

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2008-CP-40-1696

Ayree Henderson, #237887

Respondent,

v.

State of South Carolina,

Petitioner.

APPENDIX

Henry Dargan McMaster
Attorney General

John W. McIntosh
Chief Deputy Attorney General

Other Counsel of Record:

Salley W. Elliott
Assistant Deputy Attorney General

Celia Robinson
Appellate Defender
SCCID
Post Office Box 11589
Columbia, South Carolina 29211-1589
(803) 734-1343
Attorney for Respondent

Brian T. Petrano
Assistant Attorney General

Post Office Box 11549
Columbia, South Carolina 29211-1549
(803) 734-3731
Attorney for Petitioner

RECEIVED

JUL 28 2014

S.C. Supreme Court

INDEX

Transcript of the Trial.....	1
Counsel's Anders Brief.....	674
Pro Se Anders Brief.....	684
Direct Appeal Remittitur and Order	695
Application For Post-Conviction Relief.....	698
Return to the Application.....	704
Transcript of The Post-Conviction Relief Hearing.....	711
Proposed Order of Dismissal ¹	758
Proposed Order Granting Relief.....	770
Order Granting PCR.....	774
Clerk of Court Records.....	783
South Carolina Department of Corrections Records.....	787

¹ The PETITIONER submitted the Proposed Order of Dismissal via email on September 11, 2009, copied to RESPONDENT. [Rule 5(b)(3), SCRCP].

1 STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

2 COUNTY OF RICHLAND

3
4
5 STATE)

6 V.)

TRANSCRIPT OF RECORD

7 AYREE HENDERSON)

VOLUME 1

8 DEFENDANT.)

02-GS-40-7277

9
10
11 SEPTEMBER 21, 2004
12 COLUMBIA, SOUTH CAROLINA

13 B E F O R E:

14 THE HONORABLE ALISON RENEE LEE, JUDGE; AND A
15 JURY.

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

17 KATHRYN LUCK CAMPBELL, ASSIST. SOLICITOR
18 BRYAN S. JEFFRIES, ASSIST. SOLICITOR
19 ATTORNEYS FOR THE STATE

20 CHARLES E. JOHNSON, ESQUIRE
21 ATTORNEY FOR THE DEFENDANT

22
23
24
25 STACY L. SHEPPARD
CIRCUIT COURT REPORTER

ORIGINAL

I N D E X

	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
1					
2	Ayree Henderson (In Camera) (Vol. 1)				
3	By Mr. Johnson	10			
4	Terrell Nicole Myers (In Camera) (Vol. 1)				
5	By Ms. Campbell	18			
6	By Mr. Johnson		31		
7	Opening Statements (Vol. 1)				
8	By Mr. Jeffries	73			
9	By Mr. Johnson	78			
10	Robert John Hall (Vol. 1)				
11	By Mr. Jeffries	82			
12	By Mr. Johnson		113		
13	Everett Wilson (Vol. 1 & 2)				
14	By Ms. Campbell	120, 529			
15	By Mr. Johnson		137, 534		
16	Terrell Nicole Myers (Vol. 1)				
17	By Ms. Campbell	140		179	
18	By Mr. Johnson		170		180
19	Kathy Wilson (Vol. 1)				
20	By Ms. Campbell	182		196	
21	By Mr. Johnson		194		197
22	Dianne Crawford (Vol. 1)				
23	By Mr. Jeffries	198			
24	By Mr. Johnson		213		
25	Donald Ray Catoe (Vol. 1)				
26	By Ms. Campbell	224			
27	By Mr. Johnson		257		
28	Donna Martin (Vol. 1)				
29	By Ms. Campbell	269			
30	By Mr. Johnson		272		
31	Peter Currie (Vol. 1)				
32	By Ms. Campbell	273			
33	Christine Elizabeth Montgomery (Vol. 1)				
34	By Ms. Campbell	278			
35	By Mr. Johnson		282		

1 I N D E X cont.

2	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	Clay Allen Nichols (Vol. 1)				
	By Ms. Campbell	284			
4	By Mr. Johnson		300		
5	Samuel C. Reighley, Jr. (Vol. 1)				
	By Ms. Campbell	304		316	
6	By Mr. Johnson		312		
7	Hue Tang (Vol. 1)				
	By Ms. Campbell	319		334	
8	By Mr. Johnson		328		336
9	Mark William Vinson (Vol. 2)				
	By Ms. Campbell	350		378	
10	By Mr. Johnson		370		379
11	Shea Laron Thomas (Vol. 2)				
	By Mr. Johnson	394		465	
12	By Ms. Campbell		416		
13	Ayree Henderson (Vol. 2)				
	By Mr. Johnson	467		525	
14	By Ms. Campbell		489		
15	Closing Arguments (Vol. 2)				
	By Ms. Campbell	559, 599			
16	By Mr. Johnson	587			
17	Charge of the Court (Vol. 2)		628		
18	Verdict of the Jury (Vol. 2)		666		
19	Sentence of the Court (Vol. 2)		675		
20	Certificate of Reporter (Vol. 2)		676		

21

22

23

24

25

E X H I B I T S

	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
1				
2				
3	State's 1	Photo Lineup Affidavit (Vol. 1)	29	166
4	State's 2	Photo Lineup (Vol. 1)	29	166
5	State's 3	Diagram (Vol. 1)	86	228
6	State's 4	Diagram (Vol. 1)	88	228
7	State's 5	Diagram (Vol. 1)	89	228
8	State's 6	Photo of		
9		Apartment Complex (Vol. 1)	99	123
10	State's 7	Photo of		
11		Apartment Complex (Vol. 1)	99	125
12	State's 8	Photo of Apartments (Vol. 1)	99	
13	State's 9	Photo of		
14		Door of Apartment (Vol. 1 & 2)	99	354
15	State's 10	Photo of		
16		Apartment Complex (Vol. 1)	99	186
17	State's 11	Photo of Apartments (Vol. 1)	99	
18	State's 12	Photo of Apartments (Vol. 1)	99	
19	State's 13	Photo of Apartments (Vol. 1)	99	
20	State's 14	Photo of		
21		Apartment Complex (Vol. 1)	99	148
22	State's 15	Photo of Apartments (Vol. 1)	99	
23	State's 16	Photo of		
24		Apartment Complex (Vol. 1)	99	186
25				

1	E X H I B I T S cont.			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
3	State's 17	Photo of Crime Scene (Vol. 1)	103	104
4	State's 18	Photo of		
5		Victim and Vehicle (Vol. 1)	103	104
6	State's 19	Photo of Vehicle (Vol. 1)	103	104
7	State's 20	Photo of Vehicle (Vol. 1)	103	104
8	State's 21	Photo of		
9		Victim and Vehicle (Vol. 1)	103	104
10	State's 22	Photo of Vehicle (Vol. 1)	103	104
11	State's 23	Photo of Vehicle (Vol. 1)	103	104
12	State's 24	Photo of Sidewalk (Vol. 1)	103	104
13	State's 25	Photo of Door (Vol. 1)	103	104
14	State's 26	Photo of		
15		Apartment Complex (Vol. 1)	103	104
16	State's 27	Photo of Door (Vol. 1)	103	104
17	State's 28	Photo of Door (Vol. 1)	103	104
18	State's 29	Photo of Door (Vol. 1)	103	104
19	State's 30	Photo of Sidewalk (Vol. 1)	103	104
20	State's 31	Photo of Meter Box (Vol. 1)	103	104
21	State's 32	Photo of Meter Box (Vol. 1)	103	104
22	State's 33	Photo of Apartment (Vol. 1)	103	104
23	State's 34	Photo of Sidewalk (Vol. 1)	103	104
24	State's 35	Photo of Sidewalk (Vol. 1)	103	104
25	State's 36	Photo of Sidewalk (Vol. 1)	103	104

E X H I B I T S cont.

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
State's 37	Photo of Footprints (Vol. 1)	103	104
State's 38	Photo of Footprints (Vol. 1)	103	104
State's 39	Photo of Floor (Vol. 1)	103	104
State's 40	Photo of Sidewalk (Vol. 1)	223	234
State's 41	Photo of Sidewalk (Vol. 1)	223	234
State's 42	Photo of Door Stoop (Vol. 1)	223	234
State's 43	Photo of Projectile (Vol. 1)	223	234
State's 44	Photo of Telephone (Vol. 1)	223	234
State's 45	Photo of		
	Nine Millimeter Casing (Vol. 1)		244
State's 46	Copper Clad Projectile (Vol. 1)	245	250
State's 47	Photo of Projectile (Vol. 1)		251
State's 48	Photo of Defendant (Vol. 2)		369
State's 49	Photo of Victim (Vol. 2)		533
Defendant's 1	Photo of Apartment (Vol. 2)	404	404
Defendant's 2	Photo of Apartment (Vol. 2)	404	404
Defendant's 3	Photo of Apartment (Vol. 2)	404	404
Defendant's 4	Photo of Apartment (Vol. 2)	404	404
Defendant's 5	Photo of Apartment (Vol. 2)	404	404
Court's 1	Jury Note (Vol. 2)	665	
Court's 2	Jury Note (Vol. 2)	675	

24

25

Date:

9-21-04

County:

Pickland

VOIR DIRE

Case No:

02-SS-40-7277

Judge:

Alison Lee

State:

State:

Atty:

Kathryn Luck Campbell

Bryan Jeffries

Defendant:

Alyce Henderson

Defense Atty:

Charlie Johnson

Court Reporter:

Stacy L. Sheppard

Case No.	Name	Sex	Race	Court	Section STATE	Defense	Assist
214	Christopher Phillips	M	B				1
163	Justin Lett	M	W		1		
113	Michael Hamlin	M	B		2		
86	Frances Virginia Willes	F	W			1	
3	Barrett Alderman	M	W				2
108	Sue Haddad	F	W			2	
119	Isaac Harris	M	B			3	
86	Marisha A. Flagg	F	W				3
271	Mary Vogt	F	W			4	
298	Season Feller	F	W			5	
148	Page Kalish	M	W			6	
60	Liffany Connelly	F	B				4
24	Paul Blodgett	M	W				5
198	Jeresa Murphy	F	B			7	
170	Betty Mack	F	B				6
78	Nolanda Edmonds	F	B				7
259	Weldon Thompson	M	B				8
162	Lawrence Lesley	M	B		3		

For the court column, please indicate who made the motion to strike the jurors "for cause" with a "C" for Court, "P" for Plaintiff or "D" for Defense.

1 (The following proceedings were held on
2 September 21, 2004.)

3 **THE COURT:** All right. Ms. Campbell, you may
4 call the case.

5 **MS. CAMPBELL:** May it please the Court, Your
6 Honor.

7 **THE COURT:** Yes, ma'am.

8 **MS. CAMPBELL:** The State calls the State versus
9 Ayree Henderson for the charge of murder, indictment
10 number 02-GS-40-7277.

11 **THE COURT:** And the defendant's represented by
12 Charlie Johnson.

13 **MR. JOHNSON:** That's correct, Your Honor.

14 **THE COURT:** Are there any pretrial matters that
15 we need to take up at this time?

16 **MR. JOHNSON:** Yes, there is, Your Honor. Your
17 Honor, the first pretrial matter is that the
18 prosecution have taken a -- it's a --

19 **MS. CAMPBELL:** GSR, gunshot residue test.

20 **MR. JOHNSON:** Gunshot residue test, Your Honor.
21 And they informed me that it came back negative;
22 however, they do not have the written report. As a
23 result, I had informed my client that I think it
24 would be only proper that because this is an issue
25 of self-defense in this case, that it would be only

1 proper that we obtain independent examination of
2 that particular kit and that we would request a
3 continuance today.

4 However, Your Honor, my client has informed me
5 that he wishes to go forward irregardless of the
6 results of that test. As a result of that, Your
7 Honor, I think that it would be -- that we request
8 that I be allowed to put my client on the stand and
9 have him testify that against my wishes, he has
10 decided he wants to go forward.

11 **THE COURT:** That's fine. Mr. Henderson, you
12 need to step around please and be sworn.

13 (The following proceedings were reported in
14 camera.)

15 AYREE HENDERSON,
16 having been duly sworn, testified as follows:

17 **THE CLERK:** Please have a seat up there, sir,
18 and state your full name for the record.

19 DIRECT EXAMINATION

20 BY MR. JOHNSON:

21 **Q** Mr. Henderson, will you please state your full
22 name?

23 **A** Ayree Henderson.

24 **Q** Mr. Henderson, you're aware that you've been
25 charged with murder; is that correct?

1 **A** Yes, sir.

2 **Q** And you're aware that we're prepared to go
3 forward today in trial?

4 **A** Yes, sir.

5 **Q** Now, I had informed you prior to that that
6 there was a gun residue test done on the victim's
7 hands. Are you aware of that test? Did I inform
8 you of it?

9 **A** Yes, sir.

10 **Q** Are you also aware that our case here is one of
11 self-defense; is that correct?

12 **A** Yes, sir.

13 **Q** And, as a result of that, I had made you aware
14 that that gun residue kit was a very important
15 result and I did make you aware of that, didn't I?

16 **A** Yes, sir.

17 **Q** And I also made you aware that I suggested that
18 we have an independent expert examine the residue
19 kit ourselves and that I request a continuance
20 today; is that correct?

21 **A** Yes, sir.

22 **Q** I also informed you that if you are found
23 guilty of murder, that you could be facing 30 years
24 or more?

25 **A** Yeah.

1 **Q** Of a day-to-day sentence; is that correct?

2 **A** Yes, sir.

3 **Q** So, therefore, you are aware of the importance
4 of that particular test; is that correct?

5 **A** Yes, sir.

6 **Q** As a result of our conversation, please tell
7 the Court your decision as to whether you want to go
8 forward or whether you want to request a
9 continuance?

10 **A** I want to go forward.

11 **Q** Even after considering all of the consequences
12 that I informed you of?

13 **A** Yes, sir.

14 **MR. JOHNSON:** I have no other questions, Your
15 Honor.

16 **THE COURT:** Anything further from the State?

17 **MS. CAMPBELL:** No, ma'am.

18 **MR. JOHNSON:** I have no other questions. Your
19 Honor, as a result of that, the defense is ready to
20 go forward today based on my client's wishes to go
21 forward.

22 **THE COURT:** Are there any other pretrial
23 matters?

24 **MS. CAMPBELL:** Your Honor, I did just receive a
25 copy of the proposed voir dire and the State does

1 have some objections to that. We might want to take
2 that up at this time.

3 **THE COURT:** As a general rule, I would not ask
4 questions 16 through 28.

5 **MS. CAMPBELL:** Yes, ma'am.

6 **THE COURT:** Does that encompass your
7 objections?

8 **MS. CAMPBELL:** Your Honor, I would just ask if
9 I could go through them just briefly. We have no
10 problem with number one. On number two, friend or
11 acquaintance with Attorney General or the
12 Solicitor's office, we would just ask that that be
13 made reciprocal to say the public defenders office
14 or general defense oriented, appellate defense, the
15 public defender's office, things of that nature.

16 Number three, we have no problem with. Number
17 four, we have no problem with. Number five, Your
18 Honor, I believe is in your general charge,
19 perspective witnesses. And we have handed up a
20 proposed witness list and I don't know if
21 Mr. Johnson has his or not.

22 **MR. JOHNSON:** I have one.

23 **MS. CAMPBELL:** Number six, Your Honor, I don't
24 know that that would be relevant, Ever been a
25 witness in a criminal trial. I don't know if

1 perhaps, I just -- that's usually one that's not
2 asked. I don't know what the relevance or the
3 bearing here would be.

4 **MR. JOHNSON:** Well, Your Honor, it's our
5 position that the relevance of this is that a person
6 that has been a witness in a -- well, have been a
7 witness in a criminal trial would understand that
8 there is a greater preponderance of evidence
9 required in a criminal trial than a civil trial.

10 **MS. CAMPBELL:** Well, she's going to instruct
11 them that.

12 **MR. JOHNSON:** Well, as I stated, that's the
13 reason that we included it.

14 **MS. CAMPBELL:** Okay. Based on that reason,
15 Your Honor, we just say that's irrelevant as far as
16 voir dire goes. And, of course, you will be
17 instructing the jury generally what the burden is.

18 Number seven, eight and nine, I believe, is
19 part of your general charge. And number ten, Your
20 Honor, Has any member of your family been a victim
21 of a murder, armed robbery, assault, burglary or any
22 similar offense, I don't know how armed robbery,
23 assault or burglary would be relevant in this case.
24 The only charge we're going forward on is murder. I
25 have no problem with that part.

1 **MR. JOHNSON:** I will agree to remove the armed
2 robbery, assault and burglary.

3 **MS. CAMPBELL:** And then in that same vein, Your
4 Honor, on number ten, if we can make it reciprocal,
5 if any close members have ever been accused of
6 murder.

7 **MR. JOHNSON:** I have no objection to that, Your
8 Honor.

9 **MS. CAMPBELL:** I have no problems with number
10 11, Your Honor. I believe that's part of your
11 general charge, a charge if you have any problems at
12 all. Number 12, Your Honor, I think is irrelevant
13 and intrusive as to the jurors whether they've ever
14 been charged with a crime but never convicted.

15 **MR. JOHNSON:** Your Honor, I withdraw that one.

16 **MS. CAMPBELL:** Number 13, Your Honor, I don't
17 know what the alcoholic beverages -- and I'm not
18 completely aware of his defense -- I don't have a
19 problem with 13.

20 Number 14, Have you ever served on a jury panel
21 before, was it civil or criminal; if criminal,
22 what's the disposition, I just don't think that's
23 relevant.

24 **MR. JOHNSON:** I will withdraw that one, Your
25 Honor.

1 **MS. CAMPBELL:** And then, finally, Your Honor,
2 number 15, Have you ever witnessed a crime, I would
3 just say that that's too general in nature. I think
4 maybe perhaps relevant would be, Have you ever
5 witnessed a murder?

6 **MR. JOHNSON:** I will agree to amend it, Your
7 Honor, to a murder. And, Your Honor, just for the
8 record, my understanding then that you have ruled
9 that you would not submit the other questions, the
10 remaining questions.

11 **THE COURT:** I generally don't ask those on voir
12 dire and so it's not my plan to ask them.

13 **MR. JOHNSON:** Your Honor, the only one that I
14 request that you possibly reconsider would be number
15 27.

16 **MS. CAMPBELL:** We would strongly object to
17 number 27.

18 **THE COURT:** I generally don't ask that
19 question. I tell them when I charge them what their
20 responsibility is and that their verdict must be
21 unanimous. There's also the opportunity to poll the
22 jurors to make sure that the verdict is, in fact,
23 their verdict at the conclusion of the case and so I
24 generally -- I won't ask that question on voir dire.

25 **MR. JOHNSON:** Thank you, Your Honor.

1 **MS. CAMPBELL:** Your Honor, at this time, too, I
2 have handed over the prior records, or lack thereof,
3 three out of four of our lay witnesses. I'm giving
4 the report right now. And there's nothing
5 impeachable and I'm handing them over to him to
6 review.

7 Beg the Court's indulgence.

8 (Pause.)

9 **MS. CAMPBELL:** Your Honor, we have handed over
10 prior records on three out of four of our lay
11 witnesses or potential lay witnesses, that will be
12 Kathy Wilson, Everett Wilson and Terrell Myers. And
13 I think we're in agreement that there's nothing
14 impeachable.

15 **MR. JOHNSON:** Your Honor, as a result of the
16 information given to me, I have not seen anything
17 impeachable to their records.

18 **THE COURT:** You said -- who was the third one?

19 **MS. CAMPBELL:** Terrell Myers, T-E-R-R-E-L-L
20 Myers.

21 As far as the defendant's prior record, should
22 he choose to take the stand, Your Honor, we do
23 think, as far as impeachable convictions, he does
24 have from 1997, he was convicted of possession of
25 stolen vehicle and grand larceny of a motor vehicle.

1 And the only other impeachable offense, Your Honor,
2 would be a 1995 conviction, January of 1995
3 conviction, for accessory after the fact of murder.

4 **MR. JOHNSON:** I have no objection to that.

5 **MS. CAMPBELL:** Thank you.

6 **THE COURT:** Anything further?

7 **MS. CAMPBELL:** Your Honor, the only other thing
8 I think we need to take up would be there was a
9 photo lineup shown to one of the witnesses in the
10 case that she had known him from when she had been
11 at school years earlier, but I think just to protect
12 the record, we can put her up very quickly and just
13 make sure that the record's protected. The State
14 calls Terrell Myers.

15 **TERRELL NICOLE MYERS,**
16 having been duly sworn, testified as follows:

17 **THE CLERK:** Please have a seat, state your full
18 name for the record.

19 **THE WITNESS:** Terrell Nicole Myers.

20 **DIRECT EXAMINATION**

21 **BY MS. CAMPBELL:**

22 **Q** Ms. Myers, how old are you?

23 **A** Twenty-eight.

24 **Q** And where do you reside currently, what city?

25 **A** Columbia, South Carolina.

1 Q And how long have you lived in the Columbia
2 area?

3 A All my life.

4 Q Are you currently employed?

5 A Yes.

6 Q And where do you work?

7 A The university.

8 Q University of South Carolina?

9 A Uh-huh.

10 Q Here in Columbia?

11 A Yeah.

12 Q And, approximately, how long have you been
13 working for the University of South Carolina?

14 A Six years.

15 Q Ms. Myers, did you know a man named Alonzo
16 Gale?

17 A Yes.

18 Q And what was your relationship with Alonzo
19 Gale?

20 A He was my boyfriend.

21 Q And back in -- turning your attention to July
22 and the early part of August of 2002, two years ago,
23 were y'all living together at that time?

24 A Yes.

25 Q And where were y'all living?

1 **A** In Hammond Village.

2 **Q** Hammond Village?

3 **A** Uh-huh.

4 **Q** And that's located, I think, it's off River
5 Drive?

6 **A** Off River Drive.

7 **Q** I want to turn your attention to the early
8 morning hours of August the 3rd, 2002. That
9 evening, were you asleep in your home?

10 **A** Yes.

11 **Q** And at some point during the early morning
12 hours or some time after midnight, did Alonzo Gale
13 return to y'all's apartment and enter it?

14 **A** Yes.

15 **Q** Once he came into the apartment that evening,
16 what were y'all doing after he got home?

17 **A** Asleep.

18 **Q** You were asleep?

19 **A** Uh-huh.

20 **Q** And in your apartment, is that a one-story or a
21 two-story apartment?

22 **A** Two-story.

23 **Q** And where is the bedroom located?

24 **A** On the front side, hill side.

25 **Q** On the hill side?

1 **A** Yeah.

2 **Q** And it sounds weird, but it's easier to refer
3 to it -- on one side of the apartment, was what?

4 **A** A hill.

5 **Q** And what was on the other side?

6 **A** A parking lot.

7 **Q** A parking lot. And your bedroom was located on
8 the first or the second floor?

9 **A** Yeah.

10 **Q** Which one?

11 **A** On the second floor.

12 **Q** Okay. And the bedroom window actually opened
13 out to what?

14 **A** The hill side door.

15 **Q** The hill side door. On that evening, or during
16 the early morning hours, did you have an occasion to
17 hear some knocking?

18 **A** Yes.

19 **Q** And where was the knocking originally coming
20 from?

21 **A** From the parking lot side.

22 **Q** From the parking lot side?

23 **A** Uh-huh.

24 **Q** And at that point when you heard the knocking,
25 tell the Judge what you did?

1 **A** I got up, looked out the bathroom window,
2 didn't see anybody.

3 **Q** And, at that point, where did you go?

4 **A** Back in the bed.

5 **Q** Shortly thereafter -- at some point thereafter,
6 did you hear some more knocking or tapping?

7 **A** Yes.

8 **Q** And where was it coming from this time?

9 **A** From the hill side.

10 **Q** From the door on the hill side?

11 **A** Uh-huh.

12 **Q** And just so I can be straight about this and so
13 the Judge can understand, there's a door that enters
14 from the parking lot side?

15 **A** Uh-huh.

16 **Q** And is there also another door that enters out
17 to the hill side?

18 **A** Uh-huh.

19 **Q** And when you heard the tapping on the door on
20 the hill side of your apartment, what did you do?

21 **A** Looked out the window and looked down to see
22 who it was.

23 **Q** And the window, you actually lifted it up?

24 **A** Uh-huh.

25 **Q** And did you actually stick your head out of the

1 window?

2 A Yes.

3 Q And when you looked down at the area in which
4 we call the hill side of your apartment, what did
5 you see?

6 A Ayree.

7 Q And when you say Ayree, how far -- where was he
8 when you saw him?

9 A Like looking right down at him.

10 Q Looking right down at him?

11 A Uh-huh.

12 Q So was he below the window you were looking
13 out?

14 A Yeah.

15 Q And that back door, where is it located in
16 relation to the window where your bedroom is?

17 A It's like the door is here and the window is
18 like from the side.

19 Q And when you were looking out of the window, I
20 don't know if you can estimate distances, was he
21 very far? Were you able to see him clearly?

22 A Yes.

23 Q What was the lighting like out there, because
24 this is dark, wasn't it, after dark?

25 A Uh-huh.

1 **Q** And it was before dawn of August 3rd, right?

2 **A** Yeah.

3 **Q** And, at this point, what was the lighting like
4 out there that enabled you to see who was out there?

5 **A** It was light enough for me to see because they
6 have big, tall lights on the back and on the sides
7 of the buildings.

8 **Q** Okay. So it was light enough for you to see
9 him. And when you said you saw Ayree, did you
10 recognize him?

11 **A** Yes.

12 **Q** And tell the Judge how you knew Ayree prior to
13 that night?

14 **A** Growing up as, you know, childhood and went to
15 school together.

16 **Q** Y'all went to school together?

17 **A** Yeah, Saint Andrews.

18 **Q** Saint Andrews?

19 **A** Uh-huh.

20 **Q** Is that a middle school or a high school?

21 **A** Middle school.

22 **Q** And had you had occasions in the weeks or
23 months prior to this night to see Ayree in the
24 neighborhood?

25 **A** Yeah, I seen him around the neighborhood.

1 Q Okay. And when you would see him, you
2 recognized him. Did you know his full name at that
3 time?

4 A No.

5 Q And what name did you know him by?

6 A Avery.

7 Q Avery?

8 A (Witness nodded head.)

9 Q And when you looked out and you saw him that
10 night, did you say anything to Alonzo Gale? Was
11 Alonzo still in the bedroom at that point?

12 A Uh-huh.

13 Q What, if anything, did you say to Alonzo?

14 A I told him that that was Ayree down there
15 bamming on the door like that.

16 Q And, at this point, was he awake?

17 A He got up then.

18 Q And where did he go?

19 A He stuck his head out the window and asked him
20 what he wanted, had words with him, then he went
21 downstairs.

22 Q And, at that point, were you still looking at
23 who was down there?

24 A No.

25 Q Did you see more than one person in the area?

1 **A** When I looked out the window the first time, I
2 saw him and a female.
3 **Q** A female?
4 **A** Uh-huh.
5 **Q** Did you recognize the female?
6 **A** No.
7 **Q** Okay. After Alonzo got up out of bed, he stuck
8 his head out of the window and spoke to the person
9 you knew as Ayree?
10 **A** Uh-huh.
11 **Q** Did you hear them exchange words?
12 **A** Not exactly.
13 **Q** Okay. Where did Alonzo go?
14 **A** Downstairs to the hill side door.
15 **Q** And could you tell whether or not he went
16 outside the door?
17 **A** He did go outside the door.
18 **Q** Once he went downstairs, did you see the person
19 out back anymore after that?
20 **A** No.
21 **Q** So you didn't look out to follow up to see what
22 was going on back there?
23 **A** No.
24 **Q** Did you hear words being exchanged between one
25 or more people?

1 **A** I heard words being exchanged, but couldn't
2 figure out what the conversation was about.

3 **Q** Was one of the voices Alonzo's?

4 **A** Yeah.

5 **Q** Did you know who the other voice belonged to?

6 **A** I guess it was Ayree.

7 **Q** The only male you had seen out there that night
8 at the tapping was Ayree; is that correct?

9 **A** Uh-huh.

10 **Q** Did you see Ayree anymore that night?

11 **A** No.

12 **Q** But you recognized him as soon as you looked
13 out the window?

14 **A** Yes.

15 **Q** Was there anything obstructing your view once
16 you opened the window when you looked down at the
17 person that was at the back?

18 **A** No.

19 **Q** Did he say anything to you when you looked down
20 there?

21 **A** No. When I immediately saw him, I told Alonzo
22 who it was.

23 **Q** Okay. The police came later that night after a
24 shooting took place; is that correct?

25 **A** Yes.

1 **Q** And did you give them the name that you knew
2 the person to be by?

3 **A** Yes.

4 **Q** Were you able to give them the last name,
5 though?

6 **A** No.

7 **Q** At a later time that day, did you have an
8 opportunity to talk to an investigator, Investigator
9 Mark Vinson?

10 **A** Yes.

11 **Q** And did he have an opportunity to show you some
12 photographs?

13 **A** Yes.

14 **Q** And that was around 8:30 that morning?

15 **A** Uh-huh.

16 **Q** And I'm going to show you this piece of paper.
17 Do you recognize that?

18 **A** Uh-huh.

19 **Q** And is that the photo lineup that you were
20 shown that morning?

21 **A** Yes.

22 **Q** And, also, the second piece of paper, does that
23 indicate where you had identified the person you
24 knew as Avery or Ayree?

25 **A** Yes.

1 **MS. CAMPBELL:** Your Honor, at this time, I'd
2 mark them as State's Exhibits 1 and 2 for
3 identification.

4 **MR. JOHNSON:** I have no objection, Your Honor.

5 (State's Exhibit Number 1, affidavit of
6 photo lineup, and State's Exhibit Number 2, photo
7 lineup, were marked for identification purposes.)

8 BY MS. CAMPBELL:

9 **Q** When Investigator Vinson showed you these
10 photographs that's been marked State's Exhibit 2 for
11 identification, did he tell you who to pick?

12 **A** No.

13 **Q** Did he influence your decision in any way?

14 **A** No.

15 **Q** Did he suggest that you had to pick one?

16 **A** No.

17 **Q** And when you looked at those, did you look at
18 all six of the photographs?

19 **A** Yes.

20 **Q** Did you recognize anyone in the photo lineup?

21 **A** Yes.

22 **Q** And who did you recognize?

23 **A** Avery, number five.

24 **Q** Okay. Now, each one has a number under them;
25 is that correct?

1 **A** Uh-huh.

2 **Q** And the one that you recognized that was number
3 five was the guy you saw outside your window earlier
4 that morning?

5 **A** Yes.

6 **Q** And then you memorialized that by signing off
7 here that you had recognized number five as Avery, I
8 think, is how you put it?

9 **A** Yeah.

10 **MS. CAMPBELL:** Your Honor, at this time, I'd
11 ask permission to hand them up.

12 **Q** Did anyone ever tell you you had to pick
13 someone out of that lineup?

14 **A** No.

15 **Q** And when you viewed the photos, did you even
16 know whether or not the person that you had seen
17 outside your window was actually going to be in
18 there?

19 **A** No.

20 **Q** And the person you recognized from that photo
21 lineup, you recognized him from seeing him outside
22 your window when you heard the tapping that morning?

23 **A** Yes.

24 **MS. CAMPBELL:** That's all I would have, Your
25 Honor.

1 **THE COURT:** Mr. Johnson.

2 **MR. JOHNSON:** Thank you, Your Honor. May it
3 please the Court.

4 CROSS-EXAMINATION

5 BY MR. JOHNSON:

6 **Q** I did not get your last name?

7 **A** Myers.

8 **Q** Ms. Myers, you say that you saw my client
9 there. Is it possible that there was other people
10 out there that you didn't see?

11 **A** No.

12 **Q** It's not possible?

13 **A** Huh-huh.

14 **Q** You said that you only looked down and that you
15 couldn't see anything else later on. Is it possible
16 that somebody else could have been outside?

17 **A** It might be possible.

18 **MR. JOHNSON:** I have no other questions. Your
19 Honor, I have no objection to --

20 **MS. CAMPBELL:** No objection to it, then I don't
21 think we need to put up the investigator.

22 **THE COURT:** If there's no objection, I'll find
23 it's admissible.

24 Anything further?

25 **MS. CAMPBELL:** Nothing further from the State

1 on that issue, Your Honor.

2 **THE COURT:** Is there any other pretrial?

3 **MS. CAMPBELL:** No, Your Honor, I don't believe
4 from the State.

5 **MR. JOHNSON:** Your Honor, at this time, I don't
6 have anything from the defense.

7 **THE COURT:** Okay. Mr. Johnson, I have a motion
8 that was filed by you.

9 **MR. JOHNSON:** That's correct, Your Honor,
10 requesting the State to reveal the deal.

11 **THE COURT:** Yes, sir.

12 **MR. JOHNSON:** At this time, Your Honor, my
13 motion is to request that the State reveal any deals
14 they might have made with any of the witnesses in
15 this matter.

16 **MS. CAMPBELL:** None of them have any pending or
17 other charges that I'm aware of, Your Honor. There
18 have been no deals.

19 **MR. JOHNSON:** Thank you, Your Honor.
20 Your Honor, may we approach?

21 **THE COURT:** Certainly.

22 (Whereupon, there was a bench conference
23 held off the record.)

24 **THE COURT:** You may call for the panel please,
25 Mr. Truitt.

1 **THE CLERK:** Yes, Your Honor.

2 **THE COURT:** And, Ms. Campbell, on behalf of the
3 State, who is the person that will sit with you?

4 **MS. CAMPBELL:** My investigator will be Mark
5 Vinson, Your Honor.

6 (The jury panel enters the courtroom.)

7 **THE COURT:** Good morning, ladies and gentlemen.
8 My name is Alison Lee and I'm the Circuit Court
9 Judge here for General Sessions or Criminal Court
10 this week. And we are about to begin the trial of
11 the case of the State versus Ayree Henderson. In
12 this matter, the Grand Jury for Richland County
13 returned an indictment that reads as follows: That
14 Ayree Henderson did, in Richland County on or about
15 August the 3rd of 2002, feloniously, willfully and
16 with malice aforethought kill one Alonzo Gale by
17 means of a gunshot wound and that said victim died
18 as a proximate result thereof.

19 Now, ladies and gentlemen, Mr. Henderson is
20 charged with murder. And to this indictment, he has
21 entered the plea of not guilty. And by that plea,
22 that casts the burden on the State to establish each
23 and every element of the offense and to prove its
24 case against Mr. Henderson by evidence that
25 convinces a jury of guilt beyond a reasonable doubt.

1 The purpose of this trial, ladies and gentlemen, is
2 to determine whether or not the State will be able
3 to meet that burden.

4 And you all are potential jurors and I need to
5 ask you a series of questions to determine your
6 eligibility to serve as jurors in this particular
7 case.

8 Is there any member of the jury panel that has
9 any knowledge of any of the facts or the issues to
10 be tried in this particular case; if so, please
11 stand?

12 (There was no response.)

13 **THE COURT:** Is there any member of the jury
14 panel who was a member of the grand jury that
15 brought the indictment in this particular case; if
16 so, please stand?

17 (There was no response.)

18 **THE COURT:** Is there any member of the jury
19 panel who is related by blood or marriage or a
20 close, personal friend of the victim in this case,
21 Alonzo Gale; if so, please stand?

22 (There was no response.)

23 **THE COURT:** The State in this particular matter
24 is being represented by Luck Campbell and Bryan
25 Jeffries, if you would, please stand, of the Fifth

1 Circuit Solicitor's Office. Is there any member of
2 the jury panel who is related by blood or marriage
3 or a close, personal friend of either of these two
4 attorneys or if you have any friends -- close,
5 personal friends or relatives within the Fifth
6 Circuit Solicitor's Office; if you would, please
7 stand?

8 (There was no response.)

9 **THE COURT:** The defendant in this case is Ayree
10 Henderson. Mr. Henderson, if you would stand and
11 face the jury panel. Is there any member of the
12 jury panel related by blood or marriage or a close,
13 personal friend of Mr. Henderson; if so, please
14 stand?

15 (There was no response.)

16 **THE COURT:** Thank you, sir.

17 Mr. Henderson is represented by Charlie Johnson
18 of the law firm of Charlie J. Johnson. Is there any
19 member of the jury panel who is related by blood or
20 marriage or a close, personal friend of Mr. Johnson
21 or have you ever been represented by him; if so,
22 please stand?

23 (There was no response.)

24 **THE COURT:** Thank you, sir.

25 Is there any member of the jury panel or a

1 member of your immediate family who is a law
2 enforcement officer or employed with a law
3 enforcement agency; if so, please stand?

4 (Jurors stand.)

5 **THE COURT:** Yes, ma'am, beginning with you,
6 your name please?

7 **JUROR:** Jennifer Welch.

8 **THE COURT:** And is that you or a member of your
9 family?

10 **JUROR:** My husband.

11 **THE COURT:** And can you tell me what agency
12 he's employed with?

13 **JUROR:** It's the South Carolina Department of
14 Corrections, Wateree Correctional Institute.

15 **THE COURT:** And, Ms. Welch, the fact that your
16 husband is employed in that capacity, would that
17 prevent you from being able to listen to the
18 evidence in this case?

19 **JUROR:** I wouldn't think so.

20 **THE COURT:** And would you be able to make a
21 decision based strictly upon the evidence that would
22 be presented?

23 **JUROR:** Yes, ma'am.

24 **THE COURT:** And would you be able to give both
25 the State and the defendant a fair and impartial

1 trial in this matter?

2 JUROR: Yes, ma'am.

3 THE COURT: Thank you. You may have a seat.

4 Yes, sir, your name please?

5 JUROR: James Sauls.

6 THE COURT: And, Mr. Sauls, is that you or a
7 member of your family is employed in that capacity?

8 JUROR: My son, he works with Irmo Police
9 Department.

10 THE COURT: And the fact that your son is
11 employed in that capacity, would that prevent you
12 from being able to listen to the evidence in this
13 case?

14 JUROR: No, ma'am.

15 THE COURT: And would you be able to make a
16 decision based strictly upon the evidence that will
17 be presented in this trial?

18 JUROR: Yes, ma'am.

19 THE COURT: And would you be able to give both
20 the State and the defendant a fair and impartial
21 trial?

22 JUROR: Yes, ma'am.

23 THE COURT: Thank you, sir. You may have a
24 seat.

25 Yes, ma'am, your name please.

1 **JUROR:** Tiffany Conelly.

2 **THE COURT:** And, Ms. Conelly, was that you or a
3 member of your family?

4 **JUROR:** My husband.

5 **THE COURT:** And can you tell me what agency
6 he's employed with?

7 **JUROR:** South Carolina Department of Mental
8 Health.

9 **THE COURT:** And the fact that he is employed in
10 that capacity, would that prevent you, in this case,
11 from being able to listen to the evidence?

12 **JUROR:** No, ma'am.

13 **THE COURT:** And would you be able to make a
14 decision based strictly upon the evidence that will
15 be presented here?

16 **JUROR:** Yes, ma'am.

17 **THE COURT:** And would you be able to give both
18 the State and the defendant a fair and impartial
19 trial?

20 **JUROR:** Yes, ma'am.

21 **THE COURT:** Thank you. You may have a seat.
22 Yes, ma'am, your name please.

23 **JUROR:** Patricia Smith-Jenkins.

24 **THE COURT:** Yes, ma'am. Is that you or a
25 member of your family?

1 **JUROR:** My husband.

2 **THE COURT:** And what agency is he employed
3 with?

4 **JUROR:** Department of Juvenile Justice.

5 **THE COURT:** And the fact that he is employed
6 with that agency, would that prevent you from being
7 able to listen to the evidence in this case?

8 **JUROR:** No.

9 **THE COURT:** And would you be able to make a
10 decision based strictly upon the evidence that will
11 be presented here?

12 **JUROR:** Yes.

13 **THE COURT:** And would you be able to give both
14 the State and the defendant a fair and impartial
15 trial?

16 **JUROR:** Yes.

17 **THE COURT:** Thank you, ma'am. You may have a
18 seat.

19 Is there any member of the jury panel who is a
20 member of, or a contributor to, any group which has,
21 as its primary concern, the promotion of law
22 enforcement or victim's rights, and such agencies
23 would include, but are not limited to, MADD, SADD,
24 CAVE, or CADRE; if so, please stand?

25 (Juror stands.)

1 **THE COURT:** Yes, ma'am, your name please.

2 **JUROR:** Susan Zeller.

3 **THE COURT:** I'm sorry, what's your last name?

4 **JUROR:** Zeller, Z like zebra, Mothers Against
5 Drunk Driving.

6 **THE COURT:** And you are a member or a
7 contributor to one of those agencies?

8 **JUROR:** Yes, ma'am.

9 **THE COURT:** And the fact that you are either a
10 member or a contributor, would that prevent you from
11 being able to listen to the evidence in this case?

12 **JUROR:** No, it wouldn't.

13 **THE COURT:** And would you be able to make a
14 decision based upon the evidence that will be
15 presented here?

16 **JUROR:** Yes, ma'am.

17 **THE COURT:** And would you be able to give both
18 the State and the defendant a fair and impartial
19 trial?

20 **JUROR:** I would.

21 **THE COURT:** And can you tell me what
22 organization you're a member or a contributor to?

23 **JUROR:** Mothers Against Drunk Driving.

24 **THE COURT:** Thank you, ma'am.

25 Ladies and gentlemen, there may be a number of

1 witnesses who may be called to testify in this
2 matter. If the witnesses are present, when I call
3 your name, if you would, please stand.

4 Investigator Mark Vinson of the Columbia Police
5 Department. Is there any member of the jury panel
6 who is related by blood or marriage or a close,
7 personal friend of Investigator Mark Vinson; if so,
8 please stand?

9 (There was no response.)

10 **THE COURT:** Everett Wilson. Is there any
11 member of the jury panel who is related by blood or
12 marriage or a close, personal friend of Everett
13 Wilson; if so, please stand?

14 (There was no response.)

15 **THE COURT:** Terrell Myers. Is there any
16 members of the jury panel who is related by blood or
17 marriage or a close, personal friend of Terrell
18 Myers; if so, please stand?

19 (There was no response.)

20 **THE COURT:** Kathy Wilson. Is there any member
21 of the jury panel related by blood or marriage or a
22 close, personal friend of Kathy Wilson; if so,
23 please stand?

24 (There was no response.)

25 **THE COURT:** Calvin Hinton. Is there any member

1 of the jury panel related by blood or marriage or a
2 close, personal friend of Calvin Hinton; if so,
3 please stand?

4 (There was no response.)

5 **THE COURT:** Janie Gale. Is there any member of
6 the jury panel related by blood or marriage or a
7 close, personal friend of Janie Gale; if so, please
8 stand?

9 (There was no response.)

10 **THE COURT:** Carnell Williams. Is there any
11 member of the jury panel related by blood or
12 marriage or a close, personal friend of Carnell
13 Williams; if so, please stand?

14 (There was no response.)

15 **THE COURT:** Officer W.J. Scobie with the
16 Columbia Police Department. Is there any member of
17 the jury panel related by blood or marriage or a
18 close, personal friend of Officer Scobie; if so,
19 please stand?

20 (There was no response.)

21 **THE COURT:** Officer R.J. Hall also with the
22 Columbia Police Department. Is there any member of
23 the jury panel related by blood or marriage or a
24 close, personal friend of Officer Hall; if so,
25 please stand?

1 (There was no response.)

2 **THE COURT:** Investigator Paul Mead with the
3 Columbia Police Department. Is there any member of
4 the jury panel related by blood or marriage or a
5 close, personal friend of Investigator Mead; if so,
6 please stand?

7 (There was no response.)

8 **THE COURT:** Doctor Clay Nichols who works at
9 Palmetto Richland Memorial Hospital. Is there any
10 member of the jury panel related by blood or
11 marriage or a close, personal friend of Doctor
12 Nichols or ever been treated by him; if so, please
13 stand?

14 (There was no response.)

15 **THE COURT:** Shea Thomas. Is there any member
16 of the jury panel related by blood or marriage or a
17 close, personal friend of Ms. Thomas, who's standing
18 in the back of the courtroom; if so, please stand?

19 (There was no response.)

20 **THE COURT:** Samuel Reighley, Junior, with the
21 South Carolina Law Enforcement Division. Is there
22 any member of the jury panel related by blood or
23 marriage or a close, personal friend of Samuel
24 Reighley; if so, please stand?

25 (There was no response.)

1 **THE COURT:** Judy Spell. Is there any member of
2 the jury panel related by blood or marriage or a
3 close, personal friend of Judy Spell; if so, please
4 stand?

5 (There was no response.)

6 **THE COURT:** Dianne Crawford. Is there any
7 member of the jury panel related by blood or
8 marriage or a close, personal friend of Dianne
9 Crawford; if so, please stand?

10 (There was no response.)

11 **THE COURT:** D.R. Catoe with the Columbia Police
12 Department. Is there any member of the jury panel
13 related by blood or marriage or a close, personal
14 friend of Mr. Catoe; if so, please stand?

15 (There was no response.)

16 **THE COURT:** Chandler Davis with the Richland
17 County Coroner's Office. Is there any member of the
18 jury panel related by blood or marriage or a close,
19 personal friend of Chandler Davis; if so, please
20 stand?

21 (There was no response.)

22 **THE COURT:** Donna Martin with the Columbia
23 Police Department. Is there any member of the jury
24 panel related by blood or marriage or a close,
25 personal friend of Donna Martin; if so, please

1 stand?

2 (There was no response.)

3 **THE COURT:** Christine Montgomery with the South
4 Carolina Law Enforcement Division. Is there any
5 member of the jury panel related by blood or
6 marriage or a close, personal friend of Christine
7 Montgomery; if so, please stand?

8 (There was no response.)

9 **THE COURT:** Hue Tang also with the South
10 Carolina Law Enforcement Division. Is there any
11 member of the jury panel related by blood or
12 marriage or a close, personal friend of Mr. Tang; if
13 so, please stand?

14 (There was no response.)

15 **THE COURT:** Pete Currie with the Columbia
16 Police Department. Is there any member of the jury
17 panel related by blood or marriage or a close,
18 personal friend of Pete Currie; if so, please stand?

19 (There was no response.)

20 **THE COURT:** Investigator Glenn Bulloch with the
21 Columbia Police Department. Is there any member of
22 the jury panel related by blood or marriage or a
23 close, personal friend of Investigator Bulloch; if
24 so, please stand?

25 (There was no response.)

1 **THE COURT:** Captain Brian Redmond with the
2 Alvin S. Glenn Detention Center. Is there any
3 member of the jury panel related by blood or
4 marriage or a close, personal friend of Captain
5 Redmond; if so, please stand?

6 (There was no response.)

7 **THE COURT:** Ira Parnell also with the South
8 Carolina Law Enforcement Division. Is there any
9 member of the jury panel who is related by blood or
10 marriage or a close, personal friend of Ira Parnell;
11 if so, please stand?

12 (There was no response.)

13 **THE COURT:** Joe Powell also with the South
14 Carolina Law Enforcement Division. Is there any
15 member of the jury panel related by blood or
16 marriage or a close, personal friend of Joe Powell;
17 if so, please stand?

18 (There was no response.)

19 **THE COURT:** Is there any member of the jury
20 panel or a member of your immediate family who has
21 ever been either a victim -- let me repeat that. Is
22 there any member of the jury panel or a member of
23 your immediate family or close friend ever been a
24 victim of murder or accused of murder; if so, please
25 stand?

1 (Jurors stand.)

2 **THE COURT:** Yes, sir, your name?

3 **JUROR:** Page Kalish.

4 **THE COURT:** Kalish.

5 **JUROR:** K-A-L-I-S-H.

6 **THE COURT:** And, Mr. Kalish, was that a friend
7 of yours or a member of your family?

8 **JUROR:** My grandmother.

9 **THE COURT:** And the fact that a family member
10 has been such a victim, would that prevent you from
11 being able to listen to the evidence in this case?

12 **JUROR:** No, Your Honor.

13 **THE COURT:** And would you be able to make a
14 decision based upon the evidence that will be
15 presented here?

16 **JUROR:** Yes, Your Honor.

17 **THE COURT:** And would you be able to give both
18 the State and the defendant a fair and impartial
19 trial?

20 **JUROR:** Yes, Your Honor.

21 **THE COURT:** Thank you. You may have a seat.

22 Yes, ma'am, your name please?

23 **JUROR:** Shara Merrett.

24 **THE COURT:** Merrett?

25 **JUROR:** Merrett.

1 **THE COURT:** Is that a member of your family or
2 a friend?

3 **JUROR:** My cousin.

4 **THE COURT:** And the fact that one of your
5 family members has been such a victim, would that
6 prevent you from being able to listen to the
7 evidence in this case?

8 **JUROR:** No, Your Honor.

9 **THE COURT:** And would you be able to make a
10 decision based strictly upon the evidence that will
11 be presented?

12 **JUROR:** Yes, Your Honor.

13 **THE COURT:** And would you be able to give both
14 the State and the defendant a fair and impartial
15 trial?

16 **JUROR:** Yes, Your Honor.

17 **THE COURT:** Thank you. You may have a seat.
18 Yes, ma'am.

19 **JUROR:** Teresa Murphy.

20 **THE COURT:** Marvee?

21 **JUROR:** Murphy.

22 **THE COURT:** Murphy, thank you. And, Ms.
23 Murphy, was that a family member or --

24 **JUROR:** My brother.

25 **THE COURT:** And the fact that your brother has

1 been such a victim, would that prevent you from
2 being able to listen to the evidence in this
3 particular case?

4 **JUROR:** No, Your Honor.

5 **THE COURT:** And would you be able to make a
6 decision based strictly upon the evidence that will
7 be presented here?

8 **JUROR:** Yes, ma'am.

9 **THE COURT:** And would you be able to give both
10 the State and the defendant a fair and impartial
11 trial?

12 **JUROR:** Yes, ma'am.

13 **THE COURT:** Thank you. You may have a seat.
14 Is there any member of the jury panel who has
15 ever been witness to a murder; if so, please stand?

16 (There was no response.)

17 **THE COURT:** Is there any member of the jury
18 panel who has formed or expressed an opinion about
19 any of the issues to be tried in this particular
20 case; if so, please stand?

21 (There was no response.)

22 **THE COURT:** Is there any member of the jury
23 panel that's aware of any bias or prejudice towards
24 either the State or the defendant, Mr. Henderson, in
25 this case; if so, please stand?

1 (There was no response.)

2 **THE COURT:** Is there any member of the jury
3 panel that knows of any reason why you would not be
4 able to serve as a fair and impartial juror in the
5 trial of this particular case; if so, please stand?

6 (There was no response.)

7 **THE COURT:** Is there any member of the jury
8 panel who has formed or expressed an opinion about
9 the guilt or the innocence of the defendant in this
10 particular case; if so, please stand?

11 (There was no response.)

12 **THE COURT:** Is there anything further from the
13 State?

14 **MS. CAMPBELL:** Nothing from the State, Your
15 Honor.

16 **THE COURT:** Anything further from the
17 defendant?

18 **MR. JOHNSON:** Nothing further from the defense,
19 Your Honor.

20 **THE COURT:** Ladies and gentlemen, as your names
21 are called, if you would, please bring all of your
22 belongings and come down and stand in front of this
23 microphone and state your name again.

24 There are, I believe, ten strikes for the
25 defense and five strikes for the State. Do the

1 parties wish to have an alternate?

2 **MS. CAMPBELL:** Yes, Your Honor.

3 **MR. JOHNSON:** Yes, Your Honor.

4 **THE COURT:** One or two?

5 **MS. CAMPBELL:** One's fine.

6 **MR. JOHNSON:** One, Your Honor.

7 **THE COURT:** Thank you.

8 You may proceed, Mr. Truitt.

9 **THE CLERK:** Yes, Your Honor.

10 (During the jury selection process, the
11 jurors were called forward and peremptory strikes
12 were exercised as reflected by the attached voir
13 dire sheet made a part of this record at page 7.)

14 **THE COURT:** Are there any motions with respect
15 to the selection of the jury?

16 **MR. JEFFRIES:** Nothing from the State, Your
17 Honor.

18 **MR. JOHNSON:** We have nothing from the defense.

19 **THE COURT:** Then I'll find the jury qualified
20 pursuant to the Batson versus Kentucky and Jeb
21 versus Alabama.

22 To the remaining members of the panel, I'd like
23 to thank you very much for your willingness to serve
24 as jurors in this case. I'd like to ask that you
25 return downstairs to the jury assembly room for

1 further instructions. Thank you.

2 (The remaining jury panel was excused.)

3 **THE COURT:** Ladies and gentlemen, you have now
4 been selected as jurors in this particular case.
5 I'm going to wait until later to actually swear you
6 as jurors, but I'm going to give you some
7 instructions that I'm going to ask that you follow
8 each and every time we come together.

9 First of all, ladies and gentlemen, now that
10 you have been selected as jurors, I'm going to ask
11 that you not begin to discuss this matter among
12 yourselves until you've heard all of the evidence
13 that has to be presented. Of course, at this
14 particular time, you only know the allegations that
15 are contained in the indictment and perhaps the
16 questions that I have asked may give you some
17 indication of what this case is about, but I ask
18 that you not begin to discuss among yourselves. At
19 this particular point, it's pure speculation. And
20 until you've heard all of the evidence that's to be
21 presented, you are not in the position to be able to
22 determine the facts of this case. And that will be
23 your role, ladies and gentlemen, to determine the
24 facts of this case based upon the evidence that will
25 be presented to you throughout the course of this

1 trial.

2 So I'm going to ask that you not begin any
3 deliberations or discussions about any of the
4 evidence that you hear throughout the course of this
5 trial until you are instructed to actually begin
6 your deliberations, because until you've heard all
7 of the evidence and until you've heard my charge of
8 the law, my instructions on the law to you, you are
9 not in the position to be able to determine the
10 facts and to make a decision about this particular
11 case.

12 Secondly, ladies and gentlemen, I ask that you
13 not allow anyone to approach you to discuss this
14 case with you. It is inappropriate for anyone to
15 come up to you and attempt to discuss this case with
16 you while you're seated as a juror and until you
17 have reached a verdict in this case.

18 If anyone does that, we certainly would like to
19 have the opportunity to investigate to make sure
20 that no one's attempting to influence you in any way
21 and also just to make sure that it does not occur in
22 the future. So we ask that you report it as soon as
23 possible.

24 You can report it to the bailiffs, you can
25 report it to the clerk's office, you can report it

1 to me, but we ask that you do report it so that we
2 can conduct an investigation. If anyone approaches
3 you, please tell them that you are a juror in this
4 case and you cannot discuss it with them and report
5 it as soon as possible.

6 Also, ladies and gentlemen, as you come and go
7 from the courthouse, both at the end of the day and
8 throughout the lunch breaks and other breaks that
9 we'll take throughout the trial, I ask that you not
10 listen to any conversations that you may hear in the
11 hallways. Sometimes the attorneys may be discussing
12 things with each other or with witnesses or there
13 may be conversations taking place in the hallways,
14 and, again, the decisions that you have to make must
15 be based upon the evidence that you hear in this
16 courtroom and it should not be based upon
17 information that you hear outside of this courtroom.
18 And so I ask that you simply not listen to any of
19 those conversations.

20 Ladies and gentlemen, I have a scheduling
21 conflict this afternoon which makes it almost
22 difficult to actually begin the trial at this
23 particular point. What I'm going to do is I'm going
24 to ask that you follow the bailiff out. When you
25 follow the bailiff out, the bailiff will show you a

1 room where you should report tomorrow morning.

2 When you report tomorrow morning and you have
3 all assembled there, of course, you need to go
4 downstairs to actually check in so they'll know that
5 you're present, but do not stay downstairs in the
6 jury assembly room, come straight upstairs to the
7 third floor and someone will direct you to that
8 room. And when you all have assembled at that time,
9 then I'll explain a little bit more about how the
10 trial will progress and we'll actually get started
11 early tomorrow -- well, I call it early tomorrow
12 morning, but about 9:30 tomorrow morning. So I'm
13 going to ask that you report tomorrow morning at
14 9:30.

15 I'm going to give you a couple of additional
16 instructions that I'm going to ask that you follow.
17 I know that your family and friends will want to
18 know what you're doing on jury duty, whether you've
19 been selected as a juror. And, certainly, you can
20 tell them that you have been selected in a trial of
21 a criminal case in which someone has been accused of
22 murder, but I ask that you not discuss it any
23 further than that.

24 Often times when people are discussing things
25 and you're just having a simple conversation, they

1 may ask you questions, they may say things to you
2 that ultimately could influence you in your decision
3 making process and could, in some form or fashion,
4 cause some bias on your part and so I ask that you
5 avoid those conversations. Please tell them that
6 the Judge has asked you not to discuss the case
7 until you have rendered a verdict.

8 Once you have done that, ladies and gentlemen,
9 then you are free to discuss the case with whoever
10 you want, under whatever circumstances you wish to
11 do that, but we just ask that you not engage in
12 those conversations until you have reached a verdict
13 in this case.

14 In addition, ladies and gentlemen, when you
15 report tomorrow morning, I ask that you not bring
16 any reading materials with you. I don't screen what
17 you read. I don't want to screen what you read, but
18 I never know when there's something that you're
19 reading that may have an impact on some issue or
20 some fact to be determined in this case. And so to
21 avoid that either you or your fellow jurors could be
22 influenced by that, we simply ask that you not keep
23 it with you in the jury room.

24 I also ask that when you report in the morning,
25 that you turn off your telephones and beepers or

1 leave them with the bailiffs. Matter of fact, I'm
2 sure they will ask you for your telephones. If you
3 do not wish to turn it off because you need to be
4 connected to your home or your office for whatever
5 reason, we'll keep an eye on it. If it goes off,
6 then we can take a break so that you can address any
7 emergencies that may arise. But we ask that you not
8 keep them with you -- in the jury room with you.

9 And, finally, ladies and gentlemen, I don't
10 know that there will be any media coverage of this
11 particular trial, but to the extent that there may
12 be something in either the newspaper or the
13 television or the radio, I ask that you not listen
14 to it or watch it or read it. Again, for the
15 reasons that that's someone else's recitation of
16 what they've heard or seen throughout the course of
17 this trial and I don't want you to be influenced by
18 what someone else's impressions are of what's going
19 on in the courtroom.

20 You will hear all of the evidence that has to
21 be presented and you will have to make the
22 determination of the facts based upon that evidence
23 and based upon the law that I charge you, so I ask
24 that you not listen to or watch or read or look at
25 any of those programs or news coverage of this

1 particular event.

2 Ladies and gentlemen, again, I'm going to ask
3 that you report tomorrow morning at 9:30. When you
4 have reported tomorrow morning at 9:30 to this jury
5 room or -- I guess, it's down that way, I'm not
6 usually on this floor so I'm disoriented, but when
7 you have reported to the jury room, then we can
8 actually begin the trial tomorrow morning at 9:30.
9 I hope that you have a pleasant afternoon and a
10 pleasant evening. We'll see you tomorrow morning at
11 9:30. Thank you.

12 (The jury was excused for the day.)

13 **THE COURT:** To the extent that there are any
14 witnesses present here today that are to testify or
15 perhaps may testify in this matter, I ask that you
16 all report back tomorrow morning at 9:30. If your
17 name was called out as a potential witness during
18 the voir dire of the jury, then you need to report
19 tomorrow morning at 9:30 unless you were
20 specifically instructed by counsel to report at
21 another time. So I need to make sure that you all
22 are here at 9:30 tomorrow morning.

23 Is there anything else that we need to take up?

24 **MS. CAMPBELL:** Nothing from the State, Your
25 Honor.

1 **MR. JOHNSON:** I have nothing for the defense at
2 this time, Your Honor.

3 **THE COURT:** And Mr. Henderson is still in the
4 detention center?

5 **MR. JOHNSON:** He's still in the detention
6 center.

7 **THE COURT:** I'll ask that they bring him over
8 at nine o'clock so that he can get dressed so that
9 at 9:30, we'll be ready to go.

10 **MR. JOHNSON:** That should be fine, Your Honor.

11 **THE COURT:** All right. Thank you. Then we'll
12 see you all tomorrow morning at 9:30.

13 **MS. CAMPBELL:** Thank you, Your Honor.

14 (Whereupon, the proceedings were concluded
15 for September 21, 2004.)

16 (The following proceedings were held on
17 September 22, 2004.)

18 **THE COURT:** Is there anything that we need to
19 take up before we begin?

20 **MR. JOHNSON:** Yes, it is, Your Honor. Your
21 Honor, we had a pretrial motion concerning how I
22 intend to impeach the credibility of one of the
23 prosecution witnesses, Ms. Dianne Crawford. She has
24 a criminal conviction that we think should be
25 admissible and be allowed to impeach her

1 credibility.

2 **THE COURT:** And what is that?

3 **MR. JOHNSON:** She was convicted in June of '95
4 of crack cocaine possession. She also had a
5 conviction and given 30 days for possession of
6 marijuana at the same date, June 28th, 1995.

7 **THE COURT:** Yes, Ms. Campbell?

8 **MS. CAMPBELL:** May it please the Court, Your
9 Honor. We'll concede that the possession of crack
10 cocaine carries more than one year and it's within
11 the ten year period. However, the simple possession
12 of marijuana I don't believe qualifies because it is
13 not a crime of moral turpitude and it carries less
14 than a year.

15 **MR. JOHNSON:** Your Honor, in response, I think
16 this would be considered a separate conviction for
17 the marijuana charge. She has another conviction of
18 simple possession of marijuana in '84.

19 **THE COURT:** Was it a plea or was it a trial?

20 **MR. JOHNSON:** I see she was arrested in '84 for
21 possession of marijuana.

22 **MS. CAMPBELL:** It's not showing up as a
23 conviction.

24 **MR. JOHNSON:** It doesn't show...

25 **THE COURT:** I think, certainly, the conviction

1 for possession of crack cocaine is a crime for which
2 you could impeach her under Rule 609. I don't think
3 that the possession of marijuana -- it appears to be
4 a simple possession of marijuana which carries less
5 than one year and it is also not a crime of moral
6 turpitude, and so under those circumstances, under
7 Rule 609, there's no basis to allow the impeachment
8 -- allow that conviction to impeach her.

9 **MR. JOHNSON:** Thank you, Your Honor.

10 **THE COURT:** Anything else?

11 **MR. JOHNSON:** The second thing, Your Honor, is
12 the victim character as a defense -- the victim
13 character may come to play in this case because this
14 is a case of -- the case position is one of
15 self-defense. We understand that we cannot refer to
16 any specific incidents as it relates to the victim;
17 however, we wanted to make the Court aware of that.

18 **THE COURT:** Ms. Campbell.

19 **MS. CAMPBELL:** May it please the Court, Your
20 Honor. We would just refer to the most recent case
21 that I have in front of me -- the more recent cases,
22 State versus Rufus Brown, which is a March of 1996
23 opinion, as well as State versus Andrews, which is a
24 1906 opinion, State versus Boyd, which is referred
25 to in these opinions in 1923, State versus Franklin.

1 I would just pass those cases up at this time, Your
2 Honor, with your permission.

3 Your Honor, I think the cases hold quite
4 clearly that specific instances of prior misconduct
5 or convictions are not admissible. However, if he
6 wants to go into pertinent character traits that
7 have to do with this crime, he can do so generally
8 with one of his witnesses. He just can't go on a
9 fishing expedition, however, with our witnesses.

10 He asked me for a copy of the victim's prior
11 record, I've shown it to him. He does have a prior
12 conviction for a drug offense in, I believe, 1998.
13 And he indicates he wants to get into that. I don't
14 understand how that will be probative or relevant in
15 this case or how it will be admissible under any
16 position.

17 I believe he's indicated to me that his client
18 will testify, should he take the stand, that my
19 defendant (sic) was selling drugs. And then he
20 wants to ask his client if he's ever been aware of
21 my victim -- excuse me -- my victim having been
22 arrested for selling drugs before and we feel that
23 that would be improper. Certainly, he could testify
24 if he sold drugs if he wants to, but I don't think
25 he can try to say he was aware of a 1998 conviction.

1 **THE COURT:** Mr. Johnson?

2 **MR. JOHNSON:** Your Honor, it's our position
3 that, at the present time, we do not know -- because
4 no evidence has been presented by the State, we do
5 not know what areas we may be allowed to go into and
6 I do not think that it's -- that it's ripened to
7 that point, at the present time, to -- for the Court
8 to make a ruling on that. We ask that -- I'm sure
9 that if I go into any areas that the State objects
10 to, she will definitely object at that time and I
11 think that's the proper time to address that issue.

12 **THE COURT:** I think it is early to make a
13 decision on it. I would ask, however, that before
14 you ask the questions that you think may go into
15 that area, that you alert the Court so that we can
16 address those questions before they're asked before
17 the jury and objections made so that we can
18 determine at least whether or not that's a subject
19 area that can be explored.

20 **MR. JOHNSON:** I will. Your Honor, also, while
21 I did see the victim's criminal record, I do not
22 have a copy of it. I request to have a copy of it.

23 **THE COURT:** Is there any problem giving him a
24 copy?

25 **MS. CAMPBELL:** No problem, Your Honor. And,

1 Your Honor, thank you, that's exactly what our
2 concern was that any questions, such as, did you
3 know he was a drug dealer or anything of that
4 nature, if he intends to do that on cross, if he
5 would just approach before he asks it in front of
6 the jury.

7 **MR. JOHNSON:** I will approach, Your Honor.

8 **THE COURT:** Anything else we need to take up?

9 **MR. JOHNSON:** Nothing at this time, Your Honor,
10 for the defense.

11 **THE COURT:** You may ask the jury to come in,
12 please.

13 (The jury enters the courtroom at 9:52 a.m.)

14 **THE COURT:** Good morning, ladies and gentlemen.

15 Mr. Thompson, I would like for you to change
16 places with this young lady in the very first seat
17 in the front row with the white sweater on -- shirt.
18 I'm going to ask that you serve as foreperson of
19 this jury.

20 **FOREMAN:** Yes, ma'am.

21 **THE COURT:** And, Madame Clerk, if you would,
22 please swear the jurors.

23 Ladies and gentlemen, if you would, please
24 stand and raise your right hand please.

25 (The jury was duly sworn by the Clerk of

1 Court at 9:54 a.m.)

2 **THE COURT:** Again, ladies and gentlemen, you
3 have now been sworn as jurors in this case. And as
4 jurors, your responsibility will be to determine the
5 facts of this case based upon the evidence that will
6 be presented. What I am going to tell you now,
7 ladies and gentlemen, is by way of an introduction.
8 It is not in place of the formal instructions that I
9 will give you at the conclusion of this trial, but
10 it's by way of an introduction for some of the
11 things that you may have to consider in your
12 responsibility as jurors in this particular case.

13 Now, ladies and gentlemen, this case has been
14 started, as I stated yesterday, by the State against
15 Ayree Henderson. And yesterday I read to you the
16 body of the indictment.

17 Now, ladies and gentlemen, you should
18 understand that this indictment is simply the
19 charging document. It is not evidence. And it may
20 not be considered by you as evidence in this case.
21 The sole reason for this indictment is to be able to
22 bring the charges against this particular defendant
23 and to come to trial in an effort to determine
24 whether or not the State would be able to establish
25 its burden of proving the elements of the crime with

1 which Mr. Henderson has been charged.

2 To this indictment, as I stated yesterday, the
3 defendant has pleaded not guilty. And he is
4 presumed innocent and remains innocent unless and
5 until the State is able to establish for you the
6 defendant's guilt. And the State would have to do
7 that by evidence that firmly convinces you of his
8 guilt beyond a reasonable doubt. And as I stated,
9 the purpose of this trial is to determine whether or
10 not the State would be able to make that burden.

11 Now, under our system, ladies and gentlemen,
12 you are to determine the facts. What I say are not
13 considered facts at all. What the attorneys say
14 throughout the course of this trial are not facts.
15 The facts must be determined based upon the evidence
16 that will be presented to you, that may be in the
17 form of witness' testimony, it may be in the form of
18 photographs or documents or other physical pieces of
19 evidence that you'll have to take with you into the
20 jury room when it's time for you all to begin your
21 deliberations.

22 Under our system of criminal justice, I'm not
23 allowed to make any statements that would influence
24 you at all that could be construed as being comments
25 on the evidence or comments -- or telling you what

1 facts to find in this case. That's not my job.
2 That's not my responsibility. That's your role as
3 jurors to determine the facts of this case based
4 upon the evidence that will be presented to you.

5 Now, on the other hand, ladies and gentlemen, I
6 tell you that just as you are the sole finders of
7 the facts, I am the sole finder of the law in this
8 case. And you must accept the law as I charge it to
9 you when that time comes. If you have any ideas as
10 to what the law should be or what it ought to be or
11 what you think it is or your interpretation of that,
12 you must put all of that aside under your oath as
13 jurors as well. For you must apply the law as I
14 charge it to you.

15 Now, ladies and gentlemen, let me explain a
16 little bit about how the trial will progress. The
17 first thing that you will hear will be the opening
18 statements of the attorneys. Now, their opening
19 statements are not evidence, but they will kind of
20 give you an overview, a little bit more information
21 about what they hope that they will establish for
22 you throughout the course of this trial or they may
23 tell you a little bit more about what this trial is
24 about.

25 I ask that you listen carefully to what they

1 have to say for it will probably give you an
2 opportunity to figure out how to follow along and
3 keep up with the information as it is presented to
4 you.

5 Once they have made those opening statements,
6 then you will hear the evidence. And as I stated,
7 the evidence may come in many forms, it may be
8 witness' testimony or physical pieces of evidence
9 that you'll be able to look at and to take with you.

10 Now, in connection with any evidence that's
11 presented in court, there are certain rules that
12 apply about that evidence and those are legal
13 questions which I must determine. So from time to
14 time, you may hear the attorneys object about
15 certain evidence that's being presented and whether
16 or not that evidence is admissible. I must make a
17 determination as to whether or not it should be
18 admitted.

19 If I sustain an objection, then that means that
20 the evidence will not be allowed in and I ask that
21 you not speculate as to what the evidence might have
22 been or the reasons for the objection. I assure you
23 that we're not trying to hide anything at all from
24 you. We're just trying to make sure that what you
25 consider in determining the facts of this case, the

1 evidence that you hear will be competent evidence,
2 evidence that will help you in your fact finding
3 mission.

4 Now, on the other hand, if I overrule an
5 objection, then that means that the evidence will be
6 allowed in and you will be able to hear it.

7 In addition, from time to time, there may be
8 certain other legal matters that we have to take up
9 and we may need to do that outside of your presence.
10 To the extent that we can do that briefly in court,
11 the attorneys may come up and we'll discuss them
12 here while we're in court. On other occasions,
13 however, I may have to ask that you retire to the
14 jury room so that we can have an opportunity to more
15 fully discuss those legal issues.

16 Again, I ask that you not speculate as to what
17 we're discussing or the reasons we're discussing it.
18 Again, we're just trying to make sure that
19 everyone's rights are protected and we need to have
20 the opportunity to discuss those issues outside of
21 your presence. I will try to do that quickly and
22 efficiently.

23 If, to the extent that I can do that during a
24 lunch break, then you may get an extended lunch time
25 in order to do that. You may leave earlier in the

1 day so that we can have a chance to take up some
2 matters if it occurs at the end of the day. So I
3 will take into consideration that you're sitting in
4 the jury room waiting to come back into court.

5 Once you've heard all of the evidence that has
6 to be presented, then you'll hear again from the
7 attorneys, this time in the form of a closing
8 argument. And, at that time, they will truly be
9 making arguments to you. They will argue portions
10 of the evidence that you've heard in an effort to
11 try to sway you to find the facts in accordance with
12 their view of what happened.

13 Again, their arguments are not evidence, but I
14 ask that you listen carefully to what they have to
15 say, for they may cause you to think about the
16 evidence in a different light, or they may raise
17 questions that you'll want to discuss among
18 yourselves when it's time for you all to begin your
19 deliberations.

20 Then once they have concluded that, then I
21 will, what we call, charge you the law or instruct
22 you as to the applicable law of this case. And then
23 you may begin your deliberations at that particular
24 time.

25 Ladies and gentlemen, I think that we will be

1 here probably all day today and probably all day
2 tomorrow. I ask that you listen very carefully to
3 the evidence as it's presented throughout the course
4 of this trial and I ask that you not take notes. I
5 find that when people are taking notes, they're busy
6 writing down information and they miss something
7 that's being presented.

8 I do understand, however, that there are
9 individuals who find that taking notes will help
10 them in being able to remember information. If that
11 applies to you, please let me know so that I can
12 accommodate you in that regard. But I think if you
13 listen, it will be fairly straightforward and you
14 should be able to follow along and keep up with the
15 information that's being presented.

16 Now, ladies and gentlemen, I've asked
17 Mr. Thompson to serve as your foreperson. And,
18 Mr. Thompson, your responsibility will be able to
19 communicate with me in the event that there's
20 anything that your fellow jurors need throughout the
21 course of this trial.

22 For example, if there's anyone that has any
23 health issues that I need to be aware of for
24 purposes of taking breaks or taking a lunchtime, it
25 will be your responsibility to write me a note about

1 those. In addition, if anyone has any conflicts,
2 for example, in the event that we have to go past
3 five o'clock, if there are any appointments after
4 5:00, for example, child care or day care issues,
5 that I need to be aware of, classes for anyone who's
6 taking night classes, you should write me a note
7 about that so that I can take that into
8 consideration for scheduling the time that we're in
9 court.

10 But more importantly, when this case is
11 submitted to you all to begin your deliberations,
12 your responsibility will be to make sure that
13 everyone has the opportunity to express his or her
14 views about the evidence and about what they believe
15 the facts of the case are and then to coordinate
16 those discussions. And then, ultimately, when you
17 all have reached a verdict, it will be your
18 responsibility to record the verdict on the
19 appropriate form.

20 I ask that you always take a seat right there
21 where you're sitting at this moment. The rest of
22 you are free to sit wherever you would like to sit
23 within the jury box.

24 Now, Mr. Stills, as the alternate, your role is
25 also very important. In the event that one of your

1 fellow jurors will not be able to complete their
2 service for whatever reason, then you will step into
3 that person's shoes and fulfill that obligation. So
4 I ask that you take a seat somewhere on that last
5 row, wherever you would like to sit, just so that we
6 can keep up with your whereabouts as well.

7 The rest of you, as I stated, are free to sit
8 wherever you would like so sit within the jury box.

9 Now, I believe, at this time, ladies and
10 gentlemen, we are ready to hear the opening
11 statements of the attorneys. And I'll ask Ms.
12 Campbell, Mr. Jeffries, if you would like to begin.

13 **MR. JEFFRIES:** May it please the Court, Your
14 Honor.

15 **THE COURT:** Yes, sir.

16 **MR. JEFFRIES:** Mr. Foreman, ladies and
17 gentlemen of the jury, on August 3rd, 2002, the
18 defendant, Ayree Henderson, who sits at this table
19 with his attorney, shot and killed 25-year-old
20 Alonzo Gale. You'll hear that they had an argument.
21 You'll hear that he went to Alonzo's house, six
22 o'clock in the morning, banged on his door until
23 Alonzo came out. And when he came out, they argued
24 and he shot him in the neck and killed him. He was
25 on his own porch, six o'clock in the morning, that's

1 why we're here today.

2 My name is Bryan Jeffries. And I, along with
3 Luck Campbell, will be prosecuting this case on
4 behalf of the State.

5 The defendant is charged, as the Judge told
6 you, with one count of murder.

7 Also seated at the State's table is
8 Investigator Mark Vinson. He's the lead
9 investigator of this case from the Columbia Police
10 Department. Seated behind the State's table is the
11 family, the survivors, of Alonzo Gale.

12 Now, as the Judge told you, he's charged with
13 murder. Now, ironically, although murder is the
14 most serious crime known to our system of justice,
15 it also has one of the shortest definitions. Murder
16 is defined as the unlawful killing of another with
17 malice aforethought either expressed or implied.
18 The unlawful killing of another with malice
19 aforethought.

20 Thus, in order for us to prove murder, what we
21 have to do is first show that an unlawful killing
22 took place and then show -- establish malice
23 aforethought.

24 Now, malice is a term of art. It means
25 wickedness. It means a heart devoid of social duty.

1 Malice can be described as an intentional act of
2 violence. It's conduct that evidences a conscious
3 effort of creating substantial bodily harm to the
4 person of another. Malice has no time limit. It
5 can happen in the blink of an eye or the snap of a
6 finger. And, as I said before, malice can be either
7 expressed or implied.

8 Now, an example of expressed malice will be
9 somebody verbally stating, I'm going to kill you,
10 pulling the trigger and doing it in that sequence.

11 Now, the law recognizes that expressed malice
12 doesn't often occur -- people don't often announce
13 their intention to commit a violent crime, proceed
14 to do it in this tight little sequence, so the law
15 also recognizes implied malice. Now, an example of
16 implied malice is the use of a deadly weapon, such
17 as a handgun or a pistol.

18 Now, the State's burden of proof, the standard
19 for which we must prove the defendant's guilt, is
20 proof beyond a reasonable doubt. That phrase means
21 exactly what it sounds like. It's not proof beyond
22 any possible doubt. It's not proof beyond a shadow
23 of a doubt. It's proof beyond a reasonable doubt.
24 And, in essence, what proof beyond a reasonable
25 doubt means is after hearing the evidence, if you

1 are firmly convinced, just firmly convinced, of the
2 defendant's guilt, then you must find him guilty.

3 Ladies and gentlemen, I submit to you that the
4 evidence you hear in this case will leave you a lot
5 more than just firmly convinced.

6 Now, I want to briefly talk to you about the
7 facts of this case. As I said before, it took place
8 on August 3rd of 2002 at six o'clock in the morning
9 at 921 Marlboro Street, which is where Alonzo --
10 you'll also hear Alonzo Gale described as Moe, that
11 was his nickname. Moe lived at 921 Marlboro Street,
12 Hammond Village Apartments, here in the City of
13 Columbia, Richland County. He lived there with his
14 girlfriend, Terrell, and their two small children.

15 You'll hear that the defendant, Ayree
16 Henderson, came looking for Moe that morning,
17 banging on the door, like I said before, for several
18 minutes until Moe finally came out. Moe's dressed
19 in nothing but his boxer shorts. He comes out
20 there, asks what's going on. They get into an
21 argument and you'll hear that a gun is fired several
22 times by the defendant, multiple times. One of the
23 bullets strikes Moe in his neck, comes out the back
24 and it kills him.

25 Ayree Henderson takes off, leaves the scene,

1 leaves Moe bleeding on his own porch. You'll hear
2 that Moe gets up, he stumbles back into the house,
3 tries to grab the phone to call 911. His
4 girlfriend, Terrell, grabs the phone from him. She
5 calls 911. Meanwhile, he's stumbling through the
6 house, goes outside and collapses on top of his car.
7 People from the neighborhood come out to try to help
8 him. EMS and the police respond immediately, but
9 when they get there, it's too late, he died.

10 Arrest warrants for Ayree Henderson were issued
11 for murder. He turned himself in the next day.
12 He's charged with murder. He's here today and he
13 pleads not guilty. So it's up to the State, it's up
14 to us to prove his guilt beyond a reasonable doubt.
15 That's our burden. That's the burden we accept.
16 It's a burden we take very seriously. And, in this
17 case, ladies and gentlemen, it's a burden we welcome
18 because I submit that you'll have absolutely no
19 doubt as to this defendant's guilt after you hear
20 the evidence in this case.

21 At the close of this case, you'll be asked to
22 render a verdict. The word verdict comes from the
23 Latin phrase to speak the truth. All I ask, all the
24 State asks this week is that you listen to the
25 evidence, that you bring us back a verdict that

1 speaks the truth. And I submit that if you do that,
2 the only truthful verdict that you can render in
3 this case is that the defendant's guilty. Thank
4 you.

5 **THE COURT:** Mr. Johnson.

6 **MR. JOHNSON:** Thank you, Your Honor. May it
7 please the Court.

8 Good morning. Ladies and gentlemen of the
9 jury, my name is Charlie Johnson. I'm a local
10 attorney here in the Columbia area and I represent
11 Ayree Henderson. He's the defendant in this case.
12 Mr. Henderson is 26 years old.

13 Now, he has spent -- he has been in foster
14 homes since he was 12 years old. After leaving
15 foster homes, as an adult, he got in some trouble.
16 He had spent some time in jail. While in jail, he
17 got a GED. Avery had basically lived basically on
18 his own since he's been 12. Now, he's not what you
19 call an angel, but Avery is not a murderer.

20 Now, the State speaks about speaking the truth.
21 Well, I'm glad they said that because, see, if you
22 listen to the State's version, they don't tell you
23 everything, but all I ask you to do is listen to the
24 evidence in this case.

25 This is a case of self-defense. We intend to

1 show by eyewitness testimony that Mr. Avery
2 Henderson, along with another individual, a young
3 lady who you will also see, went to Moe's house, as
4 he is called, the victim in this case, to buy some
5 drugs at six o'clock in the morning. They knocked
6 on the front door, no one answered, and they walked
7 around to the back door and knocked.

8 You will hear evidence that the victim's
9 girlfriend looked out the window and saw that it was
10 Mr. Henderson. At no time did they feel threatened
11 at that time, apparently, because the victim, as the
12 State would call him, came downstairs, six o'clock
13 in the morning, he came downstairs. We intend to
14 show evidence that he came downstairs with a gun in
15 his hand and that they did have an argument or some
16 words at the back door.

17 What the State forgot to tell you is that, I
18 think, the prosecution in his opening statement
19 stated that there was some arguments and then the
20 victim was shot in the neck. Well, they left out
21 about ten minutes of what happened because what he
22 forgot to tell you is that there were some
23 arguments, the victim shut the door, went back
24 inside the house. Avery Henderson, my client, was
25 walking away from the scene.

1 The victim came out of the front door, came
2 around the building, as you will see in the
3 evidence, and there was a second altercation where
4 the victim approached my client with a gun. My
5 client, fearing for his life, grabbed the victim,
6 there was a struggle. As you can see by the
7 evidence, he was shot in the neck. It was not an
8 intentional act on my client and there is no
9 evidence, no one will testify that they ever saw my
10 client with a gun.

11 You will hear some witness testify that the
12 victim owned a gun, but all of a sudden after the
13 incident, nobody couldn't find a gun.

14 You will also see evidence that there is no gun
15 in this case. No gun was ever found.

16 There's also evidence that my client turned
17 himself in the next day. Amazingly, the State
18 forgot to tell you about that.

19 All we ask you to do is to listen to the
20 evidence because there's two sides of every story
21 and then there's also a third side, which is the
22 truth.

23 You, as a jury, have the responsibility -- this
24 case happened two years ago. My client has waited
25 two years to have his day in Court. This is his day

1 in court. You, as the jury, is impartial. You are
2 not here to look out for the well-being of my
3 client. You are not here to look out for the
4 well-being of the deceased victim. Your job is to
5 look at the evidence and make an intelligent
6 decision about what caused the death of Moe.

7 If you, after listening to the evidence, find
8 that my client went there with the intent on killing
9 Moe and did with malice aforethought shoot and kill
10 him, then you have every obligation to find him
11 guilty. However, if, after looking at the evidence,
12 you find that there is reasonable doubt as to what
13 happened or you find that there is evidence that my
14 client inten -- that my client, in self-defense,
15 trying to prevent himself from being killed, was
16 attacked by Moe and as a result of that, resulted in
17 Moe's death, then you have an obligation to find my
18 client innocent as a result of self-defense.

19 I believe that it's our intent that after we
20 have presented all of our evidence to you, that you
21 will also come to the same conclusion that we have,
22 that this was a case of self-defense in a case in
23 which an individual -- two individuals went to
24 another individual's house to buy some drugs and
25 there was an argument. At no time was there any --

1 any pre -- at no time was there any intent by my
2 client going there with the intent to kill anyone.

3 All I ask is that you look at the evidence in
4 an honest and open manner. And as a result of that,
5 I think that you will find my client not guilty.
6 Thank you.

7 **THE COURT:** You may call your first witness.

8 **MR. JEFFRIES:** The State calls Corporal R.J.
9 Hall.

10 ROBERT JOHN HALL,
11 having been duly sworn, testified as follows:

12 **THE CLERK:** Please have a seat in the witness
13 stand and state your full name for the record.

14 **THE WITNESS:** Robert John Hall.

15 **MR. JEFFRIES:** I beg the Court's indulgence.

16 (Pause.)

17 DIRECT EXAMINATION

18 BY MR. JEFFRIES:

19 **Q** Corporal Hall, with whom are you employed?

20 **A** I'm employed with the City of Columbia Police
21 Department.

22 **Q** And what's your rank there?

23 **A** I am a police corporal assigned to West Region
24 out in the Harbison area.

25 **Q** And where were you assigned back in 2002,

1 particularly in August?

2 A August of 2002, I was assigned to Eau Claire,
3 which is the North Region and I was assigned there
4 for approximately 16 years.

5 Q Sixteen years in the Eau Claire region?

6 A Yes, sir.

7 Q And what region did you say that was?

8 A North Region, the northern part.

9 Q How long have you been with the Columbia Police
10 Department all total?

11 A In excess of 19 years and I've got two years
12 prior employment with the City of Cayce.

13 Q So 21 years total in law enforcement?

14 A Yes, sir.

15 Q And what are your general duties as a corporal
16 with the Columbia Police Department?

17 A We're right now assigned to patrol duty. And
18 the corporal is utilized as an assistant to the
19 sergeant when a -- in the absence of the sergeant,
20 the shift supervisor.

21 Q So you have a supervisor role as well?

22 A Part time.

23 Q And back in August 2002, you were assigned to
24 the North Region?

25 A Yes, sir.

1 **Q** And what region does that encompass, what part
2 of Richland County, what part of Columbia, more
3 specifically?

4 **A** North Region is defined as the property north
5 of Calhoun Street. Calhoun stretching from the
6 river all the way down to Harden and everything
7 north to I-20 down Farrow Road and down Main Street
8 and Farrow Road.

9 **Q** Were you working on August 3rd, 2002?

10 **A** Yes, sir, I was.

11 **Q** What shift were you working that day?

12 **A** I was assigned to day shift.

13 **Q** What hours are those?

14 **A** We come in at 5:30 in the morning and leave out
15 at six o'clock in the evening.

16 **Q** 5:30 to 6:00?

17 **A** 5:30 in the morning to 6:00 in the evening,
18 yes, sir.

19 **Q** And you were assigned to the North Region at
20 that time?

21 **A** Correct.

22 **Q** Had you received a call to respond to a scene
23 about 6:00 a.m. that morning?

24 **A** Yes, sir, I did.

25 **Q** And where did you respond to?

1 **A** I was -- they gave out a call of a shooting
2 that had just occurred at 921 Marlboro Street. I
3 was in the patrol vehicle right near River Drive and
4 Sunset, which is about 300, 400 yards from Hammond
5 Village, which is 921 Marlboro Street, and that's in
6 the City of Columbia inside the city -- or the
7 County of Richland.

8 **Q** And, again, what type of call was it that you
9 responded to?

10 **A** Shots fired, one hit.

11 **Q** And what time -- and do you have your incident
12 report to refresh your memory?

13 **A** Yes, I do.

14 **Q** You're using that to refresh your memory?

15 **A** Yes, sir.

16 **Q** What time were you dispatched to 921 Marlboro
17 Street?

18 **A** They gave it out at about 6:21 a.m.

19 **Q** And what time did you arrive at that location?

20 **A** 6:22 a.m.

21 **Q** So you were fairly close by?

22 **A** Within about 35 seconds, 35 to 45 seconds.

23 **Q** And you did respond to that location, responded
24 at 6:22; is that correct?

25 **A** Yes, sir.

1 Q Where were you responding from; do you
2 remember?

3 A River and Sunset, it's right there near the old
4 Piggly Wiggly, the bingo, where River, Sunset and
5 Plymouth Road meet, the Sunset Shopping Center on
6 300 Sunset.

7 Q Okay. Were you alone in your vehicle or were
8 you with another officer?

9 A I was solo.

10 Q Okay. And that -- the location that you
11 responded to 621 -- I'm sorry -- 921 Marlboro
12 Street, is that within the city limits?

13 A Yes, sir, it is.

14 Q Of Richland County?

15 A Yes, sir.

16 Q I'm going to show you a diagram and ask you if
17 you recognize --

18 **MR. JEFFRIES:** If I can have it marked, please,
19 for demonstrative purposes.

20 (State's Exhibit Number 3, diagram, was
21 marked for identification purposes.)

22 Q Let me ask you if you recognize this area of
23 Columbia?

24 A Yes, I do.

25 Q And what location would you have been

1 responding to?

2 **MR. JEFFRIES:** Can I have him step down, Your
3 Honor?

4 **THE COURT:** Yes, sir.

5 (Witness leaves the witness stand.)

6 **THE WITNESS:** I responded from, approximately,
7 over here.

8 BY MR. JEFFRIES:

9 **Q** This is River Drive up here; is that right?

10 **A** This is River Drive and then Sunset forks off
11 in here and you've got Buck's Sport Shop right about
12 here (indicating). I was, approximately, here, came
13 through, and they gave out the call at building two
14 which the -- this is building one on the bottom and
15 it goes up to, I think, 12 and then continues up to
16 the highest number. So I knew that building two was
17 down here. I entered in, went down to the lower
18 level. These apartments are much lower than these
19 apartments. It's terraced off.

20 **Q** Okay. So these are separated by actually a
21 road?

22 **A** That's a roadway, yes, sir.

23 **Q** So this is all one apartment complex?

24 **A** This is one apartment complex. And the street
25 level up here on Marlboro is about level with the

1 roofs of the first apartments. And then this street
2 level is approximate level with the top of the roofs
3 of these apartments, so it terraces off. So I knew
4 to go down and I pulled up into that parking lot.

5 Q So is that a fairly steep hill here?

6 A It's about a 35 or 40 foot elevation
7 difference.

8 Q Okay. And show me again where the location is
9 that you responded?

10 A The parking lot right there.

11 Q Okay. But this unit right here would be...

12 A Building two.

13 Q Building two, okay.

14 A The large one here.

15 Q Okay. If you can stay right there, I'm going
16 to show you another one.

17 (State's Exhibit Number 4, diagram, was
18 marked for identification purposes.)

19 Q What's the difference in this one?

20 A This is a blown-up version of building one, two
21 and three and partial of four.

22 Q Okay. Show the jury again which buildings
23 we're looking at.

24 A This is the lower level. This is building one
25 two, three and partial of four (indicating).

1 Q And the incident location where you responded?

2 A Was right here (indicating).

3 Q And this is building two?

4 A Building two.

5 Q Okay. And show me where that hill is that we
6 were talking about.

7 A This is the road of the -- the center, private
8 access or private drive in between the upper level
9 and the lower level. And this is the lower street
10 and the office is right over here (indicating).

11 Q Okay. So what does the back of this apartment
12 complex look like?

13 A It's -- the little walkway back here is
14 concrete and then the terrain comes up about 35 to
15 40 feet and it's real steep to the roadway. And
16 this roadway is almost at level to the top of this
17 second floor, the crest line. So there's -- it's
18 about a 40 foot decline from the roadway, goes down
19 to the sidewalk, which is about 35, 40 feet
20 elevation difference.

21 Q And let me show you this third diagram or map.

22 (State's Exhibit Number 5, diagram, was
23 marked for identification purposes.)

24 Q How would you describe this map?

25 A This is, I guess, it's a medium-sized blowup --

1 **THE COURT:** I'm sorry, you're going to have to
2 speak a little bit louder to make sure that everyone
3 can hear you.

4 **THE WITNESS:** Yes, ma'am. This is a medium
5 blowup picture of the same, 921 Marlboro Street,
6 which in the center of the picture is the buildings
7 one through three. And it shows, this is the lower
8 level, this is the center level, this is Marlboro
9 Street near Park.

10 BY MR. JEFFRIES:

11 **Q** You said apartments one, two and three are
12 units one, two and three?

13 **A** One, two, three, four and five and this is the
14 office.

15 **Q** Okay. Again, the incident location for this
16 case?

17 **A** Right here (indicating).

18 **Q** And this will be building two?

19 **A** Building two.

20 **Q** Okay. And this area back here again would be
21 the hill?

22 **A** Yes, sir.

23 **Q** So in the front of this building, you have a
24 parking lot; is that fair to say?

25 **A** Correct.

1 Q And then the back is the hill?

2 A Correct.

3 Q Okay. You can have a seat.

4 A (Witness resumes the witness stand.)

5 Q Now, when you first arrived on the scene, what
6 did you first observe?

7 A I pulled up into the parking lot that
8 encompassed buildings one, two and three. And as I
9 pulled up, there was -- the victim was laying right
10 beside the left front tire of a Caprice Classic.

11 The Caprice Classic car was parked in the driveway,
12 or in the parking lot, facing building two and he
13 was on the left front, slouched down.

14 Q And, again, were there any other officers on
15 the scene when you first arrived or were you the
16 first there?

17 A No, sir, I was the first one there.

18 Q Okay. Was there anyone else in the parking lot
19 besides the victim who was on the ground?

20 A Ms. Myers was on the telephone. She came
21 running toward me. There were, I believe, a couple
22 of people that were on the front porch by building
23 three, apartment 3-1.

24 Q You said Ms. Myers, how did you identify Ms.
25 Myers?

1 **A** She told me who her name was or what her name
2 was. And, at that point, I ran up to check on the
3 person, which was the victim, Mr. Gale.

4 **Q** And did she advise you what had happened to
5 him?

6 **A** Not at first. I went up and checked on him.
7 And there was a large amount of blood on the car,
8 the left front fender down the side. And there was
9 a large amount of blood on the ground around
10 Mr. Gale. And there was an extreme amount of blood
11 on Mr. Gale.

12 **Q** So could you pretty much tell that he was the
13 one that was bleeding, causing all this blood?

14 **A** Oh, yes.

15 **Q** Can you describe the -- Ms. Myers, as you call
16 her, describe her physical appearance?

17 **A** She's a small framed, black female,
18 approximately 22, 25. She was on the telephone.
19 Once she came out, she said, He shot him, he shot
20 him. And, at that point, my focus was on first aid.
21 When I got up to Mr. Gale, I could not tell where he
22 was shot, that there was so much blood. And about
23 eight or so seconds into that, once I had gone up to
24 him to check him, he had expelled his last breath
25 and expired.

1 Q Let me take you back. To make it easy, do you
2 see Ms. Myers in the courtroom here today?

3 A Yes, I do.

4 Q And she's who you encountered first when you
5 got to the scene that day?

6 A Yes, sir.

7 Q Okay. And, again, you weren't -- when you
8 first arrived, you weren't aware of the nature of
9 the injury, but you could tell the victim that was
10 bleeding down there that's on the ground --

11 A Dispatch had described or gave out the call as
12 shots fired, one hit, but I could not tell where he
13 was hit because there was so much blood.

14 Q And you were there when he like, as you said,
15 he expired. Was EMS on the scene at this time or
16 was this before they arrived?

17 A No, this was before they arrived. They arrived
18 -- I got there at 6:22 and EMS arrived at 6:27.

19 Q EMS arrived at 6:27, about five minutes after
20 you got there?

21 A Yes, sir.

22 Q And, again, you couldn't actually see the wound
23 to Mr. Gale?

24 A Could not tell.

25 Q What happened when EMS got there; did they

1 attend to him?

2 **A** Yes, sir, they did. And one of the EMS
3 personnel at 6:30 advised that there were no signs
4 of life.

5 **Q** So at 6:30, they advised there were no signs of
6 life?

7 **A** Correct.

8 **Q** In a situation like this where you respond to
9 what appears to be a violent crime or a major crime,
10 who, if anyone else, is notified from Columbia
11 Police Department to respond to the scene?

12 **A** Sergeant Thornton was the supervisor for the
13 squad that morning.

14 **Q** That would have been your supervisor?

15 **A** My supervisor. And I notified that I needed
16 additional units to secure the scene. I had Ms.
17 Myers there. Got additional personnel to come down
18 to tape off the parking lot to secure the building.

19 **Q** So it's your job to secure the scene at this
20 point?

21 **A** Secure the scene.

22 **Q** And how do you go about securing the scene?

23 **A** With the additional manpower. Also, we used
24 the yellow tape to tape off areas to keep onlookers
25 and curious people to keep them out so that if

1 there's any evidence, it's not disturbed.

2 **Q** And y'all did that in this situation?

3 **A** Yes, sir.

4 **Q** What other officers, and you can refer to your
5 incident report, responded to the incident location
6 at that time?

7 **A** There were, Sergeant Thornton was the
8 supervisor and myself, Eric Barber, George Potash,
9 Scott Wilson, Mike Haynes, Leonard Page. And we
10 also notified Lieutenant D.K. Martin, who is our
11 watch commander, who is the lieutenant over the
12 entire city during patrol times.

13 **Q** Now, when these other officers responded, you
14 already taped off the area to preserve the crime
15 scene. Did you have the opportunity to go to other
16 parts of the scene, like the back -- the hill side
17 of the apartment, did you have the opportunity to do
18 that?

19 **A** Yes, sir. Once the scene was controlled in the
20 front and I gathered my notes from the different
21 people, the witnesses, once the body was removed, I
22 went to the back to gather other information for the
23 incident report as to what was found.

24 **Q** And, at this time, you wouldn't have known
25 where the incident had occurred, where the victim

1 may have gotten shot, what particular location at
2 the complex?

3 **A** No, sir. My primary -- being the first
4 officer, the first officer's responsible for
5 securing the scene and also documenting the times
6 for the arrival of personnel, the corner's office,
7 who all's on scene, who actually came into the scene
8 and document the times and dates when they arrive
9 and such.

10 **Q** And did you have an opportunity, at some point
11 after you set up the perimeter to make sure that the
12 crime scene was preserved, did you have the
13 opportunity to go inside the home, inside the
14 apartment two -- apartment 2-2, I'm sorry?

15 **A** Yes, sir.

16 **Q** Was that the apartment you would have went
17 into?

18 **A** Yes, sir.

19 **Q** Would that have been based on the information
20 that you got from Ms. Myers?

21 **A** Yes, sir.

22 **Q** And was it your information that the victim
23 actually lived in that apartment?

24 **A** Yes, sir.

25 **Q** And which apartment number was that?

1 **A** Two dash two.

2 **Q** Two dash two. And did you obtain any
3 information about the vehicle that was covered with
4 blood where the victim was lying next to?

5 **A** I believe that was Ms. Myers' vehicle. That
6 was the 1985 Chevrolet Caprice, four door, and it
7 was white in color.

8 **Q** And what, if any, information did you obtain
9 from Ms. Myers about a possible suspect who might
10 have done that?

11 **MR. JOHNSON:** Objection, Your Honor.

12 **THE COURT:** To the extent that it calls for
13 hearsay, I'll sustain it.

14 **MR. JOHNSON:** Yes, ma'am.

15 **MR. JEFFRIES:** Your Honor, I would submit that
16 if it's a hearsay objection, that this is an excited
17 utterance by the victim's girlfriend in the parking
18 lot.

19 **MR. JOHNSON:** Your Honor, it's our position
20 that --

21 **THE COURT:** You need to rephrase the question.

22 **MR. JEFFRIES:** I will, Your Honor.

23 BY MR. JEFFRIES:

24 **Q** What, if any, information did you obtain about
25 a possible description or a name of a suspect in

1 this shooting?

2 **A** When I initially approached on -- when I
3 arrived on the scene, Ms. Myers was on the phone and
4 said that Avery or Ayree shot him and that was
5 repeated to me.

6 **Q** Are you aware if the family, the actual, I
7 guess, immediate family of the victim, were they
8 notified if you're aware?

9 **A** While I was out on the scene, Ms. Janie Gale --

10 **Q** I'm sorry, what was that name?

11 **A** Janie Gale, the mother of the victim, she and
12 the victim's brother, Calvin Hinton, both arrived on
13 the scene shortly after probably -- probably about
14 six or seven minutes after I had gotten there and --

15 **Q** Some time after the -- after seeing Ms. Myers
16 on the phone, it was some time after that?

17 **A** Correct. And I had to prevent them from coming
18 into the crime scene, we had not gotten the tape up
19 yet. And they were somewhat cooperative. They were
20 distraught, but cooperative.

21 **Q** Let me ask you, how long were you at the
22 incident scene that morning?

23 **A** Approximately, four hours, three and a half to
24 four hours.

25 **Q** Are you aware if photos were taken of the scene

1 that morning?

2 **A** Yes, sir. I.D. tech, Don Catoe, processed the
3 scene.

4 **Q** And in processing the scene, photos were taken?

5 **A** Yes, sir.

6 **Q** I'm going to show you a series of photos. I'm
7 going to have them all marked first.

8 (State's Exhibit Numbers 6 through 16,
9 photographs, were marked for identification
10 purposes.)

11 **Q** Before I show you these photos, if I can take
12 you back, we were talking about the condition of the
13 victim at the scene and I believe you described --
14 described him as covered in blood. What, if
15 anything, do you remember about what he was wearing,
16 what he had on?

17 **A** I believe he had on a pair of white boxer
18 shorts with no top.

19 **Q** No shirt?

20 **A** No shirt, no shoes, no socks.

21 **Q** Okay. And let me show you these photos and ask
22 you to look through them and tell me if you
23 recognize in general what they depict?

24 **A** Exhibit 6 shows a frontal shot of building two.

25 **Q** If I can stop you. What you're looking at is

1 State's Exhibit 6 through 16 and if you can just
2 tell me in general what together they represent as
3 far as the area that's depicted?

4 **A** (Witness reviews photographs.)

5 **Q** Are you aware if that's the unit where this
6 took place, the incident location?

7 **A** Yes, it is.

8 **Q** Okay. And does it seem to you -- is that the
9 way it was -- the way it looked the morning you got
10 there the date of this incident?

11 **A** These are photographs of the building and the
12 surrounding areas of it, yes.

13 **MR. JEFFRIES:** At this time, Your Honor, I'd
14 ask to admit State's 6 through 16.

15 **THE COURT:** Any objection?

16 **MR. JOHNSON:** Yes, Your Honor. I object to --
17 yes, Your Honor. State's 6 through 16 is a
18 representation of the way the apartments look at the
19 present. They're not a representation of the way
20 the apartments looked two years ago.

21 **MR. JEFFRIES:** That's all I asked him if he
22 recognized the area. I didn't -- we have some other
23 photographs that are going to depict the scene.

24 **MR. JOHNSON:** I think he specifically stated,
25 Do they depict the way the area looked at the time

1 that you arrived two years ago, and he responded,
2 Yes.

3 **THE COURT:** That is correct what you asked him.

4 **MR. JEFFRIES:** I can ask him again, Your Honor.
5 BY MR. JEFFRIES:

6 **Q** Does it depict the scene the morning you came
7 out there or is it just the area in general as you
8 remember it? I'll let you look at them again and
9 I'll point your attention to the area right here.
10 Is that the scene you came up on or is that, in
11 general, the area of Hammond Village apartment two?

12 **A** These are photographs of the building and the
13 parking lot layout. And these are not the crime
14 scene photos, no. These are photos of the area
15 around building two, the parking lot --

16 **Q** Do they fairly and accurately depict the
17 apartment complex at Hammond Village at 921 Marlboro
18 Street?

19 **A** Yes.

20 **MR. JEFFRIES:** Again, Your Honor, I'd ask to
21 admit 6 through 16 State's Exhibit.

22 **MR. JOHNSON:** Once again, Your Honor, my
23 objection is those pictures I do not know if -- I
24 think the officer testified that Investigator Catoe
25 took the pictures of the crime scene.

1 **MR. JEFFRIES:** Your Honor, all I asked, do they
2 fairly and accurately depict the scene.

3 **MR. JOHNSON:** And, for the record, Your Honor,
4 I do not know who took those pictures. The officer
5 stated that Officer Catoe took the pictures two
6 years ago. If those pictures were taken since then,
7 I have not seen any evidence to indicate where the
8 pictures came from.

9 **MR. JEFFRIES:** Your Honor, I think the rule is
10 if they fairly and accurately depict the scene or
11 whatever according to the witness --

12 **THE COURT:** I think there's an authenticity
13 question and so I'm going to sustain the objection
14 at this particular time. If you can establish the
15 authenticity of them, then I'll allow it in.

16 **MR. JEFFRIES:** I'm sorry, Your Honor, I didn't
17 hear that last part.

18 **THE COURT:** I said if you can provide the
19 authenticity, the requisite foundation to admit
20 them, then I'll allow them in.

21 **MR. JEFFRIES:** Beg the Court's indulgence.

22 (Pause.)

23 BY MR. JEFFRIES:

24 **Q** I have some more photos I want to show you.
25 I'm going to ask you if you recognize these photos.

1 And I need to have these marked. And, again, it's a
2 series of photos.

3 (State's Exhibit Numbers 17 through 39,
4 photographs, were marked for identification
5 purposes.)

6 Q What I have here is State's Exhibits 17 through
7 39 and I want to just have you look at them and tell
8 me, generally, do these represent the scene as you
9 saw it on the date of this incident, August 3rd of
10 2002, when you responded to the scene?

11 A Yes.

12 Q Specifically, as to State's Exhibit Number 17,
13 do you recognize the individual in that photo?

14 A That's where my car came to a stop and that's
15 myself doing the report.

16 Q So that's your patrol car?

17 A Yes, sir.

18 Q And that's a picture of you at the scene?

19 A Yes, sir.

20 Q And when were these photos taken?

21 A Those were taken that morning.

22 Q And you didn't take these photos?

23 A No.

24 Q Who took these photos if you're aware?

25 A Don Catoe.

1 **Q** He's with Columbia Police Department?

2 **A** He's retired now.

3 **Q** And what was his position back then?

4 **A** He was the I.D. technician.

5 (Pause.)

6 **MR. JOHNSON:** No objection, Your Honor.

7 **THE COURT:** I'm sorry, what was that?

8 **MR. JOHNSON:** I have no objection.

9 **MR. JEFFRIES:** I'd move to put State's Exhibits
10 17 through 39 into evidence.

11 **THE COURT:** Without objection, they're
12 admitted.

13 **MR. JEFFRIES:** Thank you, Your Honor.

14 (State's Exhibit Numbers 17 through 39,
15 photographs, admitted into evidence.)

16 BY MR. JEFFRIES:

17 **Q** And, again, as to State's Number 1 (sic),
18 that's your patrol vehicle?

19 **A** Yes, sir.

20 **Q** And that's you in that --

21 **A** That's a photograph of me from the back.

22 **THE COURT:** I'm sorry, I can't hear a word
23 you're saying. If I can't hear you, there's a good
24 chance the jury can't hear you and the attorneys
25 can't hear you. So you need to speak up, both of

1 you, because your voices are very soft and they're
2 trailing off. So you need to speak loudly.

3 **THE WITNESS:** Yes, ma'am.

4 BY MR. JEFFRIES:

5 **Q** What area does this photo depict, State's
6 Number 17?

7 **A** That depicts where I parked my car when I came
8 to a stop in the parking lot facing building two.

9 **Q** If I can ask you, I think I'm going to need you
10 to step down so I can show the jury.

11 **MR. JEFFRIES:** Your Honor, may he step down?

12 **THE COURT:** You may step down as long as you
13 keep your voices up, please.

14 (Witness leaves the witness stand.)

15 BY MR. JEFFRIES:

16 **Q** And, again, this is your patrol vehicle and
17 what's --

18 **A** This is the white Caprice Classic. This is
19 building one and this is building two here
20 (indicating).

21 **Q** So now you can't see it in this photo, but
22 where would the body be located if we had a full
23 view of that area over there?

24 **A** The left front fender of the white Caprice
25 Classic (indicating).

1 **Q** Okay. What is this photo?

2 **A** This is a photograph of the victim, the left
3 side of the white Caprice Classic. And this is the
4 right front bumper of another police car. I believe
5 this is going to be my police car here.

6 **Q** And when you approached the location, of
7 course, was the body exposed or was it covered up as
8 it is in this photo?

9 **A** We covered the victim.

10 **Q** Would you have done that or would EMS have done
11 it?

12 **A** We supply the blanket. We have blankets in the
13 trunk.

14 **Q** And, again, is this the Chevy Caprice?

15 **A** That's the left front fender of the Chevy
16 Caprice.

17 **Q** And, again, this is another view. And this is
18 all the blood that you saw when you approached the
19 location?

20 **A** Yes, sir.

21 **THE COURT:** Would you please use exhibit
22 numbers when referring --

23 **MR. JEFFRIES:** I'm sorry, Your Honor. That was
24 State's Exhibit Number 20 that I just showed
25 Corporal Hall.

1 BY MR. JEFFRIES:

2 Q And this is State's Exhibit Number 21. Now, I
3 want to show you State's Exhibit Number 24 and ask
4 you what that represents?

5 A This is the sidewalk in front of the apartment
6 door facing the parking lot at 2 dash 2.

7 Q And we talked about it before, on one side of
8 the apartment complex is a parking lot; is that
9 correct?

10 A Correct.

11 Q And on the other side is a hill?

12 A Correct.

13 Q Okay. So now would this be the hill side or
14 the parking lot side door that we're looking at?

15 A This is the parking lot side door.

16 Q And, actually, what -- and this is State's
17 Exhibit 24, what apartment unit are we looking at
18 here, what door is that?

19 A This is two dash two.

20 Q And that would then be from the information you
21 had where Alonzo Gale lived?

22 A Correct.

23 Q And this is a closer view; is that correct,
24 State's Exhibit Number 25?

25 A Correct.

1 **Q** Now, State's Exhibit Number 26, what does it
2 represent?

3 **A** This is the backside or the hill side of the
4 apartment.

5 **Q** And if this photo were to give us more of a
6 view up here, what would we see up here?

7 **A** It's actually to the left of the --

8 **Q** Would that be a hill?

9 **A** -- of the photograph on the other side of the
10 building. This is where the hill side, the 35 or 40
11 foot hill side, goes up to the next tier.

12 **Q** So it would kind of come up from up here?

13 **A** This is a picture taken facing westbound which
14 would be toward Lucius Road sign.

15 **Q** And which one of these units is apartment 2-2,
16 if you can see it from there?

17 **A** It should be this one right here (indicating).
18 There's a power box to the left and just right on
19 the other side of the air conditioner, or right here
20 where this pad is, is two dash two.

21 **Q** Okay. So what would this first door be --

22 **A** This is two dash one. And this is where the
23 sidewalk starts to curve around the side of the
24 building to go back toward the parking lot side.

25 **Q** Okay. So the apartments go one, two, three on

1 back from east to west, I guess, you can say?

2 A Correct.

3 Q And what does State's Exhibit Number 27 depict?

4 A This is a picture of the screen door to the
5 apartment facing the hill side.

6 Q Does this appear to be blood on the door?

7 A Yes, it is.

8 Q And this is actually the screen door we see
9 right here?

10 A The storm door, correct.

11 Q How would you describe this photo?

12 A This is the door to the apartment that faces
13 the hill with the storm door opened.

14 Q So the door is prop -- is it opened to this
15 side?

16 A It opens -- it swings from left to right. The
17 storm door is opened and this is a picture of the
18 back door or the door facing the hill side.

19 Q So you actually seen blood on the inside of the
20 door, as well as on the screen door?

21 A Yes.

22 Q Now, which door is this, State's Exhibit Number
23 30?

24 A This is the back or the porch area.

25 Q Is that hill side or --

1 **A** This is the hill side. The hill is out of the
2 picture, but this is the storm door and the back pad
3 to apartment two dash two.

4 **Q** Two dash two. And I think you referenced this
5 power box earlier in State's Exhibit Number 31, is
6 that what that is?

7 **A** This power box is to the left of the door to
8 two dash two that faces the hill.

9 **Q** So two dash two's door would be located over
10 here?

11 **A** To the right.

12 **Q** Okay. And are you aware where this, State's
13 Exhibit Number 35, where this blood would be located
14 on that back area, the hill side of the apartment?

15 **A** This would be on the hill side of the
16 apartment, but I'm not sure whether it's -- well,
17 here's the corner of the building here, so this
18 would be the back side of two dash one since this is
19 the hill side and then this goes back around to the
20 parking lot side.

21 **Q** So you had observed blood all the way to 2-1
22 back to 2-2 and that sidewalk here?

23 **A** Yes.

24 **Q** In other words, it wasn't all located in one
25 spot?

1 **A** Correct.

2 **Q** Now, let me show you State's Exhibit Number 37-
3 and ask you what area of the apartment complex is
4 this?

5 **A** This was the photograph inside apartment two
6 dash two. And this section here is where the
7 furnace is at. So this would be the parking lot
8 side door facing into the apartment going back to
9 and around into the living room, or the den, to the
10 back door or the hill side door.

11 **Q** So if you walked in the parking lot door, the
12 parking lot side door --

13 **A** This is the door.

14 **Q** -- this would be right there in that entrance
15 way?

16 **A** Yes.

17 **Q** And this is State's Exhibit Number 38, it's the
18 same area. Do there appear to be footprints in the
19 blood?

20 **A** Yes.

21 **Q** I'm going to show you State's Number 39. What
22 do you see depicted in that one?

23 **A** This is an inside shot going, I believe, to the
24 back door or the hill side door. This is the inside
25 of the hill side door.

1 **Q** Okay. You can have a seat.

2 **A** (Witness resumes the witness stand.)

3 **MR. JEFFRIES:** Your Honor, may I publish these
4 photos to the jury?

5 **THE COURT:** Yes, sir.

6 BY MR. JEFFRIES:

7 **Q** And, again, Corporal Hall, you didn't take
8 those photos?

9 **A** No, sir.

10 **Q** But they do depict the scene as you saw it that
11 day?

12 **A** Yes, sir.

13 **Q** You indicated before, I think, you were at the
14 scene for four hours?

15 **A** Three and a half to four hours. I cleared
16 about ten o'clock that morning.

17 **Q** And you didn't take part in the actual
18 processing of the scene? In other words, you didn't
19 pick up evidence or anything like that; is that
20 correct?

21 **A** No.

22 **Q** Have you had any other further involvement with
23 this case since that day?

24 **A** No, sir.

25 **Q** Before testifying here in court?

1 **A** No, sir.

2 **MR. JEFFRIES:** Nothing further, Your Honor.

3 Please answer any questions Mr. Johnson might
4 have for you.

5 **THE COURT:** Mr. Johnson.

6 **MR. JOHNSON:** Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. JOHNSON:

9 **Q** Officer Hall, did you make the determination as
10 to where the actual shot occurred or where the
11 victim was shot?

12 **A** No, sir.

13 **Q** So you had nothing to do with that?

14 **A** No, sir.

15 **Q** Concerning the evidence, the blood evidence, so
16 you did see blood evidence on the corner of the
17 building towards apartment 1-1?

18 **A** There was blood on the sidewalk in the grass to
19 the -- where apartment two dash one, the back corner
20 -- one of the photographs shows the back corner of
21 the apartment, the corner that would be in
22 connection to two dash one which would be away from
23 two dash two's. It would have been in the
24 photographic photos.

25 **MR. JOHNSON:** Your Honor, may I ask the officer

1 to step down?

2 **THE COURT:** Yes, sir.

3 (Witness leaves the witness stand.)

4 BY MR. JOHNSON:

5 **Q** I have State's Exhibit Number 4. For the jury,
6 this is apartment two, right?

7 **A** Building two.

8 **Q** This would be -- just for clarification, there
9 are four apartments in these buildings?

10 **A** Correct.

11 **Q** There's one on each end like single apartments,
12 one bedroom kind of apartments or whatever, and then
13 these are two story apartments in the middle; is
14 that correct?

15 **A** Yes, sir.

16 **Q** Now, the incident occurred in the two story
17 apartment here?

18 **A** Building two -- or apartment two here in
19 building two.

20 **Q** Okay. So, I guess, it would be one, two,
21 three, four is that how they're --

22 **A** Correct. If you're in the parking lot facing
23 the building, it goes one, two, three, four.

24 **Q** And the back door that you referred to, to
25 apartment two, would be somewhere in this area?

1 **A** Somewhere in this area right here (indicating).

2 **Q** But in the picture that you presented, you did
3 say that you found blood evidence on the corner?

4 **A** Correct, back here in between the sidewalk and
5 the grass portion next to the building and the
6 photograph shows the corner of the building on the
7 view of the picture.

8 **Q** But did you find any blood in this area
9 (indicating)?

10 **A** Not that I'm aware of.

11 **Q** Okay. So the blood evidence -- there was blood
12 here and then there were traces of blood coming up
13 to here?

14 **A** Correct.

15 **Q** And then there was a considerable amount of
16 blood here?

17 **A** Correct.

18 **Q** To the door and to the side?

19 **A** And through the apartment.

20 **Q** Through the apartment. And then by the car,
21 there was a considerable amount of blood there?

22 **A** Yes, sir.

23 **Q** By your years of experience, if an individual
24 was shot here at the door, as you had heard, at the
25 door, is there -- what would that indicate if there

1 was blood here? That either he walked there or that
2 it's impossible that he could have been shot here at
3 the corner?

4 **A** I'm not a blood splatter expert, but there was
5 more blood toward the back door step of two dash two
6 and there were -- there was an amount of blood in
7 the grass in the sidewalk area. There was less near
8 the corner and increased toward the back step.

9 **Q** Okay. Now, there was a shot to the neck; is
10 that correct? Well, you can sit back down.

11 **A** (Witness resumes the witness stand.)

12 **Q** When you arrived on the scene, you noticed that
13 the victim was shot in the neck?

14 **A** I could not tell where he was shot due to the
15 amount of blood.

16 **Q** One other question, do you notice -- I guess
17 someone that was shot like that, did he have any
18 blood on his hands?

19 **A** There was blood everywhere. There was such a
20 quantity that I could not discern whether he was cut
21 or shot other than dispatch advising that it was a
22 shots fired, one was hit. I could not determine
23 where he was shot or cut. There was a lot -- there
24 was a lot of blood.

25 **Q** And just for clarification, how much blood

1 would you say that you saw on the corner of the
2 building? Well, let me clarify this for you, maybe
3 this will help you some. Was there any indication
4 of any blood in the grass area around the corner
5 there?

6 **A** Yes, there was.

7 **Q** Did it look like a body or something had fell
8 there or that there was a struggle there?

9 **A** I couldn't tell. The spot was probably about
10 12 or so inches in diameter on the grassy part and
11 then there was the blood spatter on the sidewalk
12 area.

13 **Q** Leading back to --

14 **A** Leading back to the hill side door of two dash
15 two.

16 **MR. JOHNSON:** Thank you. No other questions.

17 **THE COURT:** Anything further?

18 **MR. JEFFRIES:** Nothing further, Your Honor.

19 **THE COURT:** You may step down. Thank you.

20 **MR. JEFFRIES:** Your Honor, may he be excused?

21 **THE COURT:** Any objection?

22 **MR. JOHNSON:** I have no objection.

23 **THE COURT:** You may be excused. Thank you.

24 At this time, ladies and gentlemen, I think
25 this would be a good time to take a morning break.

1 I'm going to ask that you not begin any discussions
2 because, certainly, you've not heard all of the
3 evidence that has to be presented in this matter and
4 it would be inappropriate for you to begin any
5 discussions at this time. Let's take a brief break
6 and then we'll come back and continue on.

7 (The jury retires to the jury room.)

8 **THE COURT:** Let's take a break and we'll come
9 back.

10 (Brief recess.)

11 **THE COURT:** Is there anything that we need to
12 take up before we begin?

13 **MS. CAMPBELL:** Your Honor, I did consult with
14 counsel during the break. And on State's 6 through
15 16 as far as the authenticity, and I'm going to use
16 these with the next witness, I don't believe he has
17 an objection as long as I specify that these weren't
18 taken the day of the shooting, but this is generally
19 how it appeared at the time and it still appears
20 today.

21 **MR. JOHNSON:** That's correct, Your Honor, as
22 long as they specify that those pictures are not as
23 it appeared --

24 **MS. CAMPBELL:** I will put into the record they
25 were not taken the day of the shooting. These were

1 taken at a later date.

2 **THE COURT:** You may ask the jury to come in.

3 (The jury returns to the courtroom.)

4 **THE COURT:** You may call your next witness.

5 **MS. CAMPBELL:** Okay. Your Honor, we would call
6 Terrell Myers.

7 **THE COURT:** Mr. Whittle, would you call for
8 Terrell Myers, please?

9 **MS. CAMPBELL:** Thank you, Your Honor.

10 (Pause.)

11 **BAILIFF:** Your Honor, I've paged Terrell Myers
12 three times in the lobby, but no response.

13 **MS. CAMPBELL:** I'll be glad to call another
14 witness, Your Honor.

15 **THE COURT:** Please do.

16 **MS. CAMPBELL:** The State will call Everett
17 Wilson.

18 **EVERETT WILSON,**
19 having been duly sworn, testified as follows:

20 **THE CLERK:** Please have a seat in the witness
21 stand and state your full name for the record.

22 **THE WITNESS:** My name is Everett Wilson.

23 **THE COURT:** Mr. Wilson, if you would, move
24 closer to the microphone please and please speak
25 loudly so that everyone can hear you.

1 DIRECT EXAMINATION

2 BY MS. CAMPBELL:

3 Q And it's hard to hear in here so you've got to
4 talk real loud, okay?

5 A All right.

6 Q Mr. Wilson, how old are you?

7 A Thirty-three

8 Q Thirty-three?

9 THE COURT: I'm sorry, you need to move closer
10 to the microphone and speak loudly.

11 BY MS. CAMPBELL:

12 Q Thirty-three years old?

13 A Thirty-three.

14 Q And how long have you lived in the Columbia
15 area, sir?

16 A All my life.

17 THE COURT: I can't hear him. All I heard was,
18 My life.

19 THE WITNESS: My whole life.

20 BY MS. CAMPBELL:

21 Q All your life. You've got to talk really,
22 really loud in here. I don't know why the
23 microphone's not working today. Are you currently
24 employed, sir?

25 A Yes.

1 Q And where do you work?

2 A BTC Contractors at the post, Fort Jackson.

3 Q At BTC Contractors at Fort Jackson?

4 A Yes.

5 Q And what kind of work do you do there, sir?

6 A Maintenance, lawn maintenance.

7 Q I'm going to turn your attention back to August
8 of 2002 about two years ago. Where were you living
9 then?

10 A With my mother.

11 Q Okay. You've got to talk louder, okay?

12 A With my mother, Kathy Wilson.

13 Q With your mother, Kathy Wilson. And what area
14 of town were y'all living in at the time?

15 A Hammond Village.

16 Q Hammond Village?

17 A Yes.

18 Q And where is that located?

19 A 921 Marlboro Street, apartment two dash one.

20 Q And you were living in apartment two dash one?

21 A Yes.

22 Q And that apartment complex is there generally
23 like one building with several apartments in it?

24 A Yes.

25 Q And how many stories was your building -- was

1 your apartment?

2 A Four.

3 Q Four apartments?

4 A Four apartments.

5 Q And how many bedrooms were in the apartment you
6 were living in with your mother?

7 A One.

8 Q And where would she sleep at night?

9 A In her bedroom.

10 Q And where would you sleep at night?

11 A On the couch.

12 Q On the couch?

13 A Yes.

14 Q And would that be in the den or living room
15 area?

16 A Living room.

17 Q I'm going to show you a photograph of what's
18 been marked as State's Exhibit 6 for identification
19 and just ask if you recognize that?

20 A Yes.

21 Q And does this photograph fairly and accurately
22 depict -- it was taken at a later date, okay, but
23 does it fairly and accurately depict how your
24 apartment complex appeared back in August of 2002?

25 A Except for the change.

1 **Q** The change?

2 **A** The vinyl siding.

3 **Q** The vinyl siding. But the general structure of
4 the building and the doors are all in the same
5 place?

6 **A** Yes.

7 **MS. CAMPBELL:** Your Honor, at this time, I
8 would offer State's Exhibit 6, I believe, without
9 objection.

10 **MR. JOHNSON:** I have no objection.

11 **THE COURT:** Without objection, it's admitted.

12 (State's Exhibit Number 6, photograph of
13 apartment complex, admitted into evidence.)

14 BY MS. CAMPBELL:

15 **Q** You mentioned that you lived in apartment two
16 dash one?

17 **A** Yes, ma'am.

18 **Q** Can you point here on this and tell me where
19 the door of two dash one would be?

20 **A** To your left.

21 **Q** Is that where my finger is?

22 **A** Yes, ma'am.

23 **Q** So your apartment door is in State's Exhibit 6,
24 the front door to your -- or is it the parking lot?

25 **A** The parking lot.

1 **Q** And in front of -- what I call the front, some
2 people call it the back, though, right?

3 **A** Yeah.

4 **Q** Okay. On this side of your apartment, there is
5 a parking lot; is that correct?

6 **A** Uh-huh.

7 **Q** And is there another door or entry or exit to
8 your apartment?

9 **A** Around the other side, the front, the hill
10 side.

11 **Q** The hill side. So there is a door on the
12 parking lot side and there's a door on the hill
13 side; is that correct?

14 **A** Yes, it is.

15 **Q** And where I have my finger right here, that
16 would be the actual door on the parking lot side
17 where your apartment was located, the one where you
18 were living with your mother?

19 **A** Yes.

20 **Q** And then, of course, on the back side, and I'll
21 show you State's Exhibit 7, which you refer to -- I
22 say it's the back side, some people call it the
23 front side?

24 **A** The front side, yes.

25 **Q** The front side. Is State's Exhibit 7 -- now,

1 this is the hill side, I guess, is the best way to
2 refer to it?

3 **A** Yes, it is.

4 **Q** And is your door shown on this photograph?

5 **A** Yes.

6 **Q** And, again, this photograph was taken at the
7 later time, but does it show generally the set up of
8 the windows and the doors?

9 **A** Yes.

10 **Q** And I'm going to put my finger here, is that
11 where the door was?

12 **A** Yes, it is.

13 **Q** And there's a kind of concrete stoop underneath
14 it, does that indicate a door?

15 **A** Yes, it is.

16 **Q** And then these other things that run up and
17 down, I think one's got a air conditioner, those
18 would be windows?

19 **A** Yes.

20 **MS. CAMPBELL:** Your Honor, at this time, we'd
21 offer State's Exhibit 7, I believe, without
22 objection.

23 **MR. JOHNSON:** No objection.

24 **THE COURT:** Without objection, it's admitted.

25 (State's Exhibit Number 7, photograph of

1 apartment complex, admitted into evidence.)

2 BY MS. CAMPBELL:

3 Q And just for clarification, this would be the
4 back door of the apartment where you were staying
5 with your mother?

6 A Yes.

7 Q And, again, that was two dash one?

8 A Yes.

9 Q The apartment that was next to you, what number
10 would that be; do you remember?

11 A Two dash two.

12 Q Two dash two?

13 A Yes, it is.

14 Q And, again, you're going to have to speak up.
15 And do you remember who was living in that apartment
16 back on August the 3rd of last year?

17 A Terrell and Moe.

18 Q Terrell and Moe?

19 A Yes.

20 Q And the person you refer to as Moe, was that
21 Alonzo Gale?

22 A Yes, it is.

23 Q But everybody called him Moe?

24 A Yes.

25 Q And Terrell and Moe, had they been living there

1 for a while when you were there?

2 A Yes.

3 Q Do you remember exactly how long you had been
4 living in that apartment complex back on August the
5 3rd?

6 A No.

7 Q Had you been there for a period of more than a
8 few days, though?

9 A Yes.

10 Q How did you know Terrell and Moe, just from
11 living next door or how is that?

12 A Just living next door.

13 Q From living next door. I want to turn your
14 attention back to the early morning hours of August
15 the 3rd of 2002, two years ago. Were you in your
16 apartment with your mother that night?

17 A Yes, I was.

18 Q And, again, if your apartment is right here,
19 the front door to their apartment would be, is that
20 where my other finger is pointing?

21 A Yes, it is.

22 Q So your apartment is here on the end?

23 A On the end.

24 Q And then their's would be the next one over?

25 A Yes.

1 Q And on that evening, where -- in the early
2 morning hours after midnight, what were you doing?

3 A Asleep.

4 Q You were asleep?

5 A Yes.

6 Q And, again, you mentioned earlier that you
7 usually slept on the couch, is that where you were
8 asleep that day?

9 A Yes.

10 Q And while you were asleep that morning on the
11 couch, where was your mother; do you know?

12 A She was in her room.

13 Q And I'm going to show you State's Exhibit 7
14 again. If that's your back door, where is the
15 window to the bedroom?

16 A Right here.

17 Q Right where?

18 A (Indicating.)

19 Q Right here?

20 A Yeah, right there.

21 Q So the window to the bedroom would actually be
22 between the apartments 2-1 and 2-2?

23 A Yes.

24 Q The doors, the back door -- or the hill side
25 doors of those apartments; is that correct?

1 **A** Yes.

2 **Q** Okay. And then this other window, where would

3 that have been?

4 **A** The living room.

5 **Q** So the window towards the corner would be

6 towards the living room; is that correct?

7 **A** Yes.

8 **Q** Approximately, 5:00 to 6:00 a.m. that morning,

9 you don't remember what time it was, do you?

10 **A** No, ma'am.

11 **Q** During the course of that morning, though, or

12 evening, was it still dark or light?

13 **A** It was kind of dark.

14 **Q** Kind of dark. Did you get awakened that

15 morning?

16 **A** Yeah, my mom woke me.

17 **Q** Your mom woke you up?

18 **A** Yes.

19 **Q** And when she woke you up, were you in the

20 living room?

21 **A** Yes.

22 **Q** And did your mom, you can't say what she said

23 to you, but, at that point, did you have a

24 conversation with your mother, a brief conversation?

25 **A** Yeah.

1 **Q** And as a result of that conversation, will you
2 tell the jury what you did?

3 **A** After that conversation, I looked out the
4 window where the air condition is, I saw somebody
5 standing on the corner. And after that, I was about
6 to go to the door to see what was going on --

7 **Q** Okay. And, again, you said you looked out the
8 window where you were on the couch, right?

9 **A** Yes.

10 **Q** And you saw someone standing near the corner?

11 **A** Yes.

12 **Q** And what -- did you know that person?

13 **A** No.

14 **Q** And can you describe him for the jury?

15 **A** I can't.

16 **Q** Okay. Was it a white or black male or do you
17 even know that much?

18 **A** I believe he was black.

19 **Q** He was a black male?

20 **A** Yes.

21 **Q** And you didn't know him?

22 **A** No.

23 **Q** And, at that point, I believe you mentioned
24 that he was standing in the back -- you looked out
25 this window, on State's Exhibit 7, where the air

1 conditioning unit was?

2 A Yes.

3 Q And you saw him standing in the back near the
4 corner?

5 A In the back near the corner.

6 Q Okay. Was he on the sidewalk or not; do you
7 remember?

8 A I couldn't tell.

9 Q But was he definitely behind the building near
10 the corner?

11 A He was pretty much where that grill is right
12 now.

13 Q Okay. Where this grill is in this picture.
14 That wasn't there at the time, just for
15 clarification?

16 A No, it wasn't.

17 Q But that was where the person was you saw
18 standing there?

19 A Yes.

20 Q Did you see anyone else at that point when you
21 looked out the back?

22 A That's pretty much it.

23 Q And, at that point, what did you do?

24 A I was going to the door to open it up.

25 Q And when you were going towards the door to

1 open it up, what did you do? What happened?

2 **A** I heard somebody rack one in the chamber, then
3 I heard three shots.

4 **Q** When you said you heard someone rack one in the
5 chamber, can you explain to me what you mean by
6 that?

7 **A** They had loaded the gun. They put a bullet
8 inside the chamber.

9 **Q** Inside the chamber?

10 **A** Yes.

11 **Q** And when you're talking about racking the gun,
12 is that kind of the sound it causes when you pull
13 the chamber back of a semiautomatic?

14 **A** Yes.

15 **Q** It wouldn't be a revolver, it would be a
16 semiautomatic?

17 **A** Semiautomatic.

18 **Q** And you heard that noise, you didn't see it
19 happen, did you?

20 **A** No.

21 **Q** But you heard that noise and then what did you
22 hear?

23 **A** I heard three shots.

24 **Q** Prior to hearing the racking of that, did you
25 hear anyone saying anything?

1 **A** I heard somebody say, You don't know who the
2 fuck you're messing with.

3 **Q** You heard someone say, You don't know who --
4 I'm sorry, the word?

5 **A** The fuck you're messing with.

6 **Q** Who the fuck you're messing with?

7 **A** Yes.

8 **Q** And how much time elapsed between the time you
9 heard that and you heard the chamber being racked,
10 the gun being loaded?

11 **A** Probably about a minute, less than a minute.

12 **Q** Less than a minute. And then how short a time
13 after that, after the gun, were the shots? And you
14 can be -- do you know how much time?

15 **A** No.

16 **Q** Did it all happen quickly?

17 **A** Yes.

18 **Q** Okay. How many shots did you hear?

19 **A** Three.

20 **Q** Where were you when you heard the shots?

21 **A** At the door.

22 **Q** And could you tell where the shots were coming
23 from?

24 **A** It sounded like behind the door.

25 **Q** Right behind the door?

1 **A** Right behind the door.

2 **Q** And, again, the door we're referring to is the
3 door on the hill side?

4 **A** Yes.

5 **Q** Near your apartment?

6 **A** No.

7 **Q** And that would be on State's Exhibit 7 right
8 there?

9 **A** Uh-huh.

10 **Q** And that's where you heard the sound of the
11 shots coming from; is that correct?

12 **A** Yes.

13 **Q** And, again, the one person -- did you see Moe
14 out there that night?

15 **A** No.

16 **Q** The person you saw, though, before you went to
17 the door and heard the words and then the shots and
18 everything -- you heard the shots from behind your
19 door?

20 **A** Yes.

21 **Q** Did you recognize the voice that said the
22 words?

23 **A** No, I didn't.

24 **Q** You were at the door when you heard the shots,
25 you said you moved back?

1 **A** Yes, I did.

2 **Q** And then what happened; what did you hear?

3 **A** I heard a thump noise against the wall.

4 **Q** A thump against the wall?

5 **A** Yes.

6 **Q** And did you know what that was at the time?

7 **A** No.

8 **Q** And after that, what did you hear?

9 **A** I heard Terrell screaming.

10 **Q** Terrell screaming?

11 **A** (Witness nodded head.)

12 **Q** And Terrell would be Terrell Myers who lived

13 next door in 2-2?

14 **A** Yes, ma'am.

15 **Q** And when she was screaming, was she upset,

16 excited?

17 **A** She was upset.

18 **Q** She was upset?

19 **A** (Witness nodded head.)

20 **Q** And what was she screaming?

21 **A** I can't recollect.

22 **Q** You can't recall that?

23 **A** No.

24 **Q** Did you ever see anyone with a gun out there

25 that night?

1 **A** No.

2 **Q** And how long did you actually get an
3 opportunity to view the person you saw out there?
4 Was it seconds?

5 **A** Just a second.

6 **Q** Just a second?

7 **A** (Witness nodded head.)

8 **Q** And, at that point, that's when you went to the
9 door?

10 **A** Yeah.

11 **Q** And it was after you got to the door that you
12 heard what was said, which I won't make you repeat
13 again, the gun being chambered, racked, and then the
14 shots?

15 **A** Yes.

16 **Q** And all of that, once you got to the door,
17 happened quickly?

18 **A** Quickly.

19 **Q** Do you know where your mother was at that
20 point?

21 **A** At that point, she was standing in the living
22 room with me.

23 **Q** And prior to her waking you up, you don't know
24 what was going on out there?

25 **A** No.

1 **Q** Do you -- or did you, prior to all of this
2 happening, know Ayree Henderson?

3 **A** No.

4 **Q** So you would not have been able to recognize
5 his voice?

6 **A** No.

7 **Q** And the voice you heard saying that, you didn't
8 recognize?

9 **A** No.

10 **MS. CAMPBELL:** That's all I have of this
11 witness, Your Honor.

12 **THE COURT:** Any cross?

13 **MR. JOHNSON:** Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. JOHNSON:

16 **Q** Mr. Wilson, I'm going to show you a picture.
17 Is that the picture of your residence?

18 **A** Yeah, right here on the end.

19 **MR. JOHNSON:** Your Honor, can I have the
20 witness step down?

21 **THE COURT:** Yes, sir.

22 (Witness leaves the witness stand.)

23 BY MR. JOHNSON:

24 **Q** I need this to show to the jury --

25 **THE COURT:** You need to speak louder, please.

1 **MR. JOHNSON:** Yes, Your Honor.

2 **BY MR. JOHNSON:**

3 **Q** So this is where you was (sic) living at the
4 time; is that correct?

5 **A** Yes.

6 **Q** And this would be the door that you came to?

7 **A** Yes.

8 **Q** Now, Moe's door would be down here; is that
9 correct?

10 **A** Yes, it is.

11 **Q** So when you looked out of the window, you saw
12 somebody standing here?

13 **A** On the corner.

14 **Q** He was not in front of Moe's door, was he?

15 **A** Not at the time.

16 **Q** Okay. And the shots that you heard was near
17 the corner here; is that correct?

18 **A** The shots I heard was near the door right here.

19 **Q** Your door, though? But not Moe's door, your
20 door?

21 **A** Uh-huh.

22 **Q** Okay. And you heard something hit the wall.
23 And the wall that you heard was the wall of your
24 apartment not Moe's apartment; is that correct?

25 **A** Yeah.

1 Q So the initial shots and everything were near
2 your apartment near the corner; is that correct?

3 A Yeah.

4 Q And not at the back door of Moe's apartment?

5 A Correct.

6 Q You can sit back down.

7 A (Witness resumes the witness stand.)

8 Q The other question I have, the words that you
9 heard, or the conversation that you heard, you say
10 you couldn't recognize the voice?

11 A I couldn't.

12 Q So, therefore, you couldn't say whether it was
13 Moe or the other person, can you?

14 A That's right.

15 Q So you don't know who said it, it could be
16 either one?

17 A It could be either one.

18 MR. JOHNSON: No other questions.

19 THE COURT: Any redirect?

20 MS. CAMPBELL: No redirect, Your Honor. May he
21 be excused to go back to work?

22 MR. JOHNSON: I have no objection, Your Honor.

23 THE COURT: You may be excused. Thank you.

24 MS. CAMPBELL: The State calls Terrell Myers.

25 *****

1 TERRELL NICOLE MYERS,
2 having been duly sworn, testified as follows:
3 **THE CLERK:** Please have a seat in the witness
4 stand and state your full name for the record.

5 **THE WITNESS:** Terrell Myers.

6 DIRECT EXAMINATION

7 BY MS. CAMPBELL:

8 **Q** Terrell, how old are you?

9 **A** Twenty-eight.

10 **Q** And what do you do for a living?

11 **A** I work for the University of South Carolina.

12 **Q** And how long have you been working there,
13 ma'am?

14 **A** Six years.

15 **Q** Do you have any children?

16 **A** Yes.

17 **Q** And how many children do you have?

18 **A** Three.

19 **Q** And how old are your children?

20 **A** Twelve, three and five months.

21 **Q** Did you know a man named Alonzo Gale?

22 **A** Yes.

23 **Q** And how did you know Alonzo Gale?

24 **A** He was my boyfriend.

25 **Q** Did he have a nickname?

1 **A** Yes.

2 **Q** And what was his nickname then?

3 **A** Moe.

4 **Q** Moe?

5 **A** Uh-huh.

6 **Q** When did you first meet Alonzo Gale; do you
7 remember?

8 **A** I met him at a party, maybe --

9 **Q** What year approximately?

10 **A** Probably about 2000.

11 **Q** Around 2000?

12 **A** Uh-huh.

13 **Q** And once you had met him, did y'all start
14 seeing each other?

15 **A** Yes.

16 **Q** And, eventually, did y'all actually move in
17 together?

18 **A** Well, he moved in with me.

19 **Q** He moved in with you?

20 **A** Uh-huh.

21 **Q** And the children that you mentioned you have,
22 were they his children?

23 **A** One of them was.

24 **Q** And how old is that child now?

25 **A** He's three now.

1 Q And what's his name?

2 A Alonzo Gale.

3 Q I want to turn your attention back to August of
4 2002. And just for the record, you don't live in
5 Hammond Village anymore, do you?

6 A No.

7 Q Back in August of 2002, were you living in
8 Hammond Village?

9 A Yes.

10 Q And how long had you been living there?

11 A Approximately, about two years.

12 Q About two years?

13 A Uh-huh.

14 Q And during that period of time, had Alonzo been
15 living with you for some period of time?

16 A No.

17 Q Did he eventually move in with you that summer?

18 A Yeah.

19 Q And during that Summer of 2002, did you know --
20 did you have a neighbor in two dash one named Kathy
21 Wilson?

22 A Yes.

23 Q I want to turn your attention to the evening
24 before all of this took place, okay? That evening
25 before, did you have an occasion to go out?

1 **A** Yes.

2 **Q** And where did you go?

3 **A** I went to -- my sister had a birthday party
4 that night.

5 **Q** And your sister's birthday party -- well,
6 approximately, what time did you go there for the
7 birthday party?

8 **A** About 9:30, ten o'clock.

9 **Q** Did you take your children with you?

10 **A** Yes.

11 **Q** And when you got to the birthday party, was
12 Alonzo or Moe there?

13 **A** At the party?

14 **Q** Yes.

15 **A** No.

16 **Q** Okay. Did he have an occasion to come by the
17 party that night?

18 **A** No.

19 **Q** Later that night, did you return home?

20 **A** Yes.

21 **Q** And, approximately, what time of night was it
22 when you got home?

23 **A** About 1:30.

24 **Q** 1:30?

25 **A** Uh-huh.

1 **Q** And that would be 1:30 a.m.?

2 **A** Uh-huh.

3 **Q** And once you got home, was Alonzo there?

4 **A** No.

5 **Q** Was this a special day for Alonzo?

6 **A** No.

7 **Q** Had he gone out that evening?

8 **A** Uh-huh.

9 **Q** And, approximately, what time -- once you got
10 home at 1:30, what did you do?

11 **A** Went to bed.

12 **Q** Okay. Did you put the children to bed?

13 **A** Uh-huh.

14 **Q** And once you were in bed, did Alonzo come in
15 later than you that night?

16 **A** Yes.

17 **Q** Okay. Approximately, do you remember what time
18 he came in?

19 **A** About three o'clock.

20 **Q** About three o'clock in the morning?

21 **A** Uh-huh.

22 **Q** And when he came in, what did he do?

23 **A** He got in the bed.

24 **Q** After you had been asleep in the bed -- did
25 y'all go back to sleep at that point as far as you

1 know?

2 A Yeah.

3 Q During the early morning hours, turning your
4 attention to around 5:00 or 6:00 a.m. that morning,
5 did something wake you up?

6 A Yes.

7 Q And can you tell the jury what you heard?

8 A I heard a tapping at the parking lot side of
9 the apartment.

10 Q At the parking lot side of the apartment?

11 A Uh-huh.

12 Q And I'm going to show you what's been marked as
13 State's Exhibit 6. Do you recognize this?

14 A Yes.

15 Q And does that show the apartment -- and there
16 are multiple buildings, but, basically, this shows
17 building number two?

18 A Uh-huh.

19 Q So State's Exhibit Number 6 shows building
20 number two. And which one was your apartment, can
21 you point to it for me?

22 A That one (indicating).

23 Q Okay. So if my pen is pointing to this door,
24 would that have been the correct building?

25 A Yes.

1 Q And the one -- so you were one of the two
2 story?

3 A Yes.

4 Q And on either end, I notice, is a one story on
5 this?

6 A Yes, ma'am.

7 Q Who was next to you in the one story?

8 A Ms. Wilson.

9 Q Ms. Wilson?

10 A Uh-huh.

11 Q And you're familiar with her son, Everett?

12 A Yes.

13 Q Okay. Was he living with her at the time?

14 A Yes.

15 Q And when you mentioned that you went to sleep,
16 where did y'all go to sleep that night, were you in
17 your bedroom?

18 A Uh-huh.

19 Q In which story, or which floor, would the
20 bedroom that you went to sleep in that night be on?

21 A On the second level.

22 Q On the second level?

23 A Uh-huh.

24 Q And I notice that there's a window right here
25 above the door?

1 **A** Uh-huh.

2 **Q** What would that window be to?

3 **A** That was my kids' room.

4 **Q** The kids' room?

5 **A** Uh-huh.

6 **Q** And then there's another window, a smaller
7 window there, whose bedroom would that go to?

8 **A** That's the bathroom.

9 **Q** That's the bathroom. And is that the bathroom
10 that you would have been using at the time?

11 **A** Uh-huh.

12 **Q** And then on the back of this complex, what I
13 call the back, some people call it the front, right?

14 **A** Uh-huh.

15 **Q** Because that's been confusing because there's
16 the parking lot side and then the hill side, okay,
17 can we refer to it that way? On the hill side --
18 I'm going to show you State's Exhibit 14, do you
19 recognize that?

20 **A** Yes.

21 **Q** And does that show the back of the building?

22 **A** Yes, ma'am.

23 **Q** Including the windows up where your apartment
24 would be?

25 **A** Yes.

1 **MS. CAMPBELL:** Your Honor, at this time, we'd
2 offer State's Exhibit 14 as being representative of
3 the area.

4 **MR. JOHNSON:** I have no objection.

5 **THE COURT:** Without objection, it's admitted.

6 (State's Exhibit Number 14, photograph of
7 back of apartment complex, admitted into evidence.)

8 BY MS. CAMPBELL:

9 **Q** Your bedroom window on the second floor, was
10 there -- there was a window in the back and on the
11 front, right, but there was a window to your bedroom
12 on the back?

13 **A** Yes.

14 **Q** Which window?

15 **A** Both of them were -- the air condition and the
16 one beside it were both the bedroom windows.

17 **Q** The air condition where the screen's pulled
18 out?

19 **A** Uh-huh.

20 **Q** And then the one beside it would have been the
21 windows to your bedroom; is that correct?

22 **A** Yeah.

23 **Q** You said you first heard a tapping at which
24 door? Was it the parking lot side or the hill side?

25 **A** The parking lot side.

1 Q And did you make any attempt to find out what
2 was making the tapping noise?

3 A I got up and looked out the bathroom window,
4 but didn't see anybody.

5 Q Okay. And you said you looked out the bathroom
6 window, so that would be this window here?

7 A Uh-huh.

8 Q This small window, one over from your
9 children's bedroom window; is that correct?

10 A That's correct.

11 Q And when you looked out, what area of the
12 parking lot did you look into?

13 A I looked -- tried to look down on the porch
14 part.

15 Q And there's a roof there I see?

16 A Yes.

17 Q And could you tell who was at your front door
18 at that point?

19 A No.

20 Q Where was Alonzo when you initially were
21 looking out the bathroom window to try to determine
22 who was tapping at what sounded like the parking lot
23 door?

24 A Still in the bed asleep.

25 Q And, at that point, you didn't see anybody,

1 right?

2 **A** No.

3 **Q** And once you looked out the bathroom window,
4 didn't see anybody, did you see anybody in the
5 parking lot?

6 **A** No.

7 **Q** What did you do?

8 **A** Got back in the bed.

9 **Q** Once you got back into the bed, did you go back
10 to sleep?

11 **A** Not instantly, but I got back in the bed.

12 **Q** Okay. And then tell the jury, once you got
13 back in the bed, what happened?

14 **A** I heard the tapping again and it was coming
15 from the hill side door.

16 **Q** The hill side door?

17 **A** Uh-huh.

18 **Q** What you refer to as --

19 **A** The back.

20 **Q** The back. Some people call it the front,
21 though, right?

22 **A** Yes.

23 **Q** And as you go out your back door, there's kind
24 of a concrete stoop is what I call it?

25 **A** Yes.

1 Q About that deep (indicating)?

2 A Yeah.

3 Q And then as you continue out into the lawn,
4 then there's a quick -- a pretty tall incline right
5 there, right?

6 A Yes.

7 Q And that's why we call it the hill side?

8 A Yeah.

9 Q And when you went out -- when you heard the
10 tapping the second time, do you remember exactly how
11 much time went by from the first to the second time
12 that you heard the tapping?

13 A Just a few minutes.

14 Q A few minutes?

15 A Yeah.

16 Q You weren't looking at your watch or anything,
17 so you can't say exactly how much time?

18 A No.

19 Q But once you got back into bed and then you
20 heard the tapping at a different door?

21 A Yeah.

22 Q And what did you do then?

23 A I got up and opened up the window that doesn't
24 have the air condition in it and looked down and
25 asked who it was.

1. Q So you got up and you looked out the window
2 that doesn't have the air condition and that would
3 be this window right here?

4 A That's correct.

5 Q And when you looked out of that window right
6 there, your hill side door would be over here where
7 my pen is; is that right?

8 A Uh-huh.

9 Q And when you looked down, did you see anything
10 or anyone?

11 A Yes.

12 Q And when you looked down, what did you see?

13 A I saw Ayree standing there.

14 Q You saw Avery standing there. And can you tell
15 this jury, approximately, where you saw Avery
16 standing?

17 A Like right here where this -- right there.

18 Q Right here (indicating)?

19 A Uh-huh.

20 Q Near your back door?

21 A Yeah.

22 Q Which was where you were hearing the tapping or
23 the pounding sound, right?

24 A Uh-huh.

25 Q And when you looked down, was anything

1 obstructing your view?

2 A No.

3 Q What was the lighting like out there that
4 night?

5 A It was light enough I could see on the back
6 side of the house from the lights, the outside
7 lights.

8 Q And when you looked down, you said you saw
9 Avery, or Ayree as you call him, whichever --

10 A Uh-huh.

11 Q He's been called both names?

12 A Yeah.

13 Q And when you looked down there, you recognized
14 it was Avery or Ayree?

15 A Yes.

16 Q Well, tell this jury how do you know him?

17 A We went to school together.

18 Q And when you say you went to school together,
19 what school did y'all go to?

20 A Went to Saint Andrews Middle.

21 Q Saint Andrews Middle School?

22 A Uh-huh.

23 Q And did you continue to see him through middle
24 school and high school?

25 A No.

1 Q Had you seen him, though, in the weeks prior to
2 this incident taking place?

3 A Yes.

4 Q And where had you seen him?

5 A Just out in the area.

6 Q And when you say in the area, would that be in
7 your neighborhood?

8 A Yes.

9 Q And, specifically, would that be in the Hammond
10 Village Complex?

11 A Yes.

12 Q And when was the last time, or do you remember
13 the last time you'd actually seen him right there in
14 the complex?

15 A I can't recall.

16 Q Had it been within a week or two, though?

17 A Yeah, about a week.

18 Q Did you know his last name?

19 A No.

20 Q But you knew his face and you knew a name?

21 A Yeah.

22 Q Be it Avery or Ayree?

23 A Yes, ma'am.

24 Q And when you looked down there, do you remember
25 exactly what you said to him?

1 **A** At first, I asked who was it and he said his
2 name.

3 **Q** Okay.

4 **A** Then he -- Moe got up and asked who was it
5 knocking at the door, and I said Ayree.

6 **Q** Okay. Back up a minute. You said you called
7 down there to the person, you said, Who is it?

8 **A** Uh-huh.

9 **Q** And, at that point, did you know who it was?

10 **A** When he said his name, I knew who it was.

11 **Q** Okay. And in addition to that, did you get a
12 look at his face when he looked up --

13 **A** Yeah --

14 **Q** -- as he talked to you?

15 **A** -- I looked down there.

16 **Q** And is that when you knew it was the Avery you
17 knew from middle school --

18 **MR. JOHNSON:** Your Honor, she's leading the
19 witness.

20 **THE COURT:** Sustained as to leading.

21 **BY MS. CAMPBELL:**

22 **Q** How did you know him?

23 **A** From school.

24 **Q** From school. And in addition to that, had you
25 seen him recently?

1 **A** No.

2 **Q** You had not seen Avery recently?

3 **A** From since school?

4 **Q** Since school?

5 **A** Yeah, I have seen him in the neighborhood.

6 **Q** In the neighborhood, that's what I'm getting
7 to. I'm not trying to trick you, I'm sorry.

8 **A** Okay.

9 **Q** At that point, what happened?

10 **A** After I told him that it was Ayree knocking, he
11 got up --

12 **Q** When you say you told him, who did you tell?

13 **A** I told Moe that it was Ayree knocking on the
14 door like that.

15 **Q** And was Moe at the window at that point?

16 **A** He got up and went to the window.

17 **Q** Okay. And that's when you told him it was
18 Avery?

19 **A** Uh-huh.

20 **Q** And what happened?

21 **A** He -- Ayree was down outside saying words to
22 him and he got up and went downstairs.

23 **Q** So when he came over to the window, Ayree said
24 something to him?

25 **A** Yeah.

1 Q Do you know what that was?

2 A No.

3 Q Had you backed off away from the window?

4 A Yes, because my baby was crying.

5 Q Okay. So your attention was back on your
6 child?

7 A Yeah.

8 Q Who was, I believe, 18 months old at the time?

9 A Uh-huh.

10 Q And at that point, what did Moe do?

11 A Went downstairs.

12 Q What was Moe wearing when he got out of bed
13 that day -- that morning?

14 A Boxers, just his boxer shorts.

15 Q Did he have on anything else?

16 A No.

17 Q And once he went downstairs, could you tell
18 where he went?

19 A He went out the hill side door.

20 Q The hill side door?

21 A Uh-huh.

22 Q And how do you know he went out the hill side
23 door?

24 A Because I heard the door slam behind him.

25 Q And that would be the door where the tapping --

1 the second set of tapping occurred?

2 A Yeah.

3 Q On the hill side?

4 A Uh-huh.

5 Q And how long did it take him to go out the
6 door?

7 A Two minutes, a minute.

8 Q Did it appear that he went straight downstairs
9 and out the door?

10 A Yes.

11 Q Did you hear him wandering around the apartment
12 or anything before he exited?

13 A No.

14 Q Once you said you heard the door slam, you were
15 still tending to your child at that point?

16 A Uh-huh.

17 Q Did you hear anything else going on?

18 A I heard arguing going on outside, but couldn't
19 understand what they were saying, but they were
20 fussing about something.

21 Q And do you know how many voices you heard
22 outside?

23 A Just two.

24 Q Two. And did you know who one of those voices
25 was?

1 **A** Yeah.

2 **Q** Who was that?

3 **A** Alonzo.

4 **Q** And did you know who the other voice was?

5 **A** Ayree's.

6 **Q** And so when you heard the argument, the first
7 argument you heard was a verbal argument?

8 **A** Uh-huh.

9 **Q** But you don't know what was being said?

10 **A** No.

11 **Q** What's the next thing you heard?

12 **A** After I heard the arguing, I heard like
13 struggling going on like on the concrete side of the
14 back -- on the hill side, and a few seconds later, I
15 heard shots.

16 **Q** And do you remember how many shots you heard?

17 **A** About three.

18 **Q** And do you know -- you heard the verbal
19 argument first and then you heard what sounded like
20 somebody fighting, physically?

21 **A** Yeah.

22 **Q** What did it sound like?

23 **A** Like somebody's feet was tussling on the ground
24 or something.

25 **Q** And, at that point, what did you hear?

1 **A** After the tussling, I heard the gunshots.

2 **Q** Did you hear anybody say anything specifically
3 or were you able to tell what they were saying or
4 anything?

5 **A** No. After the gunshots, I heard a female voice
6 say, Oh, shit, you shot him.

7 **Q** And you mentioned you heard a female voice and
8 it said what?

9 **A** Oh, shit, you shot him.

10 **Q** And, at that point, did you hear anything else
11 from outside?

12 **A** No.

13 **Q** Once Moe, or Alonzo, had exited and gone out
14 the back, did he ever come back in prior to the
15 shots being fired?

16 **A** No.

17 **Q** Had you seen a female out there when you looked
18 down and saw Ayree that -- when you went to the
19 window?

20 **A** Yes.

21 **Q** And I forgot to ask you this, but where was she
22 standing in regards to Ayree?

23 **A** She was standing like on the side of him.

24 **Q** On the side of him?

25 **A** Uh-huh.

1 Q And did you know who that person was?

2 A No.

3 Q What kind of description were you able to give
4 of her; do you remember what she looked like?

5 A At that time, she was a dark, slim-built female
6 with, I guess, white color, blond hair in her head.

7 Q And you didn't recognize her?

8 A No.

9 Q Not as you had Ayree?

10 A No.

11 Q And then right after the gunshots, you heard a
12 female voice say, You shot him?

13 A Yeah.

14 Q Once you heard the shots, what happened?

15 A After the shots, maybe about a couple of
16 seconds later, I heard tapping again at the hill
17 side door.

18 Q At the hill side door?

19 A Uh-huh.

20 Q And, again, that would be the door in your
21 apartment?

22 A Yes.

23 Q And what did you do when you heard tapping?

24 A I opened the door and Moe came in, was
25 holding --

1 **Q** So at this point -- when you heard all of the
2 things and what the female was saying, were you
3 upstairs or downstairs?

4 **A** I was upstairs.

5 **Q** Was the window open or shut?

6 **A** It was open.

7 **Q** And, at that point, you were still tending to
8 your child?

9 **A** Yeah.

10 **Q** But once you heard the shots, you were able to
11 hear those specific words?

12 **A** Yeah.

13 **Q** When you went downstairs, you said you opened
14 the door?

15 **A** Uh-huh.

16 **Q** And what was there?

17 **A** Moe standing there bleeding heavily.

18 **Q** Heavily?

19 **A** Uh-huh.

20 **Q** And what happened after you opened the door?

21 **A** He walked in and picked up the phone and was
22 trying to dial 911 and I took the phone out of his
23 hand and dialed 911.

24 **Q** And you called for help?

25 **A** Uh-huh.

1 Q Did you call the police, 911?

2 A Uh-huh.

3 Q And what was Moe doing while you were trying to
4 call the police or you were calling the police?

5 A He was walking through the hill side door and
6 came through the living room and went through the
7 parking lot side door.

8 Q He went to the parking lot side door?

9 A Uh-huh.

10 Q And did he go out into the parking lot area?

11 A Yes.

12 Q What did you do?

13 A I walked behind him.

14 Q What were you saying?

15 A I was telling him to -- trying to keep him to
16 stand, you know, stay still and stand up, but I
17 couldn't hold him up, so he fell onto his car and
18 then collapsed on the ground.

19 Q Did the police respond that morning?

20 A Yes.

21 Q Once he collapsed on the ground, were you
22 trying to get Moe help?

23 A Uh-huh.

24 Q And did other people come out there to try to
25 help him?

1 **A** Ms. Williams came out to help and Mr. Williams.

2 **Q** And the police came?

3 **A** Yes.

4 **Q** And the ambulance came?

5 **A** Uh-huh.

6 **Q** But they weren't able to help him?

7 **A** No.

8 **Q** When the police came, did they -- were you
9 trying to tell them what you knew?

10 **A** Uh-huh.

11 **Q** And were you able to give them a name?

12 **A** Yes.

13 **Q** Were you able to give them a full name?

14 **A** No.

15 **Q** Later that morning, did the police ask you to
16 go down to the police station to try to give a
17 statement?

18 **A** Yes.

19 **Q** Were you still upset at that point?

20 **A** Yes.

21 **Q** Did you attempt to give them a statement?

22 **A** Yes, ma'am.

23 **Q** And I'm going to show you this three page
24 statement. Is that the statement that you gave?

25 **A** Yes.

1 Q And, basically, you told them what you've told
2 the jury here today?

3 A Yes.

4 Q And some of the order is out of order, but is
5 it all of the correct information?

6 A Yes, ma'am.

7 Q That morning you gave them information about
8 who was out there?

9 A Uh-huh.

10 Q The -- and did Investigator Vinson, who's
11 sitting right here, did he show you a lineup that
12 morning?

13 A Yes, ma'am.

14 Q And prior to showing you a lineup, did he tell
15 you which one to pick?

16 A No.

17 Q Did he influence your decision in any way?

18 A No.

19 Q And when you looked at this lineup, which is
20 State's Exhibit 2 for identification, did you even
21 know whether or not the person you knew as Ayree was
22 going to be in there?

23 A No.

24 Q And I'm going to show you State's Exhibit 2,
25 other than the sticker that's on this now, is that

1 in the same condition as when you looked at it?

2 **A** Yes.

3 **Q** And when you looked at this photo lineup, did
4 you look at all six pictures?

5 **A** Yes.

6 **Q** And were you able to recognize anyone?

7 **A** Yes, ma'am.

8 **Q** And which one did you recognize?

9 **A** Number five.

10 **Q** How did you recognize number five?

11 **A** Because I knew him and I saw him.

12 **Q** And that's the person you saw out there banging
13 on your back door wanting Alonzo?

14 **A** Yeah.

15 **Q** I'm going to show you State's Exhibit 1. Did
16 the investigator have you sign that indicating who
17 you had identified?

18 **A** Yes.

19 **MS. CAMPBELL:** Your Honor, at this time, I
20 offer State's Exhibit 1 and 2.

21 **MR. JOHNSON:** I have no objection, Your Honor.

22 **THE COURT:** Without objection, they're
23 admitted.

24 (State's Exhibit Number 1, affidavit of
25 photo lineup, and State's Exhibit Number 2, photo

1 lineup, were admitted into evidence.)

2 BY MS. CAMPBELL:

3 Q Do you remember how long Moe had been living in
4 your apartment at this time, approximately?

5 A I can't say.

6 Q Did Moe have a gun in your apartment?

7 A No.

8 Q Why was that?

9 A Huh?

10 Q Why did Moe -- did anyone have a gun in your
11 apartment?

12 A No.

13 Q Was there a gun in your apartment?

14 A At one time, it was.

15 Q At one time, it was?

16 A Uh-huh.

17 Q And did you, specifically, have that gun
18 removed?

19 A Yes.

20 MR. JOHNSON: Your Honor, she's still leading
21 the witness.

22 THE COURT: Sustained as to leading.

23 BY MS. CAMPBELL:

24 Q What happened to that gun?

25 A He got rid of it.

1 **Q** And when you say, He got rid of it, who got rid
2 of it?

3 **A** Moe got rid of it.

4 **Q** And how long before this occurrence was that?

5 **A** May have been like a year, a year before.

6 **Q** Why did you want -- were you adamant about the
7 gun?

8 **A** Because I don't like guns.

9 **Q** What was Moe wearing when he left the apartment
10 that morning?

11 **MR. JOHNSON:** Your Honor, that's been asked and
12 answered.

13 **THE COURT:** Sustained.

14 BY MS. CAMPBELL:

15 **Q** Do you remember what he was wearing?

16 **A** That morning?

17 **Q** Uh-huh.

18 **A** Just his boxers.

19 **MR. JOHNSON:** Your Honor, once again, that's
20 been asked and answered.

21 **THE COURT:** Sustained.

22 BY MS. CAMPBELL:

23 **Q** The person that you saw outside your window
24 down on the sidewalk that day?

25 **A** Uh-huh.

1 Q Do you see him here in the courtroom?

2 A Yes.

3 Q Does he look the same as when you saw him that
4 night?

5 A No.

6 Q How has his appearance changed?

7 A He's gained weight and he looks cleaned up now.

8 Q But you can still recognize his face?

9 A Yes, ma'am.

10 Q And can you point him out for the jury?

11 A Right there (indicating).

12 Q Right there?

13 A Uh-huh.

14 Q And what shirt or coat does he have on?

15 A A white shirt and tie.

16 Q Sitting over here at the defense table?

17 A Yes.

18 Q And this is the man you're identifying?

19 A Yes.

20 Q And that's the same man that you identified in
21 the photo lineup?

22 A Yes.

23 MS. CAMPBELL: Your Honor, may the record
24 reflect she's identified the defendant?

25 THE COURT: Noted.

1 **MS. CAMPBELL:** Thank you. That's all I have.

2 **THE COURT:** Any cross?

3 **MR. JOHNSON:** Thank you, Your Honor. May it
4 please the Court.

5 CROSS-EXAMINATION

6 **BY MR. JOHNSON:**

7 **Q** Ms. Myers, this is the same man that identified
8 his self that night to you as being Ayree, isn't it?

9 **A** Yes.

10 **Q** So he never tried to hide or say that he wasn't
11 Ayree when he came to the window, did he?

12 **A** No.

13 **Q** At the time that -- at the time that he came to
14 the back window, you looked out the window, you said
15 it was Avery, did he seem to be upset?

16 **A** Not to my knowledge.

17 **Q** Okay. Did Moe appear to be upset?

18 **A** Yeah, from him knocking on the door.

19 **Q** So he was upset the minute he got out of bed;
20 is that correct?

21 **A** Yes.

22 **Q** Okay. Did he say anything that you heard him
23 say?

24 **A** No.

25 **Q** But you could tell he was upset?

1 **A** Yeah.

2 **Q** So he went downstairs?

3 **A** Uh-huh.

4 **Q** And you heard them arguing downstairs; is that,
5 basically, what you heard?

6 **A** Yeah.

7 **Q** And you were tending to your baby; is that
8 correct?

9 **A** Correct.

10 **Q** Now, you stated that after they argued for a
11 while, you heard some shots; is that correct?

12 **A** Uh-huh.

13 **Q** But that's not exactly what happened, is it?

14 **A** That's what happened.

15 **Q** Do you remember giving a statement to the
16 police that the Solicitor has just mentioned to you?

17 **A** Yes.

18 **MR. JOHNSON:** Your Honor, may I approach the
19 witness?

20 **THE COURT:** Yes, sir.

21 **BY MR. JOHNSON:**

22 **Q** I'm going to show this to you. Is that a copy
23 of your statement and is that your handwriting?

24 **A** No, it's not my handwriting.

25 **Q** But is that your statement?

1 **A** Yes.

2 **Q** And that's the statement that you gave to the
3 police?

4 **A** Yes.

5 **Q** Do you see a highlighted area there?

6 **A** Uh-huh.

7 **Q** Could you please read that to the jury?

8 **A** I was going back to bed and I heard tapping
9 again and realized it was coming from the back door.
10 I peeked out and asked who it was. He said it was
11 Avery. I could also see it was Avery. Moe had
12 gotten up and came to the door and told him not to
13 come around -- not to be coming around that time of
14 morning.

15 **Q** So you did hear him say something?

16 **A** Yeah.

17 **Q** Okay. Also in the statement, after the
18 argument, would you please read the top part of
19 that?

20 **A** Alonzo came inside, closed the back door and
21 went out the front door.

22 **Q** Okay. So let me ask you, so he went
23 downstairs, they had an argument and you heard that;
24 that's correct?

25 **A** Uh-huh.

1 Q So he came back inside the house; is that
2 correct?

3 A He came back inside after he was shot.

4 Q Please read your statement to refresh your
5 memory --

6 A I read it.

7 Q -- and then let me ask you that again. Well,
8 read the whole statement, please. It's very
9 important.

10 A (Witness complies.)

11 Q Did you read it all?

12 A I read it plenty of times.

13 Q Okay. Now, let me ask you the question again.
14 Did he come back inside the house?

15 A After he was shot, yes, he did.

16 Q In your statement here, you stated he came back
17 into the house before he was shot?

18 A No, I didn't.

19 Q Let me read this to you and tell me -- this is
20 the statement that you give to the police. Well,
21 better yet, I'll let you read it.

22 A It says, Alonzo came inside, closed the back
23 door and went out the front door.

24 Q Continue to read.

25 A Avery and Moe were still having words. I heard

1 what sounded like firecrackers, maybe three or four.

2 **Q** Continue to read.

3 **A** And almost instantly I heard the tap at the
4 back door and I opened the door, Moe was standing
5 there bleeding heavily. He was walking through the
6 house, grabbed the phone. I took the phone from
7 him, dialed 911. Moe went out through the front
8 door and collapsed by the car.

9 **Q** Okay. So by your own statement, he did not go
10 to the back door and was shot at the back door when
11 he first went outside, he actually shut the back
12 door and came back inside the house. Now, you're
13 not saying you didn't say that?

14 **A** I mean, if it's on paper, then I said it. But
15 he came -- he went downstairs out the hill side
16 door. And when he came back in, he came back
17 through that same door and went out the front door.

18 **Q** And then you heard shots after he went out the
19 front door?

20 **A** No. I heard the shots when he came -- when he
21 came back in, when he went out the first time, I
22 heard the shots. Then he came back through the back
23 door and walked through the front door, the parking
24 lot side door.

25 **Q** But in your statement, did you not say that

1 they argued at the back door, he came back inside
2 and went out the front door and then you heard
3 shots?

4 **A** If it's on paper, then I said it. I mean, I --
5 I mean...

6 **Q** Well, we're trying -- I'm not trying to -- to
7 make you mislead anything, but it's very important
8 that you tell the truth?

9 **A** And I'm telling the truth.

10 **Q** In your statement here, you stated that they
11 went downstairs to the back door; is that correct,
12 and you heard words?

13 **A** Yes.

14 **Q** Then you stated that Moe came back inside, shut
15 the door and went out the front door. And then here
16 you say, approximately, three minutes or so, you
17 heard shots. So now -- now you're saying that he
18 went to the back door, was shot at the back door, so
19 which is it?

20 **A** He came downstairs, went out the hill side
21 door, the argument took place back there. He got
22 shot, came back through the hill side door and went
23 out the parking lot side door.

24 **Q** Then why would you add that other ingredient of
25 him coming back inside the door if it wasn't so?

1 **A** I mean, I don't know.

2 **Q** Could it be that you were telling the truth
3 then and now you're lying?

4 **A** I'm not lying neither time.

5 **Q** Do you understand what perjury is?

6 **A** Yes.

7 **Q** And you understand the consequences of perjury?

8 **A** Yes.

9 **Q** Are you -- did you ever see Moe sell drugs at
10 your house?

11 **A** No.

12 **Q** Were you aware of it?

13 **A** No.

14 **Q** Did you ever see Avery with a gun?

15 **A** No.

16 **Q** So you didn't see what happened, did you?

17 **A** No.

18 **Q** When you gave your -- you said here on the
19 stand that you heard a female said, Oh, shit, you
20 shot him; is that correct?

21 **A** Yes.

22 **Q** When you give your statement, the written
23 statement that you give right after the scene, you
24 didn't mention that, why?

25 **A** I don't know.

1 Q Could it be because it didn't happen?

2 A No, it did happen.

3 Q It happened today, but you didn't mention it
4 then, don't you think that was important?

5 A It might have was important. I mean, when the
6 investigators talked to me, it was right after this
7 happened. I was upset and there was a lot going on
8 then.

9 Q You're not upset and a lot is not going on now?

10 A It still is -- I mean, a lot is still going on
11 now and I'm still upset about it.

12 Q Let me ask you a question. Do you see this
13 young lady sitting right here in the stand, right
14 behind us with her hand up?

15 A Yes.

16 Q Is that the woman that was standing outside?

17 A I can't say what she looked like. I mean, she
18 doesn't have white hair in her hair now.

19 Q Other than the white hair, does she appear to
20 be the woman that was standing out there?

21 A I don't know.

22 Q You said Moe -- when you was (sic) asked on
23 your statement, the question was asked, Did Moe own
24 a gun, you stated, He owned one, I don't know where
25 it at at the present time; do you remember saying

1 that?

2 **A** Uh-huh.

3 **Q** Why didn't you tell them that he did own one
4 because he got rid -- had gotten rid of it a year
5 earlier if that was the case?

6 **A** He asked me did he have a gun. Not that
7 particular day, he did not have a gun, but he did
8 have one and he got rid of it way before this
9 happened.

10 **Q** Why didn't you tell the police that then?

11 **A** I did tell them.

12 **Q** So in your statement when you stated that he
13 came back in the house -- where do you hear the
14 shots at? Where did you hear the shots, right
15 outside of your door?

16 **A** It sounded like they was coming from off the
17 hill side of the apartment.

18 **Q** So he wasn't shot in front of your door?

19 **A** No.

20 **Q** So when you said that he came back in the
21 house, shut the door and went out the front door,
22 that wasn't true?

23 **A** It was true. After he was shot, he went out
24 the parking lot side door.

25 **Q** But the way you wrote it in your statement is

1 different?

2 **A** Well, I didn't write it.

3 **Q** Did you sign it?

4 **A** I signed it, but I didn't write it.

5 **Q** Did you read it?

6 **A** Yeah.

7 **MR. JOHNSON:** Your Honor, may we approach?

8 **THE COURT:** Yes, sir.

9 (Whereupon, a bench conference was held off
10 the record, in the presence of the jury, but out of
11 the hearing of the jury.)

12 BY MR. JOHNSON:

13 **Q** And just one final question. You do not know
14 what happened outside the door that night, do you?

15 **A** No, I don't.

16 **Q** So you do not know if --

17 **MR. JOHNSON:** No other questions then.

18 **THE COURT:** Any redirect?

19 **MS. CAMPBELL:** Just a couple.

20 REDIRECT EXAMINATION

21 BY MS. CAMPBELL:

22 **Q** Terrell, when he asked you about telling the
23 truth and everything, have you told the truth here
24 today?

25 **A** Yes.

1 **Q** And you aren't trying to tell them stuff you
2 didn't know, like what happened out back, are you?

3 **A** No.

4 **Q** But just as it is in your statement, I don't
5 mean to play with words, he did go out the back
6 door, come back and -- excuse me -- the hill side
7 door, come back in that door and go out the parking
8 lot door?

9 **A** Yes.

10 **Q** And you said that back then just as you told
11 them now?

12 **A** Uh-huh.

13 **MS. CAMPBELL:** Thank you.

14 **MR. JOHNSON:** Just one follow-up, Your Honor.

15 RECROSS-EXAMINATION

16 BY MR. JOHNSON:

17 **Q** So you stated he only came through the house
18 one time?

19 **A** Yes.

20 **Q** In your statement, just one paragraph here,
21 that you give, would you please read that first
22 paragraph completely one last time?

23 **A** Moe had seen Avery around, but doesn't --

24 **Q** No, that's not the one.

25 **MS. CAMPBELL:** Objection, Your Honor. May we

1 approach?

2 **THE COURT:** Yes, ma'am.

3 (Whereupon, a bench conference was held off
4 the record, in the presence of the jury, but out of
5 the hearing of the jury.)

6 BY MR. JOHNSON:

7 **Q** The part here where it says, Alonzo came back
8 in the door, will you please read from here down to
9 here?

10 **A** Alonzo came inside, closed the back door and
11 went out the front door. Avery and Moe was still
12 having words. I heard what sounded like
13 firecrackers, maybe three or four, and almost
14 instantly I heard the tap at the back door. When I
15 opened the door, Moe was standing there bleeding
16 heavily. He walked through the house and grabbed
17 the phone. I took the phone out and dialed -- took
18 the phone out of his hand, dialed 911. Moe went out
19 through the front door and collapsed by the car.

20 **Q** So by your own statement that you wrote here,
21 he actually came through the house one time, went
22 out the back, you heard shots and he came through
23 the house a second time, is that correct, by what
24 you wrote here?

25 **A** By what's there, yeah.

1 **MR. JOHNSON:** No other questions.

2 **THE COURT:** You may step down.

3 You may call your next witness.

4 **MS. CAMPBELL:** Thank you, Your Honor. The
5 State will call Kathy Wilson.

6 KATHY WILSON,
7 having been duly sworn, testified as follows:

8 **THE CLERK:** Please have a seat in the witness
9 stand and state your full name for the record.

10 **THE WITNESS:** My name is Kathy Wilson.

11 DIRECT EXAMINATION

12 BY MS. CAMPBELL:

13 **Q** And, Ms. Wilson, how old are you?

14 **A** I'm 53 years old.

15 **Q** And how long have you lived in the Columbia
16 area?

17 **A** Just since April of 2002.

18 **Q** April of 2002?

19 **A** (Witness nodded head.)

20 **Q** And when you moved to Columbia in April of
21 2002, do you -- are you familiar with an area called
22 Hammond Village?

23 **A** Yes, ma'am, that's where I moved to.

24 **Q** And you moved there. And when you moved in
25 Hammond Village, did you meet any of your neighbors?

1 **A** Yes, ma'am. As a matter of fact, Moe was one
2 of the first ones I met while I was moving. He
3 helped me move my stuff in the apartment.

4 **Q** Okay. And the person that you knew as Moe, was
5 his real name Alonzo Gale?

6 **A** Yes, ma'am.

7 **Q** And where did he live?

8 **A** He lived next door with Terrell, apartment two
9 dash two.

10 **Q** Two dash two?

11 **A** Yes, ma'am.

12 **Q** And over the course of that spring and summer,
13 did you have an occasion to get to know Moe and
14 Terrell?

15 **A** Yes, ma'am.

16 **Q** And you saw them on a regular basis?

17 **A** Yeah, you know, going in and outside.

18 **Q** And you talked to them on multiple occasions?

19 **A** Yeah.

20 **Q** You have a son named Everett, I believe?

21 **A** Yes, ma'am.

22 **Q** And back in the Summer of 2002, was he living
23 with you?

24 **A** Yeah -- well, when I first moved in, he wasn't.

25 **Q** He wasn't?

1 **A** No, ma'am.

2 **Q** Did he later come to live with you?

3 **A** Yes, ma'am.

4 **Q** And how long had he been living with you when
5 all of this occurred?

6 **A** He'd been living with me about a month or two.

7 **Q** And I'm going to show you what's been marked as
8 State's Exhibit 16. It's already in evidence. Do
9 you recognize that?

10 **A** Yes, ma'am. That's the hill side of both
11 apartments.

12 **Q** The hill side?

13 **A** Yeah.

14 **Q** And just to clarify for the jury, I refer to it
15 as the front and the back incorrectly, but do
16 different people think the front's the front and the
17 back --

18 **A** Yeah. Well, in reality, the hill side part of
19 the apartments, they're called the front by housing
20 and the parking lot side is called the back.

21 **Q** So even though, for some reason, I call it the
22 opposite --

23 **A** Yeah.

24 **Q** -- refer to it as the hill side and the parking
25 lot, that's the best way to distinguish it?

1 **A** Yeah. For right now, yeah.

2 **Q** Okay. And this one, State's Exhibit 16, does
3 that depict the area including the back door to your
4 apartment?

5 **A** Yes, ma'am. I live on the far end up there.

6 **Q** When I say the back door, I should have said
7 the hill side door; is that correct?

8 **A** Yes.

9 **Q** And you said that you lived on the far end?

10 **A** Yes, ma'am.

11 **Q** If I put my finger right there.

12 **A** It's up there by that grill.

13 **Q** Would that be pointing to your actual hill side
14 door?

15 **A** That's my apartment stoop, yeah.

16 **Q** What you refer to as the front?

17 **A** Yeah.

18 **Q** And some people refer to as the back?

19 **A** Yeah.

20 **Q** And, again, the front of the complex, and I
21 show you what's been marked as State's Exhibit --

22 **MS. CAMPBELL:** Beg the Court's indulgence.

23 (Pause.)

24 **Q** I show you State's Exhibit 10. Do you
25 recognize that?

1 **A** Yeah, that's the parking lot side.

2 **MS. CAMPBELL:** Your Honor, at this time, we'd
3 offer into evidence Number 10 and Number 16, Your
4 Honor.

5 **MR. JOHNSON:** I have no objection, Your Honor.

6 **THE COURT:** Without objection, Exhibits 10 and
7 16 are admitted.

8 (State's Exhibit Number 10, photograph of
9 apartment complex from parking lot side, and State's
10 Exhibit Number 16, photograph of apartment complex
11 from hill side, were admitted into evidence.)

12 BY MS. CAMPBELL:

13 **Q** And where would your apartment be in this
14 picture looking at it from the parking lot side?

15 **A** My apartment is on the end right there.

16 **Q** On this end down here?

17 **A** Yes.

18 **Q** And then I asked you about Terrell Myers and
19 Alonzo or Moe, where would they be living?

20 **A** Their apartment was right here (indicating).

21 **Q** The parking lot side of their apartment would
22 be right there. So they were basically, literally,
23 your next-door neighbors?

24 **A** Yeah.

25 **Q** Turning your attention to the evening of August

1 the 2nd into the early morning hours of August the
2 3rd, were you in your apartment that evening?

3 A Yes, ma'am.

4 Q And what were you doing after midnight?

5 A In bed asleep.

6 Q In bed asleep?

7 A (Witness nodded head.)

8 Q And, at some point during the early morning
9 hours, turning your attention to 5:00 or 6:00 a.m.,
10 did something wake you up?

11 A Yes, ma'am. I heard a loud knocking and
12 kicking on the door from the parking lot side.

13 Q From the parking lot side?

14 A Yes, ma'am.

15 Q So the first thing that got your attention was
16 you heard a loud knocking or kicking from the
17 parking lot side?

18 A Yes, ma'am.

19 Q And that would be in State's Exhibit 10?

20 A Yes, ma'am.

21 Q Was it -- could you tell where it was coming
22 from in the parking lot side?

23 A It was close -- I could hear it close to my
24 apartment. My bedroom is right next to their living
25 room.

1 Q Your bedroom is next to their living room?

2 A And when you come in through the parking lot
3 side, you go in through the kitchen and my bathroom
4 is right there. And I keep my bathroom door open at
5 night and I can hear everything on that side.

6 Q Could you tell whether or not it was at your
7 door?

8 A No, it wasn't at my door.

9 Q But you could tell it was nearby?

10 A Yes.

11 Q And after you heard that initial knocking at
12 the front, did you hear any -- did you get up to see
13 anything at that point?

14 A No, ma'am. I tried to, you know, tend to my
15 own business, but the knocking stopped.

16 Q The knocking stopped?

17 A Yeah.

18 Q And do you recall how long the knocking at the
19 front park -- in the parking lot side went on?

20 A It wasn't that long.

21 Q Okay. And then it stopped?

22 A Yes, ma'am.

23 Q And what was the next thing that caught your
24 attention after the knocking on the front side?

25 A I heard the knocking come around to the hill

1 side, knocking on Terrell's door.

2 Q And you could tell that was coming from --

3 A Right there, because the door is right by my
4 bedroom window.

5 Q And just for clarification, in State's Exhibit
6 16, do you see that door?

7 A Yes, ma'am.

8 Q Which door would that be?

9 A This door is Terrell's and that's my bedroom
10 window.

11 Q Okay. This door has a concrete marker at the
12 bottom?

13 A Yes, ma'am.

14 Q And then this finger over here shows where your
15 window was?

16 A Yes, ma'am.

17 Q And that's the bedroom where you were sleeping?

18 A Yes, ma'am.

19 Q Do you remember if your window was open or
20 shut?

21 A I keep my window shut, but you still can hear
22 everything outside.

23 Q Was it the same kind of knocking that you heard
24 before?

25 A It was hard, loud knocking.

1 **Q** Do you recall what happened next? Did you look
2 out at that point?

3 **A** No, I didn't look out the door.

4 **Q** And then what happened?

5 **A** But shortly after I kept hearing the knocking,
6 I heard Terrell talking to somebody and I heard her
7 call the name Ayree. And shortly after that, I
8 heard the hill side door open and it was Moe.

9 **Q** Was that your door that opened?

10 **A** No, Terrell's door.

11 **Q** Terrell's door next door?

12 **A** Yeah. And it was Moe. And I heard him say
13 something to the effect, Man, why you knocking on my
14 door like this. And right after that, I didn't hear
15 anything else, but I heard scuffling, fighting. So
16 I got up and I woke my son up and I told my son --

17 **Q** Where was your son sleeping that night?

18 **A** He was in the living room on the couch. I
19 said, Everett wake up, Moe out there fighting with
20 somebody. And after that --

21 **Q** Then what did you hear?

22 **A** He looked out the window. And when he opened
23 the door, I heard the gun click. After that, I
24 heard three shots.

25 **Q** Did you hear anyone after -- you first heard

1 Moe when he came to the door say, Why are you
2 knocking on my door like that?

3 A (Witness nodded head.)

4 Q And then later did you hear any other voices
5 ever say anything?

6 A Yeah. I heard somebody say, Man, I told you
7 I'm not the one to be fucked with, like that. They
8 wrote it wrong in the statement, but that's what was
9 said.

10 Q They wrote it in the statement. Man, I don't
11 want to be --

12 A Man, I told you I'm not the one to be fucked
13 with.

14 Q The first voice you heard when you heard -- was
15 Moe's?

16 A Right.

17 Q When he came to the door and asked him, Why are
18 you knocking on my door like that?

19 A That's right.

20 Q The next voice was it the same voice you heard
21 earlier or did you recognize the voice?

22 A It wasn't Moe's voice.

23 Q And what did he say?

24 A He said, Man, I told you I'm not the one to be
25 fucked with.

1 Q How long after that did you hear the shots?

2 A Oh, God, it wasn't but seconds.

3 Q And your son was at the door?

4 A Yeah, he was at the door. He didn't -- the
5 door wasn't open, it was just barely cracked because
6 he was -- before he heard the gun click, I guess --
7 what did he say -- loading the gun, he was going to
8 go and see what was happening, but after he heard
9 the gun click, he just eased it back.

10 Q And then what happened?

11 A After I heard the gunshots, I heard a knocking
12 on the hill side door of Terrell's.

13 Q Terrell's hill side door?

14 A Uh-huh.

15 Q That's what you would call the front door?

16 A Yeah.

17 Q And that was the apartment next to you?

18 A Right. And after the door was opened, I heard
19 Terrell screaming. And I mean, it was a scream that
20 I can't -- I still hear her screaming sometimes.
21 After that, it got quiet. And I didn't know really
22 he had gotten shot until after the police arrived.

23 Q How many shots did you hear that night?

24 A Three.

25 Q Did you actually see what went on out there?

1 **A** No, ma'am, I just heard.

2 **Q** But the two things you heard, as you told the
3 police, the first thing was Moe's voice --

4 **MR. JOHNSON:** Your Honor, this has been asked
5 and answered. She's leading the witness again.

6 **THE COURT:** As to leading, I'll sustain.

7 BY MS. CAMPBELL:

8 **Q** Let me clarify my question. Whose voice did
9 you first hear?

10 **A** Moe's.

11 **Q** And then the second voice was that Moe's voice?

12 **A** No.

13 **Q** Did you know whose voice it was?

14 **A** No.

15 **Q** And, again, just for the record, you gave a
16 statement to the police?

17 **A** (Witness nodded head.)

18 **Q** And told them what -- what --

19 **A** What I had heard.

20 **Q** And you gave that statement on that same day
21 around 7:50 a.m.?

22 **A** Yes, ma'am.

23 **Q** And do you know Ayree Henderson?

24 **A** I've never seen him before a day in my life.

25 **MS. CAMPBELL:** Thank you.

1 **MR. JOHNSON:** Your Honor.

2 **THE COURT:** Yes, sir.

3 CROSS-EXAMINATION

4 BY MR. JOHNSON:

5 **Q** Ms. Wilson?

6 **A** Yes, sir.

7 **Q** On the time line in this instance when you
8 first heard the knocking at the back door?

9 **A** Uh-huh.

10 **Q** About -- did you hear them arguing at the back
11 door when it first happened?

12 **A** Well, the argument wasn't at the back door, it
13 was at my bedroom window.

14 **Q** That's the argument you heard; is that correct?

15 **A** Yeah. I heard Moe when Moe came out the house.

16 **Q** Okay. And you heard them arguing?

17 **A** Yeah.

18 **Q** And that's when you went to awaken your son?

19 **A** Yes, that's when I woke my son.

20 **Q** But you don't know who had a gun or who didn't
21 have a gun, do you?

22 **A** Just like I said, I only gave testimony -- I
23 mean, gave a statement as to what I heard.

24 **Q** But you did hear an argument and you heard a
25 scuffle?

1 **A** I heard the argument. I heard Moe when he
2 asked him what he did and I heard whoever say what
3 they said. And I heard the scuffle. The scuffle
4 was at my bedroom window and the shot sounded like
5 they were right there at my bedroom window.

6 **Q** Okay. And that's on the corner of --

7 **A** No, it's not on the corner. Let me show you on
8 the pictures.

9 **Q** Sure, please do that.

10 **A** This is my door --

11 **Q** Well, I'll tell you what --

12 **MR. JOHNSON:** Your Honor, could she step down?

13 **THE COURT:** Yes, sir.

14 (Witness leaves the witness stand.)

15 **THE WITNESS:** This is my apartment door right
16 here. This is my bedroom window right here.

17 BY MR. JOHNSON:

18 **Q** And this is Moe --

19 **A** No, no, no. That's Terrell's door right there.

20 **Q** Okay.

21 **A** I heard the scuffling and the voices right in
22 here. And the gunshots were closer right where my
23 -- right where Everett testified, said he heard it
24 at the door, between the door and here and my
25 bedroom.

1 Q Okay. So it's down near your door?

2 A It's not at -- no, the corner -- it's a good
3 piece. It's about from half way to that table to
4 here, from the corner to my door.

5 Q To your door?

6 A Right.

7 Q It was right in that area?

8 A Right.

9 Q Okay. Thank you.

10 A (Witness resumes the witness stand.)

11 Q And just for clarification, as far as what
12 happened out there, you don't know?

13 A None other than what I testified.

14 MR. JOHNSON: No other questions.

15 MS. CAMPBELL: Just one quick -- two quick
16 questions.

17 REDIRECT EXAMINATION

18 BY MS. CAMPBELL:

19 Q Ms. Wilson, you said that you heard Alonzo come
20 to the back door and asked about the knocking?

21 A No.

22 Q How fast after that did the scuffle start?

23 A Not too long.

24 Q Was there time enough for him to go out the
25 front door --

1 **A** Oh, no, he -- I only heard that door close
2 once.

3 **MS. CAMPBELL:** Thank you. That's all I have.

4 **MR. JOHNSON:** Just one follow-up.

5 RECROSS-EXAMINATION

6 BY MR. JOHNSON:

7 **Q** But you do not know if they had talked before,
8 do you?

9 **A** None other than me -- no, because the knocking
10 was what woke me up.

11 **MR. JOHNSON:** No other questions.

12 **THE COURT:** You may step down.

13 You may call your next witness.

14 **MS. CAMPBELL:** Thank you, Your Honor.

15 **MR. JEFFRIES:** State calls Dianne Crawford.

16 DIANNE CRAWFORD,

17 having been duly sworn, testified as follows:

18 **THE CLERK:** Please have a seat in the witness
19 stand and state your full name for the record.

20 **THE WITNESS:** (No response.)

21 **THE COURT:** State your full name, please.

22 **THE WITNESS:** Dianne Crawford.

23 **THE COURT:** Thank you.

24 ****

25 ****

1 DIRECT EXAMINATION

2 BY MR. JEFFRIES:

3 Q Ms. Crawford, I'm going to ask you to speak
4 really loud. The acoustics in this room aren't very
5 good, so you have to really raise your level of
6 voice. Ms. Crawford, where do you live?

7 A I live at 921 Hammond Village.

8 Q And what apartment do you live in?

9 A One dash one.

10 Q One dash one?

11 A Yes.

12 Q Speak as loud as you can. How long have you
13 been living there?

14 A About 26 years.

15 Q Twenty-six years?

16 A Yes.

17 Q In that same apartment?

18 A Yes.

19 Q Now, do you know the defendant, Ayree
20 Henderson?

21 A Yes, I do.

22 Q You do know him?

23 A Yes.

24 Q About how long would you say you've known him?

25 A Well, I've known him all of his life, ever

1 since he was a little small boy.

2 Q And did you know the victim, Alonzo Gale?

3 A Yes, I did.

4 Q How did you know Moe?

5 A As being a neighbor.

6 Q Did you know him as Alonzo or did you know him
7 as Moe?

8 A I knew him as Moe.

9 Q Okay. And he was a neighbor you said?

10 A Yes.

11 Q How long did he live out there that you
12 remember?

13 A About two years.

14 Q Now, would you see -- you said you knew Ayree
15 Henderson. Would you see him in your neighborhood,
16 is that how you knew him?

17 A He used to live there.

18 Q Was he living there during the time of this
19 incident?

20 A No.

21 Q But you would still see him in the
22 neighborhood?

23 A Yes.

24 Q So it wasn't unusual to see him?

25 A He's just one of the neighborhood guys, you

1 know.

2 **Q** Now, I have to ask you this, and I don't mean
3 to embarrass you in any way, but the Court needs to
4 know, do you have a 1995 conviction, a drug
5 conviction?

6 **A** Yes, I do.

7 **Q** Now, you said you live in apartment 1-1?

8 **A** One dash one.

9 **Q** I'm going to show you a photo of the area and
10 you can point this out to the jury. Let me show you
11 State's Exhibit Number 10. Which apartment -- can
12 you recognize which group of apartments this is?

13 **A** Yes, those building two --

14 **THE COURT:** I'm sorry, you need to speak up a
15 little bit more.

16 **THE WITNESS:** It's apartment building two right
17 there.

18 BY MR. JEFFRIES:

19 **Q** Where I have my finger is building two?

20 **A** Yes.

21 **Q** Okay. And now show me where your apartment
22 would be in relation to that?

23 **A** Right here, on the corner right here.

24 **Q** Right here where my finger is?

25 **A** Yes.

1 Q Where that black truck is parked in front of?

2 A Yes.

3 Q Now, let me take you back to August 3rd, 2002.

4 Did you see Ayree Henderson early in that day, not
5 the time of this actual incident, but earlier that
6 day or that night?

7 A I saw him early -- late that night around about
8 2:30, something like that.

9 Q About 2:30 in the morning?

10 A Yes.

11 Q And that would have been on August 3rd?

12 A Yes.

13 Q Okay. Tell me what happened when you saw him
14 that night. How did you come to see him?

15 A He came knocking at my door with a young lady
16 and asked me would I call Moe for him. And I told
17 him that I wasn't calling nobody, y'all need to try
18 to go home and go to bed. So I guess he got kind of
19 angry, you know, he kind of, you know, kicked my
20 door and they walked away. Him and the young lady
21 walked away.

22 Q And you said he came to your house about 2:30;
23 is that correct?

24 A Yes.

25 Q And who was he asking for you to call?

1 **A** Moe.

2 **Q** Okay. And you didn't call Moe?

3 **A** No, I didn't.

4 **Q** And what did he do after he asked you that and
5 you said no?

6 **A** I told him, I said, I'm not calling nobody this
7 time of morning, y'all need to go home and go to
8 bed.

9 **Q** Did he say anything else about Moe or anybody
10 else while he was out there?

11 **A** No, he didn't.

12 **Q** Did he make any threats against anybody?

13 **A** Not at the time he was at my door.

14 **Q** Okay. Did you hear or see Moe -- I'm sorry --
15 did you hear or see Ayree any other time that night?

16 **A** Well, I saw a bunch of guys that was out there
17 in the neighborhood around building three.

18 **Q** Around building three?

19 **A** Yeah, around --

20 **Q** Was Ayree one of those individuals?

21 **A** Yes, he was.

22 **Q** Okay. Did you hear or see him say or do
23 anything else?

24 **MR. JOHNSON:** Your Honor, it's been asked and
25 answered. She said that she had --

1 **THE COURT:** One moment.

2 **MR. JOHNSON:** It's been asked and answered. He
3 asked her earlier if she heard him say anything that
4 night, she had already said no.

5 **THE COURT:** I'm going to overrule the
6 objection.

7 BY MR. JEFFRIES:

8 **Q** Please answer the question, did you hear Ayree
9 anymore after he came to your door, knocked -- and
10 kicked your door later that night?

11 **A** You said after he came and knocked at my door?

12 **Q** Uh-huh.

13 **A** No, sir, I didn't hear anything.

14 **Q** I'm sorry, let me -- before that time, did you
15 hear him say anything about Moe or anybody else?

16 **A** Before he came to my house?

17 **Q** That's correct.

18 **A** Well, I was -- I'm the type I never go to bed
19 most of the time. Sometimes I be kind of scared to
20 go to bed after all that night, a lot of shooting
21 going on and stuff, so I was kind of scared to go to
22 sleep. So I hear, you know, I did hear him say that
23 he was going to rob a mother fucker tonight. I
24 don't know who he was talking about the early part
25 that night.

1 **Q** And I'm going to ask you to repeat that louder.
2 What did Ayree say that night?

3 **A** I heard him say it outside before he came
4 knocking at my door, said he was going to rob a
5 mother fucker tonight. I don't know who he was
6 referring to because he was out there with a bunch
7 of guys.

8 **Q** Okay. And then it was some time later that he
9 came to your door and asked you to call Moe; is that
10 correct?

11 **A** Yes, uh-huh.

12 **Q** Okay. Now, let me take you to further in the
13 night -- actually, he finally left your house,
14 right? He finally left your apartment when you told
15 him you wouldn't call Moe?

16 **A** Yes, he did.

17 **Q** Okay. And you said that was about what time?

18 **A** It was about --

19 **Q** And if you don't know the exact time, that's
20 fine, but just give me a general idea?

21 **A** I know the exact time. It was between 2:30 and
22 three o'clock, between that time.

23 **Q** Okay. Did anything else happen later that
24 night or early in the morning -- tell me what
25 happened later on?

1 **A** Well, after he had came knocking at my door and
2 asked me would I call Moe and I told him, no, I'm
3 not calling nobody and y'all get away from my door
4 and y'all need to go home and go to bed, but they
5 didn't pay me no attention. So I was -- had my door
6 open and I watched them. They left my door and went
7 to building two dash three and knocked on their door
8 and nobody didn't come to the door. And then he
9 went next door to two dash two and knocked on the
10 door and then nobody came downstairs. And so I saw
11 them went on around the building. That's what I
12 saw.

13 **Q** Did you hear or see anything after that
14 pertaining to this incident?

15 **A** No, I didn't.

16 **Q** Did you ever see Moe anymore that night?

17 **A** No, I --

18 **Q** Or that morning?

19 **A** Well, after Ayree had came to my house and
20 asked me to call Moe -- no, I didn't see Moe. I saw
21 Moe when he came -- he said he was out celebrating
22 his birthday, I believe. So I went over there and I
23 had a talk with Alonzo. I said -- I said, I know
24 you always call me nosey, always being in people's
25 business, I said, But I want you to take some advice

1 from me. I said, Whatever you do, don't open your
2 door for nobody, nobody. But he didn't listen.

3 Q Okay. And tell me the next thing that happened
4 later on that night involving Moe, what you -- just
5 what you saw?

6 A Well, when I went to his house, he was sitting
7 down at the table eating -- eating dinner. That's
8 around about 3:00, 3:30, he was eating. And I was
9 teasing him about, you know, I said, Well, I said,
10 Why don't you give me that piece of rib right there,
11 you know. He said, No, Dianne, you better go away
12 and leave me alone and let me enjoy my food. I
13 said, But that rib right there look good, you know,
14 and I took one.

15 Q Okay. I'm going to ask you another question
16 and when you answer, make sure you bring your voice
17 up as loud as you can so the jury can hear you. Did
18 you see Moe in the parking lot after 6:00 in the
19 morning, the day this happened; in other words,
20 after this incident took place?

21 A After he was shot?

22 Q Yes.

23 A Yes, because I was the one standing -- kneeling
24 over him when he passed away.

25 Q Okay. Tell the jury what all you saw?

1 **A** First of all, when I heard Terrell was
2 screaming and hollering and crying and stuff, and
3 I'm like this, I said, well, I hope they ain't over
4 there fighting, you know, like I wanted to go over
5 there and see what was wrong with them, but -- and
6 she was hollering and screaming and hollering and
7 screaming and hollering and screaming.

8 **Q** So let me stop you. You heard Terrell
9 hollering and screaming. And you knew Terrell, too?

10 **A** Yes.

11 **Q** How did you know Terrell?

12 **A** By being, you know, Moe.

13 **Q** From being in the neighborhood, from living
14 next door?

15 **A** Yes.

16 **Q** Okay. So you heard Terrell screaming, then
17 what happened?

18 **A** I mean, she was hollering and screaming. I
19 mean, I thought they were fighting, so I wanted to
20 be nosey to go and say, y'all need to quit that.
21 But after she came -- she said, Lord, somebody help
22 me, Moe been shot. And I was the first one, I ran
23 out there. And she said that she want -- her baby
24 -- her small baby, she had to go take her baby, you
25 know, over to the lady in building three so he won't

1 see all of this to his father. So she said, Dianne,
2 would you please watch Moe until I do this? I said,
3 Yeah.

4 So he was lay -- he was leaning over on -- he
5 was leaning over on the car. And then somehow or
6 another, he just slid off the car, lay, you know.

7 Q When you saw him laying on the car, was he
8 moving at all at this point?

9 A He was --

10 Q Was he already gone?

11 A No, he was still alive, but he had collapsed on
12 the ground.

13 Q And, at some point, he fell off on to the
14 ground?

15 A Yes.

16 Q Okay. And what did you do to try to help him
17 or what --

18 A I tried to, you know, I told him, I said, Moe
19 didn't I told you not, you know, I said, Didn't I
20 tell you don't open the door. And he was trying to
21 talk to me. He was trying to say something to me,
22 but he couldn't say anything. And then when he did
23 try to say something, a big plop of blood came out
24 of his mouth and he took the last breath and he
25 died.

1 **Q** And did the police and EMS come out there; do
2 you remember?

3 **A** I called the police at the time that -- when
4 Terrell said, Somebody help me, Moe been shot, I
5 called the pol -- I mean, I called the ambulance way
6 before anybody, but the ambulance did not come on
7 time, they was late like an hour or something late.
8 He was already dead a long time when the ambulance
9 got there.

10 **Q** Well, let me ask you this, did you actually
11 hear the gunshots out there?

12 **A** Yes, I did.

13 **Q** Okay. And how long after that was it that you
14 saw Moe come out of the house? Or did you see him
15 come out of the house or was he already in the
16 parking lot when you came out?

17 **A** No, I saw him -- I was looking out my bathroom
18 window, I saw him in the corner and he was doing
19 like this (indicating) here. I didn't see no blood
20 or anything, he was just doing like this and just
21 holding his -- and just holding it -- he was doing
22 like this, and I was doing that. And then when
23 Terrell started all that screaming and hollering and
24 stuff, I was wondering what was wrong with her.

25 **Q** Let me show you State's Exhibit Number 15, tell

1 me where you saw Moe standing over here after he had
2 been shot, after you heard the gunshots?

3 **A** He was standing in that corner right there.

4 **Q** Right where my finger is?

5 **A** Yeah, right in the corner right here.

6 **Q** And that's when you came over to try to help
7 him?

8 **A** No, see what --

9 **Q** You didn't know anything was wrong at that
10 time?

11 **A** No. At that time, I told you I was looking out
12 the bathroom until Terrell said, Lord, somebody
13 please help me, Moe been shot. So I came out the
14 door, you know, I went over to her rescue to see
15 what was wrong. She said, Moe been shot. She told
16 me would I watch him until she go take her baby over
17 there to Ms. Iola Williams' house.

18 **Q** She asked you to watch him, so did you watch
19 him?

20 **A** Yes, I did. And I was talking to him, I said,
21 Moe, I sure hope you don't die. I said, Please,
22 don't die now, please, you know. I was, you know,
23 talking to him, but he was trying to tell me
24 something, but he couldn't talk. He just died in
25 front of my face.

1 **Q** Let me ask you this, the man you know as Ayree
2 -- is that how you know him?

3 **A** Yeah.

4 **Q** Is that what you call him?

5 **A** Yeah.

6 **Q** The man that came to your door and asked you to
7 call Moe --

8 **MR. JOHNSON:** Your Honor, if he has a question,
9 I wish he would ask it. He's leading the witness.
10 He's just going over testimony again.

11 **MR. JEFFRIES:** I'm just trying to complete my
12 question, Your Honor.

13 **THE COURT:** Make sure it's not a leading
14 question.

15 BY MR. JEFFRIES:

16 **Q** The man that you testified that you heard out
17 in the parking lot saying, I'm going to kill -- or
18 rob --

19 **MR. JOHNSON:** Your Honor, he's testifying
20 again. If he has a question --

21 **MR. JEFFRIES:** Your Honor, this was her
22 testimony.

23 **THE COURT:** Don't restate her testimony, ask
24 her a question.

25 BY MR. JEFFRIES:

1 **Q** What did you hear Ayree say earlier in that
2 evening out in the parking lot before he came to
3 your house?

4 **A** They was not in the parking lot, they was on
5 the side by the trash can, by the dumpster on the
6 side of the street.

7 **Q** What did Ayree say?

8 **A** Ayree was saying that they was going to rob a
9 mother fucker tonight, that's what I heard.

10 **Q** And who was it that came and banged on your
11 door later that evening?

12 **A** It was Ayree and a young lady. And it was
13 somebody else, but I didn't see who the other person
14 was. It was him and her came knocking at my door
15 because I opened up the door and I saw both of them
16 standing at the door and asked me would I call Moe.
17 I told them, I said, No, I'm not calling nobody at
18 this time of night, y'all need to go home and go to
19 bed.

20 **Q** That man, is he in the courtroom today, the man
21 who did that?

22 **A** Yes, right there.

23 **MR. JEFFRIES:** May the record reflect, Your
24 Honor, she pointed out the defendant. Beg the
25 Court's indulgence.

1 (Pause.)

2 **MR. JEFFRIES:** Nothing further.

3 **THE COURT:** Any cross?

4 **MR. JOHNSON:** Yes, Your Honor. Your Honor, can
5 I have one moment?

6 (Pause.)

7 CROSS-EXAMINATION

8 BY MR. JOHNSON:

9 **Q** Ms. Crawford, you stated that you've known
10 Ayree his whole life; is that correct?

11 **A** Yes.

12 **Q** Do you not make some racket around the
13 community by allowing the people in that
14 community --

15 **A** Say what now?

16 **MR. JEFFRIES:** Objection, Your Honor. It's not
17 relevant. May we approach?

18 **THE COURT:** You can approach.

19 (Whereupon, a bench conference was held off
20 the record, in the presence of the jury, but out of
21 the hearing of the jury.)

22 BY MR. JOHNSON:

23 **Q** Ms. Crawford, do you have a -- this whole case
24 is based on your recollection of what you heard; is
25 that correct?

1 **A** Yes.

2 **Q** Okay. So if there was something that could
3 interfere with your recollection, you understand
4 then how that could affect what you're telling the
5 jury today; is that correct?

6 **A** Yeah.

7 **Q** Do you have a drug problem?

8 **A** Well, I did at the time because I got a drug
9 charge, it wasn't my drugs.

10 **Q** But you were using crack cocaine during that
11 time, weren't you?

12 **A** No, not that time.

13 **Q** Not that time. Now, what was your drug of
14 choice at that time?

15 **A** Marijuana.

16 **Q** Marijuana?

17 **A** Yes.

18 **Q** Now, 2:30 in the morning, you heard Ms. Wilson
19 -- well, first of all, if you don't mind me asking,
20 how old are you?

21 **A** I'm 48.

22 **Q** Forty-eight?

23 **A** Yes.

24 **Q** You heard Ms. Wilson testify earlier that at 12
25 o'clock, she was in the bed asleep?

1 **A** Uh-huh.

2 **Q** You testified at 2:30, you was up. Was you
3 coming home from work?

4 **A** No, I was up -- would you sleep with all of
5 that shooting going on and all of this commotion
6 going on in your neighborhood, in your section, huh,
7 would you?

8 **Q** So there was a lot of drug stuff going on in
9 that area; is that correct?

10 **A** Not the drugs, just that the -- the boys that
11 hang down there make the noise.

12 **Q** Okay. Explain to me, you said the boys that
13 hang down there?

14 **A** Yeah. There was a bunch of boys in our section
15 making a lot of noise.

16 **Q** And they used to hang in that area?

17 **A** No, no. You know, they find every spot, you
18 know, like in Hammond Village, they'll go to one
19 section one week and then they get tired of that,
20 then they go on to the next section; you know what
21 I'm talking about?

22 **Q** So were they drinking and was there drugs
23 involved? I mean, what were they doing?

24 **A** I couldn't answer that. I know that it was a
25 bunch of boys. I couldn't answer that. It was a

1 bunch of boys out there.

2 Q But you said that you're nosey, so you like
3 being up and knowing what's going on?

4 A Sometime I might be nosey, but sometimes it's
5 best not to know what's happening, but I know
6 there's a bunch of boys in that section, but they
7 don't even normally be there.

8 Q Did people like Avery and others generally used
9 to come to your house and ask you to use your phone
10 and you used to charge them for it?

11 A Yes, I do.

12 Q Okay. But you used to allow the boys and
13 different people in the neighborhood come to your
14 house, right?

15 A No.

16 Q I mean, you charged them to use the phone?

17 A Yeah, I might let them use the phone and that's
18 about it and they can go on about their business.

19 Q Okay. So you admit that you have had a drug
20 problem?

21 A Yes.

22 Q Did you still have one?

23 A Yes.

24 Q Are you high today?

25 A No, I'm not.

1 Q When is the last time you got high?

2 A It's been a while.

3 Q What do you call a while?

4 A Maybe about two weeks.

5 Q About two weeks?

6 A Yeah.

7 Q So when you're high, it does affect your
8 realities; is that correct? I mean, sometimes you
9 can't remember?

10 A I ain't never got that high, sir.

11 Q Huh?

12 A I ain't never been that high.

13 Q But you've been high?

14 A I ain't been that high, though.

15 Q Let me ask you a question. Do you remember you
16 said that you heard the boys talk about a trash can
17 -- could you please step down, please?

18 A (Witness leaves the witness stand.)

19 Q Stand to the side here. This is the building
20 where Moe and them lived at and this was his
21 apartment?

22 A Yes.

23 Q And you live over here?

24 A Yes.

25 Q You say you heard them that night talking

1 earlier by the trash can?

2 A Yes, which is over in this section.

3 Q The trash can is over here?

4 A Yeah.

5 Q And you were in your apartment?

6 A Yes.

7 Q And you could hear them talking and Avery
8 saying he's going to rob somebody --

9 A I could hear them because they -- if you was
10 right there, you could hear them because they was
11 all -- not by the trash -- they was all up in here
12 around building --

13 Q Building three here?

14 A Yeah. They was all up around in that building
15 right there, that apartment right there.

16 Q So from your apartment, all the way to here,
17 you heard Avery say that he's going to rob somebody?

18 A Yeah, because he was very loud.

19 Q He was very loud?

20 A Very loud.

21 Q So -- okay, thank you. You can sit back down.

22 A (Witness resumes the witness stand.)

23 Q So in looking at the pictures, that's basically
24 across the parking lot you heard somebody say that?

25 A Yes.

1 **Q** Let me ask you this question. When do you
2 first tell the police about this?

3 **A** Ain't nobody ask me no question about nothing
4 when it happened.

5 **Q** That's not what I asked you. When do you first
6 tell the police about this?

7 **A** This happened about two weeks ago.

8 **Q** Two weeks ago?

9 **A** Yes.

10 **Q** It's been two years.

11 **A** Yes, and nobody came to ask me anything.

12 **Q** Don't you think that was important?

13 **A** I don't know. They didn't ask me anything,
14 must have wasn't. Ain't nobody came and asked me
15 anything.

16 **Q** Nobody asked you anything?

17 **A** Even when it happened, ain't anybody that came
18 and knock on my door and ask me anything.

19 **Q** Why didn't you go and volunteer?

20 **A** Because I, you know, if you're standing over
21 somebody and watch them die and they was trying to,
22 you know, talk to you, I was kind of upset. Nobody
23 didn't know but me. I was upset.

24 **Q** So if you knew something that would help solve
25 this crime and help that person that you saw, why

1 didn't you go to the police with it and wait until
2 two weeks for when the time of trial to come up?

3 **A** I was kneeling down on my knees with Moe when
4 the police officer came up.

5 **Q** Why didn't you tell the police then?

6 **A** The man just told me to leave.

7 **Q** Okay. So it wasn't none of your business,
8 basically?

9 **A** It was my business, but the police asked me to
10 leave, hurt my feelings.

11 **Q** Two weeks ago, did you come to the police or
12 they came to you?

13 **A** They came to me.

14 **Q** What did they say?

15 **A** They said, Dianne, we need to get a statement
16 from you. I said, After all of these years, y'all
17 want a statement.

18 **Q** And why did they come to your house in
19 particular? If they didn't know you knew anything,
20 why did they come to your house?

21 **A** Maybe somebody told them that I was there, I
22 was around when all this happened.

23 **Q** So this police officer came to your house just
24 out of the blue and said, We need a statement from
25 you?

1 **MR. JEFFRIES:** Objection, Your Honor. She's
2 answered the question.

3 **THE COURT:** I'll allow her to answer it.

4 **THE WITNESS:** I wouldn't say out the blue. I
5 know one thing, they did -- I hadn't made a
6 statement until two weeks ago from two years --

7 BY MR. JOHNSON:

8 **Q** Did he tell you how he got your name?

9 **A** Terrell.

10 **Q** From Terrell?

11 **A** Yeah.

12 **Q** When you gave the statement, did you give a
13 written statement?

14 **A** I didn't sign nothing.

15 **Q** Did you tell them then that you heard Ayree say
16 that?

17 **A** Yes. I'm just only telling -- I'm only
18 repeating what I heard. I ain't trying to get
19 nobody in no trouble and I ain't trying to sent
20 nobody down the road for life. I'm just -- I'm just
21 repeating what I heard.

22 **Q** And what you heard was across the parking lot
23 over 300 feet away from your apartment?

24 **A** Yes, uh-huh. And if you was out there and as
25 loud as they was talking, you would have heard it,

1 too.

2 **Q** So it was obvious that --

3 **A** They was real loud.

4 **Q** So it was obvious that they were trying to keep
5 it quiet, right?

6 **A** Keep what quiet?

7 **Q** That they were going to rob somebody.

8 **A** Ain't nobody kept nothing quiet. They were
9 saying it loud enough for everybody to know it.

10 **MR. JOHNSON:** No other questions.

11 **THE COURT:** Any redirect?

12 **MR. JEFFRIES:** Nothing, Your Honor.

13 **THE COURT:** You may step down.

14 Ladies and gentlemen, at this point, it will be
15 a good time to take a lunch break. I'm going to
16 remind you the instructions that I have given to you
17 previously, that is, not to begin to discuss this
18 matter among yourselves as you still have not heard
19 all of the evidence that has to be presented; please
20 do not allow anyone to approach you to discuss this
21 matter with you. If someone comes up to you and
22 attempts to discuss this case, please tell them that
23 you are a juror and you cannot discuss it and please
24 report it as soon as possible.

25 Also, ladies and gentlemen, as you come and go

1 from the courthouse, please do not listen to any
2 conversations that you may hear in the hallways
3 again for the reasons that you have to make the
4 decision based upon the evidence that you hear here
5 in this courtroom and not based upon conversations
6 that you may overhear in the hallways.

7 I'm going to ask that you report back to the
8 same jury room where you reported this morning. You
9 come back at 2:15, then, at that particular time,
10 then we will be ready to continue on with the trial
11 of this case. Thank you and have a good lunch.

12 (The jury was excused for lunch.)

13 **THE COURT:** Let me instruct anybody who's in
14 this courtroom that there is to be no comments
15 during the course of someone's testimony. There
16 should be no verbal conversation that can be heard
17 by anyone in this courtroom. So if you have a
18 conversation, you need to take it outside. We'll
19 come back at 2:15.

20 (Whereupon, there was a luncheon recess.)

21 (State's Exhibit Numbers 40 through 44,
22 photographs, were marked for identification
23 purposes.)

24 **THE COURT:** Is there anything we need take to
25 up before we begin the afternoon?

1 **MS. CAMPBELL:** Not from the State, Your Honor.

2 **MR. JOHNSON:** Not from the defense, Your Honor.

3 **THE COURT:** You may ask the jury to come in,
4 please.

5 (The jury returns to the courtroom.)

6 **THE COURT:** Good afternoon, ladies and
7 gentlemen. I'm sorry for the delay in starting this
8 afternoon. We had a few things that we had to take
9 up.

10 Ms. Campbell, you may call your next witness.

11 **MS. CAMPBELL:** May it please the Court.

12 **THE COURT:** Yes, ma'am.

13 **MS. CAMPBELL:** The State would call
14 Investigator Catoe.

15 DONALD RAY CATOE,

16 having been duly sworn, testified as follows:

17 **THE CLERK:** Please have a seat in the witness
18 stand and state your full name for the record.

19 **THE WITNESS:** Donald Ray Catoe.

20 DIRECT EXAMINATION

21 BY MS. CAMPBELL:

22 **Q** Investigator Catoe, are you currently employed?

23 **A** No, I'm not. I'm retired.

24 **Q** You're retired. You're going to have to talk
25 real loud in this courtroom, for some reason that

1 microphone just doesn't work. I'm sorry?

2 A I am retired.

3 Q And where were you employed prior to your
4 retirement, sir?

5 A The Columbia Police Department.

6 Q And how long did you work with the Columbia
7 Police Department?

8 A A little over 20 years.

9 Q And towards the end of your -- when did you
10 actually retire?

11 A I'm sorry?

12 Q When did you retire?

13 A It would have been in November of 2002.

14 Q November of 2002?

15 A That's correct.

16 Q Prior to your retirement, what did you do for
17 the Columbia Police Department?

18 A I was a crime scene investigator.

19 Q And can you tell this jury what your duties
20 included as a crime scene investigator?

21 A To process the crime scenes, collect evidence,
22 take photographs, that type of thing.

23 Q And can you tell this jury a little bit about
24 your qualifications and your experience, your
25 training as a crime scene investigator?

1 **A** I had extensive training with SLED, the
2 Criminal Justice Academy in evidence collection,
3 investigation, blood spatter interpretation,
4 fingerprints, various other arson investigation and
5 various other courses.

6 **Q** And all of those categories fall under the kind
7 of the big umbrella of crime scene investigation?

8 **A** That's correct, yes.

9 **Q** And you've testified before as an expert in
10 crime scene investigations, have you not?

11 **A** Yes, I have.

12 **Q** And you've been qualified, I know personally,
13 on more than one occasion; is that correct?

14 **A** That's correct.

15 **MS. CAMPBELL:** Your Honor, at this time, we
16 offer him as an expert in crime scene investigation.

17 **THE COURT:** Any objection?

18 **MR. JOHNSON:** Your Honor, I have no objection.

19 **THE COURT:** Without an objection, I'll find him
20 so qualified.

21 **MS. CAMPBELL:** Thank you, Your Honor.

22 **BY MS. CAMPBELL:**

23 **Q** Investigator Catoe, I want to turn your
24 attention to the early morning hours of August the
25 3rd of 2002. Did you have an occasion to respond to

1 a crime scene at 921 Marlboro Street?

2 A Yes, I did.

3 Q And what kind of call were you responding to
4 that morning, sir?

5 A Homicide.

6 Q Homicide. And you aren't the first officer on
7 the scene generally, are you?

8 A No, I'm not.

9 Q However, your duties include, just as you went
10 over and in this case, is to photograph the scene?

11 A That's correct.

12 Q To collect any possible evidence?

13 A That's correct.

14 Q And to dust, if it's appropriate, for things
15 like fingerprints and things of that nature?

16 A Yes.

17 Q What time did you actually respond to this
18 crime scene, sir?

19 A According to my report, it was 6:18.

20 Q 6:18. And that would have been 6:18 in the
21 morning?

22 A That would have been in the morning.

23 Q And you went, I believe, to apartment two dash
24 two at 921 Marlboro Street?

25 A That's correct.

1 **Q** I'm going to show you some diagrams, and I
2 think you reviewed these at my request, which is
3 State's 5, 4 and 3. You're familiar with the term,
4 Hammond Village?

5 **A** Vaguely, yes.

6 **Q** And this apartment complex in State's Exhibit
7 3, does that, basically, represent the Hammond
8 Village area?

9 **A** Yes, it does.

10 **Q** And then the other two that you reviewed for
11 me, State's Exhibit 5 and Number 4, those are
12 closer-up views of certain apartments in that area?

13 **A** That's correct.

14 **Q** And do these fairly and accurately depict how
15 the apartments were situated back in August of 2002?

16 **A** Yes, it does.

17 **MS. CAMPBELL:** Your Honor, at this time, we'd
18 offer these three into evidence.

19 **MR. JOHNSON:** I have no objection, Your Honor.

20 **THE COURT:** Without objection, they're
21 admitted.

22 **MS. CAMPBELL:** Thank you.

23 (State's Exhibit Numbers 3 through 5,
24 diagrams, were admitted into evidence.)

25 **BY MS. CAMPBELL:**

1 Q I want to turn your attention, in using State's
2 Exhibit Number 4, basically, this Hammond Village
3 has several different units within it?

4 A Yes, it does.

5 Q And the buildings start down at one end, and
6 this will be building number one?

7 A I don't recall what direction the numbers run
8 in.

9 Q Okay. But this is building number two, the big
10 one with four units in it?

11 A Yes, it is.

12 Q Okay. When you responded that morning, when
13 you first got to the crime scene, what did you find?

14 A I found a body next to a car with blood smeared
15 at the front in the parking lot. In the back, there
16 were several areas with blood and blood smears.

17 Q And did you also have an opportunity to go
18 inside apartment two dash two?

19 A Yes, I did.

20 Q And you also found certain evidence there?

21 A I believe, I collected a cell phone if I'm not
22 mistaken.

23 Q And I'll get back to that in a minute. I want
24 to show you what's been marked as State's Exhibit
25 21, 20, 19, 18, 23 and 22 and just ask you to look

1 through those?

2 **A** (Witness complies.)

3 **Q** Are you familiar with those photographs?

4 **A** I haven't finished looking at them, I'm sorry.

5 **Q** I'm sorry.

6 **A** Yes, I am.

7 **Q** And are those photographs you actually took of
8 the crime scene as you found it that day?

9 **A** Yes, I did.

10 **Q** And these represent the ones I just went
11 through, the numbers I went through, represent what
12 you saw in front of the apartment -- when I say the
13 front, the parking lot side of the apartment?

14 **A** That's correct, yes.

15 **Q** You also mentioned the interior and the front
16 steps. I'm going to show you State's Exhibit 24 and
17 25, as you enter from the parking lot, are you
18 familiar with that?

19 **A** Yes, I am.

20 **Q** And do those fairly and accurately depict how
21 the scene was as you were walking in from the
22 parking lot into two dash two that day?

23 **A** Yes.

24 **Q** I'm going to show you State's Exhibit 37, 38
25 and 39 and ask you to review those?

1 **A** (Witness complies.)

2 **Q** Did you review those, sir?

3 **A** Yes, ma'am.

4 **Q** And do those fairly and accurately depict the
5 interior of two dash two as you found it that day?

6 **A** Yes, they did.

7 **Q** And just to be clear for the jury to
8 understand, when you're going to the crime scene,
9 you're looking for any possible evidence having to
10 do with -- in this case, it was a shooting, was it
11 not?

12 **A** Yes, it was.

13 **Q** And in looking for that, things like blood
14 spatter, things of that nature are important?

15 **A** Yes.

16 **Q** And also any kind of projectiles or shell
17 casings that may come from the firing of a gun?

18 **A** That's correct, yes.

19 **Q** And any other evidence that may be pertinent
20 based on the brief summary you're given when you get
21 there?

22 **A** Yes.

23 **Q** And, in this case, is it indicated how many
24 people were actually shot in this case?

25 **A** One.

1 **Q** One person was shot. And that was the only
2 indication of anyone being hurt in this thing,
3 correct?

4 **A** That's the only indication I had.

5 **Q** You also mentioned that you found some
6 additional evidence in the -- what I call the rear,
7 what other people call the front, but on the hill
8 side. Are you familiar with that hill behind these
9 apartments?

10 **A** Yes.

11 **Q** And on that side between the hill, is there
12 another door -- there's like a door that comes in to
13 each one of those apartments from the parking lot
14 side, correct?

15 **A** The back door or front door, depending on
16 whether that's the front or the back.

17 **Q** Yes. On the parking lot side is what I call
18 it. And then there's additional doors on the back
19 -- on the hill side?

20 **A** Yeah, okay.

21 **Q** And leading up to those doors, there is a
22 concrete sidewalk that runs down the length of the
23 area?

24 **A** That's correct, yes.

25 **Q** And I'm going to show you some photographs,

1 first, State's Exhibit 26. Do you recognize that?

2 A Yes.

3 Q And then there's two different stoops, I call
4 them stoops, but concrete pads where the doors come
5 out, and I'm showing you State's Exhibit 30 and 34;
6 are those accurate?

7 A Yes, they are.

8 Q And also on State's Exhibit 35 and 36, there --
9 near the -- one of those doors on the concrete,
10 there is some additional blood?

11 A Yes. That's near the corner of the building.

12 Q And then, finally, a series of photographs
13 showing the area right outside the back door to
14 apartment two dash two?

15 A Yes.

16 Q And that's how the crime scene appeared when
17 you got there that day. And those are actually your
18 photographs; is that correct?

19 A That's correct, yes.

20 Q And then, finally, I'm going to show you, in
21 addition, just some photographs which have been
22 marked 40 through 44 and ask you to view those?

23 A (Witness complies.)

24 Q And do those fairly and accurately depict the
25 scene as you found it that day?

1 **A** Yes, they do.

2 **MS. CAMPBELL:** Your Honor, at this time, we
3 offer them into evidence.

4 (Pause.)

5 **MS. CAMPBELL:** Without objection, Your Honor.

6 **MR. JOHNSON:** No objection, Your Honor.

7 **THE COURT:** Without objection, they'll be
8 admitted.

9 (State's Exhibit Numbers 40 through 44,
10 photographs, were admitted into evidence.)

11 **MS. CAMPBELL:** Your Honor, may the witness step
12 down?

13 **THE COURT:** Yes.

14 (Witness leaves the witness stand.)

15 BY MS. CAMPBELL:

16 **Q** If you come over on this side and talk real
17 loud and face over here. And you've recently had
18 surgery, haven't you, sir?

19 **A** Yes, I have, last Thursday to be exact.

20 **Q** Thank you. And I'll just be a minute, okay.
21 Basically, just to familiarize yourself, there are
22 two rows of buildings, as shown in State's Exhibit
23 Number 3, to make up Hammond Village, this upper row
24 and then this lower row?

25 **A** Yes.

1 Q And the one we're talking about is this
2 building down here on the end?

3 A Correct, yes.

4 Q Right here. And when we're referring to this
5 concrete sidewalk, you can kind of see it right
6 there, is that the sidewalk you're referring to that
7 runs behind the building?

8 A Yes, it is.

9 Q And then this parking lot is here, right?

10 A That's correct.

11 Q And the doorway actually into the victim's
12 apartment in this case, the 2-2, is right here?

13 A That's correct.

14 Q And there's an additional doorway here, one
15 here and one here, so four apartments?

16 A Yes.

17 Q Okay. I want to take these quickly. You
18 mentioned when you first came on to the scene, you
19 took several photographs of what you found here in
20 the parking lot?

21 A Yes.

22 Q And, approximately, where was that car parked
23 where you found not only the victim's blood, but his
24 body?

25 A It was right there.

1 **Q** If this is the building --

2 **A** I believe, it's going to be right there.

3 **Q** Right in there?

4 **A** Right.

5 **Q** And I'm going to show you what's been marked as
6 State's Exhibit 18. Can you tell the jury what that
7 shows?

8 **A** I'm sorry?

9 **Q** State's Exhibit 18, what does that show?

10 **A** That shows the body next to the vehicle.

11 **Q** And that was the position of the body when you
12 got there?

13 **A** Yes, it was.

14 **Q** And the blood spatter and all the smears on the
15 car, which are shown in State's Exhibits 20, 23 and
16 22, that's all as you found it?

17 **A** Yes.

18 **Q** And you mentioned that as part of your crime
19 scene investigation, you're an expert in blood
20 spatter and blood smearing?

21 **A** Uh-huh.

22 **Q** What do those indicate to you?

23 **A** That would indicate that someone had blood on
24 their hands or body and was rubbing up against the
25 car and --

1 **Q** Up against the car?

2 **A** Right. And fell down the side of the car in
3 the approximate position that the body is shown
4 there.

5 **Q** So would that be consistent with the victim
6 having gone out in the front, leaning against the
7 car, bleeding profusely and falling down?

8 **A** That's correct, yes.

9 **Q** You mentioned then leading up to the interior
10 to the front door, and I'll show you State's Exhibit
11 25 and 24; do you recognize those?

12 **A** Yes, I do.

13 **Q** And is that the sidewalk on the parking lot
14 side leading into two dash two?

15 **A** Yes, it is.

16 **Q** And what do that -- the blood -- you see blood
17 patterns here too, what is that consistent with?

18 **A** That's consistent with someone coming out of
19 this door and going into the parking lot.

20 **Q** Which leads right up to this car we just talked
21 about?

22 **A** Yes, it does.

23 **Q** Bleeding at the time?

24 **A** Right. The starring of the blood spatter shows
25 the direction of travel being from the door toward

1 the car.

2 Q Toward the car?

3 A That's correct.

4 Q So these findings were consistent with someone
5 bleeding, going towards the car?

6 A That's correct.

7 Q Once you were inside the residence, I'm going
8 to show you 38, 37 and 39, these are in various --

9 A Those are inside the residence.

10 Q Inside the residence?

11 A At two dash two, I believe, it was.

12 Q And I notice there's some footprints in
13 these --

14 A I'm sorry?

15 Q There's some footprints?

16 A Yes, bare footprints.

17 Q Bare footprints. And would that be consistent
18 with someone having travelled through the house?

19 A From the back door or the hill side toward --

20 Q Hill side?

21 A -- the front door.

22 Q I'm going to show you what's been marked as
23 State's Exhibit 44 and you took a photograph of
24 that, sir?

25 A Yes, I did.

1 Q And was that the phone that was found next to
2 the front door on the couch?

3 A Yes, it was. It also had blood smears on it.

4 Q Blood smears on it, too. And it was found on
5 the interior?

6 A Yes.

7 Q Going down the back side, you mentioned that
8 there was -- and I'm going to show you State's
9 Exhibit 26 -- first of all, what position -- where
10 would you have been when you took this picture, sir?

11 A Standing at the corner of the building.

12 Q Standing here at the corner of the building?

13 A Standing at the corner, this corner.

14 Q Looking down in between the hill down this
15 sidewalk?

16 A That would be correct, yes.

17 Q And we mentioned also that there are two
18 different stoops, one for 2-2 and then one with less
19 blood on it for 2-1; is that correct?

20 A That's correct, yes.

21 Q Okay. And that's how it appeared when you got
22 there that day?

23 A Yes.

24 Q And here's just another angle, State's Exhibit
25 40, of the doorway and the stoop right behind 2-2?

1 **A** That would be 2-2, yes.

2 **Q** Thank you. In the sidewalk, somewhere in here
3 behind 2-1, there was also some blood stains noted;
4 is that correct?

5 **A** Yes, that -- right at the corner of the
6 building, you can see the corner of the building
7 there, and it's right at the corner of the building.

8 **Q** That's right at the corner of the building,
9 right?

10 **A** Yes, it is.

11 **Q** And would that be consistent with someone
12 having walked in that direction while they were
13 bleeding?

14 **A** Yes.

15 **Q** And, I'm sorry, State's Exhibit 41 is a
16 close-up of part of that?

17 **A** Right, that's the same as --

18 **Q** Those?

19 **A** Yeah, it's the same as this one.

20 **Q** Okay. And, finally, State's Exhibit 32, 31,
21 and 33, what do those show?

22 **A** What do they show me? Okay, they show blood on
23 this, whatever it is there, a bloody hand print on
24 the wall.

25 **Q** Which is?

1 **A** That's a close-up of the same item and that's
2 right next to 2-2, I believe.

3 **Q** 2-2. And that, I believe, State's Exhibit 33?

4 **A** Hand print.

5 **Q** Hand print on the wall. Would that be
6 consistent with someone having blood on one hand and
7 going up against the wall or on an arm even and
8 going up against the wall?

9 **A** Yes.

10 **Q** State's Exhibit 27, 28 and 29, those are
11 photographs of the back door at 2-2?

12 **A** That's the inside door and these two are the
13 screen door, yes.

14 **Q** When you say the inside door, that would be the
15 door on the hill side, the actual door itself, and
16 then these are the screen doors?

17 **A** Yes, that's correct.

18 **Q** And is there anything significant about the
19 blood spatter patterns that's shown in these?

20 **A** It's a high velocity or a high impact type
21 splatter which indicates that there was some type of
22 force behind those blood splatters. The small
23 droplets indicate that it was a high velocity
24 impact.

25 **Q** And when you say high velocity impact, are you

1 referring to the kind of impact a bullet would have
2 on say a carotid artery?

3 **A** That would be correct, yes.

4 **Q** And, again, this would have been in the doorway
5 of 2-2?

6 **A** Yes.

7 **Q** And would the victim have been in some kind of
8 area around 2-2 in order for this blood spatter to
9 be left there?

10 **A** It would have been in the immediate -- had to
11 have been in the immediate vicinity because that
12 type of blood droplets would not travel very far
13 even though they're --

14 **Q** And let me just distinguish just so the jury
15 can understand, like on State's Exhibit 27, that's a
16 good example of what we're talking about?

17 **A** Yes, it is.

18 **Q** Explain that to the jury?

19 **A** Okay. You can see the blood drops up higher,
20 the angle shows that they came from somewhere in
21 this area. And then in this area, it's more of a
22 direct, straight -- direct -- straight down type of
23 drop and that shows that it was coming from up here
24 and somewhere close to the vicinity of the door.

25 **Q** Okay. And droplets, on the other hand, that

1 aren't high velocity, but that are dripping down,
2 they leave more of a pattern, such as, at the bottom
3 of this picture?

4 **A** That's correct. That's just --

5 **Q** Or perhaps best illustrated on State's Exhibit
6 32 --

7 **A** -- dropping blood --

8 **Q** That would be consistent with dropping blood?

9 **A** -- and those would be a drip type of blood.

10 **Q** Okay. Sir, you can take your seat.

11 **A** (Witness resumes the witness stand.)

12 **Q** Finally, so in your expert opinion, the bullet
13 wound would have been sustained somewhere around the
14 doorway of two dash two?

15 **A** Yes.

16 **Q** Causing that blood spatter pattern. In
17 addition to photographing the scene, once it's
18 photographed, did you also collect any possible
19 pertinent evidence?

20 **A** I collected, I believe, a nine millimeter shell
21 casing, a copper clad projectile, and I believe a
22 Kleenex or some type of a wipe with blood on it.

23 **Q** Okay. And where was that collected?

24 **A** Those were all collected at the back of the
25 building.

1 **Q** At the back of the building?

2 **A** The hill side of the building.

3 **Q** On the hill side, as what we're referring to as
4 the back?

5 **A** Right.

6 **Q** And I want to show you what's been marked as
7 State's Exhibit 42 and 43. Can you tell me what
8 those are, sir?

9 **A** That's photographs of the shell casing.
10 Photographs of the shell casing and they're on the
11 stoop at two dash one.

12 **Q** Okay. And I want to go back to that again.
13 And I show you this item; do you recognize that?

14 **A** Yes, I do.

15 **Q** And what is that, sir?

16 **A** That's a nine millimeter shell casing.

17 **Q** And is that the shell casing you found as
18 depicted in State's Exhibit 42 and 43?

19 **A** Yes, it is.

20 **MS. CAMPBELL:** Your Honor, at this time, we
21 offer the shell casing into evidence.

22 **MR. JOHNSON:** No objection, Your Honor.

23 **THE COURT:** Without objection, it will be
24 admitted as 45.

25 (State's Exhibit Number 45, nine millimeter

1 shell casing, admitted into evidence. State's
2 Exhibit Number 46, copper clad projectile, was
3 marked for identification purposes.)

4 BY MS. CAMPBELL:

5 Q And, again, as I show the jury, State's Exhibit
6 45, that is what you found and what is depicted in
7 State's Exhibits 42 and 43, that's how it was when
8 you got there?

9 A Yes, it was.

10 Q And explain to the jury, what -- I don't know a
11 lot about guns, you know, when a gun is fired in a
12 semiautomatic, what happens and where different
13 pieces may go?

14 A As it's fired, the shell is ejected or the
15 casing is ejected from the weapon. Normally, it
16 would be ejected back and to the right.

17 Q Normally --

18 A Depending on the type of firearm.

19 Q And that's what I was getting ready to get to.
20 It depends on what type of firearm that's involved?

21 A That's correct.

22 MR. JOHNSON: Your Honor, I've been quiet, but
23 she's been leading the witness for a while. She
24 needs to just ask questions, Your Honor. I object
25 to the manner of questions the witness --

1 **THE COURT:** Just make sure your questions
2 aren't leading.

3 **MS. CAMPBELL:** Yes, ma'am.

4 BY MS. CAMPBELL:

5 **Q** You just mentioned about the type of gun makes
6 a difference?

7 **A** Yes.

8 **Q** If it's a semiautomatic gun, explain to the
9 jury what parts of the projectile, where it goes,
10 and the shell casing, what happens to it?

11 **A** The shell casing is ejected from the weapon
12 through a, I guess you'd call it, a slot in the
13 weapon. As the gun is fired, the slide comes back,
14 it's caught by an ejector and thrown out of the
15 weapon, the bullet goes out the barrel, or the
16 projectile goes out the barrel.

17 **Q** And the shell casing, I guess, maybe it's
18 somewhat explanatory, but it surrounds the actual
19 projectile?

20 **A** The shell casing. The projectile is crimped
21 into the casing before it's fired.

22 **Q** So the projectile, could I refer to that part
23 as the bullet?

24 **A** Right.

25 **Q** And then the casing that was around it before

1 it was fired is what comes out the side of the gun?

2 A That's correct.

3 Q And that's what happens with a semiautomatic
4 gun. How far necessarily, or does it depend on the
5 gun again, will a shell casing travel?

6 A There again, it would depend on the type of
7 firearm. It could be anywhere from two to eight or
8 ten feet.

9 Q Two to eight or ten feet?

10 A Yes.

11 Q And do you recall the approximate distance
12 between the doors between apartments 2-1 and 2-2?

13 A No, I don't recall the exact distance.

14 Q Can other factors also affect where a shell
15 casing may end up?

16 A Yes. It could hit on concrete and bounce.
17 Whereas, if it hit in grass or on soft ground, it
18 would stay in the same position. The position that
19 the gun is held in could affect it. There are
20 numerous other -- it could have been kicked or
21 rolled, anything like that could affect the exact
22 position of it.

23 Q And you've been to, of your career?

24 A I'm sorry?

25 Q You've been to many crime scenes involving

1 shootings or homicides?

2 **A** Yes, I have.

3 **Q** And even when there are two to three shots, are
4 you necessarily going to find all of the shell
5 casings if a semiautomatic is used?

6 **A** No.

7 **Q** What about with a revolver? Is there a
8 difference if a revolver is used?

9 **A** A revolver, the shell casing stays in the
10 cylinder on the revolver. It does not eject. It
11 has to be manually ejected by the shooter. And,
12 generally, it's ejected, if you've got a six round
13 revolver, it ejects all six at the same time.

14 **Q** So the shell casings actually stay in the gun
15 until they're taken out by the shooter?

16 **A** They have to be manually removed, that's
17 correct.

18 **Q** In this case, you also found, I believe, a
19 projectile. Are projectiles even more difficult to
20 find than shell casings?

21 **A** Generally, yes.

22 **Q** Can you explain that to the jury for me?

23 **A** They're smaller. They're not as bright.
24 They're harder to see. They would go further from
25 the scene. They would ricochet. Lots of factors

1 that would cause them to be further -- or harder to
2 find, the main one being that they're smaller.

3 **Q** And say with a nine millimeter gun, when you
4 fire it, how far can that bullet travel if it's not
5 interrupted?

6 **A** Over a mile uninterrupted.

7 **Q** And, again, you mentioned before about shell
8 casings ricocheting and stuff, is that also true of
9 projectiles?

10 **A** I'm sorry?

11 **Q** Is that also true that projectiles can ricochet
12 and be bounced around and things --

13 **A** Yes.

14 **Q** In this case, you were able to find the one
15 nine millimeter casing we've discussed, as well as
16 the projectile?

17 **A** Yes.

18 **Q** And that would actually be the core -- the
19 bullet is what I call it?

20 **A** Yes.

21 **Q** And where did you find this?

22 **A** The projectile?

23 **Q** I'm sorry, I picked up the wrong one. What's
24 been marked as State's Exhibit 46 for I.D.?

25 **A** The -- is that the projectile, I can't see

1 it from that --

2 **Q** Yes, I'm sorry.

3 **A** Okay. That was found at the corner of the
4 building, if I remember correctly.

5 **Q** And the corner of the building would be
6 building two?

7 **A** Building two.

8 **Q** Near the corner near two dash one?

9 **A** Yes.

10 **Q** Okay. And was it found on the concrete or in
11 the grass?

12 **A** It was in the grass.

13 **MS. CAMPBELL:** Your Honor, at this time, we'd
14 offer State's Exhibit 46.

15 **MR. JOHNSON:** No objection, Your Honor.

16 **THE COURT:** Without objection, it's admitted.

17 (State's Exhibit Number 46, copper clad
18 projectile, admitted into evidence.)

19 BY MS. CAMPBELL:

20 **Q** I want to show you this photograph of the grass
21 where the projectile was located.

22 **A** It's hard to see in there, but that was the
23 area that it was found in.

24 **Q** That was the area it was found in?

25 **A** Yes.

1 **MS. CAMPBELL:** Your Honor, at this time, we
2 offer it into evidence.

3 **MR. JOHNSON:** No objection, Your Honor.

4 **THE COURT:** That will be admitted as State's
5 47.

6 (State's Exhibit Number 47, photograph of
7 projectile, admitted into evidence.)

8 BY MS. CAMPBELL;

9 **Q** Looking at State's Exhibit 45 and 46, can you
10 tell how long those items were out there?

11 **A** No, you cannot.

12 **Q** And when you're collecting evidence at a crime
13 scene or a shooting or a stabbing or whatever, do
14 you collect whatever whether or not it has anything
15 to do with it anyway?

16 **A** I collect everything that looks like it has a
17 possibility of being connected to that particular
18 crime, yes.

19 **Q** And you can't tell this jury how long those two
20 items were out there?

21 **A** No, I cannot.

22 **Q** Or -- was the gun ever recovered in this case?

23 **A** Not to my knowledge, no.

24 **Q** And when a gun -- we've all heard about testing
25 you can do to compare bullets and shell casings to

1 determine what gun. When a gun, as in this case
2 which happens, is not recovered, can you do any
3 further comparisons?

4 **A** No. Ballistics can't be done unless you have a
5 weapon to test fire.

6 **Q** Did you collect any, what's known as, DNA
7 evidence in this case?

8 **A** No, I did not.

9 **Q** And in certain cases, DNA evidence is very
10 valuable, is it not?

11 **A** I'm sorry?

12 **Q** In certain cases, DNA evidence can be valuable,
13 correct?

14 **A** Yes, it can.

15 **Q** And in this case, we have a lot of blood,
16 correct?

17 **A** Yes, we did.

18 **Q** But was there any dispute over whose blood it
19 was?

20 **A** Not to my knowledge, no.

21 **Q** After you had gone to the crime scene,
22 photographed it and collected the evidence there,
23 did you then have an opportunity to attend an
24 autopsy that day at Richland Memorial Hospital?

25 **A** Yes, I did.

1 Q And that was around 11:30 that morning?

2 A 11:30.

3 Q And who was actually performing the autopsy at
4 Richland Memorial?

5 A Doctor Clay Nichols performed the autopsy.

6 Q Did you collect any evidence there at the
7 autopsy while it was being performed?

8 A I did perform what we call a GSR collection on
9 the hands of the victim.

10 Q And prior to the body being removed from the
11 scene, what, if anything, was done to preserve any
12 evidence that may be on that victim's hands?

13 A The hands were bagged to preserve any evidence
14 that were on the hands at the time.

15 Q The hands were bagged?

16 A Yes. We put a bag over it and tie it up.

17 Q What's the purpose of you going to the autopsy
18 and doing what we call is a gunshot residue kit?

19 A To determine if the person had fired a gun.

20 Q Had fired a gun?

21 A Yes.

22 Q And does that test have to be performed within
23 a certain amount of time?

24 A On a body, not really.

25 Q Not on a body. What about on a live person?

1 **A** Generally, on a live person, they want it done
2 within an hour or two.

3 **Q** Okay. And, in this case, there was no one
4 apprehended there at the scene, was there?

5 **A** Not to my knowledge.

6 **Q** Okay. And you went to the -- once the hands
7 were bagged and then the body was transferred, you
8 were able to go and get evidence from the autopsy?

9 **A** Yes. I collected the GSR at the autopsy.

10 **Q** Can you tell this jury what kind of -- how the
11 collection happened and what you did?

12 **A** They have a device they call a SEM. And in the
13 kit, there are four SEM's. You take a collection
14 from the back of each hand and the palm of each
15 hand. And each one is preserved separately. And
16 then it's packaged for analysis at SLED.

17 **Q** And, in this case, the victim had some blood on
18 one hand, does that -- do you go ahead and collect
19 it anyway?

20 **A** Yes. You use spots that don't have the blood
21 on it. You collect from the spots that don't have
22 blood on it.

23 **Q** That's what I wanted to make sure about. And
24 when you collected those tabs, they're kept separate
25 so they can't contaminate --

1 **MR. JOHNSON:** Your Honor, once again, she's
2 leading the witness.

3 **MS. CAMPBELL:** I'll rephrase, Your Honor, I'm
4 sorry.

5 BY MS. CAMPBELL:

6 **Q** How is the evidence preserved so it won't be
7 contaminated?

8 **A** It comes in a kit, generally a box, each SEM
9 has an individual container that it's put in. And
10 then that SEM is packaged in that box separately and
11 marked and turned into evidence and forwarded to
12 SLED for processing.

13 **Q** Once you had collected the kit at the autopsy,
14 did you then log it into evidence?

15 **A** I'm sorry?

16 **Q** Once you had collected the GSR kit?

17 **A** Yes, it was put into the evidence room.

18 **Q** Here's the evidence form just for your view.

19 **A** (Witness reviewing document.)

20 **Q** So that was actually logged in properly?

21 **A** It was logged in along with the other evidence
22 that I collected.

23 **Q** Along with the other evidence including what
24 I've just shown you. And during the time period
25 that you had that -- once you had collected the

1 gunshot residue kit, during the time period you had
2 it in your custody, did anyone alter it, change it
3 or do anything to it?

4 **A** It was in my possession the whole time.

5 **Q** And, again, you collected that in the proper
6 manner on the parts of the hand that didn't have --

7 **A** Yes, I did.

8 **MR. JOHNSON:** Your Honor.

9 **THE COURT:** Sustained.

10 BY MS. CAMPBELL:

11 **Q** How did you collect the kit, on what parts?

12 **MR. JOHNSON:** Your Honor, that's been asked and
13 answered.

14 **THE COURT:** I'll let him answer the question.

15 **MS. CAMPBELL:** Thank you.

16 BY MS. CAMPBELL:

17 **Q** Go ahead.

18 **A** The evidence was collected off of the hands by
19 the use of a SEM, that's a sticky surface on a metal
20 pin, that is dabbed into the areas where gunshot
21 residue may collect from firing a gun. Once it's
22 collected off of each area, it's put into a plastic
23 case, a cap -- capped into a plastic case and then
24 you collect from the next area.

25 **Q** And that was --

1 **A** And once you have collected from both hands, it
2 is put into a box that's packaged and sealed. It
3 has seals on it that you initial to show that it
4 hasn't been tampered with and it's turned into the
5 evidence room. And then from the evidence room, it
6 goes -- forwarded to SLED.

7 **Q** And you did the proper procedures in this case?

8 **A** Yes, I did.

9 **MS. CAMPBELL:** Thank you. I don't have
10 anything further?

11 **THE COURT:** Any cross?

12 **MR. JOHNSON:** Yes, Your Honor. May it please
13 the Court.

14 CROSS-EXAMINATION

15 BY MR. JOHNSON:

16 **Q** Officer Catoe, let's start with the crime
17 scene?

18 **A** Start with what?

19 **Q** You state -- the crime scene, I'm sorry. You
20 stated that when you initially got there, let's
21 clarify some times here, you said that you arrived
22 at 6:18?

23 **A** I was given the call at 6:18, that's correct.

24 **Q** And is that what time you arrived at the scene?

25 **A** It would have been, approximately, that, yes.

1 Q Officer Catoe, what is an incident report?

2 A I'm sorry?

3 Q Would you please tell the jury what's a
4 supplemental incident report?

5 A A supplemental incident report is a report
6 that's written by anyone who adds to the initial
7 report, adds information to the initial report.

8 Q Okay. And when you arrived at the scene, were
9 you the first officer there?

10 A No, I was not.

11 Q There was other officers there; is that
12 correct?

13 A Yes.

14 Q Would you happen to know who was the first
15 officer there?

16 A No, I don't have that information on my --

17 Q If I was to say Officer Hall, would you have
18 any knowledge that he wasn't the first officer
19 there?

20 A I don't recall.

21 MR. JOHNSON: Your Honor, may I approach the
22 witness?

23 THE COURT: Yes.

24 BY MR. JOHNSON:

25 Q I want you to take a look at that. Can you

1 please describe what that is?

2 **A** (Witness complies.)

3 **Q** Just that first page that I showed you.

4 **A** Okay. I looked at the wrong place on my report
5 about the time that I arrived, it would have been
6 shortly after the initial incident and the time that
7 I was called. 6:18 is the actual incident time,
8 okay.

9 **Q** So you didn't get there at 6:18?

10 **A** No, I did not.

11 **Q** So you made a mistake?

12 **A** I made a mistake there, yes.

13 **Q** Okay. So that's one mistake.

14 **A** Thank you.

15 **Q** So what time did you get there?

16 **A** I don't recall the exact time that I got there
17 because I don't have -- like I say, I have retired,
18 I don't have my exact notes.

19 **Q** So you don't have the exact notes, how do you
20 know everything else you testified to is correct?

21 **A** I know what I did at the scene. I don't know
22 the exact time that I did it.

23 **Q** Okay. Well, let's talk about the scene then.

24 **A** All right.

25 **Q** At the scene, you said when you first got

1 there, you collected the evidence and --

2 **A** No.

3 **Q** You took pictures, I'm sorry.

4 **A** That's correct.

5 **Q** You took the pictures. And you say you took
6 pictures on the corner of the house; is that correct
7 -- on the corner of the building?

8 **A** Among others, yes.

9 **Q** Let's start off with State's Exhibit Number 35.
10 Will you please take a look at that?

11 **A** Okay.

12 **Q** Will you please tell the jury what is that,
13 what that picture depicts?

14 **A** Blood spatter on the sidewalk at the corner of
15 the building.

16 **Q** And that's at the corner of the building?

17 **A** Yes, it is.

18 **Q** And that's blood spatter?

19 **A** Blood droplets, yes.

20 **Q** Do you remember how much blood was there?

21 **A** No, I don't.

22 **Q** Was there any in the grass there on the corner?

23 **A** Yes, there was.

24 **Q** Was there a considerable amount or how much?

25 **A** That would depend on what you would call a

1 considerable amount.

2 Q I'm asking you to put an estimate on it, you're
3 the expert.

4 A At that one particular spot, there's not that
5 much there. It's several blood droplets, but it's
6 not a considerable amount in my opinion.

7 Q Okay. What about in the grass? Was there
8 blood in the grass?

9 A Yes, there was.

10 Q But does it look like there was a struggle
11 there?

12 A I'm sorry?

13 Q Was there an indication of there being a
14 struggle in that area or something?

15 A No, no indications of a struggle.

16 Q But there's blood there, right?

17 A Yes, there's blood there.

18 MR. JOHNSON: Your Honor, may I show this to
19 the jury?

20 THE COURT: Yes, sir.

21 BY MR. JOHNSON:

22 Q I'm going to show you Plaintiff's (sic) Exhibit
23 Number 41. Please take a look at that State's
24 Exhibit 41.

25 A Okay.

1 Q Please explain what that is.

2 A I'm sorry?

3 Q Could you please explain to the jury what that
4 picture shows?

5 A It's additional blood drops.

6 Q And where is that located?

7 A That's located on the opposite side of the
8 sidewalk away from the building. It's on the
9 sidewalk.

10 Q Is that near the corner?

11 A Yes, it is.

12 Q Okay. But that's not behind the victim's
13 house, that's on the corner down in the apartment on
14 the end; is that correct?

15 A It's between the corner and the walkway to
16 apartment two dash two, yes.

17 Q So it's on the corner down away from there?

18 A Yeah.

19 Q Two dash two or two dash one? You mean the
20 walkway to go to 2-2, but it's behind two --

21 A The walkway that goes behind on the hill side
22 behind the two apartments.

23 Q Behind apartment 2-1?

24 A And 2-2, it goes all the way across.

25 Q But the blood spatter is behind apartment 2-1?

1 **A** It's between the apartment -- the first
2 apartment and the corner.

3 **Q** And the first apartment is 2-1; is that right?

4 **A** I don't recall which way the numbers ran, no.

5 **Q** Okay. I need you to look at State's Exhibit
6 26. Do you recognize that?

7 **A** Yes, I do.

8 **Q** And what does that show?

9 **A** It shows blood drops on the sidewalk.

10 **Q** And where are the blood drops leading to?

11 **A** The blood drops are between the corner of the
12 building and the apartment.

13 **Q** Are they going to the apartment or coming away
14 from the apartment?

15 **A** I can't really tell because I can't see what
16 direction the splatter is in.

17 **Q** But you took those pictures?

18 **A** Yes, I did.

19 **Q** All right. Do you have -- explain to me,
20 you've just stated under the State examination of
21 your direct examination that it's your professional
22 opinion, or expert opinion, that the shots was at
23 the door?

24 **A** Yes.

25 **Q** How do you get blood to the corner of the

1 building if he was shot at the door and the blood is
2 leading to the door?

3 **A** I have no idea what direction he walked in
4 after he was shot, whether he went to the corner and
5 back and then into the house.

6 **Q** But -- are you through? I want you to finish.

7 **A** Yeah.

8 **Q** But you testified -- as an expert, you
9 testified that it showed on the front that the blood
10 led out, but you can't tell me where the blood led
11 in the back, as an expert?

12 **A** I can show you what indicates to me the
13 direction of travel. And these blood spatters that
14 you're asking about now, there's nothing to indicate
15 whether he was traveling or standing still.

16 **Q** When you make your decision as an expert
17 witness, do you take into consideration all of the
18 evidence of the scene?

19 **A** Yes, I try to, yes.

20 **Q** Do you take into consideration witness
21 testimony?

22 **A** I'm sorry?

23 **Q** Do you take into consideration witness
24 testimony when you make your assumption?

25 **A** I don't question the witnesses, so I don't know

1 what their testimony says. I collect the evidence
2 as I find it.

3 **Q** So if a witness had said that the gunshots went
4 off behind my apartment or around my door of
5 apartment 2-1 on the corner, do you have any
6 evidence to indicate that that is not true?

7 **A** No, I don't.

8 **Q** So if there is blood behind apartment 2-1, a
9 witness who was there at the time that the occasion
10 happened states that the gun went off behind my
11 apartment, that would mean that your decision about
12 where the gunshot happened is wrong, wouldn't it?

13 **A** No, it doesn't.

14 **Q** Can you explain how it can have both?

15 **A** I explained it when I explained the high
16 velocity blood spatter on the door.

17 **Q** You said high velocity blood spatter?

18 **A** Uh-huh.

19 **Q** Couldn't it be that a main artery was hit in
20 the neck and that a person standing at the door,
21 leaning against the door, bleeding profusely such as
22 that would leave that kind of blood?

23 **A** Possibly.

24 **Q** So it's possible you could be wrong?

25 **A** Possibly, but there would have been high

1 velocity splatter where he was initially shot also
2 and it was not there.

3 Q But in short, you don't know?

4 A I wouldn't say I don't know, I've got my
5 opinion.

6 Q Okay. Explain this to me, the round was found
7 on the corner of the building, that was the actual
8 -- not the casing, but the round, the shell
9 casing -- the actual bullet?

10 A Projectile.

11 Q Projectile. Were found at the corner of the
12 building?

13 A Okay.

14 Q And there is testimony that there were three
15 shots, where are the other rounds?

16 A I have no idea.

17 Q Where are the other casings?

18 A Huh?

19 Q Where are the other casings?

20 A I don't know.

21 Q But they weren't found?

22 A They could have been from a revolver, they
23 could have been picked up, they could have landed in
24 somebody's clothes.

25 Q Okay. Then -- then in short, you don't even

1 know if these had anything to do with it?

2 **A** No, I don't. They were at the scene. I
3 collected them as being potential evidence.

4 **Q** When you said that you can't tell how long an
5 item had been at a particular location, that wasn't
6 exactly correct, is it? There are ways of telling
7 if a round was freshly shot or if it's been there
8 for a number of days, isn't it?

9 **A** No.

10 **Q** But can't you pick up a shell casing, such as
11 this, after it's been fired and smelled a gun --
12 actually smell it and you could smell that it's been
13 just recently shot by the gun powder?

14 **A** No, because that possibly would stay in there
15 for a period of time.

16 **Q** Okay. Isn't it possible you could look at a
17 shell casing, see that it's been rusted such as that
18 one?

19 **A** Brass doesn't rust.

20 **Q** It doesn't rust?

21 **A** No.

22 **Q** But can't you look at a shell casing -- haven't
23 you found shell casings that you've looked at and
24 said, Well, these have been here for a number of
25 days?

1 **A** Yes, I have.

2 **Q** Well, what about them made it apparent to you
3 that they had been there for a few days?

4 **A** Some of them would have sand washed in them,
5 they would have where rain or water had splattered
6 on them.

7 **Q** So when you made a statement that you can't
8 tell how long projectile had been there, that was
9 also wrong because you just explained to me how you
10 can tell?

11 **A** That's some of the ways you can tell.

12 **Q** So, therefore, your first statement was
13 incorrect?

14 **A** What?

15 **Q** That you can't tell?

16 **A** No, you can't tell. I couldn't put an exact
17 minute on it, no.

18 **Q** Do you have any evidence that you collected
19 that would go to indicate that this was not a person
20 that had been shot as a result of self-defense?

21 **A** I don't know what you mean by that.

22 **Q** I just asked you. You want me to ask you
23 again?

24 **A** Please.

25 **Q** Do you have any evidence that would indicate

1 that this individual was not killed as a result of
2 self-defense?

3 **A** I can't think of anything specific, no.

4 **Q** So the answer is no?

5 **A** No -- yes.

6 **MR. JOHNSON:** No other questions.

7 **THE COURT:** Redirect?

8 **MS. CAMPBELL:** No, ma'am, I have no further
9 questions.

10 **THE COURT:** You may step down. Thank you.

11 **MS. CAMPBELL:** Your Honor, may he be excused?

12 **THE COURT:** Any objection?

13 **MR. JOHNSON:** No objection, Your Honor.

14 **THE COURT:** You may be excused. Thank you.
15 You may call your next witness.

16 **MS. CAMPBELL:** Thank you, Your Honor. The
17 State calls Donna Martin.

18 DONNA MARTIN,
19 having been duly sworn, testified as follows:

20 **THE CLERK:** Please have a seat in the witness
21 stand and state your full name for the record.

22 **THE WITNESS:** My name is Donna Martin.

23 DIRECT EXAMINATION

24 BY MS. CAMPBELL:

25 **Q** Ms. Martin, where are you employed?

1 **A** With the City Police Department Evidence Unit.

2 **Q** The evidence unit?

3 **A** Yes.

4 **Q** And what do you do in the evidence unit?

5 **A** I collect all of the evidence, log it in and
6 store it until the time of trial and dispose of it.

7 **Q** You're familiar with the term, Chain of
8 Evidence?

9 **A** Yes.

10 **Q** And while the evidence is in your custody --
11 are there other people that also work in your unit?

12 **A** There's three other people.

13 **Q** And are there certain procedures in place or
14 protocols in place to make sure the evidence is kept
15 securely?

16 **A** Yes.

17 **Q** Specifically turning your attention to this
18 case, was there certain evidence, including a
19 gunshot residue kit, that was logged into your
20 evidence room back in August of 2003?

21 **A** Yes.

22 **Q** And when was that evidence logged in, ma'am?

23 **A** It was logged on, I guess, the day after, so
24 the incident date was on the 3rd, so the day after
25 -- because all we have is -- we don't have an exact

1 date unless I can look at one of the evidence, I can
2 tell you when it was logged in.

3 Q Okay. Two of the them were these items?

4 A August 3rd, yes.

5 Q From August the 3rd?

6 A August 3rd, yes.

7 Q And those items were logged in by Investigator
8 Catoe?

9 A Yes.

10 Q And once those items of evidence, including the
11 gunshot residue, what I need to focus on right now,
12 came into your possession, were they stored in a
13 proper manner?

14 A Yes.

15 Q And, specifically, turning your attention to
16 the gunshot residue kit, was it later logged out by
17 another investigator with the City Police
18 Department?

19 A Yes.

20 Q And when did that occur?

21 A It happened on the 3rd of August of last month.

22 Q August the 3rd of last month?

23 A Yes.

24 Q During the period of time of some -- exactly
25 two years that it stayed in the Columbia Police

1 Department Evidence Room, did anyone have an
2 opportunity to alter it, tamper with it, change it
3 in any way?

4 **A** No.

5 **Q** Was it kept securely?

6 **A** Yes.

7 **Q** And was it turned over to Investigator Currie
8 in the same condition it was logged in two years
9 earlier?

10 **A** Yes.

11 **Q** And during that period of time, no one had the
12 opportunity to change it, do anything with it or
13 alter it?

14 **A** No.

15 **MS. CAMPBELL:** Thank you very much, ma'am.

16 **THE COURT:** Any cross?

17 **MR. JOHNSON:** Just one question.

18 CROSS-EXAMINATION

19 BY MR. JOHNSON:

20 **Q** The evidence was kept there at your room for,
21 approximately, two years?

22 **A** Yes.

23 **Q** Almost two years to the date, isn't it?

24 **A** Yes.

25 **MR. JOHNSON:** No other questions.

1 **MS. CAMPBELL:** I have no further questions.

2 **THE COURT:** You may step down.

3 **MS. CAMPBELL:** Thank you, Your Honor. May she
4 be excused?

5 **MR. JOHNSON:** I have no objection, Your Honor.

6 **THE COURT:** You may be excused. Thank you.

7 **MS. CAMPBELL:** The State calls Pete Currie.

8 PETER CURRIE,

9 having been duly sworn, testified as follows:

10 **THE CLERK:** Please have a seat in the witness
11 stand and state your full name for the record.

12 **THE WITNESS:** My name is Peter Currie.

13 DIRECT EXAMINATION

14 BY MS. CAMPBELL:

15 **Q** Investigator Currie, where are you employed?

16 **A** With the City of Columbia.

17 **Q** And how long have you been working for the City
18 of Columbia Police Department?

19 **A** Going on 15 years.

20 **Q** What did you do there, sir?

21 **A** I'm assigned to the Crime Scene Unit. I've
22 been at the Crime Scene Unit for, approximately,
23 eight and a half years.

24 **Q** So you work in a capacity such as Investigator
25 Catoe who just testified?

1 **A** That is correct.

2 **Q** As part of your duties, do y'all also transport
3 evidence to SLED for testing?

4 **A** Yes. Anything that we collect that we do not
5 have the capability of processing is carried to
6 wherever it needs to be processed.

7 **Q** And you're familiar with gunshot residue kits?

8 **A** Yes, ma'am.

9 **Q** And last month on August the 3rd, did you have
10 occasion to transport a gunshot residue kit from the
11 evidence room and log it into SLED?

12 **A** I did.

13 **Q** And the fact that two years have passed, does
14 that have any affect on the results of -- and
15 testing on gunshot residue --

16 **MR. JOHNSON:** Your Honor, objection. He cannot
17 testify. He's not an expert in residue kits.

18 **THE COURT:** If he possesses the requisite
19 knowledge and experience, I'll let him testify to
20 it.

21 **MS. CAMPBELL:** Thank you. You can answer.

22 **MR. JOHNSON:** Your Honor, I do not think that
23 he established that he does req -- preserve --

24 **THE COURT:** You need to lay an appropriate
25 foundation.

1 **MS. CAMPBELL:** I'll lay the foundation.

2 BY MS. CAMPBELL:

3 **Q** I'm sorry. You're a crime scene investigator?

4 **A** Yes, ma'am.

5 **Q** And can you tell the jury a little bit about
6 your training and your education in the crime scene
7 investigations?

8 **A** It's a lot of schools, Criminal Justice
9 Academy, SLED, pertaining to crime scenes and crime
10 scene investigations, photography, fingerprints and
11 pretty much all aspects concerning crime scenes.

12 **Q** And does that include the collection and
13 everything of gunshot residue tests?

14 **A** That's correct.

15 **MS. CAMPBELL:** Your Honor, at this time, we'd
16 offer him as a crime scene investigator with
17 expertise in that area.

18 **MR. JOHNSON:** Your Honor, he has testified that
19 he is an expert in going to different schools, but
20 he didn't specify that he is an expert in collecting
21 the sample. He is not an expert in examining the
22 sample or determining what that sample says. And,
23 as a result, I still do not feel that he can answer
24 that question.

25 **THE COURT:** You need to go into a little more

1 detail if you want to lay the foundation.

2 BY MS. CAMPBELL:

3 Q What kind of training do you have in gunshot
4 residue kit collection?

5 A As far as gunshot residue kit to administer it,
6 it has self-instructive instructions on whatever you
7 do. The analyzation is done by SLED that we use,
8 but the kit itself is self-explanatory. It is
9 sealed, tamper proof. I don't know what else to say
10 about it.

11 Q Over the course of your however many years in
12 crime scene investigation -- how long have you been
13 in crime scene investigation?

14 A About eight and a half years.

15 Q Eight and a half years, that's right. Have you
16 had the occasion to collect and later have tested
17 gunshot residue kits?

18 A I'd say a hundred plus, at least.

19 Q Thank you.

20 MR. JOHNSON: Once again, Your Honor, he --

21 THE COURT: Counsel approach.

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

25 BY MS. CAMPBELL:

1 **Q** I apologize, Investigator. Once a gunshot
2 residue kit is collected, is there any certain
3 amount of time during which you must get it to SLED
4 for the testing to be done?

5 **A** No, ma'am.

6 **Q** In this case, the test was taken out two years
7 later?

8 **A** That is correct.

9 **Q** And you transported this kit from when you
10 checked it out of evidence from Ms. Martin and
11 transported it to SLED?

12 **A** That is correct.

13 **Q** And that was done, I believe, on August the 3rd
14 of 2004?

15 **A** That is correct.

16 **Q** During the time period that you had this test,
17 which you earlier described, in your possession, did
18 anyone alter it, tamper with it, change it or do
19 anything to it?

20 **A** No.

21 **Q** And did you actually log that kit into SLED
22 evidence, I believe to Ms. Montgomery, in the same
23 condition in which you received it?

24 **A** That is correct.

25 **MS. CAMPBELL:** That's all I have, Your Honor.

1 **THE COURT:** Any cross?

2 **MR. JOHNSON:** No questions, Your Honor.

3 **THE COURT:** You may step down.

4 Any objection to him being excused?

5 **MR. JOHNSON:** No objection, Your Honor.

6 **THE COURT:** You may be excused. Thank you.

7 **MS. CAMPBELL:** Thank you. Your Honor.

8 **THE COURT:** You may call your next witness.

9 **MS. CAMPBELL:** The State will call Christine
10 Montgomery.

11 CHRISTINE ELIZABETH MONTGOMERY,
12 having been duly sworn, testified as follows:

13 **THE CLERK:** Please have a seat in the witness
14 stand and state your full name for the record.

15 **THE WITNESS:** Christine Elizabeth Montgomery.

16 DIRECT EXAMINATION

17 BY MS. CAMPBELL:

18 **Q** Agent Montgomery, where are you employed?

19 **A** The South Carolina Law Enforcement Division.

20 **Q** And what do you do at the South Carolina Law
21 Enforcement Division?

22 **A** I'm a forensic technician in the area of trace
23 evidence.

24 **Q** And as a forensic evidence technician, can you
25 tell this jury a little bit about your training and

1 your education in that field?

2 **A** Most of my training has been in-house training.
3 Once I came into the department, the lieutenant goes
4 through all of the training that you need. I've
5 been doing this now for two and a half years.

6 **Q** And what is the trace department? What kinds
7 of things does the trace department test for?

8 **A** Gunshot residue, paint, fibers, explosives,
9 arson.

10 **Q** Are you familiar with the process that you go
11 through in setting up a test for gunshot residue to
12 be tested?

13 **A** I do the prepping of the GSR kits, yes.

14 **Q** And tell the jury in the prepping of a GSR kit,
15 what you do. It's the gunshot residue kit; is that
16 correct?

17 **A** Right. Basically, what I do is I open the kit.
18 There's paperwork in the kit. I review all of the
19 paperwork, make sure it's filled out completely. I
20 fill out some paperwork of my own according to the
21 kit. The samples in the kit, depending on the kit,
22 in this case, there was swabs and particle lifts in
23 the case and I set up the swabs so that they're
24 ready to go on the instrumentation for analysis.

25 **Q** And turning your attention just to the chain of

1 custody, did you actually receive this gunshot
2 residue kit that had been logged in by Investigator
3 Currie from the Columbia Police Department?

4 **A** I received it from the trace box in the log-in
5 area at SLED.

6 **Q** Where he would have placed it when he logged it
7 in?

8 **A** Where he would have placed it when he logged it
9 in.

10 **Q** And was it in a sealed condition when you
11 received it?

12 **A** Yes, it was.

13 **Q** Once you received that, tell this jury,
14 specifically, how you went around prepping this for
15 test?

16 **A** Once I open the kit and take the swabs out, the
17 swabs are in tubes, I don't take them out of the
18 tubes, there's a solution that's added to the swabs.
19 And then once that solution is added and it's
20 filtered, then it goes on to the instrumentation.

21 **Q** And in this case concerning this testing, and
22 you did this in the last month I believe; is that
23 correct?

24 **A** Yes.

25 **Q** Did you follow proper procedures in making sure

1 there was no contamination, cross-contamination or
2 anything of that sort?

3 **A** Yes.

4 **Q** And were the samples in this, which is
5 L-029445, I believe, is the SLED number, were the
6 samples of this case, was their integrity preserved,
7 no one tampered with them or altered them?

8 **A** No.

9 **Q** During the period of time that you were doing
10 your prep work and setting up or anything, did
11 anyone change or alter, tamper with this evidence in
12 any way?

13 **A** No.

14 **Q** Did you?

15 **A** No.

16 **Q** And once you had done the preparatory work for
17 the testing to be done, was that later turned over
18 to Agent Tang?

19 **A** Yes.

20 **Q** And during the period of time you had it in
21 your possession, did anyone alter it or change it in
22 any way?

23 **A** No.

24 **Q** And then that was turned directly over to Agent
25 Tang?

1 **MS. CAMPBELL:** Thank you.

2 **THE COURT:** Before you call your next witness,
3 let's take a very brief break.

4 Ladies and gentlemen, again, I'm going to ask
5 you not to begin discussing this matter among
6 yourselves as you still have not heard all of the
7 evidence. Let's take a brief break and then we'll
8 come back and continue on.

9 (The jury retires to the jury room.)

10 **THE COURT:** Counsel, there is a juror that
11 needs to leave between 5:00 and 5:30 today in order
12 to meet child care responsibilities, so I just ask
13 that you take that into consideration for your
14 witnesses. Let's take a brief break and we'll come
15 back.

16 (Brief recess.)

17 **THE COURT:** Is there anything we need to take
18 up before we bring the jury back?

19 **MS. CAMPBELL:** Nothing from the State, Your
20 Honor.

21 **MR. JOHNSON:** Nothing from the defense, Your
22 Honor.

23 **THE COURT:** You may ask the jury to come in,
24 please.

25 (The jury returns to the courtroom.)

1 **THE COURT:** You may call your next witness.

2 **MS. CAMPBELL:** May it please the Court. The
3 State calls Doctor Clay Nichols.

4 CLAY ALLEN NICHOLS,
5 having been duly sworn, testified as follows:

6 **THE CLERK:** Thank you. Please have a seat in
7 the witness stand and state your full name for the
8 record.

9 **THE WITNESS:** Clay Allen Nichols.

10 DIRECT EXAMINATION

11 BY MS. CAMPBELL:

12 **Q** Doctor Nichols, where are you employed?

13 **A** At Richland Memorial Hospital.

14 **Q** What do you do there, sir?

15 **A** I'm a forensic pathologist.

16 **Q** And can you tell this jury, as a forensic
17 pathologist, what you do?

18 **A** Essentially, I do autopsies on people who die
19 of suspicious or unnatural deaths.

20 **Q** Can you tell this jury a little bit about your
21 training, your education in the field of pathology
22 or forensic pathology, specifically?

23 **A** I received my Bachelor of Science degree from
24 the University of Oklahoma in 1981. After that, I
25 entered O.U.'s med school, completing that in 1985.

1 After that, I entered a residency program in both
2 anatomic and forensic pathology down at MUSC in
3 Charleston. I completed that in 1990.

4 From 1990 to 2000, I was on the faculty as an
5 associate professor teaching pathology and forensic
6 pathology to medical students, dental students,
7 pathology residents and forensic pathology fellows.
8 In 2000, I entered private practice here in the
9 Richland area where I'm currently employed. I am
10 board certified by the American Board of Pathology
11 in both anatomic and forensic pathology and I hold
12 an unrestricted license to practice surgery in
13 medicine in the State of South Carolina.

14 **Q** And forensic pathology, how does that differ
15 from say anatomic or other fields of pathology?

16 **A** The other types of pathology, anatomic
17 pathology, deals with the diagnosis of tissue
18 usually removed at the time of surgery. If you've
19 been in the hospital and had a gall bladder out and
20 appendix out, that's sent to a pathologist where
21 they look at it, both with their naked eyes and
22 underneath a microscope, looking for the presence or
23 absence of disease. They also have training in
24 autopsy performance. But what I do differently is
25 that I have specific training in dealing with people

1 who die suspicious or unnatural deaths.

2 **Q** Have you been qualified before in state or
3 federal court, actually, as a forensic pathologist?

4 **A** Yes, I have.

5 **Q** And, approximately, how many times have you
6 been qualified?

7 **A** A couple hundred.

8 **MS. CAMPBELL:** Your Honor, at this time, we'd
9 offer him as an expert in forensic pathology.

10 **THE COURT:** Any objection or voir dire?

11 **MR. JOHNSON:** I have no objection, Your Honor.

12 **THE COURT:** Without objection, I find him so
13 qualified.

14 **BY MS. CAMPBELL:**

15 **Q** Doctor Nichols, I want to turn your attention
16 back to August 3rd of 2002. Did you have an
17 occasion to perform an autopsy on Alonzo Gale?

18 **A** Yes, I did.

19 **Q** And, approximately, what time of day was that
20 when you came in contact with him?

21 **A** The autopsy was performed on August 3rd of 2002
22 at 11:30 a.m.

23 **Q** And can you tell the jurors generally what you
24 do when doing a forensic autopsy and what kind of
25 things you're looking for?

1 **A** The autopsy begins first with a phone call to
2 gather information, what happened to the individual,
3 if any information is available. After that, the
4 body is examined looking for the presence or absence
5 of any sort of injury which may contribute to the
6 person's death. After that, a complete internal
7 dissection is performed looking at each major organ
8 system looking for the presence or absence of trauma
9 which may have contributed to the person's death.
10 Small samples of tissue are taken for microscopic
11 examination. Also, fluids are collected for
12 toxicologic evaluation. At the end, a report is put
13 together, and within about a month, a final report
14 is issued.

15 **Q** Doctor, in this case, you had an occasion to --
16 during the autopsy, you're also assisted by certain
17 people in your department?

18 **A** That's correct.

19 **Q** And in addition to that, investigators usually
20 attend from Columbia Police Department or Richland
21 County Sheriff's Department, wherever it is?

22 **A** That's correct.

23 **Q** And, in this case, there's been testimony that
24 Investigator Catoe actually would have collected the
25 gunshot residue kit from the hands?

1 **A** I don't remember who did it, but, yes, Catoe
2 was one of the people who would regularly attend the
3 autopsy.

4 **Q** That was -- my point is that wouldn't have been
5 your responsibility or anything within your purview?

6 **A** No.

7 **Q** And he would have done that independently of
8 your examination?

9 **A** Yes, ma'am.

10 **Q** When this person, Alonzo Gale, can you briefly
11 describe how he presented on that morning?

12 **A** I was told that he died as a result of a
13 gunshot wound.

14 **MR. JOHNSON:** Your Honor, I'd like to object to
15 reading a description of how he died. I think that
16 would be considered hearsay.

17 **MS. CAMPBELL:** The collection -- under the
18 hearsay exception for medical purposes, medical
19 diagnosis.

20 **MR. JOHNSON:** Your Honor, may we approach?

21 (Whereupon, a bench conference was held off
22 the record, in the presence of the jury, but out of
23 the hearing of the jury.)

24 BY MS. CAMPBELL:

25 **Q** Doctor, let me rephrase my question, be a

1 little more specific. What were your observations
2 of the victim when he first presented in the morgue?

3 **A** He had a definite through and through gunshot
4 wound, which means the bullet entered and exited the
5 body. The gunshot wound was to the right neck,
6 approximately here (indicating), and exited through
7 the shoulder. And if you like, I can read the exact
8 description for the record.

9 **Q** The external description?

10 **A** Yes.

11 **Q** Yes.

12 **A** Okay. There was a perforating gunshot wound to
13 the right anterior neck located 11 inches from the
14 top of the head and one inch to the right of
15 midline. The wound is circular with a zero point
16 two eight inch abrasion border -- excuse me -- zero
17 point two eight inch diameter. No soot or powder
18 stippling is identified.

19 There is a zero point 15 inch abrasion border
20 at the nine o'clock position. The bullet enters the
21 skin at this sight with subsequent laceration or
22 tearing of the right carotid artery, right lobe of
23 the thyroid gland, laceration of the trachea and,
24 subsequently, exits through the left upper back at a
25 distance of 11 point five inches from the top of the

1 head and four inches to the left of midline.

2 The exit wound is irregular with lacerated
3 edges measuring zero point 28 by zero point 35 inch
4 in greatest diameters. No bullet is recovered. The
5 approximate angles of trajectory are to the left 60
6 degrees, backwards 30 degrees and slightly
7 downwards.

8 Q And I'm going to take that just kind of
9 step-by-step what you just went through. The first
10 thing when you're looking at -- and, in this case,
11 it was a clear-cut shooting involved?

12 A Yes, ma'am.

13 Q And as far as any other external injuries -- in
14 your initial assessment, you do an external
15 examination?

16 A That's correct.

17 Q And were you aware initially of any other
18 injuries other than what you've classified as an
19 entrance wound and an exit wound in this case?

20 A There were no other injuries.

21 Q Okay. And I want to talk about that first.
22 When looking at, as a forensic pathologist, when
23 looking at a body, part of your determination is to
24 understand what is the entrance wound and what is
25 the exit wound?

1 **MR. JOHNSON:** Your Honor, once again, she's
2 leading the witness. He can explain what part of
3 his interest is.

4 **THE COURT:** Rephrase the question.

5 **MS. CAMPBELL:** I'll rephrase.

6 BY MS. CAMPBELL:

7 **Q** What -- when looking at wounds, what type of
8 wounds are you trying to determine they are?

9 **A** First, there's an entrance wound and if there's
10 another wound, whether it's another entrance or it's
11 an exit wound from the first bullet.

12 **Q** And, in this case, were you able to determine
13 how many entrance wounds there were into Alonzo
14 Gale?

15 **A** Yes, I was.

16 **Q** And that would be an entrance wound consistent
17 with a bullet; is that correct?

18 **A** Just one, yes, to the base of the neck.

19 **Q** One to the base of the neck. And,
20 approximately, where in the neck was the entrance
21 wound?

22 **A** Approximately, here (indicating).

23 **Q** Here (indicating)?

24 **A** Here, yes.

25 **Q** Approximately, right here (indicating). And

1 you also noted that there was another wound in the
2 body upon your external examination; is that
3 correct?

4 **A** That's correct.

5 **Q** And, during the course of your investigation,
6 were you able to determine whether that was an exit
7 or entrance wound?

8 **A** That was an exit wound.

9 **Q** And, approximately, where in the body was that
10 located?

11 **A** Approximately, here in the left shoulder.

12 **Q** In the left shoulder?

13 **A** Yes.

14 **Q** Down further on the back?

15 **A** A little bit, yes.

16 **Q** A little bit. So the point of entry -- tell
17 this jury how you're able to determine whether it's
18 an entry or an exit wound?

19 **A** Entrance wounds are generally circular, that
20 the bullet is spinning, they don't come out -- the
21 bullets don't come out of the gun just fired out,
22 instead there's usually a groove barrel which
23 imparts a spin to the bullet. And when the bullet
24 strikes the skin, it doesn't just penetrate it,
25 instead drills a little hole through it. So by

1 looking at the shape of the wound and the presence
2 or absence of an abrasion border where the drilling
3 effect will take place, that would indicate an
4 entrance wound.

5 Exit wounds, on the other hand, are irregular,
6 have lacerated edges and sometimes even have pieces
7 of skin hanging from them as a result of the exiting
8 of the bullet.

9 Q And, in this case, as you've testified, you
10 were able to determine there's one entrance wound in
11 the neck?

12 A Yes.

13 Q And an exit wound in the top of, kind of the
14 back?

15 A Yes.

16 Q At a slightly downward angle?

17 A Yes.

18 Q And you also mentioned during your recitation
19 that several areas within the body were perforated
20 by the track of the bullet?

21 A That's correct.

22 Q And, in this case, was the track of the bullet
23 fairly straight?

24 A Yes.

25 Q Okay. That's not always true, is it?

1 **A** No, sometimes it hits bone and ricochets down
2 or deflected. But, in this particular case, the
3 bullet track was straight through the body.

4 **Q** And you said that it entered in the front of
5 the neck and what different, I guess, not organs,
6 but different vessels and arteries were perforated
7 while it traveled through Alonzo Gale's body?

8 **A** The first thing it hit was the right carotid
9 artery. And you can feel the carotid artery in your
10 neck. If you put your fingers right here, you can
11 feel the pulse coming from your heart. That's a
12 major artery that supplies the brain. You have
13 another one on the left side. So you have right and
14 left carotid arteries. It then went through the
15 thyroid gland, which is an organ that controls
16 metabolism at the base of your neck. It went
17 through the trachea, which is also known as the
18 windpipe. Then after that, it exited through soft
19 tissue, such as muscle, on its way out of the body.

20 **Q** And you mentioned the first thing that it
21 perforated or tore was the carotid artery?

22 **A** Yes.

23 **Q** And what affect would that have had on his --
24 what affect did that have on Alonzo Gale's life?

25 **A** The first thing it caused was major bleeding.

1 Having a lacerated carotid artery is a life
2 threatening event. Added to that is the fact that
3 the blood would spurt out very forcefully. I've
4 seen minor -- not minor, but smaller arteries
5 actually shoot up three, three and a half feet. So
6 spurting outwards, you would have a tremendous
7 amount of blood at one time coming outward. And
8 more importantly in Alonzo's case that his trachea
9 was perforated, the windpipe. And, although, there
10 was outward bleeding, there was also inward bleeding
11 and his lungs actually filled up with blood as a
12 result of the lacerated carotid artery.

13 Q And what was the actual cause of death for
14 Alonzo Gale?

15 A Aspiration of blood due to perforating gunshot
16 wound to the right neck.

17 Q Now, I want to talk specifically about this
18 entrance wound and where it would have happened.
19 When this -- when Alonzo Gale would have been shot,
20 as his carotid artery was severed with the force of
21 a bullet, what kind of blood spatter would that
22 cause?

23 A It would cause the blood to spurt out three,
24 maybe even four feet. There would be some degree of
25 velocity to it. You would be able to tell the

1 directionality of the blood and when it hit the
2 ground, there would be some degree of splatter
3 associated with that with a directional component.

4 Q And that would be kind of what we call high
5 velocity spatter?

6 A Yes.

7 Q And that would be consistent with happening at
8 the point of impact?

9 A That's correct.

10 Q And then as he would continue to bleed, the
11 blood would continue to come out?

12 A Oh, yes.

13 Q You have described this entrance wound as
14 round, I believe?

15 A Yes.

16 Q And what was the size of it again?

17 A I believe zero point 28 inch.

18 Q Zero point 28 inch?

19 A Which is around a quarter of an inch, a little
20 larger.

21 Q You also mentioned what we call abrasion
22 borders and things of that nature. Can you tell
23 this jury what kind of information you were able to
24 get from this entrance wound and what determinations
25 you were able to make as far as how far the gun was

1 away from the skin at the time it was shot?

2 **A** First off, the abrasion border is the direct
3 effect of the drilling of the bullet through the
4 body. If it goes straight in, you're going to have
5 a circular abrasion border. If it comes in at an
6 angle, you're going to have it offset a little bit.

7 In this particular case, if you consider the
8 gunshot wound as a clock face, at the nine o'clock
9 position, there was an abrasion border there
10 indicating some degree of directionality to the
11 bullet. Also important that there was no soot or
12 gunpowder stippling identified which meant that the
13 gun was some distance away from the victim when the
14 trigger was pulled.

15 Now, depending on the type of ammunition used
16 and the gun used, you're talking about at least 18
17 inches in some cases and I have had nine millimeters
18 all the way up to two feet before there's an absence
19 of gunshot residue or powder stippling deposited
20 around the skin.

21 **Q** And let me go back on that, clothing can affect
22 whether or not there's stippling or soot found?

23 **A** Yes.

24 **Q** In this case, was this victim wearing any kind
25 of shirt of any kind?

1 **A** I don't recall a shirt being worn. I think he
2 had a pair of shorts on.

3 **Q** And you mentioned that the distance can be
4 determined, because there was a lack of soot or
5 stippling, that's significant in your findings?

6 **A** Yes.

7 **Q** And how far away, at least, would that gun have
8 been at the time it was shot?

9 **A** Somewhere, is an estimate 18 inches. And once
10 again, in some cases with nine millimeters, I've had
11 them up to 24 inches.

12 **Q** Twenty-four inches?

13 **A** Yes.

14 **Q** Would that be commensurate with say, basically,
15 an arm's length?

16 **A** Yes.

17 **Q** I think is how you characterized it earlier?

18 **A** Yes.

19 **Q** So the gun would have been about an arm's
20 length away --

21 **MR. JOHNSON:** Your Honor, once again, she's
22 testifying.

23 **THE COURT:** I'll sustain the objection.

24 **BY MS. CAMPBELL:**

25 **Q** How far away would the gun have been,

1 approximately?

2 **A** Eighteen to 24 inches, which is roughly arm's
3 length.

4 **Q** Could it have been further?

5 **A** Oh, yes.

6 **Q** And how much further?

7 **A** The maximum firing range of the weapon.

8 **MR. JOHNSON:** Your Honor, I think the question
9 asked is speculation. He testified that the
10 evidence was 18 inches of -- as his examination and
11 the other question would be speculation.

12 **THE COURT:** Rephrase the question.

13 **BY MS. CAMPBELL:**

14 **Q** In your expertise as a forensic pathologist,
15 how far away could this gun have been at the time it
16 was fired?

17 **A** The maximum firing range of the weapon.

18 **Q** The maximum firing range of the weapon?

19 **A** Yes.

20 **Q** So anywhere from an arm's length to that?

21 **A** Several hundred yards.

22 **Q** Did you observe any other life threatening
23 injuries to this victim?

24 **A** No, I did not.

25 **Q** And, in fact, did you observe any other

1 injuries of note?

2 **A** No.

3 **MS. CAMPBELL:** Beg the Court's indulgence.

4 (Pause.)

5 **MS. CAMPBELL:** That's all I have, Your Honor.

6 **THE COURT:** Any cross?

7 **MR. JOHNSON:** Yes, Your Honor. May it please
8 the Court.

9 CROSS-EXAMINATION

10 BY MR. JOHNSON:

11 **Q** Doctor, in your examination, you stated that
12 the gunshot wound went through the neck; is that
13 correct?

14 **A** That's correct.

15 **Q** And it hit the right carotid artery?

16 **A** That's correct. You're pointing to the left
17 side.

18 **Q** I'm sorry. I'm left-handed. However, that is
19 a major artery that runs, my understanding of it,
20 runs from the heart, that's a major artery; is that
21 correct?

22 **A** That's correct.

23 **Q** And that artery is under a lot of pressure; is
24 that correct?

25 **A** That's correct.

1 **Q** A shot of that nature would have resulted in
2 the blood exiting, which direction, the front or
3 back of the individual that was shot as he was shot?

4 **A** Well, initially, in the front because that was
5 the first thing that was hit, but after it entered
6 -- the bullet entered the trachea, that also
7 provided an additional area for the blood to
8 collect. In this particular case, the cause of
9 death was actually due to aspiration of blood which
10 means he drowned in his own blood, but if that did
11 not occur, he would have bled out.

12 **Q** Okay. My question is, as far as the exterior
13 bleeding, that would have been to the front of the
14 individual or the rear of the individual?

15 **A** Initially, in the front, but then once the
16 trachea was lacerated, it would have been in both
17 directions.

18 **Q** Okay. Is it possible that with the type -- is
19 the major artery under a considerable amount of
20 pressure --

21 **A** Yes, it is.

22 **Q** -- the heart?

23 **A** Yes, it is.

24 **Q** So an artery that has been cut or lacerated,
25 such as this one with the bullet, it would have like

1 came out every time the heart beats?

2 **A** That's correct.

3 **Q** It would have been like a large --

4 **A** Yes.

5 **Q** So you could get a large blood splatter say by
6 someone staggering up to a door, facing a door or
7 either backward or whatever, but whenever the heart
8 beat, there would be a large spread out?

9 **A** That's correct.

10 **Q** And that would be a high velocity splatter,
11 wouldn't it appear to be the same?

12 **A** Yes.

13 **Q** So, therefore, because there was a high blood
14 splatter at the door, it doesn't nes -- it does not
15 indicate that that is actually the place that he was
16 shot?

17 **A** I think you could follow a blood trail from
18 where the person was to where the blood started and
19 that would be where he was shot.

20 **Q** So you would follow the blood trail?

21 **A** Yes, sir.

22 **Q** Second question, you have stated that the
23 gunshot could have been as close as 18 inches?

24 **A** Yes.

25 **Q** Could you give me -- could you demonstrate to

1 the jury what your understanding of -- estimate what
2 18 inches would be for you?

3 **A** Eighteen inches about that far (indicating).

4 **Q** Could you please stand?

5 **MR. JOHNSON:** Your Honor, if I may?

6 **THE COURT:** Yes, sir.

7 (Witness leaves the witness stand.)

8 BY MR. JOHNSON:

9 **Q** So if we are -- let's say you have a gun in
10 your right hand, would 18 inches be, as far as a
11 gun, about this close?

12 **A** Eighteen inches from where the barrel is to
13 about here.

14 **Q** So if someone is grabbing a gun or something,
15 it's possible?

16 **A** Yeah. You'd have to have other evidence that
17 if the gun was grabbed at that time, there would be
18 evidence of gunshot residue on the person's hands
19 when the trigger was pulled and -- and that's all I
20 can say for right now.

21 **Q** But it's possible that if people struggle over
22 a gun, that could be possible?

23 **A** But then you would have would have other
24 evidence that the hand was pulled when the trigger
25 was pulled.

1 **Q** But if the person collecting the evidence
2 doesn't present it to you, you wouldn't have it,
3 would you?

4 **A** That is correct.

5 **MR. JOHNSON:** No other questions. Thank you.

6 **THE COURT:** Any redirect?

7 **MS. CAMPBELL:** No, ma'am. May he be excused?

8 **MR. JOHNSON:** I have no objection.

9 **THE COURT:** You may be excused. Thank you.

10 **MS. CAMPBELL:** The State will call Sam
11 Reighley.

12 SAMUEL C. REIGHLEY, JR.,
13 having been duly sworn, testified as follows:

14 **THE CLERK:** Please have seat in the witness
15 stand and state your full name for the record.

16 **THE WITNESS:** My name is Samuel C. Reighley,
17 Jr.

18 DIRECT EXAMINATION

19 BY MS. CAMPBELL:

20 **Q** Agent Reighley, where are you employed?

21 **A** I'm employed with the South Carolina Law
22 Enforcement Division, commonly referred to as SLED.

23 **Q** How long have you been working at SLED?

24 **A** I've been with SLED, approximately, six years.

25 **Q** What department do you work in, sir?

1 **A** I currently work with the forensic toxicology
2 department within forensics is where I work.

3 **Q** Can you tell us generally a little bit about
4 your education and your training in forensic
5 toxicology?

6 **A** My educational background is I have a Bachelor
7 of Science degree in biology. Prior to coming to
8 SLED --

9 **MR. JOHNSON:** Your Honor, if I may, I'm willing
10 to stipulate that's he's an expert in the area.

11 **THE COURT:** Is there any objection to that?

12 **MS. CAMPBELL:** No, ma'am.

13 **THE COURT:** Then I find him so qualified as an
14 expert in forensic toxicology?

15 **MR. JOHNSON:** That's correct, Your Honor.

16 **THE COURT:** Is that suitable, counsel?

17 **MS. CAMPBELL:** Yes, ma'am.

18 BY MS. CAMPBELL:

19 **Q** Agent Reighley, when an autopsy occurs on a
20 victim -- after a victim has the autopsy done, is
21 blood forwarded to your agency for certain testing
22 in suspicious deaths?

23 **A** In suspicious deaths, we typically get all
24 types of bodily fluids, anywhere from blood, urine,
25 tissue samples, such as, brain, liver, kidney

1 samples. We also get stomach contents, any kind of
2 bodily fluid associated with the autopsy.

3 Q And, in this case, were certain samples, blood,
4 I believe, brain tissue, things of that nature
5 forwarded to your agency involving Alonzo Gale as
6 the victim?

7 A Yes. We received -- or I received samples, a
8 urine sample, which was labeled Ayree Henderson with
9 an A zero two dash 208 on the container itself. I
10 also received brain tissue samples, kidney tissue
11 samples and liver tissue samples.

12 Q And, initially, what kind of testing did you do
13 in this case?

14 A With this particular case, the type of testing
15 that I would routinely do on any case such as this
16 is do an initial alcohol testing on the urine sample
17 itself and also do drug screening on the sample.
18 And any screens that would come back as a positive
19 result would then be confirmed within that fluid.

20 Q And when you ran these tests on the blood from
21 Alonzo Gale, what were your findings?

22 A In this particular case, I didn't receive any
23 blood, I just received urine.

24 Q Excuse me, I'm sorry, urine. I apologize. I
25 made a mistake.

1 **A** Within the urine sample, I tested it for
2 ethanol, which is what's commonly found in alcoholic
3 drinks. The level that I received was a zero point
4 063 percent weight by volume ethanol within the
5 urine sample. I also did various drug screens for
6 major classes of abuse drugs.

7 In this particular case, I did -- it screened
8 positive for cocaine and cocaine metabolites within
9 the urine and those were confirmed to find cocaine
10 and cocaine metabolites in the urine. They screened
11 negative for barbiturates, which is -- this class of
12 drugs is a central nervous system depressant drugs.
13 They're used as -- such as like hypnotics or sleep
14 inducing drugs or antianxiety drugs. They also
15 screened negative for benzodiazepines, which are
16 central nervous system depressants also and they're
17 used as antianxiety type drugs. And it also
18 screened negative for opiates, which opiates are
19 things such as morphine, heroin, they're used as --
20 typically, a lot of them are used as narcotic
21 analgesics or pain medications.

22 **Q** Based on your findings as far as the alcohol
23 content, which was a point 06, I believe?

24 **A** That's correct.

25 **Q** By law, would he have been impaired?

1 **A** With this particular level in a urine sample,
2 we can't really correlate it to what it would
3 actually be in blood, but he would have been under
4 the influence of alcohol at the time of his death,
5 but with that particular level, it can't correlate
6 it to an actual blood alcohol level.

7 **Q** As to an actual blood alcohol level.

8 **A** As far as impairment is in his reactions or
9 driving a vehicle or anything like that.

10 **Q** Okay. But as far as this level, it is less
11 than the level we've all heard about point --

12 **MR. JOHNSON:** Your Honor, I object to that
13 cross-examination. He had just stated that as a
14 result of these tests, you cannot correlate it, so,
15 therefore, I do not think he can give an opinion
16 about that.

17 **THE COURT:** I'll sustain it as it's asked.

18 **BY MS. CAMPBELL:**

19 **Q** Is it less than the amount point 10 or point
20 08?

21 **A** Yes, it's less than that.

22 **Q** And anytime a person takes even, say, half a
23 glass of wine or beer or whatever, they're under the
24 influence of alcohol?

25 **A** Anytime anyone drinks an alcoholic beverage,

1 you're going to get some type of affects from it.
2 As soon as you start to drink any kind of alcoholic
3 beverage, a person, their mood changes, they tend to
4 become more relaxed, so you get various affects from
5 that.

6 **Q** You also indicated that you found indications
7 of cocaine metabolites?

8 **A** Cocaine and cocaine metabolites.

9 **Q** Yes, sir, correct. And did you do any further
10 testing to assess whether or not he would have been
11 under the influence of any of those drugs?

12 **A** Yes, I did. In this particular case, there was
13 only enough urine submitted to do the initial
14 testing and that initial confirmation. There wasn't
15 enough sample to do any other analysis, so in order
16 to get an actual level or try to figure out if he
17 was under the influence at the time of his death, I
18 went to the brain tissue samples.

19 In that particular sample, I ran confirmation
20 tests for cocaine and cocaine metabolites within
21 that sample and I did not find any cocaine or its
22 metabolites within the tissue. I also ran a general
23 drug screen within the tissue sample to look for any
24 other types of drugs or drugs of abuse and didn't
25 find any within the brain sample itself.

1 **Q** And what does that indicate to you that there
2 appeared to be a presence in the urine, but it
3 wasn't in the brain sample?

4 **A** With the presence of -- well, any drug that you
5 take into your system, or alcohol, but drugs
6 particular, it takes an amount of time for it to
7 leave your system. The body will actually process
8 it and break down the drug into a form that it can
9 eliminate it from the body. Urine itself is one of
10 the prime locations in order to get drugs and
11 contaminates in the body out of the system.

12 In the case of cocaine when you ingest it,
13 you'll start to process it, your body will break it
14 down, send it into the urine and excrete it. In
15 this particular case with seeing cocaine and its
16 metabolites in the urine, that would -- the urine
17 itself gives you a history of drug usage. You can
18 typically see most drugs in a urine sample up to
19 three days.

20 In this particular case, by going back and
21 running the actual brain tissue to look to see if
22 there was any cocaine within that sample, that would
23 give me an indication of how long it had been from
24 the time that the individual had actually ingested
25 the substance or, in this case, cocaine. In this

1 case, without finding it in the brain samples,
2 typically I would say that the individual probably
3 had taken it, approximately, 12 to 24 hours before
4 his death. That would be the general range of when
5 they would have been using the actual drug.

6 **Q** So in your expert opinion, as a forensic
7 toxicologist, would he have been under the influence
8 of those drugs 12 to 24 hours later?

9 **A** No. Without finding any in his brain tissue,
10 he wouldn't have been under the influence of the
11 drug at that time.

12 **Q** He would not have been under the influence?

13 **A** That's correct.

14 **Q** And those were accurate levels as to what was
15 in his system at the time he expired?

16 **A** In the brain samples itself, yes, and the
17 urine.

18 **Q** And was there any presence of any other drug?

19 **A** There were no other drugs indicated within his
20 system.

21 **MS. CAMPBELL:** Thank you.

22 **THE COURT:** You may cross.

23 **MR. JOHNSON:** Thank you, Your Honor.

24 *****

25 *****

1 CROSS-EXAMINATION

2 BY MR. JOHNSON:

3 Q Will you please tell me your last name again?

4 A Reighley.

5 Q Mr. Reighley, when you did your examination,
6 you said that alcohol changes moods; is that
7 correct?8 A Potentially it can. That's one of the affects
9 of alcohol. It can change judgment or, basically,
10 how the person feels or perceives things.11 Q So, therefore, it could make a person react
12 logically in some cases, more logically in some
13 cases and less logically in some cases?14 A I don't know if I would say more logically.
15 Mostly, it's a depressant on the system itself, so
16 it would tend to slow a person's reaction time,
17 change their judgment, things like that. I wouldn't
18 say they could think any clearer or anything like
19 that.

20 Q So it wouldn't help them think clearer?

21 A No, sir, not at all.

22 Q If anything, they would think more irrational;
23 is that correct?24 A Potentially. Depending on what level it is, it
25 could change their perception or judgment, yes, sir.

1 **Q** It could possibly even make people react in a
2 more angrier way?

3 **A** Alcohol affects everybody differently, but
4 there is potential that it could cause somebody that
5 normally is not aggressive to be aggressive under
6 the influence of alcohol.

7 **Q** Now, what would the effect of alcohol and
8 cocaine have an on individual?

9 **A** Well, assuming that they're under the influence
10 of both of them at the same time, both drugs can
11 have different effects and affect different parts of
12 the body. So the alcohol would be a central nervous
13 system depressant, whereas the cocaine is a central
14 nervous system stimulant. They wouldn't counteract
15 each other or anything like that, they would both be
16 causing affects on different parts of the body. But
17 the cocaine itself would be a stimulant, which is a
18 mood altering drug itself. People tend to have
19 paranoia with it, hallucinations, things like that.

20 **Q** So from your examination, you have determined
21 then that the victim in this case used drugs within
22 at least the last three days or even better,
23 according to your estimation, within the last 12
24 hours?

25 **A** At a -- that would be the closest to the time

1 of his death would be 12 hours, but anywhere from 12
2 hours up to three days.

3 Q And even when you give that estimate, that is a
4 generalization because on some people, it would be a
5 lot longer, and on some people, it possibly could be
6 a lot shorter; is that correct?

7 A With the estimations that I've given as far as
8 elimination rates, it's published studies on
9 individuals, so these are averages. But with the
10 technology as far as how I'm analyzing the sample,
11 our techniques, we could only find it at a maximum
12 up to three days, so that's how we can break it down
13 up to a maximum of three days.

14 Q But I'm talking about as far as the length of
15 time -- the closest to the length of time that a
16 person takes it. It's just an average that it was
17 within 12 hours?

18 A Approximately, 12 hours, that would be a good
19 estimate, yes, sir.

20 Q But so it's possible it could have been less
21 time than that?

22 A Like I say, based on the studies, it's an
23 average. The range that it gives is not that wide
24 of a window because they do it over a large sample
25 group, but I wouldn't come too much below that just

1 based on not finding any cocaine or cocaine
2 metabolites within the brain tissues.

3 Q Well, when you do this type examination, do you
4 have like what you consider a margin of error?

5 A A margin of error. On this particular case, we
6 have -- it's what we consider a qualitative test,
7 it's not a quantitative test. I'm not getting a
8 number on the cocaine itself. I did on the urine on
9 the alcohol. But it's just if it's there, if it's
10 not there. I don't have a level. So it's a
11 concrete that is in his system in his urine, the
12 cocaine and cocaine metabolites.

13 Q So just for clarification, a person that --
14 well, we don't have to say a person, Alonzo, the
15 person that you tested in your cult -- or your urine
16 test, definitely showed that he had used drugs or
17 was a drug user?

18 A It showed that he had cocaine and cocaine
19 metabolites in his system at some time between 12
20 hours and three days, he had used drugs.

21 Q And as a result of this cocaine or metabolites
22 in his system, in your expert opinion, these are
23 substances that would affect your mood in different
24 ways?

25 A If you're -- if it's in your blood or affecting

1 your brain at the time, yes, you would be getting
2 affects from though particular drugs.

3 **Q** And as a result, that would make people act
4 more irrational than rational?

5 **A** It possibly could. It has other affects, too,
6 but that could be an effect of those particular
7 drugs.

8 **Q** And because of the way that it affects a
9 person's personality, those are the reasons that the
10 laws are there; is that correct, because of the
11 affects that it has on an individual that's why it's
12 illegal?

13 **A** Well, it's associated with impairment as far as
14 driving and a person's reaction, that's why -- or a
15 person's ability to function, that's where the drugs
16 and the alcohol come into play in the law.

17 **Q** So from your examination, what you have found
18 out is that the victim in this case was a drug user?

19 **A** That he had used cocaine or cocaine metabolites
20 within the last 12 hours to three days.

21 **MR. JOHNSON:** No other questions.

22 **REDIRECT EXAMINATION**

23 **BY MS. CAMPBELL:**

24 **Q** Just one question and I want to make sure I'm
25 straight. You mentioned that the affects of alcohol

1 or cocaine in the brain at the time?

2 **A** That's correct.

3 **Q** At about the time of his death, was there any
4 cocaine in his brain?

5 **A** There was not.

6 **Q** And would he have been suffering from any
7 affects from cocaine at the time of his death?

8 **MR. JOHNSON:** Your Honor, I do not think that
9 he can answer that. He's not a medical doctor or a
10 psychiatrist. He cannot -- as to what affect it
11 would have on the brain. He can state whether it
12 was in the brain or not, but as to what affect it
13 would have, I do not believe he can state that.

14 **THE COURT:** Rephrase the question.

15 BY MS. CAMPBELL:

16 **Q** Based on the questions he just asked you about
17 the affects cocaine can have and in conjunction with
18 alcohol, was cocaine, in any way, affecting Alonzo
19 Gale's moods or anything else at the time of his
20 death?

21 **MR. JOHNSON:** Your Honor, once again, I object.
22 I asked the witness a generalized question as in
23 reference to generalization. She's asking specific
24 questions as to the affect on an individual that has
25 deceased and he cannot answer that.

1 **THE COURT:** I'm going to overrule the
2 objection.

3 **MS. CAMPBELL:** Thank you.

4 BY MS. CAMPBELL:

5 **Q** You can answer it?

6 **A** Based on the testing that I did in the brain
7 tissues of the victim, he was not under the
8 influence of cocaine at the time of his death.

9 **MS. CAMPBELL:** Thank you. Your Honor, may he
10 be excused?

11 **MR. JOHNSON:** I have no other questions.

12 **THE COURT:** You may step down.

13 Is there any objection to him being excused?

14 **MR. JOHNSON:** No objection, Your Honor.

15 **MS. CAMPBELL:** The State would call Hue Tang.

16 HUE TANG,

17 having been duly sworn, testified as follows:

18 **THE CLERK:** Please have a seat in the witness
19 stand and state your full name for the record.

20 **THE WITNESS:** Hue Tang.

21 **THE COURT:** And would you please spell your
22 first name, please?

23 **THE WITNESS:** H-U-E.

24 **THE COURT:** Thank you.

25 ****

1 DIRECT EXAMINATION

2 BY MS. CAMPBELL:

3 Q Agent Tang, where are you employed?

4 A I'm employed by South Carolina Law Enforcement
5 Division.

6 Q And how long have you been working at SLED?

7 A Fourteen and a half years.

8 Q And where are you currently employed at SLED?

9 A I'm employed in the trace evidence section.

10 Q In the trace evidence section?

11 A Yes, ma'am.

12 Q And can you tell this jury in the trace
13 evidence department, what types of things y'all test
14 for?

15 A We perform tests on GSR sample, paint,
16 explosive, arson or fire debris and duct tapes.

17 Q Can you tell this jury a little bit about your
18 training and your education in the field of trace
19 evidence?

20 A I received a bachelor with major chemistry from
21 South Carolina Law Enforcement -- University of
22 South Carolina. I completed my training in GSR
23 analysis at SLED. I completed my training in basic,
24 police academy -- basic training in South Carolina
25 Criminal Justice Academy. Also receive -- obtain

1 various courses, graduate courses at the University
2 of South Carolina.

3 Q And are you currently employed in the trace
4 department?

5 A Yes, ma'am.

6 Q And you're currently qualified -- the SLED
7 laboratory is accredited; is that correct?

8 A That's correct.

9 Q And you are currently qualified to perform
10 tests there?

11 A Yes, ma'am.

12 Q And have been doing so?

13 A Yes, ma'am.

14 MS. CAMPBELL: Your Honor, at this time, we'd
15 offer him as an expert in trace analysis.

16 MR. JOHNSON: I have no objection, Your Honor.

17 THE COURT: Without objection, I find him so
18 qualified.

19 BY MS. CAMPBELL:

20 Q Agent Tang, I want to turn your attention to
21 this case in particular, I believe, it's L-27250 --
22 94545. Did you have an occasion to receive certain
23 evidence in this case?

24 A Yes, ma'am.

25 Q And who did you receive that evidence from,

1 sir?

2 A I received sample from our evidence technician,
3 Christine Montgomery.

4 Q Christine Montgomery?

5 A Yes, ma'am.

6 Q And she also works within the trace department;
7 is that correct?

8 A That's correct.

9 Q And her job in the trace department is what,
10 sir?

11 A Her job is to intake the evidence and prep the
12 sample.

13 Q And, in this case, did she do that?

14 A Yes, ma'am, she did.

15 Q And once she turned this evidence over to you,
16 did you then perform the test in this case?

17 A Yes, ma'am, I did.

18 Q And during the time that this evidence was in
19 your possession and while you were doing the
20 testing, did anyone have the opportunity to tamper
21 with the evidence, to alter it or change it in any
22 way?

23 A No, ma'am.

24 Q This evidence was not forwarded to SLED for,
25 approximately, two years?

1 **A** The date we received it is August 3rd of this
2 year.

3 **Q** Of this year?

4 **A** That's right.

5 **Q** When evidence is collected in a gunshot residue
6 kit, which has already been testified to, can it --
7 as long as it's kept in a proper manner, can it sit
8 for a period of time before testing?

9 **MR. JOHNSON:** Your Honor, once again, she's
10 testifying. She needs to ask -- she's doing direct
11 examination.

12 **THE COURT:** Rephrase the question.

13 **BY MS. CAMPBELL:**

14 **Q** Does it matter how long it is before the
15 testing is done if it's collected in the correct
16 manner?

17 **A** No, ma'am.

18 **Q** And the fact that this evidence was not
19 forwarded to SLED for two years, does that affect
20 the results in any way?

21 **A** No, ma'am.

22 **Q** When you received the evidence in this case,
23 can you tell the jury generally what kind of testing
24 you did in this case specifically?

25 **A** I performed an instrumentive test.

1 Q The instrumentive test?

2 A That's right.

3 Q And what -- generally, what kinds of things
4 were you looking for?

5 A We're looking for an element of gunshot primer,
6 like barium, antimony and led.

7 Q So you're looking for certain elements that are
8 present in --

9 A Gun primer.

10 Q In gun primer?

11 A That's right.

12 Q And it's what we refer to -- that's why it's
13 called a gunshot residue kit?

14 A That's right.

15 Q And, in this case, did you do the proper
16 testing?

17 A Yes, ma'am, I did.

18 Q And in gunshot residue kits, are you testing
19 for different parts -- are there collections done
20 from different parts of the hands?

21 A That's correct. We collect from the palm of
22 the right hand and palm of left hand and the back of
23 both hands.

24 Q And in this case, did you have samples from the
25 four different areas of the hands?

1 **A** Four samples different hand and a control
2 sample, which is far away from the hand, which is
3 like the back of the subject or the back of the
4 thigh.

5 **Q** And in taking either the right or the left hand
6 first, what were the results when you tested the
7 gunshot residue kit that was collected from the palm
8 of say the -- from whichever hand?

9 **A** Okay. There's no -- in the sample submitted in
10 the kit labeled Gale Alonzo, the quantities of
11 matter did not -- the test did not indicate a
12 presence of gunshot residue.

13 **Q** Okay. And was that true -- it did not indicate
14 the presence of gunshot residue?

15 **A** That's true.

16 **Q** So the results were negative?

17 **A** That's right.

18 **Q** And that would have been for the left palm?

19 **A** In this case, for all part of the hands.

20 **Q** All parts. So in the left hand, front and
21 back?

22 **A** That's right.

23 **Q** And in the right hand, front and back?

24 **A** That's right.

25 **Q** And that's negative?

1 **A** That's correct.

2 **Q** And tell this jury how that is significant on
3 whether or not the placement of someone's hands at
4 the time a gun is fired or handled?

5 **A** In order for gunshot residue to be present on
6 the person hand, either the person discharged the
7 weapon or the person handled the weapon or been in
8 the vicinity, close vicinity when the weapon was
9 discharged.

10 **Q** So a person's hand, I believe, the first thing
11 you said was a person actually -- how did you put
12 it?

13 **A** Discharged a weapon, fired.

14 **Q** Fired the weapon?

15 **A** That's right.

16 **Q** So if their hands were around the weapon at
17 that time, what would you expect to find?

18 **A** Gunshot residue.

19 **Q** On which part of the hand or does it matter?

20 **A** Depend, you left hand, right hand or how you
21 hold the weapon.

22 **Q** And, in this case, your results were?

23 **A** Negative.

24 **Q** And the second thing you mentioned, the
25 handling of the gun?

1 **A** That's right.

2 **Q** Can deposit gunshot residue?

3 **A** That's right.

4 **Q** And, in this case, the results of your gunshot
5 residue tests were?

6 **A** Negative also.

7 **Q** And, finally, you mentioned the third way that
8 gunshot residue may be deposited?

9 **A** Either he fired or around the gun when it was
10 discharged.

11 **Q** So if the hands were in close proximity to,
12 say, the end of the gun?

13 **A** That's correct.

14 **Q** Or anywhere around it when it was fired?

15 **A** That's correct.

16 **Q** And would that be consistent with, say, a
17 struggle going on over a gun?

18 **A** You can have the person hold the gun when it
19 was discharged.

20 **Q** Okay. Is there -- in this case, the victim was
21 wounded and there was actually blood on his body, as
22 long as it's collected correctly, that doesn't
23 affect your results, does it?

24 **A** That's correct.

25 **Q** Does gunshot residue kits, do they have to be

1 done in a certain amount of time, collected?

2 **A** The collect time within -- have to be within --
3 a live subject should be collected within six hours.

4 **Q** Okay. So if a subject is alive, say a
5 suspected shooter in a case, it needs to be done
6 within six hours?

7 **A** That's correct.

8 **Q** Why is that?

9 **A** Because it's a time -- far away from the time
10 of discharge from daily activity, you might wipe
11 your hand on your clothes or wash your hands,
12 something like that, the activity will remove the
13 gunshot residue from your hands.

14 **Q** And what about a person who has actually died
15 as a result of their wounds?

16 **A** The time limit can be extended to like day or
17 so.

18 **Q** Were you aware that this residue kit was even
19 collected within six hours on this case?

20 **A** It's within six hours.

21 **Q** So the test in this case would be accurate?

22 **A** That's correct.

23 **MS. CAMPBELL:** That's all I have, Your Honor.

24 **THE COURT:** Any cross?

25 **MR. JOHNSON:** Yes, Your Honor.

1 CROSS-EXAMINATION

2 BY MR. JOHNSON:

3 Q Mr. Tang, you say it has to be done within six
4 hours?

5 A That's correct.

6 Q What happens after six hours?

7 A Gunshot residue has been completely removed
8 from the person's hand.9 Q If a person is shot, in this instance, I think
10 the victim was alleged to have been shot around
11 5:30, six o'clock, is that the time that you have on
12 your...13 A I believe the incident day and time is August
14 3rd, 6:18 a.m.15 Q But that was the exact moment that the officer
16 arrived; is that correct?

17 A That's what our record indicate.

18 Q So just say if the officer arrived at 6:18 and
19 the incident happened at six -- let's just say six
20 o'clock, could you tell me what time the autopsy was
21 done and the sample was taken?

22 A The time the sample was taken was 11:35.

23 Q So, approximately, five and a half hours?

24 A That's correct.

25 Q And that's -- at 11:30, that's assuming that

1 the sample was taken at the beginning of the
2 autopsy; is that correct?

3 **A** The only information I have in this --

4 **Q** Is what's on that paper?

5 **A** That's right.

6 **Q** So you don't know if it was taken at the
7 beginning of the autopsy or the end of the autopsy?

8 **A** I have no knowledge of that.

9 **Q** Do you have any idea of how long an autopsy
10 normally takes?

11 **A** No, sir.

12 **Q** So if the officer -- for instance, if the
13 autopsy starts at 11:30 and just say that they took
14 the gunshot residue at the end of the autopsy, how
15 long -- do you have any idea or have you ever -- of
16 your own personal experience, have any idea what a
17 typical length of an autopsy would be?

18 **A** No, sir.

19 **Q** Would it be safe to say at least a half an
20 hour?

21 **A** I have no knowledge of that.

22 **Q** So if a person took this test let's say an hour
23 after the autopsy started at 11:30, it would be past
24 your limit, wouldn't it?

25 **A** I have testified that the time limit for the

1 deceased subject can be extended since a deceased
2 person don't have daily activity and doesn't stand
3 up and wipe his hands or wash his hand or other
4 activities.

5 **Q** I understand. Now, you stated that the effect
6 of blood would have no effect on gun residue?

7 **A** I believe she asked me if it's collected
8 properly.

9 **Q** Well, what is collected properly, explain that
10 to me?

11 **A** I believe the officer collected in the area
12 that doesn't have blood on his hand.

13 **Q** Suppose the officer didn't, how would it affect
14 your exam?

15 **A** Blood or any liquid can wash away the residues.

16 **Q** Blood or any liquid can wash away residue?

17 **A** That's right.

18 **Q** Suppose a person has been shot, such as this
19 incident, and he's profusely bleeding out of his
20 neck, he hit a major artery, and just,
21 hypothetically, suppose he gabbed his neck?

22 **A** Okay.

23 **Q** What kind of effect would that have as far as
24 that amount of blood on his hand, would that wash
25 away the residue?

1 **A** If blood completely covered his hands, that
2 would wash away, but I believe the officer already
3 testified the area of his hand was not covered with
4 blood.

5 **Q** He testified that he -- he testified that an
6 area of his hand was not covered with blood, but is
7 it possible that blood could have washed over his
8 hand -- let me show you a picture, I want you --

9 **MR. JOHNSON:** Your Honor, may I approach the
10 witness?

11 **THE COURT:** Yes.

12 BY MR. JOHNSON:

13 **Q** This is State's Exhibits 19 and 20, will you
14 take a look at that?

15 **A** (Witness complies.)

16 **Q** I'm going to show this to the jury while we
17 talk about it. Those are pictures of the car where
18 the victim fell upon and there was a lot of blood
19 there, you saw that, and some of that looked like
20 hand prints, did it not to you? I can bring it back
21 to you so you can take a look at it.

22 **A** Please. I cannot tell whether they're hand
23 prints or not.

24 **Q** Okay. But as you can tell that is a
25 considerable amount of blood, isn't it?

1 **A** That's blood.

2 **Q** And according to the testimony that you saw,
3 this person had been bleeding ever since the back of
4 the house where there was a considerable amount of
5 blood, isn't it possible that a person that -- with
6 losing that amount of blood, that blood could have
7 washed the residue off his hand?

8 **A** Complete both side of his hand?

9 **Q** Yes.

10 **A** The front and back?

11 **Q** Yes.

12 **A** I believe the officer say that's what area --

13 **Q** I'm not asking you what the officer said. I'm
14 asking you isn't that possible?

15 **A** If both hands were -- front and back were
16 completely covered with blood --

17 **Q** Right, it would wash away the residue?

18 **A** --the answer would be yes.

19 **Q** That's all I'm asking you, okay. So,
20 therefore, it is possible that a person could have
21 been tussling with a gun and if the blood washed it
22 off, your results would turn out negative?

23 **A** If the blood would completely cover both hands
24 and the officer cannot collect a sample properly,
25 the answer would be yes.

1 **Q** And the key word is the officer must collect
2 the sample properly, right?

3 **A** Yes, in the area of both hands.

4 **Q** And when you take your -- when you do your
5 test, you're making an assumption? Of all the tests
6 you do, you make one vital assumption when you take
7 your test, do you know what that is? Could you tell
8 me what that is, that one assumption you make?

9 **A** I'm not sure what you're asking.

10 **Q** Isn't the one assumption that you make every
11 time you take a test is that that officer took the
12 sample properly?

13 **A** In the sample kit, we have instruction list and
14 the officer is supposed to follow the instruction.

15 **Q** But isn't the one assumption that you make when
16 you take your examination -- all of your other
17 examinations are mechanical, you put them in
18 different types of machines, you look under
19 microscopes and you do all of those things; is that
20 correct?

21 **A** Yes, I have control of the testing.

22 **Q** You have control?

23 **A** That's right.

24 **Q** The one thing that you don't have control of
25 when you take your test is that you make an

1 assumption that the officer took the exam properly,
2 right?

3 **A** The officer supposed to follow instruction --

4 **Q** I agree, he's supposed to, but if he doesn't,
5 then whatever results you got could be flawed by his
6 mistake; is that correct?

7 **A** I cannot testify to how the officer collected
8 the sample.

9 **Q** I'm just asking you, if the officer did not
10 collect it correctly, then it would make a flaw in
11 your examination; is that correct?

12 **A** If he did not follow instruction correctly,
13 yes.

14 **MR. JOHNSON:** No other questions.

15 **THE COURT:** Any redirect?

16 **MS. CAMPBELL:** Yes, Your Honor, just a few.

17 REDIRECT EXAMINATION

18 BY MS. CAMPBELL:

19 **Q** In this case, is there any indication he didn't
20 follow the instructions correctly?

21 **MR. JOHNSON:** Your Honor, I object to that.

22 The witness was not present at the scene. He took
23 this test two years after the officer collected it.
24 He does not have no knowledge of what that officer
25 did and he cannot give an opinion of that.

1 **THE COURT:** Rephrase the question.

2 BY MS. CAMPBELL:

3 **Q** To your knowledge, was there any indication in
4 this case that the officer did not collect
5 everything correctly?

6 **A** According to our chain, and the officer
7 testified earlier, he collected in the area that
8 wasn't covered with blood.

9 **Q** And just to make sure we understand, you want
10 to do the collection within six hours on a live
11 person, right?

12 **A** That's correct.

13 **Q** But a person that is dead or died, the window
14 of time to collect it is much longer?

15 **A** That's true.

16 **Q** And the hands -- are you familiar with the
17 bagging of hands and what that does to ensure the
18 quality of your result?

19 **A** Yes, ma'am.

20 **Q** What's the purpose of bagging hands?

21 **A** To protect the hand from the person carrying or
22 whatever, interfere with the hand or wipe it off.

23 **Q** To make sure you preserve whatever evidence may
24 be there?

25 **A** That's right.

1 **Q** And you're aware that, in this case, Alonzo
2 Gale's hands were bagged at the scene?

3 **A** From earlier testimony, yes, ma'am.

4 **Q** To make sure you get an accurate result?

5 **MR. JOHNSON:** Your Honor, once again, she keeps
6 testifying.

7 **THE COURT:** I'll sustain that objection.

8 BY MS. CAMPBELL:

9 **Q** What's the purpose of bagging at the scene?

10 **A** To protect the hand from any interfere (sic) or
11 contamination.

12 **Q** Interfering or contamination?

13 **A** That's right.

14 **MS. CAMPBELL:** Thank you.

15 **MR. JOHNSON:** Just a few follow-up, Your Honor.

16 RECROSS-EXAMINATION

17 BY MR. JOHNSON:

18 **Q** If you bag up hands that are covered with
19 blood, what do you get?

20 **A** Completely covered with blood?

21 **Q** Yes.

22 **A** You got a hand with blood, a bloody hand.

23 **Q** And would that allow you to make -- for your
24 examination to be proper?

25 **A** If the hand were completely covered with blood

1 and --

2 Q And if the officer did not properly take the
3 sample, what would that result be?

4 A As I testified earlier, he doesn't follow the
5 instruction, then my result of my test would be
6 invalid.

7 Q And you were not at the scene, were you?

8 A No, sir.

9 Q And you did not see this sample that you're
10 testifying to until two years after the sample was
11 even taken; is that correct?

12 A That's right.

13 Q What is the normal time that you normally get a
14 sample?

15 A It all depends.

16 Q You've had 14 years, right, that you've been
17 within the department?

18 A Yes.

19 Q What would be an average time?

20 A Some officers submit the next day, some week,
21 some months later.

22 Q Of your own expert opinion, what is the average
23 time?

24 A A month.

25 Q A month?

1 **A** Yes.

2 **Q** So 24 months would be an extended period of
3 time, wouldn't it?

4 **A** Yeah, that's more than one month.

5 **Q** I think so. Thank you.

6 **MR. JOHNSON:** No other questions.

7 **THE COURT:** You may step down.

8 Is there any objection to the witness being
9 released?

10 **MR. JOHNSON:** No objection.

11 **THE COURT:** You may be excused. Thank you.

12 Ladies and gentlemen, I think this is a good
13 time to take a break for the evening. Again, I'm
14 going to remind you the instructions that I have
15 given to you throughout the course of this trial and
16 that is not to begin to discuss this matter among
17 yourselves as you still have not heard all of the
18 evidence that has to be presented. I ask and remind
19 you not to allow anyone to approach you to discuss
20 this matter with you. Also, please do not listen to
21 any conversations that you hear in the hallways as
22 you come and go. Again, if someone attempts to
23 discuss this case with you, please report it as soon
24 as possible.

25 And I also ask you, ladies and gentlemen, to

1 remember the instructions that I gave to you
2 yesterday, that is, to the extent that there may be
3 any media reports, I'd ask that you not listen to or
4 watch or read any of those for the reason that you
5 have to make the decision based upon what you hear
6 in the courtroom and not based upon someone else's
7 recitation of what they heard or saw throughout the
8 course of this trial.

9 Also, ladies and gentlemen, I ask you once
10 again not to discuss this matter with your family
11 and friends, again for the reasons that your
12 conversations with them, they may make comments to
13 you or ask you questions that may influence your
14 thought processes and may influence how you view the
15 evidence. And until you've heard all of the
16 evidence, you are not in a position to be able to
17 make any decisions or determinations as to the facts
18 of this case. Again, please tell your family and
19 friends that the Judge has asked you not to discuss
20 it and that you will be free to discuss it at a
21 later point.

22 Finally, ladies and gentlemen, to the extent
23 that any of you all are familiar or have access to
24 the information relating to any of the issues that
25 have been raised in this particular case or the

1 locations, I ask that you not conduct any
2 independent investigation, that would be the same as
3 allowing someone to come up to you and discuss this
4 case with you.

5 Any investigation that you may conduct through
6 the use of the Internet or other services or through
7 whatever resources you may have available would not
8 be proper and that would again cause influence upon
9 you and also provide information that your fellow
10 jurors would not have access to and it would be
11 inappropriate. So I ask that you not engage in any
12 independent investigation on any of the facts or the
13 issues in this particular case.

14 Ladies and gentlemen, I'm going to ask that you
15 again report to the same jury room where you
16 reported this morning and throughout the course of
17 this trial. When you report at 9:30 tomorrow
18 morning, we will be ready to continue on with the
19 trial of this case. Have a very pleasant evening
20 and we'll see you tomorrow.

21 (The jury was excused for the day.)

22 **THE COURT:** Is there anything we need to take
23 up before we adjourn for the evening?

24 **MS. CAMPBELL:** Beg the Court's indulgence.

25 (Pause.)

1 **MS. CAMPBELL:** Your Honor, there's a matter we
2 might need to just talk to you about in chambers

3 **THE COURT:** I'm available to do that. If you
4 want to do that today, that's fine.

5 **MR. JOHNSON:** I have nothing from the defense.

6 **THE COURT:** We'll see you all tomorrow morning
7 at 9:30.

8 I ask again that the detention center bring
9 Mr. Henderson over at nine o'clock and see if
10 someone can have his clothes available at that time.
11 Thank you.

12 (Whereupon, the proceedings were concluded
13 for September 22, 2004.)
14
15
16
17
18
19
20
21
22
23
24
25

1 (The following proceedings were held on
2 September 23, 2004.)

3 **THE COURT:** Anything we need to take up before
4 we bring the jury in?

5 **MS. CAMPBELL:** Nothing from the State, Your
6 Honor. We have a couple of issues we need to
7 resolve just before he puts his case up. But we're
8 putting up one more witness, we anticipate, and then
9 we will rest. And I assume, at that point, we have
10 other matters to take up anyway, so we will do it
11 then.

12 **MR. JOHNSON:** I have nothing from the defense,
13 Your Honor.

14 **THE COURT:** If you'll ask the jury to come in,
15 please.

16 (The jury enters the courtroom at 10:00
17 a.m.)

18 **THE COURT:** Good morning, ladies and gentlemen.
19 We are having some technical difficulties. I'm just
20 going to tell you up front, there is a shortage in
21 the microphone system. It's not the lights, it's
22 the microphones. And so that's what that buzzing
23 noise is. In order to get the noise to stop, I have
24 to turn off all the microphones and that's just not
25 feasible. We need to have the microphones on so

1 that everybody can hear not just you all, but also
2 the attorneys and everybody else who's in the
3 courtroom.

4 I'm trying to see if we can move to another
5 courtroom or what courtroom might be available that
6 we can move to, that entails a little bit of time
7 and energy in order to do that. We'll probably just
8 have to suffer through it this morning and perhaps
9 we'll be able to move after lunch. We'll just see
10 where we are. If we're here tomorrow, then for sure
11 tomorrow we'll be in a different courtroom. And if
12 I have to, I'll just tell you to report down here to
13 this jury room and then we'll just move from there
14 tomorrow morning so that you can find the right
15 place to be.

16 And I apologize for the inconvenience that
17 we're having. It's been looked at, but, apparently,
18 they need to have some other folks come in and they
19 just haven't had a chance to do that. So please
20 bear with us and I appreciate your patience.

21 If we're ready to continue, Ms. Campbell, you
22 may call your next witness.

23 **MS. CAMPBELL:** Thank you, Your Honor. The
24 State would call Mark Vinson.

25 *****

1 MARK WILLIAM VINSON,
2 having been duly sworn, testified as follows:

3 THE CLERK: Please have a seat in the witness
4 stand and state your full name for the record.

5 THE WITNESS: Mark William Vinson.

6 DIRECT EXAMINATION

7 BY MS. CAMPBELL:

8 Q Investigator Vinson, where are you employed?

9 A Columbia Police Department.

10 Q And how long have you been working there, sir?

11 A Twenty-five years.

12 Q What do you do at the Columbia Police
13 Department?

14 A Major Crimes Investigator.

15 Q And can you tell this jury, as a Major Crimes
16 Investigator, what your duties involve?

17 A I do follow-ups on violent crimes against
18 persons, homicides, shootings, robberies, sexual
19 assault. I do the follow-up, talk to witnesses,
20 obtain statements, things like that.

21 Q And as an investigator in the major crimes unit
22 -- how long have you been doing major crime
23 investigations?

24 A Seventeen years.

25 Q Seventeen years?

1 **A** Yes, ma'am.

2 **Q** You aren't the person necessarily that's going
3 to respond if, say, I call 911?

4 **A** No, ma'am.

5 **Q** But you would be one of the people that would
6 respond to the scene if it's, say, what we call a
7 major crime or a violent crime?

8 **A** Yes, ma'am.

9 **Q** I want to turn your attention back to August of
10 2003 (sic), August the 3rd, in the morning. Did you
11 have an occasion to respond to a crime scene at 921
12 Marlboro Street?

13 **A** Yes, I did.

14 **Q** And is that here in Richland County?

15 **A** Yes, ma'am.

16 **Q** And what kind of call were you responding to
17 that morning?

18 **A** I had already been informed there was a
19 homicide.

20 **Q** And, approximately, what time did you get
21 there?

22 **A** I arrived at 7:00 a.m.

23 **Q** 7:00 a.m.?

24 **A** Yes, ma'am.

25 **Q** And when you got there, were there other

1 officers already there?

2 **A** Yes, Officer Hall, his supervisor and several
3 other officers were already there.

4 **Q** EMS?

5 **A** Yes -- they may have already left. I don't
6 remember actually.

7 **Q** Tell this jury what you encountered when you
8 first went to the scene, what it generally looked
9 like?

10 **A** There was a victim's body laying by the car in
11 the parking lot and a large amount of blood there.

12 **Q** Did you have an occasion to go around to the
13 rear of the apartment building?

14 **A** Yes. I walked through the apartment and looked
15 in the rear of the apartment.

16 **Q** And Investigator Catoe was already there when
17 you got there; is that correct?

18 **A** I think he arrived after I did actually.

19 **Q** And you were able to assess the crime scene?

20 **A** Yes.

21 **Q** And in assessing the crime scene, as an
22 investigator with 17 years of experience, you are
23 careful not to disturb any potential evidence?

24 **MR. JOHNSON:** Your Honor, she's testifying
25 again.

1 **THE COURT:** Just watch the leading. I'll
2 sustain the objection.

3 BY MS. CAMPBELL:

4 **Q** As an investigator with the major crimes unit,
5 tell this jury what you're careful about doing when
6 you get to the scene?

7 **A** I don't want to disturb any evidence. We have,
8 you know, the crime scene investigative unit are the
9 ones that collect the evidence.

10 **Q** And in your assessment of both the front -- the
11 interior of this apartment, which I believe is
12 apartment what?

13 **A** Two dash two.

14 **Q** And that is where the victim was actually
15 living at the time of the assault?

16 **A** Yes.

17 **Q** Were you able to see any blood or any evidence
18 of any blood?

19 **A** Like I stated, there was a large amount of
20 blood on the front, the rear and inside the
21 apartment.

22 **Q** In your assessment of the scene, I'm going to
23 show you what's been marked as State's Exhibit 9 for
24 identification purposes, this photo was taken at a
25 later date, but does that generally show the area,

1 what I call the back, but some people call the
2 front, but it's the hill side?

3 **A** Yes. And this is the back door of the
4 apartment.

5 **Q** And on State's Exhibit 9, is this looking from
6 what direction?

7 **A** From two dash one looking to the end.

8 **Q** And they go two dash one then...

9 **A** Two, three, four.

10 **MS. CAMPBELL:** Your Honor, at this time, we'd
11 offer State's Exhibit 9, I believe, without
12 objection.

13 **MR. JOHNSON:** No objection, Your Honor.

14 **THE COURT:** Without objection, it's admitted.

15 (State's Exhibit Number 9, photograph of
16 back door of apartment, admitted into evidence.)

17 BY MS. CAMPBELL:

18 **Q** Did you make contact with any potential
19 witnesses there at the scene that morning?

20 **A** Yes, Ms. Terrell Myers.

21 **Q** And how did you come in contact with her?

22 **A** The officers had already talked to her so they
23 pointed her out to me.

24 **Q** And were there other witnesses also there at
25 the scene, the Wilsons, I believe, and other

1 witnesses?

2 A Yes.

3 Q And were those actually talked to or handled by
4 other people or you at a later date?

5 A Other investigators also responded and took
6 statements from them.

7 Q That morning, once you made contact with Ms.
8 Terrell Myers, what did you do?

9 A I talked to her and she was very upset almost
10 to the point of being hysterical, tried to calm her
11 down, talked to her to find, you know, it's
12 important to find out what had happened.

13 Q And did you make a decision to actually talk to
14 her somewhere else?

15 A Yes. I decided to take her down to the police
16 department away from the scene because the victim's
17 body was still laying there in the parking lot. I
18 knew, having to wait for the coroner, it would be
19 there for some time.

20 Q And did you, in fact, take Ms. Myers down to
21 police headquarters?

22 A Yes, I did.

23 Q And where is police headquarters?

24 A It's at the corner of Lincoln and Washington
25 Street.

1 **Q** Once you got Ms. Myers to headquarters, did you
2 have an occasion to take a statement from her?

3 **A** Yes, I obtained a written statement from her.

4 **Q** And that was an actual three page statement?

5 **A** Yes, it was.

6 **Q** And what time in the morning was that that you
7 actually took the statement?

8 **A** I actually began it shortly after I arrived at
9 the scene at 7:10 a.m., but then I had elected to
10 take her down to the police department, so I
11 probably finished it an hour later.

12 **Q** An hour later?

13 **A** Yes.

14 **Q** And a three page statement, does that usually
15 take an hour?

16 **A** No, not normally.

17 **Q** And tell the jury what was going on when you
18 were taking a statement from Ms. Myers?

19 **A** Like I said, she was upset, she was crying.
20 And, also, just the information I obtained from her,
21 she didn't know the suspect's entire name. I was
22 having to do some research to try to find out who he
23 was.

24 **Q** Was Ms. Myers, however, able to relate to you,
25 basically, what she knew about what went on?

1 **A** Yes.

2 **Q** And before I go any further, is this a copy of
3 the statement that you actually took from Ms. Myers
4 that morning?

5 **A** Yes, it is.

6 **Q** And there have been some questions about the
7 events that she related them to you that day and
8 later. Can you explain to the jury how the
9 statement was taken and what you were doing?

10 **A** Like I stated, the statement itself is in my
11 handwriting. She was telling me what happened and I
12 was writing it down. I was also trying to do some
13 research to obtain a last name of the suspect.

14 **Q** And during that time period, did she indicate
15 how many times the defendant went out the back door?

16 **A** Just one time.

17 **Q** And that's in the statement?

18 **A** Yes.

19 **Q** And is it written somewhat -- explain to the
20 jury about the top three lines, you then go back to
21 explaining it, explain how that happens?

22 **A** The top three lines?

23 **Q** On the second page, I'm sorry.

24 **A** We had stopped -- stopped and started several
25 times, like I said, sometimes because of, you know,

1 just her being upset and also myself having to go
2 look something else up.

3 Q Okay. And, at that point, she explained
4 generally the victim's movements in a general
5 statement?

6 A Yes.

7 Q And did you then go back to clarify parts of
8 that?

9 A Yes.

10 Q Was she able to provide you any information
11 about the name of the person that she saw come to
12 her back door that day?

13 A She had provided a name of either Ayree or
14 Avery, a physical description. And she had also
15 stated she had known him, I think, since middle
16 school.

17 Q Based on that information, were you able to
18 develop a suspect in the case?

19 A Yes. Checking through what we call field
20 interview cards, came up with the name of a person
21 -- actually, the name on the interview card was
22 written as Ayree Henderson where he had -- the
23 police had spoken with him on July 1st of 2002,
24 about a month before this, out at 921 Marlboro
25 Street.

1 **Q** At 921 Marlboro --

2 **A** At the apartment complex.

3 **Q** Was she able to give you any information on
4 anyone else that might be with Mr. Henderson -- what
5 you then determined would be Mr. Henderson?

6 **A** She told me that he was strictly with a young
7 man named Tavay. And I also observed that on July
8 1st, when he was -- the police had spoken with him,
9 that a young man by the name of Shandon Tavay
10 Robinson was with him at that time.

11 **Q** Based on your -- information you got from the
12 field interview and the information you were able to
13 get from Ms. Myers, did you develop a photo lineup?

14 **A** Yes. I obtained a photograph of Mr. Ayree
15 Henderson and placed it along with five other
16 pictures in a photo lineup.

17 **Q** I'm going to show you what's been marked as
18 State's Exhibit Number 2. Do you recognize that?

19 **A** Yes. This is the photographic lineup I
20 prepared with Mr. Henderson's picture on August 3rd
21 of 2002.

22 **Q** And when you showed this picture to Ms. Myers
23 that morning -- and that was around what time?

24 **A** That was at 8:30 a.m.

25 **Q** Did you tell her who to pick?

1 **A** No, ma'am.

2 **Q** Did you tell her he would necessarily be in
3 there?

4 **A** No, ma'am.

5 **Q** What, if anything, did you explain to her prior
6 to showing her this set of pictures?

7 **A** I just told her I was showing her a
8 photographic lineup and to take a look at these six
9 pictures and see if she saw a picture of the man she
10 had referred to in her statement that morning.

11 **Q** And when she viewed the lineup, were you
12 present?

13 **A** Yes, I was.

14 **Q** And what happened?

15 **A** She, almost within just a couple of seconds,
16 picked out photograph number five who is, in fact,
17 Ayree Henderson.

18 **Q** Did you memorialize this in State's Exhibit 1?

19 **A** Yes. This is a standard form we used. I had
20 her sign it saying she had chosen photograph number
21 five and then I had her sign it.

22 **Q** And, again, that was based on this group of
23 photographs you were able to obtain that morning at
24 8:30?

25 **A** Yes, ma'am.

1 **Q** Later that morning, did you also have an
2 occasion to come in contact with witnesses, Kathy
3 Wilson and Everett Wilson?

4 **A** Yes. Another investigator had taken statements
5 from both of them.

6 **Q** And just to clarify for the record, statements
7 were also taken from them earlier that morning,
8 around 7:30 or 8:00 that morning?

9 **A** Yes.

10 **Q** And once -- did you assert whether or not
11 either of them were able to identify the person that
12 was behind, as they explained in their statements?

13 **A** Mr. Wilson indicated he had actually seen the
14 person, but only seen him through a double screen.
15 I did show him the photographic lineup. He told me,
16 before I even showed it, he didn't think he could
17 identify him. I went ahead and showed it anyway and
18 he did not identify anybody.

19 **Q** That was Mr. Everett Wilson?

20 **A** Yes.

21 **Q** And that would be Kathy Wilson's son?

22 **A** Right.

23 **Q** Did you ever show the photo lineup to Ms. Kathy
24 Wilson that morning?

25 **A** No, I did not.

1 **Q** Why was that, sir?

2 **A** She said she never saw the man.

3 **Q** At some point that day, did you get an arrest
4 warrant for Ayree Henderson?

5 **A** Yes, I did.

6 **Q** Later that day, did you make any attempts to
7 find Ayree Henderson?

8 **A** Yes. The information on the field interview
9 card and according to his South Carolina driver's
10 license, he was showing an address of 900 Gracern
11 Road, apartment 156.

12 **Q** And 900 Gracern Road, what part of the county
13 is that in?

14 **A** That's off of Greystone Boulevard. I think
15 it's Three Rivers Apartments.

16 **Q** Off Greystone Boulevard?

17 **A** Right.

18 **Q** And that's not in the Eau Claire area?

19 **A** No, it's off Greystone Boulevard near I-126.

20 **Q** Near I-26?

21 **A** Yes.

22 **Q** 126. Did you make any attempts to locate him
23 at the address you were able to come up with?

24 **A** Yes. I obtained a search warrant for the
25 address and went to the address and knocked on the

1 door, but when we got there, we found out that the
2 person who lived there -- that Mr. Henderson did not
3 live there and the person who was in the apartment
4 now had just recently moved in there.

5 Q Were you able to find any other addresses for
6 Mr. Henderson that day?

7 A No.

8 Q Did you make any other attempts to find
9 Mr. Henderson?

10 A I spoke with his girlfriend, spoke with his
11 mother. Also, we did a press release advising, you
12 know, that we did have a murder warrant on Ayree
13 Henderson for the shooting.

14 Q And were you able to make contact with Ayree
15 Henderson that day?

16 A No, I was not.

17 Q Did you also make any attempts to find his
18 friend, Tavay?

19 A Yes. Later that same morning, we went to his
20 address, which is not too far from 921 Marlboro
21 Street, spoke with a relative of his and they had
22 not seen him or Ayree.

23 Q Were you also made aware, when you talked to
24 Ms. Myers that morning, that there was a second
25 person out there when she looked out of that window?

1 **A** Yes, a female.

2 **Q** A female?

3 **A** Right.

4 **Q** Did you make any attempts to determine who the
5 female was that was out there?

6 **A** Yes.

7 **Q** And what, if any, information were you able to
8 develop and how?

9 **A** We did receive an anonymous call that the
10 person out there, just a first name of Shea. And
11 the anonymous caller said she lived in Hammond
12 Village. We attempted to locate her, but were never
13 able to locate her.

14 **Q** And you made attempts to locate her as well?

15 **A** Yes.

16 **Q** Has she ever made contact with you?

17 **A** No.

18 **Q** And as of this day, she ever made contact with
19 you?

20 **A** No.

21 **Q** Were you made aware on the next day, I believe
22 it was August the 4th, that Mr. Henderson had turned
23 himself in?

24 **A** Yes. I think it was 9:15 that evening the
25 following day, he did turn himself into the police

1 department at the front desk.

2 Q And how was that effected?

3 A I'm sorry?

4 Q How did he come about turning himself in?

5 A He just -- he came down to the Columbia Police
6 Department.

7 Q Did you have information that he was going to
8 ahead of time?

9 A Yes. His attorney at the time, Todd
10 Rutherford, had contacted me to advise me of that.

11 Q Did you make any contact with the defendant at
12 that time?

13 A No.

14 Q When the defendant turned himself in, is it a
15 common practice to, basically, try to get an address
16 from him?

17 A Yes.

18 Q And was the defendant able to provide an
19 address when he turned himself in the next day --
20 the next evening?

21 A On the supplemental report that Investigator
22 Bulloch written, he had wrote down as no permanent
23 address.

24 Q This was a shooting, right?

25 A Yes, ma'am.

1 **Q** So as an investigator, you're going to make an
2 attempt to try to find the gun?

3 **A** Of course, yes, ma'am.

4 **Q** And the purpose of the search warrant -- what
5 was the purpose of the search warrant?

6 **A** To look for a gun.

7 **Q** Were you able to ever determine where
8 Mr. Henderson was living or staying at the time?

9 **A** No, ma'am.

10 **Q** And were you able to ever find the gun in this
11 case?

12 **A** No, I was not.

13 **Q** Does that happen sometimes?

14 **A** That happens fairly frequently.

15 **Q** Why is that?

16 **A** Well, once a person, you know, leaves the scene
17 with a gun, you know, they're taking the gun away,
18 you know, so that they can't be linked to the crime
19 normally.

20 **Q** Were you able -- ever able to determine where
21 the gun ended up in this case?

22 **A** No.

23 **Q** And just for the record, when you went to the
24 scene that day, that morning, and you were there
25 for, approximately, an hour or two?

1 **A** Off and on. I left shortly after I got there,
2 but, you know, we did come back.

3 **Q** And officers were there the entire time?

4 **A** Yes.

5 **Q** Did anyone ever make contact with Ayree
6 Henderson that morning at the scene?

7 **A** No, ma'am.

8 **Q** Did anyone ever make contact with a girl or a
9 woman named Shea?

10 **A** No, ma'am.

11 **Q** You also heard information -- there were other
12 people living in the apartments surrounding that
13 little cul-de-sac where this occurred?

14 **A** Yes.

15 **Q** Were you able to determine at that point
16 whether or not anyone else had seen anything as far
17 as the actual shooting occurring?

18 **A** It would be a normal practice, as that morning,
19 other investigators did what we call a canvas, just
20 going door to door in the area knocking on all of
21 the doors asking people if they had seen or heard
22 anything.

23 **Q** Is it unusual for people to be reluctant to
24 come forward in a case such as this?

25 **A** No, it's not unusual.

1 **Q** Can you explain that to the jury?

2 **A** Sometimes -- if it's a high crime area,
3 sometimes people are afraid of talking to the
4 police, things like that.

5 **Q** Why is that?

6 **A** They're afraid of other people in the
7 neighborhood.

8 **Q** When you went to the scene, were you able to
9 observe the body on the ground next to the car?

10 **A** Yes.

11 **Q** What was the victim wearing?

12 **A** Just a pair of boxer shorts.

13 **Q** When the defendant, Ayree Henderson, turned
14 himself in, was he -- are you aware of whether or
15 not he was injured in any manner?

16 **A** He was not.

17 **MS. CAMPBELL:** Beg the Court's indulgence.

18 (Pause.)

19 **Q** The defendant's appearance, do you have -- at
20 my request, did you get some photographs of the
21 defendant, how he looked that summer?

22 **A** Yes, I did.

23 **MR. JOHNSON:** Your Honor, objection. May we
24 approach?

25 **THE COURT:** Counsel, approach.

1 (Whereupon, a bench conference was held off
2 the record, in the presence of the jury, but out of
3 the hearing of the jury.)

4 **THE COURT:** For the record, Mr. Johnson's
5 raised an objection which we'll take up -- we'll
6 note that he made it at this particular point and
7 we'll discuss the merits of it when we take a break.
8 And, I guess, discuss the merits on the record.
9 We've already discussed it with...

10 BY MS. CAMPBELL:

11 **Q** This photo, does that reflect, approximately,
12 his appearance in and around the time?

13 **A** Yes, ma'am.

14 **MS. CAMPBELL:** Your Honor, at this time, we'd
15 offer it into evidence.

16 **THE COURT:** With the objections noted by
17 Mr. Johnson, it's admitted.

18 (State's Exhibit Number 48, photograph of
19 the defendant, admitted into evidence.)

20 BY MS. CAMPBELL:

21 **Q** During the course of your investigation over
22 the last two years --

23 **MR. JOHNSON:** Your Honor, may I approach again?

24 **THE COURT:** Yes.

25 (Whereupon, a bench conference was held off

1 the record, in the presence of the jury, but out of
2 the hearing of the jury.)

3 BY MS. CAMPBELL:

4 Q Investigator, I'm sorry. Finally, during the
5 course of your investigation, your initial
6 investigation over the last two years, when is the
7 first time you heard about a self-defense case in
8 this case?

9 A Monday.

10 Q Of this week?

11 A Yes, ma'am.

12 MS. CAMPBELL: Thank you, Investigator. Please
13 answer any questions the defense may have.

14 THE COURT: Any cross?

15 MR. JOHNSON: Yes, Your Honor. May it please
16 the Court.

17 CROSS-EXAMINATION

18 BY MR. JOHNSON:

19 Q Officer Vinson, you stated that -- a couple of
20 things. Let's start with the picture. You stated
21 that that picture reflects the way that
22 Mr. Henderson looked at the time of the incident; is
23 that correct?

24 A Yes.

25 Q How would you know if you never saw him?

1 **A** I obtained that photograph of him that was
2 taken.

3 **Q** But how would you know how he looked at that
4 time if you never saw him?

5 **A** Like I say, just from looking at the photograph
6 of him.

7 **Q** So you're assuming that's how he looked?

8 **A** Well, I know that photograph was taken that
9 day.

10 **Q** Right. But you never saw him in person, did
11 you?

12 **A** Right.

13 **Q** So you don't know how he looked at the time.
14 You're just assuming that that's the way he looked
15 when you saw that picture, right?

16 **A** From the photograph, right.

17 **Q** So, therefore, you don't know how he looked at
18 the time of the incident because you never saw him?

19 **A** At the incident scene, no, sir, I didn't see
20 him there.

21 **Q** You never interviewed him, did you?

22 **A** No, sir.

23 **Q** So if you never talked to Mr. Henderson --

24 **MS. CAMPBELL:** Objection, Your Honor. We have
25 a matter of law. May we approach?

1 **THE COURT:** Yes.

2 (Whereupon, a bench conference was held off
3 the record, in the presence of the jury, but out of
4 the hearing of the jury.)

5 BY MR. JOHNSON:

6 **Q** Because my client had a lawyer, you did not
7 interview him; is that correct?

8 **A** Correct.

9 **Q** So, therefore, if there was any defense that my
10 client had, you would have not known about it; is
11 that correct?

12 **A** I'm sorry, could you repeat that?

13 **Q** Because you couldn't interview him, if there
14 was any defense that my client had, you would not be
15 aware of it; is that correct?

16 **A** Not from him, right.

17 **Q** So you were not aware of it because under the
18 law, you were not allowed to talk to my client; is
19 that correct?

20 **A** Yes, sir.

21 **Q** Okay. And my client did turn himself in the
22 next day; is that correct?

23 **A** Yes, sir, 9:00 p.m. that following day.

24 **Q** He was not tracked down somewhere or whatever,
25 he actually came downtown and turned himself in; is

1 that correct?

2 **A** Yes, sir. Like I say, his name and everything
3 had already been released to the media.

4 **Q** The person that you were given the name of Shea
5 as the person that was also there at the scene?

6 **A** Correct.

7 **Q** What attempts did you make to find her?

8 **A** I checked with the people out in the complex to
9 see if anyone out there knew her just by her first
10 name. I was not able to find anything as far as an
11 address or a last name.

12 **Q** But there was testimony, evidence given to you
13 that this person, Shea, was present at the time?

14 **A** Right, an anonymous call and, like I say,
15 witnesses that stated there was a female out there
16 with him.

17 **Q** Okay. Now, you said that a lot of times in
18 incidents like this, because you couldn't find a
19 gun, that the person -- the defendant would take the
20 gun with them or something of that nature; is that
21 correct?

22 **A** Correct.

23 **Q** But also in these areas where there's a lot of
24 drugs, there's a lot of crime, haven't you also seen
25 occasion where the gun was dropped somewhere at the

1 scene and some of the people within the area picked
2 up the gun?

3 **A** I am not personally aware of any incident such
4 as that.

5 **Q** Have you heard of such a thing?

6 **A** I've heard of that rarely, yes, sir.

7 **Q** So that's a possibility as well?

8 **A** It could be a possibility, yes, sir.

9 **Q** Also, in occasions where there might be some
10 confusion as to what happened, isn't it possible
11 that people involved in an incident could have
12 picked it up other than the person that was alleged
13 the shooter?

14 **A** Yes, sir.

15 **Q** Let's talk about the statement that was given
16 to you. Is this a copy of the statement that you
17 took?

18 **A** Yes, sir.

19 **Q** Now, is that your handwriting?

20 **A** Yes, sir, it is.

21 **Q** So you wrote that?

22 **A** Yes, sir.

23 **Q** Now, tell me the procedure you do when you take
24 a statement from an individual?

25 **A** Normally, go over it verbally once and then

1 start writing it down, go over it a second time.

2 Q And then isn't it also that the individual
3 reads the statement? Don't you tell them something
4 about reading a statement and make sure it's correct
5 before they sign it?

6 A Yes, sir.

7 Q And you make sure that they read the statement
8 and understand what they're writing -- what they're
9 signing; is that correct?

10 A Yes, sir.

11 Q So did she do all of those things in this
12 statement?

13 A Yes, she did. She signed the statement.

14 Q Will you please read the statement out to me,
15 please, that you wrote?

16 A Okay. This is -- Alonzo Gale, my boyfriend,
17 had been staying with me out here for about a year.
18 I grew up on Park Street. I knew Avery then and we
19 both went to Saint Andrews Middle School. I started
20 seeing Avery again once I moved back out here to
21 Hammond Village.

22 It was still a little bit dark this morning.
23 We were asleep and I was hearing a tapping at the
24 door. I got up and went to the front and looked out
25 the window, but didn't see anything. I was going

1 back to bed and I heard the tapping again and
2 realized it was coming from the back. I peeped out
3 and asked who it was. He said it was Avery. I
4 could also see it was Avery.

5 Moe had gotten up and came to the door and told
6 him not to be coming around here at that time of
7 morning. Alonzo was standing on the back porch and
8 Avery was halfway between our back door and
9 apartment one. Alonzo came inside, closed the back
10 door and went out the front door. Avery and Moe
11 were still having words.

12 I heard what sounded like firecrackers, maybe
13 three or four. And almost instantly, I heard a tap
14 at the back door. And when I opened the door, Moe
15 was there bleeding heavily. He walked through the
16 house and grabbed the phone. I took the phone and
17 dialed 911. Moe went out through the front door and
18 collapsed by the car.

19 Moe had seen Avery around, but didn't know him.
20 They weren't friends and didn't hang around
21 together. I saw Avery hanging out here yesterday by
22 the mailboxes.

23 I asked the question, Do you know why Ayree
24 would come by here looking for Moe?

25 Her answer was, I don't know.

1 I asked her, Have you ever seen Ayree with a
2 gun before?

3 She stated, I have. He's always out here
4 shooting and stuff.

5 I asked the question, How long was it between
6 the time Moe went out the front door and you heard
7 the shots?

8 Her answer was, about three minutes.

9 I asked, Was there someone else out there?

10 Her answer was, There was a female wearing dark
11 clothing, around five foot six, slim. I never saw
12 her well enough to know if I had seen her before.

13 I asked the question, Did Moe have a gun?

14 Her answer was, No, I didn't see one.

15 Question, Did Moe own a gun?

16 Her answer was, He owned one, I don't know
17 where it's at.

18 And I asked her, Describe Ayree.

19 She said, Around 27 or 28, around five six,
20 slim, dark skin, short afro, goatee, wearing a white
21 T-shirt, dark colored jeans.

22 Q And you wrote that, right?

23 A Yes, sir.

24 Q And you took that down as she told you about
25 what happened; is that correct?

1 **A** Yes, sir.

2 **Q** Now, you're standing here saying that the part
3 where she stated he came back in the house and went
4 out was wrong?

5 **A** No, sir.

6 **Q** You're saying that that's correct?

7 **A** I'm saying that's just the way the statement is
8 written.

9 **Q** So you wrote down what she told you; is that
10 correct?

11 **A** Right.

12 **MR. JOHNSON:** No other questions.

13 **THE COURT:** Any redirect?

14 **MS. CAMPBELL:** Just one or two questions.

15 REDIRECT EXAMINATION

16 BY MS. CAMPBELL:

17 **Q** Investigator, the first line of the second
18 page, basically, explains Alonzo's actions that
19 morning?

20 **A** Yes.

21 **Q** Then, at that point, did you go back to clarify
22 where he went and what he was doing?

23 **A** Yes.

24 **Q** How many times did she indicate that he went
25 out the back door?

1 **A** Just one time.

2 **Q** And after he was shot, did he come back through
3 the house?

4 **A** Yes.

5 **Q** Is that what she told you then?

6 **A** Yes.

7 **Q** And that's what's in the statement?

8 **A** Yes.

9 **MS. CAMPBELL:** Thank you.

10 **MR. JOHNSON:** Redirect (sic), Your Honor.

11 RECROSS-EXAMINATION

12 BY MR. JOHNSON:

13 **Q** But in your statement that you wrote down, that
14 is not what you wrote?

15 **A** What I just read out, I mean, that's the way
16 it's written.

17 **Q** And you wrote down what she told you?

18 **A** Right.

19 **Q** So what she told you was he went to the back
20 door, they was having words, he came back inside and
21 shut the door and went out the front door. And then
22 after he went out the front door, about three
23 minutes later, she heard gunshots. Now, you're here
24 saying that that's not correct because it doesn't
25 match your story?

1 **A** No, sir.

2 **Q** So which is correct?

3 **A** Like I said, that's the way the statement is
4 written. Like I say, we were stopping, starting,
5 she was upset.

6 **Q** All I'm asking you is, which is correct, what
7 you just said to the State or what you wrote down on
8 that paper that day?

9 **A** Well, like I said, that's -- what I read out,
10 that's the way in the statement.

11 **Q** And that's what she told you?

12 **A** Right.

13 **Q** That he came back in the house and went out the
14 front door, and about three minutes later, after he
15 went out the front door, she heard gunshots?

16 **A** Well, like I said, she was repeating things and
17 we were just trying to clarify things.

18 **Q** I'm asking you what's in the statement. Isn't
19 that what's in the statement?

20 **A** The way I just read it, yes, sir, that's what's
21 in the statement.

22 **Q** And in the statement, she said, he went out the
23 front door and three minutes after he went out the
24 front door, she heard gunshots.

25 **A** Um --

1 **Q** Read it, you wrote it.

2 **A** Well, like I said, that is the way it is
3 written. Alonzo came inside, closed the back door
4 and went out the front door. Avery and Moe were
5 still having words. I heard what sounded like
6 firecrackers, maybe three or four.

7 **Q** And you wrote that, right?

8 **A** Yes, sir.

9 **Q** And she told you that, right?

10 **A** Right.

11 **Q** So when you told the State just now that that
12 was a mistake, that was not a mistake, you wrote
13 down what she told you, correct?

14 **A** That's the way it -- what I just read out, yes,
15 sir.

16 **Q** What she told you that day?

17 **A** That's the way it's written out, yes, sir.

18 **MR. JOHNSON:** No other questions.

19 **THE COURT:** You may step down.

20 You may call your next witness.

21 **MS. CAMPBELL:** The State would rest, Your
22 Honor.

23 **THE COURT:** Yes, sir.

24 **MR. JOHNSON:** At this time, Your Honor, I
25 guess, I'll make my usual motion for a directed

1 verdict.

2 **THE COURT:** Ladies and gentlemen, we have some
3 matters of law that we need to take up outside of
4 your presence. And I'm also informed that there's
5 someone here who might be able to fix the
6 microphone. So I'm going to ask that you retire to
7 the jury room and not to begin any deliberations.

8 Certainly, you have not heard all of the
9 evidence. And even if you had heard all of the
10 evidence, you have not heard my charge of the law to
11 you, so it would still be inappropriate for you to
12 begin your discussions at this time. I ask that you
13 retire to the jury room and we'll return shortly.
14 Thank you.

15 (The jury retires to the jury room.)

16 **THE COURT:** Our first matter, let's put on the
17 record, Mr. Johnson, the objections that you had in
18 relation to State's Exhibit Number 48, which is the
19 photograph.

20 **MR. JOHNSON:** Yes, Your Honor. Your Honor, my
21 objection, the photograph is -- a number of
22 objections, first of all, the photograph addition is
23 not relevant. It is extremely prejudicial. As
24 explained when we met a few minutes ago, the
25 prosecution stated that the only reason she wanted

1 to place the picture into evidence was to show how
2 my client looked at the time of the incident.

3 And my objection, Your Honor, is that that has
4 no relevance as to whether he did it or not. This
5 is not a case about whether he was there, this is a
6 case of self-defense. It's been put on the record.
7 This is a case that my client admits to being there.
8 So this is not an identification case.

9 The prosecution have already been able to put
10 up evidence of the I.D. taken of the photo lineup
11 where there was a picture of my client in which the
12 victim picked my client out of a -- well, one of the
13 witnesses picked my client out of a lineup saying
14 that he was the person that she saw.

15 The only reason for allowing that picture, Your
16 Honor, is one in which the prosecution is trying to
17 prejudice the jury by seeing my client as -- in some
18 light unfavorable to him. As a result, Your Honor,
19 I ask that that picture be left out.

20 **THE COURT:** Ms. Campbell, was there any
21 response that you wanted to put on the record?

22 **MS. CAMPBELL:** I will just put on the record,
23 Your Honor, that there's testimony in the record
24 about how his appearance here in court today is
25 different from then. And based on that, we were

1 trying to bring forth how he looked at the time,
2 that was the purpose.

3 **THE COURT:** And, I believe, that you had three
4 photographs. I restricted admission to only one
5 photograph. The photograph that was admitted is
6 similar to the way the photograph in the photo
7 lineup appears. And I think that that supports, at
8 least, the identification that was made off of the
9 photo lineup and that was the reason why I allowed
10 it in.

11 I did not think that it was prejudicial to your
12 client, Mr. Johnson, because it certainly doesn't
13 show him in a traditional mug shot and so -- and I
14 did ask that certain portions of the photograph be
15 redacted there so the Internet sites written at the
16 bottom, I think that -- so I asked that those come
17 off so that it's just a photograph.

18 **MR. JOHNSON:** Your Honor, may I just -- just
19 one more issue so that I can make sure it's on the
20 record. Also, Your Honor, during my
21 cross-examination of the witness, the witness who
22 the State used its foundation to enter the record,
23 testified that he never saw my client at the time;
24 therefore, he would have no knowledge as to how my
25 client looked. Therefore, I also object on the case.

1 that the State did not furnish proper foundation to
2 even enter the picture.

3 **THE COURT:** It's noted for the record and I
4 will overrule it. Yes, sir, Mr. Johnson, I'll hear
5 your motions at this time.

6 **MR. JOHNSON:** Your Honor, at this time, we make
7 a motion for a directed verdict in this case. My
8 client is charged with murder which requires the
9 State to show malice aforethought. All evidence
10 given by the State, even in the light most favorable
11 to the State, does not indicate anything that would
12 have malice.

13 At best, the State's own evidence is that the
14 two individuals was involved in an argument, that as
15 a result of the argument, the victim was killed.
16 There is no indication it was a robbery in this
17 matter, Your Honor. There is no indication of any
18 premeditation in this matter and -- as such, Your
19 Honor, I think that to meet their burden of murder
20 in the case, the State has not shown that. As a
21 result, we request a directed verdict.

22 **THE COURT:** Ms. Campbell.

23 **MS. CAMPBELL:** May it please the Court, Your
24 Honor. Premeditation is not an element of murder in
25 this state. In addition to that, Your Honor, the

1 testimony from four lay witnesses is that,
2 basically, the victim went down the stairs, was
3 confronted by Ayree Henderson, that some kind of
4 struggle ensued, that the victim was unarmed, as far
5 as -- the testimony so far, at the time he went
6 downstairs, and that the victim was shot in the neck
7 and died as a proximate result thereof.

8 There's also testimony that the defendant was
9 yelling that he wanted to rob someone that night
10 earlier in the evening and that testimony about how
11 at right at time -- right as the shooting occurred,
12 the person who was not Alonzo out there and the
13 testimony is there were only two males out there.
14 There was a male voice saying, I told you not to,
15 and I won't use the exact language, but that was the
16 -- and then the gun was cocked and it went off. I
17 think in the light most favorable to the State,
18 we've met our burden.

19 **THE COURT:** And at the directed verdict stage,
20 I'm only concerned with whether or not there is
21 evidence that makes out a prima facie case on behalf
22 of the State and not with the weight to be given
23 that evidence. I think that there is evidence which
24 if -- if it were to be weighed by a jury, would give
25 rise to allowing it to go to the jury, I think there

1 is sufficient evidence on the elements of malice
2 aforethought that would allow that particular issue
3 to go to the jury. So I'll deny your motion on that
4 basis. Any other motions at this time?

5 **MR. JOHNSON:** Not from the defense, Your Honor.

6 **THE COURT:** Ayree Henderson, if you would,
7 please stand, please.

8 Now, Mr. Henderson, I'm going to explain some
9 of your rights to you. We are now at that stage of
10 the trial in which you may present any defenses that
11 you may have. And you also have the constitutional
12 right to take the witness stand and testify in your
13 behalf. And you have the right not to take the
14 stand and testify in your behalf.

15 If you decide to testify for yourself and you
16 have a criminal record which carries an offense that
17 is punishable by more than one year of imprisonment
18 or a crime of moral turpitude, those can be used to
19 impeach you on the witness stand. However, if you
20 decide not to take the witness stand and testify on
21 your behalf, then the jury would be instructed that
22 the fact that you did not testify should not be
23 considered by them in any manner whatsoever in their
24 deliberations, that you have an absolute
25 constitutional right not to take the witness stand

1 and that the burden falls upon the State to prove
2 each and every element of their -- the charge by
3 evidence beyond a reasonable doubt.

4 You can discuss this matter with your family,
5 with your friends and, of course, with your
6 attorney, but, ultimately, the decision is your
7 decision to make and you will have to make that
8 decision as to whether or not you wish to testify in
9 your behalf. Do you understand what I've just
10 advised you?

11 **DEFENDANT HENDERSON:** Yes, ma'am.

12 **THE COURT:** I will give you a few moments to
13 consider it further. And, hopefully, they'll be
14 able to fix the microphone during that time. And
15 afterwards, I'll ask about your intentions as to
16 whether or not you wish to testify in this matter.
17 Thank you.

18 Let's take a break and see if we can get the
19 microphone fixed and then we'll come back.

20 (Brief recess.)

21 **THE COURT:** Is there anything that we need to
22 take up before we begin?

23 **MR. JOHNSON:** Not from the defendant, Your
24 Honor.

25 **THE COURT:** Mr. Henderson, have you made a

1 decision relating to your right to testify?

2 **DEFENDANT HENDERSON:** Yes, ma'am.

3 **THE COURT:** And what are your wishes?

4 **DEFENDANT HENDERSON:** Testify.

5 **THE COURT:** You wish to testify on your own
6 behalf?

7 **DEFENDANT HENDERSON:** Yes, ma'am.

8 **THE COURT:** All right, sir. Thank you.

9 And, Mr. Johnson, Ms. Campbell, have you all
10 come to an agreement as it relates to any prior
11 criminal record?

12 **MS. CAMPBELL:** We have as far as he's
13 concerned, Your Honor. However, on the one witness,
14 and I will hand up, at this time, the State versus
15 Mandell Sims, as far as bias or possible prejudice,
16 we have agreed that on Ms. Thomas, I believe she has
17 four shoplifting convictions over the last three
18 years, one in Georgia and three in South Carolina,
19 that I will be attempting to impeach her with which
20 we agree on.

21 **MR. JOHNSON:** That's correct, Your Honor.

22 **MS. CAMPBELL:** And then there's an additional
23 pending charge in our office. Pursuant to Rule
24 608(c), Your Honor, the State versus Sims, the judge
25 in that case prevented -- and this is on a witness,

1 I'm not talking about a defendant, but this is just
2 a witness, and I don't mean there's any pending
3 cases against Mr. Henderson I could go into, but
4 under Rule 608, it says that any bias, prejudice or
5 motive to misrepresent may be shown to impeach a
6 witness either by examination of a witness or by.

7 **COURT REPORTER:** Can you slow down, please?

8 **THE COURT:** You need to slow down.

9 **MS. CAMPBELL:** Okay. Bias, prejudice or any
10 motive to misrepresent may be shown to impeach the
11 witness either by examination of the witness or by
12 evidence otherwise adduced. It preserves South
13 Carolina precedent holding that generally anything
14 having a legitimate tendency to throw light on the
15 accuracy, truthfulness or sincerity of a witness may
16 be shown and considered in determining the credi --
17 to be approved from his testimony.

18 In that case, Your Honor, the appellant sought
19 to expose Peterson's possible bias and prejudice by
20 asking him what the crimes were that he was charged.
21 And because of the number of crimes pending against
22 Peterson and the severity of potential sentences,
23 again, Your Honor, this was a witness in the case
24 not the defendant, they were limited just to say
25 they were pending charges and that no deals had been

1 sought.

2 Conversely, Your Honor, our position would be
3 that, in that same vein, that she may be biased or
4 prejudiced towards our office because she has
5 pending charges in our office. I do not want to go
6 into the fact that she has that other matter we
7 talked about last night pending, Your Honor. I
8 don't intend to do that. I don't think that will be
9 fair. But we would like to just go into the fact
10 that she does have a shoplifting third offense
11 pending in our office and that would be the extent
12 of the discovery we want to go into. I don't know
13 if you want to put on the record the other matter.

14 (Pause.)

15 **MS. CAMPBELL:** I think we've agreed that it's
16 still pending.

17 **MR. JOHNSON:** Yeah, we've agreed it's still
18 pending. However, Your Honor, on behalf of the
19 defense, it's our belief that that is -- that that
20 would be just the opposite of what the State states
21 in that my client would have a bias to try to assist
22 the State because they have present charges on her,
23 she would not have a bias to do anything against the
24 State because there's some charges on her. If
25 there's any bias, it would be a bias to assist the

1 State in her testimony because they do have pending
2 charges on her. It would not be a bias to testify
3 and do anything to hurt the State.

4 **THE COURT:** I think that's one that could
5 probably work both ways.

6 **MR. JOHNSON:** It is my belief, Your Honor, that
7 under Rule 609, it says, Evidence that a witness
8 other than an accused has been convicted has
9 acquired a conviction. As the State has stated,
10 these charges are still pending and I do not feel
11 that the State should be allowed to address a
12 present pending charge. As well, Your Honor, this
13 is a shoplifting third, I'm aware of that, but the
14 charge is still pending.

15 **MS. CAMPBELL:** Your Honor, we are proceeding
16 under 608(c) not 609.

17 **THE COURT:** I think she can ask whether or not
18 there are pending charges. And I think she can ask
19 what the pending charges are, or is it true that the
20 pending charges are, but I think that that would,
21 basically, end any questioning. She would not be
22 able to go into any underlying facts or reasons for
23 the charges, certainly, and I think under the rule
24 and the case law, that that will be allowed.

25 And I analogize that if it's allowed to be

1 asked of a defendant, then it certainly should be
2 allowed to be asked of a witness. And the case law
3 that I've seen says that it's reversible error not
4 to allow cross-examination of a defendant as to
5 pending charges and so under the circumstances with
6 a witness, I think it will be appropriate as well.

7 **MR. JOHNSON:** Thank you, Your Honor.

8 **THE COURT:** Anything further?

9 **MS. CAMPBELL:** Nothing from the State, Your
10 Honor.

11 **MR. JOHNSON:** Nothing from the defense, Your
12 Honor.

13 **THE COURT:** Mr. Hollis, if you would, ask the
14 jury to come in, please.

15 (The jury returns to the courtroom.)

16 **THE COURT:** Ladies and gentlemen, at this time,
17 we're now ready to hear from the defense.

18 Mr. Johnson, you may call your first witness.

19 **MR. JOHNSON:** Thank you, Your Honor. May it
20 please the Court. Your Honor, at this time, the
21 defense would like to the call Shea Thomas to the
22 stand.

23 **SHEA LARON THOMAS,**

24 having been duly sworn, testified as follows:

25 **THE CLERK:** Thank you. Please have a seat in

1 the witness stand and state your name for the
2 record.

3 **THE COURT:** Please state your name for the
4 record.

5 **THE WITNESS:** Shea Laron Thomas.

6 DIRECT EXAMINATION

7 BY MR. JOHNSON:

8 **Q** Shea, I'm going to need you to speak up so
9 everybody can hear you. Shea, where do you live?

10 **A** 3937 Brewer Street.

11 **Q** And where is that -- what area of town is that?

12 **A** Off Sunset Drive.

13 **Q** Is that like an apartment area or something
14 that you live?

15 **A** Yeah, house, complex, building, you know.

16 **Q** Okay. Now, do you know Ayree Henderson?

17 **A** Yes, I do.

18 **Q** How long have you known Ayree?

19 **A** For about three and a half years.

20 **Q** Back on August the 3rd of 2002, did you have
21 occasion to be with Ayree at that time?

22 **A** Yes, I was.

23 **Q** On the early morning -- about what time was it
24 that you was together that day?

25 **A** All that night.

1 **Q** The night before?

2 **A** Well, like 12 o'clock through, you know, all of
3 the night, all of that night.

4 **Q** Let's talk about yourself, Shea. Are you
5 employed at the present time?

6 **A** No.

7 **Q** At that time, was you employed?

8 **A** No.

9 **Q** What did you do?

10 **A** Well, I used to hustle back then.

11 **Q** Okay. When you say hustle, please explain to
12 the jury -- look at the jury and please explain to
13 the jury?

14 **A** I used to sell dope back then, dope, weed,
15 whatever.

16 **Q** And that's what you was doing?

17 **A** Yes.

18 **Q** Are you still selling dope and doing those type
19 things?

20 **A** No.

21 **Q** Now, do you have any criminal record?

22 **A** Yes, I do.

23 **Q** What type of criminal record do you have?

24 **A** Shoplifting, simple possession of marijuana and
25 disorderly conduct.

1 **Q** About how many shopliftings do you have?

2 **A** Three.

3 **Q** So, basically, you have stole (sic) before?

4 **A** Yes.

5 **Q** Now, on the night that this occurred that you
6 was with Ayree, what was you doing together?

7 **A** Well, we were going to purchase a bag from Moe
8 house.

9 **Q** Okay. Before we even get into that, are you
10 and Ayree girlfriend, boyfriend, something like
11 that?

12 **A** No, just friends, real close friends.

13 **Q** Where were you prior to going over to Moe (sic)
14 house?

15 **A** Where were we?

16 **Q** Right.

17 **A** Up the stairs, up in like -- up like 28
18 building, 24 building.

19 **Q** Okay. When you say that --

20 **MR. JOHNSON:** Your Honor, may I approach the
21 witness?

22 **THE COURT:** Yes.

23 **MR. JOHNSON:** This has been previously marked
24 State's Exhibit Number 5. Your Honor, could I ask
25 the witness to step down?

1 **THE COURT:** Yes. You may step down.

2 (Witness leaves the witness stand.)

3 **THE COURT:** Please keep your voice up while
4 you're testifying.

5 **THE WITNESS:** This is the upstairs right here.

6 **MR. JOHNSON:** Right. And this is the
7 building --

8 **THE COURT:** You need to speak up, please.

9 BY MR. JOHNSON:

10 **Q** Now, do you recognize this picture?

11 **A** Yes, I do.

12 **Q** Okay. I'm going to point out some things to
13 you in the picture and please tell the jury what
14 those areas are. Okay, do you recognize this
15 building here?

16 **A** Yes. This is where Moe stay at right here.

17 **Q** So this would be the number two building?

18 **A** Yes.

19 **Q** So how is the complex -- would this be one, two
20 and three, or is it the other way around?

21 **A** I think this, one, two and three, right here.

22 **Q** Okay. So Moe was in the two building?

23 **A** Yes.

24 **Q** Now, what is this behind here; what is that?

25 **A** This is like the street where you can come down

1 to go to Moe house or you can go out -- go in or
2 out, you know.

3 Q Now, what area this is called -- what is this
4 area called?

5 A This is the bottom and this is the top.

6 Q I mean, but what's the name of this apartment
7 complex?

8 A Oh, Hammond Village Apartments.

9 Q Is this a hill here?

10 A No, these are some steps. Yeah, this is a hill
11 right here, but these are steps leading to down, you
12 know, to the bottom where they stay at.

13 Q Okay. So where were you and Ayree hanging out?

14 A First, we were right here in this little area
15 right here.

16 Q Now, about what time do you decide to go down
17 to Moe house; do you remember?

18 A It was like 5:30, six o'clock in the morning.

19 Q And what path do you take to get to Moe house?

20 A We have to go down the steps right here and
21 take the steps right there.

22 Q Okay. So you took the stairs and you came down
23 the back way; is that correct?

24 A Yeah. This is the walkway to get to the
25 back --

1 Q Now, you heard some evidence that you went to
2 the front of the house?

3 A No. We never did go to the front. We never
4 walked to the front of the building. We always
5 stayed in the back, this back door right here.

6 Q And you went to the back of the building?

7 A Yes.

8 Q What did you do when you get to the back of the
9 building?

10 A Knocked on the door.

11 Q And exactly -- how about point to like the
12 location of the door, if you can best estimate that?

13 A I think it should be right here (indicating).

14 Q I'm going to get a better picture. This is
15 State's Exhibit Number 4 which shows the complex
16 close up. So how about point again to the area
17 where you went to the door?

18 A Right here (indicating).

19 Q Okay. Now, what happened when you got to that
20 area?

21 A Well, we knocked on the door, might have been a
22 couple times. And Moe said, Who is it? He was
23 yelling because, I guess, it was late, but someone
24 had just left their house like 30 minutes ago so
25 that's what made us go down there because we was

1 going to purchase a bag of marijuana. So we knocked
2 on the door maybe a couple times. Moe was yelling.

3 Q I tell you what, why don't you go and sit back
4 down?

5 A (Witness resumes the witness stand.)

6 Q Go ahead?

7 A Moe was yelling, he was saying, Who is it? And
8 Ayree said, Ayree. And Moe came down to the steps
9 with green boxers on and he was like, What's wrong
10 with you knocking on my door this time of morning?
11 And we were just like, We're trying to get a bag of
12 marijuana. And he was yelling.

13 Q Did Moe have -- he was dressed with boxers,
14 that's all that he had?

15 A Yeah. He had green boxers and he had a black
16 gun in his hand.

17 Q He had a what now?

18 A A black gun.

19 Q A black gun?

20 A Yes.

21 Q Okay. Did you see it personally?

22 A See him?

23 Q Did you see him and could you see the gun?

24 A Oh, yes, I did.

25 Q Okay. What happened -- so go on. So he came

1 down stairs and standing in the door...

2 **A** And he was like, What's wrong with you knocking
3 on my door at this time of morning? We were just
4 like, We're coming to purchase a bag of marijuana.
5 And he was like, Y'all don't be coming at my door
6 any time of morning. And we was like, We were just,
7 you know, just coming to purchase a bag.

8 **Q** All right. So what did Ayree say? And tell
9 them the truth, tell them exactly what Ayree said;
10 what did he say?

11 **A** Ayree said, You ain't got to be yelling and you
12 ain't got to be coming down the steps with no gun,
13 you know, coming down out the door with no gun. We
14 were just coming to get a bag, that's all. We ain't
15 wanting to cause no problems.

16 **Q** What did Moe say?

17 **A** Man, hold up, I got something for you. And
18 that's when he went back in the house.

19 **Q** He went back in the house?

20 **A** Yeah.

21 **Q** Did he shut the door?

22 **A** Yeah, he shut the door.

23 **Q** What did the two of you do?

24 **A** I was like, Come on, Ayree, let's go, we'll
25 find somebody else to give us some weed, some

1 marijuana.

2 Q And then what happened? So what did you do?

3 A What did we do?

4 Q Right.

5 A We was walking away -- walking away from the
6 door to like the side of the building.

7 Q Going back towards the apartment on the end of
8 the building?

9 A Yes.

10 Q Then what happened?

11 A Like, I guess, like Moe must have went in the
12 house to put on some shorts, whatever he did, he
13 came out the front door. And as we was leaving out
14 of the side of the building, Moe was coming and he
15 had the gun. And he was like, I told you don't be
16 coming to my house no any time in the morning.

17 Q Well, stop right there. How about if you could
18 step back down again?

19 A (Witness leaves the witness stand.)

20 Q Okay. So you were standing at the back door
21 here?

22 A Yeah.

23 Q You were standing back here?

24 A Uh-huh.

25 Q Moe shut the door, then what did you do?

1 **A** We was walking back this way. I was like, Come
2 on, Ayree, let's just leave, because he's coming to
3 the door with a gun and we ain't got time for that.
4 So we walked to the side of the building, we was
5 going to go up the steps, but Moe came out the front
6 door to the side of the building.

7 **Q** There?

8 **A** Yes.

9 **Q** Okay. You can sit back down.

10 **A** (Witness resumes the witness stand.)

11 **MR. JOHNSON:** Your Honor, one moment.

12 (Pause.)

13 **MR. JOHNSON:** Your Honor, may I approach the
14 witness?

15 **THE COURT:** Yes, sir.

16 **BY MR. JOHNSON:**

17 **Q** Shea, I'm going to show you some pictures. Do
18 you recognize those pictures?

19 **A** Yes, I do.

20 **Q** Do you remember when those pictures were taken?

21 **A** Yes.

22 **Q** When were they taken?

23 **A** Sunday.

24 **Q** And please explain to the jury how they came
25 about being taken?

1 **A** Well, I showed him every place --

2 **Q** When you say him, please tell the jury who it
3 was?

4 **A** I showed you all of the places that we were
5 standing at.

6 **Q** And those pictures were taken by who?

7 **A** By you.

8 **Q** And you were showing me those pictures; is that
9 correct?

10 **A** Yes.

11 **Q** So it was Sunday that we took those pictures?

12 **A** Yes, sir.

13 **MR. JOHNSON:** Okay. Your Honor, I would like
14 to mark these as Defense Exhibits 1, 2, 3, 4 and 5.

15 **THE COURT:** Any objection?

16 **MS. CAMPBELL:** No objection, Your Honor.

17 (Defendant's Exhibit Numbers 1 through 5,
18 photographs, were marked and admitted into
19 evidence.)

20 **BY MR. JOHNSON:**

21 **Q** I'm going to show you Defendant's Exhibit
22 Number 5. Can you take a look at that? Do you
23 recognize that picture?

24 **A** Yes.

25 **Q** What is that?

1 **A** This is the front building of his apartment.

2 **Q** Okay. Now, point to the jury -- how about
3 point to which door Moe came out of, or would have
4 had to come out of, if he came out the front door?

5 **A** This door.

6 **Q** And then he went in which direction?

7 **A** This side right here.

8 **MR. JOHNSON:** Your Honor, present to the jury?

9 **THE COURT:** Yes.

10 BY MR. JOHNSON:

11 **Q** So you went to -- you was walking away; is that
12 correct?

13 **A** Yeah. I told Ayree let's go because he had a
14 gun and I mean...

15 **Q** I'm going to show you Defendant's Exhibit
16 Number 2. Can you take a look at that -- well,
17 let's change, let me give you Defendant's Exhibit
18 Number 3. Do you recognize that?

19 **A** Yes.

20 **Q** What is that?

21 **A** This is Moe's back door.

22 **Q** And that's where you were standing when you
23 initially had the first argument?

24 **A** Yeah. This is where we were knocking at the
25 door at.

1 Q Can you stand up for a minute and just point to
2 the jury exactly where you were standing?

3 A Where I was standing at?

4 Q Right.

5 A Right here on the side of Ayree (indicating).

6 Q And where was Moe standing?

7 A He was at the door right here.

8 Q Standing on the hard part?

9 A Yeah, on the hard concrete.

10 Q I'm going to show you Defendant's Exhibit
11 Number 2. Will you take a look at that?

12 A Yes.

13 Q Okay. Do you recognize that?

14 A Yes.

15 Q And what is that?

16 A This is the sidewalk.

17 Q Now, could you stand up again please, just
18 right there where you are? So where is Moe's door
19 at?

20 A Right here (indicating).

21 Q Where the path is?

22 A Yeah.

23 Q So you was away from the path?

24 A Yeah, walking this way right here, this way
25 (indicating).

1 Q Now, where did you first see Moe when you was
2 walking down that pathway?

3 A When we was walking away?

4 Q Right.

5 A He was coming from the side. As we were coming
6 away, he was meeting us halfway.

7 Q How about point where you were when you first
8 saw him?

9 A (Indicating).

10 Q So you were past that corner?

11 A Yeah, we were on the side.

12 Q I'm going to show you Defendant's Exhibit
13 Number 1.

14 A This is where we met up with Moe.

15 Q Why don't you stand up so they can see?

16 A This is where we met up with Moe.

17 Q So is that where you were standing?

18 A Yeah.

19 Q And that's where you ran -- that's where you
20 met Moe at?

21 A Yeah --

22 Q Now, what direction was he coming from?

23 A He was coming from the front door. He was
24 coming from out the front door.

25 Q And it was you and Ayree there?

1 **A** Yeah, it was me and Ayree.

2 **Q** And that's -- and the spot where you're
3 standing is that the spot --

4 **A** That's where we met him at.

5 **Q** I'm going to show you Defendant's Exhibit
6 Number 4 just for clarification. Now, do you
7 recognize that?

8 **A** Yes.

9 **Q** And what is that?

10 **A** This is the back of his apartment door.

11 **Q** So in the other one, you can see -- what could
12 you see? Could you see the window above in the
13 other picture?

14 **A** Yes.

15 **Q** But in that one, you can't see the window?

16 **A** You can't see the window.

17 **Q** Were you standing there when you encountered
18 Moe the second time; is that where you were
19 standing?

20 **A** No. We was on the side of the building.

21 **Q** Okay. So you were standing on the side of the
22 building and you encountered Moe?

23 **A** Yes, sir.

24 **Q** What did you first hear?

25 **A** Well, they were arguing because --

1 **Q** Well, first, let's -- you've got to be specific
2 here. Who said what first?

3 **A** Well, Moe was like, Didn't I tell you I had
4 something for you? And he was pointing the gun.
5 And Ayree was like, Man, hold up, man, I was just
6 coming to get a bag, you ain't got to be doing all
7 that. And then you see my friend right here, you
8 ain't got to be pointing no gun out at nobody.

9 **Q** All right. Then what happened?

10 **A** Then they started tussling with the gun and it
11 went off.

12 **Q** When you say tussle now, I need you to explain
13 to the jury exactly what happened, you've got to be
14 specific.

15 **A** Well, Moe came out the, you know, he was coming
16 from the side and he was already saying he got
17 something for Ayree. So, I mean, he came back out
18 the door to the side of the building and he was
19 like, Didn't I tell you I had something for you?
20 And then Ayree was like, Well, we were just coming
21 to get a bag, you ain't got to be all, you know, you
22 ain't got to be coming out the door with no gun and
23 fussing and cussing. And the next thing, you know,
24 they started arguing and -- I mean, not arguing, but
25 tussling.

1 Q Now, when you say tussle, what happened?

2 Specifically, what happened?

3 A Both of them started tussling with the gun
4 because Moe had it pointed at both of us.

5 Q And what did Ayree do when Moe -- did Moe have
6 it down to the side or he had it up in the air?

7 A No, he had it in the air because he was already
8 saying, Didn't I tell you don't be calling my house
9 at no six o'clock in the morning.

10 Q Will please stand up and demonstrate how Moe
11 had the gun?

12 A Like this (indicating).

13 Q He just had it like that at the time?

14 A Yeah. Didn't I tell you don't be coming to my
15 house at six o'clock in the morning.

16 Q Did he have it in his right hand or left hand?

17 A I don't remember.

18 Q And then what did Ayree -- you can sit back
19 down. What did Ayree do?

20 A Well, he was just -- we was kind of mad because
21 he came out the door with the gun the first time.
22 So Ayree was like, You ain't got to be coming out no
23 door with no gun and -- what else -- they were
24 arguing.

25 Q That's on the side of the building?

1 **A** Yeah.

2 **Q** Now, that was the second time they had argued?

3 **A** Yeah.

4 **Q** Okay. And then what happened after they was
5 arguing?

6 **A** I mean, Moe had the gun, pointed it at both of
7 us. And Ayree got mad and they started tussling and
8 the gun went off and, I guess --

9 **Q** Did Ayree grab the gun and stand away and shoot
10 Moe?

11 **A** No, both of them was -- he grabbed his arms and
12 they start tussling.

13 **Q** On the side of the -- on the corner of the
14 building there?

15 **A** Yeah.

16 **MS. CAMPBELL:** Objection, Your Honor, as to
17 leading. If he can just let her testify to what
18 happened.

19 **THE COURT:** Sustained as to leading.

20 BY MR. JOHNSON:

21 **Q** What happened -- when the gun went off, what
22 happened?

23 **A** Moe fell on the ground and I was shocked. And
24 I -- Ayree ran and I ran.

25 **Q** What did you say when Moe -- when it happened?

1 Did you say anything?

2 **A** I was just like, Oh, you know, like, Oh, shit.

3 **Q** Okay. I mean, is that all you said or did you
4 say more?

5 **A** That's all I said, Oh, shit.

6 **Q** And then what happened then?

7 **A** Ayree ran and I ran.

8 **Q** Now, at any time, did Avery have a gun?

9 **A** No, Ayree never had a gun.

10 **Q** Did you have a gun?

11 **A** No.

12 **Q** What happened to the gun?

13 **A** I don't know, I ran.

14 **Q** Did Avery have the gun in his hand when Moe
15 fell?

16 **A** No. The gun must have fell on the ground.

17 **Q** Are you sure Avery didn't have the gun?

18 **A** I'm positive.

19 **Q** Did you pick up the gun?

20 **A** No.

21 **Q** If it was an accident, why did you run?

22 **A** Because I was scared and I didn't know what to
23 do.

24 **Q** What did you do when you ran; where did you go?

25 **A** I ran towards the front, like towards the front

1 building towards the trash can. And I took the cut
2 through the apartment complex and ran up the stairs.

3 Q And then what did you do?

4 A I went into this girl (sic) complex apartment.

5 Q And what happened then? You said girl, whose
6 apartment did you went to?

7 A Her name is Gabriel.

8 Q You went to her apartment?

9 A Yeah.

10 Q And what did you do then?

11 A I was just -- I kept calm because I, you know,
12 ain't nobody knew what was going on yet. So I was
13 just like, I was just shocked. I mean, I didn't
14 know what to do.

15 Q Why didn't you go to the police?

16 A Because I was scared.

17 Q Scared of what? If you didn't have anything to
18 do with it --

19 A Because I was at the scene.

20 Q Even if you was at the scene, if you didn't
21 have anything to do with it, why didn't you go to
22 the police?

23 A I don't know.

24 Q Did the police or anybody ever come to your
25 house?

1 **A** No.

2 **Q** Anybody ever make contact with you?

3 **A** I talked to an attorney, a lawyer.

4 **Q** Who was that?

5 **A** His name was -- I can't remember. It's in my
6 cell phone, but --

7 **Q** Did you tell him what you're telling me now?

8 **A** Yeah, I told him everything.

9 **Q** When did I contact you?

10 **A** Maybe two -- two months ago.

11 **Q** And that's when you told me the story?

12 **A** Yeah.

13 **Q** Has anybody contacted you since then?

14 **A** No.

15 **Q** So the only person you've talked to since then
16 has been me?

17 **A** Yes, sir.

18 **Q** Did I prep you to come and testify today?

19 **A** Did you make me?

20 **Q** No. Did I prep you? Did I prepare you to
21 testify today? Did I do anything or have you sit
22 down or did we go over the testimony today?

23 **A** Yes, sir.

24 **Q** And what did I tell you to do?

25 **A** Tell the truth.

1 Q Are you telling the truth now?

2 A Yes, sir.

3 Q Is there anything that I forgot to ask you
4 about this incident that you care to tell me or that
5 you would like the jury to know? And if there is,
6 please look at the jury and tell them.

7 A Well, the defendant said he came to the door
8 with green boxers on. So, as you know, he went back
9 into the house and put his shorts on. And he must
10 have put a bullet in the chamber or I don't know
11 what he did besides putting his shorts on when we
12 went in the house.

13 Q But, at any time, did Avery have a gun or did
14 you go there with the intention of robbing anybody?

15 A No, sir.

16 Q And, once again, what did you go there for?

17 A To buy a bag of marijuana.

18 Q Have you bought bags of marijuana from that
19 place before?

20 A Not me, but somebody I know.

21 Q And they told you that you could go there?

22 A Yeah. They said he was up because they just
23 left there like 30 minutes before we went there.

24 Q Okay. Is there anything else that you would
25 like to tell the jury that I didn't ask you?

1 **A** No, sir.

2 **MR. JOHNSON:** No other questions.

3 **THE COURT:** Any cross?

4 **MS. CAMPBELL:** May it please the Court.

5 CROSS-EXAMINATION

6 BY MS. CAMPBELL:

7 **Q** Is it Ms. Thomas or Ms. Harris?

8 **A** Ms. Thomas.

9 **Q** Ms. Thomas. And you also go by the name of
10 Harris?

11 **A** No.

12 **Q** Not anymore?

13 **A** (Witness shook head.)

14 **Q** Now, just a few things. My name is Luck
15 Campbell by the way. I'm with the Solicitor's
16 office. I don't think we've had the opportunity to
17 meet or talk. And I wanted to go over a few things
18 with you, specifically, about that night and
19 everything. And if I -- I don't try to put words in
20 your mouth, so if I say something incorrectly, you
21 correct me, okay?

22 **A** Okay.

23 **Q** Your relationship with Ayree Henderson, you say
24 you've known him about three and a half years?

25 **A** Yes, ma'am.

1 Q And what was your relationship with him at the
2 time all of this occurred?

3 A He was my, you know, friend.

4 Q He was your friend. Are y'all related by
5 blood?

6 A No.

7 Q Do you know any reason he would list you as his
8 sister when he was in the jail?

9 A I guess because he wanted me to come visit him.

10 Q Okay. So you aren't his sister as he said?

11 A No, I'm not.

12 Q And since this all happened back in August two
13 years ago, have you had any contact with
14 Mr. Henderson?

15 A Yes, I went to go see him.

16 Q You went to go see him?

17 A Yes.

18 Q And what name would you use when you would go
19 see him?

20 A Shea Thomas.

21 Q And, approximately, how many times have you had
22 the opportunity to go and see him over the last two
23 years or talk to him about this?

24 A One time.

25 Q One time?

1 **A** (Witness nodded head.)

2 **Q** And did y'all just talk about what happened
3 that night and the stories?

4 **A** No. I was just asking him how he was doing and
5 he was asking how I was --

6 **Q** Okay. So you went to visit him on an occasion
7 and y'all didn't discuss anything that had to do
8 with testimony in court, what the story was going to
9 be or anything like that?

10 **A** No, ma'am.

11 **Q** Okay. What about yesterday? Yesterday did you
12 have the opportunity to talk to the defendant?

13 **A** Yes.

14 **Q** Okay. And that took place right in here, I
15 believe, on a break, didn't it?

16 **A** Yes.

17 **Q** And what did y'all discuss then? Did you just
18 ask him how he was doing again?

19 **A** Yeah.

20 **Q** Okay. So y'all didn't discuss the testimony or
21 anything again?

22 **A** No, ma'am.

23 **Q** Why was he handing you photographs and pointing
24 to them?

25 **A** Because I asked him to let me see them.

1 Q So he was showing you photographs of the scene
2 and pointing to certain areas?

3 A He didn't get to show them.

4 Q Because the guards took them away from you?

5 A Yeah.

6 Q But he handed you the photographs and was
7 telling you something about the photographs when
8 they were taken away?

9 A Uh-huh.

10 Q But your testimony here today is that at no
11 time over the last two years have y'all discussed
12 your testimony or what you need to say or anything
13 like that?

14 A But we was not like talking, you know.

15 Q What about phone calls you've had with the
16 defendant over the last two years?

17 A Yeah, I talked to him.

18 Q And how many times approximately? I don't, you
19 know, want to put words in your mouth, but how many
20 times, approximately, have you had the opportunity
21 to talk with him over two years, not just to visit
22 with him, but talk to him?

23 A Maybe at least two to three times.

24 Q Two or three? Would it be more than two or
25 three maybe?

1 **A** Just about two or three.

2 **Q** Two or three times. And on those two or three
3 occasions that you had an occasion to talk to him
4 over the last two years, have you ever discussed
5 what happened that night?

6 **A** No, ma'am.

7 **Q** What happened was pretty traumatic, wasn't it?

8 **A** Yes, ma'am.

9 **Q** A person was shot, that would be Moe?

10 **A** Yes, ma'am.

11 **Q** And you were there when it happened?

12 **A** And I could have got shot, too.

13 **Q** Yeah, that's a good point. You could have
14 gotten shot, too, that night. That's a very good
15 point. And the only other person there that night
16 was Ayree Henderson; is that your testimony?

17 **A** Yes, ma'am.

18 **Q** Was anybody else around?

19 **A** No, ma'am.

20 **Q** You didn't see anybody else out there?

21 **A** No, ma'am.

22 **Q** So nobody else but you and him and the person
23 that was killed were out there that night?

24 **A** Yes, ma'am, that morning.

25 **Q** In that morning, was it still dark or light; do

1 you remember?

2 **A** It was morning.

3 **Q** It was morning?

4 **A** Yes, ma'am.

5 **Q** So it was light?

6 **A** Yes, ma'am.

7 **Q** As light as in here?

8 **A** Yes, ma'am.

9 **Q** So it was light when all of this happened
10 according to you. And that morning when it
11 happened, you knew immediately when Moe fell that he
12 was shot?

13 **A** Yeah.

14 **Q** And how did you know he was shot?

15 **A** Because he fell on the ground.

16 **Q** Because he fell on the ground. Did you -- and
17 your testimony is you didn't see what happened to
18 the gun, right?

19 **A** No, because I ran.

20 **Q** And this is pretty traumatic I would think?

21 **A** Yeah, it was.

22 **Q** Almost life altering to witness actually
23 someone getting shot?

24 **A** Yes, ma'am.

25 **Q** When did you find out he was dead?

1 **A** Earlier that morning.

2 **Q** Earlier that morning?

3 **A** Yes, ma'am.

4 **Q** That would be after he was shot?

5 **A** Yes, ma'am.

6 **Q** And, at that point, it probably even had a
7 bigger impact on you?

8 **A** Yes, ma'am.

9 **Q** And then your testimony here today to this jury
10 is over the last two years, the only other person
11 that was out there, the only other person that
12 witnessed it, you've talked to him on at least three
13 occasions, you've met with him face-to-face at least
14 one time and you had a conversation with him
15 yesterday in the courtroom when he was handing you
16 photographs of the crime scene and y'all never
17 discussed what happened?

18 **A** No, we didn't get to.

19 **Q** You didn't get to?

20 **A** No.

21 **Q** While I'm on the subject, before I move on,
22 Mr. Johnson asked you some questions, right, about
23 your prior record?

24 **A** Yes, ma'am.

25 **Q** And you mentioned that you were found guilty

1 on, I believe, you said disorderly conduct?

2 A (Witness nodded head.)

3 Q Simple possession of marijuana?

4 A Yes, ma'am.

5 Q And then back in 2001, you were found guilty
6 the first time of shoplifting?

7 A Yes, ma'am.

8 Q And then later in 2001, you were found guilty
9 again of shoplifting?

10 A Yes, ma'am.

11 Q And then again in 2003, you were found guilty
12 of shoplifting?

13 A Yes.

14 Q And then also -- that would be 2003, another
15 shoplifting?

16 A (Witness nodded head.)

17 Q And you currently, though, he didn't ask you,
18 but you currently have pending charges and my office
19 is prosecuting you?

20 A Well, if you say I do, I guess I do. I mean, I
21 didn't get no letters in the mail saying I had a
22 bench warrant on me.

23 Q You aren't aware that we are prosecuting you,
24 that my office, the Solicitor's office in this
25 county, is prosecuting you?

1 **A** No, ma'am.

2 **Q** You mentioned -- and I want to go back to that
3 night, okay, and your memory of it. Your memory is
4 pretty clear?

5 **A** Yeah.

6 **Q** You're able to tell this jury exactly what you
7 saw and what you remember that night, right?

8 **A** Yes, ma'am.

9 **Q** And you said on that evening that you -- you
10 weren't working at the time then, so it wasn't like
11 you'd just gotten off shift or anything?

12 **A** Yes, ma'am.

13 **Q** And you aren't working now?

14 **A** No.

15 **Q** But that evening you met up with Ayree, I
16 believe your testimony was, and if I misquote, I
17 don't mean to, about midnight?

18 **A** Yeah.

19 **Q** Okay. And, at that point -- how did y'all get
20 together?

21 **A** Just being in the neighborhood, meeting up, you
22 know.

23 **Q** Being in the neighborhood?

24 **A** Yeah, everybody hang out in the same spot.

25 **Q** Was that your neighborhood?

1 **A** No, ma'am.

2 **Q** Was that Ayree's neighborhood?

3 **A** No. He didn't stay out there, but he used to,
4 you know, hang out there.

5 **Q** Okay. And y'all would hang out in the parking
6 lot, so it wasn't unusual in this neighborhood of
7 Hammond Village that even if you didn't live there,
8 people would just congregate out in the parking lot?

9 **A** Yes, ma'am.

10 **Q** And what would y'all do?

11 **A** Sell dope or weed.

12 **Q** Okay. So you would sell dope or weed. But
13 that night you weren't selling dope or weed, you
14 were trying to purchase it?

15 **A** We were trying to purchase weed.

16 **Q** And you said that you met up about 12 o'clock
17 midnight?

18 **A** Yeah.

19 **Q** And is that up in the parking lot up above it?

20 **A** Yes, ma'am.

21 **Q** That's the one up the hill?

22 **A** Up the hill, up the stairs.

23 **Q** And if I refer to stuff, I'm going to refer to
24 the hill side and the parking lot side, okay?

25 Because the front and the back, people kind of

1 interchange those, don't they?

2 A See, to come to their house, you always had to
3 go through the back door.

4 Q Which makes some people call the front door?

5 A The back is the back and the front is the
6 front.

7 Q Well, if I refer to it as the hill side and the
8 parking lot side, can we do that?

9 A Okay.

10 Q Okay. And you were up above the hill in
11 another whole parking lot; is that correct, what you
12 pointed out?

13 A Yes, ma'am.

14 Q Okay. And how many hours did you spend in that
15 parking lot that morning?

16 A Where, the upstairs? I mean --

17 Q The upper one.

18 A All that morning.

19 Q All that morning?

20 A Yeah.

21 Q Because if you met up around 12 o'clock, what
22 were you doing before you met up with him?

23 A Just hanging in the parking lot.

24 Q So you've been there a long -- what time did
25 you get to the parking lot, to hang in the parking

1 lot that night?

2 **A** Well, it was like, maybe like six o'clock in
3 the afternoon.

4 **Q** Probably six o'clock in the afternoon?

5 **A** Yeah.

6 **Q** So by the time you met up with Ayree Henderson,
7 you had been standing in the parking lot, hanging
8 out for six hours; what were you doing?

9 **A** Just hanging in the parking lot.

10 **Q** Okay. Were y'all partying?

11 **A** Yeah. We were just listening to the radio and
12 just --

13 **Q** Listening to the radio. Drinking?

14 **A** No, no drinking.

15 **Q** You don't drink?

16 **A** No.

17 **Q** Do you smoke anything?

18 **A** Well, I used to back then.

19 **Q** What were you smoking?

20 **A** Marijuana.

21 **Q** Marijuana?

22 **A** Uh-huh.

23 **Q** And how much did you smoke that night?

24 **A** Maybe two blunts.

25 **Q** Two blunts. And do you remember what point in

1 the evening you smoked those; was that before the
2 shooting occurred?

3 A Yeah, that was before.

4 Q Okay. Before the shooting occurred?

5 A That was way, way before.

6 Q Way before the shooting occurred?

7 A Uh-huh.

8 Q And you smoked two blunts, but you didn't drink
9 anything that night?

10 A No.

11 Q Were other people drinking?

12 A Yeah, in the neighborhood.

13 Q In the neighborhood. Was Ayree drinking?

14 A No, I don't think so.

15 Q You don't think Ayree was drinking?

16 A No --

17 Q Do you know what he was doing prior to meeting
18 up with you at midnight?

19 A We were just -- like I said, everybody hang out
20 in the parking lot.

21 Q Why was Ayree coming there that night? Was he
22 just selling drugs like you were?

23 A Yeah.

24 Q Okay. So y'all were there, you meet up around
25 midnight, after you smoked two blunts, to sell drugs

1 that morning?

2 A Uh-huh.

3 Q And you'd been there for six hours?

4 A (Witness nodded head.)

5 Q And you mentioned that y'all didn't go down the
6 hill until around 5:30 to 6:00 a.m.; is that
7 correct?

8 A Yeah, everybody was fixing to go home
9 because it was late --

10 Q Everybody was fixing to go home?

11 A Uh-huh.

12 Q But y'all didn't want to go home?

13 A Yeah, we was going home.

14 Q You were going home?

15 A Yeah.

16 Q But on your way home, you needed to stop and
17 buy some more marijuana at 6:00 a.m. in the morning?

18 A Yep.

19 Q Okay. And why did you need that marijuana at
20 6:00 a.m. in the morning?

21 A Because, I mean, I was going home in the house
22 and I wasn't coming back out no time soon.

23 Q So you needed it for your own personal use or
24 you were selling it, that's all I'm asking?

25 A Personal use.

1 Q Personal use that day. And you'd already been
2 using that evening?

3 A Uh-huh.

4 Q And the effects of marijuana, does that make
5 you sleepy?

6 A Sometimes.

7 Q Sometimes it does?

8 A Yes.

9 Q And you smoked two blunts that night and that's
10 a fair amount of marijuana, isn't it?

11 A That's enough. I mean...

12 Q But it didn't make you sleepy?

13 A No. I was kind of tired because it was early
14 -- I mean, it was getting late.

15 Q It was getting late, 6:00 a.m. is pretty late?

16 A Yeah, it was time to go to sleep.

17 Q What did y'all do and who do you see from 12
18 midnight until 6:00 a.m. in the morning?

19 A Who did I see?

20 Q Uh-huh.

21 A What you mean?

22 Q Specifically, do you remember who you saw?

23 A Other people who stay in the neighborhood.

24 Q Other people who stay in the neighborhood.

25 Specifically, do you remember what -- who you saw?

1 Can you remember the names of any of them?

2 **A** Well, it was a couple of girls who stay in the
3 complex building where we were staying at. Do you
4 want to know their name?

5 **Q** Yeah.

6 **A** Gabriel.

7 **Q** Gabriel, that's the girl you went back to her
8 apartment?

9 **A** Yeah.

10 **Q** Yeah, she stays right there --

11 **A** She was standing --

12 **Q** -- in the upper level, doesn't she?

13 **A** Yes, ma'am.

14 **Q** I don't know, I'm asking you these questions.
15 Does she stay in the upper level?

16 **A** Yes, ma'am.

17 **Q** Okay. Because that's what you testified to.
18 And you saw Gabriel and -- is Gabriel here in the
19 courtroom?

20 **A** No, ma'am.

21 **Q** Okay. Who else did you see?

22 **A** Well, there was a couple of other people.

23 **Q** Okay. Do you remember their names?

24 **A** Because everybody hang out in the neighborhood.
25 Terrance.

1 Q Terrance? Is he here in the courtroom?

2 A Huh-huh.

3 Q Okay. Who else?

4 A Gabriel sister, Danielle.

5 Q Danielle, she's not here today?

6 A Huh-huh.

7 Q Do you remember exactly what conversations you
8 had or what y'all were doing from 12:00 to 6:00 a.m.
9 before you went down that hill?

10 A We were just hanging in the parking lot. I
11 mean, listening to the radio --

12 Q It's been a long time, hasn't it? You don't
13 remember exactly what was going on?

14 A Yeah, I remember what was going on.

15 Q Okay. You remember what was going on?

16 A Yeah.

17 Q Can you tell me?

18 A Well, we were just hanging in the parking lot.
19 That's what we do everyday, hang in the parking lot.

20 Q Were you having conversations?

21 A Yeah.

22 Q Were you selling drugs?

23 A Yeah.

24 Q And when did you sell the last of your drugs
25 that morning?

1 **A** Maybe it was like one o'clock, two o'clock.

2 **Q** One o'clock in the morning --

3 **A** We just stay out all night until we make money.

4 **Q** Okay. And you finished up your selling
5 ability --

6 **A** No, I was just ready to go home.

7 **Q** You were ready to go home. I didn't mean to
8 say you were ready to go home. I'm just saying you
9 sold the last of your supply around 1:00 a.m.?

10 **A** No, I didn't sell all of them.

11 **Q** Okay. I'm sorry, I didn't mean to misinterpret
12 what you just said to me. You said you finished
13 selling around 1:00 or 2:00 a.m.?

14 **A** Well, I stopped, but I didn't sell all of it.

15 **Q** So you had -- you stopped selling at 1:00 or
16 2:00, but you still had some more?

17 **A** Uh-huh.

18 **Q** Okay. And how much more marijuana did you have
19 left?

20 **A** Well, I done smoked both of them before, you
21 know, before we went to Moe house.

22 **Q** Okay. And that's what I need to know. You
23 smoked two blunts -- I don't mean to misinterpret.
24 The blunts you mentioned you smoked, you smoked
25 after two o'clock a.m., before 6:00 a.m.?

1 **A** Yeah, all during that time --

2 **Q** So it wasn't earlier in the night?

3 **A** It was all -- 12 o'clock, one o'clock.

4 **Q** Okay. So you sold -- how much money did you
5 make that night?

6 **A** Maybe about \$60.

7 **Q** About \$60. And the only drug you were selling
8 that night was marijuana?

9 **A** No, I was selling dope.

10 **Q** And when you say dope, what does that mean?

11 **A** Crack.

12 **Q** Crack cocaine?

13 **A** (Witness nodded head.)

14 **Q** And so you were selling crack cocaine and
15 marijuana?

16 **A** No, I wasn't selling marijuana then.

17 **Q** Okay. And that's what I'm confused about. You
18 were just selling crack cocaine?

19 **A** Yeah, that night I was just selling crack.

20 **Q** And that would be to people in the
21 neighborhood?

22 **A** Yeah, that's what pretty much everybody do,
23 sell crack or either weed.

24 **Q** Okay. And crack cocaine is a --

25 **A** A drug.

1 Q -- a form of cocaine, it's a drug?

2 A Uh-huh.

3 Q And Ayree, when he came out at midnight, what
4 was he doing out there, since y'all -- all of y'all,
5 everybody else was selling drugs --

6 A Same thing I was doing, selling dope.

7 Q Okay. So he's selling dope, too. And what
8 kind of -- how much did he sell; do you know?

9 A No, I don't remember.

10 Q Do you know whether he was selling marijuana,
11 too, that night?

12 A Did he what?

13 Q Did he sell marijuana, also?

14 A No. He smoked it, though.

15 Q He smoked marijuana?

16 A Yeah.

17 Q And when you were smoking your blunts from 2:00
18 to 6:00 a.m., was he smoking his blunts?

19 A Yeah, with me.

20 Q With you?

21 A Yeah, everybody was.

22 Q Who's everybody?

23 A Who I named earlier.

24 Q Those two girls and Terrance?

25 A And there were other couple of people, too.

1 Q And other couple of people. And you mentioned
2 that before you went down -- and that's, basically,
3 what y'all were doing that night, right?

4 A (Witness nodded head.)

5 Q And you can't tell me exactly what was said or
6 anything, but you know all of that happened. And
7 then when it started getting light, it was light,
8 you mentioned that about 30 minutes before you went
9 down, and I wrote it down, so don't let me misquote
10 you, you went down the hill, that you decided that
11 -- that you had contact with the person who had
12 bought dope from Moe?

13 A Uh-huh, bought weed.

14 Q Bought weed from Moe, I'm sorry, weed. Thank
15 you.

16 A Yeah.

17 Q Weed from Moe. And that was about 30 minutes
18 before that, right?

19 A Uh-huh.

20 Q And this was someone you knew?

21 A Yeah.

22 Q Okay. Someone you trusted?

23 A (Witness nodded head.)

24 Q Who was it?

25 A My boyfriend.

1 Q Your boyfriend?

2 A Uh-huh.

3 Q Who's your boyfriend?

4 A Hodari Gardener.

5 Q Hodari Gardener?

6 A Uh-huh.

7 Q Is he here in the courtroom?

8 A No.

9 Q Where is he?

10 A He's probably home.

11 Q But he's the one that said he had been down
12 to --

13 A And got him a bag and he was still up.

14 Q And did you know Moe prior to all of this?

15 A No, I never knew him. I just knew he sold
16 marijuana.

17 Q Okay. You didn't know him. Did you know where
18 he lived?

19 A Yeah.

20 Q And why did you know where he lived?

21 A Because everybody knew where he stayed. It was
22 the weed house.

23 Q It was the weed house?

24 A Yeah.

25 Q Okay. Even though there was no weed found in

1 there, it was the weed house?

2 **A** Well, she probably took it all, I mean, and hid
3 it. I mean, I don't know what she did with it.

4 **Q** Okay. And you went down there because your
5 boyfriend, Hodari Gardener, said to go down there
6 and buy it. So did he go with you?

7 **A** Who?

8 **Q** Hodari?

9 **A** No, he went home.

10 **Q** And is Hodari a good friend of Ayree's?

11 **A** Yeah.

12 **Q** Okay. Would he have listed him maybe as his
13 brother?

14 **A** No, just friend.

15 **Q** Okay. So there's no reason he would list you
16 as his sister and Hodari as his brother?

17 **A** Huh?

18 **Q** On the visitation log?

19 **A** Well, I guess -- I mean, I guess if you're a
20 friend, you can't come see him, I don't know.

21 **Q** Okay. So 30 minutes before you go down the
22 hill, Hodari, your boyfriend, tells you to go down
23 to Moe's house, which you happen to know where it is
24 even though you don't know him because everybody
25 knows he sells dope?

1 **A** Yes.

2 **Q** And you went down there to buy --

3 **A** A dime bag of marijuana.

4 **Q** A dime bag of weed. Because you were out of
5 your personal use and you sold all your dope?

6 **A** Yeah.

7 **Q** Okay. And you needed some more weed before you
8 went to bed?

9 **A** To go home with, yeah. I smoke it if I wake up
10 or whatever.

11 **Q** Okay. You smoke it if you wake up. So you
12 needed something if you wake up?

13 **A** Pretty much.

14 **Q** And then y'all go down the stairs?

15 **A** Uh-huh.

16 **Q** And it's light?

17 **A** Yeah.

18 **Q** And you never went around to the front of that
19 complex, right?

20 **A** We never went to the front door.

21 **Q** And y'all were never hanging out -- and Ayree
22 was with you the entire time from midnight until
23 6:00 a.m.?

24 **A** We never hung out in their apartment. We
25 always hung up the street -- I mean, up the stairs.

1 Q And how did you and Ayree make the decision to
2 go there to buy dope?

3 A Because my boyfriend said he was still up, so
4 we was like let's walk down there.

5 Q Okay. How were you getting home that night?

6 A I called a cab.

7 Q You called a cab?

8 A (Witness nodded head.)

9 Q Did you catch a cab after you went to your
10 girlfriend's house?

11 A No. I was still standing in the parking lot.

12 Q Okay. Maybe I don't understand. How does
13 Hodari get home? Does he live with you?

14 A No, he does not.

15 Q So he was going to a different place?

16 A (Witness nodded head.)

17 Q So, basically, y'all just stood out there, were
18 smoking weed -- were smoking weed, selling dope and
19 that's what you and Hodari did that night?

20 A (Witness nodded head.)

21 Q And Ayree?

22 A Uh-huh, and the rest of everybody else.

23 Q And marijuana, when you smoke it, it doesn't
24 affect your ability to perceive things?

25 A No, it doesn't.

1 Q And y'all go down the hill and you never go
2 into the parking lot area, correct?

3 A No, we never went to the front door.

4 Q Okay. So nobody would have heard you knocking
5 on the front door?

6 A No. We don't never go to the front door. You
7 always go to the back.

8 Q You always go to the back?

9 A Uh-huh.

10 Q So you purchased weed from, not him before you
11 said?

12 A No, not me, but everybody else always say you
13 go to the back.

14 Q Everybody always told you to go to the back on
15 this first occasion when you went to Moe's house,
16 who you happen to know is a weed dealer even though
17 you don't know him?

18 A Yeah.

19 Q Okay. And then y'all go to the back door and
20 you have Ayree with you?

21 A Yeah.

22 Q And Ayree wasn't armed?

23 A No, he was not.

24 Q He didn't have a gun?

25 A No.

1 Q And you didn't hear Ayree earlier that night
2 talking about how he wanted to rob somebody?

3 A No. That's just -- she smoked dope, too. And
4 she was just mad because she couldn't get none.

5 Q Who are you talking about, ma'am?

6 A Dianne.

7 Q Oh, Dianne. She was just mad at Ayree because
8 she couldn't get any dope?

9 A Yeah.

10 Q And you and Ayree and, say, Z.Z. and all those
11 others weren't hanging out there that night?

12 A Where, in her parking lot?

13 Q Yeah.

14 A No.

15 Q Okay. And then y'all go down the steps, you
16 don't go to the front door, right?

17 A No, we never went to the front door.

18 Q What was Ayree wearing that night? If you
19 can't remember, that's okay.

20 A A white T-shirt, but I don't remember what kind
21 of pants or nothing.

22 Q You don't remember what kind of pants. What
23 were you wearing that night?

24 A I think I had on some beige pants or something
25 like that.

1 Q Do you remember what Hodari was wearing that
2 night?

3 A No.

4 Q Do you remember what Danielle was wearing?

5 A (Witness shook head.)

6 Q Or any of the other people you mentioned,
7 Terrance?

8 A No. I didn't keep up with what they had on.

9 Q You mentioned that y'all went up and it's light
10 out, right, when you go to the back door?

11 A Yes.

12 Q And you knock on the door?

13 A Yeah.

14 Q And as you're knocking on the door, what
15 happened?

16 A What?

17 Q What happened?

18 A Moe said, Who is it.

19 Q Moe said, Who is it, from inside the door?

20 A From inside the window, the upstairs window.
21 He didn't come to the, you know, like his bed must
22 have been by the window and his voice said, Who is
23 it.

24 Q Okay. And then what happened?

25 A Ayree said, Ayree.

1 Q Okay. And then what happened?

2 A Moe started yelling because, I guess, it was
3 late. And he was like, What's wrong with you
4 knocking on my door this time of night -- I mean,
5 this time of morning.

6 Q Moe's yelling, What's wrong with you knocking
7 on my door. And what did you say to him? Did you
8 say anything?

9 A To Moe?

10 Q To Moe.

11 A No, I didn't say anything to him because I
12 didn't know him.

13 Q Could you see his face at that point?

14 A Yeah, I saw him when he came downstairs.

15 Q Okay. Before that, did you see his face or you
16 just heard a voice?

17 A Just heard a voice.

18 Q Did you hear a woman's voice that night?

19 A No.

20 Q And once you heard that voice, he said, What
21 are y'all doing down there?

22 A Yeah. He sounded real upset, so I was like,
23 Oh, you know.

24 Q So, at that point, you're scared?

25 A Yeah.

1 Q He's upset.

2 A Yeah.

3 Q From the window, you could tell he's mad?

4 A Yeah, but he didn't come to the window so I
5 could see his face. He was just -- I just heard his
6 voice.

7 Q But you heard his voice?

8 A Uh-huh.

9 Q And the voice scared you?

10 A Uh-huh.

11 Q So what did y'all do?

12 A Well, we was, you know, waiting on him to come
13 down the stairs because, I guess, he was like, Who
14 is this knocking on my door this time of morning.
15 And Ayree said, Ayree. So Moe came down the stairs,
16 opened the door.

17 Q He opened the back door?

18 A Yeah.

19 Q The door on the hill side?

20 A Yeah.

21 Q Some people call it the front door. So do you
22 call it the back door or the front door?

23 A I say the back door.

24 Q Okay. And it would be the door that would be
25 on this --

1 A That side.

2 Q And did he come out?

3 A Yes, he came out.

4 Q Okay. And, at that point, what did you say he

5 was wearing?

6 A Some green boxers.

7 Q Some green boxers?

8 A Uh-huh.

9 Q And was that all he was wearing?

10 A Yeah, he had no shirt on.

11 Q Okay. And he came all the way out the door?

12 A Yeah.

13 Q Out to where the door slammed shut?

14 A He came on the -- the thing -- this right here.

15 Q The concrete part?

16 A Yeah, the --

17 Q So the door had shut behind him?

18 A No, he didn't close it all the way.

19 Q Oh, he hadn't closed the door?

20 A No, he didn't close the big door.

21 Q So he was standing in the doorway?

22 A No. He was all the way out the door, but he

23 didn't close the big door all the way.

24 Q Okay. But he let the screen door go?

25 A Yeah.

1 **Q** Okay. And that's what makes the slamming
2 noise?

3 **A** Okay.

4 **Q** Okay. So he let that go?

5 **A** Let what?

6 **Q** The screen door go, but the door behind it was
7 open --

8 **A** Yeah, he was on the little --

9 **Q** On the little stoop?

10 **A** Yeah, on the stoop.

11 **Q** And where are y'all?

12 **A** Like right here.

13 **Q** Right there?

14 **A** Yeah.

15 **Q** Right there on the sidewalk?

16 **A** Uh-huh.

17 **Q** In front of -- behind apartment number 2-1?

18 **A** No, 2-2.

19 **Q** And what was said at the point when he comes
20 out -- when did you see the gun?

21 **A** As soon as he came out the door.

22 **Q** As soon as he came out the door?

23 **A** Yeah, because he was mad. He was cussing as he
24 was coming out the door.

25 **Q** He's cussing as he comes out the door and he's

1 got a gun?

2 A Uh-huh.

3 Q And, at that point, was he pointing it at you?

4 A Yeah. He was like, What's wrong with y'all
5 coming to my house this time of morning.

6 Q And, at that point, were you scared?

7 A Yeah.

8 Q And then is there a conversation that goes on?

9 A No conversation, just arguments.

10 Q Okay. And I say conversation, you say
11 arguments. Was it heated? Were they talking?

12 A We were just like -- Ayree was just saying,
13 Man, you ain't got to be coming down no stairs with
14 no gun, we were just coming to get a bag. And Moe
15 was like, I don't give a, you know, F what you was
16 coming to do. Don't be coming at my house no
17 anytime, you know, anytime of the morning. And he
18 was like, I got something for you and he went back
19 in the house --

20 Q Okay. And let me get this. He said, I've got
21 something for you?

22 A Uh-huh.

23 Q And then he went back in the house?

24 A He must have put his -- he had to put shorts
25 on.

1 Q Shorts on?

2 A Yeah, his blue jean shorts.

3 Q Over his boxers?

4 A Yeah.

5 Q Blue jean shorts, and I'll get back to that.

6 And then y'all were coming down the sidewalk back
7 towards the stairs?

8 A I was like, Come on, Ayree, let's just go
9 because he slammed the big door.

10 Q And the two of you are walking together?

11 A Yeah.

12 Q And you were walking in this area?

13 A Walking away from the door.

14 Q Walking away from the door?

15 A Yeah.

16 Q And I want to show you this, back towards where
17 these stairs are, walking this way, this way?

18 A Is that the bottom part?

19 Q Yeah, it is. It's just upside down. This is
20 the bottom, these are top ones?

21 A Okay. Which building is 2-2 -- I mean, which
22 building is two? Which building is two?

23 Q You tell me. If this is the top row and this
24 is the bottom row, which building is two?

25 MR. JOHNSON: Your Honor, I have an objection.

1 I think she's confusing the witness. If she wants a
2 specific answer, she needs to point out what she's
3 talking about.

4 BY MS. CAMPBELL:

5 Q Can you tell which building it is?

6 A You said this is the top?

7 Q Yes, ma'am.

8 A And this is the bottom?

9 Q Yes, ma'am. And I can get you a closer up view
10 if it will help you?

11 A Yeah, I'd like to look at something else.

12 Q But y'all are walking back down that concrete
13 part in the back?

14 A The sidewalk, yeah.

15 Q The sidewalk in the back, like here on State's
16 Exhibit Number 8, right?

17 A Yeah. We was walking back towards this way.

18 Q Towards the corner?

19 A Yeah.

20 Q And then you said, at that point, that Moe had
21 gone back into the house, the screen door had
22 slammed again, right?

23 A Yes. And he shut the big door, too.

24 Q Shut the big door?

25 A Yeah.

1 **Q** And then y'all are walking down and the next
2 thing you saw was him coming out the front door?

3 **A** Yeah, because he must have went in the house
4 and put his -- well, he had to put his shorts on.

5 **Q** And as soon as you saw him coming out of the
6 house, you could see he had shorts on?

7 **A** Yeah.

8 **Q** And as soon as you saw him coming out of the
9 house -- and which door did he come out of?

10 **A** The front door.

11 **Q** Okay. Let me make sure I'm right about this.
12 I'm going to show you State's Exhibit 6?

13 **A** Yes. This is the front.

14 **Q** This is the front door right here?

15 **A** Yeah. He had to come through that part to the
16 side.

17 **Q** Do I have it pointed right?

18 **A** Yes, ma'am.

19 **Q** Okay. As soon as you see him come out the
20 front door, you see him in blue jean shorts?

21 **A** No, I didn't see him come out the front door,
22 but he was coming to the side, so you know he had to
23 come out the front door to come to the side.

24 **Q** Okay. So you didn't see him come out the front
25 door?

1 **A** I mean, he came out the front door to come to
2 the side. As I saw him, he was coming on the side,
3 but I didn't see him exactly coming out the front.

4 **Q** On the side, okay. So you see him on the side.
5 And then as you see him coming around the corner,
6 he's changed because he's put on blue jean shorts?

7 **A** Yes.

8 **Q** And you can't see his green boxers anymore?

9 **A** No, you can't.

10 **Q** And does he still have the gun?

11 **A** Yeah.

12 **Q** Where were y'all when you first saw him?

13 **A** On the side.

14 **Q** On the side?

15 **A** Yes, ma'am.

16 **Q** I show you State's Exhibit 7. Were you further
17 around the side?

18 **A** This is the back.

19 **Q** That's the back?

20 **A** Yeah, we was on the side --

21 **Q** Wait, let me find your exhibits and I'll find
22 -- there they are. Defendant's Exhibit 1?

23 **A** Exactly where I was standing at.

24 **Q** That's right where you were standing?

25 **A** That's where we met Moe at as we was walking

1 away.

2 Q That's where you met Moe?

3 A Yes, ma'am.

4 Q And that's where y'all came face to face right
5 here?

6 A Yes, ma'am.

7 Q No question about that?

8 A (No response.)

9 Q And is that where the fight took place?

10 A Yes, ma'am.

11 Q What was said prior to the fight?

12 A Didn't I tell you I had something for you,
13 didn't I say don't be coming to my house no anytime
14 of the night -- I mean, anytime in the morning.

15 Q And then Ayree, because he's pointing the gun
16 at you, jumps on him?

17 A Well, I mean, I guess he was mad because he was
18 pointing it at both of us because you don't just --

19 Q And you don't know what was going through his
20 head, but Ayree jumps on him?

21 A Yeah.

22 Q While he's standing there, pointing the gun?

23 A Yeah, because he was going, I guess, shoot him,
24 I guess, for coming to his house anytime of the
25 morning.

1 Q And then they start struggling over the gun?

2 A Yeah.

3 Q And is it close?

4 A Yeah, they was very close to each other.

5 Q Were they fighting?

6 A No, they was tussling like --

7 Q Tussling for the gun?

8 A -- because -- no. I'm there, too, so it's like
9 why you got this gun and there's another person
10 here, you know, anybody could have got shot that
11 morning.

12 Q Anybody could have gotten shot and that's a
13 good point.

14 A Yes, ma'am.

15 Q While they are tussling right here on the side
16 of this building, do they move anywhere or do they
17 stay in the same area?

18 A They was tussling, moving, you know, moving
19 around.

20 Q Around in the same area?

21 A Yes, ma'am.

22 Q And then the gun goes off?

23 A Yes, ma'am, one time.

24 Q One time?

25 A Yes, ma'am.

1 Q Not three times, but one time?

2 A One time.

3 Q And in that struggle, at what point did Ayree
4 or Moe chamber the round?

5 A I guess he must have chambered it before he
6 came out the door.

7 Q When he was coming out of the front door?

8 A Yeah.

9 Q And so that would have been around on this side
10 of the house?

11 A Yes, ma'am.

12 Q You guess he must have chambered it. You don't
13 know about that?

14 A I don't know because I was walking towards, you
15 know, coming from the back.

16 Q And who was saying what to whom when they were
17 tussling?

18 A Both of them were saying stuff to each other.

19 Q What were they saying?

20 A Yeah -- what were they saying?

21 Q Yeah.

22 A Well, I mean, they was arguing about coming to
23 the house, you know, in the morning.

24 Q In the morning?

25 A Yeah.

1 Q And then the gun went off?

2 A Yeah, because they was tussling.

3 Q Could you tell where the gun was when the gun
4 went off?

5 A It was just -- no, I really don't know where it
6 was pointed.

7 Q Were they close together fighting?

8 A Yeah, they was -- they had arm to arm each
9 other.

10 Q Arm to arm?

11 A Yes, ma'am.

12 Q So say if I was this close, it would be closer
13 than you and I right now? I don't mean to crowd
14 you, but would they have been like right just up
15 against each other?

16 A Like where you're standing at right now if you
17 was to come back right here.

18 Q Well, they're at least closer than arm's length
19 if they're tussling over the gun?

20 A Yes, ma'am.

21 Q And they're trying to get the gun?

22 A Both of them was tussling like trying -- Ayree
23 was trying to pull the gun down and Moe was pointing
24 it --

25 Q But Moe was the one holding the gun?

1 **A** Yeah, he had the gun when he --

2 **Q** So he had the gun in his hands?

3 **A** Yes, ma'am.

4 **Q** And then it just went off?

5 **A** Yes, ma'am.

6 **Q** And then you took off?

7 **A** I looked at -- I mean, I seen where Moe fell on
8 the ground and I was just like shocked and I ran.

9 **Q** And did he fall around right where you're
10 standing in this picture?

11 **A** Well, he probably fell like right there
12 somewhere.

13 **Q** Oh, you want to move it over some now?

14 **A** No. I mean, this is where it occurred at, but
15 I don't -- he probably fell like right here.

16 **Q** Well, you saw him fall, it's not probably?

17 **A** Yeah, I saw -- I saw him fall.

18 **Q** And where are you putting his body now?

19 **A** His body was still in the grass.

20 **Q** Still in the grass?

21 **A** Yeah, but he must have crawled -- I don't know
22 what he did because like I said, I ran. He must
23 have crawled to the back door.

24 **Q** Crawled to the back door?

25 **A** Yeah.

1 Q Okay. Did you see the big spurt of blood?

2 A No, I did not see it because I left.

3 Q Did the big spurt of blood hit you?

4 A No, ma'am.

5 Q Did the big spurt of blood hit Ayree that you
6 saw?

7 A No, ma'am.

8 Q And then you ran?

9 A Yes, ma'am.

10 Q Which way did you run?

11 A Well, you got like a picture I can show you?

12 Q Just tell me, was it towards the steps --

13 A I ran towards like the street or the front --
14 the front side and ran through the -- I cut through
15 these other apartments and ran up the stairs.

16 Q So you ran up the stairs?

17 A Yes, ma'am.

18 Q And that's when you went to your friend's
19 house?

20 A Yes, ma'am.

21 Q And that's when you -- I think you testified
22 that you stayed calm?

23 A Yeah. I called a cab and went home.

24 Q At any point, did you call 911?

25 A No.

1 Q You knew someone had been shot?

2 A Yeah.

3 Q You know you can report things anonymously?

4 A Well, I knew somebody was going to call, I
5 mean.

6 Q How did you know he had been shot if you didn't
7 see any blood?

8 A Because he fell on the ground.

9 Q And you didn't see any blood?

10 A Not yet, I ran.

11 Q And the last time you saw the gun, who had it?

12 A Moe.

13 Q Moe?

14 A Yes.

15 Q It was definitely in his hands?

16 A It was his gun.

17 Q And his hands were definitely on that gun when
18 it went off?

19 A Yes, ma'am.

20 Q And he was definitely handling that gun prior?

21 A Yes, ma'am.

22 Q Did you tell your girlfriend, Gabriel, what
23 happened?

24 A No.

25 Q So she had no idea when you ran up the stairs,

1 got to her apartment, you had just witnessed a
2 person being shot who you had left on the ground and
3 she didn't know anything was wrong?

4 **A** No.

5 **Q** And your memory of this night is clear?

6 **A** Yeah, I remember it.

7 **Q** And you've never had the opportunity to discuss
8 this with Mr. Henderson?

9 **A** Huh-huh.

10 **Q** You never looked at any pictures with
11 Mr. Henderson?

12 **A** No, just yesterday, but I didn't get to look at
13 them.

14 **Q** And the victim had definitely changed clothes
15 when he came out?

16 **A** Huh?

17 **Q** He had the gun the first time?

18 **A** Yeah.

19 **Q** He was mad?

20 **A** He had on boxers the first time when he came
21 out the back door.

22 **Q** As you saw him coming around the corner of that
23 building, did you run?

24 **A** No. I was just like, Oh, you know, shocked
25 that he came back out the front door.

1 **Q** You found out he was dead later that day?

2 **A** Yeah.

3 **Q** Did you think it was important to go to the
4 police about what had happened?

5 **A** Well, I mean, I didn't want anybody to know
6 that I was there at the time so that's why I didn't
7 say nothing.

8 **Q** You didn't say anything even though Ayree
9 Henderson considers you like a sister, you didn't
10 think it was important for the police to know that
11 he had only shot in self-defense?

12 **A** Yeah, it was, but, I mean...

13 **Q** Do you remember talking to an investigator with
14 my office yesterday?

15 **A** Huh?

16 **Q** Do you remember talking to an investigator with
17 my office yesterday when we figured out who you
18 were?

19 **A** Yeah, he knew who I was.

20 **Q** Yeah. And he came and talked to you just right
21 outside the courtroom?

22 **A** Uh-huh.

23 **Q** Do you remember talking to him about how the
24 victim, Moe, had gone in the house?

25 **A** Yeah.

1 Q And you said that he put on all of his clothes?

2 A He put on his blue jean shorts.

3 Q And today it's the blue jean shorts?

4 A Uh-huh. I ain't never said it was nothing
5 else.

6 Q And when you last saw him lying in the grass on
7 the side of that building, you didn't see any blood,
8 he had on blue jean shorts and you don't know what
9 happened after that?

10 A No, because I ran.

11 Q Which way did Ayree run?

12 A The back way.

13 Q When you say the back way, what way is that?

14 A Up the stairs.

15 Q And you went up the stairs, too, though, right?

16 A I went through the front entrance, though, the
17 front street and it's a back way -- it's a back way
18 you can go and it's a front way you can go.

19 Q Well, if you ran towards the front of the
20 street, how do you know he ran up those stairs?

21 A Ayree left me.

22 Q He left you running?

23 A Yeah.

24 Q And your testimony is he didn't take a gun with
25 him?

1 **A** No, he didn't.

2 **Q** Was anybody else out there that night when that
3 shooting took place?

4 **A** No, ma'am.

5 **Q** Just for the record, do you have any -- do you
6 know Kathy Wilson or Everett Wilson?

7 **A** Well, I heard she stayed next door from them.

8 **Q** Do you know her?

9 **A** No, I don't know her.

10 **Q** Does she have any reason to bode you ill will
11 or Ayree or anything?

12 **A** Huh?

13 **Q** Does she have any reason not to like you or
14 anything, any bias or prejudice towards you?

15 **A** She don't know me. I just -- I know of her
16 smoking, though.

17 **Q** And the only reason you went there that night
18 was to purchase some marijuana at 6:00 a.m. in the
19 morning on your way home because you had sold all of
20 your dope and you had smoked all of your weed and
21 you needed some in case you woke up the next day?

22 **A** (Witness nodded head.)

23 **Q** And you have a clear memory of everything that
24 happened after you had been sitting on that street
25 corner for 12 hours smoking and selling crack?

1 **A** Yes, I do.

2 **Q** And you've never discussed this with Ayree or
3 anyone else?

4 **A** No, ma'am.

5 **Q** And none of the people that you knew were
6 witnesses out there that night are here in court?

7 **A** They wasn't there.

8 **MS. CAMPBELL:** Beg the Court's indulgence.

9 (Pause.)

10 **Q** Had you ever seen Ayree with a gun before?

11 **A** No, ma'am.

12 **Q** Were you aware Ayree was trying to purchase a
13 gun that night?

14 **A** No, ma'am.

15 **Q** But you don't know what he was doing prior to
16 your getting...

17 **A** Huh?

18 **Q** You don't know what he was doing prior to your
19 hooking up with him?

20 **A** What you mean what he was doing?

21 **MS. CAMPBELL:** That's all I have.

22 **THE COURT:** Any redirect?

23 **MR. JOHNSON:** Just two quick ones, Your Honor.

24 *****

25 *****

REDIRECT EXAMINATION

BY MR. JOHNSON:

Q Did Avery have a gun?

A No.

Q Did Moe have a gun?

A Yes, Moe had a gun.

Q Were they fighting?

A They was tussling. They wasn't fighting like this (indicating), they were tussling with a gun.

Q And the gun went off?

A Yes, sir.

Q Are you telling the truth?

A Yes, sir.

MR. JOHNSON: No other questions, Your Honor.

THE COURT: You may step down.

Ladies and gentlemen, I think this would be a good time to take a lunch break. I'm going to ask you and remind you of the instructions that I have given to you, that is, not to begin to discuss this matter among yourselves as you certainly have not heard all of the evidence that has to be presented. And even if you had, you have not heard my charge of the law to you, so it would be inappropriate for you to begin to discuss it.

Please also do not allow anyone to approach you

1 to discuss this case with you. Again, if someone
2 attempts to do that, please tell them that you are a
3 juror and you cannot discuss it and please report it
4 as soon as possible. Also, remember not to listen
5 to any conversations as you come and go from the
6 courthouse for the reasons that I've given to you
7 earlier that you have to make the decisions about
8 the facts of this case based upon what you hear here
9 in the courtroom, the evidence that's presented here
10 and not based upon other conversations.

11 Ladies and gentlemen, I'm going to ask that you
12 report back at two o'clock since it's the height of
13 the lunch time hour. When you report back to the
14 same jury room at 2:00, then we can continue on with
15 the trial of this case. Thank you. Have a good
16 lunch.

17 (The jury was excused for lunch.)

18 **THE COURT:** Is there anything we need to take
19 up before we break for lunch?

20 **MR. JOHNSON:** Nothing from the defense, Your
21 Honor.

22 **THE COURT:** Then we'll see you all at two
23 o'clock.

24 (Whereupon, there was a luncheon recess.)

25 **THE COURT:** Is there anything we need to take

1 up before the jury comes in?

2 **MR. JOHNSON:** Nothing from the defense, Your
3 Honor.

4 **MS. CAMPBELL:** No, ma'am.

5 **THE COURT:** You may ask the jury to come in.

6 (The jury returns to the courtroom.)

7 **THE COURT:** Mr. Johnson, you may call your next
8 witness.

9 **MR. JOHNSON:** Thank you, Your Honor. Your
10 Honor, at this time, the defense would like to call
11 Ayree Henderson to the stand.

12 **THE COURT:** If you would step forward please
13 and be sworn.

14 AYREE HENDERSON,
15 having been duly sworn, testified as follows:

16 **THE CLERK:** Please have a seat in the witness
17 stand and state your full name for the record.

18 **THE WITNESS:** Ayree Henderson.

19 DIRECT EXAMINATION

20 BY MR. JOHNSON:

21 **Q** Ayree, you're aware what you're on trial for
22 today?

23 **A** Yes, sir.

24 **Q** What are you on trial for?

25 **A** Murder.

1 Q And who did they say that you murdered?

2 A Alonzo Gale.

3 Q Let's start off by asking you this, did you
4 murder Alonzo Gale?

5 A No, sir.

6 Q On August the 3rd, 2002, do you remember that
7 day?

8 A Yes, sir.

9 Q Let's go back to the day before that, which
10 would be August the 2nd. Do you remember what you
11 was doing that day?

12 A Yes, sir.

13 Q What were you doing?

14 A I was just doing the usual, just being myself
15 at that time, which I was smoking weed, drinking and
16 just -- just doing what I usually do on my regular
17 activities.

18 Q What is your regular activities?

19 A My regular activity, I would get up, get
20 dressed and go to the neighborhood and just lounge
21 around the neighborhood and, you know, sell drugs,
22 you know -- I mean, honestly speaking, that's what I
23 would do.

24 Q And, at the time, where were you living?

25 A Well, I was staying from house to house, like I

1 was staying with this girl named Tiffany Miller
2 because we was dating at the time.

3 Q Do you have any kids from her?

4 A No, sir.

5 Q How old are you?

6 A Twenty-six.

7 Q Let's go back a little further. Where were you
8 born?

9 A In Columbia, South Carolina, Moncrief Hospital.

10 Q Your father and mother was living together at
11 the time?

12 A No, sir. My father's name, Austin Gilbert. My
13 mother's name, Susie Henderson.

14 Q So you were raised by your mother?

15 A Yes, sir.

16 Q How long did you live with your mother?

17 A For -- I stayed with her up to about 11 -- 11
18 years old, I went to Little R&E. And then after I
19 left Little R&E, I went to a group home. And once I
20 got in the group home, I was about 12 years old.
21 And after that, I went to a foster home. And from
22 that foster home, I went to another group home.
23 From that group home, I came back to stay with my
24 grandmother for about two months. I mean, I been --

25 Q When you got out of the last group home, how

1 old were you?

2 A I got out the last -- after the last group
3 home, I would say I was about -- that was a while
4 back, so I was in 7th grade, 12 years old, 12 years
5 old because I went to the second group home like
6 after I left the foster home.

7 Q Now, you got in trouble or something when you
8 went to R&E?

9 A Yes, sir.

10 Q What kind of trouble did you get into?

11 A I got into -- I had accessory after the fact of
12 involuntary manslaughter.

13 Q So that was a murder?

14 A Yes, sir.

15 Q And you were accessory after the fact?

16 A Yes, sir.

17 Q What did you do? I mean, what did they charge
18 you with doing?

19 A They charged me of knowing about it and not
20 telling the police officer about it and not
21 reporting it and things of that nature.

22 Q How old was you at that time?

23 A Sixteen years old.

24 Q And were they correct, you knew about it,
25 didn't do it?

1 **A** Yes, sir, they was correct.

2 **Q** Why didn't you tell them at that time?

3 **A** I mean, when you're that young and I guess when
4 you grow up in a neighborhood like I grew up, I
5 mean, you wouldn't be too quick to want to report
6 anything of that nature because you don't know what
7 can happen to you, if you do decide that you will
8 want to tell, because I don't know, maybe what I
9 told may come back on me. I mean, I feared for my
10 life. I mean, that's how I live. I mean, you know,
11 I'm not saying that it's justifiable, but I'm just
12 saying that, you know, by me being that young, I
13 didn't want to die. I didn't want nothing to happen
14 to me, you know, even though I didn't have a tight
15 family like that, but I cared about them, also.

16 So, you know, I know how rough the streets is
17 because I grew up rough. I mean, I'm not perfect.
18 I'm not going to sit up here and tell you I'm an
19 angel or anything like that, but, you know, when you
20 start speaking of murder, that's the intention of
21 wanting to do some bodily harm to anybody, you know,
22 and that's -- I couldn't do that. I wouldn't even
23 want nobody to die. I wouldn't wish that on nobody
24 or nothing like that.

25 **Q** Okay. So you didn't tell?

1 **A** No, sir.

2 **Q** And, as a result, you was --

3 **A** Charged.

4 **Q** And what kind of time did you get?

5 **A** Three to six in a juvenile -- in DJJ.

6 **Q** So you went to juvenile?

7 **A** Yes, sir.

8 **Q** While you're in juvenile, did you do anything
9 there?

10 **A** Yes, sir. I went to school. I got in a start
11 program. They turned me down on my first parole
12 because they say I didn't do enough time, but there
13 was a case worker there, he put me up for early
14 board so that next month, I got released on that
15 next month.

16 **Q** Did you get your education while you was there?

17 **A** Yes, sir. I got like -- I got two credits
18 while I was there. I didn't stay there enough, but
19 four months.

20 **Q** So when you got out, what happened?

21 **A** When I got out of DJJ --

22 **Q** Well, first of all, how old were you when you
23 got out of DJJ?

24 **A** I was 17.

25 **Q** When you got out, what did you do?

1 **A** I went to go stay with my grandmother.

2 **Q** Where was your mother at that time?

3 **A** She was staying there, but -- she was staying
4 there, but my grandma wouldn't allow her to stay
5 there because, you know, she was living with a
6 lesbian, so it was a conflict of interest there.
7 And by me being there, my mama, she's like the black
8 sheep of the family because, you know, she don't get
9 along with her sister. So, you know, my sister --
10 my mother's sister and my grandma, they really tight
11 and their family tight so they have a big family.
12 So on my side of the family, my mama, my sister and
13 my brother, it's just us.

14 **Q** So you have a sister and a brother?

15 **A** Yes, sir.

16 **Q** How old is your sister?

17 **A** My sister is -- she was born in '71, so she's
18 thirty --

19 **Q** About 34?

20 **A** She's 33 now.

21 **Q** How old is your brother? He's younger than
22 you?

23 **A** Yes, sir, 17 months younger. He'll be 25,
24 November.

25 **Q** So you stayed with your grandmother, do you get

1 into more trouble?

2 **A** All right. When I stayed with my grandmother,
3 I didn't get in trouble until '96.

4 **Q** What kind of trouble you got (sic) into?

5 **A** Possession of stolen vehicles.

6 **Q** Explain that?

7 **A** Okay. On the possession of stolen vehicles, me
8 and this guy named Tony Lawrence, he start breaking
9 into people's car, taking people cars and stuff like
10 that, but I was with him. And what happened was he
11 went and robbed somebody and I was in the vehicle
12 with him and he left the scene, but he got -- he
13 went and got another car, but I got the car he had
14 before that and got caught with the car I was in so
15 they arrested me and stuff like that. And when they
16 arrested me, they charged me with possession of
17 stolen vehicle, charged me with driving with no
18 license, no seat belt, things like that.

19 **Q** How old was you?

20 **A** Eighteen.

21 **Q** And you was guilty of that, wasn't you?

22 **A** Yes, sir.

23 **Q** How much time did you get?

24 **A** I got a one to six.

25 **Q** How much time did you do?

1 **A** I did two years.

2 **Q** Where did you do them at?

3 **A** At Trenton in Turbeville Correction Institute.

4 **Q** And did you do anything while you were in
5 Trenton?

6 **A** I got my GED.

7 **Q** You did?

8 **A** Yes, sir.

9 **Q** So since then, have you been in more trouble?

10 **A** Since then, I haven't caught no -- I haven't
11 caught any felonies. I've been charged with this --
12 this is what I'm here now for, but I caught like a
13 disorderly conduct, simple possession of marijuana,
14 I mean.

15 **Q** So you've been in some trouble?

16 **A** I've been in some trouble, sir.

17 **Q** What makes you different now than you were
18 then?

19 **A** Well, what make me different now than what I
20 was then was that I didn't have a life ahead of me.
21 I didn't have any set goals about myself. I was
22 lost. I was lost. You know, my soul was lost. You
23 know, I didn't follow God or I didn't obey, you
24 know, his laws and statutes. And right now today I
25 can say that, you know, I pray to him everyday. I

1 ask him that he watch over me, that he continue to
2 bless me and, you know, have mercy on me.

3 Q So because of that, you know that you must tell
4 the truth today, right?

5 A Yes, sir.

6 Q So let's talk about the night of August the
7 3rd?

8 A All right.

9 Q Who were you with that night, say, around 12
10 o'clock -- I guess, that would be the morning, 12:00
11 a.m., August the 3rd?

12 A All right. This is what happened that night, I
13 can't get into no details about the time because,
14 you know, it was so long ago, I was disoriented, but
15 that night it started off, I remember I was at the
16 strip club at Mr. Lucky's, so I was out there at the
17 club. When I got back from the club, I was with
18 Shea. And we was out, you know --

19 Q When you say Shea, you're talking about Shea
20 that testified earlier?

21 A Yes, sir. I was with Shea Thomas. And we was
22 out there hanging out at Hammond Village on top of
23 the hill around building 23, 24, selling drugs, you
24 know, smoking, stuff like that. But she came up to
25 me, she was like, I want some weed. She like, You

1 got some money? I was like, Yeah. She was like,
2 Well, I want a bag of weed. So the only reason I
3 decide to go do this was because when I didn't have
4 money, she would intercede for me and give me some
5 money whenever I want some, so I said, All right.

6 So we went down the hill. We went down the
7 steps, went down the hill. I knocked on the door.
8 I went to the back door. I knocked on the door.
9 And I heard Terrell say, Who is it? I said, Ayree.
10 So I heard Moe say, Who the F that is? I said, Moe,
11 this is Ayree, man, what's up, like that. He was
12 like, What the F you doing at my door like this? I
13 didn't want to, you know, use the -- but he was
14 like, Who the fuck that is at my door? What are you
15 doing?

16 So we started -- I heard him cursing like that,
17 so I was like, you know, me and Shea started walking
18 off because I knew he was upset by the way he was
19 saying. So we're walking off, I heard him come to
20 the back door. He was like, Man, what you doing at
21 my door this time of night, huh? What the F you
22 doing at my door?

23 So I seen the gun in his hand. He didn't have
24 nothing on but his boxers, but he was standing out
25 there on the porch. So when he -- he had the gun

1 like this, he was looking at me, he was like, What
2 you doing at my door, huh? What I told you about
3 coming to my door this time of night, huh? And when
4 he was saying it, he was like intimidating me like,
5 Huh, huh, nigger, what I told you, what I told you
6 about coming to my door this time of night? Don't
7 you ever come to my door this time of night.

8 **Q** So what did you do? What did you say?

9 **A** So I was look -- at first, when he started
10 saying that, I was just looking at him because I was
11 shocked that, you know, he would come off of me like
12 that because, you know, we don't even talk, so I
13 ain't even never cursed him out like that. So I was
14 -- at first, I was just looking at him. Then I was
15 like, you know, he ain't had to -- so I was like,
16 Man, you know, you ain't got to be talking to me
17 like that, man, because you know it ain't like that.
18 He was like, Well, what I told you about coming to
19 my door this time of night, like that. So he was
20 like -- he went in the door, he went inside.

21 **Q** Well, before he went inside, before he went in
22 the door, you had to say more than that to him, what
23 did you tell him? Come on, tell the jury exactly
24 what happened. What did you say to him?

25 **A** I told him, Man, you didn't have to disrespect

1 me like that. I said, Because you know I don't fuck
2 with you like that. So I said, You ain't got to
3 disrespect me, I ain't going to disrespect you.
4 That's what I told him. I said, Man, I said, Man,
5 don't disrespect me like that because I ain't
6 disrespect. So he was like -- so he went in the
7 house, so I started walking off, me and Shea started
8 walking off, but then when I got around the corner
9 of the building, that's when he met me with the gun.
10 He was like --

11 Q When did you first see him?

12 A I didn't see him until we got to the end of the
13 building.

14 Q In which direction was he coming from?

15 A From the front of his apartment.

16 Q So he was coming around the --

17 MR. JOHNSON: Your Honor, may I approach the
18 witness?

19 THE COURT: Yes, sir.

20 BY MR. JOHNSON:

21 Q Why don't you step down here?

22 A (Witness leaves the witness stand.)

23 Q This is the building. Do you recognize the
24 diagram?

25 A Yes, sir.

1 Q Where would Moe apartment be in this diagram?

2 A This is 2-1 right here and this is 2-2 right
3 here. So we was right here. It started right here.
4 And this is -- we was right here, that's where we
5 had got into it. He was like, Man -- he was
6 standing in the door with the gun. He was like,
7 Man, what I told you about coming to my mother
8 fucking door like that? He said, Huh, ain't I told
9 you about that, don't ever come to my mother fucking
10 door like that.

11 So that's when I was -- at first, I was just
12 looking at him. And then I was like, Man, you know
13 you ain't had to disrespect me like that, you know
14 what I'm saying. So I said --

15 Q So what did he do next?

16 A So when he started --

17 Q Well, after he finished fussing, what did he
18 do?

19 A He went back in the door.

20 Q Did he shut the door?

21 A Yeah, he shut the door. So that's when we
22 started walking off right there, but he had came
23 around this way, came right here, came right here
24 this right here and this where it started right
25 here.

1 Q And so where were you standing when you first
2 saw him?

3 A I was standing right here.

4 Q At the corner of the building?

5 A Yeah, at the corner of the building right here.

6 Q And where were (sic) he at when you saw him?

7 A He was right here.

8 Q Now, he had a gun in his hand?

9 A Yes, sir.

10 Q Which hand did he have it in?

11 A In his right hand.

12 Q And you were standing how far from him when you
13 saw him?

14 A If this the building right here, if this the
15 building and this the grass right here, he was
16 standing like right here.

17 Q So he was standing about this close to you
18 about the time you saw him?

19 A Yeah, about right there.

20 Q And he had the gun in his right hand?

21 A Right hand right there.

22 Q And what did he say -- did he have it up or did
23 he have it down?

24 A When he came around the building, he came
25 around like this (indicating). And then he was

1 like, Uh-huh, mother fucker.

2 **Q** So he pointed it at you?

3 **A** Yes, sir.

4 **Q** So he did like that?

5 **A** Yeah. He was like, What's up now, mother
6 fucker.

7 **Q** And then what did you do?

8 **A** I grabbed like this (indicating).

9 **Q** And y'all started tussling?

10 **A** Yes, sir.

11 **Q** Okay. Have a seat.

12 **A** (Witness resumes the witness stand.)

13 **Q** So you started tussling?

14 **A** We started tussling.

15 **Q** Now, what happened? Tell me as much about it
16 as you can tell me. Well, tell the jury.

17 **A** When we started tussling with the gun, I mean,
18 it was -- I can't give you no time frame on that
19 because it all happened at a blur, but I know when I
20 grabbed that gun, all I can think about was, damn,
21 you know. All I was thinking about was I either get
22 this gun or he going to kill me with it because I
23 was scared. So when we started tussling with the
24 gun, all I heard -- I heard a shot. And when the
25 gun shot -- when the gun shot went off, I seen him

1 fall. And when I seen him fall, I just looked and I
2 just --

3 Q Did you see blood?

4 A Yes, sir, it just came out his mouth.

5 Q It came out his mouth?

6 A Yes, sir.

7 Q Okay. And what did you do?

8 A I ran.

9 Q What happened to the gun?

10 A It was laying on the ground and I just ran.
11 Once I seen him, I seen -- once I seen him drop and
12 I seen blood come out his mouth, I just ran.

13 Q Where did you go?

14 A I ran past Hammond Village to go get -- I went
15 to a crack head house, but he wasn't home.

16 Q Why did you go there?

17 A Why? Because I was scared.

18 Q I mean, why did you go to that particular
19 house?

20 A Because I was trying to get a ride to leave.
21 You know, I was -- I mean, I'm in a drug
22 neighborhood, me and somebody just got in a tussle
23 with a gun, the gun went off. I seen him fall. I
24 seen blood come out his mouth, I ran.

25 Q All right. Then where did you go?

1 **A** I went to a motel.

2 **Q** Which motel you went to?

3 **A** To the -- it was Knights Inn, but it's right
4 there on Piney Grove Road right behind the Hardee's.

5 **Q** What did you do there? You got a room?

6 **A** Yes, sir.

7 **Q** And you stayed there until when?

8 **A** The next night, then I turned myself in.

9 **Q** So you went down and turned yourself in?

10 **A** Yes, sir.

11 **Q** Did you call somebody or do anything?

12 **A** Well --

13 **Q** Did you see anybody between the time it
14 happened and the time that you turned yourself in?

15 **A** Well, I talked to Z.Z. and when I told him
16 about it, I was like, Man, me and Moe just got into
17 it. He was like, Man, I don't know, man, there's a
18 bunch of police out here. He was like, Man, I think
19 Moe dead. I was like, Man, I don't know what to do.
20 He was like, Man, you need to turn yourself in. I
21 said, Man, I ain't want to turn myself in. He was
22 like, Man, you need to turn yourself in, man,
23 because the police looking for you, the man dead. I
24 was like, Man, I'm scared, I don't know what to do.
25 And I wouldn't turn myself in, so he said he was

1 going to call a lawyer and get a lawyer to take me
2 down. And I was like, I'll think about it. So I
3 told him, I'd think about it.

4 So the next day I was just -- I kept thinking
5 about it. I mean, I talked to him again. He was
6 like, Man, Todd Rutherford going to come by and pick
7 you up, man. I talked to him already, he said he
8 going to take you down to the police department. I
9 said, I'll think about it.

10 But that night I got a ride from my partner,
11 Jarvis. He came and picked me up from the motel.
12 He took me down to Columbia Police Department. I
13 asked to speak to any investigator or any police and
14 they took me to a back room. They asked me who I
15 am. I told them my name Ayree Henderson and I'm
16 here about the murder of Alonzo Gale.

17 Q And you turned yourself in?

18 A Yes, sir. And he put some handcuffs on me, sat
19 me in the chair, said he was going to call an
20 investigator. But about after an hour or two, he
21 just took me straight to the Alvin S. Glenn
22 Detention Center.

23 Q And that's where you've been for the last --
24 until then, right -- until now?

25 A Yes, sir.

1 **Q** Okay. Now, did you have -- you've heard the
2 testimony, you've sat here through this whole trial?

3 **A** Yes, sir.

4 **Q** Did you go there with the intent on robbing
5 somebody?

6 **A** No, sir.

7 **Q** Did you have a gun?

8 **A** No, sir.

9 **Q** Did you know Moe?

10 **A** I knew Moe as far as being in the neighborhood
11 as far as the weed man. I mean, you know, like in a
12 neighborhood like that, people know -- you're going
13 to know who sell weed out there, you know what I'm
14 saying, or who sell what because everybody out
15 there. So he the weed man. I mean, I know him like
16 that, but as far as hanging with him or smoking,
17 drinking, I don't do that because I don't know him.
18 I mean, I grew up out there. I stayed out there
19 since I been in my mama's stomach, but I don't know
20 him.

21 **Q** Let me ask you this, if you were planning on
22 robbing someone, would you go to their house and
23 announce their name?

24 **A** No, sir.

25 **Q** Would you tell them who you were?

AYREE HENDERSON - DIRECT BY MR. JOHNSON

487

1 **A** No, sir.

2 **Q** You heard Ms. Crawford testify?

3 **A** Yes, sir.

4 **Q** Do you know her?

5 **A** Yes, sir.

6 **Q** And you, basically, have known her most of your
7 life?

8 **A** Yes, sir.

9 **Q** What kind of relationship do you have with her?

10 **A** Well, she know my mama all my life, so she
11 always knew me. But I used to go by there and use
12 her telephone, pay her, I might give her a piece of
13 hard -- a piece of dope -- crack, a piece of crack
14 to use her phone or if it's cold out there, just sit
15 in her house because it's cold outside to warm up or
16 to get a plate of food, something to eat like that.

17 **Q** So have you done that over the years?

18 **A** Yes, sir.

19 **Q** And that's the way you lived?

20 **A** Yes, sir.

21 **Q** Did you say anything about you're going to rob
22 somebody or were yelling and screaming that day?

23 **A** No, sir.

24 **Q** You're sure?

25 **A** I'm sure.

AYREE HENDERSON - DIRECT BY MR. JOHNSON

488

1 Q Finally, let me ask you this, did anybody prep
2 you before you came forward today?

3 A No, sir.

4 Q Do you remember talking to me about this whole
5 case?

6 A Yes, sir.

7 Q And telling me about it?

8 A Yes, sir.

9 Q What did I tell you to do?

10 A You told me get on the stand, tell the truth.
11 And whatever I ask you, you said look at the jury,
12 answer and look at them.

13 Q And what does that tell you? Who do you have
14 to depend on?

15 A The jury.

16 Q But who else do you have to depend on right
17 now?

18 A The Lord.

19 Q And who else?

20 A Myself and you.

21 Q You've got to depend on yourself, right?

22 A Yes, sir.

23 Q Are you lying?

24 A No, sir.

25 Q Did you lie about anything I asked you?

1 **A** No, sir.

2 **MR. JOHNSON:** I've got no other questions.

3 **THE COURT:** Any cross?

4 **MS. CAMPBELL:** Yes, Your Honor.

5 CROSS-EXAMINATION

6 BY MS. CAMPBELL:

7 **Q** Mr. Henderson, I just have a few questions. I
8 want to go over some things. What is your
9 relationship with Shea Thomas?

10 **A** A friend.

11 **Q** She's a friend?

12 **A** Yes, ma'am.

13 **Q** And your relationship with Hodari Gardener?

14 **A** He's a friend.

15 **Q** He's a friend? Is there any reason you would
16 list them as your sister and your brother?

17 **A** Well, in the county jail, they got it where
18 only your immediate family can come, so I put them
19 as my brother and sister so they can come see me.

20 **Q** And you mentioned that you have a very
21 tightknit family other than you don't get along with
22 your mother?

23 **A** I mean that -- what I mean by that is I don't
24 -- I don't go and visit them like how other people
25 visit their family because I know we don't -- they

1 don't mess with us like that. I mean, you know, you
2 got some family members that's real tight, they're
3 family, but I didn't grow up around them. You know,
4 we didn't interact when we was young, so I don't
5 know them like --

6 **Q** And I'm just basing this based on what you said
7 in your direct examination about your tightknit
8 family unit, which was your brother, your sister,
9 you and your grandmother; is that correct?

10 **A** Yes, ma'am.

11 **Q** But you didn't think it was important to list
12 any of those people as being able to come see you in
13 this time of need?

14 **A** I mean, at the time -- I mean, when I said
15 that, that's who I stayed with at the time, my
16 mother, my brother and my sister. But, I mean -- I
17 mean, my lawyer didn't ask me whether my sister
18 stayed there her whole life. She didn't stay there.

19 **Q** Because that's not misleading when the fact of
20 the matter is they don't have anything to do with
21 you anymore for a reason?

22 **A** I mean -- what you mean?

23 **Q** Because --

24 **MR. JOHNSON:** Your Honor, she's testifying
25 again.

1 **MS. CAMPBELL:** I'm cross-examine -- this is
2 cross-examination.

3 **MR. JOHNSON:** I understand, Your Honor, but
4 she's still testifying. She's got to set the basis.

5 **THE COURT:** Just make sure it's a question.

6 BY MS. CAMPBELL:

7 **Q** The reason they don't want anything to do with
8 you anymore is because of your behavior and what
9 you've done?

10 **A** No, it's not like that.

11 **Q** It's not like that?

12 **A** No, ma'am.

13 **Q** Because as you have explained to the jury, your
14 first time you were in R&E, I believe you said, is
15 when you were 11 or 12?

16 **A** Eleven, something like that.

17 **Q** And then you got out of there and you went for
18 a period of time and then you went back in?

19 **A** Yes, ma'am.

20 **Q** And you got out and you went back in?

21 **A** Yes, ma'am.

22 **Q** And during that period of time, your family
23 tried to help you?

24 **A** I mean, I only got -- since I been in DJJ, I
25 got -- I got a visit from my mother one time. I got

1 a visit from my aunt one time since I been
2 incarcerated. My mother came to John G. My aunt
3 came when I was in the annex, they came to visit me
4 one time. I mean, it's not like -- other people
5 they get visit every week, letters, phone calls, I
6 couldn't do that.

7 Q The reason they don't visit you is because of
8 your behavior and what you've done to them?

9 A I mean, I never did anything to my aunt because
10 I never -- we never used to see each other like
11 that, so I couldn't never did nothing to her.

12 Q And you talked about the times you've been in
13 trouble with the law and one time you mentioned was
14 when you were actually convicted of accessory after
15 the fact of murder?

16 A Yes, ma'am.

17 Q But that wasn't your fault as you explained?

18 A Yes, ma'am.

19 Q Okay. And, again, one of the next times you
20 mentioned that you got into trouble and went to
21 prison was when you were stuck driving when somebody
22 else stole a vehicle?

23 A Yes, ma'am.

24 Q You forgot to mention that you were actually
25 convicted of not only possessing the stolen vehicle,

1 but stealing the vehicle, theft of vehicle?

2 **A** They charged me with possession of stolen
3 vehicle and accessory after the fact of grand
4 larceny of a motor vehicle. That's my charge.

5 **Q** Do you want to see the paper that says that you
6 got charged with...

7 **A** That's what I --

8 **Q** That's what you remember?

9 **A** Uh-huh.

10 **Q** But, again, that wasn't your fault, that was
11 somebody you were with that was stealing those
12 vehicles just so the jury knows?

13 **A** Yes, ma'am.

14 **Q** And, finally, we're here -- there have been
15 other situations, but we're here again today and
16 it's not your fault?

17 **A** (No response.)

18 **Q** Is that right?

19 **A** That's right.

20 **Q** You were doing what you usually did back then,
21 right? That's what you said to the jury. And you
22 didn't work for a living, did you, sir?

23 **A** No, ma'am.

24 **Q** And you had had opportunities when you had gone
25 into prison and sobered up to do good things with

1 your life, hadn't you?

2 A Yes, ma'am.

3 Q And you -- in fact, when you were in DJJ the
4 last time on the murder thing, you got credits and
5 you worked while you were in there and not on drugs
6 and you did well?

7 A Yes, ma'am.

8 Q And then when you went back in after getting
9 the stolen vehicle situation coming up and you went
10 back in prison, you did well again when you aren't
11 on drugs?

12 A Yes, ma'am.

13 Q Did they have a nickname for you when you're on
14 drugs?

15 A What you mean?

16 Q Did they ever describe you as having a Doctor
17 Jekyll and Mr. Hyde personality?

18 A No, ma'am.

19 Q Have you ever heard the name Ann Whoopy (ph)?

20 A No, ma'am.

21 Q That evening, the night before, you mentioned
22 that you were out there doing your thing in the
23 village; is that correct?

24 A Yes, ma'am.

25 Q And in the village, you mean Hammond Village?

1 A Yes, ma'am.

2 Q You didn't live there, did you?

3 A No, ma'am.

4 Q And you stated, at the time, that you were
5 living with your girlfriend?

6 A Yes, ma'am.

7 Q The one girlfriend, Tiffany, not the other
8 ones, Tiffany?

9 A Tiffany.

10 Q Okay. Where was she living?

11 A On Ridgewood Avenue.

12 Q On Ridgewood Avenue?

13 A Yes, ma'am.

14 Q Do you have any idea that when the police got
15 in touch with her, why she would say you don't live
16 there and she hadn't seen you in days?

17 A Yes, ma'am.

18 Q Why was that?

19 A That's because when Z.Z. got out of jail, I was
20 staying with him.

21 Q Okay. So you did have a place to stay back
22 then, where Z.Z. was living?

23 A I mean, we would stay where we lay our head at.

24 Q Where you lay your head at?

25 A Yes, ma'am.

1 Q Why is it when you got booked in on this
2 charge, you told the police you didn't have an
3 address?

4 A I didn't have a stable address. I mean --

5 Q You didn't have a stable address?

6 A -- I stayed where I lay my head.

7 Q That wasn't so that they couldn't go look for a
8 gun somewhere, was it?

9 A No, ma'am.

10 Q And did you ever provide the police with the
11 fact that you stayed with Z.Z. or anyone else when
12 you were arrested?

13 A I mean, I stayed where I laid my head at.

14 Q On that night, the night before this happened
15 up until midnight, where were you?

16 A I mean, not on the night before, I couldn't
17 even tell you.

18 Q You can't tell us?

19 A No, ma'am.

20 Q And was that because at the time all of this
21 was going on, and by your own admission, and you've
22 been up front about this, you were smoking weed?

23 A Yes, ma'am.

24 Q And smoking crack?

25 A (No response.)

1 **Q** You admitted it?

2 **A** Yes, ma'am.

3 **Q** And were there any other drugs that you favored
4 at that point?

5 **A** No, that's it.

6 **Q** And on that evening, the evening before that
7 you can't remember, that was because you were
8 smoking all of these drugs?

9 **A** I mean, on that evening before, it wasn't
10 nothing significant as any other night, beside that
11 night of August 3rd, that's a significant night.

12 **Q** You also admitted in your direct examination
13 that you would drink when you were smoking crack and
14 smoking weed and you would drink; is that right?

15 **A** Yes, ma'am.

16 **Q** And this is a night like any other night where
17 you do that combination of events; is that right?

18 **A** That's right.

19 **Q** Okay. But that doesn't affect your behavior in
20 any way?

21 **A** No, ma'am.

22 **Q** Okay. So some time around midnight, you do
23 remember this part though, that you hooked up with
24 Shea; is that correct?

25 **A** I mean, it was some time around that night. I

1 mean, I --

2 Q I don't mean to make you say an exact time,
3 okay? I'm just saying some time around midnight.
4 And where did y'all meet up? Was it preplanned?
5 Did you plan to meet up with her or you just ran
6 into her?

7 A I mean, I just seen her in the parking lot.

8 Q And that's Shea who's sitting over there,
9 right?

10 A Yes, ma'am.

11 Q And then that's -- the Z.Z. we're talking about
12 is the guy in the blue shirt with the white tank
13 top?

14 A That's right.

15 Q And was Z.Z. out there that night?

16 A I don't remember him out there that night.

17 Q Even though you were laying your head down at
18 his house, he wasn't out there that night?

19 A I mean, he didn't have no safety house. I
20 mean, it could have been at one of his aunt house or
21 a motel or, you know, one of his friend's house, I
22 mean...

23 Q Anywhere?

24 A Anywhere.

25 Q Okay. And on that night, who else was out

1 there when you got with Shea -- met up with Shea?

2 **A** Man, it was -- I can't even remember, but it
3 was -- I know it was -- you got people who stay out
4 there that was out there, people who stayed out
5 there. I mean, but --

6 **Q** You were one of those people, weren't you?

7 **A** I was one of those people.

8 **Q** And as the night progresses and people do more
9 drugs and drink more liquor, things get louder
10 sometimes; isn't that right?

11 **A** Yes, ma'am.

12 **Q** And in this area, unfortunately for the people
13 that have to live there, there are a lot of
14 shootings?

15 **A** If a shooting happened.

16 **Q** There's a lot of rowdiness going on, things
17 getting broken, people partying, that type of thing
18 in the parking lot?

19 **A** If it happens.

20 **Q** Well, it was happening that night, you just
21 described it.

22 **A** All I said was we was out there drinking, we
23 was out there smoking, but I didn't say we was out
24 there breaking things.

25 **Q** Okay. You weren't breaking things that night,

1 y'all were just partying?

2 A We wasn't partying. I mean --

3 Q What were you doing? Were you selling your
4 drugs?

5 A Yes, ma'am.

6 Q And you were out there earning your living
7 selling your drugs?

8 A That's right.

9 Q And you were smoking pot, smoking crack and
10 drinking?

11 A Yes, ma'am.

12 Q At any point, do you become inebriated or drunk
13 when you do those three items together?

14 A I mean, that right there -- I mean, when you
15 talking about somebody drinking or somebody smoking,
16 if you're addicted to it, then your body becomes
17 adapted and that's what your body craves for when I
18 was out there.

19 Q You were addicted?

20 A I was addicted.

21 Q Okay. And that's not a good thing. I'm not
22 saying that. I don't mean to say that. But you
23 know you were addicted, you had to have that kind of
24 stuff and you would do whatever it took to get it,
25 right, because you were addicted?

1 **A** (No response.)

2 **Q** Is that right?

3 **A** I mean, I made my living.

4 **Q** What drugs were you selling that night, sir?

5 **A** Crack.

6 **Q** Crack cocaine?

7 **A** Yes, ma'am.

8 **Q** What drugs was Shea selling?

9 **A** I don't know. I mean, she do her own thing, I
10 do my own thing.

11 **Q** Okay. And that night were y'all sharing drugs
12 or doing your own drugs or what?

13 **A** I do my own drugs.

14 **Q** You did your own drugs that night?

15 **A** Yes, sir (sic).

16 **Q** Did you share two blunts with Shea some time
17 after midnight in addition to your smoking crack and
18 drinking?

19 **A** Yes, ma'am.

20 **Q** And what's a blunt?

21 **A** It's reefer when you put it in a cigar.

22 **Q** In a cigar, because I thought it was one of
23 those little cigarette-type ones, but it's the big
24 one, it's the cigar?

25 **A** Yes, ma'am.