

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DAQWAN M. JOHNSON,

APPELLANT

APPELLATE CASE NO. 2012-212696

RECORD ON APPEAL

ROBERT M. DUDEK
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

Attorney for Appellant

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3727

DANIEL E. JOHNSON
Solicitor, Fifth Judicial Circuit
Post Office Box 192
Columbia, SC 29202-0192
(803) 576-1800

Attorneys for Respondent

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VOLUME ONE
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SC Court of Appeals

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State of South Carolina

Court of General Sessions

County of Richland

2011-GS-40-00863

2011-GS-40-00885

The State of South Carolina :

:

-VS-

:

TRANSCRIPT OF RECORD

:

Daqwan Johnson and :

Brian Campbell :

May 21 - 22, 2012

Columbia, South Carolina

B E F O R E:

The Honorable R. Knox McMahon, Judge, and
jury.

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

Kathryn "Luck" Campbell, Esquire
J.J. Shellenberg, Esquire
Meghan Walker, Esquire
Attorneys for the State

Greg B. Collins, Esquire
Clarke Newton, Esquire
Alex Postic, Esquire
Attorneys for the Defendants

Daphne D. Helms
Circuit Court Reporter

1 Your Honor: If they're going to introduce up a gang expert
2 or offer somebody up as an expert in gangs, we'd ask for the
3 C.V. on that expert.

4 **The Court:** All right.

5 **Ms. Campbell:** He doesn't have one.

6 **Mr. Collins:** Okay. And lastly, Your Honor, here's the
7 issue that we have a problem with this morning. We got the
8 evidence log yesterday from the Richland County Sheriff's
9 Department, and that log referenced 40 swabs of D.N.A. taken
10 from shell casings at the scene of the murder, from the guns
11 matched to the scene of the murder that were in inventory.
12 They were mentioned -- one page of the ballistic report bench
13 notes said swabs existed. I missed that inside the
14 evidence...

15 But, additionally, in this evidence log that we just
16 received yesterday after we picked the jury, it says these
17 swabs were sent off to the D.N.A. trace lab. They were there
18 from May of 2011 until July of 2011 and they returned them.
19 We have zero information about what happened at that lab. We
20 have zero information they were ever sent off. We --
21 honestly, from me missing it and the ballistics report wasn't
22 aware these swabs existed -- and our position now, Judge, is
23 we can't effectively go forward with the trial until we have
24 an opportunity to see what was tested or have it tested by
25 other experts because if somebody else's D.N.A. is on those

1 shell casings or on those---

2 **The Court:** I'm sorry. I -- the Court will please come
3 to order. Sheriff, if people start talking, just take them
4 into custody. I can't listen but to one person at a time. I
5 just can't focus. Thank you. Go right ahead, Mr. Collins.

6 **Mr. Collins:** But D.N.A. swabs taken from shell casings
7 at the murder scene and from guns matched to the murder
8 scene: Very important pieces of information. If somebody
9 else's D.N.A. is on there, that could be material and
10 extremely exculpatory for our client, considering this was
11 definitely a "who was there." We have people pointing
12 fingers, and there's a lot of names that came into the
13 picture throughout this investigation. And if we can get a
14 match -- and there's a lot of different D.N.A. tests that can
15 be done.

16 There's the basic elementary tests and there's
17 amplification tests. There's some exploratory tests that we
18 would like to have our own expert test if they're not willing
19 to, but the other problem I have is we weren't aware that it
20 was ever sent to the lab until yesterday, and if it was, we
21 don't have any reports from that. We don't know if it was
22 sent to S.L.E.D. We don't know if it was sent to the
23 Richland County lab. It just -- it seriously concerns me
24 that this wasn't brought to our attention until after we
25 picked a jury in the case, and we're forced into a position

1 where we can't effectively represent our client in this case
2 unless we're given an opportunity to explore this further.

3 **The Court:** These are items that were taken into
4 possession of the -- by officers of the Richland County
5 Sheriff's Department?

6 **Mr. Collins:** Yes, Your Honor.

7 **The Court:** All right. And this would have been items
8 taken into custody by the Richland County Sheriff's
9 Department from Studio 54?

10 **Mr. Collins:** From the actual murder scene at Gable
11 Oaks, the shell casings found at the apartment complex, and
12 the only place that references these D.N.A. swabs is in page
13 69 of 79 of the ballistic report bench notes from David
14 Collins that we got in 2012, roughly around March of 2012.
15 It's on there, but it's a shortened version of the evidence
16 log. There's nothing on there that shows that these swabs
17 were actually sent to be tested. We didn't get that until
18 yesterday.

19 **The Court:** Show me the items you're referring to that
20 you received yesterday, Mr. Collins.

21 **Mr. Collins:** Your Honor, I'm going to hand up the
22 evidence log that was given to us yesterday, and page three,
23 items 50 through 56.

24 **The Court:** Thank you.

25 **Mr. Collins:** It's a total of 40 different swabs.

1 **The Court:** Page three -- page three of ten?

2 **Mr. Collins:** Yes, Your Honor.

3 **The Court:** Is that correct?

4 **Mr. Collins:** Those are the 50 through 56, and as you go
5 further, you can see that was taken out by the D.N.A. trace
6 lab in May of 2011 and returned in July of 2011.

7 **The Court:** 50 through 56 would be the seven entries at
8 the top of the page dated 7/1/11, 13:44 hours?

9 **Mr. Collins:** I believe so, Your Honor. That's the only
10 copy I have is the---

11 **The Court:** All right. Where do you -- where do you
12 track these items? In other words, what is item 16950929.56?
13 Where is your log of that?

14 **Mr. Collins:** Your Honor, you have everything that I
15 have.

16 **The Court:** Well, it doesn't tell me what the item is,
17 does it? It just says property slash evidence, property
18 slash evidence. It's got property item, an item number, then
19 lab inventory, transferred from, transferred to. Where does
20 it tell me what that item is?

21 **Mr. Collins:** If I may approach, Your Honor?

22 **The Court:** Oh, is that back on page two of -- yes, sir,
23 you may approach.

24 **Mr. Collins:** I don't...

25 **The Court:** Is that back on the previous page?

1 **Mr. Collins:** No, Your Honor. It's -- it might be
2 further along. I apologize.

3 **The Court:** No, that's all right. I just... I want to
4 see what you're referring to. This is page one here.

5 **Mr. Collins:** I'm sorry. It's page two.

6 **The Court:** All right. So page -- page two tells me
7 what the items are?

8 **Mr. Collins:** Yes, Your Honor.

9 **The Court:** And page three shows me the transfer from
10 and to.

11 **Mr. Collins:** Yes, Your Honor, and I believe it goes in
12 reverse order as far as the -- where it traveled.

13 **The Court:** All right. And what is your motion? What
14 are you asking me to do?

15 **Mr. Collins:** Well, Your Honor, it puts us in a
16 situation where we can't effectively represent our client in
17 trial until we explore what was tested, if there's a report,
18 or if we need to get our own expert to test it. I don't --
19 I'm sure they would like us to move for a continuance. I
20 don't think that the defense should have to move for a
21 continuance due to withholding of this evidence and this
22 information.

23 I guess we're asking the Court to continue the case due
24 to the fact that we can't effectively represent our client
25 because of the discovery violations that are contained

1 herein.

2 **The Court:** All right. Thank you. Solicitor?

3 **Ms. Campbell:** May it please the Court, Your Honor?

4 There was some colloquy back and forth last Fall into this
5 Winter into the first of the year about whether or not any
6 D.N.A. testing was done in this case. It went back and
7 forth. There was a request by the defense at one point for
8 D.N.A. testing to be done. We were going to comply with that
9 request.

10 At that point we asked that he provide a buccal swab
11 from his defendant.. He chose not to do that, and that was
12 abandoned at that point. The information in the swabs that
13 he refers to were provided in discovery. That was provided
14 to him in the case notes from David Collins, as he just
15 admitted, Your Honor. So he was on notice as far as the
16 swabs that he's now contesting that he wants tested.

17 At this point if he's requesting that the testing be
18 done -- and I'm double-checking to make sure. It's my
19 understanding no testing was done in this case. We've
20 double-checked the records and everything. We met with
21 Richland County and were informed no testing had been done.
22 We are double-checking that to make sure because it does look
23 like that the D.N.A. lab, Ms. Rachel Grant, at Richland
24 County did have it in her custody for a month or so, these
25 swabs.

1 Your Honor, at this point no testing has been done. If
2 he's requesting that the testing be done, I don't know how
3 that would affect P.C.R. down the road because he's claiming
4 he didn't know about it. And I -- I am somewhat at a loss at
5 this point if that's what -- if he's requesting a continuance
6 based on that, whatever the Court feels is appropriate...

7 **The Court:** Show me Mr. Collins' notes that you and --
8 not Mr. Collins, the lawyer, but Mr. Collins', the ballistics
9 expert, notes that---

10 **Ms. Campbell:** Your Honor, as he said, I think it's page
11 69 or 70 where there's an evidence log which references some
12 swabs.

13 **The Court:** Where does it tell me what these items are?
14 I've got the same question for you, solicitor, that I had for
15 Mr. Collins.

16 **Ms. Campbell:** I believe it's on the pages preceding
17 those, Your Honor.

18 **The Court:** All right.

19 **Ms. Campbell:** Basically with the evidence logs from
20 Richland County, they basically list the items and then...
21 And this case is somewhat convoluted because there are
22 multiple case numbers involved because there was a Studio 54
23 shooting and there was a city shooting. So those are
24 cross-referenced somewhat. Your Honor, may I consult with
25 him for a moment?

1 **The Court:** Yes, ma'am.

2 (Whereupon, an off-the-record discussion takes place
3 between Ms. Campbell and Mr. Collins.)

4 **Mr. Collins:** Your Honor, if I could just clarify the
5 conversations I had with Craig Pisarik, the original second
6 seat in this case or was the second second seat, the
7 conversations that I had about the D.N.A. In the C.S.I.
8 reports that we've had all along since 2010, it references
9 collecting D.N.A. swabs from the car, from the door handles
10 of the car and from the steering wheel of the car.

11 The swabs that are contained in that ballistic bench
12 notes that we didn't get until 2012 are not referenced in any
13 other report in the close to 800 pages of discovery. When I
14 had conversations about not testing the D.N.A. and the
15 Schmerber of D.N.A., that was all in reference to the car.
16 We were not aware of the 40 swabs from the shell casings and
17 the guns until last night and this day, and there's no way in
18 the world I would have agreed not to test those had we been
19 aware of them. And, again, what's listed in those bench
20 notes does not contain the evidence log that shows that these
21 samples were sent to the D.N.A. trace lab and stayed there
22 for two months and returned.

23 **The Court:** Are you moving for a continuance?

24 **Mr. Collins:** I'm put in a situation where I have to. I
25 just want to make it clear for the record that we don't --

1 our position is that it's not through the defense's fault
2 that we have to move for a continuance. The evidence log can
3 be printed and e-mailed from the sheriff's department by the
4 touch of a computer or the touch of a keyboard button. It
5 wasn't provided to us even though we specifically asked for
6 it for the last month, one month -- two months we've been
7 asking for this, and we got it the day of trial, and in it
8 contained information that we had no knowledge of.

9 **The Court:** Well, the Court only rules on motions that
10 are before it, and if there's no motion for a continuance, I
11 don't have anything to rule on. Are you moving for a
12 continuance, solicitor?

13 **Ms. Campbell:** No, Your Honor. I've told Mr. Collins if
14 he's requesting the tests to be done that we will accommodate
15 him if that's what he's requesting.

16 **Mr. Collins:** I guess we'd move for a continuance. I
17 don't want to sacrifice my client, Your Honor, so I guess
18 we'll have to move for a continuance.

19 **The Court:** Is there a request for Mr. Johnson to
20 provide swabs for D.N.A. testing?

21 **Ms. Campbell:** Your Honor, we had conversations back and
22 forth when he was requesting the tests to be done originally
23 on swabs in the case. I had said---

24 **The Court:** Swabs from the car.

25 **Ms. Campbell:** Swabs from the car.

1 **The Court:** All right.

2 **Ms. Campbell:** And I said, you know, at that point we
3 would need a known sample from his client, at which point he
4 withdrew any request for D.N.A.

5 **Mr. Collins:** Your Honor, they---

6 **Ms. Campbell:** Said we would have to have a Schmerber as
7 well.

8 **The Court:** And sitting here right now, no one can tell
9 me that there's any -- has there been any testing on these
10 items 50 through 56?

11 **Ms. Campbell:** I've been informed there's no testing,
12 and I'm double-checking that.

13 **The Court:** When you say no testing, there has not even
14 been samples taken from these items for potential testing.

15 **Ms. Campbell:** There's been swabs taken. As far as I
16 know, that's the extent of it. I'm double-checking that
17 right now to make sure.

18 **The Court:** And those swabs have not been compared with
19 anybody.

20 **Ms. Campbell:** No, sir, not that I -- I've been told no.
21 I'm double-checking that to make sure I'm not misleading the
22 Court.

23 **The Court:** All right. Mr. Collins? Yes, sir.

24 **Mr. Collins:** Your Honor, just the issue of the D.N.A.
25 on the car, they asked if he would consent to give a sample.

1 If he didn't consent, they weren't going to test them. They
2 could have done a Schmerber all along on this.

3 **The Court:** Sure.

4 **Mr. Collins:** But, you know, again we're asking for a
5 continuance so that we can evaluate this evidence that we
6 weren't aware of until now. Obviously it can be extremely
7 exculpatory if it comes back and matches with somebody else's
8 D.N.A. that's connected with this case that's not Mr. Johnson
9 or any of the four other co-defendants. That could be a very
10 big piece of evidence.

11 **The Court:** All right. Then does Mr. Johnson want to
12 consent to providing a sample?

13 **Mr. Collins:** If I could have time to confer with him,
14 Your Honor.

15 (Whereupon, an off-the-record discussion takes place
16 between Mr. Collins and Mr. Johnson.)

17 **The Court:** All right. Quite frankly, this cuts both
18 ways. It cuts against the State in the quality of the
19 follow-up investigation, at least forensically in that
20 regard, by the failure to do any testing that may have been
21 productive.

22 **Mr. Collins:** We've considered both sides, Your Honor,
23 and we feel that given the fact that they have potentially
24 four co-defendants testifying against our client, we need
25 some type of hard evidence and we need to explore any

1 opportunity to obtain any hard evidence to contradict four
2 testifying co-defendants.

3 **The Court:** All right. Well, really it's not -- it's
4 not my place to decide whether he consents or doesn't
5 consent. Solicitor?

6 **Ms. Campbell:** Your Honor, we would just -- if you were
7 to grant the continuance, we'd ask to have a Schmerber motion
8 if they're not consenting.

9 **The Court:** Have a Schmerber motion when?

10 **Ms. Campbell:** If they aren't consenting, if we could go
11 ahead and have a Schmerber motion.

12 **The Court:** All right. All right. Well, I do not see
13 it as a discovery violation. It may not have been timely
14 processed and it may not have been any need for the forensic
15 lab to process it under the totality of the circumstances in
16 this case. Many times you may have issues that arise when
17 you have multiple agencies involved. Of course, the Court is
18 very aware of the requirements under State versus Quattlebaum
19 that is placed on the solicitor to make certain that the
20 agencies cooperate and provide full disclosure to the
21 solicitor so that the solicitor can then pass that discovery
22 on.

23 It does appear that those items were identified in
24 Detective Collins -- David Collins' bench notes during his
25 ballistic... And, of course, common sense dictates that you

1 can perform D.N.A. tests on just about any item nowadays. As
2 Mr. Collins points out, you can do a basic test. You can do
3 more sophisticated tests and exploratory tests in that
4 regard.

5 Given the circumstances of the case, the Court will
6 continue the case upon the motion of the defense. Is that
7 correct? Your motion, Mr. Collins?

8 **Mr. Collins:** Yes, Your Honor.

9 **The Court:** All right. I grant that motion. The case
10 is continued. Madam Clerk, can you tell me when the jury
11 will be in here for striking the next case for trial?

12 **Ms. Campbell:** Your Honor, as far as these reports, I'm
13 just going to hand them over to the defense, as far as the
14 reports they requested from Gable Oaks.

15 **The Court:** All right. Yes, ma'am. That will be fine.
16 That's the three reports?

17 **Ms. Campbell:** Yes, sir.

18 **The Court:** All right. And are you going to have Mr.
19 Streater, Investigator Streater, meet with Mr. Collins and
20 Mr. Newton?

21 **Ms. Campbell:** Yes.

22 **The Court:** And -- all right. Anything further,
23 solicitor?

24 **Ms. Campbell:** Your Honor, it's just come to my
25 attention that apparently swabs were tested. It was not in

1 the case jacket - it was not brought to our attention - that
2 this is a copy. There was no report done. All there is is a
3 CODIS note, and for some reason it didn't make it into the
4 case jacket. If I could approach. And I just found this
5 when they called specifically. However, it's not been
6 compared to anyone, and I apologize.

7 **The Court:** Have you provided a copy of this to Mr.
8 Collins?

9 **Ms. Campbell:** No, sir. I just received it. I'm
10 providing a copy as we speak.

11 **The Court:** Mr. Collins?

12 **Mr. Collins:** Thank you, Your Honor.

13 **The Court:** Uh-huh.

14 **Ms. Campbell:** Your Honor, for the record, traditionally
15 those are provided in the case jacket. We have gotten
16 everything from ASIS. We have met with forensic people over
17 and over. It was our understanding there was no D.N.A.
18 testing done, and I apologize.

19 **Mr. Collins:** Your Honor, when it comes to those
20 reports, as well as the actual graphs from the gas
21 chromatograph which shows the peaks and the levels, and those
22 can be analyzed by experts that we can retain as well. Just
23 that report is the tip of the iceberg for the testing.

24 **Ms. Campbell:** Yes. Typically we do provide that to
25 complete discover -- once they make a report and generate

1 data comparing it to someone.

2 **The Court:** Are you asking me to do anything different,
3 solicitor?

4 **Ms. Campbell:** No, sir. I just apologize.

5 **The Court:** Thank you very much. The case is continued.
6 Let me know if you want me to hear a motion on the...

7 **Ms. Campbell:** As far as the Schmerber motion, Your
8 Honor?

9 **The Court:** Yes, ma'am.

10 **Ms. Campbell:** Thank you.

11 **The Court:** Thank you.

12 (The proceedings were concluded. Later in the day a
13 Schmerber hearing took place as follows.)

14 **The Court:** Thank you. Please be seated. Thank you
15 very much. All right. Solicitor?

16 **Ms. Campbell:** May it please the Court, Your Honor? At
17 this point we would move for a Schmerber hearing.

18 **The Court:** All right. You may call your first witness.

19 **Ms. Campbell:** I call Sergeant Thomas.

20 Arthur Thomas, after being duly sworn, testified as
21 follows in camera:

22 **The Clerk:** Please have a seat and state your full name
23 for the record.

24 **The Witness:** Arthur Thomas.
25

1 follow up on that at all?

2 A. He didn't give any names to where -- he said he was with
3 a girlfriend planning a birthday party.

4 Q. That was the party at Studio 54; right?

5 A. I don't know what party. It was a birthday party. He
6 was with his girlfriend and her girlfriends.

7 Q. So you didn't follow up on his statement.

8 A. I didn't have names. He didn't give me the names. He
9 just wrote a statement saying I'm with my girlfriend.

10 Q. Your testimony is you didn't -- you still don't know the
11 name of his girlfriend?

12 A. I don't know the name of his girlfriend or what have
13 you.

14 Q. Okay. Now---

15 A. It was his girlfriend. That was his statement and
16 contradicted by all the co-defendants and witnesses.

17 Q. Now, you said the shell casings and everything were
18 collected; right?

19 A. That's correct.

20 Q. And that was notated, I believe, in Buddy Rose's C.S.I.
21 report?

22 A. That's correct.

23 Q. And you've reviewed these reports as the lead
24 investigator; right?

25 A. I've seen some of the reports, yes.

1 Q. All right. Did you see anything about swabs being taken
2 from any of these shell casings?

3 A. Again, as communicated moments ago, that information was
4 just communicated to me. I think there was something in
5 addition to that other shooting. Whether that happened, I
6 don't know.

7 Q. You never thought to request that?

8 A. I had no knowledge that that was what was happening at
9 that time.

10 Q. You didn't think---

11 A. The report was just -- the report was just brought
12 before me today.

13 Q. You did not think to request that to be done?

14 A. Again, the report was just brought before me today.

15 Q. I understand the report was just given to you.

16 A. I did not---

17 Q. I'm asking you did you think---

18 A. I---

19 Q. ---to request---

20 A. I don't recall the question---

21 **Court Reporter:** I can't take you both at the same time.

22 **The Witness:** I've answered the question.

23 By Mr. Collins:

24 Q. Did you or did you not think to request---

25 A. I did not---

1 Q. ---that these casings---

2 A. I did not---

3 Q. ---be tested?

4 **Court Reporter:** Wait. I can't take you both at the
5 same time. I'm sorry. I cannot do that.

6 **The Court:** Ask your question, Mr. Collins, and then you
7 answer it, Agent Thomas.

8 By Mr. Collins:

9 Q. Did you or did you not think to request that these
10 casings be tested?

11 A. Again, I did not request it. Whether I thought it or
12 not, I can't tell you. I had a lot of things going on at the
13 time.

14 Q. Okay. Now, have you seen the evidence log from the
15 Richland County Sheriff's Department?

16 A. I did not see the log that you requested yesterday. It
17 was dealing with Studio 54, and up until this morning I had
18 no real concern with that.

19 Q. And you have no knowledge who ordered that those swabs
20 be tested in May of 2011?

21 A. I would imagine any of the investigators over in
22 Richland County - they were building their case - may have
23 decided to have those things tested in relation to what we
24 have.

25 Q. So you don't know who requested it?

1 A. Until I look at that report and get some information on
2 it, no, sir, I can't tell you.

3 Q. All right. And you don't know why they would have asked
4 for that to be tested.

5 A. Again, there were two shootings. One ending up in a
6 homicide. The other, I think, three or so victims were shot,
7 one in the head, neck, and so forth. So I would imagine
8 that's why that investigator chose to do what he chose to do.

9 Q. You would agree the casings tested were all recovered
10 from Gable Oaks Apartments; right? That would be in your
11 jurisdiction?

12 A. Again, apparently there was a lot of evidence tested.
13 So if that was inclusive, then I would have to agree with
14 that.

15 Q. All right. And you have no idea what type of tests they
16 performed on this D.N.A. recovered.

17 A. I cannot answer that. I don't know.

18 Q. Okay. Basically you didn't even know it existed until
19 today.

20 A. Again, I've made that statement before you and before
21 the solicitor. Information was brought to my attention this
22 morning.

23 Q. And you have no idea where the swabs or the casings have
24 been since they were turned in.

25 A. Wherever Richland County stores them, I would imagine.

1 The records indicate they're at Richland County.

2 **Mr. Collins:** Okay. No more questions, Your Honor.

3 **The Court:** Redirect, solicitor?

4 **Ms. Campbell:** No, sir.

5 **The Court:** Thank you. You may step down.

6 **The Witness:** Thank you, Judge.

7 **The Court:** All right. Solicitor?

8 **Ms. Campbell:** Your Honor, I believe that we have
9 satisfied probable cause as well as how the procedure would
10 be -- the actual testing would be done or collected, and at
11 this time we would move for a buccal swab from the defendant.

12 **The Court:** All right. Mr. Collins?

13 **Mr. Collins:** Your Honor, we agree that the probable
14 cause portion has been satisfied. The only pillar that I
15 think is still a question is the reliability of the evidence
16 to compare Mr. Johnson's D.N.A. to. We have a one-page
17 report that has just surfaced after over a year that nobody
18 really knows where it came from or how it was developed.
19 Until we find out more about the tests that were performed
20 and how they were performed and why they were performed and
21 who ordered it, I don't think we can judge on the reliability
22 of that evidence. I would look forward to finding that out,
23 but as far as today, I don't think that prong has been
24 satisfied.

25 **The Court:** All right. Well, under State versus --

1 State versus Baccus regarding Schmerber, it says there's
2 three elements. One, probable cause would believe the
3 suspect has committed the crime. That element has been
4 shown. Two, a clear indication that relevant material
5 evidence will be found. I think there is a clear indication
6 that relevant material evidence will be found. And, three,
7 that the method used to secure it is safe and reliable.

8 So under Baccus and the three prongs -- there are
9 additional factors, of course, to be weighed: The
10 seriousness of the crime, the importance of the evidence to
11 the investigation, and to balance the necessity for acquiring
12 involuntary non-testimonial identification evidence against
13 constitutional safeguards prohibiting unreasonable bodily
14 intrusions, searches, and seizures. I think that has been
15 met.

16 I have a different -- an additional opinion that some of
17 us on the bench share. I also believe that an affidavit has
18 to be submitted to me under 17-13-40. It says, "A warrant
19 issued hereunder shall be issued only upon affidavit sworn to
20 before a magistrate, municipal judicial officer, or a judge
21 of a court of record establishing the grounds for the
22 warrant."

23 Solicitor, if you would have Detective Walker prepare
24 such an affidavit to be sworn before me, I will certainly
25 take that into consideration, and I'll place him under oath

1 upon receiving that affidavit and then I'll make my ruling.
2 There's a case - I couldn't quite find it and I can't
3 remember if it was Judge Few's case or the trial judge or the
4 appellate court judge - where there's some language in there
5 that an affidavit is... I require that now. So if you would
6 have him prepare what purports to be an affidavit, I'll be
7 glad to be available to meet with the officer in that regard.

8 **Ms. Campbell:** Thank you, sir.

9 **The Court:** All right. Thank you. Thank you,
10 solicitor. Thank you, Mr. Collins.

11 **Mr. Collins:** Thank you, Your Honor. We'll just have
12 him remain in holding until they're able to get down there
13 and swab him.

14 **Ms. Campbell:** Yeah, keep him downstairs. We're going
15 to swab him as soon as we get an affidavit.

16 **The Court:** All right. Thank you.

17 (Whereupon, the proceedings were concluded. Court
18 reporter's note: Court's Exhibit 1 was attached to the order
19 and went directly into the clerk's file.)
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21
22
23
24
25

1 STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

2 COUNTY OF RICHLAND

3
4
5 STATE OF SOUTH CAROLINA)

6 -vs-)

TRANSCRIPT OF RECORD

7 DAQWAN MARQUELL JOHNSON,)

11-GS-40-00863 & 00885

8 Defendant.)
9

10 July 26, July 30-August 3, and
11 August 8, 2012
12 Columbia, South Carolina
13
14

15 B E F O R E:

16 HONORABLE R. KNOX MCMAHON, Judge; and a jury.
17
18

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

20 K. LUCK CAMPBELL, Senior Asst. Solicitor
21 MEGHAN L. WALKER, Asst. Solicitor
22 JEREMIAH JOSEPH SHELLENBERG, II, Asst. Solicitor
Attorneys for the State

23 GREGORY BRIAN COLLINS, Asst. Public Defender
24 JOHN CLARKE NEWTON, Asst. Public Defender
Attorneys for the Defendant

25 L. COCONUT PANTSARI, R.P.R.
Circuit Court Reporter

1 (The following proceedings are reported on
2 July 26, 2012.)

3 THE COURT: Mr. Collins, this is your motion.

4 MR. COLLINS: Thank you, Your Honor. I want
5 to thank you for hearing this motion today. The reason
6 we wanted to bring it up this week is for scheduling
7 purposes. There's a lot of other trials on the docket.
8 The issues that we are bringing up are not going to
9 change over the weekend. So we wanted to try to address
10 it as soon as possible.

11 As you are familiar, we started this case back
12 on, I believe it was May 21st. An issue came up with
13 some swabs that were in the evidence log that at the
14 time we weren't sure if they had been tested or not. We
15 moved for a continuance in the case to sort all that
16 out.

17 Since that time we have gotten the full D.N.A.
18 report with all the buccal swabs of all the
19 codefendants. We got that July 12th. We have also
20 gotten roughly about 200 pages of miscellaneous
21 discovery since July 12th to this date.

22 But the main issue that we have here today
23 from the defense's standpoint is recently there has been
24 a federal indictment against, I believe, 37 Blood gang
25 members here in Richland County. A number of the names

1 listed in that indictment are specifically referenced in
2 the discovery of this case and are potential witnesses
3 and possibly have information that we could use as a
4 defense. We could use to impeach. We are not sure.

5 The one thing we do know is that in the
6 federal indictment, there was a two-year investigation,
7 which encompassed the time of this shooting. Some of
8 the people listed in the indictment were involved with a
9 retaliatory shooting in 2010 after this time of the
10 murder where Blood gang members -- after Gary Reese, the
11 victim, in this case, after he was shot and killed -- a
12 number of Blood gang members then went to a Studio 54
13 nightclub within hours of the murder to try to
14 retaliate. There was a big shootout at the nightclub as
15 well.

16 Specifically Titus Bowman is one name who was
17 in the federal indictment as one of the main players.
18 He was at the nightclub. He was the main instigator.
19 He was there. Darryl Austin and Craig Austin, one of
20 those brothers -- I think it was Craig -- was actually
21 shot in the face at the nightclub.

22 Bernard Breland is listed in the federal
23 indictment, Torrian Sims, Antwon Brisbane. Michael
24 Taylor is also specifically referenced in the discovery
25 for this case, a witness seeing him in the car going

1 towards the nightclub right before the shooting.

2 The reason we think this is important is that
3 these people were under surveillance at this time. It's
4 a very likely scenario that as they are making phone
5 calls and assembling before they do a retaliatory
6 shooting, they are talking about: Who just shot Gary
7 Reese and who just shot at them and what is going on.

8 If that is on a recording or a wire tap, which
9 were used in this investigation, we think that would be
10 invaluable to the defense to have that. Whether it
11 helps us or hurts us, we feel that that is information
12 that is attainable through the federal guidelines, Title
13 28, 16-21 through 29. There is a process to go through
14 to try to obtain that information. We have already
15 started that process.

16 We just really want to get our hands on it and
17 see if something is relevant. The A.U.S.A., when it
18 gets our requests, reviews what they have, responds to
19 us, and discusses whether they have what we are
20 specifically requesting. We haven't gotten to that
21 point. So that's the first reason we are asking for a
22 continuance just to sort it out.

23 I will preface that with Mr. Johnson is in
24 jail without a bond. We are not asking for a bond. We
25 are willing to concede for five or six months that we

1 won't apply for a bond or won't be allowed to apply for
2 a bond. We simply just want to make sure that when we
3 do this trial, we do one trial, and information doesn't
4 come out later -- that eventually will come out -- that
5 could have helped or materially changed the case. At
6 this point we are not sure exactly what is within the
7 federal investigation.

8 We do know that it's a two-year investigation,
9 and there's a number of names listed in that indictment
10 that they had surveillance on that were involved with
11 this case, and I think involved to a degree that they
12 could be material involvement, especially if you are
13 talking about witnesses to the shooting calling their
14 friends or Blood members to go retaliate, they are going
15 to talk about what they have seen.

16 That brings me to the next issue we have got.
17 Yesterday we were informed that Rontrell Henderson, a
18 State's witness who was at the Gable Oaks Apartments the
19 night of this shooting, he gave a statement to police
20 saying that he saw our client, Daqwan Johnson, shooting
21 a gun at the victims that night.

22 He was arrested over the weekend. The
23 Solicitor's Office informed us yesterday or the day
24 before yesterday that they went and spoke with him, and
25 now he is saying that is what he told the police;

1 however, it's not true. He made it up completely.

2 Here is where we have the problem. What he
3 got arrested for, he was appointed to our office. We
4 have already turned that in for conflict review, and it
5 will get appointed out to a private attorney. But until
6 he is appointed a private attorney, we can't send our
7 investigation to go talk to him.

8 We really very much want to find out why he
9 made that up and why he gave that statement. It's
10 material because it could affect our defense if there is
11 a certain reason why he made it up. We would like, at
12 least, to be given the chance to explore that. That
13 just came up this week. We are doing everything we can
14 to get him appointed a private attorney as fast as
15 possible, but given the fact today is Thursday, the time
16 crunch is definitely there for that.

17 The other issue, we have ordered the
18 transcript from the first day and a half back in May.
19 We didn't think it was necessary to get the transcript
20 until we received some documents on July 12th. At that
21 time we realized there is a potential issue that we are
22 requesting the transcript. We haven't got it yet. We
23 are hoping to get it hopefully tonight, but I'm not sure
24 exactly when we are going to get it. That is another
25 reason. We would like to have a chance to review the

1 transcript and flesh that issue out. I don't want to
2 bring it up or put anything on the record until we have
3 had a chance to review exactly what is on there.

4 We are not trying to do any kind of legal
5 maneuvering or stall tactics, Your Honor. We simply
6 just want get to the bottom of what is contained in this
7 federal investigation because it's the time period.
8 It's the players. They have surveillance. They have
9 wiretaps. There very well could be material information
10 out there. We just want to be given a chance to access
11 it, and we haven't been given a full chance at that.

12 That's the reason we are asking for a
13 continuance. I believe Your Honor is in Richland County
14 the end of August and also the end of October at some
15 point, and we would be okay with either one of those
16 dates. We would preferably ask for October so we can
17 have a few months to deal with the federal issue. As
18 part of the procedure, we will probably have to go have
19 a hearing in federal court and get the information that
20 way.

21 But there was an issue with the CrimeStopper
22 tip reports. I have heard from Chris Cowan from
23 CrimeStoppers via e-mail. He is going to get me a
24 certified letter --

25 THE COURT: Say that again. I'm sorry. I

1 wasn't tracking.

2 MR. COLLINS: Chris Cowan with CrimeStoppers,
3 he e-mailed me today. We issued a subpoena back in May
4 after we started the trial. He gave me an e-mail. He
5 is going to be sending me an official letter. From
6 their review, there was only one CrimeStopper tip report
7 given. That is not an issue anymore.

8 But, again, the main reasons we are moving for
9 a continuance is the federal indictment issue and the
10 investigation that was done, the new information about
11 Rontrell Henderson that at this time we are unable to
12 explore just for conflict reasons. We can't talk to him
13 until we know who represents him and clear it with his
14 attorney.

15 Just on top of that, Your Honor, we have
16 gotten approximately 200 pages of discovery in the past
17 two weeks. I have been the lead trial both of these
18 past two weeks. I have done everything I can and will
19 continue to do everything I can to be ready as soon as
20 possible.

21 It just seems that this is getting rushed
22 together, and we want to take all precautions to make
23 sure that Mr. Johnson gets a full and effective defense.
24 Without giving us an opportunity to explore everything
25 and find out this information, I don't feel like we are

1 being effective. That's the reason we are asking for a
2 continuance in this case.

3 THE COURT: Thank you, Mr. Collins.
4 Ms. Campbell.

5 MS. CAMPBELL: May it please the Court. If I
6 can just clarify. It's my misunderstanding that as far
7 as the federal indictment, their concern is there may be
8 wiretaps in and around the time of that offense that may
9 have some information in the subsequent shooting and the
10 murder we are here in trial about.

11 I did get in touch yesterday with the U.S.
12 Attorney's Office to try to anticipate some of these
13 arguments, Your Honor. As far as any wiretaps, there
14 were no wiretaps in place until June of 2011. So in and
15 around the time -- this occurred June of 2010 -- up
16 until a full year later, there were no wiretaps in place
17 according to the U.S. attorney who I talked to.

18 In addition to that, this is information they
19 claim they have been seeking since these indictments
20 came out. I spoke to people, representatives from the
21 F.B.I., as well as the U.S. Attorney's Office. The
22 first time they had any request from the Public
23 Defender's Office was yesterday afternoon. They were
24 served with a subpoena.

25 They are now attempting to comply with the

1 information they are seeking. They were apparently
2 supplied with some 15 names they wanted to run through
3 as far as whether there is any association with the
4 people.

5 Your Honor, I have procured a copy of the
6 indictment to which they are referring where the U.S.
7 Attorney's Office is proceeding. Ms. Walker prepared a
8 chart going through the federal indictments, the people
9 named in the federal indictments. The ones in bold are
10 the ones they are claiming to have a certain interest
11 in. If I may approach?

12 (Attorneys confer).

13 (Hands to Court.)

14 MS. CAMPBELL: I have also, Your Honor,
15 reviewed -- at the prior trial, we did hand up witness
16 lists and witness names were done at that point, the
17 defense witness list, as well as our witness list. None
18 of those names appear on either witness list.

19 The people that are named in the indictment --
20 and there are only three of them, Your Honor, that have
21 any bearing on the shooting we are not going to trial
22 on, which has already been resolved. One person was
23 charged. That person pled guilty. As far as the State
24 is concerned, that case was resolved.

25 It was -- and some people do say it was a

1 retaliation shooting by the Bloods on the Folk or the
2 Crips as a result of our murder. We do not know that
3 that would be admissible at trial. We were not planning
4 on getting into it. If they want to get into it, of
5 course, they can.

6 However, even under their information and need
7 to talk with the U.S. Attorney's Office, there is no
8 information that they have that they haven't already
9 gotten from their discovery from the Studio 54 shooting,
10 which happened several hours after the murder we are
11 going forward on.

12 To give you just a brief factual background,
13 basically this was an ongoing shooting back and forth on
14 the day of the 19th. There was a shooting of a Whitney
15 Wilson earlier in the day at Gable Oaks apartment
16 complex.

17 There was another shooting where supposedly
18 Whitney Wilson shot back at some of the people that were
19 subsequently charged in this case, at which point,
20 according to the information we have, these five
21 codefendants got together at the instigation of Daqwan
22 Johnson and kind of gathered forces.

23 All became armed and there is actually
24 videotape where you see them going into the Gable Oaks
25 area. They enter in and there is literally a shooting

1 by multiple members of those five people that were
2 involved. You can also see them exiting with their guns
3 and things of that nature. You can't actually identify
4 anybody off of the video, but you can at least see how
5 they looked and what they were doing that day.

6 Then several hours later, Your Honor, there
7 was another shooting in the County at Studio 54 in which
8 none of the people that they named were in any way
9 implicated to be in any way involved in our murder case
10 or anything to do with it. I would ask the Court to
11 inquire if they have any reason to believe anymore
12 information is out there.

13 I have checked with federal prosecutors. I
14 have talked to Stacy Haynes and D.J. Rowell, as well as
15 Michael Stansbury with the F.B.I. They are
16 double-checking to make sure, but they indicate to me
17 they have no information that would have any bearing on
18 our case whatsoever.

19 In the Studio 54, three of these defendants
20 were there apparently at the Studio 54 shooting;
21 however, they were not even named as victims in the
22 case. We aren't going into that so I don't know how
23 this would have any bearing on our murder case we are
24 going forward on.

25 As far as I can see, this is a fishing

1 expedition. But even by their own admission since there
2 were no wiretaps in place in June of 2010 through
3 June of 2011 -- June or July, summer of 2011 -- this
4 should not be an issue anyway since that is not the
5 case.

6 As far as Rontrell Harrison -- I believe is
7 his name -- Your Honor, he was recently arrested. We
8 interviewed him. He gave our investigators recanting or
9 whatever you want to call it about the information. We
10 turned that over to the defense as we should.

11 At this time, Your Honor, we would just ask --
12 and I think we can take care of it -- if you would just
13 appoint counsel from the bench, and that issue can be
14 resolved as well.

15 Was there another ground, Your Honor?

16 THE COURT: Transcript from the prior hearing
17 before me.

18 MS. CAMPBELL: And the discovery, Your Honor.
19 As far as what has been turned over to them, Your Honor,
20 I have a copy of what we turned over to them since the
21 last hearing. The majority of that are some visitation
22 records from the jail. They have also requested rap
23 sheets on all our witnesses, which is what they are
24 doing now. We have given them to them. The majority of
25 this is rap sheets.

1 I believe the gang information that they
2 requested as well has been turned over to them. I can
3 hand up this copy of what we have turned over to them
4 since then. The only thing of any substance was a
5 single page of an E.M.S. report that we turned over to
6 them, as well as the D.N.A., which is the whole reason
7 for the continuance before. We turned it over as soon
8 as we got it.

9 THE COURT: Was the D.N.A. done locally?

10 MS. CAMPBELL: Locally by the Richland County
11 Sheriff's Department, Your Honor. The only holdup in
12 getting that done -- we did it as quick as possible --
13 we had to get swabs from all five defendants for
14 elimination problems. The D.N.A. also eliminated their
15 client as being involved, did not inculcate him. That's
16 swabs from the shell casings.

17 THE COURT: How long does it normally take to
18 appoint a lawyer when the public defender has a conflict
19 in Richland County?

20 MS. CAMPBELL: In Richland County, Your Honor,
21 it's my understanding they could do it that day. I
22 don't do the process as far as what the Public
23 Defender's Office does.

24 THE COURT: They don't perform it either? A
25 judge does?

1 MS. CAMPBELL: Typically a judge can do it
2 from the bench.

3 MR. COLLINS: If it goes through the Clerk of
4 Court, it used to be a lot quicker. Currently it is now
5 taking a few weeks before an attorney is appointed, but
6 it can happen immediately if a judge appoints a certain
7 attorney from the bench. This one could be a tough one
8 to find a attorney without a conflict given the
9 involvement of Mr. Henderson, but we should be able to
10 find somebody that could be appointed very soon.

11 THE COURT: I don't mind appointing somebody.
12 If I was the administrative judge, I certainly would.
13 Do y'all's conflict cases just go down the list? The
14 clerk maintains a list and it pops up the next one on
15 the list?

16 MR. COLLINS: I know there is a preferred
17 list. There's all kinds of different lists, and I'm not
18 sure exactly the rhyme or reason.

19 THE COURT: The preferred list. I wonder if a
20 lawyer wants to be on that preferred list or not,
21 Mr. Collins.

22 MR. COLLINS: Certain people do and some
23 people don't.

24 THE COURT: And who it's preferred by.

25 MR. COLLINS: We got the conflict in

1 immediately. So that should be easily -- we can go to
2 Judge Benjamin. I can go there with the solicitor and
3 try to get somebody appointed immediately, and then we
4 can get down there and try to talk him at some point
5 over the weekend, I guess.

6 As far as the federal subpoena that we have
7 done, the reason for the delay is there is a federal
8 procedure that we had to research in order to try to
9 attempt to obtain the information. We talked with
10 several federal public defenders. The federal
11 regulations, we were trying to comply with that.

12 Our subpoena asks for -- wiretaps is one
13 thing, and that is information that is news to us, that
14 they didn't have wiretaps at that time, but there is
15 also any and all records or anything like that.
16 Ms. Campbell just admitted that they are looking into it
17 because apparently there is information from those
18 players, that whether or not they feel the retaliatory
19 shooting is material, it's material to us.

20 We plan on getting into it, and we plan on
21 finding out and using that in different ways for our
22 defense. We just want -- we are just asking for time to
23 get all this information and make sure we have
24 everything we need to have before we go forward with
25 this trial.

1 THE COURT: Yes, ma'am.

2 MS. CAMPBELL: Your Honor, if I misspoke -- I
3 don't believe I did -- but the only information that the
4 feds have is my understanding they got from the County
5 investigation, which he already has. There is no
6 additional information.

7 THE COURT: Mr. Collins, I have never
8 practiced in federal court. Why can't you subpoena
9 someone involved in the investigation? Like I said, I
10 prefaced that by saying I never practiced in federal
11 court.

12 MR. COLLINS: Your Honor, the first step is
13 you have to give the subpoena to the Department of
14 Justice. The A.U.S.A. assigned then reviews what they
15 have in their discovery and responds. His response can
16 be either: We are not giving it or there is nothing
17 relevant.

18 THE COURT: I'm talking about why can't you
19 subpoena a federal officer?

20 MR. COLLINS: As a witness in the trial?

21 THE COURT: Yes, sir.

22 MR. COLLINS: Your Honor, the reason we are
23 looking into this is just for our investigative
24 purposes. We need this information to properly
25 investigate, to prepare the defense. We don't want to

1 have to be forced to do our investigation in front of a
2 jury. We are trying to get this information so we are
3 prepared for trial.

4 THE COURT: You wouldn't necessarily have to
5 do it in front of a jury. You can do it in camera.
6 There may be a rule. I don't know. There might be law.
7 I don't know I am just asking the question.

8 Could you subpoena an officer -- not a U.S.
9 attorney. I don't mean that, and the answer may be no.
10 I don't know the answer -- and say, I am going to
11 subpoena Agent -- what was his name -- Mulder. I am
12 going to subpoena Agent Mulder. He either will or won't
13 talk to you. He either will or won't testify.

14 I am not saying you have to do it in front of
15 a jury at all. I would never require you to put a
16 witness up, number one. Number two, even if you did it,
17 it wouldn't have to be in front of the jury. Can you do
18 that?

19 MR. COLLINS: At this point we don't know who
20 the federal investigators were. All we know is -- we
21 don't even have a copy of the indictment. We have the
22 news stories. So we wouldn't know who to serve. Even
23 then if we got information on the stand, we would need
24 to use that for our own investigation, which I don't
25 feel comfortable giving too many details about that on

1 the record at this point and give away some of our
2 possible defense.

3 THE COURT: I'm not asking you to do that.

4 MR. COLLINS: They also have a non-disclosure
5 agreement. That's the reason I believe in the federal
6 regulations, they have specifically a way to do it
7 because of the non-disclosure rule.

8 The fruits of their investigation sometimes
9 they have different confidential informants and rules on
10 disclosing. The process isn't extremely lengthy. It's
11 a pretty set process. It's only about three or four
12 steps.

13 THE COURT: You mentioned seven individuals.
14 You named seven specific individuals: Mr. Bowman, D.
15 and C. Austin, Breland.

16 MR. COLLINS: Antwon Brisbane.

17 THE COURT: And it looks like Sims, Brisbane,
18 and Taylor.

19 MR. COLLINS: Yes.

20 THE COURT: Are those -- of the 38 or however
21 many you read about in the newspaper -- are those the
22 only ones you are interested in?

23 MR. COLLINS: Those are the ones that are
24 listed in the indictment.

25 THE COURT: In what indictment?

1 MR. COLLINS: The federal indictment. The
2 other names we put on our subpoena were people that are
3 connected with those individuals that could possibly
4 have been part of the investigation that the feds did.
5 Those specific names are mentioned heavily involved with
6 this case.

7 MS. CAMPBELL: Your Honor, for clarification
8 they aren't involved in the murder case we are trying at
9 all. He is referring to the club Studio 54 shooting
10 that occurred hours after this.

11 THE COURT: I understand. Mr. Collins is
12 alleging a connection between that and perhaps
13 conversations between parties concerning the shooting of
14 Mr. Reese --

15 MR. COLLINS: Yes, Your Honor.

16 THE COURT: -- by these parties.

17 MR. COLLINS: Yes, Your Honor. This was all
18 in a three or four-hour time period. The whole reason
19 for the nightclub shooting was the shooting of
20 Mr. Reese. We believe it's all connected and would come
21 in under res gestae or a number of other things.

22 THE COURT: Well, I don't know when these
23 individuals were arrested. I know it was recently. I
24 know you say there was something in the paper or on
25 television. Was it the last couple of weeks or last

1 week?

2 MR. COLLINS: I believe it's been two or three
3 weeks since the indictment, maybe a couple weeks.

4 THE COURT: For purposes of this hearing on a
5 motion to continue, as to the federal indictment, I
6 think there is a -- if there are dots to connect, I
7 think it's very tenuous from the reading of a newspaper
8 article concerning a federal indictment to a homicide
9 case that occurred -- as I understand the date -- 19
10 June of '10, which is a little over two years ago, two
11 years and a month ago.

12 Now, part of my thinking is I have no way to
13 connect the federal indictment to this particular act.
14 I am further informed that the U.S. Attorney or
15 assistant U.S. attorneys have advised the State that
16 there were no wiretaps in place in June of 2010.

17 Of course, if you want to -- what the
18 attorneys say obviously is not evidence. I don't mean
19 it like that. But if you want to explore that in some
20 manner, since I take your word as an officer of the
21 Court and I take Ms. Campbell's word as an officer of
22 the Court, but then, again, it's not like a witness
23 testifying.

24 I am going to deny the motion on that ground.
25 That does not mean you cannot revisit that motion. You

1 can revisit it. If you have got any evidence or
2 testimony otherwise, I would be glad to consider it. As
3 far as Mr. Henderson -- well, Mr. Henderson may be --
4 let's put him down the line just a minute. What about
5 the transcript issue?

6 MR. COLLINS: We are attempting to get it. We
7 are supposed to be getting the transcript e-mailed at
8 some point today or tonight. As of yet, we haven't
9 gotten it. I know she is going out of town tomorrow.
10 She said she would have it to us by then.

11 THE COURT: You can always rely on a court
12 reporter.

13 MR. COLLINS: Yes, yes. The transcript, she
14 said is close to 85 to 95 pages long. That's about how
15 long it is.

16 THE COURT: The discovery, is Ms. Campbell
17 correct that most of it is -- the majority of it is
18 criminal histories and D.N.A. reports?

19 MR. COLLINS: The D.N.A. report was the bulk
20 of it. There was also a number of records from the gang
21 task force that were made available after our specific
22 request. It was a little difficult to get through. All
23 the e-mails were untitled and documents were mixed in
24 and mixed up. We had to go through and sort it all out.
25 We are getting through it.

1 Like I said, all that came since July 12th. I
2 think it was like 11 different e-mails. It's a lot of
3 odds and ends. We are still going through some stuff we
4 have received, but essentially it's the D.N.A. report,
5 the rap sheets, the gang task force records, the
6 incident reports concerning certain witnesses, and the
7 jail logs with the visitations, which, again, we have to
8 look into that, different people that have been visiting
9 at the jail and different names that we had not seen
10 before. We then had to go and investigate that.

11 THE COURT: Were any of those names on the
12 original witness list, the jail list? Is the jail
13 log -- is that something y'all asked for particularly,
14 the jail logs?

15 MR. COLLINS: No, Your Honor.

16 THE COURT: Is that something they provided?

17 MR. COLLINS: Yes, Your Honor. When it's
18 provided then we have to be prepared in case one is
19 called. A lot of the names were unfamiliar, but some of
20 the names were familiar. I am still going through that.
21 I have been able to complete that. We are still working
22 on that.

23 THE COURT: Can a lawyer get a jail log for
24 his client?

25 MR. COLLINS: If it's subpoenaed, yes.

1 THE COURT: Can a lawyer get the jail log for
2 anybody in the jail if it's subpoenaed?

3 MR. COLLINS: That I'm not sure of. I don't
4 think it has ever been done through our office. I don't
5 think it's ever been requested.

6 THE COURT: I'm sure if it had some real
7 relevancy Mr. Strickler or your office can subpoena it
8 though, I would imagine. I was just asking that
9 question.

10 Did you have a statement, Ms. Campbell?

11 MS. CAMPBELL: No, sir.

12 THE COURT: Let me see that discovery that has
13 been provided, please.

14 (Hands to Court.)

15 MS. CAMPBELL: Your Honor, the only thing that
16 is not in there is the D.N.A. report is my
17 understanding.

18 THE COURT: Y'all have a video visitation at
19 the Glenn center now?

20 MR. COLLINS: Yes, Your Honor.

21 THE COURT: How long has that been in place
22 approximately?

23 MR. COLLINS: Three to four years.

24 (Pause.)

25 THE COURT: Besides the D.N.A., Ms. Campbell,

1 all the discovery has been provided in July is in this
2 notebook?

3 MS. CAMPBELL: It's my understanding, yes,
4 sir, Your Honor.

5 THE COURT: When you go through these tabs,
6 the largest amount is behind the tab with video
7 visitation request. Many of the names are duplicitous:
8 Mia Johnson, Mia Johnson, Mia Johnson, Wanda Odom, Wanda
9 Odom. There are some others, Angela Johnson.

10 There is other information in here concerning
11 gang information on Bowman and Bethel, gang information
12 on Bowman and Bethel. There is another tab, Chris
13 Johnson and an note from Investigator Brown, membership
14 status that you requested. I take it that would be in
15 the database of membership in a gang, rap sheets.

16 Have you fully and completely complied with
17 the discovery, Ms. Campbell, as far as Rule 5 and
18 Brady?

19 MS. CAMPBELL: Yes, sir. We have met, I
20 think with defense counsel, and gone through everything.
21 As well as any requests they have come up with, we have
22 tried to address in a timely fashion.

23 THE COURT: As to the discovery motion, I am
24 going to deny the motion. The discovery issue -- not on
25 the other discovery issue you have that you e-mailed me

1 about -- but the motion to continue, I will deny that on
2 that grounds.

3 If there is specific information -- without,
4 of course, revealing your defense -- if there is someone
5 in there you particularly want to talk to, I will order
6 the Solicitor's Office and their investigator to try to
7 make that person available for you.

8 Then, again, the defense lawyer is on a
9 tightrope there if it ends up somehow exposing your plan
10 if you think so. If there is someone particular you
11 want to talk with and you need assistance in locating
12 that person, I am willing to assist you in locating that
13 person.

14 I guess the transcript is in abeyance. There
15 are some cases out there, State versus McMillan and
16 others, where a case has been tried and mistried and
17 retried within three weeks. Of course, the court
18 reporter is so far behind, they never even started on
19 the transcript and trial judges have denied that. It
20 just kind of depends on the totality of the
21 circumstances in that regard. It sounds like you
22 probably will have it available any way.

23 The next issue -- and I think the last issue
24 until we get into that issue on the database -- I will
25 be glad to contact Judge Benjamin and ask her to appoint

1 someone to represent Mr. Henderson and have that
2 information provided to you before the end of the day
3 today.

4 If it was a Lexington case, I could pick
5 somebody and call them up and tell them, I am appointing
6 you to represent so and so, one of the usual suspects so
7 to speak. I would prefer her doing it being the chief
8 admin judge.

9 Does that cover the basic -- does that cover
10 your motion to continue, Mr. Collins?

11 MR. COLLINS: As far as today, yes, everything
12 we have today. There could be something once we get the
13 transcript. We will talk about that at the appropriate
14 time.

15 THE COURT: The other issue you had was the
16 e-mailing of the document. I kind of in my mind or
17 perhaps in the e-mail, they call it a gang database from
18 the Sheriff's Office in Richland County. Do you have a
19 further matter you want to take up on that?

20 MR. COLLINS: Your Honor, the only information
21 we were provided about what was given to you was that
22 you were given some information to review. Until
23 yesterday we didn't know exactly what you had to review.
24 So I didn't want just to concede because we really
25 didn't know anything about it.

1 THE COURT: Sure.

2 MR. COLLINS: We know we have gotten some
3 information with gang task force headers on it for some
4 of the people, I believe most of the people that we
5 specifically requested.

6 We never asked for every Blood in Richland
7 County. We were asking for certain names. I believe we
8 listed it all back in May, along with the other
9 discovery requests that we did in May, that we didn't
10 receive in the last two weeks.

11 THE COURT: I think what they provided me is
12 the database from A. to Z. of all the named individuals
13 in the Richland County Sheriff's Department database. I
14 think, from my understanding -- and they will correct me
15 if I'm wrong -- the names that were in this database
16 that were associated with this case, that information
17 was extracted and provided. Is that correct,
18 Ms. Campbell?

19 MS. CAMPBELL: Your Honor, if I can confer
20 with Ms. Walker.

21 MS. WALKER: Your Honor, I'm Meghan Walker.
22 Yes, sir, those names we extracted from that database,
23 and we sent those to Mr. Collins and Mr. Newton. That
24 is the complete database. Out of an abundance of
25 caution, we wanted to make sure that the Court was aware

1 that there were other names out there that are connected
2 in that Blood database but that are not connected with
3 this case.

4 THE COURT: Thank you, Ms. Walker. Some of
5 the names would have beside it, associate or member.
6 It's like us in the courtroom, your name, my name,
7 Ms. Campbell, Ms. Walker, Mr. Shellenberg, the name may
8 be on the list. When you say, Who was at this location?
9 It may be just me and you. So their names are not
10 turned over. That's what I was trying to convey in my
11 e-mail.

12 What I was intending to do is, if the case
13 goes to trial, is have my law clerk check the witness
14 list against this and against those individuals called
15 if there is any discrepancy in that regard. Then I
16 guess then put those under seal for an appellate court,
17 if there was ever an appeal on the case, to review it.

18 But it's the same information that you have
19 been provided on other individuals: names, age, date of
20 birth, race, relationship -- that is whether associate
21 or member -- and the relationship dates. I guess that's
22 the input by the Sheriff's Department.

23 MR. COLLINS: Also included with that
24 information they have -- when a person is referenced --
25 they will include occurrences, field interview sheets,

1 and incident reports that are also in the database that
2 may not be on the list.

3 The other issue we have is if that is just the
4 list of Bloods, we also have the Folk Nation involved
5 with this with codefendants. If there is stuff with the
6 gang database on codefendants and other potential
7 witnesses, we would ask that we be provided with that
8 information as well.

9 THE COURT: If it's people involved in the
10 case, that's what you are saying?

11 MR. COLLINS: The codefendants, I believe, are
12 in a gang database as well. We haven't gotten anything
13 as far as the Folk Nation, I don't believe.

14 THE COURT: I thought my e-mail said if it was
15 victim, defendant, codefendants, witnesses, that should
16 be provided.

17 MR. COLLINS: I guess my question is: Do you
18 only have a list of the Blood gang members or is that
19 all exclusive gangs from Richland County?

20 THE COURT: Let's see. Do you know that
21 answer, Ms. Walker?

22 MS. WALKER: Yes, Your Honor. Those are the
23 Blood Gang members. In speaking with the gang
24 investigator with Richland County and the Columbia
25 Police Department, we asked them specifically about the

1 codefendants in this case.

2 At the point in time which we spoke to them,
3 they had not been entered into the gang database. I can
4 check with them again to today if see if they have been
5 entered into either the City or the County's gang
6 database.

7 THE COURT: What about the other gangs that
8 Mr. Collins is addressing, like the -- what did you call
9 them, the Crips?

10 MR. COLLINS: Folk Nation, the Crips.

11 MS. WALKER: I did not get the complete Folk
12 Nation database after they told us that the specific
13 people that Mr. Collins was talking about weren't in
14 there. I can go ahead and get the Folk Nation database
15 if Your Honor would like us to and turn that over as
16 well to Your Honor. But it's my understanding --

17 THE COURT: What about the Crips?

18 MR. COLLINS: The Folk Nation is a subset of
19 the Crips.

20 THE COURT: Thank you.

21 MS. WALKER: If Your Honor would like us to
22 get that database...

23 THE COURT: I think he wants to know if any of
24 the individuals involved in gang activity, if there is a
25 database and other databases beside the Bloods you can

1 check, I would suggest you do that and provide it to the
2 Court.

3 MS. WALKER: Yes, Your Honor.

4 MR. COLLINS: That would be anybody on the
5 witness list or any of the codefendants.

6 MS. WALKER: Yes, Your Honor.

7 THE COURT: Codefendants, witnesses, victims,
8 defendants. There may be a master database. I don't
9 know. Anything else?

10 MS. CAMPBELL: Nothing from the State.

11 MR. COLLINS: That's all we have today, Your
12 Honor.

13 THE COURT: I will contact Judge Benjamin when
14 I leave and ask her to appoint a lawyer. If she doesn't
15 mind, if her law clerk will notify both sides as to who
16 is appointed.

17 MR. COLLINS: Thank you, Your Honor.

18 MS. CAMPBELL: Your Honor, as far as
19 scheduling for next week, it's my understanding that we
20 are going to do a hearing with Your Honor on State
21 versus Zinah Jennings on Monday. We should be able to
22 start this case Tuesday morning.

23 THE COURT: Ms. Campbell, you handed some
24 documents up to me that I think Mr. Collins said he
25 didn't have copies of.

1 MR. COLLINS: We didn't have any copies of
2 anything that was handed up to the court.

3 THE COURT: What would that be?

4 MS. CAMPBELL: I believe I handed up the
5 indictment from the feds which we got.

6 THE COURT: And this chart, are you going to
7 make copies of this for Mr. Collins?

8 MS. CAMPBELL: I would be glad to.

9 THE COURT: I don't have a clerk in here; so I
10 will return this to you --

11 MS. CAMPBELL: And I will provide it to them
12 today.

13 THE COURT: -- and you can provide it to
14 Mr. Collins. Thank you. Thank you very much,
15 Mr. Collins.

16 MR. COLLINS: Thank you very much, Your Honor.

17 (Whereupon the proceedings are concluded for
18 July 26, 2012.)

19 (The following proceedings are reported on
20 July 31, 2012.)

21 THE COURT: Solicitor.

22 MS. CAMPBELL: May it please the Court, Your
23 Honor. We are here on the case of the State versus
24 Daqwan Johnson. He is charged with murder and attempted
25 murder, Your Honor. We are here today for the trial of

1 the case.

2 As you know, you were made aware this case was
3 coming last week. We had a hearing in front of you.
4 Your Honor, there is one matter I would like to take up
5 right away that came to my attention yesterday morning.

6 Apparently on Friday afternoon, Greg Collins
7 sent me an e-mail basically accusing me of ethical
8 violations and prosecutorial misconduct. I will hand up
9 a packet, Your Honor, including the e-mail, which I
10 didn't get until yesterday morning by the way, Your
11 Honor. Also, the packet from the D.N.A. that was
12 produced to the defense, as well as a transcript from
13 the prior hearing.

14 THE COURT: What prior hearing are you
15 referring to?

16 MS. CAMPBELL: Your Honor, when we originally
17 called this case, I believe it was the week of May 21,
18 2012, in front of Your Honor, we did have pretrial
19 hearings and actually picked a jury at that time.

20 It came up during the course of that there
21 were some swabs that not been tested or had not been
22 compared to anything, Your Honor, that we became aware
23 of. At that point you granted a continuance on the
24 case.

25 THE COURT: All right.

1 MS. CAMPBELL: Your Honor, in the e-mail that
2 he sent, he references how he has conferred with John
3 Freeman of the U.S.C. Law School about possible ethical
4 violations.

5 He states that it has come to his attention
6 that assertions were made by me during the pretrial
7 stages that were not true; that I related the swabs
8 could not be tested on numerous occasions; that I had
9 gone over this issue with the County and forensics, and
10 it was my understanding that swabs had not been tested.

11 He then references the full D.N.A. report that
12 we received that we provided to them in conjunction with
13 this case. Because at that point, if you may recall,
14 Your Honor, there was some swabs from the shell casings
15 and projectiles at the scene that had not been tested.

16 Your Honor, to give you a little bit of
17 background, this is a City murder case. As you are
18 aware, there was a secondary case, a shooting at a
19 separate club later that night, that involved some of
20 the same people.

21 The City then submitted their ballistics
22 evidence to the County for testing, which the County
23 agreed to do so since the two cases were related.
24 However, as with outside cases, in this case the comedy
25 is what happens when outside agencies submit cases,

1 they go under a separate case number from the County
2 case.

3 As such, we received right before trial the
4 chain from that, which is a property report which you
5 reviewed in the last hearing, Your Honor. In that
6 property report, we became aware that some of the
7 property is the swabs that were done by David Collins,
8 which ironically he didn't mention in his notes that he
9 had swabbed the evidence.

10 That is standard protocol. He just didn't put
11 it in his notes, that that had been swabbed and that
12 evidence had been logged into the Richland County
13 Sheriff's Department.

14 In the packet that I just handed up, Your
15 Honor, you will see a request form that was filled out.
16 It comes, is my understanding, by Gray Amick in this
17 case.

18 At the top of the request form, it has the
19 people that are requesting that certain items be tested,
20 which include items 50 through 56, which are the swabs
21 that were in question during the last hearing. My name
22 is at the top of the list, Stan Smith's name is at the
23 top of the list, and Willie Gonzalez' name, the people
24 requesting that.

25 THE COURT: What page are you referring to,

1 Solicitor?

2 MS. CAMPBELL: Just a moment, Your Honor. Beg
3 the Court's indulgence.

4 (Pause.)

5 MS. CAMPBELL: I apologize, Your Honor. For
6 some reason it doesn't appear to be in the packet I
7 pointed out for you. Your Honor, it's page 12 of the
8 case jacket.

9 THE COURT: Page 12 of the forensic
10 examination report?

11 MS. CAMPBELL: Yes, sir.

12 THE COURT: All right. I have it in front of
13 me, Solicitor. You may continue.

14 MS. CAMPBELL: Your Honor, that form was
15 filled out by Gray Amick with the Richland County
16 Sheriff's Department. He is a D.N.A. analyst there. In
17 the prior hearing, I made mention that I was not aware
18 of any testing that had been done. Then I mentioned
19 over and over I am double-checking on those things.

20 We had actually met -- and Ms. Walker can
21 address this -- with the people from the County. The
22 problem in this case is because it's an outside agency,
23 when the testing was done, there was no case in the
24 actual Richland County A.S.I.S., which is their way of
25 tracking cases, Your Honor. There was a property

1 report, but there was no case to attach to the
2 C.O.D.I.S. note.

3 What happened -- and Mr. Amick is here and can
4 address the Court if you feel it's necessary -- is there
5 are a number of ways in which the testing can be done.
6 The date on that shows that in May of 2011, a request
7 was made.

8 Having talked to Investigator Amick, the way
9 that could have been done is either I made contact with
10 Investigator Amick and requested for him to check to see
11 if there was any evidence that needed to be tested in
12 this case and would he please do that or I conveyed that
13 through Major Stan Smith, who would have conveyed it to
14 him if his name is reflected on the form as well.

15 The investigator that is noted is Willie
16 Gonzalez, even though he was not involved in the case,
17 somehow that information was related to Mr. Amick as
18 well, even though he was involved with either the C.P.D.
19 case or the Richland County case, or I made contact with
20 Mr. Amick myself, which is not unusual for me to be at
21 the County and say: Would you please check on the case
22 and see if there is any evidence to be tested or not.

23 I do not have any independent memory of how
24 this request was made, Your Honor, and I can tell you
25 that Mr. Amick does not have independent memory.

1 However, if the request was made that those -- there are
2 three ways in which it could have happened or I could
3 have specifically asked for those items to be tested.

4 I am telling you as an officer of the Court, I
5 don't have any specific recollection of requesting that
6 items be tested. It's not unusual for me to go to the
7 County with a number of cases for me to be looking into
8 and to make requests that the D.N.A. department check
9 into them and do any testing if it is appropriate. At
10 that point, Your Honor, there were no known samples
11 submitted in this case for anything to be compared to.

12 In addition, Your Honor, he also questions the
13 fact that there was page 1 of the follow-up, which is
14 right after the actual report itself, where it said that
15 on 6/7/2011 -- that would be Rachel Grant e-mailed
16 Willie Gonzales the C.O.D.I.S. note, which is the last
17 page of this report, Your Honor.

18 I have spoken with Mr. Gonzales. He does not
19 recall. He has no independent recollection of receiving
20 a C.O.D.I.S. note. However, he receives a number of
21 those, and it would not have alerted him -- because it
22 just had a bunch of numbers on it -- to anything that
23 was not a hit as well.

24 He would have just noted it. He doesn't have
25 any independent recollection of it. He would not have

1 thought to notify anyone else as to its existence
2 because it just wouldn't ring a bell with him because it
3 is just a bunch of numbers.

4 He doesn't recall specifically receiving this,
5 but he doesn't dispute that he may have. The reason his
6 name is on the report is unknown to me, Your Honor, as
7 the investigator to contact and to mail that to.

8 Your Honor, I had spoken to Rachel Grant and
9 to Gray Amick at that point. At the time the further
10 note says there was no case to attach that C.O.D.I.S.
11 note to, as is normal in what we would have been looking
12 at. There was no case in the system at the time. So
13 therefore it would have just remained on her computer.

14 As we were preparing to go forward last time,
15 Your Honor, as you became aware, we actually had to --
16 Carter Cox with my office actually was checking on that
17 while we were having a hearing, Your Honor. He had to
18 actually call down there and have them retrieve the
19 C.O.D.I.S. note from, I believe, Ms. Grant's computer,
20 which she would have kept it separately. She would have
21 had to look it up specifically.

22 So as far as accusing me of prosecutorial
23 misconduct or anything, it's somewhat ludicrous in that
24 I wouldn't have requested the testing be done if I was
25 trying to hide evidence, number one. Number two, I have

1 no independent recollection of ever knowing this
2 specific evidence existed.

3 Number three, we did go and try to check to
4 make sure. If anything, Your Honor, it is my fault
5 because there were other people handling the chain in
6 this case. They think that they thought the swabs were
7 related to other swabs that were taken from the car.

8 That is something that I should have been
9 checking on and that was remiss on my part on that part;
10 however, none of that would have come to light until
11 that first day of trial anyway, Your Honor.

12 As Mr. Collins notes, he takes these matters
13 very seriously. He would like an explanation in
14 writing. I would prefer to have the Court hear
15 everything, and if he wants, we can put up testimony as
16 to what happened in this case specifically, Your Honor.
17 However, we do not feel like there was any prosecutorial
18 misconduct in this case.

19 I understand Mr. Collins' position is
20 different. I would note in the transcript where he
21 accuses me of making these assertions, I think the first
22 things I say is page 75 forward, Your Honor. I mention
23 that I am double-checking to make sure. It is my
24 understanding that no testing was done. We got to
25 Richland County and were informed no testing was done.

1 That was information given to us and I can put
2 Ms. Walker up for that issue.

3 THE COURT: What page was that, Solicitor?

4 MS. CAMPBELL: Seventy-five.

5 THE COURT: Seventy-five?

6 MS. CAMPBELL: Yes, sir.

7 THE COURT: I go from page 74 to page 78 or
8 either I don't know my numbers.

9 MS. CAMPBELL: You go from 74 to 78? I would
10 hand up pages 75 through 77. The defense did request a
11 copy. They have a copy of the transcript, as well as
12 the packet I handed up.

13 THE COURT: The part you were referring to,
14 Solicitor, is the part that is highlighted?

15 MS. CAMPBELL: It starts on page 75, yes, Your
16 Honor, and it continues on page 78, over the next
17 several pages. Then I correct myself because as first I
18 do I assert we have been informed there was no testing
19 information, which was the information we had. Then I
20 said there was a C.O.D.I.S. note and hand that over
21 immediately.

22 As far as we are trying to hide exculpatory
23 evidence, Your Honor, the only gun we even relate to
24 Mr. Daqwan Johnson is an S.K.S. There was a swab done
25 from that. It came back with no D.N.A. on it.

1 As far as the report goes, there was swabs
2 from an A.K., which we allege the codefendant had, as
3 well as a swab from certain cartridge cases which we do
4 not in any way relate to the defendant that come back
5 matching no one in the case. However, Your Honor, that
6 would relate to the codefendants and not to him.

7 THE COURT: Anything further, Solicitor?

8 MS. CAMPBELL: No, Your Honor. I do have the
9 witnesses here if you want to hear from them.

10 THE COURT: Let me hear from Mr. Collins.

11 MR. COLLINS: Thank you, Your Honor.

12 THE COURT: Yes, sir.

13 MR. COLLINS: We weren't planning to bring
14 this up as part of this trial. The potential problem
15 that could have been happened was remedied when they did
16 disclose the testing that had been done.

17 The problem I had is that they were vehemently
18 opposed for a continuance last time, the first time the
19 case was called for trial. Had we gone forward, we
20 would have gone forward without this very important
21 D.N.A. testing that we now have.

22 We feel like we have a very strong prima facie
23 case as far as evidence that should have been known
24 about and should have been disclosed. This is an issue
25 for the disciplinary board if it goes that far.

1 I wrote the e-mail simply to get an
2 explanation as to what she just gave the Court. I was
3 asking for that in writing because I discussed this with
4 Professor John Freeman at the law school. We discussed
5 it very thoroughly.

6 I am doing this to cover myself as an attorney
7 because I don't feel like I would properly be
8 representing by client unless I at least addressed a
9 prima facie showing that she requested those swabs be
10 tested a year before we were in court and then came
11 up --

12 THE COURT: That's not correct. Her name is
13 on the form. The inference may be that she requested
14 the swabs --

15 MR. COLLINS: Your Honor, my reading --

16 THE COURT: -- but if you are saying that is
17 not before this Court and even if it happened in the
18 manner in which you are alleging it had and it has been
19 remedied, then there is nothing for me to act on.

20 MR. COLLINS: As far as this case, it has been
21 remedied. The fact that we -- the response we have
22 gotten today, I think possibly this is something we can
23 resolve. I would hope she could have responded to me
24 outside of Court instead of bringing it in here because
25 I got absolutely zero response when I addressed that.

1 Simply we had a prima facie case. There was a
2 letter which said, "for a Court date," which only the
3 solicitor would know about the Court date. That's the
4 reason it was requested to be tested.

5 When we saw that, we had concerns because we
6 had just spent 20 minutes where they were fighting a
7 continuance because they said there was no testing done,
8 when, in fact, it looks like it was definitely requested
9 by the Solicitor's Office a year before that hearing.

10 That was the problem we had. I feel we were
11 hesitant going forward with an officer of the court who
12 can make that kind of misrepresentation, which almost
13 caused a trial without the only piece of exculpatory
14 evidence that we now have. That was the great concern
15 to us. That's the reason I wanted to address it with
16 Ms. Campbell, and between Ms. Campbell and myself.

17 It was remedied. Thank goodness it was, and
18 we are ready to go forward with the trial today. If she
19 is claiming she has absolutely no memory of requesting
20 it and that was the problem, then that is an explanation
21 I can understand. That is all I was asking for was the
22 reasonable explanation for it. We have gotten that on
23 the record and we are ready to move forward.

24 THE COURT: Ms. Campbell.

25 MS. CAMPBELL: Briefly. He mentioned I

1 vehemently opposed a continuance. On page 78 of the
2 transcript it says, "No, Your Honor. I told Mr. Collins
3 if he is requesting the testing be done, we will
4 accommodate him if that is what he is requesting." So
5 we were not vehemently opposed to any continuance at the
6 time.

7 In addition, Your Honor, I felt like as an
8 officer of the Court, I needed to bring this to the
9 Court's attention when I was accused of an ethical
10 violation so that if you felt it was appropriate and it
11 needed to be reported, that that could come before the
12 Court, which would be appropriate.

13 THE COURT: Based on Mr. Collins' position in
14 this matter as far as the issue of Mr. Johnson's trial,
15 even taking the materials in the light most favorable to
16 the defendant's position, it does not affect or would
17 not affect his right to a fair trial or his right to due
18 process. The items were tested. The results have been
19 presented. The defense has it. Mr. Collins can
20 evidently go forward in that regard.

21 Well, looking at the some of the cases
22 concerning prosecutorial misconduct, if there is no
23 motion concerning that before the Court, there is
24 nothing for the Court to rule on in that regard. I
25 reiterate that Mr. Collins has said if there was, it has

1 been remedied.

2 MR. COLLINS: Yes, Your Honor.

3 THE COURT: The focus of prosecutorial
4 misconduct is not only the conduct of the prosecutor,
5 it's on the fairness of the trial defendant. If you
6 have all the materials now that the State has turned
7 over, and Mr. Collins is satisfied it has been turned
8 over appropriately, that matter is no longer before the
9 Court.

10 Do you agree with that, Mr. Collins?

11 MR. COLLINS: Yes, Your Honor. It's our
12 position it's a separate matter outside of this.

13 THE COURT: Do you agree with that, Solicitor?

14 MS. CAMPBELL: Yes, Your Honor. We do not
15 think there was any prosecutorial misconduct to begin
16 with, but everything has been turned over anyway.

17 THE COURT: I guess what I'm saying is the
18 Court is not making a finding either way because it's
19 moot as far as the fairness of Mr. Johnson's trial.
20 Even if there was prosecutorial misconduct -- which I do
21 not decide there was; I do not decide there was not --
22 it is moot as far as the fairness of Mr. Johnson's
23 trial.

24 If you want to put anything additional on the
25 record, you may certainly do so. I don't think you need

1 to do so, but I never prohibit any of those parties from
2 placing whatever they want on the record.

3 MS. CAMPBELL: No, Your Honor, I'm fine.

4 THE COURT: Any other motions?

5 MS. CAMPBELL: The only other thing I would
6 like to bring up at this time is during one of the
7 hearings or at some point in an e-mail or something, the
8 defense indicated that wanted to call one of the
9 codefendants to the stand. That is Mr. Brian Campbell.
10 He is represented by Alex Postic of the private bar.

11 THE COURT: All right.

12 MS. CAMPBELL: We have talked to Mr. Postic,
13 and it's my understanding that he has talked with the
14 defendant and informed them his defendant, Brian
15 Campbell, will assert the Fifth Amendment should they
16 attempt to call him.

17 Your Honor, as the case law says they can't
18 just to put him up in front of the jury to have him
19 assert the Fifth. So I would just caution that any
20 mention of him in opening or anything, that that is out
21 there. We wanted to make sure it was clear on the
22 record.

23 THE COURT: Mr. Collins.

24 MR. COLLINS: Your Honor, I think we can deal
25 with that should it arise, but I don't think we should

1 be limited from being able to mention his name. He is a
2 big part of this investigation. We will definitely be
3 able to talk about him with the investigators and other
4 witnesses. I think we should be allowed to talk about
5 Brian Campbell. I don't understand why we wouldn't.

6 MS. CAMPBELL: That's not my position, Your
7 Honor, just that he would not testify for the defense,
8 what his testimony would be. That's what I'm asking
9 about.

10 THE COURT: Normally what I do if you have a
11 codefendant that the attorney -- his attorney -- states
12 after talking with him he believes he is going to take
13 the Fifth Amendment, I will allow you to put him up in
14 camera to confirm that one way or the other outside of
15 the presence of the jury in that regard, if you prefer,
16 not that I wouldn't take Mr. Postic's word for it, but
17 you never know who a widow might marry.

18 Isn't that right, Ms. Walker?

19 MS. WALKER: Yes, sir.

20 THE COURT: Anything further, Ms. Campbell?

21 MS. CAMPBELL: No, sir, Your Honor. We are
22 ready for the jury. I don't know if the defense has any
23 motions.

24 MR. COLLINS: Your Honor, I summited a
25 pretrial motion list. I also gave a copy to the

1 Solicitor's Office. Just to start off with, one that is
2 not on the list is I notice that a Ms. Loree Johnson is
3 on the jail transport list for today.

4 THE COURT: Loree Johnson?

5 MR. COLLINS: Yes, Your Honor. She is a
6 witness who was just at the scene where the victim died.
7 She recently picked up a case July 27th. She was
8 arrested and she is in jail currently.

9 Our office opened the file. We haven't
10 assigned it yet. As soon as I noticed her on the jail
11 transport list for today, I e-mailed Doug Strickler. We
12 are going to try to get that taken care of as quickly as
13 possible.

14 We would just ask that if they are going to
15 call her, to not call her today and give our office an
16 opportunity to at least let her get represented before
17 she is put on the stand.

18 THE COURT: Solicitor, any objections?

19 MS. CAMPBELL: Your Honor, she was scheduled
20 to testify and that is the reason she was on the
21 transport list. We will try to put her off for today.

22 THE COURT: Put her off today. Don't put her
23 on the stand until she gets an attorney, and they have
24 an opportunity to try to speak with her.

25 MS. CAMPBELL: Yes, sir.

1 THE COURT: If you need me to appoint
2 somebody, I certainly will.

3 MR. COLLINS: We probably should go ahead and
4 appoint somebody.

5 THE COURT: Madame Clerk, see if you can get
6 in touch with the Mr. Leventis, 256-0113.

7 He doesn't represent any codefendants in this
8 case; does he?

9 MR. COLLINS: No, Your Honor.

10 MR. NEWTON: Lee Leventis?

11 THE COURT: Yes.

12 MR. NEWTON: No, sir.

13 MR. COLLINS: Your Honor, I will move through
14 the motions in order. Again, for the record we are
15 going to renew our Rule 5 and our Brady motion. As late
16 as yesterday, we have gotten a written statement from
17 one of the witnesses.

18 So we just want to put on the record again
19 that we are renewing our Rule 5 and Brady. Everything
20 that is in the possession of the Solicitor's Office or
21 any law enforcement agency that is related to this case
22 in any way, we are asking that they turn that over.

23 Specifically, we have a number of evidence
24 logs which shows the chain of custody from the City and
25 from the County. The County has a couple of different

1 cases. The City has one case.

2 Specifically in reference to the D.N.A. swabs
3 from the shell casings and from the guns that they
4 actually did test, I think all the evidence logs have
5 been provided to us.

6 I don't see anywhere in there, as far as who
7 entered the D.N.A. swabs. I can see where they were
8 sent to David Collins in ballistics and he sent them
9 back. There is no record of who actually submitted the
10 swabs or who took the swabs.

11 There is also no mention of -- we did see the
12 evidence from the City property room. We were invited
13 to the Solicitor's Office before the last trial that was
14 called in May, and we walked into their office, in which
15 case there was a number of evidence bags that had been
16 opened and been sifted through. We have gotten no
17 evidence report as far as who sealed those back up, and
18 there is no chain of custody since that time.

19 We have no idea where the City's property has
20 been since then. We have also not been given an
21 opportunity to look at any property that was stored in
22 the Sheriff's Department. So we would ask for any
23 documentation of who opened those bags and who resealed
24 them and give the chain of custody on those pieces of
25 evidence because we haven't been provided with that.

1 As far as the gang task force records from the
2 City or the County, if they are indicating we have
3 everything that is in either one of those gang task
4 force reports, then we are to rely on that, Your Honor.
5 We have been provided with numerous reports on numerous
6 people.

7 They gave us the police report from June 19,
8 2010, where someone was arrested in Gable Oaks -- or it
9 was, I think, Ashley Apartments at that time -- where
10 someone was arrested on that day. We got an incident
11 report from that; however, the timing of that arrest in
12 that incident report did not match up with the security
13 report.

14 There was a security company that monitored
15 this apartment complex. They specifically noted in
16 their notes that someone was placed in handcuffs and
17 placed in a City police car at 11:46 P.M., roughly 30
18 minutes after the shooting.

19 We haven't gotten any report or any radio
20 transmission logs or anything of that nature to show
21 what that arrest was for or what that detainment was
22 for. Even if it was just a detainment, there should be
23 some type of record or some time of report, and we
24 haven't been provided with that.

25 With the CrimeStopper report, Your Honor, we

1 issued a subpoena on the CrimeStopper organization.
2 It's within the Richland County Sheriff's Department.
3 That was back on May 21st of this year. The only
4 response we have gotten from that, after I called Seth
5 Rose, an attorney for CrimeStoppers and actively pursued
6 trying to get these records, Chris Cowan, I believe, of
7 the CrimeStoppers organization sent me an e-mail saying
8 that one report was all they got from this case.

9 I asked for an official letter, something to
10 that regard, because I still -- it's very surprising to
11 me that there would be close to ten 9-1-1 phone calls
12 from the shooting. This shooting was on all the news
13 stations. It was in the State. The header of all the
14 news articles is: Call 1-800-Crimestoppers with any
15 information.

16 I am having a hard time believing that there
17 is only one call that came in about this case. We would
18 ask, if it's possible, to put somebody from
19 CrimeStoppers either on the record or ask for an
20 official letter saying that is the only call they got in
21 relation to this case.

22 I am doing that to preserve the record for my
23 client and do everything I can to try to get those
24 records because I do believe they could be relevant in
25 this case.

1 The CrimeStopper tip report is what led them
2 to their first witness in this case to begin with, and
3 that's all we have. Those are the specifics for the
4 Rule 5 and Brady renewal, Your Honor.

5 THE COURT: All right. Solicitor.

6 MS. CAMPBELL: Your Honor, addressing just the
7 full evidence logs, we did run the evidence logs again
8 from the County yesterday. I can hand that up at this
9 time as far as the testing he requested to be done.

10 As far as where he asserts that he doesn't
11 know who submitted the swabs in this case, that is in
12 the evidence log that has already been provided to him.
13 That would be David Collins.

14 THE COURT: So Mr. Collins swabbed and
15 submitted the swabs?

16 MS. CAMPBELL: Which is in the evidence report
17 he already has.

18 THE COURT: What about the City property room
19 sealed bags?

20 MS. CAMPBELL: Your Honor, as far as any
21 evidence, as far as any chain of custody that has to be
22 proven at that point, in preparation for trial, of
23 course, those bags were done, but all the testing had
24 been done, other than after the last time this case was
25 called for trial.

1 We then went and got known standards from all
2 of the codefendants in the case, including the defendant
3 because you granted Schmerber at the end of the last
4 case, Your Honor. That evidence has not been tampered
5 with in any way, and the actual swabs that were at the
6 County never left the County because we didn't know
7 about them.

8 Those were not opened or tampered with in any
9 way. As far as any chain of evidence, of course, we
10 only have to prove up to the point of testing, and we
11 have provided them with the chain on that information.

12 THE COURT: I take it there is other items,
13 non-fungible items, that he may be referring to?

14 MS. CAMPBELL: Yes, sir, it's not fungible
15 items.

16 THE COURT: And what about his opportunity to
17 view the Sheriff's Office property?

18 MS. CAMPBELL: Those would be swabs, Your
19 Honor. We can have brought those over this afternoon
20 and have them view the swabs. That's the only evidence
21 he has not had the opportunity to view.

22 THE COURT: Aren't there non-fungible items of
23 evidence with the County?

24 MS. CAMPBELL: Those were provided last time,
25 Your Honor. He did see those.

1 THE COURT: Is that correct, Mr. Collins? I
2 apologize. I wasn't tracking that.

3 MR. COLLINS: They invited us to look at the
4 evidence. When we walked in and saw everything open and
5 the bags unsealed and nobody there from the property
6 room, we refused to go through without someone there to
7 document as far as chain of custody went.

8 THE COURT: I thought that was the City?

9 MR. COLLINS: That was my understanding. We
10 don't know where a lot of this evidence is.

11 THE COURT: I apologize. I'm not tracking. I
12 thought you said you saw the City property, but the bags
13 were open. "I don't know who sealed them." Then I
14 thought you said you never had the opportunity to see
15 the Sheriff's Office property. Maybe I thought wrong.
16 I thought that's what you said.

17 MR. COLLINS: We were invited to view the
18 evidence that they indicated was from the City. We
19 didn't look through it because we noticed all the bags
20 were opened and unsealed, and there was nobody there to
21 be a custodian of the records or to document the chain
22 of custody as far as looking through the property. So
23 we did not want to go through and contaminate any
24 property.

25 THE COURT: And tell me about the Sheriff's

1 property.

2 MR. COLLINS: Up until the date of the last
3 trial, we were still learning everything that they had
4 in evidence as far as swabs. We have not been able to
5 even look at the swabs to see if there were multiple
6 swabs or just one swab. We haven't been able to view
7 any of that evidence.

8 THE COURT: Can you make those arrangements,
9 Ms. Campbell?

10 MS. CAMPBELL: Your Honor, the evidence is
11 here, and we will make -- they had the opportunity to
12 view the evidence. They chose not to. The swabs that
13 we are referring to that were in question last time had
14 already been tested at that point. There is no further
15 chain issues on that.

16 The only additional evidence that they haven't
17 seen or had the opportunity to see -- and we would have
18 provided them had they been requested -- were the buccal
19 swabs that were taken from the five codefendants.
20 Everything was there and available to them to view.
21 They refused to view it.

22 THE COURT: Make it available for them to view
23 it with a custodian there.

24 MS. CAMPBELL: Yes, sir.

25 THE COURT: The gang task force, you rely on

1 what has been turned over. Is that correct,
2 Mr. Collins?

3 MR. COLLINS: Yes.

4 THE COURT: The police report of 6/19/10, as I
5 understand it, you say that it does not match the timing
6 of the security report where an individual was placed in
7 handcuffs and placed in the back of a patrol vehicle. I
8 take it that would be the Columbia Police Department
9 patrol vehicle at 11:46 P.M. on that date?

10 MR. COLLINS: That's correct, Your Honor. We
11 were provided, since the last time the trial was called,
12 with an incident report of somebody being arrested
13 during the afternoon at that apartment complex but
14 nothing from that night.

15 THE COURT: Was anybody arrested that night,
16 Solicitor?

17 MS. CAMPBELL: Your Honor, I had Sergeant
18 Thomas check on that specifically. He found no other
19 reports that could address this issue. I'm not aware of
20 anything else.

21 THE COURT: If an officer takes a person into
22 -- will an officer at times take a person into
23 detention, handcuff them, place in the vehicle, and not
24 arrest them?

25 OFFICER THOMAS: That does occur, Your Honor,

1 depending on what the situation it. I had dispatch look
2 up calls that night and give me an indication that was
3 related to that area. I think what they were provided
4 with was the only thing. There was a custodial arrest
5 made that night.

6 Sometimes officers will detain, place a
7 subject in the car, ask a few questions, and if there is
8 nothing on what he said, they will cut him loose. It's
9 just a small detention. I don't know if that's what
10 occurred here, but I did have them look up any arrests
11 that were made. Whatever we provided them with was the
12 arrest that was made that night.

13 THE COURT: Is there a way to find out if that
14 is what occurred here? That an officer took a person
15 into detention and placed them in the back of that car?

16 OFFICER THOMAS: That is normally not
17 communicated through dispatch. It's normally just --
18 tells whatever is happening right there at the time.
19 They may sometimes get some information possibly in
20 their file or they may just write something on their
21 pad, "I made contact with John Doe."

22 THE COURT: If you were trying to find that
23 out, Sergeant, what would you do?

24 OFFICER THOMAS: Again, check with dispatch
25 and see what calls happened within that time frame and

1 any case that was related. I can double-check again. I
2 can have somebody call dispatch and double-check, but
3 the last time, I think, they only produced a drunken
4 report or something of that nature.

5 THE COURT: Can you have somebody check with
6 the officer that respond to that scene in Gable Oaks or
7 can you see if anyone did respond to that scene between:
8 11:15, quarter to 12:00, 11:00?

9 OFFICER THOMAS: The only way to really do
10 that is to try to reference through dispatch through
11 their communications. In a shooting and melee of that
12 nature, there may have been 25 or 30 officers that
13 responded.

14 All may not call out. They may just come up
15 for a backup or to secure the area. They may not call
16 dispatch immediately on radio. They may be in the area
17 for additional security. I can, again, refer back to
18 dispatch on that day and see if they come up with
19 anything different.

20 THE COURT: Can you refer it to whoever the
21 shift commander would have been and ask him to check
22 with whoever was on the shift?

23 OFFICER THOMAS: I can attempt to do that as
24 well.

25 THE COURT: If you can just follow it a little

1 bit further logically, Sergeant, I would ask you to do
2 so.

3 OFFICER THOMAS: Okay.

4 THE COURT: All right. If it does occur that
5 an officer has a memory of it occurring, just advise the
6 solicitor. She can turn that information over to the
7 defense. If it occurs you cannot find anyone, advise
8 the solicitor so that can be placed on the record also.
9 Thank you, Sergeant.

10 OFFICER THOMAS: Yes, sir.

11 THE COURT: What about CrimeStoppers,
12 Solicitor? He said he thought Mr. Cowan -- and I take
13 it Mr. Cowan is the officer over CrimeStoppers at
14 Richland County?

15 MS. CAMPBELL: Yes, sir. Your Honor, I have
16 spoken -- I haven't actually spoken to Mr. Cowan. I
17 have spoken to Seth Rose who actually represents
18 CrimeStoppers. He indicates to me that they have
19 provided everything they have got, but I can
20 double-check that as well.

21 I didn't know what their motions were going to
22 be this morning so I didn't have him here to address
23 that specific issue, but I can get Captain Cowan here,
24 say, by lunchtime.

25 THE COURT: Either have him provide a letter

1 that is all they have or subpoena him, and he can come
2 testify to whatever he is going to testify to. That
3 should take care of it.

4 MS. CAMPBELL: Yes, sir.

5 THE COURT: I think that takes care of your --
6 my response to your various issues on discovery,
7 Mr. Collins.

8 MR. COLLINS: One additional Ozmint v. Riddle.
9 They have --

10 THE COURT: Is that exculpatory -- change in
11 statements?

12 MR. COLLINS: Change in statements. From the
13 jail transport list yesterday, it looked as if most of
14 the codefendants were brought over. We are guessing
15 that the solicitors had conversations with them.

16 THE COURT: One of them went back -- I will
17 pull his name out in a minute -- Robinson? Is that his
18 name, the one you wanted to appoint a lawyer for last
19 week? What was his name?

20 MR. COLLINS: Rontrell Henderson.

21 THE COURT: Henderson. I'm sorry.

22 MR. COLLINS: We got the information we needed
23 from that, and we thank the Court for helping us out.

24 THE COURT: So if there is any change in
25 statements, you want those?

1 MR. COLLINS: Yes, Your Honor. Specifically
2 with the codefendant Detrick Walker, he did not give a
3 written statement.

4 THE COURT: Detrick?

5 MR. COLLINS: D-E-T-R-I-C-K, Detrick Walker,
6 he is a codefendant in this case, a potential witness.
7 He did not give a written statement. There is a report
8 from the investigator stating things that he said that
9 was not recorded. When the recording was turned on, he
10 refused to give a statement.

11 I believe the last time we were in front of
12 Your Honor back in May, Mr. Cambo Streeter gave us a
13 little bit of information about what was said when they
14 interviewed him.

15 But we are just asking for maybe a written
16 report or something as far as the nature of their
17 conversation with that witness since there was no
18 written statement from him.

19 THE COURT: Solicitor.

20 MS. CAMPBELL: May it please the Court, Your
21 Honor. After the last hearing, Mr. Streeter had
22 interviewed Detrick Walker, along with a number of the
23 other codefendants, Your Honor. He did meet with the
24 defense at their request, and he gave them all the
25 information he had.

1 I am not aware -- and I will double-check with
2 him too. I was in court all day yesterday. I didn't
3 meet with any codefendants -- but I am not aware of any
4 changes in anyone's statements. If I become aware of
5 that, I will immediately turn it over.

6 MR. NEWTON: Your Honor, if I may, Clarke
7 Newton for the defense. I was the one that spoke to
8 Investigator Streeter. We sat down and I took notes,
9 but it was just -- he had a little note card that he had
10 notes. He advised me that he just had a conversation
11 with him.

12 We do want to make sure, if it was written
13 down past just his note card, which he let me look at --
14 and this was May of 2012 that we did this -- that if
15 they did actually take written statements, just hand
16 them over if they did.

17 I don't think so, from my conversation with
18 them, but I know they brought him over yesterday. I do
19 have my little piece of paper with my notes. But
20 outside of that, if they sat down and talked to him
21 yesterday --

22 THE COURT: You want any additional notes that
23 there may be on Mr. Detrick Walker, if there are any?

24 MR. NEWTON: Yes, sir.

25 THE COURT: Solicitor.

1 MS. CAMPBELL: Yes, sir.

2 THE COURT: Mr. Collins.

3 MR. COLLINS: Your Honor, number two, I
4 believe we settled this last time, sequestering
5 witnesses. We would request that everybody except for
6 the victim's family and the lead investigator be
7 sequestered. Also, if they have any experts that they
8 are planning on putting up, they would be allowed to
9 stay as well.

10 We have our client's mother, grandmother, and
11 father here. They are on the witness list from the
12 State which they gave us the last time the case was
13 called for trial. We ask that they be allowed to remain
14 in the courtroom throughout the trial as well.

15 THE COURT: What about the evidence custodian?
16 Did I address that last time?

17 MR. COLLINS: We would be fine with the
18 custodian staying in.

19 THE COURT: I really don't remember my ruling
20 last time. Sometime I rule based on Carmack and other
21 times I rule not based on Carmack, I guess I should say.
22 How did I rule?

23 MS. CAMPBELL: Page 38, Your Honor, of the
24 transcript that I handed up, and you ruled pursuant to
25 Carmack.

1 THE COURT: Yes. If they have already given a
2 written statement, they can remain as witnesses, number
3 one. Number two, the evidence custodian, you can keep
4 the evidence custodian if you have physical items of
5 evidence. The chief investigator and, of course, any
6 parties that are authorized under the victim/witness,
7 but I leave that up to y'all. Of course, I will allow
8 his family members to remain.

9 MR. COLLINS: Thank you, Your Honor. Number
10 three, I believe they have provided all of the rap
11 sheets for the witnesses as far as we know. So we can
12 go past that one.

13 Number four, Your Honor, based on the new
14 Liverman case, which stated that you are entitled to a
15 Neil v. Biggers hearing whether someone knew the person
16 or not, if there is any kind of identification, there is
17 a number of people that identified Mr. Johnson out of a
18 lineup. If the State is seeking to introduce any of
19 those identifications, we would ask for a Neil v.
20 Biggers for any of those potential witnesses.

21 THE COURT: You will take that up at the
22 appropriate time, Solicitor?

23 MS. CAMPBELL: Yes, sir.

24 THE COURT: Number five?

25 MR. COLLINS: Number five, Your Honor, we are

1 not asking that there be no mention of gangs in this
2 case. We are asking that there be no mention of gang
3 affiliation of Mr. Johnson unless they can establish a
4 proper foundation for that without attacking his
5 character.

6 If they have witnesses that will get up there
7 and testify as to gangs, that is introducing his
8 character evidence. We would object to that. We just
9 want to make a motion in limine that he not be
10 associated with a gang unless they can lay a proper
11 foundation.

12 THE COURT: What is the proper foundation? If
13 they have the capo of the gang testify and say,
14 Mr. Johnson was at all the meetings or he wore colors.
15 He had a tattoo. I don't know. What is the proper
16 foundation?

17 MR. COLLINS: We would object if they would
18 testify about previous meetings that are not relevant to
19 this case, but if they have their gang expert, which
20 they normally put up, who does not have a C.V., but if
21 he gets up there and testifies they have him on the list
22 without some kind of reason for it, we would object to
23 them claiming he is in a gang at this point.

24 THE COURT: Solicitor?

25 MS. CAMPBELL: Your Honor, we are not trying

1 to attack anyone's character in the case. This whole
2 case is premised on the fact that there were two rival
3 gangs that were out to shoot each other.

4 Whether or not you say he is affiliated with
5 it or a member of it -- I don't know if we are mincing
6 words there -- but it was Mr. Daqwan Johnson's beef that
7 happened to be with the Bloods, who the ultimate victim
8 ended up being, and that caused this whole thing to
9 happen.

10 I don't know how we mention that this -- and
11 the whole motive in this case is gang involved -- how we
12 mention gangs without at least affiliating him with a
13 gang. I do not understand what the proper foundation
14 would be.

15 THE COURT: Mr. Collins?

16 MR. COLLINS: Your Honor, I guess we can deal
17 with it as it comes up. We just wanted to bring up the
18 motion in limine to try to avoid the situation.

19 THE COURT: Thank you, Mr. Collins. Number
20 six.

21 MR. COLLINS: I believe we addressed this in
22 May in both Investigator Thomas and Investigator
23 Reese -- who I don't see Investigator Reese here
24 today -- again, there is a number of recorded statements
25 from codefendants and numerous, numerous references to

1 notes being taken by the investigators.

2 In fact, you can hear the pen writing on
3 paper. We don't have any handwritten notes from either
4 one of those investigators. Last time Investigator
5 Thomas said his notes were incorporated into his report.
6 His report is a 12-page document.

7 Specifically when he interviewed Terrance
8 Patterson, he references the first statement he wrote
9 out where Terrance Patterson denied involvement in the
10 shooting. Then he gave a separate statement after that
11 admitting that he was in the shooting. We have gotten
12 no records from that initial statement that Investigator
13 Thomas specifically references.

14 I believe he put on the record that all his
15 notes were incorporated into a report before. We would
16 just ask and like to reiterate that if there are any
17 notes out there, that they be turned over.

18 THE COURT: Any notes, Solicitor?

19 MS. CAMPBELL: None that I'm aware of, Your
20 Honor.

21 THE COURT: Number seven.

22 MR. COLLINS: Number seven, Your Honor, just
23 to put it on the record, this case has been noticed for
24 trial many, many, many, many times. Since dating back
25 to the beginning of 2011, it has been scheduled for

1 trial anywhere from six to eight different times.

2 Discovery has continued to trickle in
3 throughout the over two years of this case. As I
4 mentioned before, we got a written statement yesterday
5 that we did not have up until yesterday. The fact that
6 the solicitors have complete control of the docket and
7 decide when to schedule the case, we were not consulted
8 with this trial date of July 30th.

9 We have done everything in our power to get
10 ready. We were noticed July 18th, technically within
11 the ten-day -- I mean, outside the ten days notice
12 required. However, we just want to put on the record we
13 object to the solicitor-controlled docket, considering
14 the complexity of this case, the number of potential
15 witnesses.

16 We were not consulted with on a specific
17 trial date. We were just told 12 days before to be
18 ready to go to trial. I just want to put on the record
19 that we object to the solicitor-controlled docket for
20 those reasons.

21 THE COURT: Of course, I follow the Code of
22 Laws for South Carolina, 1-7-330, that the solicitor
23 does control the call of the case at this time. Thank
24 you.

25 MR. COLLINS: Thank you, Your Honor. Again,

1 you denied it last time. Again, I want to make sure
2 it's on the record. We would ask for attorney led and
3 spoken voir dire -- as most of the other states do --
4 allowed in this case. It's allowed in death penalty
5 cases in South Carolina.

6 We are just asking for a chance to have it in
7 this case, considering, again, the complexity of the
8 case, the number of witnesses, the gang affiliations
9 that could come out in the trial, and the amount this
10 case was in the news two years ago.

11 We would ask to have attorney led, spoken voir
12 dire to make sure we got a fair and balanced jury. I
13 believe last time you ruled that if we had sensitive
14 questions, the jurors could approach the bench if there
15 were issues they weren't comfortable answering in front
16 of the entire jury panel.

17 THE COURT: I would renew -- I don't recall
18 specifically my ruling in that manner.

19 Solicitor, I didn't give you an opportunity to
20 respond to number eight.

21 MS. CAMPBELL: Your Honor, I believe it's the
22 standard voir dire. Of course, they have submitted
23 questions they want to ask that would be appropriate.

24 THE COURT: I don't recall my ruling, but I
25 would deny attorney led juror questioning. If I have

1 one come up and discuss a particular issue, sometime I
2 have to walk off somewhere and confer with the
3 attorneys, if there is any follow-up such like that. I
4 will handle that on a juror-by-juror basis as far as
5 additional questions. Number nine.

6 MR. COLLINS: Number nine, Your Honor, there
7 are four codefendants in this case. A number of
8 defendants have pending charges. Obviously the
9 codefendants' charges are the same issues as this case.
10 We understand they are all represented.

11 We also understand, since nothing has been
12 provided to us, that none of these codefendants have
13 been offered a deal with the exception of Brian
14 Campbell, who it seems that they are not going to call
15 as a witness.

16 But we would like an opportunity, outside the
17 presence of the jury, for each one of those witnesses to
18 be advised that they have the right to remain silent and
19 they do not have to testify and incriminate themselves
20 in this trial.

21 THE COURT: Are their attorneys going to be
22 here?

23 MS. CAMPBELL: Excuse me?

24 THE COURT: Are the attorneys for the
25 codefendants going to be present during their testimony?

1 MS. CAMPBELL: Yes, sir, that's the plan.

2 THE COURT: I may ask the attorneys if they
3 have advised them.

4 MS. CAMPBELL: That's fine.

5 THE COURT: Any others motions, Mr. Collins?

6 MR. COLLINS: That's all our pretrial motions.
7 I submitted our requested voir dire. Just a few
8 questions outside of your normal voir dire is what we
9 are requesting in this case.

10 THE COURT: Any objections to any of the
11 questions submitted by Mr. Collins, Solicitor?

12 MS. CAMPBELL: Your Honor, looking at them,
13 number one, if you could separate that in two parts.
14 Sometimes it has got to be followed up with: Have you
15 ever been a victim to a crime of violence or a witness
16 to a crime of violence or accused of a crime of
17 violence.

18 THE COURT: Yes, ma'am.

19 MS. CAMPBELL: That would be my only
20 modification on number one, Your Honor. Did you ask me
21 that?

22 THE COURT: All right. Any others?

23 MS. CAMPBELL: On number two, we would ask for
24 the reciprocal, any Public Defender's Office and defense
25 attorney's office.

1. Mr. Leventis is unavailable. He is at a funeral; is
2 that correct?

3 CLERK: Yes, sir.

4 THE COURT: Who is the next one on the list?
5 (The clerk approaches the bench).

6 THE COURT: They are checking on an attorney
7 for Ms. Johnson.

8 MR. NEWTON: Your Honor, I do believe there is
9 an attorney present in the courtroom that could possibly
10 assist us, Ms. Mixon with Todd Rutherford's law firm. I
11 was just speaking with her.

12 THE COURT: In this Ms. Mixon?

13 MR. NEWTON: Yes. I happened to eye her in
14 the courtroom. I don't know if she is available or not.
15 She said she might be able to.

16 THE COURT: Are you available for an
17 appointment, Ms. Mixon?

18 MS. MIXON: Yes, Your Honor, I am.

19 THE COURT: You can talk with the defendant
20 today?

21 MS. MIXON: Yes, Your Honor.

22 THE COURT: I understand the defendant was
23 transported today; is that correct?

24 MS. CAMPBELL: That's my understanding.

25 THE COURT: Somewhere within these facilities

1 even as we speak. I am appointing you to represent
2 Loree Johnson. All right?

3 MS. MIXON: Thank you, Your Honor.

4 THE COURT: Thank you very much for your
5 service. Anything further, Solicitor?

6 MS. CAMPBELL: No, Your Honor.

7 THE COURT: We will take about a ten-minute
8 recess.

9 (Whereupon there was a recess.)

10 THE COURT: Are we ready for the jury,
11 Solicitor?

12 MS. CAMPBELL: Yes, sir.

13 THE COURT: Mr. Collins?

14 MR. COLLINS: Yes, Your Honor. We quickly
15 prepared a short witness list.

16 THE COURT: Thank you.

17 MR. COLLINS: May I approach?

18 THE COURT: Yes, sir, please.

19 (Hands to Court.)

20 MR. COLLINS: Your Honor, I guess it's my
21 understanding that they are not going seek to introduce
22 any kind of identification or out-of-court
23 identification of Mr. Johnson.

24 One of our pretrial motions just asks for a
25 hearing on that basis. The new case of Liveman where

1 even if the person knows the defendant, if there is a
2 photo identification, you are still entitled to a
3 hearing on whether or not -- the suggestiveness of that
4 identification.

5 THE COURT: What month was that? That was
6 Judge Johnson's case?

7 MR. COLLINS: Yes, Your Honor. I believe it
8 was within the last couple of months when that case came
9 out.

10 MS. CAMPBELL: It was State versus Chris
11 Liverman, Your Honor. It was tried in Richland County.

12 THE COURT: Chris Liverman; is that right?

13 MS. CAMPBELL: Yes, Your Honor. We tried it
14 here several years ago. It involved gangs.

15 THE COURT: Solicitor, what about the issue on
16 Neil v. Biggers?

17 MS. CAMPBELL: Your Honor, it's my
18 understanding that the only photo lineup that was shown
19 was shown to Rontrell Henderson. He has known the
20 defendant. He would be bound to that. He is also in
21 custody. When we spoke earlier --

22 THE COURT: If court would come to order,
23 please. Go right ahead please, Solicitor.

24 MS. CAMPBELL: When we had spoken earlier, at
25 the appropriate time, we will have a hearing. Of

1 course, we would be glad to conduct a hearing with him
2 prior to him taking the stand. The logistics in the
3 case, because everybody is in custody, it might be
4 easier just to take that up just prior to his testimony.

5 THE COURT: Who is the witness?

6 MS. CAMPBELL: His name is Rontrell Henderson.

7 THE COURT: Mr. Henderson is a codefendant?

8 MS. CAMPBELL: No, Your Honor. He is a
9 witness.

10 THE COURT: He is a witness. Is he in
11 custody?

12 MS. CAMPBELL: Yes, Your Honor. It's my
13 understanding he is in custody.

14 THE COURT: He was shown a photographic
15 lineup?

16 MS. CAMPBELL: Yes, Your Honor. I can show
17 you the lineup.

18 THE COURT: Are there any others?

19 MS. CAMPBELL: As far as lineups on the
20 defendant, Your Honor? Just a minute. Beg the Court's
21 indulgence.

22 (Pause.)

23 MS. CAMPBELL: No, Your Honor. I am not aware
24 that we will be calling any identifications through a
25 photo lineup. However, if that comes up -- if I am

1 mistaken -- I will bring that to the Court's attention
2 prior to testifying.

3 THE COURT: I had not let that slip off my
4 plate, Mr. Collins. That's what I thought we were going
5 to do is if a particular witness came up that would fit
6 into that category, we would have a hearing at that
7 time.

8 MR. COLLINS: It's our understanding that all
9 the codefendants were shown lineups or shown pictures.
10 I am a little concerned if they are saying that Rontrell
11 Henderson is the only person that picked him out of a
12 lineup. The discovery says otherwise.

13 THE COURT: Solicitor, what about the
14 codefendants?

15 MS. CAMPBELL: I am double-checking. I'm not
16 aware of what he is talking about. I will double-check
17 to make sure and bring it to the Court's attention. If
18 he tells me specifically what he is referring -- now,
19 some of the codefendants' photographs were shown to
20 people, but I don't think he would have standing to
21 challenge those.

22 MR. COLLINS: We will deal with it as it comes
23 up. It's our position it doesn't have to be a six-pack
24 lineup that was shown. If it was a picture with the
25 Defendant's face or his mugshot, we would like to have a

1 hearing outside the presence of the jury before that
2 witness is allowed to possibly I.D. our defendant.
3 That's all we are asking, to deal with this when it
4 comes up.

5 THE COURT: Solicitor, I think there is a case
6 out there that says the defendant has standing to
7 challenge photographic lineup on a codefendant.

8 MS. CAMPBELL: I will look at that, Your
9 Honor.

10 THE COURT: I think it was a Charleston County
11 bank robbery case. I can't pull the name out right now,
12 but I think a defendant has standing to challenge a
13 codefendant's photo identification.

14 If any of them have been -- any of the
15 witnesses, eyewitnesses, have been subjected to any
16 police procedure, whether it's a show-up, one photograph
17 or a photographic lineup, and there is an in-court
18 identification, there should be an in camera hearing
19 prior to that testimony.

20 MS. CAMPBELL: Yes, sir.

21 THE COURT: Does that meet your requirements,
22 Mr. Collins?

23 MR. COLLINS: Yes, Your Honor.

24 THE COURT: Anything further before we bring
25 our jury up?

1 MR. NEWTON: Your Honor, I would ask for just
2 for personal reasons the scheduling for today, at
3 6:00 o'clock I have a scheduled baseball game I was
4 going to play in; however, if we are going to go past
5 six, I need to let them know that I will not be
6 attending..

7 THE COURT: Have you been conspiring with my
8 court reporter?

9 MR. NEWTON: To be honest I don't mind missing
10 the game.

11 THE COURT: I usually quit about 5:15 or 5:30,
12 depending on where we are at with a particular witness.
13 I will try to accommodate you. It sounds like all our
14 witnesses are pretty well available.

15 MR. COLLINS: Just additionally, I am looking
16 through the first page of the transcript of an interview
17 of Terrance Patterson. The first question is: "Who is
18 this right here?"

19 "That's G-man," which is the nickname for our
20 client. So obviously he was shown a picture in that. I
21 believe in almost every other interview with
22 codefendants --

23 THE COURT: Who is that?

24 MR. COLLINS: Specifically with Terrance
25 Patterson, one of the State's witnesses. The first

1 recorded question was: "Who is this?" Obviously we
2 don't have a video, but I can't think of that question
3 being asked without a picture being shown.

4 THE COURT: All right. Are you ready for the
5 jury? Bring us our jury, please.

6 (The jury panel enters the courtroom.)

7 THE COURT: Solicitor, you may call your case
8 for trial.

9 MS. CAMPBELL: May it please the Court, Your
10 Honor. The State calls Daqwan Johnson. He is charged
11 with one count of murder and one count of attempted
12 murder.

13 THE COURT: Thank you. Thank you very much,
14 Solicitor.

15 Ladies and gentlemen of the jury, if you would
16 please give me your complete and undivided attention. I
17 am sure you have been welcomed previously this morning
18 to the Richland County courthouse. I welcome you again.
19 Again, I remind you, my name is Knox McMahon. I'm a
20 circuit court judge assigned to a term of general
21 sessions court in Richland County this week. To my
22 right is my law clerk, Ms. Rogers.

23 The State has called for trial the case of the
24 State versus Daqwan Marquell Johnson. Did I pronounce
25 that correctly, Mr. Johnson?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: We are going to begin and go
3 through a process whereby we select a trial jury for the
4 trial of this case. As part of that process, I will
5 publish or read to you the indictments in the case. The
6 indictments in the case are not evidence.

7 The indictments are merely the formal
8 documents by which an individual is placed on notice of
9 charges that have been brought against him or her. It
10 puts the individual on notice of the charges and is in
11 no way any evidence of the mere allegations contained
12 therein.

13 The evidence will come from the witnesses
14 testifying under oath from the witness stand over to my
15 right and any physical items of evidence or documentary
16 evidence or the like. I read or publish these
17 indictments to you because I will ask you a series of
18 questions about the indictment and about individuals
19 involved in the case and about your knowledge of the
20 case, if any. Again, our purpose is to select a fair
21 and impartial jury for the trial of this case for
22 Mr. Johnson and for the State.

23 During the qualifications Monday morning, I
24 had the clerk place you and your colleagues under oath.
25 Please consider yourselves still under oath for purposes

1 of this proceeding. Make sure your answers to me to any
2 questions that I propose to you are full, complete, and
3 accurate.

4 The first indictment, 2011-GS-40-0863 -- 2011,
5 of course, is the date. The GS indicates general
6 sessions. Forty indicates Richland County on the
7 alphabetical list of the 46 counties in South Carolina.
8 Forty indicates Richland County. Then the particular
9 Number is 0863. Again, it is the State versus Daqwan
10 Marquell Johnson.

11 The indictment reads that Daqwan Marquell
12 Johnson did in Richland County, on or about June 19,
13 2010, willfully, feloniously, and intentionally kill the
14 victim, Gary Reese, with malice aforethought, either
15 express or implied by means of gunshot wounds, and the
16 victim did die as a proximate result thereof in
17 violation of 16-3-10 of the South Carolina Code of Laws,
18 1976 as amended. That is an indictment for murder.

19 The next indictment, 2011-GS-40-0885 reads
20 that Daqwan Marquell Johnson did in Richland County, on
21 or about that same date June 19, 2010, did with the
22 intent to kill, attempt to kill Lamettress Stevens with
23 malice aforethought either express or implied, all in
24 violation of Section 16-3-29 of the Code of Laws of
25 South Carolina. That is an indictment for attempted

1 murder.

2 The State is represented by Assistant
3 Solicitors in this case: Campbell, Walker and
4 Shellenberg. If you would please, Solicitors, stand,
5 face the jury panel, and introduce yourselves and any
6 member of the Solicitor's Office staff that are going to
7 assist you in this trial.

8 MS. CAMPBELL: I'm Luck Campbell. I am
9 assistant solicitor in the Fifth Judicial Circuit.
10 Meghan Walker and J.J. Shellenberg, also assistant
11 solicitors or attorneys in our office. In addition you
12 will be hearing from law clerks, specifically Dana Outen
13 who will also assist us in this case.

14 THE COURT: Thank you. Thank you very much,
15 Solicitor.

16 The defense is represented by Mr. Collins and
17 Mr. Newton. If you would please stand, introduce
18 yourselves, and your client to the jury panel.

19 MR. COLLINS: I'm Greg Collins. This is
20 Daqwan Johnson and Clarke Newton. This is also a law
21 clerk with us this summer. I might mess up her last
22 name, Megan Eigenbrot, I believe. She will be with us
23 throughout the trial.

24 THE COURT: Thank you. Thank you very much,
25 Mr. Collins, Mr. Johnson, and Mr. Newton.

1 not normally what is told by me.

2 CLERK: I don't know if that's what they were
3 told or not. Normally they go wait down here in family
4 court.

5 THE COURT: I will take care of it.

6 MR. NEWTON: If you would like the juror
7 numbers, I can let you know. Ms. Campbell does have a
8 point. It could be a general inclusive: Did anybody
9 hear anybody talking about the case? I think that
10 settles it.

11 THE COURT: I will do it generally. Do you
12 want to take a few minutes, Mr. Collins?

13 MR. COLLINS: Yes, Your Honor, if we can.

14 THE COURT: I will let y'all look at that.
15 Will about 15 minutes be enough?

16 MS. CAMPBELL: It should be, Your Honor.

17 THE COURT: If you finish any earlier, please
18 let me know. Thank you very much.

19 (Whereupon there is a recess.).

20 THE COURT: Mr. Collins, did you get the
21 opportunity to review the items of evidence?

22 MR. COLLINS: We have been able to review what
23 they have in the courtroom: the shell casings, the
24 three guns recovered, and some unspent bullets. We
25 still haven't -- we are going to try to work something

1 out where we can look at whatever is still in the County
2 lockup or is here in the Solicitor's Office.

3 THE COURT: I guess my question would then be:
4 That which is available in the courtroom, you have had
5 an opportunity to review?

6 MR. COLLINS: Yes, Your Honor.

7 MS. CAMPBELL: Your Honor, there is more
8 evidence available in our office. During a break or
9 whenever we can make it available. I wanted them to be
10 aware of what may come in today.

11 Your Honor, another housekeeping matter. I am
12 trying to expedite things. As far as prior record on
13 some of the witnesses that may come up this afternoon, I
14 have reviewed that with Mr. Collins over the break as
15 well.

16 I think we have agreed generally as to what
17 should be impeachable. I can put this on the record
18 quickly. Mr. Jerome Singleton, he is not showing any
19 convictions for which he could be impeached. On
20 Mr. Detrick Walker, he is showing a 2006 burglary second
21 juvenile conviction which will come in.

22 On Terrance Patterson, Your Honor, he is not
23 showing anything for which he should be able to be
24 impeached. For Loree Johnson, Your Honor, I'm not
25 showing any convictions for which she could be able to

1 THE COURT: Yes, sir.

2 OPENING STATEMENT

3 MR. SHELLENBERG: On June 19, 2010, five
4 men -- Daqwan Johnson, Brian Campbell, Marquez Prophet,
5 Detrick Walker, and Terrance Patterson -- armed
6 themselves with an A.K.47, an S.K.S. assault rifle, a
7 .223 assault rifle, a .40 and a 9-millimeter handgun.

8 They went to the Gable Oaks apartment complex
9 where they went through a cut to get in surrounding
10 Building 23 and opened fire, firing over 40 times,
11 hitting Lamettress Stevenson in the shoulder and Gary
12 Reese in the back, killing him. Neither one was the
13 intended target.

14 That's why we are here today. Because Daqwan
15 Johnson is one of the five men charged with attempted
16 murder and murder. Three of the others, you are going
17 to hear from later today.

18 Attempted murder in the State of South
19 Carolina is defined as a person attempting to kill
20 another person with malice aforethought, whether that
21 malice is express or implied.

22 Murder is defined as the unlawful killing of
23 any human with malice aforethought, whether that malice
24 is express or implied. The State has the burden, the
25 highest burden. We must prove our case beyond a

1 reasonable doubt. Ladies and gentlemen, we will in this
2 case.

3 Now, additionally the State of South Carolina
4 has a law that is known as the hand of one is the hand
5 of all. That simply says when these five men decided to
6 participate in this murder, as soon as they went and
7 ambushed Gable Oaks, they became equally guilty of
8 attempted murder and murder.

9 Now, there were some events that led up to
10 this murder. You see, the victim, Gary Reese, and some
11 of the other witnesses you are going to hear from are
12 gang members. They are known as the Bloods. Some of
13 the other people you are going to hear from are members
14 of the Folk Nation. Those are rival gangs. Ladies and
15 gentlemen, this is gang violence.

16 You are going to see how it all started. You
17 are going to see a video from the Gable Oaks apartment
18 complex that shows a resident, Whitney Wilson, just
19 taking out his trash when the defendant, Daqwan Johnson,
20 and Brian Campbell pull up in Daqwan's silver Buick and
21 open fire. Whitney flees and gets away safely.

22 Now, later in the day some of those gangs
23 members from Gable Oaks apartment complex, they go
24 looking for that Buick. They want retribution and they
25 find it on [REDACTED] where Brian Campbell is driving

1 this time. They fire at the Buick and they hit it, and
2 Brian gets away.

3 But Brian calls Daqwan Johnson to tell him
4 what happened. You are going to get to see phone
5 records of all this before and after the shooting. So
6 he tells him what happens. Daqwan gets him over to his
7 grandmother's house. Then they get three more people:
8 Marquez Prophet, Terrance Patterson, and Detrick Walker.

9 Those three men are going to get up here, and
10 they are going to confess. They are going to tell you
11 exactly what happened that day. They are going to tell
12 you how they went over there.

13 They armed themselves. Terrance had an
14 A.K.47. Brian Campbell had an S.K.S. Daqwan Johnson had
15 a .223 -- all assault rifles -- and Marquez and Detrick
16 had a 9-millimeter and a .40.

17 They are going to tell you how they got in the
18 car, how they drove over to Gable Oaks apartment
19 complex, went through the cut, they spread out
20 surrounding Building 23, and they fired killing Gary
21 Reese.

22 Now, additionally you are going to get to see
23 some video. You are going to see footage that shows
24 five men from Gable Oaks coming through the cut, and
25 they are going to tell you who it is, who each one is

1 holding the gun.

2 You are going to see them go in right before
3 the shooting. Then you are going to see another video
4 that shows Gary Reese as the bullets are flying trying
5 to flee for his life.

6 Finally, you are going to get to see a video
7 that shows five men flee the scene shortly after the
8 shooting. They will tell you exactly who and what order
9 they left in. You are going to get to see all that.

10 Now, you are also going to get to hear from
11 some of the witnesses that were out there with Gary
12 Reese. You are going to get to hear from the other
13 victim, Lamettress Stevenson, and you are going to get
14 to hear from Loree Johnson.

15 Now, in addition, you are going to get to see
16 some of these guns. You are going to see the .223 that
17 the investigators found underneath Daqwan Johnson's bed
18 with some bullets that matched. They are identical to
19 bullets found at the crime scene. You are also going to
20 get to see the A.K.47, and you are going to get to see
21 the S.K.S. that Terrance Patterson, the codefendant, hid
22 under his girlfriend's bed.

23 Five men, 40 shots, one man dead. When they
24 got the phone call that Gary Reese was dead, they were
25 on their way to Studio 54, a club on [REDACTED], to

1 celebrate.

2 Ladies and gentlemen, my name is J.J.
3 Shellenberg. Along with Assistant Solicitor Meghan
4 Walker, Senior Assistant Solicitor Luck Campbell, we
5 represent the State of South Carolina. The evidence
6 this week is going to prove the events I told you about
7 here today.

8 This is a serious matter. Crimes don't get
9 anymore serious than murder. Murder to Daqwan Johnson,
10 they are serious to him. They are serious to the State.
11 They are very serious to the family of Gary Reese.
12 That's why at the end of this trial we are going to come
13 back and we are going to ask that you find the defendant
14 guilty of attempted murder and murder. Thank you.

15 THE COURT: Thank you. Thank you very much,
16 Mr. Shellenberg. Mr. Newton.

17 **OPENING STATEMENT**

18 MR. NEWTON: Good afternoon, ladies and
19 gentlemen. My name is Clarke Newton. Along with Greg
20 Collins, we represent Daqwan Johnson in these charges.
21 Daqwan Johnson, I will say this to start, is an innocent
22 man. He is not guilty of this crime. Okay?

23 What the State wants to do is they want to
24 talk about gang warfare, rival gangs, fighting each
25 others, killing each other. That's what happened here.

1 Okay? Five people went in to Gable Oaks Apartments and
2 shot it up because they were fighting with another gang.
3 But Daqwan Johnson was not there. Okay?

4 You are going to hear a lot about gang life.
5 You are going to find out a lot about it, the various
6 dealings with it. It's something we are not very
7 familiar with -- I know I'm not very familiar with. I'm
8 assuming y'all aren't, but we are going to find out
9 about that.

10 One of the biggest things we are going to find
11 out is the hierarchy of the situation: People on top
12 and people below, and what you have to do to protect the
13 people at the top. That's very important.

14 I want you guys to pay attention and listen
15 and understand why Daqwan Johnson's name would get into
16 this mess and what those people they say are coming to
17 testify, why they would do it. I want you guys to pay
18 very, very close attention.

19 As Mr. Shellenberg told you, this is serious.
20 Someone is dead. A horrific shooting occurred and
21 somebody is dead. It's awful and it's terrible, but
22 Daqwan Johnson didn't do this.

23 I want y'all to take these days we are going
24 to be here -- and it's going to take a while -- I want
25 you to take these days and pay very close attention to

1 this. He deserves that. They have to prove this case
2 beyond a reasonable doubt.

3 Now, on June 19, 2010, Daqwan Johnson woke up,
4 ran some errands, and planned a birthday party.
5 Mr. Shellenberg said they went to celebrate. Well,
6 there was a birthday party planned for Daqwan Johnson's
7 girlfriend at Studio 54, which at the time was called
8 Club Gemini. It was an advertised party. There were a
9 ton of people there.

10 Daqwan Johnson's birthday is right around the
11 corner from June 19th. He was celebrating that as well.
12 That is where he was on this night. He prepared for
13 this party and they went to a party, and he was there
14 and he was seen by people at the party throughout the
15 night.

16 Their story is -- and they want to tie this
17 in -- is that somehow during the course of him planning
18 this party, he took the time to drive with four other
19 people and go and shoot up an apartment complex.

20 That is their core story. That is the basic
21 story. There will be a lot of other things, but that's
22 the basic story is that he was planning a very fun
23 night, and he decided to take a few minutes and go do
24 this horrific thing. Just think about that.

25 There are other stories that came out of Gable

1 Oaks. When this shooting occurred, there was tons of
2 9-1-1 calls. There was a ton of people interviewed.
3 There is a ton of people that weren't interviewed. This
4 is a huge crowded apartment complex. You are going to
5 hear that from people. There was a ton of people, 40 to
6 50 shots. It was horrific. It was awful.

7 I want, again, for you to take the time to pay
8 attention to what people said and what they didn't say.
9 And when they did tell Investigator Thomas and
10 Investigator Reese information, what did they do with
11 that information? They would get a lot of it.

12 The State is going to tell you that they went
13 down the right path and got it and they are done. Well,
14 wait a second. Pay attention. Be very critical of
15 every single thing that they do, and do that because he
16 deserves it. We deserve it as a country. We deserve
17 the State to be put to the task when they charge someone
18 with a crime, especially one as horrific as this.

19 So what the State has and what the State will
20 give you -- and all they can give you are gentlemen that
21 say they were a part of this and say that Daquan Johnson
22 was there. All right? I want you to think about a
23 couple of things when they get on the stand.

24 I want to backtrack just a second. That's all
25 they have. This is the most serious crime we have in

1 this State. Someone is dead and it was caused by
2 someone else maliciously.

3 There is D.N.A. There is forensics. There
4 are pieces of evidence that don't involve statements.
5 And guess what? None of it is tied to him at all. It's
6 not linked to him.

7 D.N.A. was found on the gun -- or a bullet,
8 not him and not any of the other people either, but it
9 was somebody. So pay attention. Did they test it?
10 Think of this.

11 Ask questions to yourself. Think about these
12 things that come up. Why didn't do they do these
13 things? Why didn't they follow these leads? That is
14 very important.

15 So you are going to have three statements.
16 You are going to have individuals, and I want you to
17 think of three things. One, I want you to think about
18 why they are testifying.

19 They are going to sit here. They are going to
20 tell you their version of the events. They are going to
21 sit right here, and they are going to explain this awful
22 shooting.

23 They are going to say, That guy was there.
24 Why would they come up and do this though? They are
25 doing this because they are going to get a deal. They

1 are going to save their behind. They are going to save
2 their necks, and they are also going to protect their
3 leader.

4 I want to think about that. That is the
5 credibility of the witnesses. These gentlemen are
6 charged with murder, and they would do anything to not
7 spend the rest of their life in prison. So think about
8 that. It's very, very, very important.

9 Second thing, they know what gun and what
10 person killed Gary Reese. Terrance Patterson. His
11 bullet from his gun killed Gary Reese. They know that.
12 Definitively. Terrance Patterson is the one whose gun
13 killed Gary Reese. That is important just to think
14 about that. Think about that.

15 Then finally he kept saying there's three
16 individuals that are going to testify. There are four
17 other people involved. Daqwan Johnson makes five in
18 this.

19 Brian Campbell, we want them to bring Brian
20 Campbell. It doesn't sound like they are going to do
21 that. We want them to. We want them to give us all of
22 the evidence and explain everything, and they are not
23 going to.

24 I want you to think why is Brian Campbell not
25 here? If he comes, even better. Find out what he has

1 to say. We want -- his nickname is B.K. We want him.
2 Where is he? What would he tell you? What would he
3 have to say?

4 I apologize. I am a little worked up. It's
5 late. It's time to get going. I appreciate y'all's
6 service. This is a huge commitment, I understand. We
7 just thank you. We thank you. The State thanks you.
8 This is about protecting their leader, but think again,
9 it's also about a horrific crime that occurred, a
10 horrific, awful crime.

11 I want you to remember how important this is
12 to Daqwan Johnson because he is not guilty of this, and
13 I think as we go through all this and you ask the
14 questions, you will come back with not guilty. Thank
15 you.

16 THE COURT: Thank you. Thank you, Mr. Newton.
17 Solicitor, before you call your first witness,
18 are the firearms to be attempted to be introduced for
19 this afternoon?

20 MS. CAMPBELL: I'm sorry, Your Honor?

21 THE COURT: The firearms, will there be an
22 attempt to introduce firearms into evidence this
23 afternoon?

24 MS. CAMPBELL: There may be, Your Honor, yes.

25 THE COURT: Prior to the first break?

1 MS. CAMPBELL: No, sir.

2 THE COURT: I just wanted to make sure we go
3 over the guidelines for handling firearms as evidence
4 prior to any display or introduction. Thank you,
5 Solicitor. You may call your first witness.

6 MR. SHELLENBERG: The State calls Investigator
7 Andrew Richbourg.

8 ANDREW RICHBOURG, being
9 first duly sworn, testifies as follows:

10 CLERK: Have a seat in the witness stand
11 please. State your name for the record.

12 THE WITNESS: Andrew Richbourg.

13 COURT REPORTER: Spell your last name, please.

14 THE WITNESS: R-I-C-H-B-O-U-R-G.

15 **DIRECT EXAMINATION**

16 BY MR. SHELLENBERG:

17 Q Good afternoon.

18 A Good afternoon.

19 Q What is your occupation?

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

22 Q And how long have you been employed by the City of
23 Columbia?

24 A Approximately three years.

25 Q What are your present duties?

ANDREW RICHBOURG -- DIRECT -- MR. SHELLENBERG

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1 A Investigator with property crimes.

2 Q I will direct your attention back to the evening of
3 June 19, 2010. Were you working that evening?

4 A Yes, sir.

5 Q And what were your duties at that point?

6 A I was a street unit, regular patrol.

7 Q Did you respond to a call at Gable Oaks?

8 A Correct.

9 Q And what kind of call was it?

10 A It originally came out as shots fired call with
11 possibly one victim hit.

12 Q And were you first on the scene?

13 A I was either first or second. I believe I was
14 second.

15 Q And what did you observe when you got there?

16 A I observed a large group of people. We parked
17 behind Building 23, ran to the front. There was a
18 large group of people that had gathered directing
19 us, myself and other officers, into, I believe, it
20 was Apartment E., at which point we entered.

21 When we entered, we noticed a lot -- as we
22 entered, there is a living room. There was a lot
23 of blood on the wall. People were pointing us down
24 the hall, and we observed a victim in the back room
25 lying on the ground obviously in pain.

1 Q And did you secure the crime scene?

2 A Yes. At that point there was more officers coming.
3 There was a large group that had gathered. First,
4 we called -- of course, called for an ambulance,
5 went out and we tried to rope off the area with
6 caution tape as best as possible.

7 Q Is Gable Oaks located in the City of Columbia?

8 A Yes, sir.

9 Q Did you have a chance to interview anybody at the
10 crime scene?

11 A Later I did speak with the lady next door. I think
12 that was 23-F.

13 Q And how did you document what you did that evening?
14 Do you keep handwritten notes?

15 A Yes, sir.

16 Q And what did you do with your handwritten notes?

17 A Our supervisor at the time advised us because of
18 the -- it was a high charge. The nature of the
19 crime -- that we turn them into the property room
20 for future investigation.

21 MR. SHELLENBERG: Beg the Court's indulgence.

22 THE COURT: Yes, sir.

23 (Pause.)

24 BY MR. SHELLENBERG:

25 Q And that took place here in Richland County?

1 A Right.

2 Q No further questions. Thank you.

3 THE COURT: Thank you, Solicitor. Mr. Newton.

4 CROSS EXAMINATION

5 BY MR. NEWTON:

6 Q Investigator Richbourg?

7 A Yes, sir.

8 Q You were the first on the scene; is that correct?

9 A I was either first or second.

10 Q And you said there was a large group of people;
11 correct?

12 A Correct, out in the common area.

13 Q Any idea how many?

14 A No, sir, it was -- it's been so long. I don't
15 know. I couldn't tell you the number. I would say
16 it would be at least 50.

17 Q Fifty people. And you were able to secure the
18 crime scene and attend to the victim?

19 A Actually the first priority is attend to the
20 victim, at which point we checked out the victim,
21 called for an ambulance. Once we have more
22 officers come, we started roping off the whole
23 apartment.

24 Q How long do you think that took to secure the
25 scene?

1 A A matter of minutes because other officers were on
2 scene in a matter of minutes. I'm not the actual
3 one that taped the scene off. There was other
4 officers there.

5 Q Okay. And you said that you took notes and turned
6 them into a supervisor; is that correct?

7 A No, we turned them into our evidence locker.

8 Q And who was the supervisor that you were referring
9 to?

10 A Sergeant Cora.

11 Q Sergeant Cora. Were you -- at any point did you
12 speak to Sergeant Babin on that night?

13 A I may have. He was, I believe, he was the
14 supervisor of investigations at that time. He was
15 on scene. I may have talked to him; I may not
16 have.

17 Q Were you one of the officers that secured the gun,
18 the shell casings? Were you a part of that?

19 A No, sir.

20 Q You weren't?

21 A I was in the actual apartment where the victim was.

22 Q Okay.

23 MR. NEWTON: No further questions.

24 THE COURT: Redirect?

25 MR. SHELLENBERG: No, Your Honor.

1 THE COURT: Thank you. Thank you very much.

2 You may step down.

3 THE WITNESS: Thank you, Your Honor.

4 (Witness leaves the witness stand.)

5 THE COURT: You may call your next witness.

6 MS. WALKER: The State calls Kenneth St. John.

7 THE COURT: Come around to the bailiff, sir,
8 and be sworn in.

9 CLERK: Place your left hand on the Bible and
10 raise your right.

11 THE WITNESS: I'm a Christian. My word is my
12 word.

13 THE COURT: Will you affirm that you will tell
14 the truth?

15 THE WITNESS: Yes, sir.

16 THE COURT: Do you understand there are
17 criminal penalties for failure to tell the truth?

18 THE WITNESS: Yes, sir.

19 THE COURT: What you testify to today will be
20 the truth?

21 THE WITNESS: My word is my word.

22 THE COURT: Thank you. Thank you very much.
23 You may take the stand.

24 KENNETH ST. JOHN, being
25 first duly affirmed to tell the truth, testifies as

1 follows:

2 THE COURT: Tell me your full name.

3 THE WITNESS: My name is Kenneth St. John.

4 THE COURT: Spell your last name.

5 THE WITNESS: S-T-period, J-O-H-N.

6 THE COURT: Thank you very much.

7 MS. WALKER: May it please the Court, Your
8 Honor.

9 THE COURT: Yes, ma'am.

10 DIRECT EXAMINATION

11 BY MS. WALKER:

12 Q Mr. St. John, where do you live? Do you live here
13 in Columbia, South Carolina?

14 A Yes, I reside in Columbia, South Carolina.

15 Q Do you live alone?

16 A No, I have five foster kids.

17 Q Back in 2010 where did you live?

18 A I lived in [REDACTED].

19 Q What is the name of that complex?

20 A Gable Oaks.

21 Q Gable Oaks. And were your foster kids with you
22 then?

23 A Yes, they were.

24 Q I want to take you back to June 19th. Were you at
25 home that day?

KENNETH ST. JOHN -- DIRECT -- MS. WALKER

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1 A Yes, I was.

2 Q That night were you at home then as well, on the
3 night of June 19th?

4 A Yes, I was.

5 Q What were you doing?

6 A I'm a parent. I stay home with my kids.

7 Q At any point in time that night, did you hear
8 gunshots?

9 A You said June 19th or June 20th?

10 Q June 19th going into June 20th, that night, did you
11 hear gunshots at any point in time?

12 A Yes, I did, ma'am.

13 Q Can you please -- where were you when you first
14 heard the gunshots?

15 A Sitting in front of my building.

16 Q You were outside?

17 A Yes, ma'am.

18 Q How many gunshots did you hear?

19 A About anywhere from 30 to 40.

20 Q When you heard those gunshots, what did you do?

21 A Hit the floor and ran into the house to check on my
22 kids and called 9-1-1.

23 Q You said you hit the floor?

24 A Yeah, the pavement.

25 Q How long did the firing last?

- 1 A I would say about a good three or four minutes.
- 2 Q Could you tell which direction the gunshots were
- 3 coming from?
- 4 A Yes, I could.
- 5 Q Where were they coming from?
- 6 A They was coming from off of [REDACTED], between
- 7 [REDACTED] -- I mean -- between [REDACTED]
- 8 [REDACTED].
- 9 Q Could you see anyone with guns?
- 10 A I saw a couple of guys with guns, but they all had
- 11 on black.
- 12 Q After you got your kids inside and called 9-1-1,
- 13 what did you do?
- 14 A Calmed my kids down because my kids been through a
- 15 lot of trauma already, and I had to calm my kids
- 16 down.
- 17 Q I want to back up a little bit and take you back to
- 18 earlier that day.
- 19 A Yes, ma'am.
- 20 Q During the day of June 19th?
- 21 A Uh-huh. (Indicating affirmative response.)
- 22 Q Did you hear gunshots then?
- 23 A Yes, ma'am.
- 24 Q And could you see who was firing at that point in
- 25 time?

KENNETH ST. JOHN -- DIRECT -- MS. WALKER

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- 1 A No, I didn't see who was firing, but I seen a guy
2 when he leaned out of the passenger's window. He
3 sat up on the passenger window where it comes up
4 at, and he leaned over and was shooting at the
5 suspect.
- 6 Q He was shooting at?
- 7 A Whitney.
- 8 Q At Whitney?
- 9 A Yes.
- 10 Q You say he was leaning out of the car. Do you
11 remember what the car looked like?
- 12 A Like a tan-colored car, four door.
- 13 Q It was a four-door car?
- 14 A Uh-huh. (Indicating affirmative response.)
- 15 Q Do you remember the make or model?
- 16 A No, I'm not good with cars.
- 17 Q Do you remember what the gun looked like?
- 18 A No, I was too busy worried about the kids that was
19 outside. In that same area where Whitney was at,
20 there was kids there too.
- 21 Q Were kids outside during both of these shootings?
- 22 A Yes, ma'am.
- 23 Q The shooting that happened during the day, do you
24 know about what time that was? Can you recall?
- 25 A About 12:30. I was sitting outside by myself in

1 the park area.

2 Q Mr. St. John, where was Whitney, if you can recall,
3 when he was shot at?

4 A He was coming down from out of -- I believe that
5 was Building 23 -- to dump the garbage. As he was
6 coming down, the car was pulling in the parking
7 lot. As he was coming through the parking lot to
8 go to the garbage can to cut through the cars, the
9 car -- he looked at the people in the car. He kept
10 on walking.

11 The car made a U-turn where the garbage can
12 was at and waited. He dumped the garbage. When he
13 dumped the garbage and started walking back, that's
14 when the guy driver drove up, and the other one
15 leaned out of the passenger seat and started
16 shooting at him.

17 Q Thank you, sir. No further questions.

18 THE COURT: Mr. Collins.

19 MR. COLLINS: May it please the Court.

20 CROSS EXAMINATION

21 BY MR. COLLINS:

22 Q Good afternoon Mr. St. John. Have you moved away
23 from Gable Oaks?

24 A Yes, sir.

25 Q Are you happy where you are now?

KENNETH ST. JOHN -- CROSS -- MR. COLLINS

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1 A I moved again.

2 Q Do you remember giving a statement to an
3 investigator in this case way back a couple of
4 years ago?

5 A Yes, I remember.

6 Q It was a signed, written statement; right?

7 A Yes, it was.

8 Q Have you had a chance to review that before you got
9 to come in here today?

10 A Yes, I did.

11 Q In that statement you talked about the passenger
12 shooting out of the car at Whitney; right?

13 A Yes.

14 Q You talked about Whitney having a gun too; right?

15 A No, I didn't say Whitney had a gun.

16 Q You didn't saying anything about Whitney having a
17 gun at some point?

18 A No, not that afternoon when they shot at him.

19 After the car left, then. You didn't ask that
20 question.

21 Q Okay. But that was later when he had the gun?

22 A Yes, sir.

23 Q You also talked about the car in the afternoon
24 shooting that you saw when Whitney was coming back
25 from the dumpster. You said that car came back

1 about an hour later?

2 A The car came into the parking lot. Whitney was
3 coming down dumping the garbage. As Whitney was
4 coming to dump the garbage, he looked at the car.
5 He kept on walking. The car went past and made a
6 U-turn.

7 When the car made a U-turn and Whitney dumped
8 the garbage, as he was walking back to his
9 building, he said hi to the kids, and they started
10 shooting at him. When they started shooting at
11 him, I told the kids to hit the ground.

12 The car then spun and left, went up Carteret,
13 over by the office to the mailboxes, made a U-turn
14 and sat and waited by the mailbox. Whitney went up
15 the steps. I told him to stay up there, don't come
16 down. They staying there and waiting for you to
17 come down.

18 Meanwhile, I was getting the kids. When the
19 car left, it spun out and went down Randall towards
20 Ashley, and that's when Whitney came downstairs
21 with his gun.

22 Q And that's when he got some of his friends with
23 him; right?

24 A Yes.

25 Q And he left with his friends?

KENNETH ST. JOHN -- CROSS -- MR. COLLINS

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1 A Yes.

2 Q And then in your written statement, you say about
3 30 minutes after he left, that same car came back;
4 right?

5 A Yes, sir.

6 Q But when it came back, it had two females --

7 A Driving.

8 Q -- driving and one male in the back seat; right?

9 A Yes.

10 Q And then somebody approached that car?

11 A Yes.

12 Q And somebody was like, Do y'all know him? Was that
13 Whitney that went up to the car?

14 A The person in the car said something to them, and
15 Whitney turned to his friend and said, Y'all know
16 them? And the car spun backwards and the nigger in
17 the back said, "Doughnuts."

18 Q Okay. At any point did any investigator try to
19 show you a photo lineup to try to identify anybody?

20 A No.

21 Q You were never presented with that?

22 A No.

23 Q And the night shooting, you couldn't get a good
24 look at the faces of the people because they had
25 masks on; right?

1 A Right.

2 MR. COLLINS: No further questions, Your
3 Honor.

4 THE COURT: Redirect, Solicitor?

5 MS. WALKER: No, Your Honor.

6 THE COURT: Thank you. Thank you very much.
7 You may step down.

8 THE WITNESS: You're welcome.

9 (Witness leaves the witness stand.)

10 THE COURT: You may call your next witness.

11 MR. SHELLENBERG: The State calls Clarissa
12 Mack.

13 CLARISSA MACK, being
14 first duly sworn, testifies as follows:

15 CLERK: State your full name, please.

16 THE WITNESS: Clarissa Mack.

17 **DIRECT EXAMINATION**

18 BY MR. SHELLENBERG:

19 Q Ms. Mack, who do you work for?

20 A South Carolina Department of Motor Vehicles.

21 Q And what's your job title?

22 A Administrative specialist.

23 Q And what does that entail exactly?

24 A I'm the lead person over the research department,
25 the title records.

CLARISSA MACK -- DIRECT -- MR. SHELLENBERG

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1 MR. SHELLENBERG: Let me get this marked.

2 (Attorneys confer).

3 (State's Exhibit Number 1 is marked for
4 identification).

5 BY MR. SHELLENBERG:

6 Q I show you what has been marked for identification
7 at State's Exhibit 1. Do you recognize that?

8 A Yes, this is a complete title history.

9 Q And are those kept in the regular course of
10 business?

11 A Yes.

12 MR. SHELLENBERG: Your Honor, at this time I
13 move to admit State's 1 into evidence.

14 THE COURT: May I see it, please?

15 MR. SHELLENBERG: Yes, sir.

16 THE COURT: Any objection?

17 MR. NEWTON: She didn't testify what it is
18 yet.

19 BY MR. SHELLENBERG:

20 Q Can you tell the Court what that is?

21 A This is a complete title history of a 1998 Buick
22 LeSabre.

23 MR. NEWTON: No objection, Your Honor.

24 THE COURT: State's 1 is in evidence. Without
25 objection, Mr. Newton?

1 MR. NEWTON: Yes, Your Honor.

2 (State's Exhibit Number 1 is received into
3 evidence.)

4 BY MR. SHELLENBERG:

5 Q Look at that again. Can you tell me what make and
6 model of car that is?

7 A This is a 1998 Buick. The model is a LeSabre
8 Custom.

9 Q Can you tell me who that car is registered to?

10 A Larry Johnson.

11 Q Is there anybody else on that registration?

12 A No, sir.

13 MR. SHELLENBERG: Beg the Court's indulgence.

14 (Pause.)

15 BY MR. SHELLENBERG:

16 Q Can you look at it. There is nobody else on that
17 title?

18 A Larry Johnson. As the current owner?

19 Q Yes.

20 A Yes.

21 Q Who would have been the owner back in 2010?

22 A 2010, we have Larry Johnson. Before that it was
23 registered to State Farm because it was marked
24 salvage through the insurance company.

25 Q And who before that?

1 A Mia Johnson.

2 Q And you said it was involved in an accident?

3 A Yes.

4 Q Can you tell me what the date of that accident
5 would have been?

6 A It was titled to the insurance holder on 7/22/2010.

7 MR. SHELLENBERG: Thank you, Your Honor. No
8 further questions.

9 THE COURT: Thank you, Solicitor. Mr. Newton?

10 MR. NEWTON: Beg the Court's indulgence.

11 **CROSS EXAMINATION**

12 BY MR. NEWTON:

13 Q Ma'am, have you ever seen this car before?

14 A No, sir.

15 Q You have no idea what it looks like?

16 A No, sir.

17 Q You have no idea who drives it?

18 A Just the owner.

19 Q You have the owner's name, but you don't know who
20 drives the car; right?

21 A Correct?

22 MR. NEWTON: No further questions.

23 THE COURT: Redirect?

24 MR. SHELLENBERG: No, Your Honor.

25 THE COURT: Thank you. Thank you very much

1 for being with us today, Ms. Mack.

2 THE WITNESS: Thank you.

3 THE COURT: You may step down and you may be
4 excused.

5 (Witness leaves the witness stand.)

6 THE COURT: You may call your next witness,
7 Solicitor.

8 MR. SHELLENBERG: The State calls Jerome
9 Singleton.

10 JEROME SINGLETON, being
11 first duly sworn, testifies as follows:

12 CLERK: State your full name for the record.

13 THE WITNESS: My name is Jerome Singleton.

14 **DIRECT EXAMINATION**

15 BY MR. SHELLENBERG:

16 Q Good afternoon, Jerome. Who do you work for?

17 A I work for Bailey Management Corporation. They are
18 the owners of Gable Oaks Apartments.

19 Q Gable Oaks Apartments. What is your job title over
20 there?

21 A I'm the property manager there.

22 Q What does that entail?

23 A I oversee the property.

24 Q Would that include video cameras?

25 A Yes, sir.

JEROME SINGLETON -- DIRECT -- MR. SHELLENBERG

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1 MR. SHELLENBERG: I will get this marked.

2 (State's Exhibit Number 2 is marked for

3 identification).

4 BY MR. SHELLENBERG:

5 Q At this time I would like to show you what has been
6 marked as State's 2 for identification. Do you
7 recognize that?

8 A Yes, sir.

9 Q Have you had a chance to view that?

10 A Yes.

11 Q Is it in substantially the same shape as when you
12 got to view it?

13 A Yes.

14 Q And what is it?

15 A It's the video for the incident that occurred a few
16 years ago.

17 Q From the Gable Oaks cameras?

18 A Yes.

19 Q Is that kept in the ordinary course of business?

20 A Yes.

21 MR. SHELLENBERG: Your Honor, at this time I
22 move to admit State's 2 into evidence.

23 MR. COLLINS: Your Honor, I would like to be
24 able to observe what is actually on the video before I
25 just allow it into evidence.

1 THE COURT: All right.

2 MR. SHELLENBERG: Your Honor, he has been
3 given a copy of it.

4 THE COURT: He wants to see it before it goes
5 into evidence to determine if that's the video.

6 MR. SHELLENBERG: All right, Your Honor.

7 THE COURT: How long is it, Solicitor?

8 MR. SHELLENBERG: I believe it's fairly
9 lengthy.

10 THE COURT: That's a relevant term, Solicitor.

11 MR. SHELLENBERG: I understand it's a relevant
12 term. I'm not sure the exact length. I would say it's
13 over 30 minutes, conservatively.

14 THE COURT: Well, Mr. Foreman, ladies and
15 gentlemen of the jury, please step to your jury room.
16 Do not discuss the case during this brief recess or
17 perhaps lengthy recess. I don't know. Do not discuss
18 the case.

19 (The jury retires to the jury room.)

20 THE COURT: There is this video and another
21 video?

22 MR. SHELLENBERG: I believe this is
23 everything. Everything is on this one video.

24 THE COURT: Allow Mr. Collins and Mr. Newton
25 to review it.

1 Solicitor, you may proceed.

2 MR. SHELLENBERG: Thank you, Your Honor.

3 DIRECT EXAMINATION

4 BY MR. SHELLENBERG:

5 Q Mr. Singleton, where do you work?

6 A Gable Oaks Apartments.

7 Q What is your job title?

8 A I am the property manager at the property.

9 Q And what does that entail?

10 A That entails overseeing all daily operations of the
11 property.

12 Q Does that include video cameras?

13 A Yes.

14 Q Are you familiar with the video camera system?

15 A Yes.

16 Q You operate it daily?

17 A Yes.

18 Q Did the police come to you and ask you to pull some
19 video?

20 A Yes.

21 Q And you have the ability to pull video?

22 A Yes, I do have the availability to download any
23 incident on a disk from the D.V.R.

24 Q And I am going to show you what has been marked as
25 State's Exhibit 2. Do you recognize that?

1 A Yes.

2 Q And can you tell me what it is?

3 A That disk contains the incident that happened a few
4 years ago.

5 Q Is that the video that the police asked you for?

6 A Yes.

7 Q And is it in substantially the same shape as when
8 you saw it?

9 A Yes.

10 Q Same condition?

11 A Yes, sir.

12 Q And it's kept in the ordinary course of business?

13 A Yes.

14 MR. SHELLENBERG: Thank you, Your Honor. No
15 further questions -- I'm sorry, Your Honor. At this
16 time I offer State's 2 into evidence.

17 THE COURT: Mr. Collins?

18 MR. COLLINS: Over our previously stated
19 objections, Your Honor.

20 THE COURT: State's 2 is in evidence subject
21 to previous objections.

22 (State's Exhibit Number 2 is received into
23 evidence.)

24 THE COURT: Mr. Collins.

25 MR. COLLINS: Thank you, Your Honor.

1 CROSS EXAMINATION

2 BY MR. COLLINS:

3 Q I will try to keep this short, Mr. Singleton. You
4 were in charge of keeping the video equipment up to
5 date; right?

6 A Yes.

7 Q And the police came to you and asked, Hey, we need
8 a video of this date and this time. You can go on
9 the computer and pull that up; right?

10 A Yes.

11 Q And that's what you did in this case?

12 A Yes.

13 Q You pulled up everything that they told you to pull
14 up; right?

15 A I pulled everything that was in the area of the
16 incident. The cameras that were in that area,
17 that's what I pulled.

18 Q So you pulled up basically information they gave
19 you?

20 A Yes.

21 Q Now, there is also a security service that Gable
22 Oaks used at the time to help monitor these videos
23 at night; right?

24 A Yes.

25 Q And at the time of this incident, I believe it was

1 Virtual Guard Services, Incorporated, they were
2 monitoring the videos the night of this incident;
3 right?

4 A Yes.

5 Q And every night they send you reports about what
6 they observed on these videos; right?

7 A Yes.

8 Q And they sent you a report about this night;
9 right?

10 A Yes.

11 Q You read those reports; didn't you?

12 A Yes.

13 Q Do you remember in those reports they talked about
14 observing the police arrest or put a suspect in
15 handcuffs and put him in a patrol car at
16 11:46 P.M.?

17 A No.

18 Q If I showed you a report, would that refresh your
19 memory?

20 A Possibly, yes.

21 MR. COLLINS: May I approach the court
22 reporter?

23 THE COURT: Yes, sir, certainly.

24 MR. COLLINS: If I could have this marked as
25 Defense Exhibit 1 for I.D. purposes only.

1 (Defendant's Exhibit Number 1 is marked for
2 identification).

3 BY MR. COLLINS:

4 Q Do you recognize this, Mr. Singleton?

5 A Yes, this is the type of reports that we get every
6 night, yeah.

7 Q If you look towards the bottom of that, it talks
8 about the police detaining somebody at 11:46 P.M.;
9 doesn't it?

10 A Yes.

11 Q And the shooting happened roughly around 11:15 P.M.
12 on that same date; right?

13 A I would assume so. I can't remember.

14 MR. COLLINS: I have no further questions,
15 Your Honor.

16 THE COURT: Thank you. Redirect, Solicitor?

17 MR. SHELLENBERG: Yes, Your Honor.

18 **REDIRECT EXAMINATION**

19 BY MR. SHELLENBERG:

20 Q Does the video depict what happened that night?

21 A Excuse me?

22 Q Does the video depict what happened that evening?

23 A Yes.

24 Q Thank you. No further questions.

25 THE COURT: Recross?

1 MR. COLLINS: No, Your Honor.

2 THE COURT: Thank you. Thank you very much.

3 You may step down.

4 (Witness leaves the witness stand.)

5 THE COURT: You may call your next witness.

6 MS. WALKER: Your Honor, the State calls
7 Lamettress Stevens.

8 LAMETTRESS STEVENSON, being
9 first duly sworn, testifies as follows:

10 CLERK: State your full name, please.

11 THE WITNESS: Lamettress Stevenson.

12 COURT REPORTER: You better spell both,
13 please.

14 THE WITNESS: The first name is
15 L-A-M-E-T-T-R-E-S-S. The last name is
16 S-T-E-V-E-N-S-O-N.

17 DIRECT EXAMINATION

18 BY MS. WALKER:

19 Q Good afternoon.

20 A Hello.

21 Q Where do you live?

22 A Now?

23 Q Yes, now. Do you live in Columbia now?

24 A I do.

25 Q Where do you work?

- 1 A Palmetto Health Richland.
- 2 Q Back in 2010 where did you live?
- 3 A Gable Oaks.
- 4 Q That's located here in Columbia?
- 5 A Yes, ma'am.
- 6 Q Were you at home that day?
- 7 A I was.
- 8 Q And were you at home that night?
- 9 A Yes, I was.
- 10 Q I want to talk to you about that night first. At
- 11 any point that night, did you hear gunshots?
- 12 A Yes.
- 13 Q I want you to speak up. I want to make sure
- 14 everybody on the jury can hear you.
- 15 A Okay.
- 16 Q What did you say?
- 17 A Yes.
- 18 Q Do you remember what time that was?
- 19 A I will say about 11:30, almost 12 midnight.
- 20 Q What were you doing when you heard the gunshots?
- 21 A I was actually going back inside my apartment.
- 22 Q What apartment did you live in?
- 23 A Twenty-three-F.
- 24 Q And where had you been before you started walking
- 25 back inside the apartment?

1 A Standing outside. I was outside.

2 Q Who were you with?

3 A Brittany, which is the girl that lived next door,
4 and just a group of other people were standing
5 outside.

6 Q You said y'all were talking?

7 A Yeah, we was talking. They were getting ready to
8 do their thing, and I was going back in my
9 apartment.

10 Q Describe what you were doing exactly when you first
11 started hearing the gunshots. You were heading --

12 A I was actually going back in the apartment when I
13 heard the gunshots. Then I went in, slammed the
14 door, telling the kids to get down, and just heard
15 gunshots, gunshots, gunshots, got on the phone and
16 called 9-1-1.

17 Q The kids that you were telling to get down, were
18 these your kids?

19 A My kids, neighbor kids. I had a good little bit
20 of kids in my house that night.

21 Q And were you actually injured that night?

22 A Yes, ma'am.

23 Q Can you describe that to the jury, please?

24 A At the time it didn't really bother me because I
25 was trying to get the kids under control. But

1 after everything kind of died down, I noticed my
2 arm was burning, stinging, you know, didn't really
3 pay much attention to it until one of the officers
4 came and I told him my shoulder was hurting a
5 little bit. They looked at it and said a bullet
6 had grazed it.

7 Q So it was grazed. Did you have to seek medical
8 treatment for that?

9 A I didn't. They looked at it but I didn't go to the
10 E.R. or anything, no.

11 Q Do you remember roughly how many gunshots you heard
12 that night?

13 A It was a lot. It was a lot. Then from the glass
14 and people screaming and trying to get on the
15 phone, it was a lot. When I say a lot, I mean it
16 was a lot.

17 Q How long did the shooting last?

18 A It seemed like all night but it was maybe a few
19 seconds.

20 Q Now, earlier that day were you at home?

21 A I was.

22 Q Did you hear shooting then?

23 A I did.

24 Q How many shots did you hear then?

25 A Maybe a few, two or three maybe.

1 Q At any point, either when you were shot that night
2 or when you heard the shooting that day, could you
3 tell where the shooting was coming from?

4 A No.

5 Q Did you see any of the shooters?

6 A No, ma'am.

7 Q Was your car damaged during that shooting?

8 A My car, yeah. Somebody that was visiting me, their
9 car.

10 Q And that was during the night shooting or the day
11 shooting?

12 A The night.

13 Q The night shooting. Where did the bullet hit you?

14 A My shoulder.

15 Q On your shoulder.

16 A Yes.

17 Q Where were you standing when you were shot?

18 A I was going inside, like going inside of the
19 apartment. All I remember is hearing the gunshots
20 and just rushing into my apartment to, you know,
21 get out the way or whatever. I didn't really know
22 what was going on with my shoulder until after
23 everything had done died down some.

24 MS. WALKER: No further questions, Your Honor.

25 THE COURT: Thank you, Solicitor. Mr. Newton.

1 CROSS EXAMINATION

2 BY MR. NEWTON:

3 Q Ms. Stevenson, you said there was a lot of people
4 outside?5 A It was a lot of people out. I mean, it was the
6 weekend. So there was people out. Kids were out,
7 yeah.

8 Q Do you have any idea about how many people?

9 A Not really how many people, but it was more than
10 normal, like during the weekday or whatever.

11 Q Okay. No further questions.

12 THE COURT: Redirect, Solicitor?

13 MS. WALKER: No, Your Honor.

14 THE COURT: Thank you. Thank you very much,
15 Ms. Stevenson.

16 THE WITNESS: You are welcome.

17 THE COURT: You may step down.

18 (Witness leaves the witness stand.)

19 THE COURT: Solicitor, you may call your next
20 witness.21 MS. CAMPBELL: The State would call Buddy
22 Rose. Your Honor, may we approach about a scheduling
23 matter?

24 THE COURT: Yes, ma'am.

25 (Whereupon there was a bench conference off

1 Officer Rose -- to testify in front of the Court before
2 he takes the witness stand that he -- if he is the one
3 that will handle any firearms -- to check any weapon,
4 that they are all safe and unloaded.

5 At no time would the jury get both the firearm
6 and the ammunition at the same time. Further, the
7 weapons are not to be pointed at any individual,
8 specifically a juror, attorney, any other court officer.

9 If there is a request for a demonstration,
10 please advise the Court first. You can certainly get
11 copies of the guidelines for the safe handling of
12 weapons off the Supreme Court website. The weapons are
13 not to be displayed until they are offered into
14 evidence.

15 Mr. Collins, I normally advise the jury
16 concerning the handling of weapons in the courtroom. Do
17 you have any objections to that?

18 MR. COLLINS: No, sir.

19 THE COURT: Anything further from the State
20 before we take our evening recess, Solicitor?

21 MS. CAMPBELL: Your Honor, I did make contact
22 with Chris Cowan, who indicates that it was actually a
23 S.L.E.D. agent, Bobbi Schlatterer, who actually ran the
24 information requested. Mr. Cowan has a closing in the
25 morning and would request that Ms. Schlatterer be able

1 to be here at 9:30.

2 THE COURT: If she can answer the questions, I
3 don't have any objections.

4 MS. CAMPBELL: I am just getting the message
5 conveyed. I am assuming she can answer the question.
6 If not, we will address it later.

7 THE COURT: If not, we will circle back to
8 Mr. Cowan.

9 MR. COLLINS: Just so we are clear for the
10 record, the letter that we have got today from
11 Ms. Margaret Schlatterer says that they ran -- a query
12 search was performed on July 25, 2012, for CrimeStopper
13 tips that been submitted regarding Daqwan Johnson,
14 spelled D-E-Q-W-A-N, which is actually incorrect.

15 That was not our response. The subpoena that
16 we served on them was for any and all reports concerning
17 the case of the Richland County Sheriff's Department
18 1007-010901, Richland County Sheriff's Department
19 1006-205020. Case Number 1006-950929 and C.P.D. case
20 Number 10-17068. That was our specific request, not
21 tips just regarding to Daqwan Johnson.

22 THE COURT: I assume Ms. Schlatterer would
23 have the subpoena, a copy of the subpoena. That's fine
24 with me if Officer Cowen is not here. If
25 Ms. Schlatterer can't answer the question, we will

1 testimony by the State in its case in chief.

2 Solicitor, you may call your next witness.

3 MS. CAMPBELL: May it please the Court. The
4 State calls Buddy Rose.

5 THE COURT: If you would come around and be
6 sworn, please.

7 WALTER ROSE, being
8 first duly sworn, testifies as follows:

9 CLERK: State your name for the record.

10 THE WITNESS: Walter Rose.

11 **DIRECT EXAMINATION**

12 BY MS. CAMPBELL:

13 Q Sergeant Rose, where are you employed?

14 A The City of Columbia.

15 Q What do you do there, sir?

16 A I work for the police department as a crime scene
17 supervisor.

18 Q And as a crime scene supervisor, tell this jury
19 what your duties include?

20 A I manage the crime scene unit, and what we do is
21 document, collect, preserve, and analyze evidence.

22 Q Do you have any specialized training or education
23 as far as maintaining your job?

24 A Yes, ma'am.

25 Q Can you tell the jury a little bit about your

1 education or training in crime scene investigation?

2 A In '90 we started with the police academy and
3 several schools throughout the State for crime
4 scene. All the way until now we still go to
5 training.

6 Q In schools you say, as far as your training, what
7 areas are you actually trained in and you have
8 received training in?

9 A Evidence collection, marijuana analysis,
10 photography, all aspects of crime scene.

11 Q And have you ever been qualified before as an
12 expert in crime scene investigation?

13 A Yes, ma'am.

14 Q And approximately how many times have you been
15 qualified in the area of crime scene investigation,
16 as far as the collection and documenting of
17 evidence at a crime scene?

18 A Twice.

19 MS. CAMPBELL: Your Honor, at this time we
20 offer him as an expert in crime scene investigation.

21 THE COURT: Mr. Collins?

22 MR. COLLINS: Your Honor, it's our position
23 that crime scene investigation is too broad of an area
24 to an area of expertise.

25 THE COURT: Do you want to have a hearing

1 Since that is and has been in the past a
2 recognized area of expertise in South Carolina, I'm not
3 going to overrule those precedents that recognize that.
4 As far as where he went to school or his instructor's
5 name and such like that, you can ask those questions.
6 That can go to his credibility or believability with the
7 jury in that regard.

8 But I think looking at the specific language,
9 I think in Tapp that the expertise and reliability and
10 the ability of the testimony to assist the triers of
11 fact are all threshold determinations to be made prior
12 to the admission of expert testimony.

13 Generally a witness' expert status will be
14 determined prior to determining the reliability of his
15 testimony. I would find that crime scene investigation
16 would be an area of expertise that would assist the jury
17 in that regard. So in that regard I overrule your
18 objection.

19 MS. CAMPBELL: Your Honor, if I may while the
20 jury is out just real quickly, Ms. Schlatterer ran the
21 parameters asked for on the CrimeStoppers tips. The
22 only additional thing she found was from Studio 54,
23 which I would hand up, Your Honor.

24 I don't see any identifying factors as to the
25 actual tipster in that case, and we would have no

1 problem turning that over with the Court's order. The
2 only other tip that came up was the one that has already
3 been provided. Ms. Schlatterer is here if anybody has
4 any questions.

5 THE COURT: I would order that this be turned
6 over.

7 MS. CAMPBELL: Thank you. I believe he
8 indicated he wanted to ask some questions.

9 THE COURT: Did you want to question
10 Ms. Schlatterer, Mr. Collins? Anything further at this
11 time?

12 MR. COLLINS: No, Your Honor.

13 THE COURT: Anything further before we bring
14 the jury?

15 MS. CAMPBELL: We would just ask that
16 Ms. Schlatterer be allowed to leave, Your Honor.

17 THE COURT: May she be excused?

18 MR. COLLINS: Yes, Your Honor.

19 THE COURT: Thank you for being here with us.
20 Ms. Schlatterer.

21 MS. CAMPBELL: Thank you.

22 THE COURT: If you would bring us our jury
23 back, please.

24 (The jury returns to the courtroom.)

25 THE COURT: Solicitor.

1 MS. CAMPBELL: Thank you, Your Honor. Your
2 Honor, at this time I offer him as an expert in crime
3 scene investigation, including collection and
4 documentation of evidence.

5 MR. COLLINS: It's over our previous
6 objection, Your Honor.

7 THE COURT: Mr. Foreman, ladies and gentlemen
8 of the jury, normally a person cannot give opinion
9 testimony. Normally when a person testifies, they must
10 testify as to what they either saw, heard, or sensed by
11 smell or something of that nature.

12 However, there is an exception when someone is
13 qualified because of education or experience or
14 training. They are permitted to give their opinion in
15 certain areas if the Court qualifies them that way.

16 This witness, Sergeant Rose, will be qualified
17 in the area of crime scene investigation and collection
18 and documentation of evidence to give opinion testimony
19 in that area. That does not mean you must accept the
20 opinion, but it is evidence for you the jury to use in
21 any way you see fit.

22 Thank you, Solicitor. You may continue.

23 MS. CAMPBELL: May it please the Court.

24 THE COURT: Thank you, Mr. Collins.

25 ---

DIRECT EXAMINATION

1

2 BY MS. CAMPBELL:

3 Q And you have been in crime scene investigation for
4 how long?

5 A Six years.

6 Q Six years?

7 A Yes, ma'am.

8 Q During that time period, how many crime scenes have
9 you actually gone to and investigated?

10 A A thousand or so.

11 Q Can you tell jury a little bit about when you go to
12 a crime scene, such as a shooting or a murder crime
13 scene, typically what are you doing?

14 A I will walk the scene, photograph, document
15 everything in place, and then we will start
16 collecting the evidence that is left at the scene
17 of the actual crime.

18 Q And are you actually the first person at a scene?

19 A No.

20 Q Who actually calls you in to process the crime
21 scene?

22 A A line officer that gets dispatched.

23 Q I want to turn your attention back to June 19,
24 2010. Did you respond to a call at Gable Oaks
25 Apartments?

1 A Yes, ma'am.

2 Q What kind of call were you responding to?

3 A It was a homicide call.

4 Q And approximately what time was it when you
5 actually got to the crime scene that day?

6 A I got the call at 12:30 A.M. and arrived there at
7 1:00 o'clock in the morning.

8 Q When you got there, were there any other crime
9 scene investigators already there?

10 A Yes, ma'am.

11 Q And who was that, sir?

12 A Officer Gilland.

13 Q Is he also a part of your unit?

14 A He was at that time.

15 Q And specifically why were two officers called in,
16 crime scene investigators, called in in this case?

17 A Because it was so large.

18 Q When you got there, tell the jury what you observed
19 when you initially got there that day.

20 A A large part of the apartment complex was cordoned
21 off by the police officers with crime scene tape.
22 I walked the scene with Officer Gilland. It ended
23 up being several different smaller scenes. There
24 was five different areas that we had to document.

25 Q Specifically what evidence did you observe in those

1 five areas that made it necessary for you to
2 document?

3 A Shell casings.

4 Q And when you are walking this area -- and describe
5 this area, this apartment complex, to the jury.

6 A There are several apartment buildings. It has got
7 a green area, grassy area, in between them,
8 probably a couple of hundred feet between each
9 building. There was shell casings all in through
10 the grassy areas.

11 Then across the roadway, a parking lot area in
12 front of another apartment complex, there was more
13 shell casings. There was cones laid out everywhere
14 to show us where all the casings were that the
15 officers found when they first arrived.

16 Q Let me back up a minute. You mentioned earlier
17 that there was crime scene tape up. What is the
18 purpose in doing that? That had been done when you
19 got there?

20 A Yes, ma'am, it's to secure the area so no one else
21 can get inside.

22 Q When you got there, was the crime scene itself
23 secured properly?

24 A Yes.

25 Q And basically when you say securing, are people --

1 you try to keep people out of that area?

2 A Yes, ma'am.

3 Q What is the purpose in that?

4 A So that all the evidence -- nothing is disturbed or
5 moved.

6 Q You also mentioned that there were certain cones in
7 place documenting certain evidence. Explain to the
8 jury who would have done that and why that was
9 done.

10 A The line officers. Whenever they are trying to
11 secure the area, if they find shell casings or
12 anything, any other pieces of evidence, they will
13 mark it.

14 They have traffic cones in their cars. They
15 are two-foot, three-foot traffic cones. They will
16 mark where they find evidence as they try to find
17 out how large the scene really is.

18 Q In this case were the line officers, would they be
19 trained to collect evidence or would they just mark
20 it?

21 A They would just mark it.

22 Q So they wouldn't move it or put it together or
23 anything like that? That would be up to you?

24 A Yes, ma'am.

25 Q And in this case where the cones were and the areas

1 that were documented with the shell casings, were
2 those some of the areas you found shell casings?

3 A Yes, ma'am.

4 Q When you talk about a shell casing, tell the jury
5 what that is.

6 A It's a fired cartridge, a bullet from a gun. Once
7 you fire it, the shell casing, the brass cartridge,
8 it's the spent round that comes out of a gun after
9 you shoot it.

10 Q It's actually expelled from the front of the gun or
11 the side of it if it's a semiautomatic?

12 A From the side of the gun.

13 Q The projectile is a different part of the bullet
14 itself?

15 A Yes.

16 Q I use these terms because I am not familiar with
17 them. What is the significance of shell casings
18 being found in certain areas or what can that show
19 you generally?

20 A It can show what guns were shot by the calibers.

21 Q Prior to collecting any evidence, you mentioned
22 earlier that you did a walk-through with
23 Investigator Gilland?

24 A Yes, ma'am.

25 Q And in that walk-through, did you observe certain

1 pieces of evidence in areas that were marked by the
2 cones?

3 A Yes.

4 Q Did you also observe additional evidence that you
5 eventually marked yourself and collected?

6 A Yes, ma'am.

7 Q When you went to this crime scene, tell the jury
8 initially what you did and how y'all split up and
9 what y'all observed. Did you observe the entire
10 crime scene?

11 A I did.

12 Q Were you also there assisting Investigator Gilland
13 in the collection of this evidence and the
14 documentation of this evidence?

15 A Yes, ma'am.

16 Q And prior to collecting any evidence, what did
17 y'all do?

18 A We walked together through the crime scene,
19 photographed the crime scene. One of us would
20 collect while the other one would photograph.

21 Q Ultimately once all the evidence was collected, who
22 ultimately took responsibility for the evidence?

23 A I did.

24 Q And then it became -- all the evidence was turned
25 over to you that night?

1 A Yes, ma'am, to me.

2 Q That was collected at that crime scene. Typically
3 in a case such as this where you have a multitude
4 of shell casings, do you make any effort to mark
5 them prior to photographing them?

6 A Yes, ma'am.

7 Q And how do you do that, sir?

8 A I have little placards, little plastic yellow
9 placards with numbers on them.

10 Q For your entire testimony in this case, did you
11 ever move any evidence that had been photographed
12 or anything with markers or anything like that?

13 A No, ma'am.

14 Q So this is how it would have appeared? You just
15 added the markers in?

16 A Yes.

17 Q You mentioned that there were a number of areas and
18 a number of different buildings around which you
19 collected evidence?

20 A Yes.

21 Q And did you actually generate a diagram of sorts in
22 this case?

23 A Yes, ma'am.

24 Q I want to show you what has not been marked. Are
25 these blow-ups of certain diagrams? Are you

1 familiar with these?

2 A I am.

3 Q What does this first one show?

4 A The apartment complex, an aerial view.

5 Q The second one that I am showing you, what does
6 that show?

7 A An aerial view of the apartment complex where we
8 found the evidence.

9 Q And was this actually created by you?

10 A Yes.

11 MS. CAMPBELL: Your Honor, at this time we
12 offer them into evidence.

13 MR. COLLINS: No objection, Your Honor.

14 THE COURT: That would be State's 3 and 4?

15 COURT REPORTER: Yes, sir.

16 (State's Exhibits Number 3-4 are received into
17 evidence.)

18 BY MS. CAMPBELL:

19 Q I will get you to step down in just a minute. Does
20 this fairly and accurately show the apartment
21 complex we are referring to as Gable Oaks?

22 A Yes, ma'am.

23 Q And the buildings, are they shown on here?

24 A They are.

25 Q And this area here (indicating) that is shown in

WALTER ROSE -- DIRECT -- MS. CAMPBELL

260

1 kind of like a white -- not square -- what is the
2 other term?

3 A Rectangle.

4 Q Thank you, rectangle. What is that area?

5 A That is a playground area.

6 Q And specifically can you show from there the jury
7 the general areas where you found evidence.

8 A In this area (indicating). It's going to be here
9 (indicating) and here (indicating) and some over
10 here (indicating) too.

11 Q I show you now State's Exhibit Number 4. Does this
12 show the general area, the same area where you
13 documented where you found evidence?

14 A Yes, ma'am.

15 Q Is this something that will aid you in showing the
16 jury the general areas where you found all the
17 evidence we are getting ready to show them?

18 A Yes, ma'am.

19 Q When you got there, was the attention -- well, let
20 me back up.

21 MS. CAMPBELL: With the Court's permission, we
22 would go ahead and number these to expedite things.
23 Further we can get someone to number them, other than
24 the court reporter, to expedite things even more.

25 THE COURT: Yes, ma'am.

1 BY MS. CAMPBELL:

2 Q I am going to show you what is marked as State's
3 Exhibit Number 5. Do you recognize that?

4 A I do.

5 Q What does that show, sir?

6 A The placard where we marked a bunch of shell
7 casings.

8 Q Is this photograph taken after you actually marked
9 where the shell casings were in that area?

10 A It is.

11 MS. CAMPBELL: Your Honor, at this time we
12 offer State's Exhibit 5 into evidence.

13 THE COURT: Any objection?

14 MR. COLLINS: If I could see it.

15 (Pause.)

16 MR. COLLINS: No objection.

17 THE COURT: State's 5 in evidence without
18 objection.

19 (State's Exhibit Number 5 is received into
20 evidence.)

21 BY MS. CAMPBELL:

22 Q And just so I can talk to the jury. What are those
23 numbered markers? Who put those there?

24 A Those were placed there by Officer Gilland.

25 Q And did you observe him or actually see him doing

1 that?

2 A Yes, ma'am.

3 Q And what was he marking in this photograph?

4 A Those were 20 spent shell casings, 7.62 shell
5 casings.

6 Q This is a general overview of the first area where
7 y'all started marking evidence?

8 A Yes, ma'am.

9 Q I will show you State's Exhibit Number 6. I will
10 get the rest of them in a minute. Do you recognize
11 that?

12 A Yes, ma'am.

13 Q And what does that show?

14 A Those were some more shell casings.

15 Q Is that a closer up of part of the area that was
16 shown in State's Exhibit Number 5?

17 A Yes, ma'am.

18 MS. CAMPBELL: Your Honor, at this time we
19 offer State's Exhibit Number 6 into evidence.

20 THE COURT: Any objection?

21 MR. COLLINS: No objection, Your Honor.

22 THE COURT: State's 6 in evidence without
23 objection.

24 (State's Exhibit Number 6 is received into
25 evidence.)

1 MS. CAMPBELL: Your Honor, I am handing over
2 to the defense State's Exhibits 7 through 49 for him to
3 look through quickly so we can expedite things.

4 THE COURT: Yes, ma'am.

5 (Pause.)

6 BY MS. CAMPBELL:

7 Q Sergeant Rose, have you had an opportunity to look
8 at these pictures earlier?

9 A Yes, ma'am.

10 Q State's Exhibit 7 through 49, do those fairly and
11 accurately depict the crime scene as you marked it
12 and photographed it that night?

13 A Yes, ma'am.

14 Q Those pictures do fairly and accurately depict what
15 you observed in your investigation that night?

16 A Yes, ma'am, they are the same ones.

17 MS. CAMPBELL: Your Honor, at this time we
18 offer 7 through 49 into evidence.

19 THE COURT: Say the numbers.

20 MS. CAMPBELL: It's 7 through 49.

21 THE COURT: That's 7 through 49?

22 MS. CAMPBELL: Yes, sir.

23 THE COURT: Any objections?

24 MR. COLLINS: No objections, Your Honor.

25 THE COURT: State's 7 through 49 is in

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1 evidence without objection.

2 MS. CAMPBELL: Thank you, Your Honor.

3 (State's Exhibits Number 7-49 are received
4 into evidence.)

5 MS. CAMPBELL: Your Honor, may the witness
6 step down.

7 THE COURT: Yes, sir, you may step down,
8 Sergeant. Please keep your voice up for the Court, the
9 court reporter, and for the attorneys.

10 (Witness leaves the witness stand.)

11 BY MS. CAMPBELL:

12 Q If you can come over on this side and try to speak
13 loudly for the court reporter. It helps. I am
14 showing you State's Exhibit Number 4 when we are
15 going through these photographs. If you can orient
16 the jury in the general area where these were
17 found.

18 I am going to show you State's Exhibit
19 Number 7, which shows a close-up of markers 3 and
20 4, as well as State's Exhibit 8. Where is that
21 located on the diagram and where in relation to the
22 buildings that are shown there?

23 A This (indicating) is Building 24. That's right
24 here in this area here (indicating).

25 Q Right there in that area there?

- 1 A Yes, ma'am.
- 2 Q Is that Building 24 right next to it?
- 3 A This (indicating) is, yes.
- 4 Q And as shown in State's Exhibits 9 through 12, is
- 5 that the same general area?
- 6 A Yes, ma'am.
- 7 Q How is that marked on there?
- 8 A It's marked here by a block of evidence, 1 through
- 9 21.
- 10 Q The numbering system, is that reflected in these
- 11 photographs?
- 12 A It is.
- 13 Q So the corresponding marker number reflects the
- 14 general area where the evidence is found as
- 15 documented on State's Exhibit 4?
- 16 A Yes, ma'am.
- 17 Q What kind of evidence was it you were collecting
- 18 that night there?
- 19 A In this area here were shell casings.
- 20 Q I am going to show you what has been marked as
- 21 State's Exhibit Number 13. Does that show two
- 22 markers?
- 23 A It does.
- 24 Q What area is that on?
- 25 A Right here (indicating) on the sidewalk.

1 Q On the sidewalk right there where you are
2 pointing --

3 A Yes, ma'am.

4 Q -- on State's Exhibit Number 4. In State's
5 Exhibits Number 14 and 15, is that a closeup of the
6 actual evidence you collected later that night?

7 A It is.

8 Q Does that fairly and accurately show how it was
9 when you got to that crime scene that day?

10 A Yes, ma'am.

11 Q Marker Number 3 and 4 are also on what?

12 A Also on the sidewalk.

13 Q And would that be shown in these earlier pictures
14 that we have already shown the jury in relation to
15 each other?

16 A Yes, ma'am.

17 Q What kind of evidence was that that you collected
18 in 3 and 4?

19 A Shell casings.

20 Q Again, that's how it was when you got there that
21 night?

22 A It was.

23 Q State's Exhibit Number 18 and 19, which show
24 markers 5 and 6, what kind of evidence is shown in
25 this?

1 A Shell casings.

2 Q What area of the apartment complex was that found
3 in?

4 A In this area here (indicating), the grassy area in
5 front of Building 24.

6 Q Your job at this point, when you were marking and
7 photographing and ultimately collecting, did you
8 collect them so that they could be tested and taken
9 to ballistics later?

10 A Yes.

11 Q State's Exhibit Number 20 and 21, where is that?

12 A It's in the same area here (indicating).

13 Q Again, what kind of evidence is this you are
14 showing?

15 A Shell casings.

16 Q Going through State's Exhibit 22, 23, 24, 25, 26,
17 and 27, markers 9 through 15, again, what kind of
18 evidence are you collecting?

19 A Those were shell casings in the same area here.
20 (indicating).

21 Q And in State's Exhibit 11 that shows the relation,
22 the overall relation, of all these shell casings to
23 each other?

24 A Yes, ma'am.

25 Q And then it's the individual photographs we have

1 been going through --

2 A Yes, ma'am.

3 Q -- showing the actual evidence. State's Exhibit
4 Number 28, 29, 30, and 31 showing markers 16
5 through 20?

6 A Yes, ma'am.

7 Q Again, what kind of evidence is this?

8 A It's the shell casings.

9 Q Again, the relation in several of the photographs,
10 including State's Exhibit Number 11, in that area?

11 A Yes, ma'am.

12 Q Was another area documented where evidence was
13 found --

14 A Yes, ma'am.

15 Q -- on here. Can we just go chronologically.

16 A This area here (indicating). This is evidence 23
17 through 26 that was in this area.

18 Q I show you what has been marked in evidence as
19 State's Exhibit 31. Where is this in relation to
20 the apartment building itself? Again, what number
21 is that?

22 A This is Building 24.

23 Q Twenty-four. Thank you.

24 A That's right there in that walkway or right there
25 in front of a doorway of the apartment.

1 Q And, again, what kind of evidence is noted in 22
2 through 24 markers?

3 A Shell casings.

4 Q And a closeup of actually item 21 is here in
5 State's Exhibit 32?

6 A It is.

7 Q State's Exhibit 33, is there an area on there that
8 indicates where you found evidence 27 and 28?

9 A Yes, ma'am, right here (indicating).

10 Q There is an arrow that actually goes to that
11 showing the general area you are talking about?

12 A Yes, ma'am.

13 Q And State's Exhibit Number 33, does that show that
14 area?

15 A It does.

16 Q And what type of evidence did you collect there?

17 A Those were actually cartridges.

18 Q Cartridges. What is the difference between a
19 cartridge and a shell casing?

20 A It's a complete bullet. It's an unfired bullet.

21 Q State's Exhibit Number 34 shows, I believe, markers
22 29 through 36?

23 A Yes, ma'am, that's 29 through 36. That's right
24 here (indicating).

25 Q Again, what kind of evidence did you collect at

1 that point?

2 A Those were shell casings.

3 Q And State's Exhibit Number 35, were there a number
4 of automobiles that were out there that night?

5 A Yes.

6 Q And were some of those significant as far as being
7 damaged?

8 A Yes, ma'am.

9 Q I show you State's Exhibit 35. What does that
10 show?

11 A It's a blue car that had been shot.

12 Q And what is that on the hood of the car? Can you
13 tell?

14 A It's food from a fast food restaurant.

15 Q State's Exhibit Number 36, is that another shot?

16 A Yes, ma'am.

17 Q Did you recall how many cars were actually damaged
18 that night with bullets?

19 A Two or three.

20 Q State's Exhibit Number 37 is another angle with
21 some cones in it. Are those the cones you were
22 referring to earlier?

23 A Yes, ma'am.

24 Q Is that a photograph you actually took before you
25 actually made the exhibit markers yourself?

1 A Yes, ma'am.

2 Q That would have been done prior to you getting
3 there?

4 A Yes.

5 Q When you remove the cones and replace them with
6 your markers, do you disturb the evidence in any
7 way?

8 A I do not.

9 Q State's Exhibit 38, again, what does that show?

10 A Damage to one of the vehicles in the parking lot.

11 Q What is that in the windshield?

12 A It's the damage.

13 Q State's Exhibit Number 39, does that show another
14 set of markers where you found evidence?

15 A Yes, ma'am.

16 Q And what numbers are those?

17 A Thirty-seven through 42.

18 Q And where is that found on State's Exhibit 4?

19 A It's right here (indicating) in the grassy area.

20 Q Again, what kind of evidence did you collect that
21 day?

22 A Those are shell casings.

23 Q Again, State's Exhibit 40 and 41 are different
24 angles on the same evidence?

25 A Yes, ma'am.

1 Q And then 42 and 44 through 48, are those closeups
2 of the evidence you just mentioned?

3 A Yes, ma'am.

4 Q Finally, I am showing you State's Exhibit
5 Number 49. That shows what area again?

6 A It shows this area here (indicating). It's just a
7 different angle.

8 Q Those were markers through 42?

9 A Yes, ma'am.

10 Q Did you also find evidence that is marked on here
11 as evidence 46?

12 A We did.

13 Q What was that evidence?

14 A I would have to refer back to my notes there.

15 Q Sure.

16 A Forty-six was a bullet fragment.

17 Q Where was that found, sir?

18 A It was found right here (indicating) in front of
19 the apartment.

20 Q I will get back to that. Evidence 45?

21 A Forty-five was right over here (indicating) in a
22 different apartment. This is Apartment 20-H and
23 there was a bullet there.

24 Q And where was it found in that apartment?

25 A The projectile was found in the bathroom.

- 1 Q Inside the apartment?
- 2 A Yes, ma'am.
- 3 Q You can have a seat.
- 4 A (Witness resumes the witness stand.)
- 5 Q I show you what has been marked as State's Exhibit
- 6 Number 123. I first ask, are you familiar with
- 7 that evidence?
- 8 A I am.
- 9 Q And what is in that evidence?
- 10 A These are the shell casings collected marked
- 11 numbers 1 through 21.
- 12 Q And what marker numbers does that evidence relate
- 13 to?
- 14 A One through 21.
- 15 Q When you collected those items after photographing
- 16 and marking it, how did you go about collecting it
- 17 to make sure of its integrity?
- 18 A On these we did each individual round in an
- 19 envelope.
- 20 Q And that could be forwarded to ballistics or for
- 21 D.N.A. testing at a later time?
- 22 A Yes.
- 23 Q So it was collected properly in this case is my
- 24 question?
- 25 A Yes, ma'am.

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1 MS. CAMPBELL: Your Honor, at this time we
2 offer State's Exhibit Number 123.

3 MR. COLLINS: No objection, Your Honor.

4 THE COURT: State's 123 is in evidence without
5 objection.

6 (State's Exhibit Number 123 is received into
7 evidence.)

8 BY MS. CAMPBELL:

9 Q Again, those marker numbers were 1 through 22 on
10 State's Exhibit Number 123?

11 A One through 21.

12 Q One through 21. I'm sorry. Thank you. I am going
13 to show you what is going to be marked as 124. I
14 first ask if you are familiar with that?

15 A Yes, ma'am.

16 Q Were those also some of the evidence you testified
17 earlier that was collected that night?

18 A Yes, ma'am.

19 Q And specifically what marker numbers are in State's
20 124?

21 A Twenty-two through 36.

22 Q So in the photographs that have already been
23 admitted into evidence, that would be the evidence
24 that had the markers 22 through?

25 A Thirty-six.

1 Q And did you collect those properly that night?

2 A Yes, ma'am.

3 Q And individually package them?

4 A Yes.

5 MS. CAMPBELL: Your Honor, at this time we
6 offer State's Exhibit 124.

7 THE COURT: What are those items?

8 THE WITNESS: Shell casings.

9 THE COURT: Thank you. Mr. Collins?

10 (Attorneys confer.)

11 MR. COLLINS: Your Honor, may we take up
12 something outside the presence of the jury?

13 THE COURT: Certainly. Ladies and gentlemen,
14 please step to your jury room momentarily. Please do
15 not discuss the case during this brief recess.

16 (The jury retires to the jury room.)

17 THE COURT: Yes, sir.

18 MR. COLLINS: Your Honor, the only issue I
19 have if they are trying to introduce this under exhibit
20 number, there are two completely different types of
21 evidence contained in this bag. There are shell casings
22 for a .40 caliber. There is also live rounds from a
23 .223.

24 We would just ask that if they are going to be
25 introduced, to be introduced because it's two different

1 offer State's Exhibit 124, I believe without objection.

2 MR. COLLINS: That's correct, Your Honor.

3 THE COURT: State's 124 is in evidence without
4 objection.

5 (State's Exhibit Number 124 is received into
6 evidence.)

7 BY MS. CAMPBELL:

8 Q I am going to show you State's Exhibit 125. You
9 testified earlier that there were two live rounds
10 or actual whole bullets that you found?

11 A Yes, ma'am.

12 Q What markers were those, sir?

13 A Twenty-seven and 28.

14 Q Twenty-seven and 28?

15 A Yes, ma'am.

16 Q Which are reflected here (indicating)?

17 A Yes, ma'am.

18 Q Coming from that area. Were you able to determine
19 the caliber of those rounds?

20 A Yes, ma'am.

21 Q What was the caliber?

22 A Point 223.

23 Q A .223 bullet?

24 A Yes, ma'am.

25 Q Are these the two that you collected from that

1 area?

2 A Yes, ma'am.

3 MS. CAMPBELL: Your Honor, at this time we
4 offer State's Exhibit 125.

5 MR. COLLINS: No objection, Your Honor.

6 THE COURT: State's 125 is in evidence without
7 objection.

8 (State's Exhibit Number 125 is received into
9 evidence.)

10 BY MS. CAMPBELL:

11 Q The markers that are on there and in the
12 photographs of the evidence that you collected from
13 markers Number 37 through 41, I show you State's
14 Exhibit 126. Is that the evidence you collected?

15 A Yes, ma'am.

16 Q When you collected that evidence, did you collect
17 it properly for further testing?

18 A Yes.

19 MS. CAMPBELL: At this time we offer State's
20 Exhibit 126, I believe, into evidence.

21 MR. COLLINS: What are those items?

22 MS. CAMPBELL: Markers 37 through 41.

23 MR. COLLINS: No objection, Your Honor.

24 THE COURT: That's the items, markers?

25 MS. CAMPBELL: The items reflected in markers

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1 37 through 41. They are actual shell casings.

2 (State's Exhibit Number 126 is received into
3 evidence.)

4 BY MS. CAMPBELL:

5 Q As indicated on your markers 43, 44, 45, and 47, I
6 show you what has been marked as State's Exhibit
7 127. Do you recognize that?

8 A Yes, ma'am.

9 Q Are those the additional evidence that you
10 collected at that crime scene?

11 A Yes, ma'am.

12 Q What type of evidence is that?

13 A It was a bullet fragment, another shell casing, a
14 projectile, a second bullet fragment.

15 Q And were those collected properly by you that
16 night?

17 A Yes, ma'am.

18 Q And individually packaged for further testing?

19 A Yes, ma'am.

20 MS. CAMPBELL: Your Honor, at this time we
21 offer State's Exhibit 127.

22 MR. COLLINS: No objection, Your Honor.

23 THE COURT: Number 127 is in evidence without
24 objection.

25 (State's Exhibit Number 127 is received into

1 evidence.)

2 MS. CAMPBELL: I will go ahead and mark 128
3 for I.D. only.

4 (State's Exhibit Number 128 is marked for
5 identification).

6 BY MS. CAMPBELL:

7 Q I will show you what is marked as State's Exhibit
8 128. Do you recognize that?

9 A This is from Arthur Thomas.

10 Q This is from Arthur Thomas?

11 A Yes, ma'am.

12 Q I want to refer back to the shell casings. Can
13 you, just for the jury's edification, in State's
14 Exhibit 124, can you pull out one of the shell
15 casings and show them what you are talking about,
16 as far as the shell casing and as far as an
17 actual -- what do you call it, a bullet?

18 A Yes, ma'am, cartridge.

19 Q Or live round?

20 MR. COLLINS: Your Honor, can we have gloves
21 provided if we are going to be handling evidence?

22 THE COURT: I will not provide them.

23 MR. COLLINS: I would ask that gloves --

24 THE COURT: Someone can handle evidence
25 however they want to.

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1 MR. COLLINS: The defense would ask that
2 gloves be used.

3 THE COURT: Why?

4 MR. COLLINS: Because some of these casings
5 may or may not have been swabbed for D.N.A. testing at
6 this point. There could be a future investigation if
7 this trial ends in a certain way.

8 THE COURT: Step out for me, please, ladies
9 and gentlemen.

10 (The jury retires to the jury room.)

11 THE COURT: Is there any evidence you wanted
12 tested for D.N.A.? I thought we visited this issue
13 months ago.

14 MR. COLLINS: Your Honor, what we found out
15 months ago is that they had four to five swabs. What we
16 have learned since --

17 THE COURT: My question was: Is there any
18 evidence you want tested for D.N.A.?

19 MR. COLLINS: We have recently been informed
20 that there was --

21 THE COURT: That is not my question, what you
22 have recently been informed. My question is: Is there
23 any evidence you want tested for D.N.A.? End of
24 question. What is your answer?

25 MR. COLLINS: We would like every specific

1 shell casing and bullet swabbed independently and
2 tested.

3 THE COURT: Why haven't you done that? You
4 have been assigned to the case for two years?

5 MR. COLLINS: We learned as early as this
6 morning that the swabs they had in evidence, we had no
7 idea of how many swabs. It referenced a number of shell
8 casings.

9 We have learned that that swab or one swab was
10 swabbed on each or all of the shell casings, and those
11 swabs have been destroyed. We were never able to
12 observe those swabs, didn't know about them until May.

13 When it listed the number of shell casings, we
14 thought they swabbed each shell casing. Apparently they
15 did one swab on each shell casing. There is a
16 difference.

17 THE COURT: I am not directing an officer on
18 how to handle evidence. I am not directing any witness
19 on how to handle evidence, except for the guidelines
20 from the Supreme Court on how to handle firearms. If
21 you want to provide this officer with gloves, you can
22 provide that officer with gloves. If he wants to wear
23 gloves, he can wear gloves.

24 I really don't understand why I am in the
25 midst of this trial in front of the jury talking about

1 THE WITNESS: I do, sir.

2 THE COURT: You can wear gloves. As far as
3 the Court is concerned, every witness that gets up here
4 can wear gloves. I don't have a preference one way or
5 the other. If you have a particular witness, bring it
6 up before the witness -- before they take the stand.

7 Bring us our jury, please.

8 (The jury returns to the courtroom.)

9 THE COURT: Welcome back, ladies and
10 gentlemen. If you would please continue to give the
11 parties your complete and undivided attention.

12 Thank you, Solicitor.

13 Thank you, Mr. Collins.

14 **DIRECT EXAMINATION**

15 BY MS. CAMPBELL:

16 Q Sergeant Rose, there has been testing done in this
17 case. It was not done by you; correct?

18 A Yes, ma'am.

19 Q And typically in handling evidence once we got to
20 trial, do you handle it with or without gloves at
21 trial?

22 A Without gloves.

23 Q In this case the defense has requested you wear
24 gloves, and you have no objection to that?

25 A I don't.

1 Q The shell casing you were talking about earlier in
2 State's Exhibit Number 124, can you show the
3 jury --

4 MS. CAMPBELL: Does he want me to wear gloves?

5 THE COURT: I didn't hear you.

6 MS. CAMPBELL: Does he want me to wear gloves?

7 MR. COLLINS: If she is going to be handling
8 shell casings, that's what we are asking for.

9 MS. CAMPBELL: Your Honor, may the witness
10 step down?

11 THE COURT: Certainly.

12 (Witness leaves the witness stand.)

13 BY MS. CAMPBELL:

14 Q Because the defense has requested, we will wear
15 gloves. What is a shell casing? Show that to the
16 jury.

17 A (Indicating).

18 Q And what part of the gun is that typically expended
19 from? And what type of weapon typically would
20 leave that at a crime scene?

21 A This was from a pistol --

22 THE COURT: Speak up a little bit for me.

23 A This is from a pistol. It was expelled from the
24 top right side of the pistol typically.

25 Q And is that actually the actual projectile or

1 bullet that would actually hit someone?

2 A No, ma'am.

3 Q What part of the bullet is that?

4 A That's the projectile; the part that is in the top
5 of the cartridge.

6 Q I show you State's Exhibit Number 125. You
7 mentioned that these are actually live rounds.
8 What caliber are those?

9 A These are .223-caliber.

10 Q And what is the difference between the shell casing
11 you have in one hand and the actual .223 you have
12 in the other?

13 A The size right now. This (indicating) is a
14 complete bullet.

15 Q And those wouldn't be the same caliber for the
16 record?

17 A They are not.

18 Q But is that what was called a live round?

19 A A live round.

20 Q What part of that bullet is the actual shell casing
21 on that bullet as regards to the other one?

22 A The brass section here (indicating) and the top
23 part is the projectile.

24 Q You can return that back to State's Exhibit
25 Number 124.

1 A (Witness complies.)

2 Q You can have a seat.

3 A (Witness resumes the witness stand.)

4 Q Approximately how long were you at the crime scene
5 that day, you and Investigator Gilland, processing
6 and collecting evidence?

7 A It was a couple of hours. I'm not sure.

8 Q Once all the evidence had been collected, was it
9 then turned over to you?

10 A Yes, ma'am.

11 Q What did you do with any evidence you collected at
12 that scene or at any scene in this case?

13 A Went to our crime scene work area lab for proper
14 packaging, and then the decision is to be made
15 where it goes for the analysis.

16 Q And during the time period that you had this
17 evidence on your person or in your presence, did
18 anyone alter or tamper with it in any way?

19 A Did not.

20 Q Did anyone have access to it to do anything to it?

21 A No, ma'am.

22 Q Did you eventually put that into the evidence room?

23 A Yes, ma'am.

24 Q When did you turn it into the evidence room? Do
25 you know?

1 A It's stamped on one of the envelopes. I don't have
2 the exact time.

3 Q Not the exact time. What day was it?

4 A Should be that same day.

5 Q That same day. Then eventually did you also
6 transport it to the Richland County Sheriff's
7 Department?

8 A Yes, ma'am.

9 Q And for what purpose did you eventually take it to
10 the Richland County Sheriff's Department?

11 A It was taken for ballistics.

12 Q I am going to move on to the next day. Actually
13 you arrived at this crime scene on the 20th; is
14 that correct?

15 A Right.

16 Q Slightly after midnight?

17 A Yes, ma'am.

18 Q After 1:00 A.M.?

19 A Yes.

20 Q That day next, June the 21st, did you go back to
21 the apartment complex?

22 A Yes, I did.

23 Q What was the purpose in you going back?

24 A I was sent there to Apartment 23-H. They found
25 some more damage.

1 Q And once you got there, were you able to recover
2 any evidence there?

3 A Just photographs.

4 Q And what were you photographing at that point?

5 A I photographed the damaged apartment but we
6 weren't able to find any bullet fragments. There
7 was a photograph of the vehicle that had a bullet
8 hole, but we could not find the bullet in the
9 vehicle.

10 Q Let me back up. While you were there that night,
11 did you also become aware that someone had been
12 shot?

13 A Yes.

14 Q And ultimately died?

15 A Yes, ma'am.

16 Q And I want to show you State's Exhibits 50 through
17 60. I will just ask you first, do you recognize
18 those?

19 A Yes, ma'am.

20 Q What do those show?

21 A The first one is an overall picture where the shell
22 casings were in the apartment complex, and then the
23 next one is Building 23.

24 Q Specifically which apartment in Building 23 did you
25 go into to take those photographs?

1 A Apartment E.

2 Q Apartment E. and F.?

3 A Yes, ma'am.

4 Q What were you photographing when you went into
5 there?

6 A Myself and Officer Gilland, we did these at the
7 same time. We walked through both apartments. He
8 took E. In E. there was a blood trail. He
9 documented and photographed all the areas where
10 they found the victim. I was in Apartment F. doing
11 the pictures of the damage of the bullet that went
12 through the other apartment.

13 Q Those are reflected in those photographs we just
14 mentioned?

15 A Yes, ma'am. This is Apartment E.

16 Q Apartment E.?

17 A Specifically E. You can see the entrance to H.

18 MS. CAMPBELL: Your Honor at this time, we
19 offer them into evidence, State's Exhibits 50 through
20 60?

21 MR. COLLINS: No objection.

22 THE COURT: Without objection 50 through 60
23 are in evidence.

24 (State's Exhibits Number 50-60 are received
25 into evidence.)

1 BY MS. CAMPBELL:

2 Q State's Exhibit Number 50 is an overview of the
3 apartment complex?

4 A Yes, ma'am.

5 Q And did you take that when you first got there or
6 when was it taken?

7 A Yes, ma'am, that was taken when we first got there.

8 Q In this picture it actually reflects some of the
9 cones you refer to that the officers would have put
10 there before you got there?

11 A Yes, ma'am.

12 Q Building 23 is where the victim ran into after
13 being hit?

14 A Yes.

15 Q I show you State's Exhibit Number 51. What does
16 that show?

17 A That is the entrance to E.

18 Q Specifically in State's Exhibit Number 52?

19 A That's the apartment entrance for E. and F.

20 Q Which one is which?

21 A E. would be on the right -- looking at it -- the
22 right. I'm sorry. Let me see the picture again.
23 I think it's the left door. The left door is E.
24 and the right door is F.

25 Q I note in State's Exhibit Number 53 there appears

1 to be some red marks?

2 A There is.

3 Q What does that appear to be?

4 A Appeared to be blood.

5 Q State's Exhibit 55 and 56?

6 A They are inside the apartment.

7 Q Again, that's where the victim went?

8 A Yes, ma'am.

9 Q It appears to be reddish marks throughout the
10 pictures I am showing the jury now. What does that
11 appear to?

12 A It appeared to be blood.

13 Q Did you collect or swab that in any way?

14 A We did not.

15 Q Was there any dispute over whose blood it was?

16 A There wasn't. That's where E.M.S. worked on him.

17 Q And specifically in State's Exhibit 58?

18 A Yes, ma'am.

19 Q Fifty-nine, again, the interior of the same
20 apartment?

21 A Yes, ma'am.

22 Q Again, the stains on the floor and on the wall
23 appear to be?

24 A Blood.

25 Q Again, there is no dispute as to whose blood that

1 was?

2 A No, ma'am.

3 Q State's Exhibit 60, what is that on the floor?

4 A That's the kitchen with the bloodstains.

5 Q I want to show you what has been marked at State's

6 Exhibit Number 61 from the same complex -- 61

7 through 64 actually -- and first ask if you

8 recognize those?

9 A Yes, ma'am.

10 Q And what do those show?

11 A This is another building. This is Building 24

12 where there was a bullet hole in the glass in one

13 of the front windows.

14 Q Does that fairly and accurately reflect that?

15 A Yes, ma'am.

16 MS. CAMPBELL: Your Honor, at this time we

17 offer State's Exhibit 61, 62, 63, and 64.

18 MR. COLLINS: No objection.

19 THE COURT: State's 61 through 64 are in

20 evidence without objection.

21 (State's Exhibit Number 61-64 are received

22 into evidence.)

23 ---

24 BY MS. CAMPBELL:

25 Q And I note here in State's Exhibit Number 62 and

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1 63, is one a closeup of the other? I may have them
2 upside-down?

3 A Yes, ma'am, they are.

4 Q And in your expert opinion, what does that appear
5 to be?

6 A Bullet holes.

7 Q Was building was this in?

8 A Twenty-four.

9 Q Is that the same building the victim died in or was
10 that a different one?

11 A That was the building across the roadway -- the
12 parking lot -- where we collected all the other
13 shell casings.

14 Q You mentioned there was a number of automobiles in
15 the parking lot that day?

16 A Yes, ma'am.

17 Q I show you State's Exhibit 65 through 75 and first
18 ask if you recognize those?

19 A I do.

20 Q What do those show?

21 A It shows the vehicles in the parking lot. The
22 first view shows the pictures in the parking lot as
23 we had seen them that night. Then the other ones
24 were where they were towed to the police
25 department.

1 Q When they were towed to the police department?

2 A And photographed.

3 Q And you actually photographed those at a separate
4 time?

5 A Yes, ma'am.

6 Q And what type of damage is shown on those vehicles?

7 A Bullet holes.

8 MS. CAMPBELL: Your Honor, at this time we
9 offer them into evidence, 65 through 73. I apologize,
10 Your Honor. I misspoke through 75.

11 MR. COLLINS: No objection.

12 THE COURT: Sixty-five through 75 are in
13 evidence without objection.

14 (State's Exhibits Number 65-75 are received
15 into evidence.)

16 BY MS. CAMPBELL:

17 Q I show you State's Exhibit Number 65. What kind of
18 automobile is that?

19 A It's a Caravan.

20 Q Is there any damage that is noted in this
21 photograph?

22 A A bullet hole.

23 Q Was that located in the parking lot area where you
24 found the shell casings?

25 A Yes.

1 Q And in State's Exhibit Number 66, what does that
2 show?

3 A Another car with gunshot.

4 Q State's Exhibit 67, what does that show?

5 A That's the same car you just saw with another
6 bullet hole in the tire.

7 Q What is that on the hood of that car?

8 A It's food from a fast food restaurant.

9 Q Was that significant in your investigation?

10 A Yes.

11 Q Why?

12 A It just shows somebody was out there in front of
13 the car when all this happened.

14 Q Specifically 68 through 75, those were taken after
15 it was towed?

16 A Yes, ma'am.

17 Q That was that same car we just referenced?

18 A It was. We were trying to locate the bullet.

19 Q Did you also go inside an apartment there to find
20 evidence -- several apartments actually?

21 A We did.

22 Q I show you what has been marked -- what are the
23 numbers on those?

24 A Seventy-six through 85.

25 Q Seventy-six through 85. Do those fairly and

1 accurately depict what you found?

2 A Yes, ma'am.

3 Q And what type of damage is noted on the interior of
4 the apartments?

5 A Bullet holes again.

6 Q Do you remember specifically which apartment that
7 was in?

8 A Yes, ma'am, this is Apartment 23-F.

9 Q Where is Building 23? You mentioned several
10 buildings in this. Where did the victim actually
11 go into?

12 A That was Building 23. He was in Apartment E. This
13 is next door, Apartment F.

14 Q Thank you. So this was next door?

15 A Yes, ma'am.

16 Q And there was actual damage?

17 A There is.

18 MS. CAMPBELL: Your Honor, at this time we
19 offer State's Exhibits 76 through 85.

20 THE COURT: Any objection?

21 MR. COLLINS: No objection.

22 THE COURT: Seventy-six through 85 are in
23 evidence without objection.

24 (State's Exhibits Number 76-85 are received
25 into evidence.)

1 BY MS. CAMPBELL:

2 Q And I note in State's Exhibit Number 76, what type
3 of damage did you photograph there?

4 A The bullet hole on the wall.

5 Q And is that right below where I am pointing?

6 A Yes, ma'am.

7 Q That was actually on the inside of the apartment?

8 A It is.

9 Q And do you know whether or not there were people in
10 that apartment when this happened?

11 A There was. I'm not sure where they were located.

12 Q State's Exhibit Number 77, what type of damage is
13 that?

14 A A bullet hole.

15 Q State's Exhibit 78?

16 A The same thing, bullet hole.

17 Q State's Exhibit 80 shows what?

18 A That's looking into the apartment.

19 Q Which then State's 81 shows what?

20 A A bullet hole, damage.

21 Q State's Exhibit Number 82, what type of evidence is
22 that?

23 A A bullet fragment.

24 Q Was that collected?

25 A It was.

1 Q And where was that found?

2 A On the floor in that apartment.

3 Q Finally, State's 83 and 84 and 85, bullet holes?

4 A Yes, ma'am.

5 Q Did you also go into a bathroom in a different
6 building?

7 A I did.

8 Q What building was that?

9 A Building 20.

10 Q And I believe that's on your diagram, item
11 number -- your marker Number 45?

12 A Forty-five.

13 Q Which would be on State's Exhibit 4 over here
14 (indicating)?

15 A Yes, ma'am.

16 Q And the majority -- where are the buildings we have
17 been talking about?

18 A This is Building 24 (indicating), 23 (indicating),
19 and this is Building 20 (indicating). That
20 (indicating) is specifically H.

21 Q And did you actually end up going over to that
22 building at some point?

23 A Yes, ma'am.

24 Q When did you go there?

25 A That night.

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1 Q And what type of evidence were you asked to look
2 for or were you shown?

3 A That bullet. It was a projectile on the floor in
4 the bathroom.

5 Q I show you State's Exhibit 86 through 88. Do you
6 recognize those?

7 A Yes, ma'am.

8 Q And does that show the bullet fragment that you
9 collected?

10 A Yes.

11 Q As noted on State's Exhibit Number 4?

12 A It does.

13 MS. CAMPBELL: Your Honor, at this time we
14 offer into evidence these photographs?

15 MR. COLLINS: No objection.

16 THE COURT: Eighty-six to 88 are in evidence
17 without objection.

18 (State's Exhibits Number 86-88 are received
19 into evidence.)

20 BY MS. CAMPBELL:

21 Q I show the jury 87 and 88.

22 A Yes, ma'am.

23 Q Does that show what we are talking about?

24 A It does, the projectile on the bathroom floor.

25 Q Is that different from the shell casing we were

1 referring to?

2 A It is.

3 Q What part of the bullet is that?

4 A It's not part of your full cartridge. That's what
5 comes out of the gun.

6 Q You mentioned that the day after you finished your
7 processing of the crime scene that day, you went
8 back to Apartment 23-H, I believe?

9 A Yes, ma'am.

10 Q And who did you meet with that day?

11 A I don't recall their name.

12 Q Can you refer to your notes dated 6/21/2010.

13 A Oh, yeah, Stevenson.

14 Q Ms. Stevenson?

15 A Yes.

16 Q Lamettress Stevenson?

17 A Lamettress Stevenson.

18 Q Did she give you consent to search a certain item
19 of hers?

20 A Yeah, her van.

21 Q The van, the Caravan?

22 A Yes, ma'am.

23 Q Again, the bullet hole was noted, but what were you
24 looking for in the Caravan when you searched that?

25 A Bullet fragments, which I found none.

1 Q You found none. Is that unusual when there is an
2 obvious bullet hole for there to be no bullet
3 fragments?

4 A No, ma'am.

5 Q Why is that?

6 A It disintegrates sometimes.

7 Q On the next day, on June 22nd, did you make contact
8 with a Michael Samuels?

9 A Yes, I did.

10 Q Which automobile did he own out there that night?

11 A It was, I believe, an Oldsmobile.

12 Q Yes, sir, the Oldsmobile?

13 A Yes, an Oldsmobile.

14 Q That we showed pictures of earlier?

15 A We did.

16 Q Did he give you consent to search his vehicle?

17 A He did.

18 Q Did you photograph that one, that are already in
19 evidence?

20 A Yes.

21 Q And what all damage did you notice depicted in the
22 photographs?

23 A It looked like the bullet had passed through
24 vehicle and hit one -- hit his tire.

25 Q On June 24th, two days later, were you again asked

1 to assist in this investigation?

2 A Yes.

3 Q And specifically what were you asked to do on June
4 the 24th?

5 A Assist Investigator Menendez with a search warrant
6 on a 1998 LeBaron, to photograph and collect
7 evidence.

8 Q You said LeBaron. Would you refer to your notes?

9 A I'm sorry, LeSabre.

10 Q LeSabre?

11 A That was my fault. Yes, a 1998 Buick LeSabre. I
12 didn't read it correctly.

13 Q I will show you what has been marked as State's 89
14 through 107 and first ask if you recognize those?

15 A I do.

16 Q Are those photographs you took in processing that
17 car?

18 A Yes, ma'am.

19 Q And do those fairly and accurately depict how --
20 where did you go to actually process that car that
21 day?

22 A This was done at headquarters at 1 Justice Square.

23 Q So someone else had this car towed there?

24 A Yes.

25 Q When you got there, your job was to just document

1 the damage to the vehicle?

2 A It was.

3 Q Did you do that?

4 A I did.

5 Q It that fairly and accurately depicted in 89
6 through 107?

7 A Yes, ma'am.

8 MS. CAMPBELL: Your Honor, at this time we
9 offer them into evidence.

10 MR. COLLINS: No objection.

11 THE COURT: State's 89 through 107 are in
12 evidence without objection.

13 (State's Exhibit Number 89-107 are received
14 into evidence.)

15 BY MS. CAMPBELL:

16 Q I am going to show you State's Exhibit Number 89.
17 Does that accurately show the rear of that vehicle?

18 A Yes.

19 Q And State's Exhibit Number 90, does that show
20 damage to that vehicle?

21 A It does.

22 Q What damage was it to the Buick LeSabre?

23 A It's bullet holes in the door.

24 Q And that's how it was when you processed it on June
25 the 24th?

1 A Yes, ma'am.

2 Q I want to show you State's Exhibit Number 91. Do
3 you recognize that?

4 A Yes, sir.

5 Q What damage does that show?

6 A A bullet hole on the top of the car.

7 Q When you were called in as part of this
8 investigation, do you even know who the car belongs
9 to?

10 A No, ma'am.

11 Q You just document it and collect it?

12 A Yes.

13 Q State's Exhibit Number 92?

14 A Just a different angle, same damage on the driver's
15 side.

16 Q Ninety-three?

17 A Different angle, same side, driver's side.

18 Q State's Exhibit Number 94?

19 A That's a different angle. Again, on the top,
20 damage to the roof.

21 Q And what type of damage to the roof is noted in
22 this picture?

23 A Bullet holes.

24 Q And State's Exhibit Number 95, which is an
25 overview?

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- 1 A Yes, ma'am.
- 2 Q Specifically did you go through and document up
3 close with the scale certain bullet holes?
- 4 A Yes, we did.
- 5 Q State's Exhibit 96?
- 6 A That's the bullet hole with a scale.
- 7 Q Ninety-seven?
- 8 A Same thing.
- 9 Q Ninety-eight?
- 10 A Bullet hole with a scale.
- 11 Q Ninety-nine?
- 12 A Bullet hole with a scale.
- 13 Q And State's 100 through 107 is just more
14 documentation of the same?
- 15 A Yes, ma'am.
- 16 Q As part of your protocol, did go ahead and swab the
17 door handles?
- 18 A We did.
- 19 Q For what?
- 20 A We swabbed the door handles to collect any D.N.A.
21 on the door handle on the inside of the car.
- 22 Q When you were processing at that point, you don't
23 know what role it played in this?
- 24 A No, not at all.
- 25 Q That same day on the 24th, did you get a call to go

1 to [REDACTED] [REDACTED]?

2 A Yes, ma'am.

3 Q Whose house was that? Do you know?

4 A I don't know. We had a search warrant for that
5 house.

6 Q The search warrants and other stuff, you assist in
7 processing and collecting evidence, but you don't
8 like get the search warrants?

9 A Not, not at all, just assist.

10 Q But there was a valid search warrant in this case?

11 A Yes, ma'am.

12 Q When you went to [REDACTED] [REDACTED], did you
13 participate in a search of the house?

14 A No.

15 Q Were you called in after the search was down to
16 document evidence that had been observed?

17 A Yes, I was.

18 Q I want to show you State's Exhibit 108 through 117
19 and first ask if you recognize those?

20 A I do.

21 Q What do those show?

22 A It shows the outside of that address on [REDACTED]
23 Street, the house, and then the interior. It shows
24 the bedroom and a weapon sticking out from
25 underneath the bed.

1 Q And your role in the search warrant would be to
2 document and then collect any evidence?

3 A Yes.

4 Q Is that what you did in this case?

5 A I did.

6 MS. CAMPBELL: Your Honor, at this time we
7 offer State's Exhibit 108 through 117 in evidence.

8 MR. COLLINS: No objection.

9 THE COURT: Number 108 through 117 in evidence
10 without objection.

11 (State's Exhibits Number 108-117 are received
12 into evidence.)

13 BY MS. CAMPBELL:

14 Q I show you State's Exhibit Number 108. What does
15 that just generally show?

16 A That's the front side of the house at that address.

17 Q This is the [REDACTED] Street address?

18 A [REDACTED] Street.

19 Q You mentioned earlier about that you observed what
20 under the bed?

21 A A weapon, a rifle.

22 Q Was it -- how was it positioned under the bed when
23 you got there?

24 A Pointing out from underneath it about midway, I
25 guess, of the bed sticking out.

- 1 Q I will show you State's Exhibit 109. Can you
2 actually observe that there?
- 3 A Yes, you can see it right here (indicating).
- 4 Q If I put my finger right there, is that where it's
5 sticking out?
- 6 A Yes, ma'am.
- 7 Q What part of the gun is actually sticking out?
8 It's hard to see.
- 9 A The barrel, the front of the barrel.
- 10 Q The barrel of the gun?
- 11 A Yes, ma'am.
- 12 Q What type of gun did you find at [REDACTED]
13 that day?
- 14 A That was an A.K. rifle chambered with .223.
- 15 Q State's Exhibit 110, 111, 112 just document the
16 general area?
- 17 A Yes.
- 18 Q But then State's Exhibit Number 113, is that a
19 better picture of what you were talking about?
- 20 A Yes, ma'am.
- 21 Q State's Exhibit Number 114 and 115, what do those
22 show?
- 23 A The same rifle, just from a floor angle.
- 24 Q From a floor angle?
- 25 A Yes, ma'am.

1 Q State's Exhibit Number 117, when was this taken?

2 A After I removed the weapon from underneath the bed
3 to clear it and make sure it was unloaded and safe.

4 Q And was there any ammunition in that weapon that
5 day --

6 A There was.

7 Q -- at [REDACTED]?

8 A Yes, ma'am. The magazine was loaded, and there was
9 also one in the chamber ready to fire.

10 Q Again, what caliber weapon is this?

11 A It's a .223-caliber.

12 Q A .223-caliber. Did you actually collect that
13 evidence?

14 A Yes, ma'am.

15 MS. CAMPBELL: Beg the Court's indulgence.

16 (Pause.)

17 BY MS. CAMPBELL:

18 Q I show you what has been marked as State's Exhibit
19 129. You have got to handle this carefully by the
20 guidelines.

21 A Yes, ma'am. (Pause.)

22 Q Is that the .223?

23 A It is.

24 Q Is that the one you collected that day at [REDACTED]

25 [REDACTED]?

1 A Yes, ma'am.

2 Q I show you State's Exhibit Number 130 and 131. Do
3 you recognize those?

4 A Yes, this is the ammunition I bagged.

5 Q And was that the ammunition that you got from that
6 rifle once you removed it from under the bed?

7 A Yes, ma'am.

8 Q Why is the one round separate from the others?

9 A This is the round that was in the chamber.

10 Q In the chamber?

11 A And these were the rounds that were in the
12 magazine.

13 MS. CAMPBELL: Your Honor, at this time we
14 offer Exhibits 129 through 131 into evidence.

15 MR. COLLINS: Without objection.

16 THE COURT: One-thirty-one is going to be --
17 which one is 131?

18 MS. CAMPBELL: Number 131 is the single bullet
19 in the chamber.

20 THE COURT: In evidence without objection.

21 (State's Exhibits Number 129-131 are received
22 into evidence.)

23 ---

24 BY MS. CAMPBELL:

25 Q Just for clarification, in 117 that's the gun and

1 those are the bullets?

2 A Yes, ma'am.

3 Q The next day on the 25th of June, did you respond
4 to an address at [REDACTED]

5 A I did.

6 Q Again, why were you called in?

7 A The investigators were following up on the case,
8 and they called me to the scene. They had found
9 more evidence.

10 Q I am going to show you what is marked as State's
11 Exhibit 118 through 122, which is upside-down. Do
12 you recognize those?

13 A I do.

14 Q What do those depict, sir?

15 A This is the apartment at 3630 Medical Drive. It's
16 Apartment D.

17 Q Does it depict actual evidence that you collected
18 there at the scene?

19 A It does.

20 Q Did you find it or did somebody else find it and
21 then call you?

22 A Somebody else found it, and they called me just to
23 collect it.

24 MS. CAMPBELL: Your Honor, at this time we
25 offer State's Exhibits 118 through 122.

1 MR. COLLINS: No objection.

2 THE COURT: One-eighteen through 122 is in
3 evidence without objection.

4 (State's Exhibits Number 118-122 are received
5 into evidence.)

6 BY MS. CAMPBELL:

7 Q I show you State's Exhibit Number 122. What does
8 that show?

9 A The front door of the apartment there on Medical
10 Drive.

11 Q When you got there, in State's Exhibit Number 118,
12 were there two weapons on the bed?

13 A Yes, ma'am.

14 Q Did you photograph those prior to collecting them?

15 A I did.

16 Q And what type of weapons did you find at Medical
17 Drive?

18 A One is an A.K.47. The other one is an S.K.S.

19 Q The .223 and A.K.47 and S.K.S., what type of
20 weapons are those?

21 A They are all assault rifles.

22 Q Again, closeups in 119 and 120?

23 A Yes, ma'am.

24 Q And in this case did you collect any ammunition in
25 State's Exhibit 121?

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1 A Yes.

2 Q What type of ammunition -- where did you find that
3 ammunition?

4 A That ammunition was in the kitchen drawer, and
5 there was just several types.

6 Q During that search were those guns actually loaded,
7 as the S.K.S. was?

8 A They were unloaded.

9 Q I show you what has been marked as State's Exhibit
10 Number 132, 133, and 134. Again, be careful
11 handling it.

12 A This is the S.K.S.

13 Q Is this depicted in State's Exhibit Number 118?

14 A Yes, ma'am, on the bed.

15 Q Which one is that?

16 A It's this one, the rifle.

17 Q The rifle. I show you State's Exhibit Number 132.

18 A This is the A.K. That is also depicted there.

19 Q Here (indicating)?

20 A Yes, ma'am.

21 Q Finally, you mentioned the ammunition?

22 A Yes, ma'am, this is the bullets.

23 MS. CAMPBELL: Your Honor, at this time I
24 would offer into evidence 132, 133, and 134.

25 THE COURT: Tell me again, 132 is what item,

1 Sergeant?

2 THE WITNESS: This one is the A.K.47.

3 THE COURT: That's 133; isn't it?

4 THE WITNESS: One-thirty-two.

5 THE COURT: All right, 132.

6 THE WITNESS: And 133, sir, is the S.K.S.

7 THE COURT: Any objections, Mr. Collins?

8 MR. COLLINS: No, Your Honor.

9 THE COURT: One-thirty-two and 133 are in
10 evidence without objection.

11 MS. CAMPBELL: And 134.

12 THE COURT: What is 134?

13 MS. CAMPBELL: It's the ammunition.

14 THE COURT: What ammunition is that?

15 THE WITNESS: The ammunition that was in
16 Apartment D. on 3630 Medical Drive.

17 THE COURT: Any objections, Mr. Collins?

18 MR. COLLINS: No, Your Honor.

19 THE COURT: Number 134 is in evidence without
20 objection.

21 (State's Exhibits Number 132-134 are received
22 into evidence.)

23 ---

24 BY MS. CAMPBELL:

25 Q Finally, when you were participating in the search

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1 of the Buick that had been shot up, did you find
2 any paperwork in that?

3 A Yes.

4 Q I will show you what is marked as 135. Is that
5 some of the paperwork you found in that car?

6 A Investigator Menendez retrieved this from the glove
7 box. This is just the miscellaneous papers with
8 the defendant's name on it.

9 MS. CAMPBELL: Your Honor, at this time I
10 offer 135 into evidence.

11 THE COURT: Any objection, Mr. Collins?

12 MR. COLLINS: If I could look, Your Honor.

13 (Pause.)

14 MR. COLLINS: No objection.

15 THE COURT: One-thirty-five is in evidence.

16 What are those items?

17 THE WITNESS: Just miscellaneous papers that
18 was in the glove box.

19 (State's Exhibit Number 135 is received into
20 evidence.)

21 BY MS. CAMPBELL:

22 Q State's Exhibit Number 135, whose name is on the
23 papers that were taken from this car?

24 A Daqwan Johnson.

25 Q Daqwan Johnson?

1 A Yes, ma'am.

2 Q Once you had collected all the evidence in this
3 case, did anyone ever alter or tamper with it in
4 any way while it was in your possession?

5 A No, ma'am.

6 Q And was it submitted properly to your evidence
7 room?

8 A It was.

9 Q And later on June 29, 2010, were you asked to take
10 evidence to the Richland County Sheriff's
11 Department?

12 A Yes, ma'am.

13 Q And what evidence did you actually transport to the
14 Richland County Sheriff's Department?

15 A I took items 1 through 47, 49 through 51. Those
16 were taken to the Richland County Sheriff's
17 Department.

18 Q During the time period you had that evidence in
19 your possession, did anyone alter or tamper with it
20 in any way?

21 A No, ma'am.

22 Q Did you submit it to the Richland County Sheriff's
23 Department evidence room?

24 A Yes.

25 Q During the course of this, did you prepare a

1 listing of the evidence that you collected, the
2 location it was collected, and the date and time
3 you collected it?

4 A Yes.

5 Q And is that reflected in -- let me mark these. Is
6 this a blowup of the actual evidence you collected
7 in the case and your listing?

8 A Yes, ma'am.

9 MS. CAMPBELL: Your Honor, at this time we
10 offer State's Exhibits 136 through 38.

11 MR. COLLINS: Let me see those.

12 MS. CAMPBELL: Sure.

13 MR. COLLINS: No objection, Your Honor.

14 THE COURT: State's 136, 137, 138 are in
15 evidence without objection.

16 (State's Exhibit Number 136-138 are received
17 into evidence.)

18 BY MS. CAMPBELL:

19 Q For example, State's Exhibit Number 136, is this
20 some of the evidence that you collected at the
21 crime scene that day?

22 A It is.

23 Q The initial crime scene. State's Exhibit 137
24 continues that and where it was collected?

25 A Yes.

1 Q And the time?

2 A It does.

3 Q And then down here (indicating), I believe item 47
4 starts with what was found at [REDACTED]?

5 A Yes, ma'am.

6 Q And so all the items up to that point were found
7 at the original crime scene at Gable Oaks
8 Apartments?

9 A Yes.

10 Q Then when you go to State's Exhibit 49, that was
11 found at Medical Drive?

12 A Yes.

13 Q And that lists what was found?

14 A Yes, ma'am.

15 Q Again, any testing done on the items, that would be
16 done by a different expert?

17 A Yes.

18 Q Thank you.

19 MS. CAMPBELL: I don't have anything further,
20 Your Honor.

21 THE COURT: Thank you. Thank you very much,
22 Solicitor. Mr. Collins.

23 CROSS EXAMINATION

24 BY MR. COLLINS:

25 Q Good morning. Well, I guess it's barely good

1 afternoon now. I noticed you had a tough time
2 remembering some of the questions that Ms. Campbell
3 was asking you; right? Some of the details, you
4 had a tough time recalling without your report;
5 right?

6 A Yes.

7 Q That's because you take a good report whenever you
8 do a crime scene investigation that you are
9 working; right?

10 A I do take one.

11 Q Sometimes it takes a couple of years for it to make
12 it to trial?

13 A Yes.

14 Q And it's hard to remember certain details about
15 what you did a couple of years ago; right?

16 A That's the purpose of the notes.

17 Q And you take detailed notes?

18 A I take the report that I have in front of me, yes,
19 sir.

20 Q Accurate notes?

21 A Yes.

22 Q And you make sure it's thorough?

23 A Yes, we document what we do, sir.

24 Q And you can go back and supplement the report if
25 you need to; right?

1 A Yes.

2 Q I want to take you back a little bit, back to
3 June 19, 2010, why everybody is here today. I
4 believe you testified that you got there and made
5 sure the scene was secured; right?

6 A Yes.

7 Q That's because you don't want any contamination of
8 any evidence that is out there; right?

9 A That's right.

10 Q I believe your words, your job to is to document,
11 collect, preserve, and analyze; right?

12 A Yes.

13 Q In this case you didn't actually analyze anything
14 in this case?

15 A No.

16 Q You didn't; right?

17 A No.

18 Q But you documented everything, and that was just
19 putting the numbers and organizing everything that
20 you were going to collect; right?

21 A That is part of the investigation.

22 Q You documented where it was found and what was
23 found so that the jury would be able to see it
24 today?

25 A Yes.

1 Q By collecting it, it's not just picking it up and
2 throwing it in the bag. You are doing that pretty
3 carefully; right?

4 A Yes.

5 Q Again, you don't want to contaminate. Because
6 things can be tested for fingerprints; right?

7 A Yes, sir.

8 Q And it can be tested for D.N.A.; right?

9 A Depending on the evidence, yes, sir.

10 Q And the technology with D.N.A. testing has gotten
11 sophisticated enough that there is a thing called
12 touch D.N.A.; right? Are you aware of that?

13 A I am.

14 Q That means if somebody just touches something, it's
15 possible to develop a D.N.A. profile from that;
16 correct?

17 A I'm not a D.N.A. expert, sir. I just collect the
18 evidence and we send it off for analysis.

19 Q You preserve it so that the analyst can possibly
20 recover a D.N.A. profile; right?

21 A Yes.

22 Q And that's why you wear gloves when you handle
23 evidence; right?

24 A At the scene, absolutely.

25 Q At the scene. Okay. And all of this stuff that

1 you have analyzed and you collected and you put in
2 the evidence room, you didn't taken any swabs from
3 any of the shell casings; did you?

4 A No, sir.

5 Q You found out that somebody else did at some point;
6 right?

7 A In this case the evidence, once it was collected,
8 was going to be tested through another agency. At
9 that point we don't swab. We don't do any other
10 analysis on that piece of evidence.

11 It was going to go to Richland County or it
12 was going to go to S.L.E.D. or whatever other
13 agency. When that happens we do not analyze it.
14 We don't swab it. They do..

15 Q But you just kept it preserved so that they could
16 analyze it; right?

17 A Yes, sir.

18 Q And it wasn't contaminated in any way when you sent
19 it to the Richland County Sheriff's Department?

20 A No.

21 Q And they have their own lab there; right?

22 A Yes, sir.

23 Q Now, I want to take you to what Ms. Campbell just
24 went through with these three boards here. She
25 went through the things that you listed that you

1 took into evidence. In these three boards what she
2 left out was that you took the D.N.A. swabs from
3 the Buick LeSabre; right?

4 A Yes.

5 Q So you do have the ability to take D.N.A. swabs?

6 A To collect possible D.N.A., yes.

7 Q And you took swabs from each door handle on the
8 inside of the car; right?

9 A Yes, sir.

10 Q To possibly tell who may have touched that door
11 handle; right?

12 A Or who was sitting where, yes, sir.

13 Q Exactly. You also took into evidence a bunch of
14 cigarette butts?

15 A Yes, sir.

16 Q And when people smoke cigarettes, they put them in
17 their mouth and take them out and hold them; right?

18 A Yes.

19 Q Typically. So usually you can develop a D.N.A.
20 profile from a cigarette butt?

21 A Well, you can turn it in to be analyzed, yes, sir.

22 Q To your knowledge was it ever analyzed?

23 A Not to my knowledge.

24 Q Was anything tested at all from that car?

25 A That I don't know.

1 Q That car that was riddled with bullet holes?

2 A For D.N.A. I don't know.

3 Q Now, you testified about the .223 gun that you
4 recovered on [REDACTED]?

5 A Yes, sir.

6 Q I believe you called it an A.K., but it's not
7 actually an A.K.; is it?

8 A It's an A.K. action assault rifle chambered in
9 .223s. They are chambered in several different
10 calibers.

11 Q And the ammunition that you found at the scene that
12 you called .223, it's actually a different caliber
13 that can be fired from a .223?

14 A It's the same caliber. It's just measured
15 differently. There were two sets, two different
16 types of ammunition mixed in that magazine.

17 Q And the gun that you recovered and the things you
18 recovered from [REDACTED], I believe you said
19 that was on June 24th; right?

20 A June 24th, yes, sir, around -- I don't have the
21 time. It should be on the search warrant.

22 Q That's about four or five days after the shooting
23 at Gable Oaks?

24 A Yes, sir.

25 Q And let's go back again to Gable Oaks. I apologize

1 for bouncing all over the place. Back to the scene
2 the night you were there, I believe you testified
3 you found 20 shell casings that were 7.62?

4 A Yes, sir, 7.62 by 39.

5 Q And that ammunition cannot be fired by a .223 gun?

6 A No, sir.

7 Q It can only be fired by an A.K.47?

8 A Well, it can be fired through an A.K.47 chamber.

9 It's .30-caliber, 7.26 by 39.

10 Q And it can be fired by an S.K.S.?

11 A It can.

12 Q And those were the two guns found at Medical Park
13 Drive; correct?

14 A Yes, sir.

15 Q And they were unloaded and stored away?

16 A They were on the bed when I got there. I don't
17 know where they were in the apartment.

18 Q All right.

19 MR. COLLINS: Beg the Court's indulgence.

20 THE COURT: Yes, sir.

21 (Pause.)

22 BY MR. COLLINS:

23 Q And you were qualified as a crime scene
24 investigation expert?

25 A Yes, sir.

1 Q In your expert opinion, everything that you sent
2 off was properly preserved and ready for testing;
3 right?

4 A Yes, sir.

5 Q That includes the swabs from the car; right?

6 A We didn't send that off for testing.

7 Q It's still preserved for testing; correct?

8 A Yes.

9 Q The shell casings, you had those preserved so they
10 could be swabbed for D.N.A.; correct?

11 A They were packaged properly, which is for any
12 analysis that can be done to them.

13 Q In your expert opinion, when you sent them to
14 Richland County, they could have properly been
15 swabbed for D.N.A.; correct?

16 A No, we asked for ballistics to be done on them. We
17 didn't request D.N.A. on the shell casings.

18 Q Who was the supervising investigator that you were
19 familiar with?

20 A The investigator in charge, Arthur Thomas, I
21 believe is the --

22 Q What about Sergeant Babin?

23 A Sergeant Babin was in charge of the unit itself.

24 MR. COLLINS: Beg the Court's indulgence.

25 THE COURT: Yes, sir.

1 (Pause.)

2 MR. COLLINS: If I may approach the court
3 reporter?

4 THE COURT: Yes, sir.

5 MR. COLLINS: If I can have this marked for
6 I.D. purposes only, please.

7 (Defendant's Exhibit Number 2 is marked for
8 identification).

9 BY MR. COLLINS:

10 Q Do you recognize this sheet of paper?

11 A This is a supervisor's form to get payment when you
12 send something for forensic analysis. This was
13 Sergeant Babin's side of what needs to be done.

14 Q Can you explain --

15 A To take it and have the test done. I was directed
16 to take it for ballistics, and he would take care
17 of the paperwork.

18 Q And what box is checked, the two boxes that are
19 checked for the types of investigation to go
20 forward on?

21 A Serology, D.N.A. analysis, and firearms and tool
22 mark analysis.

23 Q What's the date on that piece of paper?

24 A The 25th is when it was signed. I don't know when
25 it was done.

1 Q The 25th of what year?

2 A 6/25/2010.

3 Q 2010. It's a request for D.N.A. testing and
4 ballistics; correct?

5 A From Sergeant Babin, yes.

6 Q Thank you.

7 MR. COLLINS: I have no further questions,
8 Your Honor.

9 THE COURT: Redirect?

10 MS. CAMPBELL: Just a couple, Your Honor.

11 **REDIRECT EXAMINATION**

12 BY MS. CAMPBELL:

13 Q He asked you about shell casings that you found at
14 the scene and Gable Oaks?

15 A Yes, ma'am.

16 Q He mentioned specifically what type of shell
17 casing?

18 A The 7.62 by the 39.

19 Q What kind of live rounds did you find at that crime
20 scene that day?

21 A There were .223 rounds.

22 Q And what kind of gun did you find under the bed at

23

24 A It was an A.K.47 that was chambered in .223.

25 Q In .223?

1 A Yes, ma'am.

2 Q The same type of live rounds you found at the
3 scene?

4 A Yes, ma'am.

5 Q He didn't ask you about that?

6 A He did not.

7 Q Also, he asked you about whether or not you took
8 D.N.A. from a car?

9 A He did.

10 Q A Buick LeSabre specifically. And can D.N.A. just
11 tell you who might or might not have been in that
12 car?

13 A Yes, ma'am.

14 Q Whose paperwork did you find in that car?

15 A Daqwan Johnson's.

16 Q And if a person owns a car and drives a car, would
17 you expect to find their D.N.A.?

18 A Oh, absolutely.

19 Q Regardless of whether or not they committed a crime
20 or not?

21 A Yes.

22 Q Thank you.

23 THE COURT: Recross, Mr. Collins?

24 MR. COLLINS: Yes, Your Honor, very briefly.

25 THE COURT: Yes, sir.

RECROSS EXAMINATION

1

2 BY MR. COLLINS:

3 Q How many spent shell casings from a .223 did you
4 find at the scene?

5 A I only found two live rounds.

6 Q How many spent shell casings?

7 A No spent shell casings of .223-caliber.

8 Q None?

9 A No .223 spent casings, only live rounds.

10 Q If that gun is fired -- it's not a revolver
11 rifle -- it shoots out shell casings; correct?

12 A Yes, sir.

13 Q Now, she bought up the paperwork from the car, and
14 I may have some trouble finding it. Do you
15 remember what is on that paperwork besides
16 Mr. Johnson's name?

17 A I just looked at it. I don't know what's on it.

18 Q Is it still up there? If you could look at the
19 dates on that paperwork for me, please.

20 A Do you want me to put gloves on with this too?

21 Q We don't have to put gloves on pieces of paper.

22 A It's a leave and earning statement.

23 Q Are there any dates on there?

24 A The date of the check was 12/10/2009.

25 Q Let's go to the next one.

1 A It's a loan agreement. I don't know who it's from
2 but it's to Daqwan Johnson.

3 Q What is the date on that?

4 A 1/7/2010.

5 Q Okay.

6 A And a Wachovia bank paper for a checking account,
7 Daqwan Johnson, and this statement is good through
8 12/16/2009.

9 Q Okay.

10 A That's it.

11 Q This shooting happened June 15, 2010 -- or June 19,
12 2010?

13 A Yes, sir.

14 MR. COLLINS: No further questions.

15 THE COURT: Thank you. Thank you very much,
16 Sergeant. You may step down.

17 (Witness leaves the witness stand.)

18 THE COURT: You may call your next witness.

19 MR. SHELLENBERG: Yes, sir, the State calls
20 Sue Johnson.

21 SUSAN JOHNSON, being
22 first duly sworn, testifies as follows:

23 CLERK: State your name for the record,
24 please.

25 THE WITNESS: Susan Johnson.

1 DIRECT EXAMINATION

2 BY MR. SHELLENBERG:

3 Q Ms. Johnson, where do you work?

4 A T-Mobile.

5 Q What is your job title?

6 A I'm the custodian of records.

7 Q What does that entail?

8 A We respond to subpoenas from various law
9 enforcement agencies across the United States.

10 Q So you come and testify in court?

11 A Yes.

12 Q At this time I am going to show you what is marked
13 as State's 139 and State's 140. Take a look at
14 those. Do you recognize those?

15 A Yes, I do.

16 Q What are they?

17 A Subscriber information, as well as call records.

18 Q What are the date of those phone records?

19 A June 17, 2010, through June 22, 2010.

20 Q Are those records kept in the normal course of
21 business?

22 A Yes, they are.

23 MR. SHELLENBERG: Your Honor, at this time we
24 offer State's Exhibit 139 and 140 into evidence.

25 MR. NEWTON: I need to see what it is, Your

1 Honor. Beg the Court's indulgence.

2 THE COURT: Yes, sir.

3 MR. NEWTON: Your Honor, at this time I don't
4 believe the State has laid a proper foundation as to
5 what these phone records are and the relevance to this
6 trial, Your Honor, who the person is, what they mean,
7 what this has to do with anything.

8 THE COURT: All right. I would agree. I
9 don't know whose records those are. So as far as her
10 being the custodian under 803(6), she meets those
11 qualifications; but as far as the relevancy of the items
12 at this point, I don't know what it is. I would sustain
13 the objection at this time based on the testimony I have
14 heard at this time. They will be for I.D. only at this
15 time.

16 (State's Exhibits Number 139-140 are marked
17 for identification).

18 BY MR. SHELLENBERG:

19 Q Can you please tell me whose names appear on those
20 records?

21 A The name as far as the subscriber?

22 Q Yes, ma'am.

23 A Mia Johnson, and the other account is prepaid.

24 THE COURT: What was the first name you said?

25 THE WITNESS: Mia Johnson, M-I-A.

1 THE COURT: Mia Johnson?

2 THE WITNESS: Correct.

3 THE COURT: Go right ahead, Solicitor. I
4 didn't mean to interrupt you.

5 MR. SHELLENBERG: Beg the Court's indulgence.

6 (Pause.)

7 MR. SHELLENBERG: Your Honor, the prepaid one,
8 we will mark for I.D. only, but we moved to admit 139
9 into evidence.

10 MR. NEWTON: Your Honor, again, I would state
11 they haven't even established what phone numbers they
12 want to introduce, what that has to do with anything in
13 this case whatsoever, who Mia Johnson is, how this is
14 connected whatsoever. We have not spoken about a phone
15 number. At this time it's not proper for it to be
16 introduced.

17 THE COURT: Do you have Ms. Johnson here?
18 Call her and ask her who she is, what her connection is,
19 and have this witness brought back up here. You know,
20 you can't prove everything on a pencil point.

21 I can allow them to go forward. If they fail
22 to tie it up, I will strike it from the record; but
23 everything cannot be proven on a pencil point with a
24 witness from alpha to omega so to speak.

25 This witness is the custodian of those

SUSAN JOHNSON -- DIRECT -- MR. SHELLENBERG

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1 records. If they don't tie in who Ms. Johnson is, I
2 will certainly strike those from the record. But if he
3 wants that foundation first to show relevancy, I don't
4 have objections to that either.

5 MR. SHELLENBERG: All right, Your Honor. May
6 I ask the witness to step down?

7 THE COURT: Yes, ma'am, if you could step
8 aside. You will be subject to recall, continued direct,
9 and possible cross examination.

10 (Witness leaves the witness stand.)

11 THE COURT: Call your next witness, Solicitor.
12 States 139 and 140 are still marked for identification.

13 MR. SHELLENBERG: The State calls Karen
14 Milbrodt. Your Honor, Verizon sent down a different
15 person than we originally had, a different custodian of
16 records then they usually use.

17 THE COURT: What is this person's name?

18 MR. SHELLENBERG: Karen Milbrodt,
19 M-I-L-B-R-O-D-D. (verbatim).

20 KAREN MILBRODT, being
21 first duly sworn, testifies as follows:

22 CLERK: State your name for the record.

23 THE WITNESS: Karen Milbrodt.

24 THE COURT: Solicitor, this young lady's⁷ name
25 was not on the witness list?

1 MR. SHELLENBERG: No, Your Honor.

2 THE COURT: Is any member of the jury panel
3 related by blood or marriage or close personal friends
4 or have any business, social, or professional
5 relationship with -- I will mispronounce your name
6 again. I apologize.

7 THE WITNESS: Milbrodt. The last letter is
8 T., not D.

9 COURT REPORTER: Spell it for me, please.

10 THE WITNESS: M-I-L-B-R-O-D-T.

11 THE COURT: If any member of the jury fits in
12 that category, please stand.

13 (There is no response.)

14 THE COURT: Thank you very much.

15 **DIRECT EXAMINATION**

16 BY MR. SHELLENBERG:

17 Q Ms. Milbrodt, who do you work for?

18 A Verizon Wireless.

19 Q And what do you do for them?

20 A My title is I'm an analyst in the executive
21 relations office. One of those responsibilities is
22 to be a records custodian for our business records.

23 Q I will show you what is marked for identification
24 as State's Exhibit 141. Do you recognize that?

25 A Yes, I do.

KAREN MILBRODT -- DIRECT -- MR. SHELLENBERG

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1 Q What are those?

2 A These are our business records for a specific
3 subscriber, a customer of ours. The records are
4 ledgers that explain how to read our business
5 records, and then they are text message and phone
6 calls, activity records.

7 Q Are they kept in the normal course of business?

8 A Yes, they are.

9 MR. SHELLENBERG: At this time we would just
10 like to mark them for identification purposes.

11 THE COURT: This will be 141 for I.D. only.

12 (State's Exhibit Number 141 is marked for
13 identification).

14 MR. COLLINS: Your Honor, may we be allowed to
15 view those?

16 THE COURT: Sure.

17 (Pause.)

18 MR. COLLINS: Your Honor, may we approach very
19 briefly?

20 THE COURT: Sure.

21 (Whereupon there was a bench conference off
22 the record in the presence of the jury but out of the
23 hearing of the jury.)

24 BY MR. SHELLENBERG:

25 Q I will show this to you just briefly.

1 A Yes, sir.

2 Q Can you tell me the dates of those phone records,
3 those phone calls?

4 A Yes, sir, the phone call dates are from June 17,
5 2010, through June 23, 2010.

6 Q And what is the phone number associated with those
7 records?

8 A Our customer's telephone number is [REDACTED].

9 Q Thank you very much.

10 MR. SHELLENBERG: No further questions, Your
11 Honor.

12 THE COURT: Mr. Collins?

13 MR. COLLINS: No questions.

14 THE COURT: Thank you. Thank you very much.
15 You may step down.

16 (Witness leaves the witness stand.)

17 THE COURT: Solicitor, you may call your next
18 witness.

19 MS. WALKER: Your Honor, may we approach?

20 THE COURT: Yes, ma'am.

21 (Whereupon there was a bench conference off
22 the record in the presence of the jury but out of the
23 hearing of the jury.)

24 THE COURT: Step to your jury room for about
25 ten minutes, ladies and gentlemen. Do not discuss the

1 case during this brief recess.

2 (The jury retires to the jury room.)

3 THE COURT: They are bringing the next witness
4 up?

5 MS. WALKER: Yes, sir. I just requested that
6 a deputy bring him up.

7 THE COURT: What is the issue on his record?
8 Is that resolved?

9 MR. NEWTON: Your Honor, there is a C.D.V. of
10 a high and aggravated nature conviction that carries
11 over a year. There are some manufacturing of drugs that
12 carry over a year. I feel like those would be at this
13 point relevant. I don't think I will object to those.

14 THE COURT: Solicitor?

15 MS. WALKER: Beg the Court's indulgence, Your
16 Honor.

17 MR. NEWTON: I believe he is serving time on a
18 C.D.V. third, which is not the same as a C.D.V. of a
19 high and aggravated nature, which I believe carries a
20 year, over a year.

21 MR. COLLINS: Your Honor, I don't know if we
22 have addressed it yet, but if we are getting into the
23 witnesses that are incarcerated and possible
24 codefendants, we are still going to have to go back and
25 address the Neil v. Biggers hearing.

1 I don't know if this next witness, Whitney
2 Wilson, if they are going to attempt to do any type of
3 identification, but he was shown a photo lineup when he
4 was questioned by the police.

5 He did circle a number of pictures; but,
6 again, we are requesting hearings outside the presence
7 of the jury on any witness that they intend to identify
8 Mr. Johnson in any way whatsoever.

9 THE COURT: Solicitor.

10 MS. WALKER: Your Honor, we would be happy to
11 have a Biggers hearing.

12 THE COURT: Say that again.

13 MS. WALKER: We are happy to go forward with a
14 Biggers hearing if that's what they are requesting, Your
15 Honor.

16 THE COURT: What is his last name?

17 MS. WALKER: Wilson, W-I-L-S-O-N.

18 THE COURT: Is he going to identify -- do you
19 intend for him to identify the defendant in court?

20 MS. WALKER: To offer the photo lineup in
21 court or to actually --

22 THE COURT: Is he going to identify
23 Mr. Johnson in court as one of the individuals that was
24 the perpetrator or was present aiding and abetting the
25 perpetrators of the crime?

1 MS. WALKER: No, Your Honor.

2 THE COURT: If there is no in-court
3 identification, it's not relevant whether or not there
4 was an out-of-court identification whether it was
5 suggestive or not; correct?

6 MS. WALKER: Your Honor, they do show a photo
7 lineup of the shooting incident that happened earlier
8 that day when he was shot at. If Your Honor wants me to
9 approach and show you the lineup.

10 (Hands to Court.)

11 THE COURT: All right.

12 MS. WALKER: He then narrows the perpetrator
13 of that afternoon shooting down to three people, one of
14 whom, Your Honor, is Daqwan Johnson.

15 THE COURT: This was the daytime shooting?

16 MS. WALKER: Yes, Your Honor.

17 THE COURT: I am trying to think it through.
18 You have an out-of-court 50/50 identification, three out
19 of six. That is three chances to be maybe be right and
20 three chances to be wrong.

21 Why is there a necessity for a Neil versus
22 Biggers hearing if he's not going to do an in-court
23 identification? That's what I'm not tracking. The
24 purpose of -- of course, I will probably sit here and
25 talk about it longer than it would take to have a

1 hearing.

2 But at the same time, the purpose of the
3 in-camera hearing is to determine whether or not the
4 in-court identification was of an independent origin or
5 was the product of circumstances surrounding the prior
6 out-of-court identification. If there is no in court --

7 MR. COLLINS: I agree 100 percent, Your Honor.
8 We were inquiring and will be objecting to that being
9 submitted into evidence as being much more prejudicial
10 than it is probative of anything.

11 It's six mugshots, one with our client
12 included, and he only circled half of the lineup.
13 That's not very probative of much, and it's highly
14 prejudicial to our client. We would be objecting to
15 that.

16 THE COURT: That's a separate and distinct
17 motion in limine so to speak on the prejudicial effect
18 of the photo lineup.

19 MR. COLLINS: Yes, Your Honor. We agree 100
20 percent with the Court. If there is no in-court
21 identification, Neil v. Biggers doesn't come up.

22 THE COURT: Solicitor, are you going to offer
23 this into evidence?

24 MS. WALKER: Yes, Your Honor.

25 THE COURT: He says it's prejudicial. He also

1 says it might not be very probative if it's 50/50.

2 MS. WALKER: Your Honor, that's something for
3 the jury to consider. My position is that -- and I
4 think Mr. Newton conceded this in opening statement --
5 this was a series of events that happened over the
6 course of the day.

7 Your Honor, the first shooting, our position
8 is that the defendant was driving the Buick LeSabre that
9 we have been talking about, and fired at Whitney Wilson.
10 There was a retaliation shooting for that later in the
11 day, and that culminated, Your Honor, in the murder of
12 Gary Reese.

13 At that point Mr. Wilson is asked questions
14 about that earlier shooting that kind of starts off this
15 event that ends with this murder. The witness in this
16 case identifies the car as that gray Buick LeSabre.

17 He was also able, at that point in time, when
18 shown a photo lineup, he does select three individuals,
19 one of whom is Daqwan Johnson. That can go to the
20 weight of the evidence, Your Honor, but I don't think
21 its admissibility.

22 THE COURT: How do I know these are mugshots,
23 Mr. Collins?

24 MR. COLLINS: We can easily elicit that from
25 the investigator of where he pulled these pictures, but

1 I know from my personal experience these are mugshots.
2 They certainly look like mugshots to me. My fear would
3 be that the jurors would assume the same thing.

4 THE COURT: Some jurors might not even know
5 what a mugshot is.

6 MR. COLLINS: They might not but they might.
7 I think when you do the balancing test of prejudicial
8 nature versus probative, the probative side of this is
9 barely even off the floor.

10 THE COURT: He can testify to it. He can
11 testify to being shown a photo lineup. He circled three
12 he thought were -- you can mark that for identification
13 purposes only. It cannot be shown to the jury at this
14 time.

15 MS. WALKER: Thank you, Your Honor.

16 MR. COLLINS: Also, Your Honor, we request a
17 copy of Mr. Wilson's rap sheet. We have gotten some,
18 but I don't see Mr. Wilson's.

19 THE COURT: I thought he just addressed that.

20 MR. COLLINS: He had spoken to Ms. Walker
21 about it and knew some of the convictions, but I don't
22 think we have a copy of the actual rap sheet.

23 MR. NEWTON: To help you track a little bit,
24 Mr. Collins, I just ran over to Ms. Campbell, and she is
25 going to make us a copy. We are straight. I didn't get

1 a chance to tell him that.

2 MS. CAMPBELL: They said they lost theirs, and
3 we are getting them another one.

4 THE COURT: Is the record straight?

5 MR. NEWTON: We are going to get a copy.

6 THE COURT: Is the record straight under 609
7 and what you are going to impeach him on?

8 MR. NEWTON: Your Honor, I do believe that
9 Solicitor Campbell is double-checking a disposition out
10 of Lexington to decide whether it's a manufacturing or a
11 distribution charge; is that right? We were waiting on
12 that.

13 THE COURT: Is Mr. Wilson upstairs?

14 DEPUTY: Yes, sir.

15 THE COURT: Are you ready to proceed,
16 Solicitor?

17 MS. WALKER: Yes, sir.

18 MS. CAMPBELL: Your Honor, they are planning
19 on getting into the drug conviction and the two C.D.V.
20 convictions is my understanding; is that correct?

21 MR. COLLINS: Yes.

22 THE COURT: Bring the jury.

23 (The jury returns to the courtroom.)

24 THE COURT: You may call your next witness,
25 Solicitor.

1 MS. WALKER: Your Honor, the State calls
2 Whitney Wilson.

3 THE COURT: Mr. Wilson, if you would come
4 around and be sworn for us, please.

5 WHITNEY WILSON, being
6 first duly sworn, testifies as follows:

7 CLERK: State your name for record.

8 THE WITNESS: Whitney Wilson.

9 DIRECT EXAMINATION

10 BY MS. WALKER:

11 Q Mr. Wilson, are you currently at the Department of
12 Corrections?

13 A Yes, ma'am.

14 Q Back in 2010 where did you live?

15 A Ashley Apartments, known as Gable Oaks Apartments.

16 Q That's here in Columbia?

17 A Yes, ma'am.

18 Q I want to take you back to June 19, 2010. Start
19 that afternoon. Was there a period of time in
20 which you heard and saw gunfire?

21 A Twice that day.

22 Q I'm sorry? Can you speak up.

23 A Yes, ma'am, twice that day.

24 Q Let's start with the first time. Can you tell me
25 where you were when you heard it the first time?

WHITNEY WILSON -- DIRECT -- MS. WALKER

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1 A The first time I was taking out the trash, and I
2 was right there by the 25 building when I seen a
3 gray or silver Buick pull up, the passenger side
4 window rolled down, a gun came out, and shot at me.

5 Q Could you see the people in the car?

6 A I seen the driver.

7 Q Did you know him?

8 A No, I ain't know him.

9 Q About what time was that?

10 A It was around 12:00 o'clock that afternoon.

11 Q What kind of car was it?

12 A Silver Buick with tinted windows.

13 Q Do you remember the model of the car?

14 A '97, '98 model.

15 Q When you were shot at that afternoon, what did you
16 do?

17 A I went in the house and ain't come out no more
18 until later on that night, later on that night
19 about 12:00 o'clock.

20 Q Between that afternoon shooting and when you talked
21 about later on that night, where were you?

22 A I was in the house.

23 Q Did you stay in the house the whole time?

24 A Yeah.

25 Q That night when you first heard shots, do you

1 remember where you were?

2 A Yeah, I was on the sidewalk right by the park.

3 Q There is a children's playground in the middle of
4 this apartment complex?

5 A Yes, ma'am.

6 Q And you were standing by the playground when you
7 first heard shots?

8 A Yes, ma'am.

9 Q Do you remember how many shots you heard?

10 A No, it was rapid fire.

11 Q Do you remember how long it lasted?

12 A Probably about a good minute and a half time span.

13 Q Could you see where the shots were coming from?

14 A Yes, ma'am. We have like a field across from the
15 park. Gunshots were coming from there and from the
16 little alleyway by the 25 building where I stayed
17 at.

18 Q So there is an alleyway there?

19 A Yes, ma'am, like a cut between the apartments.

20 Q Could you make out who was doing the shooting?

21 A No, I couldn't see the faces. I just saw the
22 gunfire from the flame from the muzzles.

23 Q Could you tell what type of guns they had?

24 A Yeah.

25 Q What kind of guns did you see that night?

WHITNEY WILSON -- DIRECT -- MS. WALKER

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1 A Assault rifles.

2 Q So those are long guns?

3 A Yeah.

4 Q Once you realized that or heard the shooting for
5 the second time, what did you do?

6 A At first I ducked behind the car. Then we all just
7 got up and started running.

8 Q Where did you run to?

9 A I ran between the 23 and 22 building.

10 Q Did the shooting eventually stop that night?

11 A It stopped.

12 Q At some point did you see police officers and
13 ambulances and stuff like that respond to the
14 scene?

15 A Yeah, it took a while for them to get there, but
16 they finally did get there.

17 Q Now, at some point in connection with all this, you
18 gave a statement to the police; didn't you?

19 A Ma'am?

20 Q You gave a statement to the police about this?

21 A Yes, ma'am.

22 Q And did they ask you about both shootings?

23 A Yes, ma'am.

24 Q And did they show you pictures regarding that first
25 shooting?

1 A Yes, ma'am.

2 (State's Exhibit Number 142 is marked for
3 identification).

4 MS. WALKER: Your Honor, I would like to show
5 the witness what has been marked as State's Exhibit
6 Number 142.

7 THE COURT: Yes, ma'am, you may show it to the
8 witness.

9 BY MS. WALKER:

10 Q Do you recognize that?

11 A Yes, ma'am.

12 Q Are these the pictures that were shown to you?

13 A Yes, ma'am.

14 Q And you circled a number of pictures here; correct?

15 A Yes, ma'am.

16 Q How many picture did you circle?

17 A I circled three.

18 Q When you were circling these three pictures, why
19 did you circle these pictures?

20 A Those were the faces I saw in the car that shot at
21 me.

22 Q This was in the afternoon?

23 A Yes.

24 Q Could you narrow it down to just one person or
25 these three? You circled these three?

WHITNEY WILSON -- DIRECT -- MS. WALKER

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1 A Those are the pictures.

2 Q Now, you stated, when you first got on the stand,
3 you are at the Department of Corrections; right?

4 A Yes, ma'am.

5 Q Do you have a number of convictions on your record?

6 A Yes, ma'am.

7 Q Do you have a criminal domestic violence third?

8 A Yes, ma'am.

9 Q Criminal domestic violence, 2005?

10 A Yes, ma'am.

11 Q In 2003 there was a possession with intent to
12 distribute crack?

13 A Yes, ma'am.

14 Q That afternoon when you were at Gable Oaks, you
15 were taking trash out?

16 A Yes, ma'am.

17 Q And what kind of car were the people that shot you
18 in?

19 A A silver Buick.

20 MS. WALKER: No further questions, Your Honor.

21 THE COURT: Thank you. Mr. Collins.

22 MR. COLLINS: Thank you, Your Honor.

23 **CROSS EXAMINATION**

24 BY MR. COLLINS:

25 Q Good afternoon. Do you go by any nicknames?

1 A No, sir.

2 Q Anyone ever called you Weeny?

3 A No, sir.

4 Q No one has ever called you Weeny?

5 A No, sir.

6 Q Do you know anybody named Weeny?

7 A Yeah.

8 Q What's his name?

9 A Edward Miller.

10 THE COURT: Say that again for me.

11 THE WITNESS: Edward Miller.

12 THE COURT: Edward Miller?

13 THE WITNESS: Uh-huh.

14 THE COURT: Thank you.

15 BY MR. COLLINS:

16 Q Did you ever hang out with Edward Miller?

17 A Yeah, that's my nephew.

18 Q He lived over in Gable Oaks community too at that
19 time back in 2010?

20 A Yes, sir.

21 Q And do you know a person by the name of Titus
22 Bowman?

23 A I know of him.

24 Q Know of him. How do you know of him?

25 A Being around in the neighborhood.

1 Q How about Antwon Brisbane?

2 A No, I don't know him.

3 Q Have you ever heard of Terrance Patterson?

4 A Yeah.

5 Q Did you know about Weeny shooting at Terrance
6 Patterson?

7 A No.

8 Q Did you know about Terrance Patterson shooting at
9 Edward Miller?

10 A No, sir.

11 Q Did you ever shoot at Terrance Patterson?

12 A No, sir.

13 Q Did he ever shoot at you?

14 A (Witness shakes head.) (Indicating negative
15 response.)

16 THE COURT: Is that a no? I couldn't quite
17 hear.

18 THE WITNESS: No, sir.

19 THE COURT: Thank you.

20 BY MR. COLLINS:

21 Q Have you ever owned a gun?

22 A No, sir.

23 Q Never held one?

24 A No, sir.

25 Q Do you know Christine Toatley?

1 A Who?

2 Q Christine Toatley?

3 A No.

4 Q Never heard of Christine Toatley?

5 A No, sir.

6 Q Do you know if Weeny -- Edward Miller -- knows
7 Christine Toatley?

8 A Don't know.

9 Q So you don't ever remember telling Christine
10 Toatley that the person in that Buick worked at
11 Bojangle's?

12 A Sir?

13 Q You don't ever remember telling Christine Toatley
14 that the person in that Buick that shot at you that
15 afternoon worked at Bojangle's?

16 A No, sir.

17 MR. COLLINS: No further questions.

18 THE COURT: Redirect, Solicitor?

19 **REDIRECT EXAMINATION**

20 BY MS. WALKER:

21 Q He asked you about Titus Bowman. You said you know
22 him?

23 A I know of him.

24 Q Would you recognize him if you saw him?

25 A Yeah, probably.

1 MS. WALKER: No further questions.

2 THE COURT: Recross, Mr. Collins?

3 **RECROSS EXAMINATION**

4 BY MR. COLLINS:

5 Q I almost forgot. Speaking of Titus Bowman, is your
6 testimony here today that you had nothing to do
7 with the shooting at Studio 54 the night of this
8 incident?

9 A No, sir.

10 Q You had nothing to do with going to that club and
11 unloading 20 to 30 rounds?

12 A No, sir.

13 Q Thank you.

14 THE COURT: Thank you. Thank you very much,
15 Mr. Wilson. You may step down. Thank you for being
16 with us today.

17 (Witness leaves the witness stand.)

18 THE COURT: Perhaps now would be a good time
19 to take our luncheon recess, ladies and gentlemen.
20 Please remember my instructions. Do not discuss this
21 case with anyone during this recess. That includes your
22 fellow jurors, lunch mates, family, friends, anyone
23 else.

24 If anyone tries to talk with you about the
25 case, please let me know immediately. Please remember

1 my instructions to you. Do not use your computer, your
2 cellular phone to do any research in the matter on any
3 information that is excluded, which includes but is not
4 limited to, information on a party, an attorney, a Court
5 officer, a witness, any prior news reports about the
6 case, or any information that you think would be helpful
7 in deciding the case through your jury research.

8 Remember, you must determine and decide the
9 case based on the evidence you hear from the witnesses
10 testifying under oath from the witness stand and any
11 other physical evidence introduced.

12 With that being said, you are now released for
13 your luncheon recess. I would ask you to please be back
14 promptly at 2:30 please. Be back promptly at 230.
15 Don't hang around when you come back. Come right on
16 back and back to your new temporary home, your jury
17 room. I hope you have a pleasant lunch. Thank you very
18 much.

19 (The jury is excused for lunch at 1:00 P.M.)

20 THE COURT: Anything further from the defense?

21 MR. COLLINS: Your Honor, regarding the last
22 pack of phone records that was marked for identification
23 purposes only, if we could approach the bench. I want
24 to put on the record I have a problem with that packet.

25 I realize it's not in evidence yet, but I just

1 wanted to bring to the Court's attention the fact that
2 when they do seek to introduce it, we were provided the
3 spread sheets of those phone records; however, we were
4 never provided with the first two pages, which is the
5 actual key to how to read those records.

6 It also notifies that those records are from
7 Verizon Wireless. The remedy we would seek is those
8 first two pages be suppressed if they seek to introduce
9 them and if they lay the foundation for that phone
10 record at the appropriate time.

11 THE COURT: Solicitor.

12 MS. CAMPBELL: Your Honor, we are checking
13 what we actually turned over as far as those first two
14 pages. However, as far as the key to actually using the
15 things, we have turned over those keys on multiple
16 occasions to the Public Defender's office. I am not
17 saying specifically to this person, but if we could look
18 over the lunch hour, we will look and then we will make
19 an offer.

20 THE COURT: Anything further, Mr. Collins?

21 MR. COLLINS: No, Your Honor.

22 THE COURT: Solicitor, anything from the State
23 before we take our recess?

24 MS. CAMPBELL: No, sir.

25 THE COURT: Thank you very much. Court will

1 be in recess until 2:30.

2 (Whereupon there is a luncheon recess.)

3 MS. CAMPBELL: May it please the Court.

4 THE COURT: Yes, ma'am.

5 MS. CAMPBELL: We want to go ahead this
6 afternoon and put up some of the codefendants to get
7 that testimony done if we could. There are a few
8 matters that we need to address. We have two out of the
9 three lawyers here of the defendants.

10 I believe at one point that you wanted to do a
11 colloquy with them about their rights or something to
12 that effect. I don't know if you wanted the defendants
13 present in the courtroom when they did that.

14 Your Honor, we do plan on publishing parts of
15 the video during their testimony. I have conferred with
16 defense counsel, and I think we have settled all their
17 records.

18 THE COURT: I was just referring to pretrial
19 motion number nine. The defense made a motion to have
20 each witness with pending charges advised of his or her
21 right to remain silent by the presiding judge and to
22 have any potential plea deals disclosed to the defense
23 in this case. This includes any offers or deals whether
24 written or not.

25 I didn't intend to advise them of their

1 rights. If they want to be advised of their rights,
2 they can bring them out here in the presence of their
3 lawyer and ask their lawyer if they want to advise them
4 of their rights. I didn't intend to do it.

5 MS. CAMPBELL: And maybe I misheard, Your
6 Honor. I just wanted to make sure we complied with any
7 rulings you had made and make sure we didn't do anything
8 without...

9 THE COURT: Who is your first codefendant?

10 MS. CAMPBELL: Your Honor, I can do Marquez
11 Prophet. Mr. Shurling is here. Mr. Johnson is here for
12 Mr. Walker, and it's my understanding that Deon O'Neil,
13 we have requested him to come over -- he is here.

14 THE COURT: You can bring all three of them if
15 you want at one time. I don't know about security.

16 (Pause.)

17 THE COURT: Have them and their lawyers come
18 around to the microphone.

19 MR. JOHNSON: Good afternoon, Your Honor.

20 THE COURT: Good afternoon, Mr. Johnson. How
21 are you? Tell me your client's name.

22 MR. JOHNSON: Detrick Walker, Your Honor.

23 THE COURT: Walker?

24 MR. JOHNSON: That's correct, Your Honor.

25 THE COURT: And tell me your client's name.

1 MR. O'NEIL: Terrance Patterson.

2 THE COURT: Madame Clerk, would you place the
3 two defendants under oath for me, please.

4 DETRICK WALKER AND TERRENCE
5 PATTERSON are first duly sworn.

6 THE COURT: Mr. Johnson, tell me your client's
7 full name.

8 MR. JOHNSON: Detrick Walker.

9 THE COURT: The defense had filed a motion
10 concerning each witness with any pending charges being
11 advised of his or her right to remain silent by the
12 presiding judge and to have any potential plea deals
13 disclosed to the defense in this case.

14 I did not intend to advise them of their
15 rights since they were represented by counsel. I
16 assumed counsel would be here. Have you advised him of
17 his rights, Mr. Johnson?

18 MR. JOHNSON: Yes, I have, Your Honor.

19 THE COURT: Does he appear to understand those
20 rights?

21 MR. JOHNSON: It appears to me that he does,
22 Your Honor.

23 THE COURT: Does he intend to testify today?

24 MR. JOHNSON: My belief of my conversation
25 with him is he intends to testify, Your Honor.

1 THE COURT: He is not taking the witness stand
2 solely for the purposes of exercising his Fifth
3 Amendment right?

4 MR. JOHNSON: That's correct, Your Honor.

5 THE COURT: Mr. Walker, you have heard what
6 your attorney, Mr. Johnson, has said. Is all that
7 correct?

8 MR. WALKER: Yes, sir.

9 THE COURT: He talked with you about your
10 right to testify or not to testify in this trial?

11 MR. WALKER: Yes, sir.

12 THE COURT: You have a right to remain silent?

13 MR. WALKER: Yes, sir.

14 THE COURT: Speak up for me just a little bit.
15 My court reporter has to get everything down.

16 MR. WALKER: I said yes, sir.

17 THE COURT: Do you intend to testify in this
18 trial?

19 MR. WALKER: Yes, sir.

20 THE COURT: You do not intend to exercise your
21 Fifth Amendment right to remain silent; is that correct?

22 MR. WALKER: Yes, sir.

23 THE COURT: Plea deals?

24 MR. JOHNSON: No plea deals have been offered
25 to me yet, Your Honor.

1 THE COURT: Is that correct, Madame Solicitor?

2 MS. CAMPBELL: Yes, sir.

3 THE COURT: Which of the three witnesses now
4 before me -- I haven't identified Ms. Shurling's client
5 yet -- which individual is going to testify first?

6 MS. CAMPBELL: I was planning on going with
7 Mr. Prophet, Your Honor. In addition, he was shown some
8 individual photographs, but he does know the defendant
9 by name and sight and all that, but if we need to have a
10 hearing on that as well.

11 THE COURT: All right. Anything else you
12 would like to put on the record, Mr. Johnson, as far as
13 your client?

14 MR. JOHNSON: I have nothing, Your Honor.

15 THE COURT: Mr. Collins, are there any other
16 questions you would like the Court to ask of Mr. Johnson
17 or his client?

18 MR. COLLINS: No, Your Honor. We think the
19 request was handled.

20 THE COURT: Thank you. Thank you very much.
21 He can be returned to wherever y'all return them to.

22 State your name for the record and for the
23 court reporter.

24 MR. O'NEIL: My name is Deon O'Neil, and I
25 represent Terrance Patterson.

1 THE COURT: Thank you. Thank you very much,
2 Mr. O'Neil. Have you discussed with him his right to
3 testify or not to testify?

4 MR. O'NEIL: Yes, Your Honor.

5 THE COURT: And you have explained to him that
6 he has a right to remain silent?

7 MR. O'NEIL: Yes, Your Honor.

8 THE COURT: Does he intend to testify in this
9 trial today?

10 MR. O'NEIL: My last discussion with
11 Mr Patterson on this past Monday was that he intended to
12 testify. We have not fully discussed that matter today.

13 THE COURT: That was your last conversation
14 you had with him, he intended to testify?

15 MR. O'NEIL: Yes, sir.

16 THE COURT: He understands his right to remain
17 silent?

18 MR. O'NEIL: Yes, Your Honor.

19 THE COURT: Have there been any plea offers or
20 plea deals made?

21 MR. O'NEIL: No, Your Honor.

22 THE COURT: Sir, you heard what your attorney,
23 Mr. O'Neil, just said; is that correct?

24 MR. PATTERSON: Yes, sir.

25 THE COURT: Step over here by the microphone

1 for me. You heard what your attorney said?

2 MR. PATTERSON: Yes, sir.

3 THE COURT: Is that correct?

4 MR. PATTERSON: Yes, sir.

5 THE COURT: Do you intend to testify in the
6 trial?

7 MR. PATTERSON: No, sir.

8 THE COURT: You do not intend to testify in
9 this trial?

10 MR. PATTERSON: No, sir.

11 THE COURT: So if you were called as a
12 witness, you would exercise your right to remain silent?

13 MR. PATTERSON: Yes, sir.

14 THE COURT: And exercise your Fifth Amendment
15 right?

16 MR. PATTERSON: Yes, sir.

17 THE COURT: So your position has changed since
18 Monday?

19 MR. PATTERSON: Yes, sir.

20 THE COURT: Do you need anymore time to talk
21 with your lawyer?

22 MR. PATTERSON: No, sir.

23 THE COURT: Do you want anymore time to talk
24 with your lawyer?

25 MR. PATTERSON: No, sir.

1 THE COURT: Any other questions you would like
2 the Court to consider asking, Solicitor?

3 MS. CAMPBELL: No, sir.

4 THE COURT: Mr. Collins?

5 MR. COLLINS: No, sir.

6 THE COURT: Should that change -- and I should
7 have told Mr. Johnson this also -- should that change --
8 Sheriff, I don't allow people in the courtroom in shorts
9 unless it's part of a Boy Scout's uniform -- should that
10 change if you would notify the solicitor, Mr. O'Neil.

11 MR. O'NEIL: Yes, Your Honor.

12 THE COURT: Thank you. Thank you very much
13 for being here today.

14 Ms. Shurling, what is your client's name?

15 MS. SHURLING: Marquez Prophet, Your Honor.

16 THE COURT: Prophet?

17 MS. SHURLING: Prophet.

18 THE COURT: Spell that for me.

19 MS. SHURLING: P-R-O-P-H-E-T.

20 THE COURT: Have you explained to him his
21 right to testify or not to testify?

22 MS. SHURLING: At great length, Your Honor.

23 THE COURT: Does he understand he has a right
24 to remain silent?

25 MS. SHURLING: Yes, he does.

1 THE COURT: Does he intend to testify in this
2 trial?

3 MS. SHURLING: He does, Your Honor.

4 THE COURT: If he is called to the witness
5 stand, he is going to testify and not exercise his right
6 to remain silent?

7 MS. SHURLING: It is my understanding, and he
8 has consistently taken that position for some time now.

9 THE COURT: Have there been any plea deals or
10 plea offers made between the State and Mr. Prophet?

11 MS. SHURLING: Your Honor, there not only have
12 not been any deals extended, there have actually been no
13 negotiations beyond making it very clear that there
14 would be no negotiations at this time.

15 THE COURT: Thank you. Do you object to me
16 asking your client some questions, Ms. Shurling?

17 MS. SHURLING: Not at all, Your Honor.

18 THE COURT: Madame Clerk, would you place
19 Mr. Prophet under oath.

20 MARQUEZ QUAYSHAWN PROPHET is
21 first duly sworn.

22 THE COURT: Tell me your full name.

23 MR. PROPHET: Marquez Quayshawn Prophet.

24 THE COURT: You heard what your attorney told
25 me, what she said, Ms. Shurling. Do you intend to

1 testify in this trial?

2 MR. PROPHET: Yes, sir.

3 THE COURT: So if you are called to the
4 witness stand, you are going to testify and answer the
5 questions that are asked?

6 MR. PROPHET: Yes, sir.

7 THE COURT: You are not going to exercise your
8 right to remain silent?

9 MR. PROPHET: No, sir.

10 THE COURT: There have been no plea offers or
11 plea deals?

12 MR. PROPHET: No, sir.

13 THE COURT: Any other questions, Solicitor,
14 you would like me to consider?

15 MS. CAMPBELL: No, sir.

16 THE COURT: Mr. Collins?

17 MR. COLLINS: No, sir.

18 THE COURT: Thank you. Thank you for being
19 here, Ms. Shurling.

20 As to Mr. Prophet, is there a Neil v. Biggers
21 issue?

22 MS. CAMPBELL: No, Your Honor. He knows
23 everyone by name and sight. However, based on what you
24 said pretrial, if we want to have a hearing on that, he
25 was shown some photographs, even though he knows the

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1 people, just to confirm their identities.

2 There was a photo lineup. In other words,
3 normally under McCloud and with the Liverman case, I
4 think we need to have a hearing just to establish that
5 he knows them and that type of thing.

6 THE COURT: I agree. Are you going to do that
7 now?

8 MS. CAMPBELL: It would be a good time to do
9 it, Judge.

10 THE COURT: You are still under oath.

11 **IN CAMERA DIRECT EXAMINATION**

12 BY MS. CAMPBELL:

13 Q Mr. Prophet, how old are you?

14 A Twenty.

15 Q And you lived here in the Columbia area?

16 A Yes, ma'am.

17 Q How long have you been living in Columbia?

18 A All my life.

19 Q Do you remember what happened back on June 19,
20 2010, when this happened?

21 A Yes, ma'am.

22 Q And who were you that night? Do you remember?

23 A Yes, ma'am.

24 Q Can you tell the judge who you were with?

25 A Me, G-man, T., Detrick, and Brian.

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1 THE COURT: Repeat that for me. I didn't
2 quite understand.

3 THE WITNESS: Me, T., Detrick, G-man, and
4 Brian.

5 BY MS. CAMPBELL:

6 Q And T., do you know his real name?

7 A Terrance.

8 Q Terrance Patterson?

9 A Yes, ma'am.

10 Q And G-man, do you know his real name?

11 A Daqwan Johnson.

12 Q And who is the other person you said?

13 A Detrick.

14 Q Detrick?

15 A Yes, ma'am.

16 Q And then the final person you said was whom?

17 A Brian.

18 Q How long specifically have you known G-man?

19 A For a couple of years.

20 Q A couple of years?

21 A Yes, ma'am.

22 Q What kind of relationship did you have with G-man?

23 A Friends, home boys.

24 Q Home boys?

25 A Yes, ma'am.

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1 Q So y'all would see each other on a daily basis, a
2 weekly basis, or it just depends?

3 A I'd say about a weekly, weekly basis.

4 Q That night the person that you got up with, one of
5 the people you got up with, was G-man?

6 A Yes, ma'am.

7 Q That was the person you had known for a couple of
8 years?

9 A Yes, ma'am.

10 Q What about T.? How long had you known him?

11 A I ain't know him that long.

12 Q You didn't know him as long as you've known G-man?

13 A No, ma'am.

14 Q Were you closer to G-man than you were to T.?

15 A Yes, ma'am.

16 Q Were you able though to recognize T. whenever you
17 would see him?

18 A Yes, ma'am.

19 Q So you had seen him before on multiple occasions?

20 A Not multiple but I had seen him before.

21 Q You knew him by the nickname of T.?

22 A Yes, ma'am.

23 Q Brian, how do you know him?

24 A From being with G-man.

25 Q And how long had you been knowing him?

MARQUEZ PROPHET -- IN CAMERA DIRECT -- MS. CAMPBELL ³⁷⁴

- 1 A Not that long.
- 2 Q Not as long as you had known G-man?
- 3 A No, ma'am.
- 4 Q And then the last person you said that was with
- 5 y'all that night was who?
- 6 A Detrick.
- 7 Q Detrick. How long have you known Detrick?
- 8 A Since middle school.
- 9 Q Since middle school. And how old are you now?
- 10 A Twenty.
- 11 Q So you knew him as well as you knew G-man?
- 12 A Yes, ma'am.
- 13 Q Do you remember when the police were getting your
- 14 statement from you?
- 15 A Yes, ma'am.
- 16 Q And they showed you some photographs?
- 17 A Yes, ma'am.
- 18 Q And when they showed you some of those photographs,
- 19 you identified certain people we have talked about
- 20 here in the courtroom?
- 21 A Yes, ma'am.
- 22 Q Including T.?
- 23 A Yes, ma'am.
- 24 Q G-man?
- 25 A Yes, ma'am.

MARQUEZ PROPHET -- IN CAMERA DIRECT -- MS. CAMPBELL 375

1 Q Detrick?

2 A Yes, ma'am.

3 Q When you identified them, did they make you pick
4 anybody or identify anybody?

5 A No, ma'am.

6 Q Why did you recognize those people?

7 A I knew them.

8 Q Do you remember when he showed you -- I haven't
9 marked this yet, Your Honor -- this photograph or
10 do you remember if that's the photograph?

11 A I don't remember.

12 Q But he showed you a photograph of G-man?

13 A Yes, ma'am.

14 Q And did you recognize it because you knew him?

15 A Yes, ma'am.

16 Q Do you remember him showing you these other
17 photographs?

18 A Yes, ma'am.

19 Q And you identified some people in these photographs
20 as people you knew?

21 A Yes, ma'am.

22 Q And some of them as being who was with you that
23 night?

24 A Yes, ma'am.

25 Q Who did you identify as being with you that night?

MARQUEZ PROPHET -- IN CAMERA DIRECT -- MS. CAMPBELL 376

1 A Detrick Walker and Terrance Patterson.

2 Q That was two of the four people on this photograph?

3 A Yes, ma'am.

4 Q Did they force you to identify anybody?

5 A No, ma'am.

6 Q Did they influence you in any way?

7 A No, ma'am.

8 Q And all these people you have known at least some
9 period of time?

10 A Yes, ma'am.

11 Q Do you know them by name?

12 A Yes.

13 Q Or nickname?

14 A Yes, ma'am.

15 Q And by sight?

16 A Yes, ma'am.

17 Q You had no difficulties recognizing them?

18 A No, ma'am.

19 Q Do you know who you were with that night when the
20 shooting went down?

21 A Yes, ma'am.

22 Q And those are the people you told the police about?

23 A Yes, ma'am.

24 Q In fact, you had told them who they were before
25 they showed you the photographs?

MARQUEZ PROPHET -- IN CAMERA DIRECT -- MS. CAMPBELL 377

1 A Yes, ma'am.

2 MS. CAMPBELL: I can do an in-court I.D. if
3 you want me to.

4 THE COURT: Yes, ma'am, you may.

5 BY MS. CAMPBELL:

6 Q The person that you know as G-man, do you see him
7 here in the courtroom?

8 A Yes, ma'am.

9 Q Can you point him out for the judge? You can't
10 point; can you?

11 A No.

12 Q Where is he sitting?

13 A To my left.

14 Q To your left. And where is he seated at the
15 table?

16 A In the middle.

17 Q In the middle?

18 A Yes, ma'am.

19 MS. CAMPBELL: Your Honor, may the record
20 reflect he has identified the defendant?

21 THE COURT: So reflected.

22 MS. CAMPBELL: That's all I have.

23 THE COURT: Mr. Newton?

24 MR. NEWTON: May it please the Court.

25 THE COURT: Yes, sir.

MARQUEZ PROPHET -- IN CAMERA CROSS -- MR. NEWTON 378

1 **IN CAMERA CROSS EXAMINATION**

2 BY MR. NEWTON:

3 Q Mr.. Prophet, do you remember what time in the
4 morning you went and spoke to Investigator Thomas?

5 A About six or seven, I think.

6 THE COURT: Say that answer again.

7 THE WITNESS: About six or seven.

8 BY MR. NEWTON:

9 Q And that was in the A.M.?

10 A A.M.

11 Q Would you be surprised if it was 5:30 A.M.?

12 A Not really.

13 Q You spoke with Investigator Thomas; correct?

14 A Yes, sir.

15 Q Can you point him out in the courtroom?

16 A (Indicating.)

17 Q The gentleman over here (indicating)?

18 A Yes, sir.

19 Q Which one of the two? Is he the farthest left?

20 A In the middle.

21 MR. NEWTON: Let the record reflect he has
22 pointed out Investigator Arthur Thomas.

23 THE COURT: So reflected.

24 BY MR. NEWTON:

25 Q So when they brought you in early in the morning,

1 did you immediately start talking to Mr. Thomas,
2 Investigator Thomas?

3 A No, sir.

4 Q They just had you sitting?

5 A Yes, sir.

6 Q How long did it take before you started to talk to
7 Investigator Thomas?

8 A After I had done talked to my mother.

9 Q You got to talk to your mother before?

10 A Yes, sir.

11 Q Was it hours?

12 A No, sir.

13 Q Just less than a hour before you started talking to
14 Investigator Thomas?

15 A Yes, sir.

16 Q I am going to hand up something for you. Do you
17 remember signing this waiver?

18 A Yes, sir.

19 Q Can you read to the Court what time you signed that
20 waiver on the top left?

21 A 7:45.

22 Q Say it again.

23 A You said the top? 7:45.

24 Q Is that A.M. or P.M.?

25 A It's P.M.

MARQUEZ PROPHET -- IN CAMERA CROSS -- MR. NEWTON 380

1 Q But you remember it being in the morning; correct?

2 A Yes, sir.

3 Q Now, explain a little bit of the conversation you
4 had with Investigator Thomas. There are portions
5 that are recorded. Was it always recorded?

6 A Not to my knowledge.

7 Q So did you immediately, when you got in there, put
8 pen to paper and start writing or did y'all talk?

9 A Talked.

10 Q Talked?

11 A Yes, sir.

12 Q How long do you think you talked with him? Hours?

13 A No, sir.

14 Q Less than an hour?

15 A Yes, sir.

16 Q You said he let you talk to your mother?

17 A Yes, sir.

18 Q At any time during this time when you were talking
19 to your mother and Investigator Thomas, were you
20 upset?

21 A Yes, sir.

22 Q Were you crying?

23 A Yes, sir.

24 Q He did finally record this conversation; correct?

25 A Yes, sir.

1 Q Do you remember the conversation? I mean, not all
2 of it, but you do remember what was said in this
3 conversation; correct?

4 A Yes, sir.

5 Q And do you remember when he was going through the
6 people that were with you, do you remember giving
7 him the name Brian Campbell?

8 A No, sir.

9 Q You said it was a guy with braids; right?

10 A Dreads.

11 Q Dreads?

12 A Yes, sir.

13 Q You didn't know his name at the time; did you?

14 A No, sir.

15 Q But now you know his name?

16 A Yes, sir.

17 Q How long total do you think you were in this room
18 with him talking? Total? From speaking to your
19 mother and everything?

20 A About a couple of hours.

21 Q A couple of hours?

22 A Yes, sir.

23 Q And at one point you were crying and at one point
24 you got to hug your mother; correct?

25 A Yes, sir.

MARQUEZ PROPHET -- IN CAMERA CROSS -- MR. NEWTON 382

1 Q Do you remember when you were showed pictures? Was
2 it the beginning? The middle? The end?

3 A I think in the beginning.

4 Q In the very beginning?

5 A Yes, sir.

6 Q Was that recorded or not recorded?

7 A I can't recall.

8 Q You said you referred to Daqwan Johnson as G-man;
9 correct?

10 A Yes, sir.

11 Q Did you know his full name at the time this
12 happened though?

13 A No, sir.

14 Q You didn't know his name?

15 A No, sir.

16 Q You just knew him as G-man?

17 A Yes, sir.

18 MR. NEWTON: Beg the Court's indulgence.

19 THE COURT: Yes, sir.

20 (Pause.)

21 BY MR. NEWTON:

22 Q Who gave you the name Daqwan Johnson? Who told you
23 that?

24 A Nobody gave a name. I seen it like on a picture.

25 Q You saw it on a picture?

1 A Yes, sir.

2 MR. NEWTON: No further questions.

3 THE COURT: Anything further, Solicitor?

4 MS. CAMPBELL: No, sir.

5 THE COURT: Thank you. Thank you very much.

6 You may take him back into custody, Sheriff.

7 (Witness leaves the witness stand.)

8 THE COURT: I would be glad to hear from you,
9 Mr. Newton.

10 MR. NEWTON: Your Honor, we would move to
11 preclude this in-court identification. We just heard
12 testimony from this gentleman who said he does not even
13 know this person's name, knows him as G-man. He said
14 that he got his name from a picture that he was shown,
15 which contradicts the direct testimony that we heard, of
16 what we know about this.

17 I would say this is unduly suggestive. He was
18 in a room for hours. His mother was brought in. He was
19 crying. He was being recorded; he wasn't being
20 recorded. I feel like this is extremely unduly
21 suggestive under this hearing, and therefore we would
22 ask for the in-court identification not to happen.

23 THE COURT: Solicitor.

24 MS. CAMPBELL: May it please the Court, Your
25 Honor. This witness indicated that he did know the

1 defendant for a couple of years. He knew him by the
2 name of G-man. That's what he told the police at the
3 time.

4 Your Honor, we might want to make a part of
5 the record too, I have got a transcript of the actual
6 audio recording where he is shown the pictures if you
7 want to review that.

8 In addition to that, Your Honor, he mentioned
9 that he had seen a picture at some point and saw his
10 name at that point, but he didn't indicate which picture
11 it is.

12 Even so, that doesn't even taint his knowledge
13 of who he was. It just gives him additional
14 identifiers; however, he indicated he saw him on a
15 weekly basis. They were home boys. They were
16 acquaintances.

17 They had known -- he had known him a couple of
18 years. He was closer with him than I believe he said
19 with Terrance Patterson or the other person he was shown
20 a picture of, which would be Detrick Walker.

21 Your Honor, I asked the specific questions if
22 there was anyone that influenced him identifying anyone.
23 They basically did it to make sure they were talking
24 about the same person.

25 He indicated that the police had not :

1 influenced him in any way, Your Honor. Therefore, I do
2 not know -- and they don't even mention that there was
3 any undue police influence here that could possibly
4 affect his identification.

5 THE COURT: Thank you. Do you care to
6 respond?

7 MR. NEWTON: Nothing further, Your Honor.

8 THE COURT: I would find that there is no
9 undue influence in this particular case. The defendant
10 or the witness testified that he knew an individual,
11 G-man, on his direct. He said his name was Daqwan
12 Johnson and he knew him better than he knew Brian and
13 T.; that he would see him on a weekly basis; that they
14 were home boys. It's irrelevant whether he knew or did
15 not know what G-man's given name was as far as this
16 analysis.

17 He further did not indicate when he saw or
18 where he saw the picture with G-man's name of Daqwan
19 Johnson on it. He said he knew Detrick since middle
20 school. He was shown photos. He identified the
21 individual as G-man. He knew two of the four people on
22 the other photographs and identified them.

23 The question, again, is whether or not the
24 in-court identification was of an independent origin and
25 the product of the circumstances surrounding the prior

1 out-of-court identification.

2 He was shown a picture and he identified the
3 picture as G-man that he was talking about in this case.
4 I would deny the motion of the defense and allow the
5 testimony.

6 Anything further, Solicitor?

7 MS. CAMPBELL: Nothing further.

8 THE COURT: Any other motions at this time?

9 MS. CAMPBELL: No other motions I know of
10 prior to calling this witness, Your Honor.

11 THE COURT: Mr. Collins, Mr. Newton?

12 MR. NEWTON: Your Honor, I guess just for
13 scheduling purposes, now that we have the jury out, I
14 believe Detrick Walker is going to have the same
15 problem. So we perhaps need to go ahead and do that now
16 that we have the jury out.

17 Detrick was -- everybody was shown a video, an
18 identification of the people coming through the cut in
19 this video. The defense would say that is an
20 identification because they are not only looking at
21 this, but they are saying: This is this person. This
22 is this person. This is this person.

23 I think based on that, that entitled us to a
24 Neil v. Biggers hearing even though Mr. Walker can say
25 he knows him, the same as Mr. Prophet. We did not get

1 into that identification with Mr. Prophet.

2 But with Mr. Walker, according to Investigator
3 Streeter, he showed him either pictures or the video of
4 the shooting, which they do plan on showing, and all of
5 the three codefendants that were scheduled to testify
6 picked people out of a lineup.

7 Mr. Prophet and Mr. Patterson had done that
8 previously. Mr. Walker had not done it, but as early as
9 May of 2012, we were aware that he did that. We would
10 say that that is an identification, an out-of-court
11 identification, and therefore we are entitled to Neil v.
12 Biggers in regards to that, whether or not that was
13 unduly suggestive.

14 THE COURT: I apologize, Mr. Newton. I'm not
15 tracking. Are you saying I need to conduct another Neil
16 v. Biggers hearing on Mr. Prophet?

17 MR. NEWTON: No, I'm saying Detrick Walker
18 will need one.

19 THE COURT: Mr. Walker?

20 MR. NEWTON: Detrick Walker.

21 THE COURT: That is Mr. Johnson's client; is
22 that right?

23 MR. NEWTON: Yes. I believe in May of 2012,
24 and then I believe this week based on my conversation
25 with Investigator Streeter, he was shown either pictures

1 or a video of the shooting and asked to pick out who was
2 who on there, and he picks out our client. That's
3 Mr. Walker.

4 THE COURT: So the only other Neil v. Biggers
5 you are saying on the table right now -- not that there
6 may not be others -- is the one with Mr. Walker?

7 MR. NEWTON: Correct, Your Honor. We are not
8 saying we need to rehear Mr. Prophet in terms of that
9 identification. We are saying that Mr. Walker was --
10 and we don't know how he was shown it, but I was given
11 information that he picked Mr. Johnson out of either the
12 video or pictures from the video.

13 Investigator Streeter told me this in May, and
14 he confirmed it again on Monday that this was done; that
15 Mr. Walker picked every -- picked people as they were
16 coming through, and I don't know if it was done as
17 pictures or a video. We don't know. He just said this
18 is the way it came out.

19 THE COURT: Solicitor.

20 MS. CAMPBELL: May it please the Court, Your
21 Honor. Basically he was shown a video that was shown to
22 all the other people who they are not requesting
23 hearings on that. That was shown by the police. This
24 video was shown to Mr. Walker in preparation for his
25 testimony by Investigator Streeter with our office.

1 The video, you can't identify anyone's faces.
2 Basically he was just pointing out who he alleged was
3 coming through the cut at the time on the video. I
4 don't know that that is necessarily any kind of thing
5 that would be encompassed by Biggers as far as a hearing
6 goes.

7 THE COURT: Was he shown photographs also,
8 Mr. Walker?

9 MS. CAMPBELL: No, sir.

10 THE COURT: I think the theory is -- I think
11 the theory is and I could be wrong is that -- well, let
12 me back up. Mr. Walker is going to in court identify
13 Mr. Johnson?

14 MS. CAMPBELL: Yes, sir.

15 THE COURT: I think Mr. Newton's theory is
16 whether or not the officer showing Mr. Walker a video,
17 whether or not that taints his in-court identification.

18 MS. CAMPBELL: I understand his theory and if
19 anyone was identifiable by face, I mean -- I understand,
20 Your Honor.

21 THE COURT: I guess he is going to identify
22 him because he is going to say: I was there and T. was
23 here. Detrick was there and G-man was here and Brian
24 was here. Is that right?

25 MS. CAMPBELL: That's my understanding, Your

1 Honor, as they did with the other codefendants.

2 MR. NEWTON: Your Honor, if I may just briefly
3 supplement.

4 THE COURT: Yes, sir.

5 MR. NEWTON: If you don't mind. Detrick
6 Walker is the only one of the codefendants originally
7 that did not give a written statement. He had the same
8 interview, interrogation interview, procedure conducted
9 as every other one. They were spoken to and then a
10 recording starts. It's very obvious that the recording
11 is in the middle of the conversation. So we don't know
12 what happened in 2010.

13 It doesn't seem, based on what we have, that
14 there was any photos taken. I don't know. I am only
15 basing it now off of the fact that we do know that
16 Investigator Streeter did show them something. Again,
17 we don't know what they were shown, if Detrick Walker
18 has ever been shown photos or was ever shown a lineup.
19 If he was, I think we would be entitled to have a
20 hearing.

21 MS. CAMPBELL: And I would agree that if he
22 was ever shown a lineup or a single photograph, then
23 they would have a hearing, in the same manner as we just
24 conducted.

25 THE COURT: Is he your second witness today?

1 MS. CAMPBELL: Yes, sir.

2 THE COURT: Let's press on. We will bring the
3 jury out, and you can call Mr. Prophet. We will see how
4 long that takes. Anything further before we bring in
5 the jury? Solicitor, anything further before we bring
6 in the jury?

7 MS. CAMPBELL: No, sir.

8 THE COURT: Mr. Newton?

9 MR. NEWTON: No, Your Honor. Thank you.

10 THE COURT: Bring us the jury.

11 (The jury returns to the courtroom at
12 3:17 P.M.)

13 THE COURT: Welcome back, ladies and gentlemen
14 of the jury panel. I apologize for the delay. As I
15 told you before, your time is very valuable to me. I
16 will try to do a better job of managing it. I would
17 advise you that this had nothing whatsoever to do with
18 any of the parties. They were here early, working very
19 diligently, and will be working very diligently later on
20 in the evening.

21 With that being said, we are continuing with
22 the trial of the case by the presentation of evidence by
23 the State in its case in chief.

24 Solicitor, you may call your next witness.

25 MS. CAMPBELL: May it please the Court. The

1 State calls Marquez Prophet.

2 MARQUEZ PROPHET, being
3 first duly sworn, testifies as follows:

4 CLERK: State your name for the record.

5 THE WITNESS: Marquez Prophet.

6 DIRECT EXAMINATION

7 BY MS. CAMPBELL:

8 Q Can you back off the microphone a little bit. Can
9 you say your name again?

10 A Marquez Prophet.

11 Q Marquez Prophet?

12 A Yes, ma'am.

13 Q How old are you, sir?

14 A Twenty.

15 Q And where did you grow up?

16 A Columbia.

17 Q How long have you lived in Columbia?

18 A All my life.

19 Q And you are currently incarcerated?

20 A Yes, ma'am.

21 Q Where are you incarcerated?

22 A Alvin S. Glenn.

23 Q How long have you been there?

24 A Two years.

25 Q Are you in a gang?

1 A No, ma'am.

2 Q Do you know people that are in gangs?

3 A Yes, ma'am.

4 Q And who do you know or who do you hang with that is
5 in gangs?

6 A T.

7 Q T.?

8 A Yes, ma'am.

9 Q Do you know T.'s real name?

10 A Terrance Patterson.

11 Q Who else do you hang with that is in a gang?

12 A G-man.

13 Q G-man?

14 MR. NEWTON: Objection, Your Honor. May we
15 approach?

16 THE COURT: Sure.

17 (Whereupon there was a bench conference off
18 the record in the presence of the jury but out of the
19 hearing of the jury.)

20 THE COURT: Step to your jury room, please,
21 ladies and gentlemen. Do not discuss the case.

22 (The jury retires to the jury room.)

23 THE COURT: You have an objection, Mr. Newton,
24 Mr. Collins?

25 MR. NEWTON: Your Honor, we object to

1 having -- we would ask for the question to be stricken
2 from the record and the jury advised to not take into
3 account what the question and answer to that was, which
4 was: Do you know anyone else in a gang? And he replied
5 G-man.

6 That is character -- impermissible character
7 evidence against our defendant. The State has said that
8 we said in our opening that this was gang-related
9 activities; however, we are saying our client wasn't
10 involved in that. That is including this.

11 We had a motion at the beginning of this trial
12 asking -- from any references to that. I think they
13 have to lay a proper foundation to establish that, and
14 they have not. They just blatantly asked the question.

15 Your Honor, we feel it's impermissible. We
16 would ask that it be stricken from the record and for
17 the jury to be advised that they are not to take that
18 into account.

19 THE COURT: Basically your objection is it's
20 impermissible character evidence?

21 MR. NEWTON: Yes, Your Honor, towards the
22 defendant.

23 THE COURT: Excuse me?

24 MR. NEWTON: Towards the defendant.
25 Impermissible character evidence against the defendant.

1 THE COURT: Ms. Campbell.

2 MS. CAMPBELL: May it please the Court, Your
3 Honor. We are not offering this as character evidence
4 in any way whatsoever. In their opening statement, they
5 got up here and said that the only reason that anybody
6 is pointing at their guy is because there was another
7 gang member they are all scared of.

8 I don't have my notes in front of me, Your
9 Honor. I apologize. I left those in the office as to
10 specifically what was said which opened the door to
11 that. In addition to that, Your Honor, I mean,
12 everything that they put out there in openings talked
13 about gangs.

14 Very simply I am asking the question
15 basically: Who does this person of his own knowledge
16 have knowledge that is in a gang? Which I think we are
17 allowed to go into under Liverman and Price and those
18 cases, Your Honor, when it is, in fact, a motive for
19 this case.

20 It was a gang retaliation, which they openly
21 admitted, and they are the ones that further went into
22 the retaliation shooting at Studio 54 with one of the
23 other witnesses.

24 THE COURT: Documents have been handed up
25 previously, defendant's requested voir dire, question

1 number 8 upon the qualifications of the jury I asked
2 this question: Does any member of the jury panel have
3 any knowledge of or connection to gang activity or
4 affiliation that would affect your ability to be fair
5 and impartial in this case?

6 That question was not asked in a vacuum. That
7 was a question requested by the defense as part of the
8 qualification of the jury panel. Y'all made a motion in
9 limine concerning Liverman I because I do not think the
10 gang issue in Liverman I went on certiorari to the
11 Supreme Court.

12 I don't recall the extent of that motion in
13 limine, but I said, What do you mean? What if somebody
14 gets up here and testifies he is the capo of the gang or
15 he wears the colors or he is at the meetings because I
16 have seen him? There was some talk about an expert in
17 gangs.

18 What Ms. Campbell has done is ask the first
19 question in this area: Who do you know that is in a
20 gang? Are you in a gang? No. She asked this witness.
21 Then she asked: Who do you know in a gang? He said T.
22 That's Mr. Patterson, I believe, Terrance Patterson.

23 Then she asked who else do you know in a gang?
24 And he said G-man. Character evidence may not be
25 admissible; however, just because evidence is not

1 admissible on one issue, it can be admissible on another
2 issue.

3 You can't present to the jury that this was
4 all gang related by these forces, none of whom are in
5 the courtroom, this unseen gangster -- I guess that's
6 where that word comes from -- and try this case in a
7 vacuum. That's the issue I have with it.

8 MR. NEWTON: Your Honor, I would again object
9 to it. Further, I think that you kind of laid the
10 foundation for our argument, which the first question
11 was: Are you in a gang? No.

12 THE COURT: Well, object. Object to gang.
13 Why do you have it in openings and why do you have it in
14 voir dire? I don't mean that by way of fussing.

15 MR. NEWTON: Oh, no, and that's fine. If he
16 has personal knowledge -- if he is not in a gang, where
17 did he gather his personal knowledge?

18 THE COURT: I'm not at the Knights of
19 Columbus, but I can guarantee you I can tell you who
20 might be over there tonight.

21 MR. NEWTON: Your Honor, the point of our --
22 any sort of direction to the jury that this was gang
23 related was to, one, emphasize, he was not a part of
24 this. He is not in a gang; therefore, he's not there
25 and he wasn't part of it. That's what we are saying,

1 Your Honor. Again, I believe it was improper to go that
2 route.

3 THE COURT: And they might not believe one
4 word this gentleman says except his name. He is in a --
5 this is not by way of being critical of this gentleman,
6 but the jury is looking at this gentleman in a jumpsuit,
7 shackled. The one thing they may believe is his name.
8 They might not believe that.

9 I will deny your motion. I think I go back to
10 Chief Justice Toal's dissent in the case -- the first
11 name is Gloria. I think the last name was Smith -- out
12 of Horry County, a murder case where she cites, in re:
13 Masters where you can't extract -- just like Nathaniel
14 Hawthorn's birthmark -- you can't extract the gang
15 connotation out of the case.

16 Now, you can extract Mr. Johnson out of the
17 gang. He's not a member. But you can't extract that
18 out. By the way her dissent is now the law. I'm not
19 citing dissent for authority, but I have always found it
20 important to read the dissents. Be that as it may, I
21 will deny your motion.

22 MR. NEWTON: Thank you, Your Honor.

23 THE COURT: Bring us our jury, please.

24 (The jury returns to the courtroom.)

25 THE COURT: Solicitor, you may continue.

DIRECT EXAMINATION

1

2 BY MS. CAMPBELL:

3 Q We were talking about you who knew that was in a
4 gang. Who did you say you knew was in a gang?

5 A T.

6 Q Who was the other person you said you knew was in a
7 gang?

8 A G-man.

9 Q And who is G-man?

10 A Daqwan, Daqwan Johnson.

11 Q Daqwan Johnson?

12 A Yes, ma'am.

13 Q And I noticed you just dipped your head. Is he
14 sitting here in the courtroom?

15 A Yes, ma'am.

16 Q How do you know G-man?

17 A He is like my home boy.

18 Q He is like your home boy?

19 A Yes, ma'am.

20 Q What does that mean for people that are old like
21 me?

22 A Friend, associate I hang with.

23 Q Is that somebody you hang with?

24 A Yes, ma'am.

25 Q What gang was T. in? Do you know?

- 1 A Folk.
- 2 Q What gang was G-man in?
- 3 A Folk.
- 4 Q And these are some of the people you would hang
5 with sometimes?
- 6 A Yes, ma'am.
- 7 Q Did you know a guy named Detrick or Detrick Walker?
- 8 A Yes, ma'am.
- 9 Q How did you know Detrick Walker?
- 10 A From school.
- 11 Q And how long have you been knowing Detrick Walker?
- 12 A From school, middle school.
- 13 Q Middle school?
- 14 A Yes, ma'am.
- 15 Q How old are you now?
- 16 A Twenty.
- 17 Q Would you sometimes hang out with Detrick Walker as
18 well?
- 19 A Yes, ma'am.
- 20 Q Was he in a gang?
- 21 A Not as I know of.
- 22 Q Not that you know of?
- 23 A No, ma'am.
- 24 Q Do you know a guy that you later learned his name
25 was Brian Campbell?

- 1 A Yes, ma'am.
- 2 Q Who did you know him through? Did you even know
- 3 his name at the time when all this happened?
- 4 A No, ma'am.
- 5 Q But who did you know him through?
- 6 A G-man.
- 7 Q Through G-man?
- 8 A Yes, ma'am.
- 9 Q What was Brian Campbell's relationship with G-man
- 10 as far as you knew?
- 11 A Associate, home boy, friend.
- 12 Q Is it better to be an associate or a friend or a
- 13 home boy?
- 14 A Either one.
- 15 Q It's pretty tight?
- 16 A Yes, ma'am.
- 17 Q And when would you see the guy you now know as
- 18 Brian Campbell? Who would he be hanging with?
- 19 A G-man.
- 20 Q G-man?
- 21 A Yes, ma'am.
- 22 Q And where did they hang?
- 23 A I don't know.
- 24 Q You don't know?
- 25 A No, ma'am.

- 1 Q Did you know where G-man lived?
- 2 A Yes, ma'am.
- 3 Q Where did he live?
- 4 A With his grandmomma.
- 5 Q He lived with his grandmother?
- 6 A Yes.
- 7 Q Do you remember the name of the street?
- 8 A No, ma'am.
- 9 Q Do you remember what color the house was?
- 10 A No, ma'am.
- 11 Q But he lived with his grandmother?
- 12 A Yes, ma'am.
- 13 Q Would G-man-- would it be unusual for G-man to call
- 14 you up to do things?
- 15 A Yes, ma'am.
- 16 Q It was unusual for him to call you?
- 17 A Yes, ma'am.
- 18 Q It was?
- 19 A (Witness nods.) (Indicating affirmative response.)
- 20 Q I want to turn your attention back to June the
- 21 19th. What were you doing that day?
- 22 A Riding.
- 23 Q Riding?
- 24 A Yes, ma'am.
- 25 Q Who were you riding with that day?

- 1 A G-man.
- 2 Q Before you started riding with G-man, who were you
- 3 riding with?
- 4 A Brian.
- 5 Q Brian?
- 6 A Yes, ma'am.
- 7 Q Whose car were y'all riding in that day?
- 8 A G-man.
- 9 Q What kind of car did G-man have?
- 10 A A Buick.
- 11 Q A Buick?
- 12 A Yes, ma'am.
- 13 Q Do you remember what color it was?
- 14 A Kind of like khaki tan.
- 15 Q Khaki tan is what you remember?
- 16 A Yes, ma'am.
- 17 Q Do you know who the Buick actually belonged to?
- 18 A No, ma'am.
- 19 Q Who always drove that Buick though?
- 20 A G-man.
- 21 Q Who else would drive that Buick sometimes?
- 22 A B.K.
- 23 Q B.K.?
- 24 A Uh-huh. (Indicating affirmative response.)
- 25 Q Is that Brian Campbell?

1 A Yes, ma'am.

2 Q How did you get up with them that day? How did
3 that happen?

4 A They called me and said his girlfriend was having a
5 party.

6 Q And where was the party supposed to be taking
7 place?

8 A The club.

9 Q What club?

10 A Studio 54.

11 Q And did you end up going to Studio 54 earlier that
12 night?

13 A Yes, ma'am.

14 Q Who did you go with?

15 A G-man.

16 Q And who else was with you?

17 A T., Detrick, and Brian.

18 Q Did y'all end up at Gable Oaks Apartments that
19 night?

20 A Yes, ma'am.

21 Q Tell this jury how that happened and when it
22 happened to your knowledge.

23 A Or [REDACTED] we had got shot at.

24 Q Who all was in the car when you were on [REDACTED]
25 and got shot at?

- 1 A Brian, me, and Detrick.
- 2 Q Who was driving? Do you remember?
- 3 A Brian.
- 4 Q Where were you sitting?
- 5 A In the back seat.
- 6 Q And who was in front?
- 7 A Detrick.
- 8 Q When you got shot at on [REDACTED] did you know
- 9 who was shooting at you?
- 10 A Not as soon as it happened but after I did.
- 11 Q Who was actually shooting at you that day? Do you
- 12 remember?
- 13 A Weeny.
- 14 Q Who?
- 15 A Weeny?
- 16 Q Weeny?
- 17 A Yes, ma'am.
- 18 Q Do you know Weeny's real name?
- 19 A No, ma'am.
- 20 Q Is Weeny in a gang?
- 21 A I don't know.
- 22 Q Did you have a fight with Weeny?
- 23 A No, ma'am.
- 24 Q Did you know that G-man had a fight with Weeny?
- 25 A Yes, ma'am.

1 Q What was the gripe over?

2 A I think it was over a gang.

3 Q Over gangs?

4 A Yes, ma'am.

5 Q It wasn't your gripe?

6 A No, ma'am.

7 Q And the car you were in when you got shot was
8 whose?

9 A G-man.

10 Q After y'all got shot, what did you do?

11 A Called G-man.

12 Q You called G-man. What did you tell G-man?

13 A The car got shot up.

14 Q And did the bullets actually hit the car?

15 A Yes, ma'am.

16 Q Did anybody get hurt?

17 A No, ma'am.

18 Q Did y'all shoot back?

19 A No, ma'am.

20 Q What happened once you told G-man, your home boy,
21 what Weeny had done?

22 A He was mad. He was like bring his car --

23 MR. COLLINS: Objection, Your Honor, hearsay.

24 THE COURT: Did I understand the question? I
25 thought she was asking -- rephrase your question.

- 1 BY MS. CAMPBELL:
- 2 Q Specifically what did G-man, the defendant, say to
- 3 you?
- 4 A Bring his car.
- 5 Q Bring him his car?
- 6 A Yes, ma'am.
- 7 Q Where was he?
- 8 A At his friend girl.
- 9 Q With his friend girl. What's his friend girl's
- 10 name? Do you know?
- 11 A No, ma'am.
- 12 Q Where did y'all go?
- 13 A To G-man friend house.
- 14 Q The girlfriend's house?
- 15 A Yes, ma'am.
- 16 Q And where was that? Do you remember?
- 17 A Off of North Main.
- 18 Q Off North Main?
- 19 A Yes, ma'am.
- 20 Q When you got there, did you have anymore
- 21 conversations with the defendant in the case?
- 22 A Yes, ma'am.
- 23 Q What did he say?
- 24 A We got to get the guns.
- 25 Q We've got to get the guns. Who was the person

- 1 saying that we've got to get the guns?
- 2 A G-man.
- 3 Q Your home boy?
- 4 A Yes, ma'am.
- 5 Q What went through your mind when he said, We've got
- 6 to get the guns?
- 7 A All type of things.
- 8 Q All types of things went through your mind?
- 9 A Yes, ma'am.
- 10 Q What did y'all do when G-man told you y'all had to
- 11 get the guns?
- 12 A Called T.
- 13 Q And T., he is the other person you know that's in a
- 14 gang; right?
- 15 A Yes, ma'am.
- 16 Q And when you called T. what happened?
- 17 A He said come get him.
- 18 Q Where was T.?
- 19 A Hanging at his friend girl house too.
- 20 Q At his friend girl's house too?
- 21 A Yes, ma'am.
- 22 Q So at this point y'all leave G-man's friend girl's
- 23 house and go to T.'s girlfriend's house or friend
- 24 girl?
- 25 A Yes, ma'am.

- 1 Q At that point who all is in the car with you at
2 that point?
- 3 A Me, Detrick, G-man, and Brian.
- 4 Q Who had guns at that point?
- 5 A No one. We went to pick them up at T.'s
- 6 Q When you got to T.'s friend girl's house, what
7 happened?
- 8 A He started giving everybody guns.
- 9 Q Who was giving out the guns?
- 10 A T.
- 11 Q What kind of gun did you get?
- 12 A A pistol, a handgun, .380.
- 13 Q A .380?
- 14 A Yes, ma'am.
- 15 Q That's a handgun?
- 16 A Yes, ma'am.
- 17 Q What did everybody else get?
- 18 A Some got big guns; others got pistols.
- 19 Q Who else got a pistol?
- 20 A I think it was Detrick.
- 21 Q When you said big guns, what do you mean by big
22 guns?
- 23 A Rifles, assault rifles.
- 24 Q Assault rifles?
- 25 A Yes, ma'am.

1 Q And at that point were y'all still having the
2 conversation, you and the defendant? Was he
3 talking about what he wanted to do?

4 A Yes, ma'am.

5 Q And what did he tell you? With the handguns and
6 guns, what did he say he wanted to do that day?

7 A He said he know where the blue Vic always at at
8 Ashley Apartments.

9 Q It's always been at Ashley Apartments?

10 A Yes, ma'am.

11 Q Why was the blue Vic -- is that a blue Victoria?

12 A Victoria, yes, ma'am.

13 Q Is that a car?

14 A Yes, ma'am.

15 Q Why was that significant?

16 A It shot at the Buick.

17 Q And y'all had seen the blue Vic earlier?

18 A Yes.

19 Q And that was the car that Weeny would have been in?

20 A Yes, ma'am.

21 Q So the defendant told you he knew where the blue
22 Vic would be at?

23 A Yes, ma'am.

24 Q Who all had guns that night?

25 A All of us.

- 1 Q Did y'all end up leaving T.'s friend girl's house?
- 2 A Yes, ma'am.
- 3 Q Where did you go?
- 4 A Went to North Main Apartments.
- 5 Q To where?
- 6 A North Main Apartments.
- 7 Q North Main Apartments?
- 8 A Yes, ma'am.
- 9 Q Is that what they are called or is that what you
- 10 know them by?
- 11 A That's what they called.
- 12 Q That's what they are called?
- 13 A Yes, ma'am.
- 14 Q And what happened when you got to North Main
- 15 Apartments?
- 16 A We had parked in North Main Apartments and walked
- 17 through the cut behind them to Ashley.
- 18 Q So you parked at North Main Apartments. Is that
- 19 off North Main Street?
- 20 A Yes, ma'am.
- 21 Q Where were y'all planning on going?
- 22 A Ashley.
- 23 Q Ashley Apartments?
- 24 A Yes, ma'am.
- 25 Q Did that name change at some point to another name?

- 1 A Yes, ma'am.
- 2 Q What was the name it was known at the time? Do you
- 3 remember?
- 4 A Like Gable or something.
- 5 Q Gable something?
- 6 A Yes, ma'am.
- 7 Q When y'all parked who was telling everybody what to
- 8 do? Do you remember?
- 9 A Yes, ma'am.
- 10 Q Did the defendant, G-man, was he -- did he have a
- 11 plan? Did he tell y'all where to go?
- 12 A No, ma'am.
- 13 Q Who decided where y'all were going?
- 14 A G-man.
- 15 Q G-man?
- 16 A Yes, ma'am.
- 17 Q Where did he tell y'all he wanted to go when y'all
- 18 were armed and ready to go?
- 19 A To Ashley, where the blue Vic always is.
- 20 Q Ashley or Gable?
- 21 A Yes, ma'am, Ashley.
- 22 Q Why did he want to go there?
- 23 A That's where the blue Victoria always be.
- 24 Q That's where the blue Victoria is always at?
- 25 A Yes, ma'am.

- 1 Q That would be Weeny's car?
- 2 A I suppose.
- 3 Q Or one he drove anyway?
- 4 A Yes, ma'am.
- 5 Q Not necessarily his car?
- 6 A Yes, ma'am.
- 7 Q So when y'all parked the car there at North Main
8 Street, where did y'all go?
- 9 A Cut behind the North Main Apartments.
- 10 Q So you cut behind the North Main Apartments. Where
11 does that cut lead to?
- 12 A Ashley.
- 13 Q What you know as Ashley?
- 14 A Yes, ma'am.
- 15 Q What was the plan once y'all got over there?
- 16 A To go shoot up on the Vic.
- 17 Q Go shoot up the victim (verbatim). Whose plan was
18 that?
- 19 A G-man.
- 20 Q What happened when y'all got out of the car? Did
21 y'all go to the Ashley Apartments?
- 22 A Yes, ma'am.
- 23 Q And how did y'all proceed to enter Ashley
24 Apartments? Is that an area you would normally go
25 in?

1 A No, ma'am, but I been out there before.

2 Q You hadn't been there before?

3 A Yes, ma'am.

4 Q You had been there before?

5 A Yes, ma'am.

6 Q But you didn't usually hang there; did you?

7 A No, ma'am.

8 Q That's because Weeny and his friends lived there or
9 gang?

10 A Yes, ma'am.

11 Q Once y'all got into the apartment complex, tell
12 this jury what happened.

13 A Once we got to the cut, I really stopped by the
14 first -- that second or first apartment building,
15 and everybody else went their own separate ways.
16 Then I heard gunshots.

17 Q You heard gunshots?

18 A Yes, ma'am.

19 Q And who all went in with you that night into the
20 Ashley Apartments?

21 A Me, G-man, T., Detrick, and Brian.

22 Q Did everyone have a gun?

23 A Yes, ma'am.

24 Q And you mentioned that once you got through the
25 cut, where did you go?

- 1 A At the first building and stopped.
- 2 Q You went to the first building and stopped?
- 3 A Yes, ma'am.
- 4 Q Why didn't you keep going?
- 5 A I seen people out the door.
- 6 Q You seen who out the door?
- 7 A Like people who lived out there.
- 8 Q At that point what was the plan once y'all entered
- 9 Ashley Apartments? What were you supposed to be
- 10 doing?
- 11 A Go find the blue Vic, Victoria, and Weeny.
- 12 Q Weeny?
- 13 A Yes, ma'am.
- 14 Q But you didn't go as far as the others went in?
- 15 A No, ma'am.
- 16 Q You mentioned that you heard gunshots. Did you
- 17 know who was shooting?
- 18 A No, ma'am.
- 19 Q Could you see who was shooting?
- 20 A No, ma'am.
- 21 Q And you didn't go -- by your testimony here -- you
- 22 didn't go any further in. Did you shoot?
- 23 A No, ma'am.
- 24 Q At some point did all y'all come back out of the
- 25 apartment area and go back to where your car was?

1 A It wasn't my car but we went back.

2 Q Where the car was when you came? I'm sorry.

3 A Yes, ma'am.

4 Q Did y'all run back through the cut?

5 A Yes, ma'am.

6 Q Did you still have your gun?

7 A Yes, ma'am.

8 Q Did everybody else still have their guns?

9 A Yes, ma'am.

10 Q Did y'all all get in the car?

11 A Yes, ma'am.

12 Q Once you got into the car, where did y'all go?

13 A We went to G-man girlfriend house.

14 Q Back to that house?

15 A Yes, ma'am.

16 Q During the car ride, did G-man say anything about
17 the shooting or what had or hadn't happened?

18 A No, ma'am.

19 Q He didn't talk about the shooting?

20 A I didn't recall him talking. I just remember
21 someone else was talking.

22 Q Who was talking?

23 A T.

24 Q About what?

25 MR. NEWTON: Objection, Your Honor.

1 THE COURT: Ms. Campbell?

2 MS. CAMPBELL: Res gestae, Your Honor.

3 THE COURT: I will sustain the objection.

4 BY MS. CAMPBELL:

5 Q Was everybody excited?

6 A Yes, ma'am.

7 Q A shooting had just occurred?

8 A (Witness nods.) (Indicating affirmative response.)

9 Q Was everybody still exited about the shooting?

10 A Yes, ma'am.

11 MS. CAMPBELL: Your Honor, at this time I
12 would like to proceed.

13 THE COURT: You may proceed.

14 BY MS. CAMPBELL:

15 Q What was said?

16 MR. NEWTON: Objection, Your Honor.

17 THE COURT: Overruled.

18 A I heard like people, like T. saying he let --

19 COURT REPORTER: Wait a minute. I didn't get
20 that.

21 BY MS. CAMPBELL:

22 Q T. said what?

23 A He let his chopper loose.

24 Q He let his chopper loose?

25 A Yes, ma'am.

- 1 Q What does that mean?
- 2 A I guess he shot his rifle.
- 3 Q And was G-man still in the car?
- 4 A Yes, ma'am.
- 5 Q Do you remember specifically what he said?
- 6 A What who said?
- 7 Q G-man.
- 8 A No, ma'am.
- 9 Q Do you remember anybody else talking about the
- 10 shooting?
- 11 A No, ma'am.
- 12 Q Once you got to G-man's friend girl's house, what
- 13 happened?
- 14 A We had put the guns up.
- 15 Q You did what with the guns?
- 16 A Put them up at her house.
- 17 Q At her house?
- 18 A Yes.
- 19 Q And you don't remember her name?
- 20 A No, ma'am.
- 21 Q Then what happened?
- 22 A We went to the club.
- 23 Q And why were y'all going to the club that night?
- 24 A It was a friend girl birthday, I guess.
- 25 Q Whose friend girl's birthday?

- 1 A G-man.
- 2 Q About what time of night is this all happening? Do
- 3 you know?
- 4 A About 11:00. I say about 11:00, 11:30.
- 5 Q So did y'all go to the club?
- 6 A Yes, ma'am.
- 7 Q And were y'all celebrating?
- 8 A Yes, ma'am.
- 9 Q Who all went to the club with you that night?
- 10 A Me, T., G-man, Detrick, and Brian.
- 11 Q Once you got to the club, did you stay there?
- 12 A Not for a long time. We stayed a little bit.
- 13 Q And when you said we stayed for a little bit, who
- 14 is we?
- 15 A All of us that went there: Me, G-man, T., Detrick,
- 16 and Brian.
- 17 Q Did something happen to make y'all leave?
- 18 A Yes, ma'am.
- 19 Q What happened?
- 20 A A lot of guys had came and started fighting. The
- 21 club was over. They had kicked everybody out, and
- 22 another shooting had happened.
- 23 Q Another shooting?
- 24 A Yes, ma'am.
- 25 Q Were you there when the shooting occurred?

- 1 A Yes, ma'am.
- 2 Q But at that point y'all didn't have your guns
- 3 anymore?
- 4 A No, ma'am.
- 5 Q Do you know what happened to the guns?
- 6 A Ma'am?
- 7 Q Do you know what happened to the guns that y'all
- 8 used that night, that y'all had?
- 9 A Since we took them to his girlfriend house, no,
- 10 ma'am.
- 11 Q You didn't see the guns anymore?
- 12 A No, ma'am.
- 13 Q After you left the club, where did you go?
- 14 A Home.
- 15 Q To your house?
- 16 A Yes, ma'am.
- 17 Q Do you know where G-man went?
- 18 A No, ma'am.
- 19 Q Do you know where Terrance went?
- 20 A No, ma'am.
- 21 Q Do you know where Detrick went?
- 22 A No, ma'am.
- 23 Q Do you know where Brian Campbell went?
- 24 A No, ma'am.
- 25 Q At some point did you become aware that somebody

1 had been killed?

2 A Yes, ma'am.

3 Q And at that point did you go to the police?

4 A No, ma'am.

5 Q Why not?

6 A I was -- I ain't want to be like telling on
7 somebody, and I know like what happens when you
8 tell on somebody.

9 Q So the next day you didn't go to the police?

10 A No, ma'am.

11 Q Did you learn who had been killed?

12 A Yes, ma'am.

13 Q And who got killed?

14 A G-50.

15 Q G-50?

16 A Yes, ma'am.

17 Q Would he have been in a rival gang from G-man?

18 A Yes, ma'am.

19 Q In fact, you didn't tell anybody about any of this
20 until the police, you told; right?

21 A Yes, ma'am.

22 Q How did that happen?

23 A Ma'am?

24 Q How did you that happen?

25 A Talking about how did I tell the police?

- 1 Q Yes.
- 2 A I guess I was on the news then.
- 3 Q You were on the news?
- 4 A Yes, ma'am.
- 5 Q And why were you on the news?
- 6 A Murder.
- 7 Q For murder. And at that point were you aware that
- 8 they had already talked to other people involved in
- 9 this?
- 10 A No, ma'am.
- 11 Q You didn't know that?
- 12 A No, ma'am.
- 13 Q But you knew your face was on the news and that you
- 14 were charged with murder?
- 15 A Yes, ma'am.
- 16 Q And attempted murder?
- 17 A Yes, ma'am.
- 18 Q And you are still charged with murder?
- 19 A And attempted murder.
- 20 Q And attempted murder?
- 21 A Yes, ma'am.
- 22 Q For your role in this?
- 23 A Yes, ma'am.
- 24 Q And when you made -- did you turn yourself in or
- 25 did the police come find you?

- 1 A I had turned myself in.
- 2 Q And where did you turn yourself in?
- 3 A Headquarters.
- 4 Q Why did you turn yourself in?
- 5 A I was on the news.
- 6 Q That you were wanted?
- 7 A Yes, ma'am.
- 8 Q Once you turned yourself in, did the police take
- 9 you into custody?
- 10 A Yes, ma'am.
- 11 Q Did they charge you with murder and attempted
- 12 murder?
- 13 A Yes, ma'am.
- 14 Q Did they advise you of your rights?
- 15 A Yes, ma'am.
- 16 Q And at one point did you request to talk to your
- 17 mother before you talked to the police?
- 18 A Yes, ma'am.
- 19 Q Did they get your mother down and talk to you?
- 20 A Yes, ma'am.
- 21 Q Did you have a conversation with your mother?
- 22 A Yes, ma'am.
- 23 Q And as a result of talking to your mother, did you
- 24 tell the police what happened that night?
- 25 A Yes, ma'am.

1 Q Did you tell them who all was involved?

2 A Yes, ma'am.

3 Q And who did you tell them, back on June the 26th,
4 was involved in this?

5 A Me, T., G-man, Detrick --

6 COURT REPORTER: After Detrick, what did you
7 say?

8 THE WITNESS: The dude with the dreads.

9 BY MS. CAMPBELL:

10 Q The dude with the dreads?

11 A Yes, ma'am.

12 Q And that's who you know now is Brian Campbell?

13 A Yes, ma'am.

14 Q And the police actually recorded, I believe, a
15 statement you gave?

16 A Yes, ma'am.

17 Q And then once you talked to them that day, you went
18 to jail?

19 A Yes, ma'am.

20 Q And that's where you have been ever since?

21 A Yes, ma'am.

22 Q Do you know what you are facing on a murder charge?

23 A Yes, ma'am.

24 Q What are you facing?

25 A Thirty to life.

- 1 Q What to life?
- 2 A Thirty.
- 3 Q Thirty years to life?
- 4 A Yes, ma'am.
- 5 Q Do you know what you are facing on an attempted
6 murder charge?
- 7 A Yes, ma'am.
- 8 Q What are you facing on that charge alone?
- 9 A Another 30 years.
- 10 Q Do you have a lawyer?
- 11 A Yes, ma'am.
- 12 Q Is your lawyer here in the courtroom?
- 13 A Yes, ma'am.
- 14 Q Can you point to where she is in the courtroom?
- 15 A (Indicating.)
- 16 Q Seated over there?
- 17 A Yes, ma'am.
- 18 Q And you have talked to her?
- 19 A Yes, ma'am.
- 20 Q And you understood before you came in here that I
21 couldn't force you to talk?
- 22 A Yes, ma'am.
- 23 Q But you are going to talk. Have you been offered
24 any deals in this case?
- 25 A No, ma'am.

1 Q Have there been any promises made to you, other
2 than you hope it might help you in front of a judge
3 down the line, and you hope we might do something
4 for you; right?

5 A Yes, ma'am.

6 Q Have you been offered any deals by the State or
7 anyone in my office?

8 A No, ma'am.

9 Q And you are still today facing the murder and
10 attempted murder?

11 A Yes, ma'am.

12 Q That you have just come in here and told the jury
13 about?

14 A Yes, ma'am.

15 Q Why are you testifying?

16 A To get it off my chest really.

17 Q G-man, the one you have been talking about?

18 A Yes, ma'am.

19 Q Do you see him here in the courtroom?

20 A Yes, ma'am.

21 Q Can you tell the jury where he is sitting? I know
22 you can't point.

23 A In the middle to my left.

24 Q In the middle to your left. What is he wearing?

25 A A suit.

1 Q A suit and a tie?

2 A Yes, ma'am.

3 Q Is his hair a little different than it used to be?

4 A Yes, ma'am.

5 Q Is his appearance a little different than it used
6 to be?

7 A Yes, ma'am.

8 Q Has anybody promised you anything?

9 A No, ma'am.

10 Q To make you testify?

11 A No, ma'am.

12 Q No deals whatsoever?

13 A No, ma'am.

14 Q You may hope there may be one but none?

15 A Yes, ma'am.

16 MS. CAMPBELL: Beg the Court's indulgence.

17 (Pause.)

18 MS. CAMPBELL: I don't have anything further,
19 Your Honor.

20 THE COURT: Thank you. Mr. Newton.

21 MR. NEWTON: May it please the Court.

22 THE COURT: Yes, sir.

23 CROSS EXAMINATION

24 BY MR. NEWTON:

25 Q Do you mind if I call you Noonie?

- 1 A Yes, sir.
- 2 Q Can I call you Noonie?
- 3 A Yes, sir.
- 4 Q That's your nickname, street name?
- 5 A Yes, sir.
- 6 Q Noonie, where have you been living the past two
- 7 years?
- 8 A Fairfield or at Alvin S. Glenn.
- 9 Q What is Alvin S. Glenn?
- 10 A The detention center.
- 11 Q Do you have your own room?
- 12 A Yes, sir.
- 13 Q You do?
- 14 A (Witness nods.) (Indicating affirmative response.)
- 15 Q How big is it?
- 16 A About the size of this stand.
- 17 Q And you have been living in that for the last two
- 18 years?
- 19 A Yes, sir.
- 20 Q What do you get to eat for breakfast every day?
- 21 A Oatmeal.
- 22 Q How about lunch?
- 23 A A sandwich.
- 24 Q How about dinner?
- 25 A Spaghetti.

1 Q And you have been doing that for the past two
2 years?

3 A Yes, sir.

4 Q Your testimony was that when you got to the
5 apartment complex, you hid?

6 A Yes, sir.

7 Q You didn't fire any shots?

8 A No, sir.

9 Q So you are positive your gun -- there is no way it
10 killed G-50?

11 A Yes, sir.

12 Q Would you be surprised to know there were bullets
13 found that were not from the assault rifles?

14 A No, sir.

15 Q You wouldn't be surprised. So someone else shot?

16 A Yes, sir.

17 Q But it wasn't you?

18 A No, sir.

19 Q The solicitor asked you about conversations that
20 you heard in the car. Do you remember ever telling
21 anybody else about that?

22 A About what?

23 Q About the conversations that you heard in the car.
24 Did you ever talk to Investigator Thomas?

25 A Yes, sir.

MARQUEZ PROPHET -- CROSS -- MR. NEWTON

1 Q You did. He was the one that you talked to when
2 you came in; right?

3 A Sir?

4 Q When you came in, when you were arrested and you
5 turned yourself in, that's who you talked to;
6 right?

7 A Yes, sir.

8 Q About how long did y'all talk?

9 A A couple of hours.

10 Q A couple of hours?

11 A Yes, sir.

12 Q And the solicitor alluded to it. Some of it was
13 recorded; correct?

14 A Yes, sir.

15 Q And Investigator Thomas, he just handed you a piece
16 of paper and said, Tell me what happened?

17 A No, sir.

18 Q You guys had a conversation?

19 A Yes, sir.

20 Q Talked about it?

21 A Yes, sir.

22 Q Talked about possible people that were involved in
23 this; right?

24 A Yes, sir.

25 Q Talked about Detrick Walker; right?

- 1 A Yes, sir.
- 2 Q Talked about Terrance Patterson?
- 3 A Yes, sir.
- 4 Q Talked about Daqwan Johnson?
- 5 A Yes, sir.
- 6 Q Talked about Thomas Williams, O.B.; right.?
- 7 A Yes, sir.
- 8 Q He asked you about him; right?
- 9 A Yes, sir.
- 10 Q You know who that is; right?
- 11 A Yes, sir.
- 12 Q You know he is the set king for the Folk; right?
- 13 A No, sir.
- 14 Q No?
- 15 A No, sir.
- 16 Q But you do know some gangs members; right?
- 17 A Yes, sir.
- 18 Q But you are not in a gang?
- 19 A No, sir.
- 20 Q But your name is Noonie; right? Your nickname?
- 21 A Yes, sir.
- 22 Q Now, in this in conversation that you had, you had
- 23 a chance to see your mother?
- 24 A Yes, sir.
- 25 Q And you got to hug her?

1 A Yes, sir.

2 Q And you were crying?

3 A Yes, sir.

4 Q And they said telling them what they wanted to hear
5 would help you out; right?

6 A No, sir.

7 Q No? They didn't?

8 A No, sir.

9 Q They didn't say that at all. Okay. You are facing
10 30 years to life; is that right?

11 A Yes, sir.

12 Q How old are you?

13 A Twenty.

14 Q Twenty.

15 MR. NEWTON: Beg the Court's indulgence.

16 (Pause.)

17 BY MR. NEWTON:

18 Q I will ask you just a couple of questions about
19 Studio 54. I am almost done. You brought no guns
20 to Studio 54; correct?

21 A No, sir.

22 Q Not at all?

23 A Not me, no, sir.

24 Q And Thomas Williams, O.B., he was at the club;
25 right?

1 A Yes, sir.

2 Q He was involved in a fight at the club; right?

3 A I don't know.

4 Q You don't know?

5 A No, sir.

6 Q You don't know he was involved in a fight, an
7 alleged shooting?

8 A No, sir.

9 MR. NEWTON: No further questions.

10 THE COURT: Redirect?

11 MS. CAMPBELL: Just one question.

12 **REDIRECT EXAMINATION**

13 BY MS. CAMPBELL:

14 Q Was O.B. with you during the shooting that night --

15 A No, ma'am.

16 Q -- that y'all did?

17 A No, ma'am.

18 Q Thank you.

19 MS. CAMPBELL: I don't have anything further.

20 THE COURT: Recross, Mr. Newton?

21 MR. NEWTON: Nothing further.

22 THE COURT: Thank you. He is back in the
23 custody of the Richland County Detention Center. You
24 may step down.

25 (Witness leaves the witness stand.)

1 THE COURT: Ladies and gentlemen, let's take
2 about a 15-minute recess. Please do not discuss this
3 case during this brief recess. You may now go with your
4 bailiff.

5 (The jury retires to the jury room.)

6 THE COURT: Court will be in recess 15
7 minutes.

8 (Whereupon there is a recess.).

9 THE COURT: Solicitor, who is your next
10 witness?

11 MS. CAMPBELL: Your Honor, we can go ahead and
12 take the other codefendant that is the going up today or
13 we can take other witnesses, whatever you want. There
14 is another one there in holding as well. It's not a
15 codefendant but yet another witness.

16 THE COURT: Is the other witness the other
17 codefendant, Mr. Walker?

18 MS. CAMPBELL: Yes, sir.

19 THE COURT: And that's the issue that
20 Mr. Newton brought up in Neil v. Biggers?

21 MS. CAMPBELL: Yes, sir. Or we can put up
22 people from S.L.E.D., whatever you want me to do, Judge.

23 THE COURT: What is your position as to
24 Mr. Walker, Solicitor, on the Neil v. Biggers? What is
25 your position?

1 MS. CAMPBELL: Whatever you think is
2 appropriate, Your Honor. I mean, I don't think it's
3 necessary. I think the purpose of Neil v. Biggers is he
4 basically pointed out who was going -- he was shown the
5 video, not some photographs, but the video; and he
6 pointed out -- if you look at the video, Your Honor, you
7 can't see faces so much. He was just able to identify
8 who was coming through the cut is my understanding.

9 THE COURT: I can't, for the life of me,
10 determine how that would require a Neil v. Biggers
11 hearing. The case y'all have cited, primarily Liverman,
12 states that Neil v. Biggers is a United States Supreme
13 Court case setting forth a two-prong test to determine
14 whether due process requires impression of eye witness
15 identification.

16 Due process requires courts to assess, on a
17 case-by-case basis, whether the identification resulted
18 from unnecessary and unduly suggestive police practices.
19 And if so, whether the out-of-court identification was
20 nevertheless so reliable that no substantial likelihood
21 of misidentification exists.

22 I cannot fit a video of an apartment complex
23 into -- and showing that to a witness -- I cannot fit
24 that into some type of unnecessary and unduly suggestive
25 police procedure. It's not like a lineup. It's not

1 like a show-up. It's not like a photo show-up, anything
2 of that nature.

3 If that were the case, then we would never be
4 able to show a witness evidence that had photographs of
5 people. Let's say you have photographs of somebody and
6 show it to them. I don't see where that is unduly --
7 where it fits into that framework.

8 MR. COLLINS: Your Honor, I think possibly we
9 got a little off track talking about Cambo Streeter and
10 the things that we knew about. Our other concern is
11 that originally yesterday when we brought up the issue
12 of having these hearings outside the presence of the
13 jury, we asked Investigator Thomas and Ms. Campbell if
14 anyone had been shown a picture or a lineup.

15 The initial response was: No, nobody was
16 shown a picture. Nobody was shown a lineup. On further
17 inquiry we learned not only were they shown a picture --
18 Marquez Profit was shown a picture with Mr. Johnson's
19 name written underneath it.

20 On Terrance Patterson's transcript from the
21 recorded statement he gave, the first question is: Who
22 is this? Where a picture was shown to him. Mr. Walker,
23 when they turned the recording on, stopped cooperating
24 with the police. But in Investigator Thomas' notes, he
25 writes Mr. Walker gave a full confession implicating

1 these other people.

2 Out of precautionary reasons, due to the
3 original response we got from Investigator Thomas that
4 no pictures were shown to Mr. Patterson or Mr. Prophet,
5 we would just like to get Mr. Walker on the stand and
6 ask him outside the presence of the jury something along
7 those lines to see if there was something done.

8 THE COURT: I will respond to that
9 momentarily, but I didn't track Mr. Prophet's testimony
10 that he was shown a picture by the police with Daqwan
11 Johnson's name on it.

12 I did track his testimony that he saw a
13 picture with Daqwan Johnson's name on it, but I didn't
14 necessarily track -- I didn't know if he saw it on the
15 news or on a wanted poster or his confirmation picture.
16 I didn't know that he had come -- I didn't necessarily
17 track that that came from being shown by the police.

18 If the State says, We didn't show Mr. Walker a
19 lineup, there is no show-up, no one picture, I don't
20 think it's necessary for Neil versus Biggers. If you
21 want to call Mr. Thomas briefly, you can do so. If you
22 want to put something on the record, that's fine, but I
23 think I just follow the law.

24 If they are saying as officers of the Court,
25 there is no -- not only are there no suggestive police

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1 practices or procedures that fit unduly suggestive
2 identification, that there was no procedure done
3 whatsoever, I don't think the inquiry that I have to
4 make is a threshold inquiry.

5 MR. COLLINS: Thank you, Your Honor.

6 THE COURT: Thank you. Call your next
7 witness -- well, let's see. Are you ready for the next
8 witness?

9 MS. CAMPBELL: Yes, sir.

10 THE COURT: Bring us our jury, please.

11 (The jury returns to the courtroom.)

12 THE COURT: Solicitor, you may call your next
13 witness.

14 MS. CAMPBELL: May it please the Court, Your
15 Honor. The State calls Detrick Walker.

16 DETRICK WALKER, being
17 first duly sworn, testifies as follows:

18 CLERK: State your name for the record.

19 THE WITNESS: My name is Detrick Walker.

20 **DIRECT EXAMINATION**

21 BY MS. CAMPBELL:

22 Q Mr. Walker, how old are you?

23 A Twenty-one.

24 Q And where did you grow up?

25 A Say what?

- 1 Q Where did you grow up?
- 2 A I grew up in South Carolina, Columbia.
- 3 Q In Columbia, South Carolina?
- 4 A Yes, ma'am.
- 5 Q Did you go to high school here?
- 6 A Yes, ma'am.
- 7 Q Where did you go to high school?
- 8 A C.A. Johnson.
- 9 Q Did you graduate?
- 10 A No, ma'am.
- 11 Q What grade did you go through?
- 12 A Eleventh.
- 13 Q Eleventh grade?
- 14 A Yes, ma'am.
- 15 Q Where are you currently living?
- 16 A [REDACTED]
- 17 Q That's where you were living?
- 18 A Yes, ma'am.
- 19 Q That's not where you live right now; is it?
- 20 A No, I stay in Fairfield County.
- 21 Q Fairfield County?
- 22 A Detention center.
- 23 Q In the detention center. Is that the Fairfield
- 24 County jail?
- 25 A Yes, ma'am.

DETRICK WALKER -- DIRECT -- MS. CAMPBELL

1 Q And how long have you been in the Fairfield County
2 jail?

3 A Twenty-six months.

4 Q Since this happened?

5 A Yes, ma'am.

6 Q Pretty much?

7 A Yes, ma'am.

8 Q I want to turn your attention back to June
9 the 19th. Who were you with that day?

10 A Marquez Prophet, Daqwan Johnson, Terrell (verbatim)
11 Patterson, and Brian Campbell.

12 Q And you just said their names. Did you know them
13 by nicknames?

14 A Yes, ma'am.

15 Q And you mentioned that you know Marquez Prophet?

16 A Yes, ma'am.

17 Q What is his nickname?

18 A Noonie.

19 Q Noonie?

20 A Yes, ma'am.

21 Q And you mentioned that you know Terrance Patterson.
22 What is his nickname?

23 A T.

24 Q And you mentioned that you know Daqwan Johnson.
25 What is his nickname?

- 1 A G-man.
- 2 Q G-man?
- 3 A (Witness nods.) (Indicating affirmative response.)
- 4 Q And then you mentioned a Brian Campbell. What is
- 5 his nickname?
- 6 A B.K.
- 7 Q How did you know T.?
- 8 A Neighborhood.
- 9 Q From the neighborhood. What neighborhood is that?
- 10 A Bethel Bishop Apartments.
- 11 Q Bethel Bishop Apartments?
- 12 A Yes, ma'am.
- 13 Q And did you used to hang out in Bethel Bishop
- 14 Apartments?
- 15 A Yes, ma'am.
- 16 Q And that's how you met T.?
- 17 A Yes, ma'am.
- 18 Q How did you know Marquez?
- 19 A We went to school together.
- 20 Q When did you go to school with him?
- 21 A Middle school and high school.
- 22 Q What about B.K.? How did you know him?
- 23 A I went to school with him too.
- 24 Q G-man, how did you know him?
- 25 A Went to school with him.

- 1 Q What school did y'all go to?
- 2 A Perry and Johnson.
- 3 Q Perry and Johnson?
- 4 A Uh-huh. (Indicating affirmative response.)
- 5 Q Do you see somebody you recognize?
- 6 A Ma'am?
- 7 Q Do you see somebody you recognize? I notice you
- 8 looking over.
- 9 A Yes, ma'am.
- 10 Q Any of those people in a gang?
- 11 A Ma'am?
- 12 Q Are any of those people in a gang?
- 13 A No, ma'am.
- 14 Q Nobody is in a gang?
- 15 A No, ma'am.
- 16 Q You aren't in a gang?
- 17 A No, ma'am.
- 18 Q G-man's not in a gang?
- 19 A No, ma'am.
- 20 Q T. is not in a gang?
- 21 A No, ma'am.
- 22 Q Do you know -- are you familiar with Folk?
- 23 A Yes, ma'am.
- 24 Q And do you know people who are in the Folk gang?
- 25 A Yes.

1 Q But you are telling this jury that they aren't in
2 the Folk gang?

3 A Not necessarily a gang.

4 Q They associate with people?

5 A Yes, ma'am.

6 Q So they do associate, at least by your testimony,
7 with people in the Folk gang?

8 A Yes, ma'am.

9 Q Do the Folk and the Bloods get along?

10 A No, ma'am.

11 Q You say you aren't in a gang?

12 A I'm not in a gang, ma'am.

13 Q But you associate too with people that are in
14 gangs?

15 A Yes, ma'am.

16 Q On that day tell this jury how you ended up meeting
17 up with all those guys that you just mentioned?

18 A Earlier that day we was over in Hillingdale
19 Apartments, and we was just chilling out. We had
20 got together and was planning on going to the club
21 later on that night or whatnot.

22 Q Why were y'all going to the club later on that
23 night?

24 A Mr. Johnson girlfriend was having a birthday party.

25 Q And who is Mr. Johnson?

- 1 A G-man.
- 2 Q And you've got a lawyer named Mr. Johnson too;
- 3 don't you?
- 4 A Yes, ma'am.
- 5 Q But you are talking about G-man when you say
- 6 Mr. Johnson here in this courtroom?
- 7 A Yes, ma'am.
- 8 Q And you all were over at Hillingdale Apartments.
- 9 Who lived at Hillingdale?
- 10 A Me.
- 11 Q You were living there?
- 12 A Yes, ma'am.
- 13 Q That's the one right off [REDACTED]?
- 14 A Yes, ma'am.
- 15 Q That's off North Main Street; is that right?
- 16 A Yes, ma'am.
- 17 Q And that day y'all were chilling. What does that
- 18 mean for people like -- older?
- 19 A Sitting back, drinking, smoking.
- 20 Q What were you drinking?
- 21 A Hennessey.
- 22 Q Hennessey?
- 23 A Yes, ma'am.
- 24 Q And what were you smoking?
- 25 A Marijuana.

- 1 Q Who all was over there that afternoon?
- 2 A Me, Prophet, Campbell. Mr. Johnson had left with
- 3 his girlfriend.
- 4 Q And what was Mr. Johnson or G-man driving that day?
- 5 A He was driving his girlfriend's S.U.V.
- 6 Q His girlfriend's S.U.V.?
- 7 A Uh-huh. (Indicating affirmative response.)
- 8 Q Did you know what Mr. Johnson's car looked like?
- 9 A Yes, ma'am.
- 10 Q What kind of car did he have?
- 11 A Buick.
- 12 Q What kind of Buick was it? Do you remember?
- 13 A I don't know. I did know it was a silver Buick.
- 14 Q A silver Buick. Had he been driving that car for a
- 15 while?
- 16 A Yes, ma'am.
- 17 Q You said that y'all were over there. What time of
- 18 day is it you are talking about to begin with?
- 19 A This was earlier in the day.
- 20 Q Earlier in the day. About what time? Do you
- 21 remember?
- 22 A Like about 2:00 or 3:00 o'clock in the afternoon.
- 23 Q At some point did Marquez and B.K. leave in the
- 24 Buick? Do you remember?
- 25 A Yes, ma'am.

- 1 Q And did something happen while they were in the
2 Buick?
- 3 A Yes, ma'am.
- 4 Q That got everybody riled up?
- 5 A Yes, ma'am.
- 6 Q What happened when they were driving G-man's Buick
7 that day that got them all riled up?
- 8 A We was on our way going to the club.
- 9 Q Were you with them?
- 10 A Yes, ma'am.
- 11 Q Okay. Sorry. You were with them?
- 12 A Yes, ma'am.
- 13 Q Who all was in the car?
- 14 A It was me, Campbell, and Prophet.
- 15 Q The three of you?
- 16 A Yes, ma'am.
- 17 Q You were driving whose car?
- 18 A Johnson.
- 19 Q Johnson's car? G-man?
- 20 A Uh-huh. (Indicating affirmative response.)
- 21 Q Go ahead.
- 22 A We was turning on [REDACTED] from West Beltline.
- 23 Q [REDACTED]?
- 24 A Uh-huh. (Indicating affirmative response.)
- 25 Q Near Beltline?

- 1 A We was turning off Beltline onto [REDACTED]
- 2 Q I'm sorry. Off Beltline onto [REDACTED]. Go ahead.
- 3 A When we turned we seen a blue Crown Vic, and two
- 4 guys hung out the window and shot the car.
- 5 Q You say you saw a blue Crown Vic?
- 6 A Yes, ma'am.
- 7 Q And did you know whose car that was?
- 8 A Yes, ma'am.
- 9 Q Whose car was that?
- 10 A A female named -- I just know her by a nickname.
- 11 Her nickname is Rue Rue.
- 12 Q Rue Rue?
- 13 A Uh-huh. (Indicating affirmative response.)
- 14 Q Who is Rue Rue's boyfriend?
- 15 A Weeny.
- 16 Q Weeny?
- 17 A Uh-huh. (Indicating affirmative response.)
- 18 Q And what was Weeny's relationship with G-man? Did
- 19 you know?
- 20 A There wasn't no relationship.
- 21 Q You didn't know? I wouldn't say it was a
- 22 relationship. How did they get along?
- 23 A They ain't get along.
- 24 Q Do you know why they didn't get along?
- 25 A Not really. I know on several occasions that Weeny

1 had shot up Mr. Johnson's car.

2 Q And on this day y'all are turning off Beltline onto
3 [REDACTED] when the blue Vic that belongs to Weeny's
4 girlfriend came by, and what did it do? What did
5 the people do inside it?

6 A Fired several shots at the Buick.

7 Q Did it hit?

8 A Yes, ma'am.

9 Q Did it hit any of y'all?

10 A No, ma'am.

11 Q What did y'all do after you got shot at by the
12 blue -- is it a Crown Vic?

13 A Yes, ma'am.

14 Q Sorry. On [REDACTED]?

15 A We called Mr. Johnson and told him his car had just
16 got shot up.

17 Q Did you talk to Mr. Johnson?

18 A No, ma'am.

19 Q Who was talking to Mr. Johnson?

20 A Campbell.

21 Q Campbell?

22 A Uh-huh. (Indicating affirmative response.)

23 Q Do you remember Marquez talking to Mr. Johnson too?

24 A Not that I recall.

25 Q At that point when y'all called Mr. Johnson, could

1 you hear what he was saying?

2 A No, ma'am.

3 Q After you made the phone call to Mr. Johnson, what
4 did y'all do?

5 A Took him his car.

6 Q You took him his car. Where did you go to take him
7 his car?

8 A To his girlfriend house.

9 Q Where was his girlfriend's house? Do you remember?

10 A It's off North Main. I don't know exactly the name
11 of the road, but it's off of North Main.

12 Q Once you got to his girlfriend's house, what
13 happened?

14 A We got in his car and left and went and picked up
15 Patterson.

16 Q Let me back up. While you were at the girlfriend's
17 house, did you meet up with G-man?

18 A Yes, ma'am.

19 Q And what was G-man saying that day? Do you
20 remember?

21 A Not really. He wasn't really saying nothing. He
22 was just mad about his car being shot up.

23 Q He was mad about his car being shot up?

24 A Yes, ma'am.

25 Q So y'all decided to get back in the car?

1 A Yes, ma'am.

2 Q And who all got back into G-man's car at that
3 point?

4 A Me, Campbell, Prophet, and Johnson.

5 Q And where were y'all heading?

6 A To pick up T.

7 Q Who is T.?

8 A Patterson.

9 Q Terrance Patterson?

10 A Yes, ma'am.

11 Q And why were y'all going to T.'s house at that
12 point?

13 A We was going to go pick him up so we would get his
14 guns.

15 Q Get his guns. Where does T. stay at that point?
16 Where did y'all go pick him up?

17 A He picked him up on [REDACTED] by --

18 COURT REPORTER: What liquor store?

19 THE WITNESS: Bumpy (phonetic) Liquor Store.

20 I don't know the exact name. That's what they call it.

21 Q The Bump Liquor Store?

22 A Yeah, on [REDACTED]

23 Q On [REDACTED]. And was he just at the liquor
24 store or was it some house there?

25 A No, he was on his way walking to his house and we

- 1 met him.
- 2 Q And who was driving the car at that point?
- 3 A Campbell.
- 4 Q Once you picked up T. at Bump's Liquor Store, where
- 5 did y'all go?
- 6 A We went to Doctor's Circle to a little female's
- 7 apartment.
- 8 Q Once you got -- could it be Medical Drive or
- 9 Doctor's Circle?
- 10 A I think Medical Drive.
- 11 Q Once you got there -- and this would be whose
- 12 girlfriend's house?
- 13 A It was nobody girlfriend house. It was just the
- 14 house that we be at.
- 15 Q A house that y'all would stay at sometimes?
- 16 A No, we just go over there and chill out.
- 17 Q Y'all would go over there and chill out?
- 18 A Yes, ma'am.
- 19 Q When you say y'all would go over there, would it be
- 20 you?
- 21 A Yes, ma'am.
- 22 Q G-man?
- 23 A Yes, ma'am.
- 24 Q T.?
- 25 A (Witness nods.) (Indicating affirmative response.)

1 Q B.K.?

2 A (Witness nods.) (Indicating affirmative response).

3 Q And Noonie?

4 A (Witness nods.) (Indicating affirmative response.)

5 THE COURT: Is that yes?

6 THE WITNESS: Yes, ma'am.

7 THE COURT: Yes, sir?

8 THE WITNESS: Yes, sir.

9 BY MS. CAMPBELL:

10 Q Once y'all got over to the house -- on what drive?

11 A Medical Drive.

12 Q What did y'all get there?

13 A What did we get?

14 Q Yes. What did you get?

15 A T. had went and got his assault rifle and a .223
16 and another assault rifle.

17 Q T. went and got those?

18 A Yes, ma'am.

19 Q How many guns did he come back with?

20 A Three.

21 Q Where were the handguns from?

22 A I had my own handgun.

23 Q What about Marquez? What kind of gun did he have?

24 A I think a .380 or a 9-millimeter, one of the two.

25 Q That would be a handgun too?

- 1 A Yes, ma'am.
- 2 Q So he went and got the three assault rifles, and
3 then there were two other guns that somebody got.
4 You had yours?
- 5 A Yes, ma'am.
- 6 Q And then there was another one that Marquez ended
7 up with?
- 8 A Yes, ma'am.
- 9 Q And do you remember who got what rifle?
- 10 A Patterson had the A.K.47 and Johnson had the .223
11 and Campbell had the S.K.S.
- 12 Q The .223, that was Johnson. That would be G-man;
13 right?
- 14 A Yes, ma'am.
- 15 Q Once y'all got your guns, did y'all stay there or
16 did you go somewhere?
- 17 A We had stayed there and the dude started calling
18 Campbell's phone.
- 19 Q Who started calling?
- 20 A It was Weeny.
- 21 Q Weeny started calling Campbell's phone?
- 22 A Uh-huh. (Indicating affirmative response.)
- 23 Q What was G-man saying during this time period when
24 y'all were hanging out on Medical Drive?
- 25 A He wasn't really talking about nothing too much.

1 He was there and we was smoking and whatnot.

2 Q Smoking and stuff?

3 A Yes, ma'am. Then Weeny, he had called the phone
4 and whatnot, bragging about he had just shot up the
5 car and whatnot.

6 Q What happened next?

7 A They was talking, saying how he had shot up the
8 car, and telling us what he said and whatnot.

9 Q Do you know Weeny's real name?

10 A No, ma'am.

11 Q Do you know Edward Miller?

12 A I don't know if that his name or not. I just know
13 him by Weeny.

14 Q So that happened. And then what did y'all decide
15 to do?

16 A We decided to go where he was, where they say that
17 was at.

18 Q Who is the they y'all are looking for?

19 A It was Weeny and his cousin Whitney.

20 Q Once y'all decided to do that -- whose idea was
21 that?

22 A Ma'am?

23 Q Whose idea was it?

24 A Mine.

25 Q And who all was going with you that day?

1 A Everybody who was with me: Campbell, Johnson, and
2 Prophet.

3 Q But you just had the handgun. Who had the assault
4 rifles?

5 A Patterson and Campbell and Johnson.

6 Q Once y'all got back in the car, who was driving?

7 A Campbell.

8 Q Where did y'all go?

9 A To North Main Apartments.

10 Q Why were y'all going to North Main Apartments?

11 A To walk through the cut.

12 Q Is there a cut you are familiar with?

13 A Yes, ma'am.

14 Q Where does the cut lead to?

15 A To Gable Oaks.

16 Q And what is Gable Oaks territory like?

17 A The Bloods.

18 Q Again, the Bloods and the Folk don't get along?

19 A No, ma'am.

20 Q And were you aware of whether or not Weeny was
21 affiliated with a gang?

22 A Yes, ma'am.

23 Q And what gang was Weeny affiliated with which had a
24 beef with G-man?

25 A Bloods.

1 Q Once y'all got to the cut, what happened?

2 A We walked through. When we got through, me and
3 Johnson went one way and Patterson and Prophet went
4 the other way, and I don't know where Campbell
5 went.

6 Q And once you got through the cut, that's where
7 y'all split up?

8 A Yes, ma'am.

9 Q What was the plan?

10 A There wasn't ever no plan. We was just going out
11 there.

12 Q What were you looking for?

13 A Weeny.

14 Q Once you got into the apartment complex, which
15 direction did you go in once you came through the
16 cut?

17 A I went to the left?

18 Q You went to the left.

19 A (Witness nods.) (Indicating affirmative response).

20 Q The two others went to the right, and you didn't
21 know where B.K. went?

22 A Yes, ma'am.

23 Q What happened next?

24 A When we got around the corner, they was in the
25 parking lot. I guess they seen us coming around

1 the corner. When they seen us come around the
2 corner, they opened fire.

3 Q They opened fire. Were you aware that other people
4 had opened fired on them first?

5 A No, they shot first.

6 Q So y'all planned this ambush, and it just happened
7 that they were able to open fire on you first?

8 A No, we never planned no ambush.

9 Q What was the purpose of y'all going there that day
10 looking for G-man's archenemy?

11 A Looking for him.

12 Q To make amends?

13 A Basically.

14 Q And to do that you armed yourself with assault
15 rifles and pistols?

16 A Yes, ma'am.

17 Q And you went in their territory looking for them?

18 A Yes, ma'am.

19 Q That's your testimony?

20 A Yes, ma'am.

21 Q What happened next?

22 A When they opened fire, we turned around and ran.

23 By the time we made it back to the car, Johnson was
24 behind me.

25 Q Did you shoot?

- 1 A No, ma'am.
- 2 Q You didn't shoot?
- 3 A No, ma'am.
- 4 Q They opened fire on you, and you didn't shoot even
5 though you were armed?
- 6 A I ain't never had a chance to shoot.
- 7 Q Who were you with?
- 8 A Johnson.
- 9 Q Did he shoot?
- 10 A No, ma'am.
- 11 Q G-man didn't shoot either?
- 12 A I ain't see him shoot with my eyes.
- 13 Q What kind of gun did G-man have?
- 14 A The .223.
- 15 Q Did you see his gun jam?
- 16 A Yes, ma'am.
- 17 Q What about Terrance? Did you see him shoot?
- 18 A No, ma'am.
- 19 Q Did you hear him shooting?
- 20 A Yeah, I heard a gun that sounded like an assault
21 rifle. I don't know if he was him shooting or not.
- 22 Q Do you know if Marquez shot?
- 23 A No, ma'am.
- 24 Q Do you know if B.K. shot?
- 25 A No, ma'am.

- 1 Q What is your testimony here today next?
- 2 A Ma'am?
- 3 Q What happened next? What's your story next?
- 4 A We got back in the car and we left.
- 5 Q You left?
- 6 A Uh-huh. (Indicating affirmative response.)
- 7 Q And when you got back in the car, were there any
- 8 conversations?
- 9 A No, not really.
- 10 Q Were people upset? You just got shot at.
- 11 A Yeah, people upset but there was really no
- 12 conversation until we got to my house.
- 13 Q Do you remember Terrance bragging about anything?
- 14 A That was after the fact. That ain't happened right
- 15 after the shooting happened.
- 16 Q Do you remember G-man bragging about it or being
- 17 upset about it?
- 18 A He was upset but he ain't bragged about it too
- 19 much.
- 20 Q Do you remember him being upset about his gun
- 21 jamming?
- 22 A No, he never was upset. He never said nothing
- 23 about his gun jamming period. I seen him when the
- 24 gun jammed.
- 25 Q You just saw him when the gun jammed?

- 1 A Uh-huh. (Indicating affirmative response.)
- 2 Q Where did y'all go once you left?
- 3 A Hillingdale Apartments.
- 4 Q And that's where you live?
- 5 A Yes, ma'am.
- 6 Q Who all went there?
- 7 A Me, Johnson, Patterson, Campbell, and Prophet.
- 8 Q What did you do when you got there?
- 9 A Changed.
- 10 Q You changed what?
- 11 A Clothes.
- 12 Q Why?
- 13 A Just changed them.
- 14 Q After you changed clothes, was everybody still
- 15 there?
- 16 A Yes, ma'am.
- 17 Q Where did y'all go next?
- 18 A Studio 54.
- 19 Q Once you all got back in the car, did anybody else
- 20 change clothes?
- 21 A No, ma'am.
- 22 Q Why were you changing clothes?
- 23 A I just felt that I should change clothes.
- 24 Q What happened to the guns?
- 25 A I still had my gun.

- 1 Q What happened to the other guns?
- 2 A Patterson took them back to the house.
- 3 Q To the house?
- 4 A Uh-huh. (Indicating affirmative response.)
- 5 Q On Medical Drive?
- 6 A Uh-huh. (Indicating affirmative response.)
- 7 Q Do you know what happened to the gun that G-man
- 8 had?
- 9 A No, ma'am.
- 10 Q Once y'all went --
- 11 A It went to the house too.
- 12 Q I'm sorry. I didn't mean to interrupt you. I
- 13 apologize.
- 14 A Patterson took it back to his house.
- 15 Q Did y'all do that on the way to the club or after
- 16 you went to the club or what?
- 17 A We did that before we went to the club.
- 18 Q After you changed clothes?
- 19 A Yes, ma'am.
- 20 Q Then y'all went to the club?
- 21 A Yes, ma'am.
- 22 Q To celebrate?
- 23 A No, ma'am.
- 24 Q It wasn't someone's birthday?
- 25 A Yeah, it was Johnson girlfriend birthday.

1 Q And when you got to the club, what happened?

2 A We was in the club and whatnot, and some Blood gang
3 members came in and got into an altercation and
4 whatnot. When they got outside, they was waiting
5 on us outside, and there was another shootout.

6 Q There was another shootout?

7 A Yes, ma'am.

8 Q Did you participate in that one?

9 A Yes, ma'am.

10 Q Do you know if anybody was hit in that shootout?

11 A Yes, ma'am.

12 Q Once there was another shootout -- this is your
13 second shootout that night -- what happened next?

14 A We left.

15 Q Where did you go?

16 A Went home.

17 Q Did anybody go home with you?

18 A Prophet.

19 Q What happened the next day?

20 A Nothing.

21 Q At any point did you ever call the police?

22 A No, ma'am.

23 Q The next day did you become aware that somebody
24 had been shot and killed in your shootout at Gable
25 Oaks or Ashley Apartments, whatever you want to

1 call it?

2 A On the way going to the club, somebody had called
3 our phones. Well, to be exact my mother had called
4 my phone and had said that somebody had got killed,
5 and somebody else had called Patterson phone and
6 said that somebody -- G-50 had got killed or
7 whatnot. He was like yes.

8 Q They were excited G-50 had been killed?

9 A No, he was excited.

10 Q Who is he?

11 A Patterson.

12 Q Terrance Patterson?

13 A Yes.

14 Q G-man, was he excited?

15 A No, ma'am, he didn't express nothing that I could
16 see.

17 Q Not that you could see. And your relationship with
18 G-man is what?

19 A Socially, home boy.

20 Q Home boy. You are pretty tight?

21 A Yes, ma'am.

22 Q And you have been tight for a while?

23 A Yes, ma'am.

24 Q At some point did you make contact with the police?

25 A No, ma'am.

1 Q And at some point did the police make contact with
2 you?

3 A Like a week later.

4 Q Like a week later. And at some point did you
5 become aware that you were wanted?

6 A Yes, ma'am.

7 Q When did you become aware that you were wanted?

8 A That Thursday.

9 Q That Thursday. What day did this happen on?

10 A That Saturday before.

11 Q The Saturday before. How did you become aware that
12 you were wanted for murder and attempted murder?

13 A Somebody had called my phone and said the S.W.A.T.
14 team was at my house, and I called my momma. She
15 told me.

16 Q That the S.W.A.T. team was at your momma's house?

17 A Yes, ma'am.

18 Q So at that point what did you do?

19 A Got in touch with my momma and grandmother. They
20 came and picked me up, and I turned myself in.

21 Q Where did you turn yourself in?

22 A To Richland County Sheriff's Department on Two
23 Notch.

24 Q Did you ultimately get transported to the City
25 Police Department?

- 1 A Yes, ma'am.
- 2 Q When you got to the City Police Department, did you
3 make contact with investigators in the case?
- 4 A Yeah. Yes, ma'am.
- 5 Q Sergeant Thomas?
- 6 A Yeah, they was the one that came and picked me up.
- 7 Q They came and picked you up?
- 8 A Yes, ma'am.
- 9 Q And then did they advise you of your rights?
- 10 A Yes, ma'am.
- 11 Q And did you understand what your rights were?
- 12 A Yes, ma'am.
- 13 Q And did you agree to talk to them? Reluctantly?
- 14 A No, ma'am.
- 15 Q And, in fact, you told them some of what happened
16 at first; right?
- 17 A No, ma'am.
- 18 Q And then you wouldn't tell them anymore; would you?
- 19 A (Witness shakes head.) (Indicating negative
20 response.)
- 21 Q Do you remember that?
- 22 A Yes, ma'am.
- 23 Q And why did you not want to tell them what had
24 happened?
- 25 A I don't know. I don't know.

- 1 Q Is G-man your home boy?
- 2 A Yes, ma'am.
- 3 Q Once you turned yourself in and you were
- 4 transported to headquarters and advised of your
- 5 rights, were you then placed into custody?
- 6 A Yes, ma'am.
- 7 Q And you have been in detention since then?
- 8 A Yes, ma'am.
- 9 Q What are you currently charged with? Two counts?
- 10 Murder?
- 11 A Murder and attempted murder.
- 12 Q And do you know what those carry?
- 13 A Yes, ma'am.
- 14 Q What do they carry?
- 15 A Thirty years.
- 16 Q Do you know that murder carries 30 to life?
- 17 A Yes, ma'am.
- 18 Q And attempted murder carries up to 30?
- 19 A Yes, ma'am.
- 20 Q Have you got a lawyer?
- 21 A Yes, ma'am.
- 22 Q Is he here in the courtroom?
- 23 A Sitting there.
- 24 Q Is this him here (indicating), Mr. Johnson?
- 25 A Yes, ma'am.

1 Q And he has been your lawyer for a while?

2 A Yes, ma'am.

3 Q And do you understand that we can't make anybody
4 come in here and testify?

5 A Yes, ma'am.

6 Q And you spoke to your lawyer?

7 A (Witness nods.) (Indicating affirmative response).

8 Q And you chose to come in here and testify today?

9 A Yes, ma'am.

10 Q Did anybody offer you any deals whatsoever?

11 A No, ma'am.

12 Q In fact, have any promises been made to you?

13 A I wouldn't exactly say a promise but...

14 Q Who did you talk to?

15 A My lawyer.

16 Q Has your lawyer represented to you anything, other
17 than what he put on the record in court here
18 earlier today?

19 A No, ma'am.

20 Q So there is no promises of leniency or any deals?
21 You hope something will happen, but there are no
22 promises?

23 A He said that some leniency, yes, ma'am.

24 Q Who would?

25 A I guess the prosecutor. I don't know.

1 Q Do you know who the prosecutor is?

2 A Yes, ma'am.

3 Q Who?

4 A I think her name Luck Campbell.

5 Q You and I never met?

6 A Huh?

7 Q You and I have never talked before this?

8 A No, ma'am.

9 Q So you don't know my name is Luck Campbell?

10 A (Witness shakes head.) (Indicating negative
11 response.)

12 Q Do you remember seeing a video in this case?

13 A Yes, ma'am.

14 Q And what was on that video? Do you remember?

15 A Five guys going through the cut.

16 Q When you looked at the video, were you able to
17 identify who was who in that video?

18 A Yes, ma'am.

19 Q Can you do that for the jury? Show who went which
20 way?

21 A Yes, ma'am.

22 MS. CAMPBELL: Your Honor, may we set it up so
23 the witness can just -- I don't want him to step down.
24 Well, I guess he will have to step down. Maybe a deputy
25 can escort him.

1 THE COURT: All right. How long is the video
2 or how much of the video are you going to show?

3 MS. CAMPBELL: We are going to try to key it
4 up, if it works. We are just going to try to keep it up
5 to a couple of points.

6 THE COURT: All right.

7 (Pause.)

8 BY MS. CAMPBELL:

9 Q Can you see that?

10 A (Witness nods.) (Indicating affirmative response.)

11 Q What area does that show?

12 A It look like the cut.

13 MS. CAMPBELL: Can you forward it?

14 THE COURT: Sheriff, will you let him step
15 around and point to where he is referring to.

16 (Witness leaves the witness stand.)

17 BY MS. CAMPBELL:

18 Q Do you recognize that person?

19 COURT REPORTER: I can't hear.

20 THE COURT: Speak up when you are away from
21 the microphone.

22 A Play it through first and let me see it.

23 (Pause.)

24 Q Is that good? Were you able to recognize who those
25 people were?

1 A Yes, ma'am.

2 Q Is that going into the apartment complex or coming
3 out?

4 A Going in.

5 Q Who was the first person you saw?

6 A Prophet.

7 Q Prophet. Who was behind him?

8 A Me.

9 Q You?

10 A (Witness nods.) (Indicating affirmative response).

11 Q Who was next?

12 A Johnson.

13 Q G-man?

14 A (Witness nods.) (Indicating affirmative response.)

15 Q Who was after him?

16 A Patterson.

17 Q And who was the last person?

18 A Campbell.

19 Q Okay.

20 A (Witness resumes the witness stand.)

21 THE COURT: Are you going to use that anymore,
22 Solicitor?

23 MS. CAMPBELL: Not anymore now.

24 BY MS. CAMPBELL:

25 Q Were you also shown the video of y'all exiting back

1 through the cut?

2 A (Witness nods.) (Indicating affirmative response.)

3 Q You were just shown this part, and those are the
4 people that were there that night. Did y'all ever
5 find the blue Crown Vic that night?

6 A No, ma'am.

7 Q At least you didn't?

8 A I didn't.

9 Q Do you know if anybody else found it?

10 A No, ma'am.

11 Q The person that you know as G-man, the person that
12 had the beef with Weeny, do you see him here in the
13 courtroom?

14 A Yes, ma'am.

15 Q Can you tell the jury where you see him?

16 A On the left, on that side.

17 Q On that side of that table?

18 A Yes, ma'am.

19 Q Where is he seated at the table?

20 A In the middle.

21 Q What is he wearing?

22 A A suit.

23 MS. CAMPBELL: Your Honor, may the record
24 reflect he identified the defendant?

25 THE COURT: So reflected.

1 BY MS. CAMPBELL:

2 Q Has his appearance changed from back when this
3 happened?

4 A Yes, ma'am.

5 Q How has it changed?

6 A He had dreadlocks.

7 Q He had dreadlocks?

8 A Yes, ma'am.

9 MS. CAMPBELL: The Court's indulgence.

10 (Pause.)

11 MS. CAMPBELL: I don't have anything further.

12 THE COURT: Thank you. Thank you, Solicitor.

13 Mr. Newton?

14 MR. NEWTON: May it please the Court.

15 THE COURT: Yes, sir.

16 **CROSS EXAMINATION**

17 BY MR. NEWTON:

18 Q Good afternoon. Do you mind if I call you Shark?

19 Can I call you Shark? Is that your nickname?

20 A Yes, sir.

21 Q You are at the Fairfield County Detention Center;
22 is that correct?

23 A Yes, sir.

24 Q And you told the jury that you have been there for
25 26 months?

1 A Yes, sir.

2 Q It's a long time; isn't it?

3 A (Witness nods.) (Indicating affirmative response.)

4 Q Yeah?

5 A Yes, sir.

6 Q You knew the months, to the month?

7 A (Witness nods.) (Indicating affirmative response.)

8 THE COURT: Speak up for me a little bit.

9 THE WITNESS: Yes, sir.

10 THE COURT: Thank you.

11 BY MR. NEWTON:

12 Q Are you in a cell?

13 A Yes, sir.

14 Q You share a cell with people?

15 A Yes, sir.

16 Q How big is the cell?

17 A Not that big.

18 Q Not that big. Is your room at your house bigger
19 than that?

20 A Yes, sir.

21 Q What do they feed you for breakfast?

22 A Grits.

23 Q What about lunch?

24 A Sandwiches.

25 Q Dinner?

1 A It depends on what day it is.

2 Q You are charged with murder and attempted murder;
3 correct?

4 A Yes, sir.

5 Q And you know murder carries 30 to life; correct?

6 A Yes, sir.

7 Q Do you want to go away for the rest of your life?

8 A No, sir.

9 Q Now, you said you had a handgun; right?

10 A Yes, sir.

11 Q But you didn't fire it often?

12 A No, sir.

13 Q Would you be surprised to know though that they
14 found shell casings from a handgun?

15 A I would be, yeah.

16 Q Okay. Now, this was a long day. A lot of things
17 happened this day, but you were with, for the most
18 part, Brian Campbell and Marquez Prophet; correct?

19 A Yes, sir.

20 Q The car that Brian Campbell was driving, whose car
21 was that?

22 A Johnson.

23 Q What type of car was that?

24 A A Buick.

25 Q Buick. He had it at the [REDACTED] shooting;

- 1 correct?
- 2 A Yes, sir.
- 3 Q And he was the one driving it there; correct?
- 4 A Yes, sir.
- 5 Q Was Thomas Williams with you?
- 6 A No, sir.
- 7 Q You didn't see Thomas Williams the entire day?
- 8 A No, sir.
- 9 Q You didn't see him at Daqwan's girlfriend's house?
- 10 A No, sir.
- 11 Q You didn't see Thomas O.B. Williams at the Medical
- 12 Center at T.'s house?
- 13 A No, sir.
- 14 Q And you didn't see him at Studio 54?
- 15 A I seen him at Studio 54.
- 16 Q So you did see him. So he was around?
- 17 A At Studio 54.
- 18 Q You know Thomas Williams?
- 19 A Yes, sir.
- 20 Q Are you close with him?
- 21 A I ain't going to say we are close, but I know him.
- 22 I be around him.
- 23 Q Was he involved in a fight at Studio 54?
- 24 A Everyone was involved in a fight at Studio 54.
- 25 Q You met with Investigator Thomas shortly after

1 this; right?

2 A You talking about?

3 Q The gentleman over here (indicating).

4 A Yeah.

5 Q But before that how did you find out that you had
6 been wanted for this?

7 A Somebody had called my phone and said that the
8 S.W.A.T. team was at my house.

9 Q Did you see anything in the news?

10 A No, sir.

11 Q No. You just had a call. So you came down. Do
12 you remember what time of day it was when you were
13 there?

14 A Are you talking about when I turned myself in?

15 Q Yes.

16 A It was like 10:00 or 11:00 o'clock at night.

17 Q Did you immediately speak with Investigator Thomas?

18 A Not really.

19 Q How long was it before you spoke to them?

20 A It probably been like 20, 30 minutes before I spoke
21 to them.

22 Q And how long did this conversation last?

23 A Not that long.

24 Q Not that long?

25 A No, sir.

1 Q Were parts of it recorded?

2 A Not to my knowledge.

3 Q You don't know if you had been recorded?

4 A No, sir.

5 Q And you didn't sign -- they asked you to sign a
6 waiver of your rights. You didn't agree to that;
7 correct?

8 A You talking about the paper?

9 Q That you understood your rights?

10 A Yeah, I understood my rights.

11 Q Do you remember this (indicating)?

12 A (Witness nods.) (Indicating affirmative response.)

13 Q But you didn't want to do a written statement;
14 correct?

15 A No, sir.

16 Q But you did talk with them for a while; correct?

17 A No, I talked to them for like a couple of minutes,
18 but then I just stopped talking.

19 Q You talked to them for a couple of minutes. Was
20 there another investigator in the room?

21 A Yes, sir.

22 Q Was she a woman?

23 A Yes, sir.

24 Q Do you remember what her name was?

25 A Menendez.

DETRICK WALKER -- CROSS -- MR. NEWTON

1 Q Menendez. Do you remember her telling you
2 anything? Or talking to her?

3 A She was talking about my case or whatnot.

4 Q Do you remember telling her: You keep on telling
5 me if I tell you the truth such and such, you still
6 don't like me. I am willing to go to court and
7 testify against whoever you want me to testify or
8 anything. You don't remember saying that?

9 A No.

10 Q You don't remember her saying: We can't give you
11 nothing. We can't threaten you. We can't coerce
12 you. We can't promise you anything. Read between
13 the lines. You don't remember Investigator
14 Menendez, a woman in there?

15 A I remember her, but I don't remember her saying all
16 that.

17 Q You don't remember talking about that. Brian
18 Campbell drove the car the majority of that day;
19 right? He had, in possession, the Buick; correct?

20 A Yes, sir.

21 MR. NEWTON: Beg the Court's indulgence.

22 THE COURT: Yes, sir.

23 (Pause.)

24 BY MR. NEWTON:

25 Q Do you have any idea where Brian Campbell was

1 working at the time?

2 A He was working at Bojangle's.

3 Q He was working at Bojangle's. In your conversation
4 with Investigator Thomas, did he have just -- did
5 he ask you what happened? Is that how it started?

6 A He asked me where was the .40-caliber that I said I
7 had.

8 Q Did he show you any pictures, any photos of people?

9 A (Witness shakes head). (Indicating negative
10 response).

11 Q No photos of anybody?

12 A (Witness shakes head). (Indicating negative
13 response).

14 Q No lineups?

15 A (Witness shakes head.) (Indicating negative
16 response.)

17 Q In any part of your conversation with Investigator
18 Thomas, did he give you information that had not
19 already been discussed by you?

20 A Say that again.

21 Q When you were talking to Investigator Thomas, the
22 information that you gave him, did he give you
23 additional information that he knew?

24 A He said that they had people on camera or whatnot.

25 MR. NEWTON: No further questions.

1 THE COURT: Redirect?

2 MS. CAMPBELL: No, sir.

3 THE COURT: Thank you. Thank you, Mr. Walker.

4 He is back in the custody of the Richland

5 Detention Center, Sheriff.

6 (Witness leaves the witness stand.)

7 THE COURT: You may call your next witness.

8 MS. WALKER: Your Honor, the State calls

9 Brittany Russell.

10 THE COURT: If you would come around, please,

11 Ms. Russell, and be placed under oath.

12 BRITTANY RUSSELL, being

13 first duly sworn, testifies as follows:

14 CLERK: State your name for the record.

15 THE WITNESS: Brittany Russell.

16 DIRECT EXAMINATION

17 BY MS. WALKER:

18 Q Where do you live, Ms. Russell?

19 A On Norman now.

20 Q I'm sorry? What did you say?

21 A Where do I live?

22 Q Yes.

23 A On Norman now.

24 Q Where did you live back in 2010?

25 A Gable Oaks Apartments.

- 1 Q And you lived there in June of 2010?
- 2 A Yes.
- 3 Q Do you know Loree Johnson?
- 4 A Yes.
- 5 Q How do you know her?
- 6 A A school friend from the neighborhood.
- 7 Q Did you know Edward Miller or Weeny?
- 8 A Yes.
- 9 Q How did you know him?
- 10 A School friend and from the neighborhood.
- 11 Q What about Gary Reese?
- 12 A Yes.
- 13 Q Were you actually with Gary Reese the night he was
- 14 murdered?
- 15 A Yes.
- 16 Q About what time did you first hear gunshots?
- 17 A I would say like probably like 9:00. I know I was
- 18 on the way out.
- 19 Q Was it nighttime?
- 20 A Yes.
- 21 Q Where were you?
- 22 A We all was standing there outside. I was coming
- 23 outside my house. We was like getting ready to go
- 24 out.
- 25 Q I will ask you this. When you say we all, who are

1 you talking about?

2 A Everybody -- it was like a lot of people. It was a
3 lot of people outside. It was people at the park,
4 my house. Everybody was getting ready to go out.
5 Loree Johnson and Gary Reese was there.

6 Q They were both there. Was Kendrick Mann there?

7 A Yes.

8 Q There were some kids outside too?

9 A Yes.

10 Q And at some point while y'all were getting ready to
11 go out, you heard gunshots?

12 A Yes.

13 Q How many gunshots did you hear?

14 A A lot.

15 Q Can you guess?

16 A About nine or ten.

17 Q And how long did this shooting last?

18 A I can't tell you because when I heard it, I ran
19 straight to the house. The only thing I could
20 think about is my son.

21 Q Right. He was in the apartment that night?

22 A My son, he was outside, but when I heard it, I ran
23 in the house to my son because he was already like
24 in the doorway. So the only thing I could think
25 about was just saving my son.

1 Q So your son was outside playing when the gunshots
2 started?

3 A Yes.

4 Q Along with others kids?

5 A Yes.

6 Q And then you and your son both run back into the
7 apartment?

8 A Yes.

9 Q At some point did Gary Reese come into that
10 apartment?

11 A Yes. When I ran in the house, seen my son was
12 okay, when I ran in the house, I hurried up and
13 closed the door. That's when my door slammed
14 straight open (verbatim). I heard, "Sis, I got
15 hit."

16 Q You heard, "Sis, I got hit"?

17 A Yes.

18 Q Who said that?

19 A Gary Reese. When he said that, he hit my living
20 room door. That's when I seen it and I was in such
21 a shock that I was just like speechless. I was
22 just standing there.

23 Q What did you see?

24 A I just seen him right there bleeding, nonstop
25 bleeding.

1 Q A lot of blood?

2 A Yes.

3 Q Could you tell where the blood was coming from?

4 A Not at the time.

5 Q It was just everywhere?

6 A It was just everywhere. It was on my front door,
7 my living room floor, and you just seen the trail
8 from my living room floor all the way to the
9 bathroom where the ambulance came and got him from.

10 Q So did he eventually make it -- he made it from the
11 front door --

12 A No. Somebody -- I don't know who picked him up --
13 but somebody picked him up and took him to the
14 bathroom trying to hold his head up he can like --
15 at least he could take his breath so he wouldn't
16 just like collapse. He already collapsed but so he
17 won't just die right there in the living room.

18 Q How many people were in your apartment while this
19 was going on?

20 A I would say like five or six.

21 Q They all ran in there after the shooting started?

22 A (Witness nods.) (Indicating affirmative response.)

23 Q Were you in the bathroom with Gary?

24 A No, at the time I was in the living room on the
25 phone with the paramedics.

1 Q And they eventually came?

2 A Like 30 minutes later, yeah.

3 Q And Gary was taken away from your apartment?

4 A Yes.

5 Q When you said all this shooting started, and you
6 can't tell how long it lasted, could you see where
7 the shots were coming from?

8 A No, I could not.

9 Q You couldn't?

10 A No. But the way it looked like when it came
11 through my window -- they shot up my T.V. and
12 everything -- it looked like it came from an angle
13 wise. Somebody shot, not on the side of my
14 building, they was like -- like this (indicating)
15 is my building. They was like facing my building
16 this way (indicating) in the big field. There is a
17 field right there. I can't see where -- I'm not
18 standing there trying to look to see who shot, but
19 it came angle wise.

20 Q And after that Gary Reese went into your apartment
21 and said, "Sis, I got hit"?

22 A Yeah. When he opened my door -- bust my door
23 open -- that's when I seen him.

24 MS. WALKER: Beg the Court's indulgence.

25 THE COURT: Yes, ma'am.

1 (Pause.)

2 BY MS. WALKER:

3 Q Did you see Gary Reese fire a gun that night?

4 A No, he didn't have a gun.

5 MS. WALKER: No further questions, Your Honor.

6 THE COURT: Thank you. Mr. Collins.

7 MR. COLLINS: May it please the Court.

8 THE COURT: Yes, sir.

9 **CROSS EXAMINATION**

10 BY MR. COLLINS:

11 Q Good afternoon, Ms. Russell.

12 A Hi.

13 Q You gave a written statement back in 2010; didn't
14 you?

15 A Yes.

16 Q In that statement you told the police officer that
17 you looked out your window after the shooting and
18 saw a silver Buick in the parking lot?

19 A No, that was earlier that day. It was two
20 shootings that occurred that day. The first one
21 was when the dude named Whitney, he was taking the
22 trash out, and a silver Buick came in my parking
23 lot, did a U-turn. And when they did a U-turn, I
24 guess they -- I don't know -- they was on my side.
25 I heard gunshots, looked out the window, and that's

1 when I seen the silver Buick speeding out the
2 parking lot.

3 Q Did you see a white van out there?

4 A No.

5 Q Did you ever hear about a white van?

6 A No.

7 Q Have you ever heard about a person named Rocky
8 Bethel being involved in the shooting?

9 A I heard numerous names but, yes.

10 Q So you did hear that he was involved?

11 A (Witness nods.) (Indicating affirmative response.)

12 Q You said that you knew Weeny, who is Edward Miller;
13 right?

14 A Uh-huh. (Indicating affirmative response.)

15 Q And you knew Whitney Wilson?

16 A I don't know Whitney like that, but I knew he
17 was -- he had a relationship with a girl from the
18 neighborhood I was staying in.

19 Q Do you know if Whitney and Weeny were close?

20 A I don't.

21 Q You don't know?

22 A No.

23 Q Did you know about Weeny's beef with Thomas O.B.
24 Williams?

25 A No, I didn't.

1 Q Did you know about his beef with Terrance
2 Patterson?

3 A No, I didn't.

4 Q So you hadn't heard about when he shot at Terrance
5 Patterson numerous times?

6 A No, I did not.

7 Q And you didn't hear about when he shot at O.B.
8 numerous times?

9 A No.

10 Q Did you ever see Kendrick Mann with a gun this
11 night?

12 A No.

13 Q But you say you were out there when the shooting
14 started?

15 A Yeah.

16 Q And you said you didn't see Gary Reese with a gun?

17 A No.

18 Q Did you hear about anybody having a gun shooting
19 back at the shooters that night?

20 A No. Because when the shooting occurred, everybody
21 ran.

22 MR. COLLINS: No further questions.

23 THE COURT: Redirect?

24 MS. WALKER: No, Your Honor.

25 THE COURT: Thank you. Thank you very much.

1 You may step down.

2 (Witness leaves the witness stand.)

3 THE COURT: Solicitor, you may call your next
4 witness.

5 MR. SHELLENBERG: The State calls Tracy Dixon.

6 THE COURT: If you would come around and be
7 sworn, please.

8 MR. COLLINS: Your Honor, may we approach just
9 briefly?

10 THE COURT: Sure.

11 (Whereupon there was a bench conference off
12 the record in the presence of the jury but out of the
13 hearing of the jury.).

14 THE COURT: Mr. Foreman, and ladies and
15 gentlemen, please step to your jury room. I intend on
16 working until about 6:30 tonight. However, there was a
17 time when I had childcare issues. I no longer have
18 those childcare issues. They are out of my house and
19 off my payroll. I don't have to pick them.

20 If any of y'all have childcare issues, let me
21 know, and I will make sure -- and if you have other
22 commitments tonight -- but I would like to work until
23 about 6:30. I do have a matter though to take up
24 outside of your presence. If you would step to your
25 jury room. Do not discuss the case, except only as far

1 check, Your Honor.

2 (Pause.)

3 MS. CAMPBELL: As an addition, Your Honor,
4 there is another pistol that was found in an unrelated
5 case which matched some of the ammunition at the crime
6 scene that I would think he would -- I would assume you
7 stipulate to this.

8 MR. COLLINS: We will stipulate to the
9 .45-caliber handgun that was matched to the shell
10 casings at the crime scene.

11 MS. CAMPBELL: My understanding is what he is
12 stipulating to is everything that was submitted for
13 ballistics, except for this one item, 128. Would that
14 be a correct assessment?

15 MR. COLLINS: That's correct.

16 MS. CAMPBELL: In addition to that, the
17 gunshot residue kit?

18 MR. COLLINS: I cannot stipulate to the
19 gunshot residue kit because I don't have that
20 information about where --

21 MS. CAMPBELL: If I could, Your Honor, have a
22 few seconds. Hopefully I can get the two chains down on
23 those items.

24 THE COURT: Sure.

25 MS. CAMPBELL: That will cut out a number of

1 our witnesses today. We do have two more witnesses
2 downstairs that can testify that are in custody that
3 aren't codefendants. We could settle their records
4 really quickly if we need to.

5 THE COURT: One of them is Ms. Johnson?

6 MS. CAMPBELL: One of them is Ms. Johnson.

7 THE COURT: What about her lawyer?

8 MS. CAMPBELL: I can see if I can get her real
9 quick.

10 THE COURT: Who is the other witness?

11 MS. CAMPBELL: Lamanda Smith. She is in
12 custody in Fairfield County on unrelated charges.

13 THE COURT: Does she have a lawyer?

14 MS. CAMPBELL: I do not know. I can check on
15 that. Everybody in this case has a lawyer. Most of the
16 rest of our witnesses are from law enforcement.

17 THE COURT: If this cuts out all of your chain
18 witnesses, with the exception of the gunshot residue and
19 the bullet from the vehicle that was found at some later
20 time, 128, how many more witnesses are you going to have
21 left?

22 MS. CAMPBELL: Beg the Court's indulgence. We
23 have one more lay witness that we can't put up until
24 tomorrow because he couldn't be transported because we
25 had so many brought over today. So about eight.

1 THE COURT: When are you going to finish?

2 MS. CAMPBELL: I would hope tomorrow.

3 THE COURT: What time tomorrow?

4 MS. CAMPBELL: Maybe mid-afternoon.

5 THE COURT: That was for their planning
6 purposes. Well, rather than have y'all scrambling with
7 Ms. Benevento and the others, the hour is late. The
8 stakes are high. We will break for the evening.

9 MS. CAMPBELL: I apologize, Your Honor.

10 THE COURT: That's quite all right. You had
11 your chain witnesses.

12 MS. CAMPBELL: And we had anticipated putting
13 up a third codefendant today, but, of course, you saw
14 that change.

15 THE COURT: That's fine. I will bring the
16 jury out and release them, and we will start back at
17 9:30 in the morning.

18 MS. CAMPBELL: Thank you.

19 THE COURT: Bring us our jury.

20 (The jury returns to the courtroom.)

21 THE COURT: Ladies and gentlemen, after
22 conferring with the attorneys, which is not unusual, I
23 have another matter to take up. I will not hold you
24 captive any further tonight. I will release you for
25 your evening recess.

1 THE COURT: If you would come around and be
2 sworn for us, please.

3 BRADLEY J. MARCUS, being
4 first duly sworn, testifies as follows:

5 CLERK: State your name for the record.

6 THE WITNESS: Bradley J. Marcus, M-A-R-C-U-S.

7 DIRECT EXAMINATION

8 BY MS. WALKER:

9 Q Dr. Marcus, what do you do for a living?

10 A I'm a pathologist.

11 Q Can you tell this jury please exactly what
12 pathology is?

13 A Pathology is the study of disease and the cause of
14 disease in the human body.

15 Q Please tell the jury a little bit about your
16 educational background.

17 A Yes. I went to college at the University of North
18 Carolina. Then after that I went to medical
19 school. After medical school then I went to the
20 Medical University of South Carolina where I did a
21 residency program. After you receive your M.D.
22 degree, you have to do a residency program.

23 I chose as my medical specialty pathology.
24 With that I studied with other pathologists. I
25 learned everything there is to know about pathology

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1 in that four years. After that I then did some
2 more subspecialty training. In particular I did a
3 fellowship in forensic pathology where I trained
4 with a forensic pathologist one-on-one for a year
5 and did approximately 300 forensic autopsies of all
6 different types with a forensic pathologist
7 studying under them, kind of like a mentor
8 relationship.

9 After that I then did another fellowship in
10 cytopathology. That is studying cells, disease
11 processes in cells. That's like -- you know,
12 everybody knows about what a pap smear is and so
13 forth, looking at pap smears and so forth.
14 Everybody knows what that is. I look at all those
15 types of biopsies also.

16 So after I completed all those types of
17 training, I had to sit for my board examinations
18 given by the American Board of Pathology. I passed
19 my anatomic pathology boards, my clinical boards,
20 my forensic pathology boards, and my cytopathology
21 boards. So I am board certified in four
22 pathologies, four specialties.

23 Q And how long have you been certified? I'm sorry.

24 A I have been certified since 2007 in anatomic
25 pathology and clinical pathology and forensic

1 pathology and since 2008 in cytopathology.

2 Q Can you tell me approximately how many autopsies
3 you have performed?

4 A I have performed approximately 1,700 forensic and
5 medical autopsies.

6 Q And have you ever been admitted as an expert in
7 pathology in court before?

8 A Yes, I have.

9 Q Do you know how many times?

10 A It's approximately 20 times.

11 MS. WALKER: Your Honor, at this point the
12 State moves that Dr. Marcus be admitted as an expert in
13 pathology..

14 MR. COLLINS: No objection.

15 THE COURT: Again, ladies and gentlemen,
16 normally a person cannot give opinion testimony.
17 Normally when a person testifies, they must testify as
18 to what they either saw or heard or sensed by smell or
19 something of that nature.

20 However, there is an exception when someone is
21 qualified because of education, experience, or training
22 in a particular art, science, proofings, or field. They
23 are permitted to give their opinions in certain areas if
24 the Court qualifies them that way.

25 This witness will be qualified in the area of

1 pathology to give opinion testimony in that regard.
2 That does not mean you must accept the opinion, but it
3 is evidence for you the jury to use in any way you see
4 fit. Thank you, Solicitor. You may continue.

5 MS. WALKER: Your Honor, I misspoke, admitted
6 as an expert in forensic pathology.

7 THE COURT: That would be specifically -- any
8 objections?

9 MR. COLLINS: No objections.

10 THE COURT: That would be specifically the
11 area of forensic pathology.

12 Thank you. Thank you, Solicitor. You may
13 continue.

14 MS. WALKER: Thank you, Your Honor.

15 BY MS. WALKER:

16 Q Can you tell jury what forensic pathology is?

17 A Yes. Forensic pathology is a subspecialty of
18 pathology dealing with -- pretty much dealing with
19 cause of death and manner of death. Cause of death
20 is, by definition, any disease or injury that
21 brings about death.

22 Then when you talk about death, you can break
23 that down into five categories, and that's as to
24 manner of death. In South Carolina there are five
25 manners of death. Other states, they have

1 different categories, but in South Carolina there
2 are five categories of death:

3 Natural death -- and the manner of death, by
4 definition, is circumstances surrounding the death.
5 Natural death, which are deaths due exclusively to
6 disease, such as, implications of metastatic breast
7 cancer, exclusively due to a disease process,
8 natural.

9 So natural deaths. Then you have accidental
10 deaths, which are car accidents and so forth. Then
11 you have suicide, taking of one's life. Then you
12 have homicide, which is death at the hand of
13 another person. Then you have undetermined.
14 Sometimes we just don't know the circumstances of
15 how they died. You don't know. Those are
16 typically resolved -- sometimes a body is found in
17 woods. You just don't know.

18 Q Did you perform an autopsy on Gary Reese?

19 A I did perform an autopsy on Mr. Reese, that's
20 correct.

21 Q When was that autopsy performed, Doctor?

22 A I performed an autopsy on Mr. Reese on June 20,
23 2010.

24 Q Where was that?

25 A I performed it at Palmetto Health Richland

1 Hospital.

2 Q And the process by which you go about performing
3 that autopsy, could you kind of explain that to the
4 jury, please?

5 A Yes, sure. So I was notified by the deputy coroner
6 of a death. So the coroner scheduled an autopsy
7 with my private pathology group, Professional
8 Pathologists Services. We scheduled an autopsy to
9 begin at 9:00 A.M. on June 20th down in the morgue
10 at Richland hospital.

11 So I believe it was Leonard Bradley, the
12 Deputy Coroner, who scheduled the autopsy to begin.
13 So he scheduled it with me, and we both showed up
14 at 9:00 A.M. to do the autopsy at the morgue down
15 there. Everybody was brought down to do the
16 autopsy down the in morgue at Richland hospital.
17 That's where we began the autopsy, and that was the
18 first step of what we did.

19 Q Were officers with the Columbia Police Department
20 present?

21 A They were.

22 Q And is that unusual?

23 A No.

24 Q You said that was the first step. What is the
25 second step?

1 A The second step is basically what we do is I
2 examine the body, how it arrived. In this case,
3 Mr. Reese -- in this case Mr. Reese was -- he had
4 some clothes on. He was still clothed in some
5 clothing. So I examined the body, how he was
6 clothed. Then I believe I undid his clothing.
7 Then I had received a report that he had been shot.
8 So then I immediately looked for the gunshot wound,
9 the gunshots wound on him --

10 Q And did you -- I'm sorry. I didn't mean to
11 interrupt, Doctor. Go ahead.

12 A So I immediately then looked for the gunshot wounds
13 on him because any time anyone is shot that comes
14 in who is shot, I like and look to see where the
15 holes are. One thing I like do is I like to
16 examine and get X-ray down there and have his body
17 radiographed to make sure if there is -- to look
18 for any bullets that are still in him because it's
19 very easy to miss something when you do an autopsy.

20 So I X-rayed the body to make sure that
21 there's no bullets in him. In this case I saw two
22 holes in him, which kind of corresponded to an
23 entrance and an exit. The X-ray showed no
24 projectiles, no bullets, in him. So that made
25 sense.

1 Q With the entrance -- you said there were two
2 wounds, an entrance and an exit. Where was the
3 entrance wound on Mr. Reese?

4 A The entrance wound was on his right back.

5 Q And the exit wound?

6 A Was on his right upper chest area.

7 Q So the bullet entered him through the back?

8 A The bullet entered in his back, that's correct.

9 Q Were you able -- are you able to determine the
10 length at which a bullet or the distant at which
11 the gun is fired when a bullet enters a body?

12 A I am.

13 Q Can you explain to the jury how you are able to
14 determine that?

15 A Basically, yes. When a weapon is fired at a body,
16 if the weapon is close to the body, for instance,
17 if it's very close to the body, when a weapon is
18 fired, soot comes out of the weapon and leaves
19 brown, black discoloration on the skin. You can
20 clearly see that. You can see it. You can see
21 what it looks like. You can see the brown
22 discoloration. That's when you have a contact
23 wound.

24 When a gun is held, for instance -- again, it
25 depends on the gun and type of ammo -- say for

1 instance, the body is right here (indicating), and
2 the gun is held like this far apart (indicating),
3 this distance -- again, it depends on the type of
4 weapon and the type of ammo used -- but, again, up
5 to 18 inches.

6 When you fire a weapon, sometimes -- well, all
7 the time -- gun powder comes out of the barrel
8 also, but it's unburned gun powder. It becomes
9 like a very, very fine particle. Think of it being
10 like very fine -- very, very fine -- sand, like a
11 sand.

12 What happens is that when it hits the body, it
13 causes little, little tiny scrapes in the skin.
14 What they call it is they call that powder
15 tattooing or stippling. It leaves very, very fine
16 marks around the entrance wound. I called those
17 intermediate range gunshots. The gun is not
18 actually touching the body but it's close, very,
19 very close to the body.

20 Then anything after that I call those distant
21 range gunshots because you have no soot on the
22 body, no powder tattooing, or stippling, as I said,
23 but you just have a hole in the body. That's what
24 I call a distant range gunshot.

25 So I categorize gunshots, and every forensic

1 pathologist does, in three categories: Contact,
2 intermediate and distant range. In this case I
3 found these gunshots wounds that Mr. Reese had
4 sustained were distant range gunshots.

5 Q Meaning there was no soot present?

6 A No soot present.

7 Q And no stippling present?

8 A No stippling present.

9 MS. WALKER: Your Honor, I would like to show
10 the witness what is marked for identification -- what
11 would be the next number, Madame Court Reporter?

12 COURT REPORTER: The next number would be 144.

13 MS. WALKER: Your Honor, I would like to show
14 the witness what has been marked as State's Exhibits 144
15 through 148 for identification purposes.

16 THE COURT: All right.

17 BY MS. WALKER:

18 Q Do you recognize these, Dr. Marcus?

19 A Yes, I do.

20 Q And are those pictures that you -- that were taken
21 by you?

22 A No, I did not.

23 Q Were those pictures taken during the autopsy?

24 A Yes, these pictures were taken during the autopsy,
25 that's correct.

1 Q Do they fairly and accurately depict Mr. Reese
2 during that autopsy?

3 A Yes, they do.

4 MS. WALKER: Your Honor, at this point I would
5 like to move State's Exhibits 144 through 148 into
6 evidence.

7 (Attorneys confer.)

8 MR. COLLINS: No objection.

9 THE COURT: Number 144 through 148 is in
10 evidence without objection.

11 (State's Exhibit Number 144-148 are received
12 into evidence.)

13 MS. WALKER: Your Honor, may the witness step
14 down?

15 THE COURT: Yes. Doctor, you may step down.
16 If you will keep your voice up for us when you are away
17 from the microphone.

18 THE WITNESS: No problem.

19 THE COURT: Thank you.

20 (Witness leaves the witness stand.)

21 BY MS. WALKER:

22 Q This photo, Dr. Marcus, can you explain to the jury
23 what we see here?

24 A Yes, this is Mr. Reese. So what we have here is
25 Mr. Reese -- we have Mr. Reese on his -- let me

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1 think -- he is on his left side. I've got him on
2 his left side leaning over, propped up on his right
3 so we can see his right back or we can see his
4 entire back there.

5 What you can see here clearly, he has got a
6 small hole in his right -- almost to the midline --
7 right back there, very clean hole right there.
8 That is an entrance gunshot wound right there.
9 That clearly is an entrance gunshot wound.

10 Q And State's Exhibit 145, can you describe this?

11 A Yes. That's, again, just a close-up example of an
12 entrance gunshot wound, just showing the closeup
13 example of an entrance gunshot wound.

14 Q And 146?

15 A Just another example of the closeup of it.

16 Q These are closeups?

17 A I need to see that other one again. This looks
18 like the exit wound, the corresponding exit wound
19 over here. He had an exit wound on the other side
20 of his right clavicle region, over here
21 (indicating).

22 Q Show the jury what you are talking about. Where
23 would the entrance wound be?

24 A The entrance wound on his back was right about --
25 right about there (indicating). It was 16 inches

1 from the top of the head.

2 Q And the exit wound?

3 A The exit wound was right about there (indicating),
4 13 inches from the top of the head.

5 Q There was an additional wound as well?

6 A Yes. This wound right here (indicating), this is
7 what I call a graze wound. He had on the tip of
8 his index and middle fingers on his right hand, a
9 graze wound. If you can kind of visualize in your
10 mind, like a bullet going there. Just kind of
11 visualize the track of a bullet hitting that right
12 there.

13 Now, that bullet, that's a graze wound right
14 there. It kind of grazes the skin. It never
15 entered his finger. It just grazed it. That
16 bullet, that wound could have come from the exit
17 right here (indicating) when that bullet left the
18 body. It could have went like that (indicating) or
19 it could have been a from a separate shot. I don't
20 know. I can't say for sure.

21 Q Thank you, Dr. Marcus. If you would return to the
22 stand, please.

23 A (Witness resumes the witness stand.)

24 Q You said you were unable to determine whether or
25 not there were two different bullets that hit

1 Mr. Reese or one that went through and exited and
2 hit his finger as well?

3 A Right. It's impossible for me to say for certain
4 whether there were two because it's just impossible
5 for me to say.

6 Q Dr. Marcus, to a reasonable degree of medical
7 certainty, what was the cause of death of Gary
8 Reese?

9 A Mr. Reese died because of the gunshot wound
10 sustained to his back because it perforated his
11 lungs and his subclavian vessels right here
12 (indicating), and he bled out. He bled to death
13 due to the gunshot wound he sustained to his back.

14 Q Thank you, Dr. Marcus.

15 MS. WALKER: No further questions.

16 THE COURT: Mr. Collins?

17 MR. COLLINS: Thank you for coming, Doctor.

18 THE COURT: Thank you. Thank you very much,
19 Doctor. You may step down and you may be excused.

20 (Witness leaves the witness stand.)

21 THE COURT: Solicitor, you may call your next
22 witness.

23 MR. SHELLENBERG: The State call F.P.O. Tammie
24 Moore.

25 CLERK: If you would come around and be sworn

1 for us, please.

2 Tammie L. Davis Moore, being
3 first duly sworn, testifies as follows:

4 CLERK: State your name for the record.

5 THE WITNESS: Tammie L. Davis Moore.

6 COURT REPORTER: Do you spell your first name
7 with a Y or an I?

8 THE WITNESS: I-E.

9 DIRECT EXAMINATION

10 BY MR. SHELLENBERG:

11 Q How long have you been with C.P.D.?

12 A Collectively maybe 12 years.

13 Q And that's the Columbia Police Department?

14 A Yes, sir.

15 Q And what are your duties at the police department?

16 A Currently I'm assigned to the crime scene
17 investigation unit.

18 Q Does that include attending autopsies?

19 A Yes, it does.

20 Q And why would you attend an autopsy?

21 A To take photos, document any injuries to the body.
22 Sometimes we have to administer what is called a
23 gunshot residue test. Sometimes I may have to
24 check something off the body.

25 Q Did you attend the autopsy of Gary Reese on

1 June 20th?

2 A Yes, I did.

3 Q And was a G.S.R. kit taken?

4 A Yes, a G.S.R. kit was administered.

5 Q And what does G.S.R. stand for?

6 A Gunshot residue kit.

7 Q And how does one go about taking this kit?

8 A The kit comes in an envelope. There is one part
9 that has these little things on it that are kind of
10 sticky, and we dab the back of the hands and the
11 palm of the hands. Then we go back with a nitric
12 acid solution that we pour on a Q-tip and we swab
13 it. It's two parts.

14 Q That would be the hand you would have shot with?

15 A We do both hands, the palms and the backs of both
16 hands.

17 Q And is there a difference between how long G.S.R.
18 stays on a living person versus a dead person?

19 A We have a six-hour time limit for G.S.R. on the
20 living, and there is no time limit for the
21 deceased.

22 Q So you did take this G.S.R. kit for Gary Reese?

23 A Yes, I did.

24 Q What did you do with it after you took it?

25 A I turned it into the evidence room.

1 Q Properly sealed?

2 A Yes, it was.

3 Q Did you make any identifying marks on it?

4 A Other than my name that I took it.

5 MR. SHELLENBERG: Let me get this marked.

6 (State's Exhibit Number 149 is marked for
7 identification).

8 BY MR. SHELLENBERG:

9 Q I am showing you what is marked as State's Exhibit
10 149 for identification. Will you take a look at
11 that?

12 A Yes, sir.

13 Q Do you recognize it?

14 A Yes, I do.

15 Q How do you recognize it?

16 A Well, it has my name on it where I collected it.
17 This was a gunshot residue kit.

18 Q And after you collected it, you turned it into
19 C.P.D. headquarters.

20 A Yes, to the evidence room.

21 Q And who did you transfer it to at that point?

22 A Evidently I placed it inside of a locked locker.

23 Q Okay. On what day did you do that?

24 A On the 20th, 6/20.

25 Q While you were in control of the G.S.R. kit, did

1 you substantially change or alter it, tamper with
2 it in any way?

3 A No, sir, I didn't.

4 Q And did you also check it back out of evidence?

5 A Yes, I did.

6 Q On what day?

7 A 12/9.

8 Q December the 9th. Did the kit appear to have been
9 tampered with in any way?

10 A No, not when I checked it out.

11 Q Do you know who you transferred it to at that
12 point?

13 A I transferred it to Doris Yarborough at S.L.E.D.

14 Q At S.L.E.D.?

15 A Yes, I did.

16 Q While it was in your control, you didn't do
17 anything to change it, alter it?

18 A No, I didn't.

19 MR. SHELLENBERG: Your Honor, I have no
20 further questions.

21 THE COURT: What was that number?

22 MR. SHELLENBERG: It's 149.

23 THE COURT: Thank you, 149.

24 MR. COLLINS: May it please the Court.

25 THE COURT: Yes, Mr. Collins.

1 CROSS EXAMINATION

2 BY MR. COLLINS:

3 Q Can you test for gunshot residue for clothes?

4 A I don't. We do the hands.

5 Q So you are not aware of the capability of testing
6 for gunshot residue on people's clothes?

7 A S.L.E.D. would do that.

8 Q And also from cars, the inside of cars, and things
9 like that?10 A We can use this gunshot residue kit for vehicles
11 also.

12 Q Thank you.

13 THE COURT: Redirect?

14 MR. SHELLENBERG: Nothing, Your Honor.

15 THE COURT: Thank you. Thank you very much
16 for being with us today, Officer. You may step down and
17 you may be excused.

18 (Witness leaves the witness stand.)

19 THE COURT: You may call your next witness.

20 MR. SHELLENBERG: Your Honor, we call Doris
21 Yarborough.22 THE COURT: Come around to our bailiff and be
23 sworn for us, please.24 DORIS YARBOROUGH, being
25 first duly sworn, testifies as follows:

1 CLERK: State your name for the record.

2 THE WITNESS: My name is Doris Yarborough,
3 Y-A-R-B-O-R-O-U-G-H.

4 DIRECT EXAMINATION

5 BY MR. SHELLENBERG:

6 Q Who do you work for?

7 A I work for the South Carolina Law Enforcement
8 agency also known as S.L.E.D.

9 Q In what capacity?

10 A I am a forensic technician in the evidence control
11 department.

12 Q What would that mean to me?

13 A That means that when agencies throughout the State
14 of South Carolina bring evidence in that need a
15 forensic analysis, they bring it through our office
16 to start with.

17 Q I am going to show you what has been marked for
18 identification as State's 149. Will you take a
19 look at that.

20 A Yes, sir. I recognize it by the number that is on
21 it, the yellow bar-code.

22 Q And do you know who you received it from?

23 A I received it from Tammy Moore of the Columbia
24 Police Department.

25 Q On what day?

1 A Let me look at my notes. On December 9, 2011.

2 Q And did the package appear to have been tampered
3 with in any way, altered?

4 A No, sir.

5 Q Who did you transfer the package to?

6 A When we log in evidence, it goes into our secure
7 evidence room until it's requested by the
8 technician from the department that needs it or the
9 analyst.

10 Q And while it was in your custody and control, did
11 you change it in any way, alter it?

12 A No, sir.

13 MR. SHELLENBERG: No further questions.

14 THE COURT: Mr. Collins?

15 CROSS EXAMINATION

16 BY MR. COLLINS:

17 Q I'm sorry. I might have missed it. You said you
18 were the property custodian at S.L.E.D.?

19 A I'm a log-in technician, forensic log-in technician
20 at S.L.E.D.

21 Q So you are not the person that actually tests
22 anything?

23 A No, sir.

24 THE COURT: Redirect?

25 MR. SHELLENBERG: Nothing, Your Honor.

1 THE COURT: Thank you very much for being with
2 us today.

3 THE WITNESS: Thank you.

4 THE COURT: You may step down and you may be
5 excused.

6 (Witness leaves the witness stand.)

7 THE COURT: You may call your next witness.

8 MS. CAMPBELL: May it please the Court. The
9 State calls John Roberts.

10 THE COURT: Say that name again.

11 MS. CAMPBELL: John Roberts, Your Honor, with
12 S.L.E.D.

13 JOHN ROBERTS, being
14 first duly sworn, testifies as follows:

15 CLERK: State your name for the record.

16 THE WITNESS: John Roberts, R-O-B-E-R-T-S.

17 DIRECT EXAMINATION

18 BY MS. CAMPBELL:

19 Q Agent Roberts, where are you employed?

20 A I work for the South Carolina Law Enforcement
21 Division, more commonly called S.L.E.D., the
22 forensic services building in the trace evidence
23 department.

24 Q In the trace evidence department, what typically do
25 your duties include?

1 A What we do in the trace evidence department is
2 analyze items of evidence for gunshot residue, for
3 flammables, like from an arson scene maybe. We do
4 paint, fiber, glass, duct tape, explosives, and
5 bank dye packs. My duties right now are comprised
6 of gunshot residue completely.

7 Q Can you tell this jury a little bit about your
8 education and training as far as being an expert in
9 gunshot residue testing?

10 A Yes, ma'am. I have a Bachelor of Science degree in
11 chemistry from Texas A&M, Corpus Christi. When I
12 moved up here to South Carolina and started working
13 for S.L.E.D., I started the gunshot residue
14 program, which meant that I did a lot of the work
15 for my supervisor at the time.

16 He would give me cases to prepare for analysis
17 on instrumentation. I would do that. Then I would
18 run the instrumentation after he taught me how to
19 use it. I would generate data. I would come to
20 conclusions, and I would help him write reports.

21 After doing that for about six months, I was
22 given an exam and was tested by all the other
23 people in the department who were clear to run
24 gunshot residue on my knowledge of that and my
25 knowledge of the instrumentation. I passed and I

1 have been taking gunshot residue kits and doing
2 analyses on them since 2006.

3 Q Can you even estimate how many gunshot residue
4 tests you have done?

5 A It's in the thousands.

6 Q And have you ever been qualified before as an
7 expert in trace evidence, specifically as to
8 gunshot residue?

9 A Yes, ma'am.

10 Q And approximately how many times have you been
11 qualified?

12 A I have been qualified as an expert 55 times,
13 probably 53 of those are in gunshot residue.

14 MS. CAMPBELL: Your Honor, at this time we
15 would offer him as an expert in trace evidence,
16 specifically as to gunshot residue testing.

17 THE COURT: Mr. Collins?

18 MR. COLLINS: No objection.

19 THE COURT: Thank you. Again, ladies and
20 gentlemen, if you recall, a person cannot give opinion
21 testimony. Normally when a person testifies, they must
22 testify as to what they either heard, saw, or sensed by
23 smell or something of that nature.

24 However, there is an exception when someone is
25 qualified because of education, experience. They are

1 permitted to give their opinion in certain areas if the
2 Court qualifies them that way.

3 This witness, John Roberts, will be qualified
4 in the area of trace evidence, specifically gunshot
5 residue, to give opinion testimony in that regard. That
6 does not mean you must accept the opinion, but it is
7 evidence for you the jury to use in any way you see fit.

8 Thank you, Solicitor. You may continue.

9 MS. CAMPBELL: May it please the Court.

10 BY MS. CAMPBELL:

11 Q Agent, could tell this jury, typically in testing
12 for gunshot residue what specifics elements you are
13 looking for and what testing you do?

14 A What we look for are metals that are in the primer
15 of a cartridge case when it is fired. We looking
16 for lead, barium, and antimony. There are two
17 tests, as master patrolman, master police officer
18 Moore explained.

19 There are sticky tabs and there are swabs.
20 What we look for on the swabs is traces of metal
21 that are in the primer. We look for lead, barium,
22 and antimony. What we look for on particle lifts
23 are the actual particles of gunshot residue
24 themselves. So of the two samples, we look for
25 basically the same thing but in kind of different

1 forms.

2 Q In the testing you do in your expert opinion,
3 typically how does the particles you are looking
4 for, typically how do they get distributed, say, in
5 a homicide?

6 A The best example I can use is myself, not for the
7 homicide part but for the shooting part. When I go
8 out and shoot, I typically use a semiautomatic
9 firearm. It has an ejector port where every time I
10 fire, the cartridge case comes shooting out.

11 A lot of the residue can come out of that
12 port, but the vast majority of it comes out of the
13 muzzle, like the pathologist was explaining. That
14 soot and stuff that gets deposited on a surface
15 near the gun when it goes off, that is gun powder
16 residue.

17 Mixed in with that is the metals and things
18 that I am looking for in gunshot residue. So it
19 comes out in a cloud, and it deposits on things
20 near the firearm when it goes off. For instance,
21 if I am on the range and I'm shooting, it will
22 deposit itself on my hands.

23 If I don't clean my firearm, I put it and away
24 and pick it back up, I can get gunshot residue off
25 the firearm that I had fired and not cleaned. I

1 can also get it if I am standing next to somebody
2 who is shooting if we go in pairs because it's
3 also safer to shoot with somebody else, not by
4 yourself.

5 If I am standing next to somebody who is
6 firing off a lot of rounds, that gunshot residue
7 can drift over, and I can get it on my hands just
8 from being near it when it goes off.

9 So there are basically three ways you can get
10 gunshot residue on you: You shoot a gun, you are
11 near it when it goes off or you handle a weapon
12 that has been recently fired.

13 Q When you are talking about being near it when it
14 goes off, what kind of distances are we talking
15 about that this gunshot powder, I guess -- is that
16 a fair assessment?

17 A Gunshot residue.

18 Q Residue.

19 A Yes, ma'am.

20 Q How far from the gun typically does it spew,
21 typically?

22 A Off the muzzle end it's six to eight feet at the
23 most. When you are looking at being next to it,
24 it's closer then that, shoulder to shoulder, two to
25 three feet maybe.

JOHN ROBERTS -- DIRECT -- MS. CAMPBELL

1 Q So this is not something that resonants, say, if
2 the bullet travels hundreds of yards -- which it
3 can -- gunshot residue is not typically going to
4 follow with it that far?

5 A I wouldn't expect to see anything on somebody that
6 was shot from a distance like that, no, ma'am.

7 Q But if a person is shot up close, even the victim
8 could get gunshot residue on them?

9 A Depending on the position of their hands. If they
10 are facing the suspect or the person who is
11 shooting at them and they hold their hands up,
12 typically we can see a lot of gunshot residue on
13 the palms of their hands because that is what is
14 closest to the gun when it's going off.

15 Q Once the gunshot residue is deposited on, say,
16 somebody's hands if they are firing a gun or if the
17 victim is close enough that it gets on them or the
18 other scenario you gave, does it stay there
19 permanently?

20 A On a living person what happens is that withing six
21 hours, we have noticed that it is not there in any
22 technical quantity or in a quantity that we would
23 associate with firing or handling or being near a
24 gun when it goes off. On a deceased person, if
25 it's there, it will stay there until it's

1 physically removed, either by washing or by doing a
2 gunshot residue kit.

3 Q And the gunshot residue kit, typically where is the
4 gunshot residue collected from?

5 A Typically what is done is there are samples taken
6 from the palms, the right palm and the left palm,
7 and the right back and the left back. That's the
8 backs of the hands.

9 Q In a murder case is it unusual for that to be
10 performed, say, on the victim at autopsy?

11 A No, ma'am, it's not unusual.

12 Q In fact, if that is performed and taken from the
13 autopsy, is that something y'all would test?

14 A Yes, ma'am.

15 Q Say, if a shooter or a suspect is not apprehended
16 within six hours, is there any point in the police
17 trying to take a sample from them, say, a day or
18 two or even a week later?

19 A No, ma'am.

20 Q Why is that again?

21 A Because after six hours the materials have been
22 absorbed into your body basically, and we wouldn't
23 be able to associate anything that we found with
24 that specific incident.

25 Q And in this case specifically were you submitted a

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1 certain item?

2 A Yes, ma'am, I was.

3 Q What was that item, sir?

4 A I was given a gunshot residue kit from -- let me be
5 sure of the name here -- Gary Reese.

6 Q Gary Reese?

7 A Yes, ma'am.

8 Q And, again, that was taken at autopsy, which would
9 be proper since he was deceased? You mentioned it
10 doesn't absorb?

11 A Yes, ma'am, that's right.

12 Q When that gunshot residue kit was submitted to you,
13 was it properly packaged and sealed?

14 A Yes, ma'am, it was.

15 Q I want to show you what is marked as State's
16 Exhibit 149. Do you recognize that?

17 A I do.

18 Q Is that the actual gunshot residue kit that was
19 properly sealed and submitted to you?

20 A Yes, ma'am, it is. It has our unique lab
21 identifier on it. In this case it was L-10-7130.
22 It's in big yellow and black print up here. It
23 also has my initials on the seal on the back and
24 the date that I sealed it up.

25 MS. CAMPBELL: Your Honor, at this time we

1 offer State's Exhibit 149 into evidence.

2 MR. COLLINS: No objection.

3 THE COURT: One-forty-nine is in evidence
4 without objection.

5 (State's Exhibit Number 149 is received into
6 evidence.)

7 BY MS. CAMPBELL:

8 Q Tell the jury what testing you did in this case?

9 A In this case what we did is we ran swabs off of
10 Mr. Reese. We ran it on an instrument that looks
11 for the presence of metals that we find in gunshot
12 residue.

13 Q What specific areas were the swabs that you ran
14 taken from?

15 A We ran the right palm, the right back, the left
16 palm, and the left back.

17 Q Again, what elements are you looking for?

18 A Lead, barium, and antimony.

19 Q What were the results when the gunshot residue was
20 collected from Gary Reese?

21 A I will read the first one, the results from the
22 right palm. Quantities of metals found did not
23 indicate the presence of gunshot residue. That was
24 the result for the right palm, the right back, the
25 left palm, and the left back. So all four areas

1 tested were negative for gunshot residue.

2 Q Would that be consistent with someone having not
3 fired a gun?

4 A Yes, ma'am, it could be.

5 Q Or being some distance away having been shot?

6 A Yes, ma'am.

7 Q Was any clothing submitted in this case for you to
8 test?

9 A No, ma'am.

10 Q Typically in a case where a victim is shot, do you
11 test clothing?

12 A I would not test the victim's clothing, no, ma'am.

13 Q Why not?

14 A Because they have been shot. By definition being
15 shot, you have got a bullet hole in you. The hands
16 are the best thing to test, and victims with holes
17 in them do not get their clothing tested because
18 they are, by definition, shot or near a gun when it
19 goes off.

20 Q In addition, did you receive any gunshot residue
21 from a car that had been shot up?

22 A No, ma'am, I did not.

23 Q If a car had been shot up, again, would the same
24 analysis as the clothing apply?

25 A Mostly. We will test samples taken from a

1 suspected shooter's car if it can be demonstrated
2 that somebody was inside the car shooting the gun.
3 We would test that vehicle samples. We would not
4 generally test a victim's car, but that would be on
5 a case-by-case basis.

6 Q And in this case, again, Gary Reese, all parts of
7 his hands, which is what y'all normally get, were
8 negative?

9 A Yes, ma'am, that's right.

10 Q Thank you.

11 MS. CAMPBELL: I have nothing further.

12 THE COURT: Mr. Collins?

13 MR. COLLINS: May it please the Court.

14 **CROSS EXAMINATION**

15 BY MR. COLLINS:

16 Q You work for S.L.E.D.?

17 A Yes, sir.

18 Q You work in the lab for S.L.E.D.?

19 A Yes, sir.

20 Q Where is that located?

21 A Broad River Road.

22 Q Broad River Road. You guys do testing for law
23 enforcement agencies throughout the State; right?

24 A That's right.

25 Q Free of charge?

1 A Yes, sir.

2 Q The type of testing you guys do in the lab, you
3 guys have a D.N.A. section; right?

4 A Yes, sir.

5 Q You are just in the gunshot residue department?

6 A I'm in the trace evidence department.

7 Q Trace evidence. In the D.N.A. department they can
8 tests for touch D.N.A.; right?

9 A I don't have any idea about what D.N.A. does.

10 Q You don't have any knowledge of D.N.A. testing?

11 A I don't test D.N.A.; so I'm not an expert in it. I
12 wouldn't feel comfortable.

13 Q But there is a department at S.L.E.D.; right?

14 A Yes, sir.

15 Q Again, free of charge, if something is sent to them
16 by law enforcement in South Carolina, that lab has
17 the capability to test for that?

18 A For the most part, yes, sir. There are probably
19 some things we can't do.

20 Q Thank you.

21 THE COURT: Redirect?

22 MS. CAMPBELL: No, sir.

23 THE COURT: Thank you. Thank you very much,
24 Agent Roberts. You may step down.

25 THE WITNESS: Yes, sir.

1 (Witness leaves the witness stand.)

2 THE COURT: You may be excused. Solicitor,
3 you may call your next witness.

4 MS. CAMPBELL: Your Honor, our next witness
5 will be one we spoke to you about earlier, Rontrell
6 Harris -- Henderson, excuse me.

7 THE COURT: I'm not tracking. I'm sorry.

8 MS. CAMPBELL: I think we need to have a
9 hearing on him.

10 THE COURT: Step up here for me a moment.

11 (Whereupon there was a bench conference off
12 the record in the presence of the jury but out of the
13 hearing of the jury.)

14 THE COURT: Ladies and gentlemen, I do have to
15 take a matter up outside of your presence. I will ask
16 you to step to your jury room. You can take your
17 morning recess, about 15 or 20 minutes perhaps. Do not
18 discuss the case during this brief recess. Thank you
19 very much.

20 (The jury retires to the jury room.)

21 THE COURT: Do we have -- what is his name?

22 MS. CAMPBELL: Henderson.

23 THE COURT: Mr. Henderson. Is he in the D.
24 cell or is he downstairs?

25 MS. CAMPBELL: Your Honor, if you want to, at

1 the same time if they can bring up the woman, Ms. Smith.
2 That would take care of everybody downstairs.

3 THE COURT: How about Ms. Johnson?

4 MS. CAMPBELL: Mr. Johnson, we are not going
5 to call her, Your Honor.

6 THE COURT: Who is Mr. Henderson's lawyer?

7 MS. CAMPBELL: I believe Mr. Lee.

8 MR. LEE: I am, Your Honor.

9 THE COURT: We will take about ten minutes or
10 just let me know when y'all are ready.

11 (Whereupon there is a recess.)

12 THE COURT: Solicitor.

13 MS. CAMPBELL: May it please the Court, Your
14 Honor. The State would call Rontrell Henderson.

15 THE COURT: Come around, Mr. Henderson, and be
16 sworn.

17 RONTRELL HENDERSON is first
18 duly sworn.

19 THE COURT: Mr. Lee, this is your client?

20 MR. LEE: Yes, Your Honor. He has informed me
21 that he does not wish to testify.

22 THE COURT: He what?

23 MR. LEE: He has informed me to tell the Court
24 that he does not wish to testify.

25 THE COURT: So if he is called as a witness,

1 he is going to exercise his Fifth Amendment right?

2 MR. LEE: Yes, sir.

3 THE COURT: His right to remain silent?

4 MR. LEE: Yes, Your Honor.

5 THE COURT: Is that correct, Mr. Henderson?

6 THE WITNESS: Yes, Your Honor.

7 THE COURT: If you are called as a witness in
8 front of the jury, you are not going to testify?

9 THE WITNESS: Yes, Your Honor.

10 THE COURT: You are going to exercise your
11 right to remain silent?

12 THE WITNESS: Yes, Your Honor.

13 MS. CAMPBELL: Your Honor, for purposes of his
14 testimony, I believe we would be allowed to give him
15 immunity, transactional immunity. Therefore, he would
16 have no Fifth Amendment rights.

17 MR. LEE: Your Honor, in response, we would
18 ask for -- if the immunity is being offered, use
19 immunity, transactional immunity, and federal immunity
20 for prosecution. I don't think the State has the power
21 to do that.

22 THE COURT: I don't think the State has the
23 power to grant immunity to any other forum.

24 MR. LEE: I agree.

25 THE COURT: State forum, if that's what you

1 are referring to.

2 MR. LEE: I am, Your Honor.

3 THE COURT: It has been a while since I have
4 read a case on transactional and use immunity.

5 MR. LEE: Yes, Your Honor. I believe that any
6 testimony that he would be giving now may possibly be
7 used against him. Maybe the State has the power to
8 grant immunity in this case and this forum, Your Honor.

9 But what he is saying on the record in this
10 forum can still be used in a different forum. So I
11 would still advise my client to exercise his Fifth
12 Amendment right, despite the immunity that is being
13 offered from the State.

14 MS. CAMPBELL: I could be wrong, Your Honor.
15 You know the law better than I do. I do not think South
16 Carolina recognizes use immunity. I would hand up
17 Thrift and its progeny as the precedent for this. Your
18 Honor, I believe some immunity issues came up most
19 recently in the Inman case, but it's not really point on
20 point.

21 (Hands to Court.)

22 (Pause.)

23 THE COURT: As I understand your position,
24 Mr. Lee, the State can offer transactional immunity.

25 MR. LEE: Excuse me, Your Honor?

1 THE COURT: The State can offer transactional
2 immunity in this case.

3 MR. LEE: Well, Your Honor, I believe that
4 whatever he says on the stand that -- I believe if we
5 are given total immunity, including federal prosecution,
6 Your Honor, I think it would be reasonable.

7 What he says on the stand right now, if for
8 some reason Bill Nettles and the Federal Government
9 decides to prosecute, they can subpoena transcripts from
10 this record, from this proceeding, and use it against
11 him. He has no immunity in that forum, Your Honor.

12 From my understanding, Your Honor, I told the
13 prosecution during our break that my client was not
14 going to testify. There was no mention of immunity. I
15 had no idea of what case was being presented to Your
16 Honor. My client's constitutional right is at stake via
17 ambush, Your Honor. I have no idea what cases she is
18 citing. I would ask for some time or a copy to review
19 them.

20 THE COURT: Certainly.

21 MR. LEE: If the law says they can offer
22 transactional immunity and that's enough to do it, I
23 will talk to my client accordingly. At this point I
24 have no idea what the cases are. I had no idea immunity
25 was being offered.

1 THE COURT: One of them is the Thrift
2 brothers, and that's a statewide grand jury case where
3 some indictments were dismissed. That's the argument
4 that there is no -- that's the proposition that there is
5 no use immunity. That cite is 440 S.E.2d 341.

6 The other one she handed up is State versus
7 Earl E. Morris, Jr. That cite is 656 S.E.2d 359. That
8 is also a statewide grand jury case. It's somewhat
9 different in facts. I believe Mr. Morris was not
10 compelled to appear before the grand jury in that second
11 case. I will give you some time --

12 MS. CAMPBELL: That's fine.

13 THE COURT: -- to review those.

14 MS. CAMPBELL: Just for the record too, he did
15 tell me he didn't want to testify. The first time I
16 heard that he was going to take the Fifth was here in
17 the courtroom. Mr. Collins informed me that he didn't
18 want to testify this morning as well, but I wanted to be
19 straight with the Court. We offer that to witnesses who
20 don't want to testify.

21 THE COURT: There is a significant difference
22 between, I do not want to testify and exercising my
23 Fifth Amendment right.

24 MR. LEE: That may be true, Your Honor. I
25 didn't tell him that.

1 MS. CAMPBELL: Just to be clear, we had told
2 our investigator too, which we turned over to the
3 defense, that he went through the statement and
4 everything was fine in the statement. Then he was told
5 he was going to have to testify and he said, I'm not
6 going to testify. I made it all up. That was turned
7 over to the defense.

8 THE COURT: Well, let's give Mr. Lee the
9 opportunity to review those cases and then talk back
10 perhaps with the solicitor and the client.

11 MR. LEE: Thank you, Your Honor.

12 THE COURT: He can go wherever y'all normally
13 take them when he goes out the door. There is another
14 individual?

15 MS. CAMPBELL: Another individual, Your Honor.
16 She is currently serving, it's my understanding --
17 correct me if I'm wrong -- 30 days in Fairfield County
18 for shoplifting.

19 We ran her rap sheet under a number of names,
20 and we can't get a rap sheet to come up on here, which
21 is not unusual in Fairfield County. Our understanding
22 is she is currently serving 30 days on a shoplifting.
23 She will be in lovely garb. I want to make sure I
24 turned that over.

25 MR. COLLINS: That's what they told us. But

1 to back up just for a second for the record on Rontrell
2 Henderson.

3 THE COURT: Yes, sir.

4 MR. COLLINS: We were informed by the State
5 that when confronted with the statement, when they went
6 to go talk to him, he said, I made that up. This is the
7 first time that I've heard that he initially went
8 through the statement and said, Yeah, that's right.
9 That's right; and then he didn't hedge until he was told
10 he was going to have to testify.

11 That is new information to us. It was
12 explained to us in a little bit different fashion; that
13 he initially just immediately said he made that
14 statement up. I just want to put that on the record.
15 That's the first time we were informed that he basically
16 did go through the statement and said it was true.

17 MS. CAMPBELL: Luckily we have informed them.

18 THE COURT: Ma'am?

19 MS. CAMPBELL: Regardless, that's what he said
20 and we turned that over.

21 THE COURT: All right.

22 MR. LEE: I will be back.

23 THE COURT: Thank you very much, Mr. Lee, for
24 your service. So y'all are calling -- who is the next
25 witness?

1 MS. WALKER: Your Honor, the State is going to
2 call Lamanda Smith.

3 THE COURT: I need to get the jury; correct?

4 MS. WALKER: Yes, Your Honor.

5 THE COURT: You can bring the jury.

6 (The jury returns to the courtroom.)

7 THE COURT: Welcome back, ladies and
8 gentlemen. We are continuing the trial of the case with
9 the presentation of evidence and testimony by the State
10 in its case in chief. Please continue to give all the
11 parties your complete and undivided attention.

12 Solicitor, you may call your next witness.

13 MS. WALKER: Your Honor, the State calls
14 Lamanda Smith.

15 THE COURT: If you would come around and be
16 sworn, please, Ms. Smith.

17 LAMANDA SMITH, being
18 first duly sworn, testifies as follows:

19 CLERK: State your name for the record.

20 THE WITNESS: Lamanda Smith.

21 **DIRECT EXAMINATION**

22 BY MS. WALKER:

23 Q Ms. Smith, I want you to do me a favor and speak up
24 so the jury can hear you. Okay?

25 A Okay.

LAMANDA SMITH -- DIRECT -- MS. WALKER

- 1 Q Where are you living right now?
- 2 A Winnsboro.
- 3 Q Fairfield County?
- 4 A Yes, ma'am.
- 5 Q Are you at the jail now?
- 6 A Yes.
- 7 Q For shoplifting?
- 8 A Yes, ma'am.
- 9 Q Back in 2010 did you live here in Columbia?
- 10 A Yes, ma'am.
- 11 Q Are you familiar with the Gable Oaks apartment
- 12 complex?
- 13 A Yes, ma'am.
- 14 Q Were you there on June 19th?
- 15 A Yes, ma'am.
- 16 Q About what time of day or night was that?
- 17 A It was around 11:00, maybe a quarter to 12:00. I
- 18 was on my way coming home from being down the
- 19 street.
- 20 Q Were you by yourself?
- 21 A Me and my husband.
- 22 Q You lived at that apartment complex?
- 23 A In front of it.
- 24 Q In front of it. When you got home, did you hear
- 25 gunshots that night?

1 A Yes.

2 Q How many?

3 A It was multiple shots, like fireworks. Me and my
4 husband was basically coming home. I asked my
5 husband, I was like, I wonder who is popping
6 firecrackers at this time of night. He was like,
7 No, baby, those are not firecrackers. Those are
8 gunshots.

9 Q Once you heard those gunshots, did you see
10 anything?

11 A No, because we were actually pulling into our
12 apartment complex.

13 Q Did you see any people that night?

14 A Yes.

15 Q That was at the same time you heard the gunshots or
16 a little bit after?

17 A It was after.

18 Q How many people did you see?

19 A About four.

20 Q Could you tell what they were wearing?

21 A I couldn't tell.

22 Q Was everything happening kind of fast at that
23 point?

24 A Yes, ma'am.

25 Q What were those people doing?

LAMANDA SMITH -- DIRECT -- MS. WALKER

1 A They were actually running from behind my apartment
2 complex with guns in their hands, like A.K.s or
3 something.

4 Q Now, when you say from behind your apartment
5 complex, what is actually behind your apartment
6 complex?

7 A Gable Oaks.

8 Q Okay. So your apartment building is in front of
9 Gable Oaks?

10 A It sits on the main road.

11 Q Okay. They were running from behind your apartment
12 complex. What did they do once they ran -- did
13 they run past you?

14 A They came right beside me. They got into a gray
15 Buick Regal, I believe.

16 Q It was a Gray Buick?

17 A (Witness nods.) (Indicating affirmative response.)
18 I'm not sure. It might have been a gray Buick or a
19 Crown Vic.

20 Q Did any of them -- were they wearing masks? Could
21 you tell?

22 A I couldn't tell because I froze.

23 Q Could you see any of their faces?

24 A No, ma'am.

25 Q Could you see which way the gray Buick went once

1 they got in the car?

2 A It went straight across the street towards Ames
3 Manor Apartments.

4 MS. WALKER: No further questions.

5 THE COURT: Mr. Newton?

6 MR. NEWTON: May it please the Court.

7 **CROSS EXAMINATION**

8 BY MR. NEWTON:

9 Q Good morning, Ms. Smith. Do you remember giving a
10 statement to police?

11 A Yes, I do.

12 Q Do you remember giving a written statement?

13 A Yes.

14 Q You remember signing it?

15 A Yes.

16 Q Do you remember giving them a description of one of
17 the people that you saw?

18 A Not to my knowledge.

19 MR. NEWTON: I will mark this for I.D at this
20 time.

21 (Defendant's Exhibit Number 3 is marked for
22 identification).

23 ---

24 BY MR. NEWTON:

25 Q I will approach with Defense's Exhibit 3 for I.D.

1 purposes. Do you recognize this?

2 A Yes, I do.

3 Q If you will turn to the second page here. Okay?

4 A Okay.

5 Q Do you recognize this second page?

6 A Yes, I do.

7 Q In the middle of the page, there is a question that
8 says: Can you describe the suspect with his mask
9 off? Do you see that on the page?

10 A Yes, I can.

11 Q Do you remember giving an answer to that statement
12 now?

13 A Yes, I do.

14 Q Do you remember telling them that you saw a
15 gentleman with a muscular build, tall,
16 dark-skinned, clean-cut facial cut, could have been
17 a goatee like?

18 A I remember now.

19 Q Do you know Investigator Thomas here?

20 A I don't have my glasses on.

21 Q You don't know any investigators with the Columbia
22 Police Department?

23 A I remember Investigator Thomas.

24 Q Do you know him from anything else, other than
25 being at the Columbia Police Department?

1 A My landlord.

2 Q He is your landlord.

3 MR. NEWTON: Beg the Court's indulgence.

4 (Pause.)

5 BY MR. NEWTON:

6 Q In your description you gave, you didn't mention
7 anything about dreadlocks; did you?

8 A No.

9 MR. NEWTON: No further questions.

10 THE COURT: Redirect, Solicitor?

11 **REDIRECT EXAMINATION**

12 BY MS. WALKER:

13 Q How many people did you see that night?

14 A About four.

15 Q And how many people did you give a description of?

16 A One.

17 MS. WALKER: No further questions.

18 THE COURT: Recross?

19 MR. NEWTON: None, Your Honor.

20 THE COURT: Thank you. Thank you very much.

21 You may step down. This witness is back in the custody
22 of the sheriff.

23 (Witness leaves the witness stand.)

24 THE COURT: You may call your next witness.

25 MR. SHELLENBERG: The State calls Lieutenant

FRIEDA WYATT -- DIRECT -- MR. SHELLENBERG

1 Frieda Wyatt.

2 FRIEDA WYATT, being
3 first duly sworn, testifies as follows:

4 CLERK: State your name for the record.

5 MR. NEWTON: Frieda Wyatt.

6 COURT REPORTER: Spell your first name,
7 please.

8 THE WITNESS: F-R-I-E-D-A.

9 THE COURT: Solicitor.

10 MR. SHELLENBERG: Thank you, Your Honor.

11 DIRECT EXAMINATION

12 BY MR. SHELLENBERG:

13 Q Officer Wyatt, what do you do for a living?

14 A I'm a deputy.

15 Q I'm sorry. Lieutenant Wyatt. What law enforcement
16 agency are you employed by?

17 A Richland County Sheriff's Department.

18 Q And what do you do for them?

19 A Currently I'm the lieutenant over the drug
20 suppression team.

21 Q Let me direct your attention back to July 1, 2010.
22 Were you working that everything?

23 A I was.

24 Q In what capacity? What was your job title?

25 A At that time I was a corporal over the gang unit.

1 Q Were you conducting property searches that evening?

2 A That evening we were conducting property checks.

3 Q And where were you doing those..

4 A The Buckner Road area, the cemetery.

5 Q Can you tell me, was there anything out of the
6 ordinary you found when you were doing those
7 property searches?

8 A That evening during a property check, I had pulled
9 up into the cemetery. It was dark and I observed
10 several individuals over to the left of the
11 cemetery sitting in chairs.

12 Q Did you find any weapons that evening?

13 A I did.

14 Q What was that?

15 A I recovered a .45-caliber pistol right on top of
16 Gary Reese's gravesite.

17 Q What did you do after you collected it?

18 A Submitted it for evidence.

19 MR. SHELLENBERG: If I could get this marked.

20 (State's Exhibit Number 150 is marked for
21 identification).

22 BY MR. SHELLENBERG:

23 Q I will show you what is identified as State's 150
24 for identification.

25 MR. SHELLENBERG: Your Honor, may we approach

FRIEDA WYATT -- DIRECT -- MR. SHELLENBERG

1 real quick?

2 THE COURT: Certainly.

3 (Whereupon there was a bench conference off
4 the record in the presence of the jury but out of the
5 hearing of the jury.)

6 THE COURT: Let me do this. This is Sergeant
7 Reese with the City Police?

8 OFFICER: Yes, sir.

9 THE COURT: Sergeant, did you examine the item
10 in 150?

11 OFFICER: Yes, sir.

12 THE COURT: What is that?

13 OFFICER: It's a handgun.

14 THE COURT: Is it unloaded?

15 OFFICER: Yes, sir.

16 THE COURT: Is it in a safe condition?

17 OFFICER: Yes, sir, it has a gun lock in it.

18 THE COURT: Thank you. Thank you very much.

19 OFFICER: Yes, sir.

20 THE COURT: You may continue, Solicitor.

21 BY MR. SHELLENBERG:

22 Q I will show you what is marked as State's 150 for
23 evidence. Will you take a look at -- it's for
24 identification -- do you recognize it?

25 A Yes, sir.

1 Q How do you recognize it?

2 A This is the pistol I recovered from the gravesite.

3 Q The same one you found on the gravesite on
4 July 1st?

5 A Yes, sir.

6 MR. SHELLENBERG: Nothing further, Your Honor.

7 THE COURT: What date was this? I apologize.

8 MR. SHELLENBERG: July 1, 2010.

9 THE COURT: Thank you. Mr. Collins?

10 MR. COLLINS: Thank you, Your Honor.

11 **CROSS EXAMINATION**

12 BY MR. COLLINS:

13 Q Whose gravesite was it?

14 A Gary Reese's.

15 Q Who had the gun?

16 A The gun was lying on top of the gravesite.

17 Q Who was there at the gravesite?

18 A There were several individuals.

19 Q Kendrick Mann was one of them?

20 A He was.

21 Q Titus Bowman?

22 A He was not.

23 Q He was not there?

24 A No.

25 Q Are you sure?

FRIEDA WYATT -- CROSS -- MR. COLLINS

1 A I'm positive.

2 Q It was Kendrick Mann. Who else?

3 A If you don't mind, Melissa Norris, Loree Johnson,
4 Marquez Faust, Andre Norris, and --

5 COURT REPORTER: What was the last one?

6 THE WITNESS: I'm sorry. There's more.

7 Tawanda Reese, Andre Norris, Marquez Faust, Loree
8 Johnson, Melissa Norris, Larry Palmer, Richard Corbin --
9 and I will tear this name up -- L-A-K-I-N-E-Y-A-T-T-A
10 Jacobs.

11 BY MR. COLLINS:

12 Q I believe you testified you were on a gang unit
13 back in 2010?

14 A I was.

15 Q Are you familiar with the name Titus Bowman?

16 A I am.

17 Q Are you familiar with the name Raheme Bethel?

18 A I am.

19 Q Are you familiar with the name Thomas O.B.
20 Williams?

21 A I am.

22 MR. COLLINS: No further questions.

23 THE COURT: Redirect?

24 MR. SHELLENBERG: No, Your Honor.

25 THE COURT: Thank you. Thank you very much

1 for being with us today, Lieutenant. You may step down.

2 THE WITNESS: Thank you.

3 (Witness leaves the witness stand.)

4 THE COURT: You may call your next witness.

5 MS. CAMPBELL: The State would call Dr. Gray

6 Amick.

7 THE COURT: If you would come around and be
8 sworn, please.

9 MS. CAMPBELL: Your Honor, may we approach?

10 THE COURT: Yes, ma'am.

11 (Whereupon there was a bench conference off
12 the record in the presence of the jury but out of the
13 hearing of the jury.)

14 GRAY AMICK, being
15 first duly sworn, testifies as follows:

16 CLERK: State your name for the record.

17 THE WITNESS: My name is Gray Amick.

18 MS. CAMPBELL: Your Honor, may I put the
19 stipulation on the record?

20 THE COURT: Yes, ma'am, you may.

21 MS. CAMPBELL: Your Honor, just as far as the
22 next several witnesses that did some testing in this
23 case, as far as ballistics and D.N.A. testing, the State
24 and the defense have stipulated that the chain of
25 evidence was proper in this case, just for the jury's

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1 edification.

2 THE COURT: What is the stipulation?

3 MS. CAMPBELL: That the chain of evidence, the
4 handling of the actual evidence, the State has met the
5 requirements, and they do not require us to prove the
6 chain.

7 THE COURT: And the State and the defense
8 agree to that? Is that correct, Mr. Collins?

9 MR. COLLINS: I thought the stipulation was we
10 agreed to the chain of custody for everything that was
11 tested in this case.

12 MS. CAMPBELL: Okay. That's good.

13 THE COURT: For purposes of this witness, can
14 we go forward at this point?

15 MR. COLLINS: Yes, Your Honor.

16 THE COURT: At the break you can put the
17 stipulation in writing. Thank you very much.

18 DIRECT EXAMINATION

19 BY MS. CAMPBELL:

20 Q Dr. Amick, where are you employed?

21 A Richland County Sheriff's Department.

22 Q What do you do there, sir?

23 A I'm the D.N.A. technical leader, the forensic
24 D.N.A. laboratory. I'm the supervisor over D.N.A.

25 Q What do your duties include as supervisor of the

1 D.N.A. laboratory?

2 A Well, among other things basically I also act as a
3 D.N.A. analyst. So I receive evidence from crimes
4 and also standards from individuals involved. I
5 attempt to develop D.N.A. profiles from those and
6 compare the two, author reports, and testify in
7 court.

8 Q Can you tell the jury a little bit about your
9 education and training in the field of D.N.A.
10 comparison or analysis?

11 A Yes. I got a B.S. in biology in 1989 and a Ph.D.
12 in biochemistry in 1993 from the University of
13 South Carolina. From there I was employed at the
14 South Carolina Law Enforcement Division, commonly
15 known as S.L.E.D. for 11 years.

16 At S.L.E.D. I was trained by court-qualified
17 experts in the field of forensic D.N.A. and
18 forensic serology. In 2004 I was hired by the
19 Sheriff's Department to start up their D.N.A. lab
20 with another individual.

21 I did that and began testing at that
22 laboratory in late 2004 and have been there ever
23 since and involved in continuing education every
24 year in the field of forensic D.N.A.

25 Q And have you ever been qualified as an expert in

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1 D.N.A. analysis in courts of South Carolina?

2 A Yes.

3 Q And approximately how many times have you been
4 qualified as a D.N.A. analyst?

5 A Approximately 80 times.

6 Q Eighty?

7 A Yes.

8 MS. CAMPBELL: Your Honor, at this time we
9 offer him as an expert in D.N.A. analysis.

10 MR. COLLINS: No objection.

11 THE COURT: Ladies and gentlemen, y'all have
12 heard my instructions several times now on expert
13 witness testimony. This witness, Dr. Gray Amick, will
14 be qualified in the area of D.N.A. analysis to give
15 opinion testimony. That does not mean you must accept
16 the opinion, but it is evidence for you the jury to use
17 in any way you see fit.

18 Thank you, Solicitor. You may continue.

19 MS. CAMPBELL: Thank you, Your Honor.

20 BY MS. CAMPBELL:

21 Q Doctor, how does evidence typically get submitted
22 to you for analysis?

23 A Typically it comes from investigators or crime
24 scene investigators, deputies who work the scene or
25 arrive at the scene, take swabs, and submit them to

1 our evidence room. Then they are either picked up
2 by myself or a technician and brought into the lab
3 for testing.

4 Q So the investigators have a role in deciding what
5 you may or may not test?

6 A Yes.

7 Q As well as other people may request you do testing
8 in cases?

9 A That's correct.

10 Q Is it unusual for you to receive swabs that may be
11 collected from ballistics evidence at the scene?

12 A That's another method that I didn't mention.
13 Another analyst in a different discipline, for
14 example, firearms, could swab a piece of evidence
15 and submit that for testing to our lab.

16 Q In this case were certain swabs initially submitted
17 for y'all's testing that were collected from
18 ammunition in guns in this case?

19 A Yes, it was.

20 Q And were those swabs properly submitted when you
21 got them or when the analyst got them?

22 A There are no notes that they were improperly
23 packaged. So, yes, they were submitted properly.

24 Q Tell the jury what kind of testing you do once
25 evidence is submitted.

1 A What we do is we will do some basic serology, which
2 means identifying any -- or if any -- body fluids
3 that are available or present. Then we simply go
4 through the protocol to try to develop a D.N.A.
5 profile.

6 So swabs from a gun, for example, if there is
7 no blood on it or no other serology, we make a
8 cutting from that swab, attempt to get the D.N.A.
9 from it, and develop a profile and have that to
10 compare to other evidence or other individuals.

11 Q Explain to the jury how D.N.A. is left at a crime
12 scene typically.

13 A There are several ways. One is body fluids --
14 obviously, blood, semen, saliva being the main body
15 fluids we deal with at crime scenes. However, the
16 majority of our cases now involve what is called
17 touch D.N.A.

18 So anything you touch could potentially -- you
19 could potentially leave your D.N.A. there.
20 Obviously anything you touch your mouth to also.
21 So cigarette butts, drink cans, the end of a pencil
22 can also yield D.N.A. from it.

23 Touch D.N.A. could be from doorknobs or
24 elevator buttons or points of entry or other pieces
25 of evidence, say, for example, in this case

1 firearms, shell casings, stuff like that.

2 Q I notice when you were referring to touch D.N.A.,
3 that someone touches an item that they could
4 potentially leave it, I believe is the word you
5 used?

6 A That's correct.

7 Q So if I walk up and then put my finger or my whole
8 hand and grab this (indicating) even, am I
9 necessarily going to leave D.N.A.?

10 A Not necessarily.

11 Q Why is that, sir?

12 A It depends on the surface you are doing that to.
13 It depends on the person doing that. It depends on
14 if you are sweating, if shed D.N.A. cells readily.
15 So it depends on the person, the surface, the
16 environment. So there's lot of factors involved
17 whether or not you will leave a D.N.A. profile.

18 Q You mentioned that certain people tend to shed
19 D.N.A. cells more than others?

20 A Yes.

21 Q That has been in your experience?

22 A Yes.

23 Q So, say, if I am handling something, say, a vase or
24 even a weapon in this case, am I necessarily going
25 to leave D.N.A. on it?

1 A Not necessarily.

2 Q And if then after, even when it's handled by me, if
3 other people handle it -- or through a number of
4 reasons?

5 A That's correct. You may or may not.

6 Q And in doing your D.N.A. testing, when you test for
7 the presence of D.N.A., can you tell this jury how
8 long that D.N.A. has been there?

9 A No. You cannot tell how long D.N.A. from any
10 surface or any body fluid has been on that item.

11 Q Again, you mentioned earlier that in certain cases,
12 such as where there is the presence of blood,
13 saliva, or certain blood fluids, those tend to
14 leave D.N.A.?

15 A Yes. You can get D.N.A. from those body fluids.

16 Q And what we are going to talk about here today
17 though is just touch D.N.A.; is that correct?

18 A Yes, there was no serology done. There was no body
19 fluids in this case.

20 Q What exact swabs -- I believe they were collected
21 by Investigator Collins with Richland County --
22 were submitted to you?

23 A In this case there was a swab from an A.K., which I
24 assume is a rifle, a swab from an A.K.47. Again, I
25 assume it's a rifle. A swab from a S.K.S., again,

1 a type of rifle. A swab from I-4 to I-23, which
2 are identity markings, I would assume from the
3 investigator or the crime scene person who
4 collected those.

5 Swabs from I-4 to I-23, cartridge casings, a
6 cartridge case being some ammunition. Swabs from
7 another cartridge case, I-24 to I-28. Swab from
8 I-31 to I-36, cartridge case, and a swab from I-37
9 to I-41, cartridge case. That was the evidence
10 submitted in this case.

11 Q And basically you didn't participate in the actual
12 items that were swabbed in this case, but that was
13 the evidence that was submitted?

14 A That's correct.

15 Q And the initial testing was actually done by
16 another analyst in your office?

17 A That's correct.

18 Q When you get items such as this and swabs from
19 evidence from a crime scene, are you necessarily
20 even going to get a D.N.A. profile?

21 A You don't know when you get them. So you may get a
22 profile; you may not get a profile.

23 Q And, again, what are the factors that affect that?

24 A The item, the condition of the item, the person who
25 has touched it, and how it's collected, how it's

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1 stored, what environment it was in. There are
2 several factors like that.

3 Q In this case when you ran the items, the first
4 thing you do is try to figure out whether or not
5 there is actually any D.N.A. that may or may not be
6 able to be compared at a later date; is that
7 correct?

8 A That's correct.

9 Q Taking the items in order, item number 50, the
10 swab, was there any D.N.A. that was actually
11 extracted when you did your D.N.A. testing?

12 A Yes, there was.

13 Q So on item 50 -- which was what item?

14 A Item 50 is a swab from an A.K.

15 Q An A.K. There was actually D.N.A. on that swab?

16 A Yep.

17 Q The next item was the swab from where?

18 A Fifty-one, a swab from an A.K.47.

19 Q Were you able to get any D.N.A. from that?

20 A No D.N.A. was extracted from item 51. The answer
21 is no, no D.N.A. was from that item.

22 Q Obviously someone had handled that ammunition at
23 one point but just didn't leave any D.N.A.?

24 A Well, I don't know if anybody handled it or not.
25 The swab that was received in this case had no

- 1 D.N.A. on it.
- 2 Q Is that unusual for you not to get a result?
- 3 A Not unusual for touch D.N.A., no.
- 4 Q And the next item was a swab from where?
- 5 A Item 52, swab from S.K.S. Again, no D.N.A. was
- 6 extracted from that item.
- 7 Q The next swab was from where?
- 8 A Fifty-three, swab from cartridge case. Again, no
- 9 D.N.A. was extracted from item 53.
- 10 Q The next swab was from where?
- 11 A Fifty-four, another set of cartridge cases. Again,
- 12 no D.N.A. was extracted from 54.
- 13 Q The next item was item number 55, which is a swab
- 14 from where?
- 15 A Item 55 is a swab from another cartridge case.
- 16 There was D.N.A. extracted from 55.
- 17 Q And then item number 56, the final swab that was
- 18 submitted for your testing?
- 19 A Again, a cartridge case and no D.N.A. was extracted
- 20 from 56.
- 21 Q So basically there was a swab from one of the guns
- 22 in the case that came up with D.N.A. present; is
- 23 that correct?
- 24 A Yes.
- 25 Q And then finally a swab from certain cartridge

1 cases also had D.N.A.?

2 A Item 55, correct.

3 Q When you actually get D.N.A., what, if anything, do
4 you do to actually try to identify whose D.N.A.
5 that is? Describe the profile, what that is.

6 A So what we do is -- getting D.N.A. from an item is
7 not necessarily a profile. There may be D.N.A.
8 there, but it has to be enough to get a profile.
9 With that profile you can get compare it to other
10 evidence, people, other people, or a database. So
11 we attempt to get a D.N.A. profile from the items
12 that have D.N.A. that was extracted or D.N.A.
13 present on them.

14 Q In this case only items 50 and 55, I believe, had
15 actually any D.N.A. present; is that correct?

16 A That's correct.

17 Q On item 50 how would you characterize that profile?

18 A Fifty, my memory, they were very weak profiles.

19 Q Both of them? Because we were going to talk about
20 the other ones as well.

21 A Yeah.

22 Q When you say a weak profile, what does that mean?

23 A A weak profile means there wasn't a lot of D.N.A.
24 obtained from those items. When we develop a
25 profile, we are looking at many different locations

1 on the D.N.A. molecule, 16, in fact. So I am
2 looking for a result or data at 16 different
3 locations at once.

4 So a weak or partial profile, I may or may not
5 get a result at any one of those locations. So
6 instead of getting information at 16 locations, I
7 may only get information from, say, four or five
8 locations. So that's a partial profile, and it may
9 or may not be useful.

10 It may be useful in excluding individuals. It
11 may not be enough to put in a database. It may not
12 be enough to do anything with, but a partial
13 profile -- in this case both those items were
14 partial profiles -- they were extremely weak. Low
15 D.N.A. was extracted. Basically what they could be
16 used for is to compare to individuals for
17 exclusionary purposes.

18 Q And in this case once you got those weak profiles
19 from items 50 and 55, did you then -- were they
20 then run through any databases or were you able to?

21 A Item 50 was entered into a local database.

22 Q When you say the local database, what is that
23 comprised of?

24 A Our local database is comprised of cases that
25 Richland County has run, on suspects that Richland

1 County has run. So just the cases and suspects
2 that we have run in our lab or in our local
3 database.

4 Q Were you able to actually run this in the statewide
5 database? What does C.O.D.I.S. actually stand for?

6 A Combined D.N.A. Indexing System. We didn't -- item
7 50, which is the one we are talking about, did not,
8 as we say, get uploaded to the state level because
9 it was so weak.

10 Q And it simply wasn't appropriate for that?

11 A Right. There are certain parameters you have to
12 meet before you can upload items. One element is
13 you have to have a minimum number of locations that
14 are developed. So partial weak profiles cannot be
15 uploaded.

16 Q In this case when it was compared to the local
17 database, which is your database at Richland
18 County, did it hit on anyone? How does that
19 process work? Tell the jury.

20 A So every week it's uploaded. All the profiles that
21 are marked get uploaded automatically. Then every
22 week, in addition, they are all searched against
23 each other.

24 So our C.O.D.I.S. administrator, who is John
25 Barron, looks at those candidate hits or matches

1 and then identifies if they are legitimate or not
2 or if they are non-matches and lets the analyst
3 know if they have a potential match.

4 Q So it's done on a weekly basis to see if it matches
5 anyone?

6 A That's correct.

7 Q Item number 50, which is the swab from one of the
8 A.K. guns in this case, did it ever match anyone
9 from the C.O.D.I.S. database?

10 A Not according to this case file. There are no
11 match results in here.

12 Q At my request did you check to see whether or not
13 Thomas O'Bryan or O.B. Williams was in that
14 database?

15 MR. COLLINS: Objection, Your Honor. We have
16 a matter of law.

17 THE COURT: Step out momentary, ladies and
18 gentlemen. Do not discuss the case during this brief
19 recess.

20 (The jury retires to the jury room.)

21 THE COURT: Yes, sir, Mr. Collins.

22 MR. COLLINS: Ms. Campbell, I believe she
23 said -- what she got out -- at her request did he do
24 something with Thomas O'Bryan Williams. We have not
25 been informed or notified of any requests Ms. Campbell

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1 has given Mr. Amick about Thomas O.B. Williams. We
2 would move for a mistrial if there has been a request
3 for some sort of testing and comparison.

4 MS. CAMPBELL: Your Honor, I asked him to do
5 that this morning, and I told the defense as soon as he
6 gave me the answer. I then went back and qualified with
7 him that it was the local database, not the overall
8 database that we are talking about. So I told him on
9 two different occasions.

10 MR. COLLINS: She never mentioned the name
11 Thomas O.B. Williams to me, period.

12 MS. CAMPBELL: Simply, Your Honor, that is not
13 true. That is the whole purpose of me telling him that.
14 I informed him. As an officer of the Court, I informed
15 him of that this morning.

16 THE COURT: Well, I will deny your motion for
17 a mistrial in this regard based on your statement and
18 the solicitor's statement. A mistrial is a drastic
19 remedy in that regard. The question can be restated if
20 you'd like.

21 She can say: Whose profile did you compare
22 specifically against this, against this, whatever item
23 it was; and he can give the answer, whoever it is. If
24 you would prefer that question as opposed to: Did I ask
25 you this morning to compare it to X. and Y.?

1 MR. COLLINS: Your Honor, if there was a
2 profile attributed to Thomas O'Bryan Williams that was
3 compared to the information already contained with what
4 we had, we are entitled look at the actual reports and
5 the drafts and be able to examine how it was prepared
6 and possibly have an expert review that.

7 We have not been provided with that, and we
8 were only told that it was run through C.O.D.I.S., the
9 local C.O.D.I.S. That's the only thing we were informed
10 of. We were not informed of any comparison to O.B.
11 Williams. So if he was compared, we need to have access
12 to the reports and tests that were run and how it was
13 compared.

14 THE COURT: You keep changing the motion.
15 Your motion was for a mistrial. I have ruled on the
16 mistrial. Now I am asking you, do you want the question
17 framed: Did I request it this morning or who did you
18 compare it against?

19 MR. COLLINS: Your Honor, what I'm asking the
20 Court is we don't know if he has compared it to Thomas
21 O'Bryan Williams. I objected before she could finish
22 the question because I thought that might be where she
23 was going, and we were not informed of that.

24 I don't want that question asked if I don't
25 know what the answer is because it has not been related

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1 to us. I am simply asking the Court to maybe ask the
2 Solicitor's Office, has his D.N.A. profile been compared
3 to what they have in evidence?

4 MS. CAMPBELL: No. His D.N.A. profile is in
5 the C.O.D.I.S. system, and there has been no hits.
6 Thomas O'Bryan Williams is in the C.O.D.I.S. system that
7 it was submitted to. There has been no hits. I can
8 phrase it that way.

9 MR. COLLINS: Then I would object to this
10 witness testifying to that because he has had to rely on
11 hearsay to know that Thomas O'Bryan Williams is in the
12 C.O.D.I.S. index.

13 THE COURT: I thought under Rule 702 an expert
14 could rely in his opinions on hearsay testimony. I
15 thought that's part of the reason and that is the basis
16 of their opinions.

17 MR. COLLINS: The problem arises when the
18 hearsay testimony comes from the solicitor involved in
19 the case, Your Honor.

20 THE COURT: We have circled right back to the
21 form of the question. If you ask the agent, Dr. Amick,
22 didn't you run it through the C.O.D.I.S. system? Who
23 did you compare it against in the C.O.D.I.S. system? He
24 can answer the question.

25 His answer could be no. I don't know what his

1 answer is going to be, but they commonly rely on the
2 C.O.D.I.S. system, and I don't know that you have to
3 track that profile when you have an expert on the
4 witness stand.

5 Ask him the question, Solicitor. We are in
6 camera. Ask him the questions you want to ask. Perhaps
7 I am not tracking.

8 **IN CAMERA DIRECT EXAMINATION**

9 BY MS. CAMPBELL:

10 Q Is the local C.O.D.I.S. system monitored in your
11 laboratory which you run?

12 A Yes.

13 Q And is Thomas O'Bryan Williams in the local
14 C.O.D.I.S. system that you ran this sample against?

15 A He is to my knowledge, yes.

16 Q And have there been any hits to him or anyone else
17 running it through C.O.D.I.S.?

18 A No.

19 MR. COLLINS: May I ask one question?

20 THE COURT: Yes, sir, certainly.

21 **IN CAMERA CROSS EXAMINATION**

22 BY MR. COLLINS:

23 Q Do you have access to Thomas O'Bryan Williams'
24 actual D.N.A. profile?

25 A Not right here but I could get it from the

1 laboratory.

2 Q Did you specifically compare that profile to the
3 samples you had in this case?

4 A The searcher, the C.O.D.I.S. search program, does
5 that. So when she asked me has it been searched,
6 it has been compared against every profile in that
7 system.

8 Q C.O.D.I.S. searches for a match; correct? Or a
9 possible match?

10 A Well, it depends on how you set it up. It searches
11 based on your parameters. So it gives you
12 candidate matches and the analyst decides whether
13 or not they are true matches or not.

14 Q It's not a test to exclude; is it?

15 A Well, I would say, yeah. If it doesn't match, it
16 excludes everybody in the database.

17 Q Do you know what parameters were used in all these
18 searches?

19 A I'm familiar with our auto search parameters.

20 Q Can you make those available to the prosecution or
21 the defense?

22 A I can have them printed from our program. I don't
23 have them in front of me. They are not part of the
24 case jacket.

25 Q So your testimony is just relying completely on the

1 C.O.D.I.S. system?

2 A My testimony about -- it can be the same answer for
3 any item. If an item is put into C.O.D.I.S. and
4 there is no hit, then you can infer anybody that is
5 in that system doesn't match that profile.

6 Q And who told you that Thomas O'Bryan Williams was
7 in the C.O.D.I.S. index?

8 A My C.O.D.I.S. administrator, John Barron.

9 Q John Barron told you that?

10 A Uh-huh: (Indicating affirmative response.)

11 MR. COLLINS: I don't have anymore questions,
12 Your Honor. We would stand by the objection to that
13 testimony coming in. We were not told that Thomas
14 O'Bryan Williams or that his profile -- we were not told
15 that Mr. Williams' profile was within the C.O.D.I.S.
16 index and have not had the opportunity to get his
17 profile and compare it with our own expert. Our
18 position is that is a discovery violation, and that's
19 the reason for the mistrial, which you have already
20 denied.

21 THE COURT: I would reaffirm that it would not
22 be a discovery violation. If that were the case, then
23 every individual in the C.O.D.I.S. system would have to
24 be turned over in every case.

25 I'm not sure that is material to the State's

1 case until it's brought up as third-party guilt, Holmes
2 or under -- Holmes, the case that went to the United
3 States Supreme Court, Robert Holmes, and State versus
4 Gay and State versus Pagan. When you ask, for example,
5 the lieutenant, Madame Gang Lieutenant, are you familiar
6 with Williams -- I can't even read my writing -- Bethel,
7 or Bowman?

8 So as I understand Dr. Amick's testimony, he
9 didn't get any hits on this person, among many people in
10 the C.O.D.I.S. system. It means that when -- what does
11 it mean? It means that his D.N.A. is not in the
12 C.O.D.I.S. system. Correct?

13 THE WITNESS: It means he didn't match any
14 evidence in the C.O.D.I.S. system.

15 MR. COLLINS: Your Honor, I think the
16 difference between Thomas Williams and anybody else in
17 the system is that they actually swore a warrant out for
18 murder on Thomas O'Bryan Williams at the beginning of
19 this case.

20 It's not like his name just came up in this
21 trial. It has been involved in this case from day one.
22 That's the reason they had that D.N.A. profile available
23 the entire time, and it was not turned over.

24 THE COURT: Well, if that's the case and y'all
25 knew that, you could have gotten experts well in advance

1 of this yourself and moved to get experts to make
2 comparisons.

3 At any rate I would renew my ruling. I would
4 say I don't think it's appropriate to preface a
5 question: At my request. At the request, did you do
6 this, as opposed to at my request.

7 MR. COLLINS: Thank you, Your Honor.

8 THE COURT: The reason I ask that, to allow
9 that question is, I thought you may want, as a tactical
10 point of view, the jury to know it was just requested
11 today, just found out this morning. Y'all are good
12 trial lawyers on both sides. You can try your case.

13 Anything further before we bring the jury back
14 in?

15 MR. COLLINS: No, Your Honor.

16 (The jury returns to the courtroom.)

17 THE COURT: Thank you, Mr. Collins.
18 Solicitor.

19 **DIRECT EXAMINATION**

20 BY MS. CAMPBELL:

21 Q Let me back up a minute. You mentioned that you
22 have C.O.D.I.S. or a local database?

23 A Yes.

24 Q Which item number in this case was actually
25 submitted to that database?

- 1 A Item 50.
- 2 Q Which was which swab?
- 3 A A swab from an A.K.
- 4 Q A swab from an A.K.?
- 5 A Yes.
- 6 Q When it's run through the database, what happens
- 7 when you get a hit?
- 8 A Potential hits are generated every week. It's
- 9 automatic. Our C.O.D.I.S. administrator will go
- 10 through those and determine whether they are true
- 11 hits or not and then give those to the analyst who
- 12 did the case to write a report or pass it on to the
- 13 investigator.
- 14 Q What does it mean when there are not hits in that
- 15 database?
- 16 A What that means is that for any particular case
- 17 that the evidence didn't match the people or the
- 18 other evidence in the database.
- 19 Q It matched no standards in the database as far as
- 20 evidence?
- 21 A Right, evidence from other cases.
- 22 Q In this case was swab 50, that was run through your
- 23 local database, has it matched anyone up until
- 24 today?
- 25 A No.

- 1 Q Is Thomas O'Bryan Williams in that database where
2 the D.N.A. was run?
- 3 A Yes.
- 4 Q And has any hit come back to him on that evidence?
- 5 A No.
- 6 Q The other item that actually had some D.N.A. -- not
7 much but some as you testified on it -- was it
8 submitted to any database?
- 9 A Item 55, no, it was not.
- 10 Q Why was that?
- 11 A It was just even weaker and therefore not entered
12 into any database. It was too weak to go into a
13 database.
- 14 Q Again, how is the database comprised?
- 15 A How is it comprised?
- 16 Q Yes.
- 17 A It's comprised of evidence profiles and known
18 individuals.
- 19 Q Known individuals?
- 20 A Yes.
- 21 Q At a later date did you receive known samples from
22 the codefendants in this case?
- 23 A I received known samples from five people in this
24 case.
- 25 Q Who are the five people you received known samples

1 from?

2 A Brian Campbell, Daquan Johnson, Terrance Patterson,
3 Marquez Prophet, and Detrick Walker.

4 Q Is that standard for you to receive known standards
5 in a case?

6 A Yes.

7 Q What is the purpose of getting known standards from
8 the five codefendants in this case?

9 A The purpose is to see if any of these individuals
10 match any of the evidence in the case.

11 Q And of the two swabs you actually got in evidence,
12 did you then compare it to item number 50, the swab
13 with the A.K.?

14 A I did.

15 Q Was anyone matched to that?

16 A No. All those individuals were excluded from
17 contributing to item 50 or item 55, which means
18 they did not match.

19 Q And item 55 as well?

20 A That's correct.

21 Q Can you tell the jury how that D.N.A. got there or
22 how long it had been there?

23 A No, I cannot.

24 Q And you don't know who has handled the gun at what
25 point; do you?

1 A Nope.

2 Q Or the ammunition?

3 A No.

4 Q I will show you what is marked as State's Exhibit
5 Number 151. Do you recognize this?

6 A I do.

7 Q Is this basically a summary of the testing that you
8 did?

9 A It is.

10 Q And the results?

11 A Yes.

12 MS. CAMPBELL: Your Honor, at this time we
13 offer State's Exhibit 151 into evidence.

14 THE COURT: Mr. Collins?

15 MR. COLLINS: No objection, Your Honor.

16 THE COURT: State's 151 is in evidence without
17 objection.

18 (State's Exhibit Number 151 is received into
19 evidence.)

20 BY MS. CAMPBELL:

21 Q Of the two D.N.A. profiles that you were able to
22 develop -- and with touch D.N.A. is it unusual to
23 have a weak profile?

24 A No, it's pretty common.

25 Q It is unusual not to have a profile?

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1 A No, it's not unusual.

2 Q In this case as far as the D.N.A. from swab
3 number 50 and 55, have you been able to match it to
4 anyone?

5 A No.

6 Q Finally, item number 50 was run through that local
7 database and it never matched anyone?

8 A That's correct.

9 MS. CAMPBELL: Thank you, Your Honor.

10 THE COURT: Thank you, Solicitor.

11 Mr. Collins.

12 MR. COLLINS: May it please the Court.

13 THE COURT: Yes, sir.

14 **CROSS EXAMINATION**

15 BY MR. COLLINS:

16 Q You wrote a report about these results; right?

17 A I did.

18 Q What was the date of that report?

19 A The date is July 10, 2012.

20 Q 2012?

21 A Yes.

22 Q We are talking about item 50, which I will leave
23 the numbers behind, item 50 is a swab from one of
24 the guns; right?

25 A Correct.

- 1 Q And item 55 is a swab from the .40-caliber shell
2 casings?
- 3 A From the cartridge case, yes.
- 4 Q These items were originally tested when?
- 5 A The D.N.A. tests?
- 6 Q When they were originally tested, yes.
- 7 A Originally tested May 18, 2011.
- 8 Q 2011?
- 9 A 2011.
- 10 Q And was there a report made from that testing?
- 11 A No. In this case what was issued was called a
12 C.O.D.I.S. notification. These type cases, where
13 there is no match or no exclusion because there
14 were no standards of individuals submitted at that
15 time, what we do is run the evidence and notify the
16 investigator whether or not something is eligible
17 or not for C.O.D.I.S.
- 18 So these items were run and one of those
19 notifications was generated to say to the
20 investigator, item 50 was eligible but these other
21 items weren't.
- 22 Q And in your report who do you have as the
23 investigator?
- 24 A Investigator W. Gonzalez.
- 25 Q And that says with the Columbia Police Department?

- 1 A Yes, it does.
- 2 Q Did anyone ever send you cigarette butts to be
3 tested in this case?
- 4 A There are no cigarette butts listed as items
5 submitted to be examined.
- 6 Q Swabs from the inside of a car?
- 7 A Nope.
- 8 Q Swabs from shell casings at a shooting at Studio
9 54?
- 10 A I don't know where these cartridge cases came from;
11 so I don't know.
- 12 Q I sort of understand the D.N.A. thing. I kind of
13 want to paint a picture for how these profiles are
14 compared and how you do your reports. Please
15 correct me if I'm wrong, but you have how many
16 different -- they are called loci?
- 17 A Loci.
- 18 Q And that is one part of the D.N.A. molecule;
19 correct?
- 20 A Correct.
- 21 Q And to try to simplify it, you do testing and there
22 is a graph that comes out and there's a couple of
23 peaks at each loci; right?
- 24 A That's correct.
- 25 Q And those peaks are assigned numbers; right?

- 1 A That's correct.
- 2 Q And how many different loci do you normally test?
- 3 A Sixteen.
- 4 Q And how many loci are there in one D.N.A. molecule?
- 5 A I don't know the answer to that.
- 6 Q But there are 16. So we have like 16 different
- 7 boxes that -- if we made a chart; right?
- 8 A That's accurate.
- 9 Q In each one of those boxes, there would be one to
- 10 two numbers representing the peaks?
- 11 A If it's a single source. Now, if it's a mixture,
- 12 you may have more than two.
- 13 Q And that's kind of what you consider the profile;
- 14 right?
- 15 A That's correct.
- 16 Q So if you have one chart with different numbers in
- 17 it and you compare it to a different chart with
- 18 different numbers in it, if any one of those
- 19 numbers doesn't match, you know for a fact that is
- 20 not the same D.N.A.; right?
- 21 A No, you are wrong there. You are simplifying a
- 22 process that is not quite that simple, especially
- 23 when you have weak or partial profiles and mixtures
- 24 involved. So your hypothetical is difficult for me
- 25 to answer, but it's not quite that simple, I guess,

1 would be the answer.

2 Q In this weak profile -- let's go to item 55 -- you
3 have a report with peaks at different loci;
4 correct?

5 A My report doesn't contain the --

6 Q The graphs you used to make the report, do you have
7 those with you?

8 A Yes, I do.

9 Q And there are peaks with different numbers on them;
10 correct?

11 A Correct.

12 Q At different loci?

13 A Correct.

14 Q Please explain to the jury how you exclude one
15 person's D.N.A. profile from this profile?

16 A Item 55?

17 Q We can use 55, yes.

18 A I would take that individual's profile and look at
19 the evidence and go locus to locus and make a
20 decision whether that person's alleles or numbers
21 are present in the evidence or not.

22 Q And if the numbers don't match up at the same
23 locus, then you can exclude?

24 A In some cases, yes. Again, it's not quite that
25 simple. There could be a mixture. So there may be

1 other numbers there that belong to somebody else.
2 So when you say they don't match up, well those
3 didn't match it, but he could still be included.
4 Q But the five people that you compared to this were
5 all excluded; correct?
6 A That's correct.
7 Q It's not their D.N.A.?
8 A That's correct.
9 Q It's somebody else's D.N.A.?
10 A That's correct.
11 Q And item 55 was not submitted to the database?
12 A That's correct.
13 Q Item 50 was only submitted to the local database?
14 A Yes.
15 Q I believe that's all I have. Thank you.
16 THE COURT: Redirect, Solicitor?
17 MS. CAMPBELL: Just a couple.
18 **REDIRECT EXAMINATION**
19 BY MS. CAMPBELL:
20 Q He asked you about the time periods and how much
21 time had passed before the testing is done. Is it
22 unusual for it to take a while to do testing?
23 A No, it's not. Again, in the year that passed
24 between my report and the original testing, it is
25 not uncommon in a homicide trial; and it's not

1 uncommon to have additional evidence submitted,
2 which is what happens.

3 Q Just for the record, does it affect the quality of
4 your results as long as it's properly documented?

5 A No.

6 Q The testing was actually done and you just go back
7 later?

8 A The original evidence was done, and then I ran the
9 standards at a later date. Then the comparison was
10 made.

11 Q But nothing about how this case was handled would
12 affect the quality of the results?

13 A Correct.

14 Q Thank you.

15 THE COURT: Recross?

16 **RECROSS EXAMINATION**

17 BY MR. COLLINS:

18 Q Were you aware that the original report wasn't
19 disclosed to anybody in this courtroom until --

20 MS. CAMPBELL: Objection, Your Honor.

21 THE COURT: I would sustain the objection.

22 You may ask your next question, Mr. Collins.

23 MR. COLLINS: Your Honor, I believe she opened
24 the door to that issue with her redirect.

25 THE COURT: I sustain the objection.

1 MR. COLLINS: Thank you, Your Honor.

2 THE COURT: You may ask any other questions if
3 you have others.

4 MR. COLLINS: That would be the only question
5 I have.

6 THE COURT: Thank you. Thank you very much,
7 Dr. Amick. You may step down. You may be excused.

8 (Witness leaves the witness stand.)

9 THE COURT: Solicitor, you may call your next
10 witness.

11 MS. CAMPBELL: The State calls David Collins.
12 Your Honor, may we approach?

13 THE COURT: Yes, ma'am.

14 (Whereupon there was a bench conference off
15 the record in the presence of the jury but out of the
16 hearing of the jury.)

17 THE COURT: You may proceed, Solicitor.

18 MS. CAMPBELL: Thank you, Your Honor,

19 DAVID JEFFREY COLLINS, being
20 first duly sworn, testifies as follows:

21 CLERK: State your name for the record.

22 THE WITNESS: David Jeffrey Collins.

23 **DIRECT EXAMINATION**

24 BY MS. CAMPBELL:

25 Q Investigator Collins, tell the jury, where are you

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1 employed?

2 A I am employed by the Richland County Sheriff's
3 Department.

4 Q What do you do there, sir?

5 A I work there in the forensic services laboratory
6 where I perform as a firearms and tool marks
7 examiner.

8 Q And can you tell this jury a little bit about your
9 education and training.

10 A I received my Bachelor's degree from the Citadel in
11 1984. I was employed initially by S.L.E.D. or the
12 State Law Enforcement Division in 1994 when I
13 entered an on-the-job training program in firearms
14 and tool marks examination.

15 This program lasts approximately for two years
16 and, it is very similar to an apprentice-style
17 training program. There are no schools in the
18 country that can teach you everything you need to
19 know to be a firearms examiner.

20 I was certified by S.L.E.D. upon commission of
21 that class in 1993 and began doing case work on my
22 own. Since that time I have attended continuing
23 education training in my field in the form of
24 firearms repair or armorer's courses, firearms
25 examination, training, and annual training

1 seminars, which we attend as often as possible.

2 Q Have you ever been qualified before as an expert in
3 firearms examination?

4 A Yes, I have qualified as an expert in the circuit
5 court system of South Carolina in excess of 200
6 times. I have also qualified in the federal court
7 system, in the state court systems of Georgia and
8 North Carolina and in the military court system.

9 MS. CAMPBELL: Your Honor, at this time we
10 offer him as an expert in firearms examination.

11 BY MS. CAMPBELL:

12 Q Is that proper?

13 A Firearms examination or firearms identification.

14 MR. COLLINS: No objection.

15 THE COURT: Again, ladies and gentlemen, you
16 have heard my charge or instruction to you concerning
17 expert testimony. This witness, David Collins, will be
18 qualified in the area of firearms examination. You used
19 another term, Solicitor, I apologize.

20 MS. CAMPBELL: Firearms examination or
21 identification.

22 THE COURT: Firearms examination or
23 identification -- to give opinion in those areas. That
24 does not mean that you must accept the opinions, but it
25 is evidence for you the jury to use in any way you see

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1 fit.

2 Thank you, Solicitor. You may continue.

3 MS. CAMPBELL: Thank you, Your Honor.

4 BY MS. CAMPBELL:

5 Q Tell this jury typically what you do in a case,
6 especially a case involving guns?

7 A Any case in which we receive evidence, the first
8 thing we do when we receive it is to document what
9 it is. We take lot of notes in the laboratory. We
10 will photograph items. We document its condition
11 as we receive it.

12 If we have firearms, we are going to be test
13 firing those firearms in the laboratory to
14 determine, first off, if they function properly
15 and, secondly, we are going to be, by virtue of
16 that, obtaining fired bullets and cartridge cases,
17 which we will use for comparison purposes with
18 other evidence items.

19 If we have fired bullets, bullet fragments, or
20 cartridge cases submitted to us, we will, again,
21 document items and then compare them
22 microscopically with each other and/or we will test
23 fire bullets and cartridge cases from submitted
24 firearms looking for areas that were marked on them
25 by the firearm that fired them.

1 By doing so we may find what we call
2 individual characteristics. These are markings
3 that are placed on bullets or cartridge cases when
4 they are fired that are unique to that particular
5 firearm.

6 It's much like a fingerprint is left by a
7 person. A firearm can leave behind marks that are
8 stamped or scratched on these items that are unique
9 to that particular firearm. We do this under a
10 comparison microscope, examining two items side by
11 side, turning them, looking at different surfaces
12 to try and find these marks.

13 If we find sufficient matching marks, we can
14 conclude that it is our opinion that that bullet
15 from that cartridge case was fired by the firearm
16 that was submitted or if we don't have a firearm
17 submitted, we can conclude that the same firearm
18 fired, for instance, cartridge cases X, Y, and Z.

19 Additionally, we will try to identify the
20 source or type of ammunition. We will do the
21 documentation. If it's something we haven't seen
22 before, we will do research to try to determine
23 where it came from.

24 Typically, any type of firearms evidence can
25 be submitted to us for examination. We will do the

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1 function testing, then the microscopic comparisons.
2 If it's necessary we will do serial number
3 restorations. We will attempt to do restorations
4 on firearms that have the serial numbers
5 obliterated. Any type of firearms specific
6 examination would fall under our purview.

7 Q Specifically, as in this case, did you receive a
8 number of items that, I believe, were submitted by
9 the Columbia Police Department?

10 A Yes, I did.

11 Q And what type of testing were you requested to do
12 in this case?

13 A I received a number of fired cartridge casings and
14 projectiles and fragmented projectiles. I received
15 some unfired ammunition, and I received three
16 firearms from the City of Columbia.

17 I was asked to examine the items and to
18 determine if any of the fired cartridge cases and
19 bullets had been fired by the submitted firearms;
20 and if not, to determine what types of firearms may
21 have fired them or how many firearms may have been
22 involved.

23 Q Why was your agency requested by Columbia Police
24 Department rather than going to S.L.E.D. Why would
25 they request you to do this examination?

1 A Due to our proximity to the City of Columbia, it's
2 often we will have potential interrelationships,
3 cases that may have mutual interests. They often
4 submit those types of cases to us.

5 Q In this case was there also an accompanying case
6 that happened in the County which you also did some
7 comparisons to?

8 A Yes, there was.

9 Q I want to show you what has been marked as State's
10 Exhibit Number 150. Do you recognize this item?

11 A This is an Essex Arms Brand .45 auto caliber pistol
12 that I examined that originated from the Richland
13 County case. It was examined in evidence. Test
14 fires from this particular firearm I compared with
15 the evidence submitted.

16 MS. CAMPBELL: Your Honor, at this time we
17 would offer State's Exhibit 150 into evidence.

18 MR. COLLINS: No objection, Your Honor.

19 THE COURT: One-fifty is in evidence without
20 objection.

21 (State's Exhibit Number 150 is received into
22 evidence.)

23 ---

24 BY MS. CAMPBELL:

25 Q When you first received the evidence in this case,

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1 what did you do initially as per your protocol?

2 A I documented the items and would have taken copious
3 notes as to the information I could gather from
4 them, just from visual examination. I would have
5 then proceeded into a more physical workup, as far
6 as test firing the firearms and actually doing
7 comparison work with the cartridge cases.

8 Q Before you actually handled any of the evidence,
9 did you take any swabs in this case?

10 A There would have been swabs collected from fired
11 cartridges cases that were submitted to me, if I
12 had information that had not been done prior to
13 their submission.

14 Q In this case did you also take some swabs from, I
15 believe, the guns themselves, three of the guns?

16 A Let me refer to my notes. My notes don't indicate
17 whether I collected swabs, but it's possible that I
18 did.

19 Q What is the purpose in collecting swabs?

20 A A swab might be collected with the potential of
21 collecting D.N.A. evidence that may not be visible.
22 It's just done as a precautionary measure to try to
23 collect it before you handle the weapon and
24 therefore contaminate it. So if it becomes
25 necessary for it to be tested in the future, it

1 will be possible to do so.

2 Q And all of that would have been forwarded to the
3 evidence room --

4 A That's correct.

5 Q -- and handled by D.N.A. You wouldn't have done
6 anymore testing as far as the swabs are concerned?

7 A All I would have done at that point would be
8 package the swabs and submit them to the evidence
9 room.

10 Q In this case some of the swabs you mentioned that
11 you swabbed, you use one swab on multiple cartridge
12 cases?

13 A It would be our protocol that you would use one
14 swab to swab multiple cartridge cases of the same
15 caliber that were recovered from the same location.

16 Q And that was done in this case?

17 A It's my understanding, yes.

18 Q Once you had done that preliminary precautionary
19 measure, did you then start examining the actual
20 guns themselves?

21 A I did.

22 Q You mentioned earlier that one of the things you
23 try to find is to see if they are in working order?

24 A Yes.

25 Q I will show you some of these guns.

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1 MS. CAMPBELL: Your Honor, permission to
2 handle them in front of the jury?

3 THE COURT: Yes, ma'am.

4 MS. CAMPBELL: He is an expert.

5 THE COURT: Officer Collins, you know the
6 procedure for handling firearms in the courtroom, not
7 pointing them at anybody, the jury, and things of that
8 nature.

9 THE WITNESS: Yes, sir.

10 THE COURT: Thank you. He may step down.

11 MS. CAMPBELL: Thank you, Your Honor.

12 (Witness leaves the witness stand.)

13 BY MS. CAMPBELL:

14 Q You can use your notes if you need to. I know
15 there is a lot. What was the first gun you
16 actually examined in this case as listed on there?

17 A When firearms are submitted to the actual
18 laboratory, they are issued item numbers.

19 Q Can you come over here and face that way. I think
20 it's better for her to hear.

21 A When the firearms are submitted, if they are given
22 the item number for tracking purposes, typically I
23 will examine them in the order in which they are
24 done.

25 Q So there is no rhyme or reason to the order. It's

1 just the way you receive them?

2 A Just the way I receive them, yes.

3 Q The first item you got in this case was a rifle?

4 A Item one on my report was a Romarm's model S.A.R.3
5 semiautomatic rifle chambered in 5.56 by
6 45-millimeter caliber ammunition. This is the same
7 caliber of ammunition our military uses in its M-4
8 or M-16 assault rifles.

9 Q And do you see that gun in here?

10 A Yes.

11 THE COURT: And that weapon is safe,
12 Mr. Collins?

13 THE WITNESS: Yes, sir. There is a cable lock
14 through the mechanism. This gun cannot be fired in its
15 current condition.

16 THE COURT: Thank you.

17 A That is this firearm here (indicating).

18 Q And in doing the examination I believe you said
19 preliminarily you do some actual testing on the gun
20 itself?

21 A Yes.

22 Q What kind of testing and what preliminary results
23 did you come up with as far as the working
24 condition and things of that nature?

25 A I examined the firearm. I test fired the firearm

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1 in what we call a bullet recovery tank in the
2 laboratory. This allows us to safely fire on the
3 premises of the Sheriff's Department headquarters
4 and also to collect fired bullets and cartridge
5 cases for comparison purposes. I did perform that
6 analysis or that examination on this firearm.

7 Q Was this gun in working order?

8 A Yes, it was.

9 Q What was the next gun you actually would -- and
10 that would be State's Exhibit 129.

11 A The next firearm listed is a Ewbank manufacturing
12 firearm. The model is E.M.A.K.M. It's a
13 semiautomatic pistol chambered in 7.62 by
14 39-millimeter caliber, serial number 000940.

15 Q Do you see that gun?

16 THE COURT: And that is also safe,

17 Mr. Collins?

18 THE WITNESS: Yes, sir, it also has a cable
19 lock through the mechanism.

20 THE COURT: Thank you.

21 A This is the firearm that I examined that matches
22 that description. This is actually an unusual
23 firearm. This is classified by the Bureau of
24 Alcohol, Tobacco, and Firearms as a pistol, not as
25 a rifle, but it uses a rifle-type mechanism. It is

1 chambered in 7.62 by 39-millimeter ammunition,
2 which is the same caliber ammunition which is fired
3 by the Soviet -- now Russian -- A.K.47s. It also
4 functioned properly as well.

5 Q It did function properly?

6 A Yes, it did.

7 Q The final additional gun that was submitted to you
8 was which one?

9 A My item three, it's a Norinco model S.K.S. Sporter
10 semiautomatic rifle, also chambered with 7.62 by
11 39-millimeter caliber ammunition. It's serial
12 number 9325632.

13 THE COURT: It's also safe?

14 THE WITNESS: It is safe, Your Honor.

15 THE COURT: Thank you.

16 A That is this firearm here (indicating). My
17 examination of this was concluded -- was performed,
18 and it was also in functioning condition.

19 Q And those were the three initial ones. The final
20 weapon we are going to talk about here today is
21 item 150.

22 THE COURT: Same question.

23 THE WITNESS: Yes, sir. Yes, Your Honor, it
24 is safe.

25 THE COURT: Thank you.

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1 A This is the Essex Arms .45 auto caliber pistol that
2 was submitted by the Richland County Sheriff's
3 Department. I also examined this, and it was also
4 functioning.

5 Q You can take the stand.

6 A (Witness resumes the witness stand).

7 Q Once you had determined that the actual weapons
8 themselves are in functioning order, did you also
9 examine certain what are known as shell casings,
10 projectiles, and other items that were submitted to
11 you?

12 A A significant quantity of fired cartridge cases and
13 some projectiles that were submitted.

14 Q As well as some live rounds?

15 A Yes.

16 Q And projectiles or parts of the bullets?

17 A Bullets and fragments of projectiles, yes.

18 Q Explain to the jury typically at a crime scene when
19 you find shell casings how the shell casing is left
20 at the crime scene and what you are able to
21 determine in kind of the area where you found them?

22 A When a fired shell casing is found at a scene or
23 cartridge casing rather is found at a scene, it is
24 typically there as a result of having been fired by
25 a semiautomatic firearm or some other firearm that

1 ejects it as a part of its normal functioning
2 process.

3 When a semiautomatic gun is fired, the
4 mechanism itself automatically itself extracts the
5 fired cartridge case from the chamber of the gun
6 and ejects it from the firearm where it will be
7 left at the scene.

8 By contrast a firearm, such as a revolver or
9 certain types of shotgun, may not leave a fired
10 cartridge case at the scene unless they were
11 manually opened to unload or therefore drop the
12 cartridge cases from the gun.

13 Q And in this case were all the firearms that were
14 submitted for your examination semiautomatics?

15 A Yes, they were.

16 Q And the difference between a semiautomatic and a
17 revolver, typically what does a revolver look like?

18 A A revolver would be a handgun with a cylindrical
19 portion called a cylinder that has chambers in it
20 that hold each individual cartridge, the difference
21 there being is that the fired cartridge cases will
22 remain in that cylinder until it is opened by
23 someone, and they are manually ejected from it.

24 Q Is that kind of the equivalent of what you see in
25 the Westerns when they move that thing around?