14 WHEREUPON,

15 Anthony Re,
16 after first having been duly sworn, testified as follows:

17 DIRECT EXAMINATION IN-CAMERA

18 BY MR. STONE:

19 Q Let me get you to pull the microphone to you if you
20 can cause I can't hear you very well. Investigator Re,
21 you are with whom, sir?

22 A With Beaufort County City Police Department.

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

25 A Six and a half years.

1 Q Were you an investigator involved in the
2 investigation of the shooting of the Subway in Beaufort in
3 the City of Beaufort on July the 26th 2011?

4 A Yes, I was.

5 Q And in your capacity as an investigator with them --
6 first what is your rank by the way?

7 A Investigator Two, which is the corporal rank.

8 Q So I'm correct in calling you an investigator?

9 A Yes, yes, sir.

10 Q Through that investigation, did you prepare a
11 photographic line-up for any witnesses to view?

12 A Yes, one was prepared for Miss Jeannie Salleme. I
13 don't know how to pronounce the last name.

14 Q The last name, the lady's last name is Salleme; is
15 that correct?

16 A Yes, sir.

17 Q We think that's Salleme?

18 A Sir, I believe so, yes, sir.

19 Q Now, you prepared a lineup or had a lineup prepared
20 and showed her; is that correct?

21 A Yes, sir.

22 Q Now, let me first ask you, the photographs that came
23 from the lineup, do you know where those photographs came
24 from?

25 A From the South Carolina Department of Motor Vehicle

1 web site.

2 Q Let me first show you what's been marked as State's
3 Exhibit Number 17, ask if you can identify this document
4 please, sir?

5 A Yes, sir, this is a photo lineup I showed Miss
6 Salleme?

7 Q Okay. And let me also show you what's been marked as
8 Court's Exhibit 1 ask you if you can identify that for me
9 please?

10 A This is the second page of the photo lineup, but this
11 one identifies each person by their name and their --
12 either license number or identifying number through the
13 Department of Motor Vehicles.

14 Q Now, the second one, which is Court's Exhibit 1 did
15 you show that to the witness?

16 A No, I did not.

17 Q Just the first one, which is State's Exhibit 17?

18 A Yes, sir.

19 Q Is that correct?

20 A Yes, sir.

21 Q Let me show you what's been marked as State's Exhibit
22 18, could you tell me what that is please, sir?

23 A That would be the same Department of Motor Vehicle
24 picture of Mr. Knight.

25 Q Now, of all of the -- hand these back to you please.

1 MR. STONE: Your Honor, I just hand this up to
2 you for you to be able to see that, sir.

3 BY MR. STONE:

4 Q Okay. The photographic lineup that was State's
5 Exhibit 17, that is how many individuals do you recall?

6 A Six individuals.

7 Q And those -- or all six individuals photographs taken
8 from the Department of Motor Vehicle's photographs?

9 A Yes, sir.

10 Q All right. And in the creation of that lineup or use
11 of that lineup, was there any indication on any of those
12 photographs of any of those people ever having been
13 arrested anything like that?

14 A No.

15 Q These are just highway department driver's license
16 pictures basically?

17 A Yes, sir.

18 Q All right. How did you determine of the various six
19 photographs in there which photographs were chosen? In
20 other words, why were those six made up of that lineup?

21 A When we do the photo lineup, we choose people that
22 are similar in features. In this case, the dreadlock
23 hair, maybe facial hair, goatee, the skin color, tattoo
24 anything else that might be similar to the person that
25 we're trying to portray in the photo lineup.

1 Q Okay. Now, on State's Exhibit Number 17, there
2 appears to be Wite-Out on the neck of the individuals,
3 what is that from? Why is that there?

4 A Because the suspect Mr. Knight had a tattoo of, I
5 believe, it was peanut on the side of his neck. We had to
6 ensure that each individual on that photo lineup appeared
7 the same. So we put the Wite-Out on all of them, so that
8 I don't know if the other five had tattoos or not, so it
9 would appear that they all looked the same.

10 Q Had the witness identified this tattoo?

11 A She did state that she observe a tattoo on the neck,
12 so that's one of the main reasons we use Wite-Out.

13 Q Now, when did you show this lineup to the witness?

14 A The day after the incident on the 27th.

15 Q All right. On the 26th, tell me what her involvement
16 in this case was when we talked -- we refer to her as a
17 witness. What type of witness was she? Where was she?
18 Her opportunity that type of thing?

19 A She was located inside of Subway and she observed the
20 entire incident that happened.

21 Q Was she working at Subway or a customer?

22 A She was a costumer. She had stopped in with her son
23 who was out in the car to pick up a couple subs for dinner
24 and take them home.

25 Q Okay. And when this took place, how close was she to

1 the actual shooter?

2 A It's -- in front of the counter an approximate
3 footage maybe between ten and 15 feet.

4 Q Let me show you what has been marked as State's
5 Exhibit Number 11. Tell me what that is?

6 A That be a photo from inside the Subway.

7 Q All right. Do you know where that photograph --
8 where that photograph came from?

9 A I don't know who obtained it or gave it to you, but I
10 know Investigator Erdel obtain most of the surveillance
11 video from the Subway.

12 Q Okay. And is that a still shot of the surveillance
13 video?

14 A It appears to be.

15 Q Do you see the witness in that photograph?

16 A Appears that she's at the register.

17 Q The lady in the white shirt, I guess.

18 A Yes.

19 Q And could you tell -- first of all can you show that
20 to the Court, I'll hand that up to Your Honor. Also in
21 this photograph tell anybody else in the photograph?

22 A Got one of the workers and I'm not really sure if
23 that was identified as one of the suspect or someone else.

24 Q All right. Did Miss Salleme tell you what kind of
25 opportunity she had to see the person?

1 A While she was standing there, she had stated to me
2 that she observed the victim that was standing up at the
3 counter ordering his stuff and who she identified later as
4 Mr. Knight both of them in the business at the same time.
5 She did state that there was no words between them at that
6 time during the initial contact.

7 Q Did she tell you if she had an opportunity to see the
8 -- did she tell you she could identify who it was?

9 A Yes.

10 Q And when did you interview her by the way?

11 A I interviewed her the following day.

12 Q The following day?

13 A Yes, sir.

14 Q And I'm assuming during the interview you asked her
15 if she saw what she saw that type of thing?

16 A Yes, sir.

17 Q Okay. Her degree of attention whether or not she had
18 an opportunity to see the defendant and whether or not she
19 could make an identification, did you ask her any of those
20 things?

21 A Yes, sir.

22 Q And what did she tell you?

23 A She stated that she observed him several times in the
24 past. She works at Golden Corral. She stated that she
25 had seen him at least approximately ten times coming into

1 that business. She didn't know him by name, but she had
2 seen him in the past.

3 Q Okay. And she told you that before she saw the
4 lineup?

5 A Yes.

6 Q And did she also tell you that she could identify him
7 if she were shown a photograph of him?

8 A Yes, she did. Yes, she did.

9 Q Now, when you showed her the lineup, did you suggest
10 in any way which person out of the lineup to choose?

11 A No, I did not.

12 Q In fact, what did you tell her when you handed her
13 the lineup?

14 A I explain to her just like I already said that the
15 photo lineup is six different people with similar
16 features. I explain the hair and facial features stuff
17 like that. And I explain to her just to look at all the
18 photos carefully and when she had made a decision as to
19 who the person was to point that person out.

20 Q Okay. Was she -- any way did you point at the
21 photograph, do anything to indicate which one she should
22 choose?

23 A No, sir, I slid the whole photo lineup to her. She
24 looked at it and she point right at number two.

25 Q And how long did it take her to make that decision?

1 A It was a few seconds. It wasn't long.

2 MR. STONE: I don't have any further questions
3 at this time, Your Honor.

4 THE COURT: Cross-examination.

5 MR. BAX: Thank you, Your Honor. May it please
6 the Court.

7 CROSS-EXAMINATION IN-CAMERA

8 BY MR. BAX:

9 Q Investigator Re, good afternoon.

10 A Good afternoon.

11 Q A couple of brief follow-up questions for you, sir.
12 First of all, the interview -- and I believe you stated
13 this in some of the incident reports that you generated in
14 this case was taped; is that correct?

15 A Yes, sir.

16 Q So it was in an interview room at the Beaufort County
17 or Beaufort City Police Department?

18 A Yes, sir.

19 Q Okay. Now, you testified that I believe it's State's
20 for ID right now 17 is the photo lineup?

21 MR. BAX: Approach the witness, Your Honor?

22 THE COURT: Yes, sir.

23 MR. BAX: Thank you.

24 BY MR. BAX:

25 Q And that is the actual one that you gave to her?

1 A Yes, sir.

2 Q It's the original of that; is that correct?

3 A Yes, it is.

4 Q Okay. And that Miss Salleme, if I'm saying that
5 correctly and I apologize to her if I'm not, did not get
6 to see the one that has names under it?

7 A No, she did not that was in another room.

8 Q Okay. All right. And the only other thing that she
9 saw I believe you showed her some other paper about
10 lineups just something that you read through some
11 information before you gave her that; is that correct?

12 A I did not read off of that.

13 Q You did not read off of it?

14 A I didn't.

15 Q Okay. You had a discussion with her about what you
16 were getting ready to do first before you showed it to her
17 though; correct?

18 A Yes, sir.

19 Q And I believe in that discussion did you at all talk
20 about the fact that she was going to see Wite-Out on the
21 necks?

22 A Yes, I did.

23 Q And that's when you explain why that was?

24 A Yes, sir.

25 Q Do you recall what it is that you told her about why

1 that Wite-Out needed to be there?

2 A Not exactly, but I do know that it was because the
3 suspect had a tattoo on that side of the neck and that's
4 all the photos that we could get. All the photos that we
5 could get -- all the photos that we could get that we had
6 Wite-Out each person on that photo lineup, so the suspect
7 would not stand out.

8 Q Okay. And so that's something you talked about
9 before you handed the lineup to her?

10 A Yes, sir.

11 Q Now, once you handed the lineup to her I believe your
12 testimony was is that she pointed to number two. Do you
13 recall any kind of hesitation or any kind time before she
14 pointed at number two?

15 A It was only a couple of seconds.

16 Q Okay. After she pointed at number two, did you ask
17 her any other questions?

18 A I asked her if she was 100 percent sure of the photo.

19 Q And what was it that she responded?

20 A She said 90 percent.

21 Q Ninety percent. Okay. Did she also indicate to you
22 when she was -- after she pointed to number two and after
23 you asked her that question, did she also indicate that
24 she knew somebody else in the lineup?

25 A I don't recall.

1 Q Okay. So you don't recall her saying that she knew
2 one of the other people in the lineup and knew that wasn't
3 this other individual because she knew that guy?

4 A I don't recall that, no.

5 Q Okay. And did you record any -- other than the audio
6 recording -- well, strike that --

7 MR. BAX: Let me withdraw that question, Your
8 Honor. Moments indulgence, Your Honor.

9 Thank you, investigator.

10 (WHEREUPON, a pause in the proceedings.)

11 THE COURT: Mr. Bax, anything further?

12 MR. BAX: Sorry, Your Honor. I was having a
13 small debate here. And I'll just put this to Your Honor
14 since we're in-camera and not in front of a jury. There
15 is a portion of the video that I watched several times
16 where I believe she's making a statement she knows
17 somebody else in it. My problem is is that without either
18 showing him the video to refresh his recollection, I can't
19 get it in to be considered by the Court because he just
20 doesn't recall. So at this point ---

21 THE COURT: Let me ask this question, what
22 relevance does that have to do with the suggestiveness or
23 potential suggestiveness of this photo lineup?

24 MR. BAX: And I don't mean to stand in front of
25 the Solicitor here. The argument, Your Honor, is that,

1 you know, I think that the question that I would have
2 about that and the relevance I would see in that is that
3 if the investigator is aware at that time that she already
4 knows somebody else in the lineup, then now it's a photo
5 lineup of five pictures instead of six pictures because
6 one person she knows is in there because she's familiar
7 with that person. She knows he's not related to this
8 incident at all. So now it comes to the fact that it does
9 impact the validity of the lineup in that now you're
10 looking at a situation where she really only has to pick
11 from five unknown individuals to see if it's the
12 individual who she states she doesn't know, she just saw
13 him in this incident and has seen him around the community
14 before. But does not know him in as a, hey, how you doing
15 kind of situation and that's what it goes to. My problem
16 is from a evidentiary standpoint because he doesn't recall
17 it, I don't have it in evidence right now for you to
18 consider in my argument.

19 MR. STONE: I can -- I apologize for
20 interrupting. I can help him with that. I believe that's
21 exactly what the witness says that she did -- when he
22 shows the lineup, she goes through and she said that's --
23 she identified the defendant, but she also identified one
24 other person, so I think that is correct, Your Honor. And
25 we have the video that if you like to see it. I don't

1 quite frankly know that that affects the reliability, the
2 lineup but that is correct. I do not require him to put
3 evidence in for that.

4 THE COURT: The State stipulates to that.

5 MR. BAX: That way we can avoid playing the
6 video. I don't have any further questions for the
7 investigator at this time. Thank you, sir.

8 THE COURT: Anything further from the State?

9 MR. STONE: I do not, Your Honor.

10 THE COURT: Sir, you may step down.

11 (WHEREUPON, the witness leaves the witness
12 stand.)

13 THE COURT: Okay.

14 MR. STONE: Your Honor, we have the witness here
15 as well. However, I believe as far as the Neil vs.
16 Biggers standards, we have already -- we have covered
17 that which we need to do. The first primary threshold
18 question that Your Honor has and that's the reason I
19 handed up the lineup is to whether or not some way that
20 photographic lineup was suggestive. The photographs are
21 taken from the highway department not from any type of
22 jail booking photographs, which I think is highly relevant
23 in establishing any type of prejudice from the lineup.
24 All six photographs as you have seen are similar
25 individuals, similar in looks. And I think that the next

1 hopefully help keep the jury from having to spend any
2 time, I'm going to ask the Solicitor afterwards on whether
3 some of the stuff with the phone Mr. Crumpton will not be
4 able to stipulate to. Maybe, we can speed that up.

5 THE COURT: Well, I just didn't want to start a
6 case this late in the day. I know you all didn't
7 anticipate it taking this long. I understand that. I
8 mean, that's one of the benefits or drawbacks of a
9 visiting judge coming in and maybe pursuant to State vs.
10 Langford, I believe, it just came out last week some of
11 these pretrial matters may be able to be addressed
12 beforehand. I don't know. Again, you need to do,
13 Mr. Bax, what you need to do to protect your client's
14 interest and that's your job. So no fault on your behalf
15 in raising those issues, okay. I like to deal with them.
16 Mr. Stone and Mr. Thornton has tried cases in front of me.
17 You know that I like to deal with everything I can deal
18 with upfront, so that once a trial starts we don't have to
19 keep shuttling the jury in and out of here to address
20 those matters outside the presence. Again, I realize that
21 things may come up during the course of the trial, but
22 once we start this trial in the morning, I want things to
23 go as smoothly as possible.

24 Now, I want to go back to this issue that was
25 raise previously about the victim's record et cetra. I

1 would just caution defense counsel and would instruct you
2 to look at Rule 404(A)(2) that deals with character of the
3 victim along with the cases that were cited by the State.
4 State vs. Day 341 SC 410 and 368 SC 1, which is State vs.
5 Mekler.

6 MR. BAX: I've got them down. Actually, 366 --
7 is it 368?

8 THE COURT: I wrote down 368.

9 MR. BAX: Okay. Thank you, Your Honor, you
10 corrected me. And I got State vs. Brown at 321 184 as
11 well. We cited that as well.

12 THE COURT: 321 SC 14 State vs. Brown. I would
13 just caution you to look at those cases and certainly be
14 prepared if you open that door for the Court's ruling on
15 it.

16 MR. BAX: Your Honor ---

17 THE COURT: Sir?

18 MR. BAX: I said I've got the cases up right
19 here.

20 THE COURT: Okay. Anything else? I just wanted
21 to bring that to everybody's attention before we broke.

22 MR. STONE: No, sir.

23 THE COURT: Here are these exhibits, madam
24 clerk.

25 MR. BAX: And, Your Honor, one point of

1 Collins, State vs. Collins 398 S.C. 197, the Court in
2 that particular case goes into the prejudice, talks about
3 prejudice. And it says that prejudice that is unfair is
4 distinguish from the legitimate impact all evidence has on
5 the outcome of a case and does not mean the damage to a
6 defendant's case that results from a legitimate probative
7 force of the evidence.

8 Rather, it refers evidence which tends to
9 suggest a decision on an improper basis. I do not believe
10 that the photograph that I previously reference 45, 2, 48,
11 16, 46A and 46B would tend to, would tend to suggest a
12 decision by this jury on improper basis. And therefore,
13 I'm not going to exclude those photographs provided that
14 the State lays a proper foundation for that.

15 Now, having said that, another issue came up
16 yesterday with regards to the victim's, with regards to
17 the victim's prior record or State had a concern about
18 defense counsel going into defendant's prior record and
19 had a concern about the bell being rung so to speak and
20 not being able to unring that bell.

21 Now, yesterday -- and one of the things I asked
22 yesterday was nothing's been put before me to make a
23 ruling upon whether or not it's admissible. I asked the
24 State to provide me yesterday afternoon with a copy of
25 Mr. Holmes criminal record, which they did so. I went

1 through Mr. Holmes criminal record and from November of
2 2002, Mr. Holmes was charged with murder, assault and
3 battery with intent to kill, unlawful carrying of a
4 weapon, assault and battery excuse me -- those three
5 charges. The results of those three charges assault and
6 battery with intent to kill was nol-prossed, unlawful
7 carrying of weapon was nol-prossed. And it appears that
8 he pled to a voluntary manslaughter. It appears that he
9 pled to a voluntary manslaughter, appears he pled to a
10 voluntary manslaughter and received a sentence of 17
11 months. That's what it appears to me. Do the State agree
12 with that, Mr. Thornton?

13 MR. THORNTON: Your Honor, apologize, I'm
14 looking right now.

15 THE COURT: Page one and two of five that were
16 given to me.

17 MR. THORNTON: Yes, sir, that is correct.

18 THE COURT: All right. Furthermore, in November
19 of 2006, it appears that Mr. Holmes was charged with among
20 other charges, he was charged with unlawful carrying of a
21 weapon. The result of that particular charge was also a
22 non-conviction. It was nol-prossed. And July of 2008,
23 Mr. Holmes was charged with assault and battery with
24 intent to kill, discharging a firearm into a dwelling,
25 possession of a weapon during a violent crime.

1 The results of those charges were that they were
2 the possession of a weapon during a violent crime
3 according to the rap sheet was dismissed at prelim. The
4 assault and battery with intent to kill was also
5 dismissed, nol-prossed prosecution ending on September 4,
6 2009. The discharging of a firearm into a dwelling excuse
7 me -- into a vehicle while occupied was a non-conviction.

8 In February of 2009, Mr. Holmes was charged with
9 assault and battery with intent to kill three counts and
10 discharge a firearm into a dwelling each as well as
11 pointing and presenting a firearm, possession of a weapon
12 during commission of a violent crime. It appears that he
13 went to trial and was found not guilty of assault and
14 battery with intent to kill on three counts and
15 discharging a firearm into a vehicle while occupied.

16 Now, there are other charges on his rap sheet
17 drug charges and some traffic offenses, but I've
18 highlighted those offenses that I believe that defense
19 counsel maybe inclined or seek to go into. Before we
20 broke yesterday, I asked defense counsel to look at State
21 vs. Day 341, S.C. 410.

22 MR. THORNTON: I have copies for Your Honor.

23 THE COURT: I just want it in my evidence
24 handbook. Thank you though. And I went back and looked
25 at State vs. Day along with Rule 404 and Rule 405 both of

1 those rules talks about specific instances of conduct of a
2 victim. In State vs. Day that was a particular situation
3 where it was murder prosecution one pleaing self-defense,
4 individuals pleaing against an attack by the deceased.
5 Evidence of other specific instances of violence on the
6 part of the deceased, of course, they were not admissible
7 unless they were directed against the defendant or if
8 directed against others were so closely connected at point
9 of time or occasion with a homicide as reasonable to
10 indicate the State of mind of the decease at the time of
11 the homicide or to produce reasonable apprehension of
12 great bodily harm.

13 The Court in State vs. Day went into the fact
14 that the self-defense in this case necessitated to some
15 degree the raising of that prior instance because it did
16 create a reasonable apprehension of fear in the defendant,
17 which was an element to the defense of self-defense, okay.

18 In this particular case that we have before me
19 here today, these instances of conduct as previously
20 stated on the record first and foremost were not directed
21 against this defendant, were not direct against this
22 defendant. Furthermore, they were so far removed in time
23 that the Court does not believe that they would be
24 relevant to the matter that we have before us here today.
25 And therefore, the Court will not allow defense counsel to

1 go into those prior instances of conduct by the victim.
2 That's my ruling on that. Your objection if you have one,
3 Mr. Bax, is so noted for the record.

4 MR. BAX: And, Your Honor, if I could be heard
5 on that matter just to protect the record as well as some
6 background into it. Your Honor, I did review both State
7 vs. Day as well as State vs. Mekler. And I reviewed Rule
8 404 as instructed by the Court and I had looked at this
9 rule, obviously, before this trial on a number of
10 occasions as well. I feel that State vs. Day, State vs.
11 Mekler both support the defense that we intend to provide.
12 The record that Your Honor has before you certainly spans
13 some period of time. We understand that. However,
14 there's another incident and since we're here we minds
15 well get into it. I don't see at this point any point for
16 me trying to do anything other than to address it. But
17 there is -- and I can provide incident reports to Your
18 Honor. I'm flipping through them right now.

19 THE COURT: Let me stop you for a second and ask
20 you this question.

21 MR. BAX: Yes, sir.

22 THE COURT: You said Day and Mekler apply. Tell
23 me how they apply? Because those cases or instances so
24 far removed or went directly against the defendant in
25 those cases. Tell me how they apply?

1 MR. BAX: I will, Your Honor. Also what we
2 intend to show evidence of in this case is in -- and I
3 think it ties into what happened in 2008 and 2009, but we
4 intend to show that Mr. Holmes along with an associate by
5 the name of Antwan Robinson were believed in the mind of
6 my client as well as were implicated in the investigation
7 by Beaufort County Sheriff's Office to have put 18 bullet
8 holes into my client's trailer in May of 2011 60 days
9 prior to the shooting in this case. I have what's been
10 produced by the sheriff's department in this case a number
11 of officers that responded to the call of excuse me -- of
12 May 30th of 2011, Your Honor, and they conducted an
13 investigation. They collected 18 shell casings both .9mm
14 and .45 caliber. They took pictures of the holes in my
15 client's trailer where his girlfriend and his adopted son
16 were at the time. He had just put his son down to bed and
17 had walked out to a neighbor's house only a few short
18 minutes before. And these shots were -- these projectiles
19 were shot into the trailer all throughout the trailer. An
20 ensuing investigation occurred and Mr. Holmes was
21 implicated as one of the people that was involved in that
22 case, that's recorded in the investigation.

23 Now, that did not result in any arrest, but
24 under State vs. Mekler and State vs. Day as well as 404
25 and 405, it was directed at my client. It was close in

1 proximity via a time 60 days. And it impacted my client's
2 -- the argument is it impacted his state of mind. In
3 addition, there will be testimony that there was a number
4 of threats by Mr. Holmes to Mr. Knight. I'm going to kill
5 you and that went on for a long period of time. And in an
6 overact to carry out that threat, Mr. Holmes shot up my
7 client's trailer and tried to kill him.

8 As a result, there will be testimony that his
9 girlfriend was grazed twice once in the shoulder and once
10 in the thigh. That she had to go to the hospital, that
11 those in the community knew about it, that it was reported
12 to the police that Mr. Holmes was potentially responsible
13 along with a Mr. Robinson. That law enforcement tried to
14 follow up with that, could not get ahold of Mr. Holmes who
15 was basically not where they could find him at the time
16 and that they administratively close the case. It's not
17 clear based on the notes and something that I intend to
18 ask Sergeant Frasier who was the lead detective in that
19 case. At what time, he administratively closed that case
20 because it's not exactly clear what relation it had to
21 Mr. Holmes being shot whether they administratively closed
22 it before or after that. However, that is under State vs.
23 Day, under State vs. Mekler 404 and 405, that I believe is
24 relevant and admissible. It bears direct on it.

25 THE COURT: It's the very stuff that I ask for

1 yesterday, so that I could make a ruling upon it. All I
2 had that you all left me with yesterday was me to look at
3 a record to make a ruling on.

4 MR. BAX: And I understand that, Your Honor, and
5 I appreciate it and just the point I was trying to make
6 yesterday, which I make not to hold the Court in the dark
7 but to hold the rights of the defense open and not
8 constrict the rights of the defense and how they conduct
9 defenses at trial is that I was not aware of what law
10 requires us to go into that before my opening. Because
11 neither in Mekler or Day or any other case that I found
12 was it an issue where they said they can go under this in
13 opening or they can't mention this. It was always
14 something that came up when it tried to be admitted into
15 trial and there was an argument about its admissibility.
16 We haven't even gotten to the jury yet. They haven't even
17 been sworn yet. So that was my argument yesterday. It
18 was not meant to keep the Court in the dark. It was meant
19 to reserve my rights to try and prepare my defense in the
20 best way possible for my client.

21 THE COURT: Any more argument on that issue with
22 regard to that particular instance?

23 MR. BAX: With regards to this particular
24 incident?

25 THE COURT: Any more instances?

1 MR. BAX: I would argue that the Court should
2 reconsider its ruling on 2008, on the 2009 case because we
3 be able to present testimony that in 2008 Travis Holmes
4 was accused of going to James Odom's house --

5 THE COURT: Well -- I'm sorry go ahead.

6 MR. BAX: And I will bring this around for Your
7 Honor and then certainly, that he shot up Mr. James Odom's
8 house and that's what he was accused of in 2008. While
9 the -- one of the charges may have been -- and I looked at
10 the same record Your Honor did prelim.

11 The other charges as you shown was not dismissed
12 until September of 2009 after the trial that was conducted
13 on the 2009 charges. The 2009 charges was when Mr. Holmes
14 was out on bond he went and shot up James Odom's car while
15 James Odom was in it along with one of Travis Holmes'
16 cousins. So the problem is is that my client knows
17 Mr. Odom. He personally knows Mr. Odom and so it -- his
18 knowledge of what Mr. Holmes was cable of, that he was not
19 only capable of shooting into a house to get at somebody
20 he didn't like, but he was capable of being out on bond
21 for those charges and to continue to go after someone.
22 And the fact that the car was -- had his family members in
23 it did not stop him from continuing to shoot into a
24 vehicle that had his person he didn't like in it -- was
25 something that my client knew when Mr. Holmes decided to

1 start shooting at him and shooting into his trailer, so
2 our argument is it does bear directly.

3 THE COURT: This is what I'm going to do. I've
4 made a ruling with regards to the 2002 -- I mean, if you
5 feel like you need to try to put that up, I will make a
6 ruling at that time if the State objects to it make. I
7 will make a ruling at that time. I don't want you to have
8 to feel like you need to go any further right now. But
9 I've ruled on the 2002 matter. And we'll cross that
10 bridge and I've ruled on the 2005. You feel like you can
11 tie this stuff in later. You can say what you believe you
12 need to say in your opening statement. If the State
13 objects to it, they object to it, okay. Like I said
14 yesterday, don't presuppose what the Court's ruling going
15 to be on this other stuff. You know, putting something
16 out there to that jury -- I may not allow.

17 MR. BAX: I understand, Your Honor, thank you
18 very much.

19 THE COURT: Anything else from the State at this
20 time?

21 MR. STONE: No, sir.

22 THE COURT: Defense counsel anything further?

23 MR. BAX: No, Your Honor.

24 THE COURT: Bring me the jury please.
25

1 (WHEREUPON, the jury came into open court.)

2 THE COURT: Okay. Good morning, ladies and
3 gentlemen. You all -- the only two people right now that
4 I have assigned seating are the two individuals in the
5 back who are selected as alternates, everybody else right
6 now as you come in and out of the courtroom you all can
7 sit wherever you so desire. Now, at some point in time, a
8 foreperson will be named or appointed and that foreperson
9 will sit where this young lady in the beige sweater is,
10 but they will have an assigned seat. But right now you
11 all do not have any assigned seating when coming in and
12 out of the courtroom.

13 Now, ladies and gentlemen, we are about to begin
14 the trial of the case of the State of Sout Carolina vs.
15 Rajerick Lovell Knight. Before we begin this trial, I
16 want to tell you that this trial be different from what
17 you might expect. Many people do not have the chance to
18 attend actual court sessions as you're doing now. And may
19 think from watching television or reading books that
20 trials are always full of high drama, intense action and
21 riveting circumstances. While all of these things may be
22 true at times, this trial is not for entertainment. It is
23 a fundamental part of our democracy. A search for the
24 truth in an effort to make sure that justice is done
25 between the parties before the Court. Searching for the

1 truth and making sure that justice is done is often slow,
2 deliberate and repetitive. The opposite of what you may
3 have seen on television or in movies or read in books.
4 This courtroom is a place of honor dedicated to the
5 protection and preservation of citizens rights through
6 what many have called the greatest justice system every
7 created.

8 Now, the attorneys appearing before you are
9 advocates for the parties that they represent, but first
10 and foremost, they are officers of the Court sworn to
11 uphold the integrity and fairness of our judicial system
12 and to help you in the search for the truth. You should
13 expect them to be professional, competent and ethical in
14 the representation of their client's interest. Remember
15 that you have taken an oath and I'm going to ask that the
16 clerk at this time swear the jury.

17 (WHEREUPON, the jury is sworn.)

18 THE COURT: Okay. Now, that oath that you just
19 took, that oath that you just took, ladies and gentlemen,
20 is an oath to try this case and reach a fair and just
21 verdict. And you all, ladies and gentlemen, are also
22 expected to be professional, reasonable and ethical.
23 Thank you for accepting the important responsibility of
24 jury service and for your contribution to our judicial
25 system.

1 Now, what I will now say to you is intended to
2 serve as an introduction to the trial of this case. These
3 remarks are not a charge on the law in this case. I will
4 instruct you on the law applicable to this case. At the
5 end of the trial, before you retire to consider your
6 verdict, this is merely an explanation of the procedure
7 that we will follow in the trial of this case so that you
8 may better understand what may be happening. The
9 defendant in this case, ladies and gentlemen, Mr. Rajerick
10 Lovellette Knight, is charged by an indictment filed in this
11 court with the offense of murder and possession of a
12 weapon during a violent crime. The elements of which will
13 be explained to you later.

14 The indictment, ladies and gentlemen, is simply
15 the charging document by which this case is brought into
16 this court and it is not, it is not in any sense evidence
17 of any of the allegations it contains. The defendant has
18 pled not guilty to these indictments. The State therefore
19 has the burden of proving each of the elements of the
20 indictment beyond a reasonable doubt. And it will be your
21 duty, ladies and gentlemen, to decide whether the State
22 has met that burden. Your purpose as jurors is to find
23 and determine the facts. You are the sole judge of the
24 facts. If at any time I make any comment regarding the
25 facts, you must disregard it. You are to determine the

1 facts from the testimony you hear and the other evidence
2 introduced in this court. It is up to you to determine
3 the inferences which you feel may properly be drawn from
4 the evidence. It is especially important that you perform
5 your duty of determining the facts diligently and
6 conscientiously because ordinarily there is no way to
7 correct an erroneous determination of the facts by a jury.

8 On the other hand and with equal emphasis, the
9 same law that makes you the judge of the facts makes me
10 the judge of the law. The law as given by the Court is
11 the only law that you may consider. You must accept and
12 follow it even though you may disagree with it. I cannot
13 tell you what the facts are and you, ladies and gentlemen,
14 cannot disagree with me about what the law is or should
15 be. Your job is to take the law as I give it to you and
16 apply it to the facts as you find them from the testimony
17 of the witnesses and any other evidence that is
18 introduced. After doing that, you will render your
19 verdict a true and just verdict under the solemn oath that
20 you just took as jurors.

21 Now, until I advise you to begin your
22 deliberations, you must not discuss this case with anyone
23 including your fellow jurors, friends, family members and
24 anyone involved in this case. This includes discussions
25 face to face. Those by telephone e-mail, text, blogs or

1 any other method of communication. You may not use a
2 computer, cell phone or other electronic device with
3 communication capabilities at any time while in this
4 courtroom or during deliberations. During your breaks
5 from meals or overnight, if necessary, you may use these
6 devices. However, you may not at any time use those
7 devices to get or send information about the case. This
8 includes information about a party, a witness, an attorney
9 or a court officer. News accounts about the case,
10 research on any topics raised, any topics you may think
11 would be helpful in deciding the case or any testimony
12 presented by any witness.

13 During the trial do not read, listen to or watch
14 any news reports about this case. This includes anything
15 that may be in the newspapers or on the internet or radio
16 or television. You must not, ladies and gentlemen,
17 consider anything you may have heard or read about the
18 case outside the courtroom whether before or during trial.
19 After the case is submitted to you, you must discuss it
20 only in the jury room with your fellow jurors. The
21 attorneys and parties in this case have been advise that
22 they are not to talk to you at all. So if you see anyone
23 involved in this case and they don't speak to you, they
24 are not being unfriendly. They are simply following the
25 instructions of this court.

1 It is important, ladies and gentlemen, that you
2 keep an open mind and not decide any issue in the case
3 until all of the evidence been presented. The parties
4 have made their closing argument and I have instruct you
5 on the law in this case. It is your solemnly
6 responsibility to determine the guilt or innocence of the
7 defendant and your verdict must be based solely on the
8 evidence as it is presented to you in this trial and on
9 the law as I instruct you during and at the close of this
10 trial.

11 Now, in just a moment, the Solicitor will make
12 what is called an opening statement in which the Solicitor
13 will explain to you the issues in this case or at least
14 what the Solicitor thinks the issues are in this case.
15 The attorney for the defendant may also make an opening
16 statement although he is not required to do so. What the
17 attorney's tell you, ladies and gentlemen, during their
18 opening statements is not evidence in this case. It is
19 only their contention as to what the issues are. The
20 evidence in this case will be presented to you by the
21 testimony of sworn witnesses from this witness stand and
22 or by exhibits that may be introduced into evidence.

23 From time to time during the trial, you may hear
24 one of the attorneys say something like, Your Honor, I
25 believe that we have a question of law or a matter of law

1 that we need to discuss or Your Honor may we approach the
2 bench or sometimes I, myself, might find it necessary to
3 excuse you from the courtroom for a short while so the
4 attorneys and I can discuss a matter of law. The reason
5 for this is because you are judges of the facts. And
6 sometime when I'm discussing matters of law with the
7 attorneys, it may be necessary for me to make some comment
8 as to the facts in connection with ruling whether or not a
9 particular law applies. I am not suppose to tell you what
10 I think the facts are, so I will excuse you from the
11 courtroom while these discussions take place. So that in
12 no way will you be influenced by anything that I might say
13 or do in connection with the facts.

14 In determining, ladies and gentlemen, what the
15 facts are, you must decide whether or not the testimony of
16 the witness is believable. It will be my responsibility
17 to rule as a matter of law as to whether certain testimony
18 is admissible at all or not. But once the testimony is
19 admitted whether or not you believe it is solely for you
20 to determine. In deciding whether to believe a witness,
21 you have the right to consider the interest of any
22 witness, the bias of any witness, the prejudice of any
23 witness. The opportunity for the witness to have seen the
24 matters and things about which may testify. And the way
25 the witness acts on the witness stand. You have a right

1 to consider anything that is in the record that will help
2 you evaluate the testimony of the witnesses. That means
3 that it is your duty, ladies and gentlemen, to pay close
4 attention to these witnesses, to observe the witnesses, to
5 listen to the witnesses and to pay close attention to the
6 attorneys and to the Court.

7 Please don't let your thoughts wonder, but give
8 strict attention to the testimony in this case. So that
9 at the end of all the testimony, after the arguments of
10 counsel and charge on the law by the Court, you will then
11 be in a position to determine what the true facts are and
12 apply the law to those facts and thus render a true and
13 just verdict.

14 Now, when a foreperson is appointed in this
15 matter, it will be the foreperson's responsibility to
16 preside in the jury room and be the jury's spoke person
17 while here in court. It will also be the foreperson's
18 responsibility to write the verdict on the verdict form,
19 but I will give further instructions to the foreperson
20 later during the course of this trial. Now, in order to
21 preserve everyone's rights, I will give the parties an
22 opportunity to object to anything that I've said. Any
23 exception to anything that I've said or objection by the
24 State?

25 MR. STONE: No, sir, not from the State.

1 THE COURT: Defense counsel?

2 MR. BAX: No, Your Honor.

3 THE COURT: All right, ladies and gentlemen, we
4 will now begin the trial. The State's recognize for
5 opening statement?

6 MR. STONE: May it please the Court, Your Honor.

7 THE COURT: Yes, sir.

8 MR. STONE: This case is about a public
9 execution, public execution. In July of last year about
10 6:30 in the afternoon and back in the summer sunshine
11 still out with people going in and out of the Subway
12 sandwich shop not five miles from this courthouse, this
13 man over here, Rajerick Lovell Knight, walked into the
14 Subway with a gun, walked up Melvin Holmes (sic) put the
15 gun in his ribs and pulled the trigger. The bullet went
16 through Melvin Holmes side, out his shoulder, into the
17 wall right next to where the cashier was taking Melvin
18 Holmes' 20 dollar bill for the sandwiches he just ordered.
19 The bullet goes through that wall, into another room and
20 hits the refrigerator where it lands and is later
21 photographed by the police officers when they get there.
22 It was a public execution. Pretty much in downtown
23 Beaufort, that's what this case is about. That's the
24 facts -- those are the facts that you will hear over the
25 next couple of days from this witness stand. You won't

1 hear just from the witness stand, you'll see it. Because
2 when Rajerick Knight went into the Subway not five miles
3 down from here, there were witnesses on the outside of the
4 store. There were witnesses inside the store. There were
5 people working. There were people just simply trying to
6 get food. And there was a camera system that video taped
7 everything.

8 You will hear testimony that Rajerick Knight was
9 in the Subway. He was ordering food with a woman by the
10 name of Shiecarra Smalls. As they're ordering food,
11 Melvin Holmes comes in. Melvin Holmes is ordering food at
12 the Subway as well. Rajerick Knight and Shiecara Smalls
13 walked out of the Subway. They get into their car and
14 Rajerick Knight stops, gets his gun, walks back into the
15 store, literally walks around two people to shot and kill
16 Melvin Holmes.

17 This is not a complicated case. Those are the
18 facts that you'll hear, what you'll see on the video and
19 on photographs. My job as the prosecutor and Solicitor
20 for the Fourteenth circuit is to prove to you these cases
21 beyond a reasonable doubt. Every time I walk into a
22 courtroom, my job is to prove the case. The judge will
23 give you the instruction on the law later on and what he
24 will tell you is this, Rajerick Knight has been charged
25 with murder and the use of a handgun during the commission

1 of that murder. And murder is the unlawful killing of
2 another with malice. The judge will give you that
3 instruction. And then it will be your decision on whether
4 or not I prove to you that Rajerick Knight walked into
5 that Subway, put that gun on Melvin Holmes and pulled the
6 trigger. If I don't do that, if I don't prove to you that
7 beyond a reasonable doubt, your job is to come back here
8 and say not guilty. Solicitor, you didn't do your job.
9 But let me just tell you one thing in every courtroom,
10 everywhere your decision is called a verdict, when you
11 come back issue a verdict. And verdict is pretty simple,
12 what it means is to tell the truth, that's what you do as
13 a juror. The end of this case, ladies and gentlemen, I'm
14 just going to come back and ask you to do one thing, tell
15 the truth. And if you tell the truth, you have done your
16 job. Thank you.

17 THE COURT: Mr. Bax.

18 MR. BAX: May it please the Court, Your Honor.
19 Good morning, ladies and gentlemen, I introduced myself
20 during the jury selection process, but I like to do it
21 again. My name is Arie Bax. I have a small law practice
22 here in town. And I like to introduce you to the people
23 here at this table once again. This is Mrs. Richardson
24 Bax, she is my law partner. She's also an attorney with
25 my firm. She's also my wife, so if she says something, I

1 immediately stop you know why.

2 This is Mr. Knight. This his day. He needs to
3 focus on what we're here for: Mr. Ulbrich our
4 investigator. Thank you for being here. Thank you for
5 taking time. I know some of you may be thinking, well,
6 you now, I got a notice, I didn't really think it was
7 optional. And to so some degree you're right, it's not
8 optional, but that doesn't mean we don't appreciate it
9 because we all know that you have to take time out of your
10 lives to come sit here and listen to this. Something that
11 you had nothing to do with and now it's become part of
12 your lives and it is. It is going to become part of your
13 lives.

14 The judge has instructed you on kind of what to
15 expect and how to deal with it, but you are going to be
16 drawn into this. It is not entertainment. The judge is
17 absolutely correct. These are people's lives. These are
18 events that have happened in our community. A community
19 that I find myself lucky to say is my community as well.
20 So it affects us, but it's something that you're going to
21 find you think about it. The judge has instructed you
22 that you are not to talk about this case until the end and
23 I would re-emphasize that, but we're all people, okay.
24 Let's be honest, it's going to be going through your head
25 and that's fine. You're going to be thinking about this

1 stuff whether you're here, whether you're home having
2 dinner with your family. It's going to be going through
3 your heads and that is fine. What I would emphasize to
4 you is what you see here is what you have to make your
5 decision on. But remember our jury system which I think
6 everybody in this courtroom that works in this system
7 would stand behind as the best system in the world relies
8 on you.

9 The reason it relies on you as the jury, that
10 almighty word jury, is because we did not want to -- the
11 forefathers of our country did not want to place the
12 authority about whether someone's liberty was to be taken
13 away solely in the hands of the governing, solely in the
14 hands of either a judge or a law enforcement agency or
15 prosecutor. They wanted the people to be able to make the
16 decision about somebody's life about whether or not they
17 did something wrong or not, whether or not they did
18 something they deserve to have their liberty taken away
19 for.

20 For that reason, I want to talk to you a little
21 bit about what you expect -- what I think that you can
22 expect to see. What we say in these openings and in fact
23 what we say as attorneys in this closings is not evidence.
24 We are only giving you as attorneys what we think is --
25 what you can expect of the evidence. And at the end,

1 we're going to argue about what we think you should take
2 away from that evidence. So remember that we haven't even
3 got to the meat of this. You're going to see and hear the
4 meat of this.

5 Now, I think that it's very important in these
6 cases and in every case that I've ever tried, which is
7 quite a few. I started my career in Columbia working for
8 the Attorney General's office. I continued on to try
9 cases in Columbia for the next almost ten years before
10 coming down to Beaufort because I love this community.

11 But nothing is a snapshot, ladies and gentlemen,
12 life is not a box. When you take a picture of
13 Thanksgiving, that's not necessarily your whole life, that
14 may be the happy time. I hope it was. It was for me, I
15 had a great Thanksgiving. I hope you guys did too. But
16 that's a snapshot of your life. That's not the whole
17 context of your life. Maybe, that's a good year. Maybe,
18 that's a bad year. We don't know unless we look into the
19 context of your life. That's what I want you to be
20 thinking about. What Solicitor Stone has got up and told
21 you he is going to present to you evidence of what
22 happened on July 26, 2011. But that is a snapshot and we
23 need to put things into context.

24 First of all, there's a larger context. There
25 will be testimony that is shown to you that there is

1 another world, some us may have been a part of that world,
2 some of us may see that world, some of us may have never
3 seen that world. But there is a world in this community
4 and around this country where people are born into
5 abject-bone-breaking poverty and it's here in our
6 communities. And you're going to hear about those
7 communities today and throughout this week. And life in
8 those communities may be very different from your life.
9 So I want you all to listen to it with that in mind in
10 context that when you are born into that community, that
11 you may not have the opportunity that society tells you
12 that you do. You may not agree with the decisions that
13 people make in those communities, but you've seen it. I
14 know you have. You've driven through Poppy Hill, Grays
15 Hill. You've been past the trailer parks. Maybe, you've
16 lived in them. So keep context in your mind as you listen
17 to the testimony. Keep context about the life that some
18 people end up having to live and whether or not they
19 really got to choose that life, but they have to live the
20 live nonetheless because that's what we're doing. We're
21 striving to live the best life that we can.

22 Now, I want to talk to you about what you're
23 going to hear from the State. The State is going to
24 present testimony as Mr. Stone has said in his opening of
25 what happened that day. They are going to present

1 surveillance video, that's going to show you the events of
2 that day. They're going to talk about the fact that
3 Mr. Holmes -- I know him as Travis Sentell Holmes. I've
4 never heard him referred to as Melvin. Maybe, that's a
5 name that they know him by. I know him as Travis Sentell
6 Holmes commonly referred to by a lot people that know him
7 as Travy and he is deceased. And I do regret that. I
8 wish it had not come to that. We don't deny that he's
9 dead.

10 They're going to talk about how they look into
11 it, how they found out who they think did it. And how
12 they went about catching that person and that that person
13 is Mr. Rajerick Knight. You're going to hear testimony
14 from the defense that we don't deny it. So let me tell
15 you right now, we don't deny it. They're going to spend a
16 lot of time arguing about whether or not he's the one that
17 did it and we prove that he did it. Well, we're not
18 denying it, so let's just put that out right now. You're
19 going to hear testimony from the defense that we're not
20 denying it, that Rajerick Knight is the one that you're
21 going to see on that video and that Mr. Rajerick Knight
22 sitting right over here is the one that shot Mr. Holmes.
23 So let's just get that out there, okay.

24 However, as you listen to the State's case, I
25 want you to listen to how much investigation that they put

1 into the why. Mr. Stone has talked to you about the fact
2 that his job is to prove that Mr. Knight committed the
3 actions that resulted in Mr. Holmes death.

4 However, it is not that simple. And the judge
5 will instruct you on the law at the end of this case and I
6 submit to you as you listen to that law at the end of this
7 case, you will see that it's not that simple. And you all
8 know why because in this country, we have always said that
9 the why is important. We need to know why because for you
10 to judge someone's action that is an extremely important
11 factor. You need to know the why. And while you're
12 listening to the State's case, I want you to listen to
13 whether or not they put any effort whatsoever into finding
14 out the why or whether they just assume it was just a
15 another black on black crime and went on with their lives.
16 The why is important, ladies and gentlemen.

17 Now, in our case, in the case that you're going
18 to hear from the defense through cross-examination of the
19 State's witnesses as well as the presentation of our own
20 witnesses, you're going to hear about the why. You are
21 going to hear testimony that Mr. Knight is not what most
22 people would describe as a law abiding citizen. And we
23 don't deny, that's part of that context I talk to you all
24 about. That is the world that he is in. You may not
25 agree with every decision he's made in his life. Frankly,

1 I don't. But we're here to decide if the why affects
2 whether he has committed the crime that he's charged with
3 and I submit to you that it want. You are going to hear
4 testimony, you are going to hear testimony that Travis
5 Sentell Holmes is a very dangerous man. You are going to
6 hear testimony about what he has done and it's going to
7 affect how you look at the why. He was a very dangerous
8 man and you're going to hear about that.

9 You are going to hear testimony that he had
10 turned his sights on Mr. Knight. And you are going to
11 hear what that means in this world. You're going to hear
12 about what it means to be in Travy sights.

13 You're also going to hear that law enforcement
14 knew and law enforcement did not do anything about. And
15 that Mr. Knight and his loved ones that were close to him
16 knew that they were not going to do anything about it.

17 And finally, what's important in your duties and
18 I have said this so many times to so many juries, that I
19 can't recall it, but I always say it because it's
20 important. You're common sense and how you see the world
21 is someone who has lived here and grown up here in this
22 country, in this community is invaluable, that is why the
23 jury system is considered to be the best in the world and
24 that's why I think it is because we all have common sense.
25 And we have all lived in this community. We have all

1 lived in this country. And we all know that just the
2 words that come out of someone's mouth is not the whole
3 picture. You are here to listen to what is not said. You
4 are here to listen to how something is said. You are here
5 and the judge is going to instruct you to judge the
6 credibility and believability.

7 You are here to judge motive about what someone
8 has said, what they have said. You are here to judge
9 whether or not they say something else or what they don't
10 say and what that means. If they avoid a subject, if they
11 don't have a good answer, if they dodge an answer, those
12 are things that you are here to judge, when it comes time
13 to decide what really happened and what it means.

14 So I want everyone of you and I ask this humbly
15 and I can only ask you are all people, you are all free.
16 Your jury service is compulsory, but your decision is not
17 compulsory. You are not required under the law to make a
18 particular decision, that is your job to make your own
19 decision. And I'm going to speak more to that at the end
20 of this trial, but remember while there's deliberations,
21 it is still your purview to make your decision. And I
22 submit to you listen to what you are going to hear. Do
23 you -- I would submit that you are not going to hear
24 testimony here in this trial throughout this week, you are
25 not going to hear any testimony of anything Knight did to

1 Holmes. You are not going to hear any investigation about
2 that and that's important as well.

3 Now, thank you so much for your attention. We
4 are going to get started and it's going to be a long week,
5 but I know that all of you will dedicate all of your
6 attention to it. And like I said, you're going to be
7 thinking about this throughout the week. We ask that you
8 refrain from deliberating until the end, but it's
9 certainly going to be something that is going to impact
10 your life and that's okay because it's an experience and I
11 look forward to presenting our case in front of you.
12 Thank you.

13 MR. STONE: The State calls Master Sergeant
14 Melanie Smith to the stand.

15 THE CLERK: Would you place your left hand on
16 the Bible and raise your right hand for me please. Do you
17 solemnly swear to truthfully answer all questions ask of
18 you by this court so help you God?

19 THE WITNESS: I do.

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

22 THE WITNESS: My name is Melanie Smith, that's
23 S-M-I-T-H.

24 WHEREUPON,

25 Melanie Smith,

1 after first having been duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. STONE:

4 Q And you are a master sergeant; is that correct?

5 A Correct.

6 Q What does that mean exactly?

7 A I hold the highest rank for the dispatch center for
8 the sheriff's department.

9 Q Okay. And how long have you worked in the dispatch
10 center?

11 A I been there 14 years?

12 Q And in your capacity in the dispatch center, what
13 exactly do you do?

14 A I'm liaison for all the departments that we dispatch
15 for.

16 Q Pull that microphone down a little bit to you, I
17 apologize can't really hear you.

18 A Is that good?

19 Q Yes, thank you.

20 A I'm the liaison for all the departments we dispatch
21 for. I'm in charge of that national crime information
22 center for all the police departments we dispatch for. I
23 investigate all the complaints. And my main duty is the
24 record custodian for the 9-1-1 tapes or information.

25 Q All right. Now, the dispatch center does it handle

1 all the 9-1-1 calls coming into Beaufort County?

2 A Correct.

3 Q And when those calls come in, they could come in
4 basically from anyone who dials 9-1-1 and then you
5 dispatch out to law enforcement; is that correct?

6 A Correct.

7 Q Now, in your capacity as -- and I guess, you are in
8 charge of the center; is that fair?

9 A Yes.

10 Q Okay. Now, when these calls come in is a recording
11 made, how are those...

12 A Everything that comes in and out of the center is
13 recorded is on a digital system called N.I.C.E. It's held
14 in a digital storage facility.

15 Q And these records are kept in the ordinary course of
16 business at the dispatch center?

17 A Correct.

18 Q When the calls come in, are they recorded
19 contemporaneously when the calls are coming in?

20 A Yes.

21 Q Okay. Let me show you what has been marked as
22 State's Exhibit 1 ask if you can identify those for me
23 please, ma'am?

24 A Yes, this is a 9-1-1 call that we had received that I
25 made a recording for.

1 Q And you have reviewed that?

2 A Yes.

3 Q Is that a fair and accurate depiction of the
4 recording as made on July 26, 2011?

5 A Yes.

6 MR. STONE: Your Honor, at this time we move
7 State's Exhibit 1 into evidence.

8 THE COURT: Any objection?

9 MR. BAX: I don't believe so, Your Honor.

10 THE COURT: Any objection, Mr. Bax?

11 MR. BAX: Oh, I'm sorry. No, Your Honor.

12 MR. STONE: We move that into evidence and
13 request to publish that to the jury.

14 THE COURT: Yes, sir, so granted.

15 (WHEREUPON, State's Exhibit No. 1 was admitted
16 into evidence.)

17 (WHEREUPON, 9-1-1 call played for the jury.)

18 MR. STONE: Excuse me just a moment, Your Honor.

19 THE COURT: Yes, sir.

20 BY MR. STONE:

21 Q Let me show you what has been marked as State's
22 Exhibit 19. Ask if you can identify that please?

23 A That's the other call.

24 Q That is the second call that you received at 9-1-1?

25 A Yes, sir.

1 Q Was this also kept in the ordinary course of business
2 in your job?

3 A Yes.

4 Q Have you reviewed that and is that a fair and
5 accurate depiction of the second 9-1-1 call you got or the
6 other call that you got?

7 A Yes.

8 MR. STONE: Your Honor, at this time we offer
9 State's Exhibit Number 19 into evidence.

10 THE COURT: Any objection?

11 MR. BAX: No, Your Honor.

12 THE COURT: Without objection State's Exhibit
13 Number 19 admitted into evidence.

14 MR. STONE: Your Honor, we request to publish
15 that to the jury.

16 THE COURT: So granted.

17 (WHEREUPON, State's Exhibit No. 19 was admitted
18 into evidence.)

19 (WHEREUPON, second 9-1-1 call played for the
20 jury.)

21 MR. STONE: No further questions at this time,
22 Your Honor.

23 THE COURT: Cross-examination.

24 MR. BAX: No questions Your Honor.

25 THE COURT: Thank you, ma'am, you may step down.

1 THE CLERK: Would you place your left hand on
2 the Bible and raise your right hand for me please. Do you
3 solemnly swear to truthfully answer all questions asked of
4 you by this court, so help you God?

5 THE WITNESS: I do.

6 THE CLERK: Please be seated, state your name
7 and spell it for the court please.

8 THE WITNESS: Tim Breen B-R-E-E-N.

9 WHEREUPON,

10 Tim Breen,
11 after first having been duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. STONE:

14 Q What do you do, sir?

15 A I'm the district manager for Subway restaurants in
16 Beaufort.

17 Q What has been shown as State's Exhibit, I believe,
18 this is number two, that's up on the monitor. Is that
19 your store? Is that one of your stores?

20 A Yes, sir, that's the store in Cross Creek shopping
21 center.

22 Q And that is -- how far from here?

23 A Probably about two or three miles I say.

24 Q This is in that plaza. What else is in that plaza?

25 A We have Belk and J.C. Penny's and T.J. Max.

1 Q How long been -- you're the district manager?

2 A Yes, sir.

3 Q So you have a number of different Subways?

4 A Correct. We have seven in Beaufort County.

5 Q This particular Subway shop does it have a
6 surveillance system?

7 A It does. All of our restaurants have a surveillance
8 system through -- called D.D.T. that records all the
9 occurrences in our stores throughout the days and night.

10 Q Now, does that run on a continuous basis?

11 A It sure does, yes.

12 Q So it captures -- it captures everything going on in
13 the store as it's happening; is that correct?

14 A Correct.

15 Q Now, is that recorded somewhere or does that...

16 A It is.

17 Q How is it recorded?

18 A It's stored through D.D.T.'s system that we can pull
19 up when needed. We use it for, you know, employee safety
20 store security reasons.

21 Q Let me show you what's been marked as State's Exhibit
22 Number 10 and ask if you've taken a look at that?

23 A I have this is one of our tapes in the store.

24 Q Is that a fair and accurate depiction of the -- and
25 this again is pulled off of the surveillance system that

1 you have in the Subway; is that correct?

2 A That's correct.

3 Q And that surveillance system runs on a regular course
4 of your business; is it not?

5 A Correct.

6 Q And all of these records including the copy of the
7 surveillance is kept in the ordinary course of your
8 business?

9 A It is.

10 Q All right. And is this what has been marked as
11 State's Exhibit Number 10 a copy of the recording of
12 July 26, 2011?

13 A It is.

14 MR. STONE: Your Honor, at this time we move
15 State's Exhibit 10 into evidence as the surveillance on
16 the Subway on that day.

17 THE COURT: Any objection?

18 MR. BAX: Your Honor, I would object it's based
19 on foundation.

20 THE COURT: Hold on. Could you all approach a
21 minute.

22 (WHEREUPON, a bench conference was held in the
23 presence of the jury, but out of the hearing of the
24 jury.)

25 THE COURT: All right. Defense counsels

1 objection is so noted for the record, over defense
2 counsel's objection, State's Exhibit Number 10 is admitted
3 into evidence.

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

6 MR. STONE: Thank you, Your Honor. I need to
7 put the screen up at this time to publish this please.

8 THE COURT: And note for the record that defense
9 counsel's objection was to foundation.

10 MR. BAX: Thank you, Your Honor.

11 THE COURT: Yes, sir.

12 MR. STONE: Your Honor, may we approach briefly?

13 THE COURT: Yes, sir.

14 (WHEREUPON, a bench conference was held in the
15 presence of the jury, but out of the hearing of the
16 jury.)

17 MR. STONE: Can we dim those lights.

18 BY MR. STONE:

19 Q Mr. Breen, let me ask you first of all, the -- what's
20 depicted on the screen and the top left -- and if you like
21 to come down, you welcome to do that, sir.

22 MR. STONE: If it's all right with, Your Honor,
23 want to make sure everybody understand what this is.

24 BY MR. STONE:

25 Q What is listed up at the very top says prep area,

1 what does that mean?

2 A All the stores kind of have areas that they -- we
3 have several cameras in each store and that's just one of
4 the cameras that record.

5 Q So tell me if you don't mind to the right of this
6 screen, what are we looking at? To my right excuse me.

7 A That's the same area.

8 Q What is this area in here?

9 A That's where we were making the sandwiches, that's an
10 employee. The customer would come in and order a sandwich
11 and they kind of go down the sandwich line as the sandwich
12 prep for them.

13 Q And this is the sandwich prep area; is that correct?

14 A Correct. The customer starts at the very end and
15 work their way down. The cashier stand is down -- to the
16 bottom of the screen.

17 Q All right. Cashier stand is down here?

18 A Correct.

19 Q Can we actually see that from here or is there
20 another...

21 A There's another, that camera doesn't really capture
22 the point of sell area. We do have another camera that
23 captures that.

24 Q On both the point and sell area as well as the --
25 this shot here is all of that kept on this same disk?

1 A That is correct.

2 Q And recording at the same time?

3 A Yes, it is.

4 MR. STONE: Your Honor, what I like to do is
5 play this and then play the other angle of the same thing
6 as well both of which are captured on the same disk. Go
7 ahead and play.

8 (WHEREUPON, video being played for the jury.)

9 BY MR. STONE:

10 Q Mr. Breen, this is one of your employees here?

11 A Yes, it is.

12 Q Can you tell me how that is?

13 A Her name is Dee Dee.

14 Q As these customers are moving down the line, when
15 they move out of the screen down here, that's at the point
16 of sell?

17 A Correct.

18 Q That's the cashier stand, right?

19 A That's correct.

20 MR. STONE: If I could get you to play the other
21 angle of that please. This angle if you could just stop
22 it just a moment.

23 BY MR. STONE:

24 Q This angle is referred to at the top left is the
25 dining area; is that correct?

1 A That's correct.

2 Q All right. And this is obviously a view of the
3 dining room, but we're sort of seeing the reverse angle of
4 the serving area; is that correct?

5 A That's right.

6 Q So according to what you were telling us, this is the
7 beginning of the prep area where people order the
8 sandwiches, they move down and then at the very end is the
9 cashier; is that correct?

10 A That's correct.

11 Q And they pay after they've ordered, after they
12 received their sandwiches?

13 A That's right.

14 Q Okay. So these people here are ordering and then at
15 the end once they get to this very end at the right they
16 leave?

17 A That's right.

18 MR. STONE: Go ahead and play that please.

19 (WHEREUPON, video being played for the jury.)

20 MR. STONE: Thank you, Mr. Breen.

21 BY MR. STONE:

22 Q Okay. Let me show you what's been marked as State's
23 Exhibit Number 11 ask if you can identify that photograph
24 please, sir?

25 A That's again the restaurant at Cross Creek the prep

1 area.

2 Q Is that a still photograph from the video clip?

3 A It's to be, yes.

4 Q And is that a fair and accurate depiction of the
5 video as we just saw it?

6 A It is.

7 Q Let me show you State's Exhibit Number 12 is that --
8 could you recognize that as well?

9 A That again that's the dining area of the restaurant
10 at Cross Creek.

11 Q The fact at the very top where it says dining area
12 this is a still shot of the video that we just looked at?

13 A That's right.

14 Q State's Exhibit 13 I can if ask you that as well?

15 A Same dining area of the restaurant.

16 Q State's Exhibit 14?

17 A And that's the prep area of the restaurant.

18 Q And just stop part of this, which is State's Exhibit
19 15 the photograph itself is that also a fair and accurate
20 depiction of the part of the video as we just saw it?

21 A It is.

22 MR. STONE: I'll introduce, Your Honor, State's
23 Exhibit 15 later. But at this time, move State's Exhibit
24 11, 12, 13 and 14 into evidence.

25 THE COURT: Any objection?

1 MR. BAX: Your Honor, same objection as before
2 as to foundation.

3 THE COURT: Subject to defense counsel's prior
4 objection, which is overruled. State's Exhibits 11, 12,
5 13 and 14 are admitted into evidence.

6 (WHEREUPON, State's Exhibits Nos. 11, 12, 13 and
7 14 were admitted into evidence.)

8 MR. STONE: Permission to publish to the jury,
9 Your Honor.

10 THE COURT: Yes, sir.

11 BY MR. STONE:

12 Q And I don't know -- Mr. Breen, can you see this
13 monitor?

14 A I can.

15 Q What is depicted there is State's Exhibit Number 11
16 and I'll show you that for your reference. This is one of
17 your employees here at the bottom; is that correct?

18 A It is.

19 Q The in this -- the lady here with the white what
20 appears to be a green apron type thing. She is a
21 customer; is that correct?

22 A Yeah, a customer.

23 Q And then there's a man here at the very top; is that
24 correct?

25 A Correct.

1 Q This is a shot from the prep area. This is that
2 first view that we looked at; is that correct?

3 A That's right.

4 Q I'm going to show you now what is marked as and been
5 admitted as State's Exhibit 12 and that's on the monitor
6 now as well. This is an earlier photograph. This is also
7 the -- this would be the dining area shot that we just
8 saw; is that correct?

9 A Yes, sir.

10 Q And that's early on in the event; is that correct?

11 MR. BAX: I have to object and approach the
12 bench at this time, Your Honor.

13 (WHEREUPON, a bench conference was held in the
14 presence of the jury, but out of the hearing of the
15 jury.)

16 THE COURT: Objection sustain.

17 Mr. Stone, you may continue.

18 MR. STONE: Sure.

19 BY MR. STONE:

20 Q Let me show you what has been marked as State's
21 Exhibit 13, could you tell us what's depicted in that
22 scene as well?

23 A That is the dining area of the Cross Creek
24 restaurant.

25 Q And then finally I show you State's Exhibit number

1 14. The lady in the very bottom is that one of your
2 employees the center of this video here?

3 A Yes, that's an employee.

4 MR. STONE: I don't have any further questions
5 at this time of this witness, Your Honor.

6 THE COURT: Cross-examination.

7 MR. BAX: Briefly, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. BAX:

10 Q Good morning, Mr. Breen, just a couple of quick
11 questions. July 26 of 2011, where were you during that
12 day? Do you remember if you were ever at this store?

13 A At 6:30, I was not at the store.

14 Q Okay. So you were not at the store when the event
15 that they're asking you about on that video happened?

16 A I was not.

17 Q Were you anywhere near that store?

18 A At that point in time, I lived on Hilton Head.

19 Q Okay. All right. When -- let me ask you this, were
20 you present or did you have anything to do with the
21 extraction of that video from the surveillance system
22 there at that store, sir?

23 A It was done that night. I was not there when they
24 did that. I did help them the next couple days.

25 Q Okay. Were you present so when it came to the

1 extraction of that and handing that to law enforcement,
2 you were not present for that?

3 A I was not.

4 Q Okay. Do you know who was?

5 A I do not know.

6 MR. BAX: No further questions, Your Honor.

7 THE COURT: Any redirect?

8 MR. STONE: No, sir, Your Honor.

9 THE COURT: Thank you, sir. You may step down.

10 (WHEREUPON, the witness leaves the witness
11 stand.)

12 MR. STONE: The State calls --

13 THE COURT: Can the lawyers approach a minute?

14 (WHEREUPON, a bench conference was held in the
15 presence of the jury, but out of the hearing of the
16 jury.)

17 THE COURT: All right. Ladies and gentlemen, I
18 told you yesterday when I -- before we started, we
19 typically run court about an hour and a half to two hours
20 between breaks. We been going about an hour and a half.
21 What I'm going to do right now is I'm going to give you a
22 break this morning, go ahead and give you a break. I will
23 get you back in here as quickly as possible and we'll
24 resume the trial of this case. Do not discuss this case
25 until you are instructed to do so, okay. Everybody remain

1 Sierra Thomas,
2 after first having been duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. STONE:

5 Q Ms. Thomas, where do you live, ma'am?

6 A I live in Walterboro, South Carolina.

7 Q Pardon me?

8 A Walterboro, South Carolina.

9 Q And how long have you lived in Walterboro?

10 A Two months now.

11 Q All right. Did you work at the Subway sandwich shop
12 on July of last year?

13 A Yes.

14 Q Now, what did you do for them?

15 A Made sandwiches.

16 Q I'm sorry.

17 A Made sandwiches and cashier.

18 Q Okay. You have seen the video. You were in the
19 courtroom when the video was shown earlier; is that
20 correct?

21 A Yes, sir.

22 Q All right. Which one of the employees -- there were
23 two employees. Let me show you this State's Exhibit 14
24 and State's Exhibit 11, which employee are you? You
25 pointed to State's Exhibit 11.

1 A Yes, sir.

2 Q And I'm showing State's Exhibit 11 on the board now.

3 This is you -- and this -- that appears to be like a light

4 green shirt; is that correct?

5 A Yes, sir.

6 Q What time did you come to work that day?

7 A It was three.

8 Q Pardon me?

9 A Between three and four.

10 Q And what is your shift normally last to?

11 A Ten o'clock at night.

12 Q Ten o'clock. Let me ask you to bring the microphone

13 just a little bit closer to you. And who was with you

14 that night working?

15 A My assistant manager.

16 Q And who is your assistant manager at the time?

17 A Dee Dee.

18 Q And what is her full name, do you know?

19 A Demetria Green.

20 Q But she goes by Dee Dee?

21 A Yes, sir.

22 Q And she's working along with you; is that correct?

23 A Yes, sir.

24 Q Tell me what you recall of that afternoon?

25 A The suspect came in with a female. I made his

1 sandwiches and also rung him up. Demetria Green she
2 started making Travis sandwiches.

3 Q Okay, let me back up a second. The first man that
4 came in what -- do you recall how many sandwiches he
5 ordered?

6 A I think it was two.

7 Q Two. And he was with a woman when he walked in?

8 A Yes, sir.

9 Q Let me show you what's been -- well, actually what's
10 on the board here is State's Exhibit 11. Is this the
11 individual that you're talking about that ordered the
12 sandwich?

13 A Yes, sir.

14 Q And he came in with a female; is that correct?

15 A Yes, sir.

16 Q I'm now showing you State's Exhibit 12 on the monitor
17 is this the female?

18 A Yes, sir.

19 Q They -- tell me what they're doing at this point?

20 A They're walking out.

21 Q So they've already ordered. These are the sandwiches
22 he has in his hand?

23 A Yes, sir.

24 Q All right. And you take care of him. You take the
25 order and you -- when you work behind the counter, do you

1 handle each customer and stay with him through the whole
2 process or do you switch up?

3 A Sometimes we switch up and then sometimes we stay
4 with them during the whole service.

5 Q So what did you do in this case?

6 A I stick with him through the whole service.

7 Q These two people depicted in State's Exhibit 12; is
8 that correct?

9 A Yes, sir.

10 Q All right. Tell me what happened after this?

11 A Well, Travis walked in and Demetria started -- well,
12 he was waiting in line. And then he was waiting in line,
13 I was -- I was ringing up Rajerick. And they was walking
14 away and she started making Travis sandwiches ---

15 Q Let me stop you, when you say she, who is she?

16 A Demetria.

17 Q She is -- whose sandwiches are she making?

18 A She started making Travis sandwiches.

19 Q All right, Travis is Travis who?

20 A Holmes.

21 Q Travis Holmes he is the victim in this case?

22 A Yes, sir.

23 Q All right. So she's making his sandwiches I'm
24 assuming standing across from him?

25 A Yes, sir.

1 Q Let me show you what has been marked as State's
2 Exhibit 14, is that Travis Holmes in that picture?

3 A Yes, sir.

4 Q All right. And it's now showing on the monitor,
5 which one is he?

6 A Travis in the red shirt.

7 Q Pardon me.

8 A Travis in the red shirt.

9 Q In the red shirt here?

10 A Yes, sir.

11 Q And is this the man and the woman walking out?

12 A Yes, sir.

13 Q That we saw in the other photo?

14 A Yes, sir.

15 Q And then this is Dee Dee here?

16 A Yes, sir.

17 Q All right. Tell me what happens after that Dee Dee
18 make Travis Holmes' sandwich; is that right?

19 A Yes, sir. As she's making Travis sandwiches, I was
20 ringing up the other customers. Then another customer
21 came in. Knight came back in and ask the lady said excuse
22 me, ma'am, and he walked up to Travis. I thought that he
23 was going -- they knew each other, but I guess I was
24 wrong. I heard a gunshot and I heard -- I seen smoke and
25 that's when Travis jumped on top of the counter. And when

1 he jumped on top the counter, I ran the other way. And as
2 Travis jumped back off the counter, I went the other way.

3 Q Where are you standing when you hear the gunshot?

4 A I'm standing beside the front of the cooking counter
5 that's beside the register about to make her sandwich.

6 Q I don't know. I'll show you what's been marked as
7 State's Exhibit 13. I don't know if that will show you if
8 you can see that clear enough see if we can put that back
9 up on the monitor that's number 10. I'll let you look at
10 that. But in this photograph as State's Exhibit what
11 number I just handed you I'm sorry. State's Exhibit 13
12 where is the cookie counter in this?

13 A It's closer to the register.

14 Q And is this the register area back here?

15 A No, it's in the front. She's waiting on me.

16 Q All right. And then it appears that the man you
17 identified earlier is Travis Holmes. Is this the man back
18 here in this far back?

19 A Yes, sir.

20 Q And what is he doing?

21 A He's giving Demetria the money.

22 Q Okay. All right. Tell me -- and then where are you
23 that this point you're here?

24 A Yes, sir.

25 Q All right. Tell me when the shot is fired how far

1 A That's correct, unless we're busy, then I'll have her
2 make the sandwiches and I ring up.

3 Q I see. That day obviously we see in the video there
4 were customers in there. Tell me what the process was or
5 tell me what you did that day?

6 A Well, that day it was a good bit, I'll say not too
7 much customers, so what she did was she handle one as they
8 go and handle straight through. And I did the same thing
9 when I saw another customer and I just handed that person
10 straight through because it wasn't that much customers.

11 Q Now, I think what -- and I want to make sure that I
12 got you. You are State's Exhibit -- what we've shown as
13 State's Exhibit 14; is that correct?

14 A That's correct.

15 Q And what is showing up on the monitor is -- go back
16 one more there we go -- and we're showing State's Exhibit
17 14 up on the monitor. This is you -- is that a dark green
18 shirt?

19 A It's dark green.

20 Q And there's a person in front of you. Do you know
21 that person?

22 A Yes, I do, Travis Holmes.

23 Q Tell me what you recall happening?

24 A Well, as he came up, I fixed his sandwich. I haven't
25 seen him since -- we did went to elementary school

1 together, so I haven't seen him since then. And when I
2 saw him, I remember the face. So I was like, oh, hey, how
3 you doing? And I say I haven't seen you in a long time.
4 What's up? Just like that, me and him just conversating.
5 We kept conversating all the way until me, you know,
6 taking his money. And...

7 Q What kind of mood was he in?

8 A He was excited to see me, look like. He was happy.
9 He was happy.

10 Q Go ahead, I'm sorry.

11 A And as we got to the end, taking his money out, he
12 was just telling me -- so I was like what you doing now?
13 He was like, Well, I'm working, but, you know, I'm waiting
14 on my job to transfer me to Columbia because, you know,
15 I'm trying to start something fresh. I was like that's
16 good, that's real good because it's nothing down here just
17 like that. He was like, yeah. So you have any kids? He
18 was like, yeah, well, I have -- I think he said three, if
19 I'm not mistaken. I think he said three with one on the
20 way something like that. I said, well, that's good
21 congratulations just like that. And as he started to give
22 me his money, that's when -- what's his name?

23 Q This gentleman in the white shirt.

24 A The white shirt. Okay, that's when he came back and
25 I thought they was going to dap like guys do ---

1 Q Let me just stop, you said come back in.

2 A He came back in because he already done left. He
3 already done purchase food and done left. So he came back
4 in and thought they was about to dap.

5 Q What do you mean dap?

6 A Like something guys do like, something like this.
7 I'm not sure how that thing go, but that's a guy thing. I
8 don't do that.

9 Q Sort of like a greeting?

10 A Like a greeting, yeah, like, hey, what's up something
11 like that, but that wasn't the case. I mean, I can't say
12 I actually -- well, I can say that, but I say a piece of
13 the gun, but after I heard it shot, that's when I heard
14 it, that's when I saw a piece of the gun. And I just
15 started to run. Something tell me to move, so I move out
16 the way. And then when I went to the back, something said
17 duck, so I just slid down and I landed on my head and that
18 was the end of that.

19 Q When you heard the gunshot at that point, were you at
20 cash register?

21 A I was at the register. We was like from -- I could
22 touch him, that's how close we were. I could touch
23 Travis.

24 Q So you are standing at the cashier ---

25 A About to take his money.

1 Q Travis is in front of you at this time?

2 A Yes, sir.

3 Q Show me how -- first of all could I get you?

4 THE COURT: Your Honor, I think she keeps her
5 voice up pretty well.

6 MR. STONE: Could I ask her to step down please?

7 THE COURT: Yeah.

8 BY MR. STONE:

9 Q Keep your voice up so the court reporter can hear
10 everything.

11 A Sure.

12 Q You're at the cash register put me where Travis was?

13 A Cause we have a counter right here.

14 Q Okay. Is this correct as we're ---

15 A I could just lean over and touch you.

16 Q Okay. And you are talking at this point?

17 A Uh-huh.

18 Q Has he paid you for the ---

19 A Actually, he was about to hand me the money. And as
20 he about to hand me the money, I guess -- well, I ain't
21 gone say I guess. The guy touched him cause I saw him
22 touching him and he look back. And he looked back with a
23 surprise and he was about to push away. But before he
24 could push away, the gun had went off.

25 Q And so he is facing you as he -- does he turn this

1 way or did you turn this way?

2 A He turn this way.

3 Q I'll tell you what I'll be you. You tell me what he
4 does? What Travis does?

5 A He turns this way.

6 Q He turns to his left?

7 A Right. As he realize, he tries to back off, but
8 before he could, he done got shot.

9 Q And you're literally standing here when the gun goes
10 off?

11 A When the gun go off after I heard that shot, I go.

12 Q Let me show you what's been marked as State's Exhibit
13 16, can you identify that area in the store?

14 A That's exactly where I was standing right there right
15 in front of the register and he was standing like right
16 here right in front of this thing right here.

17 Q And that's a fair and accurate depiction of the
18 register; is that right?

19 A Yes, sir.

20 MR. STONE: Excuse me just a moment, Your Honor.

21 (WHEREUPON, a pause in the proceedings.)

22 BY MR. STONE:

23 Q Let me show you what's marked as State's Exhibit
24 45, is that also a fair and accurate depiction of the
25 scene?

1 Your Honor, may I approach while the witness is
2 coming in?

3 THE CLERK: Would you place your left hand on
4 the Bible and raise your right hand for me please. Do you
5 solemnly swear to truthfully answer all questions asked of
6 you by this court so help you God?

7 THE WITNESS: Yes.

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

10 THE WITNESS: My name is Jeannie Salleme
11 S-A-L-L-E-M-E.

12 THE COURT: Ma'am, that microphone is not
13 working, so I need you to speak loudly, okay.

14 THE WITNESS: Okay.

15 WHEREUPON,

16 Jeannie Salleme,
17 after first having been duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. STONE:

20 Q Would you give the reporter your name one more time
21 so we can hear it?

22 A Jeannie Salleme.

23 Q So it's Salleme?

24 A Salleme.

25 Q Salleme. I apologize I didn't pronounce that

1 correctly before. Ms. Salleme, what do you do, ma'am?

2 A I'm a waitress.

3 Q And where?

4 A At Golden Corral.

5 Q Golden Corral in Beaufort?

6 A Yes.

7 Q How long have you been a waitress at the Golden
8 Corral in Beaufort?

9 A Thirteen years.

10 Q In fact somebody just referred to you as the Golden
11 Corral lady would that be you?

12 A Yeah.

13 Q Let me show you what's been marked and already put
14 into exhibit as State's Exhibit 11 and make sure that --
15 show you that. Is that you in the green apron?

16 A The black apron, yes.

17 Q Okay. That's black, sorry. Color blind, black. And
18 that's showing up on the monitor at this time. This is
19 State's Exhibit Number 11, Your Honor. This is you here
20 at the bottom; is that correct?

21 A Yes.

22 Q All right. Now, were you working at that time or
23 just gotten off work, going to work or what?

24 A I just got off.

25 Q You just gotten offer work?

1 A Uh-huh.

2 Q What was your normal shift back then?

3 A It varies like 11 to three, 11 to five.

4 Q Tell me -- so what were you going to the Subway for?

5 A Well, my son was suppose to go in. It was for him,

6 it was his sandwich. And he didn't want to go in because

7 he wasn't dressed.

8 Q So you went in for him?

9 A Yes.

10 Q What time of day was this?

11 A Can't recall, 4:35.

12 Q Was it dark outside, light outside?

13 A It was still light.

14 Q And you went into the Subway. What time you get off?

15 What time you get off work from Golden Corral?

16 A Like it varies whenever I'm done with my work.

17 Q Tell me what you remember when you went into the

18 Subway?

19 A I just walked in and all of sudden I seen another guy

20 come, my earring flew out and that was it I heard a bang

21 bang.

22 Q When you first got in there, who was the -- were

23 other people in the restaurant when you got there?

24 A When I walked in, it was like two people, yeah.

25 Q Okay. And do you recall if the victim, who has been

1 identified as Travis Holmes, was he in there at the time
2 you got there?

3 A Yes.

4 Q Okay. Is the guy that was wearing the red shirt?

5 A Yes.

6 Q Now, the gentleman over here also in State's Exhibit
7 11 in the white he came in after you got in; is that
8 correct?

9 A Yes.

10 Q You did not see -- did you see him in the store
11 earlier or was this the first time you saw him in the
12 store -- in the Subway?

13 A But when I was coming he was leaving.

14 Q So you saw him go out first?

15 A Yeah.

16 Q Had you ever seen him before?

17 A Yes.

18 Q And where had you seen him?

19 A Golden Corral.

20 Q How many times -- does he work at Golden Corral?

21 A No.

22 Q He was a customer at Golden Corral?

23 A Uh-huh.

24 Q How often had you seen him at Golden Corral?

25 A I see half of Beaufort in Golden Corral.

1 Q Right. But this individual how many times had you
2 seen him?

3 A Like five, like a handful of times.

4 Q Okay. And over what time period?

5 A Over years. I mean...

6 Q How would you describe how he looked?

7 A A tall guy with dreads.

8 Q When you saw him that day, did you -- when you walked
9 in as you're walking into Subway, did you recognize him as
10 that person that you have seen in the Golden Corral
11 before?

12 A Yes.

13 Q And then this is you ordering I'm assuming the
14 sandwich here; is that correct?

15 A Yes.

16 Q So he comes back in, did you see him again?

17 A Yes.

18 Q When he came back in?

19 A Uh-huh.

20 Q Tell me what he does when he comes back in?

21 A He just goes up to the other gentleman and then I
22 heard a bang and that was it.

23 Q Did you hear any words exchange, any argument
24 anything like that?

25 A No.

1 Q Did you see any fight anything like that?

2 A No.

3 Q How far away were you from the gun when it went off?

4 A Like a couple inches.

5 Q All right. If I am the guy in the white shirt that
6 you had seen before, how close was he to you when the gun
7 went off?

8 A Closer.

9 Q Closer than this?

10 A Uh-huh.

11 Q How about now?

12 A A little bit closer.

13 Q A little bit closer than this. We are probably what
14 a foot and a half away from each other now, but he was
15 closer than that?

16 A Yes.

17 Q Now, what did you immediately do after the gun went
18 off?

19 A What did I do?

20 Q Yes.

21 A I just stood there.

22 Q Did at some point in time you talk to police about
23 what you saw?

24 A Yes, right after that we ran in the back room.

25 Q So you actually went back into the Subway into the

1 back room after that?

2 A I never left Subway. Me and the girls went in the
3 back room.

4 Q And the girls were the two ladies that just
5 testified?

6 A Yes.

7 Q All right. At some point did you talk to law
8 enforcement about what you had seen?

9 A Yes, they wouldn't let us leave.

10 Q Pardon me.

11 A The law officers wouldn't let us leave Subway.

12 Q And when you talk to law enforcement, did you tell
13 law enforcement whether or not you could identify the
14 shooter day?

15 A Yes.

16 Q Okay. And what did you tell law enforcement? What
17 did you tell them?

18 A I told them what I seen, but I didn't see no gun
19 though.

20 Q Okay. But could you identify the person in the white
21 shirt with the hat?

22 A Yes.

23 Q Let me show you what's been marked as State's Exhibit
24 17 first ask if you could identify this? Can you identify
25 that?

1 A Yes.

2 Q Okay. And is this the photo lineup that was shown to
3 you by law enforcement?

4 A Yes.

5 Q All right. When you told law enforcement, did you --
6 is this the same officer I'm assuming is this the same
7 officer that showed you the line up is the one you talk to
8 about this?

9 A Yes.

10 Q Speak up a little bit.

11 A Yes.

12 Q How did you describe the person to him?

13 A A tall guy with dreads with a tattoo.

14 Q What kind of tattoo?

15 A I don't know.

16 Q Where was the tattoo?

17 A On his neck.

18 Q Did the law enforcement -- did the law enforcement
19 officer ask you if you could identify this person if shown
20 a group of photographs?

21 A Yes.

22 Q And did you tell him if you could or not?

23 A Yes.

24 Q Did he at this point show you State's Exhibit 17,
25 which I've already shown you?

1 A Yes.

2 Q And when he showed you this, did he tell you which
3 one of these individuals depict or anything like that?

4 A No.

5 Q Did you choose someone out of this line up State's
6 Exhibit 17?

7 A Yes.

8 MR. STONE: Your Honor, at this time we move
9 State's Exhibit 17 into evidence.

10 MR. BAX: Subject to prior objections in
11 pre-trial.

12 THE COURT: Overruled. So admitted.

13 (WHEREUPON, State's Exhibit No. 17 was admitted
14 into evidence.)

15 MR. STONE: Your Honor, permission to publish
16 State's Exhibit 17.

17 THE COURT: Yes, sir.

18 BY MR. STONE:

19 Q And I will hand this exhibit to you, so that you
20 could get a closer look of it. Did you choose an
21 individual out of that **lineup**?

22 A Yes.

23 Q And on State's Exhibit 17 appears that there is a
24 signature at the bottom of one of the photographs; is that
25 correct?

1 A Yes.

2 Q And who's signature is that?

3 A That's mine.

4 Q And you choose the individual picture is number two;
5 is that correct?

6 A Yes.

7 Q Do you see the individual in that photograph and the
8 individual you saw in that Subway that day in the
9 courtroom today?

10 A Yes.

11 Q Can you point him out for me please?

12 A Yes.

13 Q Can you point to him?

14 A Yes.

15 Q One of these individuals here?

16 A Yes.

17 Q Which one?

18 A The third one.

19 Q This individual here?

20 THE COURT: I need a verbal ---

21 A Yes.

22 THE COURT: Thank you.

23 MR. STONE: Your Honor, let the record reflect
24 she has identified the defendant Rajerick Knight.

25 THE COURT: So noted for the record.

1 you heard the shot?

2 A No.

3 Q Okay. And do you recall if Mr. Knight ever said
4 excuse me as he pass by you? Do you recall hearing that
5 at all?

6 A No.

7 Q Okay.

8 MR. BAX: Moments indulgence, Your Honor.

9 THE COURT: Yes, sir.

10 (WHEREUPON, a pause in the proceedings.)

11 MR. BAX: No further questions. Thank you,
12 ma'am.

13 THE COURT: Any redirect?

14 MR. STONE: Nothing else at this time, Your
15 Honor.

16 THE COURT: Ma'am, you may step down. Thank
17 you.

18 (WHEREUPON, the witness leaves the witness
19 stand.)

20 MR. STONE: State calls Shiecarra Smalls to the
21 stand.

22 THE CLERK: Place your left hand on the Bible
23 and raise your right hand for me please. Do you solemnly
24 swear to truthfully answer all questions asked of you by
25 this court, so help you God?

1 THE WITNESS: I do.

2 THE CLERK: Please be seated, state your name
3 and spell it for the court please.

4 THE WITNESS: Shiecarra Smalls S-M-A-L-L-S.

5 WHEREUPON,

6 Shiecarra Smalls,
7 after first having been duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. STONE:

10 Q Miss Smalls, where do you live, ma'am?

11 A In Port Royal.

12 Q In Port Royal?

13 A Yes.

14 Q In Beaufort County?

15 A Yes, in Beaufort County.

16 Q And how long have you lived in Port Royal?

17 A For like a year.

18 Q I'm going to have to get you to speak up the
19 microphones not working.

20 A A year.

21 Q Do you know Rajerick Knight?

22 A Uh-huh, yes, sir.

23 Q How long have you known?

24 A Since, I was a little girl.

25 Q Do you know Travis Holmes?

1 A Uh-huh.

2 Q And how long have you known Travis Holmes?

3 A Like that's my family family, so for quite a while.

4 Q On June the 26th of 2011, did you see Rajerick
5 Knight?

6 A Uh-huh.

7 THE COURT: Hold on a minute. When he ask you a
8 question that requires a yes or no, give me yes or no
9 answer please, ma'am.

10 A Yes.

11 THE COURT: Thank you.

12 BY MR. STONE:

13 Q Tell me how that came about?

14 A How what came about?

15 Q You seeing Rajerick Knight?

16 A He came to pick me up from work.

17 Q Where do you work or where at that time did you work?

18 A I was working at Dollar Tree.

19 Q And the Dollar Tree is -- where is that?

20 A Right next to Wal-Mart.

21 Q Is that also in that Cross Creek Plaza?

22 A Yes.

23 Q All right. Somewhere in State's Exhibit -- show you
24 what's been marked as State's Number 4 and Number 5 could
25 you tell us where do you -- where is the Dollar Tree in

1 that?

2 A It's not really in this part. It's over the next
3 side it's just Wal-Mart and Dollar Tree.

4 Q Okay. So it's down with the Wal-Mart?

5 A Yeah.

6 Q I see, I see. Does -- and how far is that away from
7 the Subway?

8 A Probably like a five minute walk away.

9 Q So Rajerick Knight came to pick you up; is that
10 correct?

11 A Uh-huh, yes, sir.

12 Q All right. And where did he pick you up in?

13 A In his car.

14 Q Let me show you what's been marked as State's Exhibit
15 6, 7 and 8, is that Mr. Knight's car?

16 A Yes.

17 Q And this is the car he picked you up in that day?

18 A Yes.

19 Q About what time did he pick you up?

20 A I'm thinking it was like around five, around like
21 five something maybe.

22 Q In the afternoon?

23 A Uh-huh, yeah.

24 Q And were you getting off from work about five?

25 A A little before then.

1 Q And what were you two going to do?

2 A Well, he was just coming to pick me up and we were
3 going to go over there to Subway.

4 Q To the Subway?

5 A Uh-huh.

6 Q For what?

7 A To get some subs.

8 Q Was it for you?

9 A No.

10 Q Who is it for?

11 A Him and his girl.

12 Q Him and his girlfriend?

13 A Uh-huh.

14 THE COURT: Yes or no?

15 A Yes, sir.

16 Q What is his girlfriend's name?

17 A Peanut.

18 Q Peanut?

19 A Uh-huh.

20 Q When you go -- do you actually go with Rajerick --
21 does he pick you up in the car and then drive you over or
22 did you guys walk over?

23 A We drove over.

24 Q You drove over in the car. All right. Tell me what
25 happens when you get there?

1 A When we arrive at Subway?

2 Q Yes.

3 A We went inside Subway. I sat down at first. And he
4 was up there ordering or whatever. He offered me if I
5 wanted something, so I told him, yeah. I came up and got
6 my sub. After that, Travis he walked in the door.

7 Q And that's Travis Holmes?

8 A Uh-huh, yes, sir.

9 Q All right.

10 A And as we were leaving out, I told him what's up and
11 he spoke back and we left out and went to the car.

12 Q All right. Now, when Travis Holmes walks in, is
13 there any words exchange, any argument anything like that
14 between Travis Holmes and Rajerick Knight?

15 A No.

16 Q Okay. And you speak to Travis Holmes; is that
17 correct?

18 A Yes.

19 Q And then you and Rajerick Knight leave the Subway?

20 A Yes, sir.

21 Q What is Travis Holmes doing when you leave?

22 A I guess he was ordering his subs.

23 Q So he was at the counter when you walked out?

24 A Uh-huh, yes, sir.

25 Q Okay. What happened after that?

1 A We went to the car and I sat in the car and he was

2 ---

3 Q He being who is this?

4 A Rajerick.

5 Q Rajerick Knight?

6 A Yes. He was standing in like the door way of the car
7 just standing there and he went back in as I sat in the
8 car.

9 Q Did you ask him anything like why you going back in
10 anything like that?

11 A Yes.

12 Q What did you say?

13 A I asked him if he had -- if it was something going on
14 and he said that, yeah, he was going back in there.

15 Q Okay.

16 A And I sat in the car, but in like a little while
17 after that, he came back out and he got in a car and we
18 left.

19 Q Now, when he comes back out, is he walking, is he
20 running, what is he doing?

21 A He wasn't running. He was just more less like -- he
22 wasn't really running.

23 Q Okay, that's fine.

24 A He was like walking a little.

25 Q Okay. Then you guys left the parking left?

1 A Uh-huh, yes.

2 Q What did you see after that? Did you ever see Travis
3 Holmes again?

4 A Yes.

5 Q Where did you see Travis Holmes again?

6 A He was running back out and he dropped on the ground.

7 Q And where did he drop?

8 A Right out the door of Subway.

9 Q How did you see that?

10 A Because I was ---

11 Q Where were you when you saw that?

12 A In the car.

13 Q Did you ask Rajerick anything about that?

14 A Yes, as we were getting like -- as we got away, you
15 know, after riding for a little while and he was on the
16 phone and he told somebody he shot him and that's how I
17 found out.

18 Q When he said that was he excited?

19 A No.

20 Q Let me show you what's been marked as State's Exhibit
21 15 ask if you recognize that please?

22 A Yes, I do.

23 Q Is that a fair and accurate depiction of you and
24 Rajerick Knight in the Subway that day?

25 A Yes.

1 Q Now, the writing at the bottom of that is that
2 writing that you made?

3 A Yes.

4 Q And the date on it appears to be 7-27-11, is that
5 when you made that?

6 A Yes.

7 Q And is that your signature?

8 A Yes.

9 MR. STONE: Your Honor, at this time we move
10 State's Exhibit 15 into evidence.

11 THE COURT: Any objection?

12 MR. BAX: No objection, Your Honor.

13 THE COURT: Without objection State's Exhibit 15
14 admitted into evidence.

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

17 BY MR. STONE:

18 Q All right. I'll hand this back to you, so you can
19 see it. I know you're at a different angle. State's
20 Exhibit 15 which is on the monitor now. First of all,
21 this writing at the bottom what does that say?

22 A My name, his name.

23 Q And that Shiecarra Smalls that is your writing there?

24 A Yeah, Shiecarra Smalls.

25 Q And the next name is?

- 1 A Rajerick Knight.
- 2 Q And this is your signature at the bottom?
- 3 A Yes.
- 4 Q And is that a photograph of you and Rajerick walking
5 out of the Subway prior to the shooting?
- 6 A Yes.
- 7 Q Let me show you what's been marked as State's Exhibit
8 Number 27. Do you recognize that?
- 9 A Uh-huh.
- 10 Q All right, don't say uh-huh say yes.
- 11 A Yes.
- 12 Q And is that your signature on that as well?
- 13 A Yes.
- 14 Q And that is dated also 7-27-11; is that correct?
- 15 A Yes.
- 16 Q All right. This is a photograph shown to you by law
17 enforcement that you signed?
- 18 A Yes.
- 19 Q And who is depicted in that photograph?
- 20 A Rajerick.
- 21 Q Pardon me?
- 22 A Rajerick.
- 23 Q Rajerick Knight?
- 24 A Uh-huh, yes.
- 25 MR. STONE: Your Honor, at this time we move

1 State's Exhibit 27 into evidence.

2 MR. BAX: No objection, Your Honor.

3 THE COURT: Without objection State's Exhibit 27
4 admitted into evidence.

5 (WHEREUPON, State's Exhibit No. 27 was admitted
6 into evidence.)

7 BY MR. STONE:

8 Q Again showing on the board State's Exhibit 27 that is
9 your signature there?

10 A Yes.

11 Q And identifying the person that was with you that day
12 as Rajerick Knight; is that correct?

13 A Yes.

14 Q Do you see Rajerick Knight in the courtroom?

15 A Yes.

16 Q Okay. Can you pick him out please? This individual
17 in the coat with a turtle neck?

18 A Yes.

19 Q Is that correct?

20 THE COURT: Yes or no?

21 A Yes.

22 THE COURT: Thank you.

23 MR. STONE: No further questions at this time,
24 Your Honor.

25 THE COURT: Cross-examination.

1 MR. BAX: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. BAX:

4 Q Good afternoon, Miss Smalls.

5 A Hello.

6 Q I just have some question for you as follow up to
7 what you told us so far. Now, you've testified that on
8 this day Mr. Knight picked you up from work?

9 A Uh-huh, yes, sir.

10 Q Now, I believe you testified that where you working
11 at the time I believe you said that was the Dollar Tree;
12 is that right?

13 A Yes.

14 Q Okay. And that's in the same Cross Creek Plaza?

15 A Yes.

16 Q Is it over closer to Wal-Mart?

17 A Yes, it's right next door to Wal-Mart, it's attached.

18 Q All right. After you got off of work, did he pick
19 you up straight from your work or did you go anywhere
20 after work before he got there?

21 A I went to Wal-Mart.

22 Q You went to Wal-mart?

23 A Yeah.

24 Q Okay. What were you doing at Wal-Mart?

25 A Getting my baby some things.

1 Q Miss Smalls, how many kids do you have?

2 A I have two now.

3 Q Okay.

4 A At that time I just had one.

5 Q Okay. So you've had a child since then?

6 A Yes, sir.

7 Q Is that boy a or a girl?

8 A A boy.

9 Q And when was the boy born?

10 A October 27th.

11 Q Of this year 2012?

12 A Yes, 2012.

13 Q Okay. All right. Now, was Mr. Knight originally
14 going to pick you up from work or was that just something
15 that you called about after the fact?

16 A Yeah, something I called about after the fact.

17 Q Okay. So had he given you rides before?

18 A Yes.

19 Q Okay. Now, do you know where -- you stated that you
20 knew his girlfriend; is that right?

21 A I knew of her.

22 Q You knew of her.

23 A I don't know her.

24 Q Okay. Had you ever been to Mr. Knight's trailer that
25 he had at the time, his house?

1 A Yes, I have been.

2 Q Was she there at that time?

3 A Yeah.

4 Q Okay. So you visited their home and they were both
5 there at that time?

6 A Uh-huh, yes.

7 Q Now, I believe in your testimony to Mr. Stone, you
8 stated something along the line to the fact that Travis
9 maybe related to you or something like that; is that
10 correct?

11 A No, not related to me.

12 Q But you knew him for a while as well; correct?

13 A Yes.

14 Q Okay. Now, what did you know him -- how did you
15 refer to him, what would you call him when you came up to
16 him?

17 A Travy.

18 Q Travy?

19 A Yes.

20 Q Okay. Have you ever known him as Melvin?

21 A No.

22 Q Okay. And you know his name to be Travis Holmes,
23 right?

24 A Yes.

25 Q Okay. Now, you testified that you just said hello as

1 you guys were walking out, right?

2 A Yes.

3 Q Was there any other words exchanged?

4 A No.

5 Q Okay. Did he say anything to anybody else that you
6 heard?

7 A No.

8 Q Okay. All right. Now, you've also testified that
9 you went to the car with Mr. Knight, his car?

10 A Yes.

11 Q Did Mr. Rajerick Knight get anything out of the car
12 when you were sitting there before he went back in the
13 store?

14 A No.

15 Q He didn't go in the car and get a gun or anything?

16 A No.

17 Q Okay. So did you ever see a gun?

18 A No.

19 Q So it's your testimony you never saw a gun?

20 A No.

21 Q Now, you also testified that when he came back that
22 he was not running, he was walking Mr. Knight?

23 A Right.

24 Q Is that right?

25 A Uh-huh, yes.

1 Q Now, you testified that you saw Travis come out of
2 the store behind him or Travy came out of the store; is
3 that right?

4 A Yes.

5 Q Okay. Was Travy or Travis was he running?

6 A Yes.

7 Q Yes, okay. Were you afraid at that point?

8 A Yes, I was.

9 Q Did you ever state to law enforcement you were afraid
10 that Travis was shooting and that he might be shooting up
11 the car in a few minutes?

12 A Yeah, I thought they were having like a -- something
13 going back and forth and I thought may be he was running
14 out after him, so I was afraid that I was about to be
15 probably having to dodge bullets.

16 Q And why did you think that Travis was going to come
17 out and be shooting? Why would you think that?

18 A I mean, just by hearsay in the streets. I mean, and
19 just know that he was going back in there I knew be
20 something, but I didn't think it would be that.

21 Q Okay. So based on what you knew about Travis from
22 the community, you were concerned that he was going to be
23 shooting at the vehicle as he came out?

24 A Yes.

25 Q Now, you also testified in your -- when you were

1 being questioned by the Solicitor, that once you were in
2 the vehicle that Mr. Knight told someone on the phone that
3 he had shot somebody; is that correct?

4 A Yes.

5 Q Okay. So he didn't tell you that?

6 A No. He was on the phone.

7 Q Now, originally did you tell law enforcement that he
8 told you that?

9 A Yes, I have.

10 Q Okay. So your memory today is is that he told
11 someone else that and he you didn't tell you that?

12 A Yes.

13 Q And why do you remember it differently now than you
14 did then?

15 A Well, because at first I was just nervous. I was
16 like -- I was just like -- I can't even put the word in
17 for it, but I know it wasn't directed to me after I
18 realize that it wasn't directed to me I heard him over the
19 phone because he wasn't saying anything really too much to
20 me.

21 Q Now, once you realized that that was the more
22 accurate memory, did you contact law enforcement and tell
23 them I remembered it incorrectly when I gave my statement?

24 A No, I didn't say that, but I stated several times.

25 Q Stated what several times?

1 A That he was on the phone and said that.

2 Q Now, when did you meet with law enforcement and tell
3 them your story?

4 A The first time I met with them?

5 Q Yes, ma'am.

6 A It was the next day. My father took me.

7 Q Your father took you?

8 A Yes.

9 Q Where did he took you to?

10 A I think it was in Bluffton if I'm not mistaken.

11 Q Okay. Was it the police department?

12 A I'm assuming that's what it was. I don't even know
13 what it was.

14 Q Would it be correct it was a law office, that it was
15 an attorney's office?

16 A Could have been, yes, I think P.J. Tanner wife.

17 Q P.J. Tanner's wife?

18 A Yes.

19 Q What was her involvement?

20 A She was there. She was the person that I had spoken
21 with.

22 Q And you spoke with her before law enforcement?

23 A Uh-huh.

24 Q And she was in private practice as an attorney, do
25 you know that?

1 A No, no.

2 Q What did she state to you that her role was? What
3 did she say to you that she was talking to you about and
4 what she was there to do for you?

5 A She was just there basically on -- my dad knows them
6 pretty well. And she was just telling me that the guys
7 who were coming were going to talk to me. They were going
8 talk to me about it.

9 Q Now, were you ever charged with any crimes as a
10 result of this incident, Miss Smalls?

11 A No.

12 Q Okay. Let me ask you this, do you know Antwan
13 Robinson?

14 A Antwan Robinson?

15 Q Do you know an Antwan Robinson?

16 A No.

17 MR. BAX: Moment beg the Court's indulgence.

18 THE COURT: Yes, sir.

19 (WHEREUPON, a pause in the proceedings.)

20 MR. BAX: Your Honor, I have no further
21 questions.

22 THE COURT: Any redirect?

23 MR. STONE: No, sir, I do not have any further
24 questions of this witness.

25 MR. BAX: Your Honor, I would move for the

1 defense to keep her under notice of recall would like the
2 ability to recall Miss Smalls at a later time if
3 necessary.

4 MR. STONE: I don't have any objection to that,
5 Your Honor.

6 THE COURT: So granted.

7 MR. STONE: Just to clarify for the record, Your
8 Honor, I made a mistake in opening in referring to the
9 victim as Melvin instead of Travis, that's where the name
10 confusion comes up.

11 THE COURT: Ma'am, you may step down. Thank
12 you.

13 (WHEREUPON, the witness leaves the witness
14 stand.)

15 THE COURT: Is she under subpoena?

16 MR. STONE: She is, Your Honor, but we can
17 certainly keep her.

18 THE COURT: She is not released under her
19 subpoena. Everybody on the jury, okay? Anybody need a
20 break?

21 Call your next witness please.

22 MR. THORNTON: Just moment, Your Honor, briefly.
23 We have a witness James Powell.

24 THE CLERK: Would you place your left hand on
25 the Bible and raise your right hand for me please. Do you

1 Dee and Sierra.

2 Q Those the two young ladies that came up and testified
3 earlier?

4 A Yes.

5 Q All right, sir, go ahead.

6 A Basically, I was in there bugging them about a hotdog
7 they had got from Sonics. And they got a little busy and
8 so after that, I stepped out and I just stood in front of
9 the store New Yorkers because I be over at New Yorkers all
10 the time.

11 Q Is New Yorkers a store next to or near the Subway?

12 A Right next door.

13 Q All right, sir, go ahead.

14 A Me and Staff Sergeant Carter and a young lady from
15 Shoe Department we all were just standing in front of the
16 store just talking. And after a while, we heard like a
17 pow sound. And after we heard the sound, we didn't think
18 nothing of it because we saw a little girl down the breeze
19 way was like hitting on something so we just kept on
20 talking.

21 Q What happened after you heard the sound and went back
22 to talking?

23 A We just kept on talking and then something just told
24 me to look over in Subway. And I just peeped over and I
25 saw a guy he was coming out -- he was shot. And I could

1 see him bleeding and everything.

2 Q Did he make it very far out of the Subway?

3 A Yeah, he made it -- actually, he walked right up to
4 me and he gently kneeled down and laid on the concrete.
5 And at that time, we was so mixed, we was trying to call
6 9-1-1 and find a phone and all that stuff.

7 Q All right. Mr. Powell, let me ask you this, you said
8 on the concrete are we talking about the sidewalk outside
9 the Subway?

10 A Between New Yorker and Subway.

11 Q Were you in here, sir, when the video was played that
12 was introduced into evidence? Were you able to see the
13 videotape?

14 A No.

15 Q Well, let me ask you this, when I asked you earlier
16 how far did he make it out, did he make it all the way out
17 to the parking lot or did he collapse on the sidewalk?

18 A On the sidewalk.

19 Q Mr. Powell, did you see any cars leaving the area in
20 a hurry?

21 A No.

22 Q All right. I'm going to ask you was that your voice
23 that we heard on 9-1-1 call?

24 A Yes.

25 Q And were you relaying information to 9-1-1?

1 A Yes.

2 Q And what was that information did you tell them about
3 a car that had left the scene?

4 A Right. Actually, I was still dealing with the guy
5 that was shot looking at him. And someone was relaying
6 the relation information to me about the car that was
7 pulling off and giving me some of the license plate --
8 some of the license plate number and so I was just relying
9 that to the lady on the other end of the phone.

10 Q All right. And so you were telling dispatch that; is
11 that correct?

12 A Right.

13 Q Do you remember the woman who was or the person who
14 was relaying the information to you?

15 A I think it was the young lady that was from Shoe
16 Department. She was looking at -- well, we was all trying
17 to see what was going on, but I was concentrating more on
18 the guy.

19 Q All right. And that was your voice we heard, you're
20 the Mr. Powell from the 9-1-1 call?

21 A Yes.

22 Q All right. And were you administering whatever aid
23 or helping to administer the aid to the victim in this
24 case Mr. Holmes?

25 A Yes.

1 Q All right.

2 MR. THORNTON: Your Honor, court's indulgence
3 for one moment.

4 THE COURT: Yes, sir.

5 (WHEREUPON, a pause in the proceedings.)

6 BY MR. THORNTON:

7 Q Mr. Powell, let me ask you something. I want to go
8 back a little bit. If you could go into a little bit more
9 detail when you see the man come out of the Subway, you
10 said he walked close to you on the sidewalk and then kind
11 of -- I don't want to put words in your mouth, but
12 collapsed onto the sidewalk. Tell me what happened?

13 A Well, like I said when I looked over -- I looked
14 through the window a glass and I saw him coming out toward
15 the door and...

16 Q Describe how did he look when he was coming out? Was
17 he doing anything in particular?

18 A No, he was like staggering like and trying, I guess,
19 like say something but...

20 Q Was he able to communicate with you?

21 A No.

22 Q Why was that, sir?

23 A He was bleeding too much.

24 Q All right. Go ahead.

25 A And then he came out of the door and he turn and he

1 walk right to me. I guess, I was the only person at that
2 time he saw and he walk right to me. And he got right to
3 me and he like I said kneel down gently laid down on the
4 sidewalk.

5 Q All right. And did you notice what condition he was
6 in? You said he was bleeding. Could you tell where he
7 was bleeding from?

8 A Yeah, his chest.

9 Q Okay. And tell me about what you did? What kinds of
10 things that you did? We heard some of it on the 9-1-1
11 tape? What did you do after that?

12 A Actually, we start moving around, told my partner
13 Carter to go and get a T-shirt and press it against the
14 wound. And we tilt him up a little bit and he held the
15 shirt on him. And I just stood there with him the whole
16 time until E.M.S. got there.

17 Q All right. Were they holding pressure on the gunshot
18 wound?

19 A Right.

20 Q And was it still bleeding?

21 A Yes.

22 MR. STONE: Your Honor, the Court's indulgence
23 for one moment?

24 THE COURT: Yes, sir.

25 (WHEREUPON, a pause in the proceedings.)

1 BY MR. THORNTON:

2 Q Mr. Powell, I'm going to hand you what's been
3 introduced as evidence as State's Exhibit Number 2. Do
4 you see anything at the very bottom of that picture? Can
5 you tell us what's in the bottom of that picture?

6 A I see someone feet.

7 Q All right. Is that about where Mr. Holmes, the
8 victim, in this case fell?

9 A Yes.

10 Q And is that where you attended to his wounds?

11 A Right.

12 Q Mr. Powell, is it fair to say you were the first
13 person that he would have come in contact with coming out
14 of the store?

15 A Coming out of the door?

16 Q Out of the Subway?

17 A Yes, out the door of the Subway, he turn right to me.

18 Q Yes, sir. And you indicated that you were with him
19 that entire time until law enforcement got there?

20 A Yes.

21 Q All right. Did you see a gun on him?

22 A No.

23 Q Did you ever see a gun next to him?

24 A No.

25 MR. THORNTON: I don't have any further

1 allow you to exit, come in and out of the courtroom while
2 witnesses are on the stand. If you want to exit between
3 witnesses or come in between witnesses, I'll allow that,
4 but I'm not going to allow you to exit while witnesses are
5 on the stand, come back in while witnesses on the stand.

6 Call your next witness please.

7 MR. THORNTON: Tanya Terry.

8 THE CLERK: Place your left hand on the Bible
9 and raise your right hand for me please. Do you solemnly
10 swear to truthfully answer all questions ask of you by
11 this court so help you God?

12 THE WITNESS: Yes.

13 THE CLERK: Please be seated and state your name
14 and spell it for the court please.

15 THE WITNESS: Tanya Terry T-E-R-R-Y.

16 WHEREUPON,

17 Tanya Terry,

18 after first having been duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. THORNTON:

21 Q Ms. Terry, where do you work?

22 A Shoe Department.

23 Q The Shoe Department. And did you work there on July
24 specifically 26th of 2011?

25 A Yes.

1 Q Were you in here just a minute ago when Mr. Powell
2 was testifying?

3 A Yes.

4 Q Are you the person he was talking about to?

5 A Yes.

6 Q Ma'am, what do you remember from July the 26th of
7 2011?

8 A I was going to Subway, but I didn't go into Subway
9 because I saw Mr. Powell and Carter. And we just all
10 standing and we started talking and everything. We was
11 just talking and we heard a noise, but it was this little
12 child she was playing down on the sidewalk with her mom,
13 so we thought that was it. So we just went back to start
14 talking and then not too long after that that's when a guy
15 came out of Subway. And I was standing actually with my
16 back to Subway. And when he came out, Mr. Powell he went
17 like in between me and the window to peep into Subway and
18 that's when a guy was coming out. And I turned around and
19 glanced and I jumped back.

20 Q All right. Let me ask you something just so I'm
21 clear, you saw someone come out of Subway and then Mr.
22 Powell walked over there and you saw that Mr. Holmes had
23 collapsed on the sidewalk come out; is that correct?

24 A Yes, sir.

25 Q The first guy that came out how was -- how did he

1 come out of the store did you see him?

2 A Yeah, he came out and he was walking not like at a
3 slow pace, but he was walking kind of fast. But he just
4 went in his car, jumped in his car.

5 Q Was he yelling or anything or screaming or anything
6 like that?

7 A We didn't hear the yelling and screaming actually
8 until after he jumped in his car and as he was backing up,
9 that's when you started hearing everybody yelling and
10 screaming at Subway.

11 Q Did you hear him screaming or people in the Subway?

12 A People in Subway.

13 Q All right. And did you see what of kind car he got
14 into?

15 A Yes.

16 Q All right. I'm going to hand you, ma'am, what's
17 already been marked and introduced as evidence as State's
18 Exhibits 6, 7 and 8 and ask you if that's the car that you
19 saw him get into?

20 A I saw it from the back.

21 Q All right. Well, let me specifically do State's
22 Exhibit Number 7 from the back?

23 A Yes.

24 Q All right. Is that the car he got into?

25 A Yes.

1 Q All right. Now, I'm going to ask you are you the
2 person who was relaying the information to Mr. Powell who
3 was talking to the dispatcher that we heard on the tape?

4 A Yes.

5 Q And are you the one who gave them the tag?

6 A Yes.

7 Q Do you remember the tag you gave them? What the
8 numbers were?

9 A No.

10 Q Has it been a long time?

11 A Yes.

12 Q What happened after if the -- what happened after
13 they relayed the information to dispatch, what did you do
14 then?

15 A After we relayed the messages, we stood right there
16 with the guy that was on the ground.

17 Q Okay. And what were you doing at that time?

18 A Just relaying the messages from Carter, the one that
19 was holding the pressure on the wound, to Mr. Powell.

20 Q And did you see where he was holding pressure at?

21 A Yes, on his chest.

22 Q Okay. Now, we heard Mr. Powell talk earlier about
23 this occurred on a sidewalk. Can you tell me about since
24 you work there where -- is New Yorker right next to the
25 Subway?

1 the Bible and raise your right hand for me please, sir.
2 Do you solemnly swear to truthfully answer all questions
3 asked of you by this court so help you God?

4 THE WITNESS: Yes, ma'am.

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

7 THE WITNESS: Robert Carson C-A-R-S-O-N.

8 WHEREUPON,

9 Robert Carson,
10 after first having been duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. THORNTON:

13 Q Captain Carson, who do you work for, sir?

14 A Beaufort City Police Department.

15 Q And did you work Beaufort City Police Department on
16 or about late July of 2011?

17 A Yes, sir.

18 Q And on or about excuse me -- about early August of
19 2011?

20 A Yes, sir.

21 Q And on or about August, I believe, the second 2011
22 did you take a trip to Jacksonville, Florida?

23 A Yes, sir.

24 Q And why did you go to Jacksonville, Florida?

25 A We were notified that a wanted person was there and

1 we responded to pick that person up.

2 Q And which wanted person was in Jacksonville, Florida?

3 A Mr. Rajerick Knight.

4 Q And who was it that was responsible for his arrest in
5 Jacksonville, what agency?

6 A Well, I'm not sure exactly which agency.

7 Q That's fine. I'll ask Investigatory Dowling. Let me
8 ask you a question, did you go to Jacksonville and pick up
9 Mr. Knight?

10 A Yes, sir.

11 Q Did anybody go with you?

12 A Yes, Patrolman Shawn Alford and Investigator Josh
13 Dowling.

14 Q Captain, I'm going to hand you what's been marked for
15 identification as State's Exhibit Number 48. Can you
16 identify that picture or that -- those two pictures for me
17 on one page?

18 A Yes, sir. This is two photos. One is a front shot
19 of Mr. Knight's face. And the side shot of his neck
20 displaying the tattoo that he bares on his left side. And
21 this is what the gentleman looked like when we picked him
22 up.

23 Q All right. And when you say the gentleman who are
24 you referring to?

25 A Rajerick Knight.

1 Q And is that how Rajerick Knight appeared when you
2 found him in Jacksonville, Florida on August the 2nd of
3 2011?

4 A Yes, sir.

5 Q Is that a fair and accurate depiction of how he
6 appeared that day?

7 A Yes, sir.

8 Q And can you -- I know it's a little blurry. Can you
9 read what the tattoo says?

10 A Yes, sir. It's capital P and then it says peanut.

11 THE COURT: What exhibit number is that again?

12 MR. THORNTON: It's 48, Your Honor.

13 BY MR. THORNTON:

14 Q Captain, is that an accurate representation of how
15 Mr. Knight appeared on August the 2nd 2011?

16 A Yes, sir.

17 Q Has it been altered or changed in any way?

18 A No.

19 MR. THORNTON: Your Honor, at this time I ask
20 that State's Exhibit Number 48 be entered into evidence.

21 MR. BAX: Your Honor, I would object as I
22 previously state to the Court 403 and relevance.

23 THE COURT: So noted for the record. Defense
24 counsel's objection is noted for the record exhibit 48 is
25 admitted into evidence over defense counsel's objection.

1 swear to truthfully answer all questions asked of you by
2 this court so help you God?

3 THE WITNESS: I do.

4 THE CLERK: Please be seated and state your name
5 and spell it for the court please.

6 THE WITNESS: My name is Joshua Dowling, last
7 name is spelling D-O-W-L-I-N-G.

8 WHEREUPON,

9 Josh Dowling,
10 after first having been duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. THORNTON:

13 Q Investigator Dowling, who do you work for?

14 A I'm employed with the City of Beaufort Police
15 Department.

16 Q And did you work for the City of Beaufort Police
17 Department in late July and early August of 2011?

18 A That is correct.

19 Q And as part of your job with the City of Beaufort
20 Police Department, did you go to Jacksonville, Florida to
21 pick up one Rajerick Knight?

22 A That is correct.

23 Q And when you went to pick up Mr. Knight, do you
24 recall about what time he was incarcerated in
25 Jacksonville?

1 A It was in the early morning hours.

2 Q And do you remember what day it was?

3 A Let me reference my notes and I'll be able to give
4 you the exact date. He was arrested on July 29, 2011.

5 Q All right. You said sometime in the morning hours?

6 A That is correct.

7 Q Did you -- were you one of the people that picked up
8 Mr. Knight in Jacksonville?

9 A I was present when he was picked up correct.

10 Q Did you then transport Mr. Knight to the Beaufort
11 County Detention Center?

12 A Yes, he was transported back to Beaufort Detention
13 Center, yes.

14 Q Were you present when any property from him was
15 removed or taken from his person and placed into property
16 envelopes at the detention center?

17 A I was present for that.

18 Q And was there a phone put into his property?

19 A There was.

20 Q And did you subsequently get a search warrant to
21 search that phone?

22 A It was a search warrant obtained to seize the phone
23 from the detention center and a search warrant to search
24 the contents within the cell phone, that is correct.

25 Q Did you personally go and seize the phone out of the

1 property bag with that was belong to Mr. Knight?

2 A I did.

3 Q Is it the same phone that was placed in that bag in
4 your presence?

5 A Yes.

6 Q I'm going to hand you what's been marked as State's
7 Exhibits ---

8 MR. THORNTON: Court's indulgence, Your Honor.

9 THE COURT: Yes, sir.

10 (WHEREUPON, a pause in the proceedings.)

11 BY MR. THORNTON:

12 Q First is State's Exhibits 36, 37, 38 and 39. Would
13 you look at those for me please and just answer if you can
14 identify them?

15 A Yes, I can identify these photographs.

16 Q All right. And I will also ask you, sir, about --
17 I'm going to hand you 41, 42, 43 and 44 ask if you can
18 identify those as well?

19 A Yes, I can identify those photographs as well.

20 Q And finally, sir, photographs 34 and 35?

21 A Yes, I can identify those photographs as well.

22 Q As to all of the photographs, I just referenced what
23 are those photographs of?

24 A Those are photographs of images I took of the
25 defendant's cell phone text message correspondence he had

1 on his cell phone.

2 Q All right. And are these accurate representations of
3 the text messages -- the text messages pulled from that
4 phone?

5 A That is correct. That's all those text messages were
6 displayed in that photograph.

7 Q And have they been altered or changed in any way.

8 A No.

9 MR. THORNTON: Your Honor, at this time -- and
10 forgive me I know there's several of them, Your Honor, I
11 would ask to put into evidence and I'll take them to
12 defense counsel momentarily State's 34, 35, 36, 37, 38,
13 39, 41, 42, 43, and 44 I believe are the reference numbers
14 I have, Your Honor, ask that they be moved into evidence.

15 THE COURT: Any objection by defense counsel?

16 MR. BAX: I just want to verify those, Your
17 Honor. No objection, Your Honor.

18 THE COURT: Without objection State's Exhibits
19 34, 35, 36, 37, 38, 39, 41, 42, 43 and 44 are admitted
20 into evidence.

21 (WHEREUPON, State's Exhibits Nos. 34, 35, 36,
22 37, 38, 39, 41, 42, 43 and 44 were admitted into
23 evidence.)

24 MR. THORNTON: Thank you, Your Honor. I will
25 need to beg the Court's indulgence for one moment while I

1 get these back in order.

2 (WHEREUPON, a pause in the proceedings.)

3 MR. THORNTON: With permission, Judge, I'm going
4 to publish these to the jury?

5 THE COURT: Yes, sir.

6 BY MR. THORNTON:

7 Q Now, with regards, sir, to 36 and 37, I'm going to
8 hand you what's been marked and entered into evidence as
9 36 and 37. If you will look at 37. This an accurate
10 representation of what appears in State's Exhibit 37?

11 A That is correct.

12 Q All right. And just in case someone in the back
13 can't read it, what does that cell phone message say?

14 A Says at the bottom of it says, What's up with Karra.

15 Q All right. And is Little Jay the person that's it's
16 to?

17 A That is correct.

18 Q I'm going to hand you, sir, what's been -- actually
19 the rest of them I think, Investigator Dowling, are pretty
20 clear. Let me just run through these.

21 A Yes, sir.

22 Q Now, Investigator Dowling, and can you see this from
23 where you are?

24 A Not the first word, no.

25 MR. THORNTON: Your Honor, may I ask him to come

1 down briefly?

2 THE COURT: Yes, sir.

3 BY MR. THORNTON:

4 Q Investigator Dowling, just one question really.
5 These messages there's -- saw that in State's Exhibits
6 they are some with words and some just with other
7 information would that be showing the time and the number
8 of called and called from.

9 A That's correct. It's showing the same time incoming
10 and outgoing times as depicted by the date and time.

11 Q All right. Thank you very much, if you take your
12 seat. If you would go through these that are now into
13 evidence and in the order that I have them, would you
14 publish to the jury just in case they could not see some
15 of it. What the information contained in those text
16 messages outgoing from Mr. Knight was?

17 A The first one starts out with, What's up with Karra.

18 Q And I'll just go through. If you'll give me a moment
19 to catch up, I'll go through them with you. All right, go
20 ahead.

21 A This message was sent to Little Jay. The number is
22 depicted above it. And it states, What's up with Karra.
23 This was sent on July 28th 2011 at 12:55 p.m.

24 Q All right. What's next?

25 A The next message was sent on July 28th 2011 at

1 1:13 p.m. This was a message to Little Jay. It reads you
2 sure Little Bro they hadn't questioned her?

3 THE COURT: What exhibits are you referring to
4 there?

5 THE WITNESS: That's exhibit 38 and 39, Your
6 Honor.

7 THE COURT: Thank you.

8 BY MR. THORNTON:

9 Q Investigator Dowling, if you would --

10 MR. THORNTON: I apologize, Judge.

11 BY MR. THORNTON:

12 Q Investigator Dowling, if you would when you read off
13 what the information contain in it just reference the
14 number on the front?

15 A Yes, sir.

16 Q Thank you. What's next?

17 A And on State's Exhibit Number 43 this was a message
18 to Little Jay. And on State's Exhibit Number 44, it
19 indicates that it was sent on July 28, 2011, at 2:57 pm
20 and the message reads, Keep a close eye on Karra, Bro.

21 Q All right, sir. What's the next one?

22 A And referring to State's Exhibit Number 34 which
23 indicates a message sent on July 28, 2011, and 3:01 p.m.
24 in regards to Little Jay it reads, Don't let her see it,
25 but watch her.

1 Q All right. And earlier you testified did you not
2 Investigator Dowling that sometime in the morning hours of
3 the 29th of July that Mr. Knight was arrested in
4 Jacksonville, Florida; is that correct?

5 A That is correct.

6 Q Is there any text message that you show outgoing from
7 that time?

8 A I do and that's going to be on State's Exhibit Number
9 41.

10 Q And what does text message say?

11 A It's a message to a -- it sent to a area code of 912
12 and it reads they got me. And this was sent July 29, 2011
13 and it was received -- it indicated it was sent out at
14 12:17 p.m.

15 Q Investigator Dowling, with connection with this case
16 several of those text messages reference a Karra, are you
17 familiar with who that is?

18 A I am.

19 Q And who would that be?

20 A Let me just reference her name one moment. I don't
21 have her name immediately available. I believe her last
22 name was Smalls.

23 Q All right. Would that be Shiecarra Smalls that you
24 testified earlier?

25 A That is correct, yes.

1 MR. THORNTON: Other than that, I have no
2 further questions. Thank you very much, Investigator
3 Dowling.

4 THE COURT: Cross-examination.

5 MR. BAX: Thank you, Your Honor. May it please
6 the Court.

7 CROSS-EXAMINATION

8 BY MR. BAX:

9 Q Good afternoon, Mr. Dowling?

10 A Good afternoon.

11 Q A couple questions for you. Were you assigned as --
12 I guess, you would refer to it as lead investigator on
13 this case, Mr. Dowling?

14 A I was what's known as I was the on-duty investigator
15 during this call week where we're assigned on a weekly
16 basis to answer any calls that happened outside of the
17 work hours or any violent calls or felony level cases
18 during the day time, so I was on duty that week correct.

19 Q Okay. And I'm sorry so that is yes you were the
20 lead -- you were assign this case to supervise this case
21 as investigation; is that correct?

22 A I was the investigator who work that case correct.

23 Q Okay. As a result of that, did other officers give
24 you the information that they found?

25 A Well, the case was broken up where different

1 investigators or different officers did different
2 investigative routes to work on the case. There was
3 various investigations that occurred.

4 Q So obviously, it just wasn't you working on the case.

5 A lot of the other members of the Beaufort City Police
6 Department also worked on aspects of this case; correct?

7 A Yes, it was several investigators and officers.

8 Q As the investigator in charge though, was that
9 information relayed to you whenever someone else who had
10 been delegated something to do they did it? Did they
11 relay that they had done it and what it resulted in to
12 you?

13 A For the most part, they would document in a police
14 report and I could read that at a later date.

15 Q Okay. And so you had access to any reports that were
16 made by other officers in relation to this case; correct?

17 A Yes, I did.

18 Q Okay. And did you review all the reports that were
19 filed by other officers in this case?

20 A In respect to the City of Beaufort case?

21 Q Yes. The case that the investigation of the incident
22 at Subway restaurant that we're talking about here today,
23 did you review all the incident reports that were filed on
24 that case?

25 A Yes, any documented evidence was consolidated into

1 one report where everybody's involvement is documented.

2 Q Okay. Now, you've testified that -- you said that
3 Karra is Shiecarra Smalls. Where did you get that
4 information from?

5 A Shiecarra Smalls she came forward to provide a
6 voluntary statement about the events that had unfolded on
7 that evening.

8 Q And were you present for the statement that she gave
9 that was recorded?

10 A No, sir.

11 Q Okay. Have you listen to that recorded statement
12 that she made?

13 A No, sir.

14 Q You haven't listened to the recorded statement that
15 Miss Smalls made?

16 A No, I have not listened to the recorded statement,
17 no, sir.

18 Q So you wouldn't know whether or not during that
19 recorded statement that Miss Smalls made whether she ever
20 said that she goes by Karra?

21 A Any information that I had received in regards to
22 Miss Smalls would have been relaid by the investigators
23 that dealt with that particular interview.

24 Q Do you have your files with you today, Mr. Dowling?

25 A I do.

1 Q Okay. Can you tell me -- can you show me in your
2 incident reports where you were referred to talking to the
3 investigators that did talk to Miss Smalls and them
4 telling you that she said she goes by Karra? Can you show
5 me that?

6 A Show you that specific sentence?

7 Q Yes. Yes, sir.

8 A Well, whatever is documented would be the -- whatever
9 that particular investigator documented would be just
10 simply in what's known as a supplemental report.

11 Q Did you ever read or were you ever provided a
12 supplemental report by any investigator that said when
13 they were discussing or when they were taking the
14 statement from Miss Smalls that she identified herself as
15 Karra said that she goes by Karra. Did you ever read a
16 report that says that?

17 A It's a lot of information within this report. I
18 can't remember that worded specifically.

19 Q Okay. And you testified that as lead investigator
20 you never listen to the recorded statement of the witness
21 that was supposedly with Mr. Knight at this incident;
22 correct?

23 A That is correct. Typically, what we do on a major
24 case especially like a murder case or attempted murder
25 case, we have meetings with the other investigators to

1 discuss an overview of what they learned from their
2 respected interview, some of these interviews can go on
3 for extremely extended period of time. And it would just
4 not be feasible to listen to every interview in great
5 length. We have -- typically, we'll meet every morning on
6 a case, especially a murder case and discuss what was
7 learned during our investigation.

8 Q Well, despite those meetings, Officer, is it your
9 testimony that you did not ever hear Shiecarra Smalls say
10 that she goes by Karra nor can you tell us where you got
11 that information from?

12 A Well, in respect to that text message, there was -- I
13 can't recollect specifically, but I do remember that on
14 correspondence on the phone. And based upon what
15 information was relayed in regards to what Miss Smalls had
16 relaid to those respected to investigators, that's the
17 information we derived.

18 Q Which officers did she relay this too?

19 A If memory serves me correctly, I believe that
20 Lieutenant Darrell Gruel and Tony Re were present for the
21 interview of Shiecarra Smalls.

22 Q Okay. Which one -- did Detective Re tell you that he
23 asked her if she goes by Karra and she said, yes, I go by
24 Karra? Did Detective Re tell you that?

25 A I cannot recollect specifically. I ascertain that

1 specific information.

2 Q And you don't recall ever reading anything that says
3 that?

4 A Not to my recollection.

5 Q And did Detective Gruel tell you that?

6 A Once again, I can't recollect specifically where I
7 had ascertained that from. There was such an in flux of
8 information coming during this time period, that I cannot
9 recollect specifically who had told me that.

10 Q And I understand there was a lot of information,
11 Officer. You understand this is a murder trial; correct?
12 And that this person has been charged with murder;
13 correct?

14 A Yes, I'm well aware of these charges.

15 Q And that we are trying this case to a jury and we
16 have to go through the details of that; correct?

17 A Correct.

18 Q Okay. And that the details which could lead to the
19 conviction of a person for murder, the highest crime in
20 this state ---

21 MR. THORNTON: Objection, Your Honor.

22 Q --- is based on the details?

23 THE COURT: Hold on a minute. He's made an
24 objection.

25 MR. BAX: I'm sorry I wasn't finished with the

1 question, Your Honor.

2 THE COURT: Can you all approach a minute?

3 (WHEREUPON, a bench conference was held in the
4 presence of the jury, but out of the hearing of the
5 jury.)

6 BY MR. BAX:

7 Q Let me back up, Investigator Dowling. Obviously, in
8 preparing for or investigating this case, you were aware
9 that it could have gone to trial; is that correct?

10 A Yes, any charges that we make obviously stand a
11 chance of coming to trial correct.

12 Q Okay. And you have testified to these exhibits that
13 are still up here that reference someone name Karra spell
14 with a K; correct?

15 A Yes, correct.

16 Q But can you specifically tell us where you got the
17 information that Shiecarra Smalls, which by the way is not
18 spelled with a K goes by Karra spelled with a K?

19 A I cannot recollect specifically, but that's the
20 information that I was made aware of. I just simply do
21 not recollect where I ascertain that from.

22 Q And your testimony is that you did not listen to the
23 audio recording of Miss Smalls' statement, so you couldn't
24 tell us that she actually never makes that statement
25 during her recorded statement. You can't testify to that

1 because you didn't listen to it; is that correct?

2 A That's correct. I didn't have an opportunity to
3 listen to the audio recording; correct?

4 Q And my client, Mr. Knight, was you arrested as you've
5 already testified to on the 29th of July 2011; correct?

6 A That is correct. He was arrested down in Florida.

7 Q Okay. After, Mr. Knight, was arrested, did you do
8 anything else on this case at that point?

9 A Yes, we -- after his arrest in Beaufort Detention
10 Center, we had executed a search warrant for a cell phone,
11 yes, in that respect.

12 Q Now, ask you couple other questions. Now, at any
13 time, did you conduct any searches of any vehicles in this
14 case, Investigation Dowling?

15 A I did.

16 Q Okay. Did you at any time investigate or search the
17 vehicle that belong to Mr. Travis Holmes?

18 A I did.

19 Q Can you tell us what you found in that car please?

20 A There was narcotics, suspected narcotics that was
21 found?

22 Q Can you tell us exactly what you found please?

23 A I believe it was suspected crack cocaine that was
24 found.

25 Q Anything else?

1 A I believe suspected marijuana was founded.

2 Q Okay. Now, Investigator Dowling, at any time during
3 your leading up to the arrest of Mr. Knight in this case
4 you've already testified to, were you ever contacted by
5 anybody who told you they were Mr. Knight's mother asking
6 about how he could turn himself ---

7 MR. THORNTON: Objection, Your Honor, that's
8 hearsay.

9 THE COURT: Objection sustained.

10 BY MR. BAX:

11 Q Were you ever contacted by anybody saying they were
12 with Mr. Knight's family?

13 MR. THORNTON: Objection, Your Honor, it's still
14 hearsay.

15 MR. BAX: Your Honor, I'm not asking for him to
16 say what she said.

17 THE COURT: Objection overruled.

18 MR. BAX: Thank you.

19 BY MR. BAX:

20 Q I'll rephrase the question or restate the question.
21 Were you ever contacted by anybody who was Mr. Knight's
22 family?

23 A There was a party that had contacted me alleging to
24 be a family member, yes.

25 MR. BAX: Moment's indulgence, Your Honor.

1 THE COURT: Yes, sir.

2 (WHEREUPON, a pause in the proceedings.)

3 MR. BAX: Moments indulgence, Your Honor.

4 THE COURT: Yes, sir.

5 (WHEREUPON, a pause in the proceedings.)

6 MR. BAX: My apologies trying to find a piece of
7 paper. Let me ask if I can approach the witness, Your
8 Honor?

9 THE COURT: Yes, sir.

10 MR. BAX: Thank you.

11 BY MR. BAX:

12 Q Okay. I'm going to hand you this to see if you
13 recollect -- in case you need to refresh your memory.
14 You've testified that you read through all the incident
15 reports that were filed in this case even the ones filed
16 by other officers. Do you recall ever looking at a report
17 like that from Officer Erdel.

18 A Yes, I recollect those as part of the extensive
19 investigative notes correct.

20 Q Okay. Did you ever contact -- as a result of that,
21 you became aware of the fact that the sheriff's deputy
22 John Gobel had contacted Erdel; is that correct?

23 A That's what Investigator Erdel had indicated, yes.

24 Q Did you ever make contact with Investigator John
25 Gobal with the sheriff's department to follow up on that?

1 A There had been correspondence in regards to this case
2 with the Beaufort County Sheriff's Office?

3 Q Did you ever contact the sheriff's department
4 Investigator John Gobal about the matter that you hold in
5 your hand? Yes or no?

6 A I can't recollect whether I spoke to him
7 specifically. I had spoken to several investigators over
8 there.

9 Q Okay. Let me ask one more time, can you recall if
10 you ever spoke to Investigator John Gobal with the
11 sheriff's department about that matter?

12 A There had -- as I stated before, I had spoken to
13 several investigators during this case over at Beaufort
14 County Sheriff's Office, so if I spoke to him specifically
15 I just can't recollect.

16 Q So you can't recall whether you spoke to him. I'm
17 just trying to clarify your answer. I'm confused.

18 MR. THORNTON: Objection, Your Honor. I don't
19 think there's anything confusing. He said three times he
20 didn't recollect specifically that investigator.

21 THE COURT: Question has been asked and
22 answered.

23 BY MR. BAX:

24 Q Investigator, did you ever attempt to look for
25 Darrien Hutchinson?

1 A No.

2 Q And why not?

3 A Because I had no need to speak to him.

4 Q Okay. So if you gotten information from another
5 officer during ---

6 MR. THORNTON: Objection, Your Honor. It's
7 hearsay and relevance.

8 THE COURT: Can you all approach please?

9 (WHEREUPON, a bench conference was held in the
10 presence of the jury, but out of the hearing of the
11 jury.)

12 THE COURT: All right. Ladies and gentlemen,
13 I'm going to have to ask you to step to your jury room for
14 just a minute while we take up a matter of law outside of
15 your presence. Do not discuss the case until instructed
16 to do so. We will get you back out here as quickly as
17 possible.

18 (WHEREUPON, the jury retire to the jury room.)

19 THE COURT: Restate your question again,
20 Mr. Bax.

21 MR. BAX: Your Honor, since we are outside the
22 presence of the jury, I was asking Investigator about a
23 supplemental report that would have been filed on this
24 case by another officer in the Beaufort City Police
25 Department who I intend to call as a witness. I have

1 under my own subpoena. I think he's probably under state
2 subpoena as well. I was asking him about a supplemental
3 report that provides information about another person
4 providing information on the case name Darrien Hutchinson.
5 I was asking whether he followed up with that. And when
6 he stated no, I was trying to ascertain why.

7 As to the issue of third-party guilt that's been
8 raised by the Solicitor, Your Honor, it does not have
9 anything to do with third-party guilt because if they had
10 -- and I'm certain that it's one of those things that's in
11 the discovery. I don't know if they recall reading. I'm
12 sure they looked at it before. And I can reference the
13 page number of the discovery if I can look back at the
14 document, but it references information provided to a
15 sheriff's officer about the background of the case name
16 Darrien Hutchinson not somebody who's guilty of it or even
17 that I'm going to say is guilty of it. The page, Your
18 Honor, for purposes of discovery is 162.

19 MR. THORNTON: Your Honor, if I could have a
20 moment that would have been nice to know ahead of time.
21 We turned over about 700 pages, so it's kind of hard for
22 me to be able to accurately reference something that he
23 didn't show me before he gave it to the witness. I'll be
24 happy to pull that out.

25 THE COURT: If you will give the State, let them

1 look at what you're looking at or holding in your hand.

2 MR. THORNTON: Your Honor, and this is -- there
3 was one -- I took a guess. I had a 50/50 shot and I
4 guessed incorrectly. This document relates to the
5 information -- relates to allegedly getting the
6 information regarding a prior shooting, which Your Honor
7 hasn't even admitted into evidence yet and that's exactly
8 the kind of back dooring in of information that I was
9 concerned with, you know, for the first part. I got to
10 object blindly because he's attempting to get in and say
11 that somebody -- a random person that he's named now in
12 the report calls in a detective and says, Oh, this
13 shooting stems from a prior shooting involving a
14 girlfriend. And this is exactly the kind of incident that
15 we're talking about where he's going to attempt to
16 assassinate the character of the victim and you haven't
17 even allowed it into evidence yet, so I've got to object
18 blindly.

19 In addition, it's double hearsay. He's asking
20 him about a conversation between another person and a
21 third person. So I would object on hearsay grounds. I
22 would object on the fact that we haven't had any hearings
23 about the evidentiary or whether you're going to admit
24 this prior incident or prior shooting or not if this
25 references a different shooting, I would also ask the

1 Court to take note of the fact that this is -- that Mr.
2 Bax indicated that the only shooting or the only other
3 incident of conduct he would be talking about would be the
4 May 2011. So if it is that one, we haven't gotten there
5 yet. If it isn't that one, then that's not what Mr. Bax
6 referenced when we were in chambers. Those will be my
7 objections, Your Honor.

8 MR. BAX: Your Honor, in response, I certainly I
9 strenuously disagree with the idea of back dooring, this
10 is their discovery. This is straight from the
11 investigative file on this case from Beaufort City Police
12 Department that was provided to me by the State. I'm not
13 exactly sure how I'm going to back door their own
14 information in on them first and foremost.

15 Second of all, Your Honor, this is information
16 that was provided to the lead investigator prior to me
17 ever becoming the attorney on this case. I think it's
18 absolutely fair for me to ask whether or not he followed
19 up on it and why not. That goes to the integrity of the
20 investigation and it goes to the heart of this case. We
21 don't know exactly what Mr. Hutchinson was referencing or
22 what he was talking about with the deputy because he never
23 followed up on it. And this is within the law enforcement
24 community that investigated this. And this is information
25 I been provided by the Solicitor's office. This is stuff

1 that I would have had before getting anywhere else from my
2 own investigation this is right here. And I think that
3 the defense has the right to an investigator especially
4 the lead investigator about what they did and did not do,
5 that's the core of any criminal case whether I have an
6 affirmative defense or whether I just want to seek to cast
7 reasonable doubt, that would be the core of any defense.

8 MR. THORNTON: Your Honor, briefly in reply,
9 when I'm referencing back dooring something in, we turn
10 over everything. Just because I've turned it over to him,
11 doesn't make it admissible in court. And it's patently
12 ridiculous to get up and argue that double hearsay out of
13 a report that he didn't write is admissible because we
14 gave it to him in discovery. The rules of evidence still
15 do apply. We turn over all documents.

16 MR. BAX: And, Your Honor, just briefly, when it
17 comes to the hearsay issue, I don't think I gotten into
18 hearsay. For one thing, I'm not trying to introduce any
19 statement made for the truth of the matter asserted. Your
20 Honor, what I'm trying to do is find out what he did and
21 what he didn't do and why he didn't do it because that
22 goes to the core of the integrity of the cases being put
23 up by the Solicitor's office.

24 THE COURT: Well, I don't know, Mr. Bax, you've
25 conveyed to the Court that you're simply trying to

1 determine what he did and what he didn't do in his
2 investigation.

3 MR. BAX: That's correct, Your Honor.

4 THE COURT: Whether or not he spoke to Darrien
5 Hutchinson.

6 MR. BAX: Your Honor, I'll be happy to pass this
7 document up just in case you need to take a look at it. I
8 know it's difficult to make rulings blind as Your Honor
9 said before. I apologize.

10 THE COURT: I mean, you're not moving to
11 introduce it.

12 MR. BAX: I'm not moving to introduce it. I'm
13 merely asking him based on that information, that's
14 correct, Your Honor. And, obviously, as I've said,
15 Officer Erdel is available for me to call, which I intend
16 to do.

17 THE COURT: Mr. Thornton, do you have an
18 objection to him even asking if he spoke to a Darrien
19 Hutchinson?

20 MR. THORNTON: I don't, Your Honor. What my
21 objection to was when he said -- again, Your Honor, I have
22 to try to step in front of it. The way the question was
23 being phrased it appeared to me what he was going to ask
24 him is did you talk to this person about -- and if he's
25 going to be able to read through the document. I mean,

1 it's no different than admitting it into evidence.

2 THE COURT: I'm not going to allow you to
3 testify or bring out what the second and third party said.
4 I will certainly allow you to ask whether or not he spoke
5 to this individual in his investigation, but that may be
6 something that you can clear up through this other officer
7 depending upon what I ruled at that time. I mean, I will
8 allow you to ask him whether or not he spoke to Darrien
9 Hutchinson.

10 MR. BAX: Thank you, Your Honor.

11 THE COURT: Am I clear on that?

12 MR. THORNTON: Yes, sir.

13 MR. STONE: Thank you, Your Honor.

14 MR. THORNTON: I don't object to that, Judge.

15 THE COURT: Okay. Anything else at this time?

16 MR. BAX: No, Your Honor.

17 MR. THORNTON: No, sir.

18 THE COURT: We will stand down for few minutes.
19 You can step down, but you are not to discuss your
20 testimony with anybody. When I come back in, you need to
21 take the stand before the jury comes back in. I'm going
22 to stand down for a few minutes.

23 (WHEREUPON, a break was taken.)

24 THE COURT: State's ready to proceed?

25 MR. THORNTON: State's ready, Your Honor.

1 THE COURT: Defense counsel ready to proceed?

2 MR. BAX: Yes, sir.

3 THE COURT: Any questions about my ruling that?
4 I mean, I think you're on the same page. It's just a
5 matter of getting there, okay.

6 I remind you you are still under oath, okay.

7 MR. DOWLING: Yes, Your Honor.

8 THE COURT: Bring me the jury please.

9 (WHEREUPON, the jury came into open court.)

10 THE COURT: All the jury present, Mr. Bax, you
11 may continue cross-examination.

12 MR. BAX: Thank you very much, Your Honor.

13 THE COURT: Yes, sir.

14 CROSS-EXAMINATION CONTINUED

15 BY MR. BAX:

16 Q Going back to what we are on before the jury exited,
17 Investigator Dowling. And I can hand this back to you.
18 It is not evidence in the case, but it's for your
19 purposes. Did you speak with Darrien Hutchinson?

20 A No.

21 Q Why not?

22 A There was no reason to speak to him.

23 Q Okay.

24 MR. BAX: And I'm going to get that back from
25 you if that's all right. Thank you very much.

1 No further questions, Your Honor.

2 THE COURT: Any redirect?

3 MR. THORNTON: None, Your Honor. Thank you.

4 THE COURT: Sir, you may step down.

5 (WHEREUPON, the witness leaves the witness
6 stand.)

7 MR. STONE: The State calls Investigator Tony Re
8 to the stand.

9 MR. BAX: Your Honor, if I could and I meant to
10 say this before. We would ask that Investigator Dowling
11 be subject to recall if there's no objection from the
12 State?

13 MR. THORNTON: No objection from the State, Your
14 Honor.

15 THE COURT: So granted.

16 MR. BAX: Thank you, Your Honor.

17 THE CLERK: Would you place your left hand on
18 the Bible and raise your right hand. Do you solemnly
19 swear to truthfully answer all questions asked of you by
20 this court, so help you God?

21 THE WITNESS: Yes, I do.

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

24 THE WITNESS: Tony Re, last name is R-E.

25 WHEREUPON,

1 flesh to them, but at the same time Your Honor knows I
2 have to the protect the record on this end.

3 THE COURT: Absolutely.

4 MR. BAX: I do feel like there's a very good
5 defense for my client, but we haven't really had the
6 opportunity to put that up yet. So at this point, I would
7 make my motions to protect the record and protect my
8 client's rights. I would certainly reiterate all the
9 objections that I have made throughout the course of the
10 State's case including those of foundation that we've
11 already been through and that have been put on the record
12 as basis for that directed verdict motion -- and moments
13 indulgence. I think that's it, Your Honor.

14 THE COURT: Anything in response from the State?

15 MR. STONE: No, sir.

16 THE COURT: All right. As you all know, there's
17 any evidence -- any direct or substantial circumstantial
18 evidence tending to prove the guilt of the accused. The
19 matter should be submitted to the jury. The trial court
20 is not concerned with existence of evidence or trial court
21 is concerned with its existence not its weight, not its
22 weight. Therefore, I believe there is substantial and
23 circumstantial evidence and warrant this case being
24 submitted to the jury. I certainly understand your
25 responsibility and roles, Mr. Bax, in protecting the

1 record for your client, but I'm going to respectfully deny
2 your motion for a directed verdict.

3 MR. BAX: Thank you very much, Your Honor.

4 THE COURT: Now, at this time I want to advise
5 your client of his right to testify as far as his rights.

6 Mr. Knight, if you would stand, sir?

7 Madam clerk, will you swear the defendant
8 please?

9 THE CLERK: Would you raise your right hand for
10 me please. Do you solemnly swear to truthfully answer all
11 questions asked of you by this Court, so help you God?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Sir, you may put your hand down.
14 You are Rajerick Lovell Knight?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. We have reached or at
17 this time, I'm going to explain to you certain of your
18 rights. The State has rested in this matter and I'm going
19 to explain rights that you have. If you do not understand
20 anything that I say, please let me know. If you want me
21 to explain anything in more detail, please let me know as
22 well when we go through this.

23 Now, I want you to understand Mr. Knight that
24 you have a right to claim the protections given to you by
25 the Fifth Amendment to the United States Constitution.

1 This amendment states in part that no person, no person
2 shall be compelled in any criminal case to be a witness
3 against himself. This means that you cannot be required
4 to testify in this case.

5 You have the right to testify on your own
6 behalf. However, no one can make you testify. This is a
7 personal right. And no one can waive this right except
8 you. If you decide to testify, you will be subject to the
9 same rules that govern other witnesses. And you may be
10 examined and cross-examined on any relevant issue in this
11 case. In addition, if you have any convictions involving
12 dishonesty or false statements or for crimes punishable by
13 imprisonment for more than one year. And this court
14 determines that the probative value of admitting this
15 evidence outweighs its prejudicial effect to you, the
16 Solicitor will be able to introduce your record to attack
17 your credibility. If you decide to testify, this decision
18 on your part must be freely, voluntarily and intelligently
19 made with the knowledge of the protections given to you by
20 the Fifth Amendment and consequences of your decision to
21 testify.

22 If you decide not to testify, I will instruct
23 the jurors that they cannot, that they cannot give the
24 fact that you did not testify any consideration
25 whatsoever. And that there is to be absolutely no

1 prejudice to you because you did not testify. It is left
2 entirely up to you whether or not you testify. You may
3 talk with your attorney, your family, your friends or
4 anyone else, but the final decision as to whether or not
5 you testify is your decision. Do you understand what I
6 have explain to you?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you have any questions about what
9 I have explain to you?

10 THE DEFENDANT: No, sir.

11 THE COURT: Have you discussed with your
12 attorneys whether you should or should not testify?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you need any more time to talk to
15 your attorneys about it?

16 THE DEFENDANT: No, sir.

17 THE COURT: Do you wish to testify in your
18 trial?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: All right. You may be seated,
21 Mr. Knight. What we're going to do at this time is I'm
22 going to stand down for a few minutes. And I want to talk
23 to the lawyers in chambers and then we'll come back in
24 here and we'll start with defense counsel.

25 MR. STONE: Yes, sir.

1 (WHEREUPON, a break was taken.)

2 (WHEREUPON, Defendant's Exhibits Nos. 1-47 were
3 marked for identification.)

4 THE COURT: All right. Is state ready to
5 proceed?

6 MR. STONE: State's ready.

7 THE COURT: Defense counsel ready to proceed?

8 MR. BAX: Yes, Your Honor, defense counsel is
9 ready to proceed. Your Honor, we have premarked a number
10 of exhibits and I like the Solicitor's office to take a
11 look at those. They are up on the counter, Your Honor.

12 THE COURT: Any objection to those exhibits?

13 MR. STONE: Our understanding, Your Honor, is
14 that they plan on introducing evidence from the shooting
15 that took place on May the 30th 2011. In accordance with
16 your previous ruling, we have no objection to that. Now,
17 if we're going into other matters, then we have not
18 consented by any stretch of the imagination to anything
19 else.

20 THE COURT: Those exhibits which are premarked
21 do they relate to the May incident?

22 MR. STONE: My understanding they do. And we
23 have agreed to the chain of custody on the evidence and
24 not requiring individual officers to approve that. But
25 that is defense exhibits that have given us and that's

1 their assurance to us.

2 THE COURT: Mr. Bax, also want to put on the
3 record from my understanding in discussions with he and
4 Mr. Thornton and Mr. Stone back in chambers about 2008 or
5 2009 incident. I told him I would not -- did not think it
6 was relevant to this case and would not allow him to go
7 into that. I will be happy to allow you at this time,
8 Mr. Bax, to put on the record what you wish to put on the
9 record with regards to that ruling.

10 MR. BAX: Thank you, Your Honor. And first and
11 foremost, I believe Investigator Kelleher is here present
12 in the courtroom, just to let you know he's here. And for
13 the record that he is here and is in compliance with the
14 subpoena by the defense for that purpose. And I believe,
15 obviously, Investigator Kelleher hears me saying anything
16 that he wouldn't necessary agree with, I invite him to let
17 us know that. I don't want to misrepresent anything.

18 Your Honor, basically in -- I will be calling
19 Investigator Kelleher to the stand for Your Honor would be
20 to lay the foundation due to the fact that he was the lead
21 investigator that the individual that investigated the
22 situation involving a James Odom and Travis Sentel Holmes,
23 who is the victim in this case, Your Honor. My
24 understanding from reading the discovery that we got
25 through our own investigation of those cases in part from

1 subpoenas to the Sheriff's Department, Your Honor, but
2 also in part due to subpoenas that we sent to the Public
3 Defender's office that we actually had a hearing on in
4 front of Judge Mullen some many months ago and she ruled
5 that I was entitled to get those documents from the Public
6 Defender's office as long as they didn't contain any
7 privileged information between Mr. Holmes' attorney and
8 himself, which of course it did not. It did not contain
9 anything other than the discovery, so if you rule to be
10 something that I could obtain. Once I obtained that and
11 we through look that, Your Honor, the -- there was one
12 incident in 2008, Your Honor, where based on the
13 investigation of Mr. Holmes was charged in relation to a
14 shooting into a house that Mr. Odom was in or residence.
15 As a result of that, he received the charges -- I think it
16 was assault and battery with intent to kill, discharging a
17 firearm into a dwelling and possession of a weapon charge.
18 From our investigation possibly, the possession of a
19 weapon charge might have gone away at prelim, but the rest
20 of them were still existing.

21 Those charges were pending and Mr. Holmes made
22 bond and was released from pretrial detention. He was
23 currently out on that pretrial release in February Your
24 Honor of 2009. I would further have proffer Investigator
25 Kelleher's testimony to the fact that he was also the

1 assigned officer to investigate from investigation stand
2 point. The allegations that were made that Mr. Holmes saw
3 James Odom in February of 2009, at a gas station. The
4 fact that they see each other is on a VHS tape from the
5 surveillance system of that gas station. We have that
6 tape as well. He saw him and then went out to his car,
7 got a weapon according to the allegations.

8 THE COURT: Mr. Holmes did?

9 MR. BAX: Mr. Holmes, did, yes, sir. And that
10 he then followed Mr. Odom who was being driven Cassandra
11 Simmons, who was I believe according the information I
12 been provided, Mr. Holmes' cousin. He followed them down
13 the road until he was closer to where Mr. Odom was living.
14 And he opened fire out the driver's side window of his car
15 and he struck the white SUV being driven by Cassandra
16 Simmons with James Odom as a passenger several times.
17 There was also photographs of the white SUV glass was then
18 shattered by the projectiles and there were several bullet
19 holes in the car. So that was an event that occurred both
20 in 2008, 2009, Your Honor.

21 THE COURT: Can I ask you a question?

22 MR. BAX: Yes, sir.

23 THE COURT: And my understanding of this is all
24 relating to the incident between Mr. Holmes and Mr. Odom?

25 MR. BAX: That's correct.

1 THE COURT: Not your client?

2 MR. BAX: That's correct, Your Honor. To bring
3 that in though for the record in order to show why the
4 argument is relevance, Your Honor, Mr. Knight would be
5 able to testify that he knows James Odom. Also, I would
6 assert that any testimony I would present by Mr. Knight
7 would not be hearsay about that knowledge because it would
8 not be being offered for the truth of the matter asserted.
9 It would be offered for the state of my mind of my client.
10 It don't matter whether or not what Mr. Odom told him
11 about the incident was true or not. It's the fact that he
12 had that knowledge of Mr. Holmes and what he does, what
13 his reputation for peacefulness or lack thereof, that is
14 important in this case. I would site this both State vs.
15 Mekler in arguing for the entrance of that testimony from
16 my client.

17 In fact, in I believe State vs. Mekler, one of
18 the issues that was ruled upon by the Court was that the
19 Court ruled that the defendant in that case Ms. Mekler
20 should have been allowed to testify to her knowledge about
21 the defendant -- the victim excuse me in that case kicking
22 down the door of the other female that was involved in a
23 prior case. That case as, Your Honor, I'm sure is aware
24 because I know you read it as well as I did was about a
25 woman who was on her porch with another woman and that

1 woman's boyfriend or husband comes up to them with a knife
2 in a threatening manner and she gets a shotgun as a
3 result, that gentleman is shot and subsequently died.

4 Part of the discussion of the facts and the
5 discussion of the law in that case involved the fact that
6 the prosecutor in that trial of Ms. Mekler asked why
7 didn't you just go back into the house and close the door,
8 rather than shooting this gentleman. Her response was
9 that would have done no good. He would have come through
10 the door at me. The door would not have stopped him
11 something to that effect, Your Honor. She was not allowed
12 to testify to the fact that she had been told by the
13 victim of that other case that when she close the door on
14 her boyfriend or husband whoever he was, that he just
15 kicked in the door and came in and committed the domestic
16 violence case that she was speaking of. And the Court
17 found that to be error at the trial level not to allow
18 Ms. Mekler to testify to what she knew through being told
19 by the victim of that other case that the door had been
20 kicked down because it bore on her state of mind as to
21 whether or not actions were reasonable or not reasonable.
22 So the idea of going in and closing the door was not
23 reasonable in her mind because she knew that he already
24 kick through the door.

25 I would argue this is perfectly analogist here

1 Your Honor because this is a situation where my client
2 will be able to testify that he had direct knowledge that
3 or he had knowledge to that Mr. Holmes in prior instances
4 where he had been alleged to have shot at someone in their
5 house, then sees them in a public place, waits until they
6 have left that public place, follows them after they have
7 left that public place and fires on them again. And it
8 does not matter that he's under pretrial detainment, that
9 he's already facing charges for it, that that was
10 something that he had done in the past. And I think it
11 bears directly in this case, Your Honor.

12 One thing is the allegation from the State is
13 that my client and it is borne out by the evidence that's
14 been shown that Mr. Holmes comes into a public place once
15 again and sees my client. So the idea that that is the
16 evidence that we intend to present, we would argue that
17 needs to be presented in this case is that my client had
18 that in his mind when he sees Mr. Holmes in a public
19 place. This is a man who in the past has seen someone he
20 didn't like in a public place and follow them to shoot at
21 them again. And I would argue that despite the timing of
22 what happened to Mr. Odom in relationship to this, the
23 knowledge of that that Mr. Knight had is absolutely
24 relevant under the defense that we are presenting and is
25 absolutely relevant to his state of mind, which is going

1 to be crucial for the jury in deciding a verdict in this
2 case.

3 THE COURT: Mr. Thornton, Mr. Stone.

4 MR. THORNTON: Your Honor, State vs. Day and
5 State vs. Mekler both make it perfectly clear that if the
6 incident that someone seeks to introduce is a specific act
7 of conduct is not directed against in this case it would
8 be the defendant. It has to be so close in time and State
9 vs. Day is four months. Mekler is three months. In this
10 case, you're talking about two and three years 2008, 2009.

11 Additionally, in Mekler, Judge, the act in
12 question specifically deals with, well, it was a locked
13 door and he's coming back in. In this case, what he wants
14 to argue is because he sees somebody in a gas station and
15 follows him later in a vehicle that that somehow analogist
16 to his client leaving the Subway retrieving a pistol and
17 coming back in while he's ordering sandwiches and guns him
18 down. The situation isn't even analogist, but the most
19 important part is you don't even get there because it's a
20 timing issue. It has to be so close in time and both Day
21 and Mekler you talking three months and four months. In
22 this case, you're talking about '08 and '09 three year and
23 two years respectively. The State's position is, Judge,
24 that they are too far in time to be allowed into evidence
25 in this case.

1 MR. BAX: Your Honor, briefly in response, two
2 things I would like to state to the Court. In my reading
3 of both the Mekler and the Day case, I did not see -- and,
4 of course, I would defer judges reading of those cases,
5 but I did not see where the Court said a bright line rule
6 about the time. It is in the Court's discretion to decide
7 under the facts that have been presented of whether or not
8 that is important enough to and probative enough for the
9 State of mind of the defendant to be able to present their
10 defense, if something that passes that 403 test. There is
11 not a bright line rule about time.

12 Your Honor, and that is borne out about the fact
13 that these types are different. There's a three month,
14 there's four months. And in my reading of it, the Court
15 doesn't focus on time as being a bright line rule. They
16 did not say once you hit six months, it doesn't matter
17 whether you hit this doesn't matter. What I read from
18 those cases is a repeated discussion by the Court that the
19 trial court must look at these cases on a individual basis
20 and the facts to see if there's a close enough
21 relationship in the facts and in the impact on the
22 knowledge of the defendant as far as state of mind to make
23 it more probative than it is prejudicial and whether it is
24 relevant to the case. And I think that where Your Honor's
25 ruling would fall necessarily.

1 And secondly, there's been no -- just to clarify
2 the record, there's been no evidence presented that my
3 client went out to the car and got a gun. He actually --
4 the testimony from the State's witnesses that he didn't
5 get anything from the car. Obviously, that leaves the
6 inference he already had it. I don't know that that
7 actually helps me, but just to clarify the record, Your
8 Honor.

9 THE COURT: Well, your objection is so noted.
10 My previous ruling stands with regards to the 2008, 2009
11 incident. I agree with you, Mr. Bax, that the Court does
12 not have a bright line, bright line rule as to the timing
13 of that. However, I believe that based upon the Court's
14 analysis as previously noted on the record, I believe that
15 this matter so far removed from time and place as to this
16 particular case as it relates to your client -- bear with
17 me just a second here.

18 MR. BAX: Yes, Your Honor.

19 THE COURT: Okay. And again, I would just
20 reemphasize the language from State vs. Day evidence of
21 other specific instances of violence on the part of the
22 deceased are noted admissible unless they were directed
23 against the defendant which I think everybody can agree
24 here, they were direct -- this 2008, 2009 incident was not
25 directed at your client or if directed against others or

1 if directed against others, were so closely connected at
2 point of time or occasion with the homicide as reasonable
3 to indicate the state of mind of the deceased. And the
4 Court's analysis and what I made a determination is that
5 this was not so closely connected at a point of time or
6 occasion with a homicide that your client's being tried
7 here for that would indicate the state of mind of the
8 deceased at the time of the homicide or produce reasonable
9 apprehension, great bodily harm by your client. And
10 therefore, that's why I've ruled that your objection is so
11 noted for the record. And I think that's the appropriate
12 ruling in this case. All right.

13 Anything else at this time?

14 MR. STONE: No, sir, not from the State.

15 THE COURT: Let me ask this, we talked about
16 when we broke after the State rested, I asked the lawyers
17 to come back in chambers because I wanted to discuss after
18 Mr. Knight indicated that he wish to testify. I wanted to
19 talk to the lawyers to find out what, if any, record
20 Mr. Knight had and determine whether or not there was any
21 agreement -- first and foremost, there was a record there
22 was an agreement to what the State could ask him about in
23 cross-examining about. And based upon my discussions with
24 the lawyers in chambers, Mr. Knight does have a prior
25 record. From my understanding and what was conveyed to me

1 in chambers he has 2005 convictions for break and entering
2 three counts, three counts of larceny, in 2007 pointing
3 and presenting a firearm, and 2008 a possession of crack,
4 2010 unlawful carrying of a pistol; is that correct,
5 Mr. Solicitor?

6 MR. STONE: It is, Your Honor.

7 THE COURT: All right. It was questions that
8 defense counsel as to whether or not there any objections
9 to the State cross-examining your client as to his record.

10 MR. BAX: Thank you, Your Honor. And as I
11 stated before, I been over that. We're just double
12 checking a breaking and entering because my partner and I
13 had originally thought it was one count. I'm double
14 checking what I have here and I want to make sure we're
15 on the same page about that. It's a little bit hard to
16 read, Your Honor, because it's a North Carolina rap sheet
17 and every one of them is different and it is hard to find
18 where you are suppose to look to see whether a conviction
19 or this and that. It's a little bit difficult to read. I
20 believe they are asserting that it was more than one. I
21 think it was three counts.

22 THE COURT: Yes, sir.

23 Mr. Stone, if you all could help. Mr. Bax, is
24 right some of these rap sheets have come from other
25 states?

1 MR. STONE: Yes, sir, we went to Mecklenburg and
2 got a certified record.

3 THE COURT: If you could hand that ---

4 MR. STONE: I will let him take a look to make
5 sure that's correct. They are three separate houses. I
6 believe they were prosecuted or they were handled at the
7 same time.

8 THE COURT: While Mr. Bax is looking at that,
9 does the State have anything other than argument on the
10 law with regards to the facts that Mr. Bax put on the
11 record concerning the '08, '09 incident?

12 MR. THORNTON: Your Honor, I have no objection
13 to the facts. Based on your ruling, I don't think it's
14 important.

15 THE COURT: Mr. Bax, certainly indicated or
16 recognized a law enforcement officer. Who was it?

17 MR. BAX: The one I was talking about at
18 proffer?

19 THE COURT: Yes, sir.

20 MR. BAX: Investigator Kelleher, Your Honor.

21 THE COURT: Certainly reference Investigator
22 Kelleher before he went through recitation of the facts
23 about '08 and '09 matter and indicated if there was any
24 discrepancy from Mr. Kelleher to speak up. I just want to
25 note for the record that Officer Investigator Kelleher did

1 not speak up. And for the record, I want to be clear that
2 the State nor law enforcement had any discrepancy in what
3 the facts were stated by Mr. Bax on the record.

4 MR. THORNTON: And, Your Honor, on the record, I
5 would say this I have no discrepancy that's what
6 Mr. Bax's -- the recitation of the facts would have been
7 what people he would have called would have testified to
8 I'm not saying those were all encompassing truthful facts
9 as Your Honor knows different witnesses often say
10 different things.

11 THE COURT: Well, and that's the jury's
12 determination as to what the true facts are.

13 MR. THORNTON: But certainly the facts he
14 referenced would have been facts that in those two cases
15 people could have testified.

16 MR. STONE: And just so you know what I was just
17 doing. I asked Investigator Kelleher to make sure he was
18 here and heard the testimony. We would have no objection.

19 MR. BAX: Your Honor, I reviewed the records
20 that the Solicitor has provided. Before I get to that
21 just to make sure I don't forget, just noting for the
22 record that my presentation was in place of a proffer just
23 want to say that that was still to preserve the record and
24 then that's something that we discussed with the Court and
25 the Court's fine with me making that statement versus

1 actually proffering the testimony.

2 THE COURT: Absolutely, we discussed that in
3 chambers.

4 MR. BAX: Thank you, sir. The only thing that I
5 see that just gives me a little bit of concern and I'm not
6 exactly sure how to deal with it and seeing as how it is
7 -- it is an out-of-state record is and I will show this to
8 Mr. Stone and Mr. Thornton. On the back of the page --
9 this is from State of North Carolina Mecklenburg County on
10 the back of the page entitle transcript of plea, Your
11 Honor. There is a paragraph, handwritten paragraph under
12 14. The paper that was signed off on by the judge
13 apparently. It indicates that the defendant will plead
14 guilty to three counts of breaking and entering. The
15 cases shall be consolidated says defendant will plead
16 guilty to three counts of breaking and entering and three
17 counts of larceny after break and entering. The cases
18 shall be consolidate under one breaking and entering with
19 a split sentence, credit for time serve, followed by
20 intensive probation and then it gives the restitution
21 amount, that's just a little odd as far as records because
22 it says it will be consolidated under one. I don't know
23 what Your Honor want's to rule on that. I'm not sure what
24 it means. But I do just want to bring that to the Court's
25 attention and make sure that I want to put it on the

1 record.

2 THE COURT: Mr. Stone.

3 MR. STONE: Yes, sir. This is just the
4 sentencing was consolidated just as a normal guilty plea
5 would have been. I don't know what the rules are in North
6 Carolina, but I think the important thing is that the
7 first of the writing that he says the defendant will plead
8 guilty to three counts of breaking and entering and three
9 counts of larceny any after breaking and entering. And I
10 believe it was basically given -- he was given one
11 sentence at the same time.

12 THE COURT: I'm going to allow him to ask that.

13 MR. BAX: Certainly. And, Your Honor, based on
14 that, I believe that we agree to the record as stated. I,
15 of course, want to make sure that I am clear as defense
16 counsel that no way means that we agree to any facts
17 beyond the fact that there's a conviction unless we have
18 some further hearing on that. I would still contend that
19 merely the fact of those convictions is all that would be
20 admissible. Going into the background facts, I would
21 certainly have strenuous argument as to that being in any
22 way allowable under our rules or case law.

23 THE COURT: Anything in response to that from
24 the State?

25 MR. STONE: As far as the breaking and entering,

1 Your Honor, no, sir, I have no objection to that. There
2 is something that concerns me, Your Honor. Quite frankly,
3 this is a concern that I've had from the very beginning.
4 It depends a great deal on what the defendant says.
5 Depends a great deal on whether or not the defendant gets
6 up and says I was afraid of him and I'm a peaceful guy and
7 he's out shooting people. Because his record is not just
8 the record concerning whether or not he is to be believed
9 in one instance and this will be the only one that I will
10 be concerned about.

11 A man by the name of Michael Singleton flagged
12 down the Beaufort County Sheriff's Office and said --
13 pointed to the defendant said that guy just drove by and
14 shot at me. So I think a lot of this is going to depend
15 on how far the defendant opens that door to his own
16 peacefulness and his own character versus the victim in
17 this case. I just want you to know about that before
18 hand. I don't know where we're going, I don't know what
19 he's going to testify to obviously.

20 THE COURT: Well, and, Mr. Bax, certainly taking
21 into consideration what Mr. Stone says. I know you've
22 advised your client. And I advised him on the record his
23 right to testify and the ultimate decision is his. The
24 State's right to cross examine him on the record.

25 MR. BAX: And I agree with that, Your Honor, I

1 have discussed that with him. I understand what the
2 Solicitor is saying. If he does say something that is
3 completely contradictory to that fact, I understand that
4 that would open the door to that and I've discussed that
5 with my client. I don't anticipate that happening. I
6 don't anticipate my client standing up and saying. I'm a
7 good guy and I don't do bad things necessarily.

8 THE COURT: Well, as long as you know and I know
9 you advised him and he's sitting right here while we
10 discuss this matter. He certainly can open the door ---

11 MR. BAX: Yes, sir.

12 THE COURT: --- that other information coming
13 in.

14 MR. BAX: Yes, Your Honor.

15 THE COURT: All right. Anything else?

16 MR. BAX: No, Your Honor, defense is ready to
17 proceed.

18 MR. STONE: No, sir.

19 THE COURT: All right. Bring us the jury
20 please.

21 Before the jury comes in, I want to caution
22 Mr. Knight. Mr. Knight, you been sitting in here while I
23 made my ruling about this prior incident. I want to make
24 it abundantly clear to you that if you testify, your
25 lawyer's put on the record what he needed to protect your

1 right, but you are not to discuss the 2008, 2009 incident;
2 am I clear on that? Am I clear on that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Thank you.

5 (WHEREUPON, the jury came into open court.)

6 THE COURT: Ladies and gentlemen of the jury, as
7 I previously told you before you exited the courtroom, the
8 State has rested. The State has presented its case. It's
9 now the defense's opportunity to present its case. So
10 therefore, I'm going to recognize defense counsel.

11 Mr. Bax, you recognize, sir.

12 MR. BAX: Thank you very much, Your Honor. At
13 this time, the defense would call Investigator George
14 Erdel. Sorry, Your Honor, Officer Erdel stepped out of
15 the courtroom, call him back in.

16 THE CLERK: Place your left hand on the Bible
17 and raise your right hand for me please. Do you solemnly
18 swear to truthfully answer all questions asked of you by
19 this court, so help you God?

20 THE WITNESS: I do.

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

23 THE COURT: Mr. Bax.

24 MR. BAX: Thank you, Your Honor.

25 THE WITNESS: George Erdel, last name is

1 E-R-D-E-L.

2 WHEREUPON,

3 George Erdel,

4 after first having been duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. BAX:

7 Q Good morning, Investigator Erdel, how you doing
8 today?

9 A Good morning.

10 Q Just a few brief questions for you. First of all,
11 can you tell us where you are employed, sir?

12 A Beaufort Police Department.

13 Q How long have you been working there, Officer?

14 A Since 2003.

15 Q Okay. And what position do you hold right now? What
16 are your duties with the Beaufort City Police Department?

17 A I'm an investigator.

18 Q Okay. Is there a rank associated with that, sir?

19 A It's what's called investigator two, which is
20 corporal patrol division.

21 Q All right. Investigator Erdel, do you recall being
22 involved with the investigation of the incident that's
23 been testified to that occurred at the Subway sandwich
24 shop in Cross Creek back in July of 2011?

25 A Yes.

1 Q That was a homicide case; correct?

2 A Correct.

3 Q Okay. Now, you weren't necessarily what you would
4 call the lead investigator, but you had duties in this
5 case and you did some things in this case; is that
6 correct?

7 A I call them preferable duties but, yes, I would say I
8 was involved.

9 Q All right. What kind of things did that involve just
10 to let the jury know?

11 A Basically, the extent of my involvement in this
12 investigation was I pulled the video from the machine at
13 Subway. And I was liaison with the U.S. Marshall service
14 who apprehended Mr. Knight.

15 MR. BAX: Permission to approach the witness,
16 Your Honor?

17 THE COURT: Yes, sir.

18 MR. BAX: Thank you.

19 BY MR. BAX:

20 Q Just handing you this to refresh your recollection.
21 As a result of your -- well, let me ask you this, in your
22 general duties when you are working on a case whether it's
23 this case or any other case, you try to make notes and
24 file reports about things that you do?

25 A Yes.

1 Q Okay. And in this case, did you do that about the
2 things that you did in this case?

3 A Yes.

4 Q Okay. Now, looking at, do you recognize that as one
5 of the notes that you made in this case?

6 A Correct, yes.

7 Q Let me ask you really quickly, in you all's system
8 there at the Beaufort City Police Department, is that
9 something where reports are put on a computer?

10 A It's a computerize system, yes.

11 Q Okay. And once you've put that in the computer
12 system, how do other detectives or investigators access
13 that?

14 A Everybody has access to the system, so any individual
15 officer can -- as long as they have the case number, can
16 look in that system and they can see everything that's
17 been associated with that case.

18 Q Okay. Is there any way that you alert a particular
19 officer if you want to make sure say a lead investigator
20 knows that you put in a report, is there a particular way
21 you do that tell them or do you e-mail them, how do you do
22 that?

23 A It could be any of those ways. There's no standard
24 protocol as far as do you have to do it by e-mail or
25 verbally or by telephone. It's just which ever method you

1 chose at the time.

2 Q Okay. Now, without going into what anybody said, did
3 you receive information that caused you to make that
4 report?

5 A Yes.

6 Q Okay. And it involved information about a potential
7 person that might have information about the case?

8 A Correct.

9 Q And that person that was reported to you is Darrien
10 Hutchinson who might have information about the case; is
11 that correct?

12 A That was the information reported to me.

13 Q As a result of getting that, you did this report; is
14 that right?

15 A Correct.

16 Q Okay. Can you tell us what you did with that report?
17 You said you put it in the computer. Anything else that
18 you did with that report?

19 A With the report here that I wrote or...

20 Q Did you -- do you remember if you call the lead
21 investigator or any other investigators and said, hey,
22 look at this?

23 A It's entirely possible and probably even likely, but
24 I couldn't swear to it. I don't recall.

25 Q Okay. So you don't have any independent recollection

1 of necessarily talking about it with any other officer per
2 se?

3 A No, sir.

4 Q Okay. But it would have been there and it would have
5 been available for any investigator including
6 Investigator Dowling to look at under your understanding
7 of the computer system?

8 A Correct.

9 Q Okay. Just a couple of brief follow-up questions.
10 Now, you investigated this or you worked on this case as
11 you testified in getting video and doing some other
12 things; correct?

13 A Yes, sir.

14 Q Would it be accurate to say there was a lot of people
15 in the Beaufort City Police Department that chipped in and
16 helped out with this case?

17 A Absolutely, yes, sir.

18 Q Now, you and I have discussed this case as well;
19 correct?

20 A Correct.

21 Q Okay. Was it something that shocked you the way it
22 went down and the fact that this was broad daylight and
23 that the defendant would just go in front of all these
24 cameras ---

25 MR. THORNTON: Objection, Your Honor.

1 THE COURT: Overruled. State your objection?

2 MR. THORNTON: Calls for an opinion.

3 THE COURT: Can the lawyers approach?

4 (WHEREUPON, a bench conference was held in the
5 presence of the jury, but out of the hearing of the
6 jury.)

7 THE COURT: Objection overruled.

8 BY MR. BAX:

9 Q Okay. Let me re-ask the question. We had a
10 discussion about this, but you know were you surprised at
11 the fact this was in broad daylight in a public place, in
12 a place with cameras?

13 A Yes.

14 Q That was something you saw as atypical?

15 A Very unusual.

16 MR. BAX: Moments indulgence, Your Honor.

17 THE COURT: Yes, sir.

18 (WHEREUPON, a pause in the proceedings.)

19 BY MR. BAX:

20 Q Okay. Investigator, I'm sorry to keep you on the
21 stand there just wanted to ask you, this was based on your
22 experience in having investigated cases involving
23 shootings before; correct?

24 A Yes.

25 Q Okay. And based on the fact that you investigated

1 cases that involved shootings usually at night out of car
2 windows and things like that; correct?

3 A Yes.

4 MR. BAX: Thank you, no further questions.

5 THE COURT: Cross-examination.

6 MR. THORNTON: Yes, sir.

7 CROSS-EXAMINATION

8 BY MR. THORNTON:

9 Q Detective Erdel, that piece of paper that Mr. Bax
10 handed you earlier, did you follow up on whatever lead
11 that was?

12 A No.

13 Q And did you feel it was relevant at all?

14 A I did not.

15 MR. THORNTON: Thank you.

16 THE COURT: Any redirect?

17 MR. BAX: No redirect, Your Honor. And at this
18 time, I'd ask that Investigator Erdel be released from his
19 subpoena.

20 MR. THORNTON: Without objection, Your Honor.

21 THE COURT: Sir, you can step down. You free to
22 go. You have no further responsibilities under your
23 subpoena. Thank you for being here.

24 (WHEREUPON, the witness leaves the witness
25 stand.)

1 THE COURT: Call your next witness.

2 MR. BAX: Thank you, Your Honor. Defense would
3 now call Officer B. Johnson to the stand please with the
4 Beaufort County Sheriff's Office.

5 THE CLERK: Would you place your left hand on
6 the Bible and raise your right hand for me please. Do you
7 solemnly swear to truthfully answer all questions asked of
8 you by this court, so help you God?

9 THE WITNESS: I do.

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

12 THE WITNESS: Lance Corporal Blake Johnson
13 Beaufort County Sheriff's Office Enforcement Division.
14 WHEREUPON,

15 Blake Johnson,
16 after first having been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. BAX:

19 Q Thank you, Officer. I been wondering what the B.
20 stand for. I appreciate that. Thank you for being here
21 this morning. I'll try to get you in and out of here. I
22 know you got to be on road duty, so I want to get you back
23 out on the road. Officer Johnson, do you recall being one
24 of other the officers who responded to an incident or a
25 report of a shooting on May 30th responded to the shooting

1 on May 30th of 2011?

2 A I do.

3 Q Okay. And was -- do you recall where that was at,
4 what address it was?

5 A One Donaldson Drive in Burton.

6 Q In the Burton neighborhood?

7 A Burton area.

8 Q And tell us what you understood that call to be
9 about?

10 A We received a call or we got dispatched to One
11 Donaldson Drive. We had -- while in route we had heard
12 that the mobile home had gotten -- shots were being fired
13 and then several shots had come through the trailer.

14 Q When you respond, were you the first officer on the
15 scene, Officer Johnson?

16 A No, I was not. There was several of us there.

17 Q Okay. And so there were other officers present at
18 the scene with you when you were there?

19 A Yes.

20 Q Okay. When you were there at the scene, did you take
21 any pictures or photographs?

22 A We did.

23 Q Okay. And that was in conjunction with other
24 officers supervising you and saying I want a picture of
25 this, picture of that?

1 A Yes.

2 Q Who was that officer?

3 A Staff Sergeant Fraiser.

4 Q Staff Sergeant Fraiser, okay.

5 MR. BAX: Approach the witness, Your Honor?

6 THE COURT: Yes, sir.

7 MR. BAX: Thank you.

8 BY MR. BAX:

9 Q I'm going to pass you a packet and this is going to
10 be kind of a large packet, so I'm going to pass it to you
11 in pieces.

12 THE COURT: Those been marked?

13 MR. BAX: Yes, they have, Your Honor. They have
14 been marked defense.

15 THE COURT: Stickers on the back? I see them.

16 MR. BAX: It's in the corners, Your Honor. And
17 for the record, it's Defendant's Exhibits marked through
18 one through 44.

19 THE COURT: State's reviewed those exhibits?

20 MR. STONE: We reviewed them, we have no
21 objection to them coming in.

22 THE COURT: Thank you.

23 BY MR. BAX:

24 Q I'm just going to go ahead and pass you the packet
25 please. If you would, take as much time as you need.

1 Review those and see if those are the pictures that you
2 took that night, if those accurately represent what you
3 took a picture of and whether there's been any changes to
4 them? Take your time I know there's a lot of photos.

5 A Yes, they are.

6 Q Thank you, Officer Johnson for taking the time to do
7 that for us. Now, that you've looked at those pictures,
8 are those fair and accurate representations that you took
9 that night?

10 A Yes, sir, they are.

11 Q Have they -- do they look like they been changed or
12 altered in any way?

13 A No.

14 Q Okay. And there are some exterior shots and shots of
15 the interior of the residence at One Donaldson Drive; is
16 that correct?

17 A Yes, sir.

18 MR. BAX: Your Honor, at this time I would move
19 to have these introduced Defendant's Exhibits 1 through
20 44.

21 THE COURT: Any objection?

22 MR. STONE: We don't have any objection, Your
23 Honor.

24 THE COURT: Well, without objection Defendant's
25 Exhibits one through 44 admit into evidence.

1 (WHEREUPON, Defendant's Exhibits Nos. 1-44 were
2 admitted into evidence.)

3 MR. BAX: Thank you, Your Honor.

4 BY MR. BAX:

5 Q I'm just going to hand you back Defendant's 1 and 2,
6 that appears to be a picture of a grassy area. And
7 there's a lot of the plastic markers with numbers on them;
8 correct?

9 A Yes.

10 Q Can you tell us what those are marking?

11 A This marks the spread of shell casings that we
12 located in the adjacent property at 78 Pine Grove Road.

13 Q Is that directly behind the trailer or house that's
14 there on One Donaldson Drive?

15 A Yes.

16 Q Okay. And was that accessible by going through
17 another wooded lot back behind One Donaldson Drive?

18 A The drive way is pretty much adjacent to the back of
19 One Donaldson Drive. If you went down the driveway, you
20 would see the back of One Donaldson Drive.

21 Q Okay. And so those plastic markers that you can see
22 in those photographs, those represent where you found
23 shell casings, each one of those represent where a shell
24 casing is found; is that correct?

25 A Yes.

1 Q Can you tell the jury how many shell casings were
2 found on the scene?

3 A We found seven .45 caliber shell casings and ten .9
4 millimeter shell casings.

5 Q So for a total of 17 different shell casings in those
6 two different calibers?

7 A Yes.

8 Q Okay. Thank you.

9 MR. BAX: Permission to publish these to the
10 jury, Your Honor.

11 THE COURT: So granted.

12 BY MR. BAX:

13 Q And then in the -- some of these subsequent
14 photographs which I'm going to show you now, these are
15 just closeup shots of those very markers that are shown
16 in the first two photographs?

17 A Yes, sir.

18 Q Okay. And there's actually one that has a L-shaped
19 thing. Let me just ask you real quickly, what is that
20 L-shape there?

21 A Just to get a size.

22 Q So that's a ruler?

23 A Yes.

24 Q And that would have been on one of the ones that had
25 a numbered marker, but the numbered markers been moved to

1 put a ruler there?

2 A Yes.

3 Q Okay.

4 MR. BAX: And that's Defense Exhibit 18, Your
5 Honor, for the record that I was asking him about.

6 BY MR. BAX:

7 Q I'm going to hand you Defense Exhibit 3 through 17
8 just ask you if those are closeups of those markers that
9 we just talked about?

10 A From yes one through 15.

11 Q Thank you.

12 MR. BAX: Your Honor, permission to publish
13 those exhibits that he's just looked at to the jury?

14 THE COURT: Yes, sir.

15 MR. BAX: Thank you.

16 THE COURT: If you want to for the record
17 reference those, the ones that he just looked at reference
18 exhibit numbers.

19 MR. BAX: Certainly, Your Honor, he just looked
20 at pictures marked Defendant's Exhibit 3 through
21 Defendant's Exhibit 17 showing the plastic markers he also
22 looked at Defendant's Exhibit 18 with the ruler on them
23 and that's why I'm publishing them to the jury at this
24 time.

25

1 THE COURT: Okay, thank you.

2 BY MR. BAX:

3 Q Now, you obviously found these shell casings in this
4 area and marked them and took photographs of them. Did
5 you also take photographs of the actual residence itself?

6 A I believe that we did.

7 Q Okay. And were those photographs -- were you found
8 what appear to be bullet holes?

9 A Yes.

10 Q Okay. All right. And one of these is a little dark,
11 so if you can -- I'm going to actually pass that one to
12 you individually. Can you tell us exactly if you can
13 recall it's a little dark?

14 A This one the flash didn't work, but we submitted it.
15 It's the other.

16 Q So it's just this picture here?

17 A Yes.

18 MR. BAX: Just for the record purposes, Your
19 Honor, Officer Johnson was referring to Defendant's
20 Exhibit 22.

21 BY MR. BAX:

22 Q And your testimony is that Defendant's Exhibit 23 is
23 just that with the flash having gone off; is that correct?

24 A Yes.

25 Q Okay. And those were pictures of a bullet whole that

1 you found in the house near the ground; is that correct?

2 A Yes.

3 Q And then I'm going to hand you what's been marked as
4 Defendant's Exhibit 19 through 27 and ask you take a look
5 at those that you previously reviewed. Are those also
6 shots of bullet holes that were found in that residence?

7 A They are.

8 Q Okay. Those are taken on the exterior of the house;
9 is that correct?

10 A They are.

11 Q Were they condensed into one spot on the house or
12 were they kind of generally along the whole back and side
13 of the house?

14 A They were scattered throughout the outside.

15 Q Okay. Thank you very much, Officer.

16 MR. BAX: Your Honor, I'm passing -- I would ask
17 to publish Defendant's Exhibits 19 through 27 to the jury?

18 THE COURT: So granted.

19 MR. BAX: Thank you.

20 BY MR. BAX:

21 Q Now, Officer, do you recall if you all had an
22 opportunity to go inside the residence and look for any
23 other evidence?

24 A We did.

25 Q Did you have an opportunity to take photographs of

1 what you found inside the house?

2 A We did.

3 Q Okay. I'm going to pass you what's been marked as
4 Defendant's Exhibit 28 and I think it goes through the end
5 of these exhibits, actually with execution of this one.

6 MR. BAX: So that's going to be Defendant's 28
7 through 38, Your Honor, I'm going to hand to Officer
8 Johnson. And then I'm also handing him exhibit --
9 Defendant's Exhibit 40, 41, 43 and 44, Your Honor.

10 THE COURT: Okay.

11 BY MR. BAX:

12 Q Officer Johnson, do those appear to be the
13 photographs you took of the interior of the resident at
14 One Donaldson Drive?

15 A They do.

16 Q Okay. And those are photographs taken of where you
17 saw bullet entry holes or what appear to be bullet entry
18 holes?

19 A Yes, sir, from where they came through the dry wall
20 of the trailer.

21 Q Okay. And if you can as you're looking through
22 those pictures, can you identify the photographs and the
23 exhibit numbers of where you took pictures or what
24 appeared to be projectiles?

25 A These are the two different shots of the two

1 different projectiles.

2 Q Okay. And those would be exhibit 40 and 41; is that
3 correct?

4 A 43 and 44 is the other one.

5 Q And then these are Defendant's Exhibits 43 and 44.
6 So the 40 and 41 are different shots of one projectile
7 that was found?

8 A It's just two different angles.

9 Q And then 43 and 44 it looks like there's one shot out
10 and then one shot closer in the same projectile?

11 A Yes.

12 Q Thank you. Can you hand me those other ones.

13 MR. BAX: Your Honor, permission to publish to
14 the jury those exhibits that I just showed to him?

15 MR. STONE: No objection.

16 THE COURT: Yes, sir.

17 BY MR. BAX:

18 Q And finally, I think these are also exteriors that we
19 missed before. I just want to make sure that we cover
20 them. I'm going to hand you Defendant's Exhibit 42 and
21 39. Those appear to be pictures that were taken on the
22 exterior of the home; is that correct?

23 A They are.

24 Q The one is marked as one a shell casing with a
25 plastic marker of one; is that correct?

1 A Yes.

2 Q And the other picture is what appears to be a bullet
3 hole in a window; is that correct?

4 A It is.

5 Q Okay. Thank you very much.

6 MR. BAX: Permission to publish these last two
7 Defendant's Exhibit 39 and 42 to the jury?

8 THE COURT: Yes, sir.

9 MR. BAX: Thank you.

10 BY MR. BAX:

11 Q Now, as a result of finding this evidence at this
12 scene, did you collect the shell casings that you found?

13 A We did.

14 Q Okay. I like to pass to you what's been identified
15 or has been premarked as Defendant's Exhibits 45 and 46
16 and ask you if you can identify these for me please?

17 A These are seven .45 caliber shell casings that we
18 found. And these are the ten .9 millimeter shell casings
19 that we found at Donaldson Drive?

20 Q Okay. And those are in the evidence bag; is that
21 correct?

22 A They are.

23 Q And that was -- well, let me ask you this, that was
24 sealed on scene after being placed into the bag?

25 A Yes, it was sealed.

1 Q Does it appear that that seal has been broken in any
2 way?

3 A No.

4 Q Okay. Do they appear as you recall putting them in
5 the bag originally on May 30th 2011?

6 A They do.

7 Q Okay. And for the court's information and for the
8 jury's information, I have Exhibit Number 46 which appears
9 to be .45 shell casings; is that correct?

10 A They are.

11 Q And then I have Defendant's Exhibit 45 which appears
12 to be the .9 millimeter shell casing; is that correct?

13 A Yes, sir.

14 MR. BAX: Permission to publish to the jury,
15 Your Honor. Well, actually, I would ask to move these
16 into evidence as Defendant's 45 and 46 first.

17 MR. STONE: Judge, we don't have any objection
18 and there's no necessity to call a chain of custody,
19 either, we stipulate to that as well.

20 MR. BAX: Thank you very much.

21 THE COURT: Without objection 45 and 46 admitted
22 into evidence.

23 (WHEREUPON, Defendant's Exhibits Nos. 45 and 46
24 were admitted into evidence.)

25 MR. BAX: Thank you, Your Honor. Permission to

1 publish.

2 THE COURT: Yes, sir.

3 BY MR. BAX:

4 Q And finally, Officer, and I appreciate all your
5 patience as we go through all this. I know you got stuff
6 to do here and thank you very much for coming. I have
7 Defendant's Exhibit marked 47. Can you take a look at
8 that and see if you can identify that for me please?

9 A Two bullets that have been spint.

10 Q And that would be like what the SLED crime scene
11 investigator referred to as projectiles as well; correct?

12 A Yes.

13 Q Okay. Do those appear to be in the same condition
14 that they were when you place them in the bag on May 30th?

15 A They appear to be.

16 Q Okay. And does it appear that they there sealed as
17 well; correct?

18 A Yes.

19 Q Does it appear that that seal has been broken in any
20 way?

21 A No, it does not.

22 MR. BAX: Your Honor, I move to have this
23 introduced as Defendant's Exhibit 47 into evidence, Your
24 Honor?

25 THE COURT: Any objection?

1 MR. STONE: No, sir.

2 THE COURT: Without objection Defendant's
3 Exhibit 47 in evidence.

4 (WHEREUPON, Defendant's Exhibit No. 47 was
5 admitted into evidence.)

6 MR. BAX: Permission to publish to the jury,
7 Your Honor.

8 THE COURT: Yes, sir.

9 BY MR. BAX:

10 Q And I know that the -- we've gone through the
11 pictures, but I just want to ask you the -- and we can
12 refer back to these if you need to. One projectile that
13 was found on the floor, what was that -- do you recall
14 what was near, what kind of furniture that was near?

15 A One projectile was found by the kitchen sink and the
16 other one was found on a TV cabinet ---

17 Q An entertainment center or where you would put a
18 television?

19 A Yes.

20 Q Okay. In fact, it was found where it look like it
21 had struck some DVD's?

22 A Uh-huh.

23 Q Is that correct?

24 A Yes.

25 Q And those were children DVD's; is that correct?

1 A As I recall, yes.

2 Q Okay. And I think that we talked about this. I just
3 want to make sure I ask you again. You were with Staff
4 Sergeant Fraiser during the time you took these
5 photographs; correct?

6 A I was.

7 MR. BAX: Okay. Moments indulgence, Your Honor.

8 THE COURT: Yes, sir.

9 BY MR. BAX:

10 Q Now, Officer Johnson, while you were at the -- this
11 scene, did you find out from the other officers or from
12 anybody that was there who resided in the trailer?

13 A I don't recall who actually live there, no.

14 Q Do you recall doing any kind of report to memorialize
15 that you had been there and what you did?

16 A I did a supplemental report to the actual incident
17 report done by Corporal Snow.

18 MR. BAX: Permission to approach the witness,
19 Your Honor?

20 THE COURT: Yes, sir.

21 BY MR. BAX:

22 Q I just pass you this to see if it refreshes your
23 recollection. After having reviewed that, does it refresh
24 your recollection as to who might have been the resident
25 at that location?

1 A Miss LaShaunica Allen.

2 Q Okay. Thank you very much. While you were on scene,
3 was there any other individuals you remember that you talk
4 to or saw around?

5 A Not me personally, no.

6 Q Not you personally. So there would have been other
7 officers that might have been doing interviews or talking
8 to any potential witnesses?

9 A Yes, there were several of us out there.

10 MR. BAX: Thank you very much.

11 No further questions at this time for Officer
12 Johnson.

13 THE COURT: Cross-examination?

14 MR. STONE: No, sir, Your Honor.

15 MR. BAX: I ask that he be released from his
16 subpoena, so he could go back to his job, Your Honor.

17 THE COURT: Any objection?

18 MR. STONE: No, sir.

19 THE COURT: Sir, you are free to step down. And
20 you have no further responsibility under your subpoena.
21 You free to go. Thank you.

22 (WHEREUPON, the witness leaves the witness
23 stand.)

24 THE COURT: Call your next witness.

25 MR. BAX: Thank you very much, Your Honor. The

1 next witness for the defense would be Corporal Chris (sic)
2 Seronka. If I'm saying that correctly, I apologize.

3 THE COURT: The forelady's raising her hand on
4 the jury box over there. You asking about the evidence?

5 MADAM FORELADY: Yes, can we just have a minute
6 to catch up cause it's distracting us from listening to
7 everybody.

8 THE COURT: Can the bailiff grab that evidence
9 and give them an opportunity to look at it again.

10 Thank you, ma'am.

11 Go ahead and swear this witness and let him have
12 a seat, but do not begin your questioning until they
13 finish looking at those.

14 THE CLERK: Put your left hand on the Bible and
15 raise your right hand. Do you solemnly swear to
16 truthfully answer all questions asked of you by this
17 Court, so help you God?

18 THE WITNESS: I do.

19 THE CLERK: Please be seated and state your name
20 for the court please.

21 THE WITNESS: Corporal Chad Seronka Beaufort
22 County Sheriff's Office.

23 THE COURT: Hold on.

24 (WHEREUPON, a pause in the proceedings.)

25 THE COURT: You all as you look at a piece of

1 evidence, a picture, pass it down to the next person
2 rather than holding all 10 or 15 or however many
3 photographs you have, if you would. Thank you. Make it
4 go a lot faster.

5 (WHEREUPON, a pause in the proceedings.)

6 THE COURT: I will tell the jury this that these
7 items that have been introduced into evidence, they will
8 go back to the jury room with you for your viewing as
9 well, okay.

10 (WHEREUPON, a pause in the proceedings.)

11 THE COURT: All those items of evidence have
12 been reviewed by the jury pursuant to defense counsel's
13 request, collected by the bailiff and placed here by the
14 court reporter.

15 Mr. Bax, you are now recognized at this time.

16 MR. BAX: Thank you very much, Your Honor.

17 THE COURT: Yes, sir.

18 WHEREUPON,

19 Chad Seronka,
20 after first having been duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. BAX:

23 Q Corporal, thanks for being here this morning.

24 A Yes, sir.

25 Q All right. And you are Chad Seronka; is that

1 correct?

2 A That is correct.

3 Q I was informed by the department there are two
4 Seronka's over there at the Beaufort County Sheriff's
5 Department?

6 A Correct.

7 Q Okay. And let me ask you this, do you recall
8 responding to an incident on May 30th 2011 at One
9 Donaldson Drive?

10 A I do.

11 Q How did you get attached to that investigation, did
12 you get dispatch to it?

13 A Yes.

14 Q Okay. And what was your understanding of what the
15 incident was?

16 A I believe the initial complaint was by a female
17 stating that she was in a residence and someone had just
18 shot at it.

19 Q Okay. Now, do you recall when you arrived on scene
20 was there any other officers already there?

21 A I believe Officer Johnson and I arrived relatively
22 about the same time.

23 Q Okay. What did you do there on scene when you got on
24 scene, Corporal?

25 A Made sure that the complainant was okay, no injuries,

1 check the welfare of everyone in the residence.

2 Q Who all was in the residence, Corporal?

3 A It's my recollection it was the female complainant
4 and her four-year-old son.

5 Q Four-year-old son, okay. Were you the first to enter
6 the residence?

7 A Positively, no. It's plausible that I was to
8 initially go in and assure their safety. I would say
9 that's accurate.

10 Q Okay. Do you recall where the residents were
11 Miss Allen and her four-year-old son? Where were they
12 when they came in?

13 A When I arrived, I believe they were in the living
14 room.

15 Q Okay. And you don't recall whether another officer
16 had been in there by that point or not; is that correct?

17 A I know that no one had been in there at that point.

18 Q All right. And what did -- once you saw them and
19 ascertain they were safe, what else did you do inside the
20 residence, Corporal?

21 A Gathered basic information the who, what, where,
22 when, issued her a written statement to which he
23 completed.

24 Q Okay. And this was based on shooting into the
25 residence. Were you able to see physically any evidence

1 of that inside the home?

2 A Initially, no. That wasn't my initial concern. My
3 initial concern was more along getting information for
4 responding officers. She was able to get -- if she's able
5 to observe the suspect, see who it was so that I could
6 notify those responding officers as to who they needed to
7 look for.

8 Q Okay. Later on during your investigation, did you
9 then see some evidence of the gunshots?

10 A Yes.

11 Q What did you see?

12 A Pretty much what Officer Johnson detailed, that the
13 casing on the TV stand, found one in the kitchen on the
14 counter.

15 Q Those were the projectiles inside the residence?

16 A Correct.

17 Q And through your investigation, you ascertain where
18 the residence -- the woman and her four-year-old son were
19 they were during the time that the shots being fired, did
20 you determine that from looking around?

21 A I believe she was in a back bedroom and the young
22 child was in the living room.

23 Q Okay. And did you ascertain whether or not they got
24 together during this time or anything like that?

25 A Upon hearing the gunshots, she crawled to the living

1 room to ensure the safety of her son.

2 Q Okay. All right. Did you ascertain whether she had
3 gone anywhere prior to law enforcement coming or did she
4 stay right there?

5 A To my knowledge, she stayed in the residence until we
6 arrived.

7 Q And obviously, as you've testified, you observed a
8 lot of the things that Officer Johnson's already testified
9 to; correct?

10 A Yes.

11 Q Okay. Did you aid in putting any of those markers
12 or finding any of those things initially?

13 A I believe we went out and did the initial search for
14 casings together at which point they were identified by
15 the markers photographed and then collected by him.

16 Q Okay. And obviously, as law enforcement, you have
17 taken these situations and deal with them because it's
18 your job, but obviously something like this can cause some
19 emotion. Can you tell us from your observations what was
20 the state of mind of Miss Allen and her four-year-old son?

21 A Nervous, scared, more so for her child I believe.

22 Q What about the four year old, what was his state,
23 can you recall?

24 A I believe he was asleep at the time on the couch.
25 She had done a pretty good job of calming him down by the

1 time I got there. He was just like most four year olds.
2 He was -- he didn't really understand what was going on,
3 but he knew that something was going on.

4 Q So he had been upset and she had to calm him down?

5 A I believe so.

6 Q Okay. Was he crying when you got into the house or
7 had he stopped?

8 A I don't recall.

9 Q And you did testify that your first duty obviously
10 was to check them for injuries. You checked the four year
11 old and he didn't have any injuries?

12 A She verbally stated to me he wasn't injured and
13 neither was she.

14 Q Okay. So you didn't do a physical examination
15 yourself?

16 A Hands on, no. It was taken by her verbal.

17 Q And then visually looking at them?

18 A Correct.

19 Q Okay. Do you recall if E.M.S. or anybody was called
20 out to the scene?

21 A To my recollection, no. Based on her, they obviously
22 had no -- they were not the victim of a gunshot and by her
23 stating so, E.M.S. was not called to the scene.

24 Q Okay. Do you recall -- and I know it's been sometime
25 we're talking, you know, well over a year here. Do you

1 recall what Miss Allen was dressed in? What kind of
2 clothing?

3 A I don't.

4 Q What about the boy do you remember what he was
5 wearing?

6 A Not off the top of my head.

7 Q Do you remember the name of the boy?

8 A I believe it was Malcolm.

9 Q And as a result of your involvement in this, did you
10 do either a supplemental or an incident report?

11 A I wrote the initial -- the incident report.

12 Q Okay. All right. I'm just seeing if there's
13 something to refresh your memory in here or not. And let
14 me ask you this about how long were you or law enforcement
15 in general at this residence at night investigating this
16 case?

17 A Say no less than an hour, maybe an hour and hour and
18 a half.

19 Q And I don't know that I establish this, what time did
20 you arrive on scene? Do you recall?

21 A Not off top of my head, no.

22 MR. BAX: Approach the witness, Your Honor?

23 THE COURT: Yes, sir.

24 BY MR. BAX:

25 Q Just going to pass you this, just to refresh your

1 recollection, see if that helps you.

2 A Eighteen minutes after midnight on the 30th.

3 Q Okay. So it was late at night around midnight time?

4 A Correct.

5 Q And do you recall -- what time did you receive your
6 dispatch call to go out there?

7 A Eighteen minutes after midnight I was dispatched and
8 I arrived seven minutes later.

9 Q Okay. And you said that you guys were out there
10 about an hour. Were you the last officer to leave or were
11 there still officers when you left the scene, sir?

12 A To my recollection, I was the last one I believe.

13 Q Do you recall if Miss Allen was going to stay there
14 at the residence or was she going to leave based on
15 everything that had happened?

16 A I don't remember.

17 Q Okay. All right. Thank you very much.

18 MR. BAX: Moment's indulgence, Your Honor.

19 THE COURT: Yes, sir.

20 (WHEREUPON, a pause in the proceedings.)

21 MR. BAX: No further questions for this witness
22 at this time.

23 THE COURT: Cross-examination?

24 MR. THORNTON: Nothing from the State, Judge.

25 THE COURT: Sir, you may step down.

1 MR. BAX: We ask that the Corporal be excused
2 from his subpoena, Your Honor.

3 MR. THORNTON: Without objection.

4 THE COURT: Without objection witness is excused
5 with no further responsibility under the subpoena.

6 (WHEREUPON, the witness leaves the witness
7 stand.)

8 THE COURT: Call your next witness.

9 MR. BAX: Thank you, Your Honor. At this time,
10 Your Honor, the defense would call Staff Sergeant Fraiser
11 to the stand.

12 THE CLERK: Place your left hand on the Bible
13 and raise your right hand. Do you solemnly swear to
14 truthfully answer all questions asked of you by this
15 court, so help you God?

16 THE WITNESS: Yes, ma'am.

17 THE CLERK: Please be seated and state your name
18 and spell it for the court please.

19 MR. BAX: May it please the Court, Your Honor.

20 THE COURT: Yes, sir.

21 WHEREUPON,

22 J.L. Frasier,
23 after first having been duly sworn, testified as follows:

24 DIRECT EXAMINATION

25

1 BY MR. BAX:

2 Q Sergeant Fraiser, good to see you. You been present
3 for the testimony so far today. Were you one of the
4 officers who responded to a shooting incident on May 30th
5 of 2011?

6 A Yes, I was.

7 Q And that was at One Donaldson Drive; is that correct?

8 A Yes, sir, I was.

9 Q And were you with Officer Johnson when the evidence
10 was found and photographed?

11 A Yes, sir, when I arrived as the investigator, I
12 reviewed the entire scene. Officer Johnson is what we
13 call a crime scene technician. He assisted me in
14 collecting the evidence. I identified the evidence with
15 him. He collected that evidence for me.

16 Q Okay. And did you also have an opportunity to talk
17 to anybody on scene the residents?

18 A I did. I did canvas of the neighborhood. There were
19 people outside. We located some juveniles in the area. I
20 did -- I talk to several people.

21 Q Okay. Did you have the opportunity to ascertain who
22 were the residence of One Donaldson Drive?

23 A From what I stood, it was Miss Allen and her son.
24 And I believe his name Robert.

25 Q Robert. Okay. And is there anybody else that you

1 talk to that said they lived at One Donaldson Drive?

2 A I don't believe so.

3 Q Okay. Do you recall ever speaking to Rajerick
4 Knight that evening?

5 A I don't.

6 Q Okay. Did you ever talk to Miss Allen about anybody
7 else living there besides her and her son?

8 A I don't believe I did. I asked her who stayed there
9 and she stated it was her and her son I believe. I don't
10 believe anybody else was identified.

11 Q Okay. Now, obviously, and I think you've alluded to
12 this. Originally, officers detained three juvenile
13 suspects; is that correct?

14 A Yes, it is.

15 Q Was it later determined that those suspects didn't
16 have anything to do with the shooting?

17 A It was. Three juveniles were found in the area.
18 Upon the officers arrival, they fled. The three juveniles
19 were located. I conducted interviews with all them in the
20 presence of their parents, completed gunshot residue kits
21 and they were cleared.

22 Q Okay. And they were young and had basically ran away
23 when they saw law enforcement; is that correct?

24 A That's right.

25 Q After the three juveniles were basically cleared for

1 lack of a better word, did you continue to investigate who
2 had shot into this house?

3 A I did.

4 Q And what were you able to determine from your
5 remembrance?

6 A Most of what I was able to determine was involving an
7 Antoine Robinson. The information that I developed mostly
8 through Miss Allen herself was that Antwan Robinson was
9 responsible for the shooting. He had pulled up into the
10 residence at 98 Pine Grove Road. He had fired the shots.
11 It was -- it appeared that there was at least two people
12 with two different casings and that's judging by how the
13 casings were found in two separate piles.

14 Q Okay.

15 A Antoine Robinson was the one that I identified as the
16 most probable. However, I wasn't able to get anybody to
17 come forward for testimony and prosecution.

18 Q Okay.

19 MR. BAX: Permission to approach the witness,
20 Your Honor?

21 THE COURT: Yes, sir.

22 BY MR. BAX:

23 Q I just want to show you a couple things here,
24 Sergeant. First of all, you've referenced shell casings
25 in your testimony. I'm going to pass these to you and see

1 if you can identify those and just want to ask you if
2 those are the shell casings that you been speaking of?

3 A They are, yes, sir.

4 Q And for the jury some may know this, some may not,
5 but I want to make sure we're clear. Those are two
6 different calibers of bullets or shell casings; is that
7 correct?

8 A That's correct one is a .9 millimeter caliber and one
9 is a .45 caliber.

10 Q Okay. And I don't want to play down to anybody, but
11 I have to make sure I'm clear. Can you fire a .45 caliber
12 bullet out of a .9 millimeter gun?

13 A No, you cannot.

14 Q Okay. So based on what you have in front of you,
15 Officer, and with your experience as an investigator, were
16 there had to have been two guns present in order to have
17 shots from both a .45 and a .9 millimeter?

18 A Yes, sir, there would have.

19 Q Okay. So there's indication there that there would
20 have been potentially two shooters?

21 A That's correct.

22 Q Okay. And I think you also testified that -- and let
23 me reference the pictures if I can. I'm going to start
24 with Defendant's Exhibit 1 and 2 and hand those to you.
25 You stated that the shell casings were kind of in two

1 piles; is that right?

2 A That's correct.

3 Q Can you see -- can you determine that from that
4 picture, does that show kind of the differentiation and
5 where the .45 versus the .9 millimeters were found?

6 A It does and that's why I ask that these photos be
7 taken.

8 Q Okay. And so for the jury -- and, of course, they're
9 going to be able to look back at these pictures. There's
10 some shell casings to one side of that photo and then
11 shell casings kind of in a line on the other side of the
12 photograph?

13 A That's correct.

14 Q Okay. So the, Sergeant Fraiser, the .9 millimeters
15 were grouped in one of those groups together?

16 A Yes, sir.

17 Q And then the .45's were grouped in another group?

18 A That's right.

19 Q Let me also ask you this, there were ten .9
20 millimeter cartridges found; is that correct?

21 A That's right.

22 Q Now, standardly what is the range from your
23 experience of the amount of ammunition a standard .9
24 millimeter can hold?

25 A Typically, it's ten rounds.

1 Q Okay. So potentially -- well, let me ask you this,
2 were any firearms ever recovered in the investigation of
3 this case?

4 A No, there was not. I had a K-9 officer on scene that
5 I asked to do an area search for specifically for
6 firearms. When we arrived on scene, we found the
7 juveniles in very close proximity, so the area search was
8 conducted between where what we found the shell casings
9 and where the juveniles had fled to. In case the
10 juveniles were in fact responsible for the shooting, we
11 would have found the guns if they would have tossed them.
12 No firearms were found.

13 Q And obviously, as we stated, you ended up finding out
14 those juveniles were negative for any gunshot residue and
15 really didn't do anything other than run away?

16 A That's correct.

17 Q And so there was no wider search for firearm beyond
18 that range that you testified to?

19 A We conducted a search. It was essentially a 360,
20 what's called a 360, so an area of 60 degrees around the
21 area where the juveniles were found, the shell casings
22 were found. So all the yards, bushes, driveways
23 everything was searched.

24 Q Okay. And also going back to the firearm .45 caliber
25 guns in your experience, are those generally carry less

1 ammunition capacity because of the size of the round?

2 A They do.

3 Q Okay. What is generally in your experience as an
4 investigator with the Sheriff's Department the ammunition
5 capacity of a .45?

6 A Typically, it's seven rounds.

7 Q Okay. And there were seven rounds found on scene --
8 seven cartridges found on scene?

9 A That's correct.

10 Q Now, let me also pass you ---

11 MR. BAX: Approach the witness, Your Honor?

12 THE COURT: Yes, sir.

13 MR. BAX: Thank you very much.

14 BY MR. BAX:

15 Q What's been marked and introduced into evidence as
16 Defendant's Exhibit 47 and ask you if you recognize that
17 as well?

18 A I do.

19 Q And what are those?

20 A These are projectiles.

21 Q Can you tell us by looking at those what caliber
22 those are?

23 A I cannot.

24 Q But there is how many in that bag, sir?

25 A There are two.

1 Q Okay. Obviously, and let me ask you this and you
2 recall those were found, sir?

3 A These were the two recovered from the residence, I
4 believe.

5 Q Okay. So obviously, let me ask you this obvious
6 question I apologize. Were there other projectiles that
7 weren't recovered?

8 A Obviously, there were as if there were in fact that
9 many bullets fired, then there's obviously more than two.
10 But these are the only two that we were able to recover.

11 Q Now, obviously, I think we testified to this, but I
12 want to go over it again. This was a residence. Did it
13 involve a trailer or a regular house? How would you
14 describe the residence?

15 A The residence at One Donaldson was a single wide
16 mobile home, I believe.

17 Q Okay. All right. Is it possible through your
18 experience in looking at the scene as you did, that some
19 of these might have continued on pass the house and been
20 lost into the distance as far as projectiles?

21 A It is likely, yes, sir.

22 Q Were you able to determine that there were any
23 corresponding holes from one side of the residence to the
24 other?

25 A I don't believe so. I believe most of the

1 trajectory's were in an upward trajectory. I don't
2 believe they were.

3 Q Okay. But as far as your investigation that night,
4 those were the projectiles you were able to find?

5 A That is correct.

6 Q Now, there also photographs of bullet holes in the
7 exterior of the home; is that correct?

8 A There is.

9 Q From your remembrance and I can certainly show you
10 the photographs if you need. Were they in one place or
11 were they spread out across the trailer generally?

12 A I believe, I recall that the pattern was very
13 sporadic. It was spread all the way across a residence.
14 It wasn't one particular area that was being shot at, it
15 was the whole residence.

16 Q Okay. And you had already stated that a lot of these
17 were in an upward trajectory. Is that one -- is that a
18 mobile home that sits up on a little bit of a foundation,
19 a little bit above the ground.

20 A It was. I believe it was somewhere around 50 inches
21 above the ground.

22 Q Okay. Would that upward trajectory be consistent
23 with somebody standing on a ground outside and firing at
24 the residence at an angle?

25 A Yes, sir.

1 Q Did any of those -- from your remembrance and being
2 with Officer Johnson, did any of those bullets pass
3 through the home or enter the home at a level where they
4 would have struck someone if they were standing in a
5 normal way near where the bullet went into the house?

6 A I believe so.

7 Q Okay. And I believe one of the projectiles were
8 found in the kitchen near the kitchen sink?

9 A That's correct.

10 Q And then the other was recovered in an entertainment
11 center and it impacted some DVD's?

12 A That's correct.

13 Q Okay. And they were children's DVD's in the home at
14 around where that bullet was found; correct?

15 A I don't recall what type of DVD's.

16 Q Okay. Let me see if I can reference an exhibit for
17 you and I apologize I know it's been a long time, so I
18 can't expect for you to remember everything.

19 MR. BAX: Moments indulgence, Your Honor.

20 (WHEREUPON, a pause in the proceedings.)

21 MR. BAX:

22 Q I'm going to hand you what's been marked and entered
23 into evidence as Defendant's Exhibit 44 and 43. It's to
24 show you that. In your recollection, does that accurately
25 represent where one of the projectiles was recovered?

1 A It does.

2 Q Okay. And is that around some DVD's?

3 A It is Charlotte's Web.

4 Q Okay. Were there any -- from your remembrance, you
5 went inside One Donaldson Drive?

6 A I did. I conducted a follow-up interview with Miss
7 Allen in there as well.

8 Q Okay. And obviously, as you testified, she had a
9 four year old at that time; correct?

10 A She did.

11 Q Okay. Did she at all tell you whether she was
12 pregnant or not at that time?

13 A I don't recall, I think she did.

14 Q I think she did say she was?

15 A I believe she did, yes.

16 Q Okay. Was there any other items in there to -- as
17 far as having a child whether there other items like
18 children's furniture or children's toys around the
19 residence?

20 A I believe there was.

21 Q Okay. All right. Now, getting back to the
22 investigation, did you continue to follow up on trying to
23 ascertain who had done this after May 30th of 2011 after
24 that night?

25 A I did, yes.

1 Q I know you have testified that you were looking at an
2 Antwan Robinson as a potential suspect. Did you ever come
3 across information that Travis Sentell Holmes also could
4 be a potential suspect in this case?

5 A I came across information that of a Travis Holmes.

6 Q A Travis Holmes?

7 A Yes, sir, there are two Travis Holmes, both reside in
8 the same general area. I wasn't able to identify Travis
9 Sentell or Travis Javarn.

10 Q And so there's two Travis Holmes'. One is Travis
11 Sentell Holmes and one is Travis Javarne Holmes; is that
12 correct?

13 A That's correct.

14 Q Are they related to each other or do you know?

15 A I don't know. I don't know for sure, they may be
16 cousins.

17 Q Did you have any information that would tend to show
18 that it might have been Travis Sentell Holmes that was
19 involved with this?

20 A Miss Allen had stated to me that in talking to people
21 in the area that given her the name Travis Holmes as a
22 possible suspect. I asked her or I informed her that
23 there was two Travis Sentel Holmes and I advised her that
24 one was substantially taller than the other. She said she
25 believed it would have been the shorter of the two, that

1 would have been Travis Sentell.

2 Q So from your information Travis was the shorter of
3 the two. Do you know what the difference in height was?

4 A Some where around 5 inches.

5 Q Okay. Do you recall what height Travis Sentell was
6 suppose to be, what his height was suppose to be?

7 A I think he was some where five foot seven.

8 Q Okay. And so Travis Javarne Holmes was some what
9 taller than that?

10 A Yes.

11 Q Okay. All right. Now, as a result of that
12 information, did you talk with Antoine Robinson?

13 A We attempted to identify or I'm sorry we attempted to
14 locate Antoine Robinson several times. We took several
15 different measures to get him. We were never able to
16 interview him in this case. We were also never able to
17 get anybody else to come forward with specific information
18 about him either.

19 Q Did you ever have an opportunity to talk with Travis
20 Holmes or Travis Javarne Holmes?

21 A No.

22 Q Did you have an opportunity to try to locate them?

23 A Yes.

24 Q Were they -- did you know where they were?

25 A No not specifically. They had several listed

1 addresses.

2 Q Okay. Did you ever speak with anybody that said that
3 they knew Travis Holmes and tell him we're looking for
4 them?

5 A I don't believe so.

6 Q Okay. Is there any way based on your investigation
7 that Mr. Holmes would have known you were looking for him?

8 A No.

9 Q Okay. But let me ask you going back Mr. Robinson,
10 you said there were several attempts to speak with him or
11 get in touch with him. Tell us about those and what
12 happened with that?

13 A I went to his house several times. I never could get
14 him at his residence. His vehicles were there. I put up
15 officers around and his residence to try to get him to
16 coming out. We were never able to get him.

17 Q Okay. Was it based on evasion? Did he evade y'all?

18 A I don't know if he did. I think he did. In one
19 instance, I been surveilling the residence and I observed
20 two vehicles at the house. One was a Tahoe, a white
21 Tahoe, one was a black Civic. I left the residence and
22 got together with several other officers to try to set up
23 in the area to conduct a traffic stop at some point if he
24 left. As we were coming back through the back entrance of
25 Battery Creek High School, a black Honda Civic was pulling

1 out. We attempted to make a traffic stop on that Honda
2 Civic. However, pulled in behind a barbershop on Jennings
3 Road. When we got him behind the barbershop, the car had
4 got out on to, I believe, it's county shed and fled the
5 area where we weren't able to identify him. It wasn't
6 that that was him. I didn't get a really good look at the
7 driver. After that, I went back to the house and the
8 black Honda Civic was gone.

9 Q Okay. Based on any information that you had from
10 this investigation or prior investigations, was there any
11 known association between Travis Holmes and Antoine
12 Robinson?

13 A I don't know if there was.

14 Q Don't know whether there was or not?

15 A Not that I'm aware of, no.

16 Q But you once again, you never got a chance to talk
17 with Mr. Robinson and ask him any of those questions?

18 A That's correct.

19 Q And you never got a chance to talk with Travis
20 Sentell Holmes or either of the Mr. Holmes and ask them
21 those questions?

22 A No, sir.

23 Q What ultimately happen with that case?

24 A The case was administratively closed.

25 Q Okay. Can you tell me when that happened, when it

1 was administratively closed?

2 A I can. On June 22nd of 2011.

3 Q June the 22nd, okay. And let me ask you this, you
4 stated already that some of the information that you got
5 was from Miss Allen. Did Miss Allen come to see you or
6 did you go see her?

7 A Both. I went back to her residence again to go over
8 the crime scene again to talk to her again, talk to
9 anybody else in the neighborhood that may have had
10 information again. I also brought her into my office to
11 talk with me.

12 Q Okay. Do you recall about how many times you met
13 with Miss Allen?

14 A In person?

15 Q Either by phone or in person at your office?

16 A Several times.

17 Q Several times. Okay. Did you make contact with
18 Miss Allen immediately prior closing the case?

19 A I did.

20 Q Okay. And you informed her that -- did you inform
21 her that you were closing the case?

22 A What I informed her was that the case will be closed
23 pending further information. And in an administrative
24 closure, the case doesn't necessary go away. It just
25 stops until we obtain more information to further pursuit

1 of the case.

2 Q Okay. Did you have an opportunity to inform
3 Miss Allen you're difficulties in being able to talk with
4 Mr. Robinson or Mr. Holmes?

5 A I did. I encourage Miss Allen to talk to the people
6 in the neighborhood that were giving her information to
7 come forward and make statements to me help out
8 prosecution.

9 Q Okay. So today or to that date on June 22 had
10 anybody come forward other than Miss Allen to tell you
11 anything?

12 A No.

13 MR. BAX: Moments indulgence, Your Honor.

14 THE COURT: Yes, sir.

15 (WHEREUPON, a pause in the proceedings.)

16 BY MR. BAX:

17 Q Just a few more questions and thank you for your
18 patience, Sergeant. First I like to reference you to a
19 couple of exhibits from the State ---

20 MR. BAX: Permission to approach the witness,
21 Your Honor?

22 THE COURT: Yes, sir.

23 MR. BAX: Thank you.

24 BY MR. BAX:

25 Q I'm going to hand you what's been marked as State's

1 Exhibit 28, 29, 30 and 31. See if you can just look at
2 those?

3 A Yes, sir.

4 Q First of all, have you ever seen those before?

5 A No.

6 Q And those appear to be -- well, let me ask you
7 this -- those appear to be a copy of his license, copy of
8 the car title, copy of the Title Max loan and the D.M.V.
9 records of the registration of the vehicle?

10 A It does.

11 Q Okay. Can you tell what residence -- let me ask you
12 this, those are the copies of Mr. Rajerick Knight's
13 information; correct?

14 A Yes, sir.

15 Q In relationship to a vehicle; correct?

16 A Yes, sir.

17 Q Okay. What residence do those item -- what residence
18 do those records list as his resident?

19 A One Donaldson Drive.

20 Q Okay. Does the license list him down as One
21 Donaldson Drive?

22 A It does.

23 Q And the car title?

24 A It does.

25 Q Okay. Now, I think in there than -- this is one

1 again the State's exhibits that I pass up to you. In the
2 car title, that's a car title for a dark in color Crown
3 Victoria; is that correct?

4 A I don't know about the color, but, yes, '99 Ford
5 Crown Victoria.

6 Q Do you recall seeing any Crown Victoria's at the
7 Donaldson Drive address the night of the shooting when you
8 were investigating?

9 A Outside of the sheriff's office Crown Victoria's?

10 Q No, sir, a non-police vehicle Crown Victoria of some
11 non-police vehicle that was a Crown Victoria like -- I'm
12 sorry I'm saying this incorrectly a personal vehicle?

13 A I don't recall.

14 Q Could there have been one there?

15 A There could have been, I don't recall.

16 Q Okay. And I know you testified that you don't recall
17 if you ever talk with Mr. Knight that evening. Was
18 anybody sitting -- any African American gentleman sitting
19 on there vehicle that night in the lot in front of that
20 residence?

21 A There was. There was -- I talk to an individual. I
22 assume from the next trailer over, who refused to give me
23 his name. And I talk to two other individuals on the
24 other side of the road who also refused to give their
25 names.

1 Q Okay. And that brings us to a good point. So
2 obviously, there was a lot of people in this area and they
3 just didn't want to tell you who they were?

4 A That's correct.

5 Q Did they tell you why they didn't want to tell you
6 who they were?

7 A No, sir.

8 Q Did they appear to be scared or frightened in any
9 way?

10 A No, they didn't.

11 Q Did they appear to be cooperative?

12 A They were cooperative with the questions that I asked
13 about if they had seen anyone, if they had seen anything,
14 if they had heard the gunshots, but as far identifying
15 anybody, they weren't able to identify anybody or give any
16 vehicle descriptions. They seem forthcoming, they just
17 didn't want to provide their names. I believe the
18 comments were I don't want to be involved.

19 Q I don't want to be involve.

20 MR. BAX: Thank you very much. Thank you, sir.

21 BY MR. BAX:

22 Q As a result of your investigation both that night and
23 on through the rest of the time up until June 22nd either
24 through Miss Allen or otherwise, did you develop any
25 suspect vehicles? Was there anything you were told about

1 this that might have been the vehicle used?

2 A I did, a white Tahoe or a white truck was identified.
3 Antoine Robinson does drive a white Tahoe, that's what led
4 me to his residence, that's why I sat on the residence
5 trying to get a traffic stop on him.

6 Q Okay. All right.

7 MR. BAX: Thank you very much. Moments Court's
8 indulgence, Your Honor.

9 (WHEREUPON, a pause in the proceedings.)

10 MR. BAX: No further questions on direct, Your
11 Honor.

12 THE COURT: Cross-examination.

13 MR. STONE: Please the court, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. STONE:

16 Q Investigator, I'm looking through your report here
17 and I don't see anything where this man, Rajerick Knight,
18 ever gave you any information?

19 A He did not.

20 Q He never called and said, Hey, somebody shot at my
21 house or shot at my girlfriend and what are you doing
22 about it?

23 A No, sir.

24 Q Interesting. Let me ask you a question, most of the
25 information that you talk about today and suspects that

1 you develop, they're all coming from Miss Allen; correct?

2 A That's correct.

3 Q And actually not from Miss Allen's first-hand
4 knowledge, this is Miss Allen saying I heard so and so
5 might be involved. I heard this happened. I heard that
6 happen; is that correct?

7 A That's correct.

8 Q The fact that the first suspect that she gave you was
9 to make sure I get this right Antoine Robinson; is that
10 right?

11 A That's correct. According to her, she was told by
12 family members who stay in the Possum Hill area, which is
13 where Antoine Robinson is from that they overheard Antoine
14 Robinson talking about shooting up the residence.

15 Q Okay. So Antoine is A-N-T ---

16 A O-I-N-E.

17 Q Robinson?

18 A Yes, sir.

19 Q And I believe also that Antoine Robinson according
20 to Miss Allen in fact shot the wrong house. He was trying
21 to shoot another house; is that right?

22 A That's correct.

23 Q Some guy name Day was the target; is that correct?

24 A That's correct.

25 Q Cause Mr. Robinson is trying to send a message to

1 Mr. Day?

2 A That's correct.

3 Q Then six days later Miss Allen said, Hey, I heard
4 somebody else was involved, didn't she?

5 A I believe she gave a name Dion.

6 Q Dion. Do you know a Dion? Do you know who she was
7 talking about?

8 A I do. I believe she was talking about Dion Haygood.
9 He is a known associate of Antoine Robinson's. He also
10 drives a white Tahoe.

11 Q And in fact, you had a white Tahoe was the car that I
12 think you just earlier said was identified as some
13 information she had that might have been involved as well?

14 A That's correct.

15 Q Then a few days later you got another name, a guy by
16 the name of Jamal Jenkins; is that correct?

17 A That is correct.

18 Q And who is Jamal Jenkins?

19 A I'm not sure about Jamal Jenkins.

20 Q Is that Jamal or Jamel or do we know?

21 A She gave me both names Jamal and Jamel.

22 Q She gave you both names. So let me get J-A-M-A-L.

23 A And E-L.

24 Q Jenkins. Okay. And then six days later is when she
25 mention that she had heard from somebody somewhere that

1 Travis Holmes might be involved; is that right?

2 A That's correct.

3 Q And there are two of those. Travis S. Holmes; is
4 that correct?

5 A Travis Sentell and Travis Javarne.

6 Q What's the middle name, I apologize?

7 A Sentell and Javarne J-A-V-A-R-N-E.

8 Q One other thing the three individuals, the three
9 juveniles that you mentioned earlier where they were
10 running from the scene when the police officers got there,
11 what were their names?

12 A Christopher Jackson 15 years old, Na-shon Mervin
13 N-A--S-H-O-N 15, and Jermel Days 14.

14 Q All right. And since, Mr. Rajerick Knight here never
15 asked you about the investigation, I'm assuming you never
16 told Mr. Knight those people were cleared; correct?

17 A No, I did not.

18 Q And your investigation involved K-9, which is the dog
19 handling things like that trying to find the weapon and
20 shells things like that?

21 A That's correct.

22 Q Gunshot residence?

23 A That's correct.

24 Q You interviewed people?

25 A I did.

1 Q You followed up both with Miss Allen and on the leads
2 that Miss Allen or the information shall we say Miss Allen
3 gave you?

4 A I did.

5 Q Okay. And how long or how much time -- it appeared
6 also there were a number of officers at the scene and
7 throughout this investigation; is that correct?

8 A There were.

9 Q And you were never able to make an arrest of
10 Mr. Holmes in that case?

11 A No, I was not.

12 Q Why not?

13 A I didn't have any information or substantial leads
14 that would identify Mr. Holmes as a suspect in the case.

15 Q Other than Miss Allen saying she heard somebody told
16 her maybe that Mr. Holmes was involved?

17 A That's correct.

18 Q So the suspects in this case periodically had been
19 Christopher Jackson, Mr. Mervin, Mr. Day, Mr. Robinson,
20 Mr. Haygood, Mr. Jenkins, Mr. Holmes and the other Mr.
21 Holmes all those were at some point in time mention in the
22 incident report; is that correct?

23 A That's correct.

24 Q Okay.

25 MR. STONE: Nothing else. Thank you.

1 THE COURT: Any redirect?

2 MR. BAX: Yes, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. BAX:

5 Q I just want to recover some things here, Sergeant
6 Fraiser, that were brought up on cross. And I believe you
7 stated this, Mr. Jackson was 15 years old; is that right?

8 A Christopher Jackson?

9 Q Yes, sir.

10 A Yes, he was.

11 Q Okay. All right. And Na-Shon, if I'm saying that
12 right, Mr. Mervin?

13 A Yes, Na-Shon, he's 15.

14 Q He's 14?

15 A Fifteen.

16 Q Fifteen, excuse me. And I believe you said Mr. Day
17 was 14?

18 A Yes, sir.

19 Q Did you ascertain in your investigation that they
20 were playing video games at their grandma's house?

21 A I did.

22 Q And they ran because they saw police?

23 A Yes, sir.

24 Q Did you ever charge them with these crimes?

25 A No.

1 Q And they were cleared?

2 A They were.

3 Q Now, getting to some of these other names. You've
4 testified that you made the effort, you went out and tried
5 to talk to people. But you said that number one they did
6 not identify any vehicles or people; is that correct?

7 A I believe a white truck and a white Tahoe was
8 identified.

9 Q So people did say there was a white truck or a white
10 Tahoe?

11 A I believe so.

12 Q Did any witness that you tried to talk to that night
13 would any of them say they knew who drove that?

14 A No.

15 Q Did any of them identify having seen someone say I
16 know who that is?

17 A No.

18 Q Okay. And when you asked their identity were they
19 willing to give you their identity?

20 A No.

21 Q And they stated to the effect they didn't want to
22 become involved?

23 A That's correct.

24 Q Okay. Did you ever talk -- and I know we been
25 through this before, but as a result of not being able to

1 talk with Mr. Robinson were you able to determine if he
2 had an alibi whether he was somewhere else or what he was
3 up to the night of May 30th 2011?

4 A No, I was not.

5 Q Because you never could talk to him, right?

6 A Not just him, just anybody in that neighborhood,
7 nobody would talk.

8 Q Okay. So the information you're getting is
9 information you couldn't get yourself, but you definitely
10 tried?

11 A That's correct.

12 Q Okay. And people in this neighborhood were not
13 giving anything?

14 A That's correct.

15 Q Okay. So the only information you were getting was
16 from Miss Allen, the female that lived at that residence,
17 trying to find out what happened; correct?

18 A That is correct.

19 Q Is Miss Allen a commissioned law enforcement officer
20 to your knowledge?

21 A No, sir.

22 Q How old is Miss Allen do you recall?

23 A During the time of this incident, she was 21.

24 Q Twenty-one years old. And she had a four-year-old
25 son and may have been pregnant during this time; is that

1 correct?

2 A Yes, sir.

3 Q Okay. Do you know what level of education that she
4 has?

5 A I do not.

6 Q Okay. She was giving you information she was trying
7 to find out; correct?

8 A Yes, sir. Information, I believe several people she
9 had stated to me were calling her giving her the
10 information or her sister.

11 Q Were any of those people calling you?

12 A No.

13 Q Was any of those people making any anonymous reports
14 to law enforcement that you are aware of?

15 A No.

16 Q So all of this was information she was getting to
17 you, right?

18 A What ---

19 Q Antoine Robinson, Dion, Jamal, Jamel Jenkins and one
20 of the Travis Holmes'?

21 A That's correct.

22 Q And she didn't state to you both Travis Holmes' were
23 there or that she knew which one, she just told you it was
24 Travis Holmes and then she told you it was the shorter of
25 the two?

1 A She believed it was the shorter, yes.

2 Q Okay. And through you already knowing about the --
3 now, let me ask you this, had you ever -- did you know
4 about Mr. Travis Sentell Holmes or Travis Javarne Holmes
5 already?

6 A Yes.

7 Q Did you know their names already?

8 A Yes.

9 Q And so the information about which one's taller,
10 which one's shorter, that's information you had; correct?

11 A Yes.

12 Q And that's through your contact with these
13 individuals?

14 A Yes.

15 Q Okay. And so when you said who was taller and who
16 was shorter, it was Travis Sentell Holmes that she thought
17 was the one that was involved based on the information she
18 was getting?

19 A Yes.

20 Q And once again just for the record, the information
21 in the forensic evidence that you had indicated two
22 shooters; is that right?

23 A That's correct.

24 Q Let me ask you this real quickly, when you were
25 canvassing the neighborhood talking to Miss Allen and any

1 other witnesses that would talk to you, did anyone say
2 that there was a volley of shots and then a stop and then
3 another volley of shots?

4 A I don't believe so.

5 Q Did they all say that there were just one volley of
6 shots?

7 A That's correct.

8 Q And that was it?

9 A That's correct.

10 Q They'll also indicate that there were two shooters
11 since some didn't stop and change guns?

12 A That's correct.

13 MR. BAX: No further questions, Your Honor.

14 THE COURT: Anything further, Mr. Stone?

15 RECROSS-EXAMINATION

16 BY MR. STONE:

17 Q So the only information that you have that's
18 corroborated by anybody first of all Miss Allen's
19 information -- let me back up. Best information you had
20 would it be safe to say that Antoine Robinson was one of
21 the individuals?

22 A Yes.

23 Q And you know for a fact that he hangs out with whom?

24 A Dion Haygood.

25 Q And there two shooters, but we really quite frankly

1 don't know who shot, do we?

2 A No, we don't.

3 MR. STONE: I don't have anything else.

4 THE COURT: Sir, you may step down. Thank you.

5 MR. BAX: Your Honor, I ask that Sergeant

6 Fraiser be released from his subpoena?

7 THE COURT: Any objection?

8 MR. STONE: No, sir.

9 THE COURT: Sir, you free to leave. You have no
10 further responsibility under your subpoena.

11 (WHEREUPON, the witness leaves the witness
12 stand.)

13 THE COURT: Can the lawyers approach a minute
14 please.

15 (WHEREUPON, a bench conference was held in the
16 presence of the jury, but out of the hearing of the
17 jury.)

18 THE COURT: Ladies and gentlemen of the jury,
19 we're going to take a morning break. We've been going
20 about an hour and a half now. I'm going to ask that you
21 step to the jury room, I'll get you back out here as
22 quickly as possible. Do not discuss the case. Do not
23 discuss the case and I'll get you back out here as
24 quickly as possible.

25 (WHEREUPON, the jury retire to the jury room.)

1 THE COURT: All right. Side bar up here, I
2 asked the lawyers, Mr. Stone.

3 MR. STONE: Yes, sir.

4 THE COURT: Hold it down please.

5 Mr. Bax and Mr. Stone, specifically Mr. Bax, who
6 you anticipated calling next, he indicated that I believe
7 Corporal James T. Prusinowski, he was not going to call;
8 is that correct?

9 MR. BAX: That's correct. And I just spoke with
10 him and I told him that I was releasing him from his
11 subpoena. He's exited the courtroom, Your Honor.

12 THE COURT: Any objection to that?

13 MR. STONE: No, sir.

14 THE COURT: All right. Anything else before we
15 take a break?

16 MR. BAX: No, Your Honor.

17 THE COURT: I will stand down about ten minutes.

18 MR. STONE: Yes, sir.

19 (WHEREUPON, a break was taken.)

20 THE COURT: All right. State ready to proceed
21 at this time?

22 MR. STONE: Yes, sir.

23 THE COURT: Defense counsel ready to proceed.

24 MR. BAX: Yes, Your Honor. And before we call
25 in the jury, I would ask the Court to allow me to just

1 call and make sure that I haven't missed any of the
2 officers that are here in the courtroom under my subpoena.
3 If, Your Honor, has no objection to that? I just wanted
4 to make sure. Is there a Sergeant R. Garst here or Pfc.
5 McHaile or a Sergeant Rodriguez?

6 Judge, I was prepared to release them from their
7 subpoena's. I didn't know if they were here or not and I
8 didn't want them sitting around without having touched
9 base with them. If any of those officers are here, just
10 let me know and we can take care of that?

11 THE COURT: Any objection from the State?

12 MR. STONE: No, sir.

13 THE COURT: Anything else, Mr. Bax?

14 MR. BAX: No, Your Honor, prepared to go forward
15 with the jury.

16 THE COURT: Bring us the jury please.

17 (WHEREUPON, the jury came into open court.)

18 THE COURT: Mr. Bax, call your next witness
19 please.

20 MR. BAX: Yes, sir, Your Honor, moments
21 indulgence.

22 (WHEREUPON, a pause in the proceedings.)

23 MR. BAX: Your Honor, sorry for the delay, we're
24 just grabbing a little bit of paperwork for our client as
25 a witness. The defense would call Joshua Heyward to the

1 stand please.

2 THE CLERK: Place your left hand on the bible
3 and raise your right. Do you solemnly swear to truthfully
4 answer all questions asked of you by this court, so help
5 you God?

6 THE WITNESS: I do.

7 THE CLERK: Please be seated and state your name
8 and spell it for the court please.

9 THE WITNESS: Joshua Heyward H-E-Y-W-A-R-D.
10 WHEREUPON,

11 Joshua Heyward,
12 after first having been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. BAX:

15 Q Thank you, Mr. Heyward. And thank you for being here
16 today. Where do you live at, sir?

17 A 77 Pine Grove Road.

18 Q 77 Pine Grove Road, okay. And for the purposes of
19 the jury knowing where that's at, that's in the Burton
20 neighborhood; is that correct?

21 A Yes, sir.

22 Q Okay. And I believe that's one of the roads that you
23 would take to get out to the Burton Wells Recreation Park?

24 A Yes, sir.

25 Q Okay. Can you tell us in what proximity is your

1 residence to Donaldson Drive, sir?

2 A It's like crossing the street.

3 Q Cross the street?

4 A Yes.

5 Q Does Donaldson Drive run parallel? By that, I mean
6 in the same direction, but spaced by a short amount of
7 distance with Pine Grove?

8 A Yes, sir.

9 Q Okay. So you have to take one other street to get
10 over to Donaldson from Pine Grove? Am I saying that
11 correctly?

12 A Yes, sir.

13 Q Okay. All right. Can you see any portion of the --
14 can you see any of the houses or any portion of the houses
15 that are listed as Donaldson Drive addresses from your
16 house?

17 A You can see it like right across the street.

18 Q Okay. And what do you know which houses or which
19 residences you can see from your house?

20 A Yes, sir.

21 Q Which one?

22 A I can see across the street at 78, 79 right across
23 the street from my house and I could see the backyard of
24 Donaldson.

25 Q One Donaldson Drive?

1 A Yes, sir.

2 Q Okay. All right. And that's through that -- so
3 there's a 77 that has a large wooded front driveway?

4 A Seventy-eight.

5 Q At 78. And One Donaldson Drive backs up to that
6 property?

7 A Around the backyard.

8 Q Okay. All right. Now, Mr. Heyward, you are on the
9 opposite side of Pine Grove at your house; correct?

10 A Yes, sir.

11 Q But you could see across the road into that wooded
12 area there?

13 A Yes, sir.

14 Q And for the juries information -- when I say wooded,
15 there's just a few trees, but you can see pretty far into
16 that area; correct?

17 A Yes, sir.

18 Q Now, Mr. Heyward, do you recall an incident that
19 occurred in May of 2011, a shooting incident?

20 A Yes, sir.

21 Q Okay. Can you tell us what on May 30th of 2011, did
22 you see any cars driving around that arose your
23 suspicions?

24 A A white truck.

25 Q A white truck. Can you tell us what time do you

1 remember seeing that white truck?

2 A I couldn't tell you exactly what time. I know it was
3 late like after 12.

4 Q Was it dark outside?

5 A Yeah, it was dark.

6 Q What made you remember that? What was suspicious
7 about that white truck?

8 A It drove back and forth like three or four times.

9 Q Okay. Was it driving up and down Pine Grove?

10 A Yes, sir.

11 Q Did it ever turn like it was going up towards
12 Donaldson Drive?

13 A No, sir, it turn down 78 driveway.

14 Q It turn down 78 Driveway.

15 A Yes, sir.

16 Q Okay. What did you observe when the white truck
17 pulled down the driveway to 78 Pine Grove?

18 A It went down like half way down the driveway, it
19 stopped, two people jumped out and ran across in the
20 middle of the yard and they open fire on the trailer.

21 Q Could you hear gunshots?

22 A Yes, sir.

23 Q Okay. Could you see actually two different
24 individuals?

25 A Yes, sir.

1 Q Could you identify either of the individuals?

2 A No, sir.

3 Q About how far were you from those individuals best
4 guess?

5 A I say about 75, 50 feet.

6 Q About 50 feet or so?

7 A Yes, sir.

8 Q And you said it was dark outside?

9 A Yes, sir.

10 Q Could you see what they were dressed in?

11 A No, sir.

12 Q Okay. When you say that they opened fire, could you
13 see that they were actually both people were firing a
14 firearm?

15 A Yes, sir.

16 Q Could you see what we call muzzle flashes or those
17 flashes at the end of the gun?

18 A Yes, sir.

19 Q Okay. Josh, if you would, can you tell us where they
20 were shooting at?

21 A They were shooting at the trailer on Donaldson on the
22 back road.

23 Q And that's the back of One Donaldson Drive?

24 A Yes, sir.

25 Q Okay. Do you know who lives in One Donaldson Drive

1 or who live there at that time -- excuse me who live there
2 at that time?

3 A Yeah, Rajerick.

4 Q Rajerick live there?

5 A Yes.

6 Q Who else did he live with over there at One Donaldson
7 Drive?

8 A His girlfriend and his child.

9 Q His girlfriend and his child?

10 A Uh-huh.

11 Q That's a four-year-old Robert?

12 A Yes, sir.

13 Q And was that his adopted son?

14 A I'm not sure.

15 Q You're not sure?

16 A I'm guessing his son.

17 Q But it's the child he referred to as his son?

18 A Yes, sir.

19 Q He took care of that boy.

20 A Yes, sir.

21 Q Okay. And he was in a relationship or he claim
22 Miss Allen as girlfriend; is that correct?

23 A Yes, sir.

24 MR. THORNTON: Objection, Your Honor, I let it
25 go for a little while. We're doing a lot of leading.

1 THE COURT: Objection sustained, direct
2 examination.

3 BY MR. BAX:

4 Q All right. How did Rajerick Knight refer to
5 Miss Allen? What did he call her?

6 A His girlfriend.

7 Q His girlfriend. Did Miss Allen ever say -- did you
8 ever come across information Miss Allen was pregnant at
9 that time?

10 A I was hearing about it, yes, sir.

11 Q Now, when you saw the shooting, did you call 9-1-1?

12 A No, sir, I called to make sure Rajerick was there.

13 Q Okay. So you called Mr. Knight? You called a number
14 that you had for him?

15 A Yes, sir.

16 Q Did you speak with him?

17 A Yes, sir.

18 Q Okay. Did you hear if anybody was hurt?

19 MR. THORNTON: Objection hearsay.

20 THE COURT: Objection sustained.

21 BY MR. BAX:

22 Q Now, later on did you observe that law enforcement
23 showed?

24 A Yes, sir.

25 Q Okay. And did you see that they were out in that

1 back area where you saw the two people that were shooting?

2 A Yes, sir.

3 Q Okay. Did you see them marking and picking up stuff
4 back there?

5 A Yes, sir.

6 Q Okay. All right. Now, do you still live there on
7 Pine Grove?

8 A Yes, sir.

9 Q To your knowledge, does Mr. Knight or Miss Allen
10 still live there?

11 A No, sir.

12 Q Do you remember when they moved out of there?

13 A I don't exactly recall. I know it was like after the
14 incident.

15 Q After the incident?

16 A Yes, sir.

17 Q Was it fairly soon after the incident to your memory?

18 A Not exactly sure.

19 Q Not exactly sure, okay. All right.

20 MR. BAX: A moments indulgence just give me a
21 second there, Josh, okay.

22 (WHEREUPON, a pause in the proceedings.)

23 BY MR. BAX:

24 Q One brief further question, Josh. Did you have any
25 personal knowledge about whether or not Mr. Knight was in

1 the residence when the shooting occurred?

2 A No, sir.

3 Q You didn't know one way or the other?

4 A No, sir.

5 Q Did you know whether or not anybody was in the house
6 when the shooting occurred?

7 A No, sir, I didn't know if anybody was home.

8 Q You didn't know if anybody was there?

9 A No, sir.

10 MR. BAX: No further questions at this time,
11 Your Honor.

12 THE COURT: Cross-examination.

13 MR. THORNTON: None, Your Honor.

14 THE COURT: Sir, you may step down. Thank you.

15 (WHEREUPON, the witness leaves the witness
16 stand.)

17 MR. BAX: Your Honor, we ask that Mr. Heyward be
18 excused from his subpoena.

19 THE COURT: Any objection?

20 MR. THORNTON: None, Your Honor.

21 THE COURT: Mr. Heyward, you are excused free to
22 leave. You have no further responsibilities under your
23 subpoena. Thank you for being here.

24 Call your next witness please.

25 MR. BAX: Thank you very much, Your Honor.

1 Moments indulgence.

2 (WHEREUPON, a pause in the proceedings.)

3 MR. BAX: Your Honor, at this time the defense
4 would call LaShaunica Allen to the stand please.

5 THE CLERK: Place your left hand on the Bible
6 and raise your right hand. Do you solemnly swear to
7 truthfully answer all questions asked of you by this
8 court, so help you God?

9 THE WITNESS: Yes.

10 THE CLERK: Please be seated and state your name
11 for the court.

12 WHEREUPON,

13 LaShaunica Allen,
14 after first having been duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. BAX:

17 Q Miss Allen, one more time just for everybody, can you
18 tell us your name for the record please?

19 A LaShaunica Allen.

20 Q And how do you spell your last name?

21 A A-L-L-E-N.

22 Q Say it again?

23 A A-L-L-E-N.

24 Q Okay. Thank you, Miss Allen. I know you're kind of
25 soft spoken. Sounds like the sound system is working

1 pretty decent today, make sure you speak up and clearly
2 for us and into the mic. Thank you. Cause the court
3 reporter's got to take it down and we need the jury to
4 hear everything that you got to say, okay?

5 A Okay.

6 Q Thank you, ma'am. First of all, Miss Allen, how old
7 are you Miss Allen?

8 A I'm 22.

9 Q Say it again?

10 A Twenty-two.

11 Q Twenty-two. Okay. And how many children do you
12 have, Miss Allen?

13 A Two.

14 Q And what are their names?

15 A Robert and the other one is name Roshaun Knight.

16 Q And Roshaun Knight?

17 A Uh-huh.

18 Q Okay. Now, have you ever lived at or spent any time
19 at One Donaldson Drive?

20 A Yes.

21 Q Okay. Can you tell us when you lived -- did you live
22 at One Donaldson Drive?

23 A Yes, I did.

24 Q Can you tell us when the periods of time that you
25 live there?

1 A Probably 2001, 2010 or 11.

2 Q Okay. On May 30th of 2011, were you in the house?

3 A Yes.

4 Q Okay. And do you recall that something happen that
5 night?

6 A Yes.

7 Q Let me ask you this, did -- tell us about what
8 happened on May 30th 2011, what do you recall happening
9 that afternoon and that evening?

10 A That whole day?

11 Q Let me ask you this, obviously, we heard some
12 testimony about this, but was there a shooting in the
13 evening hours at that resident?

14 A Yes, later I think.

15 Q What time generally do you remember that being best
16 of your recollection?

17 A It was dark outside. It was probably 11 or 12.

18 Q Eleven or 12 in that time. Okay. Who was in the
19 house when that happen?

20 A Me and my son.

21 Q You and your son?

22 A Uh-huh.

23 Q Robert?

24 A Yes.

25 Q Okay. Does anybody else live at that residence with

1 you and Robert at that time?

2 A Yeah.

3 Q Who?

4 A Rajerick.

5 Q Rajerick, Mr. Knight?

6 A Uh-huh.

7 Q Okay. And who is Rajerick Knight to you?

8 A My boyfriend.

9 Q Your boyfriend, okay. And we'll get into the
10 shooting. Was there anything else happen in that day that
11 was -- that you think was related to this?

12 A Yes.

13 Q What happened?

14 A Earlier like around five or six someone was knocking
15 on the door and pretty hard.

16 Q Did you answer the door?

17 A No.

18 Q No, you didn't answer the door. Why didn't you
19 answer the door?

20 A Because Rajerick always told me not to.

21 Q He told you not to, oaky. Did you ever see who was
22 knocking on the door?

23 A No.

24 Q Did you ever see what cars had pulled up to the
25 house?

1 A No.

2 Q Was there anything being said by the individuals?

3 A It was something ---

4 MR. STONE: Objection, Your Honor.

5 THE COURT: Objection sustained.

6 MR. BAX: And, Your Honor, ask if she said she
7 didn't hear anything. She couldn't hear what was said.

8 THE COURT: Ma'am, if an objection is made,
9 please wait until I make a ruling on it before you
10 respond?

11 THE WITNESS: Okay.

12 THE COURT: Thank you.

13 Can the lawyers approach a minute?

14 MR. STONE: Yes, sir.

15 MR. BAX: Yes, sir.

16 (WHEREUPON, a bench conference was held in the
17 presence of the jury, but out of the hearing of the
18 jury.)

19 THE COURT: You may continue.

20 MR. BAX: Thank you very much, Your Honor.

21 BY MR. BAX:

22 Q Okay. Miss Allen, moving back upwards in time to
23 that evening, I want to talk to you about this shooting.
24 You stated that yourself and Robert were in the house;
25 correct?

1 A Yes, sir.

2 Q What were you doing at the time that the shooting
3 occurred?

4 A I was on my bed and I was getting ready to text him.

5 Q And by him, you mean?

6 A Rajerick.

7 Q Rajerick. Okay. And where was Robert at this time?

8 A In the living room.

9 Q Okay. And let me ask you this, you stated that
10 Mr. Knight live there. Had he been there earlier that
11 day?

12 A Yes.

13 Q When had he left?

14 A He had left like around -- he had just came in like
15 little bit before, so he had left around moments before
16 the shooting.

17 Q Okay. What were y'all doing prior to him leaving the
18 trailer there?

19 A He had just given Robert a bath and put him to sleep.

20 Q Okay. And Robert was sleeping in the living room; is
21 that correct?

22 A Yes. He was watching TV and he had got up.

23 Q Okay. So Mr. Knight had given Robert a bath and then
24 he left immediately after that; is that right?

25 A Yes.

1 Q Okay. Did you know where he was going?

2 A Outside. I don't know exactly where he was going.

3 Q And you said that when the shooting occurred, you
4 were in the bed about to text Mr. Knight. What
5 happened -- let's take the jury through what happened.
6 Did you first hear a shot or did you hear something coming
7 from through the house? What was the first thing you
8 heard?

9 A The first thing I heard was one shot.

10 Q Okay. And what did you do when you heard a shot?

11 A I didn't believe it was shot at first. I just stood
12 up like was that a gunshot. And then the rest came in and
13 that's when I got down.

14 Q Okay. Tell us what happened when you say got down?
15 Can you tell us what you mean by that?

16 A I was on the bed. I was sitting on my legs and I had
17 fell off the bed when I was trying to get off. My feet
18 didn't catch me and I had fell off the bed. And I started
19 crawling to where Robert was.

20 Q And when you fell off the bed, how did you land? Did
21 you land on your face or your shoulder or your stomach?

22 A I land on my face on the floor.

23 Q Okay. Miss Allen, were you pregnant at this time?

24 A Yes, sir.

25 Q Okay. And you said land on your front area. Did

1 that include your stomach?

2 A Yes.

3 Q Were you hit by any of these rounds at that time or
4 did you know if you were?

5 A No, didn't know at that time.

6 Q Okay. And you said that you crawled? What were you
7 doing when you crawled? What were you trying to do?

8 A I was trying to get to Robert.

9 Q Okay. Could you tell if Robert was awake at that
10 time?

11 A I was calling him and he wasn't answering.

12 Q Did you find Robert?

13 A Yes.

14 Q Where did you find him at?

15 A He was on the couch.

16 Q Okay. What did you do when you found Robert?

17 A I pulled him. I tried to pull him down on the
18 ground.

19 Q Were you successful in getting him down on the
20 ground?

21 A Uh-huh.

22 Q Okay. And what did you do after that?

23 A We stayed there and I just covered him, shielded him
24 with my body. And I just laid there with him until it
25 stopped.

1 Q Could you count or were you to able to tell how many
2 gunshots you heard?

3 A No, I did not.

4 Q How long between the first shot that you heard and
5 the last one? How long did that take do you think?

6 A It seem like a long time, but it probably was couple
7 a minutes.

8 Q But it seem like a long time?

9 A Yes.

10 Q Best guess is a couple of minutes?

11 A Uh-huh.

12 Q Did it seem like a lot of shots? I mean, was there
13 any way you could find how many shots?

14 A There seem like a lot though.

15 Q How was Robert reacting to this?

16 A I was trying to get him down. He was trying to run
17 out of the trailer to his father. And I was kept trying
18 to get him down, but I guess he thought he would be safer
19 with his father.

20 Q Okay. And you were trying to keep him from standing
21 up during this volley and running out?

22 A Uh-huh.

23 Q What else did you hear? Did you hear anything else
24 other than gun fire?

25 A No.

1 Q Was there anything that you could see that showed you
2 whether or not these rounds were coming into your house?

3 A I could hear them coming into the house and I could
4 hear breaking of things. I could hear coming in the
5 house.

6 Q Did it seem through your knowledge that any of these
7 rounds came pretty close to you?

8 A Yes.

9 Q Okay. What told you that they were coming close to
10 you?

11 A Well, the shoe that I had on it came off and my
12 shoulder was burning, so I knew.

13 Q Okay. Miss Allen, this lasted approximately two
14 minutes. What did you and Robert do after it basically
15 stopped?

16 A We stayed on the ground until police came.

17 Q Okay. Did Mr. Knight come back to the residence at
18 any time?

19 A Yes.

20 Q Okay. When was that, can you remember?

21 A After the shooting, he ran and checked on us.

22 Q Where were you and Robert when that happened?

23 A We were laying on the ground.

24 Q Okay. Did you get up when Mr. Knight came in?

25 A No, I told him I was going to stay on the ground law

1 until law enforcement came.

2 Q Miss Allen, were you scared?

3 A Yes.

4 Q Just from your observations, okay, was your son
5 scared?

6 A Yes.

7 Q Okay. Was he crying?

8 A Yes.

9 Q How long if you can tell us? How long before law
10 enforcement arrived as best to your memory?

11 A Seem like forever, but it was like probably a couple
12 minutes, like close to ten minutes.

13 Q Okay. Miss Allen, did you call 9-1-1?

14 A Yes.

15 Q You did?

16 A Yes, sir.

17 Q How long was that conversation?

18 A I kept hanging up with them, so one was like one
19 minute. And I was calling my family and telling them that
20 I love them and stuff. And then hanging up and call
21 9-1-1. So I kept hanging up on them, so it was like one
22 minute probably and I kept calling back.

23 Q During those calls to 9-1-1, did you -- what did you
24 tell 9-1-1?

25 A I told them that someone was shooting inside the

1 trailer. And I just told them that my shoulder was
2 burning and that -- just I was scared and could they send
3 someone out.

4 Q Now, you testified that you stayed on the floor until
5 law enforcement arrived. Did you ever end up seeing an
6 officer that night?

7 A Yes.

8 Q Did you stand up at that time?

9 A Yes, one of the officers told me that it was safe to
10 stand up.

11 Q Okay. Do you remember which officer that was?

12 A No.

13 Q Okay. Was there a lot of officers there that night?

14 A Yes, sir.

15 Q Okay. Once you stood up, did you do anything to
16 check Robert to see if he was injured at all?

17 A I did that on the ground, so I thought he was okay,
18 but I still did double check him.

19 Q Okay. Was he complaining of any injuries or that he
20 was hurt at all?

21 A No.

22 Q Did you check yourself for any injuries?

23 A Not at that time. I did want to get out of there.

24 Q Okay. So you didn't pat yourself down or check
25 yourself at all?

1 A Not really, no.

2 Q Okay. Do you recall what you were wearing that
3 night?

4 A No.

5 Q Do you remember if it was dark clothing or light
6 clothing?

7 A It was probably dark clothing.

8 Q Dark clothing?

9 A Uh-huh.

10 Q Okay. Now, did you end up speak to officers that
11 night?

12 A Yes.

13 Q Okay. What did you tell the officers that night?

14 A Just what they were asking, you know, like do I know
15 who did it and stuff like that?

16 Q Okay. And do you recall the names of any of the
17 officers that you spoke to?

18 A The only one that I remember is Detective Fraiser.

19 Q Okay. All right. And do you recall how long law
20 enforcement was there at your trailer there at One
21 Donaldson Drive that night?

22 A I don't think they were there that long like probably
23 half an hour, hour.

24 Q Now, at any time did law enforcement ask you if you
25 needed medical attention?

1 A I think 9-1-1 asked me did I need medical attention?

2 Q What did you tell them?

3 A And I told them, no.

4 Q Okay. Now, you had said earlier that your shoulder
5 was burning?

6 A Yes, it was.

7 Q But despite that you told them you didn't need
8 medical attention?

9 A Yeah, I just wanted to leave.

10 Q Okay. Now, after law enforcement left One Donaldson
11 Drive that evening, did you stay the rest of the night
12 there?

13 A No.

14 Q Now, you testified before that Mr. Knight came back
15 after the shooting?

16 A Yes.

17 Q How quick after the last shot that you heard, can you
18 tell us that he got back to the house?

19 A Less than a minute.

20 Q Okay, less than a minute. Now, after he got back,
21 did he remain there on scene to your knowledge?

22 A Yes.

23 Q Was he inside the trailer or outside the trailer?

24 A He was both inside and out.

25 Q Okay. All right. Did you observe him talking to any

1 law enforcement officers?

2 A Probably said something every once in a while not
3 really.

4 Q Were they aware that Mr. Knight was there from what
5 you could tell?

6 A Yes, they were.

7 Q Miss Allen, and I think I asked you this. You stated
8 that after that that law enforcement left, you didn't stay
9 there. Can you tell us where you went?

10 A I went to a friend's house.

11 Q Okay. After that night of May 30th 2011, did you
12 spend any more nights at Donaldson Drive?

13 A No.

14 Q Okay. Did you ultimately move away from that
15 location?

16 A It was like a week later, we got another trailer.

17 Q Did you get all of your stuff out of the Donaldson
18 Drive trailer?

19 A Yeah, we went back and got all our stuff out. I
20 never returned after that night.

21 Q Okay. Now, that night while law enforcement was
22 there, do you recall once you were standing looking around
23 to see what damage had been done?

24 A I wasn't really looking at them. I just wanted to
25 leave, but I seen them point out a lot of bullet holes

1 inside of the trailer.

2 Q Do you recall them finding the actual bullets in your
3 trailer?

4 A Yes, I remember it was one that came from my door and
5 out my room windows while still in the back.

6 Q Okay.

7 MR. BAX: Moment indulgence, Your Honor. Let
8 the record reflect, I'm passing Defendant's Exhibit 43,
9 44, and 40 and 41 to the witness, Your Honor.

10 BY MR. BAX:

11 Q If you will please take a look at those. Do you
12 recall the projectiles that are depicted in those
13 photographs?

14 A Yes.

15 Q And do you recall that law enforcement finding those
16 that night?

17 A Yes, sir, I remember.

18 Q Now, in two of those photographs, it shows a
19 projectile near some DVD's. Where was that at in your
20 house?

21 A It was in front of where Robert was laying. It's
22 by the door.

23 Q And you had testified earlier that after Mr. Knight
24 had given Robert a bath and put him to bed that he started
25 watching television?

1 A Yes.

2 Q Is that the television he was watching?

3 A Yes.

4 Q Is there any other televisions in the house?

5 A Yes.

6 Q Okay. But that was the one he was watching?

7 A Yes, sir.

8 Q Were that bullet was found?

9 A Yes, sir.

10 Q Okay. And I can see in there that there's some DVD's
11 showing in that picture, are those movies for Robert or
12 those Robert's movies?

13 A Yes, sir.

14 Q Okay. So he would have been in front of that
15 television when he was watching that TV?

16 A Yes, sir.

17 Q Do you know from your own personal knowledge whether
18 he was still watching TV when the shots started?

19 A I think he was sleeping or dozing off.

20 Q So he had been watching that television?

21 A Yes, he was.

22 Q How much earlier before the shooting started was he
23 still watching TV?

24 A I had went in the room was taking a shower and stuff,
25 probably 30 minutes.

1 Q Okay. So at least 30 minutes before he was sitting
2 in front of that TV?

3 A Yes, sir.

4 Q Now, you testified that you spent the night somewhere
5 else that night based on what happened; correct?

6 A Yes, sir.

7 Q Okay. The next morning did you notice anything about
8 yourself?

9 A Yes.

10 Q Can you tell us about that please?

11 A When I woke up, went to go take a shower and I had --
12 was checking myself because my shoulder was still kind of
13 hurting. And Rajerick had notice on my shoulder it was a
14 big brown like bloody thing. It was difficult to walk a
15 little bit and I notice my hip as well.

16 Q As a result of finding that you were hurting and what
17 you described to the jury, did you seek any medical
18 attention?

19 A Yes.

20 Q What did you do?

21 A I went to the hospital.

22 Q Okay. And what to your knowledge, what did they
23 discover at the hospital?

24 A They I know -- I know they were trying to get me some
25 crutches or something. And then they were -- they told me

1 that my shoulder I was severely grazed. And then they
2 told me something about hip had a sprain. And I was
3 bruised on my thigh. And they told me that I had lost the
4 baby.

5 Q All right. Let's go back through that because that
6 was a lot of stuff that you said for the jury. You stated
7 that the doctors told you you were -- I think the words
8 you uses were severely grazed on your shoulder?

9 A Shoulder. And they said more things, but I don't
10 remember them all. It was a bunch of stuff.

11 Q Did they ever remove anything from your shoulder?

12 A They were -- they put some medicine on it. Then they
13 put a little thing -- they were doing something to it.

14 Q Okay. And then you also stated I believe that you
15 were grazed, I believe, is the word you used on your leg;
16 is that correct?

17 A Yes. On my -- closer to my thigh and my shoulder and
18 there was something else, but I don't remember it all.

19 Q But they also told you that ---

20 MR. STONE: Objection.

21 THE COURT: Grounds?

22 MR. STONE: Hearsay.

23 THE COURT: Objection sustained.

24 BY MR. BAX:

25 Q Did you ever carry that pregnancy to term?

1 A No.

2 Q No. Was there a miscarriage in that pregnancy?

3 A Yes.

4 Q Did the pregnancy continue past that night?

5 A No.

6 MR. BAX: Moment indulgence, Your Honor.

7 THE COURT: Yes, sir.

8 (WHEREUPON, a pause in the proceedings.)

9 BY MR. BAX:

10 Q Okay. Now, you stated that -- you said you remember
11 talking to Detective Fraiser?

12 A Yes.

13 Q Did you talk to him just that night?

14 A No.

15 Q Did you talk to him on more than one occasion?

16 A Yes.

17 Q Okay. Can you tell us how many times you remember
18 talking to Detective Fraiser?

19 A I can't recall how times, but several times.

20 Q Where did these conversations occur?

21 A One of them up like when we were coming to get some
22 of our stuff, he had pulled into the -- we had already --
23 we was moving out and he had came to the trailer. And I
24 spoken with him then and went to his office on several
25 occasions.

1 Q Okay. And what was -- were you discussing this case
2 with Mr. Fraiser?

3 A No, not this, but the shooting on May 30th.

4 Q Shooting on May 2011 with Mr. Fraiser?

5 A Yes.

6 Q Okay. And what do you recall telling Detective
7 Fraiser about it?

8 A Just the -- he -- we were conversating about who did
9 it and just stuff like that and...

10 Q Did you give Mister or excuse me -- Detective Fraiser
11 any names of people that you believe might have been
12 responsible?

13 A Yes, I do remember giving him Antoine Robinson's
14 name.

15 Q Anybody else's name that you gave him?

16 A Travis Holmes. I remember giving him Travis Holmes'
17 name too, but he also said that he have heard that Travis
18 Holmes did it as well.

19 Q He told you that?

20 A Yes.

21 Q And you were providing this information to Detective
22 Fraiser. Was this after the sheriff's department or were
23 you guys meeting other places when you were telling this
24 or were you talking on the phone?

25 A It was sometimes on the phone. Then it was a brick

1 building by -- close by here.

2 Q Okay. Was it the brick building that's across the
3 Rebound Road from the sheriff's department?

4 A Yes, sir.

5 Q Okay. So you were inside that building?

6 A Yes, sir.

7 Q Okay. Did you go to Detective Fraiser's office in
8 that building?

9 A Yes, sir.

10 Q Okay. Ultimately, what did Detective Fraiser tell
11 you about the case where it was going?

12 A He told me that no one was coming forth in that he
13 had -- the last time I talk to him he told me that he
14 was -- he had went to their residence or he had gone to
15 Possum Hill and tried to get them or something, but he was
16 unsuccessful.

17 Q Okay. Did he ever inform you of any arrest being
18 made?

19 A No.

20 Q Did he ever tell you that he had talk to Antoine
21 Robinson?

22 A No.

23 Q Did he ever tell you that he talk to Travis Holmes?

24 A No.

25 Q Did you ever have a conversation with him about the

1 fact that there's two Travis Holmes?

2 A Yes, I remember that one.

3 Q Tell us about that conversation please?

4 A He told me that there was two Travis Holmes. It was
5 a taller one and it was a shorter. One had hair and one
6 didn't. And I told him that it's probably the shorter one
7 he described both Travis Holmes.

8 Q Okay. Now, do you recall when it was that you talk
9 to him and he said that no one was coming forward?

10 A No.

11 Q Do you remember -- were you ever informed that the
12 case was closed or administratively closed?

13 A No, I don't remember. No one say it was closed.

14 Q Now, let me ask you this, this incident where your
15 residence was shot at and shot into, that was on May 30th,
16 right?

17 A Yes.

18 Q Okay. When was the last time, you recall talking to
19 Detective Fraiser?

20 A I would say two months after the incident. I don't
21 remember, I'm not sure.

22 Q And during any of that time, were you ever made aware
23 of the fact that either Mr. Holmes or Mr. Robinson or
24 anyone else was arrested for the charge?

25 A No.

1 MR. BAX: Moment beg the Court's indulgence,
2 Your Honor. Thank you.

3 (WHEREUPON, a pause in the proceedings.)

4 BY MR. BAX:

5 Q Miss Allen, briefly in closing. Now, you had in --
6 you testified that you informed Detective Fraiser of these
7 people and the fact that you thought that they were
8 responsible. What was that based on?

9 A His knowledge and my knowledge that's just what
10 everyone was saying and the white S.U.V., so I knew it was
11 them.

12 MR. BAX: Okay, all right. Thank you very much,
13 Miss Allen. No further questions at this time.

14 CROSS-EXAMINATION

15 BY MR. STONE:

16 Q You're Peanut; is that right?

17 A Yes, I am.

18 Q He calls you Peanut, that's why he's got this tattoo
19 in his neck Peanut?

20 A Yes.

21 Q Okay. I bet he was pretty mad after you got shot at;
22 wasn't he?

23 MR. BAX: Objection calls for speculation.

24 THE COURT: Overruled.

25 MR. STONE: Yes, sir.

1 BY MR. STONE:

2 Q Yes, ma'am, I bet he was pretty mad, was he not right
3 after you got shot at?

4 A Yeah.

5 Q Pardon me?

6 A Yeah.

7 Q Okay. And I know you said you remembered Antoine
8 Robinson?

9 A Yeah.

10 Q You gave that name to the officer?

11 A Yes, I did.

12 Q And that's the same Antoine Robinson that you said
13 was actually shooting at Day and shot at the wrong house,
14 right?

15 A Yes.

16 Q So you really weren't the target. Rajerick wasn't
17 the target. Some guy name Day was the target. Do you
18 know who Day is?

19 A No, I don't know who that is.

20 Q All right. And you also gave the name of Dion, did
21 you not?

22 A Yes, I did.

23 Q And Jamal or Jamel Jenkins you gave that name too;
24 didn't you?

25 A Yes.

1 Q And we know from the last witness that there were two
2 shooters?

3 A Yes.

4 MR. STONE: I don't have anything else, Your
5 Honor.

6 MR. BAX: Redirect, Your Honor?

7 THE COURT: Yes, sir.

8 MR. BAX: Thank you very much.

9 REDIRECT EXAMINATION

10 BY MR. BAX:

11 Q Miss Allen, this information that you testified that
12 you gave to the detective this was all you were getting
13 trying to find out who shot at your home and at your son;
14 correct?

15 A Yes.

16 Q Was this information the police were getting?

17 A Yes, that's also information that the detective was
18 getting as well, it wasn't just me.

19 Q Okay. But were the police with you? Were they out
20 helping you get this information?

21 A No, they weren't.

22 Q Why were you going to get this information for them?

23 A Because I wanted justice for my house being shot up.

24 Q And why did you feel that you needed to help out?

25 A My son was involved and stuff and I just wanted

1 someone to get arrested for it.

2 Q And you already testified to this and so did sergeant
3 Fraiser, you knew that no one was coming forward according
4 to him to say what happened?

5 A Yes.

6 Q Did that motivate you to try to get out there and try
7 to find out who did this?

8 A Yes, absolutely.

9 Q So this was to try and help law enforcement?

10 A Yes.

11 Q And that was the information you were getting and you
12 were passing it on as you got it?

13 A Yes, sir.

14 Q Did you expect law enforcement to investigate these
15 names and try and figure out who did do it?

16 A Yes, I did.

17 Q Did you tell them every name that you have you knew
18 exactly that that was the person or did you tell them
19 that's who you think may did it?

20 A I told them those were the names that coming up.

21 Q Okay. Those were the names that were coming up to
22 you?

23 A Yes.

24 Q Were you doing this to spite any of these people?

25 A No. I don't know them. I just wanted to know who

1 did it, that's it.

2 MR. BAX: No further questions, Your Honor.

3 THE COURT: Any recross?

4 MR. STONE: No, sir.

5 THE COURT: Ma'am, you may step down. Thank
6 you.

7 (WHEREUPON, the witness leaves the witness
8 stand.)

9 THE COURT: Can the lawyers approach a minute
10 please.

11 (WHEREUPON, a bench conference was held in the
12 presence of the jury, but out of the hearing of the
13 jury.)

14 THE COURT: Ladies and gentlemen, what we're
15 going to do now is I'm going to go ahead take a break for
16 lunch, go ahead let you go to lunch. It is 12:30 or 12:33
17 or 34 to be exact. I'm going to ask that you be back in
18 your jury room at two o'clock, two clock and we'll resume
19 the trial of this case at that time. As throughout the
20 trial of this case, my instructions remain the same at all
21 or do any independent investigation of your own. Please
22 be back in the jury room at two o'clock. Everybody else
23 remain seated while the jury exits the courtroom.

24 (WHEREUPON, the jury is excused for lunch.)

25 THE COURT: Mr. Bax.

1 (WHEREUPON, the jury came into open court.)

2 THE COURT: Madam forelady and ladies and
3 gentlemen of the jury, I hope you all had a good lunch and
4 are ready to proceed this afternoon.

5 Mr. Bax, you recognize call your next witness.

6 MR. BAX: Thank you very much, Your Honor. The
7 defense at this time calls DaQuan Cummings to the stand
8 please.

9 THE CLERK: Would you place your left hand on
10 the Bible and raise your right hand for me please. Do you
11 solemnly swear to truthfully answer all questions asked of
12 you by this court, so help you God?

13 THE WITNESS: I do.

14 THE CLERK: Please be seated and state your full
15 name for the court please.

16 THE WITNESS: DaQuan Cummings C-U-M-M-I-N-G-S.

17 MR. BAX: May it please the Court, Your Honor.

18 THE COURT: Yes, sir.

19 WHEREUPON,

20 DaQuan Cummings,
21 after first having been duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. BAX:

24 Q Thank you, Mr. Cummings, for being here this
25 afternoon. First and foremost, Mr. Cummings, can you tell

1 us where you live, sir?

2 A Three Donaldson Drive.

3 Q Three Donaldson Drive?

4 A Yes.

5 Q I'm sorry I just wanted to make sure that that's
6 clear. Make sure when you're speaking that you're clear
7 and that the court reporter's got to hear you and the jury
8 over here got to hear you, okay?

9 A Yes, sir.

10 Q Is it all right if I call you Daquan?

11 A (Nod of head.)

12 Q Yes, sir.

13 THE COURT: Give me a yes or no answer and then
14 make sure you respond verbally.

15 THE WITNESS: Yes, sir.

16 THE COURT: Thank you.

17 BY MR. BAX:

18 Q Thank you, Daquan. And the judge is absolutely
19 correct, you know a lot of times we like to nod our head,
20 but if you can give us a yes or no or whatever verbal
21 answer, we appreciate it.

22 A Yes, sir.

23 Q All right. Thank you very much. You said you lived
24 at Three Donaldson Drive where is that in relationship to
25 One Donaldson Drive?

1 A Next door we block by like a -- I would say a septic
2 tank block like a square block in the middle.

3 Q Okay. So there's square block in the middle. What
4 is it surrounded by?

5 A Nothing just a square block.

6 Q Can people drive around that block?

7 A You can walk around it.

8 Q You can walk around the block. Okay. Does your door
9 face One Donaldson Drive or does it face the other way?

10 A One Donaldson Drive.

11 Q So it faces that trailer across that block?

12 A Yeah.

13 Q Okay. All right. And how long have you been living
14 there on Donaldson Drive, DaQuan?

15 A Say about eight years.

16 Q About eight years?

17 A Yeah.

18 Q So you were living at Three Donaldson Drive in May of
19 2011?

20 A Yes, sir.

21 Q Okay. DaQuan, let me ask you this, do you remember
22 any kind of shooting incident in the end of May 2011?

23 A Yes, sir.

24 Q Okay. I'm going to ask you a little bit about that.
25 Do you remember what you were doing that evening? Were

1 you home that evening?

2 A Yes, sir.

3 Q Okay. What were you doing -- well, let me ask you
4 this, did you hear shots?

5 A Yes, sir.

6 Q You did?

7 A Uh-huh.

8 Q Do you remember approximately about what time that
9 was?

10 A No, sir.

11 Q Okay. Was it nighttime or daytime?

12 A Nighttime.

13 Q Nighttime, dark outside?

14 A Yes, sir.

15 Q Okay. Was there anybody in your trailer with you
16 when you heard the shot?

17 A Yes, sir.

18 Q Who was there?

19 A Me, Rajerick, my girlfriend and my little sister.

20 Q Okay. Let's go through that, you said you, Rajerick
21 Knight this gentleman over here?

22 A Yes, sir.

23 Q Your girlfriend?

24 A Yes, sir.

25 Q And who was the other person you said?

1 A My little sister.

2 Q Your little sister. How old is your little sister?

3 A Eighteen now.

4 Q Eighteen now?

5 A Yeah.

6 Q How old would she have been in 2011, do you know?

7 A Seventeen.

8 Q Seventeen, okay. What did you do when you heard the

9 shots? What happened inside your mobile home when that

10 happened?

11 A Rajerick told us to hit the floor.

12 Q Okay.

13 A When I hit the floor, cut the light offs.

14 Q Okay. You got down on the ground?

15 A Yes, sir.

16 Q Did everybody else get down on the ground?

17 A Yes, sir.

18 Q You said cut the lights. Did someone cut the lights?

19 A Yes, sir.

20 Q Who did that?

21 A Rajerick did.

22 Q Rajerick cut the lights out?

23 A Yes, sir.

24 Q Okay. Can you recall how many shots that you heard?

25 A No, sir.

1 Q Was it -- is there any ballpark? Was it more than
2 five?

3 A Way more than five.

4 Q Way more than five, okay. Mr. Cummings, did you --
5 were you able to see anybody shooting when that happened?

6 A No, sir, we was in the house at the time.

7 Q Okay. Did you ever get up and try and look out the
8 window?

9 A No, sir.

10 Q Can you tell us best of your memory how long this
11 shooting lasted?

12 A For approximately two minutes.

13 Q Okay. After the shooting stopped, what did you do,
14 Daquan?

15 A Left the house.

16 Q How long after the shooting, I mean, did you
17 immediately jump and leave?

18 A We stayed there for a little while until the police
19 came and then we all left after that.

20 Q Can you tell us after the shooting what did Rajerick
21 do Mr. Knight?

22 A Went next door to check on his girlfriend and on his
23 little child.

24 Q Let me ask you this, you said that Rajerick was over
25 there. How long had Rajerick been at your house before

1 the shooting started?

2 A Fifteen, 20 minutes.

3 Q Okay. All right. Did you see -- did he come on
4 foot? Did you see him come on foot?

5 A Yes.

6 Q He just walked over from his trailer?

7 A Yeah, he walk to my trailer.

8 Q You knew Mr. Knight before this evening; correct?

9 A Yes, sir.

10 Q How long had you known him, sir?

11 A Just a year, he had move next door.

12 Q Okay. And you said that -- how long he been living
13 over there to your remembrance?

14 A Only about a year, maybe a year and a half.

15 Q Year, year and a half?

16 A Yeah.

17 Q Okay. Now, earlier in that day, did anything else
18 happen that was weird or unusual?

19 A Yeah, I mean, like three cars had approach the yard,
20 knocking on his door talking about they was going to shoot
21 his house up and stuff. And after that, all that happen.

22 Q Did you know any of these people?

23 A No, sir.

24 Q You never seen them before in your life?

25 A No, sir.

1 Q Could you identify them now?

2 A No, sir.

3 Q And you heard all that?

4 A Yes, sir.

5 Q Did they come and say anything to you?

6 A Yeah, they already told ---

7 MR. THORNTON: Objection, Your Honor, that's
8 hear say.

9 THE COURT: Objection sustained.

10 BY MR. BAX:

11 Q How much earlier in the day was it that these cars
12 came by?

13 A Seem like an hour before.

14 Q Hour before?

15 A Yeah.

16 Q Okay. It was evening time?

17 A Like say just turn dark outside like dark dark.

18 Q Okay. Could you tell how many individuals were
19 there?

20 A No, sir.

21 Q And how many cars did you say it was?

22 A Three cars.

23 Q Three cars.

24 MR. BAX: Moments beg the Court's indulgence,
25 Your Honor.

1 THE COURT: Yes, sir.

2 MR. BAX: Thank you.

3 (WHEREUPON, a pause in the proceedings.)

4 BY MR. BAX:

5 Q Okay. Daquan, what kind of cars were they that these
6 individuals were in?

7 A I believe, the one at the front door was a Honda. I
8 seen a Buick that was parked like beside my trailer and
9 they had one blocking the road.

10 Q Okay. You said there was a Honda. Can you tell what
11 kind of Honda? Was it a sedan or was it a truck or...

12 A Sedan.

13 Q Sedan of some kind?

14 A Yes, sir.

15 Q Was it a Civic or an Accord, could you tell?

16 A No, sir.

17 Q Couldn't tell?

18 A (Shook head.)

19 Q That Honda, was it a dark color Honda?

20 A No more of a light color.

21 Q Light color?

22 A Yes, sir.

23 Q Now, you said there was a Buick and then you said
24 there was another car blocking the way. What does that
25 mean? Can you tell us what that mean blocking the way?

1 A Like my yard right there next to this yard, so
2 there's a car block right there. The Buick park there in
3 my yard. Then the car behind the Buick where the driveway
4 at.

5 Q What kind of car was that?

6 A I couldn't tell.

7 Q Wouldn't tell what kind of car that was?

8 A It was blocking.

9 Q Okay. Is there only one way into that little square
10 where those two trailers are?

11 A One way in.

12 Q All right.

13 MR. BAX: No further questions at this time.

14 THE COURT: Cross-examination?

15 MR. THORNTON: No questions, Judge.

16 THE COURT: Sir, you may step down. Thank you.

17 (WHEREUPON, the witness leaves the witness
18 stand.)

19 MR. BAX: Your Honor, I ask that Mr. Cummings be
20 excused from his subpoena?

21 THE COURT: Any objection?

22 MR. THORNTON: No objection, Judge.

23 THE COURT: Sir, you are free to go and have no
24 further responsibility under your subpoena. Thank you for
25 being here.

1 Call your next witnesses.

2 MR. BAX: At this time, the defense will call
3 Rajerick Knight to the stand.

4 THE COURT: All right.

5 THE CLERK: Would you place your left hand on
6 the Bible and raise your right hand for me please. Do you
7 solemnly swear to truthfully answer all questions asked of
8 you by this court, so help you God?

9 THE WITNESS: I do.

10 THE CLERK: Please be seat and state your name
11 for the record?

12 THE WITNESS: My name is Rajerick Knight
13 K-N-I-G-H-T.

14 THE COURT: Mr. Bax.

15 MR. BAX: Thank you, Your Honor.

16 WHEREUPON,

17 Rajerick Knight,
18 after first having been duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. BAX:

21 Q All right, Rajerick, first and foremost make sure you
22 speak up for me, okay, make sure you answer all questions
23 with a yes or no or a full answer and not just a nod
24 because we want the court reporter to get it all down,
25 okay?

1 A Yes, sir.

2 Q Thank you very much. First of all, you already given
3 your name. Let's hear it again, you're Rajerick Knight;
4 is that correct?

5 A Yes, sir.

6 Q Okay. And how do spell your last name for us?

7 A K-N-I-G-H-T.

8 Q All right. First of all, Mr. Knight, where you
9 originally from?

10 A Well, I was born at or where I grew up at?

11 Q Where did you grow up?

12 A I grew up in -- it's a part of Burton, but it's
13 called Grace hill.

14 Q Grace Hill. Okay. All right. And let me ask you
15 this, Rajerick, have ever lived at Donaldson Drive, One
16 Donald Drive?

17 A Yes, sir.

18 Q Okay. And let me ask you this ---

19 MR. BAX: I'm going to ask to approach the
20 witness, Your Honor?

21 THE COURT: Yes, sir.

22 MR. BAX: Thank you very much.

23 BY MR. BAX:

24 Q On these exhibits ---

25 MR. BAX: And, Your Honor, for the record, I'm

1 referring to 28, 29, 30 and 31 once again.

2 BY MR. BAX:

3 Q Can you take a look at those for me please?

4 A I looked at them.

5 Q And is that got copies of your car title and your
6 license and so forth?

7 A Yes, sir.

8 Q Okay. And what address does it have listed down for
9 those documents?

10 A One Donaldson Drive.

11 Q Okay. Did you put that information down for like
12 your license and your car title and such?

13 A Yes, sir.

14 Q Okay. All right. Hand those back to me. Thank you.
15 That was where you were living at least for that period of
16 time, right?

17 A Yes, sir.

18 Q Okay. All right. Can you tell us about when you
19 approximately when you lived at Donaldson Drive? When did
20 you move in do you remember?

21 A I moved from Florida in June of 2010 to One Donaldson
22 Drive and I left One Donaldson Drive probably May 31st of
23 2011.

24 Q Okay. Now, Mr. Knight, do you recall May 30th of
25 2011, that night you recall a shooting incident that

1 occurred?

2 A Yes, sir.

3 Q Okay. Were you there at your trailer that day?

4 A Yes, sir, I was there the whole day.

5 Q Okay. Now, did you stay right in the trailer all the
6 time or did you come and go out of the trailer?

7 A I was in my trailer most of the time, some time that
8 day I was outside cooking for the kids. I had a lot of
9 kids over that day.

10 Q Okay. Do you know any of the neighbors that live
11 around there?

12 A I know a few, but I got a right direct neighbor that
13 stay right across street from me DaQuan Cummings.

14 Q So you know Mr. Cummings that testified today?

15 A Yes, sir.

16 Q Okay. All right. And he lives in that trailer
17 that's straight across from your trailer; is that right?

18 A Yes, sir.

19 MR. BAX: Moments indulgence, Your Honor.

20 (WHEREUPON, a pause in the proceedings.)

21 BY MR. BAX:

22 Q Mr. Knight, on that day, were you there at Donaldson
23 Drive the entire day or were there sometimes when you were
24 gone from the trailer that you gone down the road further
25 away?

1 A I was home the entire day.

2 Q Okay. Now, let me ask you this, were there times
3 when you went over to Mr. Cummings trailer?

4 A Yes, sir.

5 Q Okay. Where were you when you heard the shoots that
6 day?

7 A I just went to Mr. Cummings trailer.

8 Q Can you recall about what time that was?

9 A I know it was late at night, I'm not really sure. It
10 had to probably be around 11 or 12 o'clock.

11 Q Was it dark outside?

12 A It was very dark.

13 Q Okay. And what did you done right prior to going
14 over to Mr. Cummings, what were you doing at your trailer
15 before you left to walk over to Mr. Cummings' trailer?

16 A I had just left Mr. Cummings' trailer and went back
17 home. And my son was real dirty, he was in the yard
18 playing with his cousins and friends all day. He was real
19 dirty. He was still so young, but I took showers with
20 him. So me and him went in the shower. I brought him out
21 the shower. I put on his pajamas. It was a Sunday night.
22 He had school the next morning. I put on his pajamas, put
23 cartoons on the TV in the front room and let him watch TV.
24 LaShaunica was pregnant at the time, so I didn't smoke in
25 the house. I went outside to smoke a cigarette.

1 Q And after he had been put down in pajamas and you
2 went outside, did you go over to Mr. Cummings?

3 A Mr. Cummings was pulling back up into his yard and he
4 jumped out his car frantic like where were you, where were
5 you. I was like what I was at the house all day. And he
6 was telling me two or three cars a guy just came in
7 looking for you. They were telling me they gone kill you
8 ---

9 MR. STONE: Objection.

10 THE COURT: Objection sustain.

11 BY MR. BAX:

12 Q Mr. Knight, let me ask you this, did you ever see any
13 of these cars that came by earlier that was -- did you see
14 any other cars coming that you didn't know about earlier
15 that day?

16 A I was in the house.

17 Q Okay. Did you know about them coming by or did you
18 see anything, hear anything when it actually happened?

19 A I couldn't hear anything.

20 Q Okay. All right. Now, getting back to when you got
21 -- you left your trailer and Mr. Cummings came back. Did
22 you go into his trailer at that time?

23 A Yeah, I walked into his trailer.

24 Q Okay. Now, how long do you recall that you were in
25 his trailer before you heard any shots?

1 A I wasn't in his trailer ten minutes before we heard
2 the shots.

3 Q What did you do when you heard the shots, Rajerick?

4 A Everybody got on the ground. And I tried to crawl to
5 the light switch and hit the lights, so nobody could like
6 see us in the house. All of us were on the ground until
7 the shots were finished.

8 Q About how long do you think that they all took. I
9 mean, let me back up. Can you -- did you count how many
10 shots you heard? Do you remember how many shots it was?

11 A It was too many to count.

12 Q About how long between the time that you heard the
13 first shot and the time that you heard last shot? About
14 how long did the whole thing last?

15 A Maybe, two to three minutes.

16 Q After the shooting stopped, what did you do then?

17 A When the shooting stopped, I ran straight next door
18 to my house to check on my LaShaunica and Robert both of
19 them was just laying there not responding to me calling
20 them. So I was nudging them and then I finally got
21 LaShaunica to snap out her shock. And I was like get up.
22 She was like I can't, just going to sit here until the
23 police come. And she stayed down and called the police
24 and the police came.

25 Q Okay. When law enforcement arrived, were you still

1 there at the trailer?

2 A Yes.

3 Q Okay. Did you speak with any officers?

4 A Yeah, I spoke with some of them when walking through
5 the house with some of them showed them the holes in the
6 trailer that I noticed before they came.

7 Q Okay. So when you went in to check on your
8 girlfriend and your son, Robert, did you notice holes in
9 the trailer at that time?

10 A Yeah, I notice holes in the trailer and first when I
11 really notice was on the ceiling, it was a big skid like
12 one of the bullets slid across the ceiling.

13 Q Did you notice anything about the DVD's underneath
14 the television? Did you see anything there?

15 A I didn't have an eye for that. I didn't notice until
16 the police pointed it out to me and showed me.

17 Q Okay. So at some point they showed -- you saw where
18 they discovered a bullet there in the DVD's?

19 A Yes, sir.

20 Q Did they show you or did anybody show you any other
21 bullets that were found?

22 A I think they found bullets like between the blinds
23 and the window and the kitchen window above the sink?

24 Q Okay. You had testified that earlier you got your
25 son washed and everything said you turned on the

1 television. Was he in the same room with the television
2 and the DVD's where they found that projectile, that
3 bullet?

4 A Yes, sir.

5 Q Now, did you remain there until law enforcement left
6 that evening?

7 A We stayed there most of the time and Detective
8 Fraiser wanted us to stay, so he could question us, but
9 LaShaunica just wanted to leave. So we ended up leaving
10 before the officers left.

11 Q Had some of the officers started leaving or were they
12 all still there when you left?

13 A They were canvassing the scene still talking to some
14 of my neighbors still and we just left.

15 Q Where did you all go to a friend's house, a hotel,
16 where did you go?

17 A I think the first night we went to my friend's house.

18 Q Okay. Now, from your own observations, was
19 LaShaunica upset, was Miss Allen upset?

20 A She was very scared. She never been through anything
21 like that before.

22 Q Okay. What about your son, was Robert he upset?

23 A He was scared and ask me where I was when the
24 incident happened like I wasn't there for him. And then
25 he started this after a while once I was back with him, he

1 started back acting like a child. He knew something
2 happen, but he just didn't really understand the vary of
3 the situation.

4 Q Now, the next morning did you observe or see that
5 LaShaunica was actually injured?

6 A Yeah, the next morning I was in the bathroom with her
7 while she was getting undressed. I was asking her how her
8 arm feel and she was like it was hurting, it's hurting.
9 And I tried to touch it and she kept jerking it away. And
10 I saw that she had a big red bruise on her arm up there.

11 Q As a result of that, did you guys seek any medical
12 attention for LaShaunica?

13 A Yeah, I took her to the hospital right after we put
14 our clothes on and got dress.

15 Q How long were you guys at the hospital do you recall?

16 A We were there most of the day. It was a whole long
17 day thing. I kept running back from the hospital to get
18 her something eat. I just sat at the hospital with her
19 all day long.

20 Q Okay. And you had testified already that LaShaunica
21 was pregnant when this all happened; correct?

22 A Yes, sir.

23 Q Was it your understanding that that was your child
24 that she was carrying; correct?

25 A Yes, sir.

1 Q Okay. Did she end up being able to have that child?

2 A No, sir.

3 Q Did she end up having a miscarriage as a result of
4 falling on the floor and all that during this event?

5 A Yes, sir.

6 MR. BAX: Moments indulgence, Your Honor.

7 (WHEREUPON, a pause in the proceedings.)

8 BY MR. BAX:

9 Q Okay. Now, Mr. Knight, I want to ask you some
10 questions. Obviously, this is your trial. You are not
11 here to say you're a Boy Scott; is that right?

12 A No, sir.

13 Q I want to ask you some questions. Mr. Knight, do you
14 have any convictions for crimes in your past?

15 A Yes, sir, I have made some mistakes.

16 Q Okay. And I'm going to go through that, okay. I
17 want us to be open and honest with the jury and let them
18 know, okay. Did you get some I believe it was three break
19 and entering convictions in 2005?

20 A Yes, sir.

21 Q Okay. I believe that was in North Carolina?

22 A Yes, sir.

23 Q Okay. And there was three larceny charges that went
24 with that; is that correct?

25 A Yes, sir.

1 Q In 2007, did you get a conviction for pointing and
2 presenting a firearm?

3 A Yes, sir.

4 Q In 2008, did you get a conviction or were you
5 convicted of a possession of crack cocaine charge?

6 A Yes, sir.

7 Q Okay. And in 2011, were you convicted of an unlawful
8 carrying of a pistol charge?

9 A Yes, sir.

10 Q Okay. Is it true that you have carried a weapon in
11 the past?

12 A Yes, sir.

13 Q Okay. You're not denying that?

14 A No, sir.

15 Q Okay. And is it true that you have been involved in
16 narcotics in the past?

17 A Yes, sir.

18 Q Okay. And you're not denying that?

19 A No, sir.

20 Q Now, and this is very important, okay. Obviously,
21 we're here because of the incident you been charged with
22 in July of 2011 the Subway restaurant. Did you go into
23 the restaurant and shot Mr. Travis Sentell Holmes?

24 A Yes, sir.

25 Q Okay. Now, let's talk about why, okay. First of

1 all, was it your understanding, did you come into
2 knowledge that Mr. Travis Holmes ---

3 MR. STONE: Excuse me objection, Your Honor.

4 THE COURT: Grounds?

5 MR. STONE: On this particular part of this
6 leading.

7 THE COURT: Come on up.

8 (WHEREUPON, a bench conference was held in the
9 presence of the jury, but out of the hearing of the
10 jury.) is

11 THE COURT: Rephrase your question, Mr. Bax.

12 MR. BAX: Thank you, Your Honor.

13 BY MR. BAX:

14 Q Mr. Knight, what was your knowledge about who may
15 have done the shooting at your trailer?

16 A My knowledge was Travis Sentell Holmes did it.

17 Q Anybody else? Did you know if it was just him or
18 there anybody else that may have been involved?

19 A I know it was another guy involve with him.

20 Q Okay. Now, what was your knowledge about Travis
21 Holmes? What did you -- what was your impression of him?

22 A I mean, I had knowledge about him being a very
23 dangerous person and I know about things that he done.

24 Q Okay. Was it your -- did you know -- what did the
25 community think about? Is this stuff you got from the

1 community?

2 A Basically from the community and my knowledge I know
3 that he's known to tote a gun and is a shooter.

4 Q Now, let me ask you this, Mr. Knight, when this
5 shooting happened at your trailer at Donaldson Drive,
6 did that scare you?

7 A I was very scared.

8 Q Okay. Did it -- what impact did it have on you that
9 your son was in that amount of danger?

10 A It made me very frightened and it was just like took
11 my sense of security. I didn't feel safe at home.

12 Q What impact did it have on you that your girlfriend
13 lost -- it was a miscarriage as a result of this?

14 A I was very sad about that. Me and LaShaunica cried
15 many nights about that.

16 Q Now, Miss Allen's testified to this, but let me ask
17 you this. Do you have another child by Miss Allen now?

18 A Yes, sir.

19 Q What is that child's name?

20 A Roshaun.

21 Q And how old is Roshaun?

22 A I think he will be ten months December 7th.

23 Q Let's go forward here. You already told the jury the
24 essential fact about the Subway incident let's talk about
25 that a little bit more in detail, okay?

1 A Yes, sir.

2 Q What were you doing that day, that's July 26, 2011?

3 What were you doing that day?

4 A I was at home with LaShaunica for most of the day.

5 We were just at home watching TV and things like that.

6 Q Okay. Now, do you know Miss Shiecarra Smalls?

7 A Yes.

8 Q Okay. And how long have you known her?

9 A For a very long time since elementary.

10 Q Okay. At any time end up talking to Miss Smalls
11 about going to pick her up?

12 A Yeah.

13 Q Tell us about that?

14 A On that day, LaShaunica was pregnant again now, she
15 was begging me to go get her some Subway. So I went out
16 and left the house, go get her some Subway. And on my way
17 coming through Beaufort, Shiecarra called me. She was
18 telling me how she been off for the last 30 minutes. Her
19 ride hasn't come get her yet. And she just ask me -- and
20 I was telling her where do you work at. And she let me
21 know where she worked at. And I told her I was on my way
22 by there. Since, I had move closer to where she stay, I
23 told her I would just pick her up and take her home on my
24 way back home.

25 Q And this is at a point you had already moved away

1 from One Donaldson Drive? You didn't live there any more,
2 right?

3 A No, sir.

4 Q Where did you live at that time?

5 A I stayed on Three Tammy Lane in Sandhill Estates in
6 Grace Hill.

7 Q So you were back in Grace Hill at that point?

8 A Yes, sir.

9 Q And Donaldson Drive that's in Burton; is that right?

10 A Yes, sir.

11 Q Now, when you -- you talked to her so you were
12 already headed to Subway though to get sandwiches, right?

13 A Yes, sir.

14 Q Where did you pick Miss Smalls up from?

15 A Where she works at is connected to the Wal-Mart.

16 When I came through Wal-Mart parking lot, I called her and
17 she wasn't in the front of her job. She was just coming
18 out of Wal-Mart. She told me to just sit right there in
19 front of Wal-Mart and she came out.

20 Q Okay. After you picked up Miss Smalls from the
21 Wal-Mart, you guys go down to Subway?

22 A Yes, sir.

23 Q Okay. When you got to the Subway, what did you and
24 Miss Smalls do?

25 A We went to the Subway. She walked in there with me.

1 I went to order, but she took a seat down because, I guess
2 because she probably didn't have any money to buy her
3 something to eat or nothing. She was working all day. I
4 didn't know if she had lunch or not, so I offered to buy
5 her something to eat. She said, yeah. So I got a
6 sandwich fix for me, my girlfriend and I got Shiecarra a
7 sandwich.

8 Q Now, at some point, did you, Mr. Holmes, come into
9 the Subway?

10 A After I got all three of the sandwiches made, I paid
11 for them and, I guess, my back was to the entrance, so I
12 never saw him. As I grabbed my sandwiches and turn to
13 leave, I saw Mr. Holmes like my heart just dropped into my
14 stomach. I was just terrified to see him, but I was
15 trying to dodge him to my fullest abilities and I still
16 ran into the one person who I didn't want to see that day.

17 Q What did you and Miss Smalls do at that time after
18 you paid for your sandwiches?

19 A We were trying to rush of the store and get -- walk
20 past Mr. Holmes, but he was just like staring me down.
21 And it was so much attention between us. Shiecarra tried
22 to break the tension by telling him hi. She was like, Hi,
23 Travis, how you doing. And he barely said anything to
24 her. She was on the left-hand side of me. I was on the
25 right-hand side and he was on the right side of me. While

1 we were walking by, he barely acknowledged her. He walk
2 pass me and just was like, Man, I'm gone kill you boy.
3 And when we were leaving out the door, I really rushed out
4 the door. Then me and Shiecarra made it outside.

5 Q Okay. All right, Mr. Knight. Now, after you exit
6 the store with Miss Smalls, where did you all go from
7 there outside the store?

8 A After I exited the store, me and LaShaunica ---

9 Q That's all right take your time.

10 A I mean, me and Shiecarra Smalls, Miss Smalls we were
11 making our way to my car. And I was just explaining to
12 her like did you hear what he said just now. Like, man,
13 he just gone keep trying to kill me. You know, Travy,
14 you know what type of guy he is. And I was just keep
15 telling her that. I told her he just shoot up the house.
16 He just took a son from me. And I was telling her this.
17 I got her to the car. And when we got to the car, that's
18 when I just felt like I didn't want be...

19 Q That's all right take your time, Mr. Knight.

20 A I just felt like I couldn't live like that any more,
21 hiding, running and from Mr. Holmes and just always being
22 a victim to Mr. Holmes.

23 Q Now, after that obviously, did you go back in the
24 store?

25 A Yes, sir.

1 Q Okay. And obviously, you had a weapon on you;
2 correct?

3 A Yes, sir.

4 Q You're not trying to deny that to people on this
5 jury?

6 A No, sir.

7 Q Okay. Now, let me ask you this, why did you have a
8 weapon on you?

9 A At that time, it was just for protection. So if my
10 life was threatened, I be able to protect myself.

11 Q Let me ask you this, you've already admitted to the
12 jury that you been involved with narcotics. Does that
13 have anything to do with the danger level you felt?

14 A Yes. I'm always in danger selling drugs, you know
15 what I'm saying. Danger of being robbed. Sometimes I
16 would keep a firearm to protect myself, so I wouldn't get
17 robbed.

18 Q Now, Mr. Knight, you've already told this jury that
19 you were the one that went into this store that's on these
20 pictures and shot Mr. Holmes; correct?

21 A Yes, sir.

22 Q But you didn't waive a firearm around. Why not?

23 A When I went back into the store, it was females in
24 the store. I didn't want to waive a gun around. I didn't
25 want to in danger those females in the store, so I didn't

1 take a shot as soon as I came in the store. I didn't try
2 to brandish a pistol. I didn't want to harm the females
3 at all, so I walk straight to Mr. Holmes, who was the
4 person with the threat on my life, and I got close and
5 then I pulled the gun out and shot Mr. Holmes.

6 Q Mr. Knight, was what you did dangerous?

7 A I don't understand the question.

8 Q Let me ask you, is it possible that that bullet could
9 have hit somebody else?

10 A Not to my knowledge.

11 Q Would you have wanted that to happen?

12 A No, sir.

13 Q When you shot Mr. Holmes, was the gun right up
14 against him?

15 A Yes, sir, I wanted it to be right up against him to
16 make sure the bullet didn't have any chance to hitting any
17 innocent person.

18 Q Then after that happened, what did you do?

19 A After that happen, I left out of the Subway and I got
20 into my car.

21 Q Mr. Knight, were you scared through that hole thing?

22 A I was very scared. I never did anything like that in
23 my life. I didn't -- I never wanted that to come to that.
24 I'm very sorry for what happened. I never had any
25 intentions for it to go this far.

1 Q Now, after you left, you got into your car; is that
2 right?

3 A Yes, sir.

4 Q Where did you go?

5 A I drove Shiecarra home and I dropped her off home and
6 then I went home.

7 Q Okay. After you went home, what did you do?

8 A At that time, I was just real scared and real shaken
9 up about what just happen and I wanted to get LaShaunica
10 to safety. I didn't want any of Travis' family members or
11 his friends retaliating on me or her, so I just want to
12 grab her and try and get to safety.

13 Q Where did you end up going to?

14 A Me and her -- I took her to Jacksonville, Florida.

15 Q Did you stay in the same places she was or did you go
16 together with her?

17 A Yes, sir.

18 Q Okay. Now, let me ask you this, your hair when you
19 were in the video what's been shown here to the jury you
20 had dread locks; is that right?

21 A Yes, sir.

22 Q And when this happened at the Subway about how long
23 was your dread locks?

24 A About right here shoulder length.

25 Q Okay. Make sure you speak up for us. Thank you,

1 Rajerick. After you -- well, at some point after this,
2 did you cut your hair?

3 A Yes, sir.

4 Q And did you cut your because you were concerned about
5 getting caught and arrested?

6 A I was scared. I was trying to make it to Florida
7 with her and get her into safety before I got captured but
8 the police, so I just was scared and I thought it was the
9 best thing to guess not to be noticed.

10 Q Now, I want to back up a little bit, okay.

11 A Yes, sir.

12 Q Let's go back before all this unpleasantness happened
13 at the Subway that we are here for today. I want to go
14 back to when the shooting happened at the trailer. You
15 already testified you had knowledge about him and that you
16 came into knowledge that he might have been responsible
17 for that. Was there anything -- what was your knowledge
18 about Mr. Holmes having a problem with you?

19 A Well, the time before he told me he was going to kill
20 me. I just know he had problems with me. When I move
21 from Florida, I moved into his neighbor and he didn't like
22 that.

23 Q Let me ask you this, what did you understand his
24 relationship to LaShaunica to be?

25 A LaShaunica's uncle is married to his aunt, so they

1 like cousins through marriage.

2 Q Did Mr. Holmes like the fact that you were dating his
3 cousin?

4 A No, sir.

5 Q And this is very important, Mr. Knight. Did you ever
6 do anything that you can think of, you specifically to
7 Mr. Holmes, did you do anything to him to make him mad or
8 upset or want to hurt you?

9 A Never ever did anything to Mr. Holmes, never.

10 MR. BAX: Moments beg the Court's indulgence,
11 Your Honor.

12 THE COURT: Yes, sir.

13 MR. BAX: Thank you.

14 (WHEREUPON, a pause in the proceedings.)

15 BY MR. BAX:

16 Q Briefly, Mr. Knight. First of all, okay, we have a
17 jury here deciding your fate and you know that; correct?

18 A Yes, sir.

19 Q Now, what can you tell the jury about why they
20 shouldn't think of this as just an execution? Why
21 shouldn't they think that? What about what you did is not
22 that?

23 A Well, what I did in my perspective I think it wasn't
24 an execution?

25 Q Yes, sir.

1 A I think it wasn't execution because Mr. Holmes put me
2 in a situation where I had to choose life or death. I'm
3 young, I didn't want to die. Didn't want to get murdered
4 in cold blood, so I choose life. I choose to live, so I
5 choose to fight for my life and attack the who was
6 attacking my life. I just wanted to live and I wanted to
7 stay alive. I didn't want to get killed by Mr. Holmes.

8 Q Mr. Knight, did you in your mind, okay, did you have
9 any doubt that Mr. Holmes would continue to try to hurt
10 you?

11 A I was always scared for my life with Mr. Travis
12 especially after the incident where he showed he didn't
13 have any remorse for his cousin or her child to try to
14 kill me by shooting through our house. Every day I woke
15 up I thought I was going to die being in a situation with
16 Mr. Holmes.

17 Q So you were also scared about the danger that your
18 family was in, that Robert -- let me ask that question
19 first, you were also scared about what could happen to
20 your children; is that right?

21 A I was very scared about what could happen to my
22 children. I had already lost a child behind this whole
23 situation. I wish y'all could meet Robert. Robert is --
24 that's my everything, that's my heart. I wouldn't be able
25 to make it if I lost Robert behind this situation.

1 Q Now, Robert is not your biological son; is that
2 right?

3 A No, sir.

4 Q But did you file paperwork to adopt Robert?

5 A Yes, sir.

6 Q Okay. And had you been -- how long had you been
7 acting as Robert's father?

8 A I gave Robert his first birthday before his first
9 birthday.

10 Q Now, I want to clarify some things, okay. Before I
11 let you go for now, Mr. Knight. You testified earlier
12 that you never done anything like this before. Isn't it
13 true that as a result -- you know, as part of the
14 conviction, you got for pointing and presenting, there was
15 an accusation that you fired a shot at somebody at some
16 point?

17 A Oh, yes, sir.

18 Q Had you ever -- did you hit anybody at that time?

19 A No, sir.

20 Q Okay. When you said that you had done anything like
21 this before, are you talking about walking in broad
22 daylight into here and just getting in somebody's face
23 like this?

24 A Yes, sir, that's what I should have specified myself,
25 that's what I meant, sir.

1 Q Okay. Let me ask you this, okay, you're not getting
2 up here and telling this jury that you haven't made bad
3 decisions; is that right?

4 A I admitted to all my convictions I ever had and I
5 admit that I have made mistakes in my life.

6 Q Do you want to have an opportunity to correct those
7 mistakes and live a better life?

8 A Yes, sir.

9 Q Okay.

10 MR. BAX: Moments indulgence, Your Honor.

11 (WHEREUPON, a pause in the proceedings.)

12 MR. BAX: No further questions on direct at this
13 time, Your Honor.

14 THE COURT: Cross-examination.

15 CROSS-EXAMINATION

16 BY MR. STONE:

17 Q Yeah, I want to make sure I'm clear on this, Mr.
18 Knight. When you told the jury you never done anything
19 like this, you mean you never actually walked in to this
20 particular Subway and shot and killed somebody; is that
21 what you meant?

22 A No, sir, I didn't mean it like that.

23 Q You certainly didn't mean that you never shot at
24 anybody before, did you?

25 A That's what I just admitted to Mr. Bax.

1 Q In other words, Michael Singleton the man that you
2 shot at in 2006, that was a drive-by shooting then too,
3 was it not?

4 A No, sir, that was a accusation, but I never -- that
5 was an accusation.

6 Q You did get convicted of that did you not, sir?

7 MR. BAX: Objection, Your Honor.

8 A I got convicted of ---

9 THE COURT: Hold on.

10 A I got convicted of ---

11 THE COURT: Hold on.

12 THE WITNESS: Oh, you were talking to me, sir?

13 THE COURT: Yes, sir.

14 Grounds for your objection?

15 MR. BAX: Your Honor, that's in accurate, that's
16 not what he is convicted for.

17 THE COURT: Can you all approach?

18 (WHEREUPON, a bench conference was held in the
19 presence of the jury, but out of the hearing of the
20 jury.)

21 THE COURT: Rephrase your question.

22 MR. STONE: Yes, sir.

23 BY MR. STONE:

24 Q You aren't telling the jury that you did not shoot at
25 Michael Singleton, did you? Do you know who Michael

1 Singleton is by the way?

2 A No, sir.

3 Q You don't?

4 A I know a guy, but I don't know him by Michael
5 Singleton. I know the incident that you're referring to.

6 Q Thank you, sir. Tell us about that? Let me ask you
7 this question, this man that you know that may be Michael
8 Singleton, the guy that you shot at before, was he a drug
9 dealer too?

10 A I don't know, sir.

11 Q You don't know if he was in the narcotic business?

12 A No, sir.

13 Q Okay. And you said earlier I think that you and
14 Travis Holmes, he didn't like moving into his
15 neighborhood; is that right?

16 A Yes, sir.

17 Q Travis Holmes in the drug business?

18 A Yes, sir.

19 Q So when you say that Travis Holmes was a dangerous
20 guy, you're a pretty dangerous guy too; aren't you?

21 A Dangerous in by selling drugs?

22 Q I guess my question is this you and Travis rival drug
23 dealers?

24 A No, sir.

25 Q You want to get rid of Travis, so that you could have

1 that territory too?

2 A I had already moved in.

3 Q You already had that territory?

4 A I already move from Travis' neighborhood.

5 Q I understand. Now, you don't have any argument do
6 you that State's Exhibit 12 is a picture of you and
7 Shiecarra going out of the Subway; is that correct?

8 A Yes, sir.

9 Q That is you, right?

10 A Yes, sir.

11 Q And you say at some point and I believe that is in
12 the very back of State's Exhibit 12 is Mr. Holmes; is that
13 correct?

14 A Yes, sir.

15 Q Still ordering a sandwich, I believe talking to the
16 lady that testified yesterday that you heard; correct?

17 A Yes, sir.

18 Q And when you walk by him according to you today, he
19 said I'm going to kill you, right?

20 A That picture doesn't show that though, sir.

21 Q Of course, it doesn't show that, but that's what
22 you're saying and that's what you told this jury that he
23 threatened to kill you when you walk by him?

24 A Yes, sir.

25 Q I didn't hear Shiecarra say that?

1 A Shiecarra was on the left side of me, sir.

2 Q What about the lady that said she was talking ---

3 MR. BAX: Objection. He needs to be allowed to
4 finish his answer, Your Honor.

5 THE COURT: Let him finish his answer, Mr.
6 Stone.

7 BY MR. STONE:

8 Q Did Shiecarra say that?

9 A Say what, sir?

10 Q Did she hear him say that?

11 A That's why when we got outside, I kept questioning
12 her and asking her if she heard him say that.

13 Q That's a good question. I don't remember her saying
14 that either, do you?

15 A I don't remember her saying that in her testimony.

16 Q When you walked in that Subway, did you have the gun
17 with you when you walked in? When you went in the first
18 time with Shiecarra, did you have the gun with you?

19 A Yes, sir.

20 Q So you just carry it with you at all times?

21 A Yes, sir, I had it concealed underneath my shirt.

22 Q You did everything you could to get away from Travis
23 Holmes; is that right?

24 A That day right there?

25 Q Yes, that day right there?

1 A Yeah, I walked away from him.

2 Q And then when you got out in the car with your
3 sandwiches that you went ahead and paid for and took out,
4 you turned around and went back in; didn't you?

5 A Yes, sir.

6 Q You already at your care and you could have gotten in
7 the car and driven off right then; couldn't you?

8 A I could have, yes, sir.

9 Q But you didn't?

10 A No, sir.

11 Q You decided to go back in and end it; is that right?

12 A I wanted to end the threat of my life, yes, sir.

13 MR. STONE: Excuse me just a moment, Your Honor.

14 THE COURT: Yes, sir.

15 (WHEREUPON, a pause in the proceedings.)

16 BY MR. STONE:

17 Q And so I heard one other thing that you said that he
18 didn't have remorse for your girlfriend getting shot at;
19 is that what you said?

20 A Yes, sir.

21 Q How did that make you feel? Make you mad?

22 A No, sir.

23 Q No. And then when you got in the car and you drove
24 away, you fled to Florida, did you not?

25 A Yeah, I tried to take my girlfriend to safety.

1 Q Cut your hair?

2 A Yes, sir.

3 Q And cut it again after that?

4 MR. BAX: Objection, Your Honor, side bar.

5 THE COURT: What's the grounds for your
6 objection.

7 MR. BAX: Grounds for my objection as I've
8 stated earlier on the record what he appears like today is
9 not an indicia.

10 THE COURT: Cross-examination I'll allow the
11 question.

12 MR. STONE: Thank you, Your Honor.

13 THE COURT: Objection overruled.

14 BY MR. STONE:

15 Q So you went to Florida, you cut your hair and then
16 you started sending texts back to your friend to say watch
17 out for Karra, watch her, don't let her know you watching,
18 but watch her, right? And Shiecarra by the way is
19 Shiecarra Smalls; is it not?

20 A Yes, sir.

21 MR. STONE: I don't have any further questions?

22 THE COURT: Any redirect?

23 MR. BAX: Yes, Your Honor, one question.

24 REDIRECT EXAMINATION

25

1 BY MR. BAX:

2 Q The fact that Mr. Holmes did not care that his
3 pregnant cousin was in the house that he shot up, you said
4 that didn't make you mad. Did it scare you?

5 A It made me very frightened that he would take a
6 chance of killing his own cousin.

7 MR. BAX: No further questions, Your Honor.

8 THE COURT: Mr. Stone.

9 MR. STONE: No, sir.

10 THE COURT: Sir, you may step down. Thank you.

11 (WHEREUPON, the witness leaves the witness
12 stand.)

13 THE COURT: Can the lawyers approach please?

14 MR. BAX: Yes, sir.

15 (WHEREUPON, a bench conference was held in the
16 presence of the jury, but out of the hearing of the
17 jury.)

18 THE COURT: Ladies and gentlemen of the jury,
19 what I'm going to do there's some matters that I need to
20 deal with here this afternoon, it's about three o'clock.
21 I'm going to cut you loose for the balance of today, for
22 the balance of today. We will resume tomorrow morning. I
23 want you all here tomorrow morning at ten o'clock, ten
24 o'clock because there's some matters that we have to deal
25 with this afternoon and in the morning before we start.

1 So I'm going to let you go and I'm going to ask that you
2 be back here tomorrow morning at ten o'clock. My
3 instructions remain the same. You're not to discuss this
4 case with anybody. You're not to discuss this case with
5 anybody. You're not to do any independent investigation
6 of your own. You're not allowed to talk about the case
7 until you're instructed to do so. You all are free to go
8 at this time everybody else in the courtroom remain seated
9 while the jury exits the courtroom. Please be back at ten
10 o'clock.

11 (WHEREUPON, the jury is excused for the day.)

12 THE COURT: Okay. Now, it is my understanding
13 the only remaining witness in this case is Dr. Thomas
14 Martin; is that correct, Mr. Bax?

15 MR. BAX: That is correct, Your Honor, from
16 defense.

17 THE COURT: We discussed the fact yesterday that
18 Dr. Martin could not be here until Thursday morning. And
19 I've asked the jury to be back at ten o'clock in the
20 morning as oppose to nine o'clock in the morning. Because
21 I want to know what Dr. Martin intends to testify to. And
22 rather -- I mean, I don't know if the State intends to
23 object to any of it I don't know. How long do you
24 anticipate Dr. Martin testifying?

25 MR. BAX: Your Honor, as far as direct

1 testimony, I would estimate that his testimony would be
2 between 30 and 45 minutes. I don't think it's going to be
3 any longer than that. I'm trying to give myself as much
4 leeway as possible. I don't foresee it being as lengthy
5 as sometimes expert testimony. I don't know that's my
6 direct. I don't know what cross will involve.

7 THE COURT: Can you tell me what you going to
8 qualify him as an expert in?

9 MR. BAX: Your Honor, I'm going to qualify him
10 in the field of -- says he has a degree in psychiatry. I
11 want to make sure I say it correctly, Your Honor. I
12 think, it's going to be forensic psychology. I don't want
13 to say something to the doctor in his education, he's
14 going to tell me is incorrect, but that's what I think it
15 is forensic psychiatry. He does a lot of evaluations of
16 individuals both for all sorts of levels. And as I have
17 stated to the Court before and I can assert this
18 absolutely without hesitation, he's not here to say
19 there's any problem with my client's competency. He's not
20 here to say that he suffers from any kind of mental
21 illness that would affect his ability under insanity. In
22 fact, I don't even think he's going to say that he suffers
23 from any specific diagnose under the DSM-4. He's purely
24 here as a state of mind witness to talk about what he has
25 as far as his opinion, the mental state of my client when

1 this happened. But I would say forensic psychiatry, I
2 think, that's the way to say the most accurate way to say
3 it. And I have provided to a CV to the Solicitor's office
4 prior to this, but I will make sure we have extra copies
5 tomorrow.

6 THE COURT: Anything from the State at this
7 time?

8 MR. STONE: I don't know that enough, Your
9 Honor, at this time. I don't know that the qualifications
10 not going to be the issue. It's what he's testifying to
11 that concerning the State and I'm just not clear on what
12 that is.

13 THE COURT: I mean, he just said he's going to
14 testify as to state of mind.

15 Mr. Bax, you conveyed to me in chambers
16 yesterday in the presence of Mr. Stone and Mr. Thornton,
17 that this was something that happened on an ongoing basis.
18 And quite frankly, I've never seen an expert come in in a
19 case such as this and testify as to state of mind. I
20 mean, maybe in a mitigation in a death penalty case or
21 something like that. And you indicated that you had it
22 happen on numerous occasions. By no stretch of the
23 imagination just because I'm sitting up here in this black
24 robe, does not mean that I know everything, okay. So if
25 you intend to do that, I certainly want any and all case

1 law that you have that support your position on that so
2 that I can make a ruling on it and not have that jury sit
3 back there for a long period of time. You can e-mail
4 whatever since we're breaking for the balance of today at
5 about 3:05. You can e-mail me case law you want me to
6 look at to myself and my law clerk and I'll be happy to
7 look at it. I assume that's kind of where you were going
8 after I saw that there was a doctor on here. And I've
9 looked at some case law. And the case law that I've seen
10 dealt with a situation wherein there was the batterer
11 syndrome, batterer syndrome, diminished capacity, which
12 South Carolina from my understanding does not recognize.
13 I mean, if I recall correctly, those are the only two that
14 we saw. So you got some case law, some South Carolina
15 case law or something I can look at, I'll be happy to take
16 a look at it. I just want to make sure that I have an
17 opportunity to look at it, so that I make the appropriate
18 ruling in this matter without having to make the jury sit
19 out there an extended period of time while I do some
20 researching.

21 MR. BAX: Certainly, Your Honor, for the Court's
22 information, I have touched base with Dr. Martin informed
23 him that we have moved through all the testimony that we
24 need him tomorrow. He is going to come in late tonight
25 and stay with some people here that he knows in town, so

1 he'll be available. So he can be at the courthouse by
2 8:30.

3 THE COURT: I want court personnel here by nine
4 o'clock. I mean, I hate to do this, but I think it's a
5 situation where based upon my assumptions, I felt like it
6 was probably some testimony that need to be proffered
7 before I made a decision on it.

8 MR. BAX: All right. Certainly, Your Honor.
9 And he's going to be available for that. Additionally,
10 Your Honor, this is a housekeeping matter you may have
11 just been about to get to this. I don't mean to cut into
12 your territory. I was just going to ask if you like would
13 a propose charge.

14 THE COURT: I appreciate -- absolutely. Any
15 propose charges that you all have e-mail to my law clerk
16 tonight. We will take a look at them overnight, first
17 thing in the morning. I suspect that once -- and I'm not
18 going to hold the State to this right now, but I suspect
19 once you rest, the State has conveyed to me up here at
20 side bar a minute ago that they do not anticipate calling
21 any reply witnesses, but I'm not going to hold you to that
22 right now. But once you rest, certainly we're going to go
23 right into closing arguments, okay, regarding closing
24 arguments and the charge on the law.

25 And I'll go ahead and tell everybody that's in

1 this courtroom right now. During closing arguments and my
2 charge on the law, you will not be allowed to leave this
3 courtroom, okay. My charge on the law will be probably be
4 anywhere from 30 to 45 minutes and that's excluding what
5 the lawyers closing arguments, how long their closing
6 arguments may be. But you will not be allowed if do not
7 think you can sit for that long, you don't need to be in
8 here during closing arguments and the charge on the law
9 because I do not allow individuals to come in and out of
10 this courtroom while that is going on. I certainly do not
11 want this jury to be distracted in any way from closing
12 arguments are going on and in my charge on the law is
13 being given to the jury. So I'm just putting you all on
14 notice of that now, okay. All right. Anything else from
15 the State at this time?

16 MR. STONE: Could we approach just briefly, Your
17 Honor?

18 THE COURT: Yes, sir.

19 Mr. Bax.

20 (WHEREUPON, a bench conference was held in the
21 presence of the jury, but out of the hearing of the
22 jury.)

23 THE COURT: Anything else from the State or
24 defense counsel at this time?

25 MR. STONE: No, sir.

1 THE COURT: Court personnel back here at nine
2 o'clock in the morning. We'll resume the trial of this
3 case at ten.

4 (WHEREUPON, the proceedings were concluded for
5 the day to be reconvened on November 29, 2012.)

6 THE COURT: Okay. I had ask the lawyers to be
7 back here at this morning at 8:30, to be in my chambers at
8 8:30 to go over the jury charge. We have done that. We
9 will address that here shortly. I also asked defense
10 counsel to have Dr. Thomas Martin here at nine o'clock to
11 address some issues regarding his testimony Mr. Bax is Dr.
12 Martin here?

13 MR. BAX: Yes, Your Honor, he is.

14 THE COURT: Are you ready to proceed?

15 MR. BAX: I'm ready to proceed, Your Honor. And
16 just for my purposes, does the Court prefer that we go
17 into proffer on Dr. Martin before getting to other issues?

18 THE COURT: Yes, sir, I would.

19 MR. BAX: Well, then for that purpose, Your
20 Honor, I would call Dr. Martin at this time.

21 THE CLERK: Do you swear or affirm to tell the
22 truth, the whole truth, and nothing but the truth so help
23 you God?

24 THE WITNESS: I do.

25 THE CLERK: Please be seated and state your full

1 name.

2 THE COURT: Let me go ahead and put on the
3 record before Mr. Bax begins questioning Dr. Martin. I
4 told Mr. Bax and Mr. Thornton and Mr. Stone in chambers
5 yesterday for purposes of this hearing, it is not
6 necessary for Mr. Bax to lay out the qualifications of Dr.
7 Martin for the purpose of determining his status in
8 testimony as an expert in this court? Any objection to
9 that by the State?

10 MR. THORNTON: None, Your Honor.

11 THE COURT: All right, Mr. Bax.

12 MR. BAX: All right. And thank you, Your Honor.
13 And just for the record, I would ask if Your Honor
14 determines that his testimony is not admissible in front
15 of the jury, that I be allowed to put his qualifications
16 on the record that instance. Obviously, we don't need it
17 now, but in the event that Your Honor rules that his
18 testimony is not admissible before the Court.

19 THE COURT: Absolutely. And if you feel like
20 you need to do that, certainly I want you to do that or in
21 light of that, you can certainly make it an exhibit, a
22 Court's Exhibit his C.V., which covers all that. The
23 State may even stipulate that he qualified to testify. I
24 guess he want to be qualified or would be qualified as a
25 forensic psychologist or psychiatrist.

1 MR. BAX: Yes, Your Honor. Thank you.

2 THE COURT: Yes, sir.

3 DIRECT EXAMINATION IN-CAMERA

4 BY MR. BAX:

5 Q Dr. Martin, bearing in mind, that we heard from the
6 Court, I'm just going to get into it. First and foremost,
7 are familiar with Rajerick Knight, sir?

8 A Yes, sir.

9 Q And can you tell the Court how you got involved with
10 the Mr. Rajerick Knight and this case?

11 A You called my office earlier this year maybe around
12 July, midsummer asked if I would evaluate this case that
13 he was charged with murder. And I agreed to take a look
14 at the records and the surveillance video and other
15 documents you felt pertinent. I did that. And then we
16 made arrangements to have him transported to my office in
17 Columbia and I spent three hours meeting with him
18 personally.

19 Q Okay. And so what you have had to review includes
20 not only all the records that I have sent you including
21 discovery in this case involving a shooting at Subway, but
22 also video of the surveillance video that was taken at
23 Subway restaurant; is that correct?

24 A That's correct.

25 Q Did you also receive records provided by my office of

1 the victim's background as well, sir?

2 A Yes, sir, I did.

3 Q Have you had an opportunity to review all those
4 records to your satisfaction, Doctor?

5 A Yes, sir.

6 Q Now, you also testified that you have had an
7 opportunity to meet with Mr. Knight. What date was that
8 on to your remember?

9 A That was September 27th 2012.

10 Q Okay. And during that time, can you tell us a little
11 bit about what you and Mr. Knight talked about?

12 A First of all, I did a standard psychiatric evaluation
13 that would perform with all of my cases in a forensic
14 setting. I went through the charges that were levied
15 against him, his understanding the charges and essentially
16 issues surrounding competent to stand trial, which I found
17 that there was no difficulty there. I also went into his
18 mental health background history. I found that he had
19 trouble with some substances at one time and substances
20 use at one time, but that he had essentially had no mental
21 illness. I didn't find anything psychiatric in terms of
22 major psychiatric illness that was influencing him
23 currently for or at the time of this alleged murder, which
24 was July 26th 2011. So since, I found no major mental
25 illness, I found that he would have been criminally

1 responsible for any of his behaviors around the July 11,
2 2011 time frame as well as having no diminished capacity
3 problems.

4 THE COURT: Had no diminished capacity problems?

5 DR. MARTIN: Yes, sir.

6 THE COURT: Thank you.

7 BY MR. BAX:

8 Q And so for the edification of the Court, you're
9 testimony here today would not be as to any mental illness
10 being suffered by Mr. Knight in your opinion; correct?

11 A Correct.

12 Q Okay. Now, Dr. Martin, let me ask you this in your
13 review of the records that we were provided as well as
14 your discussions with Mr. Knight, did you become familiar
15 with the circumstances surrounding the shooting at Subway
16 and the circumstances surrounding Mr. Knight's life
17 leading up to that shooting?

18 A Yes.

19 Q And in your examination, did you observe Mr. Knight
20 expressing to you motions of fear and stress based on any
21 of the events he described to you that happened before the
22 shooting?

23 A Yes.

24 Q Can you tell us a little bit about that, sir?

25 A Certainly. Mr. Knight reiterated for me his

1 awareness of the victim, Mr. Travis S. Holmes. It wasn't
2 a personal relationship. It was more of a fearful one.
3 He depicted Mr. Holmes as rather a terrorizing in the
4 county. He also depicted for me several times when
5 Mr. Holmes had alleged committed violent crimes, made
6 violent threats against him and his family. It was at
7 that time that I contacted your office and I wanted to
8 know more about the victim in this case. And at that
9 time, you sent materials that supported that there was an
10 investigation of such shootings at his place where his
11 female friend pregnant at the time had been injured, later
12 miscarried earlier that year as well as other violent
13 incidents. He felt that his life essentially living in
14 that county which he felt he had no chance to move from
15 his place of residence at the time that his life and
16 probably his family's life were in eminent danger. And
17 when he went to Subway and saw the victim, he reacted to
18 those fears and that imminent danger.

19 Q Based on your observations of Mr. Knight, based on
20 the things that he told you, which I believe you testified
21 ended up being supported by the documentation records that
22 were provided; correct?

23 A Correct.

24 Q Based on those factors and your observations of Mr.
25 Knight, did he proceed -- was his perception or excuse me

1 let me rephrase, did he appear in your opinion as scared
2 genuinely scared of this man?

3 A It seems like he was living under a reign of terror
4 the way he simply put it.

5 Q And based on your observations of Mr. Knight and what
6 he was depicting to you, did Mr. Knight feel that his fear
7 was reasonable?

8 A Based on, you mean reality?

9 Q Well, Mr. Knight's perception at that time. Did
10 Mr. Knight feel like, was it reasonable to him to be
11 scared?

12 A Yes.

13 Q Okay. Now, obviously, we're in a proffer setting
14 here without the jury present part of the records that you
15 reviewed, did they include anything about Mr. Holmes'
16 prior record including shootings that happened in 2008 and
17 2009?

18 A Yes.

19 Q What information did you have about what Mr. Holmes
20 had done as far as criminal activities in 2008, 2009 to
21 your recollection?

22 A To my recollection, Mr. Holmes was apprehended and I
23 believe charged with some violent crime shootings into
24 homes, into vehicles around that time frame. All these
25 individual -- victims in this case were known to

1 Mr. Knight and were close acquaintances some of them. I
2 also learn that Mr. Holmes was released on, I believe,
3 some form of bond in between all of these or several of
4 these incidences and that created more tension for
5 Mr. Knight because he felt that he was essentially still
6 at large and still a threat.

7 Q Okay. And I think you testified to this a little
8 bit, but based on, you know, your examination of
9 Mr. Knight, did he appear to be well aware of Mr. Holmes
10 past ---

11 A Yes.

12 Q --- including these prior shootings?

13 A Yes, he perceived for me that that was an ongoing
14 threat is that Mr. Holmes out there in the community at
15 large had already shown to his satisfaction that he was a
16 threat to not only him and his family, but also to his
17 family and he was still at large. He felt that he could
18 not get the support. My questions to him were why did he
19 take into his own hands and he felt that he had exhausted
20 the opportunities that the police were able to provide and
21 the was man still on bond.

22 Q In your examination of Mr. Knight, did you question
23 him about how he tried to exhaust the possibilities of
24 police protection or police assistance.

25 A Yes, they contacted, reported and for reasons that I

1 can say I totally understand Mr. Holmes was still on bond.

2 Q And he informed you that his girlfriend, Miss Allen,
3 had repeatedly contacted the police and given him the
4 names of Mr. Holmes and others as potential suspects in
5 the shooting?

6 A That's the way he put it, yes.

7 Q And Mr. Knight seem to be still aware at that time
8 that no one had picked up Mr. Holmes or arrested him or
9 were even trying to?

10 A That's correct.

11 Q Now ---

12 MR. BAX: A moments indulgence, Your Honor.

13 THE COURT: Yes, sir.

14 (WHEREUPON, a pause in the proceedings.)

15 BY MR. BAX:

16 Q Briefly, Dr. Martin, I just want to ask you a couple
17 more questions. In your examination of the records and
18 Mr. Knight, were you able to ascertain, were able to kind
19 of figure out that there was kind of a time line here from
20 incident to incident. Let me ask you this, were you aware
21 of the time line of events that Mr. Knight has been
22 through at that time?

23 A He described it to me starting from I believe 2007 or
24 2008 up until the year several months, maybe three or four
25 months before his shooting incident that he has sighted

1 certain incidences of sort as being within the past couple
2 years.

3 Q So he was able to cite to you his knowledge of Mr.
4 Holmes' reputation and alleged acts as far back as 2007,
5 2008 or earlier as part of what he was afraid of?

6 A Yes, that's what he based his fear on.

7 Q Now, he was Mr. Knight open with you about the fact
8 that the shooting that occurred at his trailer where his
9 girlfriend was wounded and she miscarried about how much
10 time had passed between that shooting and when he saw Mr.
11 Holmes at the Subway?

12 A I believe it was earlier that spring, so March.

13 Q Okay. So you were aware that there was a couple
14 months roughly speaking between when the shooting occurred
15 at his trailer and when the shooting at Subway a occurred?

16 A That's correct.

17 Q In your discussions with Mr. Knight and your
18 observations of him, did it appear that he perceived the
19 threat from Mr. Holmes to be ongoing and continuing
20 throughout that entire period of time?

21 A Yes, the way he described it was it was never going
22 to end.

23 MR. BAX: No further questions at this time.

24 THE COURT: Cross-examination.

25 CROSS-EXAMINATION IN-CAMERA

1 BY MR. THORNTON:

2 Q Okay. Good morning, Dr. Martin.

3 A Good morning, sir.

4 Q Dr. Martin, let me ask you a couple of questions.

5 Did you have discussions with Mr. Holmes (sic) about the
6 fact that he's a drug dealer?

7 A Yes.

8 Q And that he is an armed drug dealer?

9 A Yes.

10 Q Carries a gun everywhere he goes?

11 A Correct.

12 Q That makes him a pretty dangerous man as well, does
13 it not?

14 A It could.

15 Q Did he tell you about the time that he shoot at an
16 unarmed man and was charge with I think assault with
17 intent to kill and pointing and presenting a firearm?

18 A Yes.

19 Q Did you factor that into your analysis as far as
20 whether he would be scared or possibly paranoid?

21 A Yes.

22 Q All right. And isn't it true that drug dealers who
23 carry and because of the business they're, they tend to be
24 a little more paranoid than other folks?

25 A I want speak for all drug dealers.

1 Q How about that drug dealer?

2 A I did not believe that Mr. Knight was using drugs,
3 which sometimes makes people in my practice more paranoid,
4 but I do believe that the field of business he was in
5 creates a hypersensitivity to your surrounding. Paranoid
6 is a psychotic illness and I don't necessarily think that
7 he was that ---

8 Q Forgive, I'm not trying to step into your area. Did
9 he talk to you about Christopher Jackson and your
10 discussions about the shooting at the house?

11 A I don't remember any particular names, so if you
12 could be more specific about the incident.

13 Q Sure. The incident that one of the reasons -- I
14 think the sole reason that you are able to base your
15 position on him being scared or for his family is the
16 shooting into the home is that at least the major one that
17 we would be talking about, the shooting into his trailer
18 where he's worried about Mr. Holmes?

19 A In March?

20 Q Yes, sir -- actually, May 2011?

21 A Sorry.

22 Q Would that be correct?

23 A Yes.

24 Q All right. There were three people who were caught
25 running away from the scene when the police first got

1 there, did you talk about those folks?

2 A No, I did not.

3 Q All right. There was an Antoine Robinson, did you
4 talk about Antoine Robinson?

5 A I remember the name, but I don't remember anything
6 specific.

7 Q Would make it any difference to you if Mr. Holmes
8 having to leave out the fact that Antoine Robinson is the
9 first name that came up in the community quote unquote
10 about this shooting?

11 A Mr. Holmes?

12 Q I'm sorry would it make any difference to you as
13 your discussions with Rajerick Knight that Antoine
14 Robinson's name was the first one to come up in this
15 shooting?

16 A If he did bring it up, I don't remember it, so I
17 can't comment.

18 Q Did he bring up Dion Haygood?

19 A I heard the name, but I don't remember any details.

20 Q Did he bring up the fact to you that Dion Haygood's
21 name a known associate of Antoine Robinson was also
22 brought up in the community as one of the possible
23 shooters?

24 A He said that there perhaps were other suspects in it,
25 but he was convinced that it was Mr. Holmes had a major

1 part in it.

2 Q Did he tell you why he was convinced Mr. Holmes had a
3 major part in it?

4 A He was just certain.

5 Q He was certain, but he was not able to give you any
6 evidence of any kind other than he was certain?

7 A Correct, I have no other evidence

8 Q I understand you don't, but he didn't either because
9 he didn't tell you about any if he did; is that correct?

10 A That is correct.

11 Q What about the fact that there are two Travis
12 Holmes', did he talk about that?

13 A Yes.

14 Q All right. But he's convinced for no other reason
15 that he's convinced, that it was Travis Sentell Holmes the
16 man that he gun down in the Subway in this case?

17 A He knew the difference between the two.

18 Q But he had no evidence other than he was just
19 convinced that it happen to be that one?

20 MR. BAX: Your Honor, asked and answered, that's
21 the same question ---

22 THE COURT: It's cross-examination restate your
23 question.

24 MR. THORNTON: Yes, sir.

25

1 BY MR. THORNTON:

2 Q As to Christopher Jackson, Nashuan Mervin, Jermel
3 Days, Antoine Robinson, Dion Haygood, Jamal or Jemel
4 Jenkins, Travis Sentell Holmes, Travis Javone Holmes, the
5 only thing he was able to tell you about that May shooting
6 is I'm just certain it was Travis Sentell Holmes?

7 A At least having the major part in it, yes. He said
8 there were other figures, but this was the main character.

9 MR. THORNTON: Court's indulgence, Your Honor.

10 BY MR. THORNTON:

11 Q One of the main things you talked about, Doctor, was
12 the fact that he doesn't suffer from any major mental
13 illnesses Mr. Knight; is that correct?

14 A That's correct.

15 Q And he doesn't suffer from diminish capacity?

16 A That's correct.

17 Q So again not to step in your area of expertise
18 basically for a layman that means he knows the difference
19 between right and wrong?

20 A Correct.

21 Q And he has the ability to control himself?

22 A Yes.

23 Q So the day in question when he was at the Subway
24 armed with a gun, he made a conscience decision to go back
25 inside and gun an unarmed man down?

1 A Yes.

2 Q In your experience, Dr. Martin, I know I've seen your
3 C.V. clearly you're qualified and you've done a lot of
4 work with different kinds of folks. Is there anything to
5 be said for the street cred or street credibility that
6 one drug dealer gets by gunning down another drug dealer
7 or a potential drug dealer?

8 A I would imagine there is a reputation that needs to
9 be upheld.

10 Q And is that something if Mr. Knight testify -- I know
11 you weren't here obviously yesterday, but Mr. Knight got
12 up and testified that both he and Mr. Holmes were drug
13 dealers and he was moving into Mr. Holmes' territory and
14 Mr. Holmes was angry about that, wouldn't that be a
15 potential reason for him gunning down -- for Rajerick
16 Knight gunning down Travis Holmes?

17 A It could be one of several, yes.

18 MR. THORNTON: I have no further questions.

19 THE COURT: Anything on redirect?

20 MR. BAX: Yes, Your Honor.

21 REDIRECT EXAMINATION IN-CAMERA

22 BY MR. BAX:

23 Q Dr. Martin, when asked about what Mr. Knight was
24 basing his belief that Travis Holmes in part responsible
25 for the shooting, did he tell you that there were

1 potentially two shooters at the trailer where his
2 girlfriend was wounded?

3 A Yeah, he's mention -- he thought there was more than
4 one.

5 Q And did he mention the fact that Travis Holmes is
6 known in his community to run with Antoine Robinson or
7 anybody else when he goes and shoots at people?

8 A Mr. Holmes according to Mr. Knight was not a loaner.
9 He had, I believe, he called Mr. Holmes a lynch men.

10 Q Okay. All right. Now, you been asked about what he
11 based on his belief that Mr. Holmes had any Travis'
12 animosity towards him, Travis Sentel Holmes animosity to
13 him. Did he describe any other events to you? Did he
14 describe any events where he was conveyed threats directly
15 by Travis Sentell Holmes prior to the shooting at his
16 trailer?

17 A Yes, I don't remember a specific time, but there was
18 not just one threat. There was a threat that he heard in
19 the Subway. The threat would be I say more implied to the
20 trailer and other threats in terms of being shot at or
21 verbally threatened by this man before. I don't know
22 exactly the type of encounters they have had where he
23 heard those threats, but he said that there's not the
24 first time.

25 Q Did he ever -- now, did you become aware during your

1 examination of Mr. Knight or through any of the records
2 that his girlfriend, LaShaunica Allen, was related to
3 Travis Holmes?

4 A I believe so, yes.

5 Q Okay. Did he describe to you any family even for
6 Miss Allen that occurred sometime prior to May 2011, maybe
7 even 2010 where family members of Miss Allen who are
8 related to Mr. Holmes said he wants to kill you?

9 A I believe he mention something about that too, yes.

10 Q And that was well before the shooting at his trailer;
11 is that correct?

12 A Yes.

13 Q So, Dr. Martin, was it just solely his belief that
14 Travis Sentell Holmes had shoot at the trailer or was it
15 based on a hole bunch of things surrounding the entire
16 context of these events?

17 A The folks that Mr. Knight did give me by name would
18 include several individuals who had also been reportedly
19 terrorized by Mr. Holmes and been shot at in the vehicle.
20 The trailer he mentioned in the spring of 2011, his girl
21 lost the baby. And in other words, it was his opinion and
22 it seem to be a community family, a family community
23 opinion, that Mr. Holmes was this kind of danger that he
24 portray to me.

25 Q Now, in your work, Dr. Martin, have you come across

1 communities where there is a lot of rumor and innuendo and
2 talk and people talk with each other and things pass from
3 person to person to person. What we would call in court
4 multiple levels of hearsay. Have you ever run across that
5 in your career as a psychiatrist?

6 A Oh, absolutely.

7 Q In your observations and discussions with Mr. Knight,
8 did he seem to exist in a community where there was a lot
9 of word on the street and great vine kind of information?

10 A Yes.

11 Q Do you think that a lot of that information was
12 making to it him in that manner?

13 A Yes.

14 Q Okay. Despite the fact that some of that stuff is
15 not -- may not be admissible in court was Mr. Knight being
16 impacted by information he was getting through those
17 means?

18 A I believe he was.

19 Q So information he was getting provided through this
20 community. And let me ask you this, during your
21 examinations with Mr. Knight did you encounter in
22 discussing with him these different people in the
23 community, the fact that Mr. Holmes' relatives and his
24 relatives are kind of intertwined?

25 A It seem like it, yes.

1 Q There's a lot of cross relationships and marriages
2 and cousins and stuff like that; is that right?

3 A Yes.

4 Q So there's a lot of people that knew both Mr. Holmes
5 and Mr. Knight; is that not correct?

6 A It seem that way, yes.

7 Q And did he tell you that a lot of these people were
8 continuing to pass along the fact that Mr. Holmes wanted
9 to kill him?

10 A Yes.

11 MR. BAX: No further questions, Your Honor.

12 THE COURT: Any recross?

13 RECROSS-EXAMINATION

14 BY MR. THORNTON:

15 Q How many of these members of the community, did you
16 interview?

17 A None.

18 Q As to Antoine Robinson and the hinch man, that's the
19 first time anybody in this entire court proceeding has
20 heard about. If he gun them down and they were unarmed in
21 a Subway, would it be reasonable for him to be scared of
22 them too?

23 A I'm not sure if I understand the question.

24 Q Okay. You've talked about or I've asked you about
25 the fact that there were other people mentioned in the

1 shooting?

2 A Yes.

3 Q And he said that Mr. Knight apparently told you there
4 other people run with him and he has hinch man, so is he
5 scared of them too or is it all just Mr. Holmes?

6 A It seem to be primarily Mr. Holmes.

7 Q And this community information that he got was based
8 on what he told you and not any interviews you did; is
9 that right?

10 A That is correct.

11 MR. THORNTON: Nothing further, Judge.

12 THE COURT: Dr. Martin, you may step down.

13 Thank you.

14 (WHEREUPON, the witness leaves the witness
15 stand.)

16 THE COURT: Doctor, you don't have to come back
17 up here, but can you stand let me ask you a question. Can
18 you hear me, okay? I want for my clarification can you
19 hear me, okay?

20 DR. MARTIN: Yes, sir.

21 THE COURT: Keshia, can you hear him?

22 COURT REPORTER: Yes, sir.

23 THE COURT: You testified in your direct
24 examination there was no difficulty in his competency to
25 stand trial after your evaluation?

1 DR. MARTIN: Correct.

2 THE COURT: There was no major mental illness?

3 DR. MARTIN: Correct.

4 THE COURT: There was nothing major
5 psychologically that would influence his actions; is that
6 right?

7 DR. MARTIN: That he had no diminished capacity
8 based on major mental illness that's correct.

9 THE COURT: He was criminally responsible for
10 his actions based upon your evaluation?

11 DR. MARTIN: Yes, sir.

12 THE COURT: Okay. Was there any information
13 convey to you by this defendant or anybody of any
14 firsthand knowledge of specific acts, firsthand knowledge
15 or specific acts of violence by this victim against the
16 defendant?

17 DR. MARTIN: Yes, Mr. Knight said that there was
18 personal contact with this victim in the past as well as
19 at the Subway.

20 THE COURT: The personal contacts, I didn't ask
21 about personal contact. I asked about acts of violence by
22 this victim directly against Mr. Knight, that's my
23 question?

24 DR. MARTIN: I'm not sure if I understand it,
25 sir.

1 THE COURT: Did Mr. Knight tell you in your
2 evaluation, during your three-hour evaluation, did he
3 convey to you any specific acts of the victim against him,
4 Mr. Knight?

5 DR. MARTIN: Yes, the ones that I've testified
6 to already that included the shooting at his home where
7 his girlfriend was injured as well as some other shootings
8 of friends of his that were in a vehicle to give two
9 examples.

10 THE COURT: That's not my question. Maybe, I'm
11 not being clear. You said that he conveyed to you
12 shooting of the house?

13 DR. MARTIN: Yes, sir.

14 THE COURT: And he conveyed to you the shooting
15 up of another person's car; correct?

16 DR. MARTIN: Correct.

17 THE COURT: Not Mr. Knight's car, somebody
18 else's?

19 DR. MARTIN: Correct.

20 THE COURT: My question is were there specific
21 instances by Mr. Holmes, specific instances of violence by
22 Mr. Holmes against the defendant, you've talked about the
23 house and you've talked about the car, that Mr. Knight
24 was not in. I want to know about specific instances
25 directed at Mr. Knight by Mr. Holmes, were you aware of

1 any?

2 DR. MARTIN: Only the ones that he told me that
3 were -- he did not incur any physical harm by Mr. Holmes
4 but he had been threatened verbally.

5 THE COURT: Okay. Thank you, Doctor, you may be
6 seated. Thank you.

7 All right. Before I hear arguments, let me ask
8 the State if there's any objection to Dr. Martin's
9 testimony by the State?

10 MR. THORNTON: There is, Your Honor, the State
11 does object?

12 THE COURT: All right. I be happy to hear
13 argument from the State since you all are objecting, then
14 I'll allow Mr. Bax to respond, okay.

15 Be happy to hear from you?

16 MR. THORNTON: Your Honor, what the defense in
17 this case seeks to introduce is testimony regarding the
18 state of mind of the defendant based on his having a
19 reasonable fear. The only cases I can find, Your Honor,
20 and I did run some copies. I think the Court already has
21 them. I think Mr. Bax actually cite some as well. You've
22 got Wilkins, State vs. Wilkins at 305 South Carolina 272.
23 You also have a State vs. Shumpert, Your Honor, and I'll
24 get the site for you for that. State vs. Carlton
25 Shumpert, which is 312 South Carolina 502, which I'm happy

1 to pass up copies. If, Your Honor, needs them, I have
2 copies of both.

3 THE COURT: Okay.

4 MR. THORNTON: Your Honor, the only time this
5 type of evidence has been allowed in South Carolina that I
6 can find -- if the Court's indulgence, I'll hand Mr. Bax a
7 copy as well. The only time that this type of evidence
8 has been allowed is in relation to rape trauma and
9 battered women syndrome. And it is basically used to
10 corroborate what in essence is a self-defense claim,
11 Judge. But in this case first of all, we don't have rape
12 trauma. We don't have battered wife syndrome. What we
13 have is rival drug dealers and the State is not aware of
14 any rival drug dealers syndrome that would justify this
15 type of testimony.

16 Second of all, Your Honor, even if you were
17 going to break with the cases upheld as far as when it is
18 appropriate to use this, you also have the problem of it
19 is going to be the State's position in argument that self
20 defense should not even be charged in this case. You
21 know, one of the questions I asked Dr. Martin if the Court
22 also reiterated is he doesn't suffer from diminished
23 capacity. He knows right from wrong and he's able to
24 control himself. And he makes a conscience decision to go
25 back into the Subway, which to the State completely takes

1 out self defense, any claim of self defense by his own
2 testimony. There's nothing in his testimony that would
3 justify a self-defense charge. Therefore, there's no
4 reason to try to bolster that testimony with Dr. Martin.
5 But I don't even think that you get there, Your Honor,
6 because this type evidence has never been allowed except
7 in rape trauma and battered women recognize syndromes that
8 exist that the courts have held proper and appropriate.

9 For those two reasons, Your Honor, alone I would
10 ask that the Court not allow Dr. Martin to testify and
11 even if you got past those two hurdles, Judge, there's
12 still the probative versus prejudicial effect. I think
13 having a doctor get up and say yet he was reasonably
14 afraid when there's no other justification for it. I do
15 not think that the probative value would outweigh the
16 prejudicial effect. I think quite the opposite, Your
17 Honor. Thank you.

18 THE COURT: All right. Mr. Bax, be happy to
19 hear from you, sir.

20 MR. BAX: Thank you very much, Your Honor. Your
21 Honor, the thing is with this case, I think it has been
22 very much miss characterized. First and foremost, the
23 prosecution has argued rival -- that their rival drug
24 situation here, but there's been absolutely no evidence
25 they been able to introduce about that whatsoever and they

1 haven't even attempted to do it. Other than one question
2 of my client, they have not produced any evidence of that.
3 And they're just arguing it because that's their
4 assumption about Mr. Knight and Mr. Holmes. They've done
5 no investigation to try to get evidence to introduce in
6 this trial about that. They just want to rely on the
7 assumptions about Mr. Knight and Mr. Holmes that they
8 have.

9 Your Honor, this obviously -- what I'm talking
10 about right now is the admissibility of Dr. Martin's
11 testimony. As I sent you before, the Atkins case which I
12 e-mailed to you, I will cite to you in just a second here
13 as I scroll to the top of the page. It is 303 South
14 Carolina 214, Your Honor. It's referred to or excited in
15 the Wilkins case, which has already been cited by the
16 State both of those cases and not in the context of
17 battered women syndrome say that state of mind is relevant
18 in any case that involves a claim of self defense. And
19 state of mind is relevant an admissible in any case where
20 the state of mind of the defendant is implied or involved
21 in an element of the offense that is charged.

22 The State of mind of my client is an essential
23 element of the elements of murder because if the jury has
24 any information or any evidence that they can infer that
25 there was some kind of provocation or that there was some

1 kind of reasonable threat of harm perceived by the
2 defendant, they can find either manslaughter or not guilty
3 under self defense, Your Honor. That is the jury's
4 purview and I'm really scared here that we're about to
5 take away the jury's purview here today. I feel that any
6 lack of being able to help the jury make their decision
7 and then any attempt to take away their ability to make
8 the proper decision is going to be obviously reversible
9 error here.

10 Your Honor, the problem is they have argued that
11 the conscience decision -- well, let me first go to this,
12 there's absolutely nothing in our law about self defense
13 that says that somebody has to suffer from diminished
14 capacity or some kind of mental illness in order to be
15 entitled to a self defense, that's never been the law in
16 South Carolina. I want to make sure that is clear.

17 State vs. Rash 188, Your Honor, 188 I believe
18 that's Southeast Second 435 states that an individual may
19 act on appearances rather than wait for a person to -- and
20 that case talked about the fact that someone is not
21 required to wait for someone to pull on them per se. This
22 is not the wild west. It is not the idea that they have
23 to draw on you first. And that's been recognize in our
24 case law, Your Honor. The State of mind is relevant. The
25 state of mind is cited also State vs. Hill 339

1 Southeastern Second 121 says state of mind is relevant in
2 cases where self defense has been asserted by the
3 defendant and we certainly have in this case. State vs.
4 Davis it's 317 Southeast second 452 talks about the self
5 defense charge and when it is appropriate. Your Honor, I
6 would also refer to ---

7 THE COURT: Let me ask this ---

8 MR. BAX: --- state of mind testimony here
9 before I move into ---

10 THE COURT: I want you to deal with the state of
11 mind why you believe Dr. Martin when you're getting off on
12 self defense ---

13 MR. BAX: And I ---

14 THE COURT: Let me finish talking. My court
15 reporter can't take down both of us talking. I don't want
16 you to get off on arguing what we talked about as far as a
17 jury charge. I want you to deal with why you believe
18 Dr. Martin's testimony should come in, that's what I want
19 you to deal with right now.

20 MR. BAX: Thank you, Your Honor, and I
21 apologize.

22 THE COURT: That's okay.

23 MR. BAX: I'm kind of thinking ahead of myself
24 here.

25 THE COURT: That's okay.

1 MR. BAX: But as I stated state of mind is
2 relevant and that is why I cited the State vs. Hill case
3 because it does talk about state of mind being relevant.

4 Your Honor, and as you've seen from the Wilkins
5 case and the Atkins case, state of mind testimony through
6 an expert has been held admissible in those cases and
7 admissible as state of mind purely just state of mind not
8 just because of battered women syndrome, may have been
9 involved -- I think was involved in only one of those
10 cases. But there was a separate opinion by the appellate
11 court concerning state of mind testimony versus just the
12 testimony on battered wife syndrome. They separated those
13 two.

14 I, in fact, have tried a case and you were
15 asking me about this the other day, State vs. Beulah
16 Butler I tried that in front of Judge McMahan. I had two
17 expert witnesses in that case and one that primarily
18 testified to battered women syndrome but one that
19 testified to state of mind. I believe the one that
20 testified to state of mind was Dr. Ross, a female
21 psychologist. I believe a psychologist might have been
22 psychiatrist. I don't want to smear Dr. Ross who
23 testified in that trial. The rules allowed for this
24 testimony.

25 Additionally, the Solicitor has said that they

1 have asserted that it's never been allowed. Number one it
2 has been allowed and number two, Your Honor, it is not
3 been disallowed. There's not a single case out there and
4 I would challenge anyone to find it because I have
5 certainly look myself, that says it is not admissible per
6 se or it is not admissible under a set of circumstances or
7 there's some test for its admissibility. It has not been
8 held to be inadmissible, Your Honor. So that is also
9 important to state that we have cases stating that state
10 of mind is relevant. We have cases like Atkins saying
11 that testimony about state of mind is admissible because
12 it's relevant. It's allowed by Rule 703 and 704 in the
13 South Carolina Rules of Evidence, which we now mirror the
14 federal rules. And there's plenty of federal case law on
15 the admissibility of state of mind. And it's been
16 testified to in federal courts on many occasions both in
17 the Fourth Circuit and the Supreme Court.

18 I also like to point, Your Honor, to the fact
19 that -- it's happening a lot in South Carolina right now.
20 The State has been allowed enter -- to use experts and
21 things like gang activity and the gang cases that I have
22 been apart of and been tried here in this county as well
23 as in Columbia. It's been ruled to be admissible to have
24 law enforcement expert to take the stand and say I'm an
25 expert in gangs. I've been on the gang task force for x

1 number of years and I can sit up here and I can tell you
2 that when they make this symbol, they mean this. When
3 they wear red, they mean this. And when they do this,
4 this is what they mean by it.

5 Your Honor, that is state of mind testimony.
6 And its been admissible in numerous cases and that's just
7 the ones that have gone up on appeal. It's probably
8 countless cases that haven't gone up on appeal where that
9 has happen.

10 Additionally, in the prosecution of crimes in
11 this case and in the state, have done this for years.
12 They also been allowed to qualify law enforcement officers
13 or SLED officers who been involved in the prosecution of
14 drug cases. As experts in drug people and how they work
15 drug dealers and their activities, drug activities, those
16 have been qualified as experts and allowed in this state.
17 And they testify about well when a drug dealer does this,
18 this is what he means when he has a notebook full of
19 numbers, this is what he means. That's also state of mind
20 testimony, that the State has been allowed to get into.
21 But now we're talking about the defense being able to have
22 their own state of mind testimony when it is relevant and
23 the state of mind in a murder case is essential to the
24 jury. It is essential to his defense. As I stated in my
25 opening argument, we skipped past all the other stuff and

1 went straight to the why, Your Honor. The motive which
2 we're allowed to argue in a murder case, we're allowed to
3 argue in a case where we're asserting self defense and
4 we're asserting those other things that I'm going to argue
5 about later. We are entitled to go into that and his
6 state of mind is absolutely the core of that defense and
7 that argument. And to take away the testimony that we can
8 have that can specifically go to element of his state of
9 mind and whether he perceived his actions to be reasonable
10 is to divest my client of a defense.

11 THE COURT: Okay. Anything in response?

12 MR. THORNTON: Just a couple things, Your Honor,
13 State vs. Atkins that is cited by the defense deals with
14 diminished capacity, that I'm sure the court already was
15 aware of. We already covered that, but the expert have
16 it. I'm not sure if I got the cite right for State vs.
17 Hill, that he also cited. If that's State vs. Sherry Lynn
18 Hill at 287 South Carolina 398, that dealt with battered
19 women syndrome. The case he even cites that he used this
20 expert before was in a battered women syndrome case.

21 Finally, Your Honor, just to clear up the
22 record, the State's assertion that he made a conscience
23 decision to go back into the Subway, I'm not -- I wasn't
24 saying that you have to have diminished capacity to get
25 self defense. The fact of the matter is you have to be

1 able to avoid the trouble. The Court's familiar with the
2 elements of self defense. I thought that was kind of
3 abundantly clear, that was the argument I was making. But
4 as to the expert in this case, Judge, there is no case
5 that I've seen that's been cited by defense where this
6 type of testimony has been allowed except in diminished
7 capacity. I did leave that one out earlier, I thought we
8 covered that one pretty cleanly with Dr. Martin or the
9 rape trauma and battered women syndrome.

10 THE COURT: Let me ask this question, Mr. Bax,
11 what Dr. Martin testified here today to is in essence the
12 same thing that your client testified to. Do you agree
13 with that? What happened -- absent what I excluded based
14 upon my decision that it wasn't relevant to this case?
15 Dr. Martin testified that he took into consideration the
16 very thing that your client testified to; is that correct?
17 My question to you is what does Dr. Martin add to the
18 testimony that your client's already put up here other
19 than the fact that he's a doctor?

20 MR. BAX: Your Honor, Dr. Martin ask had the
21 fact that part of what we have to show is whether or not
22 it can be seen that the perceptions of any person in these
23 situations whether the defendant's perceptions at the time
24 of the incident could be seen as reasonable or not based
25 on what they do. And I think it's an aid to the triers of

1 fact that he has talk to someone of Dr. Martin's past, his
2 experience, his expertise in being able to show that his
3 perceptions of fear could be held as reasonable.

4 Your Honor, Dr. Martin does not take anything
5 away from the triers of fact. He aids the triers of fact
6 in making a decision about whether the perceptions of my
7 client could be held as reasonable.

8 Your Honor, as I stated in my opening, Frankly
9 the world that Mr. Knight and Mr. Holmes live in is a
10 world that most likely many of the jurors, most of the
11 jurors do not live in and probably have had no experience
12 in it. It's a very different world because I have to go
13 into that world all the time. I have been into Burton and
14 Grays Hill. I been to Donaldson Drive. Me and my
15 investigator have gone out in investigating this case.
16 I've done gang cases in Columbia in front Judge Manning.
17 I've done gang cases down in front Judge Mullen. I'm
18 involved with the federal prosecutions involved in the
19 things that were going on in Walterboro. There is a world
20 where there's certain people you get involved within that.
21 You don't go to a neighborhood where there's people riding
22 around that could shoot at you and that's a daily concern.

23 THE COURT: I understand what you're saying
24 there and I did a lot of criminal defense before I was
25 elected to this position. But living in that world, does

1 not make what happened here or allegedly happen here,
2 that's against the law and that's ---

3 MR. BAX: That's for the jury ---

4 THE COURT: That's for the jury to determine.
5 You're exactly right, that's for the jury to determine.
6 But whether or not his actions were reasonable, again
7 that's for the jury to determine under the law, that's
8 what the jury is here to determine whether or not his
9 actions were reasonable. I agree with you 110 percent.
10 My question is what does Dr. Martin add other than what
11 your client's already said. Maybe, in an effort to
12 bolster your client's testimony?

13 MR. BAX: Your Honor, I don't think it's
14 bolstering my client's testimony. The problem is is that
15 my client can only testify as he already has to the jury
16 that he was scared. Dr. Martin can talk about the fact
17 that based on all the factors that he's looked at in his
18 examination of my client, that those fears could be seen
19 as reasonable based on everything that he was going
20 through. Based on the fact ---

21 THE COURT: Why does a jury need him to tell
22 them that? Why can't they make that determination of
23 reasonableness based upon what he said?

24 MR. BAX: They can. Your Honor, they can make
25 the determination of whether they think it's reasonable.

1 He's not taking that away. He's adding to the fact that
2 under circumstances that the jury may not be familiar
3 with, these actions can be seen as reason -- his fear
4 basically was reasonable based on what he was having to
5 deal with. And, Your Honor, I think that's something that
6 the trier of fact can use and is relevant to the case. It
7 can assist them in making a determination of whether the
8 defendant's actions, his state of mind was reasonable at
9 the time of the shooting of Mr. Holmes.

10 THE COURT: Okay. Let me ask the State this,
11 Mr. Thornton, how does he hurt your case? I mean, he says
12 he's criminally responsible. He says he doesn't suffer
13 from any mental illness. He says he has no diminished
14 capacity.

15 MR. THORNTON: Your Honor ---

16 THE COURT: Hold on.

17 MR. THORNTON: Yes, sir.

18 THE COURT: No difficulty with his competency to
19 stand trial et cetra. How does that hurt your case, him
20 testifying?

21 MR. THORNTON: Yes, sir. Here's the State's
22 position on that, Judge, if all he was going to do is get
23 up and say, Yes, based on what he told me he was scared.
24 I mean, I don't know if it does hurt. I think it's
25 cumulative under 403. I don't think it should come in,

1 but that's not what he's going to say. What he's going to
2 say is and that was reasonable. And I wasn't aware he was
3 an expert on reasonableness. I thought he was an expert
4 as to his state of mind. I think -- I don't even think he
5 can testify as to whether it's reasonable or not. I think
6 he can testify as to what Mr. Knight's state of mind is if
7 you were to let it in. So the objection to the State is
8 it's cumulative, but specifically I would object to him
9 getting up in front of a jury and saying, And, yes, I
10 think that's reasonable.

11 MR. BAX: Your Honor, to clarify and we can
12 refer back to questions that I asked him. I asked him if
13 based on everything that he examined with my client and
14 the record and whether his fear could be seen as
15 reasonable, that was my exact question.

16 THE COURT: Well, you said yesterday when we
17 talked in chambers because I asked you in chambers
18 yesterday what's he going to testify to. And you said no
19 problem with competency, no mental illness, no specific
20 diagnosis and he testified exactly to that. And then you
21 said mental state at the time of incident, that's what you
22 told me in chambers yesterday. He was going to testify as
23 to the defendant's state of mind, his mental state at the
24 time of the incident.

25 MR. BAX: And that is correct, Your Honor, his

1 mental state is not based on that 30 seconds. His mental
2 state is based on everything that come up that had
3 happened.

4 THE COURT: Address what Mr. Thornton just said
5 about him being able to say it is reason when that's in
6 the purview of the jury?

7 MR. BAX: Well, Your Honor, he is there to
8 testify about whether or not based on everything that
9 Mr. Knight had told him about what had happened whether to
10 be scared was something that is reasonable in light of
11 everything that he been through, whether or not his fear
12 out based, everything that he had -- had told to him,
13 everything he gone through was something that could be
14 seen as reasonable, Your Honor. They don't have to decide
15 what that is.

16 THE COURT: Again, you're ---

17 MR. BAX: Your Honor, all I have to show is that
18 his testimony is relevant to an issue and that it can
19 assist the trier of fact and I think I've shown that.

20 THE COURT: Okay. Anything else from the State?

21 MR. THORNTON: Your Honor, the only other thing
22 I would say is the way it really hurts is, he's based on
23 his opinion on a lot of information that you have deemed
24 inadmissible, so it's basically letting him bolster
25 defendant's testimony with things that you've already held

1 as inadmissible. Thank you, Your Honor.

2 THE COURT: All right. I will stand down. I
3 want to look at a couple things and I will be back. Let
4 me ask this while I'm out here. I asked you all to be
5 here at 8:30 this morning. We talk about -- why don't we
6 go ahead and address this, then I will come back in the
7 other matter. About the jury charge, it was my
8 inclination not to charge to manslaughter or self defense.
9 However, before I make that decision, I want to hear
10 argument by defense counsel as to why it should be in
11 there. I know that probably Mr. Bax is disappointed to
12 say the least that I conveyed that to him. Certainly,
13 understand his position. However, I want to hear legal
14 argument from you, Mr. Bax, as to why manslaughter should
15 be applicable here as well as self defense. I'll be happy
16 to hear from you at this time.

17 MR. BAX: Thank you very much, Your Honor.
18 First -- and I think I cited this before in an e-mail,
19 Your Honor, I would cite the cases that are also cited by
20 professor MacKinish in the book that I reference the other
21 day, Your Honor. I'm now looking at the criminal law of
22 South Carolina Fifth Edition. They do address imperfect
23 self defense. They talked about the fact that originally
24 the idea of imperfect self defense was objected, but that
25 the case law has changed and trended back towards the idea

1 of imperfect self defense.

2 There's the case of State vs. Brown and I would
3 cite that Your Honor 79 South Carolina 390, ground
4 manslaughter would be appropriate if there any evidence of
5 provocation says only if there's evidence of provocation,
6 but if there is evidence of provocation, that it would be
7 applicable and would need to be charged. The Court also
8 in recognize situation which practical effect strongly
9 resembles appropriate self defense and I'm quoting here, A
10 person charged with murder can kill in response to some
11 threatening gesture of another may be entitled to
12 instructions of both self defense and manslaughter. They
13 cite State vs. Jillian and that's spelled J-I-L-L-I-A-N,
14 that's at 296 South Carolina 395. Your Honor, as well as
15 State vs. Linder to 276 South Carolina 304. I think those
16 cites also were in my e-mail last evening. In certain
17 cases, the jury might conclude the defendant's belief that
18 deadly force was necessary was unreasonable but still
19 conclude the threatening act was sufficient provocation.
20 And in those cases as I've said, they have said that the
21 charge on self defense and manslaughter was the
22 appropriate action to take and let the jury decide based
23 on what they perceived the state of mind of the defendant
24 to be based on what they thought was reasonable and not
25 reasonable, what charge to come back with.

1 Judge, the jury's going to have the ability to
2 decide obviously whether they want to convict of murder or
3 not. They need to be entitled to no -- the law of self
4 defense if they think that that's been adequately proven
5 they can fight it. If not, they can.

6 They also need to know they need -- they have
7 the ability to look at manslaughter because, Your Honor,
8 there has been -- and as, Your Honor, knows as stated on
9 the record and has always been stated on the record is not
10 the weight of evidence for the judge to determine. It's
11 merely its existence. And if it's there in any form
12 inference or scintilla, then it is up to the jury to make
13 that determination. So that is why I'm arguing for those
14 charges, Your Honor. And I would cite those cases in
15 support for the idea that if it's out there even if it's
16 imperfect, we should let the jury decide what they want to
17 do with it. I've done -- I'm not here to toot my own
18 horn, but I've done everything I can to put up as much
19 defense for Mr. Knight as I can. I just don't want ---

20 THE COURT: You have and I agree with that. You
21 certainly have, Mr. Bax. You've done a good job in doing
22 that. Anything else on that?

23 MR. BAX: No, sir, Your Honor.

24 THE COURT: All right. State be happy to hear
25 from Mr. Thornton or Mr. Stone.

1 MR. THORNTON: Your Honor, I would just cite the
2 case of Hernandez to the Court. It's 386 South Carolina
3 655. It's actually out of Beaufort County, it was Judge
4 Buckner. I have a copy of that also if I could pass that
5 up?

6 THE COURT: Yes, sir.

7 MR. THORNTON: Basically, in Hernandez, Your
8 Honor, that dealt with the cooling off period. Even if
9 you take away everything else that we would have, all the
10 other arguments in this case, Judge, it would seem to me
11 this would be depositive of it.

12 In Hernandez, you had literally a couple of
13 hours of cooling off. In this case, the only thing that
14 the -- the only thing that they've really got are these
15 prior instances, which you've ruled but one is
16 inadmissible, so the only one that would still even be
17 admissible is the May of 2011. You're talking about a
18 cooling off period of a couple of months unless you go
19 into the, I'm going to kill you that nobody else
20 apparently heard except the defendant. And when he was in
21 the Subway, then he walked out. But words alone as, Your
22 Honor, knows are never sufficient to justify a self
23 defense claim. So all they have is at best even -- at
24 best, Judge, they got words in the Subway and then they
25 got an incident that occurred two months prior to that.

1 And what I would also point out to the Court interestingly
2 enough one of the cases cited by the defendant Jillian, I
3 believe, is what he cited 296 South Carolina 395. I have
4 a copy of that for the Court also.

5 Your Honor, one of the things in that the court
6 says is appellate's testimony that the victim threatened
7 him and then fired at him would support a finding of legal
8 provocation and heat of passion. Well, clearly, Judge,
9 somebody that threatens you and then fires at you would
10 justify that. The interesting person is -- it then goes
11 in to talk about heat of passion for voluntary
12 manslaughter. And it says heat of passion renders the
13 mind of an ordinary person incapable of cool reflection
14 and produces an uncontrollable impulse to do violence,
15 that's the case just cited by the defendant,
16 uncontrollable urge to do violence. If I could pass this
17 up, Your Honor. Their own expert just got up and
18 testified that he made a conscience decision to walk back
19 into the Subway and gun an unarmed man down. Thank you,
20 Your Honor.

21 THE COURT: Hold on, Mr. Bax. All right.
22 Mr. Bax, you were going to stand up. I was writing, I
23 wanted to finish my thoughts in what I was writing.

24 MR. BAX: That's okay, Your Honor. I completely
25 sympathize. I hadn't been able to finish a thought today.

1 Your Honor, I would just point out a couple things. One
2 something that you said in chambers is right here in the
3 case that they just passed to me. In determining whether
4 the evidence requires a charge of voluntary manslaughter,
5 the trial court views the facts in the light most
6 favorable to the defendant, Your Honor, stated that.

7 THE COURT: Right, it's the law.

8 MR. BAX: And as we talked about, it's not a
9 matter of how much, it's a matter of whether there's
10 anything there. Your Honor, we have testimony that there
11 was a threat on that very day. We have testimony that he
12 believed that he already been shot at.

13 Now, whether the shot 60 days before and it came
14 before the threat and there was threats in the intervening
15 time, there still is a threat. And it's on the record and
16 it's been testified to before the jury, so it is there.
17 Your Honor, also this is in the same case, they cite State
18 vs. Norris. And I apologize, Your Honor, I think the like
19 most favorable to the defendant is contributed to State
20 vs. Byrd and that's on the second page of the opinion,
21 Your Honor, at the 323 South Carolina Second 319. But
22 they also cite in that very case State vs. Norris
23 N-O-R-R-I-S at 253 South Carolina 31. That whether he was
24 cool off prior to a violent act must be determined all the
25 circumstances surrounding the event and people involved.

1 And if there's a situation where there's a question of
2 whether or not he had time to cool off or not, my
3 understanding in reading this is that that falls within
4 the purview of the jury. Obviously, if Your Honor does
5 determine to charge manslaughter, you're going to read to
6 them and instruct them on the fact that that is an element
7 of the charge. That they must have been in a state of
8 mind and not had the opportunity to cool off, that's in
9 the charge I know it's there. They're going to hear that.
10 And I know that the prosecution certainly is going to
11 argue to them if you charge that or knowing that you're
12 going charge that, that he had all the time in the world
13 to cool off in their opinion, so they're going to have the
14 opportunity to make those determinations. But if we don't
15 charge it, then they don't get to make that determination.

16 THE COURT: Let me ask this, Mr. Thornton, you
17 specifically, I believe, more or less address the self
18 defense issue. What about the voluntary manslaughter?

19 MR. THORNTON: I'm sorry, Judge, I misspoke when
20 I mentioned self defense. I think Hernandez clearly puts
21 that in your purview. What it says and I'll read from
22 Hernandez, if I can hand you ---

23 THE COURT: On hold. Where are you?

24 MR. THORNTON: I am, Your Honor, on the -- if
25 you will flip back to the third page, it's the bottom left

1 paragraph.

2 THE COURT: Okay.

3 MR. THORNTON: We affirm the trial court's
4 decision not to charge the jury on voluntary manslaughter
5 because the evidence demonstrated Hernandez cooled off
6 between dejection from the party and the shooting. They
7 go on to talk about the facts of it. They then go on if
8 you go on to the top next top, top of the next page that
9 Hernandez argues that this is determination for the jury,
10 which is what Mr. Bax just argued. And the court
11 specifically says that there's been a shift and that this
12 is actually something proper for the judge to determine.
13 So there is not something that is limited to the purview
14 of the jury. This is absolutely a call that Your Honor
15 can make if there isn't any. If there has been a cooling
16 off, then there would not be a reason to do voluntary
17 manslaughter. So, Your Honor, what I would say is that
18 sufficient legal provocation must include more than mere
19 words or a display of willingness to fight without an
20 overt or threatening act, which comes directly from State
21 vs. Rogers, which is at 320 South Carolina 520, which
22 quotes State vs. Johnson and which is actually cited, Your
23 Honor, in State vs. Hernandez also 386 South Carolina 655
24 that I've handed you. So that quote for a charge on that
25 is also in State vs. Hernandez. Your Honor, the point is

1 this, in Hernandez, there was a cooling off of hours. And
2 there was no physical -- the physical altercation that
3 happen before. In this case, the best thing you have is
4 an alleged physical altercation. If you want to talk
5 about the shooting of the house that occurred two months
6 prior and that wouldn't even be directed at the defendant.
7 It was supposedly directed at his girlfriend and child.
8 And in the Hernandez case, they actually knew it was
9 Hernandez. In this case, it's just supposition. And
10 again, it's the cooling off period. You're talking about
11 two months. The only thing they have prior to or that day
12 or prior to that day is an allegation which I understand
13 that, Your Honor, obviously, and Mr. Bax is completely
14 correct, it's any evidence. But even if you take the
15 evidence they have, which is he says -- Mr. Knight says
16 that the victim in the case says I'm gone kill you. The
17 Court has seen the video, the Court has heard the other
18 witnesses who didn't hear that taken everything into
19 account. Even if he said that, Mr. Knight then walks out
20 to his car, stands there for a minute according to
21 Miss Smalls and then walks back in. The only thing they
22 have even if you believe what Mr. Knight says is mere
23 words and mere words by themselves are never enough.

24 THE COURT: All right. Anything else?

25 MR. BAX: No, sir.

1 THE COURT: I'm going to stand down a minute and
2 kind of gather my thoughts before I come back in here and
3 make a ruling. Stand down.

4 (WHEREUPON, a break was taken.)

5 THE COURT: First of all, I want to address the
6 self defense issue with regards to whether or not to
7 include that in the charge. Defense counsel has referred
8 to imperfect self defense, imperfect self defense. Under
9 State vs. English 115 S.C. 535 106 Southeastern Second
10 781, which is a 1921 case. It's a 1921 case, it's still
11 good law at least from my reading of it, it's still good
12 law. That particular case states that the distinction, a
13 distinction between perfect and imperfect self defense.
14 Stating that under perfect self defense all of the well
15 known elements of self defense are established.

16 I think defense counsel would agree that this is
17 not a perfect self defense case. Therefore, State vs.
18 English goes on to define imperfect self defense. It says
19 that a defendant was at fault in bringing on the
20 difficulty though not with the intention of creating the
21 opportunity to take another's life or inflict serious
22 bodily injury. In looking at what the testimony has been
23 here, in looking at it in the light most favorable to the
24 defendant, there has been no specific testimony about
25 specific acts of this victim against this defendant. What

1 has been testified to in this courtroom has been
2 allegations of alleged conduct by the victim against this
3 defendant.

4 In this particular situation, the testimony of
5 the defendant himself, was that after he exited the
6 Subway, that he could have left the Subway that day, but
7 chose to go back in and pull a weapon, stuck it in the
8 side of the defendant and pull the trigger. So I believe
9 that the defendant under imperfect self defense would
10 satisfy the first prong so to speak of at fault in
11 bringing on the difficulty. But he fails to satisfy the
12 second portion of imperfect self defense, which reads
13 though not with the intention of creating the opportunity
14 to take another's life or inflict serious bodily injury,
15 that's of his own testimony.

16 Furthermore, in looking at self defense in and
17 of itself in the elements of self defense, there are four
18 elements. Number one, that the defendant was without
19 fault in bringing on the difficulty. Defendant does not
20 satisfy that of his own testimony, went back into this
21 Subway and shot the victim, when he could have left and
22 had an opportunity to leave.

23 Second element defendant was actually believed
24 that he was in imminent danger of losing his life or
25 sustaining bodily injury. The defendant testified that

1 the victim did say that he was going to kill him, but
2 there was nothing from the victim's actions that were seen
3 on the video or further testimony that would rise to the
4 level of an individual being in eminent danger of losing
5 his life or sustaining serious bodily injury. While there
6 maybe some concern about the previous shooting which
7 occurred in May, again there was no specific testimony
8 that this victim was specifically involved in that
9 shooting. There's nothing more than speculation.

10 The third element a reasonable prudent person of
11 ordinary fitness and courage would have entertained the
12 same belief as the defendant. And the fourth element, the
13 defendant had no other probable means of avoiding the
14 danger of losing his life or sustaining serious bodily
15 injury other than to act as he did.

16 I emphasize and after the third element because
17 each of these elements, each of these elements must exist
18 for self defense to exist. And has already stated without
19 addressing the third element here by the defendant's own
20 testimony, he could have avoided the danger that he
21 voluntarily chose to engage in by re-entering the Subway
22 after he already exited the Subway and had every
23 opportunity or had the opportunity to leave. Because the
24 Court concludes that this defendant does not -- testimony
25 and evidence does not satisfy all of the requirements, all

1 of the requirements of self defense whether it be perfect
2 or imperfect as stated on the record, I am not charging
3 self defense in this case.

4 Now, we with regards to voluntary manslaughter,
5 voluntary manslaughter has two elements. The unlawful
6 killing of a human being in the sudden heat of passion
7 upon sufficient legal provocation. I saw two elements the
8 Court usually break it out into three elements, unlawful
9 killing of a human being and the sudden heat of passion
10 and upon sufficient legal provocation.

11 Certainly, the first element has been satisfied
12 here the unlawful killing of a human being in a sudden
13 heat of passion being the second element. The law says
14 that while it need not dethrone reason entirely, it must
15 be such that would naturally disturb the sway of reason
16 and render the mind of an ordinary person incapable of
17 cool reflection and produce what according to human
18 experience maybe called an uncontrollable impulse to do
19 violence.

20 In State vs. Hernandez, 386 S.C. 655, argued by
21 the State and the Court agrees that the law of a cooling
22 off period although historically was a question for the
23 jury as argued by defense counsel, Hernandez goes on to
24 say that more recent jurisprudence permits the trial court
25 to make that determination.

1 The Court did not allow it into evidence, I
2 believe, it was an '08 and '09 incident involving the
3 victim against someone other than this defendant, but did
4 allow in testimony from an incident that occurred in May
5 of 2011 approximately 60 days before the victim was shoot
6 and killed. The Court does conclude -- and let me say
7 this, I say an incident that occurred approximately 60
8 days before. There was no testimony specifically
9 attributing this incident with direct knowledge or
10 firsthand knowledge of this victim being involved in that
11 particular incident which occurred approximately 60 days
12 before the matter we are here for now.

13 The Court finds that approximately 60 days prior
14 to -- and let me emphasize that within 60 days, there has
15 been absolutely no testimony or any allegations for any
16 evidence that there was any intervening contact between
17 this defendant and the victim within that 60 days prior to
18 the shooting that we're here for now.

19 The final element of voluntary manslaughter
20 addresses sufficient legal provocation. The law in this
21 state says that an unprovoked attack with a deadly weapon
22 or an overt threatening act can constitute sufficient
23 legal provocation to support a jury charge on voluntary
24 manslaughter.

25 The testimony elicited from this witness stand,

1 in this Court's view of the law, did not rise to the level
2 of sufficient legal provocation because the only testimony
3 was and it was testimony by the defendant, no other
4 witness who was in that store testified to it, was that
5 the victim said he was said he was going to kill the
6 defendant. Viewing that statement or that testimony by
7 the defendant in the like most favorable to him, in the
8 like most favorable to this defendant, words alone under
9 the law is not sufficient legal provocation. Therefore,
10 the Court will not charge the jury on voluntary
11 manslaughter.

12 Bear with me just a minute here please.

13 (WHEREUPON, a pause in the proceedings.)

14 THE COURT: I sent my law clerk to get a book
15 and, obviously, she can't find it, so I apologize. With
16 regards to Dr. Martin's testimony, I previously asked or I
17 asked defense counsel to have Dr. Martin here this morning
18 to proffer his testimony so the Court could make a
19 determination as to whether or not it was admissible,
20 whether or not his testimony would be admissible. Under
21 rules -- and we make it abundantly clear for the record
22 and I think I have already done so, but there was no
23 question as to Dr. Martin's qualifications to testify in
24 the field of forensic psychiatry or psychology. Rule 702,
25 the rules of evidence said if scientific or technical

1 other specialize knowledge will assist the trier of fact,
2 but understand the evidence or to determine a fact an
3 issue. A witness qualified as an expert by knowledge,
4 skill, experience, training or education may testify, may
5 testify thereto inform of an opinion or otherwise.

6 Dr. Martin testified here this morning that he
7 conducted a standard evaluation of competency upon Mr.
8 Knight, that there was no difficulty in his competency.
9 Mr. Knight's competency to stand trial, that he suffered
10 no major mental illness. That he was criminally
11 responsible and that he did not suffer from any diminished
12 capacity. And that I believe he also stated that he had
13 the ability to differentiate between right and wrong. And
14 I stop there and ask Dr. Martin, didn't you testify to
15 that as well, Dr. Martin? And I need a verbal response
16 from you.

17 DR. MARTIN: Yes, sir.

18 THE COURT: And I remind you you're still under
19 oath; is that correct?

20 DR. MARTIN: That is correct.

21 THE COURT: All right. Having said that,
22 defense counsel wants Dr. Martin's testimony to come in
23 and as stated yesterday to testify as to mental state of
24 the defendant at the time of the incident. I say that to
25 say that that statement yesterday that Dr. Martin would

1 testify as to the mental state of at the time of the
2 incident to some degree has some moving parts as we get
3 here today. And I say that to emphasize it was argued to
4 some degree, that Dr. Martin will testify as to
5 reasonableness, the reasonableness of this defendant's
6 conduct on the day in question. Dr. Martin's testimony in
7 the Court's opinion does not add, is not of scientific,
8 technical or specialized testimony that would add the
9 trier of fact in this particular case. He in essence
10 reiterated the very things that the defendant testified to
11 himself.

12 It is the Court's opinion that Dr. Martin's
13 testimony is simply in some sense to bolster the
14 defendant's testimony and his resulting actions by virtue
15 of expert testimony. Each of the cases that were cited by
16 defense counsel and its support of an expert testifying as
17 to state of mind dealt either with capital cases, capital
18 cases wherein a state of mind is a mitigating circumstance
19 under statute, under statute or wherein state of mind
20 existed as a result of some defense such as battered spouse
21 syndrome or another viable defense as recognized by this
22 State. Diminished capacity and I will emphasis Dr. Martin
23 didn't say there was any diminish capacity, but if there
24 were any evidence of diminished capacity, diminished
25 capacity is not a defense in this state.

1 Therefore, based upon what I've heard here today
2 and based upon my review of the applicable law in this
3 state, the Court will not allow the testimony of
4 Dr. Martin. However, and this was a reason that I wanted
5 his testimony proffered. However, if I am wrong on that,
6 his testimony is in the record and the Court of Appeals or
7 the Supreme Court can adequately determine based upon
8 their review of his testimony and the facts of this case
9 whether or not I err in disallowing his testimony.
10 Anything further from the State at this time?

11 MR. STONE: No, sir.

12 THE COURT: Defense counsel?

13 MR. BAX: Your Honor, just to protect the
14 record, obviously, we disagree with the Court's ruling and
15 object to the Court's ruling. I'd like to go through a
16 couple things.

17 THE COURT: Mr. Bax, I've already heard argument
18 on it. Your objection is noted for the record. I made my
19 ruling. The rules provide that once I make my ruling, I'm
20 not going to hear any more argument on it. Your objection
21 is so noted for the record and I think your client's
22 interest is protected on that. I have given you the
23 opportunity each of you, ample opportunity to argue you
24 all's position on each of these instances that I just made
25 a ruling on. So I am not going to hear any more argument,

1 okay. We'll stand down for about ten minutes and we'll
2 begin the trial.

3 Mr. Bax, if you have any other witnesses to put
4 up -- do you have any other witnesses to put up?

5 MR. BAX: No, Your Honor, I don't have any other
6 witnesses.

7 THE COURT: What I would anticipate doing is you
8 resting of the State anticipate calling any reply
9 witnesses?

10 MR. STONE: No, sir.

11 THE COURT: After you rest, I would ask that you
12 rather than run the jury right back out of here, that you
13 just renew your motions. And I will indicate that my
14 rulings remain the same and I believe that protects your
15 client's interest on those rulings. And then we will move
16 right into closing arguments.

17 MR. STONE: Yes, sir.

18 THE COURT: All right.

19 MR. BAX: Your Honor, you want me to do that in
20 front of the jury?

21 THE COURT: All I want you to do is once you
22 rest just renew -- just say, Judge, I renew all previous
23 motions and objections raised. And all I'm going to tell
24 you is they are so noted for the record. And your client
25 is protected on those objections that you have previously

1 raised. And my rulings remain the same on them, okay.
2 Unless, you want to do it some other way?

3 MR. BAX: Your Honor, always been my
4 understanding I still have to use the words move for a
5 directed verdict.

6 THE COURT: And then I will run the jury out of
7 here so you can put that on the record, okay.

8 MR. BAX: Thank you, Judge.

9 THE COURT: Yes, sir.

10 (WHEREUPON, a break was taken.)

11 THE COURT: Let me, we briefly discussed the
12 charge in chambers this morning, but let me -- my charge
13 to the jury on murder and I'm getting towards the end of
14 it. Malice may be inferred from conduct showing the total
15 disregard for human life. Inferred malice may also arise
16 when the deed is done with a deadly weapon. A deadly
17 weapon is an article, instrument or substance, which is
18 likely to cause death or great bodily harm whether an
19 instrument has been used as a deadly weapon depend on the
20 facts and circumstances of each case. The following
21 examples of instruments which may be deadly weapons a
22 pistol, a shot gun, a riffle, a dirk, dagger and knife, a
23 slingshot and there's some other examples in here. What
24 I'm getting at is in light of the, I believe, State vs.
25 Belcher taking out the portion of the charge that reads

1 inferred malice may also arise when the deed is done with
2 a deadly weapon. Anything from the State on that?

3 MR. STONE: Can I have just a moment, Your
4 Honor.

5 THE COURT: Yes.

6 (WHEREUPON, a pause in the proceedings.)

7 THE COURT: May we.

8 MR. STONE: May we approach briefly, Your Honor?

9 THE COURT: Yes.

10 Mr. Bax.

11 (WHEREUPON, a bench conference was held.)

12 THE COURT: State vs. Belcher Supreme Court held
13 that a jury charge instructing that malice may be inferred
14 from the use of a deadly weapon is no longer good law in
15 South Carolina where evidence is presented that would
16 reduce, mitigate, excuse or justify homicide.
17 Furthermore, the use of a deadly weapon implied malice
18 instruction has no place in a murder prosecution where
19 evidence -- and it says or assault and battery with intent
20 to kill, where evidence is presented that would reduce,
21 mitigate or excuse or justify the killing, trial court err
22 in charging a jury that malice could be inferred by the
23 use of a deadly weapon could not be considered harmless.
24 No jury in this case, Mr. Stone, based upon the testimony
25 that's been presented here could certainly say that his

1 actions are excused by his fear and what's been argued
2 here. And so therefore, I think it's appropriate to take
3 it out.

4 MR. STONE: Yes, sir, I have no objection for
5 that.

6 MR. BAX: No objection, Your Honor.

7 THE COURT: I think looking at the murder charge
8 in its entirety, the jury could certainly find that there
9 was no malice here based upon the testimony that's been
10 presented.

11 MR. STONE: Yes, sir.

12 THE COURT: Okay. I think only that -- let me
13 see. I think only that sentence that says inferred malice
14 may also arise when the deed is done with a deadly weapon.
15 I think only that sentence needs to come out of that
16 charge.

17 MR. STONE: Yes, sir.

18 THE COURT: Well, let me see. I think that
19 actually the final -- there's three small paragraphs
20 there. It reads as follows inferred malice may also arise
21 when a deed is done with a deadly weapon. Deadly weapon
22 is an article, instrument or substance. If I define a
23 deadly weapon and then give examples of a deadly weapon,
24 it's certainly going to include a weapon that was used
25 here. Any objection to that?

1 MR. STONE: No, sir.

2 THE COURT: Defense counsel?

3 MR. BAX: No, Your Honor.

4 THE COURT: Take that inferred malice sentence
5 out and then those other two paragraphs. Anything before
6 I bring the jury in?

7 MR. STONE: Not from the State, Your Honor.

8 THE COURT: Defense counsel?

9 MR. BAX: No, Your Honor, though I was going to
10 say I could always make my motions right now and then just
11 rest on the record. I believe I've done that in the past
12 if we want to keep the jury from sitting down and having
13 to get back up with the Court's permission.

14 THE COURT: I think, but don't base it on what
15 my thoughts are because I want your client's rights
16 protected on the record. Because if I made a mistake, the
17 Court of Appeals may say otherwise about you making sure,
18 but in the past, I have always, I have always when the
19 defense rest allowed the defendant to stand up or defense
20 counsel to stand up and simply, Judge, I would renew all
21 my previous motions and note all previous objections as
22 previously stated and argued on the record, which in my
23 opinion, that's my opinion on the trial court level, in my
24 opinion protects your client's interest. And I -- at this
25 stage, simply convey on the record that all of my -- that

1 your objections, arguments et cetra are so noted for the
2 record and that my ruling will be the same. And I think
3 that that's the appropriate way to handle it as oppose to
4 you making those motions now before you rest in the
5 presence of the jury.

6 MR. BAX: And I understand, Your Honor, my
7 concern is only that throughout my career and looking at
8 preservation issues, I've always been instructed that I
9 have to make the former motion of directed verdict again
10 to make sure that's preserved. And frankly, I don't know
11 if what you're saying works or not and maybe it does. I'm
12 just concern about making sure that I don't get seen as
13 not having made that motion. Obviously, Your Honor, knows
14 there's not only appeal but post conviction relief. And
15 if that's preservation error, then the appellate court can
16 say he didn't preserve for error, we can't look at that.
17 Then it turns into an ineffective assistance of client
18 claim.

19 THE COURT: Well, I'll let you rest and I'll
20 send the jury out just to make sure, okay.

21 Bring me the jury please.

22 You know, we could do this right here at side
23 bar and you put it on the record after you rest rather
24 than send them out?

25 MR. BAX: Yes, your Honor.

1 THE COURT: Let me say this to everybody in the
2 courtroom, closing arguments and a charge on the law is
3 getting ready to start and that's probably going to take
4 about an hour and a half. You will not be able to leave
5 this courtroom during closing arguments and a charge on
6 the law. So if you do not believe that you can sit that
7 long, now is your time to leave. I want those back doors
8 locked please, sir, I do not want anybody coming in during
9 closing arguments and charge on the law.

10 (WHEREUPON, the jury came into open court.)

11 THE COURT: Good morning, madam forelady, ladies
12 and gentlemen of the jury, I apologize for you all having
13 to sit back there while we wait this morning. While we
14 continue to talk about some matters of law. I apologize
15 for that, but we are now ready to proceed.

16 Mr. Bax, you are recognized, sir.

17 MR. BAX: Your Honor, subsequent to the rulings
18 we have outside the presence of the jury at this time the
19 defense rest.

20 THE COURT: All right, step down here for just a
21 second. Can the lawyers approach please? Go ahead and
22 put it on the record.

23 (WHEREUPON, beginning of bench conference on the
24 record.)

25 MR. BAX: Let me know if you can't hear me. At

1 this time, I move for a directed verdict based that on all
2 the objections that I've made throughout the trial. I
3 base that on the objections to foundation based that on
4 the objections to the admissibility of expert witness
5 testimony and all other applicable objections, Your Honor.

6 THE COURT: Objections are so noted for the
7 record and my rulings remain the same.

8 (WHEREUPON, end of bench conference on the
9 record.)

10 THE COURT: All right. Ladies and gentlemen,
11 the defense has rested in this case, and therefore, the
12 only thing remaining is closing arguments in this case and
13 my charge to you on the applicable law in this case.
14 Before I recognize the attorneys for closing arguments, I
15 will remind you, I will remind you that what the attorneys
16 tell you is not evidence in this case. What the attorneys
17 tell you is not evidence in this case.

18 At this time, I'm going to recognize the State,
19 Mr. Stone.

20 MR. STONE: I would waive arguing on the law,
21 Your Honor.

22 THE COURT: Mr. Bax.

23 MR. BAX: Ladies and gentlemen of the jury,
24 thank you so much for being here throughout this week.
25 We're just about done. Hopefully, after this is all over,

1 you want have any other jury service that you will have to
2 deal with on Friday. I doubt that that will happen, but I
3 hope that it doesn't. I appreciate all of your time and
4 your attention. We at the defense table we have watched
5 and we been very impressed. Everybody has paid attention
6 throughout this trial. We appreciate that.

7 I'm up here to give you the impressions of the
8 evidence. I'm up here to argue what you can infer from
9 what you have seen and what you may take away from it.
10 What we argue is not evidence and that is what the judge
11 is going to instruct you on, what the Solicitor argues is
12 not evidence. It is your decision in the end that is the
13 binning decision. And as the judge said before, what the
14 jury decides on the facts is not something that can really
15 ever be reviewed or changed.

16 There are issues of law that we have dealt with
17 throughout this trial that could be up for review later,
18 but your determination on the facts is not subject to
19 review. It is part of our system. It's how we've always
20 done it and your deliberations are your deliberations.
21 They're secret for a reason. It is to prevent any kind of
22 fear of retribution for what you did or why you did it or
23 people asking you. You get to deliberate in secret, that
24 means that you decide amongst yourselves what your
25 decision is and no one can affect that. No one come back

1 afterwards and give you any trouble about that. And the
2 judge is going to instruct you about that. But when you
3 go back there, you're going back there with the solemn
4 duty of being that juror, being that one person that
5 stands between any person and a loss of their liberty, any
6 person and the accusations that have been made that they
7 have pled not guilty to. I hope and wish and I believe
8 that you will take that duty seriously when you go back
9 and deliberate.

10 This is the only way that Mr. Knight has to
11 defend himself, this is it. You are it. There is no
12 other line of defense that he has.

13 I want to talk to you about what you've heard,
14 but I want to talk to you about what it means as well.
15 You don't have to agree with my interpretation.
16 Unfortunately, you have to listen to it, but I want you to
17 think about it please. I can only ask that. What you
18 seen up here is a little picture of a world that exist all
19 around us. Maybe, you have experience it and I talked
20 about this in my opening. Maybe, you haven't, but
21 unfortunately it exist all over this country. And if I
22 could change things, I would but I can't. This is my job
23 there is what I do. This is my only little way that I can
24 try to affect things.

25 I hope that as best as we could, as best as we

1 could under the law of this state to show you the
2 difficulties of the world that Mr. Knight comes from. The
3 difficulties of the world that Mr. Holmes comes from.
4 This is a world where shots ring out in the nighttime and
5 everybody has to duck. This is a world where crime
6 occurs, where poverty occurs and children run around
7 amongst it and grow up in it, but it doesn't stop. And I
8 want you to ask yourself why it doesn't stop. And I think
9 the answer is in what you heard here. If you think back
10 to the testimony of Sergeant Fraiser when he told you
11 people saying repeatedly I don't want to be involved. I
12 don't want to be involved. Think about why they were
13 saying it. They weren't saying it because they were
14 scared of Mr. Fraiser. He's a nice man. He knows people
15 in this community. He knows them by their names young
16 gentlemen, old people, everybody in between he knows them.
17 They're not scared of him, so why did they not want to get
18 involved, it's not because they're scared of Mr. Fraiser.
19 You know why they want get involved and you know why
20 they're scared. And you know why in this situation I
21 can't put anybody up here to say, yeah, it's Travis that
22 shot at that trailer. Everybody knew it, but I barely
23 been able to get a couple people up to say that the shots
24 even happened because as soon as this stuff goes down, the
25 community is locked down. In that situation, the victims

1 of what happened, they don't get any justice.

2 Now, all of us are just human beings. We come
3 from where we come from. We all know making a perfect
4 choice almost never happens. We all make mistakes.
5 Mr. Knight's got up here and told you he's made mistakes.
6 He did not hide from it. You saw something that you will
7 almost never see again. And even though I don't know what
8 your experience has been in whether or not you ever been
9 on a jury before even years and year ago, I can assure you
10 from my experience that you never see that, that you never
11 see that.

12 I hope that you take into account the honesty of
13 Mr. Knight when he came up here and he laid himself bare
14 because he does sit there bared to you all now hoping and
15 praying that you have seen past what could not be shown to
16 what really happened, to the terror that he experienced to
17 the lost of his unborn child and to the fact that no one
18 has been willing to come forward and say what Mr. Holmes
19 did and what he was and what he continued to be until his
20 life was over. And I am sorry that it is over. And I
21 assure you Mr. Knight is sorry that his life is over. He
22 didn't want to have to be the one that did that, he didn't
23 want to do it. But he was so scared of him you heard from
24 him, he had a gun to the back of his head for months and
25 months and it was just too much to bear and you're here to

1 judge that. But I want you to think about it.

2 You lost a child and you knew that that was
3 going around this community, the same community that you
4 don't feel like you can get away from all your family is
5 here, your girlfriend is here, your children are here.
6 You can't afford to leave with them and support them for
7 any amount of time with any reasonable ability to feed
8 them. You are trapped here with someone who can kill you
9 at any moment. What do you do? I hope that the closed
10 nature of this community, I hope that the poverty, I hope
11 that the lack of opportunity will go away, but we can't do
12 anything about that right now. All we can do is hope to
13 see what's going on and speak the truth. Thank you.

14 THE COURT: Mr. Stone.

15 MR. STONE: Please the Court, Your Honor.

16 THE COURT: Yes, sir.

17 MR. STONE: The defense is asking you -- and
18 let's be quite honest about it to ignore the law. They
19 are asking you based on a world that they say Rajerick
20 Knight has a right to live in. A world that he couldn't
21 escape from. A world that he was able to escape from. A
22 world that he was able to escape from quite easily when he
23 change his hair and got in his car and drove to Florida to
24 escape being caught.

25 Rajerick Knight may have very well lived in a

1 world of burglaries and larcenies and driveby shootings
2 and drug dealing. And people who settles scores by taking
3 a handgun and walking into a public place and putting it
4 up against somebody's side and shooting and killing them.
5 He in fact does live in that world because it is the world
6 that he creates. And he doesn't get to come into this
7 world and say, I'm a bad guy, I'm a drug dealer. I shoot
8 people and we had a problem, so I solved it, so let me go.
9 Because after all, Mr. Knight has a couple of other people
10 he needs to handle as well.

11 I told you at the very beginning of this case
12 that this was a public execution. I told you that the
13 evidence was going to show you that Rajerick Knight walked
14 into that Subway and basically in the middle of the day,
15 in the middle of this community besides people who were
16 there trying to get food, people who were there trying to
17 work, and as you heard from the witness stand, children
18 playing outside. And he walked right in, no concern for
19 safety of others, no concern for what was going to happen
20 and just walked up and executed that man. I told you
21 that's what the evidence was going to show and it did.
22 And had I known that the defense was going to be what it
23 was, I would have simply said because he was settling a
24 score. He was mad. He wasn't scared. He was mad, just
25 like his girlfriend testified he was. Was he pretty mad

1 about that. He was mad about that. Revenge is not a
2 defense. Revenge is what we call in this world motive and
3 motive is murder.

4 I'm going to talk to you very briefly about
5 that. The facts that you heard and the evidence. This
6 not something out there, but what you heard, what you
7 heard direct testimony about. You heard and you saw from
8 witnesses who said Rajerick Knight walked into that
9 Subway, ordered food. There wasn't an argument. There
10 wasn't any words exchanged. He walked out and he walked
11 back in with a gun that he carries with him all the time,
12 not to protect himself. But remember what he told you
13 about why he carries that gun because he's a drug dealer
14 and sometimes he gets robbed. So he needs to hold on to
15 that gun and keep it with him at all time to protect his
16 wife, to protect his child, to protect himself. No, sir
17 no ma'am, to protect his turf and his drugs. And he
18 walked into that Subway like he always is armed and
19 dangerous.

20 When he did it, he shoot a man who was armed
21 with a 20 dollar bill, a 20 dollar bill with his own blood
22 on it that the police photographed right after this
23 happened. A 20 dollar bill that he was handing to
24 Demetria Green, who was standing there as a cashier trying
25 to just do her job. And we know from the testimony of the

1 pathologist that the aggressiveness consisted of the
2 victim trying to climb back out of the counter and get
3 away. We know that because that's the angle of the shot
4 of him trying to get away. We know that because of the
5 blood smeared all over the counter where he jumped over
6 the counter after he was shot again unarmed. We know that
7 this wasn't done in some world that the defendant talks
8 about. It was done in this community right down the
9 street. We know because we heard Mr. Powell testify that
10 when I heard the shot, I didn't really think anything of
11 it. Why? Do you remember why he said he didn't think
12 anything of the sound because there was a child playing
13 right there on that sidewalk and he thought the child was
14 making that sound.

15 Now, you heard Mr. Knight say, well, I was real
16 careful not to shoot at anybody else. Remember, the video
17 when Mr. Knight walked in and he held that gun on him and
18 pulled the trigger. Did he stop and look around to see if
19 anybody got hurt? Did it occur to him that maybe somebody
20 else was in the way. And we know for a fact, ladies and
21 gentlemen, that they were, inches from Demetria Green.
22 She is literally accepting the 20 dollar bill when this
23 man comes in and executes that man. And the bullet goes
24 through him and within inches of where she's standing.
25 And not just through that, but through the wall into the

1 next room or thank goodness her co-worker wasn't standing
2 at the time. And then what did he do? This man who can't
3 escape this world that he creates.

4 Well, he escaped. He cut his hair not from how
5 he looked that day, but here. And he sent a text to a
6 friend of his how about keep an eye on that eyewitness.
7 Don't let her see but keep an eye on her. They questioned
8 her.

9 Ladies and gentlemen, the decision that you have
10 is a simple one. And what the defense wants you to do is
11 say Travis Holmes was a bad guy, so we need to kill him.
12 They want you to ignore the law and they want you to say
13 that this case is about Travis Holmes. This case is about
14 much more than just Travis Holmes. This case is about
15 Demetria Green. This case is about her coworker, who
16 every day have a right to work, to go into their business
17 and work without the threat, without the fear of having a
18 bullet go by their head. What did they do to deserve
19 this? It's about Mr. Powell and Veta Moore. It's about
20 Veta Moore's daughter having the ability in downtown
21 Beaufort to walk into a store just to get food without the
22 fear of being shot by a bullet. It is about this whole
23 community and the community that we use, that we live in
24 according to the law. The law that the defense wants you
25 to ignore. Make no mistake, it may very well be two

1 worlds that he's talking about, but it's not a world of
2 any type poverty that he's talking about. It is a world
3 of crime. A world of crime in which that's how you handle
4 your business. You shoot at people all of which he's
5 done before this. This world of burglary and theft and
6 driveby shootings, he participates in. He makes it all
7 possible. And when that world infringes on the world of
8 love the world of our community, one has to give in what
9 they're asking you to do is pick the world of crime. Let
10 it win.

11 There is no defense to this case. It is a
12 choice. Who's world, which community do we want. End it
13 now. Change the world, stop this now. The shooting, the
14 shootings, the retaliatory shootings that put our entire
15 community at risk including the child on the sidewalk.
16 The mother going into the store. The lady working behind
17 the cash register and all of those people standing there.
18 It needs to end. I told you I was going to ask you for
19 one thing the very beginning of this trial and I'm still
20 only going to ask you for that. When you render a
21 verdict, tell us the truth. Thank you.

22 THE COURT: All right, ladies and gentlemen, it
23 is now my duty as a trial judge under the Constitution of
24 this state to charge you and instruct you on the law
25 applicable to his case. It is your duty as jurors to

1 accept and apply the law as I will now state it to you.
2 Furthermore, it is your exclusive duty to decide all the
3 issues of fact in this case and to determine the effect,
4 the value and weight and truth of the evidence. Both the
5 State and the defendant have a right to expect that you
6 will carefully consider and evaluate the evidence and
7 apply the law of this case to it so that in the end both
8 the State of South Carolina and the defendant will receive
9 a fair and impartial trial.

10 I want you to understand, ladies and gentlemen,
11 when I use the word defendant, I refer to Mr. Rajerick
12 Lovell Knight. Furthermore, it is important to understand
13 that the State of South Carolina in separate indictments
14 charges the defendant with the offense known as murder and
15 possession of a weapon during the commission of or attempt
16 to commit a violent crime. To these charges, the
17 defendant has entered a plea of not guilty. This plea of
18 not guilty places the burden of proof on the State to
19 prove the guilt of the defendant to you, the jury, beyond
20 a reasonable doubt.

21 As I previously mentioned, the indictments in
22 this case allege two separate offenses against the
23 defendant. The charges are murder and possession of a
24 weapon during the commission of a violent crime or attempt
25 to commit a violent crime. Each indictment charges a

1 separate and distinct offense. You must decide each
2 indictment separate on the evidence and the law applicable
3 to it uninfluenced by your decision as to any other
4 indictment. You will be asked to write a separate verdict
5 of guilty or not guilty for each indictment.

6 I remind you, ladies and gentlemen, that the
7 fact that the defendant was arrested, charged and indicted
8 in this case is not evidence in this case and cannot be
9 considered by you as evidence of guilt in this case. Nor
10 does it create any presumption or inference of guilt. The
11 indictments are simply the formal written instruments
12 which contain the charges made against the defendant.
13 They are the formal documents by which this case is
14 brought into this court. It is vital to understand that
15 the defendant is presumed under the law to be innocent of
16 these charges. The defendant has no obligation to prove
17 his innocence.

18 It is a fundamental rule of our law that a
19 defendant irrespective of the seriousness of the charge
20 against him is always presumed innocent of the crimes for
21 which he is charged, unless and until his guilt has been
22 proven by evidence that satisfies you, the jury, beyond a
23 reasonable doubt. The presumption of innocence is not a
24 mere legal theory or a legal phrase. The presumption of
25 innocence is very important and you need to understand

1 that this presumption accompanies the defendant from the
2 time of his arrest and appearance in this court and
3 continues with a defendant even after you retire to the
4 jury room to deliberate.

5 In other words, the defendant receives the
6 benefit of the presumption innocence until the very end of
7 this trial when you, the jury, will deliberate upon the
8 evidence and decide whether the State has proven his
9 guilt beyond a reasonable doubt.

10 Now, ladies and gentlemen, what is a reasonable
11 doubt in the law. A reasonable doubt is the kind of a
12 doubt that would cause a reasonable person to hesitate to
13 act. Proof beyond a reasonable doubt that leaves you
14 firmly convinced of the defendant's guilt.

15 Now, there are very few things in this world
16 that we know with absolute certainty. So even in criminal
17 cases, the law does not require proof that overcomes every
18 possible doubt. However, if based on your consideration
19 of the evidence you are firmly convinced that the
20 defendant is guilty of the crimes charged, you must find
21 him guilty. If on the other hand, you think there is a
22 real possibility that he is not guilty, you must give him
23 the benefit of the doubt and find him not guilty.

24 Jurors please understand that reasonable doubt
25 may arise from evidence which has been presented in the

1 case or from the lack of evidence in the case. It is your
2 responsibility to determine whether or not reasonable
3 doubt exist as to the guilt of this defendant. I charge
4 you that the defendant is entitled to every reasonable
5 doubt arising in the whole case. If upon any issues of
6 fact essential to conviction in a verdict of guilty, you
7 have a reasonable doubt as to how that issue should be
8 resolved. It would be your duty to resolve that
9 reasonable doubt in favor of the defendant.

10 Thus in summary, it is important to understand
11 that a defendant is not required to prove his innocence.
12 Instead, the State is required by law to prove every
13 essential element of the offenses charged against the
14 defendant by evidence which satisfies you of his guilt
15 beyond a reasonable doubt, only then can you convict the
16 defendant and find him guilty.

17 There's two types evidence, ladies and
18 gentlemen, which are generally presented during a trial
19 direct evidence and circumstantial evidence. Direct
20 evidence is the testimony of a person who claims to have
21 actual knowledge of a fact such as an eyewitness. It is
22 evidence which immediately establishes the main fact to be
23 proved.

24 Circumstantial evidence is proof of a chain of
25 facts and circumstances indicating the existence of a

1 fact. It is evidence which immediately establishes
2 collateral facts from which the main fact may be inferred.
3 Circumstantial evidence is based on inference and not on
4 personal knowledge or observation. The law makes
5 absolutely no distinction between the weight or value to
6 be given to either direct or circumstantial evidence. Nor
7 is a greater degree of certainty required of
8 circumstantial evidence than of direct evidence. You
9 should weigh all of the evidence in this case. If after
10 weighing all the evidence, you are not convinced of the
11 guilt of the defendant beyond a reasonable doubt, you must
12 find the defendant not guilty.

13 Now, during this trial, you and I had separate
14 duties to perform. As the trial judge, it is my
15 responsibility to preside over this trial. And I also
16 have the duty to rule upon admissibility of the evidence
17 offered during the process of this trial. In that regard,
18 you are to consider only the competent evidence before
19 you. And you are to disregard from your mind any
20 testimony ordered stricken from the record of this case
21 during the progress of this trial if there was any. And
22 you are to consider only the testimony which has been
23 presented from this witness stand together with any
24 exhibits admitted into the record of this case and any
25 stipulations of counsel made into the record if there were

1 any.

2 Furthermore, I have the additional duty to
3 charge you on the applicable law of this case. And in
4 that regard, I am the sole judge of the law of this case.
5 It is your duty to accept and apply the law as I state it
6 to you. If you have any preconceived ideas as to what the
7 law is or what the law ought to be and it does not agree
8 with what I tell you the law is, you are obligated under
9 your oath to abandon these preconceptions because you are
10 sworn to accept the law precisely as I state it to you.

11 In this trial, you, ladies and gentlemen, are
12 the sole and excuse judge of the facts and I am judge of
13 the law. Do not infer that I have any opinion about the
14 facts in this case from any thing that I have said during
15 the course of this trial in ruling upon the admissibility
16 of evidence or otherwise or from anything that I say
17 during the course of this charge to you.

18 In this regard, the law simply does not permit
19 me to have an opinion about the facts. As jurors, it is
20 your duty alone to determine the effect, value, weight and
21 truth of the evidence presented during the course of this
22 trial. In determining what the facts in this case are,
23 you must judge the credibility which simply means the
24 believability of the witnesses and the value of weight to
25 be given to their testimony. You alone must decide the

1 force, effect and truth of the testimony.

2 In making this decision, there are many things
3 that you may and should take into consideration such as
4 the appearance and manner of the witness on the stand. A
5 characteristic often referred to as the demeanor of the
6 witness, was the witness forth right or hesitant, was the
7 witness testimony consistent or did it contain
8 discrepancies, what was the ability of the witness to know
9 the facts about which he or she testified. Did the
10 witness have a cause or reason to be biased and prejudiced
11 in favor of the testimony he or she gave. Was the
12 testimony of the witness corroborated or made stronger by
13 other testimony and evidence or was it made weaker or
14 impeached by such other testimony and evidence. And as
15 jurors please understand that you have the right to
16 believe a small portion of a witness' testimony and
17 disregard the larger portion or vice versa. You may
18 believe all of a witness' testimony or none. You may
19 believe the testimony of a single witness against that of
20 many witnesses or the other way around.

21 In exercising your mental processes in
22 attempting to decide truth, the law simply requires that
23 you exercise your good judgment, your common sense, your
24 sense of logic and reason and your experiences in life.
25 You then apply these attributes to the evidence and apply

1 the law as I state it to you and thus arrive at a verdict
2 the.

3 During this trial, you heard the testimony of
4 police officers. Please understand that testimony of a
5 police officer is not entitled to more weight than that of
6 any other witness. You are the sole judge of the
7 credibility of a witness and you are not to give more
8 weight to a police officer's testimony solely because he
9 or she is a police officer. Rather, you should judge an
10 officer's testimony by the same standards that you apply
11 to all other witnesses.

12 In addition, ladies and gentlemen, you also
13 heard the testimony of an individual qualified as an
14 expert. Our rules of evidence ordinarily do not permit
15 witnesses to testify to opinions or conclusions. However,
16 an exception of this rule exist for witnesses that we call
17 expert witnesses. A witness who by education and
18 experience has become an expert in some art, science,
19 profession or calling may state an opinion as to a
20 relevant and material matter, in which the witness claims
21 to be an expert. And may also state the reasons for the
22 opinion. You should consider any expert opinion received
23 in evidence in this case and like any other evidence give
24 it the weight you think it deserves. If you decide that
25 the opinion of an expert witness is not based on

1 sufficient education and experience or if you conclude
2 that the reasons given in support of the opinion are not
3 sound or that the opinion is outweighed by other evidence,
4 you may disregard the opinion testimony entirely.

5 Furthermore, an expert witness' testimony is to
6 be given no greater weight than that of other witnesses
7 simply because the witness is an expert. Further, you are
8 not required to accept an expert's opinion even though it
9 is not contradicted.

10 You also heard evidence that the defendant,
11 ladies and gentlemen, was convicted of crimes other than
12 the ones for which the defendant is now on trial. This
13 evidence may be considered by you if you conclude it as
14 true only in deciding whether the defendant's testimony is
15 believable and for no other purpose. You must not
16 consider the defendant's prior record as any evidence of
17 the defendant's guilt of the charges that we are trying
18 here in this court now.

19 Now, ladies and gentlemen, in order to establish
20 criminal liability, criminal intent is required. For
21 example, the mental state required to be proven by the
22 State for a particular crime might be purpose, intent,
23 knowledge, recklessness or criminal negligence. Criminal
24 intent must be proven by the State beyond a reasonable
25 doubt. Criminal intent is always a matter that must be

1 determined by the jury from the circumstances surrounding
2 the situation. There's no way to prove intent to a
3 mathematical certainty. There is no way that medical
4 science can dissect a person's brain and determine what
5 the person had in mind. So the law says that criminal
6 intent may be inferred from circumstances shown to have
7 existed. This is how you make a determination of whether
8 or not the element requiring intent was present. It is
9 not necessary to establish intent by direct and positive
10 evidence, but intent may be inferred but intent may be
11 establish by inference in the same way as any other fact
12 by take into consideration the acts of the parties and all
13 the facts and circumstances of the case.

14 Criminal intent is a mental state, a conscience
15 wrong doing. It is up to you, ladies and gentlemen, to
16 determine what the defendant intended to do based on the
17 circumstances shown to have existed. Criminal intent can
18 arise from action or a failure to act. It may arise from
19 negligence, recklessness or an indifference to duty or to
20 consequences that is considered by the law to be the
21 equivalent of criminal intent.

22 Now, the defendant, ladies and gentlemen, is
23 charged with offense of murder. The State must prove
24 beyond a reasonable doubt that the defendant killed
25 another person with malice aforethought. Malice, ladies

1 and gentlemen, is hatred ill will or hostility towards
2 another person. It is intentional doing of a wrongful act
3 without just cause or excuse and with an intent to inflict
4 or injure or under circumstances that the law will infer
5 an evil intent. Malice aforethought does not require that
6 malice exist for any particular time before the act is
7 committed, but malice must exist in the mind of the
8 defendant just before and at the time the act is
9 committed.

10 Therefore, there must be a combination of the
11 previous evil intent and the act. Malice aforethought may
12 be expressed or inferred. These terms express and
13 inferred do not mean different kinds of malice, but merely
14 the manner in which malice may be shown to exist, that is
15 either direct evidence or by inference from the facts and
16 circumstances which are proved. Express malice is shown
17 when a person speaks words which express hatred or ill
18 will for another person or when the person prepared
19 beforehand to do the act, which was later accomplished.

20 For example, lying in wait for a person or any
21 other acts of preparation going to show that the deed was
22 within the defendant's mind would be express malice.
23 Malice may be from conduct showing a total disregard for
24 human life.

25 The defendant is also charge, ladies and

1 gentlemen, with possession of a weapon during the
2 commission of or attempt to commit a violent crime. The
3 State must prove beyond a reasonable doubt that the
4 defendant was in possession of a firearm or visibly
5 displayed what appeared to be a firearm during the
6 commission of a violent crime.

7 A firearm, ladies and gentlemen, means any
8 machine gun, automatic riffle, revolver, pistol or any
9 weapon which is design to or maybe readily converted to
10 expel a projectile.

11 In order, to find the defendant guilty of
12 possession of a weapon during commission of a violent
13 crime, you must first find the defendant guilty of either
14 committing a violent crime or attempting to commit a
15 violent crime.

16 Murder, ladies and gentlemen, is a violent
17 crime. The State must prove beyond a reasonable doubt
18 that the weapon further advanced or helped in the
19 commission of the crime.

20 Now, ladies and gentlemen, I am now drawing near
21 the end of my charge and I want you to clearly understand
22 that you are not partisans or advocates for the State of
23 South Carolina or the defendant. It is your duty by your
24 joint deliberation to determine the truth in this case
25 giving to the defendant the benefit of every reasonable

1 doubt on each and every issue. Then to facts which you
2 determine to be true, you should take and apply the law
3 which has been given to you by this court and thus arrive
4 at a verdict which speaks the truth in this case. In
5 fact, the word verdict which has a Latin derivative means
6 a true saying. Thus, when you have accomplished these
7 responsibilities, you will have satisfied your oath as
8 jurors. And you will have discharged your duty to this
9 court. Now, once you retire to the jury room, the bailiff
10 will give the verdict form to the forelady. When you, the
11 jury, arrive at a verdict as to the offenses charged in
12 this case, the forelady will select the verdict as to each
13 charge on the verdict form. If the State has failed to
14 prove the guilt of the defendant beyond a reasonable
15 doubt, your verdict will be two words not guilty.
16 Likewise, if the State has proven the guilt of the
17 defendant beyond a reasonable doubt, your verdict will be
18 one word guilty. Once a decision has been made, madam
19 forelady, you will check whichever choice is the verdict
20 of the jury as to each charge. The verdict that you
21 render in this case must be the verdict of each and every
22 juror. It must be your unanimous verdict. All 12 jurors
23 must agree on the verdict which you authorize the forelady
24 to write for the jury.

25 Ladies and gentlemen, I want you to further

1 understand that the order in which the choice as a verdict
2 appear on the verdict form are not suggestive of any
3 verdict on the part of this court. The verdict in this
4 case is to be determined by you, the jury, not the Court.

5 Furthermore, ladies and gentlemen, please
6 understand that even though I will give the verdict form
7 to the forelady, it is not her verdict alone. It is the
8 verdict of all 12 of you. And I emphasize again, it must
9 be unanimous. I'm also going to give you, ladies and
10 gentlemen, a copy of these instructions in written form.
11 During your deliberations, you may refer to the
12 instructions to guide your decision making. You must
13 consider the instructions, ladies and gentlemen, as a
14 whole and not follow some and ignore others. Please
15 return the instructions to the court at the time that your
16 verdict is rendered.

17 I am now going to ask you, ladies and gentlemen,
18 to retire to the jury room, but do not begin your
19 deliberations. Let me ask everybody on the jury is
20 everybody on the jury feel okay? Anybody not feel well?
21 Okay. Now, the law, ladies and gentlemen, requires that I
22 consult with the attorneys to make sure that I have not
23 left anything out of these instructions. After I check
24 with the attorneys, the bailiff will bring a copy of these
25 instructions to you along with the verdict form and

1 instruct you to begin your deliberations. During your
2 deliberations should you have any questions, a piece of
3 paper and a writing instrument will be provided to you.
4 If you have any questions during your deliberations,
5 those questions need to be reduced to writing, madam
6 forelady, signed and dated by you, knock on the door, let
7 the bailiff know you have a question, provide that piece
8 of paper to him and he will get it to me and I will
9 address it accordingly, okay. Once you have reached a
10 verdict, ladies and gentlemen, please knock on the jury
11 room door as well and let the bailiff know that you have
12 reached a verdict. And the bailiff will in turn let me
13 know and I will get you back in the courtroom as quickly
14 as possible. Now, I'm going to ask that you retire at
15 this time to the jury room, but do not, do not begin your
16 deliberations until you are instructed to do so, okay.

17 (WHEREUPON, the jury retire to the jury room
18 11:59 am.)

19 THE COURT: Okay. Any objection or exceptions
20 to the charge by the State?

21 MR. STONE: No, sir, not from the State.

22 THE COURT: By defense counsel?

23 MR. BAX: Other than what we've already argued
24 on the record, Your Honor, no. I would say at this time
25 have to lodge an objection to sending the written

1 instructions back. The reason for that, Your Honor, would
2 just be that obviously the jurors did not have the means
3 to take a notes throughout the trial. They have no other
4 recording other than their memory of the testimony that
5 was presented. But they're going to have a physical copy
6 of the law, so I would object to the law being sent back.

7 THE COURT: Any objection by the State?

8 MR. STONE: I have no position, Your Honor,
9 that's up to you.

10 THE COURT: Well, your objection to that is so
11 noted for the record. However, when I practiced law, I
12 did a lot of federal criminal defense work and federal
13 judges always send it back, always sends it back. In my
14 experience, two and a half years of experience with the
15 state court bench, I initially started not sending it
16 back. And every time that I didn't send it back, the jury
17 had a question about something in the charge that
18 necessitated bringing them out and recharging them on a
19 small portion of the charge.

20 I, therefore, have concluded to sending the
21 entire charge back. And I have further instructed the
22 jury that they are not to follow some and ignore others.
23 That they are to look at them as a whole, to utilize them
24 as a whole. But your objection to me sending it back is
25 so noted for the record. As well as making it abundantly

1 clear for the record all of Mr. Bax previously objections
2 with regards to the charge and that being -- if I misstate
3 something please correct me Mr. Bax, that being my refusal
4 to charge self defense and voluntary manslaughter. Those
5 objections to the charge are so noted for the record. And
6 my ruling on those remain the same, but your objections
7 are so noted.

8 MR. BAX: Thank you, Your Honor.

9 THE COURT: If you all will come forward and
10 look at the evidence, Mr. Bax, Mr. Stone, Mr. Thornton,
11 look at the evidence make sure everything is there.

12 (WHEREUPON, a pause in the proceedings.)

13 MR. THORNTON: Your Honor, we have all of our
14 evidence.

15 MR. BAX: Your Honor, the only hang up -- I've
16 already been through my evidence. The only thing we've
17 noticed, I've noticed and it may have just been a
18 numbering situation that I didn't notice is there no
19 picture number 33. I've got Defendant's Exhibits one up
20 to 32 laid out and then I've got 34 through 44 laid out.
21 I can't find 33. Maybe, there's was never a picture 33,
22 which I'm fine with if there's no problem from the State.
23 I just want to make sure, that I haven't missed a picture
24 somehow.

25 MR. THORNTON: There's no objection the State

1 THE COURT: If you will bring the jury in
2 please.

3 (WHEREUPON, the jury came into open court at
4 approximately 1:07 pm.)

5 THE COURT: Okay. I'm going to step down so I
6 can see the entire jury. Madam forelady and ladies and
7 gentlemen of the jury, got your note that you wanted to
8 see Exhibit Number 10 again, which was a video of the
9 Subway. The State's got that cued up and they're prepared
10 to play that in its entirety for you. Go ahead.

11 (WHEREUPON, State's Exhibit Number 10 a DVD
12 being played for the jury.)

13 THE COURT: State's Exhibit Number 10 has been
14 played in its entirety for the jury.

15 Anything from the State at this time?

16 MR. STONE: No, sir, not from the State.

17 THE COURT: Anything from defense counsel?

18 MR. BAX: No, Your Honor.

19 THE COURT: Madam forelady, I ask that you
20 return to the jury room to continue your deliberations.

21 (WHEREUPON, the jury retire to the jury room to
22 continue deliberations at 1:16 pm.)

23 (WHEREUPON, court at ease awaiting verdict.)

24 THE COURT: It is my understanding that we have
25 a verdict in this case. Is the State ready to proceed?

1 MR. STONE: State's ready, Your Honor.

2 THE COURT: Defense counsel ready to proceed?

3 MR. BAX: No, Your Honor, I called my partner
4 and my investigator, they're on their way and should be
5 here momentarily. They do wish to be here for this. They
6 put a lot of time and effort to this. And I don't think
7 that they want to leave Mr. Knight without them by his
8 side when he receives the verdict. It should be
9 momentarily.

10 THE COURT: Okay, I'll give them a few minutes.

11 MR. BAX: Thank you very much.

12 (WHEREUPON, a break was taken.)

13 THE COURT: Are they in the building?

14 MR. BAX: She said two minutes. I'm just
15 letting her know you are on the bench.

16 THE COURT: Okay. While we are waiting on
17 Mr. Baxes' law partner and his investigator, I will state
18 once again, regardless of what the verdict is that you are
19 to keep your emotions in check. If you do not do so, this
20 court could hold you in contempt of court and sentence you
21 to a term of incarceration. If you do not believe that
22 you can hold your emotions in check, now is your time to
23 leave the courtroom.

24 MR. BAX: They just let me know they just came
25 in the door and are on their way up.

1 (WHEREUPON, a pause in the proceedings.)

2 THE COURT: Mr. Bax, I'm going to go ahead and
3 have the jury brought in.

4 MR. BAX: They should be in here.

5 (WHEREUPON, the jury came into open court at
6 1:37 P.M. with a verdict.)

7 THE CLERK: Madam forelady, have you reached a
8 verdict.

9 MADAM FORELADY: Yes, ma'am.

10 THE CLERK: Would you please pass it to the
11 bailiff please.

12 THE COURT: Defendant would stand please.

13 Publish the verdict publish.

14 THE CLERK: 2011-GS-07-1673, 2011-GS-07-1674
15 the State of South Carolina vs. Rajerick Lovell Knight, as
16 to the charge of murder: We, the jury, as to the charge
17 of murder, the jury unanimously find the defendant,
18 Rajerick Lovell Knight, guilty.

19 As to the charge of possession of a weapon
20 during the commission of a violent crime or attempt to
21 commit a violent crime: We, the jury, unanimously find
22 the defendant, Rajerick Lovell Knight, guilty. Date
23 11-29-2011, signed by the forelady Tammy McGinnis.

24 Ms. McGinnis, was this your verdict?

25 FORELADY: Yes.

1 THE CLERK: If you all agree, would you please
2 raise your right hand.

3 (WHEREUPON, all jurors' hands were raised.)

4 THE COURT: Anything from defense counsel right
5 now?

6 MR. BAX: Your Honor, we would ask that the jury
7 be polled.

8 THE COURT: Madam clerk.

9 THE CLERK: When I call your name, would you
10 please stand please.

11 Madam forelady, Tammy McGinnis, is this your
12 verdict?

13 JUROR: Yes.

14 THE CLERK: Is it still your verdict?

15 JUROR: Yes.

16 THE CLERK: Thank you, ma'am.

17 Diane Adams, was this your verdict?

18 JUROR: Yes.

19 THE CLERK: Is it still your verdict?

20 JUROR: Yes.

21 THE CLERK: Frederick Beiser, was this your
22 verdict?

23 JUROR: Yes.

24 THE CLERK: Is it still your verdict?

25 JUROR: Yes.

1 THE CLERK: Silvia Bushey, was this your
2 verdict?

3 JUROR: Yes.

4 THE CLERK: Is it still your verdict?

5 JUROR: Yes.

6 THE CLERK: Raymond Glover, was this your
7 verdict?

8 JUROR: Yes.

9 THE CLERK: Is it still your verdict?

10 JUROR: Yes.

11 THE CLERK: Clara Holland, was this your
12 verdict?

13 Juror: Yes.

14 THE CLERK: Is it still your verdict?

15 JUROR: Yes.

16 THE CLERK: Andrea Johnson, was this your
17 verdict?

18 JUROR: Yes.

19 THE CLERK: Is it still your verdict?

20 JUROR: Yes.

21 THE CLERK: Dana Porter, was this your verdict?

22 JUROR: Yes.

23 THE CLERK: Is it still your verdict?

24 JUROR: Yes.

25 THE CLERK: Jana Reaves, was this your verdict?

1 JUROR: Yes.

2 THE CLERK: Is it still your verdict?

3 JUROR: Yes.

4 THE CLERK: Leanne Renato, was this your
5 verdict?

6 JUROR: Yes.

7 THE CLERK: Is it still your verdict?

8 JUROR: Yes.

9 THE CLERK: Curtis Warren, was this your
10 verdict?

11 JUROR: Yes.

12 THE CLERK: Is it still your verdict?

13 JUROR: Yes.

14 THE CLERK: Asia Williams, was this your
15 verdict?

16 JUROR: Yes.

17 THE CLERK: Is it still your verdict?

18 JUROR: Yes.

19 THE CLERK: Thank you.

20 THE COURT: Anything else from defense counsel
21 at this time?

22 MR. BAX: No, Your Honor.

23 THE COURT: Mr. Bax, you and your client may be
24 seated.

25 MR. BAX: Thank you.

1 THE COURT: Ladies and gentlemen, you all have
2 fulfilled are responsibility as jurors here for this week.
3 It is my understanding that you do not have any further
4 obligations this week with regards to jury duty. So I'm
5 going to excuse you all for the balance of the week.

6 It is also my understanding that a -- all of
7 you've heard the proverbial statement of the check is in
8 the mail. You will get a check for your service.
9 However, that check that you get in no way shape or form
10 can add up to the value that your service is to this
11 county to this state and this country. You all have
12 rendered a verdict in this case and I am at this time
13 going to give you an opportunity to leave. You're not
14 required to. If you wish to stay around once you all
15 render a verdict, it's the Court responsibility to hand
16 down sentence, hand down a sentence. You are free to go
17 at this time if you want. Thank you for your service. If
18 called back up here to serve again within the next three
19 years whether it be criminal court or civil court, you can
20 be excused if you want to be excused. If you get called
21 in federal court, city court or magistrate's court nothing
22 me or any other circuit court judge can do to get you
23 excused. But if get called up here, I can excuse you or
24 some circuit judge can excuse you. But again, I want to
25 thank you for your service. I want to thank you for your

1 service. If you wish to leave, you free to leave at this
2 time.

3 Mr. Thornton, you prepared to go forward with
4 sentencing?

5 MR. THORNTON: Mr. Stone will be handling it,
6 Judge. I just want to pass up the sentencing sheet.

7 MR. STONE: We are, Your Honor.

8 THE COURT: Defense counsel ready to proceed at
9 this time with sentencing?

10 MR. BAX: Yes, Your Honor. And if, Your Honor,
11 doesn't mind if we all for my partner to enter ask.

12 THE COURT: Absolutely, if you let his law
13 partner in please.

14 MR. BAX: And I would ask that Dr. Martin be
15 allowed to come in?

16 THE COURT: Yes, sir.

17 MR. BAX: Because I know that he can offer
18 mitigating testimony as well in the sentencing phase, Your
19 Honor.

20 THE COURT: Well, I will say this, I will be
21 happy to hear any new information he wishes to state to me
22 as far as mitigation. However, I heard from him this
23 morning and certainly took notes on that and taken that
24 into consideration. Will you bring your client around to
25 be sentence please.

1 Mr. Stone, be happy to hear from you.

2 MR. STONE: May it please the Court, Your Honor,
3 first of all, the -- and, Your Honor, is well aware of his
4 prior criminal history as to his three burglaries. His
5 two gun charges. The other evidence that was presented.
6 He also has a resisting arrest from a police officer in
7 North Carolina. That was in 1995 or excuse me -- 2005
8 sort of in the middle of these other charges that those
9 preceded the breaking and enterings in Mecklenburg County
10 in North Carolina. He also has simple possession of
11 marijuana charges that, Your Honor, and a possession of
12 cocaine charge. Those are in Georgia. And then the gun
13 charges, Your Honor, are from South Carolina. So there's
14 a three state record. I would ask Your Honor to hear from
15 are -- there are a few family members here and if they
16 wish to address you ask you hear from them. I told you --
17 if I can ask and see they would like to address ask you.

18 THE COURT: I recognize there's numerous family
19 members in here from the victim's family as well as the
20 defendant's family. I will be to happy hear -- I'll limit
21 it to three individuals for each side.

22 MR. STONE: They are here and have been here
23 throughout the trial, Your Honor, and they said they do
24 not wish to address you. From the State's position and I
25 had -- I want to make sure that we're clear from the

1 State's position on this. Prior to this trial, the brazen
2 way that this crime was committed, the lack of respect for
3 not just the law of South Carolina, but the safety of this
4 community. I was in a position and I felt very strongly
5 before we started this case, that this defendant should
6 receive a life sentence. After listening to the
7 testimony, I am more convinced than I was before, the
8 reason it seems to me that this took place is nothing more
9 than someone who chose to end some type of a grudge by
10 doing the same thing that puts this community at risk. I
11 would ask, Your Honor, to consider that before you
12 sentence. Thank you nothing further.

13 THE COURT: Be happy to hear from you, Mr. Bax,
14 with regards to any mitigation.

15 MR. BAX: Thank you very much, Your Honor.
16 First of all, we have two family members of Mr. Knight
17 that wish to speak to the Court at the appropriate time
18 when Your Honor indicates. That is his mother Ms. Renee
19 Knight and LaShaunica Allen, who is mother of his
20 children.

21 Your Honor, for my part as counsel in this case,
22 obviously, we have tried to put up to the best defense
23 that we can for Mr. Knight. I believe, that it was a good
24 defense. Obviously, there's been rulings that we disagree
25 with, but we are here where we are. Obviously, you heard

1 more than what has been put in front of the jury and I
2 would ask you to take into consideration all of those
3 things including a totality of not only of my client's
4 record, but of Mr. Holmes' record including all the prior
5 shootings that were excluded from the trial in this case.

6 As well as what those impacts could be as there
7 was testimony from the psychiatrist, the doctor in my
8 case, Dr. Martin that Your Honor heard. There was
9 element -- there was certainly an element of fear in this
10 case. And, Your Honor, Dr. Martin has testified here
11 today that he took the time to question my client about
12 the problems he saw in it. And despite seeing those
13 things, he was satisfied with the answers that his fear
14 was real, that his stress and terror from what was
15 happening was real and that it was -- it was without
16 malingering. It was not faked.

17 I put a lot of stock in Dr. Martin. I have had
18 him in many cases and he always gives me an honest
19 opinion, Your Honor. And you ask me what he can add, what
20 I would say that he could add and you can ask him this or
21 can take my word for it is that Dr. Martin's reputation is
22 that if he cannot medically find what he can testify to be
23 true, he's not going to testify to it. So I want to make
24 sure that the Court takes that into consideration that if
25 he felt that the fear that he was getting from my client

1 in his examinations were in some way false or not truly
2 genuine, that he would have indicated that to me and that
3 you would have not heard from him in this trial, Your
4 Honor. And I hope that -- and if, Your Honor, wishes to
5 ask him he is here available for that.

6 My client is a young man. He's in his early
7 20's, Your Honor. He is still got a lot of life left. We
8 would ask the Court and we would beg the Court to consider
9 a sentence in the lower range. We would ask the Court to
10 consider a 30 year sentence in this case. Obviously, as
11 Your Honor, knows any sentence that he serves under the
12 conviction of murder is day for day and no parole no
13 release no good time credit, it is every 365 days must be
14 served every 24 hours of it. And I know that, Your Honor,
15 is aware of that from your own experience. So we would
16 ask you to take that into consideration and sentence him
17 in the lower range. I would ask for the Court to consider
18 a sentence of 30 years. Your Honor, at this time we
19 would ask that if the Court allow that those members of
20 the family, who I have mentioned, be allowed to address
21 the Court.

22 THE COURT: If they could stand there one at the
23 time please identify -- I'll allow three people. I'm not
24 sure how many people you indicated which to speak.

25 MR. BAX: Your Honor, I think it's only going to

1 be two, Your Honor.

2 THE COURT: Ma'am, if you would speak loudly,
3 state your name for the record again.

4 LASHAUNICA ALLEN: LaShaunica.

5 THE COURT: Yes, ma'am, I'll be happy to hear
6 from you.

7 LASHAUNICA ALLEN: I just want to say Rajerick
8 is a good man. He made a mistake. I'm sorry that it
9 happened, but please don't punish him for the rest of his
10 life. And my kids look up to him. He is a good father.
11 I'm sorry. He always led me in the right direction. He
12 helped me with my medical license. He's just such a good
13 person. Please just don't take him forever. Let him hold
14 his kids again, let him please, let him just come back
15 into our life, let him show the world he can change and be
16 a better person, just please don't take him from us. He's
17 been gone long enough and Robert always ask where his
18 daddy is. I just please, that's all I ask.

19 THE COURT: Thank you, ma'am.

20 Please state your name for the record, ma'am.

21 RENEE KNIGHT: Renee Knight. I just wanted to
22 say that my son is only 25 years old. I understand that
23 he committed a crime and he should be punished but not for
24 life. I beg you, Your Honor, not to take my son away from
25 me for life imprisonment. I apologize to the mother of

1 Mr. Holmes for the actions of my son and I feel so sorry
2 for her pain. I beg, Your Honor, not to take my son away
3 from me for life.

4 THE COURT: Mr. Knight, I will give you an
5 opportunity to say anything if you desire, but you are not
6 required to say anything. And I certainly don't want you
7 to say anything to be used against you or hurt you on
8 appeal, okay. Do you wish to address the Court at all?
9 You do not have to and you're not required to.

10 THE DEFENDANT: I just want to say like I said
11 inside my testimony, I never meant for this to happen. I
12 wish it didn't go this far. And a couple families were
13 torn a part between this situation. Like my mother say, I
14 am very sorry to Travis Holmes' mother. I know she had to
15 live with having to bury her son. I feel sorry to Travis
16 Holmes' kids too, they have to grow up without their
17 father. I'm already having to wear the burden of that
18 right now. I'm going to wear the burden of that for the
19 rest of my life. But I just ask, Your Honor, that you
20 please don't let me spend the rest of my life in prison.

21 MR. BAX: Thank you, Your Honor.

22 THE COURT: Okay. I think it's important -- I
23 heard -- I wanted to hear Dr. Martin's testimony this
24 morning. For legal reasons, I already ruled upon here and
25 I didn't allow him to testify in the trial of this case.

1 But it's important to point out for the record that -- and
2 I want to say this in sentencing, Mr. Knight was
3 evaluated. He was determined to be competent to stand
4 trial. There was no mental illness. There was no
5 diminished capacity, all be it diminished capacity is not
6 a defense in this state. He knew the difference and had
7 the ability to determine right from wrong and that he was
8 criminally responsible in his opinion for his conduct.

9 There's a lot of things in life that we don't
10 have choices about. And I've said this many of times,
11 life is about choices. There's a lot of things that we
12 don't have choices about. Mr. Bax, I stood in your shoes
13 before with clients when I practiced law and often thank
14 God for the family that I was born into and opportunities
15 that I've had in life realizing that not everybody has
16 those opportunities.

17 The family I was born into -- well, the family
18 that anybody was born into, your family didn't work for
19 you to get your law license or any other lawyer in here or
20 any other person that's in here. We had to work hard to
21 get those where we are in life. We don't have a right to
22 choose who are our parents are. We don't have a right to
23 choose who our relatives are. And in a lot of
24 circumstances, we don't have the right to choose the
25 environment that we grow up in. But there are many things

1 in life that we do have choices about, whether we stay in
2 the environment that we grow up in, whether we work hard
3 in school, get a good education, whether we work hard to
4 make an honest living. We have choices about who our
5 friends are, whether or not we want to take advantage of
6 the many opportunities that this great country affords and
7 whether or not you engage in criminal conduct. All of
8 those are choices that we have a right to make day in and
9 day out. I try to teach my children every day that life's
10 about choices and consequences.

11 It is an absolute tragedy, I practiced law and
12 represented many defendants. It was disheartening to see
13 the terrible, awful decisions that young men and women
14 make day in and day out that have such dire consequences.
15 When we make those difficult or wrong decisions, certainly
16 we as individuals suffer as a result of those decisions,
17 but the collateral damage being your family, your
18 children, Mr. Holmes' family, his children, so many lives
19 are impacted.

20 It's tragic, Mr. Knight, that on this particular
21 day, that what you did, whether it was by fear as you
22 testified to and Dr. Martin said as well, that there was
23 also testimony about the opportunity that you had to leave
24 that day and you choose not to. Not only did you take a
25 life that day, you endangered the lives many people.

1 Indictment 2011-GS-07-1674 on possession of a
2 weapon during commission of a violent crime, the defendant
3 is hereby committed to the state department of corrections
4 for a period of five years.

5 On 2011-GS-07-1673, the defendant is hereby
6 committed to the state department of corrections for the
7 balance of his natural life. The sentences are hereby to
8 be run consecutive, that is sentence of the Court.

9 THE COURT: Ladies and gentlemen of the jury,
10 you all are free to leave.

11 If you all will make sure they get out of here
12 safely.

13 (WHEREUPON, the jury was dismissed.)

14 Anything from the State?

15 MR. STONE: No, sir.

16 THE COURT: Anything from defense counsel?

17 MR. BAX: No, Your Honor.

18 END OF REQUESTED TRANSCRIPT

19

20

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22

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25

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

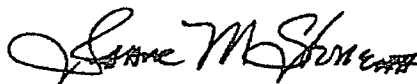
INDICTMENT
2011GS0701673

At a Court of General Sessions, convened on October 20, 2011, the Grand Jurors of Beaufort County present upon their oath:

Murder / Murder

That in Beaufort County on or about July 26, 2011, with malice aforethought, Rajerick Lovell Knight did kill and murder Travis Holmes by means of shooting said victim with a firearm, and that Travis Holmes did die in Beaufort County as a proximate result thereof on 7/26/2011; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976), as amended.

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



Solicitor

WITNESSES

Josh Dowling

ARREST WARRANT NUMBER

J357990

ACTION OF GRAND JURY

Brian Wolf
Foreperson of Grand Jury
Date:

OCT 20 2011

VERDICT

Foreperson of Petit Jury
Date:
INDICT

DOCKET NO. 2011GS0701673

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

October Term 2011

THE STATE

vs.

Rajerick Lovell Knight

Indictment for

Murder / Murder

SC Code: 16-03-0010; 16-03-0020
CDR Code:0116

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____
Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

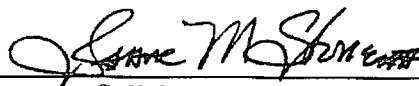
INDICTMENT
2011GS0701674

At a Court of General Sessions, convened on October 20, 2011, the Grand Jurors of Beaufort County present upon their oath:

Weapons / Poss. weapon during violent crime, if not also sen

That in Beaufort County, South Carolina, on or about 2011-07-26, the Defendant, Rajerick Lovell Knight, did possess a knife or visibly display what appeared to be a gun during the commission, or attempted commission, of Murder, a violent crime. This is in violation of 16-23-490 of the South Carolina Code of Laws, (1976) as amended.

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


Solicitor

WITNESSES

Josh Dowling

ARREST WARRANT NUMBER

J357995

ACTION OF GRAND JURY

Brett Webb
Foreperson of Grand Jury
Date:

OCT 20 2011

VERDICT

Foreperson of Petit Jury
Date:

INDICT

DOCKET NO. 2011GS0701674

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

October Term 2011

THE STATE

vs.

Rajerick Lovell Knight

Indictment for

**Weapons / Poss. weapon during violent crime,
if not also sen**

SC Code: 16-23-0490
CDR Code:0549

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
)
 COUNTY OF BEAUFORT) INDICTMENT NOS.: 2011-GS-07-1673 J357990
) 2011-GS-07-1674 J357995
 State of South Carolina,)
)
 -vs-) **VERDICT**
)
 Rajerick Lovell Knight,)
)
 Defendant.)
 _____)

1. As to the charge of Murder, we the Jury unanimously find the Defendant,

Rajerick Lovell Knight:

_____ Not Guilty X Guilty

2. As to the charge of Possession of a Weapon during the Commission of, or Attempt

to Commit, a Violent Crime, we the Jury unanimously find the Defendant, Rajerick

Lovell Knight:

_____ Not Guilty X Guilty

Dated: 11/29

Sammy McInnis
 FOREPERSON

(Please let the Bailiff know when you have completed this form)

J357990
462
J359995

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
COURT OF GENERAL SESSIONS
CRAIG BROWN, Circuit Court Judge

Case No. 2011-GS-07-1673, 1674

Rajerick Knight,
Appellant,

vs.

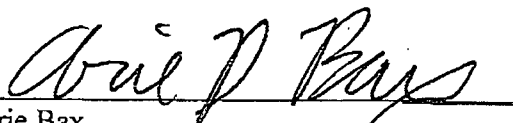
State of South Carolina,
Respondent,

2012 DEC -4 PM 1:13
BEAUFORT COUNTY, S.C.
CLERK OF COURT

NOTICE OF INTENT TO APPEAL

Rajerick Knight, by and through counsel, hereby appeals his conviction and sentence in this case. The sentence was imposed by the Honorable Howard S. Barnes on November 29, 2012.

Beaufort, SC
December 3, 2012


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69 Robert Smalls Parkway, Suite 3C
Beaufort, SC 29902
Phone: (843) 522-0980, Fax: (843) 217-5815
ATTORNEY FOR APPELLANT

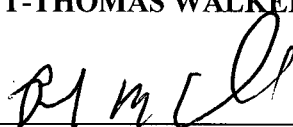
Other Counsel of Record:
Isaac McDuffie Stone
Fourteenth Circuit Solicitor
P.O. Box 1880
Bluffton, SC 29910
Phone: (843) 255-5880 Fax: (843) 255-9512

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

June 20th, 2014

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ATTORNEYS FOR APPELLANT

ORIGINAL

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

JUN 20 2014

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
The Honorable D. Craig Brown, Circuit Court Judge

SC Court of Appeals

Case No. 2011-GS-07-1673

The State Respondent

v.

Rajerick Lovelle Knight. Appellant

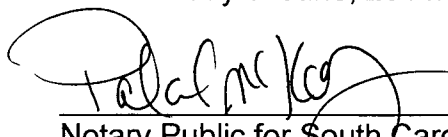
PROOF OF SERVICE

I certify that I have served the **Record on Appeal** on opposing counsel Kaycie S. Timmons at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, on June 20, 2014.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 20th day of June, 2014.



(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.