

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Charleston County

J. C. Buddy Nicholson, Jr., Circuit Court Judge

RECEIVED

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S.C. Supreme Court

BERNARD O. GILLIARD,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000193

APPENDIX

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1 (May 24, 2010.)

2 THE COURT: Mike, do you have any pretrial
3 motions?

4 MR. BOSNAK: The only thing is one witness,
5 Tammy Lee. Most of everything she says is hearsay. I'm
6 just going to object to her statement was hearsay. I
7 guess we're going to have to do a Jackson versus Denno
8 hearing because there is a statement about my client.

9 All pictures are without objection.

10 (State's Exhibit Nos. 25-89 were marked for
11 identification and admitted into evidence.)

12 MR. BOSNAK: Your Honor, we'll just enter a
13 plea of not guilty instead of pleading in front of the
14 jury.

15 THE COURT: All right. Bring the jury up,
16 please.

17 MR. DuRANT: We also have a stipulation on
18 the record to some of the evidence.

19 THE COURT: Well, let's wait until after --
20 if it's real quick, it will be a couple minutes before
21 they get them on the elevator, so if you worked it all
22 out, we'll get it on the record.

23 Welcome, ladies and gentlemen. I am Roger
24 Young. I'm one of the resident judges, and you met Judge
25 Dennis earlier. He qualified the jury panel, and I

1 believe he's trying civil cases this week while I'm doing
2 the criminal trials this week.

3 So we are in here now, and we are going to
4 draw a jury for a criminal trial which we will start
5 after lunch, but we're going to go ahead and draw our
6 jury panel this morning. The State of South Carolina has
7 charged Mr. Bernard Othello Gilliard with three charges
8 under three indictments. He has been charged with
9 murder, armed robbery, and possession of a firearm during
10 the commission of a violent crime.

11 Mr. Gilliard has pled not guilty to each of
12 these charges, so it is incumbent upon the State of South
13 Carolina to give him a jury trial and to also attempt to
14 prove to the 12 of you folks that he is guilty of these
15 charges beyond a reasonable doubt. That is the way we do
16 it in this country, and so you play a vital part in the
17 role that we have and the safeguards that we have for our
18 citizens that are charged with crimes.

19 We will go through a process now of asking
20 you not intentionally prying-purpose questions but just
21 basically to determine if you know anything about the
22 case or know any of the witnesses or any of the parties
23 such to the extent that it would affect your ability to
24 be fair and impartial jurors because all we're really
25 trying to do is find 12 folks who don't know anything

1 about the case and the promise that they will listen to
2 the evidence, base their decision on the law that I
3 charge you that applies to the facts as you find them,
4 and render us a verdict on these charges.

5 Mr. Gilliard does not have to prove his
6 innocence. The State must prove his guilt, and they must
7 prove his guilt to you beyond a reasonable doubt. A
8 little later in the day I'll be explaining to you a
9 little bit more what that means, but suffice it to say
10 that Mr. Gilliard has done the only thing that he is
11 required to do, and that is show up for a trial, but the
12 State of South Carolina must prove to you his guilt
13 beyond a reasonable doubt.

14 He does not have to prove his innocence. He
15 does not have to put up a defense if he does not wish to.
16 He does not have to call any witnesses, nor does he have
17 to testify, and at this point this time, he doesn't even
18 have to tell me if he intends to do any of those things.
19 Everything from this point forward is incumbent upon the
20 State, and so I need you to keep that in mind throughout
21 the trial. I will remind you of that obligation
22 throughout the trial on several different occasions.

23 Right now I want to introduce you to the
24 parties that are involved. In South Carolina when the
25 State charges a person with a crime and that crime is a

1 felony and it's tried in the Court of General Sessions,
2 the prosecuting attorneys in this state are known as the
3 solicitors, and the solicitor for the Ninth Circuit --
4 which is where you are, the circuit is Charleston and
5 Berkeley County -- the solicitor for the Ninth Circuit is
6 Scarlett Wilson, and she has a number of deputies and
7 assistants that assist her in presenting cases. She
8 can't try every one herself, so on behalf of her office
9 today are Mr. Rutledge DuRant and Mr. Chad Simpson, who
10 are going to stand before you right now.

11 Is there any member of the jury panel who is
12 related by blood or marriage or acquainted in any way
13 with either of these two gentlemen or perhaps with
14 Ms. Wilson, our solicitor, or has any member of the jury
15 panel ever worked for the solicitor's office or have or
16 have had a family member who worked in the solicitor's
17 office for the Ninth Circuit? If so, would you please
18 stand.

19 Yes, ma'am, your name and number?

20 A PROSPECTIVE JUROR: Senella Ladson, 123.

21 THE COURT: What is your relation to these
22 folks?

23 A PROSPECTIVE JUROR: Well, I do know a
24 little bit about the case.

25 THE COURT: You do?

1 A PROSPECTIVE JUROR: Yes, sir. The deceased
2 is my nephew.

3 THE COURT: All right. Well, then I will
4 excuse you from the service of the jury on this case
5 since you know somebody who is involved in this case. So
6 if you want to go ahead and leave, you can leave.

7 You will have to call the phone number that
8 the clerk's office has given you after 6 o'clock tonight
9 and it will tell you if have to report back tomorrow.

10 Your name and number again?

11 A PROSPECTIVE JUROR: 123.

12 THE COURT: Anyone else? All right. You may
13 be seated. All right. Again, the defendant in this case
14 is Mr. Bernard Gilliard. Would you stand, please.

15 This is Mr. Gilliard, the tall gentleman
16 standing in front of you right there. He is standing
17 with his lawyer, Mr. Mike Bosnak. Is there any member of
18 the jury panel who is related by blood or marriage or
19 acquainted in any way with Mr. Bernard Gilliard? If so,
20 would you please stand. Okay. I find none.

21 Is there any member of the jury panel who is
22 related by blood or marriage or acquainted in any way
23 with his attorney, Mr. Bosnak? If so, would you please
24 stand, or perhaps you have been represented by Mr. Bosnak
25 in the past. If so, would you please stand. Okay. I

1 find none. Thank you.

2 All right. I am now going to call out the
3 names of some people that might possibly be called as
4 witnesses in this case. It's not necessary that every
5 single one of these people will be called, but there is a
6 possibility they will be called, and so I'm going to read
7 out quite a number of people's names on the chance that
8 they might be called.

9 When I call these names, if you are related
10 by blood or marriage or acquainted with these folks in
11 any way, I would ask that you please stand. First is
12 Tammy Lee, L-e-e. All right. I find none. Kristina
13 Lee? I find none. Fernandez Lee, also known as Rock? I
14 find none. Byron Milford? I find none. Mark Milford?
15 I find none. Veronica Echevarria? I find none. Tommy
16 Simmons? I find none.

17 Melissa Murphy? I find none. Kristopher
18 Murphy? I find none. Darryl Lawrence? I find none.
19 Marvin Hancock, who works at the Charleston County Jail?
20 I find none. Ila Simmons with SLED, state law
21 enforcement? I find none. Detective Sheri Church of the
22 Charleston County Sheriff's Office? I find none.
23 Detective Rita Avila with the sheriff's office? I find
24 none.

25 Detective Derrick Boyd with the sheriff's

1 office? I find none. Detective James Perkins of the
2 sheriff's office? I find none. Detective Nicholas
3 Wagner from the sheriff's office? I find none. Dr. Erin
4 Presnell with MUSC? Might be a patient of his? I find
5 none.

6 Abigail McCollum? I find none. Jason King?
7 I find none. Debbie Lincoln? I find none. Erica
8 Gomillion, G-o-m-i-l-l-i-o-n? I find none. Johnny
9 Booker? I find none. Robert Rusch, R-u-s-c-h? I find
10 none. Investigator James Milz, M-i-l-z, with the
11 sheriff's office? I find none. Detective Kathy
12 Kjellman, K-j-e-l-l-m-a-n, with the sheriff's office? I
13 find none.

14 Investigator Erin Meyer with the sheriff's
15 office? Investigate Brian K. Sommerfeldt,
16 S-o-m-m-e-r-f-e-l-d-t, with the sheriff's office? I find
17 none. Sergeant Paul McManigal, M-c-M-a-n-i-g-a-l, with
18 the sheriff's office? I find none. Amy Stephens with
19 SLED? I find none. Selena Kinard with SLED? I find
20 none. Doris Yarbrough with SLED? I find none.

21 Patricia H. Crooks with SLED? I find none.
22 Verona Gibson with SLED? I find none. Betty Butler with
23 SLED? I find none. Sheree J. Brown with SLED? I find
24 none. Katie Coy with SLED? I find none. James W. Green
25 with SLED? I find none. Tiara Jones? I find none.

1 Ramara Straman, S-t-r-a-m-a-n? I find none. Jauquinne
2 Arline, also known as Queenie? I find none. Tommy
3 Blackwood?

4 A PROSPECTIVE JUROR: Tommy Blackwood,
5 detective?

6 THE COURT: Yes, with North Charleston?

7 A PROSPECTIVE JUROR: Yes.

8 THE COURT: Your name and number?

9 A PROSPECTIVE JUROR: William Morris, 269.

10 THE COURT: The fact that he may be called as
11 a witness in this case, would that affect your ability to
12 be fair or impartial either for or against the State or
13 for or against the defense?

14 A PROSPECTIVE JUROR: I don't think so, no.

15 THE COURT: Okay. Thank you. Anyone else?

16 John Daniels? I find none. Lavonzelle Felder? I find
17 none. Madeline Futch, F-u-t-c-h? I find none. Albert
18 Grant? I find none. Roch MacKinnon, M-a-C-k-i-n-n-o-n?
19 I find none. Travis Murphy? I find none. Myeshia
20 Wright? I find none. Officer Terry Burns?

21 MR. BOSNAK: Your Honor, that is Jonathan
22 Burns, I apologize.

23 THE COURT: And who is Officer Burns with?

24 MR. BOSNAK: Sheriff's department, Your
25 Honor.

1 THE COURT: Charleston sheriff's office?

2 MR. BOSNAK: Yes.

3 THE COURT: Jonathan Burns? Anyone?

4 MR. BOSNAK: City of Charleston, I apologize.

5 City of Charleston.

6 THE COURT: City of Charleston or North
7 Charleston?

8 MR. BOSNAK: City of Charleston.

9 THE COURT: All right. Anyone know Officer
10 Burns? All right.

11 These alleged incidents took place on or
12 about April 21 2009, and they took place on or about --
13 on or about April 21, 2009 at [REDACTED] Clovewood Street in
14 Ladson. Anyone know anything about any of these
15 incidents? If so, would you please stand. Anyone
16 know -- yes, your name and number?

17 A PROSPECTIVE JUROR: Lester Brown, number
18 30.

19 THE COURT: What do you know?

20 A PROSPECTIVE JUROR: I was going with a girl
21 when this happened.

22 THE COURT: So you know some of the folks
23 that were involved in this?

24 A PROSPECTIVE JUROR: Possibly.

25 THE COURT: Other than the witnesses' names

1 that were called out?

2 A PROSPECTIVE JUROR: You called out the name
3 Deborah Lincoln?

4 THE COURT: Yeah.

5 A PROSPECTIVE JUROR: Yeah.

6 THE COURT: You think you know something
7 about this?

8 A PROSPECTIVE JUROR: Yes.

9 THE COURT: Is it to the extent you would be
10 able to be a fair and impartial juror for or against the
11 State or for or against the defendant? You think you
12 could still be fair?

13 A PROSPECTIVE JUROR: No, sir.

14 THE COURT: You don't think you could? All
15 right. I'm going to excuse you for service. You can go
16 ahead and go, but be sure to call that telephone number
17 after 6:00 tonight.

18 Anyone else? All right. Anyone know Vincent
19 Nitrell, N-i-t-r-e-l-l? All right.

20 Any member of the jury panel or any of your
21 immediate family members ever had any criminal charges
22 adjudicated, prosecuted, by the Charleston County
23 solicitor's office? If so, would you please stand.
24 Okay. I find none.

25 Is there anybody in the jury panel previously

1 been a witness in either a civil or a criminal case? If
2 so, would you please stand. I find none.

3 Is there any member of the jury panel or any
4 of your immediate family members or friends ever worked
5 for any federal, state, or local law enforcement agency?
6 If so, would you please stand. Okay.

7 What I'm going to do is start over here and
8 we'll work our way across the room. Tell me your name
9 and your juror number or if it was you or a family
10 member.

11 A PROSPECTIVE JUROR: Felecia Williamson,
12 239. My nephew is a sheriff with the Charleston County
13 Sheriff's Department.

14 THE COURT: Do you think that would affect
15 your ability to be fair and impartial in this case for or
16 against either side?

17 A PROSPECTIVE JUROR: No, sir.

18 THE COURT: Thank you. All right. Yes,
19 ma'am?

20 A PROSPECTIVE JUROR: Kristin Ross, 275. I
21 have a cousin that works for the city of North Charleston
22 police department and a cousin that is a police officer
23 for the city of Charleston.

24 THE COURT: All right. Do you think that
25 would affect your ability to be fair and impartial for or

1 against either side in this case?

2 A PROSPECTIVE JUROR: No, sir.

3 THE COURT: All right. Thank you. Yes,
4 ma'am, your name and number?

5 A PROSPECTIVE JUROR: Number seven, Melissa
6 Baldwin. My brother is a detention officer, and I have a
7 cousin that is a Charleston County police officer.

8 THE COURT: Do you think that would affect
9 your ability to be fair and impartial in this case for or
10 against either side?

11 A PROSPECTIVE JUROR: No, sir.

12 THE COURT: All right. Thank you.

13 A PROSPECTIVE JUROR: Judy Ferunden, juror
14 69. My nephew is a sheriff's deputy in Lexington County.

15 THE COURT: Okay. Do you think that would
16 affect your ability to be fair and impartial in this
17 case?

18 A PROSPECTIVE JUROR: No.

19 THE COURT: Yes, ma'am?

20 A PROSPECTIVE JUROR: My name is Wanda
21 Singleton. I have a niece that used to work for the
22 police department.

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

25 A PROSPECTIVE JUROR: No.

1 THE COURT: All right. Thank you. I'm
2 sorry. Your name and number?

3 A PROSPECTIVE JUROR: Wanda Singleton, 202.

4 THE COURT: Okay. All right. Any member of
5 the jury panel ever taken any kind of classes or seminar
6 in law or law enforcement? All right. Yes, ma'am. Your
7 name and number?

8 A PROSPECTIVE JUROR: Kristin Ross, 275. I
9 have a minor in criminal justice.

10 THE COURT: All right. Any member of the
11 jury panel know anyone that was killed or murdered or
12 have you or any member of your immediate family or any of
13 your friends ever been the victim of a violent crime? If
14 so, would you please stand.

15 Is there any member of the jury panel that
16 has ever served on a jury before in a criminal case and
17 the jury was unable to render a verdict? If so, would
18 you please stand.

19 I find none. Oh, yes, ma'am. Your name and
20 number?

21 A PROSPECTIVE JUROR: Judy Ferunden, 69. It
22 was a case about eight or ten years ago, robbery and
23 drugs.

24 THE COURT: Ended up in a hung jury?

25 A PROSPECTIVE JUROR: Yes.

1 THE COURT: All right. Thank you. Anyone
2 else? All right. Any member of the jury panel ever have
3 any kind of unpleasant experience with a law enforcement
4 officer? If so, would you please stand. I find none.

5 Is there any member of the jury panel that
6 thinks they would have any problem with following the law
7 as I charge you, even if you don't think it is what the
8 law ought to be or if it is what you might consider to be
9 inappropriate or unfair? If so, would you please stand.

10 I find none. Is there any member of the jury
11 panel who does not feel like they could set in judgment
12 of somebody? A lot of times it's either because of a
13 religious belief or maybe a philosophical belief or some
14 sort of moral belief or political orientation or just
15 some reason why you don't think you could be fair as a
16 juror, either for or against the State or for or against
17 the defense?

18 It's perfectly fine to have any kind of
19 beliefs you have. It is a free country, but both sides
20 are entitled in this case to have 12 jurors that feel
21 like they can set and listen to the evidence, listen to
22 what I tell them the law is, and base that decision on
23 that and that alone and not based on any kind of
24 philosophical beliefs or religious beliefs or anything
25 like that that would prohibit them from either setting in

1 judgment of a fellow person or you might have a
2 preconceived notion of what the outcome ought to be in a
3 case? Anyone have any kind of beliefs like that? If so,
4 would you please stand.

5 No? Okay. Any member of the jury panel know
6 of any reason whatsoever why you don't think -- why you
7 feel like you could not be a fair or impartial juror for
8 any reason at all? If so, would you please stand.

9 All right. Is there anything further from
10 the State?

11 MR. SIMPSON: Nothing from the State, Your
12 Honor.

13 THE COURT: From the defense?

14 MR. BOSNAK: Nothing from the defense, Your
15 Honor.

16 THE COURT: We're now going to draw our jury,
17 and the way we do this in state court in South Carolina
18 is the clerk's office now has a list of the names. They
19 draw those names out of that little box there, and when
20 they call your name and your number, if you would, come
21 through that panel there and either walk through those
22 two doors, come walk up. Mr. Brown -- this is what you
23 do, you come through here, walk up to this podium here,
24 turn around and face back towards the back.

25 All right? The State will then say strike

1 the juror or present the juror, and if the State presents
2 the juror, the defense will have an opportunity to do the
3 same. If neither side strikes you, you go over to the
4 jury panel. You're on the jury panel.

5 If one of the two sides strikes you, you go
6 on back. There are a lot of reasons why people strike
7 and there are a lot of reasons why they don't strike.
8 For the most part you don't have to tell anybody, and I
9 don't want you to feel offended or slighted if they
10 struck you as a juror. You probably would have more
11 opportunities to serve on a jury later on during the
12 week, but as for right now, we will start with this
13 process.

14 Again, when the clerk calls your name out,
15 just go on up in front of that podium. All right,
16 Mr. Clerk?

17 THE CLERK: Yes, sir, Your Honor. Juror
18 number 251, Amanda Barnhill.

19 (The juror, a white female, approaches.)

20 THE CLERK: What say you for the State?

21 MR. DuRANT: Please seat the juror.

22 THE COURT: What say you for defendant?

23 MR. BOSNAK: Please excuse the juror.

24 THE CLERK: Ma'am, you've been excused from
25 the trial of this case. Please have a seat back in the

1 audience.

2 Juror number 275, Kristin Ross.

3 (The juror, a white female, approaches.)

4 What say you for the State?

5 MR. DuRANT: Please seat the juror.

6 THE CLERK: What say you for the defendant?

7 MR. BOSNAK: Excuse the juror.

8 THE CLERK: You've been excused from the
9 trial of this case. Please have a seat back in the
10 audience.

11 Juror number 68, Linda Ferguson.

12 (The juror, a white female, approaches.)

13 What say you for the State?

14 MR. DuRANT: Please seat the juror.

15 THE CLERK: What say you for the defendant?

16 MR. BOSNAK: Please excuse the juror.

17 THE CLERK: Have a seat back in the audience.

18 You've been excused from the trial of this case.

19 Juror number 256, Elizabeth Christ.

20 (The juror, a white female, approaches.)

21 What say you for the State?

22 MR. DuRANT: Please seat the juror.

23 THE CLERK: What say you for the defendant?

24 MR. BOSNAK: Seat the juror.

25 THE CLERK: Ma'am, you've been selected for

1 the trial of this case. Please have a seat in the jury
2 box.

3 Juror number 45, Robin Crusenberry.

4 (The juror, a white male, approaches.)

5 What say you for the State?

6 MR. DuRANT: Please excuse the juror.

7 THE CLERK: Sir, you've been excused for the
8 trial of this case. Please have a seat back in the
9 audience.

10 Juror number 154, Deondra Mitchell.

11 (The juror, a black female, approaches.)

12 What say you for the State?

13 MR. DuRANT: Please excuse the juror.

14 THE CLERK: Ma'am, you've been excused from
15 the trial of this case. Please have a seat back in the
16 audience.

17 Juror number 202, Wanda Singleton.

18 (The juror, a black female, approaches.)

19 What say you for the State?

20 MR. DuRANT: Please excuse the juror.

21 THE CLERK: Have a seat back in the audience.
22 You've been excused from the trial of this case.

23 Juror number 84, James Glasgow.

24 (The juror, a white male, approaches.)

25 What say you for the State?

1 MR. DuRANT: Please seat the juror.

2 THE CLERK: What say you for the defendant?

3 MR. BOSNAK: Please seat the juror.

4 THE CLERK: You've been selected as a juror
5 in this case. Please have a seat in the jury box.

6 Juror number 206, Kendra Smith.

7 (The juror, a black female, approaches.)

8 What say you for the State?

9 MR. DuRANT: Please seat the juror.

10 THE CLERK: What say you for the defendant?

11 MR. BOSNAK: Please seat the juror.

12 THE CLERK: Please have a seat in the jury
13 box. You've been selected for the trial of this case.
14 Juror number 269, William Morris.

15 (The juror, a white male, approaches.)

16 THE CLERK: What say you for the State?

17 MR. DuRANT: Please seat the juror.

18 THE CLERK: What say you for the defense?

19 MR. BOSNAK: Please seat the juror.

20 THE CLERK: Sir, you've been selected for the
21 trial of this case. Please have a seat in the jury box.

22 Juror 117, Christopher Keel.

23 (The juror, a white male, approaches.)

24 What say you for the State?

25 MR. DuRANT: Please seat the juror.

1 THE CLERK: What say you for the defendant?

2 MR. BOSNAK: Excuse the juror.

3 THE CLERK: Sir, you've been excused from
4 this case. Please have a seat back in the audience.

5 Juror 182, Korrine Riccardo.

6 (The juror, a white female, approaches.)

7 What say you for the State?

8 MR. DuRANT: Please seat the juror.

9 THE CLERK: What say you for the defendant?

10 MR. BOSNAK: Please seat the juror.

11 THE CLERK: You've been selected for the
12 trial of this case. Please have a seat in the jury box.

13 Juror number 200, Alvin Simmons.

14 (The juror, a black male, approaches.)

15 What say you for the State?

16 MR. DuRANT: Please present the juror.

17 THE COURT: What say you for the defendant?

18 MR. BOSNAK: Please seat the juror.

19 THE CLERK: You've been selected for the
20 trial of this case. Please have a seat in the jury box.

21 Juror number 64, Chad Elkins.

22 (The juror, a white male, approaches.)

23 What say you for the State?

24 MR. DuRANT: Please seat the juror.

25 THE CLERK: What say you for the defendant?

1 MR. BOSNAK: Please excuse the juror.

2 THE CLERK: You've been excused from the
3 trial of this case. Please have a seat back in the
4 audience.

5 Juror 271, Donald Pagley.

6 (The juror, a white male, approaches.)

7 What say you for the State?

8 MR. DuRANT: Please seat the juror.

9 THE CLERK: What say you for the defendant?

10 MR. BOSNAK: Please excuse the juror.

11 THE CLERK: You've been excused from this
12 case. Have a seat back in the audience.

13 Juror 75, Candice Gathers.

14 (The juror, a black female, approaches.)

15 What say you for the State?

16 MR. DuRANT: I'm sorry. What is the juror's
17 number?

18 THE CLERK: 75.

19 MR. DuRANT: 75. Okay. Please excuse the
20 juror.

21 THE CLERK: Have a seat back in the audience.
22 State has one strike remaining.

23 Juror number 13, David Bentley.

24 (The juror, a white male, approaches.)

25 What say you for the State?

1 MR. DuRANT: Please seat the juror.

2 THE CLERK: What say you for the defendant?

3 MR. BOSNAK: Present the juror.

4 THE CLERK: You have been selected for this
5 case. Please have a seat in the jury box.

6 Juror number 153, Von Milford.

7 (The juror, a black female, approaches.)

8 What say you for the State?

9 MR. DuRANT: Please seat the juror.

10 THE CLERK: What say you for the defendant?

11 MR. BOSNAK: Please seat the juror.

12 THE CLERK: You've been selected for this
13 case. Please have a seat in the jury box. Juror 259,
14 Christopher Gentry.

15 (The juror, a white male, approaches.)

16 What say you for the State?

17 MR. DuRANT: Please seat the juror.

18 THE COURT: What say you for the defendant?

19 MR. BOSNAK: Please excuse the juror.

20 THE CLERK: You've been excused from the
21 trial of this case. Please have a seat back in the
22 audience.

23 Juror number 20, Latoya Blunt.

24 (The juror, a black female, approaches.)

25 What say you for the State?

1 MR. DuRANT: Please seat the juror.

2 THE CLERK: What say you for the defendant?

3 MR. BOSNAK: Please seat the juror.

4 THE CLERK: You've been selected for this
5 case. Please have a seat in the jury box.

6 Juror number 277, Santonio Scott.

7 (The juror, a black male, approaches.)

8 What say you for the State?

9 MR. DuRANT: Please excuse the juror.

10 THE CLERK: You've been excused from the
11 trial of this case. Have a seat back in the audience.
12 State has exhausted its strikes.

13 Juror number 239, Felecia Williamson.

14 (The juror, a black female, approaches.)

15 Any challenge from the State?

16 MR. DuRANT: None from the State, Your Honor.

17 THE CLERK: What say you for the defendant?

18 MR. BOSNAK: Please seat the juror.

19 THE CLERK: You've been selected for this
20 case. Please have a seat in the jury box. Juror number
21 19, John Black. Any challenge from the State?

22 MR. DuRANT: None from the state.

23 THE CLERK: What say you for the defendant?

24 MR. BOSNAK: Excuse the juror.

25 THE CLERK: You've been excused from the

1 trial of this case. Please have a seat back in the
2 audience.

3 Juror 12, Angela Behrens.

4 (The juror, a black female, approaches.)

5 Any challenge from the State?

6 MR. DuRANT: None from the State.

7 THE CLERK: What say you for the defendant?

8 MR. BOSNAK: Seat the juror.

9 THE CLERK: Ma'am, you've been selected for
10 this case. Please have a seat in the jury box.

11 Juror number 272, Melissa Justice.

12 (The juror, a white female, approaches.)

13 THE COURT: Let me see you up here.

14 (Discussion held at sidebar.)

15 Ma'am, you got protected from Judge Dennis
16 for Thursday and Friday, and since we might go past
17 Wednesday, I'm going to excuse you.

18 THE CLERK: Juror 282, James Tyler.

19 (The juror, a white male, approaches.)

20 Any challenge from the State?

21 MR. DuRANT: No. Please seat the juror.

22 THE CLERK: What say you for the defendant?

23 MR. BOSNAK: Please excuse Mr. Tyler.

24 THE CLERK: Have a seat back in the audience.
25 Defendant has one strike remaining.

1 Juror number 261, Mark Goldberg.

2 (The juror, a white male, approaches.)

3 Any challenge from the State?

4 MR. DuRANT: No challenge. Please seat the
5 juror.

6 THE CLERK: What say you for the defendant?

7 MR. BOSNAK: Please excuse the juror.

8 THE CLERK: Have a seat back in the audience.
9 Defendant has exhausted his strikes.

10 Juror number 69, Judy Ferunden.

11 (The juror, a white female, approaches.)

12 Any challenge from the State?

13 MR. DuRANT: None from the State. Please
14 seat the juror.

15 THE CLERK: Any challenge from the defendant?

16 MR. BOSNAK: None.

17 THE CLERK: Ma'am, you've been selected for
18 the trial in this case.

19 THE COURT: Let's have two alternates, one
20 strike, two strikes.

21 THE CLERK: Yes, Your Honor. Juror number
22 203, Benjamin Smalls.

23 (The juror, a black male, approaches.)

24 What say you for the State?

25 MR. DuRANT: Please seat the juror.

1 THE CLERK: What say you for the defendant?

2 MR. BOSNAK: Seat the juror.

3 THE CLERK: You've been selected for this
4 case. Please have a seat in the jury box. Juror number
5 254, Andrew Cannon.

6 (The juror, a white male, approaches.)

7 What say you for the State?

8 MR. DuRANT: Please excuse the juror.

9 THE CLERK: You're excused from the trial of
10 this case. Please have a seat back there.

11 Juror number 265 Robert Labarge?

12 (The juror, a white male, approaches.)

13 Any challenge from the State?

14 MR. DuRANT: None from the State. Please
15 seat the juror.

16 THE COURT: What say you for the defendant?

17 MR. BOSNAK: Excuse the juror.

18 THE CLERK: Sir, you've been excused from the
19 trial in this case. Please have a seat back in the
20 audience.

21 Juror 175, David Poulin.

22 (The juror, a white male, approaches.)

23 Any challenge from the State?

24 MR. DuRANT: None from the State. Please
25 seat the juror.

1 THE CLERK: What say you for the defendant?

2 MR. BOSNAK: Excuse the juror.

3 THE CLERK: You're excused from the trial of
4 this case. Please have a seat in the audience.
5 Defendant has exhausted its strikes.

6 Juror 216, Mary Tezza.

7 (The juror, a white female, approaches.)

8 Any challenge from the State?

9 MR. DuRANT: No challenge from the State.
10 Please seat the juror.

11 THE CLERK: Any challenge from the defendant?

12 MR. BOSNAK: No challenge from the defendant.

13 THE CLERK: Please have a seat in the jury
14 box. You've been selected for this case.

15 THE COURT: All right. Anything from the
16 State?

17 MR. DuRANT: The State is fine, Your Honor.

18 THE COURT: All right. From the defense?

19 MR. BOSNAK: Nothing from the defense, Your
20 Honor.

21 THE COURT: All right. Folks, you're our
22 jury now, and we'll begin this right after lunch.

23 What I'm going to do is ask you to go back to
24 the jury room right now with the bailiff, and he will
25 show you where you are to report back to after lunch.

1 You can go to lunch after you see where the jury room is.

2 Now, while you're at lunch, this is
3 important. You can go to lunch with anybody on the jury
4 panel if you want. You can go to lunch, go back to work
5 or wherever you want to go, but I need you to not talk to
6 anybody about this case while you're on this break. I'll
7 repeat this every time we have a break, not to begin your
8 deliberations or discussions. It's real simple, one:
9 You base your decisions after you've heard all the
10 evidence. Of course you haven't heard any yet, but
11 sometimes people get involved in these things, but while
12 we're taking breaks throughout the trial, again, you're
13 only going to hear one witness at time, and we're going
14 to hear from lots of witnesses, so until you hear all of
15 the evidence, it's improper for you to begin making up
16 your mind, and, second, you don't need to have any
17 outside influence.

18 Your sworn duties will be to base your
19 decision on what you hear in this courtroom and this
20 courtroom alone, not what your spouse thinks or your
21 girlfriend thinks or your bartender thinks or anything
22 like that. It will be what the 12 of y'all come up with
23 after you've heard all of the evidence. So I'm going to
24 send you back there.

25 Now, we're also going to take a little break

1 for lunch, and we've got to come back and hear a couple
2 motions before we start, so you're free until 2:00.

3 If you would, go back -- meet in the jury
4 room at 2:00, and when you get back, all of you get back
5 together, as your first act, I like to let you choose
6 your jury foreperson among yourselves if you can. If you
7 can't, I'll appoint somebody. Anybody can be the
8 foreperson except the two alternates, all right? So the
9 last two people that got picked aren't eligible, but
10 anybody else can be.

11 It's not that big of a deal. You don't get
12 any extra pay for being the foreman or anything like
13 that, but you'll handle the verdict and make sure that
14 the crowd and everything behaves back in the jury room,
15 that sort of thing.

16 So go on back now. You can go to lunch, but
17 they'll show you where to report back at 2:00. Thank you
18 for your patience this morning.

19 (Jury dismissed.)

20 All right. Now, the rest of you folks, you
21 are free for the rest of today. As you've heard me talk
22 about, we anticipate this one will take up a good bit of
23 the week, but you never know, and Judge Dennis is also
24 trying other cases, so I know we won't need you for the
25 rest of today, so you're free to go home, go to work,

1 come back and watch the trial if you want to, for that
2 matter, but you're not obligated to stay around here.

3 The telephone number that they have given
4 you, you need to call that after 6:00 tonight and that
5 will tell you to either come back tomorrow or to call
6 back tomorrow after a certain time, more likely to be
7 after 6:00, and you just continue to call that telephone
8 number after 6:00 every day until it tells you you're not
9 needed for the rest of the week or the judge dismissed
10 you at the end of the week, but you don't have to come
11 back today and that would avoid you having to come back
12 until we need you.

13 Thank you for your patience this week and
14 today. Thank you for your jury service. I'm not sure if
15 I will see you. If this goes all the way as they think
16 it will, I'll probably be tied up the rest of the week,
17 but you may get to serve at another point in time. It
18 might be before me, but it might be before another judge
19 as well.

20 So thank you for your patience, and it really
21 is something we appreciate and we couldn't do without
22 you. So thank you.

23 (Jury panel leaves the courtroom.)

24 All right. So we need to have a Jackson v.
25 Denno hearing?

1 MR. BOSNAK: Yes.

2 THE COURT: Let's come back here about 1:30
3 and we'll take that up at that time.

4 Now, Mr. Gilliard, I'm going to -- stand up.
5 I'm going to talk to you here for a minute, and you don't
6 have to say anything right now, but I'm just giving you
7 something to think about, and you will have to make a
8 decision later on in the week.

9 But right now you have pled not guilty to
10 each of these charges, and so the State is going to give
11 you the opportunity to have a trial on this, and the
12 State has to prove your guilt. You don't have to prove
13 you're innocent. You don't have to put up a defense, but
14 you can put up a defense if you want to and you don't
15 have to testify, but you can testify if you want to.

16 These are things that you need to discuss
17 with your lawyer, and I'm sure that you have discussed
18 them, but, ultimately, whether or not you put up a
19 defense and whether or not you decide to testify is your
20 decision. You make that in consultation with your lawyer
21 and with any friends and family members that you want to
22 discuss you can discuss that.

23 You do not have to tell me at this point in
24 the trial if you want to put up a defense, and you don't
25 have to tell me if you don't want to testify, but

1 ultimately, after the State presents their case, if we go
2 forward at that point and they have proven to me there is
3 enough evidence to go forward, you will have to decide
4 then if you want to put up a defense and if you want to
5 testify.

6 If you do not want to testify, I will
7 instruct the jury they're not to hold that against you
8 while they're deliberating the verdict. Do you
9 understand everything I've said so far?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: You do not have to tell me
12 whether you want to put up a defense right now and you
13 don't have to tell me if you want to testify right now,
14 but I want to talk to you about that now so that you can
15 be thinking about it, because in a couple of days you
16 will have to make that decision, and I will ask you what
17 your decision is, okay?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Okay. We will come back then and
20 have the Jackson V Denno hearing at 1:30. I do not -- I
21 got the impression y'all have not talked about any kind
22 of pleas or offers at this point, but I would, as always,
23 in every case, encourage y'all to talk about that while I
24 am gone because you are facing murder charges,
25 Mr. Gilliard, and I'm not telling you anything that your

1 lawyer probably hasn't told you but, I do want to tell
2 you this on the record: Murder in this state is a
3 minimum sentence of 30 years, and you could get up to
4 life without parole.

5 The State is not seeking the death penalty,
6 but if you are convicted of the jury charge, you'll serve
7 a minimum of 30 years for that, and it's day for day.
8 You do not get out for parole, and you don't even get any
9 time off for good behavior. Armed robbery is 10 to 30
10 years, so if you are convicted of that you could serve a
11 minimum of ten years and a maximum of 30 years on that,
12 and then the possession of a firearm is zero to five
13 years, and so you need to also be aware of that.

14 So if you want to talk with your lawyer and
15 the State about any kind of a plea, you should take the
16 opportunity to do that. If you want to do that and
17 consider it during the lunch hour and when we get back
18 we're going to proceed, and we'll start the trial after
19 we have this motion when we get back from lunch. All
20 right? See y'all at 1:30.

21 (Recess taken.)

22 A F T E R N O O N S E S S I O N

23 (In open court, jury present.)

24 THE COURT: All right. We're back on the
25 Jackson versus Denno hearing on this matter, so call your

1 first witness.

2 Before we start, we need to take up a
3 matter -- what is the gentleman's name? Who is the
4 gentleman we were having a problem with, name? Where is
5 he at?

6 THE CLERK: That is Mr. Tumolo.

7 THE COURT: All right. What is your name,
8 sir?

9 AN OBSERVER: Lawrence Tumolo.

10 THE COURT: Wittrell?

11 AN OBSERVER: My last name is Tumolo.

12 THE COURT: Sir, I understand this is a very
13 emotional time for you, and I respect that, and this is a
14 difficult day for you and it's going to be a long week,
15 but I have to tell you that I have to maintain order in
16 the courtroom, all right?

17 Now, you have some rights, and they include
18 the right to be here and participate if you needed to as
19 a witness, and you have the right to observe, but I also
20 have to provide for a fair trial to both the State and to
21 the defendant, and if I do not provide a fair trial to
22 the defendant and he's convicted, then we got to do it
23 all over again, and then you got to go through all this
24 again.

25 Now, one of the ways I have to do that is I

1 can't have outbursts in the courtroom, and I can't have
2 people making suggestions or threats or comments to the
3 defendant. I know this is a difficult time for you and
4 I'm going to ask you to respect that, but I'm going to
5 have to put you on notice that if we have any kind of
6 outburst that I'm going to have to have you removed from
7 the courtroom and you won't be able to watch the trial.

8 Do you understand that, sir?

9 AN OBSERVER: Yes.

10 THE COURT: It's not something I want to do,
11 but it's part of what I have to do in order to provide a
12 fair trial, because if he gets convicted, one of the
13 things they bring up on appeal is the fact that the
14 victim's father was acting out in some way in the
15 courtroom making some -- I don't know what it would be,
16 but if they say, well, that affected or tainted the jury,
17 they're going to grant him a new trial and then we'll
18 have to come back and do it again a couple of years from
19 now if he gets convicted.

20 And that is just something that -- I know you
21 don't want to have to do this twice, so I just ask that
22 you try to control your emotions, and, you know, when
23 it's all over and said and done with, then you'll have
24 the right to speak, and at sentencing if he gets
25 convicted, you will have the right to tell me, okay?

1 AN OBSERVER: Yes, sir.

2 THE COURT: All right? Thank you. Okay.
3 Call your first witness.

4 MR. DuRANT: Thank you. Is this the
5 appropriate time to put on the record the stipulation?

6 THE COURT: It would be as good a time as
7 any.

8 MR. DuRANT: The defense and the State have
9 agreed that State's evidence 25 through 89, all of which
10 are pictures, are admitted into evidence and consented
11 to.

12 THE COURT: Okay.

13 MR. BOSNAK: That is correct, Your Honor.

14 THE COURT: 25 through 89?

15 MR. BOSNAK: Yes, sir, all the photographs
16 the prosecution has concerning the crime.

17 THE COURT: All right. All admitted by
18 consent. Anything else?

19 MR. DuRANT: I think that's all the evidence
20 by consent, Your Honor.

21 MR. BOSNAK: The DNA and the hat --

22 MR. DuRANT: You're consenting to the DNA?

23 MR. BOSNAK: And the hat.

24 MR. DuRANT: The State calls Detective
25 Nicholas Wagner.

1 NICHOLAS R. WAGNER,
2 having been first duly sworn,
3 was examined and testified as follows:

4 DIRECT EXAMINATION

5 THE WITNESS: Detective Nicholas R. Wagner,
6 W-a-g-n-e-r.

7 BY MR. DURANT:

8 Q. Where are you employed?

9 A. Charleston County Sheriff's Office.

10 Q. How long have you been employed there?

11 A. Just over ten years.

12 Q. And what is your current position?

13 A. I am a detective.

14 Q. Was that your position in April of 2009?

15 A. Yes, sir.

16 Q. Now, this is a hearing to talk about a statement
17 that was given by Bernard Gilliard. Were you involved in
18 the taking of that statement?

19 A. Yes, sir, I was.

20 Q. And what day was that?

21 A. That was on the 22nd of April 2009.

22 Q. When did Mr. Gilliard come into your -- when was
23 your first interaction with Mr. Gilliard that day?

24 A. On the 22nd of April, about 8:00 in the afternoon,
25 he was taken into custody at [REDACTED] Gateway Drive in Ladson

1 at the Days Inn Hotel in Room 218.

2 Q. And you said that was at 8:19 p.m.?

3 A. It was after 8:00, yes, shortly after 8 p.m.

4 Q. Was he placed in your custody?

5 A. Yes. He was searched by me and secured in
6 handcuffs and transported to the sheriff's office by me.

7 Q. And a little bit about where he was taken into
8 custody and how. This was the U.S. marshals in
9 conjunction with the sheriff's office, right?

10 A. When -- we had a warrant for him, and it was
11 entered into NCIC, so it's multi-jurisdictional to
12 include the sheriff's office and the U.S. marshals. They
13 assisted in tracking and locating him.

14 Q. And was he placed in your custody?

15 A. Yes, he was.

16 Q. Did he appear hurt or injured in any way when he
17 was placed in your custody?

18 A. No, he did not.

19 Q. Did he say he was?

20 A. No, he did not.

21 Q. And you say he was placed in your cruiser?

22 A. Yes, sir. He was placed in the front seat of my
23 cruiser.

24 Q. What did you do with him?

25 A. I searched him prior to make sure he was

1 handcuffed and properly restrained, and I transported him
2 from the hotel to the Charleston County sheriff's office
3 the criminal investigation division for a interview.

4 Q. Was he in the front seat, back seat?

5 A. He was in the front seat.

6 Q. About how long did it take you to get from the
7 Days Inn in Berkeley County to the sheriff's office?

8 A. Maybe about a half hour on the interstate.

9 Q. And what did you do once you got to the sheriff's
10 office?

11 A. We went up to the detectives office, and we have
12 an interview room that is located next to my desk. He
13 was taken up there and prepared for interview by myself
14 and Detective Perkins.

15 Q. Would you please describe for the Court the area
16 that this took place at the sheriff's office.

17 A. Detective office is on the second floor of the
18 building right behind the main office. We have an
19 interview room. It's got a table in there, a few chairs,
20 maybe about 15 by 10, maybe, big, the door and the
21 windows.

22 Q. Who was present?

23 A. Myself and Detective Perkins.

24 Q. Did you advise Mr. Gilliard of his rights?

25 A. Yes, sir. The interview room is located right

1 next to my desk. I pulled up the Charleston County
2 Sheriff's Office advisement of rights form, and at the
3 top of that there is blocks in which you can fill in the
4 case number, person's name, the date, identifiers such as
5 date of birth and race, so I filled that in and asked
6 Mr. Gilliard as we went the specifics that were needed
7 for that form.

8 Q. I'm showing you what is marked State's 90 for
9 purposes of this hearing, ask you to take a look at it.
10 Do you recognize it?

11 A. Yes, sir.

12 Q. How do you recognize it?

13 A. This is our form that we use for administering the
14 Miranda rights, and this is the one that I filled out in
15 front of Detective Perkins along with the defendant,
16 Mr. Gilliard.

17 Q. And is this the form that you used to inform
18 Mr. Gilliard of his rights?

19 A. Yes, sir. When I first brought him up there, as I
20 filled in each blank, I asked him how to spell his last
21 name, his first name, his race, and then his date of
22 birth, his address, his phone number, if he was working,
23 social security number, and then after I filled that in,
24 I printed it off and I handed it to him to double check,
25 make sure that everything was accurate.

1 Q. And after you did that, how did you go about
2 advising him of his rights?

3 A. Detective Perkins and I, we read it verbatim as it
4 states, and after each question I asked Mr. Gilliard if
5 he understood it and made sure that he acknowledged that
6 he verbally did understand that right, and then after he
7 did that, I had him initial next to it.

8 Q. Was that each right?

9 A. There were five of them listed.

10 Q. And just to clarify, I believe you said you went
11 through each right, and after you finished reading each
12 right, then he initialed?

13 A. Correct. So the first right is that I have the
14 absolute right to remain silent and do not have to answer
15 any questions or give a statement, and this fact cannot
16 be used against me.

17 I asked him, do you understand this? If he shook
18 his head or gave anything other than a verbal response, I
19 do or yes, I made sure he verbalized it, and after that I
20 asked him to place his initials next to that right.

21 Q. Is that the process you followed for each and
22 every right?

23 A. Yes.

24 Q. Any after all rights were read out to him --

25 A. All were read out loud, and he said he understood

1 them, and he was also provided a copy of it to read as I
2 read it out loud to him.

3 Q. Did he appear confused in any way regarding any
4 right?

5 A. No, he did not.

6 Q. Did he say he was?

7 A. No, he did not.

8 Q. Did he appear he was under the influence of drugs
9 or alcohol?

10 A. No, he did not.

11 Q. Did he say he was?

12 A. No, he did not.

13 Q. Did he appear injured?

14 A. No, he didn't.

15 Q. Did he say he was?

16 A. No, he didn't.

17 Q. Did he respond appropriately in your interaction
18 with him?

19 A. Yes, he did.

20 Q. And after initialling beside each right, did he
21 indicate he understood all of the rights?

22 A. After all five rights were read to him, the next
23 line says, I fully understand each of these rights which
24 have been explained to me, and I asked him and he said
25 that he did, and then he signed his name below that,

1 indicating that he did understand all of his rights.

2 Q. Did you sign your name as well?

3 A. Yes, myself and Detective Perkins both signed as
4 witnesses.

5 Q. And after he signed acknowledging that he knew and
6 understood his rights, did you ask him if he wished to
7 waive those rights and speak with you?

8 A. Yes. On the form there is a waiver of rights. I
9 read that out loud to him as he also had a copy of it so
10 he could read along, and again asked if he understood
11 those. He said that he did. Then I said if he did
12 understand those and was willing to waive those rights, I
13 asked him to sign, and he voluntarily signed his name to
14 the waiver of rights.

15 Q. Did you tell him what you wanted to speak with him
16 regarding?

17 A. Yes.

18 Q. What was that?

19 A. About the murder of Vincent Wittrell the day prior
20 in Woodside.

21 Q. And did he again waive his rights in which to
22 speak with you concerning that?

23 A. Yes. He voluntarily waived his rights and signed
24 his name, and Detective Perkins and I both signed our
25 names to the form as witnesses.

1 Q. So you testified that he had signed that
2 particular form there twice?

3 A. Yes, sir. He signed twice.

4 Q. And the first time was because he understood his
5 rights?

6 A. Correct.

7 Q. And the second time because he waived those rights
8 and wished to speak with you?

9 A. That's correct.

10 Q. About what time did this waiver of rights,
11 advisement of rights and waiver of rights, take place?

12 A. It started probably right around 9 p.m., somewhere
13 around that time.

14 Q. And about how long did it take to advise him and
15 obtain his waiver?

16 A. Maybe about ten minutes, 10, 15 minutes.

17 Q. What happened after he waived his rights and said
18 he wished to speak with you?

19 A. Then from there we then do a verbal statement and
20 talked to him about the incident which had happened.

21 Q. Was he eventually able to give you -- provide you
22 with a written statement?

23 A. Yes. After we do the verbal statement and go
24 through it, doing some questions and talking about the
25 incident that we're investigating, then he was given an

1 opportunity to write that down.

2 Q. I'm showing you what the State has labelled as
3 State's 91 for purposes of this hearing and ask you to
4 take a look at it. Do you recognize it?

5 A. Yes, sir. This is the written statement that was
6 given by Mr. Gilliard on the 22nd of April.

7 Q. And is it in substantially the same condition now
8 as when he gave you this written statement on the 22nd of
9 April?

10 A. Yes, it is.

11 Q. I want to talk about how you -- the process of how
12 you were able to obtain this written statement from
13 Mr. Gilliard. When did the -- after the waiver of
14 rights, you said you began talking to him orally?

15 A. Yes.

16 Q. Approximately what time was that?

17 A. We have written down in the top right-hand corner
18 the statement that that began at 9:15.

19 Q. And at 9:15, what did you do?

20 A. That's when we just began talking with him about
21 the shooting, the murder that happened in Woodside on the
22 21st of April.

23 Q. And how long, approximately, did you talk with
24 him?

25 A. We took a break then at 9:50, so 40 minutes.

1 Q. And you have that noted on the form?

2 A. Yes. Every time we started and stopped with the
3 interview, we noted it on the top of our right-hand
4 corner, Detective Perkins wrote those down for us.

5 Q. Who filled out the top part of that form?

6 A. I believe that that is his handwriting, with
7 his -- his name and his address, that is his handwriting.
8 On the very top where it says it's GED, that is what I
9 wrote in there, just indicating he received that as his
10 education level.

11 Q. What was his demeanor when you were talking to
12 him?

13 A. He was calm. He didn't seem to be -- he was
14 intelligent. He spoke very legibly or spoke very
15 articulate. His writing was very legible. He was easy
16 to get along with.

17 Q. And you said you spoke with him from 9:15 to 9:50?

18 A. Yes.

19 Q. And that is 35 minutes?

20 A. Yes.

21 Q. What happened at 9:50?

22 A. At that point we took a break for him -- he was
23 always offered water, so he could use the rest room,
24 smoke a cigarette, if he so chose to do so, and just so
25 we weren't in there for such a long time, give him a

1 chance to collect his thoughts and get some fresh air.

2 Q. At any point during the advisement of rights or
3 this period from 9:15 to 9:50, was he threatened in any
4 way?

5 A. No, he was not.

6 Q. Was any member of his family threatened in any
7 way?

8 A. No, they were not.

9 Q. Was he offered any leniency if he chose to waive
10 his rights and speak to you?

11 A. No.

12 Q. Was he offered any hope of a reward?

13 A. No, he was not.

14 Q. And so there was a break for approximately how
15 long at 9:50?

16 A. We took a ten-minute break, started again at
17 10:00, and that is when he was given the opportunity to
18 write his statement out.

19 Q. And at 10 p.m., how did he begin to write his
20 statement out?

21 A. Detective Perkins and I gave him the standard
22 form, the sheriff's office statement form. It was in
23 triplicate and we handed it to him and told him to start
24 writing.

25 Q. Triplicate, what do you mean by that?

1 A. There is a white page, a yellow page, and a pink
2 page, so it goes into triplicates. So it is three pages
3 to each statement page, so I informed him that we had
4 plenty of paper and he could write as much as he wanted,
5 start at the beginning and end at the end, is what I tell
6 them all, and once you get to the end of the page, start
7 again on the next one.

8 Q. Did he begin to write this in his own handwriting?

9 A. Yes, and we were not in the room when it happened.

10 Q. You were not?

11 A. No. We allowed him to write on his own.

12 Q. Was anybody in the room with him when he began to
13 write?

14 A. No, they were not.

15 Q. Did you initially observe him begin to write and
16 determined that he could write?

17 A. Yes.

18 Q. And is that why you felt comfortable leaving him
19 in the room?

20 A. Correct.

21 Q. By himself?

22 A. One of the standard questions we ask is if he's
23 able to read and to write, and he answered that he could
24 write, could read and write.

25 Q. Did you ask him what his education level was?

1 A. Yes, and it's notated at the top that he has
2 received a GED.

3 Q. So you were comfortable that he could read and
4 write?

5 A. Yes, sir.

6 Q. Where were you when you and Detective Perkins left
7 him in the room, the interview room, to write a
8 statement?

9 A. We were in our office area, right outside the
10 door, make sure he could not escape and could couldn't
11 cause harm to himself.

12 Q. Did anybody else go in the room with him when you
13 exited?

14 A. No.

15 Q. Did you return to the room?

16 A. Yes, we did.

17 Q. When?

18 A. After he got done, there is a television
19 recorder -- not a recorder, but there's a camera in
20 there, so we were able to look, and when it looked as if
21 he were done writing, we kind of walked in there and
22 checked on him. I'm not sure exactly how long it took.

23 Q. How long was he in this room according to your
24 notes at the top of this statement?

25 A. We went from -- the written statement went till

1 about 2250 hours, 10:50. We took another break after
2 that.

3 Q. So from 10 p.m. to 10:50?

4 A. Yes, sir.

5 Q. During that time was he writing his statement?

6 A. He was writing his statement, yes, he was.

7 Q. Approximately how many pages had he written when
8 you returned to the room?

9 A. Two full pages.

10 Q. And what happened at 10:50?

11 A. We took another long break. This time we went all
12 the way till 11:30. At that point we offered him food,
13 went and got some McDonald's, made sure he had a
14 substantial chance to eat and take a break in between the
15 interview process.

16 Q. At this point did he ever say he wished to not
17 speak with you?

18 A. No, he did not.

19 Q. Did he ever say he wished to have a lawyer
20 present?

21 A. No, he did not.

22 Q. And so your testimony is that y'all got him some
23 food?

24 A. Yes, sir. We got him some McDonald's.

25 Q. And how long did this break last?

1 A. It looks like it went from 10:50 to 11:30.

2 Q. So 40 minutes.

3 A. Yes.

4 Q. And what happened at 11:40, 11:30?

5 A. We began a question and answer session after
6 reading his statement. Then we -- standard question and
7 answers, we're writing a question to clarify his written
8 statement and from the verbal statement we've taken
9 before and allow him to write his answer to it.

10 Q. Who would write the questions?

11 A. Detective Perkins wrote the questions.

12 Q. Did you write any of the questions?

13 A. No.

14 Q. And he would write his answers?

15 A. Yes.

16 Q. And, ultimately, how many pages did he provide to
17 you as part of his written statement?

18 A. Nine full pages, nearly nine full pages.

19 Q. Did you go over his statement with him?

20 A. Yes. After we were completely done, we made sure
21 I handed it back to him, give him a chance to read over
22 it, and part of my standard interviewing technique is to
23 have him initial in the both top left-hand corner and
24 bottom left-hand corner indicating that he has read his
25 statement and there has been no changes to it afterwards.

1 Q. Did he make any corrections when he was able to go
2 back over it?

3 A. He made the corrections as he was writing it.
4 Every place he would scratch out and give him a chance to
5 go over those and then initial those scratch offs, but he
6 did not make any changes when we were complete.

7 Q. Then when would he initial those corrections?

8 A. That was during the actual writing of the
9 statement phase.

10 Q. So you told him to initial if he needed to correct
11 something?

12 A. Yes.

13 Q. And does he do that in the statement?

14 A. He does it in several spots.

15 Q. And after y'all went through this statement, all
16 the way through, all nine pages, your testimony is he
17 didn't have any corrections?

18 A. Correct.

19 Q. Did he affirm that this was the statement that he
20 was giving?

21 A. Yes, he did.

22 Q. And how did he indicate that?

23 A. He signed his name to the bottom of it, to each
24 and every page.

25 Q. And who was in the room with you when he did this?

1 A. Detective Perkins.

2 Q. And Mr. Gilliard?

3 A. Mr. Gilliard.

4 Q. Just the three of you?

5 A. Yes, sir.

6 Q. Was anybody else there?

7 A. No, they were not.

8 Q. Did he initial anywhere else? I think you said --

9 A. He initialed the top and the bottom of each page
10 and then next to any mark-outs he did scribble marks, he
11 did put his initials next to those.

12 Q. And after he signed all these pages, gave you this
13 statement, at any time that he was giving this statement,
14 was he threatened?

15 A. No, he was not.

16 Q. Not by you?

17 A. Not by me.

18 Q. Not by any officer?

19 A. Not by any officer.

20 Q. Was he offered any promise or hope of leniency by
21 anybody?

22 A. No, he was not.

23 Q. Did he give you the statement freely and
24 voluntarily?

25 A. Yes.

1 MR. DuRANT: At this time the State moves for
2 the admission of State's 90 and 91.

3 (State's Exhibit Nos. 90 and 91 were marked
4 for identification and admitted into evidence.)

5 THE COURT: You want to ask any questions,
6 Mr. Bosnak?

7 MR. BOSNAK: Yes, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. BOSNAK:

10 Q. Detective Perkins --

11 A. Detective Wagner.

12 Q. I'm sorry. Detective Wagner. I apologize.

13 You've been a detective -- you've been a police officer
14 ten years?

15 A. Yes, at least ten years.

16 Q. And probably the most important part of being a
17 policeman and a detective is trying to find the truth.

18 A. Yes, sir.

19 Q. And that is what you're doing as an investigator,
20 you're trying to find the truth?

21 A. Yes, sir.

22 Q. And you took my client in, and you said that you
23 had a camera in the interviewing room.

24 A. Yes.

25 Q. Of course, none of his confession was video

1 recorded, was it?

2 A. Correct.

3 Q. None of it was audio recorded, was it?

4 A. Correct.

5 Q. And the sheriff's department has a video camera?

6 A. Correct.

7 Q. And they have audio recording devices?

8 A. Yes, sir.

9 Q. And y'all decided not to record his statement?

10 A. We don't record any statement, sir.

11 Q. So it's the policy of the Charleston County
12 sheriff's office --

13 A. It's not a policy, it's a practice.

14 Q. Oh, okay. It's a practice of the Charleston
15 County Sheriff's Office not to record or videotape any
16 statement?

17 A. Yes, sir.

18 Q. We want to know the truth, though, don't we?

19 A. Yes, sir.

20 Q. And if we had that videotape, everybody could see
21 exactly what was said and what wasn't said, can't they?

22 A. Yes, sir.

23 Q. Is that a yes?

24 A. Yes.

25 Q. Yes. They can see it for themselves, couldn't

1 they?

2 A. Yes, sir.

3 Q. And we're saying that this is true and he
4 confessed, but we don't want to record it. We don't want
5 everybody to see.

6 A. We don't record them, but we can read the
7 statement.

8 Q. Okay. Well, you talk about his written statement.
9 I'm looking in his written statement. There is nothing
10 in that written statement about any food.

11 A. Okay.

12 Q. True?

13 A. True.

14 Q. So there was more said than what is actually in
15 the statement?

16 A. True.

17 Q. In other words, there is more of a conversation --
18 you said more to Mr. Gilliard than what is in that
19 statement?

20 A. Yes, sir.

21 Q. And Mr. Gilliard said more to you and Detective
22 Perkins than what is in the statement?

23 A. Yes.

24 Q. Okay. But we don't know what that was.

25 A. Sorry. As far as the statement, yes.

1 Q. It's not recorded; we don't know?

2 A. Yes.

3 Q. So what we have to do is we have to take your word
4 for this, correct?

5 A. Yes, sir.

6 Q. Now, I want to go back and just clarify a few
7 things. Did the sheriff's department pick up
8 Mr. Gilliard or did the marshal service pick him up?

9 A. Marshals.

10 Q. Marshals trapped him through a cell phone, didn't
11 they?

12 A. I believe so.

13 Q. And they picked him up?

14 A. Yes, sir.

15 Q. And they called you to respond or did they call a
16 black and white unit to respond, when the marshal --

17 A. They notified the supervisor when they were
18 getting close to locating him.

19 Q. Okay. And were you there on the scene or --

20 A. Yes, sir, I was there. There was a supervisor and
21 other marked units there.

22 Q. They had marked units there?

23 A. Yes, sir.

24 Q. And did the marshal service question him in any
25 way?

1 A. No, sir, not that I know of.

2 Q. Not that you know of?

3 A. No.

4 Q. But you weren't there when the marshal service
5 made the initial report?

6 A. Correct.

7 Q. Now, Mr. Gilliard started at about 9:00; is that
8 correct?

9 A. Yes, approximately.

10 Q. And through all this, what time did you say you
11 got finished, I mean, finished the whole thing?

12 A. Just after midnight.

13 Q. So he was there for about three hours?

14 A. Yes, sir.

15 Q. It took about three hours to write nine pages?

16 A. He also gave a verbal statement.

17 Q. So he gave a verbal statement?

18 A. Yes, sir.

19 Q. That we don't know what he said?

20 A. I know what he said. Detective Perkins knows what
21 he said.

22 Q. But the rest of us don't know what he said, but
23 then you got him to write.

24 A. Yes, sir.

25 Q. Well, a lot of times what people say verbally

1 changes when they write.

2 A. Which is why we would have a question or answer to
3 clarify that.

4 Q. Now, okay. We'll have to take your word there was
5 no threats, there was no promises or anything, no
6 leniency, anything like that, correct?

7 A. Yes, sir.

8 Q. And you have admitted, though, that there were
9 more things said than what has actually been written
10 down.

11 A. Correct.

12 Q. And we don't know exactly what was verbally said,
13 correct?

14 A. That's correct.

15 MR. BOSNAK: Thank you.

16 THE COURT: Redirect?

17 REDIRECT EXAMINATION

18 BY MR. DURANT:

19 Q. Look at the last page of his statement.

20 A. Yes, sir.

21 Q. What was the last question he was asked?

22 A. Is there anything else you want to add that I may
23 not have asked or that you think is important pertaining
24 to this case?

25 Q. Did he give you an answer?

1 A. Yes, he did. Would you like me to read it?

2 Q. I think the judge would be able to read it, but he
3 did answer this question?

4 A. Yes, sir, he did.

5 Q. This was his statement. He didn't wish to say
6 anything else after that question?

7 A. Correct.

8 Q. And as a law enforcement officer, as a detective,
9 have you been trained in taking a statement?

10 A. Yes, sir. I've been to several interview classes.

11 Q. Does it require something a little bit more than
12 the average person off the street?

13 A. Yes.

14 Q. Is one of your client techniques talking to them
15 before it's put down in writing?

16 A. Yes, the report.

17 MR. DuRANT: Thank you, Your Honor. Could I
18 give the statement up to you or have him read it?

19 THE COURT: Sure. I haven't seen it.

20 MR. BOSNAK: Your Honor, I would just follow
21 up with a few questions on redirect (sic).

22 THE COURT: Are you finished with your
23 questions?

24 MR. DuRANT: I've finished with mine. You
25 want me to leave these up here?

1 MR. BOSNAK: Can you give them to the judge.

2 I don't think --

3 THE COURT: All right. Go ahead, Mr. Bosnak.

4 RECROSS-EXAMINATION

5 BY MR. BOSNAK:

6 Q. So after three hours, after 12:00, early in the
7 morning hours, that is when y'all stopped?

8 A. Yes, sir.

9 Q. Now, you said you had certain kind of training.
10 Have you had retraining?

11 A. No, sir, I have not.

12 Q. What kind of training did you have in
13 interviewing?

14 A. I went through the criminal justice academy. The
15 basic detective class, their interrogation class. Also
16 there is one run by a joint task force out of St. Pete's
17 Florida, I believe.

18 Q. Who gives that?

19 A. I can't remember the name of the company, but it
20 was taught down at the Citadel.

21 Q. One other thing I notice when you had Mr. Gilliard
22 sign and you and Detective Wagner signed --

23 A. Sir, I am Detective Wagner.

24 Q. I'm sorry, Detective Perkins please excuse me, I
25 apologize.

1 A. That's Perkins back there. I'm Wagner.

2 Q. When Detective Wagner, when you signed and
3 Detective Perkins signed, I see that nobody puts the date
4 on these waiver of rights. There is no date by the
5 signatures.

6 A. The date should be in the top right-hand corner.

7 Q. I understand that, but there is no date by the
8 signature. By your signature, there is no date.

9 A. Because we date it at the top.

10 Q. I understand, but there is no date by
11 Mr. Gilliard's name either.

12 A. That's correct.

13 Q. And this is just what anybody could type in at the
14 top here?

15 A. Right.

16 Q. Anybody could type that in. That is your standard
17 type?

18 A. Yes.

19 Q. But when the people put the signature down, you
20 don't have to write the date down, but we could know that
21 that was that person's signature on that particular date,
22 do we?

23 A. I would think that would be because it stayed at
24 the top, but no, there is no other place to put that.

25 Q. They could write the State right underneath their

1 name, couldn't they?

2 A. True, they could.

3 Q. And you could write the date right out next to
4 your name, couldn't you?

5 A. Yes, sir, we could.

6 Q. Where we would know that was the particular date
7 for sure that this was signed.

8 A. You could do that, but I also believe with it
9 being dated at the top, we know it was done on the 22nd
10 of April 2009 because it's dated on the form.

11 Q. That's because you say it's dated on the form. If
12 we had the person's signature, we would check and make
13 sure that was their signature, at the bottom, correct?

14 A. Yes, sir.

15 Q. Okay. Thank you.

16 MR. BOSNAK: No further questions.

17 THE COURT: Detective, on the first two pages
18 on this, is it your testimony that is his handwriting?

19 THE WITNESS: Yes, sir.

20 THE COURT: Okay. And then on page three
21 following, there is handwriting of Detective Perkins. He
22 would write the questions, but the answer were back in
23 the defendant's handwriting?

24 THE WITNESS: Yes, sir, yes, sir.

25 THE COURT: I wanted to make sure I got that.

1 You can step down. Anything else from the State?

2 MR. DuRANT: Nothing from the State, Your
3 Honor.

4 THE COURT: Do you have any witnesses,
5 Mr. Bosnak?

6 MR. BOSNAK: Yes. I would like to call
7 Detective Perkins to the stand.

8 THE COURT: Go ahead.

9 JAMES PERKINS,
10 having been first duly sworn,
11 was examined and testified as follows:

12 DIRECT EXAMINATION

13 THE WITNESS: James Perkins, P-e-r-k-i-n-s.

14 BY MR. BOSNAK:

15 Q. Detective Perkins, you were the lead investigator
16 on this case?

17 A. I was the case agent.

18 Q. Is that the lead investigator?

19 A. That's the case agent, yes, sir.

20 Q. And that is you?

21 A. Yes, sir.

22 Q. And it's your case?

23 A. Yes, sir.

24 Q. Okay. And your partner just testified, Detective
25 Wagner. I don't know if he's your partner or not, but he

1 just testified that you took a statement from Bernard
2 Gilliard on 4/22/09.

3 A. That's a question? Yes, sir.

4 Q. And started at around 9:15?

5 A. Approximately, yes, sir.

6 Q. And ended somewhere shortly after 12:00 midnight?

7 A. Yes, sir.

8 Q. And at that time Mr. Gilliard gave you a complete
9 statement.

10 A. Yes, sir.

11 Q. Said he didn't want to add anything.

12 A. Well, we gave him the opportunity pretty. Much
13 what we do is after we read the Miranda warnings, explain
14 to them everything about the case as far as the Miranda
15 warnings, at any given time, stop talking, stop writing,
16 we also give him a form like Detective Wagner indicated
17 and tell them write anything or everything that they want
18 to write, and we actually leave the room so they can
19 write whatever they want.

20 So we gave him that opportunity, so he had an
21 opportunity to write whatever he wanted, sir.

22 Q. And around 12:00 he said he had written everything
23 he wanted to write?

24 A. Yeah, and at the end we asked that question again.

25 Q. Correct.

1 A. If there is anything else you want to add that you
2 did not add, you can indicate that in the statement as
3 well.

4 Q. I'm going back to the next day. It ended late
5 that night, the next day, but I'm going to go back to
6 4/23/09. You wanted to talk to Bernard Gilliard again,
7 didn't you?

8 A. Yes, I did.

9 Q. And at that time, you gave him this advisement of
10 rights?

11 A. Again, yes, I did.

12 Q. And he said at this time he refused. He did not
13 want to talk to you without a lawyer present?

14 A. That's correct.

15 Q. Now, what reason did he give for that?

16 A. He didn't, nor did I ask, because when he said he
17 wanted to talk to a lawyer, I stopped. He was just
18 ordered back to the detention center.

19 Q. You didn't say anything to him about that you knew
20 that the victim, Vincent Wittrell, had beat his mother
21 up?

22 A. On the 23rd?

23 Q. Yes.

24 A. No, sir.

25 Q. You didn't talk to him about that?

1 A. No, sir. Matter of fact, when I came to pick him
2 up, he was escorted, transported to the sheriff's office,
3 and he was read his Miranda warnings at the sheriff's
4 office, so no questions was asked pertaining to the case
5 until his warnings was read to him.

6 Q. What else did you want to talk to him about?

7 A. We wanted to talk to him about the gun, because we
8 did not locate the gun, and we wanted to locate the gun
9 and we wanted to know if he would give us the information
10 on where the gun was, so that is what we wanted.

11 If you read the statement on the 22nd, he pretty
12 much indicated as far as the incident, so on the 23rd the
13 only thing we needed to wrap up was locating the gun. We
14 was real concerned about locating that gun because we
15 didn't want anybody to find it like a young child or
16 anything and get injured, and that was the reason why we
17 brought him back in, or I brought him back in.

18 Q. He didn't tell you earlier in the statement he
19 threw it off the bridge?

20 A. Yes.

21 Q. He threw it off the bridge into the Cooper River?

22 A. On the 22nd.

23 Q. Did you want to talk to him, even though he told
24 you he had thrown it into the river?

25 A. Yes.

1 Q. And on the 22nd, you never talked to him about his
2 mother being beat up, that you knew his mother was beat
3 up by the victim?

4 A. He had indicated that on the 22nd.

5 Q. You didn't tell him you knew anything about it?

6 A. He had indicated it to me on the 22nd.

7 Q. But you didn't know anything about it that he told
8 you?

9 A. No, I didn't know anything about it.

10 MR. BOSNAK: Thank you.

11 THE WITNESS: Yes, sir.

12 THE COURT: From the State?

13 MR. DuRANT: No questions from the State,
14 Your Honor.

15 THE COURT: You can step down. Thank you.
16 You want to argue any motions?

17 MR. BOSNAK: The only problem I have is
18 Mr. Gilliard comes in and gives a complete statement on
19 the 22nd. And he tells them -- if they're going to
20 believe he murdered somebody, they certainly should
21 believe that he threw a gun over into the river, and then
22 they come back supposedly, allegedly, on the 23rd and
23 want to speak with him, and at this time he lawyers up.

24 I just find that very, very strange. A
25 gentleman had given a complete confession to a case.

1 He's been helpful with the police officers; he's answered
2 their questions. We don't know what was said, what
3 wasn't said. We just have to take the officer's word for
4 it and what was written.

5 He said he completed his statement. He
6 doesn't have anything else to give, and he talks about
7 what happened to this gun, which would be logical that
8 you would throw a gun in a river or something if you
9 killed someone. You certainly wouldn't want the police
10 to find it. And then they come back on the 23rd, and he
11 lawyers up. And when you look at both these advisement
12 of rights, there is no written date, there is only these
13 typewritten dates. They could be easily changed, and any
14 other type of law, if we were dealing with contracts or
15 we were dealing with real estate closings or anything
16 like that we would have these people date it at the
17 bottom of their note where we would know that that
18 signature was written on that particular date, and it's
19 not done, Your Honor.

20 I just don't think they're rely -- I just
21 don't think this is reliable looking at it the way it is.
22 Thank you.

23 THE COURT: All right. Well, those are
24 certainly arguments you get to make to the jury later on,
25 but the purpose of this hearing is to determine whether

1 or not there is a preponderance of the evidence that this
2 statement was made voluntarily and was there a waiver,
3 and I find there is a preponderance of the evidence.

4 He was in custody, but he was advised of his
5 rights. He freely, voluntarily, and intelligently waived
6 his rights and made this statement, and it didn't appear
7 there was any coercion or anything on the surface to make
8 this statement, and so I find the State has met its
9 burden of proof.

10 And so they'll be allowed to offer this into
11 evidence, and you can make that argument about whether or
12 not it's believable beyond a reasonable doubt to the jury
13 at the appropriate time.

14 MR. BOSNAK: Thank you, Your Honor.

15 THE COURT: All right. Anything else be
16 need to take up before we start?

17 MR. DuRANT: Your Honor, just one slight
18 issue. I'm not even sure that we actually need to do
19 this, but out of an abundance of caution, Mr. Gilliard's
20 statement in the very beginning says that the situation
21 stems from me catching -- on the day of the murder, I was
22 concerned about paying the bondsman his money for my
23 recent bail that has been posted from him catching his
24 \$800 sale. So they're talking about drug dealing.

25 I would like to just make a motion and have

1 the Court rule on it, that we can get into his whole
2 statement, not -- because it's for motive by clear and
3 convincing evidence, should this be considered a
4 404(b) matter about a prior bad act. It's in his own
5 handwriting. It's relevant to show his motive, and just
6 out of an abundance of caution we would like for the
7 Court to rule on that.

8 THE COURT: Do you want to say anything to
9 that, Mr. Bosnak?

10 MR. BOSNAK: I don't have any problem with it
11 coming in because this is what the story is. This isn't
12 some robbery. It's a beef over a drug sale, and we're
13 going to get into that and talk about all that.

14 THE COURT: Doesn't sound like he has an
15 issue with it. Anything else from the State?

16 MR. DuRANT: Nothing, Your Honor.

17 THE COURT: From the defense?

18 MR. BOSNAK: Nothing, Your Honor.

19 THE COURT: Why don't we take five minutes if
20 anybody needs to use the rest room or anything, and we'll
21 tell the jury we'll be ready to go in five minutes, so be
22 ready to make your openings.

23 (Recess taken.)

24 THE COURT: All right. Y'all ready?

25 MR. DuRANT: State is ready, Your Honor.

1 MR. BOSNAK: Defense is ready, Your Honor.

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

4 (In open court, jury present.)

5 THE COURT: All right. Be seated. All
6 right. Ms. Williamson, is that you?

7 THE FOREMAN: Yes, sir.

8 THE COURT: You are the foreman of the jury
9 elected by you peers. I hereby appoint you.
10 Congratulations. You don't get any extra pay, but you
11 get to handle the verdict form at the end of the trial,
12 and, like I say, if the crowd gets a little rowdy back
13 there, you take care of the situation for me, okay?

14 THE FOREPERSON: Yes, sir.

15 THE COURT: We're going to start the trial in
16 a minute, and I'll begin to talk to you about what we do
17 and why we're doing it, but before I do all that, the
18 clerk needs to put you under oath. And so I would ask
19 that you stand, raise your right hand while the clerk
20 administers the oath to you.

21 (Jury duly sworn.)

22 All right. Well, folks, let me go over a few
23 things with you and tell you why we're here and what
24 we're going to do in the next several days.

25 I told you when we were qualifying or drawing

1 a jury that the State has charged Mr. Bernard Othello
2 Gilliard with murder, armed robbery, and possession of a
3 firearm during the commission of a violent crime.

4 These charges were brought to this Court by
5 way of an indictment. An indictment is simply a document
6 by which -- it's a result of a process by which we get
7 jurisdiction over this case. It puts the defendant on
8 notice of what he is being tried with and what he is
9 being accused of so he can answer to it in court. An
10 indictment, in and of itself, is not evidence and is not
11 to be considered by you as evidence. It is merely the
12 way that this Court gets jurisdiction of this case and of
13 the defendant, and it puts him on notice of what he is
14 charged with.

15 I told you at the beginning of the trial, he
16 is not required to prove his innocence. He is simply
17 required to show up for trial, and the State must prove
18 his guilt beyond a reasonable doubt.

19 Now, I'm going to go over these indictments
20 with you, and it is for the purpose of letting you know
21 what he has been charged with. Indictment
22 2010-GS-10-2061 charges that on or about April 21st, 2009
23 with malice aforethought Bernard Othello Gilliard did
24 kill and murder Vincent Wittrell by means of shooting the
25 victim and that Vincent Wittrell died in Charleston

1 County as a proximate result thereof on April 21, 2009 in
2 violation of section 16-3-10 of the South Carolina code
3 of laws 1976 as amended. That is the charge for murder.

4 Indictment 2010-GS-10-2060 charges

5 Mr. Gilliard with armed robbery. That indictment says on
6 or about April 21, 2009 in Charleston County, South
7 Carolina, at [REDACTED] Clovewood Street in Ladson, South
8 Carolina, by use of force, threats, or intimidation and
9 while armed with a deadly weapon, to wit a nine
10 millimeter R ger handgun, the defendant, Bernard Othello
11 Gilliard, did take and carry away goods and/or moneys
12 from the person or immediate presence of Vincent Wittrell
13 with the intent to permanently deprive him of possession
14 thereof in violation of 16-11-330 subsection A of the
15 South Carolina code of laws 1976 as amended.

16 And, finally, indictment 2010-GS-10-2059
17 charges Mr. Gilliard with possession of a firearm during
18 the commission of a violent crime, particulars being that
19 in Charleston County, South Carolina, on or about April
20 21, 2009, the defendant, Bernard Othello Gilliard, did
21 possess a handgun or visibly display what appeared to be
22 a handgun during the commission or attempted commission
23 of murder, a violent crime. This is in violation of
24 16-23-490 of the South Carolina code of laws 1976 as
25 amended.

1 Again, these are indictments. They are
2 charges that have been brought against Mr. Gilliard, and
3 Mr. Gilliard has pled not guilty to each of these
4 charges. Now, I've said this before and I'm going to
5 repeat it again because it is one of the most important
6 rights a person has when they're charged with a crime in
7 this country. It's one of the reasons why we have this
8 country's legal system set up the way it is.

9 The State of South Carolina charged
10 Mr. Gilliard with these crimes, and they have the burden
11 of proving these crimes beyond a reasonable doubt to you
12 12 folks. He doesn't have to prove he's innocent. He
13 sits in that chair right over there, and in the eyes of
14 the law he's an innocent man, and it is the burden of the
15 State, which they have taken upon themselves, to prove
16 each and every one of these indictments to you, to your
17 satisfaction, beyond a reasonable doubt that he is guilty
18 of that.

19 And if you do not find that the State has met
20 its burden of proving that he is guilty of these charges
21 beyond a reasonable doubt, then it's your duty as jurors
22 to acquit him of these charges.

23 Now, you're asking yourself, what does beyond
24 a reasonable doubt mean? You probably heard that phrase
25 before just from TV or movies, and perhaps you have

1 served as a juror in a criminal case before, or maybe you
2 served as a juror in a civil case before.

3 In a civil case, the burden of proof is what
4 we call preponderance of the evidence, and that is a very
5 light burden of proof. It simply means the greater
6 weight of the evidence or is whatever the person trying
7 to prove more likely true than not true. It's very
8 light, a light burden, and if you had a set of scales,
9 it's simply tipping the scales, even if it's just
10 slightly, in the party's favor, then they have met that
11 burden of proof.

12 But in a criminal case, proof beyond a
13 reasonable doubt is the burden that applies in a criminal
14 case, and it is a much heavier burden of proof than in a
15 civil case. All right? Proof beyond a reasonable doubt
16 is proof that leaves you firmly convinced of the
17 defendant's guilt. They don't have to prove guilt beyond
18 every doubt because, you know, in life you just don't
19 have to -- you can't always just remove every single
20 possible doubt that somebody has about something. But
21 you can find that at the conclusion of the case if you
22 find that you are firmly convinced of the defendant's
23 guilt beyond a reasonable doubt, then you may convict him
24 of these charges.

25 On the other hand, at the end of the trial,

1 if you find that the State has not met its burden and you
2 are not firmly convinced of the defendant's guilt, then
3 it is your sworn duty to acquit him of the charges and
4 find him not guilty. You have to give him the benefit of
5 the doubt if you find the State has not met that burden
6 of proof.

7 Now, procedurally, because the State has the
8 burden of proof, they get to bring their case first, and
9 they will call their witnesses first. As I told you also
10 during the qualification, or during the part where we
11 drew the jury, the defendant doesn't ever have to put up
12 a defense if he doesn't want to. He may, if he decides
13 to, put up a defense, may, but he's not required to, and
14 if he doesn't, you're not to hold that against him while
15 you're deliberating, because that, again, is one of the
16 most important rights that we have, but the State does
17 have that burden and the State must present evidence to
18 you, and so they will go first with the bringing of the
19 evidence and their case.

20 Now, we will start in just a minute by having
21 both parties make opening statements to you. Opening
22 statements are not evidence. It is simply the lawyers
23 getting up and telling you briefly what this case is
24 about and giving you a little idea of what the evidence
25 is that you're likely to hear. It simply allows you to

1 familiarize yourself with what this case is about, and it
2 will help you follow the evidence a little bit easier,
3 but they're not allowed to make arguments about guilt or
4 innocence in this phase. They're simply telling you what
5 the case is about, perhaps giving you a little preview of
6 what the law is in this case, but what is most important
7 for you to remember, the lawyers are not witnesses, and
8 what they say is not to be considered by you as evidence.

9 All right? Evidence is things that you hear
10 from a witness on the witness stand, and they'll set in
11 that box right over there in front of that microphone.
12 The clerk will put them under oath, and then they will
13 testify, and whatever they say can be considered by you
14 as evidence.

15 And if we have photographs that are admitted
16 into evidence, that you consider that, but they might be
17 statements or written documents. That is evidence. But
18 what the lawyers say is not evidence. So when the lawyer
19 asks a question, that's not evidence. The answer to the
20 question, though, that is evidence. All right?

21 So keep that in mind, because the lawyers do
22 a lot of talking, but just remember, if they knew enough
23 about this case that they could give evidence, then they
24 would be sworn in, put in that chair over there, and they
25 would testify, and they would not be allowed to be a

1 witness or not be allowed to participate as a lawyer in
2 this case. All right? So they're only advocating on
3 behalf of their client.

4 Now, everybody in this courtroom has roles.
5 You have roles and I have a role. All right? Your role
6 is to be the finder of the facts. There is a dispute,
7 factually, as to what happened in this case. It is up to
8 you to listen to all the evidence and make up your mind
9 at the end or at the conclusion of all the evidence as to
10 how to resolve those factual disputes.

11 You deliberate, after you've heard all that
12 evidence, by applying the law that I tell you to the
13 facts as you resolve them, and that is how you come up
14 with a verdict. All right?

15 The State is going to put up their case
16 first. You've been living long enough to realize there
17 is usually two sides to every story, and you're going to
18 hear one side first, not only throughout the trial, but
19 through every witness, because the State, because they
20 called the witness first, gets to ask questions first.
21 That is all direct examination.

22 Once the State asks questions, then you get
23 to hear the defense ask questions, if he wants, so the
24 defense lawyer he can ask questions if he wants. That is
25 called cross-examination, and then I usually let one

1 follow-up round of redirect, redirect and recross, so we
2 can follow up on any questions the other side brought up,
3 then we can cut it off and bring up the next witness.

4 So we'll go that way throughout the entire
5 trial. The State presents their evidence, and then and
6 only then, after the State has presented all their
7 evidence, does the defendant have to tell me whether or
8 not he wanted to put up a defense, or he may just say,
9 You've heard everything you need to hear, and you go make
10 a decision based on that.

11 That is his right, but, again, under the way
12 we work, they don't have to tell us at this point if they
13 want to. He may but is not required to. All right?

14 Now, I told you, your role is to resolve the
15 facts. You're the fact finder. My role as the trial
16 judge, I'm called the judge of the law. That basically
17 gives me two roles in this case: First and foremost, my
18 job is to make sure both sides get a fair trial. Like
19 you, I don't know enough about this case that it affects
20 my ability to be sit here and be fair and impartial. I
21 know about 30 more minutes of this case than you do, but
22 before I walked in this morning, I knew nothing about
23 this case, all right?

24 If I knew something about the case, then they
25 would get another judge, and if I knew the lawyers or the

1 witnesses such as it affected my ability to be fair and
2 impartial, same question I ask you, then another judge
3 would hear it. My job, first and foremost, is to make
4 sure the defendant gets a fair trial but also the State
5 of South Carolina gets a fair trial. Both sides are
6 entitled to a fair trial, so I have to make sure they
7 follow our rules of procedures and our rules of evidence
8 to make sure that you hear things that you're supposed to
9 hear and not hear things that are improper because we
10 only want to do this one time.

11 All right? And if I let you hear something
12 that you weren't supposed to hear, or legally incompetent
13 evidence, then, you know, one side gets to appeal and
14 they may come back and say, well, we got to do it all
15 over again because the judge let the jury hear something
16 they weren't supposed to hear or kept them from hearing
17 something they were supposed to hear, so that is my job,
18 and we make sure we follow those rules.

19 So when a lawyer gets up and says, Objection,
20 it's not that they're necessarily trying to keep you from
21 hearing something, it's just that we have to make sure we
22 follow those rules, and they're just bringing it to my
23 attention that, Hey, Judge. We might need you to make a
24 ruling here because it's not proper evidence, and
25 sometimes I can explain it to you, but sometimes it's

1 best if we move on. But the thing is, we're trying to
2 get to the truth. We're trying to see that justice is
3 done, and we do that by following the rules and
4 procedures we set up for trials in this state.

5 So if the lawyer stands up and says,
6 Objection, sometimes I can rule based on just following
7 the testimony, and having done this for a number of
8 years, you know what the context of the objection is.
9 Sometime it's necessary for me to, Just come up here for
10 a second, tell me real briefly what your objection is,
11 just outside the earshot of the jury because it doesn't
12 really make a whole lot of sense to argue in front of you
13 because you could hear what we didn't want you to hear.

14 Sometime it's necessary for me to send you
15 out to the other room and hear what the witnesses
16 actually said so I can make a determination as to whether
17 or not you hear it or not, and, again, we're not trying
18 to keep anything from you. We're just trying to do this
19 one time. Hopefully we do it right the first time.

20 All right? Now, the second role that I have
21 in this trial is to charge you on the law that applies to
22 the charges. So at the end of the trial, after you have
23 heard all the evidence, the lawyers will make closing
24 arguments, review the evidence that you heard, and then I
25 will charge you on the law that you are duty bound under

1 the oath that you took to apply to the facts as you find
2 them. You'll then go back to the jury room and
3 deliberate and come up with your verdict, and then we'll
4 live with that.

5 So that is the real -- that's just kind of
6 the overview of how we're proceeding. I anticipate that
7 case will take several days to try. What we usually do
8 is start about 9:30 in the morning, and we'll take a
9 lunch break, and then we usually finish up somewhere
10 between 5:00, 5:30 in the evening. If it gets towards of
11 the end of the week and it looks like we might need to
12 move things along a little bit -- I really do think we'll
13 finish it up this week with no whatsoever.

14 I'm really not concerned about that, but if
15 it looks like maybe Wednesday that we're dragging a
16 little bit, we might work just a little bit later in
17 order to get it so that we are certainly getting it done
18 this week. We don't want to bring you back two weeks in
19 a row.

20 So that is kind of the procedure we'll
21 follow. We usually take a mid-morning break and a
22 midafternoon break so that you can use the rest room. At
23 any time if you need to use the rest room prior to me
24 taking a break, just kind of send word down to the
25 bailiff. They'll get my attention, and we'll take a

1 break sooner than that. And, you know, during the break,
2 when a witness is coming up or coming down from the
3 stand, if you want to stretch, you know, get the blood
4 flowing, you can do that, but if for any reason you need
5 to take a break prior to that, I always say just wake one
6 of the bailiffs up. They'll let me know. Okay? See, we
7 just woke one up.

8 Okay, folks. I've talked enough. What we're
9 going to do is turn it over first to the State so they
10 can begin with their opening statement. So, if you're
11 ready, Mr. Solicitor, you may begin.

12 MR. SIMPSON: Thank you, Your Honor. Ladies
13 and gentlemen: Good afternoon. Very briefly, my name is
14 Chad Simpson. I'm the solicitor along with Rutledge
15 DuRant in the trial of this case. It's our honor to
16 represent the State of South Carolina in the trial
17 against Bernard Gilliard on the charges of murder, armed
18 robbery, and possession of a firearm during a violent
19 crime.

20 Clovewood Street in Ladson, South Carolina,
21 is a residential street. Probably not unlike where you
22 live or I live. It's not a place where you generally
23 think charges like this arise from, and on April 21,
24 2009, it was proceeding not unlike any other residential
25 street. Johnny Booker and Robert Rusch, roommates at the

1 time, were playing basketball out in the street. They
2 had one of those goals and were shooting some hoops.

3 Jason King, having finished his work for the
4 day, had just come by with some Burger King to join them,
5 play some basketball. Abigail McCollum was thinking
6 about her upcoming meal at Ladson Seafood, which I
7 understand is a pretty good place. Dennis White, across
8 the street from where this happened, was enjoying the
9 nice, mild, moderate weather in April. He had his
10 windows open, AC turned off, enjoying the weather,
11 relaxing, and Debbie Lincoln, another resident of
12 Clovewood Street, had returned from Dollar General. Her
13 and her kids were going to help clean her brother's house
14 to help show the their appreciate for letting them stay
15 there for a time.

16 It was just an ordinary, residential street.
17 You'll see pictures of it, and you'll meet a lot of the
18 residents of that street, and it would have continued to
19 be that way on that afternoon were it not for the way
20 that Bernard Gilliard settled a debt, both a financial
21 and a personal debt.

22 Vincent Wittrell was only 20 years old when
23 he was shot nine times through the torso at point blank
24 range because, you see, Vincent and Bernard didn't like
25 one another. Vincent and Bernard also had a debt between

1 them.

2 We're not going to try to hide from the
3 nature of that. The nature of the debt was drugs, and on
4 4/21, the two agreed to meet, but they had agreed to meet
5 because Bernard Gilliard told him, I got the money I owe
6 you. Let's meet over on Clovewood. Nice, quiet street,
7 off Ladson Road, the main road.

8 And so around 4:30, the guys I talked about
9 playing basketball, saw a gold Camry turn on their
10 street, acting just the way it reminded me when I was a
11 kid: Car's coming, stop playing, get out of the way, but
12 then they look down and saw the gold Camry stop to talk
13 to an individual, Bernie Gilliard, who was walking down
14 the street, so they resumed playing for only a brief
15 moment.

16 Dennis White, at home in his residence with
17 the windows open, in front of his house saw the same
18 things, saw the two. Just looked like they were talking,
19 so he looked away, for only a brief moment, only a brief
20 moment, because it didn't take very long for Bernard
21 Gilliard to act out on his true intentions of meeting
22 that day. It didn't take long for Bernard Gilliard,
23 pretending to reach in his pocket, I got the money I owe
24 you, and pull out his gun and did he shoot and kill
25 Vincent? Yeah, he shot and killed Vincent. He shot him

1 nine times at point blank range, nine times.

2 The evidence that was collected at the scene
3 is going to describe that, ten shell casings found at the
4 scene, eight at the end of the driveway, two inside the
5 car, collected. No others, just ten. All ten sent to
6 SLED, all ten confirmed to be coming from the same
7 firearm.

8 Ten bullets found that we call projectiles.
9 Seven found in the car, three found inside, still inside
10 Vincent Wittrell's body. Nine entrance wounds in Vincent
11 Wittrell, six exit wounds through and through. Three
12 bullets remaining in that body. But while certainly what
13 the evidence at the crime scene collects at the scene is
14 important, pay attention over the next couple of days as
15 to what was not found at the scene. No other gun found
16 because there is one, Bernie's. That is all the evidence
17 you will hear about one gun, Bernie's.

18 Then again, this happened on Clovewood
19 Street, so it's not just about items that were collected,
20 it's also about what people saw, the boys playing
21 basketball, Debbie Lincoln, Abigail McCollum, Dennis
22 White. You're going to hear from all of them. You're
23 going to hear about somebody emptying his firearm at
24 point blank range into that driver's side window. You'll
25 hear from all of them who established a view of the scene

1 at different times, but you'll hear from all of them that
2 after emptying that gun, Bernie turned to run away and
3 then decided, I'm going to run back.

4 He ran back and grabbed it. Ran back,
5 grabbed something, and then fled the scene, and as he
6 fled the scene, his red hat fell off. Just the fact that
7 all these neighbors saw this happen isn't enough for you,
8 that hat was sent to SLED where they confirmed Bernard
9 Gilliard's DNA on the stand. But what did Bernie run
10 back for?

11 He ran back to add insult to fatal injury,
12 nine fatal injuries, ran back for money, to get some
13 money from the 20 year-old he had just killed with nine
14 gunshots. How do we know that's what he ran back for?
15 We know because he told police that.

16 A day later, under arrest, he gave a full
17 statement, full statement talking about everything. He
18 added some facts, and you'll hear about that, but Bernie
19 made a statement. The evidence in this trial -- and we
20 appreciate your time and attention for the next day. We
21 have a burden, as the judge talked about, to prove our
22 charges beyond a reasonable doubt, and that is going to
23 require us some time.

24 During this trial, the evidence will show
25 that on April 21, 2009, a day, as Bernie describes it in

1 his statement, the day of the murder, Bernard Gilliard
2 emptied his firearm into Vincent Wittrell on purpose,
3 and, in fact, his actions were to take money. That is
4 the basis of the armed robbery charge. And at the
5 conclusion of this trial, I'm confident that all of you
6 will remain, as the judge stated, firmly convinced that
7 Bernard Gilliard is guilty of all three charges, that, in
8 fact, April 21 was, as he said in his own statement, the
9 day of Vincent Wittrell's murder.

10 THE COURT: Mr. Bosnak?

11 MR. BOSNAK: May it please the Court: Now
12 for the other side of the story.

13 There is bad blood between my client, Bernard
14 Gilliard, and the victim, Vincent Wittrell, bad blood
15 between them. They were both having sex with the same
16 girl at the same time. The alleged victim was jealous of
17 my client having a friendship, having a friendship with
18 one of his baby's mamas, and you'll hear from her. He
19 was mad about that.

20 And this was an argument over drugs. My
21 client had sold one of Vincent Wittrell's supposed
22 clients some drugs, and he got mad. And he said, I want
23 all the money. I want the money that you got.

24 And my client said, Look, I know she owed you
25 \$100. I'll pay you the \$100 she owed you, and I'll give

1 you another 100, and let's just call it quits. How about
2 that?

3 No, no, no. I want all the money. You give
4 me all the money, or I'm going to kill you.

5 And you're going to hear from witnesses that
6 are going to say the alleged victim threatened Bernie
7 Gilliard on at least two occasions.

8 Now, six days before this happens, Bernie
9 Gilliard gets arrested by Charleston city police for
10 having a gun on him, and you're going to hear from
11 Jonathan Burns, the police officer that arrested him, and
12 he's going to say that Bernie -- he asked Bernie, Why do
13 you have a gun?

14 And Bernie says, I got to carry this gun
15 because I have got a guy that has threatened to kill me.

16 And he made that statement to the police
17 officer and the police officer is going to testify to
18 that. He was scared. He was on the run. He had nowhere
19 to go.

20 So he called Vincent and says, Look, can we
21 do something to make this up? Can we do something to try
22 to work this out? Because I'm tired of this relationship
23 and you threatening me. Can we do something? I'll give
24 you some money. Let's stop it.

25 Well, where the solicitor -- our story

1 difference is Bernie wanted to meet at a store in that
2 neighborhood, over in Ladson, which was just a street
3 above Clovewood.

4 Vincent says, Huh-uh, huh-uh, I'm not going
5 to meet at a grocery store. Why Bernie wanted to meet at
6 a grocery store is he wanted to meet where there were
7 people. He could give the guy money, and there wouldn't
8 be any violence between them.

9 Bernie carried a gun. He was carrying a gun.
10 He was scared. Bernie didn't have a car. Bernie was on
11 his feet, walking. Vincent called him and said, No, I'm
12 not going to meet at a store. I'll meet you on
13 Clovewood.

14 Bernie walked to Clovewood. Now, what you're
15 going to hear is a lot of people in Clovewood that knew
16 Vincent Wittrell. They knew him. That was his
17 neighborhood. That was his turf.

18 He was in a rental car. He pulls up to
19 Bernie. Not anybody knows what was actually said except
20 Bernie. Bernie is the only person that knows. None of
21 these witnesses that will come forward knows what the
22 conversation -- what was said, not one of them. They saw
23 him talking, but they don't know what was said.

24 Bernie gives Vincent the \$200, says, Here is
25 your money, man.

1 Vincent is mad, said, I'll whip your ass.
2 I'll shoot you. He's got a gun on the passenger seat.
3 He said, Making me wait this long, and I want more money.

4 And they were arguing. Vincent goes for the
5 gun. When he does, Bernie pulls his gun and he shoots
6 him.

7 Now, things to keep in mind when we think
8 about this: First of all, this is around 4:00 to 5:00 in
9 the afternoon in April, so it's broad daylight. There
10 are a whole lot of people out, and it's in a
11 neighborhood. It's in Vincent's neighborhood. My client
12 doesn't even have a car. He's on foot.

13 Now, he ran away, took a few steps after he
14 shot him, and he came back, and what he came back for was
15 to get his \$200 and he got his 200 from him. He had
16 handed it to him. Vincent had put it in his lap. Bernie
17 reached back in, got his \$200, and took off because he
18 was scared.

19 Now, the police want to say this is an armed
20 robbery. Okay? Hold on just a minute. When the North
21 Charleston police department, I believe that's who it
22 was, checked the alleged victim, Vincent, this is how
23 much money they found on him: In his left front pocket,
24 they found 3 \$20 bills for \$60, and he had \$2.15 in
25 change in his left front pocket.

1 In his back pocket, he had \$34. In his right
2 back pocket, he had \$450, and in his right front pocket,
3 he had \$1,060, so they found a total of \$1,607.02,
4 according to the police report. That is how much cash he
5 had. He had cash in every pocket.

6 Now, you're also going to hear from the
7 police witnesses, not our witnesses, police witnesses,
8 that numerous people went to the crime scene before they
9 got there. They were numerous people around that car.
10 There were numerous people inside that car and all around
11 it, contaminating the crime scene.

12 No, there was no gun found there, but there
13 were numerous people that were around that car that could
14 have taken that gun and nobody would have seen it.
15 Because you're going to hear differing testimony from the
16 witnesses that actually went to get by to give aid to
17 Vincent. One woman prayed with him, other people just
18 looking around, other people around, so the gun very
19 easily could have been taken, and you're going to hear,
20 as you heard hear a minute ago, no gun was found. They
21 didn't find Vincent's gun, and they didn't find Bernie's
22 gun either, so there was no gun at the crime scene,
23 period. Bernie told them what he did with his gun, but
24 there is no gun found.

25 Bernie did get picked up by the police, and

1 Bernie did give a statement, and the statement is just
2 about like what I told you, ladies and gentlemen. So
3 what you really have to decide in this case is, really,
4 what you have to decide, is it murder, is it
5 self-defense, or is it involuntary manslaughter? That's
6 really what you're going to have to decide when you
7 listen to this case.

8 The robbery, certainly you could listen to
9 robbery, but it's hard to believe somebody got robbed and
10 they had \$1,600 on them and they just got robbed. Also,
11 there was drugs on this alleged victim and also he had
12 been smoking marijuana that day, so that is what you'll
13 have to listen to, and that is what you'll hear in the
14 next couple days.

15 Thank you.

16 THE COURT: Mr. Solicitor, call your first
17 witness.

18 MR. SIMPSON: Thank you, Your Honor. State
19 calls Abigail McCollum.

20 ABIGAIL MCCOLLUM,

21 having been first duly sworn,
22 was examined and testified as follows:

23 DIRECT EXAMINATION

24 THE WITNESS: Abigail McCollum,

25 M-c-c-o-l-l-u-m.

1 BY MR. DuRANT:

2 Q. Good afternoon, Ms. McCollum.

3 A. Good afternoon.

4 Q. Will you tell the jury where you're employed.

5 A. I'm employed at the College of Charleston right
6 now.

7 Q. What do you do for the College of Charleston?

8 A. I'm doing security right now.

9 Q. Was that where you were employed in April of 2009?

10 A. No, I was at Lieber. I was a correctional officer
11 there.

12 Q. At the state prison in Lieber?

13 A. Yes.

14 Q. How long were you a corrections officer?

15 A. Five years.

16 Q. What were your responsibilities in that position?

17 A. A big responsibility. I worked death row and max
18 and -- just patrolling the population, you know,
19 prisoners.

20 Q. Keep things organized and secured, make sure
21 everything is going right?

22 A. Yes.

23 Q. I want to take you back to April 21, 2009.

24 A. Uh-huh.

25 Q. Do you remember that day?

1 A. Yes, I do.

2 Q. And is there anything in particular why you
3 remember that day?

4 A. Well, the reason I remember that day because it
5 was a nice, hot, sunny day, and I had the air conditioner
6 on and I was waiting for my daughter to bring me my
7 seafood from Ladson Seafood, and there was just -- it
8 wasn't nothing special about that day, I just remember
9 that, you know, during that time.

10 Q. It was a nice day?

11 A. Uh-huh, beautiful sunny day.

12 Q. Where were you living at that time?

13 A. I live at [REDACTED] Clovewood.

14 Q. All right. This is State's Exhibit 52. It's
15 already in evidence. We have stipulated, the defense and
16 I. I want you to take a look at this. It may take a
17 second, but do you recognize this?

18 A. Yeah, my house right here.

19 MR. DuRANT: Your Honor, may I have
20 permission to have the witness step down?

21 THE COURT: That is fine.

22 BY MR. DURANT:

23 Q. If you come down here, I have a laser pointer, and
24 if you press this red thing there, you can just kind of
25 show the jury.

1 I want you to speak up loud and tell the jury what
2 we're looking at here.

3 A. This is my home.

4 Q. Okay. And what is the street --

5 A. My car in the driveway.

6 Q. What is this street here?

7 A. Right here?

8 Q. Yes.

9 A. This is Clovewood.

10 Q. And is this where you were around 2 p.m. on April
11 the 21st of 2009?

12 A. Yes.

13 Q. What were you doing around 4 p.m.?

14 A. I was talking to my mom on the telephone. I
15 decided to come out and wait for my daughter, so I leaned
16 on the back of my car, which is right here, just right
17 here.

18 Q. I'm going to have you stand over here, kind of
19 face the jury so they can hear you, what you're saying.

20 A. Okay. I was leaning on the back of the car,
21 waiting for my daughter to come in because it was taking
22 her quite a while to get here, and I was on the phone
23 talking to my mom at the same time.

24 Q. And tell us what is happening. What do you see?

25 A. As I was talking to my mom, I heard some sounds

1 like fireworks. So I said to my mother, I said, Let me
2 see what these kids are doing. They're doing fireworks
3 around in the front of the door.

4 So I stepped up between right there where the two
5 Christmas trees? Because I can't see where the car is
6 blocking, so I stepped out so I could fuss with the kids.

7 Q. And what did you see?

8 A. I seen this young man, Bernie, running toward me,
9 and before he reach me, he turned around, and when he
10 turned around, he dropped his hat somewhere over this way
11 heading back, but I figured as he was going, I seen a car
12 drifting toward this house right here, next door to me,
13 in the ditch.

14 And as the car was drifting toward the ditch, I
15 said, Oh, my God. He stole it.

16 That's what I thought, someone stole the car, and
17 when he stole the car, he just jumped out and ran.

18 And I heard someone yell, Miss, get off the phone.
19 Someone was shot. Get off the phone.

20 My neighbors come running down the block.

21 Q. What way did they come from?

22 A. Yeah, not -- let me see. Not this house, but the
23 house next door to that.

24 Q. And they came down toward your house?

25 A. Yes, running.

1 Q. The guy that came out, Bernie, did you know
2 Bernie?

3 A. Yes, I did. I had seen him in the neighborhood
4 and I know he's Miss Dorothy's son.

5 Q. Dorothy Green?

6 A. Yes.

7 Q. What was he wearing?

8 A. He was wearing something coordinated with red. I
9 don't know if it was red and white, red and something,
10 but it was, like, coordinated, the hat, the shirt, the
11 pants, everything coordinated together.

12 Q. Which direction did he run when you saw him?

13 A. Okay. He ran from where he was almost to my
14 house, back toward this way.

15 Q. Okay. What did he do when he ran there? What did
16 you see him do?

17 A. I seen him look like he was going toward the car,
18 and I stepped back, to look over back inside my yard,
19 where I could see him more like this way. And then I
20 seen him after he move toward that car, and there is a
21 ditch, or whatever, a little alleyway there goes right in
22 between --

23 Q. In the tree line? Is that thing giving out on
24 you?

25 A. There is something -- it's like a path they go in

1 between, people walk. It's like a shortcut. He ran in
2 there.

3 Q. Let me see that thing. Is it still working good?
4 This area right here?

5 A. Yes.

6 Q. It's not showing up good on there, but --

7 A. He ran into this -- there is a path. It's not
8 near my house. It's in between -- more between the house
9 where the car went in.

10 Q. Okay. What did you initially think when you heard
11 this loud --

12 A. Fireworks. I thought kids were shooting fireworks
13 in the daytime like this in the summer. That is the only
14 think I would think, fireworks this time of day, in the
15 afternoon.

16 Q. What did you want to do when you thought you heard
17 fireworks?

18 A. Fuss with the kids.

19 Q. You were going to fuss with them?

20 A. Yes.

21 Q. You were going to tell them to stop?

22 A. Yes, I sure was.

23 Q. But your testimony was you saw this car rolling
24 toward this way.

25 A. Rolling slow, coasting and going toward the ditch,

1 and I figured when I seen that, Oh, you stole the car and
2 let this car go, and ran out. That is the first thing I
3 thought.

4 And when my neighbor started yelling, Get off the
5 phone, somebody was shot, I couldn't believe that because
6 in a daylight like this.

7 Q. I'm showing you what is in evidence as State's 41
8 now. This is a little bit of a different picture, so
9 take your time when you look at this. And let me know --

10 A. That is my house over there.

11 Q. Okay. Here is the pointer. Can you point out
12 your house?

13 A. The two Christmas trees right at the end of the
14 driveway. That is my car right there.

15 Q. That is your car?

16 A. Uh-huh.

17 Q. And where is this cut line?

18 A. Right there (indicating).

19 Q. And where is the direction that Bernie was
20 running?

21 A. When he first was running, he was running
22 toward -- just like this, toward my way, and he turned
23 around, like he forgot something. And he went back this
24 way, and I backed up to try to go this way. I didn't see
25 what he was doing, and the only thing I seen him go in

1 this -- right there, that cut, that is where everybody go
2 through for a shortcut. They go through that cut.

3 Q. And now I'm going to show you State's 41. Do you
4 recognize that?

5 A. Yes, I do.

6 Q. And what are we looking at here?

7 A. That is over there in Clovewood, the house.

8 Q. Does that show the cut?

9 A. In this direction. I don't go through that cut,
10 but I see it from my house, but I guess that's it.

11 Q. I'm going to show you 89.

12 A. That is the cut. Definitely.

13 Q. That's the cut?

14 A. They take it going into Donwood Drive. That's the
15 path.

16 Q. And this is the area you saw Bernie run?

17 A. Yes, I did.

18 Q. How long had you known Bernie?

19 A. I had known him as Dorothy's son, and he
20 sometimes -- if I'm passing, he said, Hello Ms. Abigail
21 and that was it. I don't really know him to know him.

22 Q. So would you say that your relationship was close
23 or was it distant?

24 A. It was distant.

25 Q. Was he a friend of yours?

1 A. No, he wasn't.

2 Q. Was he even a casual acquaintance?

3 A. No.

4 Q. How long had you known him?

5 A. I had known of him -- I wouldn't say known him.

6 You know how you see the kids walking, and you say, That
7 is Miss Dorothy's son, but I don't know him to know him.

8 Q. Did you know Dorothy?

9 A. Yes, I did.

10 Q. How did you know Dorothy?

11 A. Because Dorothy used to come through the
12 neighborhood, and she tried -- my dog -- Ms. Dorothy came
13 in my driveway to ask me something, and the dog got loose
14 when he was on the chain and he tried to bite her, which
15 she said he nipped her, and she took that to the lawyer
16 and sued me for that.

17 Q. So that is how you knew Dorothy? Did you know her
18 before that?

19 A. Yes, but I don't know -- too many people. They
20 just say, That is Dorothy, and you just hear that, you
21 know, her name and that is Dorothy. That is it.

22 Q. Do you recognize the guy you know as Bernie who
23 you say you saw running down the cut in the courtroom
24 today?

25 A. Yes, I do.

1 Q. Would you point to him?

2 A. Right there (indicating).

3 Q. Describe what he's wearing?

4 A. He's wearing gray suit and a white suit and he's
5 got dreads.

6 Q. Are you positive this the guy you saw running from
7 the car that day?

8 A. Yes, I am.

9 Q. This is the guy who dropped his hat?

10 A. Yes, it is.

11 MR. DuRANT: Let the record reflect the
12 witness has identified the defendant.

13 BY MR. DURANT:

14 Q. I'm now going to show you State's 40. Do you
15 recognize this?

16 A. Not in this position the way it is. Wait a
17 minute. This is where the cut is at. The way you got it
18 situated from my house, I usually see it from that way.
19 The cut is here; and that is the neighbor across the
20 street. That is her car.

21 Q. So this is the cut right here?

22 A. Uh-huh.

23 Q. And this is the ditch?

24 A. Yes.

25 Q. Okay. Do you recognize what this is?

1 A. It looks like a hat.

2 Q. I'm showing you State's 42. Recognize that?

3 A. A hat. He dropped the red hat.

4 Q. Does that appear to be where he dropped the red
5 hat where you saw him?

6 A. I don't know exactly where, but I did see the hat
7 drop from his head.

8 Q. Did you see a gun on Bernie?

9 A. No, I didn't.

10 Q. Did you see a gun on anybody?

11 A. No, because when I went to the car, I stood in the
12 middle of the street, and I was busy trying to call 911
13 to tell them the car, the area, and what I seen was the
14 victim in the car.

15 Q. Did you know Vincent Wittrell?

16 A. No, I didn't.

17 Q. Did you know the man in the car?

18 A. No, I didn't.

19 Q. I'm showing you now what is State's 44. Do you
20 recognize that?

21 A. Uh-huh, yes, I do.

22 Q. Where is your house in relation to this car here?

23 A. Right there.

24 Q. Does that fairly and accurately depict where that
25 car came to rest?

1 A. Yes. The house just before you get to my house,
2 if you're coming from Midway and Clovewood.

3 Q. What was the scene like when you walked out of
4 your driveway and saw Bernie run down the cut? What is
5 everybody else in the neighborhood doing?

6 A. I heard basketball playing, people sitting down
7 the block in the front toward their house, and it was a
8 sunny day that -- people were outside, going about their
9 business, and you would never figure something like this
10 would happen on a day like this, bright sunny day in the
11 afternoon.

12 Q. Did a lot of people start to come out?

13 A. I see my neighbors come running. When I started
14 to come out the driveway, they were telling me to call,
15 and then I seen people eventually come up. It was just
16 me and the neighbors at one time.

17 Q. You called the police?

18 A. Yes, I did.

19 Q. Did they arrive at the scene?

20 A. Yeah, a long time.

21 Q. They were there in force, weren't they?

22 A. Yeah, but a good while. It took them a long time
23 to come.

24 Q. Did they stay there for a while?

25 A. Yes, they did.

1 Q. And blocked off the scene?

2 A. Uh-huh.

3 Q. Did you go up to this car?

4 A. Yes, I did.

5 Q. When did you do that?

6 A. When my neighbors opened the door and they felt
7 for a pulse, I couldn't believe it -- I thought, like I
8 said, I thought someone -- he jumped out the car and he
9 stole the car. I didn't believe somebody was actually
10 shot in the car, so when he opened the door and I seen
11 him laying there, motionless --

12 Q. How many people went into the car to open that
13 door, if you can remember?

14 A. It was just my neighbor because they felt for his
15 pulse, that was it. It was just one, two, three and me
16 was four while they was calling the police.

17 Q. Did you see a gun in this car?

18 A. I -- when I seen him, I just turned away, and I
19 didn't look or anything. I just seen him in there like
20 that, and I just turned away and was talking to the
21 police. I didn't see any gun, but I wasn't looking for
22 no gun. I just looked at this young man in the car.

23 Q. But you didn't notice a gun?

24 A. No, I didn't.

25 Q. Did you know whether anybody had a gun at this

1 point?

2 A. No, I didn't see any gun on anyone.

3 Q. I'm showing you what is State's, I believe, 45. I
4 think this is just a more close-up picture of this car;
5 is that right?

6 A. Yes.

7 Q. And 46, different angle?

8 A. Uh-huh.

9 Q. 47? Did you speak to officers at the scene?

10 A. They were busy walking around, and one, I told
11 him, I talked to them later what I seen. I just didn't
12 want to talk in front of everybody outside.

13 Q. And why was that?

14 A. Huh?

15 Q. Why didn't you want to talk with officers on the
16 scene?

17 A. Because I said whatever I want to discuss with
18 them I would discuss -- there was no reason, but I have
19 grandkids and everybody that, you know, in this
20 neighborhood, and I was looking out for my grandsons
21 being in the neighborhood.

22 Q. You were concerned about them?

23 A. Yes, I was.

24 Q. Did you eventually talk to the police that day?

25 A. Yes, I did.

1 Q. And where did you do that?

2 A. I told them I would meet with -- they called me on
3 the phone. I give him my telephone number, and I told
4 him I would meet with him at Burger King that is off
5 College Park and 78.

6 Q. And did you meet with the officers soon after you
7 told them that you didn't want to talk to them at the
8 scene?

9 A. Yes.

10 Q. Did you have anybody with you when you went to the
11 Burger King?

12 A. My grandson.

13 Q. How old was your grandson?

14 A. Well, he was 11 at the time.

15 Q. Did you provide the officers with a written
16 statement?

17 A. Yes, I did.

18 Q. Where did you write that statement?

19 A. At the table at Burger King.

20 Q. Did it look like you were just having a casual
21 conversation with the officers there?

22 A. Yes, I did. My grandson was eating his Burger
23 King.

24 Q. Did you tell them what they put in the written
25 statement?

1 A. Yes, I did, what I seen.

2 Q. Ms. McCollum, you can resume the seat on the
3 witness stand..

4 I'm not going to have any further questions for
5 you now, but the defense attorney has an opportunity to
6 ask you some questions. I ask that you answer their
7 questions.

8 THE COURT: Mr. Bosnak?

9 CROSS-EXAMINATION

10 BY MR. BOSNAK:

11 Q. Good afternoon.

12 A. Good afternoon.

13 Q. I'll be very brief. Pretty day that day?

14 A. Beautiful day.

15 Q. And you're on the phone talking with your mother?

16 A. Uh-huh.

17 Q. And you hear something that sounds like
18 firecrackers?

19 A. Uh-huh.

20 Q. And correct me if I'm wrong. I was observing by
21 the pictures, it seems like you have some nice trees in
22 your yard. So you didn't -- you just heard something
23 that you thought was fireworks, and you stepped out kind
24 of between these two Christmas trees you call them to see
25 what was going on?

1 A. Yes, that's correct.

2 Q. And if the children were popping firecrackers, you
3 were going to tell them to quit it?

4 A. Yes, I was.

5 Q. And you see this car coming down the road, rolling
6 towards the ditch?

7 A. Uh-huh, yes, I did.

8 Q. And you know Bernard?

9 A. Uh-huh.

10 Q. Through his mother?

11 A. Uh-huh.

12 Q. And you see him running?

13 A. Yes.

14 Q. And he runs through this cut that is across the
15 street from your house?

16 A. He ran toward me and stopped, and then he turned
17 around before -- he didn't just run through the cut.

18 Q. Okay. So he ran toward you, stopped, and then ran
19 toward the cut?

20 A. Uh-huh.

21 Q. Kind of like he didn't know where the cut was or
22 he missed the cut?

23 A. Yes. I don't know what he was thinking. I just
24 seen him running, stop, turn around, and went toward the
25 cut afterwards.

1 Q. And ran down through?

2 A. Yes.

3 Q. And he was on foot?

4 A. Yes, he was.

5 Q. Now, the shooting certainly did not happen where
6 the car ended up in the ditch, did it?

7 A. The shooting -- when I heard the fireworks, I went
8 toward the middle of my driveway, looking around, which
9 was silly, but I did that, thinking it was fireworks.

10 Then I seen him running, but the car was coasting
11 toward the ditch. It hadn't came to a full stop then.
12 It was just -- it was on the grassy part and it was
13 coasting slowly, slowly towards the ditch. That is why I
14 thought he jumped out of the car, stole the car, and was
15 running.

16 Q. But when the car ended in the ditch, there wasn't
17 any more shooting, was there?

18 A. I didn't hear any more shooting.

19 Q. Okay. And you went over there to see what was
20 going on?

21 A. Because I couldn't believe they said someone got
22 shot. I just thought, just like I said, someone
23 jumped -- he jumped out the car and left the car, you
24 know, like it was stolen or something, until they opened
25 the door and I seen him.

1 Q. And someone yelled at you, Somebody is shot? Get
2 off the phone? Call 911?

3 A. Yes, they did, one of my neighbors.

4 Q. And you went over to the car and there was a
5 person shot there?

6 A. Yes, there was.

7 Q. And all your attention was really on that person
8 being shot, wasn't it?

9 A. And talking to 911.

10 Q. So you did call 911?

11 A. Yes, I did.

12 Q. You called 911, so your total efforts was to call
13 911?

14 A. Uh-huh.

15 Q. And then your total efforts were on the person,
16 the young man in the car?

17 A. Right. That was the first thing when the
18 neighbors -- when they open up the door, they went over
19 to him and checked his vital signs, and I was dialling
20 911 at the same time, and I was just watching the victim.

21 And at the time they just said, You got 911? And
22 they got on the phone and I was describing the car, the
23 area where we were at, and that was all I remember at
24 that time at that point.

25 Q. And you said there were three other people besides

1 yourself?

2 A. Yes.

3 Q. And they were all around the car?

4 A. Yes.

5 Q. One checked the young man's pulse?

6 A. Uh-huh, another one was on a cell phone calling
7 911 also.

8 Q. So would it be fair to say that everybody's
9 attention was either on calling 911 or trying to help
10 this young man?

11 A. It was only one person who went to check his vital
12 signs. Everybody was trying to get some help on the
13 phone for this young man.

14 Q. So you get help on the phone, and there was only
15 one person there trying to check the young man's vital
16 signs.

17 A. Yes, sir.

18 Q. All four people were around the car?

19 A. Yes, in the street.

20 Q. In the street, around the car.

21 MR. BOSNAK: No further questions. Thank
22 you.

23 THE COURT: Okay.

24 REDIRECT EXAMINATION

25 BY MR. DURANT:

1 Q. Did you see any of those four people take a gun
2 from that car?

3 A. No, I didn't, sir.

4 Q. Did you see a gun on anybody at that time?

5 A. No, I didn't.

6 Q. When Bernie was running towards you, before he ran
7 to the cut, did he go back to the car?

8 A. When he came toward me, then he turned around, and
9 at that time I went around the bushes to see if I could
10 see where this -- what he was doing, and I see him run
11 back, but then he went toward the ditch.

12 Q. All right. Just want to be clear. I think you
13 probably were, but I just want to be more clear. The
14 first time you saw him, where was he?

15 A. First time he was running toward me, and he turned
16 around and he went to run back, and at that time I went
17 around by -- around the bushes, around the way to see
18 what was going on, and I seen him run toward the cut.

19 Q. Let me have State's -- let's go to -- your house
20 is where?

21 A. This is my house, and this is where the car, where
22 I was at.

23 Q. Now, the first time you saw him, where were you?

24 A. I was coming from the back of this car, heading
25 toward -- between the tree when I heard the fireworks,

1 and he was running from this way and stopped. I don't
2 know actually -- he stopped prior to coming toward -- in
3 front of me.

4 Q. And so where did you go?

5 A. Back over around this way, and I seen him coming
6 back from that -- from by this car and heading toward the
7 ditch.

8 Q. So you're saying when you got around this tree
9 here, you saw him coming back from this car?

10 A. Uh-huh, and then going around through the cut.

11 Q. So he didn't just see you and then run down this
12 cut.

13 A. No.

14 MR. DuRANT: Thank you, ma'am.

15 THE COURT: Recross?

16 MR. BOSNAK: No, no redirect {sic}.

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

18 Next witness?

19 MR. SIMPSON: State calls Dennis White

20 DENNIS WHITE,

21 having been first duly sworn,

22 was examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MR. SIMPSON:

25 Q. How old are you?

1 A. Fifty-eight.

2 Q. What is your occupation?

3 A. I'm unemployed.

4 Q. Where do you live?

5 A. [REDACTED] Clovewood Street.

6 Q. And where is Clovewood Street at is?

7 A. Ladson.

8 Q. So you know if that is in Charleston County?

9 A. Yes, Charleston.

10 Q. Who lives with you on Clovewood Street?

11 A. My fiancée, Cheryl Bond.

12 Q. How long have you lived there?

13 A. This past January, five years.

14 Q. I guess it's fair to say were you living there on
15 April 21, 2009?

16 A. Yes.

17 Q. Do you recall that day?

18 A. Yes.

19 Q. Could you explain to the jury what you were doing.

20 A. It was a nice day, had the house, the windows and
21 the doors, open.

22 Q. And if you could, you obviously know why we're
23 here. Could you explain to the jury what you observed on
24 that afternoon of April 21.

25 A. Standing at my front door just looking out, and I

1 saw Joe walking down the street, small, white colored car
2 pulled up beside him, just started talking to him.

3 Q. I apologize, but when you say they were talking,
4 did you hear what they were saying --

5 A. They weren't talking that loud. I couldn't hear
6 what they were saying. They were right in front of my
7 house.

8 Q. Did they appear animated in any way?

9 A. No. I saw them, like I said, what got my attention
10 I saw them talking, and I turned away. And then heard a
11 popping sound and I turned back and realized he was
12 firing a gun through the window of the car.

13 Q. And which individual was firing the gun?

14 A. The gentleman seated to the table on the left.

15 Q. Was he the one in the car or the one walking?

16 A. The one walking.

17 Q. And he was firing it into the car, you said?

18 A. Through the window of the car.

19 Q. Which window?

20 A. The driver's side.

21 Q. And tell the jury a little bit about your view
22 from your house of when this is going on.

23 A. They were directly in front of my front door. I
24 mean, directly in front.

25 Q. Okay. So you weren't too far away?

1 A. Not very far at all, from here to the table.

2 Q. Am I correct that the shooter would have been on
3 the opposite side of the car?

4 A. Correct the car was between the two of us.

5 Q. Was he standing there?

6 A. He was standing there pointing the gun through the
7 window, firing it.

8 Q. And if you could guess from your observation,
9 about how far was the shooter from the car? Was he some
10 distance?

11 A. I couldn't tell. He was shooting through the
12 window, shooting down, so he was close enough to shoot
13 down.

14 Q. To the best of your approximation, from your
15 view --

16 A. He could have touched the car with his hand. He
17 was that close.

18 Q. He was close enough to touch the car?

19 A. Yes.

20 Q. Were the shots quick?

21 A. Yes, sir.

22 Q. And can you approximate about how many you heard?

23 A. It was quite a few. I don't remember how many. I
24 wasn't counting.

25 Q. More than two?

1 A. More than two.

2 Q. And less than 12?

3 A. It was quite a few. It was continuous.

4 Q. What did you observe the shooter do after he had
5 finished shooting?

6 A. I stepped out of my doorway and was watching him.
7 He ran down through a cut-through facing my house.
8 Left-hand side of the house used to be a drainage ditch
9 down there. I see him ran around the corner. I went to
10 go out of the door to run to the car because it was still
11 sitting right here in front of my house.

12 As I went to step out, he came running back to the
13 car, run around, reached through the driver's window. I
14 don't know what he did. All I know is that when he stood
15 up, the car started rolling.

16 Q. Okay.

17 A. He ran behind the car. I have a shallow ditch in
18 my front yard, approximately maybe two feet deep. He
19 jumped in, dropping a red and black hat, run through the
20 cut-through. I stepped back and looked through my back
21 glass sliding doors to make sure this time he continued
22 on.

23 Q. Right.

24 A. And they went down to the next street, took a
25 right and kept going. I ran out my front door. By then

1 the car had rolled across the road into a ditch across
2 the street, and I ran over and looked in. And to me it
3 didn't look like the gentleman was breathing, but I did
4 not touch anything or anything.

5 Q. You looked into the car?

6 A. I looked into the window.

7 Q. Through what window?

8 A. The driver's window. I saw nothing in his hands.

9 Q. Did you see a gun anywhere?

10 A. I didn't examine the car.

11 Q. Right. But you look looked in it?

12 A. I could see his hands in his lap, okay? So I went
13 directly back to my house. The hat was still there,
14 because nobody had been near it, because I wasn't that
15 far from it, and I stood by the hat until the police got
16 there and started calling 911.

17 Q. Now, we understood that you weren't searching for
18 anything; is that correct?

19 A. No. I was just seeing if the boy was breathing.

20 Q. In these moments after the shooting, did you see a
21 gun anywhere in that car when you looked in that window?

22 A. When I looked in, no, sir. I wasn't looking for
23 one, but I did not see one.

24 Q. And I'm sorry to get you sidetracked, but you
25 said, correct me if I'm wrong, you went back to the hat?

1 A. Yes. I was watching -- I went straight back to
2 the hat so nobody would pick it up or mess with it.

3 Q. Okay. How long did you stay with the hat?

4 A. Until the policemen got there.

5 Q. And about --

6 A. Until, probably, I guess, around 15 minutes, maybe
7 a little longer, because I think there was a shooting in
8 Lincolnville at the time, so they were a little late
9 getting there.

10 Q. You would estimate approximately 15 minutes?

11 A. At least, at least.

12 Q. Did you witness -- describe to the jury a little
13 bit about the scene of the car as you're standing there
14 by the hat.

15 A. Well, it was down in -- the driver's front tire
16 was down in the ditch. It had rolled in. People had
17 come up and was standing there looking in. I couldn't
18 see because I was far enough -- I was not that close to
19 the car.

20 Q. From any point could you see from your observation
21 point anyone rifling through the car?

22 A. No, sir, not that I saw.

23 Q. Did you see anyone leave the area of the car with
24 a firearm?

25 A. No.

1 Q. Mr. White, I want to show you a few pictures, if
2 you don't mind, if you could just turn around a little
3 bit. If you like, you could step down, if you prefer,
4 and I would just like you to describe what we're looking
5 at to the jury. I'm going to show you first what has
6 previously been entered into evidence as State's 25.

7 A. That is my house.

8 Q. And can you describe for the jury again using the
9 picture of where you were as this incident took place?

10 A. I was standing at the front door right here. I
11 have a storm door with a screen and plastic. My wooden
12 door was open.

13 Q. And it appears that your living room windows there
14 are open in the photograph, right?

15 A. Right. My couch is this way against the wall
16 where I was sitting there. I was actually sitting on the
17 couch also.

18 Q. Showing you previously what has been entered into
19 evidence as State's 26, what are we looking at there?

20 A. Same thing, my front door, living room windows.

21 Q. State's 27?

22 A. That is my house also. The hat was -- he dropped
23 the hat right in here.

24 Q. Okay. And I think we can kind of see with the
25 police tape here, is that the cut?

1 A. That is the walk through. When the detective, I
2 believe -- I don't know the first detective, but I told
3 him that he ran down there. There used to be drainage
4 ditch there, which is now covered up, and I said, He ran
5 that way. I don't know if he threw the gun away or what.

6 I couldn't see when he hit the back street, so
7 they taped that off, and I told them about the hat. And
8 Detective Perkins came in the house and took my
9 statement.

10 Q. Let's take a look at State's 40. Can we see any
11 item here that you've talked about?

12 A. Yes, sir. That is the hat right there.

13 Q. And is that the location where it came to rest
14 when it flew off the shooter's head?

15 A. Yeah, because I actually sat on that side of the
16 ditch and waited for the police. Like I said, it took a
17 lot for them to get there.

18 Q. State's 41?

19 A. That is the cut-through. That is the drainage
20 ditch.

21 Q. 42?

22 A. That is the hat.

23 Q. And you stated you stayed there with that hat?

24 A. Yes, sir.

25 Q. From when --

1 A. I did not leave the hat until I had the policeman
2 over there.

3 Q. 89?

4 A. This is also the cut-through. He went down and
5 took a right on to the next street.

6 MR. SIMPSON: Court's indulgence?

7 Mr. White, I have no further questions for
8 you at this time. Please answer anything Mr. Bosnak has
9 for you.

10 CROSS-EXAMINATION

11 BY MR. BOSNAK:

12 Q. Do you recall giving the police a statement that
13 day?

14 A. Detective Perkins.

15 Q. Do you recall giving Detective Perkins a statement
16 that day?

17 A. Right.

18 Q. Do you recall when they're saying that the
19 shooter, when he returned to the car, came and reached in
20 and put the car in gear?

21 A. It's what it looked like. I couldn't tell. All I
22 know is he reached in the car. The car was at a dead
23 stop, and he ran off the first time. It was sitting dead
24 in the road, and it never moved during the shooting. And
25 he ran off, and then he came back. He reached in. I

1 could not tell what he was doing because I stepped back
2 because I was looking, but when he stood up, the car
3 started rolling.

4 I took it for granted either he's knocked it in
5 gear or he moved the body and maybe the guy's foot was on
6 the brake, but the car started moving.

7 Q. But you recall at that time you told Detective
8 Perkins that the male walking then started to run off,
9 then returned to the car, reached in the car, and put it
10 in gear and then ran off again. Do you recall writing
11 that in your statement?

12 A. Yes, sir.

13 Q. And that is what you said in that statement?

14 A. I said it's what it looked like happened.

15 Q. What it looked like?

16 A. Yes.

17 Q. And that day also, do you recall saying that you
18 heard five to six shots?

19 A. I wasn't counting. I know it was more -- I told
20 him it was quite a few shots. I wasn't counting them.
21 I'm sitting there watching somebody get blown away. I'm
22 sorry. I was sitting there ticking them off with my
23 fingers.

24 Q. Yes, sir, I understand, but I'm just trying to be
25 correct on your statement.

1 A. It was at least that many. Like I said, I wasn't
2 counting. It was just multiple shots.

3 Q. Do you need your statement to refresh what you
4 said or do you know?

5 A. Well, I put five or six shots. Like I said, I
6 wasn't counting. I was just telling him I know it was
7 more than two or three and at least five or six. I
8 wasn't counting.

9 Q. Okay. And then you said that the person that did
10 the shooting was six foot to six one in his early 20s; is
11 that correct?

12 A. Yes.

13 Q. And you went over to the car?

14 A. Yes, sir.

15 Q. And what you did really notice, was concentrating
16 on, was this red hat?

17 A. No. The angle his car was at and where I'm at,
18 nobody was in my yard. Nobody was near this hat. I just
19 looked there because the car -- I looked in. I looked to
20 see if he was breathing. I couldn't -- I'm not a doctor.
21 I didn't touch him or feel for a pulse or anything, and
22 then I went straight back to the hat.

23 Q. So what my question was, is, your main focus was
24 nothing happened to the hat.

25 A. Right. I wanted to make sure nobody bothered the

1 hat.

2 Q. And after you checked on this victim, the next
3 thing you did is went to the hat and you stayed with the
4 hat until the policemen came?

5 A. Yes, sir.

6 Q. And you told them what you saw?

7 A. Yes, sir.

8 MR. BOSNAK: Thank you.

9 THE COURT: Redirect?

10 MR. SIMPSON: Thank you, Your Honor, just
11 briefly.

12 REDIRECT EXAMINATION

13 BY MR. SIMPSON:

14 Q. Mr. Bosnak made reference to your statement -- I
15 think in your direct testimony you mentioned this, but
16 when did you give that statement to the police?

17 A. I gave them a statement that same day.

18 Q. And it's the same afternoon as I believe in your
19 words you had seen someone gunned down in the
20 neighborhood?

21 A. Yes.

22 Q. So you admit you approximated -- I believe you
23 were very frank with us, approximated the number of shots
24 you heard.

25 A. Yes.

1 Q. And you also clarified that you couldn't see what
2 the defendant was doing inside the car?

3 A. No, sir.

4 Q. But you did witness him enter the car, reach into
5 the car.

6 A. Yes, sir.

7 Q. And after he reached in, the car began moving.

8 A. Yes.

9 Q. Okay.

10 MR. SIMPSON: I have nothing further, Your
11 Honor.

12 THE COURT: Recross?

13 MR. BOSNAK: No recross.

14 THE COURT: You can step down. Thank you.
15 Call your next witness.

16 MR. DuRANT: Thank you, Your Honor. State
17 calls Debbie Lincoln.

18 DEBBIE LINCOLN,

19 having been first duly sworn,
20 was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. DuRANT:

23 Q. Good afternoon, Ms. Lincoln. Would you tell the
24 jury how old you are?

25 A. Thirty-nine.

1 Q. Are you employed?

2 A. Yes, I am.

3 Q. Where are you employed?

4 A. At Foster's Child Care Development Center.

5 Q. I need you to -- you tend to be soft spoken, but I
6 need you to speak up so that everybody can hear what
7 you're saying, okay? The court reporter has got to take
8 it all down, the jury has got to hear it all, and
9 everybody needs to know what is being said, okay?

10 A. Okay.

11 Q. Would you tell us again where you're employed.

12 A. Foster's Child Care Development Center.

13 Q. What are you responsible for there?

14 A. I take care of kids.

15 Q. Young children?

16 A. Yes.

17 Q. Do you have any children of your own?

18 A. Yes, I do.

19 Q. How many children do you have?

20 A. Four.

21 Q. What are their ages?

22 A. Eleven, eighteen, nineteen, and twenty.

23 Q. Are you currently living in Charleston County?

24 A. No, I'm not.

25 Q. Where were you living back in April of 2009?

1 A. [REDACTED] Clovewood Street, with my brother.

2 Q. Who is your brother?

3 A. Lewis Williams.

4 Q. And you had a minor check fraud conviction in
5 2006; is that right?

6 A. Yes, sir.

7 Q. All right. I want to take you back to April 21 of
8 2009, okay?

9 A. Uh-huh.

10 Q. Do you remember that day?

11 A. Uh-huh.

12 Q. Why in particular do you remember that day? Did
13 something bad happen on the street that day?

14 A. Uh-huh.

15 Q. Where were you that day around 4 p.m.?

16 A. In the house, cleaning.

17 Q. Who were you with?

18 A. My three kids.

19 Q. I'm sorry. Who were you with?

20 A. My three kids.

21 Q. Three of your four?

22 A. Uh-huh.

23 Q. What were y'all doing?

24 A. Cleaning.

25 Q. I'm going to show you behind you State's 53, okay?

1 It's already in evidence. Would you prefer to kind of
2 twist or contort a little bit and look back here. Would
3 you prefer to come down here and look at it?

4 A. Yes.

5 Q. All right.

6 MR. DuRANT: Your Honor, permission for the
7 witness to step down?

8 THE COURT: That's fine.

9 BY MR. DURANT:

10 Q. All right. This picture, which is State's 53,
11 it's already in evidence. Take a second to look at it.
12 Do you recognize it?

13 A. Yes.

14 Q. What is this?

15 A. That's my brother's street.

16 Q. I need to you speak up so the jury can hear you.

17 A. That is where my brother resides.

18 Q. Do you know what this is? Whose house is that?

19 A. That's my brother's house.

20 Q. Is that where you were on April the 21st?

21 A. Yes.

22 Q. That is the house you were cleaning?

23 A. Yes.

24 Q. With your kids?

25 A. Yes.

1 Q. Around 4 p.m.?

2 A. Yes.

3 Q. What do you remember happening as you were
4 cleaning the house?

5 A. I was in the living room, and I noticed this young
6 man walking back and forth, up and down the road.

7 Q. Did you have an opportunity to see what he was
8 wearing?

9 A. He had a red hat on and a black shirt and black
10 shorts.

11 Q. And I'm going to have you use this. Where did you
12 see this young man?

13 A. Walking up and down.

14 Q. I need you to speak up.

15 A. Walking up and down, just back and forth.

16 Q. Did that seem unusual to you?

17 A. Yeah, because it just -- he just kept doing it.

18 Q. What did you do when you saw that?

19 A. I just went back to cleaning.

20 Q. What is the next thing you remember happening?

21 A. Went in the kitchen and started cleaning the
22 kitchen, and my daughter came in, and she said, Mama,
23 them boys are out there shooting.

24 And I said, Shooting? I said, You just don't want
25 to clean that room. Get back in that room and clean your

1 room.

2 And she said, No, mama. I'm serious. Those boys
3 are shooting.

4 And I said, Girl, get in the room and clean that
5 room.

6 So she went back in the room and she came back,
7 and she said, Mama, I'm serious. They're out there
8 shooting.

9 And when I looked up at her she was crying and I
10 knew that she was serious, so I said, Well, come on, and
11 when we got outside, the car was --

12 Q. What did you see when you came outside?

13 A. People, people. Don't know how many, but it was
14 people. So my daughter and I and my two girls and my
15 son, as we were walking towards the commotion, the same
16 guy that was walking up and down the road, he ran past
17 me --

18 Q. Now, what kind of commotion were you seeing?

19 A. People in the road, people were just coming out of
20 their houses.

21 Q. Okay.

22 A. Coming out of their houses, and I saw the
23 passenger side door open --

24 Q. Which way -- show the jury. Point which way you
25 are at your house.

1 A. This way (indicating).

2 Q. And you said you saw the same guy that you saw
3 earlier, and where was he?

4 A. Running past me, into the cut. That's what we
5 call it, cut.

6 Q. How close to you did he get?

7 A. Right about here, right about here.

8 Q. From where I am to you or further away?

9 A. He ran right -- he ran this way, right past me
10 into the cut.

11 Q. Can you show us where the cut is on here.

12 A. It's about here (indicating).

13 Q. What direction was the car traveling that you saw?

14 A. That way (indicating).

15 Q. I'm showing you State's 40. Do you recognize
16 State's 40?

17 A. Uh-huh.

18 Q. And what is that?

19 A. That's the hat the guy was wearing that I saw
20 earlier that day.

21 Q. I'm showing you State's 89.

22 A. That's the cut.

23 Q. I'm showing you State's 42.

24 A. That's the hat.

25 Q. What did you do after the man in the hat ran past

1 you right here?

2 A. I just kept going toward the car.

3 Q. Were any other people at the car?

4 A. Not when I got there.

5 Q. What did the car look like when you got to it?

6 A. The passenger side, the door was open.

7 Q. Do you know whether anybody had been at the car
8 before you got to it?

9 A. No.

10 Q. Did you go to the car?

11 A. Yes.

12 Q. Why did you do that?

13 A. I don't know. I don't know.

14 Q. Is it hard for you to come in here and tell the
15 jury what you know?

16 A. No.

17 Q. Is what you saw difficult?

18 A. Yes.

19 Q. Did you go to the car?

20 A. Yes, I got in the car.

21 Q. I'm going to show you State's 44. Do you
22 recognize that?

23 A. (Nodding.)

24 Q. Would you like to sit down? Do you need a break
25 or would you like me to continue?

1 THE COURT: It's about time for our afternoon
2 break anyway, so why don't we go ahead and take ten
3 minutes right here. Go ahead and go back into the jury
4 room. You can use the rest room. Don't begin any
5 discussions about the case in any way.

6 (In open court, jury not present.)

7 THE COURT: All right. Ms. Lincoln, if you
8 want to go to the rest room, I'll get one of the bailiffs
9 to take you back here. You can't talk to anybody about
10 the case while you're out on this break, okay? Let me
11 see if I can get one of the bailiffs to take you back out
12 there.

13 (Recess taken.)

14 THE COURT: Okay. All right. Defendant is
15 in the courtroom. Bring the jury back in.

16 (In open court, jury present.)

17 THE COURT: All right. Be seated. All
18 right. We'll resume where we left off. Go ahead.

19 MR. DuRANT: Thank you, Your Honor, may it
20 please the Court:

21 BY MR. DURANT:

22 Q. Ms. Lincoln, when we left off, I showed you that
23 photo. I'm not going to put any more photos up with you,
24 but I want to ask you about what was going on, okay? And
25 you said you went up to the car. What did you see when

1 you got to the car?

2 A. A young man on the driver's side.

3 Q. And I need you to speak up because everybody --
4 let me pull this over to you. If you speak into there,
5 it will help project it.

6 A. A young man on the driver's side.

7 Q. Were any of the doors open on the car when you saw
8 them?

9 A. The passenger side door.

10 Q. Which side of the car did you go to?

11 A. The passenger side door.

12 Q. Was anybody at the car when you got there?

13 A. No.

14 Q. And so what did you do when you got to the car?

15 A. I looked around, and I asked, Why isn't anybody
16 trying to help him? And that is when I got in the car.

17 Q. Where did you get in?

18 A. On the passenger side.

19 Q. And what did you see when you got in there?

20 A. He was trying to move.

21 Q. Did you know who was in there?

22 A. No.

23 Q. Ever seen that guy before?

24 A. No.

25 Q. He was in the driver's seat?

1 A. Yes.

2 Q. He was trying to move?

3 A. Yes, he was jerking, like this (indicating), and I
4 told him to stop moving, stop moving. And I just started
5 screaming for somebody to help, call 911, and then I
6 asked somebody what was his name. And they told me his
7 name, and I just started talking with him and holding his
8 hand.

9 Q. Was he able to talk to you?

10 A. No.

11 Q. He wasn't able to say anything?

12 A. No.

13 Q. When you sat down in the passenger seat, was there
14 a gun on the passenger seat?

15 A. No.

16 Q. Did you see a gun anywhere in that car?

17 A. No.

18 Q. So you were telling us you sat with him?

19 A. (Nods head.)

20 Q. Why did you do that?

21 A. I thought it was the right thing to do, because I
22 know he was hurt.

23 Q. Could you see that he was hurt?

24 A. Uh-huh.

25 Q. What did you see?

1 A. Little holes in his shirt, and he had a wound to
2 his hand.

3 Q. Did anybody else come to the car?

4 A. Not that I remember. I was in the car the whole
5 time till he died.

6 Q. Did you stay with him until he died?

7 A. Uh-huh. He squeezed my hand one time, and I
8 prayed with him. And I told him, I said, if it hurts too
9 bad, baby, just let go, if it's too painful.

10 And then he got a stronger pulse. He was
11 fighting, and I said, if it hurts that much, just let it
12 go, baby. And I said, Just grab ahold of God's
13 unchanging hand, and his head went limp on my shoulder.

14 Q. Did you stay with him until the police arrived?

15 A. Yeah.

16 Q. Were you pretty emotional at the scene?

17 A. Yeah.

18 Q. Did you give a statement to the police that night?

19 A. Yes.

20 Q. Were you able to tell them everything you told the
21 jury?

22 A. No.

23 Q. What was your emotional condition that night?

24 A. I was numb.

25 Q. Did you ever see anything like this before?

1 A. (Shakes head.)

2 Q. How are you dealing with it?

3 A. Not good.

4 Q. Are you talking to anybody about it?

5 A. I'm getting ready to.

6 Q. What was that?

7 A. I'm getting ready to.

8 Q. I'm just going to ask you one more question. Did
9 anybody reach into that car and take something out of
10 that car when you were there?

11 A. No.

12 Q. You never saw a gun there?

13 A. No.

14 Q. I'm going to let defense counsel ask you some
15 questions now, okay? Thank you.

16 THE COURT: Mr. Bosnak?

17 MR. BOSNAK: Your Honor, no questions for the
18 witness. She's had enough.

19 THE COURT: Ma'am, you may step down. All
20 right. Call your next witness.

21 MR. DuRANT: State calls Johnny Booker.

22 JOHNNY BOOKER,

23 having been first duly sworn,

24 was examined and testified as follows:

25 DIRECT EXAMINATION

1 BY MR. DURANT:

2 Q. Mr. Booker, good afternoon. Will you tell the
3 jury how old you are?

4 A. I'm 28.

5 Q. And are you employed?

6 A. Yes, sir.

7 Q. Where are you employed?

8 A. Vector Security.

9 Q. What is that?

10 A. It's a home security alarm company.

11 Q. What do you do for them?

12 A. Sales.

13 Q. Where do you live?

14 A. In Woodside Manor.

15 Q. Specific address?

16 A. [REDACTED] Clovewood Street.

17 Q. Were you living there on April the 21st of 2009?

18 A. Yes, sir.

19 Q. Do you remember that day?

20 A. Yes, sir.

21 Q. And any reason in particular?

22 A. Yes, sir. The murder.

23 Q. Something bad happen on that street that day?

24 A. Yes, sir.

25 Q. Where were you around 4 p.m. that afternoon?

1 A. I had just woke up from a nap, and my roommates
2 were outside playing basketball, and I had just walked
3 outside.

4 Q. Who were your roommates?

5 A. Robert Rusch.

6 Q. Was anybody else there at the house with you?

7 A. Yes, sir.

8 Q. Who was there?

9 A. Maggie Showalter and Jason King and Dallas Kane.

10 Q. And where were you all playing basketball?

11 A. Directly outside the house.

12 Q. I'm going to show you State's 51. I'm going to
13 come up behind you. Take a second to look at that, get
14 oriented with it. Let me know when you recognize it, if
15 you recognize it.

16 A. Yeah, that's the Quick Mart.

17 Q. Right here?

18 A. Yes, sir.

19 Q. Okay. And what is this?

20 A. That's Clovewood Street.

21 Q. Okay. Now, do you recognize your house on here?

22 A. Yes, sir. I'm right up in that area.

23 Q. Around in here?

24 A. Yes, sir.

25 Q. Where were y'all playing basketball, on this side

1 of the street or that side?

2 A. Where you're pointing right now, on the right-hand
3 side.

4 Q. I'm going to let you point.

5 A. My house is right around in this facility
6 (indicating).

7 Q. Are you able on the diagram to show which one it
8 is?

9 A. I can't really tell, but I believe it looks like
10 the red Accura and that looks like my neighbor James, and
11 if that is my neighbor James, that is my house right
12 here, and then the basketball goal is right here.

13 Q. We've been talking about a pathway, or a cut, from
14 Clovewood?

15 A. That is further down the street. They actually
16 filled it in, but I'm guesstimating it's right in here
17 because it's right down the street. Yes, sir, and it
18 cuts to the second street of the neighborhood.

19 Q. I think that was the cut. So y'all are out there
20 playing basketball, and what happens? What is the first
21 thing you remember happening?

22 A. All I heard was these pops, and it honestly
23 sounded like firecrackers. And then my roommate actually
24 kind of panicked and said, you know, Run in the house.
25 That was gunshots.

1 And I thought to myself, Man, it's 4:00 in the
2 afternoon in broad daylight. I don't think they're
3 shooting nobody.

4 Q. Let me ask you this: Did you see any cars on the
5 street?

6 A. Yes, sir.

7 Q. Before the shots?

8 A. Yes, sir. There was a gold car, yes, sir.

9 Q. What --

10 A. I didn't pay that much attention. I just seen a
11 gold car.

12 Q. What direction was it traveling?

13 A. It was on the right-hand side. Like, if we were
14 facing the goal, it was on the right-hand side down the
15 street.

16 Q. On the map here, is it coming from the bottom of
17 the map to the top?

18 A. The car came up the street this way and then
19 pulled over, but they were in the middle of the street
20 first, and, like I said, I didn't pay much attention to
21 it first until after I heard gunfire and then that, of
22 course, made us look down the street.

23 Q. What did you see when you looked down the street?

24 A. I seen a gentleman running from the scene, and I
25 seen their hat fall. Then I seen a gentleman turn

1 around, come back to the vehicle. It looked like he
2 ransacked his pockets and then proceeded back towards the
3 cut, and then that's when I ran down the street.

4 Q. Were you able to see what this person that you saw
5 running from the car was wearing?

6 A. Yes, sir.

7 Q. What was he wearing?

8 A. Black -- all I seen was black jeans. I don't
9 recall the shirt, but I know he was wearing a black and
10 red hat as well, bright red.

11 Q. And you say he ran away from the car and then ran
12 back?

13 A. Yes, sir.

14 Q. And then ran away again?

15 A. Yes, sir.

16 Q. Which way did he run away again when he left for
17 good?

18 A. The cut. Both times he started running down the
19 cut, turned around, ran back to the car, then proceeded
20 to go back to the cut.

21 Q. When you say you heard what sounded like
22 fireworks, did you just hear it, or did you see where it
23 was coming from?

24 A. Well, it happened so quick after hearing it.
25 Like, while I heard it, I wasn't actually in the street

1 so I could not automatically look, but then I seen my
2 roommate run towards me and say, Run in the house, you
3 know. There was gunfire.

4 And I was talking to myself like, No, I'm not
5 going to run. I don't think nobody will be shooting
6 nobody in broad daylight, so that is when I proceeded to
7 go out to the street and looked to the right, and that is
8 when I seen the gentleman running.

9 So then that's when I ran towards the car, after
10 the gentleman had already left, obviously, because he had
11 a gun.

12 Q. Did you see him with a gun?

13 A. No, sir. I did not see the gun at all.

14 Q. All you heard were loud noises that sounded like
15 fireworks?

16 A. Yes, sir, but it was obviously gunshots because I
17 was the first person to that car.

18 Q. Tell us about that. Did you run down to the car
19 after he ran away?

20 A. Yes, sir. I was actually going to run after the
21 suspect so I knew he had a gun, so I was, like, Forget
22 that.

23 So that is why I ran to the car. I opened up the
24 car, the passenger side, because the car had rolled into
25 the ditch after the gentleman was shot --

1 Q. So you opened the passenger side door?

2 A. Yes, sir.

3 Q. Was anybody at that car before you got there?

4 A. No, sir, not besides the suspect that did the
5 murder.

6 Q. So you were the first person to get in that car?

7 A. I was very first person to the car.

8 Q. Did you see a gun inside that car?

9 A. There was no gun present.

10 Q. No gun on the passenger side seat?

11 A. No, because I actually put my knee on the
12 passenger seat, to lean over to check the gentleman's
13 pulse.

14 Q. Did he have a pulse?

15 A. He did have a pulse, but it was definitely
16 deteriorating quickly.

17 Q. Any of your friends or roommates, did they run
18 down there with you?

19 A. Yes, sir. Robert Rusch was right behind me.

20 Q. He was there when you opened that door?

21 A. Yes, sir, and then not even about -- within
22 minutes later, the whole street was completely -- had a
23 bunch of people from the neighborhood all over the place,
24 but it took the police a little while to get there, but
25 they had other priorities and things they were doing, as

1 far as another -- I think there was a kidnapping or
2 something they were attending to, and that is why it took
3 them so long to get here. But by the time the police
4 officers got there, the gentleman was dead on the scene.

5 Q. It seemed like a while it took the police to get
6 there?

7 A. It did. It seemed at least about 25, 30 minutes
8 because I was standing outside the car, most of the whole
9 time.

10 Q. And did you stay at the scene?

11 A. Yes, sir.

12 Q. Till the police arrived?

13 A. Yes, sir.

14 Q. Did you tell the police what you knew?

15 A. Yes, sir, and I filled out a statement, all that
16 stuff.

17 Q. So you gave them a written statement?

18 A. Yes, sir.

19 Q. His hat, you said the guy was wearing a hat.

20 A. Yes, sir.

21 Q. What, if anything, did you see happen with that
22 hat?

23 A. Whenever the suspect started running, it fell off
24 his head, and it landed kind of catty corner in a ditch.
25 If I'm not mistaken, the hat was still there. My -- one

1 of the neighbors across the street from that actually
2 stood by the hat as well to make sure nobody touched it.

3 MR. DURANT: Thank you, sir. Please answer
4 any questions the defense may have.

5 THE COURT: Mr. Bosnak?

6 MR. BOSNAK: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. BOSNAK:

9 Q. Johnny, do you recall giving a written statement?

10 A. Yes, sir.

11 Q. To the police?

12 A. Yes, sir.

13 Q. I think you wrote it yourself, didn't you, hand
14 wrote it?

15 A. I sure did, yes, sir.

16 Q. Three pages?

17 A. Yes, sir.

18 Q. And I think at the top it started at 5:44 and you
19 ended at 6:33 is that correct?

20 A. Yes. It took a while. I was sitting out there
21 for a long time.

22 Q. Let me show you. Tell me if I have got the
23 correct documents.

24 A. Yes, sir.

25 Q. Take a look at them. Make sure everything is

1 straight.

2 A. Yes, sir. These are mine.

3 Q. Now, you knew Vincent, correct?

4 A. Not really. I knew he hung out next door at my
5 neighbor's house and we were kind of like, Hey, how are
6 you doing type people. He asked to park in my yard
7 occasionally, but we never, like, hung out hung out.

8 Q. You knew his nickname?

9 A. Yes, sir.

10 Q. So you've seen him in the neighborhood?

11 A. Yes, sir.

12 Q. And according to the statement, it says that you
13 were taking a nap, and about 4:25 you started watching
14 your friends -- you woke up from your nap about 4:25.
15 You started watching your friends playing basketball?

16 A. Yes, sir.

17 Q. And that is when you heard the gunshots?

18 A. Yes, sir.

19 Q. And saw the driver getting shot?

20 A. Correct.

21 Q. And you also say in here that you did return and
22 open the passenger door and check for a pulse. You said
23 at that time that the shooter was a black male, five
24 eleven to six feet; is that correct?

25 A. Yes, sir. I was guesstimating that.

1 Q. That was the description you gave the police at
2 the time?

3 A. Correct.

4 Q. And you said a minute ago that you saw the
5 defendant ransack, going through the man's pockets,
6 ransacking the person's pockets?

7 A. Yeah. When I had ran to the car -- because
8 whenever he initially left and ran back, he was in the
9 car and then he ran away. I was the first one to the
10 car, and as soon as I got in there, I seen his pockets
11 kind of -- you could tell they were ransacked and pulled
12 through.

13 Q. I think you said you checked for a pulse and
14 noticed he was dying and his pocketed were disturbed.

15 A. Yes, sir.

16 Q. I think that is the word you used. Would that be
17 fair and accurate?

18 A. Yes, sir.

19 Q. And then you say -- hold on a minute -- that you
20 saw him reach back in the car.

21 A. Yes, sir.

22 Q. You said go through the window and grab something
23 off the victim.

24 A. Yeah. I don't know what it was.

25 Q. You saw him grab something, but when you got in

1 the car, you felt like the pockets had been ransacked?

2 A. They were definitely ransacked, without a shadow
3 of a doubt.

4 Q. What do you mean by ransacked?

5 A. Basically, the suspect in question ransacked the
6 fellow that got murdered.

7 Q. How do you know that? You didn't see that.

8 A. No, you're right, but, I mean, he was the only one
9 there when he ran away.

10 Q. You're assuming he was the only one?

11 A. I know 100 percent without a doubt he was the only
12 one there.

13 Q. First you said he reached in the car and got
14 something. Then when you got in the car and said his
15 pockets were ransacked, you're guessing, you're
16 guessing --

17 A. I'm guessing that is what he went back for
18 initially. He could have did it on the first go round
19 then when he came back to the car to grab something else,
20 but I know at that time, within that time period, he had
21 ransacked his pockets.

22 Q. What do you mean, taking things out of his
23 pockets?

24 A. Yes, sir.

25 Q. What had he taken out?

1 A. I don't know, money. Whatever the suspect could
2 have had in his pockets.

3 Q. So you know for exact -- you know for certain --

4 A. I know what a pocket looks like definitely when
5 it's --

6 Q. You know for certain?

7 A. Because it was pulled inside out almost.

8 Q. So there was nothing inside his pockets, just like
9 this?

10 A. Not completely -- the items were taken out and it
11 was partially pulled out, but yeah, you could tell.

12 Q. Wasn't anything in the pocket?

13 A. I don't know. I didn't completely search. I
14 didn't pat him down.

15 Q. You said he was ransacked, and you said his
16 pockets were pulled out, and you're saying they're pulled
17 out like this?

18 A. Yes.

19 Q. You're saying there could have been something in
20 them?

21 A. There had to be something in them. Why would he
22 pull his pockets out? Or he was checking for something
23 in his pockets.

24 Q. But my question, there wasn't anything in his
25 pocket. My pocket, this pocket, is pulled out like this

1 (indicating). I don't have anything in my pocket now?

2 A. Correct.

3 Q. So his pockets were pulled out?

4 A. Yes, sir.

5 Q. So he didn't have anything in his pockets?

6 A. Not by the time I was there, no, sir.

7 Q. So by the time you got there --

8 A. His pockets were already emptied out.

9 Q. His pockets were pulled out and there wasn't
10 anything in them?

11 Okay. No further questions.

12 THE COURT: Redirect?

13 REDIRECT EXAMINATION

14 BY MR. DURANT:

15 Q. How long were you at the car?

16 A. The entire time after the suspect ran away from
17 there.

18 Q. Did you always stay inside the car?

19 A. Not the entire time, but I was the first one
20 there. I checked for a pulse. I noticed that the
21 victim's car, this cell phone was ringing, and so I then
22 grabbed his cell phone and stood outside of the car and
23 spoke to the people that were calling his cell phone,
24 asking them where he was heading at the time or who he
25 might be getting up with because I'm 100 percent sure the

1 suspect talked to the victim before they met, obviously.

2 Q. You said you saw his pockets were disturbed.

3 A. Yes, sir.

4 Q. Did you feel the pockets?

5 A. No, sir. I could see -- I just looked right down.

6 I could see as soon as I opened up the car door.

7 Q. But you never put your hand on the pocket?

8 A. No, sir.

9 Q. On either of his pockets?

10 A. Only thing I checked was the victim's neck to
11 check for a pulse.

12 Q. So by your sense of touch, you weren't able to
13 determine if there was anything those pockets?

14 A. Correct.

15 Q. And your testimony was you were the first one in
16 the car?

17 A. Yes, sir.

18 Q. And there was no gun in that car?

19 A. There was no gun present in that vehicle.

20 Q. About how far away were you when you saw the guy
21 that ran from the car?

22 A. Maybe 20 yards.

23 Q. Okay. Would you think on that street would have
24 been one house, two houses away or --

25 A. Yeah, about two, two-and-a-half, three houses

1 away, right directly down the street.

2 Q. And you gave the best description you could to
3 police?

4 A. Yes, sir. I hadn't seen the gentleman that killed
5 him. I couldn't point him out in a lineup, but I seen
6 what I saw, yes, sir.

7 Q. Weren't able to point him out in a lineup, were
8 you?

9 A. No, sir.

10 Q. You were shown the lineup?

11 A. Yes, I was.

12 Q. But you didn't identify him?

13 A. I didn't know the gentleman at all. Never seen
14 him before.

15 MR. DuRANT: Thank you.

16 THE COURT: Recross?

17 MR. BOSNAK: No, Your Honor.

18 THE COURT: You can step down. Thank you.
19 Next witness?

20 MR. SIMPSON: State calls Robert Rusch.

21 ROBERT RUSCH,

22 having been first duly sworn,
23 was examined and testified as follows:

24 DIRECT EXAMINATION

25 BY MR. SIMPSON:

1 Q. Good afternoon. How old are you?

2 A. I'm 23 years old.

3 Q. And what kind of educational background do you
4 have?

5 A. Actually, I just graduated, and I'm currently a
6 manager at Pizza Hut right now.

7 Q. Where did you graduate from?

8 A. Trident Technical College.

9 Q. That was real recently, wasn't it?

10 A. Yes, sir.

11 Q. Congratulations. Where did you live back in April
12 of 2009?

13 A. I lived in Woodside Manor.

14 Q. And who did you live with?

15 A. Johnny Booker.

16 Q. And do you recall the street y'all lived on?

17 A. Clovewood Street.

18 Q. How long did you live there with Johnny?

19 A. I moved in there at the end of January and moved
20 out at the end of April.

21 Q. So you moved out shortly after the incident on
22 April 21st?

23 A. Yes, sir.

24 Q. If I could, if you could just spin around a little
25 bit, I'm showing you what has been already been

1 introduced into evidence at State's 51. Do you recognize
2 what that picture depicts?

3 A. I do.

4 Q. And what is that?

5 A. A picture of 78, and this is Clovewood.

6 Q. And where did you and Johnny live, approximately?

7 A. At the end of the street.

8 Q. Okay. Let's see. We're having some laser pointer
9 issues today. Is that red dot approximately where Johnny
10 Booker and you lived?

11 A. Yes, sir. Someone with kind of an addition on the
12 back of their house.

13 Q. What were you doing earlier that day on the 21st?

14 A. On April 21st, me and my, roommate Johnny Booker,
15 we were playing basketball outside.

16 Q. At about what time was this?

17 A. It was approximately between 4:00 and 5:00.

18 Q. And where did you have the goal set up?

19 A. At the end of the driveway.

20 Q. So the actual playing surface you were using, was
21 that the street?

22 A. Yes, sir. We were playing in the road.

23 Q. And who all was there?

24 A. It was me, my roommate, Johnny Booker, my other
25 roommate Dallas, and Jason had showed up towards -- I

1 think almost towards, I guess, kind of the end of the
2 game.

3 Q. Is the Jason you're referring to Jason King?

4 A. Jason King, yes, sir.

5 Q. Did he show up just before the incident to your
6 recollection?

7 A. Yes, sir.

8 Q. I would like, if I could, to just have you explain
9 to the jury what you observed that afternoon, what
10 interrupted your basketball game.

11 A. During the afternoon of April 21, 2009, me and my
12 roommates were outside playing basketball, and as we
13 normally do, as cars come down the road, we stop and we
14 see if they're either going to pull off into their
15 driveway or keep going, so the car stopped on the side of
16 the road.

17 Q. What kind of car was that, if you remember?

18 A. It was a gold Toyota Camry.

19 Q. Okay.

20 A. And the car pulled off, so we proceed to play
21 basketball, and after, I would say, probably about ten
22 seconds later, I heard three shots --

23 Q. So this was ten seconds after you had seen the
24 car --

25 A. It was definitely -- it was not that long after.

1 Q. Okay.

2 A. I seen three shots -- I heard three shots, and
3 that is what really got my attention to look down there,
4 and after I looked down there, I came to the realization
5 that somebody was holding a gun into the car and shooting
6 the victim and --

7 Q. And you observed that?

8 A. I observed it.

9 Q. And the person shooting, where was he?

10 A. He was standing outside of the driver's side
11 window of the car directly pointing the gun into the car
12 at Bernard --

13 Q. At the driver?

14 A. At the driver and was -- proceeded to shoot him, I
15 think, six more times.

16 Q. Is that an approximation?

17 A. Approximately, six or seven more times, and it was
18 a lot of shots. And as that happened, it happened so
19 fast that I --

20 Q. Let me demonstrate here. This is the car and this
21 is, I suppose, the height of an average driver's side
22 window. Just move me about how far do you see, closer?

23 A. Yeah, definitely probably around there
24 (indicating). It was point blank.

25 Q. From down the street you see about this distance

1 firing into the car?

2 A. Yeah. Pretty point blank range.

3 Q. How did you react to this?

4 A. I was pretty startled and scared. I never
5 witnessed anything like this in my life. I really didn't
6 know what to do, and my roommate, Johnny Booker, was
7 starting to run down toward the house. And I told him to
8 hold on because I actually have two pistols of my own,
9 and when the situation comes like that, my first thing is
10 to make sure I am safe, so I went inside and I grabbed my
11 gun --

12 Q. What did you do with your gun?

13 A. I put in the back of my pants.

14 Q. Was it visible?

15 A. No, it wasn't visible to anybody. Nobody knew,
16 you know.

17 Q. And your purpose was for self-defense?

18 A. Obviously, when I was a witness to somebody
19 shooting inside of a car, my first instinct is to protect
20 myself, and if I'm going to go down anywhere that
21 somebody has a gun, I want to make sure I'm able to
22 protect myself as well as help somebody out in need.

23 Q. How long -- did it take a long time to go in and
24 get that and come back out?

25 A. No, sir. Both of my pistols were inside of my

1 drawer. It was right next to my bed, and we always kept
2 the door open to the house when we were outside playing
3 basketball, so I ran inside, and on my way inside, I told
4 Johnny to hold on. Ran inside. In a split second, as I
5 run inside, grabbed my pistol, tuck it into my pants, I
6 ran down the street.

7 Q. Where is Johnny when you're running now?

8 A. He actually waited on me, and then we run down the
9 street.

10 Q. Was he running in front of you, behind you?

11 A. He was running in front of me.

12 Q. Okay. Do you see the gold Camry as you're running
13 down the street?

14 A. I do see the gold Camry. As I'm running down the
15 street, just from my own knowledge, it seems to me that
16 the driver had lost consciousness and his foot slipped
17 off the brake, and that is when the car veered into the
18 ditch.

19 Q. So it had gone into the ditch?

20 A. Yes, sir.

21 Q. From the time you heard the first shots to the
22 time you're describing now when you're approaching that
23 car, how long are we talking about, approximately?

24 A. I would say probably 15, 20 seconds.

25 Q. It's a quick period of time?

1 A. Yeah. It was more -- everything was kind of
2 moving in slow motion. Your brain is trying to
3 rationalize what happened and what to do while you're
4 thinking about what happened.

5 Q. And as you're coming down the street, you say your
6 roommate, Johnny, is in front of you?

7 A. Yes, sir.

8 Q. Is there anyone other than the driver -- is there
9 anybody at the car?

10 A. As I can recall, me and Johnny were the first ones
11 on the scene of the car. I was a little startled. I
12 didn't go into the car. Actually, I was by while Johnny
13 put his knee on the back of the seat.

14 Q. Did he -- did Johnny enter the car?

15 A. John entered the car.

16 Q. Through what side?

17 A. Passenger side door.

18 Q. Did you see him open the door?

19 A. I seen him open the door.

20 Q. Okay.

21 A. Johnny opened the door. If you're going to help
22 somebody in the driver's seat, you put your knees on --
23 you don't sit in. You put your knees on the seat, and he
24 pertained {sic} to take care of the victim and he checked
25 his pulse. Johnny said that he was still breathing, but

1 he was non-responsive.

2 Q. Did you see Johnny get out of the car at that
3 point?

4 A. I did see Johnny get outside of the car.

5 Q. If I could back track you a little bit, back to
6 the guy you saw firing into the car, did you see him
7 again when you came back out?

8 A. I did see him again. By the time, like I said,
9 whenever he got done shooting the victim, that's really
10 when I was running into the house. By the time I came
11 outside, he was running across toward the cut, through
12 the first and second street.

13 Q. Okay. And the cut-through, what is that?

14 A. The cut-through is a little pathway, like -- I
15 guess the sewage line runs through the first and second
16 street, and it's divided between two houses, so there is
17 an alleyway between the first and second street.

18 Q. Did you see any item of the shooters?

19 A. Yes, I did. I seen a red laying on the left side
20 of the road coming from Johnny's house.

21 Q. When you and Johnny got up to the car, I believe
22 you mentioned you didn't go inside. Did you look in the
23 car?

24 A. Like I said, I was really startled by the whole
25 situation. I've never been around anything like this.

1 I've never seen nothing like this, so it was very
2 traumatizing to me, to witness something like this. I
3 did not really -- I looked into the car and I seen the
4 victim laying there with his tongue hanging out, to be
5 dead, seemed to be to me, and I didn't notice anything.
6 I didn't see --

7 Q. Did you see a gun at all?

8 A. I did not see a gun.

9 Q. Did you stay in the area of the -- I should ask
10 you, how long did you stay in the area?

11 A. I stayed in the area the whole time.

12 Q. Until the police arrived?

13 A. Until the police came and said we need to leave,
14 and a separate officer came to get our statements.

15 Q. While you were there in the proximity of that
16 vehicle, until the moment the police arrived, did you see
17 anybody rifle through that car?

18 A. No, sir. The only person I seen there was the
19 lady. I can't recall her name, but she was holding him
20 and praying with him.

21 Q. And so she got in the car after Johnny got in the
22 car?

23 A. Yes.

24 Q. And you saw her get in the car?

25 A. I seen her get in the car and she was just -- she

1 was really hysterical, crying.

2 Q. Did you ever, until the police arrived, see anyone
3 other than your roommate, Johnny Booker, and the lady
4 you've just described who prayed with the victim get into
5 that car?

6 A. No, sir.

7 Q. Did you at any time see anyone take a firearm from
8 the area of the car?

9 A. No, sir. There was no gun to my knowledge around
10 or near the vehicle.

11 Q. And you were there in that -- were you in a
12 position to observe the car that whole time from when you
13 first get there until the police arrived?

14 A. Yes, sir. I was standing behind Johnny as he
15 opened the door and as he went into the vehicle to check
16 the guy's pulse, and I was just standing there, just
17 basically dumbfounded about the whole situation.

18 Q. Robert, back to when you first heard the shots,
19 were they all in instant succession or --

20 A. As it seemed, the first three shots were when I
21 actually looked down there, and then it just kind of
22 seemed everything went to slow motion, and it seemed to
23 me that it went to the realization of what he understood,
24 what he was doing, and then he proceeded to keep
25 shooting.

1 Q. So you do recall -- you recall -- I don't want to
2 put words in your mouth, but a brief pause between the
3 first three and the --

4 A. There was a pause. It was either in my head or in
5 my mind, but there was a pause between the three shots
6 and the other six or seven that I recall because that was
7 the time that I was actually being startled and thinking
8 about what was actually going on.

9 Q. And I believe you briefly testified that putting
10 an ex -- can you put an exact number to the total number
11 of shots you heard?

12 A. It was nine or ten shots. I know about the three,
13 and that is when I actually realized and looked down on
14 the street, and there was six or seven shots, but at that
15 time I was really startled and running towards the house.

16 Q. Okay.

17 MR. SIMPSON: Thank you, Mr. Rusch. Please
18 answer any questions Mr. Bosnak has for you.

19 THE WITNESS: Yes, sir.

20 CROSS-EXAMINATION

21 BY MR. BOSNAK:

22 Q. You claim you were outside playing basketball?

23 A. Yes, sir.

24 Q. And all of a sudden you hear some shots.

25 A. Yes, sir.

1 Q. And you automatically know they're gunshots?

2 A. Like I said, actually, I have two pistols of my
3 own --

4 Q. No, you automatically recognized them as gunshots?
5 Yes or no.

6 A. Yes, sir. I was getting to the point that I go to
7 the shooting range a lot and --

8 Q. Yes or no.

9 MR. DuRANT: Your Honor, can he answer the
10 question?

11 MR. BOSNAK: I'm asking a yes or no question.

12 THE COURT: Answer the question. If you need
13 to explain your answer, you can explain your answer, but
14 do answer the question he asked first. If you feel you
15 need to explain, you can.

16 THE WITNESS: Yes, sir. I did hear the
17 gunshots, and the reason why they came to me that they
18 were gunshots is that I have two pistols of my own and I
19 go to the gun range, so I'm pretty familiar with the
20 sound of a gun.

21 BY MR. BOSNAK:

22 Q. Okay. And you said this happened in about ten
23 seconds, is what your testimony was earlier?

24 A. Yes, sir. It was very quick.

25 Q. Very quick, and you heard -- would you tell the

1 solicitor how many shots you heard?

2 A. Nine to ten shots.

3 Q. In ten seconds?

4 A. Yes, sir.

5 Q. And then what you did is you ran into your -- and
6 you said you had never seen anything like this before.

7 A. Never have in my life.

8 Q. And scared you?

9 A. Yes, sir.

10 Q. And distraught?

11 A. Yes, sir.

12 Q. And what you did is you ran into your house and
13 you got one of your pistols.

14 A. Yes, sir, for my protection.

15 Q. For your protection. You didn't call the police.

16 A. Actually, as I was down, the first thing they said
17 was, Call the police, Jason King, call the police as soon
18 as that happened.

19 So that was my first instinct was to protect
20 myself, and if I'm a witness to something like that, the
21 first thing is, I'm in danger by somebody seeing me
22 witness something like that.

23 Q. Okay.

24 A. That's my first instinct.

25 Q. Let get it straight now because you changed your

1 story. First of all, you heard ten gunshots in ten
2 seconds and you ran into the house to get your gun.

3 A. Yes, sir.

4 Q. But now you're telling us that you stopped and
5 somebody said, Call 911.

6 A. That is when they were screaming.

7 Q. And somebody called 911?

8 A. Yes, sir.

9 Q. And then you went into the house and got your gun?

10 A. That was on the way into the house, sir.

11 Q. So they're saying 911, and you're running into the
12 house.

13 A. Yes, sir.

14 Q. And you go get your gun.

15 A. Yes, sir.

16 Q. Not knowing what the situation is.

17 A. No, sir.

18 Q. Not having any idea what's going on.

19 A. No, sir.

20 Q. And you get your gun. You say you got two guns?

21 A. Yes, sir.

22 Q. What kind of gun do you have?

23 A. I have a 38 and a 9 millimeter.

24 Q. So you have a 38 and a 9 millimeter?

25 A. I sure do.

1 Q. Which gun did you get?

2 A. I grabbed my nine millimeter.

3 Q. You grabbed the nine millimeter. You don't sit in
4 the house, do you?

5 A. No, sir.

6 Q. You don't wait on the police?

7 A. No, sir.

8 Q. You get a gun?

9 A. Yes, sir.

10 Q. And then you go down to a potential shooting and
11 inject yourself into it, correct?

12 A. My whole emphasis on this is somebody is in danger
13 and they just were getting shot at, and if I can help
14 somebody, that's what I want to do.

15 Q. Even if you have to use your gun?

16 A. If that is what it takes.

17 Q. And during this whole period, then you get down
18 there in what you said, 15, 20 seconds?

19 A. Yes, sir.

20 Q. And it's just you and Johnny around the car.

21 A. And the lady -- after we got down there and Johnny
22 opened the passenger side door and hopped into the
23 vehicle and checked his pulse, it all happened so fast.

24 I didn't see where the lady came from that was holding
25 him and praying with him, but I do recall that she got

1 there after us.

2 Q. Now, you said you didn't ever get in the car.

3 A. No, sir.

4 Q. Didn't go around the car?

5 A. I was standing right behind Johnny. I was too
6 startled to go into the vehicle.

7 Q. Well, if Johnny is in the vehicle and he's got his
8 knees in the floorboard taking somebody's pulse --

9 A. He didn't have them on the floorboard. He was on
10 the seat.

11 Q. He's got his knees on the seat. He has his hands
12 on the pulse. There is nowhere for you to get except
13 right behind him?

14 A. Yes, sir.

15 Q. So you are near the car?

16 A. I said I was near the car until the police came.

17 Q. You're near the car.

18 A. Yes, sir.

19 Q. You didn't search under the seats, did you?

20 A. That's correct.

21 Q. Didn't go through the back seat or anything like
22 that, did you?

23 A. No, sir.

24 Q. You just sat there. And you said all this took
25 10, 20 seconds?

1 A. It took 15 to 20 seconds.

2 Q. Fifteen to twenty seconds, and nobody else came
3 outside. They were just you -- let me ask the question,
4 you, Johnny, correct?

5 A. Yes, sir.

6 Q. The lady that was -- another lady came out there
7 and got in and prayed with him?

8 A. Uh-huh.

9 Q. And that was all the people that were out there?

10 A. No, sir. Actually, well, nobody was really close
11 to the car besides me, Johnny, and the lady that was
12 praying with him, but there was also a lady that was
13 three houses down from Johnny's house, that it happened
14 right next door to her house, and after I talked to her,
15 after the shooting happened, she was obviously outside
16 because it happened right next door to her house.

17 And she went outside thinking that somebody
18 was shooting fireworks, so she was there too, but only
19 people that were around the car was me and Johnny and the
20 lady that was praying with him.

21 Q. So three people, that's all?

22 A. Yes, sir.

23 Q. Anybody that says there were other people there,
24 they're not tell being the truth, are they?

25 A. I can't speak for anybody, else but I can tell you

1 that I didn't see anybody else.

2 Q. Sir, it's a yes or no question.

3 MR. SIMPSON: Objection, Your Honor. Calls
4 for --

5 MR. BOSNAK: Can we come up?

6 (Discussion held at sidebar.)

7 MR. BOSNAK: I would like to withdraw my last
8 question and I'll finish.

9 THE COURT: So ordered. Anything else of
10 this witness? Anything other questions for him?

11 MR. BOSNAK: No, Your Honor.

12 THE COURT: Any redirect for him?

13 MR. SIMPSON: Yes, just briefly.

14 RECROSS-EXAMINATION

15 BY MR. SIMPSON:

16 Q. Just to clarify, Mr. Rusch, you just explained to
17 Mr. Bosnak, there were more people that were in close
18 proximity to the car, correct?

19 A. Yes, sir.

20 Q. Now, as news spread, did you see more neighbors
21 come to the larger area --

22 A. Obviously it took the cops ten to fifteen minutes
23 to even, one cop, to get on the scene; therefore, within
24 ten to fifteen section, obviously.

25 I don't know him, the victim or the defendant, I'd

1 never seen necessary of them before this day, and I've
2 never even seen him before this day, but what I do know
3 is when it takes ten to fifteen minutes for a police
4 officer to get there, of course whenever there is a
5 shooting people are going to migrate around and wonder
6 what's going on.

7 Q. So did you witness people around on the larger
8 area of Clovewood Street?

9 A. I did. Nobody was getting into the car and
10 rummaging through it and trying to find anything, such as
11 a gun, money, or anything.

12 Q. So in the time period between when you arrived at
13 the car and the police got there, the only people you saw
14 in or --

15 A. Close proximity.

16 Q. Close proximity to the car were the people you
17 indicated?

18 A. Yes, sir.

19 MR. SIMPSON: Okay. I have no further
20 questions.

21 RECROSS-EXAMINATION

22 BY MR. BOSNAK:

23 Q. In the ditch is where the car ended up.

24 A. Yes, sir.

25 Q. That wasn't where the shooting occurred, was it?

1 A. No, sir.

2 MR. BOSNAK: Okay. Thank you.

3 THE COURT: All right. You can step down.

4 Let me see you -- Mr. Bosnak, come up a second. All
5 right. Call your next witness.

6 MR. SIMPSON: State calls Jason King. Your
7 Honor, may I approach the evidence table?

8 THE COURT: Yes.

9 (Recess taken.)

10 JASON KING,

11 having been first duly sworn,
12 was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. SIMPSON:

15 Q. Mr. King, good afternoon.

16 A. Good afternoon.

17 Q. How old are you?

18 A. Twenty-six.

19 Q. And where do you currently reside?

20 A. Summerville.

21 Q. Okay. Where did you live back in April of 2009?

22 A. Same, Summerville.

23 Q. Okay. Do you know a guy named Johnny Booker?

24 A. Yes, I do.

25 Q. How long have you known Johnny?

1 A. Good while, seven, eight years probably.

2 Q. Do you know where he lived?

3 A. Yes, Clovewood.

4 Q. Have you ever been over to his house?

5 A. Yes, numerous times.

6 Q. Approximately how many?

7 A. Over the years, 70, 80 times.

8 Q. Okay. Do you remember visiting Johnny Booker's
9 house on April 21 of 2009?

10 A. Yes, I do.

11 Q. Could you just explain a little bit to the jury
12 about what happened that afternoon.

13 A. After work, somewhere between 4:00 and 5:00, I
14 stopped on my way home from work, got some food from
15 Burger King, went over to Johnny's house. Usually we
16 would hang out in the evenings, play basketball and
17 whatnot.

18 Q. What time did you usually get off work?

19 A. Usually when it's warm out, somewhere around 3:00,
20 4:00.

21 Q. Okay. And you worked work, Burger King, Johnny
22 Booker's house?

23 A. Yes pulled up Johnny Booker house when I got out
24 of the truck is when I heard a couple gunshots.

25 Q. That happened immediately when you got there?

1 A. Yeah. Just coincidentally, looked up the street,
2 saw a man firing a gun in the window of a Toyota that was
3 facing my direction up the street.

4 Then I saw the shooter started to take off. Then
5 he double backed to come back to the car. That is when I
6 proceeded to go toward the house, pick up my phone and
7 call 911.

8 Q. Do recall anybody saying anything, telling you to
9 call or that was just an instinct?

10 A. Yeah, instinct.

11 Q. So upon turning and seeing what you saw down the
12 street you ran -- why run toward the house?

13 A. 'Cause gunshots. Somebody shooting, one man
14 shooting another guy, of course, get out of there.

15 Q. Who else was there when you pulled in at Johnny
16 Booker's?

17 A. Robert Rusch was up front playing ball as well as
18 Johnny Booker.

19 Q. Did you observe what they did upon hearing the
20 gunshots?

21 A. I believe Johnny started to go down there as soon
22 as it happened. Robert went back in the house, and then
23 proceeded to go right behind Robert, or Johnny and go
24 down there and check on --

25 Q. The guy that was shot, was he far behind Johnny as

1 far as your observations?

2 A. No, not too far, not too far at all.

3 Q. And going in the house, and coming out was, that a
4 quick thing or did he go in the house for ten minutes?

5 A. Oh, very quick, he was in and out.

6 Q. And you had already mentioned you called 911,
7 correct?

8 A. Yes, sir.

9 MR. SIMPSON: Permission to approach the
10 witness, Your Honor?

11 THE COURT: You may.

12 BY MR. SIMPSON:

13 Q. Mr. King, I'm handing you what has been marked for
14 identification as State's Exhibit 100. Could you take
15 that out of the envelope. Do you recognize that item?

16 A. Yes, sir.

17 Q. What kind of item is it?

18 A. It's a CD. It was a tape of my 911 phone call.

19 Q. Okay. And how do you know that that CD contains
20 your 911 call?

21 A. On the 17th of this month, I signed. I listened
22 to it, and I signed it.

23 MR. SIMPSON: At this point we move State's
24 100 into evidence.

25 MR. BOSNAK: Without objection.

1 (State's Exhibit No. 100 was marked for
2 identification and admitted into evidence.)

3 THE COURT: Okay. You can publish it.

4 MR. SIMPSON: Yes, Your Honor. Thank you.

5 (Whereupon the 911 call was played for the
6 jury.)

7 BY MR. SIMPSON:

8 Q. Mr. King, you remember making that call?

9 A. Yes, sir.

10 Q. You testified previously that you saw Johnny and
11 Robert run toward the car?

12 A. Yes.

13 Q. After making that call, what action did you take?

14 A. I never went close to the car to the scene. I
15 stayed on the phone and the operator in front of Johnny's
16 house, for the most part.

17 Q. So you chose to hang by Johnny's house?

18 A. Yes. There was enough people around there.

19 MR. SIMPSON: Please answer any questions
20 Mr. Bosnak has.

21 CROSS-EXAMINATION

22 BY MR. BOSNAK:

23 Q. Do you know Robert ran in the house to get a gun?

24 A. Yes.

25 Q. You knew he went to get a gun?

1 A. Yes.

2 Q. And on the 911 tape, you didn't tell them that
3 your roommate went there with the gun, did you?

4 A. Neither of them were my roommates.

5 Q. A friend of yours that you were with went in the
6 house and got a gun, you didn't tell 911 that, didn't
7 you?

8 A. No. I didn't know at the time exactly what he
9 went in for. I got on the phone and everything happened
10 so fast.

11 Q. Okay. When did you note that he had a gun on him?

12 A. Not until after the fact.

13 Q. Okay. So you didn't know until after it was over
14 with that he had a gun?

15 A. Correct.

16 Q. Now, you said you saw the shots, but you were way
17 away from where this happened, weren't you?

18 A. Fair distance.

19 Q. You didn't hear two men talking, did you?

20 A. No, sir.

21 Q. You don't know what was going on between them
22 prior to the shots, do you?

23 A. No, sir.

24 Q. And as a matter of fact, when you called 911,
25 somebody had to help you give a description of the person

1 that allegedly did the shooting, correct?

2 A. Yes, sir.

3 Q. And you never gave the height?

4 A. No, sir.

5 Q. You never gave the approximate weight?

6 A. No, sir.

7 Q. You never gave what type of hair style the person
8 might have?

9 A. No, sir.

10 Q. And if they were any distinguishing
11 characteristics about them?

12 A. No.

13 Q. You didn't even say whether the person was black
14 or white, did you?

15 A. I did say it was a black male, yes, sir.

16 Q. I'm sorry about that. And you said there other
17 people around and there were other people making 911
18 calls also?

19 A. Yes.

20 MR. BOSNAK: Thank you.

21 MR. SIMPSON: No redirect.

22 THE COURT: All right. You can step down.

23 Thank you. All right, folks. I think that is where
24 we'll break for the evening.

25 Now, when you go home, I want you to remember

1 what I told you earlier. Don't begin any kind of
2 discussions or deliberations either with each other or
3 with anybody else, and the reasons for that is real
4 simple: First of all, you swore to take an oath that you
5 would not discuss this case or base it other than on
6 anything you hear in this courtroom, and think about it:
7 It's only fair to both parties that you make your
8 decision based on what you hear here.

9 Nobody else has heard anything about this, so
10 if you go home and a spouse or family member or anybody
11 else hears about it, you know, they'll start interjecting
12 their opinions and things like that, and you haven't even
13 heard all of the evidence, so there is no reason in the
14 world why anybody else should have any kind of input as
15 to what your decision should be.

16 You'll have plenty of time to talk about this
17 case with them later on when this is all over with, but
18 tonight when you go home, you can tell your family
19 members or spouse, whatever, I got picked for a jury and
20 it's a murder case, but that's all I'm allowed to tell
21 you according to the judge.

22 I can talk to you about it until I'm blue in
23 the face when it's all over with but not before, and let
24 me ask to you please respect that, because if we do find
25 out that there have been any violations of that order,

1 one, you violated a Court order, and I'm going to have to
2 do something about that. But two, also, I very
3 vehemently would say that I would have to declare a
4 mistrial, and then we would have to start all over again
5 at some other time with all these witnesses back in here
6 with another jury that hasn't been tainted by it.

7 So, please, just keep that in mind. You can
8 go home this evening, rest, enjoy, talk about whatever
9 you want to in the whole wide world with anybody you want
10 to about any subject in the world except this case. One
11 other thing I want to talk to you about, because in this
12 day and age, people, when they get vested in case, they
13 start going, oh, I want to help solve this great mystery
14 that is in front of me, and in this day and age,
15 sometimes you got old fashioned tech people.

16 They'll do things like drive out to the scene
17 and go right around, take a look and get a feel for it.
18 If we need you to go out to the scene, we will take you
19 out there. People also get on the Internet these days
20 and start trying to go find old newspaper articles, or
21 they'll try to find out something about the case on the
22 Internet and go into the Court records that are now
23 available online.

24 Again, that is very improper to do that
25 because, again, your decision is going to be based solely

1 on what we bring to you, and so please don't do any of
2 that. It sounds crazy. It sounds silly, I know, but the
3 reason I'm having to tell you is because people have done
4 it in past. So, please, don't do that.

5 Also, I haven't seen any, you know,
6 TV cameras. They're welcome to come, but they have to
7 ask permission to set up, and we haven't had any of those
8 requests. And I don't know that I have had any newspaper
9 reporters, so I don't know if there will be any newspaper
10 coverage in the morning, but if you get up in the morning
11 and you read the newspaper or you hear anything on the
12 radio, switch the radio off, change the channels, and
13 don't read the newspaper articles if there are any about
14 this case because, again, they're going to be talking
15 sometimes about things that you aren't allowed to hear or
16 they're characterizing evidence.

17 Again, that's going to improperly influence
18 you, so, again, try to avoid the news and the newspaper,
19 this week. All right? So if you would, be back in the
20 jury room tomorrow morning at 9:30, and we'll get started
21 shortly there after.

22 So go home, enjoy your evening. Thank you
23 for your patience with us, and we'll see you in the
24 morning.

25 (Recess taken.)

1 THE COURT: All right. Anything before we go
2 home?

3 MR. DuRANT: Nothing from the State.

4 THE COURT: All right. Thank you for doing a
5 good job today, both sides. We'll see y'all in the
6 morning.

7 (Recess taken.)

8 (May 25, 2010.)

9 (In open court, jury not present.)

10 THE COURT: All right. We're waiting on one
11 juror still. Do we need to take up anything before the
12 jury gets here?

13 MR. DuRANT: Nothing from the State, Your
14 Honor.

15 MR. BOSNAK: Your Honor, one thing. I would
16 ask that all witnesses be sequestered. I didn't do that
17 yesterday. I would ask that we do that.

18 THE COURT: It appears that they were
19 sequestered yesterday.

20 MR. DuRANT: For the most part they were, but
21 I believe some were inside the courtroom.

22 THE COURT: All right. Well, to the extent
23 it will do any good at this point, all the people that
24 you have that you know are going to be witnesses, I ask
25 that you set outside, wait until you're called, and don't

1 discuss the case with each other, except for the victim's
2 family members and their lead investigator can stay.

3 MR. DuRANT: Okay.

4 THE COURT: Anybody that has already
5 testified can stay. I didn't see anything in the paper,
6 or press. Does anybody know? I don't watch TV news too,
7 much but I didn't see anything in the paper. Y'all ready
8 then?

9 MR. DuRANT: State is ready.

10 MR. BOSNAK: Yes, sir.

11 THE COURT: Let the record reflect the
12 defendant is in the courtroom. Bring the jury in.

13 (In open court, jury present.)

14 THE COURT: All right. Welcome back. Be
15 seated.

16 Okay. Folks, we are now going to resume
17 where we left off yesterday with the State calling their
18 next witness.

19 Mr. Solicitor, when you're ready.

20 MR. SIMPSON: Yes. Thank you, Your Honor.
21 State calls Officer James Milz.

22 JAMES MILZ,

23 having been first duly sworn,

24 was examined and testified as follows:

25 DIRECT EXAMINATION

1 BY MR. SIMPSON:

2 Q. Officer Milz, good morning. What agency are you
3 employed by?

4 A. Charleston County Sheriff's Office, sir.

5 Q. And in what capacity?

6 A. I'll a forensic investigator, sir.

7 Q. You're also known as a crime scene investigator?

8 A. Correct, sir.

9 Q. And how long have you been in that position?

10 A. Three years, sir.

11 Q. And what is your rank in the department?

12 A. I'm a deputy first class.

13 Q. Do you have any training or teaching in the area
14 of crime scene investigation?

15 A. I do, sir.

16 Q. Could you give us a brief overview of that.

17 A. I attended basic and advanced crime scene
18 reconstruction, also marijuana analysis, which helps in
19 my job. I'm also a firearms instructor for the county,
20 basic and advanced photography, which also helps in my
21 job as a forensic investigator.

22 Q. Were you employed in that capacity in April 2009?

23 A. I was.

24 Q. And in that capacity, did you have occasion on
25 April 21 to respond to [REDACTED] Clovewood Street?

1 A. I did, sir.

2 Q. And do you recall who was on scene when you
3 arrived?

4 A. Members of the Charleston County Sheriff's Office,
5 Charleston County EMS.

6 Q. So EMS arrived before you did?

7 A. Yes, sir.

8 Q. And can you give a little description of the scene
9 as you recall it for the jury when you first arrived on
10 the scene.

11 A. When I first pulled up to the scene, both ends of
12 Clovewood were cordoned off.

13 Q. When you say cordoned off, what do you mean?

14 A. Crime scene tape, barrier tape, yellow barrier
15 tape. When I first came on scene, one of the sergeants
16 on scene, Sergeant Brown, pointed out the vehicle that
17 was nose down in a ditch, also a shrouded figure beside
18 it. He pointed out also to me some shell casings at the
19 end of the driveway, some money, and possibly a red hat
20 on the opposite side from the scene.

21 Q. If you could, just back up to the shrouded figure
22 beside the car. Did you understand that to be a deceased
23 person?

24 A. Yes, sir.

25 Q. And was that then moved by the car from EMS?

1 A. Yes.

2 Q. Were you made aware of a couple other items? If
3 you could, just continue reviewing those items.

4 A. Yes, sir. I was pointed out several shell casings
5 at the end of one driveway, also some moneys by -- near
6 the shell casings, which later turned out to be two \$1
7 bills.

8 Q. Okay. You mentioned also a red ball cap?

9 A. Yes, sir. That was on the opposite side of the
10 street from the car, near a ditch line.

11 Q. And how as a crime scene investigator would you
12 proceed knowing about these items and possible
13 evidentiary value?

14 A. First thing I'm going to do is when I first come
15 on a crime scene is I walk the scene, see the lay of the
16 land, per se. After that I contacted my sergeant,
17 Sergeant McManigal, crime scene sergeant, of the
18 situation. Then I started placing what we call placards,
19 which are small plastic numbers or letters, evidentiary
20 markers, to assist us to show later where the evidence
21 was per se in relation to the scene.

22 Q. And did you disturb the items in any way while you
23 were marking them?

24 A. No, sir.

25 Q. Just some basic information, Investigator Milz,

1 about firearms. I believe you mentioned you are a
2 certified firearms trainer?

3 A. Yes, sir.

4 Q. If could you just differentiate for the jury what
5 a shell casing is as opposed to a bullet or a projectile.

6 A. A shell casing is a small metal -- lack of a
7 better word, it's almost like a small pipe with one end.
8 This shell casing holds a projectile on top, powder in
9 the center. When it is struck and it goes off, the
10 projectile leaves the barrel of the weapon, goes down a
11 range. The shell casing is ejected, if it is a
12 semi-automatic pistol or a rifle of that effect.

13 Q. And so that differentiates it between, say, a
14 revolver?

15 A. A revolver, sir, would stay in the weapon itself
16 and would have to be manually ejected, unlike a
17 semi-automatic weapon that would eject it automatically.

18 Q. And, generally, what direction is the shell casing
19 ejected from a semi-automatic weapon?

20 A. Usually top right, in most cases.

21 Q. Can you approximate, and this may vary depending
22 on type of gun, but how far a firearm would eject that?

23 A. It would -- on make and model, basically three to
24 four feet.

25 Q. So we're talking about shell casings generally

1 coming to rest in the general vicinity of where the shots
2 were fired.

3 A. Yes, sir.

4 Q. Investigator Milz, as you were marking with black
5 cards one through eight with the shell casings at the end
6 of the driveway, did you make note at that time of the
7 caliber or make of the shell casings?

8 A. Winchester nine millimeter Lugar.

9 Q. And of the eight you observed at the end of the
10 driveway, was that caliber and brand consistent among the
11 eight?

12 A. Yes, sir.

13 Q. And I believe you testified with the items you
14 observed, you marked and then photographed the items?

15 A. Correct, sir.

16 Q. Investigator Milz, I'm going show you a series of
17 photographs that have already been admitted into
18 evidence, and as we go through them, I'm going to ask you
19 to describe what we're looking at for the jury.

20 First is State's Exhibit No. 28.

21 MR. SIMPSON: May I approach the witness,
22 Your Honor?

23 THE COURT: You may.

24 BY MR. SIMPSON:

25 Q. Investigator Milz, I'm handing you a laser pointer

1 if that would assist you in any way in describing these
2 for the jury.

3 A. One through eight shell casings, one through eight
4 of the nine millimeter Lugar, victim's car, the shrouded
5 figure.

6 Q. And, rather obvious, but the white numbers we see
7 there on the ground, those would be the placards you
8 already discussed?

9 A. They would be, sir.

10 Q. I'm showing you now State's 29. This is just a
11 closer view of those placards?

12 A. Yes, sir, with the exception of number nine, which
13 is two \$1 bills which were found at the end of the
14 driveway, as you can see.

15 Q. State's 31.

16 A. One through nine again, sir.

17 Q. State's 32?

18 A. Individually starting to photograph each casing as
19 I marked it.

20 Q. And can you indicate with the pointer where the
21 shell casing is that you're marking with one.

22 A. Right there, sir (indicating).

23 Q. State's 33.

24 A. Again, the shell casing, right there.

25 Q. State's 34?

1 A. Right there, sir.

2 Q. State's 35?

3 A. There.

4 Q. State's 36.

5 A. Right there, sir.

6 Q. State's 37?

7 A. Right there, sir.

8 Q. State's 38?

9 A. Right there, sir.

10 Q. State's 39, a little hard to make out.

11 A. Yeah. It's right there. I see it, yeah.

12 Q. State's 40?

13 A. The two \$1 bills, sir.

14 Q. State's 42?

15 A. This was the red hat, sir, that I previously
16 mentioned that was pointed out to me. I was advised by
17 Sergeant Brown that that was possibly dropped by a
18 suspect, so that was placard also with placard ten.

19 Q. State's 43, does that show the placard where you
20 marked --

21 A. It does, sir.

22 Q. Once these items were marked and photographed,
23 what did you do with these items?

24 A. They were collected, sir.

25 Q. After collection, what would have been done with

1 the items?

2 A. They were individually bagged and collected, sir,
3 and secured in one of our vehicles, Investigator
4 Kjellman's vehicle, sir.

5 Q. And what was the purpose of putting them in
6 Investigator Kjellman's vehicle?

7 A. It was a locked, secured area, sir.

8 Q. And do you have any personal knowledge of what was
9 done with those items when you left the scene?

10 A. Yes, sir. Investigator Kjellman drove them back
11 to our evidence compound, at which time they were logged
12 in.

13 Q. And what does that mean by logging in the
14 evidence?

15 A. Logging in, sir, is just that we each
16 individual -- each individual piece of item was put into
17 our system, inventoried and put into our system and
18 locked away.

19 Q. Investigator Milz, what is a line search?

20 A. A line search is a -- if we really want to comb an
21 area, we, all the investigators, get at arm's length, and
22 we slowly and methodically start walking forward, head
23 down, looking for any other evidence at the scene.

24 Q. And was a line search conducted at this scene?

25 A. It was, sir.

1 Q. And did that line search reveal any items of
2 evidentiary value other than those you've already ID'd in
3 the photographs and were photographed on the scene?

4 A. None, sir.

5 Q. Did you find a firearm during this line search of
6 this area?

7 A. No, sir.

8 MR. SIMPSON: Court's indulgence. May I
9 approach the evidence table?

10 THE COURT: Sure.

11 BY MR. SIMPSON:

12 Q. I'm handing you what has been marked for
13 identification only as State's Exhibits 5 through 12.
14 Could you take a moment and review those items.

15 A. Yes, sir.

16 Q. And what items have I just handed you?

17 A. These are the shell casings that I placarded, one
18 through eight, sir.

19 Q. Okay. Is it the same shell casings we just
20 observed the photographs of at the scene?

21 A. They are, sir.

22 Q. Okay. I'm handing you what has been marked for
23 identification only as State's Exhibit 1, if you take a
24 moment.

25 A. This is the red hat, sir.

1 Q. And you can tell it's the red hat how?

2 A. Well, when I was saying earlier about logging in,
3 each individual item, we put a small sticker which tells
4 us in detail what it is, which case is assigned to it,
5 OCA, and things of that effect.

6 MR. SIMPSON: Your Honor, at this point I
7 would offer State's 1 and State's 5 through 12 to be
8 admitted into evidence.

9 MR. BOSNAK: If we could just look at them.
10 We haven't seen them yet.

11 THE COURT: All right.

12 MR. BOSNAK: Your Honor, without objection.

13 THE COURT: All right. They're admitted.

14 (State's Exhibit Nos. 1 and 5 through 12 were
15 marked for identification and admitted into evidence.)

16 BY MR. SIMPSON:

17 Q. Investigator Milz, after observing, marking
18 photographs, and collecting these items around the scene,
19 how did your investigation proceed?

20 A. After the collection, we started concentrating on
21 the vehicle itself and the victim.

22 Q. And can you explain to the jury your observations
23 when you continued that search to the victim's vehicle.

24 A. Victim's vehicle was partially nose down into a
25 ditch, driver's side. As I stated earlier, the victim, I

1 assume, had been removed by EMS to work on the victim.

2 I started with overall photographs of the vehicle
3 at all angles, and then once I believe the coroner came
4 on the scene, then we started taking pictures of the
5 victim.

6 Q. So you did at some point observe the victim's
7 body?

8 A. I did, sir.

9 Q. And explain to the jury what you observed.

10 A. The victim was laying on his back, shirt had been
11 pulled up, I am assuming by EMS, to work on him. I
12 observed several bullet holes to the left side of the
13 torso, and that is pretty much it, just for that.

14 Q. And on the scene, did you perform a search of the
15 victim's person, personal belongings?

16 A. We did, sir.

17 Q. And what did that reveal?

18 A. A large amount of moneys from all pockets, a small
19 bag of green plant material, no identification.

20 Q. Okay. But in your experience, what did the green
21 plant material appear to be?

22 A. It later tested positive for marijuana, sir.

23 Q. As to specific amounts and locations, would your
24 Sergeant McManigal be a better person to ask about that?

25 A. Yes, sir.

1 Q. At any time in searching the victim's person, did
2 you find a firearm?

3 A. No, sir.

4 Q. Bullets?

5 A. No, sir.

6 Q. Okay. And what did you -- if you could, describe
7 what did you observe upon looking into the victim's
8 vehicle?

9 A. The car was on, idling, in drive, air conditioning
10 on, stereo was still on. The driver's side seat, blood,
11 bloodstaining, what I assumed to be projectile holes in
12 the seat. Also observed more shell casings on the
13 driver's side seat.

14 Q. And, again, you previously testified that the
15 shell casings are ejected from the side of a firearm?

16 A. Correct, sir.

17 Q. And on the scene, you witnessed a shell casing
18 inside?

19 A. Yes, I did.

20 Q. And in brand and caliber, was that shell casing
21 consistent with the 1 through 8 you observed at the end
22 of the driveway?

23 A. It was, sir, it was.

24 Q. Observing this at the scene, what was decided
25 would be the proper course in regard to the victim's

1 vehicle?

2 A. We decided that we will tow the vehicle, the
3 victim's vehicle, back to our evidence compound where it
4 would be secured and we could examine it in detail.

5 Q. So rather than do an extensive search on scene,
6 you preferred to do in a more secure location?

7 A. More secure, climate controlled area, yes, sir.

8 Q. Did you drive the tow truck yourself or --

9 A. By no means. We notified, I believe it was,
10 Spivey's. Spivey's came on location. It was towed by
11 Spivey's and escorted back to the evidence compound with
12 the evidence that we described earlier by Investigator
13 Kjellman.

14 Q. What is the concern of having a police escort of a
15 towed vehicle to the compound?

16 A. Chain, at all times it's under observation by us.

17 Q. Again, Officer Milz, I'm going to show you a few
18 pictures and just ask that you walk the jury through what
19 we're doing. It's going to start with State's 44. All
20 these photographs have been previously entered into
21 evidence. I'm showing you State's 44. If you could just
22 describe it --

23 A. The state of the car is when I first arrived, as I
24 saw the car with the doors open. The victim to the left
25 of the car, shrouded.

1 Q. And, again, it was your belief that that was due
2 to EMS arriving and attempting to treat the victim?

3 A. It was, sir.

4 Q. State's 45.

5 A. Just pictures, overall pictures of the vehicle as
6 I started my photographs of the vehicle.

7 Q. State's 46.

8 A. Again, overall photographs of the vehicle, sir.

9 Q. 47?

10 A. Again, with the victim in the photograph in
11 relation to the car.

12 Q. 48.

13 A. Just taking interior shots as we observed as we
14 were on scene.

15 Q. And I believe you've already noted this, but was
16 the car in gear?

17 A. It was in gear, sir. It was, I believe, in four
18 D, which is the drive for that particular brand.

19 Q. 48?

20 A. Again, relations to the vehicle, the bloodstaining
21 on the seats there and there and also on the seat.

22 Q. 49?

23 A. Again, the bloodstaining and a cartridge case.

24 Q. And 50? I'm sorry. Investigator Milz, did your
25 work on this case continue on the following day of April

1 22nd?

2 A. Yes, sir.

3 Q. And how so?

4 A. I attended the autopsy for the deceased.

5 Q. And what is the purpose of a crime scene
6 investigator to attend an autopsy?

7 A. Our purpose is also for more photographs and also
8 to collect any evidentiary items that might be found on
9 the body.

10 Q. And do you recall who the medical examiner was
11 assigned to this particular case?

12 A. Dr. Pressnell.

13 Q. And where did the autopsy take place?

14 A. At MUSC, sir.

15 Q. And by the time you attended the autopsy the
16 following day, had the victim of the shooting been
17 identified?

18 A. Yes, sir.

19 Q. And do you recall that identification?

20 A. Last name was Wittrell, I believe, sir.

21 Q. And did you in this particular case recover any
22 items of evidentiary value from the autopsy?

23 A. Victim's clothing also, but, in particular, three
24 projectiles.

25 Q. And who would have handed over this to you at the

1 autopsy?

2 A. Dr. Presnell or one of her assistants would have
3 handed it over to me, and I would have had to sign for
4 it, sir.

5 Q. What would be done with any evidence you collected
6 at the autopsy in this case?

7 A. It was taken back to the evidence compound where
8 it was logged in, sir.

9 Q. Would you have tampered with this in any way
10 during transport?

11 A. No, sir.

12 MR. SIMPSON: Your Honor, may I approach the
13 evidence table?

14 THE COURT: Sure.

15 BY MR. SIMPSON:

16 Q. Investigator Milz, I'm showing you what has been
17 marked as State's 16, 17, and 18 for identification
18 purposes only, if you could take a moment to review those
19 items.

20 Do you recognize them?

21 A. The three projectiles that were given to me at the
22 autopsy, sir.

23 Q. And these were also taken back to the compound and
24 logged as evidence in this case?

25 A. Yes, sir.

1 MR. SIMPSON: At this point we offer State's
2 16, 17, and 18 into evidence.

3 MR. BOSNAK: Without objection, Your Honor.

4 THE COURT: Admitted.

5 (State's Exhibit Nos. 16, 17, and 18 were
6 marked for identification and admitted into evidence.)

7 BY MR. SIMPSON:

8 Q. Did your work on this case also continue on
9 4/22/09 in a different capacity?

10 A. Yes, sir. Aerial photographs of the incident
11 locate on Clovewood, sir.

12 Q. Did you ever on that day assist with a search
13 warrant?

14 A. Yes, sir. Yes, sir, I did. I might have made a
15 mistake, sir, on that date for the aerial photographs.
16 It might have been the 23rd, if I can look at my notes to
17 correct myself.

18 Q. Would that refresh your recollection?

19 A. Yes, sir. I apologize, sir. I took those aerial
20 photographs on the 28th, sir, but after I -- on the date
21 that you mentioned, yes, I did assist Sergeant McManigal
22 in the search of the tan Camry.

23 Q. Was this the vehicle that you described earlier
24 that was towed from the scene?

25 A. Yes, sir, it was, it was.

1 Q. Was this the more thorough search at the compound
2 that you had mentioned you were planning to conduct?

3 A. Yes, sir, yes, sir.

4 Q. As to the specifics of that search of the Toyota
5 Camry, first of all, who sort of took the lead on
6 investigating that search?

7 A. Sergeant McManigal.

8 Q. Would he be a better person to ask about specific
9 locations?

10 A. Yes, sir, he would be.

11 Q. But do you have personal knowledge of the items of
12 evidentiary value that were recovered from that search?

13 A. I believe, sir, and I'm going to refer to my notes
14 again, if I may.

15 Q. Okay.

16 A. Seven projectiles were recovered from the victim's
17 Camry, also two more shell casings, sir.

18 Q. Okay. And, again, the term you used, projectile,
19 is that also in more layman's terms, bullets, correct?

20 A. The bullet, yes, sir.

21 Q. So seven further bullets were collected from the
22 vehicle?

23 A. Right, sir.

24 Q. And two additional shell casings?

25 A. Yes, sir.

1 Q. And what was done with those items?

2 A. They were logged in, sir.

3 MR. SIMPSON: Your Honor, permission to
4 approach?

5 THE COURT: You may.

6 BY MR. SIMPSON:

7 Q. I'm showing you what has been marked for ID only
8 as State's 13 and 14 as well as State's 18 through 24, if
9 I could ask you to take a moment and review these items.

10 A. Yes, sir. The projectiles and casings recovered
11 from the tan Camry, sir.

12 Q. Investigator, moving on now to April 29th, this
13 would have been approximately a week after the date of
14 the incident. Did your work continue on 4/29?

15 A. 4/29 or 4/28?

16 Q. 4/29.

17 A. Can you help me a little bit on --

18 Q. Do you recall making a run to SLED in this case?

19 A. Yes, sir, I did. The evidence was collected that
20 we previously mentioned, and I drove to SLED, the South
21 Carolina Law Enforcement Division, sir.

22 Q. And where is SLED located?

23 A. Columbia, South Carolina, sir.

24 Q. What items on April 29th were taken to SLED?

25 A. The shell casings and projectiles, sir.

1 Q. So that would have been the eight shell casings
2 collected at the end of the driveway?

3 A. Correct, sir.

4 Q. As well as the two recovered from the Toyota?

5 A. Yes, sir.

6 Q. For a total of ten?

7 A. For a total of ten.

8 Q. Seven projectiles recovered from the Toyota?

9 A. Yes, sir.

10 Q. As well as three recovered from the autopsy of
11 Vincent Wittrell?

12 A. Total of ten, yes, sir.

13 Q. What is the purpose of taking all ten shell
14 casings and ten projectiles to SLED?

15 A. Sir, we wanted a firearms expert at SLED to match
16 if this was all from one weapon.

17 Q. And just to review, this constituted all of the
18 ballistics evidence that was collected from both the
19 scene, the victim's body, and the search warrant on the
20 Camry?

21 A. It was, sir.

22 Q. And once you arrived at SLED in Columbia with this
23 evidence, what did you do with it at SLED?

24 A. We go up to -- pretty much they log it in. Just
25 like we log it in in our evidence compound, they log it

1 in into their evidence system.

2 Q. And is it accompanied by a written request?

3 A. It is accompanied by a written request, sir, and a
4 receipt is also given.

5 Q. And the request was in this case, as you stated,
6 to have a ballistics expert?

7 A. A ballistics expert was to look at the projectiles
8 and shell casings to determine if it was fired from one
9 weapon.

10 Q. We're going to skip ahead almost a year to
11 February of 2010. Did your work continue still in 2010
12 in this case?

13 A. Yes, it did, sir.

14 Q. And in what manner?

15 A. On review of the case, myself and Detective Boyd
16 went to the Charleston County Detention Center where
17 through a warrant we were to obtain a buccal swab from
18 the defendant.

19 Q. Can you explain to the jury what a buccal swab is.

20 A. A buccal swab in question is pretty simple. It is
21 a Q-tip that we moisten with sterile water that we rub on
22 the inside of a person's cheek to collect DNA.

23 Q. Did you proceed with that manner in the present
24 case?

25 A. Yes, sir.

1 Q. And you obtained a buccal swab from the defendant?

2 A. Yes, sir.

3 Q. What was done with that buccal swab?

4 A. It was logged in our evidence system, sir.

5 Q. In the same manner as we have been discussing with
6 the other evidence?

7 A. Correct, sir.

8 Q. Was it ever taken to SLED?

9 A. Yes, sir.

10 Q. And do you recall offhand what date that was?

11 A. Not offhand, sir. I'm sorry.

12 Q. Okay. Was it accompanied to SLED with any other
13 item of evidence that we've already identified?

14 A. Yes, sir. We took the buccal swab that we
15 obtained from the defendant and also the red hat that was
16 found on the scene.

17 Q. And these were taken to SLED at the same time?

18 A. Correct, sir, by myself.

19 Q. And what written request did you make of SLED for
20 these two items of evidence?

21 A. We wanted to do a comparison of a possible match
22 between the defendant's buccal swab, his DNA, and any
23 DNA we found from the hat.

24 MR. SIMPSON: Your Honor, may I approach the
25 witness?

1 THE COURT: You may.

2 BY MR. SIMPSON:

3 Q. I'm handing you what has been marked for ID only
4 as State's Exhibit 2.

5 A. Yes.

6 Q. Take a moment to review that.

7 A. These are the two buccal swabs obtained from
8 Mr. Gilliard.

9 MR. SIMPSON: At this time I offer State's
10 Exhibit 2 into evidence.

11 MR. BOSNAK: No objection.

12 THE COURT: Admitted.

13 MR. SIMPSON: In an abundance of case I would
14 also offer State's 13, 14, and 18 through 24 into
15 evidence.

16 THE COURT: Was that the seven projectiles
17 and two extra indications?

18 MR. BOSNAK: Yes, sir. Without objection.

19 THE COURT: Okay.

20 (State's Exhibit Nos. 2, 13, 14, 15, 18, 19,
21 20, 21, 22, 23, and 24 were marked for identification and
22 admitted into evidence.)

23 MR. SIMPSON: State's Exhibit 1 has been
24 admitted into evidence.

25 THE COURT: So you got all the bullets and

1 all the casings and the swabs? All right.

2 MR. SIMPSON: I believe we did offer State's
3 1 into evidence, the red baseball hat, Your Honor, but if
4 not, at this time I would offer that as well.

5 MR. BOSNAK: Without objection.

6 THE COURT: Admitted.

7 BY MR. SIMPSON:

8 Q. Investigator Milz, just to review at any time on
9 the scene or while searching the victim's person or while
10 conducting the search of the Toyota Camry at the evidence
11 compound, was a firearm recovered?

12 A. No, sir.

13 Q. And I believe we have -- constituting all the
14 ballistics collected at all three of those locations, we
15 have eight shell casings from the end of the driveway as
16 well as two from the interior of the Camry?

17 A. Yes, sir.

18 Q. Seven projectiles or bullets from the interior of
19 the Camry, correct?

20 A. Correct, sir.

21 Q. And three from the body of Vincent Wittrell?

22 A. Correct, sir.

23 Q. And that constitutes all the ballistics evidence
24 collected in this case?

25 A. Ten and ten, yes.

1 MR. SIMPSON: Investigator Milz, please
2 answer any questions defense counsel may have.

3 THE WITNESS: Gladly.

4 CROSS-EXAMINATION

5 BY MR. BOSNAK:

6 Q. Agent Milz, when you got to the scene, I notice
7 there is some pictures of a car that you took. Was that
8 the way the car was when you got there?

9 A. Yes, sir.

10 Q. Y'all hadn't tampered with the car, went in the
11 car or anything before you took those pictures?

12 A. That is correct, sir.

13 Q. Okay. Now, something the solicitor didn't bring
14 up, and I would like to, it's in your forensic report, is
15 talking about that you and your sergeant bagged the
16 victim's hands.

17 A. Yes, sir.

18 Q. Okay. Why would you bag somebody's hands? Why
19 don't you tell us about that.

20 A. Several reasons, sir. Bagging of the hands, one
21 of the first things also is GSR, which is called gunshot
22 residue.

23 Q. Before you go any further, please explain to the
24 jury what a gunshot residue or gunshot residue test is.

25 A. When you fire a gun, revolver, semi-automatic,

1 rifle, a cloud of smoke is produced. The residue from
2 this gun, this powder, will be on your hands. It can be
3 collected to show or not if someone has been firing a
4 gun.

5 Q. Let me help you see if I'm correct. The powder
6 that is in a shell --

7 A. Correct, sir.

8 Q. -- that ignites causing the projectile to go out
9 the barrel --

10 A. Yes, sir.

11 Q. -- is chemicals.

12 A. Yes, sir.

13 Q. And it has to exit any type of firearm?

14 A. Yes, sir.

15 Q. And when it does, it goes all in the air?

16 A. Yes, sir.

17 Q. Gets on a person's clothes?

18 A. Yes, sir.

19 Q. Gets on their hands, possibly even their face,
20 correct?

21 A. Correct.

22 Q. That would be right? And you usually -- the
23 hands, being closest to the gun in most cases, especially
24 a pistol, would have more of this residue, would that be
25 correct, in most cases?

1 A. In most cases I agree, yes, sir.

2 Q. And so what you want to do is you want to swab
3 those hands, bag them first, and then swab them somewhere
4 to see if they fired a weapon, correct?

5 A. Correct, sir.

6 Q. And that is why you bagged his hands?

7 A. Not just for that, sir.

8 Q. Okay.

9 A. Other things that we bag the hands for. For
10 instance, just as a for instance, if a fight had
11 occurred, okay, and I scratched you --

12 Q. Or a rape.

13 A. Correct, sir. There would be DNA material
14 possibly underneath the fingernails. There is another
15 reason why hands are bagged.

16 Q. But here we didn't have a fight.

17 A. An assumption.

18 Q. Okay. Might have, but later on we didn't have a
19 fight, did we, a physical fight, correct?

20 A. Correct, sir.

21 Q. Wasn't a rape?

22 A. Correct, sir.

23 Q. Did you ever check the victim's hands for gunshot
24 residue?

25 A. No, sir.

1 Q. That wasn't done.

2 A. No, sir.

3 Q. So we wouldn't know if he fired a pistol or not.

4 A. I conferred with Sergeant McManigal on this. From
5 our assumptions, this crime happened, the shooting
6 happened, at close range. From the position of the
7 cartridge cases that we found on scene at the end of
8 driveway, the cartridge cases that were inside of the
9 vehicle, that was a close-up incident, there would have
10 been gunshot residue all over the victim, not just on his
11 hands. It would have been all over the victim. It would
12 have been in the interior of the car. Wherever I would
13 have probably swabbed I would have got gunshot residue.
14 It would have been a positive.

15 Q. But he also could have fired the gun.

16 A. Possibly, yes, sir.

17 Q. But we don't know, because you didn't check the
18 hands.

19 A. No, sir.

20 Q. Okay. Now, I want to ask you a question. You're
21 a firearms expert, correct?

22 A. I'm not an expert, no, sir.

23 Q. You're a firearms instructor?

24 A. I am, sir.

25 Q. And you teach other police officers how to shoot

1 properly?

2 A. I do, sir.

3 Q. And how long have you been doing this?

4 A. As an instructor, about five to six years now,
5 sir.

6 Q. So you know a lot about shooting a handgun
7 properly.

8 A. Correct.

9 MR. BOSNAK: Your Honor, could I approach the
10 witness?

11 THE COURT: Sure.

12 BY MR. BOSNAK:

13 Q. According to your investigation, would you say the
14 shooter was probably from me to you when he shot the
15 victim, or maybe closer?

16 MR. SIMPSON: Objection, Your Honor.

17 MR. BOSNAK: He's talked about shell casings
18 and the range and all that.

19 THE COURT: Well, he said he was an
20 instructor. He specifically said he was not an expert,
21 so if you're going to elicit an opinion from him, you're
22 not qualified to give an expert opinion.

23 MR. BOSNAK: What I was going to ask him
24 about was his estimate how far the shooter was from the
25 victim.

1 THE COURT: Well, again, that would be an
2 opinion that he has not been qualified as an expert, as
3 he is only an investigator, and he testified as to his
4 observations and what he bagged. He hasn't been
5 qualified as an expert to qualify the opinion.

6 BY MR. BOSNAK:

7 Q. I'll rephrase the question.

8 The shooting took place -- in your opinion, it
9 took place fairly close, correct?

10 A. Yes, sir.

11 Q. Now, you said the victim was only hit three times,
12 was only actually shot three times?

13 A. I did not remember stating that he was only hit
14 three times, sir.

15 Q. Well, in the autopsy, the pathologist only found
16 three bullets in the body -- in the victim's body,
17 correct?

18 A. Yes, sir.

19 Q. So he was only shot three times.

20 A. No, sir.

21 MR. SIMPSON: Objection, Your Honor. May we
22 approach?

23 THE COURT: Well -- yes.

24 (Discussion held at sidebar.)

25 BY MR. BOSNAK:

1 Q. I'll withdraw that question. We'll wait for a
2 doctor to come and talk about that. Okay?

3 A. Okay.

4 Q. You stated that you found no ID on the victim.

5 A. That's correct.

6 Q. And you found large amounts of money in each
7 pocket.

8 A. Yes, sir. Moneys, yes, sir.

9 Q. Moneys.

10 A. Yes, sir.

11 Q. And did the pockets -- when you checked the
12 pockets, did they look like they had been tampered with?

13 A. No, sir.

14 Q. Didn't look like anybody had been in the pockets?

15 A. No, sir.

16 Q. And you did find marijuana --

17 A. Yes, sir.

18 Q. -- in one of the pockets?

19 A. Yes, sir.

20 Q. Now, the vehicle was still running.

21 A. Yes, sir.

22 Q. Now, you, by no means, were the first on the
23 scene, were you?

24 A. By no means, no, sir.

25 Q. So how long -- do you have any idea what time

1 y'all got there on the scene?

2 A. I arrived at the scene at 1645, sir.

3 Q. Tell us what time that is.

4 A. 4:45.

5 Q. 4:45. Okay. And there were other officers
6 already there?

7 A. Yes, sir.

8 Q. Okay. Now, is there any reason why the body
9 wasn't removed from the car, why it was still in the car
10 when you got there? Because I think you said EMS had
11 already been there.

12 A. Yes, sir.

13 Q. Is there any reason why the body was still left in
14 the car?

15 A. It wasn't in the car, sir.

16 Q. Oh, it was not in the car?

17 A. No, sir.

18 Q. So the picture of the body over on the side of the
19 street was there when you got there?

20 A. Correct, sir.

21 Q. So he had already been pronounced dead.

22 A. Yes, sir.

23 Q. So there was nothing in the car, nobody in the car
24 at that time?

25 A. That is correct, sir.

1 MR. BOSNAK: Thank you. No further
2 questions.

3 THE COURT: Redirect?

4 MR. SIMPSON: State has nothing further of
5 this witness.

6 THE COURT: All right. You can step down.
7 Thank you. Call your next witness.

8 MR. SIMPSON: State calls Sergeant Paul
9 McManigal.

10 PAUL McMANIGAL,
11 having been first duly sworn,
12 was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. DURANT:

15 Q. Would you tell the jury where you're employed.

16 A. I'm employed with the Charleston County sheriff's
17 office.

18 Q. And how long have you been employed there?

19 A. For 21 years.

20 Q. What is your current position?

21 A. I'm the supervisor of forensic services and the
22 crime scene investigation unit.

23 Q. How long has that been your position?

24 A. Been there for 12 years now.

25 Q. And in that capacity, are you responsible for

1 other people who work under you?

2 A. Yes, I am. I'm responsible for all the crime
3 scene investigators with the sheriff's office.

4 Q. How many crime scene investigators do you have?

5 A. We currently employ five.

6 Q. And what are your duties and responsibilities as
7 the sergeant in charge there?

8 A. Primarily, our office is responsible for
9 responding to all crime scene investigations that are
10 beyond the ability of patrol units where more expertise
11 is required. It's my responsibility to schedule and
12 supervise the employees that work for the crime scene
13 investigation unit as well as other services we provide;
14 for instance, marijuana analysis. We have a ballistics
15 investigation unit. I'm responsible for all those
16 agencies.

17 Q. What is your education and training as it relates
18 to the work you do as a crime scene investigator?

19 A. Well, I have attended numerous schools and crime
20 scene investigation, crime scene reconstruction, latent
21 print development techniques, crime scene photography,
22 quite a few schools.

23 Q. Do you have any specialized training in areas of
24 crime scene investigation?

25 A. Yes, I do. I've been -- I've attended classes

1 sponsored by the South Carolina Criminal Justice Academy,
2 by the Federal Bureau of Investigation, currently in the
3 project with the United States Secret Service and the
4 FBI as well. I've also attended several schools from the
5 Bureau of Alcohol, Tobacco and Firearms which most people
6 know as ATF.

7 Q. What about training or education as it relates to
8 crime scene reconstruction?

9 A. I've attended specific school regarding crime
10 scene reconstruction, 3-D recreations of crime scenes and
11 animation of crime scenes.

12 Q. Have you been qualified as an expert witness
13 before?

14 A. Yes, I have.

15 Q. In which courts?

16 A. The federal court, United States Court, regarding
17 latent print development techniques and evidence
18 processing.

19 Q. What is a latent fingerprint?

20 A. Well, fingerprints are left behind when the oils
21 and residues on the fingers touch an object. Those oils
22 and residues are left behind on that object. A latent
23 fingerprint is one that cannot be seen by the naked eye
24 until you do some further processing to it. Usually it's
25 as simple as applying black powder to the fingerprint

1 residues so it sticks to the residues and we can see the
2 print then.

3 There are other fingerprints we call patent
4 fingerprints, meaning that you don't have to do anything
5 to them to be able to see them. For instance, when they
6 take ink fingerprints at the jail, they roll your finger
7 in ink, put it on a card, you can see that without any
8 processing, so that would be a patent fingerprint.

9 MR. DuRANT: Your Honor, at this time I would
10 ask Sergeant McManigal be qualified as expert witness in
11 crime scene investigation, crime scene reconstruction,
12 and latent fingerprint analysis, or development, not
13 analysis.

14 THE COURT: Do you wish to cross-examine the
15 witness or object on his voir dire?

16 MR. BOSNAK: Go ahead. That's fine.

17 THE COURT: So you would like to have him as
18 CSI, crime scene reconstruction, and also latent
19 fingerprint analysis; is that right?

20 MR. DuRANT: I'm sorry, Your Honor?

21 THE COURT: Was that right, three things,
22 crime scene investigation, crime scene reconstruction,
23 and latent fingerprint analysis?

24 MR. DuRANT: Development.

25 THE COURT: Crime scene investigation, crime

1 scene reconstruction -- I'm not sure what the latent
2 fingerprint development is.

3 MR. DuRANT: Just the process of obtaining a
4 latent fingerprint, not analyzing it, but just extracting
5 it from a surface.

6 THE COURT: Okay. Normally when somebody
7 testifies, we only allow them to testify as to what they
8 did, they saw, they heard, they touched, they felt, they
9 smelt, that sort of thing. They're not allowed to give
10 us evidence in the form of an opinion, that is to tell us
11 what they think about what they saw. They're only
12 allowed to tell us what they saw or touched or felt
13 smelt, et cetera.

14 However, the law says that when somebody
15 because of education or experience or training in a
16 particular field has risen to a level of expertise in
17 that field, we have them qualified as an expert and they
18 are allowed to not only tell us about their observations,
19 but they also can give us testimony in the form of an
20 opinion about what it is that they observed and the basis
21 for their opinion.

22 This witness has now been qualified as an
23 expert in the field of crime scene investigation, crime
24 scene reconstruction, and in fingerprint development. He
25 will be allowed to testify as to opinions within those

1 areas of expertise.

2 Now, the fact that here any other witness
3 that might be qualified is an expert in the trial is
4 qualified as an expert and gives his opinion does not
5 require you accept that blindly or to give their
6 testimony any extra weight simply because they're an
7 expert. You decide how much weight this testimony
8 deserves based on all of the evidence that you hear
9 throughout the trial.

10 All right? You may resume.

11 MR. DuRANT: Thank you, Your Honor.

12 BY MR. DuRANT:

13 Q. Sergeant McManigal, we qualified you as an expert.
14 You were talking about latent fingerprints, and, briefly,
15 I would like you to tell the jury, are some surfaces more
16 conducive to leaving latent fingerprints than others?

17 A. Certainly. Surfaces that are smooth and
18 non-porous, for instance, glass, certain countertops,
19 wood surfaces that are varnished when they're very smooth
20 and now porous it's very easy to get fingerprints from
21 those surfaces, and we don't need certain advanced
22 special technique. We can usually obtain those
23 fingerprints using fingerprint dusting powder, which is
24 the simplest method of obtaining a fingerprint.

25 Other surfaces that are porous, for instance,

1 paper and wood, we can still get fingerprints from but
2 they require more advanced techniques or processing. We
3 have certain chemicals that we can apply that would cause
4 chemical reaction, a color change, so we would be able to
5 visualize a print that way, and then there are other
6 surfaces that are even -- generally speaking, the rougher
7 the surface, the more difficult it is to get fingerprints
8 from those surfaces. Doesn't mean we can't, it means it
9 just requires more advanced techniques.

10 Q. Is it possible for somebody to touch a surface and
11 not leave a latent fingerprint on it?

12 A. Certainly. The fingerprints are left behind
13 because of oils and residue on your fingers. If there is
14 not enough of that oil or residue on your fingers to
15 leave behind on the surface, it's much more difficult to
16 recover that fingerprint. Of course, there are other
17 methods to avoid leaving fingerprints, such as wearing
18 gloves, things of that nature.

19 Q. In your capacity as the sergeant in charge of the
20 Charleston County sheriff's office crime scene unit, did
21 you respond to the Woodside Manor subdivision on April 21
22 of 2009?

23 A. Yes, I did.

24 Q. In reference to what?

25 A. I was notified that there was a shooting with a

1 death involved.

2 Q. Do you recall approximately what time you
3 responded?

4 A. I arrived on scene at 4:56 in the afternoon.

5 Q. What were your observations when you arrived at
6 the scene?

7 A. When I arrived there, the patrol units had already
8 been there prior to me. They had secured the scene.
9 They had put up what we call Banner Guard, which is the
10 crime scene tape, colored, covered the road with crime
11 scene tape so nobody could get into or out of the crime
12 scene. There was -- a Toyota Camry was in the ditch in
13 front of the residences, and about one yard down from
14 there, there were placards in the road which were placed
15 there by one of my investigators to mark shell casings.

16 Placards are just simple plastic tents that have
17 numbers on them that we use to identify evidence at a
18 crime scene.

19 Q. I'm showing you what is behind you that is already
20 in evidence as State's 28. This is a laser pointer.
21 There's going to be quite a few pictures. Actually,
22 we're going to go through, ask you to use that pointer.
23 Do you recognize this picture?

24 A. Yes, I do.

25 Q. And what is that?

1 A. These are the placards I was speaking about that
2 were marking the cases that were found in the roadway.

3 MR. BOSNAK: Excuse me a minute. Can we
4 approach?

5 (Discussion held at sidebar.)

6 BY MR. DURANT:

7 Q. Who was in charge of this crime scene?

8 A. I was the supervisor in charge, and I assigned
9 Investigator Milz to be the lead investigator.

10 Q. Can you tell the jury a little bit about why you
11 assigned Detective Milz or why you would assign one
12 specific person for a crime scene.

13 A. One person needs to be responsible for everything
14 that happens at that crime scene. If you just -- if you
15 don't assign anybody to it, you don't know what jobs are
16 being accomplished at what time, if everything is being
17 done that needs to be done.

18 If you have one person that is assigned as a lead
19 investigator, they still have the help of the other
20 investigators that may be on scene, but they're
21 responsible to make sure that everything is accomplished
22 that needs to be accomplished.

23 Q. And I don't want to get in depth with this, but
24 what did you do at the scene?

25 A. I assisted Investigator Milz with processing the

1 scene.

2 MR. DuRANT: We need to mark this as State's
3 102, please.

4 BY MR. DURANT:

5 Q. And up in this picture here, the yellow shrouded
6 figure, at the scene did you approach that?

7 A. Yes, I did.

8 Q. Did you have any interaction -- what was under
9 there?

10 A. The victim was. I examined the victim along with
11 the coroner.

12 Q. Did you move him around, try to check out if he
13 had anything on him?

14 A. Yes, sir, I did.

15 Q. Did he have any weapons on him?

16 A. No, he didn't.

17 Q. Did he have -- what did he have on him?

18 A. He had a large amount of currency in his pockets,
19 along with a small amount of green plant material.

20 Q. And was that the extent of your interaction with
21 him at the scene?

22 A. Yes.

23 Q. Determining that?

24 A. Yes.

25 Q. Did you --

1 A. I did -- we did bag the victim's hands.

2 Q. What was the purpose of bagging the victim's
3 hands?

4 A. To protect any trace evidence that may be under
5 the fingernails. A lot of times in an altercation, the
6 victim will come in contact with the suspect, and so we
7 try to protect any scrapings or anything that may be
8 under the fingernails.

9 Q. You said trace evidence. What does that consist
10 of?

11 A. Trace evidence is -- it's normally microscopic
12 evidence. It's very small amounts of evidence. In this
13 case, we're talking about possible skin cells that are
14 under the fingernails, maybe some blood that may be left
15 behind on the hands.

16 Q. What about gunshot residue?

17 A. Gunshot residue would be considered trace
18 evidence.

19 Q. Do you have tests to determine whether gunshot
20 residue may be on someone's hands?

21 A. Yes, we do.

22 Q. Was that done in this case?

23 A. No, it was not.

24 Q. And why not?

25 A. In this case, the shooting actually occurred

1 inside the vehicle. When a gun is fired, it expels a
2 large amount of gunshot residue, so the fact that the gun
3 was fired inside the car meant that anything that was
4 inside the car would have residue on it. So it would be
5 really inconclusive to have tested the victim for gunshot
6 residue.

7 Q. Is that because you would have expected it to be
8 everywhere anyway?

9 A. Yes.

10 Q. What led you to believe that the shooting took
11 place inside the vehicle?

12 A. Several reasons. One is the location of the
13 injuries on the victim. Most of the shots were on the
14 left side of the abdomen. The victim had been seated in
15 the vehicle at the time, so the angle that the shots were
16 fired led us to believe that the gun was inside the
17 vehicle as it was fired. Also, we did have witness
18 statements. When we arrived, we were told that the
19 shooting had taken place inside the vehicle.

20 Q. So the fact is if you were to find gunshot residue
21 on the victim's hands, that would not have been
22 dispositive of determining whether he handled the gun or
23 not?

24 A. That's correct.

25 Q. I'm showing you what is labelled as State's 102,

1 ask you to take a look at that.

2 A. Yes.

3 Q. Do you recognize it?

4 A. Yes. This is a count of the money that we found
5 in the victim's pockets.

6 Q. Did you create that diagram?

7 A. Yes, I did.

8 Q. And will you tell the jury what you found on the
9 victim, according to State's 102.

10 A. We found cash in all four of his pockets, his
11 pants pockets, and there were different denominations,
12 different amounts, so I documented exactly what we found
13 in each pocket.

14 In his left front pocket, we found three 20s,
15 total of \$60, and also \$2.15. We also in his back pocket
16 we found 34 singles, total of \$34. In his right rear
17 pocket, we found numerous denominations totalling \$450,
18 and then in his right front pocket, again, numerous
19 denominations totalling \$1,060.

20 Q. He had a good amount of money on him.

21 A. Yes, he. Did total of money was \$1,607.02.

22 Q. Can you tell us how much money you retrieved from
23 just his left side?

24 A. The left side was \$94.

25 Q. That was all the money on his left side to the

1 door of the -- as he was the driver in that car.

2 A. Correct.

3 Q. And how much money was found on his right side?

4 A. His right side was \$1,510.

5 Q. So significantly more on his right side?

6 A. Yes.

7 Q. Now I want to take you to the next day, April 22,
8 2009.

9 A. Yes, sir.

10 Q. Did you have the opportunity --

11 MR. DuRANT: And before I do that, the State
12 moves for the admission of State's 102.

13 MR. BOSNAK: Without objection.

14 THE COURT: Admitted.

15 (State's Exhibit No. 102 was marked for
16 identification and admitted into evidence.)

17 MR. DuRANT: Thank you.

18 BY MR. DURANT:

19 Q. April 22, 2002, did you again have interaction in
20 this case?

21 A. Yes. I conducted a search warrant on the victim's
22 vehicle, the Toyota Camry, which was conducted at my
23 evidence compound.

24 Q. Did you recover any physical evidence from the
25 Toyota Camry?

1 A. Yes, I did.

2 Q. What did you recover?

3 A. Specifically, we recovered seven projectiles and
4 two nine millimeter shell casings.

5 Q. Did you also recover any latent fingerprints?

6 A. Yes, I did process the vehicle for latent
7 fingerprints. I recovered 51 fingerprint cards from the
8 exterior of the vehicle as well as two from the interior.

9 Q. Did you do anything else to process the vehicle?

10 A. I did. Several other areas of interest is trace
11 evidence that may have been left inside the vehicle.
12 Again, trace evidence is very small evidence, skin cells,
13 hairs, fibers. We have tape that we use to brush off the
14 seats basically to collect any hairs and fibers and trace
15 evidence that may have been left behind on the seats, so
16 I did collect trace evidence from all four seats.

17 Q. Did you perform bullet trajectory analysis?

18 A. Yes, I did. In the passenger -- excuse me. In
19 the driver's front seat, I located six bullet holes, and
20 I did analyze the trajectories on all six bullet holes.

21 Q. Did you document it with pictures?

22 A. Yes, I did.

23 Q. Are you aware of whether any of those latent
24 fingerprints you lifted came back to Bernard Gilliard?

25 A. I don't believe so.

1 Q. I'm showing you State's 13.

2 MR. DuRANT: And, Your Honor, permission for
3 the witness to step down while we go through a few
4 pictures from his --

5 THE COURT: You may.

6 MR. DuRANT: Thank you. You can come down
7 here.

8 BY MR. DURANT:

9 Q. Would you tell the jury what we're looking at
10 here.

11 A. This is the victim's vehicle that we had towed
12 back to my evidence compound.

13 Q. And State's 14?

14 A. This is another angle of the same vehicle.

15 Q. Moving on to State's 18.

16 A. This is the driver's front seat of the victim's
17 vehicle.

18 Q. And is there anything significant about this
19 photo?

20 A. Several things. This item right here is a
21 projectile that we found on the seat. Right here is a
22 nine millimeter casing, as well as -- it's difficult to
23 see in this picture, but there are several bullet holes
24 in the back of the seat.

25 Q. State's 19?

1 A. This is a close-up of those items. This, again,
2 being the projectile, and this being the shell casing.

3 Q. Were those items collected?

4 A. Yes, I collected those items.

5 Q. State's 20.

6 A. This, again, is an even more close-up photograph
7 of just the projectile.

8 Q. State's 21?

9 A. This, again, is the projectile and the shell
10 casing.

11 Q. 22?

12 A. This is a close-up of the shell casing.

13 Q. 23?

14 A. And that is another close-up of the shell casing.

15 Q. 24?

16 A. This is the driver's seat floorboard again in this
17 area here. That is another nine millimeter casing.

18 Q. How many casings did you recover from the car?

19 A. I recovered two cases from the car and seven
20 projectiles.

21 Q. And now we've seen the two casings that you
22 collected?

23 A. Yes, sir.

24 Q. And they were inside the car?

25 A. They were inside the car.

1 Q. I'm showing you State's 59.

2 A. This is a close-up of the casing on the driver's
3 front floorboard.

4 Q. 60?

5 A. Another close-up of that same casing.

6 Q. 61?

7 A. This is the driver's side rear floorboard. That
8 is the driver's rear seat. This is the driver's front
9 seat.

10 Q. 62?

11 A. This is another projectile that was found on the
12 driver's rear floorboard.

13 Q. Was it collected?

14 A. I did collect it.

15 Q. 63?

16 A. That is a close-up of the projectile on the
17 driver's floorboard.

18 Q. 64?

19 A. This is a view from the driver's rear door of the
20 driver's front seat.

21 Q. 65?

22 A. This is the rear of the driver's front seat back.
23 That page actually folds down. It's a storage
24 compartment on the back of the driver's front seat.

25 Q. Was that area significant for you?

1 A. It was in the fact that there were -- when I
2 opened up that pocket, I located another projectile as
3 well as holes that helped me analyze the trajectory of
4 the bullet that passed through the seat.

5 Q. 66?

6 A. When the pocket was opened, I located that
7 projectile which I also collected.

8 Q. And is there a hole up there?

9 A. That is a hole that was caused by one of the
10 projectiles as it passed through.

11 Q. 66?

12 A. That is a close-up of the projectile that I found
13 in the driver's front seat pocket.

14 Q. 67?

15 A. That is another view of the hole caused by the
16 projectile.

17 Q. 68?

18 A. That is a close-up of the hole caused by the
19 projectile.

20 Q. 69?

21 A. In this view, I started placing trajectory rods
22 through the seat. When we can find the path of the
23 bullet, we start with the first hole we find. We can
24 insert a dowel into the seat, and it will follow the path
25 of the bullet. In this case, I placed that black dowel

1 through the seat, and it showed me that the bullet path
2 entered the rear seat bottom.

3 Q. Did you find the bullet in the rear seat?

4 A. Yes, I did. After I followed that path to the
5 rear seat, I cut this hole and located the projectile
6 right underneath the fabric.

7 Q. I'm showing you State's 70.

8 A. That is a close-up of the cut I made to access the
9 projectile.

10 Q. 71?

11 A. That is another close-up of the cut I made.

12 Q. 72?

13 A. Peeling back the top layer of fabric, that is the
14 projectile as I found it.

15 Q. 73?

16 A. That is a closed-up of the another projectile I
17 found under the seat fabric.

18 Q. 74?

19 A. This is after I placed trajectory rods under all
20 six holes that I located in the driver seat back.

21 Q. How many rods did you place in this car?

22 A. Six.

23 Q. Is that the amount of trajectories you found in
24 the car?

25 A. Yes.

1 Q. And how many projectiles did you find in the car?

2 A. I found a total of seven projectiles the car.

3 Q. But only six trajectories?

4 A. That's correct. The first projectile located on
5 the seat, driver's seat bottom, never actually penetrated
6 the driver's seat back.

7 Q. And you are aware that these other projectiles
8 were found in the victim's body at the autopsy?

9 A. Yes.

10 Q. Can you tell us anything about the trajectories
11 for these six trajectories that you found?

12 A. The six trajectories can actually be categorized
13 into two directions. If you'll notice, the bottom pink
14 rod points towards where the driver's side window would
15 be as well as the top pink rod and the top black rod.
16 They all came from right near the driver's door, just
17 outside the driver's door, going through the driver's
18 window. The other three rods all point more towards the
19 windshield area. That would be this white rod here and
20 the two center pink rods. That would indicate that the
21 gun was actually inside the vehicle, between the
22 windshield and the steering wheel when those shots were
23 fired.

24 Q. Was the windshield disturbed in any way? Did it
25 look like it had been fired through?

1 A. The windshield was not compromised in any way.

2 Q. If the shot had been fired from outside the
3 vehicle in order to make those trajectories, would it
4 have had to go through the vehicle?

5 A. For those three rods, the bottom light rod and the
6 two center pink rods, if the gun had not been inside the
7 vehicle, the projectiles would have had to travel through
8 either the windshield or the roof of the vehicle in order
9 to make those trajectories. Because of that, we can
10 clearly indicate that the gun was inside the vehicle when
11 it was fired.

12 Q. And with regard to the other three, the three
13 that -- this one, this pink one, this pink one, and this
14 darker one here, is there anything about the angle there
15 that would suggest a closeness of somebody who could fire
16 that weapon if they were standing on the ground?

17 A. Standing just outside the driver's door, they
18 would have had to have been very close to the driver's
19 door if not touching it. Primarily because of this
20 bottom pink rod, the angle of inclination, the angle that
21 it came down at is so extreme that if you were to step
22 away from the car, that angle would increase until the
23 point you wouldn't be able to reach it anymore. You
24 would have to be standing on a building to fire that
25 trajectory. Because of that steepness of that angle on

1 the bottom pink rod, that weapon was fired very close to
2 the driver's window.

3 Q. I think we're on State's 84. Is that just a more
4 close-up shot?

5 A. Yes, sir, it is.

6 Q. State's 85?

7 A. This is another close-up shot. It's at a
8 different angle. I had the camera turned sideways to try
9 to capture more of the seat length-wise.

10 Q. You can resume your seat on the witness stand now.
11 So in total, how many shell casings did you collect from
12 that vehicle?

13 A. I collected two casings from the vehicle.

14 Q. How many projectiles did you collect from the
15 vehicle?

16 A. I collected seven projectiles.

17 Q. Did you find any weapon inside the vehicle?

18 A. No. There were no weapons.

19 Q. No guns in the vehicle?

20 A. No weapons, no ammunition other than the spent
21 casing and the spent projectiles.

22 MR. DuRANT: Thank you, sir. Please answer
23 any questions the defense may have.

24 MR. BOSNAK: Your Honor, may we take a break?

25 THE COURT: It's time for our mid-morning

1 break, so let's go ahead and take ten, fifteen minutes.
2 Y'all can go back to the jury room again.

3 Please don't deliberate or discuss the case.
4 If anybody needs to take a cigarette break, they can
5 escort you downstairs to smoke. We'll see you back in
6 about 15 minutes.

7 (Recess taken.)

8 THE COURT: All right. We're back. Let the
9 record reflect the defendant is in the courtroom.
10 Everybody ready?

11 MR. DuRANT: Yes, Your Honor.

12 THE COURT: All right. Bring the jury back
13 in.

14 (In open court, jury present.)

15 THE COURT: All right. Mr. Bosnak, you may
16 begin your cross.

17 CROSS-EXAMINATION

18 BY MR. BOSNAK:

19 Q. Detective -- Sergeant, I was looking at your
20 report, and this car was leased, the gold Camry, that you
21 did the crime scene on. It was a leased car.

22 A. It was a rental car, yes, sir.

23 Q. And it was leased to Enterprise company?

24 A. Enterprise is the renter of the vehicle.

25 Q. And it was leased on April the 13th of '09?

1 A. I don't have the specific date in front of me, but
2 that sounds correct.

3 Q. Let me bring this up, if I can approach to
4 refresh.

5 A. Yes, sir.

6 Q. April 13th of '09?

7 A. Yes, sir.

8 Q. Would that also be correct that was eight days
9 before the shooting, correct?

10 A. Yes, sir.

11 Q. Now, it was leased to Lavern Robinson?

12 A. That's correct.

13 Q. Did you run down any leads concerning
14 Mr. Robinson?

15 A. I'm not in the detective's office. I work for the
16 crime scene unit, so --

17 Q. So you just passed on that information?

18 A. Yes.

19 Q. I want to go to something about the trajectory of
20 the bullets. Shooting a bullet into a human being is
21 different than shooting a bullet, let's say, into a seat
22 or water or gelatin or something like that?

23 A. It tends to be very similar, but the human body
24 has different organs in it, has fluid in it.

25 Q. And it also has bone in it?

1 A. Yes.

2 Q. And if the projectile happened to hit a bone, it
3 can change the trajectory of the bullet?

4 A. Yes, sir.

5 Q. Isn't that correct?

6 A. That's correct.

7 Q. So sometimes it's hard to determine from what
8 angle somebody was shooting at into a body because the
9 bullet hits a bone and there is no telling where the
10 bullet ends up in the body, correct?

11 A. Correct.

12 Q. Now, how long have you been a police officer?

13 A. Twenty-one years.

14 Q. Twenty-one years. And you carry an automatic
15 pistol now?

16 A. Yes, sir.

17 Q. Semi-automatic?

18 A. Semi-automatic.

19 Q. But years ago police officers carried revolvers?

20 A. Yes.

21 Q. Now, a semi-automatic pistol or a pistol ejects
22 the shell, correct?

23 A. Correct.

24 Q. Where a revolver doesn't eject the shell?

25 A. That's correct.

1 Q. So if I were to sit here and shoot at you with a
2 revolver, there would be no shell to eject?

3 A. That's correct.

4 Q. I would have to open the release, roll out the
5 cylinder, and push whatever it is that makes the shells
6 eject, correct?

7 A. Yes, sir.

8 Q. And for years, police officers carried them, six
9 shots, right?

10 A. Yes.

11 Q. Called six shooter or whatever. Now, if somebody
12 would have shot a revolver in that car, there would be no
13 shell casings, correct?

14 A. That's correct.

15 Q. Now, I'll ask you a little bit since you're a
16 trace expert, all gunpowder is not made the same,
17 correct?

18 A. That's correct.

19 Q. In other words, the gunpowder in a Winchester
20 bullet would not be the same gunpowder that would be in,
21 say, a federal round?

22 A. I can't speak for a specific brand.

23 Q. There is something a little different in the
24 chemicals or the elements of the gunpowder?

25 A. My understanding is that's correct.

1 Q. When you're a trace expert, you can really find
2 out some minute things, can't you?

3 A. Yes, sir.

4 Q. In other words, when you're dealing with DNA, you
5 can talk about somebody just touching another person?

6 A. Somebody touching --

7 Q. Somebody touching another person, such as in a
8 rape where a person has intercourse and it's just skin
9 against skin?

10 A. Yes, sir.

11 Q. And you can pull the other's person's skin cells
12 from a swab, can't you?

13 A. Yes, sir.

14 Q. And you can find the DNA?

15 A. Yes, sir.

16 Q. And connect it to a person?

17 A. Yes.

18 Q. Also, with trace elements, you can determine the
19 elements that are in that powder or residue, can't you?

20 A. To a certain point, yes.

21 MR. BOSNAK: Thank you. No further
22 questions.

23 THE COURT: Redirect?

24 MR. DuRANT: Briefly, Your Honor. Thank
25 you.

REDIRECT EXAMINATION

BY MR. DURANT:

Q. I just want to clarify. In talking about the gun and how it's fired, when we're talking about the trajectories that you stuck the rods through, are we talking about the trajectory of a shell casing or a projectile?

A. The trajectories of the projectiles.

Q. And can you tell us what the difference is between a shell casing and a projectile.

A. A live bullet, before it's fired, is one piece. That is actually two pieces stuck together, short version.

The projectile is the end that comes out the muzzle of the gun, and the shell casing is the cartridge that contained the gunpowder before the project was fired. The shell casing in a semi-automatic pistol is ejected, and then the next round of ammunition comes up into the chamber. So you've got the projectile that comes out of the missile. You've got a casing that comes out of the ejector port.

Q. So the projectile is the part that is meant to inflict the damage?

A. That's correct.

Q. And the shell casing is just a functional part of

1 helping the projectile do what it's supposed to do?

2 A. That's correct.

3 Q. I think you were asked a little bit about how a
4 bullet may enter a body, and it is true that some bullets
5 may ricochet off something in a body; is that right?

6 A. That's correct.

7 Q. But does anything about the three consistent
8 trajectories that you have in one clump and the other
9 three consistent trajectories in another clump indicate
10 to you anything that suggests a ricochet or something
11 that caused that bullet to sway from its natural course?

12 A. No. Actually, the opposite. The three rounds
13 that were found inside the body were the ones that struck
14 bone or some other internal mechanism. When a bullet
15 strikes bone, it loses a lot of its energy and, in that
16 case, would not necessarily penetrate the entire seat
17 back.

18 MR. DuRANT: Thank you, sir.

19 MR. BOSNAK: Redirect {sic}, just to clarify.

20 RE-CROSS-EXAMINATION

21 BY MR. BOSNAK:

22 Q. I'm a little confused. The little white cards
23 with one, two, three, four, those are the cell casings,
24 correct?

25 A. At the scene on the street, yes, those are shell

1 casings.

2 Q. But you and Detective Milz talked about the little
3 cards and took pictures. Those are the shell casings?

4 A. Yes.

5 Q. And that is what ejects out of the automatic
6 pistol?

7 A. Yes.

8 Q. The projectile -- or I would refer to it as a
9 bullet, I'm sorry -- but the projectile, which is lead or
10 a lead-based type of material, is what comes out of the
11 barrel, and that is what does the damage.

12 A. Yes, sir.

13 Q. And my only point was that when that projectile
14 hits bone or hit a hard piece of wood or concrete or
15 anything, it can change its trajectory, can it not?

16 A. Yes, sir.

17 MR. BOSNAK: That's all. Thank you.

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

19 All right. Call your next witness.

20 MR. DuRANT: State's calls SLED agent James
21 Green.

22 JAMES GREEN,

23 having been first duly sworn,

24 was examined and testified as follows:

25 DIRECT EXAMINATION

1 BY MR. DURANT:

2 Q. Agent Green, would you please tell the jury where
3 you're employed.

4 A. I'm employed by the South Carolina Law Enforcement
5 Division, commonly called the State Law Enforcement
6 Division, or SLED.

7 Q. What do you do at SLED?

8 A. I'm a forensic scientist in the firearms
9 department of the forensic services laboratory.

10 Q. How long have you been in that position?

11 A. Five years, as of next month.

12 Q. What does the field of firearms identification
13 consist of?

14 A. Firearms identification is a discipline of
15 forensic science. What it basically boil downs to is a
16 trained firearms examiner looks at an ammunition
17 component and determines if it was fired by a particular
18 firearm or not.

19 Our main tool we use is comparison microscope,
20 which is two microscopes connected by an optical bridge
21 which allows us to look at two items under magnification,
22 the same magnification under different angles of
23 lighting.

24 Q. What is your educational background?

25 A. I have a bachelor of arts degree from Charleston

1 Southern University, which I received in 1996; I also
2 received a master's of science in criminal justice degree
3 from Charleston Southern University, and I've completed
4 the SLED firearms and tool mark course of instruction,
5 which is approximately a three-year course of instruction
6 studying under six Court-qualified firearms examiners in
7 an apprentice-type program and dealt with thousands of
8 microscopic examinations and both oral and written
9 examinations.

10 Q. Are you authorized by SLED to conduct firearms
11 identification?

12 A. Yes, sir. At the end of my training cycle, I was
13 given exercises, practical problems, and mock cases to
14 work on my own and to present those answers to my
15 training officer.

16 Q. Are you a member of any professional organizations
17 related to the field of firearms identification?

18 A. Yes, sir. I'm a member of the Association of
19 Firearms and Tool Mark Examiners, also referred to as
20 AFTE, which is the relative scientific community in
21 reference to firearms identification dealing with members
22 from all over the world.

23 Q. Have you ever qualified as an expert in the field
24 of firearms identification?

25 A. Yes, sir, I have.

1 Q. How many times?

2 A. Three.

3 Q. In what Courts?

4 A. Orangeburg County, Sumter County, and Williamsburg
5 County.

6 Q. Are those all Circuit Courts in South Carolina?

7 A. Yes, sir.

8 Q. With regard to this case, your lab number,
9 L90-05134, did you receive some items of evidence from
10 the Charleston County sheriff's office?

11 A. Yes, sir.

12 Q. When did you receive these items?

13 A. It would have been May the 15th of 2009.

14 Q. And what were you given at that time?

15 A. May I refer to my notes real quick?

16 Q. Sure.

17 A. I know everything was packaged in container A in
18 one package, and I received ten fired bullets and ten
19 fired millimeter Lugar cartridge cases.

20 Q. And I'm showing you what is already in evidence.
21 I believe it's -- excuse me.

22 MR. DuRANT: At this time, the State moves to
23 have Agent Green qualified as an expert in firearm
24 identification.

25 THE COURT: Any question or do you wish to

1 voir dire the witness?

2 MR. BOSNAK: Without objection, Your Honor.

3 THE COURT: All right. Ladies and gentlemen:
4 This witness has been now qualified as an expert in the
5 field of firearms identification. The earlier
6 instruction I gave you about expert witnesses apply to
7 this witness as well. You decide, and you alone decide,
8 how much weight to give this witness's testimony based on
9 all of the evidence that you will hear throughout the
10 trial.

11 All right? You may resume.

12 BY MR. DURANT:

13 Q. I'm showing you what is already in evidence as
14 State's 15 through 24, ask you to take a look at that.

15 A. What I did was I looked at the items Mr. DuRant
16 handed me. When we get evidence at SLED in the firearms
17 department, we mark it with the SLED lab number, the item
18 number, and our initials so we know this is the items we
19 had looked at, and these eight cartridge cases I have
20 looked at before by identifying my markings left on them.

21 Q. Those are eight of the cartridge casings?

22 A. Yes, sir.

23 Q. All right. Now I'm showing you State's 21,
24 State's -- do you recognize State's 21?

25 A. Yes, sir.

1 Q. What is that?

2 A. That is a fired bullet.

3 Q. Here is State's 20. Do you recognize that?

4 A. Yes, sir. It's also a fired bullet.

5 Q. Came into your possession?

6 A. Yes, sir.

7 Q. On what day?

8 A. May the 15th, 2009, along with all the other --

9 Q. State's 22? Recognize that?

10 A. Yes, sir.

11 Q. All right. State's 23?

12 A. This has my markings on them as well.

13 Q. Will you open that up.

14 A. This is one fired nine millimeter Lugar cartridge
15 case.

16 Q. State's 19, 20, and 24? Take a look through all
17 of them.

18 A. Yes, sir. I recognize all this evidence.

19 Q. All right, and three more. Tell us the
20 identification on them.

21 A. State's 17 -- or 15, 16, and 17. Yes, sir. All
22 of these bear my marks, and the last three items, 15, 16,
23 and 17 are all three fired bullets.

24 Q. So just to clarify, I believe you have in your
25 possession that you've accounted for there with you,

1 State's 15 through 24 being 10 bullets, and State's 5
2 through 14 being 10 shell casings?

3 A. Yes, sir.

4 Q. All of which came into your possession on May 15,
5 2009?

6 A. Yes, sir.

7 Q. Those items you examined in this case.

8 A. Yes, sir.

9 Q. What analysis did you perform on those items?

10 A. Start with the bullets. I looked over the
11 bullets. I examined them for any microscopic amounts of
12 hair or some other type of residue that might be present.
13 Once that was conducted, I decontaminated them, just to
14 get rid of any unseen bacteria, microbes or any material.
15 Then I looked at them physically. I weighed them.

16 I counted the numbers of lands and grooves. In
17 fact, lands and the grooves make up rifling and the rifle
18 barrel. Simply by counting the number of lands and
19 grooves, you can narrow down all the firearms ever made
20 into a specific group.

21 For instance, these bullets now submitted, they
22 all have six lands and grooves with the right-hand twist.
23 Once I determined they all, same nominal caliber, which
24 they overall were consistent with being nine millimeter
25 Lugar caliber based on their physical appearance, their

1 dimensions and their weight, I looked at them on
2 comparison microscope and rendered a conclusion.

3 Q. What about in regards to the shell casings, items
4 5 through 14?

5 A. All the cartridge casings were head stamped as
6 being the same caliber, nine millimeter Lugar, so I went
7 straight to the microscopic work and looked at each one
8 against each other and wrote a conclusion on them as
9 well.

10 Q. Based on your examinations, what conclusion did
11 you reach?

12 A. All the fired bullets received in this case were
13 fired by one firearm, and all the fired cartridge casings
14 were fired by one firearm.

15 Q. Were there such microscopic marks to make
16 identification to a firearm?

17 A. Yes, sir. If a firearm would have been submitted,
18 we may have been able to make an identification to that
19 firearm.

20 Q. Were you able to determine whether the projectiles
21 matched the shell casings?

22 A. No, sir. That is not an examination we conduct at
23 SLED.

24 Q. Why not?

25 A. Well, we don't have the protocol for it in our

1 written directive. It hasn't been deemed very reliable
2 in the community, the scientific community. For
3 instance, the markings that were placed on the bullets
4 were seated in the cartridge case, definition -- the
5 bullet is the part of a cartridge that travels down the
6 barrel. It's the part that is shot out of the cartridge.
7 The cartridge case is simply a container used to hold the
8 powder, the primer, and the bullet, and the cartridge is
9 the entire unfired piece of ammunition.

10 When the bullet is seated in the cartridge case,
11 the marks that are left on that portion of the bullet
12 could possibly be removed by that same portion of the
13 bullet contact with a rifle as it travels down the
14 barrel, so therefore it's not very reliable and we don't
15 do it.

16 Q. So your conclusion was that the ten shell casings
17 were fired from the same gun?

18 A. Yes, sir.

19 Q. And the ten projectiles were fired from the same
20 gun?

21 A. Yes, sir.

22 Q. Based on the rifling characteristics you observed,
23 were you able to determine what type and make of firearm
24 could have fired those rounds?

25 A. Yes, sir. The FBI gives a database, and what we

1 do is plug in all the information we have, the caliber,
2 the number of lands and grooves, the direction of twist,
3 and then the measurements of those land and groove
4 widths. We put that into a database that the FBI gives
5 us, and it gives us a list of possible firearms that may
6 have fired that, based on the information we put in the
7 database.

8 Q. And included in that list is one of the
9 possibilities of the guns that could have fired that
10 weapon. Could it be a Ruger P89?

11 A. The list was very -- but yes, one of the firearms
12 that could have fired it is a Ruger.

13 MR. DuRANT: Thank you, sir. Please answer
14 any questions the defense may have.

15 CROSS-EXAMINATION

16 BY MR. BOSNAK:

17 Q. There were numerous guns that could have fired the
18 bullet, nine millimeter Lugars?

19 A. There were numerous makes, manufacturers that
20 could have fired it. There is only one gun that fired
21 it, yes.

22 Q. All the bullets came from one gun?

23 A. Yes, sir.

24 Q. But there are numerous guns that could shoot a
25 nine millimeter Lugar?

1 A. Yes.

2 Q. That's very common, isn't it?

3 A. The caliber is rather common, yes.

4 Q. And there is a difference between the nine
5 millimeter and the nine millimeter Lugar, correct?

6 A. Well, nine millimeter Lugar is a specific caliber.
7 When some people talk about nine millimeter, they are
8 referring to a nine millimeter Lugar, but there is also
9 nine millimeter Kurz. There is also a nine millimeter
10 Bergman. There's different types of nine millimeter
11 family.

12 Q. So in America, we would call a nine millimeter a
13 380, and what we call a nine millimeter is technically a
14 nine millimeter Lugar, correct?

15 A. Not technically, no, sir. We call it a nine
16 millimeter, and the majority we would be talking about a
17 nine millimeter Lugar, but in Europe some manufacturers
18 call nine millimeter Kurz, K-u-r-z, which is actually our
19 380.

20 Q. And did you get a report from Detective Perkins on
21 this case?

22 A. If I did, I didn't look at it. It may have been
23 scanned in our evidence tracking system, but the only
24 thing I printed out was their evidence submission forms,
25 is the only thing I looked at.

1 Q. So you didn't see a report from Detective Perkins?

2 A. No, sir.

3 MR. BOSNAK: Thank you. No further
4 questions.

5 MR. DURANT: Briefly.

6 REDIRECT EXAMINATION

7 BY MR. DURANT:

8 Q. So the same gun fired all ten projectiles?

9 A. Yes, sir.

10 MR. DuRANT: Thank you.

11 MR. BOSNAK: Nothing, Your Honor.

12 THE COURT: You can step down. Thank you.
13 Call your next witness.

14 MR. DuRANT: The State calls Verona Gibson.

15 VERONA GIBSON,

16 having been first duly sworn,

17 was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. DURANT:

20 Q. Ms. Gibson, would you please tell the jury where
21 you're employed.

22 A. I'm employed with the South Carolina Law
23 Enforcement Division, commonly referred to as SLED.

24 Q. And how long have you been employed there?

25 A. Approximately two years.

1 Q. And what is your job at SLED?

2 A. I'm a forensic technician in the DNA evidence
3 processing department.

4 Q. And what are your responsibilities and duties in
5 that position?

6 A. Mostly we get in larger pieces of evidence,
7 clothing, bed linens, some furniture, that kind of thing
8 and process it for biological fluids or skin cells,
9 hairs, or fibers.

10 Q. In regard to SLED lab number L90-05134, did you
11 handle items of evidence pertaining to this case?

12 A. I did, yes, sir.

13 Q. What did you handle?

14 A. It was a cap.

15 Q. I'm showing you what is already in evidence as
16 State's 1, ask you to take a look at it. You can open it
17 up. I think we got some gloves up here.

18 A. I have some.

19 Q. Okay. Do you recognize that?

20 A. Yes, I do, yes, sir.

21 Q. How do you recognize that?

22 A. My initials, the item number, the lab number are
23 on the cap. They're on the paper it was wrapped in, the
24 package it was wrapped in, and the heat-sealed pouch.

25 Q. When did it come into your possession?

1 A. It was taken into my possession on February 22 of
2 2010.

3 Q. What, if anything, did you do with it?

4 A. It had a request for ownership, so what we do is
5 we take this single use white plastic scraper, and we
6 scrape the bill and the band and the band on the inside
7 for skin cells, and then we collect those with a swab and
8 then we also collect any hairs that were present.

9 Q. Is that what you did with that hat?

10 A. Yes, sir, it is.

11 Q. I'm showing you now State's 2 and 3 and ask you to
12 take a look at both of them. Can you open that up?
13 Actually -- I'm sorry. That is State's 3 and 4.
14 Actually, that is State's 2, 3, and 4.

15 A. The 2 was never in my possession.

16 Q. Okay.

17 A. Yes, sir. These are the swabs I took from the
18 cap, and this is the possible hair collected from the
19 cap.

20 Q. Let me ask you this: When items of evidence are
21 submitted to SLED, SLED assigns their own number to them;
22 is that correct?

23 A. Yes, sir.

24 Q. And after an item enters SLED, can other numbers
25 be assigned to other items of evidence? What I'm getting

1 at is, did you assign a number to those items of
2 evidence?

3 A. I do, yes, sir. We call them subitems because
4 this item came from this item. This was 21, so this
5 becomes 21.1, and then the possible hair is 21.23. That
6 way we know these items were taken from this item or they
7 were packaged together, but in either case, they came
8 from this item.

9 Q. And what was SLED item 21.1?

10 A. That is a swab from where I scraped the bill and
11 the band of the cap.

12 Q. And what is SLED 21.2?

13 A. That is the possible hair that was collected from
14 the item.

15 Q. What did you do with SLED 21.1 and 21.2 after you
16 created them?

17 A. They were packaged. Each individual envelope is
18 sealed with my initials and the date. Then they're
19 placed in a heat seal envelope, sealed, and then they
20 were transferred to Katie Coy's possession.

21 Q. Who is Katie Coy?

22 A. She's a DNA analyst.

23 Q. What did you do with State's No. 1, which is
24 State's 21, the red hat?

25 A. It was taken back to our evidence control

1 department to be returned to the agents.

2 Q. Did you also create a work sheet about what you
3 did in this case?

4 A. Yes, sir, I did.

5 MR. DURANT: Thank you. Please answer any
6 questions the defense may have.

7 MR. BOSNAK: No questions, Your Honor.

8 THE COURT: You can step down. Thank you.
9 Next witness?

10 MR. DURANT: State calls SLED agent Katie
11 Coy.

12 KATIE COY,

13 having been first duly sworn,
14 was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. DURANT:

17 Q. Good morning, Ms. Coy.

18 A. Good morning.

19 Q. Could you please tell the jury where you're
20 employed.

21 A. I'm a forensic DNA analyst with the South Carolina
22 Law Enforcement Division.

23 Q. How long have you been employed by SLED?

24 A. Over four years.

25 Q. What do you do at SLED?

1 A. As I said, I'm a forensic DNA analyst.

2 Q. How long have you been a forensic DNA analyst at
3 the DNA department at SLED?

4 A. Same amount of time, over four years.

5 Q. What is your educational background?

6 A. I have a bachelor of science degree in forensic
7 biology and a master of science degree in forensic
8 biology.

9 Q. Do have you any specialized training in the area
10 of forensic DNA?

11 A. Yes. I completed a year-long training program at
12 SLED under the supervision of a Court-qualified analyst.
13 During that time I was trained in evidence handling,
14 serology, report writing, and DNA analysis.

15 Q. Do you have any continuing educational
16 requirements in your field?

17 A. Yes. As a DNA analyst, we are required to attend
18 continuing training every year.

19 Q. Are you certified by SLED to conduct DNA analysis?

20 A. Yes.

21 Q. Have you had any teaching or educational duties
22 related to the field?

23 A. Yes. I have been one of the analysts helping to
24 educate law enforcement. We go around teaching a class
25 to local law enforcement agencies explaining what we do

1 and what they can expect from us.

2 Q. How many DNA cases would you estimate you have
3 handled at SLED?

4 A. I would say around 1,000.

5 Q. Have you ever been qualified as an expert in the
6 field of DNA analysis?

7 A. Yes.

8 Q. How many times?

9 A. Ten.

10 Q. In what courts?

11 A. General Sessions.

12 MR. DuRANT: Your Honor, at this time the
13 State moves to offer Ms. Coy as an expert in the area of
14 DNA analysis.

15 THE COURT: Any objection or voir dire?

16 MR. BOSNAK: Without objection.

17 THE COURT: All right, folks. This witness
18 has now been qualified as an expert in forensic DNA
19 analysis, and, again, the earlier instructions I gave you
20 concerning expert witnesses apply to this witness as
21 well. You determine how much weight to give this
22 witness's testimony based on all the evidence that you'll
23 hear throughout the trial.

24 Thank you. Go ahead.

25 BY MR. DURANT:

1 Q. Ms. Coy, in general terms, could you tell the jury
2 what the field of DNA analysis entails?

3 A. We receive evidence and known standards from
4 agencies across the State. We analyze the evidence and
5 develop a DNA profile, and we compare the DNA profile to
6 known standards and see if they match.

7 Q. What is DNA?

8 A. DNA stands for deoxyribonucleic acid. It's a
9 chemical that is found in almost every cell of your body.
10 It contains genetic information that is passed from
11 generation to generation, and it is what codes all of
12 your traits, not just hair color and eye color.

13 Q. Why can DNA be forensically significant?

14 A. In forensic analysis, we look at 15 locations on
15 the DNA that are known to widely differ between
16 individuals, and that is what makes up a DNA profile, and
17 by comparing it to standards we, can see if they match.

18 Q. Do all people share the same DNA?

19 A. No. Identical twins have the same DNA.

20 Q. Can you explain to the jury in general terms how
21 you go about developing a DNA profile?

22 A. Generally, from the agencies we receive ear swabs
23 or cuttings from certain evidence items. We take a small
24 portion of that and carry it through several chemical
25 processes, and then the ultimate result is a DNA profile

1 which we look at the 15 locations and match it back to
2 the standard.

3 Q. Let me can ask you about a couple terms that may
4 be relevant. What is a mixture?

5 A. A mixture is when you get a profile that we can
6 tell more than one person contributed to that item.

7 Q. What is a major contributor?

8 A. With some mixtures, we're able to tell that one
9 person contributed more DNA to that item and that is what
10 we call a major contributor.

11 Q. What about a partial profile?

12 A. As I said, for a DNA profile, we look at 15
13 locations on the DNA. If we are not able to develop
14 something at each location, that is what we call the
15 partial profile because some information is missing.

16 Q. And with regard to this case and the SLED lab
17 number L90-05134, did you receive some items of evidence?

18 A. Yes.

19 Q. What did you receive?

20 A. I received item 22, buccal swabs from Bernard
21 Gilliard, item 21.1, swabs from the hat, and item 21.2,
22 debris from hat.

23 Q. How did these items come into your possession?

24 A. I received them from our locked DNA storage area.

25 Q. I'm showing you State's 2 and 3, and I think 4 is

1 in here. Yes, State's 2, 3, and 4, ask you to take a
2 look at those items. Let me know if you recognize them.

3 A. Yes. They contain our lab number and my initials.

4 Q. When did they first come into your possession?

5 A. Items 21.1 and 21.2 I received on March 3rd of
6 2010, and item 22 was also March 3rd of 2010.

7 Q. When they first came into your possession, were
8 the containers properly sealed?

9 A. Yes.

10 Q. Were they properly labelled?

11 A. Yes.

12 Q. Was there any evidence that any of the items had
13 been tampered with in any way?

14 A. Not that I could tell.

15 Q. What would you have done if something did appear
16 to have been tampered with?

17 A. If we notice something has been tampered with,
18 we'll call the agency and inform them.

19 Q. Did you perform DNA analysis and profiles on these
20 items?

21 A. Yes.

22 Q. Before we go into your conclusion, I want to admit
23 State's 3 and 4. I believe State's 2 is already in
24 evidence.

25 (State's Exhibit Nos. 3 and 4 were marked for

1 identification and admitted into evidence.)

2 THE COURT: It's been offered. 1 through --
3 I know 15 got offered this morning.

4 MR. DuRANT: You have got them all into
5 evidence?

6 THE COURT: They were in this morning. We
7 had some discussion about 1 and 2 and if they all got
8 admitted.

9 MR. DuRANT: All right.

10 BY MR. DURANT:

11 Q. What were your conclusions?

12 A. DNA profile developed from item 21.1, which was a
13 swab from the hat is a mixture of at least two
14 individuals. The partial DNA profile of the major
15 contributor matches the DNA profile of Bernard Gilliard.

16 Q. The major contributor matches Bernard Gilliard?

17 A. Yes.

18 Q. Did you also perform a statistical analysis as
19 part of your evaluation?

20 A. Yes.

21 Q. And what was that result?

22 A. The probability of randomly selecting an unrelated
23 individual versus a DNA profile matching the major
24 contributor to this item is approximately one in 32
25 quadrillion.

1 Q. Can you put that number in a perspective that we
2 can relate to.

3 A. Generally we compare or statistics to the world's
4 population. The current world's population is around 6.6
5 billion, and my statistic was 32 quadrillion and that is
6 over a million times larger than the world's population.

7 MR. DuRANT: Thank you. Please answer any
8 questions the defense may have.

9 MR. BOSNAK: No questions, Your Honor.

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

11 Next witness?

12 MR. DuRANT: Your Honor, may we approach?

13 THE COURT: Sure.

14 (Discussion held at sidebar.)

15 THE COURT: All right. We, on very rare
16 occasions, will actually move along faster rather than
17 slower than we thought we would, but we are in one of
18 those rare occasions where we have moved along a little
19 faster than we thought.

20 So the State's next witnesses won't be here
21 until 2:00, so we're going to take a little bit longer of
22 a lunch break. So downtown, it's a nice day, wasn't
23 raining the last time I looked, so you can take a little
24 bit of a break for lunch. I ask you be back in the jury
25 room right around 10 minutes to 2:00. You can go to

1 lunch with anyone you want, but do not discuss the case,
2 don't deliberate in any way, don't talk to anyone about
3 it, and if anyone approaches you to talk about it, please
4 report that to me.

5 So go on and enjoy your lunch. If you will,
6 report back about 10 minutes to 2:00. Thank you.

7 (In open court, jury not present.)

8 MR. DuRANT: I just wanted to clarify, 3 and
9 4? We were just comparing them. We didn't see they were
10 in.

11 THE COURT: There came a point when Chad was
12 offering stuff, and I know he ID'd 3 and 4, I thought we
13 cleared it all up that everything was in at that point.
14 Do you have it in?

15 MR. SIMPSON: I believe I was just discussing
16 1 and 2 at that point. We just want to make sure 3 and
17 4 --

18 THE COURT: Okay. All right. So it's in.
19 Everything is in. All right. Good. Thank you.

20 (Recess taken.)

21 A F T E R N O O N S E S S I O N

22 (In open court, jury not present.)

23 MR. DuRANT: All right, Your Honor. The
24 witnesses are in the hallway.

25 THE COURT: Are you ready then?

1 MR. DuRANT: They're ready.

2 THE COURT: All right. Bring the jury in.

3 Let the record reflect the defendant is in
4 the courtroom.

5 (In open court, jury present.)

6 THE COURT: All right, folks. Welcome back.
7 I hope you enjoyed your lunch. We're going to resume now
8 with the State calling the next witness. Go ahead.

9 MR. DuRANT: Thank you, Your Honor. May it
10 please the Court, the State calls Ramara Straman.

11 RAMARA STRAMAN,
12 having been first duly sworn,
13 was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. DuRANT:

16 Q. Good afternoon, Ms. Straman.

17 A. Hi.

18 Q. Do you live in Charleston?

19 A. Yes, sir.

20 Q. Did you grow up here?

21 A. Yes, sir.

22 Q. Did you go to school here?

23 A. Yes, sir.

24 Q. Are you employed?

25 A. Not at this moment. I was.

1 Q. Where were you employed?

2 A. Econolodge in Summerville.

3 Q. What did you do for them?

4 A. Housekeeping.

5 Q. Do you have any brothers or sisters?

6 A. Yes. I have two sisters and a brother.

7 Q. Who are they?

8 A. Tiara Jones and Franchina Straman, Printez
9 Straman.

10 Q. Where do you fit in with them? Are you older or
11 younger?

12 A. I'm the baby.

13 Q. You're the youngest one? Okay. I want to ask you
14 about some folks. I want you to tell me if you know
15 them, okay? Do you know a man named Vincent Wittrell?

16 A. Yes, sir.

17 Q. How do you know him?

18 A. From the neighborhood, Woodside Manor.

19 Q. Was he a friend of yours?

20 A. He was like an associate, friend, in between.

21 Q. Was he a good friend or just somebody you knew and
22 liked?

23 A. He was cool, nice person.

24 Q. Have any problems with him? Do you know Bernard
25 Gilliard?

1 A. Yes.

2 Q. How do you know him?

3 A. Relations.

4 Q. You used to be in a relationship with him?

5 A. (Nods head.)

6 Q. You used to date him?

7 A. Yes, sir.

8 Q. When did you date him, do you remember?

9 A. From the time he got out, last time he got out
10 until like a couple weeks before he --

11 MR. DuRANT: Your Honor, may we approach for
12 a second?

13 THE COURT: Yeah.

14 (Discussion held at sidebar.)

15

16 BY MR. DuRANT:

17 Q. I'm going to ask you about how long had you known
18 Bernie before this incident on April 21st of '09.

19 A. The first time we talked?

20 Q. I just want you to tell me how long, how long it
21 was before that.

22 A. To the incident?

23 Q. Yeah. How long had you known him?

24 A. Oh.

25 Q. Not how you knew him, but how long you knew him.

1 A. I got it confused. Like, three years.

2 Q. And y'all had a relationship during that?

3 A. The first time we met was just --

4 Q. I'm just asking this, okay?

5 A. Yeah. Yes, sir.

6 Q. Were y'all still seeing each other, dating, in
7 April of 2009?

8 A. Somewhat, but I stopped talking to him, like,
9 weeks before.

10 Q. Had y'all essentially broken up?

11 A. But we still had conversations.

12 Q. Were you still friends?

13 A. Yes, sir.

14 Q. So y'all didn't have any problems or anything?

15 A. (Shakes head.)

16 Q. Did you know how -- do you see Bernard Gilliard in
17 court today?

18 A. Yes, sir.

19 Q. Why are you going like this?

20 A. 'Cause I don't want to.

21 Q. Huh? Do you see him in court today?

22 A. Yes, sir.

23 Q. Where is he?

24 A. He's right there (indicating).

25 Q. What is he wearing?

1 A. A suit.

2 Q. Do you know if Bernard -- what did you call him,
3 by the way?

4 A. Bernie.

5 Q. Do you know if Bernie knew Vincent Wittrell?

6 A. Yes. They knew each other.

7 Q. Do you have personal knowledge of how Bernie felt
8 about Vincent?

9 A. Hatred, I guess, hatred, didn't like him.

10 Q. He hated him?

11 A. (Nods head.)

12 Q. Didn't like him. Did he ever say he wanted to do
13 anything to Vincent?

14 A. Yes, sir. He didn't like him --

15 THE COURT: Ma'am, you need to move your
16 hands away from your face and speak loudly into the
17 microphone so we can hear you. All right? Put your
18 hands down.

19 BY MR. DuRANT:

20 Q. The court reporter needs to take down everything
21 you say. The jury needs to hear what you're saying.

22 A. I'm trying the best I can.

23 Q. I know. I'm just letting you know why I need you
24 to speak, okay?

25 A. Okay. I'm trying.

1 Q. Did Bernie ever say anything about what he wanted
2 to do to Vincent?

3 A. He wanted to rob people.

4 Q. Did he tell you that?

5 A. Yes.

6 Q. All right. Now, I want to ask you specifically
7 about April 21 of 2009, okay? You weren't in the
8 Woodside Manor subdivision that day, were you?

9 A. I was in North Charleston.

10 Q. Did you talk with Bernie Gilliard that day or that
11 night?

12 A. That night my sister and me called him.

13 Q. Where were you?

14 A. I was on Saint Johns Avenue.

15 Q. Who were you with?

16 A. My sister Tiara Jones.

17 Q. And did you call Bernie?

18 A. Yes.

19 Q. How did you do that?

20 A. He was in my sister's cell phone.

21 Q. Was your sister present?

22 A. Yes. She is the one who told me to call him.

23 Q. Were you on speakerphone?

24 A. Yes, sir.

25 Q. Did he answer?

1 A. Yes, sir. He didn't answer at first. Probably
2 not the first time, but he did answer, like, the second
3 time I called.

4 Q. Why did you call him?

5 A. Because my sister told me to.

6 Q. There wasn't any other reason why you wanted to
7 call him?

8 A. What do I need to call him for?

9 Q. What did you ask him, if anything?

10 A. I asked him why.

11 Q. You asked him why what?

12 A. He did it.

13 And he said, Did what?

14 And I said, You know what I'm talking about.

15 Q. He said what?

16 A. He said, Did what?

17 And I said, You know what I'm talking about.

18 Q. Did he say anything else?

19 A. At that time, no. That was, like -- he asked if I
20 was coming to see him tonight, then that was the end of
21 that conversation.

22 Q. After you spoke with Bernie that night, what did
23 you and your sister do?

24 A. My sister said to call the police, so she called
25 the police.

1 Q. And what happened at that point?

2 A. She told them that I was the girlfriend of Bernard
3 and that we just talked to him about the incident and
4 they said he would come pick us up.

5 Q. Did they pick you up?

6 A. Yes, sir.

7 Q. Where did y'all go?

8 A. Leeds Avenue.

9 Q. Did you talk to some police officers there?

10 A. Yes, sir.

11 Q. Did you provide them with a written statement?

12 A. Yes, sir.

13 Q. I'm showing you -- let me get this labelled,
14 please.

15 I'm showing you what the State has labelled
16 as State's 103 just for identification, okay? Ask if you
17 recognize it.

18 A. Yes, sir.

19 Q. And is this the statement that you gave to the
20 police that night?

21 A. Yes, sir.

22 Q. I don't want you to read this out loud, but I do
23 want you to read -- right here, to the end of that page,
24 okay? Are you finished?

25 A. Uh-huh.

1 Q. And I was asking you if that was all that Bernie
2 told you that night on the phone. After reading what you
3 just read, is your memory refreshed?

4 A. Yeah.

5 Q. Did he tell you anything else that night?

6 A. That he had it coming, and I told him, You know
7 he's going to retaliate, and he says he doesn't care.

8 MR. DuRANT: Thank you. I want you to answer
9 any questions the defense counsel may have.

10 CROSS-EXAMINATION

11 BY MR. BOSNAK:

12 Q. Is it Ms. Straman? Am I pronouncing your name
13 correctly?

14 A. Yes, sir.

15 Q. Ms. Straman, Vincent, the victim, didn't like
16 Bernie either, did he?

17 A. Yes, sir, over some incident that happened.

18 Q. Right. Neither one liked each other?

19 A. Yes, sir.

20 Q. There was bad blood between both of them?

21 A. Yes, sir.

22 Q. And that incident would be him beating Bernie's
23 mother up, correct?

24 A. I heard about it. I wasn't around at the time.

25 MR. DuRANT: Objection, Your Honor. May we

1 approach?

2 (Discussion held at sidebar.)

3 BY MR. BOSNAK:

4 Q. As a matter of fact, you told Bernie about Vincent
5 beating his mother up, didn't you?

6 A. How could I tell Bernie something when I was not
7 even around?

8 Q. So you didn't tell Bernie that?

9 A. No, sir.

10 Q. Okay. Well, you said there was an incident
11 between those two where there was bad blood. What
12 incident was that?

13 A. Somebody stole something and it was from him, on
14 Bernie, but Bernie didn't stole it, it was another person
15 that stole it.

16 Q. So, in other words, Bernie was accused of
17 something he didn't do?

18 A. Uh-huh.

19 Q. And it was done to Vincent?

20 A. It was something of Vincent's that was stolen.

21 Q. Somebody stole something of Vincent's. Somebody
22 accused Bernie of it, but Bernie didn't do?

23 A. They accused Bernie of it.

24 Q. But Bernie didn't do it. Okay. Now, you and
25 Vincent had a relationship, didn't you?

1 A. We had no relationship.

2 Q. You had sex with him?

3 A. Yeah, but that is not no relationship.

4 Q. Okay. But you had sex with him?

5 A. Yes.

6 Q. And he gave you money at times?

7 A. That got nothing to do with this.

8 Q. I'm just asking.

9 A. That's my business.

10 THE COURT: Ma'am, you have to answer his
11 question.

12 THE WITNESS: Yes.

13 BY MR. BOSNAK:

14 Q. And what happened between you and Bernie was you
15 found out that Bernie was going out with Precious Wright.

16 A. Who is Precious?

17 Q. Another girl.

18 A. What that got to do with me? Bernie went and kill
19 him, that's what he do.

20 THE COURT: Ma'am, again, answer his
21 question.

22 THE WITNESS: I knew he was talking about
23 girls but I didn't know their names.

24 BY MR. BOSNAK:

25 Q. Wasn't that what you were mad about, because your

1 relationship wasn't the same?

2 A. No, sir.

3 Q. Okay. Now, on this report, what you're doing here
4 is you're basically calling Bernie. You're not
5 basically, you are calling Bernie. Yes or no.

6 A. Okay. In the statement, yes, sir, but the
7 statement is what I talked about to Bernie.

8 Q. Right. But you were calling Bernie. Bernie
9 wasn't calling you.

10 A. Yeah, I called Bernie.

11 Q. Right. You called him and asked him about what
12 happened?

13 A. Yes. I asked him why he did it.

14 Q. And at first he didn't say anything, and then you
15 asked him if he would come see you tonight where y'all
16 could have sex.

17 A. That's a lie. He asked if I could come see him.

18 Q. Okay. And y'all were going to get together and
19 have sex?

20 A. I lied, but I wasn't going to come.

21 Q. What were you trying to do is get him to give you
22 some information about this?

23 A. Huh?

24 Q. You were trying to get him to tell that you they
25 had shot Vincent, correct?

1 A. I just wanted to know why he did it.

2 Q. You wanted to know why he did it?

3 A. Yes.

4 Q. But you didn't know if he did it or not?

5 A. I was told in a text from people who saw him say
6 Bernard did it.

7 Q. And you wanted to know?

8 A. Yes.

9 Q. What you wanted to do is set him up, didn't you?

10 A. What would I set him up for?

11 Q. That's what you did. You and your sister claim
12 you heard something, and the first thing y'all did was
13 went and run to the police and said, Bernie said this
14 about this?

15 A. We heard that Vincent got shot, and we did hear
16 that Bernie did it.

17 Q. But what you did is called Bernie to set Bernie
18 up. You call him to set him up?

19 A. If I'm asking him why, that doesn't mean I'm
20 calling to set him up. I want to know what he did it,
21 what he did.

22 Q. What you did is you ran right to the police
23 department after you talked to him.

24 A. Do I have to continue answering these questions?

25 Q. You ran to the police department and said Bernie

1 said he did it, right?

2 A. You are saying I ran to them, but I did not ran
3 directly to the police department.

4 Q. You went to the police department and gave them
5 this statement saying Bernie told you that he did it.

6 THE COURT: Answer the question.

7 THE WITNESS: Oh, yes, sir.

8 BY MR. BOSNAK:

9 Q. And, also, you stated in here in this statement
10 that I told him, meaning Bernie, that his brother,
11 Vincent's brother, is going to do something about this.
12 That's what you said.

13 A. Yes, sir.

14 Q. Mercer Robinson, that is Vincent's brother?

15 A. I didn't know Vincent's brother's name. I never
16 met Vincent's brother a day in my life. That is just my
17 reaction because most times when stuff like that happens
18 people react in a different way.

19 Q. Well, you said that Vincent's brother --

20 A. Yeah. I told him that because he shouldn't have
21 did it.

22 Q. But you told him that his brother was going to get
23 him.

24 A. Yes, sir.

25 Q. So you're lying about that. Nobody in Vincent's

1 family said anything about that, they're going to get
2 Bernie?

3 A. I never said that they said that. That's just
4 what I thought.

5 Q. You then told him that his brother is going to do
6 something about this.

7 A. I never said that. I never did say Vincent
8 brother say. I just say I said, my own words.

9 Q. I'm going to bring --

10 MR. BOSNAK: Your Honor, can I approach the
11 witness, please?

12 THE COURT: You may.

13 BY MR. BOSNAK:

14 Q. Read that. Can you read that? Right there. Then
15 I told --

16 A. Yeah. I told him. I never said -- if I was going
17 to tell him that Vincent brother -- you know, Vincent
18 brother saying he going to do something about it, I never
19 said that. You're trying to say that I said Vincent
20 brother going to do something.

21 Q. Read that statement.

22 A. Then I told him that his brother is going to do
23 something about it.

24 Q. Right. That's what you said.

25 A. That's my opinion.

1 Q. That's your opinion?

2 A. That's my opinion.

3 Q. So, in other words, nobody in Vincent's family
4 said anything about hurting Bernie.

5 A. No.

6 Q. So that is just a lie what you told Bernie?

7 A. That was my opinion.

8 Q. Okay. That's your opinion. Same way it was your
9 opinion that Bernie confessed to this?

10 A. Huh?

11 Q. Same way it was Bernie's {sic} opinion that he
12 confessed to this?

13 A. I told the police that he never came out and
14 confessed about it, but the way he was saying it, he was
15 kind of confessing it the way he was talking.

16 Q. Did Bernie confess to you he killed Vincent?

17 In ways he was giving me information that I know
18 he was the one.

19 That's what you said.

20 A. And that is what I just said, yes. Yes, sir.

21 Q. What you did is because you're mad at Bernie --

22 A. I don't have no reason to be mad at Bernie.

23 You're trying to make it seem like I'm mad at Bernie.

24 That is what you're trying to do.

25 Q. Well, you're the one that ran to the police

1 department.

2 A. I went to the police department because my sister
3 chose to call the police and got me involved because she
4 knew I was his girlfriend.

5 Q. So it's your sister's fault?

6 A. Yes.

7 MR. BOSNAK: No further questions.

8 THE WITNESS: Thank you.

9 THE COURT: Redirect?

10 REDIRECT EXAMINATION

11 BY MR. DuRANT:

12 Q. Whose idea was it to call the police after you
13 talked to Bernie?

14 A. My sister.

15 Q. Did you do this because you were trying to set him
16 up or did you do it because you had information on a
17 murder?

18 A. Information, and my sister said it was the right
19 thing to do.

20 Q. Did you feel it was the right thing to do?

21 A. In a way. I wasn't going to tell, but I listened
22 to my sister. I choose to go to the police.

23 MR. DuRANT: Thank you.

24 MR. BOSNAK: Just a few questions.

25 RECROSS-EXAMINATION

1 BY MR. BOSNAK:

2 Q. It's okay when two families are having problems to
3 keep the pot boiling, in other words, saying that one of
4 their family members is going to get Bernie? That's
5 okay?

6 MR. DuRANT: Objection, Your Honor.

7 THE COURT: Pardon?

8 MR. DuRANT: It's not relevant. It's
9 improper argument.

10 THE COURT: Overruled. Go ahead.

11 BY MR. BOSNAK:

12 Q. That's okay?

13 A. No, sir. But I could state my own opinion if I
14 want to.

15 Q. What you were trying is trying to keep hostility
16 going between a family that there was already problems
17 between.

18 A. It's my opinion.

19 MR. BOSNAK: Okay. Thank you.

20 THE WITNESS: You're welcome.

21 THE COURT: All right. You can step down.

22 THE WITNESS: Thank you.

23 THE COURT: Call your next witness.

24 MR. DuRANT: State calls Tiara Jones.

25 TIARA JONES,

1 having been first duly sworn,
2 was examined and testified as follows:

3 DIRECT EXAMINATION

4 BY MR. DuRANT:

5 Q. Good afternoon, Ms. Jones.

6 A. Good afternoon.

7 Q. Will you tell the jury how old you are.

8 A. Twenty-three.

9 Q. Do you live in Charleston?

10 A. Yes.

11 Q. Did you grow up here?

12 A. Yes.

13 Q. Go to school here?

14 A. Yes.

15 Q. How far did you go in school?

16 A. To the 11th grade.

17 Q. Are you employed?

18 A. Yes, I am.

19 Q. And where are you employed?

20 A. Popeye's.

21 Q. How long have you been employed there?

22 A. A year and a half.

23 Q. And you were convicted of shoplifting in 2004,
24 right?

25 A. That's correct.

1 Q. I'm going to ask you about some people, okay?

2 A. Uh-huh.

3 Q. Did you know Vincent Wittrell?

4 A. Yes, I did.

5 Q. How did you know him?

6 A. Just through the neighborhood or whatever, from
7 him living in the neighborhood, being in the
8 neighborhood.

9 Q. What neighborhood are we talking about?

10 A. Woodside, Woodside Manor.

11 Q. Was he a friend of yours?

12 A. I wouldn't consider him a friend, but I wouldn't
13 consider him an enemy.

14 Q. Did you have any problems with him?

15 A. No.

16 Q. Do you know Bernard Gilliard?

17 A. Yes.

18 Q. Do you see him in court today?

19 A. Yes.

20 Q. What is he wearing?

21 A. A suit.

22 Q. Would you point him out.

23 A. (Indicating.)

24 Q. How do you know Bernie?

25 A. He has some -- a relationship with my sister, with

1 my little sister, Ramara.

2 Q. How many brothers and sisters do you have?

3 A. I have three sisters and one brother. Well, two
4 sisters and one brother. There is four of us.

5 Q. And where do you fall in the rank and order?

6 A. Right under my brother, the middle.

7 Q. What about Ramara?

8 A. She's the baby.

9 Q. So how much older are you than she is?

10 A. Six years.

11 Q. Was Bernie a friend of yours?

12 A. I wouldn't consider him a friend. I wouldn't
13 consider him an enemy.

14 Q. Did you have any problems with him?

15 A. No.

16 Q. I want to go to April 21, 2009, okay? Do you
17 remember -- did you have any contact with Bernie that
18 day?

19 A. I didn't personally.

20 Q. Did you ever hear his voice that day?

21 A. Yes, I did.

22 Q. How did that come about?

23 A. Well, my sister called him and asked him about the
24 murder.

25 Q. Which sister?

1 A. Ramara.

2 Q. Where were y'all?

3 A. We were at my mother's house.

4 Q. About what time was this?

5 A. I can't be exact, but I would say, like, 6:00 or
6 something.

7 Q. But you're unsure?

8 A. I can't say the exact time.

9 Q. And how did you come to hear Bernie's voice?

10 A. My sister turned the phone on speakerphone.

11 Q. And what was being said, if anything?

12 A. Well, she asked him what happened, and his reply
13 was, You already know what happened.

14 And she said why did you do it?

15 And his reply was, He had it coming for a long
16 time, whatever.

17 And then she said, Well, what if his brother do
18 something to you?

19 And he said he don't give an F, he could get it
20 too.

21 Q. Did that conversation last long?

22 A. I would say it lasted about 15 minutes.

23 Q. So it was a pretty in-depth conversation?

24 A. Not really. I mean, those questions were
25 considered to be in depth, yeah, but anything else

1 besides that, no. They might have said no. It was
2 basically about that.

3 Q. What, if anything, did you do after that
4 conversation ended?

5 A. Called the police.

6 Q. Whose idea was that?

7 A. Mine.

8 Q. And why did you feel it necessary to call the
9 police?

10 A. Because I feel like -- I mean, for you to do
11 something like that and then have an attitude about it,
12 like that later on, then that's, like -- it's evil.

13 Q. Well, did you talk to the police that night?

14 A. Yes, I did.

15 Q. Did they come get you or did you go see them?

16 A. They came and picked me and my sister up.

17 Q. Where did y'all go?

18 A. We went to the police station on Leeds Avenue.

19 Q. Did you tell the police what you knew?

20 A. Yes, I did.

21 Q. Did you provide them with a written statement?

22 A. Yes, I did.

23 Q. And was that essentially all you told the police?

24 A. Yes, sir.

25 MR. DuRANT: Thank you. Please answer any

1 questions the defense may have for you.

2 THE WITNESS: Sure will.

3 CROSS-EXAMINATION

4 BY MR. BOSNAK:

5 Q. You said this phone call took place about 6:00 in
6 the afternoon?

7 A. Yeah. I mean, basically whenever after the murder
8 happened, that is what happened. Like I said, I can't be
9 precise.

10 Q. So you say somewhere around 6:00?

11 A. Uh-huh.

12 Q. Okay. And you didn't record that, did you?

13 A. I didn't record what, the conversation?

14 Q. The conversation.

15 A. No. I recorded it in my mind.

16 Q. You recorded it in your mind, you and your
17 sister's mind?

18 A. Yes, I did.

19 Q. So you put your little sister up?

20 A. I didn't put my little sister up.

21 Q. You didn't put your little sister up to do this?

22 A. No, no. Why would I put her up to do anything?

23 Q. That's why I'm asking. You didn't put your little
24 sister up to calling Bernie, telling Bernie he could come
25 over and see her that night, have some sex --

1 A. No.

2 Q. You didn't do that?

3 A. No.

4 Q. So she put you up to doing it or she just told you
5 to come on and listen?

6 A. I mean, we were sitting right there. I was
7 sitting right there, and she put it on speakerphone and I
8 listened. I told her to put it on speakerphone because I
9 wanted to hear what he was saying.

10 Q. Okay. So you heard her talking to him?

11 A. Yes, I did.

12 Q. Or did you know she was calling him?

13 A. I mean, when she was dialling the number, I
14 probably know that is who she was calling.

15 Q. You didn't tell her to call Bernie?

16 A. No.

17 Q. You didn't tell her to call Bernie?

18 A. No.

19 Q. While he was hitting the numbers on the phone, you
20 knew she was calling Bernie?

21 A. I knew she was calling Bernie.

22 Q. And while she was calling Bernie, you told her to
23 put it on speakerphone?

24 A. Yes, I did.

25 Q. But didn't ask her to ask him any questions?

1 A. Those were questions that she wanted to know.

2 Q. Oh, those were questions she wanted to know. So
3 she got this information out of him?

4 A. Uh-huh.

5 Q. After talking to him about coming over at night
6 and all that kind of stuff.

7 A. I don't remember calling and coming over part,
8 but --

9 Q. You don't recall it?

10 A. No. I don't recall him coming over and talking
11 about coming over, but --

12 Q. Let's see if you recall this about your statement.

13 A. Okay.

14 Q. In your statement, Do you know if Bernie and
15 Vincent had any disagreement/fights.

16 A. Uh-huh.

17 Q. And your answer was, Yes. Vincent banished him
18 from Woodside.

19 A. Yeah.

20 Q. Do you remember that?

21 A. I remember that.

22 Q. You remember saying that?

23 A. I remember saying that. I said he banished him
24 from Woodside because he was robbing people and what
25 else -- yeah.

1 Q. Did you ever seen him rob anybody?

2 A. I haven't seen him rob anybody.

3 Q. How do you know he's robbing anybody?

4 A. Because that is what I heard. That was the talk.

5 Q. That's what the talk was, but you've never seen
6 him rob anybody?

7 A. I never said I seen him rob anybody either.

8 Q. But you said that Vincent had banished him from
9 Woodside?

10 A. Uh-huh.

11 Q. What does that mean?

12 A. Banned, banished.

13 Q. Told him he couldn't come back in Woodside?

14 A. That's right, yeah.

15 Q. What would happen to him if he came back into
16 Woodside?

17 A. I guess whatever he wanted to do he would do.

18 Q. So whatever Vincent wanted to do he would do if
19 Bernie came back to Woodside?

20 A. Uh-huh.

21 Q. And, again, you didn't have anything to do with
22 putting your sister up to this?

23 A. No.

24 MR. BOSNAK: Okay. Thank you.

25 THE COURT: Redirect?

1 MR. DuRANT: I have no further questions.
2 Thank you.

3 THE COURT: You can step down. Thank you.
4 Next witness?

5 MR. SIMPSON: State calls Dr. Erin
6 Presnell.

7 SUSAN ERIN PRESNELL,
8 having been first duly sworn,
9 was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. SIMPSON:

12 Q. Good afternoon, Dr. Presnell. What is your
13 occupation?

14 A. I'm a forensic pathologist. I work down the
15 street at the Medical University of South Carolina.

16 Q. Would you explain to the jury a little bit about
17 what a forensic pathologist is.

18 A. Well, I always say everybody is going to get more
19 familiar with forensic pathologists from autopsies and
20 all the TV shows, but really, to back up a little bit and
21 explain to kind of help you understand how you get there,
22 forensic pathology is actually a subspecialty of
23 pathology.

24 So pathologist is a doctor who diagnoses disease.
25 If you go, like, to your family doctor and they do a skin

1 biopsy or a Pap smears or breast biopsy, that tissue goes
2 to the pathologist, they look at it. They diagnose it as
3 cancer or not cancer. Is it an infection or not an
4 infection? And so they'll give diagnoses for disease
5 processes.

6 A forensic pathologist is somebody that goes into
7 additional training beyond that general pathology
8 training, and instead of looking at just a piece of
9 tissue or a sample of blood, we're looking at the entire
10 body of a deceased person and we are looking for
11 diseases. A lot of the times people will get cases where
12 people passed from a disease process, but we're also
13 looking at trauma and interpreting trauma.

14 We do the examination, which is the external exam,
15 the internal exam, and looking under the microscope, and
16 we ultimately come up with a cause and manner of death,
17 and all that put together is the autopsy report.

18 Q. And Dr. Presnell, what kind of education and
19 training have you been through to qualify you as a
20 forensic pathologist?

21 A. Well, pathologists are medical doctors, so you go
22 through college, four years of college, then you do four
23 years of medical school. At that point you graduate and
24 get your MD, so your medical degree, and that is when you
25 decide what specialty you go into, whether it's

1 pediatrics or surgery or family medicine, and I chose
2 pathology. That is the general pathology training and is
3 five years long. And then I did a subspecialty in
4 forensics, which is a year long.

5 After all of that training, there is the American
6 Board of Pathology that they administer Board exams, so
7 I'm Board certified in general pathology and forensic
8 pathology.

9 Q. Is that a national certification?

10 A. Yes.

11 Q. You had mentioned doing external and internal
12 exams. Is that what we commonly refer to as an autopsy?

13 A. Yes.

14 Q. And if you could approximate, how many autopsies
15 do you think you've done in the course of your practice?

16 A. Around 2,000.

17 Q. Have you ever been qualified as an expert in a
18 court of law in the area of forensic pathology?

19 A. Yes.

20 Q. Testified in that regard?

21 A. Yes.

22 Q. Approximately how many times have you testified?

23 A. Seventy, seventy-five, maybe.

24 Q. And each time being qualified as an expert in
25 forensic pathology?

1 A. Yes.

2 MR. SIMPSON: At this point, I offer
3 Dr. Presnell as an expert in the field of forensic
4 pathology.

5 MR. BOSNAK: Without objection.

6 THE COURT: This witness has now been
7 qualified in the area of forensic pathology, and like the
8 instructions I gave you earlier for expert witnesses, you
9 determine how much credibility and weight to give her
10 testimony based on all of the evidence that you hear
11 throughout the trial. Thank you.

12 BY MR. SIMPSON:

13 Q. Dr. Presnell, did you have occasion on April 22,
14 2009 to perform an autopsy on a Vincent Lawrence
15 Wittrell?

16 A. Yes, we did.

17 Q. Were you informed as to that individual's age?

18 A. Yes. The information we received was from the
19 coroner, law enforcement, and we were told he was 20
20 years old.

21 Q. Over the course of a full autopsy, do you -- is it
22 your practice to take photographs?

23 A. Yes. We do diagrams and we take photographs.

24 Q. Might it help you in discussing your autopsy your
25 observations in this case to take a look at the diagram

1 you prepared?

2 A. The diagram would be very helpful.

3 MR. SIMPSON: Court's indulgence, may I
4 approach?

5 THE COURT: Yes, sir.

6 BY MR. SIMPSON:

7 Q. Dr. Presnell, I'm handing you what has been marked
8 for ID only as State's Exhibit 101. Do you recognize
9 that?

10 A. Yes. This is a copy of the diagram we did at the
11 time of autopsy.

12 MR. SIMPSON: Your Honor, at this point I
13 would offer State's 101 into evidence.

14 MR. BOSNAK: Without objection, Your Honor.

15 THE COURT: Admitted.

16 (State's Exhibit No. 101 was marked for
17 identification and admitted into evidence.)

18 BY MR. SIMPSON:

19 Q. Dr. Presnell, if you could, referring to the
20 diagram, if necessary -- and I believe there's a laser
21 pointer at the witness table, talk first about the
22 external examination that you performed on the victim.

23 A. Could I step out there and see how clear that is?
24 Because to me that is just really -- let me just check.
25 Okay. That's better.

1 All right. So, actually, this is kind of a
2 cleaned up version that we did. We usually have many,
3 many marks, and not only diagram the entries, but we're
4 diagramming scars and stuff and so we try to recreate --
5 not recreate, to do a diagram of the chest, the gunshot
6 wounds, and the scratches that he had.

7 Obviously, his major finding was multiple gunshot
8 wounds. In summary, and I'll show them all to you, there
9 is nine gunshot wounds to the body, six exit wounds and
10 three bullets recovered within the body, and then we have
11 also a gunshot wound on the right hand.

12 These are supposed to be colored pink in here.
13 There is one, two, three, four, five, six, six pink
14 colorations. These are all entrance gunshot wounds. The
15 other three entrance gunshot wounds are on the back,
16 back, shoulder, and arm right here. So we have the one,
17 two, three, four, five, six, seven, eight, nine entrance
18 gunshot wounds. Notice they're all on left side of the
19 body.

20 These gunshot wounds enter into the body. They're
21 all traveling from his left to his right. We actually
22 have two of the -- two on the front and one on the back
23 are kind of headed in an upward direction, and all of the
24 rest are headed in a downward direction. So they're all
25 going from left to right. Three are going up; six are

1 going down.

2 Now, once they go a certain way through the body,
3 they're going through the chest and the abdominal cavity.
4 Then their paths kind of criss-cross, so I'll just kind
5 of say in general what the bullets went through as a
6 group.

7 They went through the right and left lungs. They
8 went through the heart. They went through the aorta.
9 They went through the pulmonary arteries. They went
10 through the liver, the stomach, and the intestine. They
11 also went through multiple ribs and the chest and also
12 went into the backbone.

13 These entrance wounds right here, they all travel
14 again to his right, and they exit one, two, three, four,
15 five, six. We have six exits on the right side of his
16 body, the right back side of his body. In addition to
17 the six exits, we have three bullets that are found in
18 the body, recovered in the body, that did not exit. One
19 was right behind the mid area of his back, one was on the
20 right side of his chest, and one was in the pelvis area,
21 down in this area here.

22 Those were his major injuries. He does have
23 another gunshot wound to the back of his right hand that
24 exists on the -- on the bottom of the thumb area on the
25 right hand. That injury caused fracture of the finger or

1 the hand bones.

2 Q. Doctor, if I could draw your attention -- did you
3 label these ones with letters?

4 A. Yes. We usually label A, B, C, D, et cetera, not
5 one, two, three, just because it's easier to clarify.
6 When you're originally looking at the case, you don't
7 know if A goes to C or A goes to D unless you kind of
8 open up and get inside. So that is what we do, we
9 designate all the holes with a letter.

10 Q. If I could direct your attention to the entrance
11 wound, which you designated with the letter O, is there
12 anything in particular that you noticed about that
13 entrance wound that you noted?

14 A. Yes. O is right up here on the back of the
15 shoulder, top back of the shoulder, the left shoulder,
16 and it has stippling around it. Stippling indicates to
17 us -- and I'll try to explain it. You might have heard
18 it earlier. Stippling indicates us to this is a close
19 range gunshot wound, and what we're actually looking at
20 are little scratches on the skin.

21 Let me back up. With a gun, not only does the
22 bullet come out to the end of the barrel and some soot
23 associated with that, but also a little piece of
24 gunpowder particles that are in the whole entire bullet
25 of the cartridge of the bullet, and so when the bullet is

1 fired, those little pieces of gunpowder ignite and propel
2 the bullet down the barrel.

3 Well, some of those little tiny particles look
4 kind of like sand will come out the end of the barrel.
5 If the gun is near the body, then those little tiny
6 particles will strike the skin and scratch it and cause
7 little scratches. You can't wipe it. There are round
8 little scratches.

9 Q. Does having clothing on affect it in any way?

10 A. Yes, it can, and certainly if there is clothing,
11 it might prevent the gunpowder particles from reaching
12 the skin and scratching it; however, sometimes part of it
13 can still penetrate the clothing.

14 Q. If you had a victim that was covered by clothing,
15 part of the skin, and still found stippling, would that
16 indicate further that it was even closer?

17 A. It perhaps could be. You know, I wouldn't say it
18 for sure. It depends on the type of ammunition, and
19 there are different types of ammunition particles. Some
20 might penetrate more than others.

21 Q. You noted there is a general consistency in the
22 entrance versus exit wounds from the upper left side to
23 the back right side.

24 A. Yes. We have three that are actually going
25 forward, that, again, they're all kind of on the left

1 side of the body, three back here, six right here.
2 They're all going to the right. Three of them are going
3 upwards, but the rest of them are headed downwards.

4 Q. And, just to repeat, I believe, you said you
5 indicated nine wounds that you designated as entrance
6 wounds?

7 A. Yes.

8 Q. What goes into the designation between an entrance
9 wound and an exit wound? Can you tell that as a forensic
10 pathologist?

11 A. Certainly there are a number of characteristics
12 you look for to try to evaluate entrance and exit wounds.
13 Certainly if you see stippling around a wound, you know
14 that is an entrance wound because that is where the
15 gunpowder particles are striking the skin.

16 There is other things to look for, like what we
17 call abrasion borders. When a bullet goes through, it
18 goes through the skin, it actually scratches the skin on
19 the side of the hole that it makes, and it makes an
20 abrasion around it. When a bullet is coming out of the
21 skin, a lot of times it just forces the skin apart. It
22 doesn't actually scratch the skin on the surface. You
23 don't typically see abrasion borders or an abrasion
24 around the borders of an exit wound.

25 There are other things such as an entrance wound.

1 Typically it's a defect. There is an actual hole there
2 where a lot of times an exit wound as the bullet comes
3 out, it tears the skin, but you can put it back together.
4 There is not an actual destruction of the outer layer of
5 skin there. There is all kinds of gray areas and
6 exceptions, but those are the general characteristics.

7 Q. So to a reasonable degree of medical certainty,
8 you can determine when you see a bullet wound whether it
9 was an entrance wound or exit wound in many cases?

10 A. Yes.

11 Q. And you determined we had nine entrance wounds in
12 this case?

13 A. Yes.

14 Q. How many exit wounds?

15 A. Six, and three bullets inside the body.

16 Q. Dr. Presnell, I want to show you a few photographs
17 that have already been admitted into evidence. It
18 involves a lot of what we have already discussed, but I'm
19 just going to have you discuss what we're looking at. If
20 you need to step down to get a better view, feel free.

21 Let me show you first what has been admitted into
22 evidence as State's 54. What is the jury looking at
23 here, Dr. Presnell?

24 A. We're looking at an X-ray of the victim prior to
25 us doing an autopsy. One of the reasons we'll X-ray is

1 we actually X-ray gunshot victims in hope of being able
2 to find the bullets easier, and right here you see a
3 bullet off to the side there. That is the one we
4 recovered on the right chest and a bullet right in the --
5 a little bit to the right of the midline.

6 This is like we're looking at the person and
7 they're looking back at us, so the right side is over
8 here, left side is over here, and this is the one that is
9 in the back, in his back.

10 Q. Moving on to State's 55.

11 A. This is just a higher up shot, so we're seeing the
12 bullet in the right chest and one in the back.

13 Q. State's 56?

14 A. These are his hip bones, his pelvis, and there is
15 the bullet that is in his pelvic soft tissue.

16 Q. Before we move on with just a couple other
17 photographs, is there a crime scene officer present when
18 you were doing the autopsy?

19 A. Yes. I believe it was Officer Milz. Yes, Officer
20 Milz.

21 Q. And what is the purpose of having that officer
22 present while you're doing an autopsy?

23 A. Well, frequently he has to be getting
24 fingerprints. He certainly oftentimes takes photographs.
25 He'll also collect the evidence. We'll collect the

1 evidence, and we'll transfer it over to him to wherever
2 it needs to go.

3 Q. Through the course of your autopsy, were these
4 projectiles reviewed with the X-rays removed from the
5 body of Vincent Wittrell?

6 A. Yes. We recovered all the projectiles and
7 transferred them to Officer Milz.

8 Q. Moving to State's 57.

9 A. All right. So you can see the letter O. This is
10 on the top back of his shoulder, so this is gunshot wound
11 O, and all those little dots around the entrance wound,
12 that is the stippling. That is where the gunpowder
13 strikes.

14 Q. And, again, the presence of stippling indicates
15 what to you?

16 A. It indicates a close range gunshot wound.

17 Q. State's 59.

18 A. These -- as you can see his chest, the left nipple
19 there, and -- well, I need to make a comment about C, but
20 I'll try to explain that now.

21 We have A, B, D, E, F, G are all the six entrance
22 wounds on the front of him. C, you see how irregular and
23 unusual that looks. That, we believe, goes to the
24 extensive fracturing of the ribs underneath it. That was
25 most likely associated with some kind of exit, like a

1 bony fragment exit injury in that area.

2 Q. And if we could go back to 57, I apologize, but
3 down in the far right of that screen, do we also see a
4 bit of the entrance wound labelled P?

5 A. Just a smidgen on top of the entrance wound P on
6 his arm.

7 Q. Dr. Presnell, it seems almost a silly question,
8 seeing what you testified to, but were you able to
9 determine a manner and a cause of death in this case?

10 A. Yes, the multiple -- the nine gunshot wounds to
11 his body were the cause of death with all the perforation
12 of the organs, and the manner of death is homicide.

13 MR. SIMPSON: Dr. Presnell, please answer any
14 questions Mr. Bosnak may have.

15 CROSS-EXAMINATION

16 BY MR. BOSNAK:

17 Q. Hey, Dr. Presnell. If you need to stand down
18 where you can see this better, please. I will just ask
19 you questions.

20 It seems to me, and you're the expert in this,
21 that almost all the gunshot wounds are to the left side
22 of the body.

23 A. Yes.

24 Q. Is that correct?

25 A. Yes, sir.

1 Q. And, as a matter of fact, if you took a line and
2 drew it -- started at his nose and went right down the
3 center of his body, they were all be to the left side.

4 A. Correct.

5 Q. Is that correct?

6 A. Yes.

7 Q. Joanne, if you would put, I think it's picture 59,
8 or autopsy picture 58.

9 Could you determine whether he was right-handed or
10 left-handed?

11 A. I don't know.

12 Q. So other than the shot to the right hand. And if
13 we look at this picture, which is even a more accurate
14 description, it would say almost four of those shots are
15 just right down the side. Would I be correct in saying
16 that?

17 A. Yes. One, two, three down the side, and,
18 remember, I was kind of referring to some were going
19 down, some were going up.

20 Q. Correct.

21 A. These three and that one are all going down, and A
22 and B are headed in an upward direction, and C is what we
23 believe is the false gunshot wound. It's a --

24 Q. Stippling, right?

25 A. No. C, we believe, is probably a bony fracture.

1 Q. So C went in here?

2 A. No. C is not an exit wound. We're that C saying
3 is an actual production of the multiple rib fractures
4 laying underneath, that they caused some penetration of
5 the skin.

6 Q. So that would be like a broken rib came through in
7 C?

8 A. Right, so D, E, and G, right down the side.

9 Q. If you could point to them for me, would it be
10 like right through here?

11 A. Yes, probably a little bit higher.

12 Q. Starting right about here where the nipple --

13 A. Yes, just below the nipple.

14 Q. And then here and here?

15 A. See where his belly button is?

16 Q. Correct.

17 A. So somewhere between the belly button and a little
18 bit below the nipple, one, two, three.

19 Q. And they're all to the left side?

20 A. Yes, sir.

21 Q. Now, I want to take you to another part of your
22 autopsy. I believe we're on page 10 of 11 pages. If you
23 could, please go to the toxicology.

24 A. Yes, sir.

25 Q. In the toxicology, you found nicotine in the

1 blood?

2 A. Uh-huh.

3 Q. That would be smoking?

4 A. Yes, cigarettes. He also has the marijuana, so it
5 could be from that as well.

6 Q. It could be through marijuana or cigarettes or
7 cigars?

8 A. Yes.

9 Q. How about this delta nine? What is delta nine?

10 A. Delta -- well, there is delta-nine. It says TCH,
11 but it's supposed to say THC, and delta-nine carboxy THC
12 is marijuana. So the delta nine marijuana is the active
13 metabolite for smoking marijuana, and the delta carboxy
14 is a metabolite for that, inactive metabolite, after the
15 marijuana has been broken down by the body.

16 Q. Explain that to me.

17 A. So we have a concentration of active marijuana in
18 the blood, and that's called delta-nine THC. We also
19 have some marijuana that has been there and it's been
20 processed by the body, so it's broken down into an
21 inactive metabolite that will get excreted and get taken
22 away, peed out or urinated out, and that is called
23 delta-nine carboxy THC, so we have both active marijuana
24 product and an inactive breakdown product of marijuana.

25 Q. So would that mean that he smoked marijuana

1 previously and that was now no longer active in his body?

2 A. Yes.

3 Q. And he also had active marijuana in his body?

4 A. Yes.

5 Q. Could you determine from this toxicology the last
6 time he had smoked marijuana?

7 A. No.

8 MR. BOSNAK: No further questions. Thank
9 you.

10 THE COURT: Redirect?

11 MR. SIMPSON: Just briefly, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. SIMPSON:

14 Q. Dr. Presnell, you made a point about three
15 entrance wounds. You could tell in your autopsy the
16 trajectory being slightly down and three slightly up?

17 A. Three slightly up and the rest down.

18 Q. And the rest down. Could the difference in the
19 trajectory within the human body be from a body -- the
20 body itself moving as it was being shot?

21 A. Yes, and let me explain that a little bit further.
22 When I'm describing through the body, like first instance
23 I'm saying it's going down or it's going up, that is with
24 me looking at him laying on the autopsy table. All I can
25 say is how it relates to him.

1 Now, obviously -- well, not obviously, but he
2 probably wasn't laying flat, straight down like that when
3 he was shot. So the direct -- the trajectory from where
4 the bullet is actually coming from depends on his
5 position. So if he's sitting there in the driver's seat,
6 then the ones that are angled down would likely be coming
7 from -- you know, at an upward angle.

8 Now, if he's over like this and -- we'll do --
9 let's do ones that are going down. Say this is the
10 bullet coming down. He's sitting on the driver's seat,
11 so the bullet is coming from a higher direction than him.

12 Now, if he's moved to some other direction,
13 wherever he moved, that pathway that we see is still the
14 same through the body, but it changes the position of
15 where the bullet came from. Does that make sense?

16 So that even though we have down and up, it
17 doesn't mean that he sat like this and somebody shot down
18 and then changed direction and then just shot up, it
19 completely depends on the movement of the whole process,
20 or interaction.

21 Q. Was there -- and I realize we may be stepping out
22 of the conclusions you typically make. Was there
23 anything revealed in your autopsy and your conclusion
24 that were inconsistent with, as you just stated, this
25 victim being seated in the driver's seat of a car and

1 being shot in the car?

2 A. It's consistent with that.

3 MR. SIMPSON: No further questions.

4 RECROSS-EXAMINATION

5 BY MR. BOSNAK:

6 Q. Dr. Presnell, was he shot in the left arm
7 anywhere?

8 A. Well, just that C, the one that was to the back of
9 the left arm and then the shoulder area, it's kind of
10 around the arm area, so just once in the actual left arm.

11 Q. One in the actual left arm, and we're talking
12 about a certain sitting in a car, sitting in a seat right
13 next to what we would call the B pillar of a car,
14 correct? Do you know what a B pillar is?

15 A. I know the A frame, but I don't know --

16 Q. Where your glass is, is our A pillar that comes
17 down. Where the doors close?

18 A. Yes.

19 Q. That is your B pillar, and the one in the back,
20 where you close your door, would be the C pillar. So if
21 you're sitting in the front seat, B pillar is right next
22 to you, right here, right?

23 A. If you're sitting properly, yes.

24 Q. B pillar is sitting right there, but if somebody
25 was turning, that would expose this left side of the

1 body, would it not?

2 A. Yes.

3 MR. BOSNAK: Thank you.

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

6 THE WITNESS: Thank you.

7 THE COURT: Do you need a break? Let's take
8 a ten-minute break.

9 Okay. We'll take a ten-minute break. Y'all
10 can go back, and, again, don't deliberate or discuss the
11 case. Thank you.

12 (Recess taken.)

13 THE COURT: Let's bring the jury back in.

14 (In open court, jury present.)

15 THE COURT: All right. Folks, at this time
16 we're going to bring back a witness out of order,
17 Ms. Straman, Ramara Straman. We are recalling her. We
18 normally would have her back in the defense portion of
19 the trial, but for scheduling purposes we're going to
20 call her back out of order at the request of the
21 defendants so Mr. Bosnak will be allowed to ask her some
22 questions in reverse order, as to where she was
23 originally the State's witness.

24 All right? So call Ms. Straman back in. All
25 right. Back on the stand. I'll remind you, ma'am, that

1 you're still under oath.

2 RAMARA STRAMAN,

3 having been previously duly sworn,

4 was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. BOSNAK:

7 Q. I just have a few questions to clear up something,
8 okay? You talked to Bernie one time early in the
9 evening, correct?

10 A. It was just about to get dark, nighttime.

11 Q. Okay. And I think in your statement you said you
12 watched the 10:00 news, and then you called Bernie's
13 number?

14 A. Okay. Yes, sir.

15 Q. Would that be correct?

16 A. Yes, sir.

17 Q. And that is when you talked to him in depth about
18 what happened to Vincent?

19 A. Yes.

20 Q. And that is when your sister was listening on the
21 phone?

22 A. She was listening the whole time when I first
23 called him.

24 Q. So she was listening earlier in the evening?

25 A. She was there the whole time. She was the one

1 that made me call, so she was there the whole time.

2 Q. So she made you call?

3 A. Yeah. She told me to call.

4 Q. And she was there the whole time when you called
5 him earlier --

6 A. It was her phone I was using, sir.

7 Q. Your phone?

8 A. Her phone I was using.

9 Q. Her phone you were using, and so earlier she heard
10 what was said, and then when you called him sometime
11 after 10:00 --

12 A. She heard everything.

13 Q. -- she heard everything, and that is when you say
14 basically he admitted to doing it?

15 A. I didn't say he admitted it. He was saying it in
16 ways that you could tell he did it.

17 Q. But that was sometime after 10:00?

18 A. During the whole time I was talking to him, when I
19 was asking him questions, he was saying it in ways that
20 you could tell he did it.

21 Q. What I'm trying to get from you is --

22 A. 10:00.

23 Q. Sometime, you said, after the 10:00 news you
24 called him back?

25 A. Yeah.

1 Q. And after you talked with him -- sometime after
2 10:00 when you talked to him, then that is when you
3 called the sheriff's department, correct? Would that be
4 right?

5 A. Yeah. After the news I called.

6 Q. 10:00 news.

7 A. Uh-huh.

8 Q. And then after that, you called the sheriff's
9 department?

10 A. Yeah, and they said he was coming to get us, and
11 it took them a minute to come.

12 Q. Do you have any idea what time it was you got to
13 the sheriff's department?

14 A. It was around 10:00 or 11:00 or so.

15 Q. So your sister was with you the whole time.

16 A. Yes.

17 MR. BOSNAK: Okay. Thank you. No further
18 questions, Your Honor.

19 THE COURT: Do you have any questions?

20 MR. DuRANT: I have no questions, Your Honor.

21 THE COURT: You can step down.

22 MR. BOSNAK: She's free to leave.

23 THE COURT: You're free to go. You're no
24 longer required to stay. All right.

25 The State will now call their next witness.

1 MR. DuRANT: State calls Detective Nicholas
2 Wagner.

3 NICHOLAS WAGNER,
4 having been first duly sworn,
5 was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. DuRANT:

8 Q. Detective Wagner, good afternoon. Would you tell
9 the jury where you're employed.

10 A. Charleston County sheriff's office.

11 Q. What is your position?

12 A. Currently a detective.

13 Q. Would you tell the jury what your duties and
14 responsibilities are as a detective.

15 A. I am assigned cases by a sergeant, and I
16 investigate those, do follow-up work after initial police
17 report is taken by a patrol deputy.

18 Q. What kind of cases are you involved in?

19 A. Primarily I work property crimes. I work house
20 break-ins, vehicle break-ins, business burglaries, but I
21 also -- sheriff's offices, we're assigned all cases,
22 especially when we're on call.

23 Q. Do you know approximately how many detectives the
24 shift's office employs?

25 A. We have, I believe, 12, 13 detectives.

1 Q. And they investigate a range of crimes, property
2 crimes, to murder, armed robbery?

3 A. We have white collar detectives, we have property
4 crime detectives, we have violent crime, and we have sex
5 crimes and abuse cases.

6 Q. Was this your position in April of 2009?

7 A. Yes, sir.

8 Q. What is your education and training as it relates
9 to being a detective?

10 A. I have a bachelor's degree from the University of
11 Wisconsin at Platteville. I was a police officer in
12 Illinois, went through two police academies, one in
13 Illinois, went through the police academy here in South
14 Carolina. I did an internship while I was in college
15 with the Dubuque, Iowa police department.

16 Q. How long were you in law enforcement before you
17 came to the Charleston sheriff's office?

18 A. Just over a year.

19 Q. And in your capacity as a detective, did you
20 respond to the scene in the Woodside Manor subdivision on
21 April 21, 2009?

22 A. Yes, I did.

23 Q. Why were you called out?

24 A. Detective Perkins and I were on call at that
25 point. When the shooting happened, they called out all

1 detectives, especially the on call detectives.

2 Q. Approximately what time did you arrive on the
3 scene?

4 A. Around 5 p.m.

5 Q. And what county is that located in?

6 A. In Charleston County.

7 Q. What did you observe upon arrival?

8 A. Well, as you imagine, this is a very large scene.
9 Whenever there is a shooting, there's many detectives and
10 patrol deputies and as many personnel as possible, so we
11 had a large crime scene that was being secured when I was
12 there. We had crime scene personnel on the scene, so I
13 roped off, had supervisors there. There were people
14 gathering around from the neighborhood.

15 Q. How did the investigation proceed at this point?

16 A. Well, secured the scene, tried to make sure they
17 preserved as much physical evidence as we could, and we
18 started to locate individuals who may have been witnesses
19 to or may have shed some light into what happened that
20 made us get called out.

21 Q. Did you speak to any witnesses at the scene?

22 A. Yes. I spoke to a Darrell Lawrence, and I believe
23 I spoke with some other neighbors.

24 Q. Did other detectives speak with other witnesses?

25 A. Yes. We tried to separate witnesses and tried to

1 obtain as many statements as possible.

2 Q. About how long did you stay at the scene that day?

3 A. A couple hours.

4 Q. After you left the scene, did you do anything else
5 to investigate the case that day?

6 A. After we left the scene, we went back down to the
7 sheriff's office, down in the detective division, and we
8 continued the investigation, and at that point we got
9 information about some females that may have more
10 information about the shooting. I was dispatched to go
11 pick up those ladies and go interview them. I was
12 accompanied by Detective Avila.

13 Q. Do you know who you went to go pick up?

14 A. Went and picked up Ramara Straman and Tiara Jones,
15 and they were on John Street in North Charleston. I
16 drove my cruiser, and Detective Avila rode with me.

17 Q. And where did y'all go?

18 A. We picked them up from their residence. Then we
19 went over to subdivision, the North subdivision, which is
20 located near the jail on Leeds Avenue. There is a desk
21 in there and they will have two different rooms so we
22 could keep them separated in order -- to find out what
23 exact information they may have about the shooting.

24 Q. Who did you speak with?

25 A. I spoke with Ms. Straman, Ramara.

1 Q. Did she provide you with a written statement?

2 A. Yes, she did.

3 Q. And after she did that, did y'all take them home?

4 A. Yes, took them back to their residence.

5 Q. All right. I want to move on to the next day,
6 April 22, 2009. Did you have interaction in this case
7 again?

8 A. Yes. About 7:00 in the evening, we got
9 information from the marshals that they were -- had --
10 were closing in on Mr. Gilliard, being able to locate
11 him, because at that point we had already had an arrest
12 warrant on file and it was in NCIC, and, as you can
13 imagine, we put the information out to all the
14 surrounding agencies to help the citizens find a person
15 who we had a warrant for murder on.

16 Q. And you said the marshals. Who are the marshals?

17 A. United States marshal service. They're attached
18 with locating persons.

19 Q. So they were brought in to kind of help y'all in
20 this case?

21 A. Yes, they were, tracking.

22 Q. So what is happening at 7:00 that night?

23 A. We got information that Mr. Gilliard was possibly
24 at the Days Inn in Ladson, which is located at 119
25 Gateway Drive, over in Ladson. As they were looking for

1 him and trying to pinpoint his exact location, we were
2 gathered in order to assist with them when that happened.

3 Q. So did you arrive at that hotel?

4 A. Yes. We were informed by 8:00 that they were able
5 to locate him in room 218.

6 Q. Was he taken into custody?

7 A. Yes, he was.

8 Q. Approximately what time?

9 A. A little bit after 8:00, maybe around 8:15, 8:20.

10 Q. Was he placed into your custody?

11 A. Yes. He was placed into my custody. We secured
12 him with handcuffs. He was placed in my patrol car.

13 Q. I want to talk about his physical appearance. Did
14 he appear injured or hurt in any way?

15 A. No. He had no signs of being physically injured.

16 Q. Did he say he was?

17 A. No.

18 Q. Did he appear under the influence of drugs or
19 alcohol?

20 A. No, he did not.

21 Q. Did he say he was?

22 A. No, he did not.

23 Q. What did you do with him once he was in your
24 custody?

25 A. I searched him, placed him in the front seat of my

1 police cruiser. I put a seat belt on him, and I took him
2 back to the sheriff's office, up to the criminal
3 investigation division, in order to do an interview.

4 Q. Approximately what time did you arrive at the
5 sheriff's office?

6 A. Somewhere around 9:00, maybe just a little bit
7 before.

8 Q. And where was he taken?

9 A. He was taken to the sheriff's office on Pinehaven
10 Drive in North Charleston. He was taken up to the
11 criminal investigation division. We had two separate
12 interview rooms, and there is one located right next to
13 my desk, so we put him in that one so we could fill out
14 the paperwork and work.

15 Q. And you're saying we. Who are you talking about?

16 A. Detective Perkins meet me up, there so the two of
17 us were up there to do interviews.

18 Q. Do you see Detective Perkins in the courtroom
19 today?

20 A. Yes, I do.

21 Q. Where is he?

22 A. Sitting right behind Mr. Simpson.

23 Q. And was anybody else present?

24 A. Just me, Detective Perkins, and Mr. Gilliard, and
25 I believe there may have been other people in and out,

1 but we were the main people.

2 Q. Will you describe for the jury what this interview
3 room looked like, how big it is.

4 A. Every room would sit four or five people
5 comfortably. It has a table in it, couple chairs, maybe
6 10 by 15, if I'm guessing. I don't know the exact
7 dimensions of it.

8 Q. And what happened once he got in the interview
9 room?

10 A. Made sure that we first offered him water, offered
11 him something to drink, see if he needed to use the rest
12 room. At that point we wanted to make sure to fill out
13 his advisement of rights form before we could even begin
14 interviewing him, so as part of that advisement of rights
15 form, I sat him next to my desk so I could ask him
16 questions as I filled out the top of the form on my
17 computer.

18 Q. Why did you advise him of his rights?

19 A. He has his rights, fourth amendment rights and
20 Miranda rights. Part of our job. It's how we're trained
21 to do it.

22 Q. You were required to tell him his rights, right?

23 A. Yes. We're required to do it.

24 Q. I'm showing you for identification State's 9, ask
25 you to take a look at it. Do you recognize it?

1 A. Yes. That is our advisement of rights and the one
2 I had Mr. Gilliard fill out with Detective Perkins.

3 Q. The top part of that form, how did you fill that
4 out?

5 A. Like I said, I was at my desk, and it was
6 literally right next to the interview room, so he could
7 sit in the doorway and just kind of go through this as
8 line for line. I filled in the case number for this case
9 and then asked him for his name and the correct spelling,
10 put the date on it and his date of birth and address, and
11 asked him all the appropriate information.

12 And then I printed it off and handed it to him and
13 gave him a chance to proofread it, make any changes, and
14 make sure we had it correct before we began, and then I
15 typed my name and Detective Perkins' name in there.

16 Q. So up at the top here, what was this preliminary
17 information that you obtained from him?

18 A. I obtained his name as being Bernard Gilliard,
19 with the date of birth of [REDACTED], address of [REDACTED]
20 Elderwood Drive, had a phone number of [REDACTED]. He
21 was not currently employed. Got a social security number
22 of [REDACTED].

23 Q. And he provided you with all that?

24 A. We may have gotten the social security number from
25 his driver's license if he did not know. I don't

1 remember if he provided that or not, but he definitely
2 double-checked to make sure everything was accurate.

3 Q. And after you filled out this top part of this
4 form, what comes next?

5 A. After that, we print it off and I hand it to him,
6 just make sure everything is correct, and then once he
7 says that that is the correct information, then I make
8 sure he has a copy of it so that he is handed the copy
9 that he has already said has the correct information.

10 I then take a blank one and we read it together as
11 we go through it, and I read it word for word as we go
12 through and ask him after we get through each right if he
13 fully understands that right, and then I make sure that
14 he gives me a verbal confirmation that he does understand
15 that right.

16 Q. How many rights are listed on that form?

17 A. There are five rights listed on the form.

18 Q. Will you demonstrate for the jury exactly how you
19 advised Mr. Gilliard of his rights using that form.

20 A. First, I read the first part, which says Detective
21 N. Wagner and Detective J. Perkins has advised me that he
22 is a member of the Charleston County sheriff's office and
23 has further advised me and we go directly into advisement
24 number one, that I have the absolute right to remain
25 silent and do not have to answer to any questions or give

1 a statement, and this fact cannot be used against me.

2 Once I read that, I would ask him, do you
3 understand the right I just read to you? And I don't
4 accept a head nod, I don't accept an uh-huh. I make sure
5 he says yes. As soon as he says yes, he understands
6 that, I ask him to initial next to that right, and then I
7 move on to right number two, three, four, and five.

8 Q. And in regard to the first right, did he appear to
9 understand that right?

10 A. Yes, he appeared to understand.

11 Q. How did he indicate that?

12 A. He gave me a verbal yes, and he also put his
13 initials after that, after indicating yes.

14 Q. And after he did that, did you move on to the
15 second right?

16 A. Yes. We move on to right number two.

17 Q. What is right number two?

18 A. If I do not answer questions and give a statement,
19 anything I say can and will be used against me in a court
20 of law.

21 And I ask, Do you understand this right? And he
22 say yes, and I said, If you understand, put your initials
23 next to two, and we moved on to the third right.

24 Q. Was the third right read aloud to him?

25 A. Third right was that he had the right to consult

1 with a lawyer of my choice before I answer questions or
2 give a statement, and also have him present while being
3 questioned.

4 And, again, I asked him, did you understand this
5 right and he gave me that he did. He said he did, and
6 then he initialed next to that, and moved on to
7 advisement of right number four, that if I wished to talk
8 to a lawyer or have him present but am unable to afford
9 to hire a lawyer, one would be appointed to represent me
10 free of charge.

11 Again, after I got done with that, I asked him if
12 he understood his right and he said he did. I asked him
13 if he didn't understand it, put his initials next to it,
14 at which he put his initials next to number four and then
15 we went to the fifth right, that if I decide to answer
16 questions or give a statement without having a lawyer
17 present to represent me, I had the absolute right during
18 this interview to stop and answer questions and remain
19 silent.

20 And, again, I asked him if he understood that
21 right. He indicated yes, he did, and then he placed his
22 initials next to number five. Once we were done with all
23 five, the next thing says, I fully understand each of
24 these rights which have been explained to me.

25 And I asked him again, do you understand all those

1 rights we've gone through? He indicated yes, he did
2 understand his rights, and I said, if you understood all
3 these rights, please put your name there, and he signed
4 his name below that portion of that, at which time
5 Detective Perkins and I witnessed it. We put our
6 signatures under the part that says witnesses.

7 Q. So there are three signatures there?

8 A. Yes. There is Mr. Gilliard's signatures,
9 Detective Perkins, and my signature.

10 Q. And after every right was read to him, out loud,
11 he initialed beside each right?

12 A. Yes.

13 Q. He signed his name indicating he understood those
14 rights?

15 A. Yes.

16 Q. At any time did he say he was confused about any
17 of those rights?

18 A. No, he did not.

19 Q. At any time did he indicate he was confused?

20 A. No, he did not.

21 Q. Was he able to respond appropriately to you in
22 your interaction with him?

23 A. Yes.

24 Q. And, again, did he appear under the influence of
25 drugs or alcohol?

1 A. No, he did not.

2 Q. Did he appear injured in any way?

3 A. No, he did not.

4 Q. Did he appear tired or sleepy in any way?

5 A. No, he did not.

6 Q. Did he appear fully alert?

7 A. Yes.

8 Q. And after he was advised of his rights, did you
9 ask him if he wished to waive those rights and speak with
10 you?

11 A. Yes, sir. The second portion of the advisement of
12 rights is a waiver of rights, and, again, I read those
13 out to him, and he was still provided with a copy so he
14 could read along with me, and it reads, As such, I fully
15 understand each of these rights which have been explained
16 to me, and having these in mind, I wish to waive these
17 rights and answer questions. No threats, force, or
18 promises of any kind have been made to me to induce or
19 cause me to waive these rights and answer questions, and,
20 again, I asked him if he fully understood what I just
21 read, and he said that he did.

22 And then I said, if you understand that and I
23 asked him, are you willing to speak with us and he said
24 yes, I said if that is the case, please put your name
25 down there and he signed his name, right underneath the

1 waiver of rights, and Detective Perkins and I both
2 witnessed it, and we signed our names and our payroll
3 numbers below that.

4 Q. So how many times does Mr. Gilliard's signature
5 appear on this form?

6 A. He has two signatures and five initials.

7 Q. And why does he have two signatures?

8 A. Well, one is to say that he understands his
9 rights, and the second signature is to say he was willing
10 to talk to us about the crime for which he was in there
11 for, so he was wiving his rights on the second one. He
12 understood the rights that were up above.

13 Q. And how many times does your signature appear on
14 that form?

15 A. My signature is on there twice.

16 Q. Why is your signature on there twice?

17 A. Again, it was on there the first time saying that
18 he understood his rights that we had explained to him and
19 that he had read then, and then after he had signed it
20 acknowledging he was willing to waive his rights, my
21 signature is below that.

22 Q. Because you were a witness both times?

23 A. Yes, sir.

24 Q. For the advisement of rights and waiver of rights?

25 A. Yes.

1 Q. How about Detective Perkins? How many times is
2 his signature on there?

3 A. Two times.

4 Q. For what reason?

5 A. He was there to witness and being advised of his
6 rights and that he understood his rights and when he
7 waived his rights, knowingly waived his rights, he
8 witnessed that also.

9 Q. Did you tell him what you wanted to talk to him
10 about?

11 A. Yes.

12 Q. What did you want to talk to him about?

13 A. We wanted to talk about the murder that happened
14 on the day previous in Woodside concerning Vincent
15 Wittrell.

16 Q. And did he speak with you?

17 A. Yes, he did.

18 Q. Approximately what time did this advisement of
19 rights take place?

20 A. Advisement of rights took place right around maybe
21 9:00, maybe.

22 Q. And approximately what time was he placed in your
23 custody at the Days Inn in Berkeley County?

24 A. Around 8:20, somewhere around 8:00, or just
25 shortly after.

1 Q. So there's 40 minutes between the time he's in
2 your custody, brought to the sheriff's office, and you
3 begin the advisement of rights?

4 A. Yes.

5 Q. And about how long did it take to advise him of
6 his rights and obtain his waiver?

7 A. About five to ten minutes, give or take.

8 Q. So what happened after he waived his rights?

9 A. After he waived his rights, then we simply
10 explained to him we knew what he was there for and we
11 talked to him about it and asked him to give, basically,
12 his side of the story, and we had him do a verbal
13 statement.

14 So we talk about answer questions and ask
15 questions and listen to his version of the story and see
16 where we are from there.

17 Q. Was he eventually able to provide you with a
18 written statement?

19 A. Yes. He began writing a written statement.

20 Q. As a detective, have you been trained in obtaining
21 a statement from a witness or a defendant?

22 A. Yes, I have. It's part of our -- when I was
23 selected to the detective division, we had in service
24 training, so a senior detective takes you under their
25 wing basically and teaches you how to investigate crimes

1 and how to interview people. I've been to the academy in
2 Columbia, South Carolina, took a basic detective class.
3 Part of that is interview techniques. I also was in
4 another interview class that was taught down at the
5 Citadel.

6 Q. Did this interview with Mr. Gilliard proceed
7 essentially how you had been trained?

8 A. Yes, it did.

9 Q. And what time did y'all get to talk about what
10 happened?

11 A. We did the verbal statement approximately 9:15.

12 Q. I'm showing you what the State has labelled as 91
13 for identification, ask you to take a look at it.

14 A. Yes, sir.

15 Q. Do you recognize it?

16 A. Yes, sir. This is our standard statement form
17 that Charleston County sheriff's office uses. This is
18 the form that we use with Mr. Gilliard on the 22nd of
19 April and the written statement that he gave us.

20 Q. And how do you know that?

21 A. It's got his signature on it, my signature on it,
22 my handwriting. Everything is the way I remember it when
23 we took on the 22nd of April 2009.

24 Q. Does it appear substantially in the same condition
25 now as it did when you obtained that from him that night?

1 A. Yes, it does.

2 Q. Let's talk about how you proceeded there. At
3 9:15, you said you began talking.

4 A. Yes.

5 Q. How long does that last?

6 A. Well, this one lasted probably about -- it looks
7 like we ended at 9:50, so it lasted about 35 minutes.

8 Q. And how do you know it ended at 9:50?

9 A. Detective Perkins kept notes on the top right hand
10 portion of the statement. Before we even began, I made
11 sure to ask Mr. Gilliard what his education level was,
12 and when he told me that he had a GED, I made sure to
13 note that at the top of it.

14 Q. So he talked to you out loud from 9:15 to 9:50?

15 A. Correct.

16 Q. So about 35 minutes?

17 A. Yes.

18 Q. And did he tell you his -- did he tell you about
19 the murder?

20 A. Yes, he told us about the murder. He told us he
21 committed it did --

22 Q. I'm not asking what he told you right now, but he
23 told you about the murder.

24 A. He told us about that day, yes.

25 Q. What happened at 9:50?

1 A. At 9:50, we took a break, made sure to offer him a
2 cigarette, see if he needed to use the rest room, just
3 get some fresh air and take a general break from the
4 process, give him a chance to collect his thoughts and we
5 could collect our thoughts.

6 Q. Was he offered a rest room break?

7 A. Yes.

8 Q. Was he provided with anything to drink?

9 A. Yes, he was.

10 Q. Any time while talking to you at this point did he
11 say he wanted to stop talking to you?

12 A. No, Mr. Gilliard was very alert. He didn't seem
13 to be out of it and he did not ask to stop, and he was
14 very forthcoming with information.

15 Q. At any time this far had he indicated to you that
16 he wanted to have a lawyer present?

17 A. No, he did not.

18 Q. And so how long was your break that started at
19 9:50?

20 A. We then took a ten-minute break and we started
21 again at 10:00, and I know this because Detective Perkins
22 wrote the start time again at the top right-hand corner
23 of page one of our statement.

24 Q. And what happened at 10:00?

25 A. At that point we asked Mr. Gilliard if he was

1 willing to write his statement out, what he just talked
2 to us about and give us a written statement, and he said
3 he was willing to do that.

4 So we broke out the statement pads, explained to
5 him about being in triplicate form, told him we had
6 plenty of paper and asked him to fill it out and start
7 writing his statement. One of the things I always tell
8 people is start at the beginning and end at the end, put
9 it all in there.

10 Q. And about how long did that last?

11 A. It lasted till -- we stopped at 10:50. So it took
12 about 50 minutes.

13 Q. Now, do you always -- when you take a statement
14 from somebody, do you always let them write their name or
15 do you write it sometimes for them?

16 A. It depends. Every day is a little different.
17 It's more preferable to allow them to write their own
18 statement in their own penmanship, and that is why we ask
19 them what kind of education they have, if they can read
20 or write, make sure they're not intoxicated or under the
21 influence so that they are able to do that on their own.

22 Q. What would you do if somebody said they can't
23 write?

24 A. If they can't write, then we would either -- we
25 would ask them if it was okay for us to write it for them

1 of if they dictated it to us or we would type it. Again,
2 we would ask them which way would be preferable for them.

3 Q. What if their penmanship was just terrible?

4 A. We would start again with giving them the
5 opportunity to write. If it was terrible, I would take
6 over and do it myself.

7 Q. If it was all right with them, right?

8 A. If it was okay with them.

9 Q. But in this instance, who did the writing?

10 A. Mr. Gilliard did the writing.

11 Q. And you said he wrote till about 10:50?

12 A. Yes, sir, approximately.

13 Q. And how much -- how many pages did he write?

14 A. Two full pages.

15 Q. Was that the end of it?

16 A. That was the first two pages that he wrote from
17 beginning, and then we took that and then we took a
18 break, and after we were done with our break, we did what
19 was considered a question and answer session.

20 Q. How long was your break?

21 A. We took, it looks like, a 40 minute break from
22 10:50 to about 11:30 in order to give Mr. Gilliard some
23 food. We went to McDonald's and got him a burger to eat
24 and just take another long break because we had been
25 there almost two hours.

1 Q. You said he wrote his two pages from 9:50 to
2 10:00; is that right?

3 A. It went from -- it's 10:00 to 10:50.

4 Q. And that is when he wrote his two pages?

5 A. Yes.

6 Q. Where were you when he wrote those pages?

7 A. We in the office area. He was in the room by
8 himself.

9 Q. So you left him in there?

10 A. We left him in there alone to write on his own.
11 Detective Perkins and I do that.

12 Q. Then y'all took a break from 10:50 to 11:30?

13 A. Yes.

14 Q. Why did you take such a long break?

15 A. Like I said, to give him an opportunity to eat,
16 collect his thoughts, smoke a cigarette, take a bathroom
17 break, make sure he gets something to drink.

18 Q. Was he provided with anything to eat?

19 A. Yes. We provided him with McDonald's.

20 Q. And at 11:30 when this resumed, did the statement
21 resume?

22 A. We then started up again with the statement, and
23 we did what's called a question and answer portion of the
24 written statement, where a question would be written down
25 and then he would be given the opportunity to write his

1 answer to that question, to make any clarifications of
2 the statement.

3 Q. Who would write the questions?

4 A. Detective Perkins starting writing the questions.

5 Q. Who would write the answers?

6 A. Mr. Gilliard wrote the answers. We always have
7 the other person write the answers.

8 Q. Ultimately how long was his statement?

9 A. At the end it was nine total pages written
10 statement.

11 Q. Was Mr. Gilliard given an opportunity to review
12 the statement for accuracy?

13 A. Yes. Once we were completely done with
14 everything, he was handed the statement individually, one
15 by one, and asked to review it, and once he is done
16 reviewing it, he is offered -- or we have him sign it and
17 we I have him initial the top left-hand corner where he
18 begins writing and the bottom right-hand corner at the
19 end of the statement so that we know that we don't add
20 anything to his statement, so I initialed twice and had
21 the signature on it.

22 Q. Was he given -- did he make any corrections?

23 A. Yes. Every place where there is a scratch-out we
24 have the -- whoever is writing the statement, we have
25 them initial next to it so there is a few scratch-outs

1 and we have him initial next to it. We offered him a
2 chance to review it.

3 Q. But did he write his initials to make you aware he
4 corrected something in that statement?

5 A. Yes. Every place there is a scratch-out we have
6 that he initialed it.

7 Q. The few times, it's done --

8 A. A couple times on the first page, a couple times
9 on the second page, nothing substantial.

10 Q. And after he was given this chance to review, did
11 he indicate that yes, this was his statement?

12 A. Yes, he did.

13 Q. And how did he indicate that?

14 A. He wrote his name by the signature line. The last
15 thing says, I have read and had read to me the forgoing
16 statement, which has been freely and voluntarily made by
17 me, and it is true and correct to the best of my
18 knowledge, and then there is a place for the signature,
19 and he signed right there.

20 Q. How many times did he sign that statement?

21 A. Nine times on each page, one time on each page.

22 Q. One on all nine pages?

23 A. Yes.

24 Q. What about yourself? Did you sign that statement?

25 A. Yes. After he signed it, I signed it as a witness

1 to the statement.

2 Q. What about Detective Perkins? Did he sign?

3 A. Yes. Detective Perkins also signed it.

4 Q. Was anybody else in that room?

5 A. No.

6 Q. Anybody else participate in obtaining that
7 statement?

8 A. Just Detective Perkins, myself, and Mr. Gilliard.

9 Q. At any time did you or Detective Perkins or
10 anybody threaten Mr. Gilliard in order to get him to
11 write that statement?

12 A. No, we did not.

13 Q. Did at any time you or Detective Perkins or
14 anybody threaten a member of his family in order to get
15 him to give you that statement?

16 A. No, we did not.

17 Q. Did any of you offer him any hope or a promise or
18 reward in order to get him to give you that statement?

19 A. No, we did not.

20 Q. Did you use any physical force against him at any
21 time to get him to give you that statement?

22 A. No, we did not.

23 Q. And did he provide you that statement freely and
24 voluntarily?

25 A. Yes, he did.

1 Q. Any time during that statement did he say he
2 wanted to have a lawyer present?

3 A. No, he did not.

4 Q. Any time during that statement did he indicate he
5 wished to stop talking to you?

6 A. No, he did not.

7 MR. DuRANT: Your Honor, at this time, I
8 would like to move for the admission of State's 90 and
9 91.

10 THE COURT: Over the defendant's objection to
11 the statement, now, folks I am making a determination
12 that the statement you're about to hear about is
13 admissible; that is, it is admitted into evidence, and
14 you are allowed to consider it.

15 Ultimately, the State must prove to you
16 beyond a reasonable doubt that this statement was freely,
17 voluntarily, and intelligently made. I am simply
18 allowing it into evidence, so you have heard some
19 evidence about the circumstances surrounding the giving
20 of that statement.

21 You will also hear, of course, Mr. Bosnak's
22 cross-examination about that a little bit later, and
23 after you have heard all of the circumstances surrounding
24 the giving of this statement, then you can later, when
25 you deliberate, make a determination as to whether or not

1 it was, in fact, freely, voluntarily, and intelligently
2 made.

3 If you find it was voluntarily made, then you
4 can consider how much weight to give this particular
5 statement. If you find the statement was, in fact, not
6 freely and voluntarily made then you may not -- then you
7 may not consider the statement at all. All right? You
8 may proceed.

9 MR. DuRANT: Thank you, Your Honor. May it
10 please the Court:

11 BY MR. DuRANT:

12 Q. Detective Wagner, I ask that you read the
13 statement verbatim, word for word, from the very top of
14 the statement to the very end, to the jury, please.

15 A. This is a statement of Bernard Gilliard, [REDACTED]
16 Elderwood Drive, phone number [REDACTED], black male, date
17 of birth of [REDACTED]: Me and the victim has been
18 through many conflicts, but the incident concerning this
19 situation stems from me catching his \$800 sale a couple
20 weeks ago. When I woke up the day of the murder, I was
21 concerned about paying the bondsman his money for my
22 recent bail that has been posted, so I asked one of my
23 homeboys to escort me to the job site. He then told me
24 he would have to go to Woodside first.

25 When we arrived in Woodside, I noticed my homeboy

1 procrastinating, stalling, taking me to the job site, so
2 I called my other homeboy and asked him to take me. He
3 said he would because he needed a job too.

4 When he came, his little cousin, him, and myself
5 drove to Ashley Phosphate to drop the little cousin off.
6 We then went to the job site but they said we had to come
7 back in the morning.

8 Shortly afterwards, I got a call from the sale,
9 and the sale told me what he wanted, so I had my homeboy
10 drop me off at the gas station to this other sale so my
11 sale could take me.

12 After completing my sale, I got a call from the
13 victim saying today is the day he needs the money I
14 so-called owed him for a prior incident. I told him I
15 would pay him. I had my sale drop off me at the store.
16 I called the victim and told him I was at the store. He
17 told me he wasn't coming to the store. I was to meet him
18 on the first street, so I walked to the first street with
19 my gun in my pocket.

20 I forgot to write in between the ride from my
21 sale's house and Woodside, our conversation had me
22 thinking he had some bad intentions on his mind, so I
23 made sure I had my weapon.

24 When he drove down the first street, he stopped in
25 front of me and downed his window. I then noticed the

1 black and purple nine millimeter on his passenger seat.
2 He then stated, I should make your pussy ass pay me
3 double for waiting so long.

4 I told him I already tried to pay him. He told me
5 to shut up before he shoot me. So at that time I noticed
6 a slight change in his body movement, and I reacted by
7 shooting him before he shot me.

8 When I was done, I started running through the cut
9 in the street. I then turned around to take his money
10 out of his pocket and then I left. I then left Woodside
11 with the sale that was already riding down the street and
12 went directly straight to the Cooper River to dispose of
13 the gun.

14 That is the end of written statement. Beginning
15 of the question and answer, Q and A by Detective J.
16 Perkins and N. Wagner of the Charleston County sheriff's
17 office:

18 Who are you referring to when you said victim is
19 in your statement?

20 Vincent.

21 Did you shoot Vincent?

22 Yes.

23 How many times did you shoot Vincent?

24 Whatever was left in the gun.

25 What kind of gun did you shoot Vincent with?

1 A P-89 Ruger nine millimeter.

2 Describe the gun.

3 Black and gray, medium size.

4 Did you intend on killing Vincent?

5 No, sir, I didn't really want to kill him.

6 What did Vincent say to you before the shooting?

7 He told me he should make me pay double or shoot
8 me.

9 Where did you get the gun from?

10 I have a secluded area in the woods where I keep
11 my contraband off of Pinewood Drive.

12 Do you have any other weapons in that secluded
13 area?

14 No, sir.

15 Is the area a house?

16 No, sir. It is off of a dirt road in the woods.

17 How did you get possession of the gun?

18 I made a drug transaction for him.

19 Where is the gun now?

20 In the Cooper River.

21 What were you wearing during the time of the
22 incident shooting?

23 A black shirt, black pants, white, black, and blue
24 shoes, and a red hat.

25 Where did you go after the incident?

1 I went to dispose of the gun.

2 Who did you go with to dispose of the gun?

3 His name is Jeff and he has a white Corolla,
4 Toyota.

5 What is Jeff's description?

6 5'10, 165 pounds, black hair, slim build, white
7 male.

8 Where does Jeff live?

9 I don't know.

10 What is Jeff's contact numbers?

11 I don't know.

12 Where did you go with Jeff?

13 I went to the Cooper River to get rid of the gun.

14 What route was taken to dispose of the gun?

15 I-26.

16 Did you tell Jeff what you'd done?

17 No, sir.

18 Did you show Jeff the gun?

19 No.

20 Where at on the bridge did you dispose of the gun?

21 In between the Charleston side and the top.

22 In what manner did you dispose of the gun?

23 I threw it as we was riding over it.

24 Did you exit the vehicle while disposing of the
25 gun?

1 No, sir.

2 Where did you go after you disposed of the gun?

3 I went to a friend's house.

4 What is your friend's name?

5 Russ.

6 Where does Russ live?

7 In Ardmore.

8 What is Russ's description?

9 Dark skin, 5/7", 157 pounds, slim build.

10 Is Russ a white or black person?

11 Black.

12 What street does Russ live on?

13 Behind Pep Boys, parallel to 17.

14 Describe Russ's house?

15 It looks abandoned.

16 Did you go to the Quick Mart on the day of the
17 incident?

18 Yes, sir, before the incident.

19 When were you at the Quick Mart?

20 I was standing at the store before I went to the
21 crime scene.

22 How much time passed between when you left the
23 Quick Mart and when you shot Vincent?

24 Probably two minutes.

25 Did you intend on robbing Vincent when you went to

1 meet him?

2 No, sir.

3 Did you leave Woodside after you shot Vincent in
4 the black Impala or gray Crown Vic?

5 No, sir.

6 After you shot Vincent, did you see Precious, Bum,
7 or Kiki?

8 No.

9 Did you see Queenie?

10 No.

11 Did you go to Dorchester Manor after you shot
12 Vincent?

13 No.

14 Did you go back into Woodside after you shot
15 Vincent?

16 No.

17 How did you get to the motel where you were
18 arrested at?

19 Cab.

20 Are you intentionally covering up for anyone
21 involved in the shooting of Vincent?

22 No, sir.

23 Who paid for the motel room?

24 Me.

25 How did you get the motel room?

1 Cab driver.

2 Why did she get it for you?

3 I told her I needed a place to rest and I had no
4 ID.

5 Describe the cab driver?

6 Slim, redheaded, Caucasian female.

7 Did you tell her anything about you killing
8 Vincent or that you were wanted by the police?

9 No, sir. Is there anything else you want to add
10 that I may not have asked or that you think is important
11 pertaining to this case?

12 Yes, sir. I did not mean to kill Vincent. I
13 normally would not react the way I did, but I had
14 suffered so much verbal and some physical abuse from him.
15 I was afraid he would have -- he would have hurt me
16 first.

17 I don't hate nobody. Even after all he's done to
18 me, I still did not hate him, but I wasn't going to let
19 him kill me. I feel sorry for what happened, but I can't
20 change the past, and I accept responsibility for my
21 actions.

22 Q. Is that the complete statement?

23 A. Yes.

24 MR. DuRANT: Thank you. No further
25 questions.

1 THE COURT: Mr. Bosnak?

2 CROSS-EXAMINATION

3 BY MR. BOSNAK:

4 Q. Detective Wagner, going back to the statement,
5 when did you say the time you finished it up that
6 evening?

7 A. We have an end time of just after midnight, on
8 004.

9 Q. Sometime after midnight?

10 A. Yes, sir.

11 Q. So you he got arrested about 8 a.m. -- about 8
12 p.m., excuse me.

13 A. After 8 p.m.

14 Q. After 8 p.m.?

15 A. Yeah, just after 8 p.m.

16 Q. Sometime around 8 o'clock he got arrested?

17 A. Yes, sir.

18 Q. You took him to the sheriff's office around 9:00?

19 A. Yes, sir.

20 Q. Around 9:00, say you started about 9:50; is that
21 correct?

22 A. We started with the --

23 Q. Started questioning or talking to him?

24 A. 9:15.

25 Q. 9:15, I'm sorry, and you went to 9:50? Would that

1 be correct?

2 A. Yes, sir.

3 Q. And then you had him write out two pages, and I
4 think you said that took from 10:00 to 10:50?

5 A. Yes, sir.

6 Q. And from 10:50 to about 11:30 you had a break.

7 A. Yes, sir.

8 Q. And --

9 A. Another break.

10 Q. And you said you went and got him something to eat
11 at McDonald's.

12 A. Yes.

13 Q. And then you started the Q and A at 11:30 and that
14 was over somewhere around 12:00.

15 A. Yes.

16 Q. So about four hours in all this?

17 A. Yes.

18 Q. You and I have talked before, and I asked you a
19 question that one of the most important things for a
20 detective to do is to find the truth.

21 A. Yes, sir.

22 Q. And find the whole truth?

23 A. Yes, sir.

24 Q. And before I get into that, though, Bernard didn't
25 give you any kind of hard time when you and the marshal

1 service showed up. He didn't run or anything?

2 A. No, sir.

3 Q. Wasn't armed?

4 A. No, he wasn't.

5 Q. Didn't curse at you?

6 A. No, sir.

7 Q. Didn't spit the you?

8 A. No.

9 Q. Acted like a gentleman the whole time, did he?

10 A. He was very peaceful.

11 Q. Very peaceful person, and when you and Detective
12 Perkins talked to him, he was more than happy to talk to
13 you?

14 A. Yes.

15 Q. Didn't not want to talk to you, didn't want a
16 lawyer or anything like that; he was going to sit down
17 and talk to you, right?

18 A. Yes.

19 Q. Now, you said -- we heard from Ramara Straman that
20 one of the reasons you went -- your testimony is one of
21 the reasons that you went and picked Bernard up was
22 because she and her sister came forward, the day before.

23 A. It was one of many reasons. We had lots --

24 Q. I understand, but you said sometime the night
25 before you arrested him that they had called you and said

1 that he had confessed to them that he had shot Vincent?

2 A. Yes.

3 Q. And you said that you went and picked them up.

4 A. Yes, sir.

5 Q. And then took them, I guess, to the sheriff's
6 office?

7 A. Took them to one of the substations.

8 Q. And where you then got a statement from both of
9 them.

10 A. Yes.

11 Q. And you got her statement, correct?

12 A. Yes.

13 Q. Now, in her statement, I'm sure you read it,
14 didn't you?

15 A. Yes, sir.

16 Q. And she talks about -- she talks about Bernie and
17 Vincent having problems.

18 A. Yes.

19 Q. And she also talks about -- that Bernie better
20 know that one of Vincent's brothers is going to get him.

21 A. Yes.

22 Q. You knew that.

23 A. Yes.

24 Q. Did you read her sister's statement?

25 A. Tiara's? Yes, I have.

1 Q. And you read from that where she said that Bernie
2 had been banished from Woodside?

3 A. Yes.

4 Q. By Vincent?

5 A. Yes.

6 Q. Did you ever investigate any of that?

7 A. The banishment? No, sir.

8 Q. Never investigated a threat, a retaliatory threat
9 against his life?

10 A. No, sir.

11 Q. Didn't --

12 A. I did not, no, I did not.

13 Q. Okay. And didn't investigate that he had been
14 banned, in other words, told he better not come back to
15 Woodside?

16 A. I personally did not, not.

17 Q. Who did you tell about this?

18 A. About the statement?

19 Q. Yeah.

20 A. I know that Detective Perkins and I discussed both
21 the statements.

22 Q. So you told Detective Perkins you had concerns
23 about this?

24 A. We were more concerned about the shooting than --
25 I was more concerned about the fact that he said he

1 shot -- or she said that he had said he shot Vincent.

2 Q. Right.

3 A. So we were more concerned about getting the
4 warrant and going after Bernie than that portion of it.

5 Q. Now you got him in custody the day after the
6 shooting, right?

7 A. Yes, sir.

8 Q. So he's in jail. He's fine. You don't got to
9 worry about that anymore.

10 A. Yes, sir.

11 Q. Where did you write or try to investigate, maybe
12 we ought to look at this. Let's look and see if there's
13 some type of beef between these two. Because he had been
14 told he better not come back to Woodside now, and that is
15 where the shooting took place. Where is the
16 investigation into that?

17 A. I heard from other detectives that there was a
18 known beef between the two of them.

19 Q. Where is that in any of that? Because I don't
20 have any of that. Who wrote that up?

21 A. I don't know if that was in the supplemental
22 report or not.

23 Q. Now, Detective, we want to know the truth, the
24 whole truth. If somebody said something about it, where
25 is it? It's not in any of your notes.

1 A. No.

2 Q. Not in any of your notes to Detective Perkins or
3 e-mails or anything about, look, we've heard through the
4 grapevine or through a person that we put a lot of stock
5 into, she's a witness, that this defendant's life has
6 been threatened or possibly been threatened. You don't
7 have anything like that, do you?

8 A. No, sir.

9 Q. And he was banned from Woodside by the victim.
10 You don't have any -- you didn't look into that, did you?

11 A. No, sir.

12 Q. Well, what you did is instead of doing that, you
13 charged him with murder.

14 A. Yes.

15 Q. And charged him with armed robbery, or, excuse me,
16 robbery.

17 A. Yeah.

18 Q. Armed robbery, even though you cannot ascertain if
19 anything was even taken.

20 A. He said he took money out. He said in his written
21 statement he took money out.

22 Q. And he also told you that he tried to pay this guy
23 the money that he owed him.

24 A. Yes.

25 Q. And he told you he took that money back.

1 A. He said he took money back out of his pockets.

2 Q. Well, now, correct me if I'm wrong, but the victim
3 had \$1,607.02. Logically, when people steal, wouldn't
4 they --

5 MR. DuRANT: Objection. Counsel is
6 testifying.

7 THE COURT: I'll give him leeway. Go ahead.

8 BY MR. BOSNAK:

9 Q. They take everything on them, don't they?

10 A. Sometimes they do.

11 Q. So he's just going to leave \$1,607.02 there?

12 A. I would imagine if he just shot somebody, he was
13 scared and he just took what he could and ran. I don't
14 know what he was thinking, if he took the time to go
15 through every pocket, or if he just got scared and took
16 off and got as much as he could, just like we work
17 robberies with banks or convenience stores. They take
18 what they can and then they run.

19 Q. Well, a bank has locked vaults and convenience
20 stores have locks and safes too, don't they? That's not
21 something you can reach in and grab.

22 A. Right. But they don't always take all the money,
23 that is my point. Sometimes there is money left behind.

24 Q. There was money in all four pockets, so he's just
25 going to grab half the money in the pocket and leave the

1 other money?

2 A. I wasn't there when he took the money, so I don't
3 know what he did.

4 Q. Did Detective Milz or any of the crime scene
5 people tell you that the pockets looked like they had
6 been disturbed?

7 A. I didn't speak to him about that.

8 Q. You never asked him?

9 A. No, sir.

10 Q. All right. I want to go back to this, even in his
11 own words, he said -- he told you that he didn't intend
12 on robbing, did he?

13 A. Yes.

14 Q. And he told you, out of his own words, they had
15 beefs before?

16 A. Yes.

17 Q. And then he had the other statements from one of
18 his girlfriends, or alleged girlfriend's, sister?

19 A. Yes.

20 Q. And then at the end of this statement, he said,
21 yes, sir, I did not mean to kill Vincent. I would
22 normally not react the way I did, but I suffered so much
23 verbal and physical abuse from him I was afraid he would
24 have hurt me first.

25 I don't hate nobody, even after all he's done to

1 me. I still do not hate him, but I wasn't going to let
2 him kill me first. I feel sorry for what happened, but I
3 can't change the past, and I accept responsibility for my
4 actions.

5 No type of investigation whatsoever to look into
6 that?

7 A. We knew that he had a beef.

8 Q. Where is that in any of this? You hadn't written
9 that in anywhere?

10 A. It was in the statement he had given himself. It
11 was in his verbal statement. It was also in another
12 statement by his other acquaintance, so it was well-known
13 that he had a beef.

14 Q. What I'm asking you, though, is in any of the
15 sheriff's documents, your documents, Perkins's documents,
16 Detective Perkins's documents, where is there a write-up
17 about this?

18 A. I would think it was covered in the statements.

19 Q. It's in the statements, but you two haven't done
20 anything about this. You're not looking for the truth.

21 A. I would say we are.

22 Q. If you're looking for the truth, you would have
23 tried to find out what those things were, and you would
24 have written a report on it. What you've done is you've
25 only looked for facts to try to get this man convicted

1 for murder.

2 A. We looked into the shooting of Vincent Wittrell.
3 We found out who shot him.

4 Q. Yeah, but you didn't look into all the facts. You
5 didn't look into what kind of beef they had. You didn't
6 look into the seriousness of him being banned from
7 Woodside, did you?

8 A. We spoke with the other detectives that were
9 working the area. We spoke with patrol. We knew they
10 had an ongoing problem.

11 Q. Where did you have it written down? Where did you
12 have any notes that you talked to so-and-so, Officer
13 So-and-so, Officer So-and-so about this and Officer
14 So-and-so told you that, or you talked to Detective
15 So-and-so about this or you talked to the narcotics
16 department about that? There is none of that, is there?

17 A. I can tell you -- all I can tell you is we did do
18 that.

19 Q. Where is it?

20 A. I'm telling you we did that.

21 Q. But where is it? I have never seen it. What is
22 it? Tell us what it is.

23 A. I'm sorry?

24 Q. Tell us what it is. Tell us who you talked to,
25 what detectives.

1 A. I know that Detective Perkins spoke with
2 Mr. Gilliard about it. I know that, and I can't name
3 which patrol deputies told us about it, but we did go
4 look. We did talk to people about it, or they came
5 forward with that information.

6 Q. They came forward, but y'all didn't record it
7 anywhere?

8 A. No.

9 Q. You didn't think it was important.

10 A. It was part of our discussions and our
11 investigation back and forth.

12 Q. As part of the investigation and part of the
13 report it should be recorded in some type of document,
14 true?

15 A. Not necessarily. We were going after who shot
16 him, and that was our investigation, so we didn't find
17 anything that took that away from what happened.

18 Q. So what you're telling me, you only put in these
19 police reports and things stuff that you think is
20 important and things that you don't want to put in there
21 you don't put in?

22 A. Not true.

23 Q. Not true?

24 A. We're not admitting anything, if that is what
25 you're asking.

1 Q. You're omitting any type of bad relationship that
2 the victim had with the defendant, which could go to show
3 something such as involuntary manslaughter instead of
4 murder. You've intentionally left that out.

5 A. We had it in the statements.

6 Q. You had it in the statements from two people?

7 A. Yes.

8 Q. You had it in his statement. You say that you
9 talked to other police officers, but it's not recorded
10 anywhere on any of your documentation. Is it?

11 A. No.

12 Q. So it's not important to you. If it was
13 important, you would have written it down? I would have
14 got a copy of it?

15 MR. DuRANT: Your Honor, I'm going to object
16 at this time. I think it's been sufficiently asked and
17 answered numerous times.

18 THE COURT: Well, it's been asked and it
19 really hadn't been answered, so you need to answer the
20 question.

21 THE WITNESS: No, I did not think it was the
22 part of our investigation to write it down if it was in
23 the report, no.

24 BY MR. BOSNAK:

25 Q. Did you do a background check on the victim?

1 A. We ran through NCIC.

2 Q. And you saw his record?

3 MR. DuRANT: Objection.

4 MR. BOSNAK: Goes to the truthfulness, Your
5 Honor.

6 MR. DuRANT: Can we approach, Your Honor?

7 (Discussion held at sidebar.)

8 BY MR. BOSNAK:

9 Q. Let's go back again. Through your investigation,
10 you checked the victim's record?

11 A. Yes, sir.

12 Q. You ran a check?

13 A. Yes.

14 Q. You realized he had criminal background too.

15 A. Yes.

16 Q. Had one for drug dealing?

17 A. I don't know what his criminal history is off the
18 top of my head; no, sir, I do not.

19 Q. But you knew he had a criminal record?

20 A. Yes.

21 Q. Certainly not any kind of Sunday schoolteacher?

22 A. I knew he had a criminal record.

23 Q. And even knowing all that, you still did not try
24 to look at the possibility, even when this young man
25 tried to tell you the truth, everything, the truth, and

1 you've interrogated him, you're interrogating him here
2 for about four hours in a police station and he's trying
3 to cooperate with you in every way and he tells you that
4 he didn't go and intend to rob this young man, there was
5 problems between them and that he didn't want to kill
6 him, he did it in self-defense, and two witnesses that
7 you put a lot of credibility in say that he was banned
8 from Woodside, that the victim banned Bernie from
9 Woodside when this happened, and that his brother was
10 going to come after Bernie for doing that and after doing
11 that and you said you talked to certain patrol officers
12 and other detectives and they told you about the beef
13 going on, you still didn't do any investigation into that
14 whatsoever, did you?

15 A. We had no belief even that Mr. Vincent had a gun
16 on him. We didn't locate it. We didn't know where it
17 went and had no idea that he even would have a gun.

18 Q. Now, you bring that up, but answer my question
19 first. That is a yes or no question, and I'll get into
20 that. Go ahead. Is it a yes or no?

21 A. I'm sorry?

22 Q. You didn't do any investigation, did you?

23 A. Nothing beyond that, other than speaking with
24 those people, no, sir.

25 Q. Other than speaking with the some police officers?

1 A. I know we spoke with the different individuals in
2 Woodside Manor. We spoke with them even afterwards about
3 Bernie Gilliard and Vincent Wittrell. I know we were
4 back out Woodside on the 22nd and the 23rd, spoke with
5 the deputies and the patrol people.

6 Q. Okay. What deputies? Give me a deputy's name
7 that you spoke with.

8 A. I can't recall anybody off the top of my head
9 which one specifically.

10 Q. Did you speak with anybody from narcotics?

11 A. I'm sure that we did speak with people from
12 narcotics.

13 Q. Give me a name.

14 A. I'm sure we spoke with Detective Beaufort, but I
15 don't know what specifically we spoke with him about. He
16 works up there. There is only a handful of people over
17 there, and I don't know who specifically told us what.

18 Q. So you can't give me one name of any police
19 officer that you talked about this other than Detective
20 Perkins?

21 A. I can tell you we spoke with an officer. I can't
22 tell you exactly who told me what, no, sir, but I do know
23 we were back up Woodside speaking to family members and
24 neighbors and seeing who had what to offer about the
25 investigation, even if we had Mr. Gilliard at the jail.

1 Q. Where is that? Where is that information?

2 A. I don't know which statements -- you have to
3 remember, we have lots of statements from lots of people.
4 I don't know which ones were collected on which day.

5 Q. You say you didn't find a gun at the scene.

6 A. Correct.

7 Q. Y'all didn't even try to determine how many people
8 had been in the crime scene before y'all got there.

9 A. I would say that we did. We were talking to
10 everybody around and in the area.

11 Q. Where is the note that says this person was in the
12 crime scene before police got there?

13 A. I don't know, sir.

14 Q. You don't have it, that's why. You don't have it,
15 do you?

16 A. I don't believe so. I don't know.

17 Q. Okay. And we bagged his hands. Detective talks
18 about bagging his hands, but nobody checked his hands for
19 gunshot residue.

20 A. Yes, sir. Okay.

21 Q. I need an answer. She's got to write something
22 down.

23 A. Did anybody check? I don't believe so.

24 Q. Nobody checked?

25 A. And I don't know if he covered it during his

1 testimony, but Sergeant McManigal said if a gunshot went
2 off inside a vehicle that the GSR would then -- you would
3 find it on both people. He told me that specifically
4 because we did talk about that.

5 Q. If there were two different guns with two
6 different cartridges like a Winchester?

7 MR. DuRANT: Objection. This is pitting.

8 THE COURT: Overruled.

9 BY MR. BOSNAK:

10 Q. If it's two different bullets, if I have one type
11 of ammunition in one gun and you got a different type of
12 ammunition in another gun and we shoot at each other,
13 they're going to show two different shells, two different
14 types of gunpowder.

15 A. I'm not a crime scene expert, so I don't know --

16 Q. But you're trying to give us an answer, but you
17 don't know the answer?

18 A. What I'm saying is I spoke with Sergeant McManigal
19 about wanting to do a GSR on the victim.

20 Q. The point is, it wasn't done.

21 A. Yes, sir.

22 Q. And the point is that nobody even tried to
23 ascertain how many people were in that crime scene and in
24 that car and around that car before the police, even
25 before the sheriff's office, even got there.

1 A. I know I went out and spoke with people, and I
2 don't know who I spoke with, which people, so --

3 Q. I didn't ask you that.

4 A. Yes, sir.

5 Q. I asked you, nobody tried at all to ascertain, to
6 determine, how many people contaminated that crime scene
7 before the sheriff's department got there, did they?

8 A. I would think the answer would be yes we did, by
9 trying to get the statement and identify as many people
10 as possible.

11 Q. So you're saying again that the statement did --
12 and somebody it admitted. That is all you wrote?

13 A. By walking around and talking to people and saying
14 who saw what, and if they pointed it out, I saw this
15 person there or this, I would think that would be part of
16 trying to figure out who was around, just the whole -- it
17 wasn't just about who did the shooting but trying to
18 figure out the whole scene all together.

19 Q. We talked about the truth and it being the truth,
20 the whole truth, is y'all didn't look for anything that
21 could possibly help this young man, did you?

22 A. We investigated the crime.

23 Q. But you left all that other stuff out.

24 A. Nothing in our post investigation went into any of
25 that detail. We went back and we spoke with family

1 members on both sides, spoke with all the neighbors.
2 Even on the day of the incident, we did follow up back on
3 Woodside Manor that we did patrol through there, so we
4 tried to get as much information as we could.

5 And I couldn't tell you which statements were
6 collected on which day without having the entire file in
7 front of me, but there were statements taken after the
8 21st and the 22nd.

9 Q. You don't want to answer the question. You didn't
10 look for anything --

11 MR. DuRANT: Objection. Improper commentary.

12 THE COURT: Overruled. It's
13 cross-examination.

14 THE WITNESS: So specifically did I look into
15 the beef between them, if -- other than to ask some
16 family members, that is what we looked into, yes, sir.

17 BY MR. BOSNAK:

18 Q. What family members did you speak to?

19 A. I know we went back out and spoke with Vincent's
20 fiancée, spoke with his mother and people at that house,
21 spoke to other people over at Woodside Manor.

22 Q. Who is Vincent's fiancée?

23 A. I don't know the name off --

24 Q. You took a statement from her?

25 A. I did not. But I remember being out at that

1 house, myself and Detective Perkins.

2 Q. Where is the paperwork on talking to his fiancée
3 and talking to the family members? Because I don't have
4 it. You didn't do it, did you?

5 A. Other than the written statement, no, sir.

6 Q. You talked to him. You say you talked to them,
7 but you didn't write anything down.

8 A. Correct. Other than if we took a written
9 statement that day. In fact, I know we did.

10 MR. BOSNAK: Thank you. No further
11 questions, Your Honor.

12 THE COURT: Redirect?

13 REDIRECT EXAMINATION

14 BY MR. DuRANT:

15 Q. Were you the case agent in this case?

16 A. No, I was not.

17 Q. Were you responsible for the investigation?

18 A. No.

19 Q. Did you have a limited role?

20 A. Yes.

21 Q. Do you know everything about and facet of this
22 case?

23 A. No, I do not.

24 Q. Do you know all the witnesses' names?

25 A. No.

1 Q. Do you know all the officers who investigate the
2 case?

3 A. No.

4 Q. Did the State call you for that purpose?

5 A. No, sir, I don't believe so.

6 Q. No?

7 A. No.

8 Q. Did Bernard Gilliard call you and tell you he
9 wanted to come in and turn himself in?

10 A. He spoke with Detective Perkins.

11 Q. Did he tell him he wanted to come turn himself in?

12 A. Yes. I didn't speak to him.

13 Q. I'm just asking. Did he turn himself in?

14 A. We had to go find him.

15 Q. The hotel that he was found in, was it registered
16 in his name?

17 A. No, it was not.

18 Q. So he didn't come in willingly.

19 A. No.

20 Q. You had to go find him.

21 A. Yes, sir.

22 Q. With regard to a full investigation, as far as you
23 know, did the officers, including yourself, try to talk
24 to as many people about as much as you could?

25 A. Yes, we did.

1 Q. Did you try to find out everything you could
2 possibly find out?

3 A. Yes, we did.

4 Q. And to your knowledge was information obtained
5 that there was a beef between the victim and the
6 defendant?

7 A. Yes.

8 Q. Did anything ever indicate to you that this crime
9 was anything other than murder?

10 A. No.

11 Q. If there would have been evidence that indicated
12 this was self-defense, would he have been charged with
13 murder?

14 A. No, he would not have.

15 Q. The information you collected, one of those things
16 was that Mr. Gilliard on the day of this murder had been
17 in contact with what I think you've referred to you in
18 this statement as many of his sales, sale dropped him
19 off, met another sale over here, got a sale here and
20 there; is that correct?

21 A. Yes.

22 Q. In the course and scope of drug dealing; is that
23 correct?

24 A. Yes.

25 Q. And he went to go pay off a drug deal?

1 A. Yes.

2 Q. And in the course and scope of paying off a drug
3 deal killed Vincent Wittrell?

4 A. Yes, sir.

5 Q. Is that self-defense to you?

6 A. No.

7 MR. DuRANT: Thank you.

8 RECROSS-EXAMINATION

9 BY MR. BOSNAK:

10 Q. You weren't there, were you?

11 A. No, I was not.

12 Q. You have not produced or the State has not
13 produced one single witness that could say anything about
14 the conversation they had, have you?

15 A. No, sir.

16 MR. BOSNAK: That's all. Thank you, Your
17 Honor. That's all.

18 THE COURT: All right. You can step down.

19 All right, folks. Any further witnesses from
20 the State?

21 MR. DuRANT: No further witnesses from the
22 State. At this time, the State rests.

23 THE COURT: Well, folks, we're at a break
24 point in this case where I will send you home for the
25 evening. We've got a few little legal matters that we

1 have to take up but, then we will come back tomorrow
2 morning and begin with the presentation of the defense's
3 case.

4 Now, you have heard all of the State's
5 evidence that you will hear in this trial, but, again,
6 it's improper to begin your deliberations or discussions
7 about the case because you haven't heard anything from
8 the defense yet and the case is not over.

9 So I want you to follow the instructions I
10 gave you last night. You can go home, talk about
11 anything you want to with anybody you want except this
12 case. Don't talk to each other. Don't talk to anyone
13 about this case, or if anyone does approach you or try to
14 talk to you about this case, please report that to the
15 Court immediately.

16 Again, I don't know if there is any kind of
17 press coverage on this case today. Again, there haven't
18 been any TV cameras or anything, but that doesn't mean
19 there won't be anything in the newspaper tomorrow, so
20 please avoid reading anything about the case if you do
21 look at the newspaper tomorrow.

22 So I'll send you home this evening. Please
23 report back at 9:30 tomorrow. I've asked the bailiff's
24 office to arrange to bring in some Crispy Creme doughnuts
25 or something, so if you come in a little bit early, we'll

1 have some doughnuts or coffee, but we'll try to get
2 started right about 9:30.

3 So if you want to enjoy a few minutes and
4 have a doughnut, you can come in earlier. All right?
5 See you in the morning. Thank you for your patience
6 today.

7 (In open court, jury not present.)

8 THE COURT: The State has rested. Do you
9 have any motions you would like to make?

10 MR. BOSNAK: I would like to make a motion
11 for directed verdict in this case. The State has failed
12 to meet their burden of proof.

13 THE COURT: On what grounds?

14 MR. BOSNAK: I especially they failed to meet
15 it on the armed robbery. They cannot prove that anything
16 was taken whatsoever from this young man.

17 As a matter of fact, there is evidence that
18 contradicts that anything was taken from this young man.
19 Considering he had pockets full of money, there is even
20 the crime scene tech said the pockets did not look like
21 they had been messed with or tampered with in any way.
22 It's not logical that somebody would reach into
23 somebody's pocket and take half the money, especially
24 dollar bills or 20s or whatever are folded up, reach in
25 and just take so many and put so many back. That is

1 certainly not logical.

2 THE COURT: Wasn't there some money found on
3 the ground by the shell casings?

4 MR. BOSNAK: There was a couple dollars found
5 on shell casings yes, sir, there was. We don't have any
6 idea. There is also no forensic evidence, fingerprints.
7 You have even heard the crime scene tech, the person that
8 was qualified as an expert in latent fingerprints, saying
9 the defendant's fingerprints were not found anywhere on
10 the car that he lifted.

11 Again, I would certainly think that charge --
12 now, there is one statement that he's made in his
13 confession. As you're well aware, Your Honor, you cannot
14 convict somebody on a confession alone. There has to be
15 other things in that, and there is just not anything else
16 there, Your Honor.

17 THE COURT: Who wants to argue this for the
18 State?

19 MR. DuRANT: I'll argue it, Your Honor.

20 THE COURT: All right. Go ahead.

21 MR. DuRANT: In regard to the directed
22 verdict motion in particular to the armed robbery, or to
23 all?

24 MR. BOSNAK: Well, directed verdict to all,
25 but my main -- the main one is the armed robbery.

1 MR. DuRANT: There is -- the evidence is
2 overwhelming, actually. There was a murder. The medical
3 examiner called testified this guy died, manner of death,
4 homicide. Nine gunshot wounds. Witnesses at the scene
5 reported seeing the guy, hearing the guy fire the gun,
6 the guy with the red hat. The guy took off the red hat.
7 The guy with the red hat comes back to the defendant.

8 Bernard Gilliard was picked up the very next
9 case, brought in for questioning, essentially confessed.
10 Said he ran back to the car, page two of his statement,
11 two of nine: I then turned around to take some money out
12 of his pockets, and then I left.

13 There was also evidence from Ramara Straman.
14 She said this defendant wanted to rob Vincent Wittrell.
15 She said she heard that on the phone. There is money
16 outside the car, as Your Honor indicated.

17 Shell casings, 1 through 8, it's marked
18 number 9. The left pocket of Mr. Wittrell in the car
19 contained significantly less amount of money than the
20 right side pocket. All evidence indicates shooter was on
21 the left side of the victim. This also goes to the
22 evidence in the weight and the light most favorable to
23 the State.

24 He was robbed, not by just his own words, but
25 the evidence at the scene corroborates it, and he was

1 obviously shot with a pistol. The pistol, unlawful
2 carrying of a pistol during a violent crime, murder is a
3 violent crime. There is overwhelming evidence of murder.
4 All charges should be presented to the jury.

5 THE COURT: You want to respond to any of
6 that?

7 MR. BOSNAK: What happened is the homicide
8 took place. What type of homicide, the jury will
9 determine in the next day or two, whether it was
10 self-defense, whether it was involuntary manslaughter, or
11 whether it was murder. Certainly not any kind of a slam
12 dunk case whatsoever, but, again, going back to the
13 robbery portion of this, logically, Your Honor, if I've
14 got money in my pocket, dollar bills, folded together in
15 my pocket, nobody is going to reach inside my pocket and
16 take, like, half the money and then put it back in my
17 pocket again.

18 And there is no testimony from the witnesses
19 that they saw that happen. They said they saw him reach
20 into the car. Once of the witnesses that was one of the
21 closest said he reached into the car and put the car in
22 gear.

23 Again, Your Honor, I certainly don't think
24 they have proven anything about a murder, and to rely on
25 the testimony of Ms. Straman, when she said that that was

1 basically her opinion, that is what I got out of her
2 whole statement, that this was basically her opinion, and
3 only thing that I got about robbery was that one of the
4 beefs between Vincent and Bernard was that Vincent
5 thought Bernard had robbed him at another time, which she
6 said Bernard didn't do. That is what I got out of that,
7 Your Honor.

8 Thank you.

9 THE COURT: All right. Well, the evidence
10 is -- there is some direct and there is some
11 circumstantial. The circumstantial being that according
12 to Ramara, the defendant told her he wanted to rob the
13 victim. Direct is there was evidence that there was a
14 gun that was fired upon the victim so you have the armed
15 with a deadly weapon element of the robbery.

16 The defendant, according to my notes, Johnny
17 Booker testified that he saw whoever fired the gun run
18 back to the car, and his words were, ransacked the
19 pockets of the other guy in the car, and then ran off, so
20 that is circumstantial evidence of a robbery.

21 Then you found there was money found on the
22 ground in the close proximity to the spent casings and
23 defendant ran away from that area, so I think there is
24 sufficient evidence to prove armed robbery, so that is
25 denied. And, of course, there is overwhelming evidence

1 at this point of murder and of the possession of a
2 firearm during the commission of a violent crime, so all
3 the motions are denied.

4 So tomorrow we'll start off and you're going
5 to present a defense; is that correct?

6 MR. BOSNAK: Yes, sir, Your Honor.

7 THE COURT: All right. Mr. Gilliard, we did
8 talk -- it was yesterday, I guess, about some rights that
9 you had, and I told you that you had the right to put up
10 a defense if you want to. You're not required to.

11 The State has to show enough evidence to
12 convince the jury beyond a reasonable doubt that you are
13 guilty of murder, armed robbery, and of possession of a
14 firearm during the commission of a violent crime. I have
15 ruled that they have met that burden of proof, so far, so
16 it is up to you to decide if you want to put up a
17 defense.

18 You can rest and we'll charge the jury in the
19 morning, but you also have the right to call witnesses
20 and testify, if you want to. Your lawyer indicates to me
21 that it is your desire to put up a defense, and so
22 tomorrow morning, y'all need to be ready to call whatever
23 witnesses that you want to have called.

24 I assume you have given your lawyer names of
25 any witnesses that you want to have called, and he's had

1 arrangements to have them here or subpoenaed to be here.
2 You also have the big decision to make about whether or
3 not you want to testify and take the stand.

4 Again, you do not have to tell me at this
5 point if you want to. You can reserve this right up
6 until the end and testify last, if you want to, but by
7 some point tomorrow, you will need to make a decision if
8 you want to testify.

9 Now, if you want to testify, if -- first of
10 all, let me say, if you don't want to testify, I will
11 instruct the jury that they are not to hold that against
12 you in any way while they are deliberating. Now, if you
13 do want to testify, the State will be allowed to
14 cross-examine you. That is, they'll be able to ask you
15 questions, and they got -- not an unlimited range on what
16 they want to ask you about, but they get to ask you a lot
17 of hard pressing questions, and if you take the stand,
18 you have to answer them. You can't take the Fifth
19 Amendment at that point. You waive it when you take the
20 stand.

21 The State will also have the right to ask you
22 about any prior convictions that you have in an attempt
23 to impeach your credibility. I do not know at this point
24 if you have any criminal record at all, but if it is you
25 would desire to testify tomorrow, then your lawyer will

1 bring to my attention the statement. We'll talk about
2 what prior convictions you have, and we have certain
3 rules as to whether or not they would be admissible, and
4 if you have some prior convictions your lawyer would
5 under the right circumstances ask me to perhaps keep
6 those from the jury, and I would make a determination as
7 to whether or not the jury can hear about those.

8 So I would instruct the jury that they're not
9 to consider those prior convictions as evidence of your
10 guilt but only as evidence of whether or not you're
11 telling the truth. All right? That is called
12 impeachment.

13 Do you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. So I'll send you back
16 this evening. You can talk to your lawyer, but tomorrow
17 morning, y'all be ready to call your case. All right?

18 Anything else we need to take up before we
19 retire for the evening?

20 MR. DuRANT: Nothing from the State.

21 MR. BOSNAK: Nothing from the defense, Your
22 Honor.

23 THE COURT: All right. See y'all at 9:30.

24 (Recess taken.)

25 (May 26, 2010.)

1 (In open court, jury not present.)

2 THE COURT: We're still waiting on one juror.

3 MR. DuRANT: All right.

4 THE COURT: All right. Well, while we're
5 waiting on this juror, let the record reflect the
6 defendant is in the courtroom.

7 So did y'all have a chance to talk?

8 MR. BOSNAK: Yes, sir.

9 THE COURT: And you guys have decided you're
10 going to put up a defense?

11 MR. BOSNAK: Yes, sir.

12 THE COURT: How many witnesses do you
13 anticipate at this point?

14 MR. BOSNAK: I don't anticipate, but two at
15 this point, Mr. Blackwood and also the defendant.

16 THE COURT: All right. Very well. Well,
17 we'll get started as soon as the jurors get here. Do
18 y'all have any proposed jury charges you want to hand up
19 for me to consider?

20 MR. SIMPSON: Your Honor, the position of the
21 State is obviously the standard -- obviously your
22 standard murder charge, obviously your standard
23 self-defense charge. There has been some evidence of
24 self-defense.

25 As to the involuntary manslaughter charge --

1 THE COURT: We'll consider that. We'll talk
2 about that a little bit later.

3 MR. SIMPSON: We will be opposing the
4 involuntary manslaughter charge.

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

6 MR. DuRANT: Would you like me to go over the
7 defendant's record first?

8 THE COURT: Do you know what it is?

9 MR. BOSNAK: Yes, sir.

10 THE COURT: Do you want me to keep out
11 anything that he's got?

12 MR. BOSNAK: We'll talk about it all, Your
13 Honor.

14 THE COURT: All right. Doesn't sound like
15 he's trying to hide anything on that, so fair game. Just
16 make sure y'all are talking about the same thing before
17 he testifies. I get you've got a copy of the same thing
18 he's got?

19 MR. BOSNAK: I think so.

20 THE COURT: Go ahead. Finish doing what
21 you're doing before I ask you this.

22 MR. BOSNAK: Yes, Your Honor.

23 THE COURT: You handed me up a charge of
24 voluntary manslaughter --

25 MR. BOSNAK: I'm sorry. It's supposed to be

1 involuntary manslaughter.

2 THE COURT: All right. I have a charge for
3 involuntary manslaughter, which I'll give you if we
4 decide to go that route. Okay. Are you calling Tommy
5 Blackwood first?

6 MR. BOSNAK: Yes, sir.

7 THE COURT: All right. Bring the jury in.

8 (In open court, jury present.)

9 THE COURT: All right. Be seated. Welcome
10 back, ladies and gentlemen. Now, I told you at the end
11 of the day the State has rested, and so they have
12 presented their case in chief, and we will now go to the
13 next phase of the trial in which the defense presents
14 their case, so, Mr. Bosnak, if you're ready, you may call
15 your first witness.

16 MR. BOSNAK: Tommy Blackwood, Your Honor.

17 THOMAS BLACKWOOD,

18 having been first duly sworn,

19 was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. BOSNAK:

22 Q. Tommy, what do you do now, or work?

23 A. I'm a licensed private investigator for the State
24 of South Carolina.

25 Q. Licensed with the State of South Carolina?

1 A. That's correct.

2 Q. And prior to you becoming a licensed private
3 investigator, what did you do?

4 A. I'm a retired police officer with the city of
5 North Charleston.

6 Q. And how long did you work for the city of North
7 Charleston?

8 A. Thirty-one years, ten months, twenty-two days, but
9 I wasn't counting.

10 Q. When you left, what was your rank?

11 A. Retired as a senior lieutenant.

12 Q. Senior lieutenant. Would you tell us what a
13 senior lieutenant's responsibilities are.

14 A. Basically, at the time of my retirement I was a
15 watch commander, overseeing all the operations pertaining
16 to the shift that I was on.

17 Q. So, in other words, were you over all the police
18 officers for that particular shift?

19 A. Anything happened on my shift, I was in control.

20 Q. And before you got that position, were you a
21 detective?

22 A. Yes, I was.

23 Q. And how long were you a detective?

24 A. Approximately half my career.

25 Q. So 15 years?

1 A. Roughly 15, 16 years, yes.

2 Q. And could you tell us -- I know you've had a lot
3 of training, but could you give us specific training that
4 you've had, or as much as you can remember.

5 A. I have had a lot of training, in terms of police
6 related incidents, supervision, you know, anything you
7 can think of, I've probably attended.

8 Q. How about training as far as investigation
9 techniques?

10 A. I've gone to the academy in the detective
11 certification and investigations, and I've gone to
12 advanced courses out of state as regards to homicides and
13 other law enforcement related training.

14 Q. Tell us about your experience with homicide.

15 A. Well, if I can just maybe summarize for you so we
16 don't go through a whole lot of questions, in '76 I came
17 on to the force at North Charleston and within a year I
18 was promoted to the department's first investigator.

19 Back in '77, the city was only, like, three or
20 four years old, and generally you had to be of rank to be
21 in the detective division, so they brought on
22 investigators at that point, and I was the city's first
23 investigator, at which point within a year and a half I
24 was appointed to the supervisor rank and maintained that
25 position in the detective division and up until probably

1 '93 or '94.

2 I stayed in detective division supervising major
3 crime squads and lead investigator on homicides,
4 robberies, class one crimes.

5 Q. Did they ever have a murder or homicide task force
6 at North Charleston?

7 A. Yes. We called that the major case squad.

8 Q. Were you a part of that?

9 A. Yes. I supervised that.

10 Q. Have you ever testified before as an expert
11 witness?

12 A. You're questioning if I testified? I've been
13 qualified, but prior to testifying, the case was settled.

14 MR. BOSNAK: Your Honor, at this time I would
15 ask Mr. Blackwood be qualified as an expert in police
16 investigations and police supervision.

17 THE COURT: Do y'all want to be heard on this
18 or do you want to cross-examine him?

19 MR. SIMPSON: Your Honor, may we approach
20 for --

21 THE COURT: Yeah. Let me send the jury out
22 for a second while we take up a legal matter.

23 (In open court, jury not present.)

24 MR. SIMPSON: Your Honor, if I may, I
25 appreciate you having the jury leave. I didn't want to

1 say this in front of the jury, but I would like a brief
2 cross prior to qualification about this witness's
3 familiarity and personal knowledge of this particular
4 case.

5 THE COURT: What are you offering his
6 testimony for as an expert?

7 MR. BOSNAK: Your Honor, Mr. Blackwood has
8 worked numerous cases involving shootings and the
9 testimony that I'm going to try to elicit from him is
10 during those investigations, how many of them did they
11 actually ever find the gun in shootings or murders?

12 In other words, I want him, if he's able, to
13 testify that in most murders, in the shooting cases there
14 is no gun found on the scene, whether it be a
15 self-defense --

16 THE COURT: How is that -- how is that proper
17 testimony? First, what is it relative -- what is its
18 relevance and what is its probative value? Just because
19 they find a gun in a lot of cases, how is it probative in
20 this case?

21 MR. BOSNAK: Your Honor, our main defense is
22 somebody took the victim's gun at the crime scene. That
23 is our main point of contention, and I'm afraid that what
24 has happened is the jury, watching TV, it seems like in
25 TV they always find the gun, and that's just not true.

1 That's just not the case. In most cases they don't ever
2 find the gun, whether it be -- especially in certain
3 neighborhoods, whether it be the person that did the
4 shootings gun or a person in self-defense or anything
5 like that.

6 When they go out there, the guns are gone.
7 Somebody has picked those guns up and taken off with
8 them, and that is all I'm trying to get Mr. Blackwood,
9 just in his experience as a police officer and as a
10 supervisor supervising these type of cases, to give us,
11 some estimate of how many guns they find, and this is a
12 common occurrence. That's all.

13 THE COURT: What is the State's position on
14 that?

15 MR. SIMPSON: Your Honor, I don't think that
16 is a legitimate area of expertise unless the witness is
17 prepared to give us statistical backings of these
18 findings. Generally saying yeah, a lot of times we don't
19 find a gun, that is because in most cases you have a
20 shooter and the victim, and the shooter, of course, goes
21 away from the scene and tosses the gun.

22 I don't see its probative value or its
23 relevance in this case, and were Your Honor inclined to
24 allow the witness to testify to that basic fact, we would
25 certainly argue that it would have to be very limited to

1 just that basic fact in this witness's experience.

2 I don't think prolonged -- why I wanted to
3 briefly cross-examine the witness is I believe he has
4 very little, meaning to offense to the witness, knowledge
5 of this particular case and circumstances, what the
6 detectives did in this case, so just -- I don't think
7 it's proper or relevant.

8 I don't think the witness can testify with
9 any degree, other than with respect to his experience on
10 well, in a given year we had this many homicides and in
11 this many we find a gun and in this many we don't. It
12 would just be a general, yeah, in my experience, a lot of
13 times we don't find a gun because the shooter flees the
14 scene and the first thing they want to do is get rid of
15 the gun.

16 And precisely the detective took the stand in
17 our case with the same kind of qualifications, and that
18 would have been a question he could have posed to our
19 witnesses as well. I think generally being a detective
20 for a long period of time makes you an expert in a very
21 specific area of percentages of cases with guns and how
22 many go missing and how many they recover. I don't think
23 the witness can give any sort of expert scientific
24 specificity to that answer that would make him qualified
25 to be an expert in this area.

1 Classic Daubert challenges of peer review,
2 scientific method, things of that nature we're just
3 talking about a when hunch from when he worked as police
4 officer, so we would challenge it as a as reliable method
5 on Daubert. Some degree of scientific peer review,
6 provability, things of this nature, this is not an area
7 that Daubert recognizes unless you can bolster it with
8 some expert statistical probability and, I think, under
9 the basic Daubert requirements in an expert witness.

10 With respect to his history, which we
11 appreciate, this does not qualify under any kind of
12 Daubert challenge whatsoever as to a statistical
13 scientific probability on the guns being found.

14 THE COURT: Do you want to respond?

15 MR. BOSNAK: Yes, Your Honor. We're asking
16 his opinion, one part of the testimony, just an opinion.
17 The other part of the testimony would be when they have
18 facts or allegations that have been brought up that there
19 were other guns used in homicides, how they investigated
20 those particular allegations also.

21 MR. SIMPSON: Again, what defense is asking
22 for is not just opinion. What defense is asking for is
23 an expert opinion which under Daubert requires some type
24 of scientific peer review.

25 We appreciate the witness's, you know,

1 service to the community, but there is no level of
2 scientific peer review or -- these are opinions on
3 hunches, what ifs and hypotheticals, from a witness who
4 has very little working familiarity with the facts of
5 this case and the efforts taken by Charleston County
6 sheriff's office, and to have Mr. Bosnak then question
7 him in front of the jury about his take on what the
8 witnesses did, we would definitely object on any number
9 of grounds, like leading and hearsay.

10 THE COURT: I'll let you ask him outside the
11 presence of the jury what it is you're trying to get at.
12 I'm very inclined to say it's not permissible testimony,
13 but I'll hear what he has got to say first. Go ahead.

14 BY MR. BOSNAK:

15 Q. Mr. Blackwood, in a case where there is a shooting
16 or a murder and you didn't find a weapon, what would be
17 your first procedure? What would you do as an
18 investigator in this particular incident?

19 A. Well, generally, investigations involving
20 shootings we always, of course, our primary focus is the
21 shooter, and then next the weapon, or the weapon used.
22 So sometimes it could be two separate investigations.

23 Q. So investigation on the shooter and then the
24 investigation on the weapon.

25 A. Correct.

1 Q. And if there is an allegation if another gun was
2 involved in a particular way, what would you do? Then
3 you would do an investigation on that gun too?

4 A. Yes. If that issue was a fact, yes, we would
5 pursue that in a continuing investigation.

6 Q. In the number of homicide cases that you work, is
7 the gun always found?

8 A. In most cases they're not.

9 Q. In shooting cases, are the guns found?

10 A. In most cases they're not.

11 MR. BOSNAK: Your Honor, that is about the
12 extent of what I wanted to get from him.

13 MR. SIMPSON: Would you like some cross, Your
14 Honor?

15 THE COURT: Go ahead. You can ask him
16 whatever you want to.

17 CROSS-EXAMINATION

18 BY MR. SIMPSON:

19 Q. Blackwood, correct?

20 A. Yes.

21 Q. Mr. Blackwood, you said obviously a priority in a
22 homicide case would be finding the gun, or at least
23 finding evidence of what happened to the gun that was the
24 actual shooting.

25 A. Correct.

1 Q. One of the ways you would do that is talk to the
2 defendant, or at least attempt to have an interview with
3 the defendant?

4 A. That, and witnesses.

5 Q. So you would want to talk to the witnesses at the
6 scene?

7 A. Sure.

8 Q. Okay. If the witnesses in the scene consistently
9 told you that the defendant fled the scene, would you
10 then be interested in knowing perhaps what the defendant
11 might have done with that gun after he fled the scene?

12 A. Correct.

13 Q. Would one way to find that out would be within the
14 bounds of the law attempting to find the defendant?

15 A. That's correct.

16 Q. And if that defendant told you he drove
17 immediately from that scene to the Cooper River Bridge,
18 over the Cooper River and tossed that gun over the Cooper
19 River Bridge --

20 A. Then I would have divers out there.

21 Q. You'd have divers in the currents of the Cooper
22 River Bridge to find a handgun?

23 A. We would make some attempt.

24 Q. Okay. Mr. Bosnak asked you about one case in
25 which you were qualified, but because of the legal

1 procedure in the case, you never had to testify, right?

2 A. That's correct.

3 Q. Have you ever attempted to qualify as an expert
4 and been found not an expert, not allowed to testify?

5 A. No.

6 Q. So we have one case where you tried but it
7 didn't --

8 A. It was a civil case, that's correct.

9 Q. Okay. Mr. Bosnak also asked you about guns found
10 on crime scenes, okay, and how in shootings oftentimes a
11 gun isn't located.

12 A. That's correct.

13 Q. You testified that's correct, you usually don't
14 find a gun. If witnesses told you that -- or if the
15 defendant indicated to you this was a victim and a
16 shooter and the victim had a gun, how would you proceed
17 then to decide whether or not that was accurate, whether
18 the victim was armed when he was killed?

19 A. Well, hopefully it all comes out with interviewing
20 the witnesses.

21 Q. And if all witnesses, including several who were
22 on scene moments after the shooting, all told you
23 consistently that they got in the car to check his pulse
24 and they didn't see a gun, crime scene comes out,
25 processed the scene, does a line search of the whole

1 block, don't find a gun, search warrant is executed on
2 the victim's car, look under the seats, in the trunk, you
3 know, you're familiar with search warrants, of course,
4 usually done thoroughly, and no gun is found, is there
5 some follow-up that is missing there from what I just
6 told you? Is there something else that would happen?
7 You said talk to the witnesses.

8 A. Well, in your hypothetical situation, if all
9 leads -- if there was a possibility that there was a gun
10 there and we have exhausted all means to determine that
11 there, in fact, wasn't a gun, I would say we wouldn't get
12 any further -- I wouldn't go any further with that.

13 Q. Okay.

14 MR. SIMPSON: I don't have any further cross.

15 THE COURT: Go ahead. Do you want to ask him
16 anything else?

17 MR. BOSNAK: No, sir. That's it.

18 THE COURT: Well, I don't have any doubts
19 about his experience or his qualifications leading him to
20 be an experienced, qualified expert in law enforcement
21 techniques, but I don't believe, one, there is any basis
22 for him to say across the board, based on the literature
23 that's out there, anything other than his experience as a
24 police officer that there is -- that they don't usually
25 find the gun in a murder investigation, so I don't think

1 there is a basis to qualify him as an expert to render
2 that opinion.

3 As to any of the other testimony, I mean, I
4 think that is all stuff you argue, but for him to come in
5 and just say, well, their follow-up technique was not
6 adequate, I'm not sure that is a basis for the way you
7 impeach the State's evidence.

8 You argued just about anything that he has
9 said, but I don't know that that is -- that there has
10 been a foundation laid to say, this is what -- to give an
11 opinion in this case. I just think it's improper opinion
12 testimony, so I don't want to say he's not qualified,
13 otherwise, he'd be an expert on what you're qualifying
14 him as an expert opinion on, that's not typically what we
15 bring private investigators in for, former law
16 enforcement, to give an opinion on that, oh, I think that
17 they don't normally find the gun in a murder case.

18 There's been no foundation laid for being
19 able to give that opinion, and so I'm not going to allow
20 him to be qualified as an expert and render that opinion.

21 All right?

22 MR. BOSNAK: Yes, Your Honor.

23 THE COURT: So we've have got a proffer in on
24 what you want to have him testify, but I'm not going to
25 allow him to be qualified as an expert and give an

1 opinion, based on what you have proffered it for. Okay?

2 MR. BOSNAK: Thank you, Your Honor. So, in
3 other words, he can't even talk about investigation
4 techniques, just no expert, no testimony at all?

5 THE COURT: Correct.

6 MR. BOSNAK: All right. Thank you, Your
7 Honor.

8 THE COURT: Sorry about that.

9 THE WITNESS: That's all right. Good seeing
10 you, Judge.

11 THE COURT: You too. Okay. Well, then your
12 next witness will be --

13 MR. BOSNAK: Mr. Gilliard.

14 THE COURT: All right. Mr. Gilliard, let me
15 talk to you one more time before you take the stand.

16 I talked to you twice about this already, but
17 this is an important phase in the trial. We're now down
18 to the last witness, which would be you. You have the
19 right to testify. You also have the right to not
20 testify. If you don't want to testify, I will instruct
21 the jury that they're not to hold that against you while
22 they are deliberating.

23 Do you understand that?

24 THE DEFENDANT: Oh, yeah. I got to get up
25 there. I got to get up there.

1 THE COURT: And it's my understanding from
2 your lawyer that you want to testify; is that correct?

3 THE DEFENDANT: Yes, sir. Yes, sir.

4 THE COURT: All right. So you want to get up
5 and tell the jury your side of the story?

6 THE DEFENDANT: I got to.

7 THE COURT: And you understand you have the
8 right to get up there and have your lawyer ask you
9 questions, but the State has a right to cross-examine
10 you.

11 THE DEFENDANT: I know he coming.

12 THE COURT: And you understand they have the
13 right to cross-examine you and ask you about your prior
14 convictions that you have. Do you understand that?

15 THE DEFENDANT: Know it all, sir.

16 THE COURT: All right. Understanding that,
17 you want to go ahead and take the stand?

18 THE DEFENDANT: I got to get up there.

19 THE COURT: All right. This is your
20 decision?

21 THE DEFENDANT: Yeah.

22 THE COURT: You made it in consultation with
23 your lawyer and anybody else that you wanted to, but
24 ultimately this is your decision and your decision alone?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Okay. All right. Well, I will
2 allow you to testify then, and let's bring the jury on
3 in.

4 (In open court, jury present.)

5 THE COURT: Okay. Folks, I have made the
6 determination that the purpose for which the last witness
7 was offered is not a proper line of questioning, and so
8 I'm not allowing that testimony. You're not to draw any
9 inferences from that one way or another.

10 That is a legal decision on my part. As I
11 told you, that is part of my job, to make sure that what
12 you hear is legally competent evidence, and I determined
13 that was not legally competent evidence, so you're not to
14 hold that against the defendant in any way. That is my
15 call. All right?

16 So we are now to the next witness for the
17 defense. Mr. Bosnak?

18 MR. BOSNAK: I call Bernard Gilliard.

19 BERNARD GILLIARD,

20 having been first duly sworn,
21 was examined and testified as follows:

22 DIRECT EXAMINATION

23 BY MR. BOSNAK:

24 Q. Bernard, how old are you?

25 A. Twenty-two.

1 Q. And how far did you go in school?

2 A. I got through the ninth grade. I never completed
3 the tenth grade.

4 Q. And how old were you then when you dropped out of
5 school?

6 A. I probably was about 16, 17.

7 Q. And who were you living with during that period?

8 A. At that time I was living with my mom, you know.

9 Q. And how long had you been living with your mom?

10 A. All my life.

11 Q. When did your mother and father separate, or
12 divorce?

13 A. I was probably about three or four years old.

14 Q. So you and your mom, from three till --

15 A. Yeah, that's what it was. I been living with her
16 the whole time, you know.

17 Q. What did you do when you dropped out of school?

18 A. I dropped out of school, you know. My mama, she
19 came at me on the level is you go to school, and, I mean,
20 you're going to get a job, you know what I mean?

21 And I drop out of school, so I had to get a job,
22 but at the same time, I been in the street, and I been
23 intrigued of a life by getting fast money, you know. So
24 I wanted that. I wanted that money. I was chasing that
25 money. I started selling drugs.

1 Q. When is the first time you got convicted of
2 selling drugs?

3 A. Shortly after I turned 17. You know, probably
4 about 2004, caught my first crack charge.

5 Q. Okay. If I gave you a copy of your criminal
6 record, would it help you?

7 A. Oh, you already -- I mean, I got it all on cap,
8 but you can bring it up here.

9 Q. So it happened in 2004?

10 A. Yes, sir.

11 Q. What happened in 2004? What did you get convicted
12 for?

13 A. Possession with intent to distribute crack
14 cocaine.

15 Q. What did they do to you for that?

16 A. I bond out, you know what I mean? I bond out on
17 the charge, went straight back out there on the street,
18 did the same thing, you know, trying to get money. You
19 know, how an airplane like to take off the ground, jump
20 up first, crash again, you know what I mean? Went back
21 to jail --

22 Q. How long was it when -- how long was it from your
23 first charge to when you went back to jail?

24 A. I couldn't even tell you. I been trying to get it
25 right and just couldn't get it right. My record shows

1 you that, you know what I mean, but --

2 Q. Couple months?

3 A. Probably about a couple months.

4 Q. And when you caught your second charge, what
5 happened to you?

6 A. When I caught my second charge, I stayed in there
7 about -- I don't bond, you know what I mean. I had no
8 money stacked or nothing, so I had to lay it down.
9 Stayed in there about seven months. Went to court for
10 the first crack charge I got. They gave me time served
11 for the second crack charge I got. The one -- the first
12 one I bond out on, gave me time served. On the second
13 one, they gave me probation, two years' probation, you
14 know.

15 Q. Okay. So how did you do on probation?

16 A. Oh, I messed up, crash again. Like I saying, went
17 back to jail. I went to jail this time, you know what I
18 mean? I know I need some prison time. You going under.
19 You can't keep catching the crack charges. That is just
20 the way the system works.

21 Q. You got caught again?

22 A. Yeah, I got caught again.

23 Q. Went to jail this time?

24 A. Straight back to jail.

25 Q. How long did you do this time?

1 A. I probably did about three or four months before I
2 went to court. Then when I went to court, you know what
3 I mean, they give me a YOA sentence.

4 Q. Did you do your YOA sentence?

5 A. Oh, yeah, I had to. I had no choice.

6 Q. And how many months did you do?

7 A. Probably about 18, 18 to 22 months, somewhere in
8 between, you know.

9 Q. So now you're about 18 years old.

10 A. Yeah, about 18 going on 19.

11 Q. When did you first meet the victim, Vincent
12 Wittrell?

13 A. About 2004, 2004.

14 Q. So when you were -- how old, do you think?

15 A. About 16, 17.

16 Q. How did you meet him?

17 A. Through some friends, you know. I met him through
18 some friends. We was cool back then. Just like a what
19 up, keep moving type thing, and we ain't really -- there
20 was no problem back then.

21 Q. So you just knew him?

22 A. Just knew him.

23 Q. Just knew him to speak to him?

24 A. Yeah.

25 Q. And how was your relationship when you turned 18,

1 19 years old?

2 A. See, I'm going to go ahead. This is where the
3 story start to crank up. So 18, 19, I went on my Y.
4 That's when I went up the road on a Y. When I been up
5 there, doing my time I got a letter from one of my
6 homeboys saying, okay. Your mama now get on crack. You
7 need to come on back up so you can get her right, you see
8 what I mean? Puts her back on her feet. She needs you.

9 So I still been up there bumming around, getting
10 in trouble. People sending me back because when you be
11 bad, they push your time back. You're only supposed to
12 do 10 months, I end up doing 18, 22. So they pushed some
13 time back, but I find out my mom -- it hit me hard
14 because I know I been up there selling crack to other
15 people, then my mama turned around and get on crack, you
16 know what I'm saying? So.

17 It hit me hard, you know, so she got on crack. So
18 I came home, you know what I mean, and I remember getting
19 dropped off on the way by one of my homeboys or whatnot,
20 and they said it was going to take me over because my
21 mama lost the car. I'm hearing all type of stories, but
22 I get into that as we go on.

23 So I tell my homeboy, go ahead take me over there
24 so I can see what's going on, so I can get everything
25 good, you know. So we pull up in the yard, first thing I

1 noticed, the yard unattended. You know what I'm saying?
2 I forgot to tell y'all, in a letter, my stepdad -- I did
3 already had took --

4 MR. DuRANT: Objection, objection, hearsay.

5 BY MR. BOSNAK:

6 Q. Don't talk about what somebody else said, just
7 what you know.

8 A. Well, while I been up in prison, my stepdaddy took
9 my brother, my little brother, my half brother, and they
10 moved to Charlotte, so therefore it was only my mother
11 staying in the house.

12 Q. Let's stop right there a minute.

13 A. Yeah.

14 Q. Sometime your mother remarried?

15 A. Yeah, yeah, yeah, yeah, yeah, but we make a big
16 jump from when I was three to four, when they got a
17 divorce, to when I got my first crack charge or whatever,
18 you know what I mean, so in between that time --

19 Q. Tell us when your mama remarried.

20 A. She probably remarried when I was about six or
21 seven, six or seven, you know.

22 Q. And she had another child?

23 A. Yeah, because I'm seven years older than my little
24 brother.

25 Q. Half brother?

1 A. Yeah, but that is my little brother.

2 Q. I understand.

3 A. Yeah.

4 Q. Now, did your mother do drugs --

5 A. No, no, no, no. My mama get that money, you know.
6 She used to do hair back then. She been on point. I
7 wasn't lacking for nothing.

8 Q. She wasn't on drugs when you were living with her?

9 A. No, no, no, no, no, no.

10 Q. All right. So you get home, you find out that
11 your stepfather and your stepbrother have moved back.

12 A. Yeah. So let me get back to where we been at.

13 Q. Start right there.

14 A. I pull up in the yard, and first thing I noticed,
15 the yard unattended, you know what I'm saying, weeds
16 growing up in the back yard.

17 I said, Oh, I know something ain't right here, so
18 I look at the house. I see a softball size hole in the
19 window. It's cold outside. Why ain't nobody fixed this
20 window yet, you know what I mean?

21 So I know something wrong. So my homeboy, they
22 looking at me they be like -- they already know what it
23 was. I tell them, put them on point what kind of
24 situation I was going back to, and they lending the
25 service that they could at that time, you know.

1 So I went in the house, door unlocked, you know
2 what I mean? Ain't nobody in there, but as far as I
3 remember, okay, when you lock up or whatever, scenery
4 change a lot, especially you gone. Like, 18, you could
5 be going to college or wherever you going, you know what
6 I mean? Scenery change, but I noticed a lot of things
7 was changing in my house, you know. Like I told you
8 about the softball in the window -- I mean, the yard was
9 unattended, but the inside, DVD player gone, all the DVDs
10 gone, you know what I'm saying?

11 Certain valuable stuff be in the house is gone,
12 and I know it's safe to say we all know people who smoke.
13 They tend to get valuable items, like that laptop would
14 have got sold, you know what I mean, for whatever she
15 could get so she could smoke or whatever.

16 So I'm noticing all that. I'm noticing this, you
17 know, and I saying it ain't right, you know what I mean?
18 So later on that day, the victim, Vincent, you know what
19 I mean, all them came over there to the house. They
20 selling crack out my yard, you know. So they selling
21 crack out my yard, you know what I mean?

22 I'm sitting back -- I came home. I wanted to do
23 the right thing, you know what I mean, but my living
24 situation, where I was at, I was in dire need. I needed
25 money.

1 Q. Let me stop you there. Was your mother still
2 living there?

3 A. Yeah, she was, she was. I'm going to explain
4 y'all how I seen her, and, you know what I mean, I'm
5 going to explain that. So I need the money, so I asked
6 the boy who was in the household where my mom at, you
7 know? So they was like, oh, she somewhere around here,
8 somewhere.

9 So I ain't seen nothing, but I seen those boys
10 selling crack out of my yard. Just came home, living
11 conditions how they was, you know. I got to get money.
12 You know what I mean? Sales coming to my house, so I got
13 to get this package and I got to get this money so me and
14 my old lady can be all right, you know what I mean?

15 Now, couple minutes later, who I see coming down
16 the block, short little -- she done loss all kind of
17 weight, lady coming down the street, you know what I'm
18 saying? So that my old lady right there. I ain't going
19 to sit here and lie to y'all. When I first saw her, I
20 had some ill feelings towards her, as far as she wait
21 till she turn 47 to get on crack, you understand, and
22 that hurt me. You know what I mean?

23 Instead of me being there, supporting her, like
24 Ms. Tammy said I should have done later on, you know what
25 I mean, I understood what she said. Instead of me being

1 and supporting her and embracing her, I was angry toward
2 her, you know? I was angry toward her, and I told her,
3 man, you ain't acting like my mom, you know what I mean?
4 I kind of --

5 Q. So in other words, you weren't used to seeing her
6 that way?

7 A. No, no. My mama -- she use to have a little
8 weight on her. She looking like me, you know, slim trim,
9 looking like me. So it hurt me. It hurt me, you know.
10 It hurt me. It hurt me or whatnot, but time going on,
11 selling crack out in the yard, you know. I caught me a
12 little package. I ain't been up there five days trying
13 to get money, you know what I mean, and get my old lady
14 back right.

15 Q. Your mama?

16 A. Yeah, yeah.

17 Q. Your mother?

18 A. I'm out there five days. Crash again. Back to
19 jail. I sit in the jail, I thinking, Oh, I know I'm
20 going this time. I be going for the long ride. This too
21 much, too much crack charge. These people ain't going to
22 play with me. They're trying to get me. They ain't
23 going to play with me, you know what I'm saying?

24 So after that, I'm sitting in there, you know,
25 went to court, got a little two years, a little two

1 years, I just did that. I was, like, here we go again.
2 I got to go ahead, knock this out, come on back, and try
3 it all over again, because that is one thing about life.
4 You fall down, get back up, try again, you know, try to
5 work out the little kinks of what you got going on, you
6 know?

7 So I got back up, try it again. So this time,
8 this is when it really starts to crank up. We are going
9 to start to go a little deeper. This time, okay, we
10 already know and done established people selling crack
11 out my yard, you know? And the young lady, she told
12 me -- but she didn't come up here and tell y'all, but I'm
13 going to tell y'all, believe that --

14 Q. Stop just a minute. You go to jail for two years.

15 A. No. I ain't start my sentence yet. I ain't even
16 gone to court yet. I'm still in the county right now,
17 you know what I mean? And I got a letter from Ms. Ramara
18 Straman, the skinny young lady you seen walk up in here,
19 acting crazy and hiding her face, you know what I'm
20 talking about, you know. So she came -- she wrote me,
21 talking about somehow she going --

22 MR. DuRANT: Objection.

23 BY MR. BOSNAK:

24 Q. You can't say what somebody else said. You can
25 say what you know.

1 A. All right. Can I say something, like something I
2 heard or whatnot? I'm going -- I'm going to say what I
3 know. I'm going to say what I know.

4 Q. Okay.

5 A. I call home one day for some odd apparent reason,
6 call home talk to my mother so she tells me --

7 MR. DuRANT: Objection.

8 BY MR. BOSNAK:

9 Q. You can't say what somebody else told you.

10 A. See, it's so hard for me. You got to let these
11 people know what's going on.

12 Q. I understand, but you need to talk about what only
13 you know.

14 A. I talk to my mom and she told me --

15 Q. You can't say what she told you.

16 A. Oh, man.

17 Q. You can say what information you found out about
18 her, what you understood the situation to be, but you
19 can't say what somebody told you.

20 A. Well --

21 Q. How was the situation? Tell us how the situation
22 was.

23 A. Vincent put his hand on my mother. She owed him
24 \$20, and at the time I couldn't really comprehend that
25 because y'all used to give money, okay, take that from

1 him. Y'all get money, but I can't see him reacting like
2 that over \$20, but he put a bag on my mama head, and, you
3 know what I mean, so I questioned her about it. She said
4 what she said.

5 MR. DuRANT: Objection.

6 BY MR. BOSNAK:

7 Q. You can't say what somebody else said.

8 A. All right, all right, all right, all right.

9 Anyway, he put a bag over my mama head, you know what I
10 mean?

11 Q. And hit her?

12 A. Yeah. She -- he did that, you know what I mean?

13 Q. Tell us where you were when you found this out.

14 A. I been in the county, getting ready to go to the
15 penitentiary.

16 Q. Did you go to the penitentiary?

17 A. I went. Eventually I went.

18 Q. How long did you go?

19 A. I did -- I got a two-year sentence, probably did
20 about 13 months, about 13 months.

21 Q. What happened when you got out?

22 A. Now we're about to go a little bit deeper. So
23 when I got out, I came home. Situation now went from all
24 the way at the bottom. My mama homeless. She living
25 with one of my -- well, he ain't my homeboy no more, you

1 know what I'm saying, back then, one of my homeboys, his
2 house. She living with his mom, and she was kind enough
3 to take her in, her name was Ms. Cece. She ain't in here
4 right now, but I thank her for that, you know what I
5 mean? I appreciate that. You know what I'm saying?

6 She took both of us in at that time, you know what
7 I mean? I stayed there for a couple days, probably about
8 a week. All I know is the street, trying to get back out
9 there and get money, you know what I mean? My mama, she
10 still smoking. Crash again. But I ain't caught no
11 charge. I crashed. Ms. Cece found out I was hiding dope
12 in her house, you know what I'm saying, so instead of her
13 coming out telling me, Okay, Bernie you got to leave, she
14 got her son to come tell me.

15 So I'm going to tell you at this time while I was
16 staying at Ms. CeCe house, I'm familiar with the family
17 in the back, Ms. Tammy Lee, Kristina, which is Pudding,
18 Vincent baby mother, Rock -- you know, I'm familiar with
19 them. I used to go around there, because I was -- I
20 don't know what his mindset is right now. He's
21 probably -- you know what I mean? I was real cool when
22 she got another son. I call him Chad. We used to do
23 some things back in the days, little young kids get in
24 trouble, whatever.

25 But I used to go back there, and I'm sure they

1 talked about it. They knew my situation, you know, so --

2 Q. Well, tell us what happened with Ms. CeCe.

3 A. She told me I had to leave.

4 Q. So she kicked you out of the house?

5 A. Yeah. She kicked me out of the house.

6 Q. Where did you go then?

7 A. That is what I'm leading up to now. Ms. Tammy
8 done knew my situation, and even though some things going
9 on, I want to let her know, you know, some things going
10 on between us right now, whatever, you know, that's the
11 whole reason us in the courtroom. I appreciate what you
12 did for me now, bringing me in. You know --

13 MR. DuRANT: Objection.

14 BY MR. BOSNAK:

15 Q. Tell the story. You can't be talking to people.

16 A. Well, oh, man, well -- you know what I'm mean, but
17 she looked out for me. She looked out for me.

18 Q. Okay.

19 A. She embraced me.

20 Q. Where did you go live when Ms. Cece kicked you
21 out?

22 A. Miss Tammy's house.

23 Q. Did you stay there all the time?

24 A. No, because I didn't really want to wear out my
25 welcome. I'm a bouncy person anyway. I really can't

1 stay in one spot, you know what I'm saying? So I didn't
2 stay there all the time, but I'm going to go ahead --
3 this is where we get deeper, all right?

4 So as I'm staying, this staying at her house, I
5 come into contact with Vincent. Okay? There is a couple
6 things I'm going to point out to y'all to what created
7 the beef between us, or -- yeah, the problems between us.
8 You know? I'm going to tell y'all what all this stems
9 from. It ain't going to be in at least the greatest
10 order now, it's going to be -- ain't going to be
11 everything, I'm just going to hit y'all with a brief
12 little overview of what's going on, you know?

13 So, number one, I'm going to start off, he knew
14 that I knew what he did to my mother. When I first got
15 out, I ain't rolled on him. I ain't say nothing to him,
16 you know what I mean? I didn't even approach him about
17 it --

18 Q. Stop and tell us what year that was in. Tell us
19 what year that was.

20 A. That he beat my mother up?

21 Q. No, when you went to Ms. Tammy's house.

22 A. This is '09. This is last year. This is last
23 year. I never approached him about none of this, you
24 know, because over time, time heals, you know what I
25 mean? So I let go. Police told -- Mr. Wagner in the

1 back, he told you I'm a peaceful person. I'm a peaceful
2 person, I'm humble. I let it go. Time heal me, you
3 know?

4 So he knew that I knew what he did to my mother.
5 So him being around me, he didn't know how to take me.
6 He felt uncomfortable with me around.

7 So now I'm going to hit another point. I'm
8 staying in the same house where his baby mama at.

9 Q. Who is his baby mama?

10 A. Kristina, Pudding. Now, don't get me wrong now.
11 She ain't never come off on me sexually. We never had
12 nothing like that going on. I never came off on her.
13 There was nothing like that between me and her. She got
14 real conversation. She cool. We used to sit and talk,
15 from time to time, you know what I mean?

16 I ain't got nothing against none of them. I ain't
17 got nothing against her -- I had nothing against her at
18 the time either, you know? So we used to talk or
19 whatever, and she knew Vincent used to do his thing, you
20 know? He used to mingle on the street, female wise, you
21 know what I'm saying?

22 So sometimes we would be together or whatever, all
23 right? She might say oh, you want to go out or get
24 something to eat or something? She might be going -- I
25 might say, hey, I need something to do. Well, come on

1 for the ride. That is just the type of person she is, go
2 for a ride. I love to ride anywhere.

3 I hop in the car anywhere. Ms. Tammy got a nice
4 truck, so I want to be seen in the truck anyway, you know
5 what I mean. So I sit there, we go eat. Dog, just out
6 of the blue, called.

7 Q. You need to tell them who called?

8 A. Vincent, Vincent, Vincent, he called her, you
9 know? And she say, Oh, me and --

10 MR. DURANT: Objection.

11 BY MR. BOSNAK:

12 Q. You can't say --

13 A. Or Vincent had called --

14 Q. Did he get upset?

15 A. Yeah. He get upset. You know, he thought me and
16 her -- you know, but it wasn't nothing like that. It was
17 nothing like that.

18 Q. So he thought -- what you're telling us, he
19 thought there might be some kind of romantic
20 relationship?

21 A. Exactly.

22 Q. Were you just friends?

23 A. That's all. We just used to conversate (sic). It
24 was nothing more. Therefore, jealousy plays a part, and
25 we all know how a man can get behind a female. There is

1 plenty of crimes that stem from that, man. You know, we
2 already know that, so that is one of the issues right
3 there.

4 Q. Let's go to another issue. The young lady that
5 came up here and testified against you --

6 A. I'm going to get to that right now.

7 Q. All right. Talk about that.

8 A. I'm on it now, because my life, I'm dealing with
9 it. I'm on it now, so we're going to get to that right
10 there.

11 The young lady who came up here yesterday, she was
12 having sexual, me and him, you know? So she would kind
13 of straddle the fence and play both sides of the field,
14 you see what I'm saying? Go back and tell him this, or
15 tell him that, and here we got -- okay. I just told you,
16 she was playing both sides of the field. Yesterday she
17 told y'all I was accused of something, and she know I
18 didn't do it. You know what I mean? I ain't going to
19 ask y'all --

20 Q. What were you accused of doing?

21 A. She didn't go into detail --

22 Q. I'm asking you, what were you accuse --

23 A. I'm going to go ahead. She didn't go into detail,
24 but I used to live on the third street, across from a
25 girl named Samara, you know what I mean, and Vincent

1 would go over there and put down dope from time to time,
2 you know. So one of the packages got missing, you know.
3 I had my alibi. I was with old girl, you know what I
4 mean? Around the corner, I was with old girl, but the
5 girl who house it was she -- oh, let me start. I can't
6 say what other people said.

7 Q. No.

8 A. Okay. So -- it was implicated --

9 Q. Did you get accused of stealing?

10 A. Yeah, I got accused of stealing the boy dope.

11 Q. And did he believe you stole it?

12 A. Oh, yeah. He believe it. You know, we got in a
13 little heated conversation over it.

14 Q. Did you steal his dope?

15 A. No, I ain't steal his dope. Old girl told you
16 that yesterday because I was with her the whole time, but
17 this one get me upset. She didn't tell him that, you
18 know what I mean? She had him believing, you know, so
19 you know how word of mouth go, Oh, Bernie robbed this, he
20 took the man dope or whatever, whatever, whatever.

21 Actually, if I really did it, that ain't robbing
22 anybody. I stealing because he put it down and he left
23 it, like -- you walk off and out of the room and I -- you
24 know what I mean? Rob, let me get that. You know what I
25 mean? That is the difference between stealing and

1 robbing, so I going to break that down like that right
2 there.

3 So she didn't tell the man, you know what I mean,
4 so the man thinking, oh, I go fix him. I already pointed
5 out to you. I already think he screwing my baby mama. I
6 know if I don't let the man alone, he probably will get
7 at me. And now he stealing from me, you know, so I could
8 see in his mind -- I put myself in his shoes at this
9 time, even though I ain't stole nothing from him, now, I
10 could see where he felt that I was trying to get out of
11 baby mama, whatever.

12 So I could see him feeling uneasy because I know
13 if I beat up somebody mama and I'm by them, I'm going to
14 keep my eye on that person because he might got something
15 else going on with them, you know?

16 So I can see where he felt uneasy. He could see
17 where everybody coming to him, telling him, Oh, Bernie
18 doing this, Bernie doing that, and I'm going to point it
19 out to y'all. In his mind, once I was his territory,
20 now, but I'm going to get into all that, you know.

21 So here I am, invading his space. People telling
22 him I'm catching the sales and stealing his dope, and he
23 think I'm trying to get at his baby mama and his mama
24 doing -- he know I know that he beat up my mama, you
25 know? So I could see where he feeling ill towards me. I

1 can understand. I put my feet in his shoe. I could see
2 this, you know what I'm saying?

3 So we got in a little heated argument over that,
4 you know what I mean? It wasn't really nothing too
5 major, you know.

6 Q. Did you get in a physical fight?

7 A. No, no. I wasn't really --

8 Q. Did you pull guns on each other?

9 A. No, no. At that point in time he didn't pull a
10 gun on me yet.

11 Q. So no guns, just verbal argument?

12 A. Just a verbal argument.

13 Q. Okay.

14 A. But we're going to go ahead and get --

15 Q. Let go to the next step.

16 A. We're going to get a little bit deeper.

17 Q. Let's turn the page and go to the next episode.

18 A. Next episode. Here we go. So I'm back out there
19 getting my money, selling drugs once again. Okay. We
20 already know that, you know. You already know that. We
21 done established that so far. I sell crack, you know.

22 So I'm standing at the Quick Mart one day. I see
23 a white lady pull up. She pull up. I know her from
24 buying crack. You know? I rolled on her. Run to the
25 car. Hey, what's up, what's up, what's up, what's up,

1 what's up? She, Oh, man. I need this right here, you
2 know what I mean? So I serve her, took the money.

3 Q. What did she need?

4 A. She needed some crack.

5 Q. Okay.

6 A. You know what I mean?

7 Q. Did you sell her some crack?

8 A. Yes, sir. I need that. She had big boy money
9 too, about -- anywhere from \$800 to \$1,500. Now, in the
10 statement, just so these fellows in front of me will
11 know, in the statement, I said \$800. That's what I said
12 in the statement, you know, but it was anywhere from \$800
13 to \$1,500.

14 Now, I'm going to stop right there about my
15 statement. I'm going to stop right there right quick and
16 I'm going to break it down by my statement.

17 Now, Mr. Wagner, good dude. He do his job real
18 well. No disrespect to him or whatever, you know what I
19 mean? At the same time, I don't know if he forgot
20 because it was about a year ago, about a strong year ago,
21 about 14 months ago.

22 I don't know if he forgot, but I was on the run,
23 you know what I mean? After the charge, after the charge
24 happened, I was on the run, and I got caught the next
25 day. No sleep. I don't know if y'all ever been through

1 this before, you know what I mean? I doubt it, you know
2 what I'm saying?

3 Q. You're talking about after the shooting?

4 A. Yeah, yeah. I'm going to go back. I'm going to
5 go back. You know what I'm saying?

6 So when you're on the run for something, like when
7 you're being falsely accused of murder, armed robbery,
8 you know, I had the weapon, you know what I mean? I had
9 possession of the weapon of a violent crime. I ain't
10 denying being on that scene now. Y'all saw a lot of
11 forensics and whatnot. I ain't denying being there, but
12 I'm going to get to that through y'all today.

13 I ain't denying none of that. So when you're on
14 the run for something like that, it's hard to trust
15 people. You are constantly on the go. I'm looking this
16 way, that way. I don't know where to turn at. I don't
17 know where to move, and that tends to run your body down,
18 when you're on the run like that, trying to get away from
19 something. Your adrenaline -- you're running up
20 adrenaline, and I'm only human. I'm not a robot. I
21 ain't got no 25 span year battery in my back or nothing
22 like that, you know what I'm saying?

23 I'm only human like I told y'all. You tend to
24 wear down. I ain't have no sleep when Detective Wagner
25 picked me up, so I'm actually an intelligent person. I

1 always be alert at times. I probably got a little boost
2 when he first picked me up, but throughout the session --
3 I wish it was recorded because y'all would hear me saying
4 over and over, Man, when are we going to get done?

5 My body is starting to settle down, and I'm in
6 court, and one thing about when you get caught {sic} and
7 get ready to go to jail the depression state hits you,
8 you know, because it ain't natural -- even though that's
9 outside, society today, but it ain't in our natural -- it
10 ain't a reason why God create -- you know what I mean,
11 for us to be caged up like animals, you know?

12 So it depresses. It play a part in your mental
13 state. You feel me? It does, it does. So I started
14 coming down. I started dragging, so I was telling them,
15 so it might be some things that ain't all the way exact
16 and correct in that statement, but I'm going to walk
17 y'all through that today, just bear with me.

18 Q. All right. So you say you sold the woman \$1,500
19 worth of drugs instead of 800?

20 A. No. Listen, listen. I said from 800 to 1,500,
21 anywhere in between.

22 Q. So you sold this woman drugs.

23 A. I sold her the drugs.

24 Q. And what happened after that?

25 A. Directly after that, directly after that, I would

1 say probably about -- I said probably about 30 -- no, no,
2 not 30 minutes, about 15 minutes, I get a phone call. I
3 see the number. I already know who it is.

4 Vincent, he call my phone. So I answer the phone.
5 Y'all excuse me. I ain't trying to disrespect anybody in
6 this courtroom as far as language wise or whatever. I
7 know we got some older people, and just naturally -- I
8 know we in the courtroom. I ain't be with the cussing,
9 got the judge on the stand. I don't want to disrespect
10 him neither, and I disrespect my old man, I ain't never
11 really cuss in front of him like that, and I don't want
12 to start right now.

13 But, anyway, I'm going to be real with y'all, so
14 he -- when I say, Hello, yeah, where you at, pussy? You
15 know what I'm saying?

16 So, What you got going on? Why you calling my
17 phone like that for?

18 I know you catch my sale. She done tell me.

19 Where you at? I'm like, Man, listen. Where
20 you at?

21 He be, like, You know where I at. Tell me
22 where you at so I can come get my money.

23 I said, Listen, man, you ain't getting all
24 that money she had, you know. I pay you what she owe
25 you, because the sale to me. She owed him 100, and I was

1 prepared. If he had called me, I would have gave him the
2 \$100, I would have did that, because that is out of
3 respect, you know, because I didn't know if she would
4 roll him and pay the 100.

5 He would have caught the whole sale. He
6 would have caught the whole sale. So I said, I'll pay
7 you the 100.

8 He said, No, no, no, no, no. Ain't going
9 down that. I need everything, because I'm going to get
10 everything. You know what I mean? Before you caught the
11 sale.

12 So I'm, Like, no, we don't work it like that
13 right there, bra. You know my situation. I broke it
14 down to him. I broke my situation down to him. I need
15 it all. I'm homeless, bouncing from spot to spot. I
16 need every dollar I can get. I need it all now.

17 So he didn't want to hear that, so I hung up
18 on him. Kept calling me back. So when the threats
19 kicked in, when I see you again, don't come back in
20 Woodside. When I see you, I'm going to kill you. Okay?

21 Let it go. I respect that his mind. Told
22 him, you know, whatever, whatever, whatever, whatever.
23 Whatever it is, is what it is. That's what I told him.

24 Q. Did you leave Woodside?

25 A. I left after I caught the sale anyway because I

1 was going to make a move, you know.

2 Q. But you didn't go back to Woodside after he told
3 you not to.

4 A. Not right then and there.

5 Q. Okay.

6 A. No, sir, no, sir, not right then and there. I
7 didn't go back to Woodside.

8 Q. All right. How long was it from the time you made
9 the sale until the shooting?

10 A. No, no, no, no. This is a prior event.

11 Q. That is what I'm saying. From the time you made
12 the sale to Vincent's customer until the shooting, how
13 long was that?

14 A. I'm going to say probably from about two to three
15 weeks, about two to three weeks. You want me to keep
16 going? All right.

17 So I caught the sale. I left out. It's another
18 little guy I been dealing with -- as a matter of fact,
19 there is two other little guys I've been dealing with,
20 real close friends. I could go to their spot every now
21 and then and hang out, you know what I mean? I could go
22 to their spot and chill every now and then, you know, so
23 I ain't even trying to go over there because I'm trying
24 to avoid altercation with Vincent, you know what I'm
25 saying?

1 So I started going to my other homeboy's house,
2 and from what he told me, made a threat on my life, I
3 felt in my mind I had to get a gun, you know? Because I
4 know out there in the streets, you know what I'm saying,
5 and I've seen situations with him before and how he react
6 to certain situations.

7 He ain't the baddest man in the land but even real
8 uppity. I'm going to tell you one thing about somebody
9 who get money, right? Okay. I'm going to break this
10 down first. You got upper class, middle class, lower
11 class. Now, I understand human nature and the way people
12 think, way people interact like that, so this is not for
13 everybody, this ain't no go to the standard of life, you
14 know?

15 I'm just telling y'all what is going on through my
16 head. Y'all don't even got to see it the way I do. I'm
17 just telling y'all -- anyway, I see a lot of people at
18 the bottom, lower class, they tend to be -- you know what
19 I mean, humble as far as certain situations dealing.
20 They break bread with you or whatever. They know they in
21 the struggle with you, so they're going to embrace you if
22 they need you or whatever. Hold on. Let me back up a
23 little bit further.

24 You got the regular world, then you got the
25 underworld. And I say that because you got people who

1 work and you got the street life. I'm on the street side
2 of things now, so when I say upper, middle, lower, I
3 ain't talking about millionaire, someone who makes, like,
4 \$50,000, \$70,000.

5 Low income, I'm talking about who is selling the
6 most dope, on that type of level, you feel me on that
7 type of scale right there.

8 So we already established I've been homeless at
9 the time, bouncing from spot to spot. I'm at the bottom.
10 I'm at the bottom, you know, and one thing the streets do
11 to a person when you get money, they start to get a big
12 head. And I already told you, he thought Woodside was
13 his territory, so he was getting a big head.

14 I understand that. I probably would have gotten
15 big headed myself, if I had money to play with, you know,
16 do what I want to do. I could see that happening. I
17 understand that, you know, so at the same time, we going
18 to go back, you know, we're going to go back.

19 I felt I needed a pistol. I never had a pistol in
20 my life, so I caught my pistol, I went and got me one,
21 you know what I mean, and a couple days passed.

22 Q. Tell us where you got the pistol.

23 A. I bought it off the street.

24 Q. Bought it off the street?

25 A. Yeah, for crack sale, you know what I mean?

1 Somebody came, you know, I got that, you know. I needed
2 that. Somebody that threatened my life, now so I needed
3 that.

4 Q. Did you get in trouble for having the pistol?

5 A. Oh, yeah. You know I about to get to that.

6 Q. Okay. Well, tell us what happened with the
7 pistol?

8 A. Me, Rock, another little one of my little
9 homeboys, and my homeboy sister, we driving downtown.
10 Y'all are probably familiar with the restaurant days. We
11 driving around downtown. One of them streets we was on,
12 police got behind us, so -- hold on. Let me back up.

13 Before we left the house, they told me don't carry
14 a gun nowhere now. You know, leave your gun. You with
15 us. You're all right. I told them, Yeah, I'm all right.
16 I told them yeah, I'm all right.

17 So in my mind, I'm like, I'm not going to be
18 caught up without my gun. I'm going to have my gun on
19 me, you know what I mean?

20 He know I'm going to keep mine, so forth and so
21 on. I got my gun in my pocket. They don't know. So the
22 police get behind us, police get behind us. So everybody
23 in the car, you know, they trying to get right over
24 there. They ain't had nothing on them. They been all
25 right.

1 I had a gun in my pocket, so I start to, like I
2 been doing -- like I doing right now in this chair, start
3 the swerving and looking back, and you know you you're
4 doing something wrong -- what is the word I want to use?

5 Q. Paranoid?

6 A. I mean, but well-conditioned, as far as if you
7 knew you're doing something wrong and somebody watching
8 you, you know what I mean -- you know how to play it off,
9 like ain't nothing going on. I'm usually pretty good
10 with that, you know what I mean, and I lost control.

11 I starting fidgeting, and the police walked up
12 behind or whatnot, you know what I mean, they walked up
13 behind us, pull us over. Pull us out one by one, out of
14 the car. I'm in the back. Police pull me out, you know
15 what I mean? Search them. Ain't find nothing on people.
16 They start arguing about the insurance or whatnot.

17 They pull me out. So -- I wish he was here today.
18 I don't see him back there, but I wish he was here today.

19 Q. Who is the police officer?

20 A. Officer Burns. Cool dude.

21 Q. Which police department?

22 A. Charleston, black and white, city of Charleston.

23 He's not -- a dude who do his job, sort of like Detective
24 Wagner. He good people, you know?

25 So pulled me out of the car. Start frisking me,

1 you know how they do the little frisk. He grab my
2 pocket, right front pocket: Oh, you got a gun. Get
3 down, sir.

4 So all right. I'm up on the car like this, so I
5 let him do the thing, pull the pistol out, bag it up.
6 Wait for backup to come through, you know. Backup came,
7 came and saw me. I'm in the back of the car, you know,
8 they stuck cuffs -- they had to come -- the handcuffs
9 were stuck on Rock and the other little dude.

10 Q. So they did arrest you?

11 A. Yeah. I'm in the back of the car now, so they
12 done file a report or whatever. They're on the way. So
13 when I'm in the back of the car, he came -- and this was
14 kind of funny to me now. I ain't no racist or nothing
15 like that. I ain't racist or whatever, but it was kind
16 of unusual for him to come off the way he did.

17 It's a white man, probably about early 30's, you
18 know. He was, like, Man why you had that gun on you,
19 man?

20 I'm going to tell y'all, but I could feel the
21 compassion with him, that he had for the situation. He
22 like, Man, why you have that gun, man? You know? What
23 are you doing carrying a gun?

24 That wasn't in exact words, but that is what he
25 was saying.

1 He was like, What is going on, man? Tell me.
2 Talk to me.

3 So I'm, Like, sir, I got to have this gun.

4 He said, Well, why you feel you got to have this
5 gun?

6 I said, Sir, listen. Somebody already threaten my
7 life. I ain't go into detail, but he beat my mom up and
8 whatever. And I just told him, Somebody threatened my
9 life, you know, so I got to have my gun. I got to have
10 that.

11 And, you know, a lot of police didn't document
12 that, but I'm surprised he documented that. He wrote it
13 down, he did what he had to do, and he said that at my
14 prelim. He came to my preliminary and said that.

15 Q. Let me stop you right there. Do you recall the
16 exact date when you were arrested for the gun?

17 A. No, no, no, no, no.

18 MR. BOSNAK: If I could approach to refresh
19 his recollection, Your Honor?

20 THE COURT: All right.

21 BY MR. BOSNAK:

22 Q. See if this refreshes your recollection of when
23 you were arrested for this, for the gun.

24 A. Which one --

25 Q. See it?

1 A. I got you. Oh, right there. 4/17.

2 Q. 4/17.

3 A. That is four days before the incident.

4 Q. Four days before the incident. All right. Let's
5 get to the date of the incident.

6 A. Okay. Directly to the day of the incident.

7 Q. Right.

8 A. I'm still running back and forth, you know? I'm
9 still skipping from spot to spot. So I woke up at one of
10 my little partner's house. Woke up there that morning.
11 So I told him, I said, Man, listen. My other little
12 parties call me about a job. I done did some time up the
13 road, my mama, you know what I mean? I'm tired of
14 running the street. I'm trying to find a way out now,
15 you know what I mean, because I could feel my situation
16 closing in on me, and I was going back to prison shortly.
17 I already know that, and I start doing old habits,
18 start just getting back on drugs, really heavy or
19 whatnot, you know what I mean? So I know it was coming.
20 So I said, I got to go get me a job.

21 So I call my little homeboy. I said, Man -- he
22 like, Listen. I got a job you can go to.

23 So I be all right. I'm going to get my little
24 homeboy to take me over there, bring me around or
25 whatever. So he was all ready, all right? So we went to

1 the homeboy's part, to Ms. Tammy's part, you understand?
2 So we there, me, Kristina, which is the victim's baby
3 mother, her brother, my little homeboy. Vincent wasn't
4 there. He wasn't there at the time, you know what I'm
5 saying?

6 So I called my little home -- I don't want to stay
7 at the house too long because I know Vincent would come
8 back sooner or later, you know what I mean? He was going
9 to come back, you know what I'm saying, so I want to
10 hurry and get up on out there, but my little partner, he
11 wasn't trying to move.

12 I don't know if y'all remember the statement I
13 said that I noticed somebody stalling, procrastinating.
14 That is what I was talking about, as far as taking me to
15 go get the job, you know? So he was stalling,
16 procrastinating.

17 I call my other little homeboy. I said, Listen
18 man. Listen man, I got this little job I'm trying to
19 get.

20 I think that is a new star, you know, some school
21 that was -- they had I ain't been out there, so I didn't
22 know, you know what I mean, but whatever, some building
23 back there. I guess that is a school. That's what I
24 heard, it was a school, and I went out there. I'm saying
25 school.

1 So, anyways I call my other little partner, and he
2 said, Man, I need a job too. I'm about to roll, same
3 little dude that I called plenty of times. He was here
4 today, the same little dude I called plenty of times to
5 remove me from the situation stemming from Vincent
6 threatening me, putting a gun on me before, but I ain't
7 really go into that, 'cause that is a whole -- you know
8 what I mean, we already at the date of crime, but just
9 know that happened now.

10 So he came and got me. When he came and got me,
11 his little cousin was in the car with him. So if I'm not
12 mistaken, we went straight to Dorchester Manor. Keep in
13 mind now, I'm fatigued when all this going on, but I
14 pretty much know what is going on. You feel me?

15 So I am talking about as far as writing a
16 statement now, so I ain't fatigued at the time because I
17 ain't never get on the run yet, so I don't want no one to
18 get it confused, you understand?

19 So we --

20 Q. Did you go by and try to get a job?

21 A. Oh, yeah, yeah, yeah, yeah, yeah, yeah. We went
22 by and try to get the job, you know? We already had
23 dropped the other little dude -- hold on. Let me stop
24 real quick. There is two other people that they got
25 charged on accessory after the fact of murder, Lavonzelle

1 Felder and Albert Grant. I just want this is for the
2 record.

3 Q. No, no, no, no. Just go on for the record about
4 the job.

5 A. All right, all right, all right. Well, we went to
6 go to the job site. He tell us we had to go back
7 tomorrow. We already dropped the youngest one off, so
8 when I got in the line for the job, I started thinking in
9 my head, Okay. It's back to the bases. I got to go back
10 out there and try to sell this crack and get this money.

11 I try a job. They said, Come back tomorrow, I'm
12 going to make an effort to come back tomorrow, but I'm a
13 list discouraged because they said come back tomorrow.
14 So we left.

15 I got a call from a sale, saying, Man, I need such
16 and such, you know? I need to purchase some of that
17 crack you got. Meet me at the gas station on Montague,
18 you know? So we drove over there.

19 My partner dropped me off, and I told my partner
20 that I had another sale over further up Dorchester, you
21 know what I'm saying, that I was going to try to go
22 catch.

23 And he said, All right. Well, I'm going to drop
24 you off with him. He's going to take you to other sale?

25 I said, Yeah. He's going to take me. That was

1 the last time I saw him now.

2 Q. Who was that person?

3 A. Lavonzelle Felder.

4 Q. So he dropped you off over on Montague?

5 A. That was the last time I saw him all that day, all
6 that day. Last time I saw Albert Grant is when we
7 dropped him off at Dorchester Manor.

8 Q. Go ahead and tell us what happened. Did you make
9 your sale?

10 A. Yeah, I went and caught my sale. So when I caught
11 my sale, just like the witnesses told y'all, it's a
12 pretty day. I'm feeling good. Got a little money in my
13 pocket.

14 Q. How many sales did you make that day, one or two?

15 A. At that point in time that was my second sale.

16 Q. Second sale?

17 A. Yeah. So I got a little money in my pocket. I'm
18 feeling good. I'm all right, you know what I mean? So I
19 already, I got -- well, I ain't going to say because I
20 can't say what somebody else saying, but I called
21 Vincent, listen, man. I tired of running. You know?
22 I'm tired of running, duck and hide from you, you know
23 what I mean? I ready to go ahead and kill this situation
24 and this money and be done with it, man. You feel me? I
25 done with it, man, you know?

1 So he was acting nonchalant, like, Oh, well, I
2 ain't really mind. Just come on through there.

3 I said, I got the money right now. Call me when
4 you get through there, okay? I said, I'm going to call
5 you when I get through there.

6 So on the way from Dorchester Road to Woodside, I
7 ain't no fool, you know what I mean? And I'm going to
8 take every precaution I can to protect myself, you know
9 what I'm saying, regardless of what.

10 I went to my spot. I ain't have my gun on me at
11 that time. I went to my spot and I got my gun, because
12 before I went around here, me and him meeting face to
13 face, I wanted to have my protection, you know what I'm
14 saying?

15 So I went and got my gun, you know what I'm
16 saying? So I called him when I got around there. I
17 said, Man, listen. I got my sale to drop me off at the
18 Quick Mart.

19 He drop me off so I call him, Listen, man.
20 Listen, man. Is that the police? Oh, he look like my
21 man. I didn't want him to get up here.

22 So I called Vincent. I said, Man, listen. I at
23 the store, so I had in my mind, okay. I'm going to get
24 him to --

25 Q. Tell us where the store is located.

1 A. Right there at the corner, top of the
2 neighborhood, the corner. Clovewood is directly behind
3 the store.

4 Q. So the store in Woodside Manor?

5 A. Yes, sir.

6 Q. Okay. So you were at the store?

7 A. Yes, sir.

8 Q. What is the name of the store?

9 A. Quick Mart.

10 Q. All right. You're at the Quick Mart?

11 A. I'm at the Quick Mart. So I call him. I said,
12 Man, I'm at the store, man. Come on. Get the money. We
13 can be done with it.

14 I purposely made the meeting spot at the store,
15 you know what I'm saying, because I wanted people out
16 there. I wanted the people to see us, you know what I
17 mean, see what was going on, so he would be on level.
18 Like, I ain't about to try that because there is a bunch
19 of people out here, so you know what I mean?

20 So this man tell me, I ain't coming to the store.
21 Meet me behind the store on the first street, on
22 Clovewood.

23 Man, light bulb flash in my head right then and
24 there. Why don't this man want to meet me on the store?
25 Why don't he want to meet me on the street that has a lot

1 of traffic? It really slowed down because a lot of
2 people went to jail, you know what I mean? People still
3 live on that street, you know what I mean? Just like the
4 witnesses was telling you.

5 It's busy. You know, people, they playing ball,
6 you know what I mean, whatever they have going on,
7 whatever. But middle of the day, bright sunny day,
8 temperature all right, people mixing it up. It's
9 around -- what time was it? In between 4:00 and 5:00,
10 I'm pretty sure, so I walked back there.

11 I got the light bulb in my head. I try to not
12 think nothing of it. Smoke a cigarette, walking down the
13 road, walking back, walking down the road, walking to the
14 meeting spot. So I said, I'm going to go ahead by the
15 cut, so after I serve him -- after I give him the money,
16 leave him alone, so he can leave me alone and get him up
17 off me, you know what I'm saying, I'm going to go up
18 through the cut and go about my business.

19 I thought I go hanging out with Miss Tammy. I
20 know everything would have been good because he would
21 have had his money. So, went down. I'm waiting. The
22 lady lies that she saw my walking back and forth up the
23 street. I sat in one spot, waiting on this man so he can
24 come through, get the money, and get on through.

25 I'm out there about five minutes. He turned on

1 the street. Now, when he pulls up on me, first thing I
2 see -- now, keep in mind, the day I got locked up and I
3 wrote the statement, I ain't deny not one time being on
4 that scene. I'm going to get into that. I'm going to
5 get into that, but I'm going to go ahead and tell y'all.

6 So as soon as he pull up, I see the pistol on the
7 seat. Beep, beep, beep, beep, beep, beep, beep, beep,
8 you know what I mean? Normally I would have said that is
9 my street code or whatever, but you don't have no weapon
10 just out, laying visible unless you trying to let a
11 potential threat be known, you know what I mean? That is
12 just something you don't do.

13 You probably had it on your waistline, but I ain't
14 have it -- in nine days, you really can't be having it on
15 the seat unless you be about people being about your
16 business and you use it if you want to. That is why the
17 police is different. The regular patrol officers, they
18 keep it on their side so you know, but a detective, he
19 got it under his suit, like that bailiff over there. He
20 got something under his coat.

21 If you get stupid, he's going to pop you or now.
22 It might be a Taser or it might be a gun, but don't
23 think --

24 Q. Just back up and tell them about what happened.

25 A. I'm trying to let them feel it, so here we go

1 again.

2 So I see the pistol on the front seat. So now I'm
3 on like, I'm going to go ahead and pay this man so we can
4 get on through, get him on through, you know what I mean?
5 I can go ahead about my business because I don't want
6 nothing to go down.

7 So, you know, first thing, he roll up. I see the
8 pistol -- excuse me, language -- Man, what take your
9 pussy ass so long to pay me?

10 I'm like, Man, listen. You better go ahead and
11 end this right now; you know, get the money, whatever.
12 So another thing about the statement. I'm going to point
13 this out so they don't try to -- oh, you ain't say this
14 in your statement or whatever.

15 At the time I wrote my statement, I was fatigued,
16 and I left some more key -- you know what I mean? I know
17 this is a key. They're going to bring this up, you know
18 what I mean? I left this out the part about me giving
19 this man my money.

20 Now, I gave him some money. I couldn't --

21 Q. How much money did you give him?

22 A. In between 200 and 300. That is what I gave the
23 man, you know what I mean? So --

24 Q. So what did you give him the money for?

25 A. He claim I owe him -- remember the money I told

1 you, the sale? So I wanted to give him that money and
2 get him up off me, but he was rolling on more like on a
3 level of, Give me all you got. I want as much as you got
4 toward that, between \$1,500, you know what I'm saying?

5 So here we go back to the car situation. When he
6 rolled up on me, I'm going to walk y'all through this,
7 step by step, on how his body was positioned and whatnot,
8 you know.

9 So a lot of people who run the street, they tend
10 to have their seat way back, but when you roll up on me
11 to talk to me, he was leaning over, like what took your
12 pussy ass so long to pay me my money, you know what I
13 mean? So, like I said, I gave him the money. Man,
14 listen, man. We're going to end this right now. I'm
15 going to give you the money.

16 I give him the money. I see him take the money.
17 One thing, y'all was trying to indicate whether or not I
18 was close up on the man or whatnot. I was close. You
19 know what I mean? My purpose was to give him the money.
20 I ain't going to be standing from here to my man trying
21 to give somebody no money. I'm trying to walk up on you
22 to give him the money, hand him the money, and go ahead
23 about my business.

24 So I was close. So he was up on the car, like,
25 What took your pussy ass so long to pay me? You know

1 what I mean?

2 So I was, like, Man, here. So I give him the
3 money, matter of fact.

4 You took too long to pay me, you know? I should
5 shoot you.

6 Matter of fact, that is when the change in his
7 body -- I told y'all in the statement, just like the
8 body, you know what I mean, the slight movement in his
9 body, that's when he move over --

10 Q. He moved toward the handgun?

11 A. He moved over toward the handgun. I can't
12 remember if he reach with his left hand or right hand,
13 you know, but he twist.

14 First thing I did in my head, I think all in a
15 split second I'm thinking, this man about to grab his
16 gun. He try to take a shot at me, you know what I'm
17 saying?

18 First I thing do, I proceed to shoot him. I shot
19 him. I'm the reason why he died, but I did not murder
20 him. Correct me if I'm wrong. That's the difference
21 between murder and -- murder is planned, right? I ain't
22 planned to kill this dude, man. You know what I mean?

23 Even though we have problems, you know, we
24 probably disliked each other. I didn't hate him, now.
25 It's different between dislike and hate. You know what

1 I'm saying -- I didn't hate him.

2 So he reached for the gun. I hit him up. I gave
3 him everything out of the clip. I ain't going lie to
4 you. I did it. I was just so focussed on stopping him
5 from grabbing that gun. My mind just -- you know, okay.
6 I got to stop him. He trying to kill me.

7 So I ran off. I ain't seen nobody on the street.
8 You know what I mean? I ain't seen people even out
9 there, but you got some people saying, Oh, he ran past me
10 or he did -- I ain't seen nobody in the area. If I see
11 somebody, shoot somebody up in the car --

12 Q. Tell us what you did. You shot him. Then what
13 did you do?

14 A. I ran off. I ran back to get my money. My money
15 I just gave him that I told y'all I just gave him, I went
16 back to get my money.

17 Q. Where was your money on him?

18 A. On his lap, like right on top of his -- can I
19 stand up, man? Like on his lap, like his front pocket,
20 you know what I'm saying? So I reached down and I
21 grabbed my money.

22 Q. And then you ran?

23 A. I just shot him.

24 Q. All right. Let's go back through this. Give me
25 the broad view. Let's go back through this.

1 When you first -- he came up to you, which side of
2 the road were you on?

3 A. I was on -- coming from the store, directly I was
4 on the left side of the road, across from the cut. I
5 don't know if y'all remember the pictures of the cut.

6 Q. Let me ask these questions.

7 A. Yeah, yeah, go head, go ahead.

8 Q. When he pulled in to talk to you, was he on the
9 right side of the road -- I mean, the right side of the
10 road or the left side of the road?

11 A. When he coming down, normally when you drive down
12 the street, you're going to be on the correct side, but
13 he sort of pulled close to me, so he was probably not
14 directly in the middle but leaning more towards my side
15 of the road.

16 Q. Okay. And how far, say, between me and you, how
17 far, say -- how far were you from him when he pulls up,
18 from me to here (indicating)?

19 A. Probably a little closer.

20 Q. All right. Right here?

21 A. Yeah.

22 Q. Okay. And you say he is sitting back in his seat
23 at first when he drives?

24 A. Yeah, at first.

25 Q. When he pulls up, where is he, when he's talking

1 to you?

2 A. He's leaning out the window like that.

3 Q. Okay. Hold on a minute. Just for demonstration
4 purposes, I'll pull a seat up to you. Say I'm Vincent.
5 I'm driving the car. So pulling up where you are and I'm
6 laying back in the seat and I pull up, what do I do now?

7 A. You lean up.

8 Q. Toward this way?

9 A. Exactly.

10 Q. All right. And I said, What took you so long?
11 Where is my money? Or what did he say? Tell me what he
12 said.

13 A. What took your pussy ass so long to pay me?

14 Q. So he's like this.

15 A. Yeah.

16 Q. What do you do then?

17 A. I give him the money.

18 Q. You hand him the money?

19 A. I hand him the money.

20 Q. What does he do when he takes it?

21 A. Put it like here, like right there on his left, on
22 the top of the left front pocket.

23 Q. Then what does he do?

24 A. He said, As a matter of fact, I should make you
25 pay me double, you know. I'll shoot you. He reach for

1 the gun.

2 Q. So the gun is over here on the passenger side?

3 A. Yeah.

4 Q. So he reached over this way?

5 A. Exactly.

6 Q. Okay. But you're not sure which?

7 A. I ain't -- no, I ain't really sure.

8 Q. But he reaches?

9 A. Yeah.

10 Q. Reaches for the gun?

11 A. Yes.

12 Q. Then what do you do?

13 A. Pull out the gun and commence to firing.

14 Q. Okay. Then you said you ran off. How far did you
15 run?

16 A. I probably ran about right here.

17 Q. Then what did you do?

18 A. I ran back.

19 Q. Okay. Then what did you do?

20 A. Grabbed my money.

21 Q. Then what you do?

22 A. Got on through.

23 Q. Did you ever reach in his pockets?

24 A. No, no, no, no, no. He had the money, like -- the
25 man who said I ransacked, he didn't know what he talking

1 about. Ain't no pockets flipped out.

2 Q. So you never went through his pockets?

3 A. No, no, no, no, and he try to make this thing an
4 armed robbery type thing. If I went through all that
5 trouble in broad daylight and this and that, I'm going to
6 get every dollar out of this man pocket, man, all or
7 nothing.

8 If I'm going to go to the extent to shoot this man
9 in broad day and kill this man like that, you know what I
10 mean, I would leave all this money in this man pocket? I
11 ain't know nobody going to do that.

12 Q. So you ran off?

13 A. I ran off. It's time to go.

14 Q. Now, you've only been in trouble for selling dope.

15 A. Yes, sir.

16 Q. And you admitted to us that you're a drug dealer.

17 A. Yes, sir. I caught the pistol charge too now.

18 Q. Only thing you've ever been in trouble for is
19 drugs and that pistol?

20 A. Yes.

21 Q. Four or five days before this happened?

22 A. Four days.

23 Q. No other trouble?

24 A. No, sir.

25 Q. Never robbed anybody?

1 A. They tried to make it seem like --

2 Q. Did you ever rob anybody?

3 A. No, sir. I an got no armed robbery charges.

4 Q. Never been in trouble for anything like that.

5 A. No, sir. Except the one. I charged with armed
6 robbery now, but I ain't got no prior armed robbery
7 charge.

8 Q. Did you mean to kill Mr. Wittrell?

9 A. I didn't mean to kill that boy. I did not go
10 there with the intentions of killing Vincent. I went
11 there with the intentions to pay this man.

12 Now, somebody moved that gun. I -- I think people
13 been outside this courtroom, Ramara Straman, I don't know
14 what they got going on, but somebody moved that gun. I'm
15 telling y'all with everything I love, somebody moved that
16 pistol, man.

17 Q. So you tried to pay him the money, but you got
18 into an argument.

19 A. Yes, sir, yeah. Yes, sir, yes, sir.

20 Q. Y'all were arguing?

21 A. Yes, sir.

22 Q. He was cursing you.

23 A. Yes, sir.

24 Q. Calling you names?

25 A. Yes, sir.

1 Q. And when he turned to reach for the, gun were you
2 afraid?

3 A. Of course.

4 Q. Afraid for your life?

5 A. Of course.

6 Q. And that is why you shot him?

7 A. I had to. It was either me or him and I love -- I
8 know this ain't the boundaries or whatever, the man asked
9 me something in the prelim, you feel me, and I mentioned
10 something at the end of my statement, that I know she
11 asked me was he ever mean to me, I ain't -- I just want
12 her to know, and I want to know if I can tell her
13 something right quick. That's all.

14 Q. No, no.

15 A. Because I don't want her thinking --

16 Q. I understand.

17 A. -- I'm cold-hearted because I know she needs some
18 closure about this. I don't want her to be thinking
19 something -- I ain't Freddie Kruger, man, you know what I
20 mean, so I don't want her to be -- just -- people around
21 here, I know they ain't telling the lady the whole story,
22 but they know more than what they leading her to believe.

23 I'm looking at you. I'm telling you that to your
24 face. You feel me?

25 Q. Okay. Listen. Did you -- in that statement that

1 you gave to Detective Wagner and Detective Perkins, just
2 about everything in there is true?

3 A. Yes, sir.

4 Q. Could be a few little mistakes because you were
5 tired?

6 A. Yes, I said that, because I was tired.

7 Q. But you did admit to them?

8 A. I told them off the jump. I told them from the
9 get-go. I told them.

10 Q. So everything is true?

11 A. I ain't had nothing to hide. You feel me?
12 Because it was eating at me. This type of stuff don't
13 happen every day. So I wanted to be real and tell them
14 what was going on, you know? Yeah, yeah, man.

15 Q. Is there anything else you would like to add?

16 MR. DuRANT: Objection. Improper question.

17 MR. BOSNAK: No further questions.

18 THE COURT: All right. Folks, we're going to
19 take about a 15-minute break here. It's been a couple
20 hours since you've been in here, so I want you to go
21 back.

22 If anybody needs to take a smoke break, you
23 can do that. I think we're going to have you -- some
24 doughnuts that were there, probably still some left, and,
25 again, don't begin deliberations or discussions about the

1 case, and we will see you back shortly.

2 (In open court, jury not present.)

3 THE COURT: All right. Let's take about
4 15-minute break. Mr. Gilliard, while we're on break, you
5 can go back over here, and they'll take you back if you
6 need to use the rest room. You're not allowed to
7 discuss, talk to anybody. You can't talk to your lawyer
8 during this break since you're on the witness stand. All
9 right? We'll see you back in 15 minutes.

10 (Recess taken.)

11 (In open court, jury not present.)

12 THE COURT: You ready to go? Y'all want to
13 come up here a second? I got a note from the jury. It
14 says two questions: After the trial or when appropriate,
15 is it possible to explain why the first witness was
16 excused?

17 The second question is, Is it formal protocol
18 for the accused to speak freely without answering
19 questions from the attorney? Signed juror 209,
20 Ms. Williams.

21 I propose to just say I will be able to
22 answer those questions after the trial. Please don't
23 factor these issues into your deliberations.

24 MR. SIMPSON: Is that just for one singular
25 witness? Are they back there talking about these things?

1 They shouldn't be talking about anything. I would like a
2 reminder.

3 THE COURT: I'll do that. That is a good
4 idea. Does that answer suffice?

5 MR. BOSNAK: Yes, or the last once, we want
6 to make sure he gets his story. He's the accused. We
7 want to make sure he gets his story.

8 MR. SIMPSON: I don't want to bolster
9 anything.

10 THE COURT: That is why we'll talk about it
11 afterward. All right?

12 Bring the jury in.

13 (In open court, jury present.)

14 THE COURT: All right. Folks, before we
15 resume, I want to respond to a question that y'all sent
16 me. The question, after the trial, or when appropriate,
17 is it possible to explain why the first witness was
18 excused? Second was, is it normal protocol for the
19 accused to speak freely without responding to questions
20 from attorneys?

21 I'll just answer it to say I can answer any
22 questions you have after the trial, and please don't
23 factor these things into your deliberations. I would
24 also like to remind you that you do not need to be
25 discussing this case back there. All right? So just

1 because it's brought up, I want to make sure that during
2 the breaks y'all aren't discussing testimony that you
3 have heard so far, so just keep that in mind. All right?

4 So we're going to now resume with the
5 cross-examination of the witness, so, whichever solicitor
6 is ready, you may proceed.

7 MR. DuRANT: Thank you, Your Honor. May it
8 please the Court.

9 CROSS-EXAMINATION

10 BY MR. DuRANT:

11 Q. Mr. Gilliard, good morning.

12 A. Good morning.

13 Q. You seem like a pretty smart guy.

14 A. Yeah.

15 Q. You know what's going on, right? And all this is
16 in your mind just fine, right? You didn't do anything
17 wrong.

18 A. No, sir.

19 Q. That's correct, right? I just want to go over a
20 little bit about what was going on that day, really just
21 kind of talk it all over with you, okay? And let me ask
22 you, first of all, about the guns. You know what a gun
23 is, right?

24 A. Yes, sir.

25 Q. And you know how a gun works, right?

1 A. Yes, sir.

2 Q. Do you know that you pulled the trigger, bullet
3 comes out, and damage can happen, right?

4 A. Yes, sir.

5 Q. And you've carried a gun, right?

6 A. Yes, sir.

7 Q. And you've carried a gun because you're prepared
8 to use a gun?

9 A. Yes, sir.

10 Q. And you're prepared to use a gun on this day?

11 A. No, no, no, no, no, no, no, no.

12 Q. You weren't prepared to use it?

13 A. I mean, I would have used it if I had to, now, but
14 I ain't woke up, just -- you know what I mean, intending
15 on using that gun now, but if I had to, I would have used
16 it.

17 Q. That is what I'm asking you.

18 A. Yeah, if I have to -- I did use it because I had
19 to.

20 Q. So you were prepared to use it.

21 A. Yeah.

22 Q. And you do have an extensive record, right?

23 A. Yeah, for crack.

24 Q. And running from the police as well, failure to
25 stop for a blue light?

1 A. Oh, yeah, you know.

2 Q. 2004?

3 A. Yes, sir.

4 Q. You just forgot about that one?

5 A. That ain't really nothing. Yeah, I ran from the
6 police.

7 Q. Right. But it's another part of your record as
8 well, right?

9 A. Yes. That comes with the police, you know, as far
10 as I'm concerned, you know what I mean. They trying to
11 say you doing something bad, you try to get away, right?

12 Q. You try to get away?

13 A. Yeah, okay.

14 Q. Like you did here, tried to get away from here.

15 A. Yes, sir.

16 Q. Tried to run.

17 A. I did run.

18 Q. And you've run before.

19 A. Yes, sir.

20 Q. Because you don't like being caught?

21 A. No. I don't like going to jail, sir.

22 Q. Because I think you said it's depressing.

23 A. I mean, when you first get locked up it is.

24 Q. And then you get over it?

25 A. Yeah, pretty much.

1 Q. And I think you also said when you were arrested
2 for the pistol on April 17th, four days before this, you
3 said you were sitting in the car when the car was pulled
4 over?

5 A. Yes, sir.

6 Q. In the back seat?

7 A. Yes, sir.

8 Q. And you had a pistol on you there?

9 A. Yes, sir.

10 Q. And you said, I'm pretty good at playing it off.

11 A. No, no, no, no, no, no, no, no, no. When I
12 told them that I was breaking it down, if you do
13 something wrong, you know, different people can play it
14 off real good, and there is some that I can't. When I
15 told them in the car I wasn't -- remember, I told y'all I
16 started fidgeting, looking back, and the man pulled us
17 over, I mean, that is when I had the gun. I never said I
18 was good at playing that off.

19 Q. You didn't tell the jury you were good at playing
20 it off?

21 A. No. I ain't say that.

22 Q. Let's talk about drugs, because you are pretty
23 involved in that world, right?

24 A. Yeah.

25 Q. You were?

1 A. I was.

2 Q. And you sold to a lot of people; is that right?

3 A. Yeah.

4 Q. You went to jail a lot of times for it?

5 A. Yeah, I did.

6 Q. And that is not fun, right?

7 A. I mean, it's consequences when, you know, in the
8 streets, that's part of selling drugs. You got to expect
9 to go to jail.

10 Q. And you've gone to jail for it?

11 A. Numerous occasions.

12 Q. Over and over?

13 A. Yeah.

14 Q. And so you get your drugs to sell to other people
15 from somebody else.

16 A. Yes, sir.

17 Q. Who probably has bigger quantity than you?

18 A. Well, yeah, no doubt.

19 Q. And this is what you did on pretty much a daily
20 basis?

21 A. Yes, sir.

22 Q. Sold drugs?

23 A. Yes, sir.

24 Q. And your mom was on drugs as well.

25 A. Yes, she was.

1 Q. And you didn't feel good about that.

2 A. No.

3 Q. And you didn't like that, right?

4 A. It was upsetting. It was upsetting.

5 Q. And you were upset with her?

6 A. For a little while. I got over it.

7 Q. But you had already gone to jail a couple times
8 and been involved in drug dealing before she got involved
9 in drugs, right?

10 A. Yes, sir.

11 Q. But it still upset you that she got involved in
12 drugs?

13 A. Yes, because it hurts when it touches home, you
14 know. It hurts when it touches home.

15 Q. Because you have seen -- there are bad effects of
16 drugs, aren't there?

17 A. Yes, sir.

18 Q. I mean, I think you said people sell things. The
19 DVD player was gone?

20 A. Yes, sir.

21 Q. I think you said your mama became a lot skinnier?

22 A. Yes, sir, she did.

23 Q. And started to have a lot of problems with drugs?

24 A. Yes, sir.

25 Q. Because there are a lot of problems associated

1 with drugs, not only for people who use drugs, but for
2 people for dealing in drugs?

3 A. There is consequence in -- whenever you're doing
4 something, you know, especially that.

5 Q. One of the things about drugs is you can have
6 arguments, turf wars, with other drug dealers?

7 A. Yeah, that happens.

8 Q. And that happened here.

9 A. No, no, that ain't happen here now. Ain't no turf
10 war going on now.

11 Q. You told us that Vincent was upset with you for
12 catching his sale.

13 A. Yeah. That probably what was going on in his
14 mind. Not in Mr. Gilliard's mind. Wasn't no turf war
15 going on, sir.

16 Q. Okay. Well, according to you, Vincent Wittrell is
17 involved in the drug deal, right?

18 A. What do you mean, involved in drug dealing? He
19 sell drugs? Is that what you're asking me?

20 Q. Yeah.

21 A. Yeah. He sold drugs.

22 Q. And he had a problem with you for catching his
23 sale?

24 A. Yeah. Yes, sir.

25 Q. So that was a problem --

1 A. In his mind, his mind, his mind now, Vincent
2 Wittrell's mind. Before Bernard Gilliard, ain't see that
3 as no problem. Bernard Gilliard saw that as getting
4 money for his self, earning his own keep, you know. He
5 had a problem with it, not Mr. Gilliard now.

6 Q. And that is because he didn't catch your sale, you
7 caught his?

8 A. He could have caught my sale, but, see, different
9 people react to different situations differently. You
10 know, just because he got mad and wanted to shoot me over
11 there, get whatever I had, you know what I mean, doesn't
12 mean I would have reacted the same way. And you could
13 have asked me how I would have reacted, and I would tell
14 you.

15 Q. Well, thank you. I appreciate that, but I'm
16 really just asking you about this one particular
17 situation.

18 A. Come on, man, let's go.

19 Q. He had a problem with you over drugs.

20 A. Yeah.

21 Q. And therefore there was a situation that maybe
22 wasn't your fault, in your mind?

23 A. Yes, sir.

24 Q. But there was a beef that existed out there over
25 drugs?

1 A. There was a problem. He had a problem.

2 Q. Over drugs, right?

3 A. Over drugs and money, yeah.

4 Q. It was over drugs?

5 A. I mean, there was other stuff going on too, now.

6 I already -- I believe I talked about that earlier when I
7 be talking to y'all, you know, you want me to go into
8 detail?

9 Q. The thing about your mother?

10 A. Not only that, but how he probably thought I was
11 sleeping with the old girl, Kristina, but ain't nothing
12 going on, you know? And when Ramara Straman was up there
13 and told y'all I was falsely accused of stealing, people
14 coming back and telling him I'm taking up, you know what
15 I mean, everybody coming and telling him this and that,
16 he begin to believe, you know? Stuff end up missing,
17 everybody screaming, Bernie, why not?

18 So there probably was a few things going on, not
19 just the drugs, you know, a little bit more going on.

20 Q. But you had an argument over drugs.

21 A. Yeah. That day, yeah. That day we had an
22 argument over drugs.

23 Q. At the core of this, you had an argument over
24 drugs.

25 A. I can't even call that the core, man, because I'm

1 telling you a lot of different stuff been going on, but
2 the direct incident came from this right here, yeah, yes,
3 sir.

4 Q. All right. I'm showing you what is in evidence as
5 State's 91. This is your statement?

6 A. Yeah, that's it.

7 Q. You gave that to the police, right?

8 A. I did.

9 Q. All right. Page one, you said, Me and the victim
10 has been going through many conflicts, but the incident
11 concerning this situation stems from me catching his \$800
12 sale a couple weeks ago.

13 A. Yes, sir.

14 Q. Sale of drugs? That's where the incident stemmed
15 from?

16 A. I mean, the shooting, yeah. That is what, in my
17 mind, the reason why I even began to meet him on that
18 street that day, came from this direct situation, you
19 know, but that probably wasn't the origin of his
20 feelings, you know what I mean, his ill feelings toward
21 me.

22 It didn't begin there, but the whole meeting took
23 place because of this situation right here. That was
24 the -- that was the reason for the meeting, you know what
25 I mean, as far as me giving him that money right there to

1 get him up off my back. I guess you could say that.

2 Q. Because of drug dealing?

3 A. We know drugs been involved. I tell them, you
4 know.

5 Q. Well, let's think about this. It wasn't
6 because -- it wasn't because he stole your shoes, right?

7 A. Man, you ain't grasping what I'm telling you.

8 Q. I'm just asking you a question.

9 A. No, it ain't because he stole my shoes.

10 Q. And you didn't steal his shoes?

11 A. No. I ain't took that boy's shoes.

12 Q. Right. You didn't take his clothes?

13 A. I took nothing from him.

14 Q. He didn't take your clothes?

15 A. Not even that money that y'all try to say I stole
16 went in his pocket. I ain't take that neither.

17 Q. It came from drug dealing.

18 A. What came from drug dealing?

19 Q. The incident on 4/21.

20 A. I mean, yeah, I mean -- I caught the man sale. He
21 had a problem with that.

22 Q. There was a problem?

23 A. I tell you.

24 Q. A problem amongst drug dealers because you caught
25 a sale?

1 A. He had a problem, he had a problem.

2 Q. And therefore you had a problem?

3 A. I mean, listen, I already tell you the man tried
4 to shoot me. I shot first.

5 Q. According to you -- I'm asking you a question,
6 okay? According to you, Vincent had a problem with you
7 over a drug sale, and therefore you had a problem with
8 him over that drug sale?

9 A. I ain't had no problem.

10 Q. And because of that problem, you got a gun.

11 A. I ain't had no problem. I got the gun before
12 that. Remember now.

13 Q. Wait. You said that the incident involving the
14 drug sale that you caught from him, I thought you said,
15 happened about two or three weeks before the murder?

16 A. Oh, yeah. You're right, you're right. I got the
17 gun for that, you're right.

18 Q. So that is where we are? That is the playing
19 field?

20 A. Where we are, where we at.

21 Q. So according to you, in response to that, you got
22 a gun.

23 A. Yeah, cause he already threatened my life. I had
24 to get the gun.

25 Q. Okay. So you got the gun because Vincent is upset

1 with you over you taking his drug sale.

2 A. Yeah. He threatened my life over me taking a drug
3 sale. Told me if I ever came back to Woodside, he told
4 me I was banished like old girl told you yesterday, told
5 me if I ever came back to Woodside, he was going to kill
6 me.

7 Q. Well, you said you were at Tammy Lee's house
8 earlier that day.

9 A. I was, and I also told you Vincent wasn't there.

10 Q. You were at Tammy Lee's house?

11 A. Yes, sir.

12 Q. She lives in Woodside Manor?

13 A. Yes, sir.

14 Q. She lives about four streets back from Clovewood
15 in Woodside Manor; is that right?

16 A. About four our five.

17 Q. About four or five?

18 A. Yeah.

19 Q. Tammy Lee is the mother of Kristina Lee; is that
20 right?

21 A. Yeah.

22 Q. Kristina Lee is the girlfriend and mother of
23 Vincent Wittrell's child?

24 A. Yes, sir.

25 Q. Is that right?

1 A. Yes, sir.

2 Q. And you were at her house in Woodside that day.

3 A. Yes, sir.

4 Q. And they had no problem with you.

5 A. They didn't, but Vincent wasn't there. I told you
6 that.

7 Q. I'm asking you this: Did they have a problem with
8 you?

9 A. Who?

10 Q. Tammy Lee or Kristina Lee.

11 A. Not. They never really had a problem with me.

12 Q. And these people are close people with Vincent?

13 A. I can't even directly said they knew about that
14 right there, you know what I mean.

15 Q. I'm just asking --

16 A. I didn't go tell them he threatened my life.

17 Q. So you didn't tell them that he threatened your
18 life?

19 A. No, I didn't tell Tammy Lee. I ain't tell them
20 that.

21 Q. And they didn't tell you that Vincent was upset
22 with you?

23 A. No. He called my phone and brought it to me his
24 self. They ain't had to tell me that.

25 Q. And these are people who are very close with

1 Vincent Wittrell?

2 A. You mean that tell him everything? Do you know
3 anybody that tells their family everything?

4 Q. Well, I'm asking you the questions.

5 A. I don't know. I don't know what he told them.

6 Q. They didn't have a problem with you that day, did
7 they?

8 A. Tammy Lee and Kristina Lee didn't have a problem
9 with me. No, sir.

10 Q. And they are close with Vincent Wittrell.

11 A. Yeah, they close too. We already know that, but
12 do we know whether or not -- even if he did tell them,
13 who they have reacted on that? We don't know. That we
14 already know, they're close, sir. That is the mother of
15 the man child and that is her mother. Of course they
16 close. All the family close knitted. I like that.

17 Q. So you said that Vincent didn't want you in
18 Woodside Manor?

19 A. No, he didn't want me in Woodside Manor.

20 Q. But that didn't keep you away?

21 A. No. Who is he to say that is his turf? You know,
22 I would slip through the cracks every now and then, but
23 altogether I wanted to avoid an altercation because I
24 ain't no bad person.

25 Q. You wanted to avoid an altercation and therefore

1 you actually went to Vincent Wittrell's baby mother's
2 house?

3 A. Yeah, I snuck there.

4 Q. You snuck there, because they didn't have a
5 problem with you.

6 A. I mean --

7 Q. They didn't know you were banished?

8 A. Tammy Lee -- they probably knew. Now, just
9 because they ain't said nothing to me don't mean they
10 ain't know. Dog told them that now, just because they
11 ain't say nothing now, people sneaky like that now, you
12 feel me?

13 Q. Sure.

14 A. All right.

15 Q. So you're saying Vincent was so upset with you and
16 so mad at you that he banished you.

17 A. That what he said. That is what was going on in
18 his mind.

19 Q. But you didn't really care about that, and you
20 actually went to his baby mama house?

21 A. I did care about that. That is why I stopped
22 going over there at night to sleep. I started staying
23 with my other little homeboy, so I did okay because I was
24 ducking the man. I told you that. You know what I mean?

25 Q. Well, do you know Vincent Wittrell's schedule?

1 A. I mean, no. I don't know the man's schedule.

2 Q. How did you know he wasn't going to be there that
3 day?

4 A. Because I got my homeboy to call to see if he been
5 there at first. I got my little homeboy to call to see
6 if he was there. If he was there, I wasn't going to come
7 there, and like I told you, when I was talking earlier, I
8 know my little homeboy procrastinating, stalling, taking
9 too long because he didn't want Vincent to come on back
10 through when I was there, and I told my other homeboy to
11 come get me and we left. Remember that part, right?

12 Q. You don't think it was possible that he could come
13 over there while you were there?

14 A. He could have.

15 Q. And you would have been there?

16 A. And he would have caught me slipping too because I
17 didn't have no gun on me at the time. So he probably
18 would have been sitting up here if it would have went the
19 way they would have told him or whatnot. I don't know,
20 but he probably would have been sitting here. I would
21 have been dead.

22 Q. So is it fair to say you weren't taking all the
23 necessary chances to avoid Vincent Wittrell?

24 A. Yeah, yeah, I'll say that. All right? I tried to
25 get through. You're right.

1 Q. You weren't taking all the necessary chances to
2 avoid Vincent Wittrell?

3 A. No, I ain't take that chance. I ain't going to
4 say I didn't take all the necessary chance, but I ain't
5 took that chance. I was ducking the man. Let's make
6 that clear now. I came to the residence. I was with
7 Tammy Lee and that to avoid him, feel me?

8 Q. So you went to Tammy Lee's house earlier that day.
9 Is that what you're saying?

10 A. Yes, sir.

11 Q. Did you ask anybody for a gun earlier that day?

12 A. No.

13 Q. When did you get the gun that you used in this?

14 A. When I caught the sale, after homeboy dropped me
15 off to the store, I caught my sale, told him to take me
16 to catch another sale. When I called Vincent to meet him
17 to pay him the money, so he could leave me alone, that is
18 when I got my gun because I know I was going to meet him
19 at that point in time.

20 Q. That is when you got it from the sale?

21 A. No, no, no, no, no, no. I told you --

22 Q. When was the first time it came into your
23 possession?

24 A. I can't remember the exact date. I know it was
25 shortly after he put the threat on my life. I purchased

1 the gun.

2 Q. So about two or three weeks before the murder?

3 A. Right after the sale, he got mad I caught the
4 sale. That is when I get the gun.

5 Q. So about two or three weeks before the murder?

6 A. Yeah.

7 Q. Something like that?

8 A. Yeah, something like that.

9 Q. So you must have had two guns.

10 A. No -- oh, yeah, I had two guns.

11 Q. Oh, yeah, had two guns.

12 A. Yeah. I had two guns because I got caught with
13 another gun when the police locked me up.

14 Q. That's right.

15 A. I got caught, so of course they took that out of
16 my possession, had to get another one because the threat
17 still live.

18 Q. So now you're saying that the gun that you got
19 that you used the day of the murder was after April 17th?

20 A. Yeah. They took that gun, and I bought another
21 one, thanks to Ms. Tammy Lee. She look out. She came
22 and got me, her and her children, you know, so when I got
23 out, I had to get another one because the threat was
24 still there. Mr. -- what is your name, DuRant?

25 Q. That's right.

1 A. The threat was still there.

2 Q. And Tammy Lee bailed you out because she didn't
3 have a problem with you, right?

4 A. She took care of me.

5 Q. She's a nice lady?

6 A. I appreciate that. I still do.

7 Q. So that leaves us trying to figure out where you
8 got this gun that you used on the murder. Now, we know
9 that it wasn't the gun you got two or three weeks before?

10 A. Man, I got that gun, I did too, from a sale.

11 Q. You got them both from a sale?

12 A. Yeah.

13 Q. You got both of the guns from selling drugs?

14 A. Yes, sir.

15 Q. And the first one got taken away because you were
16 unlawfully carrying it?

17 A. Yes, I was unlawfully carrying it. I don't have a
18 license to carry a pistol.

19 Q. You don't have a license to carry a pistol?

20 A. Sure don't.

21 Q. Because you're not allowed to carry a gun inside a
22 car unless it's in the glove compartment or secured in a
23 compartment?

24 A. Yeah. I think I would have lost that.

25 Q. Well, you've been around the law. That's what the

1 law is.

2 A. I don't know if that's exactly what it says, but
3 you say so. You work with the law every day, so --

4 Q. Well, you also know that you can't just -- unless
5 you have a permit, you just can't conceal a weapon or
6 walk around with it. You know that, right?

7 A. Man, we all know I'm not supposed to have a gun.

8 Q. I'm just asking.

9 A. Yeah. You keep -- I don't know you what got going
10 on, man, but --

11 Q. I'm just asking questions.

12 A. You got something going on, bro, I know.

13 Q. I'm just asking you questions.

14 A. I mean, keep on. You got to keep going with the
15 questions, you know, but I ain't know what you got going,
16 you know what I mean? We know I ain't supposed to have a
17 gun. We know I ain't supposed to sell drugs.

18 Q. I'm just asking you.

19 A. And I'm answering. I'm answering.

20 Q. All right. Well, here is the question: Do you
21 know that you cannot walk around with a gun on you?

22 A. Ain't supposed to, yeah, I know that. I know
23 that.

24 Q. You know that's is illegal?

25 A. Yes, sir.

1 Q. You did it anyway?

2 A. I was willing to break the law.

3 Q. You were willing to break the law, that's right.

4 A. To protect my life.

5 Q. Were you willing --

6 A. I was willing to take that chance of getting
7 unlawful carrying of a pistol than to get shot and killed
8 on the street. Yes, sir, I was. Yes, sir, I was.

9 You got that down on the computer there? Yeah?

10 Q. I think we all heard it, right.

11 A. I'm making sure she got that on the record, so you
12 can have this on your little record.

13 THE COURT: Let's just go with questions and
14 answers. All right? Move on to the next question.

15 BY MR. DuRANT:

16 Q. Let's talk about what happened when you got out
17 there that day.

18 A. Yeah, let's do that.

19 Q. You talked to Vincent that day on the phone?

20 A. Yes, sir, I did.

21 Q. And y'all decided to meet up?

22 A. Yeah. I called him, man, try to pay your money.

23 Q. You called him?

24 A. Yeah, I called him.

25 Q. And he told you, Let's meet on the first street?

1 A. I made a suggestion, Let's meet at the store. He
2 said, I don't want to meet you at the store now. That's
3 when the red flag popped up. Remember I told y'all about
4 the red flag? That is why the red flag popped up.

5 Q. I think you called it a flash bulb.

6 A. Both of them significant names.

7 Q. And what did that signal to you exactly?

8 A. Why he didn't want me in front of the store? I
9 know people walk there. Why he want me on the street?
10 Why he want to meet me on the street? It used to be real
11 alive at one point in time as far as drug traffic. A lot
12 of people always used to be back there, but it's pretty
13 much a low key -- you got your people playing basketball
14 like my man tell you, old lady, the lady who cleaning her
15 room, whatnot. But I know for the most part don't nobody
16 be on a street up and down. There ain't too much people
17 out there, so I am like, why this man want me on the
18 street?

19 Q. That is all you thought?

20 A. Why? Why he want me on the street? He must have
21 some hidden intention going on, so I'm going to go over
22 there ready.

23 Q. And how did you go over there ready?

24 A. Getting ready to watch his every move, make sure
25 he ain't have something else going on, man.

1 Q. You brought a gun over there.

2 A. Yeah, I had my gun. I kept my gun. Remember I
3 told you? He already threatened my life, prior, you
4 know, so I was going to keep the gun wherever I went at.

5 Q. And isn't it your testimony that something about
6 what he said made you think, Hey, you know what? I
7 probably need to put a gun on me?

8 A. Yes, sir. But I was going to do that anyway.

9 Q. You were going to do it anyway?

10 A. For my protection.

11 Q. So you were going to go talk to a guy that you
12 knew had problems with you, but you were going to make
13 sure you had a gun.

14 A. Yes, sir.

15 Q. And were you going to meet up with him and try to
16 settle this drug debt?

17 A. I mean, I ain't really going to call it no drug
18 debt, because I didn't owe him personally anything. He
19 had in his mind that he was going to get all the money
20 from the sale or whatever, so, yeah, I went over there
21 with my gun, just in case he had something planned, you
22 know, like what he did, tried to reach and shoot me. I
23 had exactly for that purpose, exactly for that purpose.

24 Q. So you grabbed the gun to go settle a drug debt.

25 A. No, no, no, no, no, no, no, no, no, no, no, no,

1 no. We need to change that word up there. You talk
2 about me grab a gun to go settle a drug debt. I didn't
3 purposely run over there with the intention of using that
4 gun. Let's get that -- you know what I mean?

5 Let's go ahead and get that. I had that gun just
6 in case. If he would have tried to make a move, like he
7 did, towards taking my life, I could protect myself. I
8 didn't go over there with the intention of using that
9 gun. You know what I'm saying?

10 Q. Nobody made you go over there, did they?

11 A. No, but I was tired of running from him.

12 Q. Nobody told you you got to go over and you got to
13 go meet Vincent?

14 A. No, sir. Why not try to mediate the problem?

15 Q. Nobody threatened your life to get you to go over
16 there and talk to Vincent?

17 A. No. Ain't nobody threatened me to make me go over
18 there.

19 Q. Nobody made you put a gun on yourself to go over
20 and talk to Vincent.

21 A. No, sir.

22 Q. Nobody made you put a gun on yourself illegally to
23 go over there and talk to Vincent about this drug debt?

24 A. No. I told you why I got the gun, man. I chose,
25 I chose to grab a gun. Feel me?