

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

Appeal from Charleston County

R. Markley Dennis, Jr., Circuit Court Judge

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S. C. SUPREME COURT

RICHARD DEAS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001761

APPENDIX

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1 THE COURT: Is there anything before we begin  
2 with the selection of the jury?

3 Does the defendant wish to have a formal  
4 arraignment?

5 MS. FORD: Yes, Your Honor, we do.

6 THE COURT: Okay. Are we going forward on  
7 both indictments?

8 MS. SHEALY: We are, Your Honor.

9 THE COURT: All right. Is there anything else  
10 before I bring in the panel?

11 MS. SHEALY: May I look at that indictment  
12 just for a second, Judge?

13 THE COURT: Uh-hum.

14 MS. SHEALY: State has nothing further.

15 THE COURT: Anything further from the  
16 defendant before we proceed with jury selection?

17 MS. FORD: No, Your Honor.

18 THE COURT: Please bring in the panel. I ask  
19 that you segregate your witnesses so that we don't  
20 run the risk of them interacting with the panel.  
21 From what I understand they're up and down in the  
22 hallway.

23 MS. SHEALY: May I step out just for a second?

24 THE COURT: Uh-hum, you may do that.

25 MS. SHEALY: Your Honor, may we approach for

1 one second?

2 THE COURT: Uh-hum.

3 (Whereupon, a discussion was held at the bench  
4 off the record.)

5 (Whereupon, the jurors enter the courtroom.)

6 THE COURT: Do we have every juror present?

7 THE BAILIFF: Yes, ma'am.

8 THE COURT: Good morning, ladies and  
9 gentlemen. We are going to be selecting a jury for  
10 the case of the state of South Carolina versus  
11 Richard Vernon Deas on indictment number  
12 2008-GS-10-3339 for murder, and indictment  
13 2008-GS-10-3340 for possession of a firearm during  
14 the commission of a violent crime.

15 Mr. Clerk, you may proceed with the formal  
16 arraignment.

17 THE CLERK: Yes, Your Honor.

18 Defendant, please stand. Case number  
19 2008-GS-10-3339, case number 2008-GS-10-3340, the  
20 State of South Carolina versus Richard Vernon Deas,  
21 an indictment for murder, and possession of a firearm  
22 during the commission of a violent crime.

23 Sir, if you answer to that name, please raise  
24 your right hand. Thank you, put it down.

25 You stand indicted by the name of Richard

1 Vernon Deas. The indictment for murder, court of  
2 general session convened on April 7th, 2008, the  
3 grand jurors of Charleston County presented on their  
4 oath that in Charleston County on or about October  
5 19th, 2007, with malice aforethought, Richard Vernon  
6 Deas did kill and murder Leroy Simmons, II, by means  
7 of injuries sustained from a gunshot wound, and that  
8 Leroy Simmons, II, did die in Charleston County as  
9 the proximate result thereof October 9th, 2007. This  
10 is in violation of section 16-3-10 of the South  
11 Carolina code of laws.

12 How say you, guilty or not guilty?

13 THE DEFENDANT: Not guilty.

14 THE CLERK: The indictment for possession of a  
15 firearm during the commission of a violent crime. In  
16 the court of general session convened April 7th, 2008  
17 the grand juror of Charleston County presented upon  
18 their oath, that in Charleston County, South  
19 Carolina, on or about October 19th, 2007, the  
20 defendant, Richard Vernon Deas, did possess a handgun  
21 or visibly display what appeared to be a gun during  
22 the commission or an attempted commission of murder,  
23 a violent crime. This is in violation of 16-23-490  
24 of the South Carolina code of laws as amended, 1976  
25 as amended.

1           What say you, guilty or not guilty?

2           THE DEFENDANT: Not guilty.

3           THE CLERK: How will you be tried?

4           THE DEFENDANT: Not guilty by my God and my  
5 country.

6           THE CLERK: May they send you a true  
7 deliverance.

8           Are you ready for trial?

9           THE DEFENDANT: Yes, sir.

10          THE CLERK: Thank you, please be seated.

11          The indictment.

12          THE COURT: Thank you. Ladies and gentlemen,  
13 as I indicated we are going to select a jury for the  
14 State versus Richard Deas on the charge of murder and  
15 possession of a firearm during the commission of a  
16 violent crime. We are going to go through a process  
17 which is called voir dire, which is simply a fancy  
18 way of saying we are going to ask you some questions  
19 so that the attorneys can more effectively exercise  
20 their preemptory challenges in jury selection.

21          If a question applies I would ask and that you  
22 stand and in a loud, clear voice give us your name  
23 and your juror number and an answer to the question  
24 if it applies, and remain standing until the Court  
25 has completed questioning you.

1           Before we begin the process I'm going to ask  
2 counsel for the State to introduce herself as well as  
3 anyone who will be assisting her in the trial of this  
4 case, and to publish the names of the members of her  
5 office. And also counsel for the defense to provide  
6 us with the same information as well as introducing  
7 your client to the panel.

8           MS. SHEALY: Good morning. My name is  
9 Jennifer Shealy. Chris Neely and I both work in the  
10 solicitor's office here. Katherine Walters is our  
11 law clerk, she's a student at the law school here in  
12 Charleston. And I have my officer here, you will be  
13 introduced to him later.

14           We work in the solicitor's office along with  
15 other attorneys, I'm going to read out the names of  
16 the other attorneys in our office.

17           Mike Dewaay. Deborah Herring-Lash. Culver  
18 Kidd. Henry Leventis. Peter McCoy. Michael Nelson.  
19 Trip Reason. Tyler Whitaker. Brian Byrd. Julie  
20 Cardillo. Rutledge DuRant. Elizabeth Gordon. Amy  
21 Harrol. Chad Simpson. Jim Stack. Adam Young. Greg  
22 Voight. Burns Wetmore. Marian Atkins. Kevin Hales.  
23 Michael Henderson. Trip Walton. Stephanie Linder.  
24 Michael Sahn. Dale Savage. Deputy Solicitor Bruce  
25 DuRant. Our solicitor is Scarlet Wilson.

1 THE COURT: Ms. Ford, you may proceed.

2 MS. FORD: Hi, my name is Mary Ford. I'm an  
3 attorney for the public defender's office, and this  
4 is my client Richard Deas. And with us is Andrew  
5 Grimes, another attorney with my office.

6 The other attorneys who I work with are Ashley  
7 Pennington, who's the Ninth Circuit lead Public  
8 Defender. The deputy public defender from my office  
9 is Lori Proctor. Other attorneys are Karen Barker,  
10 Cody Grayber. Jason Mickel. Kelly Solar. Cameron  
11 Blazer. And then there is Martha Dicus. Rhett  
12 Donaway. Sandra Winslow. Ben Lewis. Ronnie Davis.  
13 Beattie Butler. Martha Kent Jenkinson-Rooney. Mary  
14 Beth Mullaney. Michelle Suggs. Cantrell Prior.  
15 Reese Stidham. Jason King.

16 And then as family court attorneys David  
17 Ehrlic. Mary Ellen Rankin. Tim Taylor and Herb  
18 Ehrer who is the magistrate attorney.

19 THE COURT: Thank you very much.

20 Is there any member of the panel related by  
21 blood or marriage to Richard Vernon Deas or is  
22 formerly associated with Leroy Simmon, II, or anyone  
23 with whom he is related to, if so please stand at  
24 this time.

25 Does any member of the panel have a close

1 personal or social relationship with Richard Vernon  
2 Deas or formally with Leroy Simmons, II, or anyone in  
3 his -- with anyone with whom he was related to, if so  
4 please stand at this time.

5 Yes, ma'am, if you give us your name and juror  
6 number.

7 PROSPECTIVE JUROR: Carla Richard, 231.

8 THE COURT: Yes, ma'am. Who did you have an  
9 association with?

10 PROSPECTIVE JUROR: With Richard Deas' mother.

11 THE COURT: How would you characterize that.

12 PROSPECTIVE JUROR: Well, we went to school  
13 together.

14 Yes, and his brother and him went to school  
15 with my daughter.

16 THE COURT: How often would you say you see  
17 her.

18 PROSPECTIVE JUROR: Probably like once a week.

19 THE COURT: Would you characterize your friend  
20 as friend or associates?

21 PROSPECTIVE JUROR: Associates.

22 THE COURT: Ma'am, as a result of this  
23 experience do you feel you can remain fair and  
24 impartial, and render a fair and impartial decision  
25 in this case based solely on the evidence as it will

1 be presented and on the law as the Court will  
2 instruct?

3 PROSPECTIVE JUROR: I think I can.

4 THE COURT: Pardon me?

5 PROSPECTIVE JUROR: I think I can.

6 THE COURT: There has to be a yes or no  
7 answer. There is no right or wrong answer, only you  
8 can search yourself and determine if you can be fair  
9 and impartial.

10 PROSPECTIVE JUROR: No.

11 THE COURT: Ma'am, I'll excuse from the trial  
12 of this case only. If you would take your seat for  
13 me, please.

14 The following are a list of potential  
15 witnesses in this case, I would ask you listen very  
16 carefully. Martha Cooper, Chris Barfield, David  
17 Osborne. Richard Wersma. Randall Unterbrink. Anita  
18 Maestas. Thomas Rivers. Jennifer Wooley. Jerome  
19 Flemming. All the Charleston Police Department as  
20 well as Jenny Lowser and Sgt. Denton.

21 Whitney Doctor. Leon Doctor. Saline Santol.  
22 Shoreka Miles. Shrod Young. Sandra Green. Leroy  
23 Simmons, senior. Shaniqune Williams. Tianai Lee.  
24 Ira Parnell. Lindsay Thompson. All of the South  
25 Carolina Law Enforcement Division. Don Fraser, the

1 Charleston Detention Center. Mike Kimmy, University  
2 of South Carolina. Harry Melton. Ameil Preto of  
3 the Emergency Medical Service.

4 Kim Collins, MD, Medical Examiner's Office.  
5 Mark Hancock with the Charleston County Detention  
6 Center.

7 MS. SHEALY: Your Honor, I believe his actual  
8 first name is Marvin not Mark.

9 THE COURT: Marvin Hancock, Charleston County  
10 Detention Center.

11 Any member of the panel related by blood or  
12 marriage -- and Altida Bennett.

13 Is there any member of the panel related by  
14 blood or marriage to any of the people I just listed  
15 or anyone have a close personal or social  
16 relationship with any of these individuals, if so  
17 please stand at this time.

18 Is there any -- has any member of the panel  
19 ever been represented by any of the attorneys  
20 involved in this case or anyone with whom they  
21 practice, if so please stand at this time.

22 Is there any member of the panel related by  
23 blood or marriage or have a close personal  
24 relationship with any of the attorneys involved or  
25 anyone they practice law, if so please stand at this

1 time.

2 Yes.

3 PROSPECTIVE JUROR: Just put on the record I  
4 working in the solicitor's office. I know just  
5 {pwivr} one in that office as well as public  
6 defender's office

7 THE COURT: Your name and your juror number.

8 PROSPECTIVE JUROR: Jack Daniel, Your Honor,  
9 63.

10 I'm also familiar with Detective Osborne. I  
11 believe Officer Rivers and, you know, being the  
12 reason I'm familiar with them I cannot recall off the  
13 top of my head.

14 THE COURT: As a result of this experience do  
15 you feel you can remain fair and impartial, and  
16 render a fair and impartial decision in this case  
17 based solely on the evidence as it will be presented  
18 and on the law as the Court will instruct?

19 PROSPECTIVE JUROR: Yes, Your Honor.

20 THE COURT: Thank you, sir. You may take your  
21 seat.

22 Has any member of the panel formed or  
23 expressed an opinion about any issue or matter  
24 involved in this case, if so please stand.

25 Is there any member of the panel aware of any

1 bias or prejudice for either the State or defense in  
2 this case, if so please stand?

3 Is there any member of the panel that was a  
4 member of the grand jury which issued the indictment  
5 in this case, if so please stand.

6 Is there any member of the panel who's a  
7 member of or contributor to any group which has as  
8 its primary concern the promotion of law enforcement  
9 or victim's rights? These groups would include, but  
10 certainly are not limited to, Mother's Against Drunk  
11 Driving, Student's Against Drunk Driving, Citizens  
12 Against Violent Crime, People Against Rape, Citizens  
13 Advocating Decency and a Return to Ethics, Parents  
14 Empowered to Save Teens, if so please stand at this  
15 time.

16 Yes, ma'am.

17 PROSPECTIVE JUROR: I'm Biljana Lanier, number  
18 333. I think I'm member of with the Mother's Against  
19 Drunk Driving. I recall sending some money.

20 THE COURT: As a result of this experience do  
21 you feel you can remain fair and impartial, and  
22 render a fair and impartial decision in this case  
23 based solely on the evidence as it will be presented  
24 and on the law as the Court will instructed.

25 PROSPECTIVE JUROR: Yes, ma'am.

1 THE COURT: Thank you, ma'am, you may take  
2 your seat.

3 Is there any member of the panel, or member of  
4 your family, been the victim of a violent crime in  
5 the last five years, if so please stand at this time.

6 If you would give me your name and juror  
7 number.

8 PROSPECTIVE JUROR: Connie Mack, 166. I have  
9 a family member who's getting ready to go home. He  
10 got shot.

11 THE COURT: If you would remain standing.  
12 Yes, ma'am.

13 PROSPECTIVE JUROR: I'm Josie Taylor and my  
14 number is 342.

15 THE COURT: Yes, ma'am.

16 PROSPECTIVE JUROR: I was the victim of a  
17 robbery.

18 THE COURT: Okay. Actually, I apologize I  
19 added something to that question I should not have.  
20 I will restate it. Has any member of the panel or  
21 member of your family been the victim of a violent  
22 crime, if so please stand.

23 Yes, sir.

24 PROSPECTIVE JUROR: My father was involved in  
25 a drive-by shooting.

1 THE COURT: And your name, sir, and your  
2 number.

3 PROSPECTIVE JUROR: Jury 210, George Pasley.

4 THE COURT: And yes, sir.

5 PROSPECTIVE JUROR: Juror number 326, my older  
6 brother was murdered in 1990.

7 THE COURT: I'm sorry, you said your older  
8 brother?

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: I know this is delicate, I  
11 apologize, you said was murdered in 1980.

12 PROSPECTIVE JUROR: 1990.

13 THE COURT: As a result of these experiences  
14 do you all feel you can remain fair and impartial,  
15 and render a fair and impartial decision in this  
16 case, based solely on the evidence as it will be  
17 presented and on the law as the Court will instruct,  
18 number 166?

19 PROSPECTIVE JUROR: No.

20 THE COURT: Ma'am, you will be excused from  
21 this panel only, if you would take your seat.

22 Number 342?

23 PROSPECTIVE JUROR: No.

24 THE COURT: Ma'am, you will be excused from  
25 this panel only, take your seat.

1           Number 210?

2           PROSPECTIVE JUROR: Yes.

3           THE COURT: Sir, take your seat.

4           Number 326?

5           PROSPECTIVE JUROR: No.

6           THE COURT: Number 326 will be excused from  
7 this panel only. Sir, you may take your seat.

8           Is there any member of the panel that has a  
9 religious, moral or philosophical belief that would  
10 preclude your ability to sit in judgment of another  
11 person, if so please stand at this time.

12          Yes, ma'am.

13          PROSPECTIVE JUROR: I don't -- I.

14          THE COURT: Tell me your name and your jury  
15 number.

16          PROSPECTIVE JUROR: 310, I'm sorry.

17          THE COURT: Yes, ma'am.

18          PROSPECTIVE JUROR: I don't think my decision  
19 would be fair to the victim or the person I guess the  
20 defendant.

21          THE COURT: Are you telling the Court you  
22 cannot listen to the evidence and render a verdict  
23 based solely on the evidence and the law?

24          PROSPECTIVE JUROR: Right, I don't think I  
25 can. I can't pass judgment I don't think.

1 THE COURT: Is that because of a moral,  
2 philosophical or religious belief?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: Are you telling me you cannot lay  
5 that aside and honor your obligation as a juror?

6 PROSPECTIVE JUROR: I don't think I can.

7 THE COURT: Ma'am, you will be excused from  
8 this panel only.

9 Ma'am, tell me your name again.

10 PROSPECTIVE JUROR: West. Willie Mae West.

11 THE COURT: Is there any member of the panel  
12 ever had a bad experience with law enforcement, if so  
13 please stand at this time.

14 PROSPECTIVE JUROR: Can you define a bad  
15 experience?

16 THE COURT: That's subjective, only you would  
17 be able to define that. Unpleasant, bad, something  
18 that would have left a sour taste in your mouth.

19 I'm sorry, I cannot hear you, sir.

20 PROSPECTIVE JUROR: Other than being pulled  
21 over for whatever, that's about it.

22 THE COURT: Okay. Are you saying that that --  
23 sir, tell me your name and your juror number.

24 PROSPECTIVE JUROR: 210, George Pasley.

25 THE COURT: Sir, having had that experience do

1 you feel you can lay that experience aside and render  
2 a verdict in this case based solely on the evidence  
3 as it will be presented, and the on the law as the  
4 Court will instruct?

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: Thank you, sir, you may take your  
7 seat.

8 Is there any member of the panel who lives  
9 near in downtown Charleston, if so  
10 please stand at this time.

11 Yes, sir.

12 PROSPECTIVE JUROR: I live Killian Street,  
13 it's about a block away.

14 THE COURT: Sir, tell me your name and your  
15 juror number.

16 PROSPECTIVE JUROR: 305, Percy Watson.

17 THE COURT: Sir, do you have any personal  
18 knowledge about the facts and circumstances alleged  
19 in this case?

20 PROSPECTIVE JUROR: No.

21 THE COURT: Sir, as a result of where you live  
22 do you feel that you can render a fair and impartial  
23 verdict in this case, and render a verdict based  
24 solely on the evidence as it will be presented and on  
25 the law as the Court will instruct?

1 PROSPECTIVE JUROR: Absolutely.

2 THE COURT: Thank you, sir, you may take your  
3 seat.

4 Is there any member of the panel who was seen  
5 any press coverage regarding this case, that includes  
6 anything that may have been on the radio, television,  
7 Internet or newspaper, if so please stand at this  
8 time.

9 Is there any member of the panel who's a  
10 former law enforcement employee, if so please stand  
11 at this time.

12 Yes, sir.

13 PROSPECTIVE JUROR: Jack Daniel, Juror 63.  
14 About two years ago I worked in the Ninth circuit  
15 solicitor's office.

16 THE COURT: As a result of this experience do  
17 you feel that you can remain fair and impartial, and  
18 render a fair and impartial decision in this case  
19 based solely on the evidence as it will be presented  
20 and on the law as the Court will instruct?

21 PROSPECTIVE JUROR: Yes, Your Honor.

22 THE COURT: Thank you, sir, you may take your  
23 seat.

24 Does any member of the panel know of any  
25 reason whatsoever why he or she should not serve as a

1 juror in this case, with particular emphasis being  
2 placed on your ability to be fair and impartial to  
3 both the State and the defense, if so please stand.

4 Are there any additional questions from the  
5 State?

6 MS. SHEALY: No, Your Honor, thank you.

7 THE COURT: From the defense?

8 MS. FORD: Your Honor, number four on my list.

9 THE COURT: Is there any exception from the  
10 State?

11 MS. SHEALY: Beg the Court's indulgence just a  
12 moment.

13 MS. FORD: And also number eight.

14 THE COURT: That would have been disclosed in  
15 roll call. It's cumulative.

16 MS. SHEALY: It would be our position you  
17 already addressed that by an earlier question.

18 THE COURT: I think it's cumulative, not  
19 particularly relevant.

20 Strikes are 5 and 10.

21 As with regards to the requirements of those  
22 articulated areas in the statute.

23 Will there be the necessity of an alternate  
24 from the State?

25 MS. SHEALY: Yes, Your Honor.

1 THE COURT: From the defense?

2 MS. FORD: Yes, Your Honor.

3 THE COURT: Do we need one or two alternates?

4 MS. SHEALY: I would suggest two, Your Honor.

5 THE COURT: We will have two alternates  
6 without objection, I assume, Ms. Ford?

7 MS. FORD: Without objection, Your Honor.

8 THE COURT: Strike are 10 and 5, 1 and 2 are  
9 the alternates.

10 Ladies and gentlemen, if your name is called  
11 Mr. Robinson, if you would demonstrate for me,  
12 please.

13 If your name is called, please come forward  
14 with all of your belongings and face forward, as the  
15 bailiff is doing. If you are seated you will go to  
16 the jury box and be seated, if not you will return to  
17 your seat.

18 I ask because of the crowded conditions in the  
19 courtroom, if you come from the middle or inner  
20 portion and returning to your seat, if those on the  
21 end would slide down so that you don't have to crawl  
22 over other people to get back into the gallery.

23 Mr. Clerk, you may proceed when you're ready.

24 THE CLERK: Yes, Your Honor. Juror number 94,  
25 Rachel Garvin.

1           What say you for the State?

2           MS. SHEALY: Please present the juror.

3           THE CLERK: What say you for the defendant?

4           MS. FORD: Please excuse the juror.

5           THE CLERK: Ma'am, you have been excused from  
6 the trial of this case, please have a seat back out  
7 in the audience.

8           Juror number 125, Tal Herbsman.

9           What say you for the State?

10          MS. SHEALY: Please excuse the juror.

11          THE CLERK: Sir, you have been excused from  
12 the trial in this case, please have a seat back in  
13 the audience.

14          Juror number 311, Kerry Whetsell.

15          What say you for the State?

16          MS. SHEALY: Please present the juror.

17          THE CLERK: What say you for the defendant?

18          MS. FORD: Please excuse the juror.

19          THE CLERK: Ma'am, you have been excused from  
20 the trial of this case, please have a seat back in  
21 the audience.

22          Juror 144, Herman Jutzeler.

23          What say you for the State?

24          MS. SHEALY: Please seat the juror.

25          THE CLERK: What say you for the defendant?

1 MS. FORD: Please seat the juror.

2 THE CLERK: Sir, you have been selected for  
3 the trial of this case, if you would please have a  
4 seat in the jury box.

5 Juror 88, Kathi Flowers.

6 What say you for the State?

7 MS. SHEALY: Please seat the juror.

8 THE CLERK: What say you for the defendant?

9 MS. FORD: Please seat the juror.

10 THE CLERK: Ma'am, you have been selected for  
11 the trial of this case. Please have a seat in the  
12 jury box.

13 Jury number 34, Thomas Carlson.

14 What say you for the State?

15 MS. SHEALY: Please seat the juror.

16 THE CLERK: What say you for the defendant?

17 MS. FORD: Please seat the juror.

18 THE CLERK: Sir, you have been selected for  
19 the trial of this case, please have a seat in the  
20 jury box.

21 Jury 233, Rebecca Rittenberg.

22 What say you for the State?

23 MS. SHEALY: Please seat the juror.

24 THE CLERK: What say you for the defendant?

25 MS. FORD: Please seat the juror.

1 THE CLERK: Ma'am, you have been selected for  
2 the trial of this case, please have a seat in the  
3 jury box.

4 Juror 210, George Pasley.

5 What say you for the State?

6 MS. SHEALY: Please seat the juror.

7 THE CLERK: What say you for the defendant?

8 MS. FORD: Please seat the juror.

9 THE CLERK: Sir, you have been selected for  
10 the trial of this case, please have a seat in the  
11 jury box.

12 Jury number 48, Thaddeus Codrey.

13 What say you for the State?

14 MS. SHEALY: Please excuse the juror.

15 THE CLERK: Sir, you have been excused from  
16 the trial of this case, please have a seat back in  
17 the audience.

18 Jury 146, Vanessa Kelly.

19 What say you for the State?

20 MS. SHEALY: Please seat the juror.

21 THE CLERK: What say you for the defendant?

22 MS. FORD: Please seat the juror.

23 THE CLERK: Ma'am, you have been selected for  
24 the trial of this case. Please have a seat in the  
25 jury box.

1 Juror number 61, Sheryl Cutler.

2 What say you for the State?

3 MS. SHEALY: Please seat the juror.

4 THE CLERK: What say you for the defendant?

5 MS. FORD: Please seat the juror.

6 THE CLERK: Ma'am, you have been selected for  
7 the trial of this case, please have a seat in the  
8 jury box.

9 Juror 205, Emily Oddo.

10 What say you for the State?

11 MS. SHEALY: Please seat the juror.

12 THE CLERK: What say you for the defendant?

13 MS. FORD: Please seat the juror.

14 THE CLERK: Ma'am, you have been selected for  
15 the trial in this case, please have a seat in the  
16 jury box.

17 Jury number 273, Cambridge Stone, III.

18 What say you for the State?

19 MS. SHEALY: Please seat the juror.

20 THE CLERK: What say you for the defendant?

21 MS. FORD: Please excuse the juror.

22 THE CLERK: Sir, you have been excused from  
23 the trial in this case. Please have a seat back in  
24 the audience.

25 Juror 246, Marie Sauer.

1           What say you for the State?

2           MS. SHEALY: Please seat the juror.

3           THE CLERK: What say you for the defendant?

4           MS. FORD: Please excuse the juror.

5           THE CLERK: Ma'am, you have been excused from  
6 the trial in this case. Please have a seat back in  
7 the audience.

8           Juror number 70, Andrew Drayton.

9           What say you for the State?

10          MS. SHEALY: Please excuse the juror.

11          THE CLERK: Sir, you have been excused from  
12 the trial in this case, have a seat back in the  
13 audience.

14          Jury 138, Douglas Johnson.

15          What say you for the State?

16          MS. SHEALY: Please seat the juror.

17          THE CLERK: What say you for the defendant?

18          MS. FORD: Please seat the juror.

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

22          Jury 57, Sarah Cromwell.

23          What say you for the State?

24          MS. SHEALY: Please seat the juror.

25          THE CLERK: What say you for the defendant?

1 MS. FORD: Please seat the juror.

2 THE CLERK: Ma'am, you have been selected for  
3 the trial of this case, please have a seat in the  
4 jury box.

5 Jury number 281, Cynthia Teeter.

6 What say you for the State?

7 MS. SHEALY: Please seat the juror.

8 THE CLERK: What say you for the defendant?

9 MS. FORD: Please excuse the juror.

10 THE CLERK: Ma'am, you have been excused from  
11 the trial of this case, please have a seat back in  
12 the audience.

13 Juror 338, Barbara Robinson.

14 What say you for the State?

15 MS. SHEALY: Please seat the juror.

16 THE CLERK: What say you for the defendant?

17 MS. FORD: Please seat the juror.

18 THE COURT: Ma'am, you have been selected for  
19 the trial of this case, please have a seat in the  
20 jury box.

21 Juror 117, Paul Hamrick.

22 What say you for the State?

23 MS. SHEALY: Please present the juror.

24 THE CLERK: What say you for the defendant?

25 MS. FORD: Please excuse the juror.

1 THE CLERK: Sir, you have been excused from  
2 the trial in this case. Please have a seat back in  
3 the audience.

4 Juror 336, Cynthia Ohn.

5 What say you for the State?

6 MS. SHEALY: Please seat the juror.

7 THE CLERK: What say you for the defendant?

8 MS. FORD: Please excuse the juror.

9 THE CLERK: Ma'am, you have been excused from  
10 the trial in this case, please have seat back in the  
11 audience.

12 Juror number 137, Elmo Jackson.

13 What say you for the State?

14 MS. SHEALY: Please seat the juror.

15 THE CLERK: What say you for the defendant?

16 MS. FORD: Please seat the juror.

17 THE CLERK: Sir, you have been selected as a  
18 juror for the trial of this case, please have a seat  
19 in the jury box.

20 Your Honor, those are our 12 jurors.

21 THE COURT: Two alternates, strikes are 1 and  
22 2.

23 THE CLERK: Juror number 90, Lamark Ford.

24 What say you for the State?

25 MS. SHEALY: Please excuse the juror.

1 THE CLERK: Sir, you have been excused from  
2 the trial of this case. State has exhausted its  
3 strike.

4 Juror 303, Jan Waring.

5 Any challenge from the State?

6 MS. SHEALY: This is the alternate, right?

7 THE CLERK: Correct.

8 MS. SHEALY: No. Please present the juror.

9 THE CLERK: What say you for the defendant?

10 MS. FORD: Please excuse the juror.

11 THE CLERK: Ma'am, you have been excused from  
12 the trial of this case, please have a seat back in  
13 the audience.

14 Juror number 201, Scott Nigels.

15 Any challenge from the State?

16 MS. SHEALY: Please seat the juror.

17 THE CLERK: What say you for the defendant?

18 MS. FORD: Please seat the juror.

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

22 Juror 84, Angela Ferrari.

23 Any challenge from the State?

24 MS. SHEALY: Please seat the juror.

25 THE CLERK: What say you for the defendant?

1 MS. FORD: Please seat the juror.

2 THE CLERK: Ma'am, you have been selected for  
3 the trial of this case, please have a seat in the  
4 jury box.

5 Your Honor our jury has been selected.

6 THE COURT: Any motions regarding the  
7 selection of the jury from the state?

8 MS. SHEALY: Beg the Court's indulgence just  
9 one moment.

10 Your Honor, may we approach for a moment?

11 THE COURT: You may in just one moment.

12 You may approach.

13 (Whereupon, a discussion was held at the bench  
14 off the record.)

15 MS. SHEALY: State has no objection, Your  
16 Honor.

17 THE COURT: Any motions from the defense?

18 MS. FORD: One moment, Your Honor.

19 MR. GRIMES: May I have a moment, Your Honor?

20 THE COURT: You may.

21 MS. FORD: Nothing from the defense, Your  
22 Honor.

23 THE COURT: To the balance of the panel, we  
24 thank you for your time and your attention. You're  
25 excused with the Court's thanks. Please call the

1 jury information line after six o'clock this evening  
2 for further instructions. Have a good day.

3 (Whereupon, the prospective juror panel exits  
4 the courtroom.)

5 THE COURT: Ladies and gentlemen, if you would  
6 stand please and raise your right hands to be sworn  
7 by the clerk.

8 (Whereupon, the jury panel is placed under the  
9 oath by the clerk.)

10 THE COURT: The Court is appointing number 210  
11 as the jury's foreperson. The foreperson is the  
12 jury's spokesperson. They don't have any greater  
13 vote or voice than any individual juror member, it is  
14 simply an administrative function. That person fills  
15 out the verdict form and write out any questions that  
16 the jury may have during jury deliberations.

17 I ask you go with your caretakers for a few  
18 moments so I can determine scheduling for the  
19 remainder of the day. I anticipate we will be  
20 breaking for lunch very shortly.

21 During this break please do not discuss the  
22 case among yourselves, please don't speculate about  
23 what you think this case may or could be about, that  
24 would be inappropriate. If you go with the bailiffs  
25 for me, please.

1 (whereupon, the jurors exit the courtroom.)

2 THE COURT: Other than the Jackson versus  
3 Denno and Neel versus Biggers, are there any other  
4 pretrial matters we need to deal with?

5 MS. FORD: Your Honor, if Ms. Shealy is going  
6 to put forward some jail recordings, I was going to  
7 do a motion on that. I believe you've heard that  
8 motion before, but I would like to do it for the  
9 record.

10 There is a small matter which would not  
11 require a hearing, mostly based on rules 402 and 403  
12 about relevancy.

13 THE COURT: Those will be motions in limine  
14 regarding the evidence?

15 MS. FORD: Yes, ma'am.

16 THE COURT: You would need to make a  
17 contemporaneous objection. I find those motions to  
18 somewhat be taxing in terms of time, they're not  
19 dispositive and not final. What sort of evidence are  
20 we talking about?

21 MS. FORD: For example, there is a gun found  
22 on my client who's arrested. And SLED determined  
23 that it was not the gun used in the crime and so I  
24 wanted to keep that out because I don't think it's  
25 relevant and it is more prejudicial than probative.

1 THE COURT: Okay. Does the State plan to make  
2 any reference to that in its opening argument?

3 MS. SHEALY: No, Your Honor.

4 THE COURT: I would ask that you not make any  
5 reference to it. And prior to that evidence being  
6 introduced we will have an in-camera hearing and I'll  
7 make a ruling. I don't want to rule in the dark. I  
8 don't know what the case is about and I have no  
9 reference and I don't know if it's relevant. I don't  
10 know if it's more probative than prejudicial. We  
11 will see.

12 MS. FORD: My client has a pending murder  
13 case, a separate one, and I wanted to make sure that  
14 that was not mentioned in anyway.

15 THE COURT: I imagine you all would not do  
16 that.

17 MS. SHEALY: That's correct, Your Honor.

18 THE COURT: Are there any other matters that  
19 deal with the evidence?

20 MS. FORD: Your Honor, there are some clothes  
21 gotten from search warrants. Nothing links my client  
22 to the murder in any way, but I know one of the  
23 shirts had blood on it from an unidentified people,  
24 we would move to exclude that because it would be  
25 irrelevant and prejudicial.

1 THE COURT: Do you plan to introduce that?

2 MS. SHEALY: At this point I do not plan to  
3 introduce that. There is one witness that we have  
4 not been able to find and apparently showed up today.  
5 If it then becomes relevant, I will bring it to the  
6 Court's attention and advise counsel.

7 THE COURT: In the interim let's not make any  
8 reference to it in opening.

9 MS. SHEALY: Yes, Your Honor.

10 THE COURT: Of course you will be required to  
11 make any contemporaneous objects, Ms. Ford. But I  
12 would ask that as any of these matters come up that  
13 you all make me aware of it so that an in-camera  
14 hearing may be held.

15 Anything else?

16 MS. FORD: No, Your Honor.

17 THE COURT: Anything else?

18 MS. SHEALY: No, Your Honor.

19 THE COURT: What we will do, we will take up  
20 the Jackson versus Denno prior to any statement being  
21 introduced. And we will take up Neel versus Biggers  
22 prior to any identification seeking to be introduced  
23 and we can take them up in-camera.

24 I imagine you don't need to mention any of  
25 those either in your openings, is that correct, from

1 the state?

2 MS. SHEALY: Your Honor, I did intend to  
3 address the fact that I have two eyewitnesses, both  
4 who have identified him. I was not planning on  
5 addressing the statement at all in my opening.

6 THE COURT: Is it absolutely essential that  
7 you refer to the eyewitnesses in your opening?

8 MS. SHEALY: I think so, Your Honor, because  
9 that is the crux of the State's case.

10 THE COURT: How many witnesses do you have on  
11 the Neel versus Biggers.

12 MS. SHEALY: We have three.

13 THE COURT: How lengthy will they be?

14 MS. SHEALY: I don't think they will be very  
15 lengthy. I'm not sure about Ms. Ford's cross on  
16 them, but.

17 MS. FORD: I would think the whole hearing we  
18 need an hour.

19 MS. SHEALY: Definitely I think an hour to try  
20 to put three witnesses up.

21 THE COURT: Two of them are lay witnesses, one  
22 a police officer?

23 MS. SHEALY: Yes, ma'am.

24 THE COURT: If we have to approach it that  
25 way, we might as well do them all, have the jury come

1 in the morning. At this rate it will be 3:30 before  
2 we get started, we have to break for lunch, come  
3 back, do the hearing, that puts us at 3:30. There is  
4 no point bringing the jury back at 3:30.

5 So we might -- how many witnesses do you have  
6 for the Jackson versus Denno?

7 MS. SHEALY: One, possibly two.

8 THE COURT: Does the defense have any  
9 witnesses on either of the hearings?

10 MS. FORD: No, Your Honor, unless -- I don't  
11 think -- possibly my client could testify at the  
12 Denno hearing.

13 MS. SHEALY: I think that motion would be  
14 brief.

15 MS. FORD: I think it will too.

16 THE COURT: Okay. Those would be the only --  
17 I don't see the point to bring the jury back for an  
18 hour, doesn't make any sense. We will have them come  
19 back in the morning.

20 Any exception from the State?

21 MS. SHEALY: No, Your Honor.

22 THE COURT: From the defense?

23 MS. FORD: No, Your Honor.

24 THE COURT: Please bring in the panel.

25 Ms. Shealy, did you have plan to call all of

1 the witnesses you have listed?

2 MS. SHEALY: I think I have narrowed it to 19  
3 and it may get smaller.

4 THE COURT: Does the defense plan to call any  
5 witnesses?

6 MS. FORD: Not at this point. Some witnesses  
7 may be needed for impeachment purposes. But I won't  
8 know that until the time comes.

9 THE COURT: Okay.

10 (Whereupon, the jurors enter the courtroom.)

11 THE COURT: Mr. Foreman, ladies and gentlemen,  
12 we have some matters of law that we need to take up  
13 after lunch that I anticipate will take up to 3:30  
14 and I really don't think it's very efficient to bring  
15 you back at 3:30 to have court for an hour basically.

16 So we are going to break for the remainder of  
17 the day so that we can dispose of those matters and  
18 begin the trial without hopefully as minimal  
19 interruptions as possible. So I need you all to  
20 return to your jury room in the morning at 9:30. We  
21 would ask that you be punctual, we intend to resume  
22 the trial of this case promptly.

23 Now, I will also give you some additional  
24 instructions. Please do not allow yourselves to be  
25 exposed to any media coverage about this case, that

1 includes anything that could be found on the  
2 Internet, radio, television or especially in the  
3 newspapers. I don't know if they're going to report  
4 on it, but it is possible. And I would ask that you  
5 all be diligent in making sure that you are not  
6 exposed to any media coverage about the case.

7 Also, you are strictly instructed not to do  
8 any Google or ASK.com searches regarding any issue or  
9 matter involved in this case. That means that you  
10 are prohibited from doing any Internet research  
11 trying to find out about what the case or articles or  
12 anything about it, that would also be inappropriate.

13 You all have been selected as the fact finders  
14 in this case. It is essential you remain fair and  
15 impartial, and that any decision you make is based  
16 solely on the evidence as it is presented from the  
17 lips of the sworn witnesses, and any other evidence  
18 that may be introduced during the course of this  
19 trial.

20 So I would ask that you take that duty very  
21 seriously and make sure that you remain fair and  
22 impartial until you've heard all the evidence in this  
23 case, the Court's instructions and the party's  
24 closing arguments.

25 Also, when you return to the courthouse,

1 please don't allow yourselves to have any contact  
2 with anyone that does not have a blue sticker on that  
3 indicates they're a juror. We have about 27  
4 witnesses in this case, it is estimated, and you  
5 would have no way of knowing who those witnesses are.  
6 I would hate for you to have an innocent conversation  
7 with someone, and someone else observe that  
8 conversation and may be a witness and think that you  
9 are discussing the facts and circumstances of this  
10 case inappropriately.

11 So I would ask that you strictly abide by that  
12 instruction. Not only in the courthouse, but also in  
13 the parking garage as well as on the street. I know  
14 that may be a little difficult, but we would ask that  
15 you strictly abide by that instruction.

16 Again, please return directly to your jury  
17 room at 9:30. The bailiffs will show you how to do  
18 that. You will come directly from the hallway and  
19 they will shepherd you to your jury room. We  
20 appreciate your patience. Have a great afternoon and  
21 we will see you in the morning promptly at 9:30.

22 (Whereupon, the jurors exit the courtroom.)

23 THE COURT: Is there anything before we break  
24 for lunch from the State?

25 MS. SHEALY: Your Honor, Ms. Ford and I were

1 conferring as the jury was coming in about whether we  
2 should go ahead and handle, if the Court would like  
3 for us, to go ahead and handle the motion regarding  
4 the jail recording this afternoon while we have got  
5 some time?

6 THE COURT: We will see how it goes.

7 MS. SHEALY: We need one witness for the jail,  
8 would you like for us to go ahead and get him here in  
9 case we do go forward with it?

10 THE COURT: You all estimate whether you have  
11 sufficient time to go forward with it. I thought it  
12 was basically an argument on the law, I don't think  
13 you necessarily need a witness for the jail  
14 recordings.

15 MS. SHEALY: I can represent --

16 THE COURT: The Court has decided this on many  
17 occasions. I'm not aware of any new case law from  
18 the US Supreme Court or our Supreme Court that would  
19 designate those recordings being inadmissible. You  
20 receive the recording, they're public, there's no  
21 expectation of privacy in the recording. You are  
22 told during the recording that you are being  
23 recorded.

24 MS. FORD: I would like just for the record to  
25 have it heard by our courts in South Carolina

1 directly, I would like to keep it on record.

2 THE COURT: I'm going to let you make your  
3 record. I don't know if we need to drag somebody up  
4 here from the jail.

5 MS. FORD: I have documents from the jail,  
6 their manual, if the solicitor's fine with that --

7 THE COURT: I think you all can stipulate it's  
8 fairly perfunctory.

9 MS. SHEALY: I don't think -- that won't be a  
10 problem. I have not seen the documents yet.

11 Your Honor, looks like we can go ahead. If we  
12 have time to start that motion without the need to  
13 have a witness come.

14 THE COURT: I think you all can stipulate to  
15 the germane facts. Wouldn't you agree?

16 MS. SHEALY: I think so, Your Honor. She  
17 handed me some documents I have not had an  
18 opportunity to fully read. I don't think I need him  
19 here for that.

20 THE COURT: Well, if you need him, I'll leave  
21 that as a judgment call to you all about whether you  
22 will need him here or not. I frankly think it's a  
23 motion to be taken up right before he testifies. I  
24 would imagine the recording is very short.

25 MS. SHEALY: They are. I would love to know

1 whether it's going to be difficult getting them in  
2 for planning purposes.

3 THE COURT: Is there something unusual that I  
4 should know about other than the normal?

5 MS. SHEALY: I don't think so, Your Honor.

6 THE COURT: I'm not aware of any cause laws  
7 that prohibit the introduction of those records  
8 unless they took place between him and his lawyer,  
9 that's the only thing protected.

10 MS. FORD: Yes, ma'am. I would just like to  
11 make my motion. I agree it would not take long.

12 THE COURT: Okay. Is there anything else  
13 before we break for lunch from the state?

14 MS. SHEALY: No, ma'am.

15 THE COURT: From the defense?

16 MS. FORD: Your Honor, I was just going to  
17 move that we sequester the witnesses. I was fine  
18 with the victim's father, who might be a witness,  
19 with him remaining and not being sequestered.

20 I have a motion as well just for my client, he  
21 has one prior, in case he testifies I'm sure we can  
22 handle that when the time comes.

23 THE COURT: I will take that up at the time I  
24 question him regarding his right to testify.

25 MS. SHEALY: Your Honor, regard sequestering

1 of the witnesses, I have my lead detective David  
2 Osborne I would like to stay in the courtroom.

3 MS. FORD: I would recommend that is usual --

4 THE COURT: There is no objection to the  
5 sequestration request, right?

6 MS. SHEALY: No, Your Honor.

7 THE COURT: Be granted without objection.

8 MS. FORD: Your Honor, I do have the written  
9 motions if you'd like a copy of everything.

10 THE COURT: Make sure they get into the file.  
11 Have you already filed them downstairs?

12 MS. FORD: No, ma'am, I have not.

13 THE COURT: Do you have your originals?

14 MS. FORD: Yes, ma'am.

15 THE COURT: Give them to me, I will make sure  
16 they get into the file.

17 MS. FORD: Thank you, Your Honor.

18 THE COURT: You're welcome.

19 Is there anything further before we break for  
20 lunch from the state?

21 MS. SHEALY: No, Your Honor.

22 THE COURT: From the defense?

23 MS. FORD: No, Your Honor.

24 THE COURT: Have a wonderful lunch, I will see  
25 you all at 2:30.

1 MS. FORD: Thank you.

2 THE COURT: You're welcome.

3 (Whereupon, a recess was taken.)

4 (Whereupon, Court's Exhibit Nos. 1 through 8  
5 are marked for identification.)

6 THE COURT: Is the State ready to proceed?

7 MS. SHEALY: Yes, Your Honor.

8 THE COURT: Is the defense ready to proceed?

9 MS. FORD: Yes, Your Honor. And the officer  
10 from the jail he is here. I don't know if I should  
11 just send him back so he doesn't have to wait around.

12 THE COURT: I don't know, that's your all's  
13 decision. You have to determine whether you need him  
14 as a witness.

15 Is the State ready to proceed with the Jackson  
16 versus Denno?

17 MS. SHEALY: Yes, Your Honor.

18 THE COURT: Is the defense ready to proceed?

19 MS. FORD: Yes, Your Honor.

20 THE COURT: You may call your first witness.

21 MS. SHEALY: David Osborne.

22 MR. DAVID OSBORNE,

23 after having first been duly sworn to state the  
24 truth, the whole truth and nothing but the truth,  
25 testified on his oath as follows:

1 MS. SHEALY: Your Honor, for clarification,  
2 he'll also be testifying as to the Biggers issues.  
3 Do you want me to only address the statement at this  
4 time?

5 THE COURT: I prefer we have clearly  
6 delineated records for each.

7 MS. SHEALY: Sure.

8 DIRECT EXAMINATION

9 BY MS. SHEALY:

10 Q Detective Osborne, would you please indicate  
11 to the court where you are currently employed?

12 A Charleston Police Department.

13 Q In what capacity?

14 A I'm a detective in the homicide unit.

15 Q How long have you been in the homicide unit?

16 A Over two years.

17 Q Focusing your attention back to October of  
18 2007, were you the lead investigator in the case  
19 involving the death of Leroy Miles Simmons?

20 A Yes, I was.

21 Q And pursuant to your investigation was there  
22 an arrest made of an individual?

23 A Yes.

24 Q Who was arrested?

25 A Richard Deas.

1 Q And were you a participant in the arrest  
2 itself?

3 A Sort of. I was called after he was already  
4 apprehended and arrested.

5 Q And did you have occasion to interview Mr.  
6 Deas?

7 A I did.

8 Q Would you describe for the Court how that came  
9 about and when it occurred?

10 A He was arrested at I think it is,  
11 and brought back to the station. Detective Flemming  
12 stayed with him. I went to and executed a  
13 search warrant.

14 At the conclusion of that I came back to the  
15 station and met with Richard alone. First advised  
16 him of his Miranda rights with a CPD Miranda warnings  
17 card, he indicated he understood, signed the card  
18 accordingly.

19 Q Let me stop you right there.

20 MS. SHEALY: Judge, we previously had some  
21 exhibits marked as Court's Exhibits.

22 Q (By Ms. Shealy) Detective Osborne, showing  
23 you what has been marked as Court's Exhibit No. 6, I  
24 ask if you can identify that for us?

25 A Yes, it's the Miranda warning card.

1 Q And would you indicate to the Court what it  
2 was that you told Mr. Deas regarding his Miranda  
3 warnings.

4 A Would you like me to just read them?

5 Q Please.

6 A You have the right to remain to silent.  
7 Anything you say can and will be used against you in  
8 a court of law. You have the right to talk with a  
9 lawyer and have him present during any questioning.  
10 If you cannot afford to hire a lawyer, one will be  
11 appointed to represent you before any questioning if  
12 you wish one. If you decide to answer questions  
13 without a lawyer present, you have the right to stop  
14 answering questions at any time you so chose.

15 Q When you were having -- when you read Mr. Deas  
16 his Miranda warnings, where were you all located  
17 within CPD?

18 A We were upstairs in the central investigations  
19 office interview room.

20 Q And could you describe that room for us?

21 A It's attached to the detective's office. It's  
22 a small room. There is two chairs in there. And  
23 there is basically like a little stool there where  
24 you can write on it.

25 A And prior to reading him his Miranda warnings,

1 was he offered anything to drink or a restroom break  
2 or anything that you recall?

3 A Yeah, that's usually the first thing that I  
4 offer.

5 Q And did you in fact do that with Mr. Deas?

6 A Yes.

7 Q After reading him his Miranda warning, did he  
8 indicate in any fashion that he did not want to talk  
9 to you?

10 A No.

11 Q Did he indicate in any fashion that he wanted  
12 an attorney present?

13 A No.

14 Q After you read them from that card, was there  
15 a place for him to sign acknowledging that they had  
16 been read to him?

17 A Yes. On the back says, do you understand your  
18 rights? He wrote yes. And then he signed there by  
19 suspect signature.

20 Q And after he signed that, what was the  
21 procedure then? Was Mr. Flemming still present,  
22 Detective Flemming?

23 A No. Everything that I'm saying from this  
24 point was just Richard Deas and myself. He went to  
25 -- I told him, you know, obviously he was under

1       arrest for murder and asked him if he had any  
2       knowledge about it. He went on to verbally relate to  
3       me that he was at an apartment that night and just  
4       basically giving me some of his knowledge concerning  
5       the murder.

6       Q       When you were conversing with him, did you  
7       have any reason to believe that he was unable to  
8       understand you as you all were talking?

9       A       No, not at all.

10      Q       In fact did you inquire as to how far he had  
11      gone in school?

12      A       I did. If I can look at the suspect's  
13      statement.

14      Q       Do you have it with you?

15      A       I do. One of questions that's asked at the  
16      beginning of suspect statement, he had completed the  
17      ninth grade in school.

18      Q       And so in conversing with him did he appear to  
19      understand what you were saying?

20      A       Yes.

21      Q       When you and he began talking then, you've  
22      indicated that he was relaying to you that he had  
23      been in an apartment that evening?

24      A       Yes.

25      Q       What else do you recall him telling you prior

1 to your memorializing it in a statement form?

2 A Well pretty much everything I memorialized he  
3 had verbally related to me. I remember him saying  
4 that he had been to a Tianai Lee's apartment earlier  
5 that day. He had left from there. Then he went to  
6 Shaniquone William's apartment and that he had stayed  
7 there the whole night.

8 And I asked him what was he wearing, what did  
9 he know of Miles' murder, everything that's put -- he  
10 didn't add anything new to the written statement that  
11 he had verbally related to me.

12 Q If you would describe to us his demeanor while  
13 you were questioning him?

14 A Well, I mean he was certainly calm and  
15 relaxed. I mean he didn't seem excited in any way.

16 Q Do you recall whether or not he was handcuffed  
17 in any way while you were talking to him?

18 A I don't, but if he were his handcuffs would  
19 have been in the front.

20 Q And was there anything about Mr. Deas that  
21 would have made you believe that he was intoxicated  
22 or under the influence of some type of substance?

23 A No.

24 Q How long did this process take between, if you  
25 know, when you started talking to him and then later

1 when you memorialized the statement?

2 A Well, the Miranda warnings were given at 9:50.  
3 We began the written statement at 9:54 so it was  
4 relatively quickly. The entire written statement  
5 couldn't have taken any more than 30 minutes or so.

6 Q Okay. And you've indicated that he was  
7 responsive to your questions. Was it necessary for  
8 you to continue to repeat questions or was he pretty  
9 forthcoming in answering them?

10 A Well he answered the questions, yes.

11 Q And was there any physical punishment at all  
12 exercised on Mr. Deas?

13 A No.

14 Q Let me show you what has been marked as  
15 Court's Exhibit No. 7. And if you could identify for  
16 us what this is?

17 A This is the suspect statement.

18 Q Okay. And explain again, if you would, who  
19 wrote the statement? Did Mr. Deas write it or did  
20 you write it?

21 A I wrote the majority of it. He only wrote the  
22 first two lines.

23 Q And if you would read to the Court what he  
24 wrote in the first two lines.

25 A He wrote -- well he started to write something

1 then he scratched it out and put his initials by it.  
2 Then he wrote, every night I be in my girlfriend's  
3 house before or around 12:00.

4 Q And then what happens that made you begin  
5 writing it at that point?

6 A Well, there was more information and more  
7 questions that I had regarding the investigation.

8 Q So at first did you ask him to write the  
9 statement?

10 A Yes.

11 Q And then you had further questions and you  
12 began to memorialize them?

13 A Yes.

14 Q At the completion of the statement did you ask  
15 him to read back over what you had written?

16 A No, I did not ask him to, I read it back to  
17 him. We were both looking at it together. I read  
18 through the entire statement.

19 Q And does he acknowledge in some fashion that  
20 it is accurate by signing the initials?

21 A Yes. As we finished each page I would ask  
22 him, is that all right? He'd say, yeah. Then I had  
23 him sign the bottom of each page.

24 Q And how many pages are there in the statement  
25 itself?

1 A Six.

2 Q Now during the course of your writing down  
3 what he was telling you, you were both putting the  
4 questions and then his responses to those questions?

5 A Yes.

6 Q And you've told us that prior to his  
7 initialing each page he had the opportunity to look  
8 with you at the pages as you read them back to him?

9 A Yes.

10 Q At any point during this process did you  
11 threaten him in any fashion?

12 A No.

13 Q Do you recall whether he ever asked to go to  
14 the bathroom or get something to drink or whether it  
15 was provided to him?

16 A I don't recall him asking. Had he, then  
17 certainly it would have been provided.

18 Q And at any time during this process did he  
19 indicate to you that he wanted to stop speaking with  
20 you?

21 A No.

22 Q Did he at any time indicate that he wanted an  
23 attorney present?

24 A No.

25 MS. SHEALY: Your Honor, would you like for us

1 to read the statement into the record at this point?

2 THE COURT: It has been marked as a Court's  
3 Exhibit, correct?

4 MS. SHEALY: It has

5 THE COURT: It does not need to be read.

6 MS. SHEALY: I beg the Court's indulgence one  
7 moment.

8 I have no further questions at this time.  
9 Please answer any Ms. Ford has.

10 THE COURT: Ms. Ford or Mr. Grimes.

11 MS. FORD: Thank you, Your Honor.

12 THE COURT: You're welcome.

13 CROSS-EXAMINATION

14 BY MS. FORD:

15 Q Hello, detective.

16 A Hi.

17 Q Detective, you said that you were not present  
18 when Richard Deas was actually apprehended, right?

19 A That's correct.

20 Q But you were made aware when he was?

21 A Right.

22 Q And that was about 6:00 in the morning?

23 A Yes.

24 Q And through your investigation you were able  
25 to determine that he went to sleep about 2:00 in the

1 morning?

2 A No. I don't --

3 Q Shaniquone Williams?

4 A No, I don't recall Shaniquone saying that.

5 Q Okay. So between the times of about 6:00 in  
6 the morning and when you met with him at nearly 10:00  
7 in the morning, he was just basically waiting around  
8 the station?

9 A Well what I can say is that Officer Barfield  
10 transported him from the station -- or from  
11 to the station. After speaking to Detective  
12 Flemming later on, I knew that Detective Flemming  
13 sort of sat with him. Whether they were in the same  
14 room or not, I'm not sure.

15 Q Did he make any statements to Detective  
16 Flemming?

17 A No. Well Detective Flemming would have told  
18 me had he, and he didn't say anything.

19 Q When you met with Mr. Deas, you went over his  
20 Miranda warnings, correct?

21 A Right.

22 Q Did you just show him a card or did you go  
23 over each individual warning?

24 A No, I read each one.

25 Q After each one were you able to ask him if he

1 understood each one individually or did you wait  
2 until the very end?

3 A No, I probably would have read all five and  
4 then asked him if he understood and he wished to  
5 waive his rights.

6 Q Do you recall how you went over the statement?  
7 I mean did you just read it quickly or did you read  
8 it slowly or you don't recall?

9 A Well I would say I mean I read it. I don't  
10 know how quickly I read it. But I was thumbing back  
11 through it and I did notice that he did make a  
12 correction at some point in there, so I certainly  
13 read slow enough for him to understand it.

14 Q He made a correction with his Miranda  
15 warnings?

16 A No, with the suspect statement.

17 Q I was just talking about the -- I'm sorry, I  
18 was talking about the Miranda warnings?

19 A No, he -- I read the Miranda warnings, not  
20 him.

21 Q Right, I know. But did you just kind of read  
22 over them quickly or did you try to annunciate each  
23 warning?

24 A I read and asked if he clearly understood and  
25 he said yes.

1 Q At the beginning of his statement he notes  
2 that you asked him where he was in the evening  
3 starting at nine o'clock the evening of the shooting,  
4 and he started out by saying, I ain't know, I don't  
5 keep up with the time. Is that true?

6 A Right.

7 Q Did you indicate to him that if he wanted to  
8 go home he needed an alibi?

9 A No.

10 Q You told us that the room was small,  
11 detective. Can you give us a better picture of the  
12 room? How small?

13 A I don't know, I'm not very good with  
14 measurements. I would say maybe something like 8x5.  
15 Eight feet by five feet, something like that.

16 There's enough room for -- maybe it's bigger  
17 than that because you can fit three chairs in there.

18 Q And was it just you and Mr. Deas in the room  
19 during the statement?

20 A Yes.

21 Q On the statement on each page there is a place  
22 for the defendant to sign, correct?

23 A Right.

24 Q And there is also a place for a witness to  
25 sign, right?

1 A Right.

2 Q And so you signed each page, correct?

3 A Yes.

4 Q There is a second witness spot, isn't there?

5 A Yes.

6 Q But nobody signed that place, right?

7 A Right.

8 Q Can you tell us why you didn't use a second  
9 witness?

10 A Well, there was no second witness. Had there  
11 been then he would have signed there.

12 Q What about Detective Flemming, where was he?

13 A Flemming, to the best my recollection, he was  
14 working his own cases at that time.

15 Q This was about 10:00 in the morning, right?

16 A Yes.

17 Q So the station is completely open, right?

18 Open during normal business hours is what I meant.

19 A The station is never closed.

20 Q But I mean is it more busy during the daytime,  
21 during normal working hours?

22 A Well it can be. It can be more busy at 8:00  
23 or 9:00 at night. You just never know.

24 Q Other people were working at the station,  
25 correct?

1 A Yes.

2 Q Did you attempt to record any of your  
3 conversation with Mr. Deas?

4 A No.

5 Q Does your station not have the ability to use  
6 a tape recorder?

7 A Yes, it does.

8 Q Why didn't you use one?

9 A Recording a suspect is always an option. And  
10 I certainly would not have not recorded it if Mr.  
11 Deas had asked.

12 Q So it's your policy not to record unless a  
13 witness specifically requests something be recorded?

14 A Right, or unless there is some need to.

15 MS. FORD: Beg the Court's indulgence.

16 THE COURT: Uh-hum.

17 Q (By Ms. Ford) Detective Osborne, Richard  
18 Deas, he had been served with a murder warrant,  
19 correct?

20 A Right.

21 Q You knew he was there for a murder charge?

22 A Yes.

23 Q Did you ever tell him how much time murder  
24 carries?

25 A I mean I may have. I don't recall that

1 specifically coming up.

2 Q Did you offer him help in any way if he gave a  
3 statement?

4 A No.

5 Q And just I believe you said this on direct,  
6 just to clarify, in his statement he wrote the first  
7 two lines himself, correct?

8 A That's right.

9 Q But then you took over?

10 A Right.

11 Q And why wasn't Mr. Deas taken to a magistrate  
12 for the bond hearing before you questioned him?

13 A Well the bond hearing wasn't until 2 o'clock.

14 Q Don't they have bond hearings at 10:00 in the  
15 morning, too?

16 A No. The city bond hearing is at 2 o'clock.

17 Q So the city's hearings are always at 2:00?

18 A As far as I know, yeah.

19 Q So the other jurisdictions do theirs in the  
20 morning?

21 A Well I'm not the bond hearing officer. But as  
22 I understand it, the city's is at 2 o'clock.

23 MS. FORD: Beg the Court's indulgence.

24 THE COURT: Uh-hum.

25 Q (By Ms. Ford) Just one more thing to clarify

1 again. I'm sorry. Richard Deas, he wrote the first  
2 two lines, right?

3 A Right.

4 Q And then he stopped writing, correct?

5 A Right.

6 MS. FORD: Thank you, no other questions.

7 THE COURT: Any redirect of the witness?

8 MS. SHEALY: Just a couple of follow-up  
9 questions.

10 THE COURT: You may proceed.

11 REDIRECT EXAMINATION

12 BY MS. SHEALY:

13 Q Detective Osborne, the first page of the  
14 statement itself is entitled what?

15 A I'm sorry, what are you asking?

16 Q The first page of the statement itself, and  
17 we're looking at Court's Exhibit No. 7, is entitled  
18 what?

19 A Charleston Police Department Advice of  
20 Constitutional Rights.

21 Q Okay. And so the first page of the statement  
22 itself also states the Miranda warnings; is that  
23 correct?

24 A Right. I would have read it a second time.

25 Q So we have the card itself that was signed by

1 Mr. Deas?

2 A Right.

3 Q Then underneath the warnings of the statement  
4 itself, is that the signature of Mr. Deas?

5 A Yes.

6 Q On the statement itself?

7 A Yes.

8 Q And you've indicated that there were places on  
9 the statement that Mr. Deas made corrections?

10 A Yes.

11 Q Could you please tell us on what pages those  
12 are?

13 A Yeah. On page five at the top when he was  
14 answering I must have understood him to say, my car,  
15 when I went back and read it to him again he  
16 corrected me and said, no, that's my Mama's car.

17 So I scratched that out and wrote, my Mama's,  
18 and then had him put his initials above that and  
19 circle it.

20 Q And were there any other corrections?

21 A Well I mean there was a correction that I made  
22 when I read it again. I spelled lives leaves, so I  
23 corrected that so I put my initials by that.

24 Q But as far as the ones Mr. Deas did, that's  
25 the only one that he scratched?

1 A That's the only one I see him making, right.

2 Q And that is at least at page five of a  
3 six-page statement; is that correct?

4 A That's correct.

5 MS. SHEALY: I have nothing further, Your  
6 Honor.

7 THE COURT: The witness may step down.  
8 You may call your next witness.

9 THE COURT: That's all the State has regarding  
10 this issue.

11 THE COURT: Any witnesses from the defense?

12 MS. FORD: May I have one minute, Your Honor?  
13 My client would like to take the stand, Your  
14 Honor.

15 THE COURT: Certainly. If you come forward to  
16 be sworn.

17 MR. RICHARD VERNON DEAS,  
18 after having first been duly sworn to state the  
19 truth, the whole truth and nothing but the truth,  
20 testified on his oath as follows:

21 THE COURT: You may proceed.

22 MS. FORD: Thank you, Your Honor.

23 DIRECT EXAMINATION

24 BY MS. FORD:

25 Q Richard, when you first met with Detective

1 Osborne about this statement and he asked you what  
2 you did that night, what did you tell him?

3 A I tell him I don't really know because it  
4 wasn't an important day for me.

5 Q And why did you then decide to tell him, give  
6 him a story about what you did that evening?

7 A Because he told me if I wanted to go home I  
8 needed an alibi.

9 Q So you felt that if you were getting a chance  
10 to go home you were going to have to come up with an  
11 alibi?

12 A Yes, ma'am.

13 MS. FORD: That's all.

14 THE COURT: Any questions for the witness?

15 MS. SHEALY: No questions.

16 THE COURT: Sir, you may step down.

17 Any further witnesses from the State -- from  
18 the defense?

19 MS. FORD: No, Your Honor.

20 THE COURT: Any further witnesses from the  
21 State?

22 MS. SHEALY: No, Your Honor.

23 THE COURT: I'm glad to hear any argument.

24 MS. FORD: Thank you, Your Honor. Well first  
25 of all I'd like to say the fact that my client

1 started to write the statement and then stopped could  
2 be considered him invoking his right to remain  
3 silent.

4 THE COURT: That's novel. Do you have any  
5 case law to support that?

6 MS. FORD: No, Your Honor. Also just looking  
7 at the totality of the circumstances to look at the  
8 voluntariness of the statement, Detective Osborne  
9 told you how he had a ninth grade education, very  
10 low, he was 18, so those of course alone are  
11 certainly not enough to hold it involuntary. But he  
12 was awoken at 6:00 in the morning, dead asleep, Your  
13 Honor, that's just one factor. And he testified that  
14 he was told that if you want to go home you have to  
15 have an alibi.

16 He already told Detective Osborne he didn't  
17 know where he was, and so that shows that that  
18 statement was enough to overborne his will. And so  
19 that's why we would argue that the statement is  
20 involuntary, Your Honor.

21 THE COURT: Anything from the State?

22 MS. SHEALY: Your Honor, in response certainly  
23 it is our position that it is a voluntary statement,  
24 that the Miranda warnings were given to him properly,  
25 both by the reading of them by Detective Osborne from

1 the card, and then also as the defendant's signature  
2 reflects at the end of the written version of the  
3 Miranda warnings on the statement itself.

4           Regarding her argument, Ms. Ford's argument  
5 regarding the statement starting and stopping, the  
6 detective was asked whether at any point Mr. Deas had  
7 indicated he did not want to cooperate any further  
8 and that he had not. And the reason that he  
9 continued and began writing himself was he had  
10 further questions to ask of him.

11           I believe Ms. Ford, as well as I, asked  
12 Detective Osborne if at any point he had indicated he  
13 wanted to stop, and Detective Osborne indicated that  
14 he did not. And additionally that Ms. Ford asked  
15 Detective Osborne whether the language about, oh  
16 you've got to offer an alibi, had occurred, and  
17 Detective Osborne indicated in fact it had not.

18           So we had the statement with the Miranda  
19 warning typed on the statement itself which he read  
20 and signed. And the oral reading of the Miranda  
21 warnings by Detective Osborne with the signature on  
22 the Miranda card itself.

23           And the signature on each page, and the  
24 addition of a correction made by Mr. Deas on one of  
25 the pages of the statement with his initials by that

1 reflecting that he was attentive to the details of  
2 his statement.

3 THE COURT: The Court would find that the  
4 State has met its burden of proof by a preponderance  
5 of the evidence regarding the admissability of the  
6 statement.

7 While the argument is novel, I cannot discern  
8 any case law to support, nor factually from the  
9 witnesses, any support for the proposition that the  
10 defendant by beginning a statement and then having it  
11 completed by the officer asserted his Miranda rights  
12 to end questioning.

13 And that is supported by the fact that the  
14 defendant signed each page of the statement, which he  
15 could have clearly refused to sign and indicated that  
16 it was not voluntarily his statement. And instead on  
17 each page of the statement he indicated by his  
18 signature, that I have read the forgoing statement or  
19 had it read to me, and it is true and correct to the  
20 best my knowledge. I have been given the statement  
21 freely and voluntarily. I have been provided a copy  
22 of my statement.

23 That statement also indicates his name, the  
24 fact he is 18, and he reached the ninth grade. And  
25 the time of the statement as well at his address and

1 the date of the statement which was October 23rd,  
2 2007.

3 Detective Osborne has testified, and I find  
4 credible, that he mirandized the defendant as  
5 evidenced by the defendant's signature on the Miranda  
6 card, and what appears to be in his own hand; that he  
7 understood his rights; and that they have been read  
8 to him.

9 And without belaboring the hour, the Miranda  
10 warnings on the front of Court's Exhibit 6 were read  
11 to him and he indicated that he understood them.

12 There is no indication in the record that the  
13 defendant was under the influence of any intoxicants;  
14 that he was not oriented to time and place; there is  
15 no indication that he was under coercion or any  
16 duress; and that clearly he had the ability to stop  
17 any statement. He also had the ability simply not to  
18 give a statement.

19 The Court does not find credible his statement  
20 that he gave the statement, and I'm taking some  
21 liberty with how I'm paraphrasing this, that he gave  
22 the statement because the officer told him that if he  
23 provided them with an alibi he could go home.

24 Even if that were true, or if I gave it  
25 weight, there is no indication that that would have

1 made the statement involuntary. The Court would find  
2 that the statement was freely and voluntarily given  
3 by a preponderance of the evidence. And the other  
4 issues raised are matters that our case law very  
5 clearly indicated to be resolved by a jury; that  
6 being the procedure employed.

7 The Court makes the initial determination of  
8 voluntariness based on the preponderance of the  
9 evidence. The Court finds the statement was given  
10 voluntary -- freely and voluntarily, there was no  
11 coercion or duress, and that he was completely  
12 Mirandized, he was well aware of his Miranda warnings  
13 prior to giving the statement.

14 It's then for the jury to determine whether in  
15 fact any statement was given beyond a reasonable  
16 doubt. Whether law enforcement complied with the  
17 requirement, the exacting requirement in Miranda is a  
18 jury -- it is of course for the Court.

19 And the Court has found that law enforcement  
20 did in fact comply with the requirements of Miranda  
21 before giving the statement. It's ultimately for the  
22 jury to decide whether the confession was in fact  
23 voluntary beyond a reasonable doubt.

24 There is no indication in the record that the  
25 defendant's ninth grade education impeded him from

1 understanding what was being read to him or what was  
2 being explained to him or what he did in fact read on  
3 his own.

4 Therefore the statement is admissible.

5 Any other objections regarding that will have  
6 to be made contemporaneously as the testimony is  
7 elicited for purpose of the record.

8 Anything further before we proceed with the  
9 Neel versus Biggers from the State?

10 MS. SHEALY: No, your Honor.

11 THE COURT: From the defense?

12 MS. FORD: No, Your Honor.

13 THE COURT: State may proceed.

14 MS. SHEALY: Your Honor, we would recall David  
15 Osborne.

16 THE COURT: Sir, if you would come to the  
17 witness stand. I will remind you that you are still  
18 under oath.

19 MR. DAVID OSBORNE,  
20 after having previously been duly sworn to state the  
21 truth, the whole truth and nothing but the truth,  
22 testified on his oath as follows:

23 **DIRECT EXAMINATION**

24 BY MS. SHEALY:

25 Q Detective Osborne, focusing your attention on

1 the witness Shoreka Miles?

2 A Yes.

3 Q Did you offer her a photographic lineup to  
4 review?

5 A I did.

6 Q And would you describe for the Court first how  
7 it is that you decided to put Richard Deas in that  
8 photographic lineup, a photograph of him?

9 A Yeah, through a couple different sources his  
10 name was being called as a potential suspect for the  
11 murder. I had heard that there was a witness by the  
12 name of Shrod Young who I was trying to locate, so I  
13 composed a lineup with Richard Deas the suspect in  
14 hopes to find him.

15 Q When you say you composed a lineup, how does  
16 that actually take place?

17 A With that program, and we have two, with that  
18 program what you do is put in your suspect and then  
19 it will ask you for identifiers for fill-ins. In  
20 this case he would have been a black male; however  
21 old he was at that time, 18; and the program would  
22 give you a list of potential fill-ins. You go  
23 through the fill-ins and you find individuals with  
24 similar physical characteristics as the suspect. And  
25 You put them together in an array of photographs for

1 one lineup.

2 Q And showing you what has been marked as  
3 Court's Exhibit No. 1, can you tell the Court,  
4 please, what this is?

5 A This is the photographic lineup with Richard  
6 Deas as a suspect with the file numbers to each one,  
7 including Richard Deas.

8 Q Now when you say the file numbers, what does  
9 that mean?

10 A Anytime that you are booked in and a  
11 photograph is taken, the photograph is assigned a  
12 file number. So if I were to take any one of these  
13 file numbers I could put it in that same program and  
14 find out who that individual was.

15 Q Now Court's Exhibit No. 1, does that appear  
16 like the one that you later showed to Shoreka or were  
17 there revisions made to it?

18 A There were revisions. I can printout that  
19 lineup in two different ways. I can print it out  
20 with the file numbers, or I can print it out with  
21 lineup numbers. This is not the lineup that I showed  
22 Shoreka. The one that I showed Shoreka would have  
23 had one, two, three, four, five, six under the  
24 photograph instead of the file numbers.

25 Q so there is a replacement of the file numbers

1 with just the numerals one through six?

2 A Right.

3 Q Now do you recall what date it was that you in  
4 fact met with Shoreka Miles?

5 A It would have been on the 20th.

6 Q Okay. And just briefly can you describe the  
7 circumstances under which she came to the City Police  
8 Department?

9 A I received a phone call that night from Leroy  
10 Simmons, who was the father of the victim Leroy  
11 Simmons, who stated that he was with a female who had  
12 observed his son being murder.

13 Q And based on that phone call did Ms. Miles in  
14 fact come to the police department?

15 A Yes, I told him or asked him if he could bring  
16 her to the station, he said he could. So I met him  
17 and her there.

18 Q And when she arrived, if you would describe to  
19 the Court, please, the nature of your interviewing  
20 her and showing her the lineup. Could you describe  
21 how that happened?

22 A Yes. I actually told Mr. Simmons I would need  
23 to meet with her alone in a room, and he said he  
24 understood. So I met with Shoreka alone, got a basic  
25 idea from her as to what she had observed, and she

1 had verbally related that to me and then I would have  
2 shown her the lineup.

3 Q And prior to talking with her, did you know  
4 that she was on her way there, that she had in fact  
5 seen the shooter, or did you learn that once she got  
6 there?

7 A No, I did not know that until I spoke to her.

8 Q So as far as taking her statement and showing  
9 her the photographic ID, was that done all at the  
10 same time or was that two separate events?

11 A It was sort of done together. The witness  
12 statement at the very top it's got her identifying  
13 information, her name, her date of birth, whatnot. I  
14 would have taken all of that down rather than  
15 duplicating it as she was telling that to me in a  
16 witness statement.

17 Then she verbally relayed to me what she saw.  
18 I asked her if she would be able to identify the  
19 suspect she said she could, so then we went on to the  
20 lineup procedure.

21 Q And I'd like to have you describe the lineup  
22 procedure itself. Let me start by asking what is a  
23 photographic lineup admonition?

24 A It's basically a standard CPD form that we  
25 read to anyone before we show them a lineup. And

1 it's basically self-explanatory if you want me to  
2 read it.

3 Q Let me get to that in just one moment. Where  
4 were you all when you were both interviewing her and  
5 showing her the photographic lineup?

6 A It was in the central investigations office.  
7 I'm almost certain that it was in the same office or  
8 same room that I interviewed Richard Deas.

9 Q And if you would then first describe how you  
10 present the lineup to her and about the admonition  
11 form?

12 A Well the first thing I would have did was --  
13 would be to read the admonition form. Then there was  
14 a part there that says, upon viewing these  
15 photographs do not discuss your results or this  
16 procedure with any other witness.

17 I had her check yes indicating she understood  
18 that, then signed it.

19 Q Okay, I'm sorry to interrupt you, why don't  
20 you read for us what the admonition itself reflects?

21 A Okay. I would have read to her, I'm going to  
22 show you a group photographs. These photographs may  
23 or may not contain a photo of the person who  
24 committed the crime being investigated. Please keep  
25 in mind that the photographs may not always show the

1 true complexion of an individual. It is possible  
2 they may be lighter or darker than shown in the  
3 photos.

4 Also remembers that hairstyles, beards and  
5 mustaches are features that can easily be changed.  
6 When you have finished looking at all the photos tell  
7 me if you can make a positive identification of the  
8 person who committed the crime. If you are positive  
9 in your identification I will ask you to sign and  
10 date the back of the photograph.

11 Q Okay. And when you were giving her, reading  
12 her that and showing her this form and then  
13 ultimately showing her the lineup, was there anyone  
14 present other than you and Shoreka Miles?

15 A It's just us two.

16 Q And was there anything else you said to her  
17 before you showed her the lineup or when you showed  
18 her the lineup?

19 A Yeah. I just told her to take her time, make  
20 sure she looked at every photograph.

21 Q Okay. And showing you Court's Exhibit No. 3,  
22 I ask you whether this is the actual lineup that you  
23 showed Shoreka Miles?

24 A It is.

25 Q If you would, please, describe for the Court

1 THE COURT: What number is that, Ms. Shealy?

2 MS. SHEALY: No. 3, Courts Exhibit 3.

3 THE COURT: Thank you.

4 Q (By Ms. Shealy) When you showed Ms. Miles the  
5 lineup, could you describe, please, her behavior and  
6 what if anything she indicated?

7 A Well, her behavior from the beginning when I  
8 first met with her she was very nervous. When I  
9 showed her the lineup she took her time, I could see  
10 her eyes as she was looking at each photograph, and  
11 at some point she came back and she put her finger  
12 down rather hard on photographer number one and  
13 indicated that's him.

14 Q In fact on the admonition itself does she sign  
15 that?

16 A Yes.

17 Q What does she write in the line where she  
18 signs?

19 A She wrote, number one is the one who shot  
20 Miles.

21 Q Would you tell the Court, please, who is  
22 depicted as number one in that lineup?

23 A Richard Deas.

24 Q Now prior to her -- does she circle that  
25 photo?

1 A Yes.

2 Q And does she also initial it?

3 A She signed it, yes.

4 Q Prior to her doing that did you in anyway  
5 suggest to her who you believe was the shooter in the  
6 lineup?

7 A No.

8 Q Now, you've indicated that before you started  
9 talking to her you did not know at that point she was  
10 going to identify the shooter; is that correct?

11 A That's correct.

12 Q And had you in fact spoken to her before?

13 A I'd not spoken to her before then, no.

14 Q But another detective in the case had spoken  
15 to her?

16 A On the night of the shooting, yes.

17 Q On that occasion was she willing to identify  
18 the shooter?

19 A No.

20 Q Now when you got the statement from her, what  
21 was your understanding of her ability to have seen  
22 what happened that night?

23 A Well, I mean based on her statement, she saw  
24 the entire incident.

25 Q Okay. And within her statement does she

1 describe the person who did the shooting?

2 A Yes.

3 Q Do you have that available to you?

4 A I do, hang on one second. Okay. I asked her  
5 to describe the subjects, because she had mentioned  
6 two subjects. She stated, number one, that's the  
7 shooter, the guy I ID'd in the lineup; he's got  
8 dreads almost to his shoulder; light skin; 5'3"; 21  
9 to 22; thin build; wearing all black, T-shirt, black  
10 Dicky short pants, black shoes; silver, small gun, I  
11 think a revolver.

12 MS. SHEALY: Beg the Court's indulgence.

13 THE COURT: Uh-hum.

14 Q (By Ms. Shealy) And, again, when you showed  
15 her the lineup and asked her to take her time, can  
16 you describe for the Court what level of certainty  
17 she had when she identified number one?

18 A Well I asked her, she said she was absolutely  
19 positive.

20 MS. SHEALY: Beg the Court's indulgence.

21 THE COURT: Uh-hum.

22 MS. SHEALY: I have no further questions  
23 regarding this issue.

24 THE COURT: Any question for the witness?

25 MS. FORD: Yes, Your Honor.

1 THE COURT: You may proceed.

2 CROSS-EXAMINATION

3 BY MS. FORD:

4 Q Detective Osborne, Shoreka Miles gives a  
5 description of the shooter, right?

6 A Yes.

7 Q Now in her statement it indicates she had made  
8 the identification before she gave the statement,  
9 right?

10 A That's correct.

11 Q Did she tell you before she gave the -- before  
12 she looked at the photo lineup, did she give you a  
13 description of the shooter?

14 A Well what I did was I asked her to verbally  
15 relay it. If she did give me a description, I don't  
16 think it was as detailed as that.

17 Q Okay. And she said -- and when she did give a  
18 description she said that he was thin, right?

19 A No, I don't see where it says he was thin.

20 Q I'm sorry, I was looking at suspect two.

21 She said he had dreads almost to his  
22 shoulders?

23 A Yes.

24 Q Well actually looks like she did say he was  
25 thin, correct?

1           A       I'm sorry, let me read it again. Yes, okay,  
2 right after that 21, 22, thin, yes.

3           Q       And he was short, correct, 5'3"?

4           A       Five foot three, yes.

5           Q       Now looking at these, this lineup that you  
6 showed her, number two actually has long twists,  
7 wouldn't you say?

8           A       Sure, yes.

9           Q       Number three and number six, their hair it's  
10 pretty short, wouldn't you agree?

11          A       Well on the side it's short for number three.  
12 Looks like maybe something coming out toward the back  
13 of his neck.

14                   I would not say number four is short, no.

15          Q       I'm sorry, number three and six?

16          A       Yes.

17          Q       They seem to have a similar hairstyle. And  
18 number five, how would you describe his hair?

19          A       I would say medium.

20          Q       So out of that line up, number one Richard  
21 Deas and number four, they probably have the most  
22 similar hairstyle; is that fair to say from what you  
23 are looking at?

24          A       I don't know. If you are talking just hair, I  
25 think I would go ahead and group number two with that

1 as well.

2 Q Even though two's hair is much longer?

3 A Much longer, okay. I mean sure, yeah, I guess  
4 they're pretty close, one and four.

5 Q And out of number one and number four, number  
6 four appears to be a larger person than number one;  
7 is that fair to say?

8 A I would not go that far. It's tough to tell  
9 from a face how big someone is.

10 Q But his face, if you are just looking at his  
11 face number four looks much fuller than number one?

12 A That's what I'm saying, I wouldn't go by the  
13 face. Some people by their face look a lot larger  
14 than they really are.

15 Q If you are just looking at his face, which is  
16 all we have, he looks larger, he looks like a larger  
17 guy, not height of course but weight?

18 A Again, I wouldn't say that.

19 Q So you wouldn't say his face is fuller than  
20 Richard Deas's face in that lineup?

21 A Well, if you look, the picture is actually  
22 closer up. I think if you took Richard's face and  
23 brought it closer up to the camera like you did  
24 number four, you may find number four is actually  
25 pretty thin guy. It all depends on where the

1 photograph is taken in a lot of these pictures.

2 If you are real close to the lens, you are  
3 going to look a lot bigger.

4 Q From the way the photograph portrays the  
5 picture though, number one looks smaller?

6 A Well if you are asking me does he appear  
7 smaller, again I mean --

8 Q We are going on appearances not on reality.

9 A So if you suspend reality, then yeah, I guess  
10 it's possible that he is smaller.

11 Q There is no way to know from looking at the  
12 pictures who it is, what their weight is or anything  
13 like that?

14 A That's correct.

15 Q That's what I mean about reality. These  
16 pictures all came from a database, right?

17 A Right.

18 Q So do you have the information on these  
19 suspects?

20 A I can get them, yes.

21 Q Do you know how much number four weighs or  
22 weighed at the time of that picture being taken?

23 A No, but from the file number I can put it back  
24 in the database and find out who it is and get that.

25 Q You would be able to but at this point you

1 don't know?

2 A That's right.

3 Q And this picture, or this lineup, it has a  
4 pink tint; is that correct?

5 A It does have a hue to it, a slight hue, but I  
6 don't know that I would say it's pink.

7 Q Would it help to see it in person rather than  
8 on the screen?

9 A I have seen it many times. I remember you  
10 saying it was pink before too, I didn't object to it.  
11 If you think it looks pink, okay.

12 Q On the admonition form that you got Ms. Miles  
13 to sign, you did tell her that complexions may not be  
14 as they really are though, right?

15 A Yes.

16 Q But she described the shooter's complexion,  
17 doesn't she?

18 A Light skin I believe. Let me double-check.  
19 Yes, light skin.

20 Q Would you say Richard Deas has a light  
21 complexion?

22 A I would say brown.

23 Q But not light?

24 A I wouldn't describe that --

25 MS. SHEALY: Objection, relevancy, Your Honor.

1 MS. FORD: Going to match the description and  
2 what my client looks like.

3 THE COURT: The issue is suggestive evidence  
4 and procedure, all the rest of it goes to weight. It  
5 is not for me to decide beyond a reasonable doubt,  
6 it's only for me to decide whether the procedure  
7 employed was suggestive or not.

8 MS. FORD: Yes. I guess I'm going to the  
9 suggestive part of the test.

10 Q (By Ms. Ford) And after -- when Ms. Miles  
11 was looking at this lineup, she took 30 seconds to  
12 pick out Mr. Deas, correct?

13 A That's correct.

14 Q Ms. Shealy had asked you about her, Ms. Miles,  
15 ability to see from your knowledge. And the time of  
16 day it was 2:30 in the morning, right?

17 A Right.

18 Q So it would have been dark outside?

19 A Yes.

20 Q Do know the distance that she was from the  
21 shooter?

22 A I don't know the exact distance, no. But I  
23 can say based on her statement she's near the  
24 roadway, the fight and the shooting occurred in the  
25 middle of the roadway.

1           So, it wasn't on the other side of the roadway  
2 it was in the middle of the roadway.

3           Q     Did Ms. Miles ever indicate that the shooter  
4 looked at her directly?

5           A     No, I don't recall that.

6           Q     And do you happen to know if it was a clear  
7 night or rainy night?

8           A     I don't believe it was raining.

9           Q     And Ms. Miles indicates there is a second  
10 person with Mr. Deas, correct?

11          A     That's right.

12          Q     But she didn't get a look at him, right?

13          A     Well, I mean I think with him she said that  
14 she caught a quick glimpse of him.

15          Q     Did she say how long she was outside or how  
16 long the incident happened, how long was the shooter  
17 basically in her vision?

18          A     I don't recall specifically asking that.

19          Q     Did the shooter say anything to her to bring  
20 her attention to him that way?

21          A     No, not that I recall.

22          Q     In the lineup, again just going back to the  
23 lineup, Richard Deas he is wearing a black shirt,  
24 right, in this lineup?

25          A     Yes.

1 Q Looks to be a black shirt?

2 A Yes.

3 Q And she had said the shooter had a black shirt  
4 on, correct?

5 A Black T-shirt, that's right.

6 Q So you said that a computer selects the  
7 photographs?

8 A No the computer gives me options.

9 Q Gives you options?

10 A Yes.

11 Q So you are the one who picks out the six  
12 photographs?

13 A Five.

14 Q Five other than Richard Deas?

15 A Yes.

16 Q And can you tell us anything why you picked  
17 these particular five people since you had a lot of  
18 options?

19 A Well, I did not say I had a lot of options.  
20 Richard has got long dreads and he is 18. That may  
21 sound like that's an easy match, but it really isn't.  
22 There is not a lot to choose from.

23 I did not want to find anyone with facial hair  
24 either, that's another thing I have got to knock out.  
25 So literally when I say these are the five best that

1 I could find, these are the five best that I could  
2 find.

3 Q Some of these people do have facial hair,  
4 don't they?

5 A Again, that's the best I could do.

6 Q It's hard to tell, does Richard Deas have  
7 facial hair in this picture?

8 A Once again that's kind of tough to say too.  
9 That could be a little peach fuzz there, that's hard  
10 to say.

11 Q Did Shoreka Miles ever say anything about the  
12 shooter having facial hair?

13 A No.

14 Q Do you know if Richard Deas had facial hair  
15 when he was arrested?

16 A I don't recall.

17 Q I'm sorry, just to clarify about Ms. Miles and  
18 facial hair, did she just not comment or did she  
19 specifically say no facial hair?

20 A She didn't specifically say and I don't recall  
21 specifically asking.

22 Q So she did not, it just never came up?

23 A Right.

24 Q Did you try to get a better description from  
25 her of the shooter, or a more detailed one?

1           A       When I took the written statement, yes. And  
2 just to clarify, when I asked her in the beginning, I  
3 wanted to know if it was even worthwhile to even show  
4 her the lineup; could she identify the guy, was it  
5 even worth my time to show it to her. She said she  
6 could.

7           And I was just getting a general description  
8 to make sure Richard Deas even generally matched that  
9 description.

10          Q       I thought you cannot really recall if she gave  
11 a description before you showed her the lineup?

12          A       What I said was a more detailed description.  
13 You asked how did she describe, and I said I cannot  
14 really recall exactly what she said, but I certainly  
15 wouldn't have gotten into all of that, you know, what  
16 was he wearing, what kind of shoes was he wearing and  
17 all of that. I would have done that during the  
18 written statement.

19                 At that point I was just trying to find out  
20 whether it was worth even showing her the lineup.

21          Q       So she does give a description, but you cannot  
22 remember exactly what she said?

23          A       That's right.

24          Q       So are all of the boys in this lineup, are  
25 they all about 18 years of age or are some older?

1 A They should all be about the same age.

2 Q Because number two, he look older but you  
3 think he is about 18 years old?

4 A Again, that's why lineup are tough, you have  
5 to find individuals that all sort of look the same  
6 age, weight, you know and facial hair. So, yeah,  
7 according to the program he should have been around  
8 18.

9 MS. FORD: Beg the Court's indulgence.

10 THE COURT: Uh-hum.

11 Q (By Defense) You told Ms. Shealy you didn't  
12 indicate before the lineup about who the shooter  
13 might -- suspected shooter might be, correct?

14 A I'm sorry, ask it again.

15 Q Didn't you tell Ms. Shealy -- she had asked  
16 you did you ever indicate who it was, something along  
17 those lines. You did not, right? You did not tell  
18 her, this is the guy we think it is?

19 A Oh, no.

20 Q After she pointed out Richard Deas, did you  
21 make any statements to her?

22 A Well, she gave a statement to me. Once we  
23 completed the lineup with the admonition form and the  
24 lineup where she circled it and signed her name, we  
25 went ahead and completed the entire written

1 statement.

2 Q Did you tell her that that was Richard Deas?

3 A No.

4 Q And she, from your understanding, she did not  
5 know Richard Deas, correct?

6 A Well it was my understanding that she had seen  
7 him earlier that day. And there was some sort of an  
8 encounter in which Richard had asked her for a  
9 cigarette. And I cannot recall, I'd have to look  
10 back whether she actually gave him one or not.

11 Q Do you know if she is talking about a nicotine  
12 cigarette?

13 A Hold on. I assume so.

14 Q Do you -- so you picked out these photographs,  
15 correct?

16 A Yes.

17 Q Did you take any classes or learn how to do  
18 that at all or go through any training?

19 A Nope, I'm not aware of any training to that  
20 effect either.

21 Q So as far as you know, law enforcement does  
22 not have any training on photographic lineups?

23 A Never heard of it. I'm not saying it doesn't  
24 exist, I've just never heard of it.

25 Q How about in the federal setting?

1 A I have no idea.

2 Q Have you heard of -- this type of lineup, it's  
3 called a simultaneous lineup?

4 A I have never heard of that.

5 Q Have you ever heard of a consequential lineup?

6 A No.

7 MS. SHEALY: Your Honor, I'm going to object  
8 to the relevancy of these questions.

9 THE COURT: What's the relevance?

10 MS. FORD: Your Honor, I'm just going to the  
11 type of lineup and because I believe this type of  
12 lineup is more suggestive than a consequential  
13 lineup.

14 THE COURT: Are you establishing -- are you  
15 able to lay the foundation for him to answer these  
16 questions?

17 MS. FORD: Well he is telling me no, so that's  
18 why I was asking the questions, Your Honor.

19 THE COURT: He told you he has not had any  
20 training, he is not aware of any. Can you lay the  
21 appropriate foundation?

22 MS. FORD: Just because someone hasn't had the  
23 training, they may know of things they've picked up  
24 on their own.

25 THE COURT: You still have lay appropriate

1 foundation of his knowledge. He indicated he doesn't  
2 know.

3 MS. FORD: Yes, Your Honor.

4 Q (By Ms. Ford) You learned how to do a lineup  
5 somewhere, though, right?

6 A Someone showed me how to use this program,  
7 yes.

8 Q Do you know how many lineups you've put  
9 together?

10 A Throughout my entire career?

11 Q Yes.

12 A I don't know. I would say easily 400, 500.

13 Q So you have a lot of experience with putting  
14 lineups together?

15 A Yes.

16 Q You never researched in lineup procedures in  
17 any way?

18 MS. SHEALY: Your Honor, I believe that has  
19 been asked and answered.

20 MS. FORD: I was just trying to establish. I  
21 asked the question in a roundabout way, I thought  
22 this would better establish because he has training  
23 or experience, Your Honor. Lots of experience.

24 THE COURT: Restate the question, please.

25 Q (By Ms. Ford) Have you ever taken it upon

1 yourself, you said you never went to a class, but  
2 have you ever taken it upon yourself to look into  
3 photographic lineup procedures.

4 THE COURT: That's a different question than  
5 the one you just asked.

6 A No.

7 MS. FORD: The point was the same. I can't  
8 recall exactly.

9 THE COURT: It was a different point, but the  
10 point is moot now and the question -- answer will  
11 stand you may proceed.

12 MS. FORD: Beg the Court's indulgence.

13 THE COURT: Uh-hum.

14 Q (By Ms. Ford) Detective Osborne, you  
15 indicated to Ms. Miles that you would move her to a  
16 safe location if she felt scared?

17 A Yes.

18 Q And you did that because you believed that  
19 this was the right person, the right shooter?

20 A No. I did that because she was afraid of her  
21 safety. And she had been getting threats through  
22 another individual via Ricky Deas. And she said she  
23 needed to get out of there because she was afraid for  
24 her life. So that's why I helped her get out of  
25 there.

1 Q Do you know when that was?

2 A Well it was on Sunday the 21st. Now there was  
3 another encounter, but I believe the encounter on  
4 Sunday the 21st was very direct.

5 Q Okay. But the day that you took the statement  
6 and did the photo lineup.

7 A The 20th, Saturday the 20th.

8 Q Right. Did that come up as well, moving her?

9 A No. No on that day she was just scared  
10 because I think she understood the consequences of  
11 cooperating with the police. It was the next day  
12 that she called me and stated that an individual had  
13 approach her and told her that.

14 Q Okay.

15 MS. FORD: Thank you, no further questions.

16 THE COURT: Any redirect?

17 MS. SHEALY: No, Your Honor.

18 THE COURT: Sir, you may step down.

19 MS. SHEALY: Well, Your Honor, actually  
20 there's a second lineup as well. Do you want me to  
21 query that while I have him on the stand.

22 THE COURT: You need to cover them all.

23 MS. SHEALY: Go ahead and do that one?

24 THE COURT: Yes.

25 MS. SHEALY: I didn't know when you said you

1 wanted to keep them separate.

2 THE COURT: When I said separate I meant  
3 statement and identification, not separate ID's.

4 MS. SHEALY: Okay.

5 REDIRECT EXAMINATION

6 BY MS. SHEALY:

7 Q Detective Osborne, you also showed a lineup to  
8 Shrod Young, is that correct?

9 A Yes.

10 Q Would you describe for the Court, please --  
11 first of all did you use the same lineup that you had  
12 used with Ms. Miles?

13 A It was the --

14 Q Same selection of photos?

15 A Yes.

16 Q But you did not show Shrod Young the one that  
17 Ms. Miles had circled and signed?

18 A Right, I did not.

19 Q And first of all, could you tell the Court  
20 when it was that Shrod Young came in?

21 A Very early. In fact that was the first name  
22 that I got from family members of Mr. Simmons at the  
23 hospital, that he was a potential witness.

24 Q Okay. But when did he actually come in for  
25 purposes of being interviewed and doing the lineup?

1       A       Well he was arrested and I spoke to him and  
2 showed him the lineup on November the 9th, 2007.

3       Q       And when you say he was arrested, what was he  
4 arrested for?

5       A       I charged him with obstruction of justice.

6       Q       Would you explain to the Court why you charged  
7 him with obstruction of justice?

8       A       Because Shrod was telling individuals that he  
9 had seen the murder. In fact he told one individual  
10 that he wasn't going to identify the shooter until  
11 Leroy spoke to -- he wasn't going to talk to the  
12 police until Leroy spoke to the police. This comment  
13 was obviously made before Leroy passed away.

14               When I spoke to him on the phone on two  
15 different occasions, I mean he all but indicated to  
16 me that, yes, he was out there, yes, I knew what  
17 happened, but he wasn't going to speak to me.

18       Q       So if you would, please, describe for the  
19 Court the process of taking a statement from him as  
20 it related to showing him the lineup?

21       A       I picked him up, he was arrested on the 8th, I  
22 picked him up on the way into work on November the  
23 9th, brought him into the station. We got there  
24 about 9:30 I guess. Started -- I spoke to him for  
25 about 30 minutes or so, and basically just, you know,

1 telling him that it was my understanding that he was  
2 best friends with Mile and asking him to cooperate  
3 with the investigation and just tell me what he saw.

4 And after about 30 minutes of talking he said,  
5 yeah, he would go ahead and take a look at the  
6 lineup. So I again read the admonition form to him,  
7 presented him the lineup. He identified Richard Deas  
8 as the shooter, and then we went through and finished  
9 the written statement.

10 Q Okay. So showing you what has been previously  
11 marked as Court's Exhibit No. 4, if you would please  
12 describe for the record what this reflects?

13 A This is the admonition form I read to Shrod  
14 Young.

15 Q And you had read us previously with Ms. Miles  
16 the actual language, is it a similar form?

17 A Yes.

18 Q And after -- did you read it to Mr. Young or  
19 did you have him read it or do you remember?

20 A What, the admonition form?

21 Q Uh-hum.

22 A No, I read it.

23 Q After you read it to him, did you acknowledge  
24 that that had been read to him?

25 A Yes.

1 Q Did he sign it?

2 A Yes.

3 Q And if you would describe for us what happened  
4 once you showed him the photographic array?

5 A When I showed him the lineup he identified  
6 Richard Deas. I asked him to circle the photo and  
7 then sign his name. And he had actually printed his  
8 name and I said, well, I need you to sign it so then  
9 he signed it.

10 Q And would you describe for the Court whether  
11 or not you in any way indicated to him who you  
12 believed the shooter was on the lineup?

13 A No.

14 Q What was your understanding of Mr. Young's  
15 ability to have seen the shooter that evening?

16 A He would have been standing at a similar  
17 vantage point as Shoreka. So he certainly could have  
18 seen the shooter.

19 Q Did you ask him then on the bottom part of the  
20 admonition form to indicate which number, if any, was  
21 the shooter that he saw that evening?

22 A I did.

23 Q And what does he indicate?

24 A He wrote number one, and signed his name.

25 Q Did he put some other language on that line as

1 well?

2 A well I asked him, you know, are you positive  
3 or whatever. And he made the comment, that's the one  
4 I see, he killed my boy. So I wrote that down, then  
5 he initialed it at the end.

6 MS. SHEALY: Beg the Court's indulgence one  
7 moment.

8 THE COURT: Uh-hum.

9 Q (By Ms. Shealy) Do you recall whether or not  
10 Mr. Young -- what name Mr. Young knew the person as  
11 who he signed on the photographic lineup as being the  
12 shooter?

13 A Little Ricky.

14 Q And was it your understanding that he knew  
15 Little Ricky before that night or not until that  
16 night? He knew who he was?

17 A He knew who he was, yes.

18 Q And did you in fact -- in fact got a statement  
19 from him that evening detailing what he had  
20 witnessed; is that correct?

21 A That's correct.

22 MS. SHEALY: I beg the Court's indulgence just  
23 a second.

24 THE COURT: Uh-hum.

25 MS. SHEALY: I have no further questions

1 regarding this lineup.

2 THE COURT: Any cross-examination of the  
3 witness?

4 MR. GRIMES: Yes, Your Honor. May it please  
5 the Court.

6 THE COURT: Yes, sir. You may proceed.

7 MR. GRIMES: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. GRIMES:

10 Q Detective Osborne, you took out a warrant for  
11 Mr. Young's arrest for obstruction of justice?

12 A Yes.

13 Q It's because he wouldn't cooperate with you?

14 A Well, it was my belief that if Shrod was out  
15 telling everyone that he had witnessed the murder  
16 that he was a witness to the murder and that he  
17 needed to cooperate with the investigation.

18 Q You also received information that Mr. Young  
19 may have set up the victim in this case, correct?

20 A I did not receive any corroboration to that.

21 Q Detective Osborne, my question was that you  
22 received information Mr. Young may have set up the  
23 victim in this case, correct?

24 A Family members had told me that was their  
25 belief, so if you call that information then yes.

1 Q So somebody told you that he may have been --  
2 Mr. Young may have set him up, correct?

3 A That was their belief.

4 Q And that could make him guilty of murder under  
5 the hand of one is the hand all theory, couldn't it?

6 A Yes.

7 Q Guilty of armed robbery, correct?

8 A Well I don't -- I don't know that we have an  
9 armed robbery here.

10 Q Really? Wasn't there some information that  
11 the victim had -- may have had \$1,000 in his pocket?

12 MS. SHEALY: Your Honor, I object to the  
13 relevancy.

14 THE COURT: Why is it relevant, Mr. Grimes?

15 MR. GRIMES: Trying to show, suggest that the  
16 officer coerced, may have suggested that for Mr.  
17 Young to identify the defendant in this case. He  
18 could have hung a murder charge on him or armed  
19 robbery charge on him.

20 THE COURT: I'm going to give you a little  
21 latitude. You need to move it along, there is no  
22 evidence in the record an of armed robbery.

23 Q (By Mr. Grimes) Did you ever receive  
24 information that the victim had up to \$1,000 on him?

25 A To the best of my knowledge Mr. Simmons, the

1 father, who was in I think Georgia at the time  
2 believed that his son may have had that kind of money  
3 on him.

4 Q And when you took out the warrant for  
5 obstruction of justice, you swore under oath when you  
6 took out a warrant, correct?

7 A Right.

8 Q And in that -- do you have a copy of that  
9 warrant with you?

10 A I do not.

11 MR. GRIMES: May I approach the witness, Your  
12 Honor?

13 THE COURT: Uh-hum.

14 Q (By Mr. Grimes) When you said before under  
15 cross there's no evidence of armed robbery in this  
16 case, correct?

17 A Well I said I did not believe this to be an  
18 armed robbery.

19 Q Can you read me the first sentence right here  
20 in this warrant for Mr. Young's arrest?

21 A Yeah, that's a typo. But what it says is,  
22 Shrod Young did intentionally and knowingly violate  
23 armed robbery laws in the City of Charleston.

24 Q And that was sworn to the judge?

25 A That's a typo, that's correct.

1 Q This is sworn to the judge?

2 A That's a typo, that's right.

3 Q You never crossed it out?

4 A I did not catch that until you brought it to  
5 my attention.

6 Q You never crossed it out?

7 A Right.

8 Q This happened October of 2007. Or excuse me,  
9 November of 2007?

10 A Right.

11 Q And you never caught it until almost a year  
12 and a half later?

13 A I did not catch it at all until you brought it  
14 to my attention.

15 Q That would be some evidence of armed robbery,  
16 correct? You swore under oath.

17 A No. A typo is a typo, it's not evidence.

18 Q Thank you. And when you were -- Mr. Young was  
19 arrested, correct?

20 A Yes.

21 Q Do you know if he had an attorney at that time  
22 when he was arrested?

23 A No.

24 Q Did he waive his right to counsel when he went  
25 and talked with you?

1 A No.

2 MS. SHEALY: Again I object to the relevancy.

3 THE COURT: Sustained. Miranda would not be  
4 implicated in the identification procedure, nor would  
5 he be entitled to any counsel. He could not be  
6 incriminating himself by identifying someone else.

7 MR. GRIMES: Again I think it's going to the  
8 suggestion if he is in there talking to him, say,  
9 look we're going to hang this on you, we can give you  
10 ten years if you don't cooperate.

11 THE COURT: You need to establish the  
12 foundation for that, Mr. Grimes. Right now at this  
13 point there is no foundation for that question to  
14 make it relevant.

15 MR. GRIMES: Thank you, Your Honor.

16 THE COURT: You're welcome.

17 Q (By Mr. Grimes) You said you talked to Mr.  
18 Young about half an hour before you showed him the  
19 lineup?

20 A Yes.

21 Q What did you talk to him about during that  
22 half hour?

23 A Well, I talked to him about the fact that this  
24 was his best friend, his best friend was murdered in  
25 front of him. I asked him to do the right thing,

1 cooperate with the investigation, tell me what he  
2 saw.

3 Q Did you tell him how much time obstruction of  
4 justice carries?

5 A I don't recall specifically saying that but I  
6 certainly could have.

7 Q Did you ever tell him what would happen if he  
8 did not cooperate with you?

9 A Well, again I don't recall specifically saying  
10 that. But if I mentioned time then certainly, yeah,  
11 that's what could happen to him.

12 Q So it's possible you could have told him he  
13 could get some time if he didn't cooperate with you?

14 A Well, what I told him is that he could be  
15 looking at time for his charge. I asked him just to  
16 do the right thing and cooperate with the  
17 investigation.

18 Q And if he did the right thing, this charge  
19 would go away?

20 A That I never told him.

21 Q This charge did in fact go away, didn't it?

22 A It was dismissed in the prelim.

23 Q Did you oppose that being dismissed?

24 A I did not.

25 Q It was after he cooperated with you?

1 A Yes.

2 Q Now I believe on cross-examination, the first  
3 cross-examination when we were talking about the  
4 photo lineups, you stated once you received  
5 information about somebody you would use your  
6 computer program, put in the information for the  
7 fill-ins such as age, weight, height?

8 A Yes.

9 Q And that would be based upon what the  
10 witnesses told you?

11 A No, it would be based upon the suspect. In  
12 this case Richard Deas, being the suspect, I would  
13 put the parameters to closely resemble him.

14 Q So if the witness gave you information  
15 different than Mr. Deas, you would not use that  
16 information to make that lineup?

17 A No.

18 Q When you showed Mr. Young the lineup, how did  
19 you hand it to him?

20 A The same way I would have handed it to anyone.  
21 What I would have done is the admonition form --

22 Q Show me how you handed it?

23 A Well, this is not the lineup. The admonition  
24 form would have been stapled to this, so I would have  
25 handed it to him like this and said, flip the first

1 page and take a look at the lineup.

2 Q So the pages would have been covered by the  
3 admonition form?

4 A Yes.

5 Q Thank you. You said you have been in the  
6 homicide division for two years?

7 A Yes.

8 Q I'm going to ask you a few questions about the  
9 training issues. Do you keep up with what other  
10 states do with regards to photo lineups?

11 A I can't recall reading or seeing anything that  
12 other states do with photographic lineups.

13 Q Do you recall ever seeing studies that  
14 sequential lineups may be more accurate than a  
15 spontaneous lineup?

16 A This is the first time I have heard these  
17 terms, so no.

18 Q Now I think on direct you also stated that Mr.  
19 Young was at a similar vantage point as Shoreka?

20 A Yes.

21 Q You mean by that they were standing together  
22 when this happened?

23 A That I'm not sure. Let me refer back to it.  
24 They were standing on the same side of the roadway.

25 Q How far apart were they?

1 A I don't recall asking that specifically.

2 Q Well, based upon their statements were you  
3 able to investigate how far apart they were?

4 A I mean I would have to guess because I didn't  
5 ask them specifically. I mean it wasn't very far.

6 Q It's my understanding you are familiar with  
7 Line Street?

8 A Yes.

9 Q The shooting occurred in front of Apartment  
10 25?

11 A Yes.

12 Q And I think Mr. Young was maybe in the corner  
13 of Nassau and Line?

14 A At some point he ends up at that corner, but I  
15 don't think that's where he was when the actual  
16 shooting occurred.

17 Q All right. Do you know how far towards Nassau  
18 he was?

19 A No, I don't know specifically.

20 Q And did he tell you that he actually saw the  
21 shooting or did he just hear the shooting?

22 A I'd have to go back and review his statement  
23 specifically. I remember him saying that he had saw  
24 Ricky come up and, and get involved with an  
25 encounter, pull out a gun and get involved with an

1 encounter with the victim.

2 And then I believe he said he went around the  
3 corner and asked for help and that's when the  
4 shooting occurred.

5 Q And he said he saw Ricky come up by himself;  
6 is that correct?

7 A Let me look real quick.

8 MS. SHEALY: Your Honor, I'm going to object  
9 to the relevancy.

10 THE COURT: Mr. Grimes, what issue of  
11 consequence of this hearing does it make more or less  
12 probable?

13 MR. GRIMES: It goes to the second prong of  
14 the Neel v Biggers.

15 THE COURT: Which element specifically?

16 MR. GRIMES: The accuracy of the witness's  
17 previous description, the opportunity of the witness  
18 to view the criminal at the time of the crime.

19 Here Detective Osborne testified that Shoreka  
20 Miles and Mr. Young were at the same vantage point,  
21 yet I believe the testimony showed they saw two  
22 different things. One with two people, one with just  
23 one person.

24 THE COURT: Well, I don't know what they saw  
25 but probably in all likelihood that would go to

1 weight, however I will give you some latitude.

2 MR. GRIMES: Thank you, Your Honor.

3 THE COURT: You're welcome. He indicated he  
4 doesn't know how far apart they were, only that they  
5 were on the same side the street.

6 MR. GRIMES: Yes, ma'am. Now I think asked  
7 him if Mr. Young had seen Mr. Deas by himself or was  
8 he with somebody.

9 THE COURT: I'm going to give some latitude,  
10 but this is not a discovery hearing.

11 MR. GRIMES: Thank you, Your Honor.

12 THE COURT: Uh-hum.

13 A What Shrod states is that he sees one person,  
14 little Ricky, approach Mile on foot.

15 Q (By Mr. Grimes) So at this time his account  
16 is different than Ms. Miles' account?

17 A I don't know if it's different.

18 Q She said she saw two people and Mr. Deas on a  
19 bicycle?

20 A That's right.

21 Q Here Mr. Young is saying he saw one person,  
22 Mr. Deas on foot?

23 A Right. I don't know that I backed it up to be  
24 more specific. And what I mean by that is it's  
25 possible that Shrod sees the part where he is already

1 off the bicycle and walking up to Mile, where Shoreka  
2 saw the entire thing.

3 Shrod's attention may have only been drawn to  
4 the last part where he sees little Ricky walking up  
5 to the victim.

6 Q It is my understanding there was a table found  
7 out there with some cocaine out there.

8 A There was cocaine -- well, a wrapper with  
9 cocaine or cocaine residue recovered from the scene.

10 Q Do know if Mr. Young was under the influence  
11 of cocaine at the time he had an opportunity to view  
12 the shooting?

13 A I don't know. I don't know that I asked him.  
14 No, I don't see where I asked him.

15 Q Did Mr. Young even say that he saw Shoreka out  
16 there at the time of the shooting?

17 A I'd have to go back through it real quick.

18 THE COURT: Can you repeat the question, Mr.  
19 Grimes. You were a little mumbled, I couldn't hear  
20 you.

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

22 THE COURT: That's okay.

23 Q (By Mr. Grimes) Did Mr. Young even say that  
24 he saw Shoreka out there at the time of the shooting?

25 A Well, I guess the way I asked it was, who else

1 was outside when the fight between Mile and Little  
2 Ricky first happened? And the answer that Shrod give  
3 was, I think just me was out there -- oh, I'm sorry  
4 -- I think just me, Shoreka was out there later, I'm  
5 not sure if she saw the fight.

6 Q And that would be consistent with Shoreka's  
7 first statement as opposed to her second statement,  
8 correct?

9 MS. SHEALY: Your Honor --

10 MR. GRIMES: I will withdraw that.

11 THE COURT: That's pitting, correct?

12 MR. GRIMES: I think it goes to impeachment.

13 THE COURT: Well, it goes to the veracity of  
14 one statement versus the other.

15 MR. GRIMES: I will withdraw the question,  
16 Your Honor.

17 THE COURT: Uh-hum.

18 MR. GRIMES: May I have one moment, Your  
19 Honor?

20 THE COURT: Uh-hum.

21 Q (By Mr. Grimes) wrap this up, a couple more  
22 questions. At the time Mr. Young -- he told you he  
23 already knew the police had arrested Mr. Deas for  
24 this charge, correct?

25 A Right.

1 Q He knew Mr. Deas was already in jail?

2 A Yes.

3 Q So he knew who to pick out of this lineup,  
4 correct?

5 A I would not say that. He did know that Ricky  
6 had been arrested for the murder, yes.

7 Q If he is looking at 10 years over his head,  
8 best way to get out of it would be do what the police  
9 say, correct?

10 A That's not what I told him. What I told him  
11 was just to tell me what he saw.

12 MR. GRIMES: May I have one moment, Your  
13 Honor?

14 THE COURT: Uh-hum.

15 MR. GRIMES: No further questions, Your Honor.

16 THE COURT: Any redirect?

17 MS. SHEALY: Just a couple. Thank you, Your  
18 Honor.

19 Your Honor, without objection we will mark the  
20 warrant, the warrant that was reference as a Court  
21 Exhibit.

22 THE COURT: Marked without objection.

23 (Whereupon, Court's Exhibit No. 9 is marked  
24 for identification.)

25 REDIRECT EXAMINATION

1 BY MS. SHEALY:

2 Q Detective Osborne, just to clarify one matter.  
3 Regarding the warrant against Shrod Young for  
4 obstruction of justice. Would you please indicate to  
5 the Court what the description of the offense  
6 reflects is the crime?

7 A The description of the offence, which is the  
8 crime, says obstruction of justice, common law.

9 Q And if you would then, please, read the  
10 affidavit to us?

11 A Says, on October the 19th, 2007, Shrod Young  
12 did knowingly -- or did intentionally and knowingly  
13 violate armed robbery law in the city of Charleston  
14 at Line and Hannover.

15 On the above date at 02:30 hours CPD officers  
16 responded to the area of Line and Hannover for a  
17 shooting call for service. Upon arrival officers  
18 located Leroy Simmons, II, who was suffering from  
19 gunshot sounds. Mr. Simmons was transported to MUSC  
20 where he later died as a result of the injuries.

21 Investigator David Osborne met with two known  
22 witnesses who both stated they spoke to Shrod Young  
23 following the shooting. Shrod told both individuals  
24 he witnessed the shooting. He told one witness he  
25 knew the identity of the shooter. IO later spoke to

1 Shrod who told the IO he would not speak to him about  
2 the incident. He further said, I ain't no snitch.

3 The above is true and believable based on  
4 statements by known witnesses, the investigation of  
5 Charleston Police Department, and statements made by  
6 Shrod to the IO.

7 Q So within the body of the affidavit itself  
8 there was never, again, a reference to armed robbery;  
9 is that correct?

10 A No.

11 Q And regarding Shrod Young, did you promise him  
12 anything if he were to cooperate with you at that  
13 point?

14 A No.

15 Q The preliminary hearing where it was a judge  
16 that dismissed the charges?

17 A Well I think it was actually Larry Todd. When  
18 I met with Larry and conferred with him regarding the  
19 facts of the case, he basically informed me that by  
20 the letter of the law he didn't feel that the charge  
21 substantiated his actions, Shrod's actions. So I  
22 didn't object whenever he dismissed it.

23 Q Okay. And you -- the date that you met with  
24 Shrod Young and showed him the lineup was when?

25 A On November the 9th.

1 Q And do you recall that preliminary hearing  
2 being the subsequent January?

3 A January the 9th.

4 MS. SHEALY: I have no further questions.

5 THE COURT: Sir, you may step down. How many  
6 more witnesses do you have on this issue?

7 MS. SHEALY: Two, Your Honor.

8 THE COURT: We are going to take a brief  
9 recess. Should be about 10 minutes. We will resume  
10 at 4:30.

11 (Whereupon, a recess was taken.)

12 THE COURT: Is the State ready to proceed?

13 MS. SHEALY: Yes, Your Honor.

14 THE COURT: Is the defense ready to proceed?

15 MS. FORD: Yes, Your Honor.

16 THE COURT: Please call your next witness.

17 MS. SHEALY: Shrod Young.

18 MR. SHROD YOUNG,  
19 after having first been duly sworn to state the  
20 truth, the whole truth and nothing but the truth,  
21 testified on his oath as follows:

22 THE COURT: You may proceed.

23 MS. SHEALY: Thank you, Your Honor.

24 DIRECT EXAMINATION

25 BY MS. SHEALY:

1 Q Mr. Young, do you recall obviously being  
2 arrested for obstruction of justice?

3 A Yes, ma'am.

4 THE COURT: I'm sorry, sir, I need you to  
5 speak up a little bit for me.

6 THE WITNESS: Yes, ma'am.

7 MS. SHEALY: Thank you.

8 Q (By Ms. Shealy) After that arrest, did you  
9 have the occasion to talk to Detective David Osborne?

10 A Yes, ma'am.

11 Q And while you were talking to him did you  
12 ultimately give a statement?

13 A Yes, ma'am.

14 Q During that process did he also show you a  
15 lineup?

16 A Yes, ma'am.

17 Q Photographic lineup. That's what this hearing  
18 is about is the photographic lineup, okay?

19 Now I need to back up for a moment and ask you  
20 this. On October 19th, 2007 on Line Street, did you  
21 see -- were you present when Leroy Simmons, known as  
22 Miles, was out on the street and ultimately got shot?

23 A No, ma'am.

24 Q Okay. Well what do you mean that you weren't  
25 present?

1 A Like say that again.

2 Q Let me ask it a different way, let me ask you  
3 very simply.

4 A Okay.

5 Q On October 19th, 2007 on Line Street in the  
6 early morning hours of the 19th, had you been outside  
7 while Miles was waiting for a cab?

8 A Yes, ma'am.

9 Q And were you still in that area when Miles got  
10 shot and killed?

11 A At the time when Miles was waiting on the cab  
12 I was standing on Line and Nassau Street. I was  
13 waiting on somebody to come and fix this tire on the  
14 car. After that I saw, um.

15 Q Use names that you are familiar with.

16 A Little Ricky, that's when I saw Little Ricky  
17 come up and talk to Miles. I seen them talking.  
18 They were tussling at the time. And I walked off.  
19 And just stand on the corner. So I thought  
20 everything was cool.

21 So I went and I leave to go around the corner,  
22 I hear the three gunshots. So I ran to go get help.  
23 I was still up around --

24 Q Now let me interrupt you for just a second.  
25 First of all, I'm going to show you which we have

1 identified as Court's Exhibit No. 12, a photograph of  
2 -- tell me whether you can describe what is in this  
3 photograph, the area. Do you recognize that?

4 A That's Line and Nassau.

5 Q Line and Nassau?

6 A Yes, ma'am.

7 Q Okay. I'm going to put it up behind you. Can  
8 you turn around for me and see where I am looking?  
9 Now first of all, could you show me the corner of  
10 Line and Nassau?

11 A This is the corner of Line and Nassau right  
12 here.

13 Q All right. And could you show me the house  
14 where the apartment area where Miles's aunt and  
15 Shoreka Miles lived in?

16 A Shoreka Miles was staying down this way right  
17 here.

18 Q Shrod, if you push this red and point it for  
19 me, that will make it a little bit easier to  
20 understand.

21 First of all, show me the corner of Line and  
22 Nassau.

23 A Line and Nassau is right here.

24 Q I know I'm asking you to do two different  
25 things, so if you can use the pointer and then maybe

1 come back to the microphone or you can talk a little  
2 bit louder, okay?

3 So the corner of Line and Nassau, just point  
4 that out to us.

5 A (Witness so indicates.)

6 Q Okay. And the area where there are some  
7 apartments that Shoreka Miles lived in and Miles's  
8 aunt lived in?

9 A Right up in here.

10 Q Okay. And showing you what has been marked as  
11 Court's Exhibit 10, I ask if you can identify this?

12 A That's Line and Nassau.

13 Q Come back over to the microphone for me.

14 A This is Line and Nassau.

15 Q Okay. And now looking at Court's Exhibit 10,  
16 can you point out that area where the apartments are  
17 in this photograph?

18 A Back between, right there between that pole  
19 right there.

20 Q Okay. And the cup that we see that's on top  
21 of the car, do know whose cup that was?

22 A That was Miles' cup.

23 Q Come back over to the microphone.

24 A That was Miles' cup.

25 Q Now if you would describe for us in looking at

1 this, if you can tell me, first of all when you saw  
2 little Ricky approach Miles, do you remember about  
3 what area that was?

4 A No, ma'am.

5 Q Okay. But you saw him approach him?

6 A Yes, ma'am.

7 Q And did you see Little Ricky with a gun?

8 A Yes, ma'am.

9 Q And you were down at the corner of Nassau and

10 Line --

11 A Yes.

12 Q Excuse me?

13 A Nassau and Line.

14 Q Hoping that it was going to play out is what  
15 you said?

16 A Yes, ma'am.

17 Q After you heard the shots, where did you go?

18 A I ran down Line and Nassau Street and go and  
19 get help.

20 Q Now prior to that night, or that early morning  
21 hours of that Friday, did you know who Little Ricky  
22 was?

23 A I saw the face. I saw the face, but after  
24 when he walked up.

25 Q I'm sorry, let me rephrase it. Before that

1 night and that early morning hours, did you know who  
2 Little Ricky was? Had you seen him in the area?

3 A I know I seen him ride through the  
4 neighborhood on a bike.

5 Q But I'm talking about even days before that,  
6 was that somebody that you knew who it was?

7 A Yes, ma'am.

8 Q And on the night in question, when you saw  
9 Little Ricky walking up, did you have enough time to  
10 realize that was Little Ricky?

11 A Yes, ma'am.

12 Q And did you in fact come back to the scene  
13 after trying to get help?

14 A Yes, ma'am. I seen him laying down on the  
15 ground and I called the ambulance for him.

16 Q You called 911?

17 A Yes, ma'am.

18 Q Now that area of Line Street, if you would  
19 kind of describe the lighting for us. Are there  
20 street lamps, streetlights?

21 A Yes, ma'am.

22 Q And down on the corner is the Family Dollar  
23 and Churches Chicken?

24 A Yes, ma'am.

25 Q Does the Family Dollar have some lighting down

1 there as well?

2 A No, ma'am, not -- no, ma'am.

3 Q Okay. So the lighting was from the  
4 streetlights from what you remember?

5 A Yes, ma'am.

6 Q And in the time that you saw Little Ricky  
7 approach Miles, was it enough time for to you realize  
8 that was Little Ricky?

9 A Yes, ma'am.

10 Q Now on the occasion that you were speaking  
11 with Detective Osborne, do you recall him giving you  
12 this document? I'm showing you what has been  
13 previously marked as Court's Exhibit 4.

14 Do you remember this document? You can take a  
15 minute to read it if you need to.

16 A That's the lineup photo, isn't it?

17 Q Excuse me? Say it one more time?

18 A Put the photo.

19 Q There is also a lineup itself if that's what  
20 you are asking?

21 A Yes, ma'am.

22 Q Which has been marked as Court's Exhibit No.

23 5. Do you remember both of those documents?

24 A Yes, ma'am.

25 Q Okay. And when you were -- when Detective

1 Osborne was going to show you the lineup, did he tell  
2 you in anyway or suggest to you in anyway which one  
3 you should choose?

4 A No, ma'am.

5 Q Did you take your time in looking at the  
6 photographs?

7 A Yes, ma'am.

8 Q And which one was the person that you saw that  
9 evening?

10 A The first person in the picture.

11 Q On the occasion that Detective Osborne showed  
12 you the lineup, did you circle the one that was the  
13 shooter?

14 A Yes, ma'am.

15 Q And did you both print your name and write  
16 your name?

17 A Yes, ma'am.

18 Q Now this individual you've identified as the  
19 shooter, is this also the individual that you knew as  
20 Little Ricky?

21 A Yes, ma'am.

22 Q And when Detective Osborne gave you Court's  
23 Exhibit 4, do you recall signing this as well?

24 A Yes, ma'am.

25 Q And do you recall telling Detective Osborne,

1 that's the one I see, he killed my boy?

2 A Yes, ma'am.

3 Q Whose initials are those?

4 A That's my initials.

5 Q And on the night or early morning hours of  
6 October 19th, had you had enough time to note that  
7 that was Little Ricky that you saw?

8 A Yes, ma'am.

9 Q And when you were in with Detective Osborne,  
10 did he do anything to suggest to you who it was that  
11 he wanted you to choose from the lineup?

12 A No, ma'am.

13 Q When you tell us that you were making your way  
14 down to the corner, were you close enough to the  
15 shooter to be able to see who it was?

16 A No, ma'am -- yes, ma'am.

17 Q Okay. And do you have any question as to who  
18 it was that shot and killed Leroy Simmons?

19 A No, ma'am.

20 MS. SHEALY: I have no further questions, Your  
21 Honor.

22 THE COURT: Any questions of the witness?

23 MR. GRIMES: Yes, ma'am.

24 THE COURT: You may proceed.

25 MR. GRIMES: Thank you, Your Honor.

## CROSS-EXAMINATION

1

2 BY MR. GRIMES:

3

4 Q Good afternoon, Mr. Young.

5

6 A How are you doing, sir?

7

8 Q I'm pretty good. How are you doing?

9

10 A Fine.

11

12 Q If I ask you anything that you don't  
13 understand, just let me know, okay?

14

15 A Repeat that again, sir.

16

17 Q If I ask you anything that you don't  
18 understand, just let me know, all right?

19

20 A Yes, sir.

21

22 Q Now you testified on direct that you saw Mr.  
23 Deas walking down, walking on Line Street?

24

25 A I don't know about Mr. Deas, I know about  
26 Little Ricky.

27

28 Q You saw Little Ricky walking in this area?

29

30 A Yes, sir.

31

32 Q Where was he coming from?

33

34 A I don't have no idea.

35

36 Q What street was he walking on?

37

38 A What I saw of it, I saw him coming from Ducks  
39 Court I think.

40

41 Q How was he coming from Ducks Court?

42

43 A Ducks Court, that's the last part I saw him

44

1 coming from.

2 Q Was he taking Line Street from --

3 A At the time I don't know, sir.

4 Q What street were you on when you saw him?

5 A I was on Line and Nassau.

6 Q And was he walking up Nassau Street or was he  
7 walking up Hanover Street when you saw him?

8 A I saw him walking on Hanover Street.

9 Q And from Nassau to Hanover Street, is that at  
10 least one block, correct?

11 A I think, yes, sir.

12 Q Is it fair to say at least 500 feet?

13 A I don't know at the time, sir.

14 Q Sir?

15 A Can you repeat that again?

16 Q Would you say going from Nassau to Hanover is  
17 at least 500 feet, or is it a little bit more or a  
18 little bit less?

19 A Little bit less.

20 Q How much less would you say?

21 A Don't really know.

22 Q Okay. So you saw Little Ricky walking up  
23 Hanover Street and you were at Nassau Street; is that  
24 fair to say?

25 A I guess that I saw him coming up Hanover

1 Street.

2 Q And what did you do after you saw Little  
3 Ricky?

4 A I was just going to get help.

5 Q So when he was on Hanover Street you saw  
6 Little Ricky and you went to go get help?

7 Q Where are you coming from with the question  
8 you asked me about? You got me lost.

9 Q I'm sorry. You see Little Ricky walking up  
10 Hanover street, correct?

11 A Okay.

12 Q And that runs sort of parallel to Nassau,  
13 correct?

14 A Okay.

15 Q And Line Street intersects both of those  
16 streets, correct?

17 A Is that before, you talking about before the  
18 incident happened or before --

19 Q Yes, sir, before the independent happened?

20 A Okay. Well before the incident happened I  
21 wasn't right -- well, at the time we and Miles went  
22 to McDonald's that particular night.

23 Q Can you get a marker here. Okay. I'm going  
24 to turn around. All right, let's say this is Meeting  
25 Street. And Churches would be right here?

1 A Uh-hum.

2 Q And this would be Line Street right here. Is  
3 that fair to say?

4 A Yeah.

5 Q And this would be Nassau Street?

6 A Nassau Street would be the first street.

7 Q And this would be Hanover over here?

8 A Yes, sir.

9 Q And the street with Miles at about  
10 would that be about right here?

11 A Somewhere in that area.

12 Q Now from what you testified, is it fair to say  
13 you said you were standing at Line and Nassau?

14 A Line and Nassau.

15 Q About right here?

16 A Uh-hum. From the side

17 Q On this side? You were over here. And you  
18 Little Ricky walking up Hanover Street?

19 A Yes, sir.

20 Q And you said this is about 500 feet or a  
21 little bit less than 500 feet?

22 A Little less.

23 Q Let's say 400 feet. And it's pretty dark out  
24 there at this time, correct?

25 A Yes, sir.

1 Q There were no streetlights out there, are  
2 there?

3 A No, sir.

4 Q No streetlights, and you're 400 feet away, and  
5 you saw Little Ricky walking up?

6 A Yes, sir.

7 Q Okay. And now when you saw him walking up,  
8 what did you do next?

9 A What did I do next?

10 Q You. Did you start hanging out here a little  
11 bit more or did you go --

12 A At the time I was sitting right there. At the  
13 time I was sitting right there, roll up a Black  
14 Mouth. I was starting to roll up a blunt to smoke  
15 it. So I couldn't really pay attention to which way  
16 he really came from.

17 Q How many blunts did you smoke that night?

18 A I smoked one blunt.

19 Q Anything in it besides marijuana?

20 A No, sir.

21 Q Didn't have it laced with cocaine or anything?

22 A No, sir.

23 Q And there was a little bit of cocaine over  
24 here, correct?

25 A I don't know about that, sir.

1 Q Okay. So you were smoking a Black Mouth,  
2 getting ready to smoke a blunt and had already smoked  
3 one?

4 A Yeah.

5 Q And what happened after you gave -- while you  
6 were smoking the Black Mouth, what did Little Ricky  
7 do?

8 A I saw Little Rick come up and talk to -- I saw  
9 Little Rick roll up and talk to Miles. I thought --  
10 I see who's talking so I just leave it alone, you  
11 know what I'm saying, at the point of that time.

12 After that point at the time I said I thought  
13 everything was okay so I was just sitting right there  
14 still smoking a Black Mouth.

15 Q So I guess Little Ricky sort of came down like  
16 this?

17 A Up there, yes.

18 Q And while he was doing that you were just out  
19 smoking a Black Mouth?

20 A Apparently I guess.

21 Q All right. And now you say he rolled up, was  
22 he on a bicycle?

23 A I cannot tell you that, can't really tell you  
24 was he walking or was he driving, sir.

25 Q Was he with anybody or was he by himself?

1 A No, sir, he was by himself.

2 Q All right. And where was Shoreka Miles at  
3 this time?

4 A I -- she was not out there, she wasn't even  
5 out there. I was out there by myself, sir.

6 Q So there was no one else on Line Street in  
7 this block right here?

8 A No, sir.

9 Q Just you and Little Ricky?

10 A Just me, Little Ricky and Miles.

11 Q I'm sorry, Miles. And so I think according to  
12 your testimony when he rolled up he started arguing  
13 and tussling?

14 A Yes, sir.

15 Q And Little Ricky, according to you, pulled a  
16 gun out and shot Miles?

17 A I went around the corner, that's when I heard  
18 the gunshots.

19 Q Which corner did you go around?

20 A I went down Nassau.

21 Q This way?

22 A That way. I'm going to the left.

23 Q So you went down this way?

24 A That's the way I went to go get help.

25 Q Did you actually see Little Ricky shoot Miles?

1 A All I heard was the gunshots, sir.

2 Q So you saw the gun, you saw the fighting, and  
3 I think on direct testimony you said you thought  
4 everything was cool so you walked off?

5 A I walked off. Well before that happened I  
6 thought everything was cool. And then I was standing  
7 there. And then after that I went and I was standing  
8 on the corner and I walked off.

9 And then when I walked off on the corner I'm  
10 going and I thought everything was cool then so I  
11 just leave them at that.

12 Q When did you see Little Ricky with a gun?

13 A When he was talking.

14 Q And you saw him with a gun talking, you  
15 thought everything was cool and you just walked off?

16 A No, sir.

17 Q Did you see them arguing before you walked  
18 off?

19 A Saw them arguing.

20 Q You still thought everything was cool and you  
21 walked off?

22 A Well the gun part, you got me mixed up on the  
23 stories you are talking, man. Like break it down and  
24 tell me the right way.

25 Q Just asking you to tell the truth. I'm not

1 trying to make shit up.

2 So from what I understand you said Little  
3 Ricky was walking down and then you thought  
4 everything was cool and you walked down Nassau?

5 A That's when I walked down Nassau is when I  
6 heard gunshots.

7 Q When did you start walking down Nassau Street?

8 A Before the gunshots went off, that's when I  
9 went to go get help and that when I hear the three  
10 shots.

11 Q Did you walk down Nassau Street before or  
12 after you saw the gun?

13 A That was after.

14 Q Did you walk down Nassau Street before or  
15 after they were arguing?

16 A I walked down the street after they was  
17 fussing.

18 Q So Little Ricky had a gun, there was fussing,  
19 your friend Miles, you walked down Nassau because you  
20 thought everything was cool?

21 A I guess so.

22 Q Okay. What was Little Ricky wearing that  
23 night?

24 A All black.

25 Q All, sneakers black?

1 A I didn't pay attention to the shoes.

2 Q So black shirt?

3 A Black shirt, and black pants.

4 Q Was it pants or shorts?

5 A I can't remember.

6 Q If he was wearing shorts would he have had  
7 black socks on or no socks?

8 A I didn't pay no attention to none of that  
9 part, sir.

10 Q What part were you paying attention to?

11 A Just to the top part, not to the bottom part.

12 Q So you saw him with a black shirt?

13 A Yes, sir.

14 Q Anything unique about the black shirt?

15 A No, sir.

16 Q And you never saw Shoreka Miles out there  
17 until after you came back for help?

18 A Yes, sir.

19 Q Let me ask you a little bit about when you  
20 went to talk to Detective Osborne. He said he went  
21 to the jail and picked you up, right?

22 A Apparently, yes, that's right.

23 Q Because he had charged you with obstruction of  
24 justice?

25 A That's right.

1 Q Now when you were talking to him, did he talk  
2 about what might happen to this charge?

3 A What do you mean by that?

4 Q That if you gave a statement would he drop the  
5 charge on you if you cooperated with him?

6 A No, I never asked him that.

7 Q Were you hoping that might happen?

8 A No, sir.

9 Q Okay. Did he tell you how much time that  
10 charge carries?

11 A No, sir.

12 Q Did he tell you that you might be implicated  
13 for an armed robbery if you did not cooperate?

14 A Yes, sir.

15 Q He did?

16 A No, he told me that -- he told me that this is  
17 a serious charge, and I ain't get charged for others  
18 I was charged for this if I don't cooperate the  
19 right.

20 Q I'm sorry, what was that last part you said?

21 A Like I will get charged with it, like I have  
22 the same kind of charge he had, that's the way I'm  
23 thinking, he said to me but I really wasn't paying  
24 attention to what he was saying.

25 Q The same kind of charge that Little Ricky had?

1 A Something like that, yes, sir.

2 Q So he implied he might charge you with murder  
3 if you didn't --

4 A I thought that was what he was going to charge  
5 me with, I'm not saying that he said that.

6 Q That's what you thought?

7 A Yeah, that's what I thought.

8 Q Based upon your interaction with Detective  
9 Osborne?

10 A Yes, sir.

11 Q And that if you helped him out he would make  
12 sure that you weren't charged with murder?

13 A Yes, sir.

14 Q You never have been charged with murder, have  
15 you?

16 A No, sir.

17 Q And you picked out the person he wanted you to  
18 pick out, didn't you?

19 A Yes, sir.

20 Q At the time you were arrested you were -- or  
21 at the time you did this lineup, you already knew  
22 that Little Ricky had been arrested, correct?

23 A Yes, sir.

24 Q And you knew who Detective Osborne wanted you  
25 to pick out, correct?

1 A Yes, sir.

2 Q You did what he asked you to, right?

3 A Yes, sir.

4 MR. GRIMES: May I have one moment, please.

5 THE COURT: Uh-hum.

6 MR. GRIMES: Thank you, Your Honor, I have no  
7 further questions.

8 THE COURT: Any redirect of the witness?

9 MS. SHEALY: Yes, Your Honor.

10 REDIRECT EXAMINATION

11 BY MS. SHEALY:

12 Q Shrod, Mr. Grimes asked you whether you did  
13 what Mr. Osborne wanted you to do. Do you remember  
14 that question?

15 A Yes, ma'am.

16 Q Okay. Now Detective Osborne didn't tell you  
17 he wanted you to choose Little Ricky, did he?

18 A No, ma'am.

19 Q And in fact before you got arrested Detective  
20 Osborne tried to get in touch with you several times;  
21 is that correct?

22 A Yes, ma'am.

23 Q And he believed that you knew who the shooter  
24 was; is that correct?

25 A Yes, ma'am.

1 Q And in fact you had told Leroy Simmons father  
2 that you had seen some of what had happened; is that  
3 correct?

4 A Yes, ma'am.

5 Q Okay. So you knew that Detective Osborne  
6 thought you were a witness; is that correct?

7 A Yes, ma'am.

8 Q Now when you said that in your mind you were  
9 thinking that you might get a more serious charge,  
10 that was something you feared; is that correct?

11 A Yes, ma'am.

12 Q Did you lie when you said you saw Little Ricky  
13 with the gun that night?

14 A No, ma'am.

15 Q Who did you see with the gun that night?

16 A Little Ricky.

17 Q Did you see anyone else out there who could  
18 have shot Leroy Simmons other than Little Ricky?

19 A No, ma'am.

20 Q And when you've indicated that at some point  
21 you see Little Ricky over on the Hanover Street area,  
22 when is that?

23 A That was the night before it happened.

24 Q So let's look back at these corners if we can;  
25 if this is Line, Churches, Family Dollar. And this

1 is the corner of Line and Nassau. Were you on the  
2 corner across the street on Nassau, or when you said  
3 across the street is that what you meant?

4 A I was across the street.

5 Q Here?

6 A Yes, ma'am.

7 Q Okay. And you then saw Little Ricky come all  
8 the way down Line, is that what you're saying, but  
9 you were smoking your blunt?

10 A Yes. Apparently that's what I think I seen.

11 Q Okay. When you say that's what you think you  
12 seen, do you not remember specifically?

13 A No, ma'am, not really because I was all high  
14 up.

15 Q Okay. But when you're coming down Line Street  
16 in the area that you've told us there are  
17 streetlights, did you have enough time to see who it  
18 was that was approaching Miles?

19 A I saw, like when he gets close up, him and  
20 Miles was tussling.

21 Q Okay. And do you feel like the lighting was  
22 good enough for you to see who that was?

23 A Yes, ma'am.

24 Q Do you have any question as to who you saw?

25 A No, ma'am.

1 Q And even though you had had a blunt, did that  
2 affect your ability to --

3 A My blurry eyes because my eyes was blurry.

4 Q Okay. But did that affect your ability to see  
5 who it was that was down there with Miles? Could you  
6 see who was down there with Miles?

7 A Yes, ma'am.

8 Q Okay. And do you or do you not see Little  
9 Ricky with a gun?

10 A Apparently, yes, ma'am.

11 Q Okay. And when they were tussling, when you  
12 say they were tussling, who was tussling?

13 A Miles and Little Ricky.

14 Q Now in this area of Line Street, about right  
15 here, across from where the apartments are, is there  
16 a little area where there is a tent? Like a little  
17 awning where people kind of gather underneath?

18 A I cannot tell you because it's so dark out  
19 there.

20 Q Okay. So you don't know who might have been  
21 sitting back over there when this happened?

22 A No, ma'am.

23 Q You know you saw Shoreka right after this  
24 happened; is that correct?

25 A Yes, ma'am.

1 Q So you don't know where Shoreka was during the  
2 time of the shooting?

3 A No, ma'am.

4 Q We need to understand whether or not you are  
5 saying this for any reason other than it's the truth.  
6 Is it the truth that you saw Little Ricky out there?

7 A Yes, ma'am, it's the truth.

8 Q And did anything you feared from Detective  
9 Osborne affect your pointing to the person who was  
10 the shooter?

11 A No, ma'am.

12 Q Who did you see shoot Leroy Simmons?

13 A Little Ricky.

14 MS. SHEALY: I have no further questions, Your  
15 Honor.

16 THE COURT: Sir, you may step down.

17 MS. GRIMES: May I ask a few questions on  
18 redirect?

19 THE COURT: You mean recross.

20 MR. GRIMES: Yes, ma'am, recross.

21 THE COURT: I will give you some latitude.  
22 You may proceed.

23 MR. GRIMES: Thank you.

24 RE-CROSS-EXAMINATION

25 BY MR. GRIMES:

1 Q Ms. Shealy asked you a couple questions at the  
2 end about if you have no other reason besides to tell  
3 the truth about testifying against Little Ricky,  
4 correct?

5 A Repeat that again sir.

6 Q Ms. Shealy asked you, I think, a couple  
7 questions right at the end of her redirect that there  
8 are not other charges, no charges pending against you  
9 now, that you have no other reason except to tell the  
10 truth about saying it was Little Ricky who shot the  
11 victim in this case?

12 A Yes, sir.

13 Q Are you aware that they could bring back this  
14 obstruction of justice charge against you if they  
15 want to?

16 A Yes, ma'am -- I mean yes, sir.

17 Q And I think --

18 THE COURT: I don't want to hear any comments  
19 from the gallery or I will clear it.

20 You may continue, Mr. Grimes.

21 Q (By Mr. Grimes) And I was little confused  
22 about how high you were that night. On redirect you  
23 said you were really high. And then you said your  
24 eyes were blurry, and then you said but it did not  
25 affect your ability to see what happened. How high

1 were you that night?

2 A I was like, like 10, 10 high.

3 Q 10 percent high? And Ms. Shealy asked you a  
4 couple questions about this possible tent on Line  
5 Street, or right off Line Street. Do you remember  
6 those questions?

7 A No, sir, I don't know nothing about the tent.

8 Q But you remember her asking those questions?

9 A Yes, sir.

10 Q When I asked you a couple questions on cross  
11 you said it was just you, Little Ricky and Miles who  
12 were out there?

13 A Yes, sir. At the time, yes, sir.

14 Q So you did not see a tent back there?

15 A No, sir.

16 Q You did not see anyone else out there?

17 A No, sir.

18 Q Didn't hear nobody?

19 A No, sir.

20 Q Didn't hear them laughing?

21 A No, sir.

22 Q Joking?

23 A No, sir.

24 Q Anyone drinking or carrying on?

25 A No, sir.

1 MR. GRIMES: May I have one moment, Your  
2 Honor?

3 THE COURT: Uh-hum.

4 MR. GRIMES: Thank you, Your Honor.

5 THE COURT: Anything further from the State?

6 MS. SHEALY: Nothing further from this  
7 witness.

8 Your Honor, if the Court wouldn't mind  
9 reminding Mr. Young he is still under subpoena.

10 THE COURT: Sir, you are excused for the  
11 purposes of this hearing, but I would remind you that  
12 you are still subject to your subpoena. So we are  
13 going to call you back to testify, okay?

14 THE WITNESS: Yes, ma'am.

15 THE COURT: Thank you, sir.

16 MR. GRIMES: Your Honor, can you also remind  
17 him he is still sequestered and he cannot talk to the  
18 witnesses about his testimony.

19 THE COURT: Sir, please don't discuss your  
20 testimony with anyone.

21 THE WITNESS: Yes, ma'am.

22 THE COURT: Thank you, sir, have a good  
23 evening.

24 How long is the next witness going to take?

25 MS. SHEALY: How long was this?

1 THE COURT: It was about 40 minutes.

2 MS. SHEALY: Probably similar.

3 THE COURT: I think we should break for the  
4 evening. We will resume in the morning at 9:30.  
5 During the break remind your witnesses that they're  
6 not to discuss their testimony with anyone.

7 I assume that is your last Biggers witness?

8 MS. SHEALY: Yes, the next one will be the  
9 last.

10 THE COURT: See you all in the morning.

11 MR. GRIMES: Thank you, Your Honor.

12 MS. SHEALY: Thank you, Judge.

13 (Whereupon, the proceedings in this matter  
14 before the Court were adjourned for the evening.)

15 \* \* \* \* \*

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1 THE COURT: Is the State ready to proceed?

2 MS. SHEALY: Yes, Your Honor.

3 THE COURT: Is the defense ready to proceed?

4 MS. FORD: Yes, Your Honor.

5 THE COURT: You may proceed. Bring in the  
6 defendant. You may call your next witness, Ms.  
7 Shealy.

8 MS. SHEALY: Shoreka Miles.

9 MS. SHOREKA MILES,  
10 after having first been duly sworn to state the  
11 truth, the whole truth and nothing but the truth,  
12 testified on her oath as follows:

13 THE COURT: You may proceed, Ms. Shealy.

14 MS. SHEALY: Thank you, Your Honor.

15 DIRECT EXAMINATION

16 BY MS. SHEALY:

17 Q Ms. Miles the purpose of this hearing is just  
18 to talk about the lineup procedure, okay?

19 A Yes, ma'am.

20 Q First of all, would you tell the Court back in  
21 October of 2007, where were you living?

22 A 2007 I was living on Line Street at the time.

23 Q Okay. And were you living in a house or in an  
24 apartment?

25 A In an apartment.

1 Q And did you know a young man named Leroy  
2 Simmons that people called Miles?

3 A Yes, ma'am.

4 Q Were you in the area that evening when Miles  
5 got shot?

6 A Yes, ma'am.

7 Q Would you tell the Court first, if you would,  
8 please, had you had anything to drink that was  
9 alcoholic or any type of drugs that evening?

10 A I had one beer earlier that day.

11 Q Okay. And in the early morning hours of the  
12 19th, that's Friday?

13 A Yes, ma'am.

14 Q Would you tell the Court, please, where you  
15 were when you saw what you saw?

16 A I was outside across the street from my  
17 apartment sitting underneath a tent.

18 Q And showing you what has been previously  
19 marked as Court's Exhibit 12, can you see that  
20 picture?

21 A Yes, ma'am.

22 Q Okay. I'm going to get you to use this  
23 pointer and push the red button when I ask you where  
24 certain things are. I want to try it one time and  
25 point it towards the screen?

1           If you would show us where your apartment  
2 building was?

3           A     Back there.

4           Q     And that stop sign that is at the end of the  
5 street, that's the corner of what?

6           A     I think it's Nassau.

7           Q     Okay. Showing you Court's Exhibit No. 8, can  
8 you describe for us, point to where your apartment  
9 would be in this photograph?

10          A     Back up here. Right in the back.

11          Q     Okay. And when you say you were sitting in a  
12 tent area, where was that?

13          A     Over here.

14          Q     You are going to need to speak up for us.

15          A     It was right over here.

16          Q     And when you say a tent, what kind of tent are  
17 you talking about? What did it look like?

18          A     Type tent you probably would use at like a  
19 funeral or something like that.

20          Q     Okay. And showing you Court's Exhibit 11, can  
21 you describe for us first where was the tent on  
22 October 19th, 2007?

23          A     Right there.

24          Q     Okay. And where was your apartment in this  
25 picture?

1 A Back this way. Across the street this way.

2 Q Okay. Had you been sitting outside earlier in  
3 the evening?

4 A Yes, ma'am.

5 Q And at the time that you saw what happened,  
6 can you please describe for us where you saw Miles?

7 A You mean when it happened?

8 Q Well, before it happened. At what point did  
9 you see Miles come outside?

10 A I can't remember.

11 Q Okay. Why don't you do this, why don't you  
12 describe for us what happened when you first saw  
13 Miles before the incident. Where were you and what  
14 happened?

15 A I was across the street from my apartment  
16 sitting underneath the tent along with Fish, she was  
17 outside of the tent talking on her cell phone. Miles  
18 came outside and sat on Fish's car and he was talking  
19 on his cell phone also but he was waiting for a cab.

20 Q Okay. Now let me interrupt you there for just  
21 a second. Court's Exhibit 8, can you show us about  
22 in the area where you say he was sitting waiting for  
23 the cab?

24 A Right there.

25 Q Okay. And what -- tell me first about the

1 lighting in that area. Are you able to see what's  
2 going on in the street and on the sidewalks?

3 A Yes, ma'am.

4 Q You saw him sitting there, then what happened?

5 A I noticed two guys coming up the street which  
6 was coming up this way on the bicycle. The guy that  
7 was on the handlebars, he jumped off of the  
8 handlebars and started fighting with Miles. For what  
9 reason, I don't know why, but they were fighting.

10 All the sudden Miles ended up on the ground  
11 and the next thing I noticed this guy pulled out a  
12 gun and made three shots, jump back on the handlebars  
13 and left. At that point Miles did manage to get up,  
14 I guess he was trying to make it to his aunt's  
15 apartment which is her apartment is downstairs from  
16 mine.

17 He didn't make it, he ended falling down on  
18 the sidewalk. At this time I ran from under the  
19 tent, I had a black bandana on, I noticed he was  
20 holding his side, so I took the bandana off and just  
21 applied pressure to his side and I got Fish to call  
22 the police.

23 Q Okay. Now show us again what area the fight  
24 happened in?

25 A Right here.

1 Q And where was the area where the shooting  
2 occurred?

3 A Right here in this same spot.

4 Q And showing you again Court's Exhibit 11, can  
5 you show us where Miles ended up. You said he got up  
6 and was able to get --

7 A Right there, that's where he fell at.

8 Q Okay. Now when you saw the guys coming up on  
9 the bicycle, had you seen the guy on the handlebars  
10 before?

11 A I saw him earlier that day.

12 Q And I am talking about, now I'm talking about  
13 prior to that day. Had you seen him in that area  
14 before that day?

15 A Yes, ma'am.

16 Q And what name did you know him by?

17 A Little Ricky.

18 Q And further down the street like on Nassau, is  
19 there a convenience store called Nights?

20 A Yes, ma'am.

21 Q When you say that you had seen Little Ricky  
22 before, kind of describe that for us? What is an  
23 example of when you would have seen him?

24 A Because I go to the convenience store a lot so  
25 I would see him with other fellows always on the

1 corner and stuff. But I would never say anything to  
2 him. He wasn't the type of person that I would talk  
3 to.

4 Q Okay.

5 A So just by me going to the store, back and  
6 forth, that's how I knew who he was.

7 Q And that evening, or earlier the day before on  
8 the 18th, you were getting ready to tell us had you  
9 seen Little Ricky sometime that day?

10 A When the incident happened?

11 Q Uh-hum?

12 A Yes, ma'am.

13 Q Describe that for me?

14 A I went to the store to buy a pack of  
15 cigarettes and as I was coming back he asked me for  
16 one so I gave him one. From then that's it.

17 Q Now when you were watching what happened, did  
18 you stay under the tent area the whole time?

19 A Yes, ma'am.

20 Q And when you told us that it was Little Ricky,  
21 you saw them first at what point? He and the other  
22 person were doing what?

23 A They were coming up on the bicycle. But like  
24 I said, the way the lightings are on Line Street you  
25 can see pretty much everything. But the way I was

1 sitting there is no way nobody could have seen me.

2 Q Now did you later go and talk to Detective  
3 Osborne at the police department?

4 A Yes, ma'am.

5 Q And before talking to Detective Osborne at the  
6 police department that night, had you ever admitted  
7 to law enforcement that you saw the shooting?

8 A No, ma'am, I didn't.

9 Q And what changed on the evening that you went  
10 to go talk to Detective Osborne?

11 A I just thought I had to tell the truth really.  
12 I just felt his family deserved to know the truth. I  
13 just felt I had to do it.

14 Q Okay. When you went up to see Detective  
15 Osborne, did he ask you a series of questions?

16 A Not really, no, ma'am. He just pretty much  
17 asked me what happened and what I saw and that's  
18 pretty much it.

19 Q And while you were there, did you in fact give  
20 a statement to Detective Osborne?

21 A Yes, ma'am.

22 Q Do you recall him showing you some  
23 photographs?

24 A Yes, ma'am.

25 Q And prior to showing you some photographs, let

1 me ask you if you can identify a document, Exhibit  
2 No. 2. Court's Exhibit No. 2. Do you recall that  
3 document?

4 A Yes, ma'am.

5 Q Okay. And take a minute to look at the  
6 language at the top of the page. Do you remember  
7 Detective Osborne reading that to you?

8 A Yes, ma'am.

9 Q Before he showed you the photographs or right  
10 after he showed you the photographs, what did he tell  
11 you to do?

12 A He didn't tell me anything. He just brought  
13 me the lineup and he told me to take my time, and  
14 that's what I did I took my time, and I realized  
15 number one was the one.

16 Q And when you say you took your time, can you  
17 explain to the Judge whether or not you were taking  
18 this seriously?

19 A Yes, ma'am. I was taking this very seriously.

20 Q And which photograph on the lineup did you  
21 identify as the shooter?

22 A Number one.

23 Q And how did you mark it on the document itself  
24 to show that was the person?

25 A I circled it and signed my name.

1 Q Did Detective Osborne do anything to you to  
2 tell you which one to circle?

3 A Oh, no, ma'am.

4 MS. SHEALY: Beg the Court's indulgence just  
5 one moment.

6 I have no further questions, Your Honor.

7 THE COURT: Any questions for the witness?

8 MS. FORD: Yes, Your Honor.

9 THE COURT: You may proceed.

10 MS. FORD: Thank you.

11 CROSS-EXAMINATION

12 BY MS. FORD:

13 Q Hi, Ms. Miles, my name is Mary Ford.

14 A Hi.

15 Q Ms. Miles so you say you were under the tent?

16 A Yes, ma'am.

17 Q And what were you doing out there?

18 A I was always just sit outside under the tent.

19 I didn't have a reason to be out there, it's just  
20 something I always do.

21 Q And you weren't by yourself, though, right?

22 A No, ma'am.

23 Q Fish was there with you?

24 A Yes, ma'am.

25 Q Had you all been talking?

1 A No because he had been on his cell phone.

2 Q Did he see you, though?

3 A Yes, ma'am.

4 Q And no one else was out there?

5 A No, ma'am.

6 Q Now you are saying today that you had seen the  
7 person you know as Little Ricky?

8 A Yes, ma'am.

9 Q You had seen him before that day?

10 A Yes, ma'am.

11 Q We know you saw him on the 18th at the shop,  
12 correct?

13 A Uh-hum.

14 Q But are you saying you saw him actually before  
15 that day as well?

16 A I'd seen him before that day as well.

17 Q And you knew of his name?

18 A Yes, ma'am.

19 Q But you did not tell Detective Osborne that  
20 you knew the name of the person, correct?

21 A I didn't.

22 Q So when you saw the person earlier in the day,  
23 we are talking about the same day of the shooting,  
24 and the shooting was on the 19th, early morning  
25 hours, right?

1 A Yes, ma'am.

2 Q We are talking about the night of the 18th.  
3 You saw him around 10 o'clock in the evening at the  
4 store?

5 A No, ma'am, that was earlier that day when I  
6 saw him. I saw him earlier that day when I was  
7 coming from the store.

8 Q Okay. Was this in the daylight hours?

9 A Yes, ma'am.

10 Q And he was wearing the same thing that he was  
11 wearing when you saw the shooting?

12 A He had on a T-shirt when I saw him earlier  
13 that day, but that night he had on a hoodie.

14 Q What color was the hoodie?

15 A Black.

16 Q What color was the T-shirt?

17 A Back.

18 Q So he was not wearing the same thing?

19 A Maybe he had the T-shirt on under his hoodie,  
20 I'm not sure.

21 Q And you are saying today that you gave him a  
22 cigarette?

23 A Uh-hum, yes, ma'am.

24 Q Didn't you tell Detective Osborne that you  
25 didn't give him a cigarette?

1 A That I didn't? When.

2 Q When you gave Detective Osborn -- when you  
3 talked to him, you told him what the shooter looked  
4 like, right?

5 A Yes, ma'am.

6 Q And you said he was about 20 or so, right?

7 A Yes, ma'am.

8 Q And he was thin?

9 A Yes, ma'am.

10 Q And you said he was pretty short, about 5'3"?

11 A Yeah.

12 Q And you said he had a light complexion?

13 A Yes, ma'am.

14 Q And you said that he had dreads almost to his  
15 shoulder, right?

16 A Yes, ma'am.

17 Q I'm showing you what has been marked as  
18 Court's Exhibit No. 1.

19 A Yes, ma'am.

20 Q And so this is the lineup that Detective  
21 Osborne showed you?

22 A Yes, ma'am.

23 Q And would you say it has a pink tint to the  
24 pictures?

25 A Yes, ma'am.

1 Q Let's look at the second man on the top row?

2 A Uh-hum.

3 Q He has long dreads, wouldn't you say?

4 A Yes, ma'am.

5 Q And the two boys on the end on both lines,  
6 this one and this one, they have pretty short hair,  
7 right?

8 A Yes, ma'am.

9 Q And the middle gentleman on the bottom row,  
10 his hair is fairly short too, right?

11 A Yes, ma'am.

12 Q So the two boys who have kind of  
13 shoulder-length dreads would be the top, or the first  
14 picture on the left, correct?

15 A Yes, ma'am.

16 Q And the bottom picture on the left, correct?

17 A Yes, ma'am.

18 Q And looking at those two pictures, the bottom  
19 gentleman looks bigger, does he not?

20 A Yes, ma'am.

21 Q So number one looks like he is the smallest,  
22 correct?

23 A That is correct.

24 Q And number one is the gentleman or the one on  
25 the top left is the one you picked out, correct?

1 A Yes, ma'am.

2 Q The night of the shooting, were you talking to  
3 Miles at all?

4 A We said hi or whatever. But he was on his  
5 cell phone most of the time because he was waiting on  
6 his cab.

7 Q So two boys road up on a bike, correct?

8 A Yes, ma'am.

9 Q Coming from the direction of Hanover Street,  
10 right?

11 A Yes, ma'am.

12 Q Did you get a look at the second boy?

13 A No.

14 Q Did the shooter that you saw, did he ever look  
15 at you?

16 A If he did I don't know because everything  
17 happened so fast. I'm not sure if he looked at me or  
18 not.

19 Q There is no eye contact?

20 A No, ma'am. The way I was sitting under the  
21 tent it would be hard for him to see me.

22 Q And how is that? How would it be hard for him  
23 to see you?

24 A Because under the tent is dark.

25 Q So the only reason it would be hard for him to

1. see you is just because it's dark?

2. A Yes, ma'am.

3. Q And this tent, I don't know if there is a  
4. picture of it, this tent isn't a closed tent, is it?

5. A No, ma'am.

6. Q So would you say it's pretty much an awning,  
7. just a top?

8. A Yes, ma'am.

9. Q With poles?

10. A Yes, ma'am.

11. Q So there is no door or anything, right?

12. A No, ma'am.

13. Q And it's not covered in any way except for the  
14. top, right?

15. A Yes, ma'am.

16. Q But you are just saying it would have been too  
17. dark for anyone to see you?

18. A Yes, ma'am.

19. Q So you didn't have a light inside the tent?

20. A No, ma'am.

21. Q So when you saw the two boys on the bike, did  
22. you ever walk inside the tent or were you in the tent  
23. the whole time?

24. A I was in the tent the whole time.

25. Q The shooter never spoke to you, did he?

1 A No, ma'am.

2 Q It was dark outside, wasn't it?

3 A Yes, ma'am.

4 Q The weather was good, wasn't it?

5 A Oh, yes, ma'am.

6 Q And the shooter had dreads almost down to his  
7 shoulders, right?

8 A Yes, ma'am.

9 Q Was his hair in his way, in his face in  
10 any way?

11 A No, ma'am.

12 Q You said he was wearing a hoodie, correct?

13 A Yes, ma'am.

14 Q Was the hood up?

15 A No.

16 Q You never mentioned a hoodie to Detective  
17 Osborne, did you?

18 A I never mentioned a hoodie?

19 Q Yes.

20 A No, ma'am.

21 Q And how long did the whole incident happen  
22 from the time you saw the two boys on the bicycle  
23 until the time when they left? Do you know how long  
24 that was?

25 A It happened long enough for me to see them

1 fight, and for Miles to get shoot.

2 Q Did it all go down in about a minute or 30  
3 seconds?

4 A I can't answer that. I just know it happened  
5 long enough for me to see what I saw.

6 Q So you don't recall?

7 A The time being, no, ma'am.

8 Q The shooter, did you ever see his face  
9 directly, or did you just see his side profile?

10 A I saw his face directly because of where he  
11 was. But I couldn't make out the second person.

12 Q But he never faced you?

13 A No, he couldn't see me.

14 Q Okay. But did he turn his head at all?

15 A To face me?

16 Q Yes.

17 A No, ma'am.

18 MS. FORD: Beg the Court's indulgence.

19 THE COURT: Yes, ma'am.

20 Q (By Ms. Ford) Can you give us a description  
21 of the hoodie that the shooter was wearing?

22 A A black hoodie.

23 Q Was there anything special about it?

24 A No, ma'am.

25 Q What kind of pants was he wearing?

1 A Black Dickeys.

2 Q How about the shoes?

3 A I couldn't make out the shoes.

4 Q Were they black?

5 A I couldn't make it out.

6 Q They didn't stand out as white or anything  
7 though?

8 A (Negative head shake).

9 Q And just by a hoodie, did it zip up or was it  
10 a pullover?

11 A Pullover.

12 Q Was there a pocket on the front?

13 A I don't know.

14 Q Was it big, did it seem bigger like too big  
15 for the gentleman?

16 A Too big, yes, ma'am.

17 Q And again the hood was pulled down correctly?

18 A Yes, ma'am.

19 Q Was this a big sweatshirt?

20 A It was a hoodie.

21 Q Was it a thicker hoodie or was it thin?

22 MS. SHEALY: Your Honor, I'm going to object  
23 to relevancy.

24 THE COURT: It has relevance as regards to  
25 prior description. It's been asked and answered

1 three times.

2 MS. FORD: Yes, ma'am.

3 THE COURT: She's answered the question.

4 MS. FORD: Yes, ma'am.

5 Q (By Ms. Ford) You said you only had one beer  
6 that night?

7 A Earlier that day.

8 Q So do you know when that was, do you recall?

9 A No, ma'am.

10 Q And the police found some cocaine outside, do  
11 know where that came from?

12 A No, ma'am, I don't.

13 Q So you had not been doing cocaine?

14 A No, ma'am.

15 Q Was Fish doing cocaine?

16 A No, ma'am.

17 MS. FORD: That's all, Your Honor.

18 THE COURT: Any redirect of the witness?

19 MS. SHEALY: No, Your Honor.

20 THE COURT: Ma'am, you may step down. Please  
21 be advised you will be recalled to testify. Please  
22 do not discuss your testimony with anyone.

23 THE WITNESS: Yes, ma'am.

24 THE COURT: Anything further from the State?

25 MS. SHEALY: No, Your Honor.

1 THE COURT: Anything from the defense?

2 MS. FORD: Yes, Your Honor. With respect to  
3 Ms. Miles.

4 THE COURT: I'm not talking about argument,  
5 I'm asking if you have any witnesses.

6 MS. FORD: No, Your Honor.

7 THE COURT: I'm glad to hear any argument.

8 MS. FORD: Yes, Your Honor. With respect to  
9 Ms. Miles.

10 THE COURT: You may take them in the order  
11 they were presented to the Court.

12 MS. FORD: Yes, Your Honor. Mr. Grimes will  
13 handle Mr. Fish.

14 MR. GRIMES: May it please the Court, Your  
15 Honor.

16 THE COURT: Yes, sir, you may proceed.

17 MR. GRIMES: Just on the photographic ID of  
18 Mr. Deas by Mr. Shrod Young, we would move to  
19 suppress that ID as being invalid due process.

20 First, I can't think of a more egregious  
21 example that I have ever seen where you have a  
22 State's witness saying that the officer, pretty much  
23 either by words or actions, told him who to pick out.  
24 He knew who the officer wanted him to pick out.

25 THE COURT: I think that's a

1 mischaracterization of his testimony. He did not  
2 testify to that. My memory isn't always perfect,  
3 but.

4 MR. GRIMES: It struck me as him saying, I  
5 knew who the officer wanted me to pick.

6 THE COURT: I think you should stick to  
7 actually what was said, the testimony. If you want  
8 to extrapolate and argue what your interpretation of  
9 it is, that's fine.

10 Let's make the record clear. Let's stick to  
11 what the actual testimony was.

12 MR. GRIMES: The actual testimony was he had  
13 been charged with obstruction of justice.

14 THE COURT: You don't necessarily have to  
15 recap for me, I was here, I heard it.

16 MR. GRIMES: Mr. Young stated he believed he  
17 would be charged with murder if he didn't pick out  
18 Mr. Deas. He testified he knew Officer Osborne  
19 wanted him to pick out Mr. Deas. He knew Mr. Deas  
20 had already been arrested. We have someone  
21 essentially going to be charged with murder if he  
22 doesn't make the right pick. We believe that's  
23 suggestive.

24 We also believe the lineup is unreliable. His  
25 ID of Mr. Deas was unreliable. We have sort of a

1 vague description with one witness saying there was  
2 two people out there and another person saying there  
3 was one person out there.

4 You have him saying that he was -- admitted  
5 being high. His eyes were blurry. At one point --  
6 he went back and forth with how high he was. At one  
7 point he said he was very high, at another point he  
8 said he was 10 percent high.

9 I think when you look at his description  
10 versus what Ms. Miles is saying, there is no way both  
11 can be right. Ms. Miles is adamant that he was out  
12 there. He has adamant that he was out there alone.  
13 Given that those discrepancies -- generally I think  
14 they're a matter for the jury to decide, but the  
15 Court on preliminary matters has to determine  
16 credibility, one of these witnesses simply cannot be  
17 credible.

18 THE COURT: Is credibility my province?

19 MR. GRIMES: To a certain degree. I would say  
20 at the Jackson V Denno hearing when you didn't find  
21 credibility yesterday.

22 THE COURT: That's a different standard, isn't  
23 it?

24 MR. GRIMES: I think the preliminary facts  
25 would be the same. The Court makes certain findings

1 if there is enough evidence to go to a jury, did the  
2 courts miss that along with the charge on ID.

3 There is simply no credible evidence at all.  
4 I think the Court can make the ruling, make the  
5 finding of credibility.

6 Based upon that we'd ask the Court to suppress  
7 the identification of Mr. Deas by Mr. Young.

8 Thank you, Your Honor.

9 THE COURT: You're welcome, Mr. Grimes.

10 Ms. Ford.

11 MS. FORD: Thank you, Your Honor, may it  
12 please the Court.

13 I would say -- I would ask for the lineup to  
14 be suppressed because I believe it is unduly  
15 suggestive. And the reason I would argue that is  
16 because according to Ms. Miles' description of the  
17 shooter, she said he had shoulder length dreads.

18 She told you how only two gentlemen in that  
19 lineup fit that description. And she also said the  
20 shooter was small, he was not only thin but he was  
21 only about 5'2" or 5'3" so he was a pretty small guy  
22 and that my client is clearly the smallest one on  
23 there out of the two.

24 And so I think that he stood out, so that's  
25 why I would argue it was suggestive.

1           Also, as far as the totality of the  
2 circumstances regarding how she was able to see  
3 things, she doesn't recall how long it was so we  
4 can't really use that. She said there was some  
5 lighting outside, yet she said that she was under a  
6 tent, that that was completely had no lighting at  
7 all, adamant that no one would have been able to see  
8 her because there was zero lighting from that tent.

9           She says that the shooter never even turned  
10 his head toward her. So I don't know how she would  
11 have been able to get a good look. And there was  
12 some lighting but it was dark outside. And again she  
13 said there was no lighting under the tent.

14           So we believe under the totality of the  
15 circumstances that her identification is not  
16 reliable. Although she claims she knew him before,  
17 she did not say that at the time of the  
18 identification either.

19           THE COURT: Ms. Shealy.

20           MS. SHEALY: Your Honor, it would be our  
21 position that the pretrial identification procedure  
22 was completely appropriate. Both Mr. Young and --  
23 would you like me to take them one at a time as well?

24           THE COURT: If you could. I need all of the  
25 exhibits that were used.

1 MS. SHEALY: Regarding Mr. Young, as a  
2 reminder, he indicated that he had known who Little  
3 Ricky was prior to that evening. I would disagree  
4 with Mr. Grimes's account of his saying that he  
5 believed that if he didn't identify Ricky Deas that  
6 he was going to get charged with murder. I think  
7 that's a mischaracterization of what Mr. Young  
8 testified to.

9 The lineup itself, Your Honor, you can take a  
10 look at it obviously, I think it's an excellent  
11 lineup. It has all young men with the hair, the  
12 deadlocks. Yes, there are varying lengths of the  
13 hair, but neither Mr. Young nor Ms. Miles ever  
14 indicated that the length of the hair is what made  
15 them identify Rick Deas from the lineup.

16 Mr. Young identified Ricky Deas from the  
17 lineup because he is the person that he saw that  
18 night with the gun when Leroy Simmons got shot.

19 Beg the Court's indulgence just a moment.

20 THE COURT: Uh-hum.

21 MS. SHEALY: Mr. Young was asked by Detective  
22 Osborne to look at it and identify the person. Mr.  
23 Young testified that there was nothing suggestive on  
24 the part of Detective Osborne in that process. I  
25 think his testimony was clearly he identified the

1 person that was the shooter.

2           Regarding Ms. Miles', as a reminder the  
3 admonition form tells the person looking at the  
4 lineup, keep in mind hairstyles may be a little  
5 different. So the whole issue that Ms. Ford has made  
6 regarding some of the hair lengths being different in  
7 the lineup, I think is of no consequence. I mean  
8 they're told, hair doesn't make any difference.

9           So certainly Ms. Miles did not indicate in any  
10 fashion that she was looking for the length of hair  
11 and only chose the person who was closest to the  
12 length of hair of the person of the night in  
13 question.

14           In addition to that there is at least one of  
15 the individuals who had longer hair in the lineup,  
16 which would be consistent with her saying it was  
17 almost to his shoulders, and she did not choose that  
18 person based on the hair length.

19           I think Ms. Miles did an excellent job of  
20 explaining that she took her time, and she wanted to  
21 identify the person that she saw shoot Leroy Simmons.

22           THE COURT: Let me interrupt you. Where is  
23 Mr. Young's admonition form.

24           MS. SHEALY: I have got that and his lineup  
25 that he was shown. That was the first one that

1 Detective Osborne testified to that had the other  
2 numbers.

3 THE COURT: Okay.

4 MS. SHEALY: Your Honor, regarding where Ms.  
5 Miles was, she was in a tented area. When she says  
6 tent she means those things like you see out at a  
7 funeral as she described it. And even though the  
8 area she was in was darker, she unequivocally  
9 testified that there was lighting in the sidewalk  
10 area and lighting in the street.

11 She had no hesitancy in stating that it was  
12 Richard Deas that was the shooter. She knew him as  
13 Little Ricky. She knew him prior to the day before,  
14 she had seen him the day before, and she had  
15 opportunity to identify him that night.

16 So the length of the event she described that  
17 she sees him ride up on a bicycle, she sees him jump  
18 off the bicycle, she sees him come at Mr. Simmons,  
19 she sees him pull a gun and shoot a man three times.  
20 So obviously her ability to watch that entire  
21 encounter gave her ample time to see who it was that  
22 was the shooter.

23 Thank you, Your Honor.

24 THE COURT: You're welcome. The Court must  
25 consider a two-part test when determining

1 admissability of out-of-court or identifications.

2 And that two-part step is identified in Manson  
3 versus Breakaway, as well as our mirror of that case  
4 which is State versus Moore, as well as State versus  
5 Jones outlining the reliability factors in the second  
6 prong of the test.

7 Under the due process laws, an identification  
8 must be excluded if the process used to obtain the  
9 identification was so unnecessarily suggestive as to  
10 give rise to a very substantial likelihood of  
11 misidentification.

12 Again, as I have indicated, the Court is  
13 required to adhere to a two-step procedure. The  
14 first part of the test is, was the out-of-court  
15 identification process unduly suggestive. The Court  
16 would find, based on the testimony of Detective  
17 Osborne as well as that of Shoreka Miles and Shrod  
18 Young, that the process employed was not unduly  
19 suggestive.

20 Detective Osborne testified that he used a  
21 computer program where he entered the  
22 characteristics, he was given options for fill-ins.  
23 He then selected fill-ins based on characteristics  
24 most closely mirrored by the defendant.

25 In any lineup process that selection is always

1 going to be somewhat subjective, same way  
2 descriptions of people are subjective in the same --  
3 it's just a part of human nature, for lack of a  
4 better way of stating it, there is always going to be  
5 some subjective part of that process. It does not  
6 however make it unduly suggestive.

7 He also testified that he gave the appropriate  
8 lineup admonition to both witnesses: That being that  
9 he was going to show them a group of photographs;  
10 that the photographers may or may not contain the  
11 person who committed the crime being investigated;  
12 that they were to keep in mind that photographs do  
13 not always show the true complexion; that it is also  
14 possible that they may be lighter or darker than  
15 shown in the photo; and also reminded that  
16 hairstyles, beards, mustaches, and other features of  
17 a person can be easily changed or appear different;  
18 and that they were to take their time in looking at  
19 the photographs and to let him know if they could  
20 make a positive identification of the person; and  
21 then if they did to circle that person and to initial  
22 it.

23 The form also advises that they're not to  
24 discuss the results of the procedure with other  
25 witnesses. There has been no testimony in the record

1 that either Ms. Miles or Mr. Young spoke to one  
2 another. There is no indication in the record he  
3 told them who to pick or that he exercised any undue  
4 influence over them or any duress.

5 The record reflects that according to  
6 Detective Osborne's testimony that as he gave the  
7 admonition to Ms. Miles, she was very nervous, that  
8 she took her time, and she put her finger down hard  
9 on number one after which she circled and signed the  
10 admonition sheet as well. And that he made no  
11 suggestion to her as to who she should select.

12 While it is correct that on the night of the  
13 shooting she did not indicate that she saw the  
14 shooting, those matters would go to matters of weight  
15 that would be argued to the jury as to her  
16 credibility. It's not for this Court to determine  
17 her credibility. The threshold at this hearing is  
18 low, it is by a preponderance of the evidence, it is  
19 not beyond a reasonable doubt.

20 As regards to his testimony regarding Mr.  
21 Young, he testified that he had heard through the  
22 investigation that Mr. Young had witnessed the  
23 shooting, that he was talking about it, and that he  
24 indicated that he was not going to be a snitch and he  
25 was not going to testify or tell the police about it.

1           He then charged him with obstruction and he  
2 arrested him. And at that time showed him the  
3 lineup, or it was in close proximity to that. And  
4 then he followed the same admonition of process.

5           And that after reviewing the lineup that Mr.  
6 Young indicated, circled number one and indicated  
7 what's written on the form which is, that's the one I  
8 seen, he killed my boy, and initialed it.

9           And that he ID'd him as Little Ricky. And  
10 also that he knew the defendant prior to the  
11 identification.

12           Court would find the testimony of Detective  
13 Osborne credible on the issue of not suggesting to  
14 the witnesses who to identify, as well as having  
15 given the appropriate photographic lineup admonition,  
16 as well as the process he employed in selecting the  
17 photo fill-ins, so to speak, for the identification  
18 procedure.

19           And also I find credible that he did not show  
20 them the lineups beforehand, in other words that the  
21 photographic admonition sheet covered the lineup  
22 prior to them being able to see it.

23           As regards to the testimony of Mr. Young, the  
24 Court finds him credible, that the process was not  
25 suggestive, and I will go through the reliability

1 factors separately. Just out of an abundance of  
2 caution I will address the second part of the test.

3 But he indicated that his recount of the  
4 event, he said at the time of the lineup he knew the  
5 defendant had been arrested. But he also knew the  
6 defendant in the past. So, you know, while that may  
7 be a valid argument to make to the jury, it does not  
8 in and of itself make his identification of the  
9 defendant suggestive.

10 while on cross he said he knew who the officer  
11 wanted him to pick out, he know what the officer  
12 wanted him to do. On redirect he denied the officer  
13 telling him to pick the defendant. And he also  
14 admitted that he feared a serious charge, that he did  
15 not lie, he saw the defendant that night. But he  
16 also acknowledged that these were things that he felt  
17 within himself, these were not things that the  
18 officer threaten him with, nor implied to him.

19 As regards to the testimony of Ms. Miles, she  
20 indicated that she was across the street from her  
21 apartment in a tent at the time of the event; that  
22 she was under a tent; that there was good light on  
23 the street; that she was able to see everything.

24 That the defendants -- well, not defendants,  
25 but others would not have been able to see her. And

1 the Court would find that credible. Actually, her  
2 side of it probably would have been more acute  
3 looking from an area that was dark into a light area.  
4 And it is possible, based on the photographs of the  
5 area, that and the logistics of the area, it is  
6 possible that while engaged in some activity others  
7 would not have been aware of her sitting under the  
8 tent.

9           Again these are matters of credibility. They  
10 go -- that would be argued by the defendant for the  
11 jury to determine whether his identification has been  
12 proven beyond a reasonable doubt. But it certainly  
13 meets the Court's standard of meeting it by a  
14 preponderance of the evidence.

15           As regards to reliability factors, both  
16 witnesses had an opportunity to view the criminal at  
17 the time of the crime. They were both in close  
18 proximity of him, and had an area that was well lit  
19 and had the ability to observe what happened.

20           They both testified that their degree of  
21 attention was acute due to the events that were  
22 taking place. While there is variance in their  
23 descriptions -- well their prior descriptions of the  
24 defendant were accurate, they were both very certain  
25 at the time of the confrontation, and there was a

1 very minimal time between the crime and the  
2 confrontation.

3 Ms. Miles' identification took place on the  
4 20th of October of 2007. And this event is to  
5 alleged to have happened on the 19th, so it was one  
6 day. And Mr. Young's took place on November the 9th,  
7 which would have been about, I guess, maybe a little  
8 over 20 days after the event. But that is still a  
9 very short time in terms of time of confrontation.

10 In addition to that, we are looking at the  
11 reliability factors. There are cases that indicate  
12 that when you are talking about a witness's prior  
13 description, you factor in whether or not they knew  
14 this person prior to the events happening. And  
15 certainly Mr. Young knew the defendant, he knew him  
16 fairly well, and would have -- and therefore would  
17 have been able to identify him upon seeing him again.

18 Ms. Miles indicated that she had seen him  
19 several times at a corner store. While she did not  
20 speak with him, she saw him frequently. And on the  
21 day of this event he asked her for a cigarette and  
22 she gave him one.

23 As such the Court would find pursuant to Neel  
24 versus Biggers, State versus Moore and State versus  
25 Jones that the identification is admissible; that the

1 process used was not unduly suggestive as to give  
2 rise to a very substantial likelihood of  
3 misidentification.

4 And considering the reliability factors, even  
5 if it were suggestive, the identification was  
6 nevertheless so reliable that no substantial  
7 likelihood of misidentification exists, therefore the  
8 motion is denied.

9 Also, I wanted to note that when I looked at  
10 the lineup, again the features are subjective. But I  
11 have seen many identifications, many lineups, and  
12 when looking at the features of these individuals  
13 they are very similar, they're similar -- actually  
14 the pinkish tint, I guess, of the pictures makes  
15 their complexions I guess more consistent for lack of  
16 a better way of putting it.

17 But nevertheless their hair is similar; their  
18 facial characteristics, eye shape, lip shape; they  
19 all have some form, whether it be facial hair or  
20 peach fuzz, above their lips. And while their hair  
21 may vary in some length, it is very similar in length  
22 and very similar in style.

23 Is there anything further on the issue of the  
24 identification procedure before we move forward?

25 MS. SHEALY: Not from the State, Your Honor.

1 MS. FORD: Not from the defendant, Your Honor.

2 THE COURT: Okay. We will take a five minute  
3 recess after which we will resume with the Court's  
4 opening instructions and opening arguments. I would  
5 suggest you have your first witness ready so that we  
6 are not waiting any length of time to have them come  
7 into the courtroom as we call them to testify.

8 I would also tell the gallery that all of this  
9 movement is unacceptable. So if you come in be  
10 prepared to stay. I understand people have to go to  
11 the restroom, we sit for lengthy periods of time but  
12 we will be taking appropriate breaks.

13 And also, because of security concerns, we  
14 will not have people moving around too much. Also I  
15 would advise you to please take me very seriously,  
16 and I'm going to delegate this authority to the  
17 deputies, if there is any intimidating body movement,  
18 any inappropriate facial expressions, any sighing,  
19 any sort of speaking you will be removed from the  
20 gallery and you will be allowed to remain.

21 Also, if you have any cell phones you need to  
22 turn them off. If they go off we will take them and  
23 you will not get them back. They will become the  
24 property of Charleston County. The deputies do not  
25 want to do the paperwork, we don't want your phones

1 so please turn them off.

2 And also, the attorneys, no speaking  
3 objections. If you have any objection stand and  
4 state the basis of your objection, and if I need  
5 argument I will elicit it. If not, I will rule.  
6 That will preserve your contemporaneous objection.  
7 Please don't try to reargue it later, because that  
8 will the end at that point and I will move on.

9 See you all in five minutes. Be at ease.

10 (Whereupon, a recess was taken.)

11 THE COURT: Is the State ready to proceed?

12 MS. SHEALY: Yes, Your Honor.

13 THE COURT: Is the defense ready to proceed?

14 MS. FORD: Yes, Your Honor.

15 THE COURT: Please bring in the panel.

16 (Whereupon, the jurors enter the courtroom.)

17 THE COURT: Ladies and gentlemen, we  
18 appreciate your patience. Mr. Foreman, if you would  
19 pass those notebooks around for me, please, and those  
20 pens. Ladies and gentlemen, write your juror number  
21 on the sticker on the front of each notebook so that  
22 you will be able to easily identify which notebook  
23 belongs to you.

24 Ladies and gentlemen, the case that we are  
25 about to try is the State of South Carolina versus

1 Richard Vernon Deas, the defendant. What I now say  
2 to you is intended to serve as an introduction to the  
3 trial of this case. These remarks are not a charge  
4 or instructions on the law. I will instruct you on  
5 the law applicable to this case at the end of the  
6 trial before you are retire to consider your verdict.

7 This is merely an explanation of the procedure  
8 that we will follow in the trial of this case, so  
9 that you may better understand what may be happening.  
10 During the course of this trial you will be given an  
11 opportunity to take notes, and I will give you  
12 further instructions regarding that, further in the  
13 instruction.

14 The defendant is charged by two indictments  
15 filed in this Court for the crimes of murder and  
16 possession of a firearm during the commission of a  
17 violent crime, the elements of which I will explain  
18 to you later on at the conclusion of the trial.

19 The indictments are simply the charge by which  
20 this case is brought into court. And it is not in  
21 any sense evidence of any of the allegations they  
22 contain. The defendant has pled not guilty to the  
23 indictments. The State therefore has the burden of  
24 proving each of the elements of the indictments  
25 beyond a reasonable doubt. And it will be your duty,

1 ladies and gentlemen, to determine whether the State  
2 has met that burden or not.

3 Your purpose as jurors is to find and  
4 determine the facts. You are the sole judges of the  
5 facts. If at any time I make any comment regarding  
6 the facts, you must disregard it. You are to  
7 determine the facts from the testimony you hear and  
8 the other evidence introduced in court. It is up to  
9 you to determine the inferences which you feel may be  
10 properly drawn from the evidence.

11 It is especially important that you perform  
12 your duty of determining the facts diligently and  
13 conscientiously because ordinarily there is no way to  
14 correct an erroneous determination of facts made by a  
15 trial jury.

16 On the other hand, and with equal emphasis,  
17 the same law that makes you the judges of the facts  
18 makes me the judge of the law. The law as given by  
19 the Court is the only law you may consider. You must  
20 accept and follow it, even though you may disagree  
21 with me about what it is.

22 I cannot tell you what the facts are and you  
23 cannot disagree with the Court about what the law is  
24 or what the law should be. Your responsibility is to  
25 take the law as the Court gives it to you, and apply

1 it to the fact as you find them from the testimony of  
2 the witnesses and other evidence that is introduced.

3 After doing that you will render your verdict,  
4 a true and just verdict under the solemn oath that  
5 you have taken as jurors in this case.

6 Until I advise you to begin your  
7 deliberations, you must not discuss this case with  
8 anyone. That includes among yourselves, your  
9 friends, your family members and anyone involved in  
10 this case.

11 After the case is submitted to you, you must  
12 discuss it only in the jury room among your fellow  
13 jurors. The attorneys and the parties have been  
14 advised that they're not to speak with you at all.  
15 So if you should see them in the hallway, in the  
16 elevator, in the garage or local restaurants and they  
17 don't speak with you, please don't think they're  
18 being unfriendly, please know that they are simply  
19 strictly following the Court's instruction.

20 Again as I've indicated I would hate for an  
21 innocent conversation to be observed and  
22 misinterpreted.

23 During the trial you are not to read, listen  
24 to, or watch any new reports about this case. That  
25 includes anything that could be in the newspapers,

1 radio, television or Internet. You are also not to  
2 do any independent research or any type of searches  
3 on the Internet on your own. You must not consider  
4 anything that you may have read or heard about this  
5 case outside the courtroom, whether before or during  
6 the course of this trial.

7 It is essential that you keep an open mind and  
8 not decide any issue in this case until all of the  
9 evidence has been presented, the parties have made  
10 their closing arguments, and I have instructed you on  
11 the law applicable to this case.

12 It is your solemn responsibility to determine  
13 the guilt or innocence of the defendant. And your  
14 verdict must be based solely on the evidence as it is  
15 presented to you in this trial, and on the law as I  
16 will instruct you during and at the close of the  
17 trial.

18 Now in just a moment the solicitor will make  
19 an opening statement in which the solicitor will  
20 explain to you what they believe the issues to be in  
21 this case. The attorney for the defendant may also  
22 make an opening statement, although they are not  
23 required to do so.

24 What the attorneys tell you during their  
25 opening statements is not evidence, it is only their

1 contention as to what they believe the evidence in  
2 this case will show, and what they believe the issues  
3 in this case to be.

4 The evidence in this case will be presented to  
5 you by the testimony of sworn witnesses from the  
6 witness stand, and/or by exhibits that may be  
7 introduced into evidence. From time to time during  
8 the trial you may hear one of the attorneys say, I  
9 object. Just as in sports, business or any other  
10 structured activity there are certain rules that we  
11 must obey in the presentation of evidence. These  
12 rules have a purpose, they ensure that you receive  
13 the most trustworthy and reliable evidence available.

14 An objection is a procedure that an attorney  
15 uses to call a possible violation of these rules to  
16 my attention as the judge of this court. And for  
17 this reason you should not hold an attorney's  
18 objection against them, nor should you conclude from  
19 the Court overruling or sustaining an objection that  
20 I favor one side or the other.

21 Also, from time to time you may hear one of  
22 the attorneys say something like, Your Honor, we have  
23 a matter of law to discuss with you, or, Your Honor,  
24 may we approach the bench, or I may ask them to  
25 approach the bench, or it might be necessary that we

1 exclude you from the courtroom for a short while  
2 while we discuss matters of law.

3 The reason we do this is because as I have  
4 instructed, you are the finders of the facts in this  
5 case. And the law does not permit me to have an  
6 opinion about the facts. However, sometimes when I'm  
7 discussing matters of law with the attorneys, it  
8 might be necessary for me to make some comment about  
9 the facts in connection with ruling whether a  
10 particular rule of evidence or rule of procedure or  
11 other statutory interpretation may apply. And for  
12 this reason, we exclude you from the courtroom so  
13 that in no way will you be influenced by anything  
14 that the Court may say or do in connection with the  
15 facts of this case.

16 In determining what the true facts are you  
17 must decide whether or not the testimony of the  
18 witnesses is believable. It will be my  
19 responsibility to rule as a matter of law as to  
20 whether certain testimony is admissible at all or  
21 not, but once it is admitted whether or not you  
22 believe it is solely a matter for you to determine.

23 In deciding whether to believe a witness, you  
24 have the right to consider the interest of any  
25 witness, the bias of any witness, the prejudice of

1 any witness, the opportunity for the witness to have  
2 seen the matters and things about which the witness  
3 may testify, and the way the witness acts on the  
4 witness stand or something we commonly refer to as  
5 demeanor.

6 You have the right to consider anything that  
7 is in the record that will help you evaluate the  
8 testimony of the witnesses. That means, ladies and  
9 gentlemen, that it is your duty to pay close  
10 attention to the witnesses, to observe them, to  
11 listen to them, and to pay close attention to the  
12 attorneys and to the court.

13 Although we know it is very difficult, please  
14 don't allow your thoughts to wander, but give strict  
15 attention to the testimony so that at the end of the  
16 testimony, the arguments of counsel, and the  
17 instructions on the law as given by the Court, you  
18 will then be in a position to determine what the true  
19 facts are, and apply the law to those facts and thus  
20 render a true and just verdict in this case.

21 As I have indicated, during the course of this  
22 trial you will be given the opportunity to take  
23 notes. Note-taking is a privilege that you may  
24 choose to exercise or choose not to exercise. Not  
25 everyone finds note-taking helpful to them, so please

1 don't feel compelled to take notes. It is not  
2 required. If you should decide to take notes, please  
3 don't try to record everything that is being said,  
4 it's impossible.

5 As I have indicated, you are the finders of  
6 the facts, and as a result you have to rely on your  
7 powers of observation as witnesses testify to observe  
8 their demeanor so that you can make the appropriate  
9 findings regarding their believability and  
10 credibility. So please don't allow note-taking to  
11 become a distraction to you.

12 If you should decide to take notes, please try  
13 to keep an outline of the main points that are being  
14 made. Again it is impossible to take down  
15 everything. The average person speak at about -- my  
16 court reporter would probably say I speak somewhere  
17 between 200 and 250 words an minute. It does not  
18 seem like that, but that's about how fast. And I'm a  
19 slow talker compared to some of my colleagues.

20 So, when you think about that, it really is  
21 virtually impossible. And the only reason she can do  
22 it is because she's trained in a very complicated  
23 form of shorthand that allows her to take down lots  
24 of words in a very short time period and then allows  
25 her to interpret that shorthand. So please don't try

1 to take down everything that is said. It would  
2 required extensive training.

3 Again, you may want to keep an outline of the  
4 main points and arguments that are being made so that  
5 you allow those to refresh your memory of the trial  
6 evidence and general arguments when you begin your  
7 deliberations.

8 Please do not share your notes with anyone.  
9 Please remember they are for your individual  
10 purposes. They are only to be used to refresh your  
11 own memory. And also please be reminded that your  
12 notes are not to be given any greater weight than the  
13 recollections of other jurors. The recollections of  
14 other jurors should be consider just as reliable as  
15 notes taken by others.

16 Also during the breaks and recesses your notes  
17 will have to be left in your chair, so please know  
18 that we will protect your privately, no one will ever  
19 read your notes. During evening recesses they will  
20 be under lock and key.

21 It is your added duty, Mr. Foreman, to preside  
22 in the jury room to be the jury's spokesperson during  
23 jury deliberations if the jury has any questions. It  
24 will also be your duty to write the verdict, but I  
25 will give you further instructions regarding that at

1 the conclusion of the case.

2 Again I emphasize, the foreperson's  
3 responsibility is administrative. He does not have  
4 any greater vote or voice than any individual juror,  
5 it is merely an administrative function to fill out  
6 the verdict form.

7 In order to preserve everyone's rights I will  
8 give everyone an opportunity to take exception to  
9 anything that the Court has said by way of opening  
10 instructions.

11 Are there any exceptions from the State?

12 MS. SHEALY: No, Your Honor.

13 THE COURT: From the defense?

14 MS. FORD: No, Your Honor.

15 THE COURT: Madam Solicitor, you may proceed.

16 MS. SHEALY: May it please the Court.

17 THE COURT: Yes, ma'am, you may proceed.

18 MS. SHEALY: Ms. Ford, Mr. Grimes.

19 Good morning. On October 18th of 2007, that  
20 evening leading into October 19th, the early morning  
21 hours, Leroy Simmons, whose his friends called Miles,  
22 called his girlfriend Whitney Doctor and said, I'm  
23 coming over, get me a cab. He never made it to  
24 Whitney Doctor's house. She never saw him again  
25 alive. Because on Line Street in downtown Charleston

1 in those early morning hours of October 19th Richard  
2 Deas killed him. Shot him three times.

3 Now where this occurred is important. Line  
4 Street, if you are downtown on Meeting, and you come  
5 out of Piggly-Wiggly, and you are looking over  
6 Meeting, there is a Churches Fried Chicken and a  
7 Family Dollar store.

8 And straight ahead is Line Street. Line  
9 Street has some of the older Charleston houses, but  
10 it's more of a lower income area. The houses are  
11 close together. You'll see chairs outside of  
12 apartments and any little area of grass or dirt.  
13 People like to sit out there and talk. They like to  
14 congregate. They hang out there. It's a place  
15 people like to hang out that live nearby.

16 And around the corner is a little convenience  
17 store called Nights. People go there and grab a  
18 beer, snack food. But the police are not welcome on  
19 Line Street. That's important in this case.

20 Now Judge Jefferson told you on yesterday when  
21 we were the big room how this was not like Judge Judy  
22 or Judge Joe Brown or the People's Court. It's also  
23 not like CSI or NCSI, or CSI Miami. This isn't a  
24 case where we are going to have a murder weapon.  
25 This isn't a case with a bunch of forensic evidence.

1 This is a case with eyewitnesses.

2 And this would be a very different case if  
3 Miles's father had not come to town when he heard his  
4 child had been shot and killed. Because the people  
5 over on Line Street, they don't want to be seen  
6 talking to the police. But we do have two  
7 eyewitnesses.

8 Now Ricky Deas, Little Ricky, Richard Deas, he  
9 probably thought there were no witnesses out there  
10 that night. It's early in the morning, after 2:00.  
11 The streets aren't as crowded and people aren't as  
12 congregating, but there were some people out there.  
13 And they saw what happened.

14 Now I will tell you these are not people who  
15 typically have to come in front of a bunch of people  
16 and speak. I'm used to doing that, they're not. And  
17 these are not people who would willingly want to have  
18 to stand up and say everything that they saw,  
19 especially right on the scene when the police were  
20 there.

21 But thankfully, thankfully Leroy Simmons came  
22 into town. And because of him, these reluctant  
23 witnesses were made known to the police department.  
24 And one of them, Shoreka Miles, had a change of heart  
25 and thought, I need to do the right thing.

1           These are our eyewitnesses. And they're going  
2 to come in here and testify. And you will see what I  
3 mean by reluctant. They don't feel comfortable. I  
4 mean this isn't their comfort zone. They don't want  
5 to come over to the courthouse. They don't want to  
6 be seen as snitches or helping the police, that's the  
7 last thing you want to be seen as if you are hanging  
8 out there over on Line Street.

9           You will learn that what happened was Ricky  
10 Deas, riding on a bicycle, not driving a bicycle,  
11 there was another guy out there, we don't know who  
12 that was. The other guy was driving the bicycle and  
13 Ricky was on the handlebars.

14           And Miles is outside waiting on the cab he  
15 called. And Ricky jumped off those handlebars, comes  
16 at Miles, and there is a struggle. And when Miles  
17 goes down, when he is down, Ricky Deas takes out a  
18 gun and shoots, ones, twice, three times.

19           Miles was able to get up a bit and then  
20 collapsed. Ricky Deas didn't know Shoreka Miles was  
21 out there. Ricky Deas did not know Shrod Young was  
22 out there, but they were. Thankfully, they were.

23           This isn't going to be like one of those  
24 television shows, you know, when you hear the cool  
25 music in the background and the witnesses come in and

1 they speak so well and they just tell you everything  
2 very clearly. I will tell you what they do tell  
3 clearly, without any question. The person on October  
4 19th who took that gun and pointed it at Leroy  
5 Simmons and shot him three times was Little Ricky.

6 So I mean both Shoreka knew him from before,  
7 not good friends with him, knew who he was because  
8 they all hang out in that same area. Someone that  
9 Shrod Young knew from before, Little Ricky. And  
10 without any question they will come in here and tell  
11 you that on that night, in the morning hours, Little  
12 Ricky, Richard Deas, took a gun and shot and killed  
13 Miles Simmons.

14 After you've had the opportunity to hear all  
15 of the evidence, I'm confident that you will see that  
16 the State has met its burden, it's our burden to  
17 prove to each of you beyond a reasonable doubt that  
18 the shooter that night, the person who committed  
19 murder, was Rick Deas. Thank you.

20 THE COURT: You may proceed.

21 MS. FORD: Thank you, Your Honor.

22 This case essentially boils down to one thing,  
23 credibility. Richard Deas is the young man on trial  
24 before you today, at 18 years of age, was accused and  
25 arrested for murder, biggest crime out there.

1           And a man, Leroy Simmons, 30 years old,  
2 beloved by many, he was killed. That's not why we  
3 are here to decide that. You are here today to  
4 decide if it actually was Richard Deas, if there is  
5 any evidence that he was the one who actually killed  
6 Leroy Simmons.

7           Now let's go to that night. October 19th,  
8 back in 2007. The early morning hours, it's about  
9 2:30 on Line Street. Line Street between Meeting and  
10 Nassau. And Leroy Simmons had been at his aunt's  
11 house. And he was outside waiting for a cab, he was  
12 on his phone.

13           And someone came and that person shot him  
14 three times in the lower part of his body. Now Leroy  
15 was alert, he was conscience, he could tell people of  
16 his pain. But unfortunately about seven hours later  
17 he died.

18           Now the police, CPD, they learned of this  
19 shooting and they came out in full force of course,  
20 there was shooting, it's a big deal. And they looked  
21 around to see if they could find anything. They  
22 didn't see any shell casings on the ground or  
23 anything like that from the gun. They found a little  
24 cocaine, but they didn't know if that was relevant to  
25 the charge at all. But they saw some people outside

1 and they talked to them. They talked to a Elaine  
2 Singleton, who was Leroy's aunt. He had been at her  
3 house. And she was out there with her family member,  
4 and she said she hadn't seen a thing.

5 There is another woman, a young woman who was  
6 holding a bandana, a scarf to Leroy trying to stop  
7 the bleeding. This woman was Shoreka Miles. And the  
8 officer saw her because she was trying to help Leroy  
9 so he asked her, did you see anything? And she  
10 replied essentially, no, I was in my apartment at

11 I heard gunshots, and so I came outside  
12 and I saw Leroy -- who she knew as Miles -- bleeding.  
13 And so I tried to help him. I didn't see anything.  
14 So the officer believed her and left.

15 Now, the officers that night later turned the  
16 case over to the homicide detective, Detective  
17 Osborne, who you should hear from during this trial  
18 as well. In the meantime Leroy's dad, also Leroy  
19 Simmons, he comes to town and he tries to do what CPD  
20 couldn't, he tries to find witnesses.

21 Because you see a man, Shrod Young, who also  
22 goes by Fish, so you might hear him referred to as  
23 that, he was telling people, including Leroy's  
24 family, that he had been there and he saw the  
25 shooting. He mentioned something about a robbery,

1 how people looked like they were taking money. He  
2 mentioned some guys on a bike. He said he knew the  
3 person but he didn't want to say who it was, he  
4 refused.

5 So Mr. Simmons talks to Fish. Fish agreed to  
6 talk to him. And Fish tells him the story a little  
7 bit. Doesn't actually talk about the shooting so  
8 much but what led up to it. He says he's not going  
9 to talk to the police.

10 But Mr. Simmons still goes and talks to  
11 Detective Osborne and tells him what he was able to  
12 learn. So Mr. Simmons, he doesn't give up. He finds  
13 a woman named Shoreka Miles, this same young woman  
14 who had told the police the night of the shooting, I  
15 didn't see anything. And she now says that, well, I  
16 did see something. And so he takes her into  
17 Detective Osborne and she gives a statement to him.

18 And she indicates that she was outside at the  
19 tent, Fish was right there with her, and Miles is out  
20 there on the phone, and two boys on a bicycle ride up  
21 and one gets off the handlebars and eventually  
22 there's a gun and he shoots Miles three times.

23 She says she didn't know this person. Never  
24 seen him except one time, that was earlier that  
25 evening. He was at Line and Hanover, which was just

1 down the street, there is Nassau and then Line -- I  
2 mean Nassau and Hanover, they both intersect Line.

3 And she had seen him, he was wearing the same  
4 clothes, he asked her for a cigarette, but she said  
5 no. But she gives a description of the shooter.  
6 Pretty small gentleman, black male. She said he is  
7 about 5'2", 5'3", thin, about 20 or 21, dreads almost  
8 to his shoulder, wearing all black, light complexion.  
9 So that's the description she gives of the shooter.

10 And she looks at a lineup, and Richard Deas is  
11 in that lineup, and he matches best. She picks him  
12 out. So Detective Osborne, though, he doesn't give  
13 up on Fish, on that other witness, he knows he is out  
14 there. He has Fish's number, he calls him, Fish  
15 refused to talk. Detective Osborne goes ahead and  
16 has Richard Deas arrested for murder in the meantime.  
17 So Richard is arrested now on October 23rd.

18 But Osborne still does not give up on Fish.  
19 And so on the 25th he calls Fish again and he says,  
20 look you need to talk. You can maybe be charged with  
21 something. But Fish says, you can say I did not see  
22 anything.

23 So what Detective Osborne does is that he  
24 takes out a warrant for Fish's arrest for obstruction  
25 of justice. Fish is picked up on about November 8th,

1 and the very next day Detective Osborne goes and sees  
2 him and Fish is now ready to talk.

3 Now Richard Deas is already in the jail for  
4 murder, but Fish also says he knew Richard Deas a  
5 little bit. Not great friends or anything, but not  
6 enemies. But he knows Richard Deas so he points him  
7 out in the lineup.

8 But now he's saying that he was completely by  
9 himself, he didn't Shoreka until later when Leroy was  
10 bleeding, he was by himself not at a tent, he doesn't  
11 even see a tent, but at the corner of Line and Nassau  
12 at a pole. And he says that he saw Richard Deas, who  
13 he calls Little Rick, Little Ricky, he saw him walk  
14 up down the street by himself, not on a bike, not  
15 with anyone else, and he approached Miles. He thinks  
16 they're just talking, he doesn't really think much of  
17 it.

18 Then he sees a gun and so he just takes off  
19 running, takes off down Nassau. He has family in the  
20 area, I think he was going to get them.

21 As he was running away he hears shots, three  
22 shots. He comes back and finds Leroy bleeding. He  
23 calls 911. Doesn't mention anything about seeing the  
24 shooter. So that's his story on that day.

25 And so that is why you are here, because of

1 these two witnesses. And so as the Judge told you  
2 credibility is an important factor. And as you are  
3 listening to them, that is something very important  
4 to consider.

5 You have to consider what they're saying  
6 today, what they've said in the past, is there any  
7 reason or motive for them to lie? You have to decide  
8 if you believe them a little bit, if you believe them  
9 50/50, or if you believe them enough to put a man's  
10 fate in their hands.

11 Because although Leroy Simmons was killed back  
12 in 2007, this trial is about Richard Deas, about his  
13 fate, and about if he is a murderer and if there is  
14 any proof. And at the end of this trial we will ask  
15 you just to look at everything and we will ask you to  
16 find that Richard Deas is not guilty of murder.  
17 Thank you.

18 THE COURT: Ms. Shealy, you may proceed.

19 MS. SHEALY: State would call Momolu Cooper.

20 MR. MOMOLU COOPER,

21 after having first been duly sworn to state the  
22 truth, the whole truth and nothing but the truth,  
23 testified on his oath as follows:

24 THE COURT: You may proceed.

25 MS. SHEALY: Thank you, Your Honor.

## 1 DIRECT EXAMINATION

2 BY MS. SHEALY:

3 Q I was going to call you Detective Cooper, I  
4 guess that's not appropriate now. Mr. Cooper, tell  
5 the jury, if you would, where you currently are  
6 employed?

7 A I'm actually employed with Hudson Man.

8 Q what is that?

9 A It's a human resources enterprise, I'm account  
10 manager going with big organizations to help  
11 restructure them.

12 Q How long have you been employed with them?

13 A I have been their marketing consultant for 7  
14 years simultaneously with law enforcement with the  
15 City of Charleston. But I've just been employed  
16 full-time about year and a half now.17 Q Tell the jury a little bit about your  
18 background, if you would, tell us about your  
19 education.20 A I graduated from the Citadel, from there  
21 transitioned over to Charleston City Police  
22 Department, became a weapons of mass destruction.  
23 Coordinated with the military right now, so I'm a --  
24 still receive my possession as a security consultant  
25 for the undersecretary of the Army.

1 Q Well when you were working with Charleston  
2 Police Department, in what capacity were you working  
3 there?

4 A When I left I was a detective for violent  
5 crimes against persona.

6 Q Violent crimes against persons?

7 A Yes, ma'am.

8 Q Now back in October of 2007, in what capacity  
9 were you working there?

10 A I was a central detective.

11 Q Now focusing your attention, if we could, back  
12 to October 19th of 2007?

13 A Yes, ma'am.

14 Q Would you tell the jury whether or not you  
15 were working on the early morning hours of that day?

16 A Yes, ma'am. I was working actually the  
17 evening to the early mornings.

18 Q So your shift began on the 18th and spilled  
19 over into the 19th?

20 A Yes, ma'am.

21 Q And around the hours of 2:15, 2:30, could you  
22 tell the jury whether or not you received a call to  
23 go to Line Street?

24 A Yes, actually we did get a dispatch reference  
25 shots spot activation.

1 Q And when you say shot spot activation, what  
2 does that mean?

3 A It's a system that's actually been developed,  
4 very state-of-the-art, where it can actually  
5 differentiate between bullets and firecrackers. And  
6 it's positioned within certain key areas within the  
7 city of Charleston where an activation occurs means  
8 that there has been shots activated and it will tell  
9 whether or not they're firecracker, and it will tell  
10 you within six feet exactly where it was.

11 Q And when that occurs, then, are members of the  
12 police force alerted to go the scene?

13 A Yes, ma'am.

14 MS. SHEALY: Your Honor, may I approach the  
15 court reporter?

16 THE COURT: You may.

17 MS. SHEALY: Your Honor, I have this exhibit,  
18 also some photographs that there are no objection to.  
19 If I can move those into evidence.

20 THE COURT: Give us the numbers.

21 MS. SHEALY: Okay, the photographs are 1  
22 through 22.

23 THE COURT: Any objection?

24 MS. FORD: No objection.

25 THE COURT: Mark and admitted without

1 objection.

2 (Whereupon, State's Exhibit Nos. 1 through 22  
3 are admitted into evidence.)

4 MS. SHEALY: And then the overhead shot will  
5 be No. 23.

6 THE COURT: Ms. Ford, any objection?

7 MS. FORD: No, Your Honor.

8 THE COURT: No. 23 is marked and admitted  
9 without objection.

10 (Whereupon, State's Exhibit No. 23 is admitted  
11 into evidence.)

12 Q (By Ms. Shealy) Mr. Cooper, can you come down  
13 for me.

14 With the Court's permission.

15 THE COURT: Uh-hum.

16 A Sure.

17 Q (By Ms. Shealy) If you could, in showing the  
18 jury States Exhibit 23, can you show the jury, kind  
19 of orient them as to where the area was that you  
20 reported to?

21 A Actually --

22 Q This is Meeting Street here.

23 A Okay. Right here is Line Street.

24 Q So this street is what?

25 A That's Line Street.

1 Q For the jury's benefit, do you remember what  
2 businesses are on each corner?

3 A This is the Family Dollar, and Churches or  
4 Brown's Chicken; fried chicken.

5 Q Okay. And this is Line Street?

6 A Churches, yes, ma'am.

7 Q And the next intersection would be with what  
8 street?

9 A That would be Nassau and Lee?

10 A Now Nassau Street, is there a convenience  
11 store called Nights? You may not be able to see it  
12 on the picture.

13 A Here.

14 Q Closer to Hanover?

15 A Yes, ma'am.

16 Q Very good. You can go ahead and have a seat  
17 then.

18 And I will show you some photographs and ask  
19 you if you can kind of orient us as well with where  
20 you reported, okay?

21 A Sure.

22 Q I'm showing show State's Exhibits -- well, we  
23 will just do them one at a time. If we could pull up  
24 State's Exhibit 1. And we have this that you can use  
25 the red pointer.

1 A Sweet.

2 A Yeah, Churches.

3 Q Could you describe for the jury what we are  
4 looking at here?

5 A This is Meeting Street, the Family Dollar  
6 front and left on that side, this is Churches  
7 chicken, and this is Line Street going down.

8 Q Okay. So as you use your pointer, will you  
9 show them which way Nassau Street is?

10 A Nassau would be down that way, running  
11 parallel to Meeting.

12 Q State's Exhibit No. 2, that's just another  
13 shot of a similar area?

14 A Yes.

15 Q I see some people on the sidewalk in that  
16 photograph, can you describe for the jury a little  
17 bit about Line Street, whether there is a lot of foot  
18 traffic. You have to turn back around if you would  
19 for the jury so that they can hear you good.

20 A One of the main reasons for the shots spot is  
21 that certain locations is where we have the highest  
22 high traffic. High traffic would either be crime or  
23 personnel during the off-hours.

24 Line Street tends to be that area. There are  
25 several housing projects within the vicinity, and

1 it's sort of like a cut-through as such. You are  
2 going through there to get to Meeting, some people  
3 going to work, taking the buses, there is a  
4 Piggly-wiggly just on this side over here if you are  
5 looking at the photo.

6 So it's sort of like a main I wouldn't say  
7 drag necessarily, but it's a meeting place where  
8 everybody is walking through.

9 Q And then in showing You State's Exhibit No. 3,  
10 can you orient us now as to where we are on Line  
11 Street compared to the last shot?

12 A This is the parking lot to the Family Dollar,  
13 and I think this is Nassau running there.

14 Q And do you recall what address you reported  
15 to?

16 A

17 Q And do you see that on that picture? Can you  
18 make that out?

19 A I would say it's probably right here.

20 Q And can you point out what -- is there any  
21 traffic lights -- not traffic lights, but  
22 streetlights that you see?

23 A Yes, there is one right here and one right  
24 here.

25 Q Okay. And the Family Dollar parking lot,

1 point to that again?

2 A Right here.

3 Q Does that area have lighting at night?

4 A Yes. Actually at night it's sort of like the  
5 bright spot.

6 Q Okay. Showing You State's Exhibit No. 4. Now  
7 this is from a little bit different angle.

8 A Yes.

9 Q Can you show us where Family Dollar parking  
10 lot?

11 A Meeting Street is right there, this is Family  
12 Dollar and Line Street, and this would be area of

13

14 Q Now when arrived at was there  
15 anything that you saw of interest in that area that  
16 is depicted on that photograph?

17 A On the night of the incident?

18 Q Excuse me? I'm sorry?

19 A On the night of the incident?

20 Q On the night of the incident.

21 A Well, right in front here is where the victim  
22 was lying.

23 Q Okay. And that address for that building that  
24 we are looking at is ?

25 A Yes, ma'am.

1 Q And showing You State's Exhibit 5. This is a  
2 shot looking back down towards what?

3 A This is actually looking towards Meeting  
4 street, right there, and this looks like right here  
5 is

6 Q I don't know if your pointer, is it working?

7 A Yeah. This would be

8 Q Showing You State's Exhibit 6.

9 A Okay.

10 Q Can you orient us there, what is this side  
11 street?

12 A Right here should be Nassau, Line Street and  
13 Meeting Street. And that's the Family Dollar,

14

15 Q Okay. And State's Exhibit 7. Show us where  
16 is in that picture?

17 A Lots of pictures.

18 Q If you can, if you can't don't worry about it.

19 A If the light is right there it should be right  
20 here. It's open gravel.

21 Q Then the stop sign that we see on the right is  
22 a stop sign at the corner of what?

23 A Line and Nassau.

24 Q Showing you State's Exhibit 10. Do you see  
25 that car with a cup on top of it?

1 A Yes, ma'am.

2 Q Do you recall where is in that photo?

3 A It would be this open lot right here.

4 Q And across the street from that, where there  
5 is a policeman standing.

6 A Yes.

7 Q Do you recall what was in that area on that  
8 evening?

9 A That's the neighborhood tent area.

10 Q When you say neighborhood tent area, can you  
11 describe for the jury what type of tent we are  
12 talking about?

13 A It's probably a group of poles set up on  
14 someone's property, and there is just a tarp running  
15 around to protect from any weather. But it's the  
16 normal sitting area for people that live in that  
17 area.

18 Q And showing you State's Exhibit 9. Okay, now  
19 show us where in that photograph was the area that  
20 you saw the victim lying?

21 A Victim being right here.

22 Q And where was the tent? Which area was the  
23 tent in that night compared to that?

24 A Right here.

25 Q Right across from that area?

1 A Yes, ma'am.

2 Q So when you get there?

3 A Yes, ma'am.

4 Q And you approach the scene. Tell the jury  
5 what first draws your attention?

6 A Okay. I think what was odd about that  
7 situation is when you get to a shooting scene you  
8 expect a huge crowd to be around standing over and  
9 everyone shouting and so forth and trying to get  
10 information. But when I walked up I just remember  
11 there was two parties standing over the victim, and  
12 there was like an isolation, of sort of like a 15,  
13 20, maybe 30 foot gap of people just in the back  
14 looking over.

15 And that kind of stood out as being odd to me.  
16 Where from a law enforcement prospective you come in  
17 and you are thinking, maybe there is somebody still  
18 here that we need to be kind of paying attention to.

19 Q Well, what do you see on the ground? Who did  
20 you see on the ground?

21 A I see the victim who was later identified as  
22 Leroy Simmons.

23 Q Yes. And you told us you work for the city,  
24 which county is this area in?

25 A City of Charleston.

1 Q City of Charleston, county of --

2 A Charleston.

3 Q Charleston County?

4 A Yes, ma'am.

5 Q Can you describe how the victim appeared when  
6 you saw him on the ground?

7 A I remember him lying on his side, and there  
8 was a lady down next to him. I remember walking up  
9 to him and trying to get information. I could see  
10 that he was -- the party had gotten shot multiple  
11 times.

12 And he wasn't really saying anything, so I  
13 assumed he was still in shock. I tried to get some  
14 type of information, whether it be a dying  
15 declaration, but he just kept looking at me.

16 Q So he was not speaking?

17 A Yes, ma'am.

18 Q And how many people do you recall attending to  
19 him while he was on the ground?

20 A Two.

21 Q And do your notes reflect what time it was  
22 that you did arrive out there?

23 A Yes, ma'am. The activation went off at 2:32  
24 and I got there at 2:35.

25 Q 2:35?

1 A Yes, ma'am.

2 Q Now did you attempt to speak to the women who  
3 were out there assisting him?

4 A Yes, ma'am.

5 Q Can you tell jury, if you would, please, what  
6 their names were?

7 A Elaine Singleton and Shoreka Miles.

8 Q Elaine Singleton and Shoreka Miles?

9 A Yes, ma'am.

10 Q And did they relate to you whether or not they  
11 had seen what happened?

12 A They did not see what happened to get the  
13 victim where he was. However, they were in their  
14 residence and heard multiple gunshots and came  
15 outside and saw the victim lying on the ground.

16 Q Now in part of your work as a detective, do  
17 you try to get statements from people?

18 A Yes, ma'am.

19 Q Who are near the area or in the area when it  
20 occurred?

21 A Yes, ma'am.

22 Q And would you tell the jury whether or not you  
23 attempted to get Ms. Singleton and Ms. Miles to give  
24 you a statement and contact information?

25 A Yes, I did.

1 Q Was that successful?

2 A I got their names. Not their contact  
3 information.

4 Q And you asked for it?

5 A Yes, ma'am.

6 Q Now have you worked other shootings in that  
7 area?

8 A Yes, ma'am.

9 Q Could you tell the jury whether or not that  
10 was unusual that they were not being cooperative with  
11 you?

12 MS. FORD: Objection, relevance.

13 THE COURT: Please approach.

14 (Whereupon, a discussion was held at the bench  
15 off the record.)

16 THE COURT: Objection is overruled, you may  
17 proceed.

18 Q (By Ms. Shealy) Mr. Cooper, first of all  
19 remind us when you were working with CPD, could you  
20 describe for the jury how often you would have crimes  
21 in that area, the area of Line Street and Nassau?

22 A On the night in question, actually normally  
23 between 1 o'clock and 3 o'clock I tend to ride around  
24 in that area, more so as a deterrent to show our  
25 presence. And I like to back up officers that are

1 also on that scene.

2 We tend to have frequent crimes, whether that  
3 be shooting or robberies and so forth within that  
4 vicinity. I have worked multiple cases in there so I  
5 tend to go around and that's why I responded within  
6 like three minutes because I was in that area.

7 Q And because of the number of times that you  
8 have worked cases in that area, do you have any  
9 familiarity with how receptive people are to  
10 cooperate with the police?

11 A Yes, ma'am.

12 Q Could you describe that to the jury?

13 A Depending on the time of day, as well as --  
14 well for instance when I show up on scene, when you  
15 see a crowd kind of isolated away from everyone  
16 people are watching. And myself growing up in  
17 Newark, New Jersey I know that you are not really  
18 receptive to give information because you live there.

19 So if I approach somebody and I'm talking to  
20 someone, more than likely I don't expect them to give  
21 me any information, or to the point where they could  
22 be a witnesses writing something down. Because that  
23 kind of puts them in harm's way, especially if they  
24 have a family.

25 Q Okay. So when you asked for contact

1 information and a statement from Ms. Miles and Ms.  
2 Singleton and they refused, did that surprise you?

3 A No, ma'am.

4 Q Now let me go back for one second and ask you  
5 on Line Street?

6 A Yes, ma'am.

7 Q In the evening hours?

8 A Yes, ma'am.

9 Q Maybe not as early morning as this, but in the  
10 evening hours, is it an area that you typically see  
11 bare streets or are there people congregating or?

12 A There is always, I would say clicks, there is  
13 groups of people on certain parts of the roadway  
14 whether it be on the corner, in the middle and so  
15 forth.

16 Q Okay. And are you familiar with whether or  
17 not you've ever seen any chairs on the side of the  
18 road or in a little area?

19 A It's not on the sidewalk but it's always on a  
20 property, sort of like to view what's going on.

21 Q And when you are patrolling in that area, what  
22 do you usually see people doing with the chairs?

23 A Normally sitting around. Especially around  
24 that time you see a lot of I would say elderly  
25 people. But I don't think most people over 55 or so

1 would sit out talking, just view the area. Most of  
2 the times it's hot outside, and if it's hot outside  
3 it's hot inside. With the amount people that are  
4 there, normally they're just standing outside.

5 Q Now while you were there and talking to Ms.  
6 Singleton and talking to Ms. Miles, did other law  
7 enforcement officers arrive at the scene?

8 A Yes, ma'am.

9 Q And did any emergency vehicles arrive?

10 A Yes, ma'am.

11 Q What were those?

12 A Fire truck was there as well as EMS.

13 Q Okay. Now after attempting to talk, then, to  
14 Ms. Singleton and Ms. Miles and getting some brief  
15 statements from them, did you attempt to locate any  
16 other witnesses?

17 A Yes, ma'am.

18 Q Describe that for us. What efforts did you  
19 make?

20 A Well, I remember coming on scene and I noted  
21 that there were -- it's not that they weren't trying  
22 really to give me information, they didn't really  
23 want to give me information. You have, what I  
24 learned later on, their family is standing there.  
25 The last thing they want to do is break away from

1 that and take away the comforts of the family  
2 members.

3 So we tend to -- I give them my card, and I  
4 try to canvass the area where the crowds are but  
5 where there is an isolated region. I looked across  
6 the street where the tent area, and I noticed that  
7 all of the chairs had been scattered about as if  
8 someone took off running. There was a couple of  
9 chairs laying on the ground.

10 And when I walked over there, tried to see if  
11 there was anybody in the back. Because the way the  
12 tent is, you can walk in and you can actually go  
13 around in the back area and see if anyone was out  
14 there. Everyone was gone.

15 I approached a couple other people, but when  
16 you start walking towards a crowd you'll see some  
17 people walking away, and that's common. The most you  
18 can do is just give them your card and say, is there  
19 any information you have or think you'd like to  
20 assist with this case, you hear anything, give us a  
21 call.

22 Q Okay. And prior to EMS getting out there, can  
23 you describe for the jury what Ms. Singleton and Ms.  
24 Miles were doing with Mr. Simmons?

25 A I remember Ms. Singleton down. She was the

1 first person I spoke to. I went up, and I saw her  
2 down with the victim. I tried talking to the victim,  
3 and he wasn't saying anything.

4 So when I spoke to -- not that he wasn't  
5 trying to say anything, he just had that look of  
6 shock on his face.

7 MS. FORD: Objection.

8 THE COURT: Basis.

9 MS. FORD: He was -- speculation, Your Honor.

10 THE COURT: please approach.

11 (Whereupon, a discussion was held at the bench  
12 off the record.)

13 THE COURT: Overruled.

14 Q (By Ms. Shealy) Mr. Cooper, I think I asked  
15 you what Ms. Singleton and Ms. Miles were doing to  
16 assist Mr. Simmons?

17 A Okay.

18 Q Can you describe that for us again, please?

19 A Ms. Singleton, I remember seeing her, that's  
20 why I got her name first. She was down on her knees  
21 trying to comfort the victim. I remember he was on  
22 his right side, laying on his side, and you could see  
23 where his shirt was pooling with blood.

24 I remember her saying something to him of  
25 comfort and I tried to get as much information, maybe

1 even a dying declaration, but nothing. I asked her  
2 what happened, can you tell me what happened. And,  
3 if you may, she stated that the victim was her  
4 nephew, and that she was, prior to the shooting she  
5 had left her apartment -- he had left, the victim  
6 left the apartment to wait for a cab when she heard  
7 multiple gunshots. When she came outside she saw him  
8 lying on the ground.

9 Q And Ms. Miles, was she assisting the victim as  
10 well?

11 A Yes.

12 Q Could you tell what she was doing?

13 A I want to say she was more like a support with  
14 Ms. Singleton, Ms. Singleton being closest to the  
15 victim, she was kind of like standing over him. And  
16 they were talking back. There was a lot of action  
17 going on with regards to the victim lying down there.

18 Q Now you indicated, I'm sorry, you said that  
19 EMS came to the scene, emergency vehicles?

20 A Yes, ma'am.

21 Q Did they physically take the victim from the  
22 scene?

23 A Yes, ma'am.

24 Q Are you still at the scene when that occurs?

25 A Yes, ma'am.

1 Q Do you remember whether or not anyone from the  
2 crime seen unit at CPD arrived at the scene?

3 A Yes.

4 Q Were you still present when that occurred?

5 A Yes. Once they come on scene I show up on  
6 scene and I make sure it's not contaminated. And try  
7 to identify crime scene. One wasn't noted so I think  
8 we got Maestas out there, Crime Scene Maestas.

9 Q Maestas?

10 A Yes.

11 Q Is that Anita Maestas?

12 A Yes.

13 Q Were you able, I know you were looking for  
14 witnesses, but were you able to see anything of a  
15 physical nature out on the scene that night? Do you  
16 remember seeing?

17 A I remember seeing some blood right in front of  
18 . I noted that in my notes.

19 Q And because this was a shooting in a road, did  
20 you expect to find anything forensically?

21 A I will have to say, no, ma'am.

22 MS. SHEALY: Beg the Court's indulgence one  
23 moment.

24 Answer, please, any questions the defense may  
25 have.

1 THE COURT: Any cross-examination of the  
2 witness?

3 MS. FORD: Thank you, Your Honor.

4 THE COURT: You may proceed.

5 CROSS-EXAMINATION

6 BY MS. FORD:

7 Q Mr. Cooper.

8 A Hey.

9 Q So Mr. Simmons was alert when you got to the  
10 scene, right?

11 A What do you mean by alert?

12 Q Well, you noted in your report he was alert  
13 and conscious?

14 A Yeah.

15 Q Do you know about guns much? I don't know if  
16 that would have been part of your job description as  
17 a detective, but are you familiar with how guns work?  
18 I mean I know you are to an extent.

19 A Okay. I'm not a gun expert.

20 Q Did you see, do you know if any shell casings  
21 were found on the scene?

22 A I did not note any shell casings. I did not.

23 Q Okay. Is it fair to say that if no shell  
24 casings are found, and unless someone took the time  
25 to pick them up, then a revolver was likely used?

1 A Possible.

2 Q Just to clarify, you spoke to Shoreka Miles  
3 that night?

4 A Yes.

5 Q And she indicated that she saw nothing, right?

6 A Yes.

7 Q Did you think to do a GSR test on her?

8 A No, ma'am.

9 Q Can you tell us what a GSR test is?

10 A It's a gunshot residue test. You show up on  
11 scene and what you do is you actually take some  
12 remnants or -- layman's terms you try to get as much  
13 as you can off someone's hands because when you  
14 discharge a gun, some of the powder backfires on the  
15 hand so you try to get as much residue, gunshot  
16 residue as you can from that to see whether or not  
17 anyone discharged a firearm.

18 Q So that test is done to see if, to possibly  
19 see if anyone recently fired a gun?

20 A Yes, ma'am.

21 Q And it's done sometimes to try to exclude  
22 people from that as well, right?

23 A Yes, ma'am.

24 Q There was some cocaine found outside, wasn't  
25 there?

1 A There was a white substance.

2 Q Do you know, where exactly was that?

3 A It was directly across the street.

4 Q Was it by the tent or by the apartment,  
5 ?

6 A Directly across there was noted  
7 to be a small baggie of a white substance on the  
8 sidewalk.

9 Q So that would probably be the tent then?

10 A It was located between the tent and the  
11 sidewalk, street, yes, ma'am.

12 Q And you noted how it looked like people left  
13 hurriedly?

14 A Yes, ma'am.

15 Q And that was because chairs were scattered?

16 A Yes, ma'am.

17 Q And there were some cars on the street,  
18 weren't there?

19 A Yes, ma'am.

20 Q Did you look into those cars or anything to  
21 see if you could find people who the owners or the  
22 drivers?

23 A No, ma'am.

24 MS. FORD: Beg the Court's indulgence.

25 THE COURT: Uh-hum.

1 MS. FORD: Thank you. I have no further  
2 questions.

3 THE COURT: Any redirect of the witness?

4 MS. SHEALY: Just a quick follow-up.

5 REDIRECT EXAMINATION

6 BY MS. SHEALY:

7 Q Regarding the gunshot residue swabs that you  
8 can take from someone's hands?

9 A Yes, ma'am.

10 Q Are you familiar with whether or not there is  
11 any time limit beyond which you cannot do that?

12 A I cannot quote anything.

13 Q That's not your area?

14 A Yes, ma'am. I leave that up to crime scene.

15 MS. SHEALY: Very good. I have no further  
16 questions.

17 THE COURT: Any object to the witness being  
18 excused from the state?

19 MS. SHEALY: No, ma'am.

20 THE COURT: From the defense?

21 MS. FORD: No, Your Honor.

22 THE COURT: Sir, you are excused.

23 THE WITNESS: Thank you, ma'am.

24 THE COURT: You're welcome.

25 You may call your next witness.

1 MS. SHEALY: Elaine Singleton.

2 MS. ELAINE SINGLETON,  
3 after having first been duly sworn to state the  
4 truth, the whole truth and nothing but the truth,  
5 testified on her oath as follows:

6 DIRECT EXAMINATION

7 BY MS. SHEALY:

8 Q Ms. Singleton, would you tell the jury,  
9 please, where you were living back in October of  
10 2007?

11 A

12 Q Okay.

13 MS. SHEALY: Beg the Court's indulgence just  
14 one moment.

15 THE COURT: Uh-hum.

16 Q (By Ms. Shealy) Showing you what has been  
17 previously marked, I'm going to get you to turn  
18 around and look at that screen for me, State's  
19 Exhibit 21. Can you tell the jury where your  
20 apartment is in relationship to that building?

21 A Way in the back on the end.

22 Q Okay. And showing you State's Exhibit No. 4,  
23 can you tell us in that picture where your apartment  
24 building is?

25 A Way in the back.

1 Q Okay. Are you still living there?

2 A Yes, ma'am.

3 Q And how long have you lived there?

4 A Three or four years now.

5 Q Turn back around for me, if you will just so  
6 that we can hear you good. Tell us, if you would,  
7 who was Leroy Simmons, Junior to you? How did you  
8 know him?

9 A I know him through his mother and father.

10 Q How long had you known him?

11 A Since he was born.

12 Q And what is your relationship with his mother  
13 and his father?

14 A Me and his mother are real close friends. But  
15 me and his father are real close. Me and his mom are  
16 cousins.

17 Q What did you call Leroy? What name did you all  
18 call him?

19 A Miles.

20 Q Miles. I want you to, if you would, focus  
21 back on the day of October 18th which was a Thursday.  
22 First let me ask you this, would Miles stay with you?

23 A No. Every now and then he would come by and  
24 change clothes. He wasn't live there.

25 Q He didn't live there?

1 A No.

2 Q On October 18th, that Thursday evening  
3 spilling into Friday the 19th, okay? This is of  
4 2007. Would you tell the jury whether you saw him  
5 that day?

6 A Yes, I did.

7 Q And can you tell us, did he stop by your house  
8 or did you see him somewhere else?

9 A No, he stopped by my house to change clothes,  
10 to wash up and change clothes.

11 Q And did he leave at some point to go get  
12 something to eat?

13 A Yes.

14 Q Okay. Did you see him after that?

15 A Yes.

16 Q And when he came back to your house do you  
17 remember him leaving again at some point?

18 A No. He sat down, he ate, and he called his  
19 girlfriend telling her he was coming up there, and he  
20 called a cab.

21 Q Okay. Now let me ask you something real  
22 quick. Do you know someone named Fish?

23 A Yes, I do.

24 Q And was Fish a friend of Miles?

25 A I think so, I don't know.

1 Q Do you know Fish's real name?

2 A No, I don't.

3 Q Well after you heard Miles, was he using a  
4 cell phone?

5 A Yes, he was.

6 Q After he called the cab, where did he go?

7 A He walked outside.

8 Q Okay. And did you expect to see him again  
9 that evening or did you think he was leaving for the  
10 evening?

11 A He was leaving. He called his girlfriend,  
12 talking to her on the phone, telling her he was  
13 waiting on the cab and he walked out the door. And  
14 that was it.

15 Q After he walked out the door, what was the  
16 next time -- what was the next thing that drew your  
17 attention?

18 A The shot.

19 Q Okay. Can you describe for the jury what  
20 happened, what you heard?

21 A All I heard was some shot and I hit the floor.

22 Q Okay. Well after you hit the floor, what did  
23 you do?

24 A I called his number to check on him, and I did  
25 not get no response. So a friend of mine called

1 Fish's number and she called and Fish answered the  
2 phone and told her that that was Miles down.

3 MS. FORD: Objection, hearsay.

4 A And that's when I ran down --

5 THE COURT: Sustained, hearsay. Ma'am, you  
6 cannot tell us what someone else said.

7 Q (By Ms. Shealy) Don't tell us anything  
8 anybody else said, okay. But you tried to call Miles  
9 and couldn't get him?

10 A Yes.

11 Q Then it was your understand your friend was  
12 calling Fish?

13 A Yes.

14 Q And based on what you were told, without  
15 telling us that, what did you do?

16 A I ran outside to check.

17 Q And what did you find when you ran outside?

18 A He was laying on the ground.

19 Q Do you recall where he was laying on the  
20 ground?

21 A Part on the path, on the walkway, and part on  
22 the -- in the dirt.

23 Q Okay. Showing you State's Exhibit 20. Can  
24 you point to the general area?

25 A Right here.

1 Q Can you stand up and point to it?

2 A He was laying just across like that.

3 Q Now when you walked back outside, did you see  
4 Fish?

5 A No, I didn't pay attention to anybody but him.

6 Q But him?

7 A Yeah.

8 Q And what did you do towards Miles, what were  
9 you doing?

10 A I went and leaned over him and asked him  
11 what's wrong and he said he was shot. And I asked  
12 him where. And he said in his leg. And I gave a  
13 little pressure.

14 Q Now do you know Shoreka Miles?

15 A No, I don't.

16 Q Did you see another girl come up and help you  
17 with him?

18 A When I got out there a girl was down there  
19 helping him.

20 Q Okay. And what was she doing?

21 A Giving him pressure on the wound, gunshot  
22 wound.

23 Q What you mean by that?

24 A Stopping the bleeding, I guess.

25 Q She was pressing down?

1 A Yes.

2 MS. SHEALY: I beg the Court's indulgence just  
3 a moment.

4 THE COURT: Uh-hum.

5 MS. SHEALY: Thank you, Ms. Singleton. Answer  
6 any questions that the defense may have.

7 A Okay

8 THE COURT: You may proceed.

9 MS. FORD: Thank you Your Honor. One moment,  
10 please.

11 THE COURT: Uh-hum.

12 CROSS-EXAMINATION

13 BY MS. FORD:

14 Q Ms. Singleton, just a couple of quick  
15 questions. You said you did not know Shoreka Miles,  
16 right?

17 A No, I don't.

18 Q Did you know that she lived in .?

19 A Yes, she did.

20 Q Do you know which apartment she lives in?

21 A Upstairs on the next stairs over me.

22 Q And do you -- you had testified that Miles was  
23 going to see his girlfriend?

24 A Yes, ma'am.

25 Q Do you know what her name is?

1 A No, I don't.

2 Q How long did it take you to come outside, do  
3 you recall?

4 A After I got up off the floor, two, three  
5 minutes maybe.

6 MS. FORD: Okay, thank you, that's all I have.

7 THE COURT: Any redirect of the witness?

8 MS. SHEALY: No, Your Honor.

9 THE COURT: Any objection to the witness being  
10 excused from the State.

11 MS. SHEALY: No, Your Honor.

12 THE COURT: From the defense.

13 MS. FORD: No, Your Honor.

14 THE COURT: Ma'am, you are excused.

15 You may call your next witness.

16 MS. SHEALY: Shrod Young.

17 MR. SHROD YOUNG,

18 after having first been duly sworn to state the  
19 truth, the whole truth and nothing but the truth,  
20 testified on his oath as follows:

21 THE COURT: You may proceed.

22 DIRECT EXAMINATION

23 BY MS. SHEALY:

24 Q Mr. Young, would you tell the jury, please,  
25 how old you are?

1 A I'm 28 years old.

2 Q Okay. And do you have a nickname Fish? Do  
3 people call you Fish?

4 A Yes, ma'am.

5 Q Are you currently working somewhere?

6 A Yes, ma'am.

7 Q Where do you work?

8 A Car wash.

9 Q Okay. Now Leroy Simmons, Miles, was he a  
10 friend of yours?

11 A Yes, ma'am.

12 Q How long had you all been friends?

13 A 10 years.

14 Q I'm going to ask you focus your attention back  
15 to the evening hours of October 18th and the early  
16 morning hours of the 19th. And would you tell the  
17 jury whether or not you had been with Miles that  
18 evening and into the early morning hours?

19 Had you seen him or had you all gone anywhere  
20 together?

21 A Yes, ma'am, we was together.

22 Q Did you all go anywhere together?

23 A We went to McDonald's.

24 Q Okay. And after you all got back from  
25 McDonald's, what happened?

1 A I drove back to Line and Nassau Street. I  
2 dropped him off. I had a slow leak in the tire so I  
3 dropped him off and I told him -- he told me he was  
4 going inside to go grab his stuff, so I was standing  
5 outside smoking a Black and Mild.

6 By the time I stand outside and smoke a Black  
7 and Mild I was on the corner of Line and Nassau.  
8 That's when he come back from the apartments that he  
9 was in.

10 Q I'm sorry, I need you to -- you might have to  
11 slow down a little bit more, I didn't catch that last  
12 thing you said.

13 A The apartment that he went in, he came back  
14 out.

15 Q Okay, let me slow you down a little bit and  
16 ask you a question. You said you were having a  
17 problem with your tire?

18 A Yes, ma'am.

19 Q So Miles was not going to stay at the  
20 apartment, he was going somewhere else?

21 A He was going home at the time, so he started  
22 calling him a cab to go home.

23 Q And do you see Miles come back outside?

24 A Yes, ma'am.

25 Q Okay. And do you remember seeing Shoreka

1 Miles out there?

2 A No, ma'am.

3 Q Let me ask you something. You know that -- do  
4 you know whether across the street from  
5 there is a tent area?

6 A No, ma'am.

7 Q Well when Miles came back out, were you  
8 talking to him there for a bit?

9 A Yes, ma'am.

10 Q And at some point does someone else come on  
11 the scene?

12 A Yes, ma'am.

13 Q Would you describe for the jury what you see  
14 that person do?

15 A I saw Little Ricky walk up to him, come and  
16 talk to him. So I was standing on the corner of Line  
17 and Nassau at the time. And I thought everything was  
18 all right so I just stand right there and let them  
19 two talk.

20 And after that I saw a gun. So what I did, I  
21 stand right there smoking a Black and Mild, then I  
22 smoke me a blunt. After I starting smoking me a  
23 blunt I dozed off, I wasn't even thinking about what  
24 is going on at the time.

25 After the time that I dozed off, I was not

1 paying attention to what is going on, I walked off.  
2 A few minutes later when I come back -- I mean a few  
3 minutes later after I walked off around the corner I  
4 hear three gunshots, I hear three gunshots, that's  
5 when I come back around the corner, ran down Nassau  
6 Street, going to see my aunt, which is Pamela Brown.

7 I came back, Miles was laying on the grand.  
8 After that I called an ambulance for him.

9 Q Now, let me back you up a little bit.

10 Little Ricky, do you see Little Ricky in the  
11 courtroom today?

12 A Right now do I see him?

13 Q Uh-hum.

14 A No, ma'am, I don't see him.

15 Q Could you stand up and tell me whether you see  
16 him?

17 A Yes, ma'am.

18 Q Stay standing for me for a second. I know  
19 it's hard with this here. Can you point him out to  
20 the jury for us?

21 A Right there.

22 Q What does he have on?

23 A All dressed up.

24 Q All dressed up?

25 A Yes, ma'am.

1 Q Does he have a tie on or not have a tie on?

2 A He doesn't have a tie on.

3 Q Now I'm asking you a question now that is  
4 before the night that all of this happened, okay?  
5 Did you know who Little Ricky was?

6 A Yes, ma'am.

7 Q And had you seen him in the area where Line  
8 and Nassau is?

9 A Yes, ma'am.

10 Q Are you -- you've indicated that you see  
11 Little Ricky, did he approach Miles?

12 A Yes, ma'am.

13 Q He comes towards him?

14 A Yes, ma'am.

15 Q And you see a gun?

16 A Yes, ma'am.

17 Q Now you've told me that you thought everything  
18 was okay?

19 A Yes, ma'am.

20 Q But then what did you hear?

21 A When I went, when I went around the corner and  
22 I heard three gunshots. At the time I hear three  
23 gunshots. And when I hear three gunshots I was like  
24 scared to get shot, so what I did I ran down the  
25 street to try to get help.

1           That's about the time I went down the street  
2 to my aunt, Pamela Brown. And when I came back  
3 that's when I saw Miles, that's when I called the  
4 ambulance on.

5           Q     Now were you able to see from where Little  
6 Ricky came, or you just see him at some point  
7 approaching Miles?

8           A     I saw him at the time approaching Miles.

9           Q     And I'm going to ask you about the lighting in  
10 that area. Was the lighting enough for you to be  
11 able to get a good look at who you saw?

12          A     You cannot, to tell you the truth, I was  
13 loaded at the time, but I can't really tell you the  
14 real full deal.

15          Q     I'm sorry, say that again.

16          A     I said at the time I was -- my eyes was blurry  
17 so I couldn't really tell you the real full deal  
18 about that.

19          Q     Okay, let me ask you this way. Who did you  
20 see that night with the gun?

21          A     Ricky Deas.

22          Q     And you knew him by what name?

23          A     Little Ricky.

24          Q     Now when you first see the gun, do you not go  
25 and try to stop the fight at all?

1 MS. FORD: Objection, leading.

2 THE COURT: Sustained, leading.

3 Q (By Ms. Shealy) Well when you first see the  
4 gun, could you tell the jury what you do?

5 A I was -- at the time I was a little scared so  
6 I went and trying to get help, get help, somebody  
7 else to stop it. But apparently I hear the three  
8 gunshots at the time so I couldn't do nothing after  
9 that. So that's why I just called the ambulance.

10 Q Okay. When you say called the ambulance, what  
11 number did you dial?

12 A 911.

13 Q And in fact did an ambulance come to the  
14 scene?

15 A Yes, ma'am.

16 Q Now after you hear the gunshots, when you  
17 place the call to 911, do you come back to where  
18 Miles is?

19 A When I dial that number now that's when I was  
20 back. I was coming back around the corner.

21 Q You were back?

22 A Yes, ma'am.

23 Q When the police got out there, were you still  
24 in the area?

25 A I was there but I just walked off because I

1 was so scared, paranoid, and I just walked around the  
2 corner with my auntie, just try to calm down. And  
3 make sure everything all right for me, to make sure  
4 nothing happened to me.

5 Q Now why didn't you go up to the police  
6 officers and tell them what you had seen?

7 A Because I was like afraid of my life.

8 Q Okay. The days that followed, did you ever go  
9 to the police office before you got arrested and tell  
10 anybody involved in this case what you saw?

11 A No, ma'am.

12 Q Do you know Miles's father, Leroy Simmons?

13 A Yes, ma'am.

14 Q Could you tell the jury whether or not he came  
15 into town?

16 A Did he came into town?

17 Q Did he come into town?

18 A Yes, ma'am.

19 Q Did you have the occasion to talk with him?

20 A I -- we talked at the funeral.

21 Q Okay. And do you remember talking to him  
22 about some of what you saw that night?

23 A A little bit.

24 Q Okay. Did he ask you to please go talk to the  
25 police?

1 A Yes, ma'am.

2 Q Did you?

3 A No, ma'am.

4 Q David Osborne, the lead detective in this  
5 case, did he try to reach you?

6 A Yes, ma'am.

7 Q Did he try to reach you more than one time?

8 A Yes, ma'am.

9 Q Did he try to reach you more than two times?

10 A I think it was three times.

11 Q Okay. And what did you tell him when he said  
12 he wanted to talk to you?

13 A I told him, at the time I told him I'm not a  
14 snitch, I'm not a snitch. But at the time that's  
15 what I told him.

16 Q That you weren't a snitch?

17 A Yes, ma'am.

18 Q Now did you get arrested at some point after  
19 this incident?

20 A Yes, ma'am.

21 Q Was it after you refused to talk to David  
22 Osborne?

23 A Yes, ma'am.

24 Q Do you remember what you were arrested for?

25 A Obstruction of justice.

1 Q After you were arrested for that, did you in  
2 fact go and talk to Davis Osborne?

3 A Yes. He came to the count jail to talk to me.

4 Q Come talk to you.

5 MS. SHEALY: Your Honor, without objection we  
6 are going to -- we are going to mark a previous  
7 exhibit, Court's 4 --

8 THE COURT: Don't make any reference to hat  
9 they previously were marked. They will be marked  
10 State's next in line subject to defense's objection.

11 MS. FORD: Your Honor, other than --

12 THE COURT: They will be marked for ID only at  
13 this point.

14 (Whereupon, State's Exhibit Nos. 24 and 25 are  
15 marked for identification.)

16 Q (By Ms. Shealy) when David Osborne spoke with  
17 you, did you ultimately give him a statement?

18 A Yes, ma'am.

19 Q And as a part of talking to him, did he also  
20 show you a photographic lineup?

21 A Yes, ma'am.

22 Q And prior to his showing you a photographic  
23 lineup, did he hand you a document to sign?

24 MS. SHEALY: May I approach, Your Honor?

25 THE COURT: You may.

1 Q (By Ms. Shealy) Showing you what has been  
2 marked for ID purposes as State's Exhibit 24, I ask  
3 you, do you recognize this document?

4 A Yes, ma'am.

5 Q And on the occasion that Mr. -- Detective  
6 Osborne was taking your statement and showing you a  
7 lineup, did he read that form out to you?

8 A Yes, ma'am.

9 MS. SHEALY: Your Honor, I would offer State's  
10 Exhibit in at this time.

11 THE COURT: Please approach.

12 (Whereupon, a discussion was held at the bench  
13 off the record.)

14 MS. SHEALY: Your Honor, I offer State's 24  
15 then.

16 THE COURT: Marked and admitted subject to the  
17 objection.

18 (Whereupon, State's Exhibit No. 24 is admitted  
19 into evidence.)

20 Q (By Ms. Shealy) Okay. So when Detective  
21 Osborne showed you this document, did he read the  
22 language at the top of this page?

23 A Yes, ma'am.

24 Q And what did he tell you about looking at the  
25 lineup? Did he tell you he wanted you to take your

1 time?

2 A Yes, ma'am.

3 Q And when you were shown the lineup, tell the  
4 jury, please, if you would, did you see the shooter  
5 from that evening?

6 A Yes, ma'am.

7 Q Did you see the person who had had the gun  
8 that evening?

9 A Yes, ma'am.

10 Q What number is that person?

11 A Number one.

12 Q And how do you indicate on this document, and  
13 I'm showing you what has been previously marked as  
14 State's Exhibit 25, Your Honor, I understand there is  
15 no additional objection to --

16 THE COURT: Marked and admitted subject to the  
17 objection.

18 (Whereupon, State's Exhibit No. 25 is admitted  
19 into evidence.)

20 Q (By Ms. Shealy) How do you indicate on that  
21 form who the person was that you had seen that  
22 evening?

23 A I memorized the face.

24 Q What do you do on the paper to show who it was  
25 that you saw?

1 A Point him out.

2 Q Okay. And then around the picture, what did  
3 you do?

4 A Circle it.

5 Q And then what did you write on the picture?

6 A Signed and date my name.

7 Q Okay. And did you sign your name two times?

8 A Yes, ma'am.

9 Q Why did you write two times?

10 A One was print and one was handwriting.

11 Q One was a print and one was what?

12 A Handwriting.

13 Q Okay. Now when you were talking to Detective  
14 Osborne, did you realize that at that point Richard  
15 Deas had been arrested?

16 A Yes, ma'am.

17 Q Okay. Now when you indicated who you had seen  
18 that evening, did you do it based on what you had  
19 seen that night or for any other reasons?

20 A That night, that I seen him that night.

21 Q And when Detective Osborne had you sign  
22 State's Exhibit 24, what did you tell Detective  
23 Osborne on that form about the person that you  
24 circled?

25 A That was Ricky Deas.

1 Q Okay. And did you indicates, that was the one  
2 I seen, he killed my boy?

3 A Yes, ma'am.

4 Q Now when you were shown that photographic  
5 lineup, did Detective Osborne promise you anything or  
6 threaten you with anything?

7 A No, ma'am.

8 Q Did you take your time in looking at the  
9 lineup?

10 A Yes, ma'am.

11 Q Now the process when you were giving your  
12 statement to Detective Osborne, how did that work?  
13 Was he asking you questions?

14 A Yes, ma'am.

15 Q And did he actually write out the statement or  
16 did you write out the statement?

17 A He did, ma'am.

18 Q And did you have the opportunity to look back  
19 at the statement and sign each page?

20 A Yes, ma'am.

21 Q And in fact did you sign each page?

22 A Yes, ma'am.

23 Q Was there a correction that you could make,  
24 that you made ,excuse me, on this statement that you  
25 wanted Detective Osborne to put in there?

1           A       No, ma'am.

2           Q       Now I ask you, do you remember when describing  
3 what you saw that evening telling Detective Osborne  
4 that you actually saw Little Ricky point a gun at  
5 Miles? Do you remember telling Detective Osborne  
6 that?

7           A       Yes, ma'am.

8           Q       Shrod, are you having a hard time explaining  
9 that you were out there that night?

10          A       No, ma'am.

11          Q       But you remember telling Detective Osborne  
12 that you actually saw him pull the gun; is that  
13 correct?

14          A       Yes, ma'am.

15          Q       And did you in fact see him pull a gun?

16          A       Yes, ma'am.

17          Q       And he had been your friend for how long?

18          A       Six months.

19          Q       Little Ricky had?

20          A       Yes, ma'am.

21          Q       What about Miles, he had been your friend for  
22 how long?

23          A       10 months, 10 years.

24          Q       10 years?

25          A       Yes, ma'am.

1 Q And on that evening that you were out there,  
2 did you give any assistance to Miles?

3 A No, ma'am.

4 Q Is that something you've struggle with since  
5 then?

6 A What do you mean by struggling?

7 Q Has that made you feel bad that you didn't  
8 help him out?

9 A Yes, ma'am.

10 MS. FORD: Objection, leading.

11 THE COURT: Sustained leading.

12 Q (By Ms. Shealy) Tell the jury, if you would,  
13 what if any regrets that you have about what you did  
14 that evening.

15 MS. FORD: Objection, relevance.

16 THE COURT: Approach.

17 (Whereupon, a discussion was held at the bench  
18 off the record.)

19 THE COURT: Overruled.

20 Q (By Ms. Shealy) Shrod, when I had asked you  
21 what if any regrets did you have about what you did  
22 or did not do that evening?

23 A What do you mean by regrets?

24 Q Do you feel bad about anything you did do or  
25 did not do that night?

1           A       I feel bad that I couldn't really help him  
2 out. And I say that I had to call the ambulance for  
3 him.

4           Q       Okay. And shrod you weren't right out there  
5 near the tent area with Shoreka?

6           A       I don't know about that, ma'am.

7           MS. SHEALY: Beg the Court's indulgence just a  
8 moment.

9           Q       (By Ms. Shealy) When you were telling us  
10 earlier that you smoked a Black and Mild, first of  
11 all what is that?

12          A       Black and Mild is like a little cigar.

13          Q       Then you said that you also smoked a blunt?

14          A       Yes, ma'am.

15          Q       What does a blunt have in it?

16          A       Blunt just have regular weed.

17          Q       Marijuana?

18          A       Yes, ma'am.

19          Q       Okay. Now you were telling the jury then that  
20 you were smoking one blunt that night?

21          A       Yes, ma'am.

22          Q       Had you had any other drugs earlier that  
23 evening?

24          A       No, ma'am.

25          Q       Had you been drinking?

1 A No, ma'am.

2 Q And when you saw the person approach Miles,  
3 who was it that you saw?

4 A Ricky Deas.

5 Q Do you have any question about that?

6 A No, ma'am.

7 Q when you talked to Detective Osborne, did he  
8 promise you anything if you gave the statement?

9 A Say that again?

10 Q when you were talking to Detective Osborne,  
11 after you had gotten arrested, did he promise you  
12 anything if you cooperated with him?

13 A He said if I didn't cooperate I would not get  
14 no bond. And I'd have to stay in there for a long  
15 time until I go to court.

16 Q But did you talk to him because of that or did  
17 you talk to him because you wanted to finally tell  
18 the truth of what you had seen?

19 A I try to talk to him, I try to get back on the  
20 street, help my family out.

21 Q well when you tell us then that you want to  
22 get that bond, get back out, what you told Detective  
23 Osborne did you make it up?

24 A No, ma'am, didn't make it up.

25 Q This was first time willing to tell it?

1 A I told him the truth.

2 Q Okay. Now I mean I need to know that, Shrod,  
3 is what you told Detective Osborne the truth?

4 A Yes, ma'am, I did tell the truth.

5 Q But when you were telling the truth, you did  
6 it because you thought it would help get you out on  
7 bond as well?

8 A Actually he told me he would give me no bond,  
9 so I was trying to scared he was saying would not get  
10 no bond.

11 Q But what you told him, did you tell him what  
12 you saw?

13 A Yes, ma'am.

14 Q And was it the truth about Ricky Deas?

15 A Yes, ma'am.

16 MS. SHEALY: I have no further questions.

17 Thank you, Your Honor.

18 THE COURT: Any cross-examination of the  
19 witness?

20 MS. FORD: Yes, Your Honor.

21 May we approach?

22 THE COURT: You may.

23 (Whereupon, a discussion was held at the bench  
24 off the record.)

25

CROSS-EXAMINATION

1 BY MS. FORD:

2 Q Mr. Young?

3 A Yes, ma'am.

4 Q My name is Mary Ford. Mr. Young, you called  
5 911 that evening, didn't you?

6 A Yes, ma'am.

7 Q But you did not actually talk to the police,  
8 right?

9 A No, ma'am.

10 Q After the shooting you talked to several  
11 people about what you had seen though, right?

12 A No, ma'am.

13 Q You didn't talk to Sandra Green about seeing  
14 anything?

15 A Well, I told her that, yeah, I saw someone get  
16 shot.

17 Q You told her that you saw boy point a gun at  
18 Leroy, correct?

19 A Yes, ma'am.

20 Q You told her that Leroy ran into the guy,  
21 right?

22 A Yes, ma'am.

23 Q And you said that Leroy actually slammed the  
24 guy into the car, right?

25 A No, ma'am, I didn't tell her that.

1 Q You told her that Leroy slipped and fell to  
2 the ground?

3 A No, ma'am.

4 Q You told her that the guy went into Leroy's  
5 pockets and took some money, didn't you?

6 A No, ma'am, I never told her that.

7 Q But you admitted to her that you were there,  
8 right?

9 A I told her I was around the scene, I was  
10 around there when it happened, when the gunshots  
11 happened.

12 Q And you told her you knew the name of the guy,  
13 right?

14 A Yes, ma'am.

15 Q But you told her you refused to say his name,  
16 right?

17 A I told her Ricky Deas.

18 Q You did?

19 A Yes, I did.

20 Q You also spoke to Mr. Simmons, Miles's dad,  
21 right?

22 A Yes, ma'am.

23 Q And he pleaded with you to help him, didn't  
24 him?

25 A Help him with what?

1 Q With naming his son's murderer.

2 A I don't have no clue what you mean by that,  
3 what you are talking about.

4 Q He asked for your help, didn't he?

5 A Yes.

6 Q He wanted you to go to the police, didn't he?

7 A Yes.

8 Q When you spoke to Detective Osborne, this was  
9 about November 9th, correct?

10 A Yes.

11 Q And Richard Deas had already been arrested for  
12 murder, hadn't he?

13 A No.

14 Q So you didn't know that Richard Deas had been  
15 arrested for murder?

16 A I knew he was arrested for murder, but I did  
17 not -- he wasn't during the October 19th, I don't  
18 remember that.

19 Q Okay. You talked to Detective Osborne  
20 November 9th, correct?

21 A Yes.

22 Q And at this time Richard Deas was already in  
23 jail, correct?

24 A Right.

25 Q And Osborne thought that Miles was your best

1 friend, right?

2 A Yes.

3 Q But you are saying that you were not present  
4 when he was actually shot, correct?

5 A No, ma'am.

6 Q And you told us how you were outside, your car  
7 had a flat tire, right?

8 A That's correct.

9 Q When were you able to get your car?

10 A I was there at the time. I was waiting for  
11 somebody to come fix my tire. That's when I was  
12 standing on Line and Nassau corner. I called  
13 somebody to come help me fix my car.

14 Q Who did you call?

15 A I called one of my family.

16 Q Did they ever come?

17 A No because the police was out there.

18 Q When did you get your car fixed?

19 A The next morning.

20 Q So it was there all night?

21 A Yes, ma'am.

22 Q So are you saying today you told us how you  
23 saw Little Ricky walk up, right?

24 A Yes.

25 Q And you are smoking a cigarette, yes?

1       A     I didn't say cigarette, but I'd a Black and  
2 Mild.

3       Q     Black and Mild, sorry. Then you smoked a  
4 blunt, correct?

5       A     Correct.

6       Q     And at some point you doze off, right?

7       A     Right.

8       Q     And then you start to walk away, right?

9       A     Correct.

10      Q     And then you hear the shots?

11      A     Correct.

12      Q     You go to your aunt?

13      A     I ran down the street to go get help.

14      Q     And when you came back you saw Leroy bleeding,  
15 right?

16      A     Yes.

17      Q     Was the ambulance already there?

18      A     No, ma'am.

19      Q     And you told us how your vision was fuzzy,  
20 right?

21      A     Yes, ma'am.

22      Q     That's because you were high, right?

23      A     Yes, ma'am.

24      Q     And you were on Line Street but you don't  
25 recall seeing any kind of a tent, right?

1 A No, ma'am.

2 Q You didn't hear anyone else outside, did you?

3 A No, ma'am.

4 Q Hear laughing?

5 A No, ma'am.

6 Q And you told us how Osborne tried to call you  
7 probably two or three times, right?

8 A Yes, ma'am.

9 Q And the first time you said, I ain't no  
10 snitch, right?

11 A Yes.

12 Q Second time about October 25th he started to  
13 threaten you with a criminal charge, didn't he?

14 A Yes, ma'am.

15 Q And you said, you can say I didn't see  
16 anything, right?

17 A I told him I'd talk to him but I had to get a  
18 lawyer.

19 Q But you were actually arrested for obstruction  
20 of justice on the 9th, weren't you?

21 A No, yes, that too, and child support too.

22 Q Okay. And on the 9th Detective Osborne came  
23 to the jail to get you, right?

24 A Come to talk to me, yes.

25 Q Was this before or after your bond hearing?

1 A That's before.

2 Q And so he told you he would help you out with  
3 the bond?

4 A He told me that if I don't cooperate, all  
5 right, I wouldn't get no bond. So I was thinking  
6 about my family, so I had to do what I had to do.

7 Q So you ended up getting a PR bond; is that  
8 correct?

9 A Correct.

10 Q And PR bond just means basically you don't  
11 have to pay anything, correct?

12 A Correct.

13 Q That the Court will trust you on your own to  
14 show up to court dates?

15 A Correct.

16 Q And eventually you had a preliminary hearing  
17 on this charge, right?

18 A Correct.

19 Q This was January of '08?

20 A I don't remember because I never told me until  
21 I get out of jail that they dropped the charge on me.

22 Q So the preliminary hearing your charge was  
23 dropped?

24 A Yes, ma'am.

25 Q And it was dropped for lack of merit?

1           A     I don't recall, ma'am, nobody talked to me  
2 about that.

3           Q     But you know the solicitor could actually --  
4           MS. SHEALY: Objection, Your Honor. I may  
5 have objected prematurely.

6           THE COURT: Okay, objection is withdrawn.  
7 Restate the question.

8           Q     (By Ms. Ford) You knew, though, that the  
9 solicitor could directly indict that charge if they  
10 wanted to?

11          A     Yes, ma'am.

12          Q     And you picked out the person -- you saw the  
13 lineup, right?

14          A     Yes, ma'am.

15          Q     And you picked out the person that Osborne  
16 wanted you pick out, correct?

17          A     The lineup he showed me, no, I picked that  
18 out.

19          Q     Right, you picked out the person Detective  
20 Osborne wanted you pick, correct?

21          A     Correct.

22          Q     And you knew who Detective Osborne wanted you  
23 to pick, didn't you?

24          A     Yes, ma'am.

25          Q     You did whatever Detective Osborne wanted you

1 to do, didn't you?

2 A Yes, ma'am.

3 Q And you told us how Detective Osborne never  
4 promised you or threatened you or anything, right?

5 A Yes, ma'am.

6 Q But it was your impression that you were going  
7 to be charged with murder if you didn't talk, right?

8 A Yes, ma'am.

9 Q Let's go back. When you talked to Mr.  
10 Simmons, Leroy's dad, okay?

11 A Okay.

12 Q You never gave him a name, did you?

13 A No, ma'am.

14 Q Never told him it was Little Ricky?

15 A I mean yes, ma'am.

16 Q You did tell him?

17 A Yes, ma'am.

18 Q You gave him a name? So you told everyone you  
19 talked to, Sandra Green, Leroy Simmons, you gave  
20 Little Ricky, Richard Deas, you gave the name?

21 A Yes, ma'am.

22 Q And when you talked to Mr. Simmons, you told  
23 them, or you told him, that you saw Little Ricky  
24 approach on foot, correct?

25 A Apparently, yes.

1 Q He was by himself though, right?

2 A Yes, ma'am.

3 Q And you told him that you saw him pull out a  
4 gun, right?

5 A That's correct.

6 Q And then you ran off down Nassau Street?

7 A I was standing on the corner of Line and  
8 Nassau Street.

9 Q Okay. So you are saying you weren't at the  
10 tent, right?

11 A I did not know nothing about no tent.

12 Q You were at the corner of Line and Nassau  
13 Street, right?

14 A Across the street, yes, correct.

15 Q Do you know how far away that is from  
16

17 A Yes, ma'am.

18 Q How far?

19 A Yes, ma'am.

20 Q How far?

21 A Like, like four, four or five feets, like that  
22 there.

23 Q Four or five feet?

24 A I can't remember, I'm not good on that.

25 Q Okay. Was it closer or further away from

1 where I am now?

2 A Further away.

3 Q How far away, tell me to stop.

4 A Right there.

5 Q Okay, so past the tables where the attorneys  
6 are sitting, correct?

7 A Correct.

8 Q You didn't talk to Shoreka Miles that night?

9 A No, ma'am.

10 Q But you know who she is, right?

11 A Yes, ma'am.

12 Q You saw her with Leroy Simmons when he was  
13 bleeding?

14 A That's when I called the ambulance.

15 MS. FORD: Beg the Court's indulgence.

16 THE COURT: Uh-hum.

17 Q (By Ms. Ford) Didn't you tell Detective  
18 Osborne the reason you did not do anything was  
19 because you thought it was just a robbery?

20 A No, I never told him that.

21 Q Never told him that?

22 A No, ma'am.

23 Q Did you tell anybody about a bicycle?

24 A No, ma'am.

25 Q There was some cocaine on the street, had you

1       been doing any cocaine?

2       A       I don't do cocaine.

3       Q       Do you know why that cocaine was there?

4       A       No, ma'am, I don't know.

5       Q       When you talked to Detective Osborne, he asked  
6       you why you didn't come forward earlier, didn't he?

7       A       Repeat that again.

8       Q       When you talked to Detective Osborne, didn't  
9       he ask you why you didn't come forward earlier?

10      A       Yes, ma'am.

11      Q       And didn't you tell him that the reason that  
12      you did not come forward at first was because you  
13      weren't expecting Leroy to die?

14      A       I was afraid at the time because I never saw  
15      somebody get gunned down, get gunshots like that  
16      before.

17      Q       I understand that's what you are saying today.  
18      But when you gave the written statement to Osborne,  
19      you remember giving that, right?

20      A       Yeah. But I did not mean to say it like that.

21      Q       Okay. So you did not tell Detective Osborne  
22      that the reason you didn't come forward is because, I  
23      wasn't expecting him to die?

24      A       I did tell him that but I did not mean to say  
25      it like I have it in the statement.

1 Q And didn't you also tell him that, when I  
2 heard the police arrested Little Rick, I figured they  
3 didn't need to talk to me, they had what they needed?

4 A Yes, I did say that because -- because the  
5 reason I say that is because I didn't think they need  
6 me anymore.

7 Q Okay. But Detective Osborne, he called you on  
8 October 25th, right?

9 A Right.

10 Q He called you after Richard was arrested,  
11 didn't he?

12 A Like on the day it happened.

13 Q Mr. Young, where is Ducks Court?

14 A It's behind Churches.

15 Q So it's in the same area, it's on Line Street  
16 somewhere between Meeting and Nassau, correct?

17 A Correct.

18 Q Where did you see Richard come from?

19 A I seen him coming down Hanover Street side.

20 Q Okay. So Hanover, just so the jury has a  
21 clear picture, there is Meeting Street, Nassau Street  
22 and then Hanover street, correct?

23 A It's Meeting Street, Line Street, Nassau  
24 Street and then Hanover Street.

25 Q Okay. Line Street actually intersects all of

1       them though, right?

2       A       Correct.

3       Q       So while they all cross Line Street, it's  
4       Meeting Street, Nassau Street, Hanover Street, right?

5       A       Hanover Street is the last street, correct.

6       Q       So when you saw Richard approach Miles, he was  
7       coming from Hanover Street?

8       A       Correct.

9       Q       The opposite direction of Meeting, right?

10      A       Correct.

11      Q       When you gave a statement to Detective  
12      Osborne, you told him that you thought he was coming  
13      from Ducks Court, didn't you?

14      A       I see he asked me where did he ran from, as I  
15      said from Ducks Court.

16      Q       But you did tell Detective Osborne that?

17      A       Yes, I did.

18      Q       Now you are saying you think he came from  
19      Hanover Street?

20      A       I said I think he came from Hanover Street.

21      MS. FORD: Beg the Court's indulgence.

22      THE COURT: Uh-hum.

23      MS. FORD: Your Honor, may we approach?

24      THE COURT: You may.

25      (Whereupon, a discussion was held at the bench

1 off the record.)

2 THE COURT: You may proceed.

3 Q (By Ms. Ford) Mr. Young, you have a record,  
4 don't you, a criminal record?

5 A Yes, I do.

6 Q And you have been to prison before, right?

7 A Correct.

8 Q You've never been in prison?

9 A Yes, I was.

10 Q Okay. What did you see the shooter wearing  
11 that night?

12 A Black.

13 Q All black?

14 A Correct.

15 Q What kind of shirt was he wearing?

16 A A black shirt. Regular black shirt.

17 Q Was it a T-shirt?

18 A Correct.

19 Q Was there anything unique about the shirt?

20 A No, ma'am.

21 Q Just black. You told us how you smoked some  
22 weed earlier in the night, right?

23 A Correct.

24 Q You actually smoked two blunts that day?

25 A No, I had smoked one blunt.

1 Q Yesterday you testified in a hearing  
2 yesterday, right?

3 A Correct.

4 Q And didn't you tell us yesterday that you had  
5 smoked a blunt prior to seeing the fight?

6 A I said I was smoking a -- smoking a blunt at  
7 the time it was going on. Like before it happened I  
8 had smoked a blunt. And at the time I was smoking a  
9 Black and Mild when they was talking.

10 THE COURT: Counsel please approach.

11 (Whereupon, a discussion was held at the bench  
12 off the record.)

13 THE COURT: You may proceed.

14 Q (By Ms. Ford) Did you previously say that you  
15 had smoked one blunt, you were getting ready to smoke  
16 another?

17 A Correct.

18 THE COURT: Sir, I could not hear the answer.  
19 Could you repeat it, please.

20 THE WITNESS: Correct.

21 THE COURT: You may continue, Ms. Ford.

22 MS. FORD: Thank you, Your Honor.

23 Q (By Ms. Ford) And how long did you tell us  
24 today that you knew Richard Deas?

25 A Six months.

1 Q Six months. Didn't you earlier say that you  
2 only knew him for one month?

3 A Correct.

4 Q You didn't have any -- as far as because you  
5 were really good friends with Miles, right?

6 A Correct.

7 Q And as far as you know there is no dispute  
8 between him and Richard Deas, correct?

9 A No, ma'am.

10 Q Just to clarify as far as today you are saying  
11 that you were outside, saw Richard Deas approach  
12 Miles, correct?

13 A Correct.

14 Q You were smoking a blunt and dosed off,  
15 correct?

16 A Correct.

17 Q You walked away and heard gunshots, correct?

18 A Correct.

19 Q So that's what you are saying today?

20 A At the time because you are making it --  
21 refresh my memory. I remember that I was standing on  
22 Line and Nassau on the corner. Ricky Deas, as Little  
23 Rick, him and Miles was talking. I was rolling up a  
24 blunt at that time and I was smoking a Black and  
25 Mild.

1 I was smoking a blunt while they was talking  
2 so I thought everything was good. So I was -- after  
3 I have smoked a blunt I smoked a Black and Mild.  
4 From that point on right there, I just leave them  
5 right there talking, next thing I know I saw a gun  
6 come from out of nowhere.

7 Q So you saw a gun?

8 A I saw the gun come from out of nowhere. I saw  
9 him push the gun, I ran around the corner to go get  
10 help. That's when I heard the gunshots, that's when  
11 I bring my auntie back.

12 Later on that day -- later on at that night I  
13 saw Miles, he had a gun, before I came around that's  
14 when I called the ambulance and it was make sure  
15 everything was all right.

16 Q Right now you are saying that you saw a gun?

17 A Yes, I did.

18 Q But earlier when you were talking to Ms.  
19 Shealy you told her, no, I didn't see a gun.

20 MS. SHEALY: Objection, Your Honor.

21 THE COURT: Please approach.

22 (Whereupon, a discussion was held at the bench  
23 off the record.)

24 THE COURT: Question is withdrawn. You may  
25 rephrase.

1 MS. FORD: Thank you, Your Honor.

2 THE COURT: You're welcome.

3 MS. FORD: One moment, Your Honor.

4 Q (By Ms. Ford) I know we are trying to go over  
5 a lot here because you talked to a lot of people,  
6 right, about this case? You talked to a lot of  
7 people, right?

8 A What do you mean by a lot of people?

9 Q Like Ms. Green, and Leroy Simmons, and  
10 Detective Osborne and us, right?

11 A Correct.

12 Q You were at the corner of Line and Nassau,  
13 right?

14 A Correct.

15 Q Not with Shoreka Miles, correct?

16 A No, ma'am. I was not with her.

17 Q You saw Richard Deas walk past you, correct?

18 A Correct.

19 Q Did he look at you ever?

20 A No, ma'am.

21 Q Were you hiding in any way?

22 A No, ma'am.

23 Q There is no bicycle, correct?

24 A I haven't seen no bicycle.

25 Q Richard Deas was by himself, right?

1 A Correct.

2 Q And you thought this was just going to be a  
3 robbery?

4 A No, I never saw that.

5 Q Okay. So that's not what you are saying  
6 today, correct?

7 A Correct.

8 MS. FORD: That's all I have, Your Honor.

9 THE COURT: Any redirect of the witness?

10 MS. SHEALY: Just a few, Your Honor.

11 REDIRECT EXAMINATION

12 BY MS. SHEALY:

13 Q Mr. Young, as I understand the answer to your  
14 questions to Ms. Ford, you believe you told Mr.  
15 Simmons and Sandra Green that it was Little Ricky who  
16 shot Miles, correct?

17 A Correct.

18 Q And when Detective Osborne kept trying to get  
19 in touch with you, did he indicate to you that he  
20 knew that from both Sandra Green and Leroy Simmons?

21 A At the time I can't remember that did he tell  
22 me or not.

23 Q Okay, let me ask you this. You indicated to  
24 Ms. Ford that you did what Detective Osborne wanted  
25 you to do. Did Detective Osborne tell you he wanted

1 you to be truthful or untruthful?

2 A He just tell me -- he just told me be correct  
3 and tell me what you see and what you hear, what you  
4 see -- I mean like that you got me in a lie.

5 Q So when you answered Ms. Ford and said that  
6 you did what Detective Osborne wanted you to do, he  
7 wanted you to tell the truth?

8 A Yes, ma'am.

9 Q Did you tell the truth?

10 A Yes, ma'am.

11 Q When you indicated that you saw Ricky Deas  
12 come from the Hanover Street area, but you saw him  
13 run from the Ducks Court area?

14 A That I think he ran to the Ducks Court area.

15 Q So you are talking about two different times;  
16 one when he was approaching Miles and one when he is  
17 leaving?

18 A Yes, ma'am.

19 Q And when you indicated that you did not think  
20 the police needed you anymore, what did you mean by  
21 that?

22 A What I mean by then they caught the man, that  
23 they didn't need me anymore to help them out.

24 Q Okay. When you saw Ricky Deas with the gun,  
25 was there anybody else around that you saw?

1 A No, ma'am.

2 Q And are you sure that you saw Ricky Deas?

3 A Yes, ma'am.

4 MS. SHEALY: I have nothing further, thank  
5 you, Judge.

6 THE COURT: Mr. Foreman, ladies and gentlemen,  
7 I need to take up a matter of law with the attorneys,  
8 it will be very brief. During this break please do  
9 not discuss the case.

10 I anticipate in the next five minutes that we  
11 will be breaking for lunch. I appreciate your  
12 patience, please leave your notepads in your seats.

13 (Whereupon, the jurors exit the courtroom.)

14 THE COURT: Bear with me one moment, I needed  
15 to look at something before we proceed.

16 There was some discussion at the bench  
17 regarding whether Mr. Young's criminal record, I  
18 advised counsel that they could question him  
19 regarding his record and ask him if he was subject to  
20 the conviction and the year, and that they could ask  
21 whether it was a felony or misdemeanor within their  
22 discretion.

23 I notice, however, that for whatever reason I  
24 think strategic, Ms. Ford, you did not ask that  
25 question.

1 MS. FORD: No, ma'am. I thought going into  
2 that he had gone to prison.

3 THE COURT: That would satisfy your inquiry?

4 MS. FORD: Yes.

5 THE COURT: In addition, there was some  
6 discussion about whether the door was opened when he  
7 said he did not use cocaine, and I indicated that  
8 selling drugs does not mean you use them.

9 Mr. Grimes indicated that he pled to  
10 possession of cocaine which may have indicated use.  
11 I had the file pulled. My concern was -- what he  
12 actually pled to is not an indication of what he was  
13 charged with. He was charged with PWID second, which  
14 is an indication of selling. He pled down to a  
15 possession second.

16 So that would not indicate -- I'm not going to  
17 reargue it -- I just wanted to be clear for the  
18 record. I want you to know I pulled his record. And  
19 I want you all to be clear that my assumption was  
20 accurate.

21 He pled to possession of cocaine, meth, second  
22 offense. But he pled down from a possession with  
23 intent to distribute crack indictment, so the Court  
24 stands by its original ruling on the issue. And I  
25 did give you all the opportunity to question him

1 regarding his record for purposes of credibility.  
2 Ms. Ford has indicated the fact that he went to  
3 prison satisfied that inquiry for her and I did allow  
4 that.

5 okay, is there anything -- is there any  
6 exception to this witness being excused from the  
7 state?

8 MS. SHEALY: I beg the Court's indulgence for  
9 just a second.

10 No objection, Your Honor.

11 THE COURT: Any exception from the defense to  
12 the witness being excused.

13 MS. FORD: No, Your Honor.

14 THE COURT: I have got a note from the juror  
15 that we need to deal with. I need you to bring in  
16 the jury so that I can excuse this witness and then  
17 I'm going to deal with the juror.

18 I need you to bring them in. All of them.

19 (Whereupon, the jurors enter the courtroom.)

20 Is there any exception to the witness being  
21 excused from the State?

22 MS. SHEALY: No, Your Honor.

23 THE COURT: By the defense?

24 MS. FORD: No, Your Honor.

25 THE COURT: Sir, you are excused.

1           Mr. Foreman, ladies and gentlemen, we are  
2 going to take advantage of this break in testimony to  
3 take our luncheon recess. We will break until 2:30.  
4 I think you all have recognized it takes a good bit  
5 of time to get in and out of the courthouse. I want  
6 to give you ample time to eat and to come back  
7 through security.

8           In addition to that, while you are all leave  
9 for lunch, there are still administrative  
10 responsibilities that the Court has to attend to, so  
11 it will probably be another 40 minutes before I get  
12 to my lunch, so that is why we take a longer luncheon  
13 recess so that I can attend to those other  
14 responsibility.

15           I would ask that you be prompt. I expect that  
16 we will start promptly at 2:30. During this break  
17 please do not have any contact with anyone in or  
18 about the courthouse. This case has a great deal of  
19 witnesses. Of course you all would not have inside  
20 recognition of them. So I would ask that you  
21 strictly abide by my instruction and not speak to  
22 anyone that you do not recognize to be a fellow juror  
23 or member of the courthouse staff, such as security  
24 or the bailiffs.

25           Also, please don't allow yourselves to be

1 exposed to any media exposure, such as anything on  
2 radio, television, Internet or newspapers. And  
3 return directly to your jury room. And again at that  
4 time I anticipate we will began promptly at 2:30.

5 Please leave your notepads in your seats. And  
6 you all need to hold 137 out there for me, I will  
7 deal with that separately.

8 If you would go with the bailiffs for me, have  
9 a good lunch, please leave your notepads in your  
10 seats.

11 (Whereupon, the jurors exit the courtroom.)

12 THE COURT: There is one other thing I  
13 neglected in my haste, I wanted to get that witness  
14 off the stand and get the jury back in and excused  
15 for lunch.

16 Part and parcel with the Court's bench ruling  
17 was that narcotics offenses are generally not  
18 considered probative of the truthfulness as based on  
19 the progeny of cases from the Supreme Court ruling on  
20 that and dealing with that matter, that is why the  
21 court allowed the questioning of on the record  
22 because that is always because a record can all be  
23 considered on the truthfulness and would not have  
24 restricted the defendant in that regard.

25 Now we have a note form juror 137, and the

1 note simply says, close kin -- I need you to close  
2 that door for me, Mr. Rogers.

3 Note indicates, close kin to Leroy Miles and  
4 Shoreka Miles. And it is signed by Forman, just hard  
5 to make out his handwriting, but it is our foreperson  
6 that signed this.

7 So I had them hold juror 137 to make inquiry.

8 Any exception from the State?

9 MS. SHEALY: Your Honor, I want to make sure I  
10 understand the note, does it say --

11 THE COURT: Simply says close kin Leroy Miles,  
12 Shoreka Miles, number 137.

13 MS. SHEALY: Did the Court inquire --

14 THE COURT: I intend to inquire 137. It's  
15 clear to me it's about him, he didn't want to be  
16 seated by the rest of the panel.

17 MS. SHEALY: Your Honor, I would like to  
18 respond after we find out after he is saying.

19 THE COURT: The Court will give you an  
20 opportunity. We need to find out what he means by  
21 the note.

22 Any exception from the defense?

23 MS. FORD: No, Your Honor.

24 THE COURT: Please bring in the juror.

25 (Whereupon, the juror enters the courtroom.)

1 THE COURT: Sir, I received a note from the  
2 foreperson indicating, I am making an assumption, I  
3 assume you had the foreperson wrote this note; is  
4 that correct?

5 A JUROR: Yes, ma'am.

6 THE COURT: Sir, tell me your name and juror  
7 number?

8 A JUROR: My name is Elmo Jackson. I think my  
9 juror number is 137.

10 THE COURT: Did you have the foreperson write  
11 that note?

12 A JUROR: Yes.

13 THE COURT: Can you tell me what you meant by  
14 the note?

15 A JUROR: The victim and Leroy and Shoreka are  
16 real close family. I don't think I can be partial.

17 THE COURT: Did you know that during the time  
18 when the Court was making the inquiry?

19 A JUROR: No, ma'am.

20 THE COURT: You found that out after the case  
21 started?

22 A JUROR: Yes.

23 THE COURT: Okay. Are you telling the Court,  
24 sir, that you cannot be fair and impartial now that  
25 you know that information.

1           A JUROR: Sure can't.

2           THE COURT: Are you telling the Court you  
3 cannot set aside any beliefs you have and render a  
4 fair and impartial verdict?

5           A JUROR: Couldn't.

6           THE COURT: Okay, sir. If you step outside  
7 the door with Mr. Robinson for me.

8           (Whereupon, the juror exits the courtroom.)

9           THE COURT: Okay, I would imagine we need to  
10 dismiss him as a juror based on his representation to  
11 the Court he cannot be fair and impartial based on  
12 his now subsequently finding out or discovering that  
13 he is related to the victim in this case.

14           Is there any exception from the State?

15           MS. SHEALY: No, Your Honor.

16           THE COURT: From the defense?

17           MS. FORD: No, Your Honor.

18           THE COURT: We will then after lunch follow  
19 the appropriate procedure and seat the alternate.

20           Bring in the juror. The note will be marked  
21 as a Court's Exhibit.

22           (Whereupon, Court's Exhibit No. 13 is marked  
23 for identification.)

24           (Whereupon, the juror enters the courtroom.)

25           THE COURT: Sir, as a result of your

1 disclosure to the Court, we appreciate your candour,  
2 we are going to dismiss you from the trial of this  
3 case. Please do not discuss any of what you may have  
4 discussed with the Court with anyone. Please don't  
5 discuss any matters that you've heard in this case  
6 until you are dismissed as a juror on Friday, okay?

7 I would ask you -- I would ask you call the  
8 jury information line after 6 o'clock this evening  
9 for further instructions regarding your service.  
10 Have a good day. Appreciate your candour.

11 MS. FORD: Your Honor, before we leave --

12 THE COURT: Make sure he didn't leave.

13 MS. FORD: I'm only concerned, apparently he  
14 told the foreman about this. I just wanted to make  
15 sure he did not say --

16 THE COURT: I will follow the appropriate  
17 procedure, as I indicated, after lunch. I'll make  
18 inquiry of the jury whether it has been discussed  
19 with him. Then I will follow the appropriate  
20 procedure and inquire of each juror.

21 MS. FORD: Thank you.

22 THE COURT: You can let him go, thank you.  
23 Anything before we recess for lunch from the  
24 State?

25 MS. SHEALY: Nothing further, Your Honor.

1 THE COURT: Anything from the defense?

2 MS. FORD: No, Your Honor.

3 THE COURT: You all have a good lunch. See  
4 you at 2:30.

5 (Whereupon, a recess was taken.)

6 (Whereupon, State's Exhibit Nos. 26 and 27 are  
7 marked for identification.)

8 THE COURT: If you can bring in the foreperson  
9 for me, please.

10 (Whereupon, the juror enters the courtroom.)

11 THE COURT: Hi, how are you.

12 A JUROR: All right.

13 THE COURT: I needed to inquire about the note  
14 that you wrote regarding juror 137. Was that  
15 discussed in the presence of the other jurors? Or  
16 did he simply make reference to you regarding that?

17 A JUROR: He just told me.

18 THE COURT: Okay. Sir, as a result of that of  
19 having that conversation with him, do you feel you  
20 can still remain fair and impartial.

21 A JUROR: No, I think he said he didn't think  
22 he could.

23 THE COURT: No, I'm asking you. Do you still  
24 think you can remain fair and impartial?

25 As a result of that conversation.

1           A JUROR: I would say no, since he felt the  
2 need to even bring it up to me, I don't think so.

3           THE COURT: Okay. And I need you to tell me  
4 yes or no, I need you to search yourself. I'm trying  
5 to determine if you can remain fair and impartial or  
6 did you become biased in any way as a result of that  
7 conversation?

8           A JUROR: Oh, did I become?

9           THE COURT: Yes, sir.

10          MR. NEELY: Oh, no. I did not, no.

11          THE COURT: Do you still feel you go render a  
12 fair and impartial verdict in this case based solely  
13 on the evidence as it will be presented and on the  
14 law as the Court will instruct?

15          A JUROR: Yes, ma'am.

16          THE COURT: Is it your representation to the  
17 Court that Number 137 did not have any conversation  
18 about this matter with any other jurors?

19          A JUROR: Correct.

20          THE COURT: Thank you, sir. If you would step  
21 outside the door with Mr. Robinson. Please don't  
22 discuss our conversation with the other jurors.

23          A JUROR: All right.

24          THE COURT: Okay. Is there any exception? I  
25 don't think after having made that inquiry of the

1 foreperson and his representation to the Court that  
2 it was a solitary conversation between he and juror  
3 number 137, and that it was not discussed in the  
4 presence of the rest of the panel, and his ability to  
5 continue to be fair and immaterial, I do not see the  
6 need to do an individual voir dire of each juror.

7 Is that acceptable to the State?

8 MS. SHEALY: Yes, Your Honor.

9 THE COURT: Is that acceptable to the defense?

10 MS. FORD: Yes, Your Honor. However, I would,  
11 if you can possibly just make sure with the  
12 foreperson that he does not discuss any details, he  
13 just merely said, I'm related --

14 THE COURT: I think he has been very clear. I  
15 asked him specifically what was said, he related that  
16 to the Court.

17 MS. FORD: Thank you, Your Honor.

18 THE COURT: You're welcome.

19 We will draw the alternate juror by ballot as  
20 required by 14-7-1340 and we will determine then  
21 who's seated on the panel and the clerk will proceed  
22 with that as soon as he gets.

23 THE CLERK: It will be Angela Ferrari, Juror  
24 Number 84, Your Honor.

25 THE COURT: Number 84. The record will

1 reflect that the alternate was drawn pursuant to  
2 14-7-1340, was drawn by ballot to serve in place of  
3 the juror which has been discharged which was number  
4 137.

5 That was 84, correct?

6 THE CLERK: Yes, Your Honor.

7 THE COURT: Any exception from the State?

8 MS. SHEALY: No, Your Honor.

9 THE COURT: Any exception from the defense?

10 MS. FORD: No, Your Honor.

11 THE COURT: Please bring in the panel. Bring  
12 them all in.

13 (Whereupon, the jurors enter the courtroom.)

14 THE COURT: Thank you, ladies and gentlemen.

15 I hope -- I'm going to need all of you to go down for  
16 me, then number -- actually. Either I just need  
17 Number 84 to come down and have seat in that chair.  
18 Sir, you need to move down one seat for me, please.

19 Ladies and gentlemen, we appreciate your  
20 patience. I hope you all had a restful and enjoyable  
21 lunch. We will now resume with the trial testimony.

22 Ms. Shealy, you may call your next witness.

23 MS. SHEALY: State calls Shoreka Miles.

24 MS. SHOREKA MILES,

25 after having first been duly sworn to state the

1 truth, the whole truth and nothing but the truth,  
2 testified on her oath as follows:

3 THE COURT: You may proceed.

4 MS. SHEALY: Thank you, Your Honor.

5 DIRECT EXAMINATION

6 BY MS. SHEALY:

7 Q Ms. Miles, tell us a little bit about you.  
8 How old are you?

9 A 24.

10 Q And where did you grow up?

11 A Edisto.

12 Q Where do you live now?

13 A Edisto.

14 Q Was there a time period that you lived  
15 downtown?

16 A Yes, ma'am.

17 Q Tell the jury where you were living in October  
18 of 2007?

19 A I was living on Line Street.

20 Q Okay. And do you recall your address on Line  
21 Street?

22 A Yes, ma'am.

23 Q What was it?

24 A

25 Q

1 A Yes, ma'am.

2 Q Who did you live there with?

3 A My uncle, his girlfriend, my two sisters and  
4 my brother.

5 Q Okay. But you said you're now back at Edisto?

6 A Yes, ma'am.

7 Q Now focusing your attention back to October  
8 18th, the evening hours, and October 19, the early  
9 morning hours?

10 A Yes, ma'am.

11 Q Where were you that evening in the early  
12 morning of Friday?

13 A I was sitting underneath the tent across from  
14 where I was living.

15 Q Okay. I'm going to show you a few photographs  
16 and ask if you can identify them.

17 State's Exhibit No. 4, if you'll look behind  
18 you. I tell you what, let me do it this way first.  
19 Let me show you these photographs and tell me whether  
20 or not you can identify them, if these are familiar.  
21 You will have to tell me what they are right now, but  
22 just whether you can identify them.

23 A Yes, ma'am.

24 Q Okay. I'm going to hand you this device, if  
25 you push that red button, and turn and look at the

1 picture you can point at things for me. Okay, just  
2 by pushing that red button.

3 Showing you what has been marked then as  
4 State's Exhibit No. 4, would you describe for the  
5 jury what that picture shows us?

6 A This is the apartment where I was living at on  
7 Line Street right here.

8 Q Okay. And what is that building behind your  
9 apartment building?

10 A Right here?

11 Q Uh-hum.

12 A That's the Family Dollar.

13 Q Family Dollar. Okay, showing You State's  
14 Exhibit No. 6. Will you point out the apartment  
15 building to us here?

16 A Yes, ma'am. (Witness indicating.)

17 Q Will you point out Family Dollar.

18 A (Witness indicating.)

19 Q And the street that is running right nearest  
20 you, what street is that?

21 A Right here? Okay, that's Line Street.

22 Q What about this street?

23 A I think that's Nassau or Hanover. I'm not  
24 quite sure.

25 Q That's okay if you don't know.

1 Q State's Exhibit 7. Now can you show us where  
2 your apartment building is looking at this picture?

3 A It's right here.

4 Q State's Exhibit 8. Can you describe what this  
5 picture is?

6 A This is the apartment building here. This is  
7 the area where the tent was.

8 Q Okay. Now would you do us a favor and explain  
9 what type of tent that was?

10 A It was more like a tent you would use for like  
11 a funeral or something like that.

12 Q Okay. And State's Exhibit 9. Can you show us  
13 where in that photograph the tent would have been?

14 A Right there.

15 Q State's Exhibit 10. Can you point to the  
16 area, this is a nighttime picture, could you point to  
17 the area where the tent was?

18 A It would be back over here.

19 Q State's Exhibit 17. Can you show us here?

20 A It was right there you can see a pole right  
21 there.

22 Q That's the pole?

23 A Yeah. You can see it right there.

24 Q State's Exhibit 18. Now can you show us --

25 A Where the tent is?

1 Q Uh-hum.

2 A Right there.

3 Q And you're pointing right down to the pole?

4 A Yeah. That's the tent top right there.

5 Q The blue area?

6 A Uh-hum.

7 Q Okay, thank you. Now so you were telling us  
8 then that on the evening you were sitting out under  
9 the tent?

10 A Yes, ma'am.

11 Q And had there been other people out in the --  
12 on the streets and stuff earlier in the evening?

13 A Earlier that evening, yes, ma'am.

14 Q Did you have the occasion to see Miles?

15 A Earlier in day?

16 Q No, later in the evening.

17 A No, ma'am, not that I cannot remember.

18 Q Then when it got into the early morning hours  
19 did you see Fish?

20 A Yes, ma'am.

21 Q And do you know Fish to be Shrod Young?

22 A Yes, ma'am.

23 Q Did you see him in the early morning hours of  
24 the 19th?

25 A Yes, ma'am.

1 Q And did you see Miles the early morning hours  
2 of the 19th?

3 A Yes, ma'am.

4 Q If you would, please, describe for us when it  
5 is that you come across Fish and when it is that you  
6 come across Miles?

7 A I was outside before Fish and Miles came  
8 outside.

9 Q And then can you tell us about them coming  
10 outside and what happened?

11 A Nothing. I was just sitting underneath the  
12 tent and Fish was on the outside of the tent talking  
13 on his cell phone, and Miles came from up -- I think  
14 it's aunt's house but I'm not sure -- but he came  
15 outside and he was talking on his cell phone also but  
16 he was waiting on a cab as well.

17 Q Okay. And when he came outside and was  
18 waiting on his cab, what happened next?

19 A I noticed two people coming up on a bicycle,  
20 and guy on the handlebars he jumped off the bicycle  
21 and started fighting with Miles. Why they were  
22 fighting, I have no clue why they were fighting.

23 Q Let me slow you down for a second. When you  
24 saw the two guys coming up on a bicycle, from what  
25 direction were they coming?

1 A They were coming up Line Street.

2 Q Up Line Street?

3 A They were coming like towards like from where  
4 the tent was. They weren't coming from the side  
5 Churches was, they were coming from the other side.

6 Q From the opposite side?

7 A Yes, ma'am.

8 Q Okay. So showing you again then State's 6, if  
9 you would point to where the Family Dollar is again?

10 A (Witness indicating.)

11 Q Which side of the street is Churches on?

12 A That side over there, on the right.

13 Q Straight ahead of you would have been what?

14 A Straight ahead, I don't know, there is a  
15 Piggly-wiggly straight ahead.

16 Q Okay. Now when you've indicated that two  
17 people rode up on a bicycle, can you use the pointer  
18 and show us from which direction they were coming?

19 A This direction here.

20 Q And they were coming which way?

21 A Towards -- they were coming up this way.

22 Q Okay. And you've indicated that one person  
23 got off of the bicycle?

24 A Yes, ma'am.

25 Q Describe for us again what happened once he

1 got off the bicycle?

2 A He walked up to Miles and they started  
3 fighting. Like I said, I don't know why they were  
4 fighting. All of the sudden I noticed Miles, he fell  
5 to the ground, he was trying to get up but by the  
6 time he could get up the guy pulled out a gun and  
7 shot him three times and he jumped back on the  
8 bicycle and they left.

9 They left the same way they came.

10 Q Let me slow you down a little bit more. First  
11 of all, describe for us the area that you were, where  
12 the tent was, where your apartment building is. Can  
13 you describe the difference about the lighting, were  
14 you able to see into the street area?

15 A Oh yes, ma'am.

16 Q And where you were under the tent, are you as  
17 easily seen in that area?

18 A Not because I was far back under the tent. It  
19 would be very hard to see me, but I could see people.

20 Q Okay. And showing you State's Exhibit 10, now  
21 show us again where the tent is?

22 A (Witness indicating.)

23 Q Show us again with your apartment is?

24 A In the back of the corner over there.

25 Q Show us which direction the bicycle came from?

1 A This way.

2 Q Can you show us where Miles was using his  
3 phone before this happened?

4 A He was sitting --

5 Q General area?

6 A -- he was sitting on someone's car, but this  
7 was not the car.

8 Q Had there been another car there?

9 A Yes, ma'am, there was.

10 Q And so Miles was sitting there. And would you  
11 shows us, pleas, if you remember, where it was that  
12 the person who jumped off the bike, what area did he  
13 and Miles have the fight in?

14 A Somewhere in this area here because it was  
15 like directly in front of me because I was sitting  
16 under the tent.

17 Q Okay. And were you able to see who it was  
18 that jumped off the bicycle?

19 A Yes, ma'am.

20 Q And did you know who that person was from  
21 before?

22 A Yes, ma'am.

23 Q And by what name did you know that person?

24 A I know this person by Little Ricky.

25 Q And do you see Little Ricky in the courtroom?

1 A Yes, ma'am.

2 Q Did you need to stand up to see him?

3 A Yes, ma'am.

4 Q Could you stand up? Would you please tell the  
5 jury where he is seated?

6 A He is sitting right there.

7 Q Can you describe for me what he has on?

8 A White shirt, looks like a gray tie and I  
9 cannot see the pants.

10 Q Okay. Have a seat. When you said that you  
11 knew him from before, how was it that you knew who he  
12 was?

13 A Just by people talking really. Because I  
14 never really had a conversation with him. Like I  
15 said, I'd go to the corner store every now and then  
16 and I would bypass him on the corner.

17 But the conversation-wise I didn't, but I knew  
18 who he was.

19 Q And when you saw him on these earlier  
20 occasions you knew him by what name?

21 A Little Ricky.

22 Q Now with it being the early morning hours of  
23 the 19th, tell the jury, if you would, were you able  
24 to see him well enough to know that that was Little  
25 Ricky?

1 A Yes, ma'am.

2 Q And after he and Miles began fighting, what  
3 happened with Miles?

4 A He was, for some reason Miles ended up on the  
5 ground and he was trying to get up. But by the time  
6 he could get up Little Ricky pulled out a gun and he  
7 shot at Miles three times. And then he jumped back  
8 on the bicycle and left.

9 Q Let me ask you, with the Court's permission,  
10 may I have her step down, please?

11 THE COURT: Yes.

12 Q (By Ms. Shealy) Ms. Miles, if you would come  
13 step down for me. And would you demonstrate for the  
14 jury, when Miles was on the ground, what was it that  
15 you saw Little Ricky do?

16 A He went back like that and he shot three time.

17 Q Okay. Will you show the jury how he was  
18 holding the gun?

19 A Like he -- Miles was trying to get up at the  
20 same time.

21 Q At the same time Miles was trying to get up?

22 A Miles was trying to get up.

23 Q Okay, have a seat for us.

24 Now earlier that day of the 18th, the day  
25 before, had you seen Little Ricky anywhere?

1 A Yes, ma'am.

2 Q Where had you seen him?

3 A I was on my way coming from the corner store  
4 because I bought me a pack of cigarettes and I saw  
5 him with three other guys leaning up against a car  
6 and he asked me for a cigarette and I gave him one.

7 Q You did give him one?

8 A Yes, ma'am.

9 Q And can you point to us what direction that  
10 corner store would have been?

11 A It would be -- you can't really see it, but if  
12 you take this corner here you have to walk that way  
13 to get to the store. Or you can go straight ahead to  
14 get to the store.

15 Q Tell us, if you would, what you remember about  
16 what Little Ricky had on that night.

17 A That night or earlier that day?

18 Q Well, tell us both. What do you remember?

19 A Earlier that day he had on a black T-shirt and  
20 back Dickey's, I didn't pay attention to the shoes.  
21 But at night he had on a black hoodie and black  
22 Dickey's and I did not pay attention to the shoes  
23 either.

24 Q Now after Little Ricky got back on the  
25 bicycle?

1 A Uh-hum.

2 Q What did you do?

3 A It happened so quickly I was still kind of  
4 stunned because I didn't really fully understand what  
5 was going on. But after he got back on the bicycle  
6 he left. And Miles did manage to get up. I'm  
7 thinking he was trying to make it to his aunt's  
8 apartment, but he never made it because he fell.

9 Q And showing you the picture behind you, can  
10 you show us in what direction he was heading?

11 A You mean Miles?

12 Q Miles, yes, I'm sorry.

13 A Pretty much between the two cars because there  
14 was a sidewalk over there also.

15 Q Okay. And showing You State's Exhibit 20.  
16 Could you shows us there where he ended up?

17 A Right there.

18 Q Okay. And in showing you Exhibit 22, which is  
19 a closer in shot, can you tell us there where he  
20 ended up?

21 A Right in this area here.

22 Q And once -- did he collapse there?

23 A Well, he fell down right there.

24 Q He fell down there?

25 A Yes.

1 Q Once he fell down there, what did you do?

2 A I ran from underneath the tent and I realized  
3 he was holding his side. So I had on a black bandana  
4 that I took off. And I guess he was holding his side  
5 because he got shot there, and I just up'ed his shirt  
6 and did see a wound there so I took my bandana off  
7 and just tried to apply as much pressure as I could  
8 to his side. And then Fish called the police and the  
9 ambulance and they came.

10 Q Let me slow you down a little bit. When you  
11 saw a bandana, what did it look like?

12 A It was maybe this long, but a silky-type  
13 bandana that I had on that night.

14 Q And you had had it on where?

15 A I had it on my head.

16 MS. SHEALY: Beg the Court's indulgence.

17 Your Honor, at this time I'd like offer the  
18 exhibit without objection.

19 THE COURT: Is there any objection?

20 MS. FORD: No, Your Honor.

21 THE COURT: Marked and admitted without  
22 objection.

23 (Whereupon, State's Exhibit No. 28 is marked  
24 and admitted into evidence.)

25 Q (By Ms. Shealy) Shoreka, can you look at this

1 bag and tell me if you can ID this?

2 A Yes, ma'am.

3 Q Okay.

4 MS. SHEALY: Your Honor, I'm going to show the  
5 exhibit to her now.

6 THE COURT: Uh-hum.

7 Q (By Ms. Shealy) what is this?

8 A That's a black bandana.

9 Q And what did you do with this?

10 A I took it off my head and put it on Miles'  
11 side to apply pressure to keep him from bleeding so  
12 much.

13 Q After that evening, did you ever get the scarf  
14 back?

15 A No, ma'am.

16 Q While you were doing that, did anyone else  
17 come out to assist you in any way?

18 A At that time it was just me and Kooma (sic) at  
19 the time. Me and Fish at the time.

20 Q Let me ask you about Fish for a minute. Did  
21 he walk off from that area before Miles got shot, or  
22 was he still in that tent area?

23 A He was still in the tent area.

24 Q And when you saw the fight that occurred, did  
25 Fish in any way assist Miles?

1 A You mean?

2 Q Did he come out to help Miles in any way?

3 A No, ma'am.

4 Q When you saw Little Ricky pull the gun, did  
5 Fish do anything to help out at that point?

6 A No, ma'am.

7 Q And when you were giving some help to Miles,  
8 do you know where Fish was at that point?

9 A I remember him being on the phone with the  
10 police. But as far as me trying to keep up where  
11 else he went I didn't because I was too much paying  
12 attention to Miles, trying to help him. So I cannot  
13 say if he wandered off anywhere. I really don't  
14 know.

15 Q Now do you know Elaine Singleton?

16 A Yes, ma'am.

17 Q Did you see her after Miles got shot?

18 A Yes, ma'am.

19 Q And was she in the same area as you or a  
20 different area?

21 A She was in the same area with me when I was  
22 helping Miles, she came outside.

23 Q Okay. Were you still outside when the EMS  
24 people got there?

25 A Yes, ma'am.

1 Q What about some early members of the police,  
2 were you still outside?

3 A Yes, ma'am.

4 Q Do you remember having a conversation with an  
5 African-American detective named Cooper?

6 A Yes, ma'am.

7 Q And did you tell Detective Cooper what you  
8 saw?

9 A No, ma'am.

10 Q Now I need you to explain to us why you  
11 wouldn't have done that. Why didn't you tell him  
12 what you saw?

13 A Because at the time I never knew I wanted to  
14 get involved with what happened so I told him I did  
15 not see anything.

16 Q Did you feel comfortable telling him what you  
17 saw?

18 A No, ma'am.

19 Q Now any other contact with the police that  
20 evening that you remember?

21 A No, ma'am.

22 Q Did you have the occasion to meet Miles'  
23 father, Leroy Simmons?

24 A Yes.

25 Q And do you remember when it was that you met

1 him?

2 A To be honest I can't really remember. But I  
3 know I did have a chance to meet him.

4 Q Do you remember talking to him?

5 A Yes, ma'am.

6 Q And was anyone else present when you talked to  
7 him?

8 A It was just me, Mr. Leroy and Fish.

9 Q And do you know why it was that he was talking  
10 to you?

11 A No, ma'am.

12 Q Okay. What was he interesting in knowing?

13 A Just pretty much what had happened.

14 Q And did you give him any details at that time?

15 A I little bit but not all.

16 Q Okay. Well when -- how long had you known  
17 Miles?

18 A Since I moved on Line Street.

19 Q Which would have been about how long before  
20 this happened?

21 A I don't know, maybe about four months, not  
22 even that long.

23 Q Okay. Could you explain to the jury why you  
24 wouldn't tell Miles' father everything that had  
25 happened?

1           A       Because at the time I really didn't want to  
2 get involved with anything at all, so that's why I  
3 never said anything.

4           Q       But when you said you did not want to get  
5 involved, what do you mean by that?

6           A       I did not want to say anything.

7           Q       Were you worried about something?

8                    Well, let me ask it in a different way. Would  
9 you have felt comfortable going down and talking to  
10 the police at that point?

11          A       Yes, ma'am.

12          Q       And that's after you talked to Mr. Simmons?

13          A       Yes, ma'am.

14          Q       But before you talked to Mr. Simmons, did you  
15 feel comfortable doing that?

16          A       Yeah, I felt comfortable talking to him.

17          Q       To Mr. Simmons?

18          A       Yes, ma'am.

19          Q       But before Mr. Simmons came to talk to you,  
20 did you feel comfortable going down to the police?

21          A       At that time, no.

22          Q       The first time Mr. Simmons talked to you, you  
23 told us you didn't tell him everything; isn't that  
24 correct?

25          A       Uh-hum. Yes.

1 Q Did something change or did you change your  
2 mind?

3 A Yes, ma'am. I changed my mind.

4 Q Could you explain to us why you changed your  
5 mind?

6 A I changed my mind because me and Miles were  
7 really good friends. I felt that by me telling the  
8 truth his family should know what happened. That's  
9 really why I changed my mind.

10 Because I didn't want to hold something inside  
11 that I would have to live with. So I said I would do  
12 the right thing just by going ahead and telling the  
13 truth.

14 Q Would you describe for the jury how that took  
15 place. How did you end up getting down to go talk to  
16 the police?

17 A Mr. Leroy.

18 Q Mr. Leroy?

19 A Yes, ma'am.

20 Q Did he take you down there?

21 A Yes, ma'am.

22 Q How did you hook up with him?

23 A I remember meeting him at the Piggly-Wiggly,  
24 but I can't remember, you know, how we had a  
25 conversation about it. I cannot remember. I do

1 remember meeting him at the Piggly-Wiggly.

2 Q And then you went where?

3 A We went to the police station.

4 Q And prior to your going to the police station  
5 that day, had you ever told anyone the complete truth  
6 about what happened?

7 A No, ma'am.

8 Q When you went to the police station, which  
9 detective did you deal with?

10 A Detective David Osborne.

11 Q Detective Osborne sitting right here in the  
12 courtroom?

13 A Yes, ma'am.

14 Q And while you were talking to him, did he take  
15 a statement from you?

16 A Yes, ma'am.

17 Q And did he show you a lineup?

18 A Yes, ma'am.

19 Q Did those two things happen at the same time  
20 or were they separate?

21 A They were kind of separate.

22 Q Okay. And showing you what has been  
23 previously marked as State's Exhibit 26, can you tell  
24 the jury whether or not you remember this form?

25 A Yes, ma'am.

1 Q Okay. And do you recall whether Detective  
2 Osborne read the top part to you?

3 A Yes, ma'am, he did.

4 Q Would you tell just what did Detective Osborne  
5 say to you about looking at the lineup?

6 A He told me he was going to give me a paper  
7 with a couple of pictures of some people on it. And  
8 if I could recognize who the shooter was, circle the  
9 picture and sign my name.

10 So I took a look at the lineup, and I took my  
11 time, and I recognized the shooter and I circled the  
12 picture and signed my name.

13 Q Did Detective Osborne in any fashion tell you  
14 which one to choose?

15 A No, ma'am.

16 Q Showing you State's Exhibit 27, is this the  
17 lineup that he showed you?

18 A Yes, ma'am.

19 Q Tell the jury, if you would, which picture you  
20 identified?

21 A It was number one.

22 Q And when you were asked to look at the  
23 photographs and to identify someone, were you  
24 identifying the shooter that night?

25 A Yes, ma'am.

1 Q How did you indicate on the piece of paper  
2 that that was who the shooter was?

3 A Because I remember how he looked from previous  
4 times when I saw him before, before this incident  
5 even happened. I remember his face from there.

6 Q Okay. And what did you do on the piece of  
7 paper to show which one it was you choose?

8 A I circled the picture and signed my name.

9 Q And is this the picture of the person that you  
10 saw shoot Miles that evening?

11 A Yes, ma'am.

12 Q Now you've told us that in the street and  
13 sidewalk area it's pretty easy to see; is that  
14 correct?

15 A Yes, ma'am.

16 Q Shoreka, would you tell the jury whether or  
17 not you feel like you had enough time to really see  
18 who the shooter was?

19 A I had enough time to see who the shooter was  
20 because there is a streetlight right there. So I had  
21 enough time to recognize who it was.

22 Q And who was it that shot Leroy Simmons that  
23 night, Miles?

24 A It was Little Ricky.

25 Q Do you remember giving Detective Osborne a

1 physical description of the person that you saw?

2 A Yes, ma'am.

3 Q And tell us again what type of clothing he had  
4 on at the time of the shooting. Not earlier in the  
5 day, but at the time of the shooting?

6 A It was a black pull-over hoodie, he had on  
7 black Dickey's, and I didn't really pay attention to  
8 his shoes.

9 Q Okay. Again, as it relates to Fish.

10 A Uh-hum.

11 Q You know that he was there before this  
12 happened?

13 A Yes, ma'am.

14 Q And he was present where when it happened?

15 A He was outside of the tent. I was inside, he  
16 was outside because he was on his cell phone.

17 Q And other than dialing 911, did you pay much  
18 attention to him afterwards?

19 A No, ma'am.

20 MS. SHEALY: Beg the Court's indulgence just a  
21 moment.

22 THE COURT: Uh-hum.

23 MS. SHEALY: Ms. Miles, I don't have any other  
24 questions for you. Please answer any the defense may  
25 have.

1 THE COURT: Any cross-examination of the  
2 witness?

3 MS. FORD: Yes, ma'am, Your Honor.

4 THE COURT: You may proceed.

5 CROSS-EXAMINATION

6 BY MS. FORD:

7 Q Ms. Miles, you lied to the police, didn't you?

8 A I lied to the police?

9 Q Yes.

10 A Yes, ma'am.

11 Q Because you were outside the night of the  
12 shooting, right?

13 A Yes, ma'am.

14 Q And you talked to the police, right?

15 A Yes, ma'am.

16 Q You talked to detective Cooper?

17 A Yes, ma'am.

18 Q Did you also talk to Sgt. Dutton, perhaps?

19 A I can't recall that.

20 Q Did you talk to more than one officer?

21 A I remember talking to the African-American  
22 officer.

23 Q And you told him that you were inside?

24 A Yes, ma'am.

25 Q And that you only came out after you heard the

1 shots, right?

2 A Yes, ma'am.

3 Q So you told us how you spoke to Mr. Simmons  
4 two times, right?

5 A Two times?

6 Q You said you met him at one time you told him  
7 a little bit but not the whole truth, right?

8 A Yes, ma'am.

9 Q And that time you said you were in your  
10 apartment right?

11 A Yes, ma'am.

12 Q You heard shots, right?

13 A Yes, ma'am.

14 Q And you looked and you were able to catch a  
15 little bit of the guy's face as he was leaving,  
16 right?

17 A I was able to catch a little bit of the guy  
18 who was pedaling the bicycle, just a little bit of  
19 his face. Not the guy that jumped off the  
20 handlebars.

21 Q So that's what you told Mr. Simmons that time,  
22 right?

23 A Yes, ma'am.

24 Q And then you met with him again the time he  
25 took you to the police station, right?

1 A Yes, ma'am.

2 Q And you talked to Detective Osborne?

3 A Uh-hum.

4 Q And you gave a statement?

5 A Yes, ma'am.

6 Q And the statement, first of all, you gave a  
7 description of the two boys you saw, right?

8 A Yes, ma'am.

9 Q And the shooter you said was the one who was  
10 not pedaling, correct?

11 A Uh-hum.

12 Q But he was on the handlebars?

13 A Yes, ma'am.

14 Q And you said that this boy was about 5'3",  
15 right?

16 A Yes, ma'am.

17 Q About 21 or 22?

18 A Yes, ma'am.

19 Q He was thin?

20 A Yes, ma'am.

21 Q He was wearing an all black T-shirt?

22 A That day, earlier that day he had on an all  
23 black T-shirt.

24 Q You did not tell Detective Osborne that that  
25 night the shooter was wearing a T-shirt?

1 A No, he was wearing a black hoodie.

2 Q Okay. But you didn't -- are you saying you  
3 told Detective Osborne about the hoodie that night?

4 A Not that I can recall, but I know earlier that  
5 day he had on a black T-shirt and that night he had  
6 on a black hoodie. Now he might have had on a black  
7 T-shirt underneath the hoodie, I'm not sure. But I  
8 know I saw a black hoodie.

9 Q Okay. You said he had a light complexion,  
10 right?

11 A Yes, ma'am.

12 Q And you told Detective Osborne he had black  
13 shoes on, right?

14 A Black shoes?

15 Q Yes.

16 A I might have did say that, but I didn't  
17 recognize the shoes.

18 Q And so you told Detective Osborne that -- at  
19 this time you didn't tell him that you knew who the  
20 shooter was, right?

21 A No, ma'am.

22 Q You said you did not know who the guy was,  
23 didn't you say that?

24 A Yes, ma'am.

25 Q You told him that you had only seen the person

1 one time before, correct?

2 A One time before the incident happened, but I  
3 seen him previous times before then.

4 Q But the night -- the time you gave the  
5 statement to Detective Osborne, you just told him  
6 that you did not know who this guy was, right?

7 A Yes, ma'am.

8 Q You had seen him one time before the shooting,  
9 correct?

10 A That day, yes, ma'am.

11 Q So are you saying that you told Detective  
12 Osborne that you had seen him before that day?

13 A I have seen him before that day.

14 Q I understand that's what you're testifying to  
15 today. But looking at what you told Detective  
16 Osborne when you gave a written statement, okay?

17 A Yes, ma'am.

18 Q So that day did you tell Detective Osborne  
19 that you had seen this guy around beforehand?

20 A No, I didn't tell him that.

21 Q And you told Detective Osborne that you had  
22 seen him at 10 o'clock at night, correct?

23 A That's not correct actually because I saw him  
24 earlier that day when I was coming from the store  
25 with my cigarettes.

1 Q You saw him in the daylight?

2 A Yes, ma'am.

3 Q But in your statement it says 10:00 p.m.?

4 So you're saying that's a lie?

5 A I did not see him at that time.

6 Q Okay. And you told Detective Osborne that he  
7 was wearing the same exact clothes that he was  
8 wearing when you saw him at the shooting?

9 A Like I said, he had on a black T-shirt that  
10 day. But if he had his back T-shirt on he had a  
11 black hoodie on over it also.

12 Q Let's go ahead and go over a few things first  
13 and then we will go back to that, okay?

14 You told us today how you had seen the shooter  
15 earlier in the day, right?

16 A Yes, ma'am.

17 Q And he asked you for a cigarette?

18 A Yes, ma'am.

19 Q And you gave it to him?

20 A Yes, ma'am.

21 Q So are you denying that you told Detective  
22 Osborne that he had asked for a cigarette and you  
23 said no?

24 A Yes, ma'am. Because I know I did give him a  
25 cigarette.

1 Q Ms. Miles, would seeing your statement that  
2 you gave Detective Osborne, would that help you in  
3 any way refresh your --

4 A No, ma'am.

5 Q That wouldn't help you?

6 A No, ma'am.

7 Q So you are -- these things I'm telling you  
8 that are in this statement, you are saying they're  
9 not there?

10 A I know what's on the statement. I'm only  
11 saying what I saw, what happened and who I saw did  
12 it. I know what is on my statement.

13 (Whereupon, Defendant's Exhibit No. 4 is  
14 marked for identification.)

15 Q (By Ms. Ford) Do you see what's --

16 MS. SHEALY: Objection, Your Honor, can we  
17 approach for a second?

18 THE COURT: You can.

19 (Whereupon, a discussion was held at the bench  
20 off the record.)

21 THE COURT: You may proceed.

22 Q (By Ms. Ford) Ms. Miles, what do you have  
23 before you?

24 A My statement.

25 Q Okay. And just for the record it's marked as

1 Defense Exhibit No. 4 for identification purposes?

2 A (Affirmative head shake.)

3 Q Can you please go to page three.

4 THE COURT: You need to ask a question, she  
5 needs to deny it, and then you can use her statement.

6 Q (By Ms. Ford) We will start off that way.  
7 Today you are saying that the shooter was wearing a  
8 black hoodie, correct?

9 A Yes, ma'am.

10 Q When you spoke to Detective Osborne, did you  
11 tell him that he was wearing a black T-shirt?

12 A What I meant to say he was wearing a black  
13 T-shirt earlier that day when I saw him. But that  
14 night he had on a black hoodie.

15 Q But you don't mention a hoodie in your  
16 statement, do you?

17 A No, ma'am.

18 Q Today you say you don't recall shoes, but when  
19 you talked to Detective Osborne you said he was  
20 wearing black shoes?

21 A Yes, ma'am.

22 Q So you agree with that?

23 A I can't remember the shoes.

24 Q Okay, that's fine.

25 Okay, and then today you're saying that you

1 had seen the shooter earlier in the day in the  
2 daylight hours, correct?

3 A Yes, ma'am.

4 Q Are you denying that you told Detective  
5 Osborne that you had seen him at 10:00 p.m.?

6 A I'm not denying I said that, they have exactly  
7 what I told him. But what I meant to say was I saw  
8 him earlier that day.

9 Q Okay. But when you talked to Detective  
10 Osborne, you told him that you had seen him about 10  
11 o'clock at the store?

12 A Yes, ma'am.

13 Q And now going to cigarettes?

14 A Uh-hum.

15 Q Today you are saying that he asked you for a  
16 cigarette and you agreed, correct?

17 A Yes, ma'am.

18 Q But you told Detective Osborne that he asked  
19 for cigarette and you said no?

20 A I said no, yes.

21 Q So you agree with that?

22 A (Affirmative head shake.)

23 Q And then today you are saying that the shooter  
24 had on different clothes, possibly. He -- or at  
25 least at the shooting he had a hoodie, correct?

1 A Yes, ma'am.

2 Q And on the daytime when you saw him, he just  
3 had a black T-shirt on, correct?

4 A Yes, ma'am.

5 Q But you told Detective Osborne he had on the  
6 same clothes, correct?

7 A Yes, ma'am.

8 MS. FORD: May I approach the witness?

9 THE COURT: Uh-hum.

10 Q (By Ms. Ford) Let's go to the lineup, okay?

11 A Uh-hum.

12 Q You identified Richard Deas from the lineup  
13 you were shown, correct?

14 A Yes, ma'am.

15 Q And when Detective Osborne gave you this  
16 lineup, he was under the impression -- or you had led  
17 him to believe that you didn't know this person other  
18 than seeing him once before, correct?

19 A Can you repeat that, please?

20 Q Okay. When you pointed out Richard Deas?

21 A Yes, ma'am.

22 Q Detective Osborne did not know that you knew  
23 the shooter as Ricky Deas, correct?

24 A No, he didn't know that I knew that.

25 Q Because you told him that you didn't know the

1 person?

2 A Yes, ma'am.

3 Q But you gave a description of the guy,  
4 correct?

5 A Yes, ma'am.

6 Q Then he had you look at the lineup?

7 A Yes, ma'am.

8 Q I'm showing you what has been marked State's  
9 Exhibit 27, okay. And this is a copy of the lineup  
10 that you signed?

11 A Yes, ma'am.

12 Q First of all, you are looking at a picture of  
13 six young men, correct?

14 A Yes, ma'am.

15 Q And they're all black men, correct?

16 A Yes, ma'am.

17 Q But there is a pinkish tone, tint to the  
18 lineup, isn't there?

19 A Yes, ma'am.

20 Q So that makes it kind of hard to see the  
21 complexion, right? Or would you agree with that?

22 A Yes, ma'am.

23 Q Now you said the shooter had dreads that were  
24 pretty much shoulder length, correct?

25 A Almost, yes, ma'am.

1 Q Now when you were looking at number two, let's  
2 start with him?

3 A Uh-hum.

4 Q His hair, he has dreads and they're pretty  
5 long, right?

6 A That long, past the shoulders a little.

7 Q And number five, three and six, they all have  
8 pretty short hair, correct?

9 A Yes.

10 Q So the two guys on here who have sort of  
11 shoulder length or almost to their shoulders dreads  
12 would be number one and four, correct?

13 A Yes, ma'am. Because five and six, their  
14 dreads are nowhere near their shoulders.

15 Q Right. But you were saying shoulder length or  
16 almost shoulder length dreads, one and number four  
17 fit the bill, correct?

18 A Yes, ma'am.

19 Q From just looking at this picture, number  
20 four, his face is much fuller than number one's face,  
21 right?

22 A Yes, ma'am.

23 Q So he looks like a bigger guy, correct?

24 A Yes, ma'am.

25 Q And so let's go back to when you are under the

1 tent?

2 A Uh-hum.

3 Q You are saying it was just you and Fish out  
4 there?

5 A And then Miles came out later.

6 Q But Miles was never under the tent, was he?

7 A Oh, no, ma'am.

8 Q But it was you and Fish under the tent?

9 A I was under the tent. Fish was standing  
10 beside the tent.

11 Q Okay. But the tent was definitely there?

12 A Yes, ma'am.

13 Q Were you sitting down, was there a chair or  
14 anything under the tent?

15 A Yes, ma'am.

16 Q And were you talking to Fish at all?

17 A No because he was on the cell phone.

18 Q But he acknowledged you were there, correct?

19 A Yes, ma'am.

20 Q So it's your belief he knew you were there?

21 A Yeah, he knew I was there.

22 Q Okay. And if there was some cocaine found  
23 near that tent, do you know anything about that?

24 A No, ma'am.

25 Q So you had not been doing any drugs that

1 evening?

2 A No, ma'am.

3 Q And this tent, we didn't have any pictures of  
4 it, so let's just describe it a little bit better.  
5 You described it basically as an awning with poles;  
6 would that be fair?

7 A Yeah, because it didn't have any doors or  
8 anything like that on it, it wasn't closed-in tent.

9 Q So pretty much just a top and that's it?

10 A Yes, ma'am.

11 Q And it was completely open surrounding it?

12 A Yes, ma'am.

13 MS. FORD: Beg the Court's indulgence.

14 THE COURT: Uh-hum.

15 Q (By Ms. Ford) Ms. Miles, do you remember what  
16 Fish was wearing that night of the shooting?

17 A No, ma'am.

18 Q And when you were outside with Leroy,  
19 Detective Cooper had indicated there were a lot of  
20 other people outside?

21 A There were a lot of people came out after what  
22 happened.

23 Q Do you know who any of those people were?

24 A No, ma'am.

25 Q And just also I think when you gave a

1 statement to Detective Osborne and you told him that  
2 you didn't know the person who had shot Miles,  
3 correct?

4 A I told him that.

5 MS. SHEALY: Your Honor I'm going to object.  
6 May we approach?

7 THE COURT: Uh-hum.

8 (Whereupon, a discussion was held at the bench  
9 off the record.)

10 THE COURT: You may proceed.

11 MS. FORD: Thank you, Your Honor.

12 Q (By Ms. Ford) Okay. Just as far as your  
13 statement, you gave a six-page statement, right?

14 A Yes, ma'am.

15 Q And Detective Osborn was with you, right?

16 A Yes, ma'am.

17 Q And he said you signed every page, didn't he?

18 A Yes, ma'am.

19 Q And he gave you an opportunity to go over it,  
20 didn't he?

21 A Yes, ma'am.

22 Q He gave you an opportunity to make any  
23 corrections, didn't he?

24 A Yes, ma'am.

25 Q And you gave this statement on the 20th,

1 right?

2 A Yes, ma'am.

3 Q So it was about under 48 hours, correct, from  
4 the shooting?

5 A I guess, yes, ma'am.

6 Q The shooting was at 2:30 on 10/19 and the  
7 statement was at about 10:45 on 10/20?

8 A Yeah, it was under.

9 Q Okay. And that was soon after the shooting,  
10 right?

11 A Yes, ma'am.

12 Q And Detective Osborne, did he tell you the  
13 importance of being truthful?

14 A Yes, ma'am.

15 Q So you were aware that this statement would be  
16 used to review the case?

17 A Yes, ma'am.

18 Q So did you think it was important to be  
19 truthful in the statement?

20 A Yes, ma'am, it was.

21 Q And you gave the statement over a year ago,  
22 right?

23 A Yes, ma'am.

24 Q But you never called anyone to change  
25 anything, right?

1 A I lost contact with the detective.

2 Q And just going over exactly what you saw the  
3 night of the shooting, you say you were in a tent at  
4 the table, right?

5 A I was in a tent sitting in a chair, I wasn't  
6 at a table.

7 Q Okay, I'm sorry, you were just sitting in a  
8 chair?

9 A Yes, ma'am.

10 Q Did the shooter ever look at you?

11 A No, ma'am.

12 Q Did he ever talk to you?

13 A No, ma'am.

14 Q Did he ever turn his head in your direction?

15 A No, ma'am, but I could see him because there  
16 was a streetlight that's right there.

17 Q But you never had a full-on face look? Like  
18 me and you, we are looking face to face.

19 A Not like that, but I knew who he was because  
20 the streetlight was right there.

21 Q Okay. Is it fair to say you saw more of his  
22 profile though, his side view?

23 A No, I saw him.

24 Q Ms. Miles, you noticed the gun too, didn't  
25 you?



1 asked me a couple questions and I gave him the  
2 answers.

3 Q And you said he actually wrote the statement;  
4 is that correct?

5 A Yes, ma'am.

6 Q Now let me make sure I understand. When you  
7 indicated to Detective Osborne that you had seen the  
8 shooter earlier before, earlier that day?

9 A Yes, ma'am.

10 Q What time of day did you believe you had seen  
11 him?

12 A It was pretty early. I cannot give an exact  
13 time, but it was pretty early.

14 Q And do you usually give times like 10:00 a.m.  
15 or 10:00 p.m. or do you just say 10:00?

16 A Just say 10:00 or 2:00 or whatever. I never  
17 say a.m. or p.m.

18 Q Okay. And having a chance to look at your  
19 statement, the statement is written says 10:00 p.m.  
20 Do you know whether or not you indicated to Detective  
21 Osborne if it were a.m. or p.m.?

22 A I'm not sure. But it wasn't -- I didn't see  
23 him that night, I sw him earlier that day. Maybe it  
24 was my mistake for saying that, but I know I saw him  
25 that day. I know it was not that night, not around

1 10:00 because the convenience store, it closed at  
2 9:00.

3 Q And is that Nights Convince Store?

4 A Yes, ma'am.

5 Q And when it comes to whether you gave him the  
6 cigarette or didn't give him the cigarette, did you  
7 give him a cigarette?

8 A I did give him a cigarette.

9 Q Do you remember whether you told Detective  
10 Osborne that you did not or that you did?

11 A I'm not quite sure. I can't really answer.  
12 But I know I did give him a cigarette.

13 Q And Ms. Ford asked you whether you know who  
14 the people were that came on the scene after you were  
15 outside helping Miles. Were you paying attention to  
16 who else was around?

17 A No, ma'am.

18 Q What were you paying attention to?

19 A I was focusing on Miles, I was just trying to  
20 help him. I wasn't paying no attention to nobody  
21 else.

22 Q And Detective Osborne, you've had a chance to  
23 look back over your statement. Anywhere in your  
24 statement do you say that you didn't know who he was?

25 A I didn't see that in my statement where I said

1 that.

2 Q And did you in fact tell David Osborne that?

3 A At the time I did tell him I didn't know who  
4 Little Ricky was, yeah, I did say that.

5 Q When you say you didn't know who Little Ricky  
6 was, what did you mean by that?

7 A That I didn't know him at all, but I did know  
8 him.

9 Q Okay. And when you say you knew him, were you  
10 and he friends?

11 A No, ma'am.

12 Q Did you know who he was?

13 A I knew who he was just from by me being in the  
14 neighborhood and going to the store and seeing him  
15 hanging on the corner, yeah, I knew him like that  
16 never had a conversation or anything with him.

17 Q Okay and when the Detective Osborne asked you  
18 about the person on the bicycle, did you tell him you  
19 had never seen him before?

20 A No, I didn't say that.

21 Q Well look at your statement if you would for a  
22 second.

23 A You don't have a copy.

24 MS. SHEALY: Beg the Court's indulgence.

25 Q (By Ms. Shealy) Okay. Ms. Miles, showing you

1 what has been previously marked for ID purposes  
2 Defendant's Exhibit 4. If you'll take a look at page  
3 four.

4 Did you have an opportunity to look at it?  
5 Let me ask you this, the person who was driving the  
6 bicycle, not the person who jumped off, the person  
7 who was driving it, had you seen that person before?

8 A No, ma'am, I can't recognize that person at  
9 all.

10 Q You did not know who that was?

11 A No, ma'am.

12 Q Did you tell Detective Osborne that?

13 A Yes, ma'am.

14 Q The person who jumped off the bicycle and shot  
15 and killed Miles?

16 A Yes, ma'am.

17 Q Had you seen that person before the incident  
18 with the cigarette?

19 A Yes, ma'am.

20 Q Okay. And you knew him to be whom?

21 A Little Ricky.

22 Q And did you, did Detective Osborne ask you  
23 those questions to the best you remember?

24 A No, ma'am, not that I remember.

25 Q When you were describing to Detective Osborne

1 about when you saw him before, were you talking about  
2 the day before, about the cigarette?

3 A When I saw him before I was talking about the  
4 day before. Well the same day before the incident  
5 happened.

6 Q And that involved the cigarette?

7 A Yes, ma'am.

8 Q Now showing you, if we can pull it up, State's  
9 Exhibit 27, when Detective Osborne read to you the  
10 admonition, did you have any difficulties in reading?

11 A No, ma'am.

12 Q Showing you State's Exhibit 26, you've  
13 indicated to us previously that Detective Osborne  
14 read that top part to you?

15 A Yes, ma'am.

16 Q Can you read that for us?

17 A I am going to show you a group of photographs.  
18 These photographs may or may not contain the photo of  
19 the person who committed the crime being  
20 investigated.

21 Please keep in mind that photographs may not  
22 always show the true complexion of an individual.  
23 It's possible that they may be lighter or darker than  
24 shown in the photo. Also remember that hairstyles,  
25 beards and mustaches are features that can easily

1 change.

2 When you have finished looking at all of the  
3 photos, tell me if you can make a positive  
4 identification of the person who committed the crime.  
5 If you are positive in your identification, I will  
6 ask you to sign and date the back of the photograph.

7 Q Okay. And when you were shown this  
8 photographic lineup, Detective Osborne had already  
9 read that to you?

10 A Yes, ma'am.

11 Q So you knew that the hair may not be exactly  
12 the same?

13 A Yes, ma'am.

14 Q And the complexion may not be exactly the  
15 same?

16 A Yes, ma'am.

17 Q Would you indicate to the jury, did you sign  
18 this form?

19 A Yes, ma'am.

20 Q And what was written as your comment at the  
21 bottom?

22 A Number one is the one who shot Miles.

23 Q And when it comes to the description of the  
24 clothing?

25 A Uh-hum.

1 Q What did Little Ricky have on earlier when  
2 you saw him and he wanted a cigarette?

3 A He had on a black T-shirt and a pair of black  
4 Dickey's.

5 Q And what did he have on when you saw him shoot  
6 Miles?

7 A A black pullover hoodie and a pair of black  
8 Dickey's also.

9 Q And, Shoreka, you told us early on you didn't  
10 want to get involved in all of this?

11 A Yes, ma'am.

12 Q Are you certain that the person you saw shoot  
13 and kill Leroy Simmons was Little Ricky?

14 A Yes, ma'am.

15 Q And is Little Ricky in this courtroom?

16 A Yes, ma'am.

17 Q And where is he seated? You may stand.

18 A He's sitting right there.

19 MS. SHEALY: Thank you very much.

20 THE COURT: You're welcome.

21 THE COURT: Any objection to the witness being  
22 excused from the State.

23 MS. SHEALY: No, Your Honor.

24 THE COURT: From the defense?

25 MS. FORD: No, Your Honor.

1 THE COURT: Ma'am, you are excused.

2 THE COURT: Mr. Foreman, ladies and gentlemen,  
3 you all have been sitting since about a little after  
4 2:30. I'm going to give you a brief recess to  
5 refresh yourselves and have a restroom break and  
6 otherwise. Please leave your notepads in your seats.  
7 I anticipate we will be out about 10 minutes.

8 Please don't discuss the case during the  
9 break. You may go with the bailiffs for me, please.

10 (Whereupon, the jurors exit the courtroom.)

11 THE COURT: We will be out 10 minutes. Who's  
12 the State's next witness?

13 MS. SHEALY: David Osborne, Your Honor. I  
14 expect that to be a lengthy witness.

15 THE COURT: I have 3:47, we will be out until  
16 3:57. Well, we might as well say 4:00. We will be  
17 at ease.

18 (Whereupon, a recess was taken.)

19 THE COURT: Is the State ready to proceed?

20 MS. SHEALY: Yes, Your Honor. I believe Ms.  
21 Ford may have a motion regarding our next witnesses

22 THE COURT: Okay.

23 MS. FORD: Your Honor, well this has to do  
24 with the gun that we mentioned earlier.

25 THE COURT: I'm not going to take that up

1 before I hear the testimony in its context. When we  
2 reach where you think you are going to go into it, we  
3 need to stop so that I can take it up in camera.

4 MS. FORD: Okay.

5 THE COURT: Don't go into it. Stop and tell  
6 me you have a matter of law and then we'll deal with  
7 it. You have plenty he can testify to before we get  
8 into that.

9 MS. SHEALY: Yes, Your Honor. And one other  
10 matter that may involve some practicable time, just  
11 to address it. There are portions of the defendant's  
12 -- there is in his statement, the defendant's  
13 statement, this is the officer that we would be  
14 getting the statement in through, and there is  
15 mentioning of the gun within the statement.

16 THE COURT: I don't remember that. Let me see  
17 it.

18 MS. SHEALY: It's a brief reference.

19 THE COURT: What page is it?

20 MS. FORD: It's the last, second to the last.

21 THE COURT: Whose gun was it in the room this  
22 morning. Well, when you introduce this statement, he  
23 is not going to read it, is he?

24 MS. SHEALY: The officer is.

25 THE COURT: When you get to that portion you

1 need -- I would suggest that you structure your  
2 questions such that that is near the end of your  
3 questioning so that we can take up in camera.

4 MS. SHEALY: Okay. And there are two other  
5 matters we need to redact out of the statement.

6 THE COURT: I thought you all had agreed to  
7 that.

8 MS. SHEALY: We had, this is the practicable  
9 part I was going to suggest, Your Honor. In order  
10 for us to redact it, we're going to have to, with the  
11 Court's permission --

12 THE COURT: You don't have a copy of the  
13 statement?

14 MS. SHEALY: We have a copy, but our copy has  
15 the Miranda warning card copied on to it, so we don't  
16 have a clean copy.

17 THE COURT: Give them the copy of that  
18 statement.

19 Does that resolve it?

20 MS. SHEALY: It does, Your Honor.

21 THE COURT: Anything before -- further before  
22 we bring in the jury.

23 MS. SHEALY: No, Your Honor. Would you allow  
24 my law clerk to go, you want us to redact the first  
25 two portions before we address the gun one, or wait

1 and do it in one fell swoop.

2 THE COURT: You lost me.

3 MS. SHEALY: Well, the parts that we have  
4 agreed to redact, I could go ahead and get that done  
5 on the statement. But that would still leave the  
6 remaining issue about the gun that would then have to  
7 be redacted if you were to not allow the testimony in  
8 about the gun.

9 THE COURT: what I have instructed you to do  
10 is to structure your questions such that those are  
11 the last in your line of questions and I will take it  
12 up in camera and make a decision. And then we will  
13 decide about the statement.

14 MS. SHEALY: Okay.

15 THE COURT: what you are asking me now is  
16 premature. I have not made a decision.

17 MS. SHEALY: Okay, thank you.

18 THE COURT: Does that clarify it for you?

19 MS. SHEALY: Yes, thank you.

20 THE COURT: You're welcome.

21 Anything further before we bring in the jury?

22 MS. SHEALY: Not from the State.

23 THE COURT: From the defense?

24 MS. FORD: No, Your Honor.

25 THE COURT: Thank you.

1 Please bring in the panel.

2 (Whereupon, the jurors enter the courtroom.)

3 THE COURT: Ladies and gentlemen, I hope you  
4 enjoyed your break. We will now resume with the  
5 testimony.

6 You may proceed.

7 MS. SHEALY: David Osborne.

8 MR. DAVID OSBORNE,

9 after having first been duly sworn to state the  
10 truth, the whole truth and nothing but the truth,  
11 testified on his oath as follows:

12 DIRECT EXAMINATION

13 BY MS. SHEALY:

14 Q Detective Osborne, if you would please tell  
15 the jury a little bit about your background, your  
16 employment and educational background?

17 A I have worked with Charleston Police  
18 Department. I'm a detective in the homicide unit.  
19 Graduated from USC.

20 Q Prior to working for the Charleston Police  
21 Department, where did you work?

22 A I worked with New Orleans Police Department.

23 Q And how long did you work there?

24 A Little over five years.

25 Q Okay. And on the occasion of October 19th,

1 2007, where were you employed?

2 A Charleston Police Department.

3 Q And you were in what capacity at CPD at that  
4 time?

5 A I was a homicide detective.

6 Q Did you get involved in the case involving the  
7 death of Leroy Simmons?

8 A Yes.

9 Q And would you describe for the jury, please,  
10 when it was that you got involved with that case?

11 A I came into work that morning and the case was  
12 assigned to me. At that point it was just a  
13 shooting. But I was notified, not directly but via  
14 Detective Cooper, that the condition of the victim  
15 was grave. So I went to MUSC.

16 Q Okay. In that it was initially a shooting,  
17 did you go out to the scene at all?

18 A No, I wasn't called out that night.

19 Q The first place that you went in connection  
20 with this case was MUSC you said?

21 A Yes.

22 Q And when you got to MUSC what was going on the  
23 victim at that point?

24 A Actually, by the time that I had gotten there,  
25 which was about 9:30, the family actually had just

1       been notified that he passed away.

2       Q     And while you were at MUSC, did you speak with  
3       any family members?

4       A     I did.

5       Q     who did you speak with?

6       A     Sandra Green I believe was her name.

7       Q     Okay.

8       A     Yes.

9       Q     And after talking with Sandra Green, was there  
10      -- were you interested in finding witnesses?

11      A     I was. She had indicated to me that there was  
12      a person that I had not heard of, Shrod Young, or  
13      Fish, that could possibly be a witness to the  
14      incident.

15      Q     Okay. And after talking to Sandra Green then,  
16      well first let me ask you, when you were there did  
17      you talk to the doctors at MUSC?

18      A     I did.

19      Q     And did you learn how many times Mr. Simmons  
20      had been shot?

21      A     If --

22      Q     Do you recall?

23      A     If I remember correctly I believe there were  
24      four gunshot wounds. But we later learned through  
25      the autopsy that two of the wounds could have been

1 caused by one bullet.

2 Q You mean going in and out?

3 A Entry and exit. So probably shot three times.

4 Q Now while you were at MUSC, was Mr. Simmons,  
5 Leroy's father, present?

6 A Yes. No, I don't believe he was. I don't  
7 remember meeting with him then.

8 Q After talking to Sandra Green then, who were  
9 you looking for as a potential witness?

10 A Shrod Young.

11 Q Now although you had not gone to the scene, do  
12 you know who from CPD had gone to the scene as the  
13 crime scene investigator?

14 A The night before, after reviewing the reports,  
15 Anita Maestas responded to the scene.

16 Q Okay. And as the lead investigator are you  
17 aware of any physical items or swabbing that had been  
18 done at the scene?

19 A Yes. Anita had collected blood swabs from the  
20 scene. And in regards to physical evidence, also a  
21 baggie containing a white substance that appeared to  
22 be cocaine. And she took photos.

23 Q Okay. And can you describe for the jury, if  
24 you would, as a lead investigator in a case, explain  
25 to us the significance of any physical evidence and

1 then what you as a lead investigator does then with  
2 the physical evidence. Do you request further  
3 testing?

4 A It depends on what type of evidence it is. If  
5 we recover shell casings or projectiles and we happen  
6 to have a murder weapon, then we'll request those to  
7 be sent to SLED to see if they match.

8 If we recover blood, hair, fingerprints, we'll  
9 request those to be compared and matched. The  
10 importance of physical evidence, it can corroborate  
11 or discredit witness statements. It could do the  
12 same for suspect statements. It could put an  
13 individual on the scene, you know, if you recover his  
14 blood there at some point you would believe that he  
15 was there.

16 Q Okay. And when you distinguish crimes that  
17 happen outside, like in a street, with those that  
18 happen in an enclosed place, like a car or a home or  
19 a building, could you explain to the jury what  
20 differences, if any, you see between the presence of  
21 a lot of physical evidence, a little physical  
22 evidence?

23 A Well you would certainly expect to find, or  
24 you would have a greater chance I should say, of  
25 finding physical evidence inside a closed space.

1 Inside of a car, for example, you have to get inside  
2 the car to you touch the handle, you might touch  
3 something inside the car. If you were to bleed or,  
4 you know, hair were to fall out it would be contained  
5 in that one area.

6 Out on the street it's difficult to find  
7 blood, if you were to bleed. And hair, and it's very  
8 seldom you find anything on the street that you can  
9 even collect fingerprints on. And hair and whatnot  
10 can easily be destroyed by the elements.

11 Q And you indicated that Ms. Maestas had done  
12 some blood swabs?

13 A Yes.

14 Q Did you request that those be sent somewhere  
15 to be analyzed?

16 A Yes.

17 Q And where did you request that they be sent?

18 A To SLED.

19 Q And you indicated that there was a bag of  
20 cocaine?

21 A Yes.

22 Q And did you ask that that be tested to see  
23 whether or not in fact drugs were in there?

24 A Yes.

25 Q Did it in fact come back as cocaine?

1 A Positive, yes.

2 Q What about the baggie that the cocaine was in?

3 A We dusted it for fingerprints, negative  
4 results. We couldn't find anything.

5 Q And when you say we dusted it, did you send  
6 that to someone else in your police department?

7 A I'm not sure exactly who did it, but Jennifer  
8 Wooley is usually the person at the crime scene  
9 office who does that.

10 Q Okay. Now did Ms. Maesats, the crime scene  
11 investigator, go anywhere else to collect items?

12 A She went to the ER room at MUSC.

13 Q And what would she have collected from the ER  
14 room?

15 A She recovered the victim's clothing, a black  
16 scarf, some of the victim's money, and a condom.

17 Q Okay. When you say that she collects physical  
18 evidence, where does she then put it after collecting  
19 it? If you know.

20 A To the best of my knowledge, when crime scene  
21 collects the evidence they store it at their office.

22 Q And when they go out for other testing then  
23 they leave the Charleston Police Department and go to  
24 the various labs?

25 A That's correct.

1 Q Now tell me whether in all homicide  
2 investigations, do you have physical evidence?

3 A No.

4 Q And you've indicated to us that the fact that  
5 this was not in an enclosed area affects whether you  
6 would expect to see a lot; is that correct?

7 A That's correct.

8 Q Could you tell the jury, as a homicide  
9 investigator, what the different types of evidence  
10 there are when you are investigating?

11 A Well, anything could be physical evidence.  
12 You know from blood to fingerprints to even a cup  
13 depending upon whether it's relevant to the  
14 investigation.

15 There is testimonial evidence. Like I said, I  
16 mean anything could be evidence as long as it's  
17 relevant to that investigation of what happened, what  
18 had occurred.

19 Q And when you say testimonial evidence, what  
20 are you talking about?

21 A Well, you could have eyewitness accounts that  
22 would be testimonial evidence. Anyone who has  
23 general information or information concerning the  
24 homicide, that would be testimonial evidence.

25 Q Now in relationship to Mile's death, was there

1 an autopsy performed?

2 A Yes.

3 Q And who attended the autopsy?

4 A From law enforcement, I attended it and crime  
5 scene Officer Wersma.

6 Q And why would anyone from law enforcement  
7 attend it?

8 A Crime scene's responsibilities are generally  
9 to document and collect and preserve evidence at the  
10 autopsy. My purpose for going, or a detective's  
11 purpose for going, would be to ascertain information  
12 like how was the victim killed, in this case how many  
13 times was he shot; if any determinations can be made  
14 about body positioning when he was shot; are  
15 projectiles recovered; what caliber gun was used,  
16 was it more than one gun.

17 Q And who actually performs the autopsy? What  
18 type of professional?

19 A A pathologist.

20 Q And that's a medical doctor?

21 A Yes.

22 Q So you've indicated that you were present and  
23 officer Wersma?

24 A Yes.

25 Q what was collected from the autopsy?

1 A Well, two projectiles.

2 Q When you say projectile, can you describe for  
3 the jury what is meant by the term projectiles?

4 A Yeah, this is coming from a layman's term.  
5 But the full bullet would be the casings and the  
6 projectile, which would be the part that actually  
7 fires out of the gun.

8 So the projectile would be the part that  
9 actually leaves the gun through the muzzle.

10 Q I'm sorry?

11 A Through the muzzle.

12 Q When projectiles are collected at an autopsy,  
13 they come from the victim's body?

14 A Generally, yes.

15 Q What other items were taken from the autopsy?

16 A The victim's fingernail clippings, head hair  
17 from the victim, and the victim's fingerprints.

18 Q Okay. And when it comes to fingernail  
19 scrapings, head hairs and fingerprints, are those  
20 collected at all autopsies where law enforcement is  
21 present?

22 A Yes.

23 Q That's routine to collect those?

24 A Yes.

25 Q And regarding those in this case, were the

1 fingernail scrapings and head hair sent to another  
2 lab?

3 A I know the fingernail scrapings were, I'm not  
4 sure about the head hair.

5 Q Do you know what lab they would have been sent  
6 to?

7 A That would have been SLED as all.

8 Q Regarding finding out what had happened with  
9 Leroy Simmons that evening, did you find many people  
10 who were willing to talk and cooperate with you?

11 A No.

12 Q Could you describe that to the jury? what  
13 efforts did you make, what kind of cooperation did  
14 you receive?

15 A Well myself, I went back out that same night,  
16 tried to canvass the area, tried to speak to people,  
17 handed out my card, couldn't locate any witnesses.

18 I also know two other detectives also  
19 canvassed that area that morning and they also  
20 couldn't locate any witnesses.

21 Q Let me go back for one second. When you told  
22 you us the projectiles were found or collected at the  
23 autopsy, was there a murder weapon ever found in this  
24 case?

25 A No.

1 Q Is that unusual?

2 A No.

3 Q Is it unusual not to find a weapon?

4 A No, it's common.

5 Q To not find a weapon?

6 A Right.

7 Q Now after canvassing the neighborhood and not  
8 finding anyone, did you have the opportunity to meet  
9 a gentleman named Leroy Simmons, Senior?

10 A Yes.

11 Q Can you describe the circumstances that you  
12 met him?

13 A I had spoken to him on Friday, that would have  
14 been the day of the murder on the phone. And he had  
15 indicated that he wanted to speak to me. So on  
16 Saturday, the 20th, he came to the station and I  
17 spoke with him then.

18 Q Okay. And who was he to Miles?

19 A He was his father.

20 Q And when he came to talk to you, did he  
21 indicate to you that he had talked to anyone already?

22 A He had stated that he had spoken to Shrod  
23 Young.

24 Q And what about Shoreka Miles?

25 A At that point I believe Mr. Simmons had told

1 me that he had spoken to a black female, I don't know  
2 that he knew her name at that point.

3 Q And based on what Mr. Simmons told you, who  
4 were you then looking for to talk to?

5 A Shrod Young.

6 Q And what about the black female?

7 A Well obviously I was looking to speak to her  
8 but Mr. Simmons made it clear that he believed that  
9 Shrod was a witness. And the black female I believe  
10 he said had just approached her and it was someone he  
11 had spoken to. I don't believe he believed she was a  
12 witness at that point.

13 Q Okay. Now did you make an effort to find  
14 Shrod Young?

15 A I did.

16 Q Can you describe that to the jury?

17 A Well, again this is Friday on the day of, I  
18 obtained his phone number and I called him and it was  
19 about 8:00 p.m. at night. And this is while I was on  
20 the way to the area thinking that I might could catch  
21 him hanging out or just kind of loitering in the  
22 area.

23 When I spoke to him on the phone he made it  
24 abundantly clear to me that he didn't want to talk to  
25 me.

1 Q After that event, did you try to talk to him  
2 again?

3 A I did. It was later. Well, the next time I  
4 actually spoke to him was on October 25th. But I  
5 left several messages with him.

6 Q And when you would leave your message, would  
7 you ask that he call you?

8 A Yes.

9 Q Did he ever call you back?

10 A No. I had to call from different numbers  
11 actually to get him to answer the second time.

12 Q On October 25th is the second time you spoke  
13 to him?

14 A Yes.

15 Q If you would please tell the jury what that  
16 conversation was like?

17 A Much of the same again. Again he was stating  
18 that he did not want to talk to me. And I remember  
19 him even saying once that I could even put down that  
20 he wasn't there. And I said, okay, Shrod, if that's  
21 what you want to say then just meet with me and I  
22 will take a statement to that effect. But he never  
23 did.

24 Q He never met with you?

25 A No, he didn't.

1 Q Now during the course of your investigation,  
2 did you in fact develop a suspect?

3 A Yes.

4 Q And could you describe for the jury how that  
5 took place?

6 A Well, the first -- well a couple different  
7 ways Little Ricky's name first came up. There  
8 were --

9 MS. FORD: Objection. May we approach?

10 THE COURT: Uh-hum.

11 (Whereupon, a discussion was held at the bench  
12 off the record.)

13 THE COURT: You may proceed.

14 Q (By Ms. Shealy) Detective Osborne, I asked  
15 you how it was that Ricky -- how you developed a  
16 suspect, and I think you were answering me.

17 A Yes.

18 Q Could you tell the jury how in fact that  
19 occurred?

20 A One of the first times was on that same  
21 Friday, actually when I was on my way out to try to  
22 find Shrod, I happened to be going down the road and  
23 a car actually flagged me down, I was on Fishborn.

24 And he was just a citizen, he didn't want to  
25 get involved, he told me that he had overheard a

1 conversation --

2 THE COURT: Stop, approach.

3 Well sustain on hearsay. Move on.

4 Q (By Ms. Shealy) Without saying what someone  
5 told you, based on what -- based on that  
6 conversation, who then were you looking for?

7 A Little Ricky's name came up.

8 Q And did you have the full name for Little  
9 Ricky?

10 A No.

11 Q You just had a nickname?

12 A Yes.

13 Q Okay. Did any other incidents occur that made  
14 you believe that that was the nickname you were  
15 looking for?

16 A Well, another officer --

17 MS. FORD: Objection, Your Honor, may we  
18 approach?

19 THE COURT: You may.

20 (Whereupon, a discussion was held at the bench  
21 off the record.)

22 THE COURT: You may proceed.

23 MS. SHEALY: Thank you.

24 Q (By Ms. Shealy) Detective Osborn, without  
25 telling me what someone told you, let me ask you at

1 some point in your investigation did you learn that  
2 Ricky Deas may be Little Ricky?

3 A That's correct.

4 Q And after learning that, what was the next  
5 thing that occurred involving Mr. Simmons?

6 A Mr. Simmons came into the station on Saturday  
7 October 20th, I met him there, it was about 1:30 p.m.  
8 I took a written statement from him.

9 Q From the father himself?

10 A Yes, ma'am.

11 Q And at some point does he bring a witness in  
12 to you?

13 A Later on that same night.

14 Q Could you describe how that happened?

15 A He called me, I guess it was probably about  
16 10:00 p.m., and he had stated that he was with a  
17 female who had witnessed his son being murdered. I  
18 asked if it would be possible, would she agree to  
19 come to the station to speak with me and he said she  
20 would.

21 So he brought her to the station and I met  
22 with her there.

23 Q And who in fact was that that came into the  
24 station with Mr. Simmons?

25 A That was Shoreka Miles.

1 Q Would you describe for the jury what her  
2 demeanor was like when she got to the police  
3 department?

4 A She was scared. She was shaking. She  
5 certainly didn't seem like she wanted to be there.

6 Q Okay. And did you have the occasion to ask  
7 her what she had seen that evening?

8 A Yes.

9 Q Could you describe for us what the atmosphere  
10 was like, how it took place that you took a statement  
11 from her that evening?

12 A When Mr. Simmons arrived with Shoreka, I  
13 explain to him that I would need to meet with her  
14 alone and he said he understood. So I met with  
15 Shoreka, and it was just her and I, and then we went  
16 from there.

17 Q And where did you interview her?

18 A I believe it was the central investigations  
19 interview room.

20 Q Where is that located?

21 A 180 Lockwood at our station, second floor.

22 Q Can you tell me whether you have a piece of  
23 evidence up on the stand?

24 A No, just what I brought.

25 MS. SHEALY: Beg the court's indulgence just a

1 moment.

2 Q (By Ms. Shealy) Did you know what to expect  
3 when she came there? Did you know what she knew or  
4 anything?

5 A No, I didn't.

6 Q And during that process, she described what  
7 she had seen?

8 A Yes.

9 Q When you took a statement from her, did she  
10 write it or did you write it?

11 A I wrote it.

12 Q Would you tell the jury, if you would, what  
13 you told her before the statement process. What did  
14 you tell her was the importance of her being there  
15 and why you wanted to ask her questions?

16 A Well, I mean she certainly seemed to  
17 understand that it was important, but I did tell her  
18 that this was a murder investigation and I needed her  
19 to be honest. And she certainly seemed to understand  
20 that.

21 Q And the writing of the statement itself, could  
22 you explain to us how that occurred. If it's her  
23 statement but you're writing it, tell us how that  
24 procedure works?

25 A The -- well, what you do is you basically --

1 the way I do it is I basically write down their  
2 statement as they say it to me. And then if I have  
3 any follow-up questions, I will just denote it with a  
4 question, write my question out, ask them, and then  
5 write down their answers.

6 And at the conclusion of the statement, I'll  
7 go back and read it to them and if there is anything  
8 they want to change we will just change it then.

9 Q And also during that process, did you show her  
10 a lineup?

11 A I did.

12 Q Now you have testified that you had the name  
13 Richard Deas as possibly being Little Ricky?

14 A Right.

15 Q Can you tell the jury when you showed her the  
16 photographic lineup, did you include a photograph of  
17 Richard Deas in that lineup?

18 A Yes.

19 Q And showing you what has been previously  
20 marked as State's Exhibit 27, I ask you if this is  
21 the lineup that you showed her?

22 A Yes.

23 Q Okay. And in preparing this lineup, did you  
24 try to find people that looked similar to the person  
25 that you are wondering if he is the suspect?

1           A       Yes.

2           Q       Prior to showing her the lineup, and in  
3 showing you State's Exhibit 26, explain to the jury  
4 the importance of the admonition form and why it is  
5 that you use that?

6           A       Well the admonition form -- well, one thing  
7 about it is that when you read it you give the same  
8 verbiage to everyone before you show them the lineup  
9 so you don't have to worry about saying anything  
10 that's not appropriate because it's right there, all  
11 you have to do is read it.

12                    Another thing that's good about the admonition  
13 form is that it tells them that there are certain  
14 features in the photographers that might not be  
15 exactly the same; maybe the hair is different, maybe  
16 the lighting is different in the photograph that  
17 might throw off their complexion a little bit.  
18 It's all pretty much self-explanatory.

19           Q       If you would walk us through showing her the  
20 lineup and how she reacted and what she indicates.

21           A       Okay. The first thing I did was read her the  
22 admonition form. Then I told her, upon viewing these  
23 photographs do not discuss the results or this  
24 procedure with any other witness. She said she  
25 understood. I had her sign that and put the date and

1 the time.

2 Then these two documents right here would have  
3 been together. I would have handed to it her and  
4 said, turn it over and look at the lineup. Take your  
5 time, look at each photo.

6 She then pulled it over and she looked at each  
7 photo. And I was watching her eyes as she was going  
8 through, I watched her go from one to six. And then  
9 she went back to one and her finger went here, down  
10 on one hard and she said, that's the guy that shot  
11 Miles.

12 Q And on the admonition form are there comments  
13 written that she indicated that evening?

14 A Yes.

15 Q What is that comment?

16 A She said number one. Number one is the one  
17 who shot Miles.

18 Q Okay. So you told us that when she reacted to  
19 the photo, she did what with her finger?

20 A She put it down on number one on the photo.

21 Q Did you do anything in her presence that would  
22 have led her to believe that you wanted her to pick  
23 one photo over another?

24 A No.

25 Q Now how certain did she appear to be when she

1 looked at the lineup.

2 A Well, I asked her and she said she was  
3 absolutely certain.

4 Q After you showed her the lineup, can you tell  
5 the jury how she reacted?

6 A She was shaking. I don't know if she was  
7 crying, but she was definitely tearing up. And again  
8 she was just acting like she was very nervous.

9 And again I told her, let me just -- give me a  
10 few more minutes and let's go through a written  
11 statement. And then she gave me the written  
12 statement.

13 Q And when you were interviewing her and when  
14 she indicated what she saw, who did she say the  
15 shooter was?

16 A Little Ricky. Well, she didn't say that  
17 specifically. She identified the shooter.

18 Q And just showed you that person on the  
19 picture?

20 A Right.

21 Q Now after the lineup process, did you in fact  
22 draw up an arrest warrant for Mr. Deas?

23 A Yes.

24 Q And did you make any other efforts to try to  
25 get in touch with Shrod Young?

1       A       Well, the one I had mentioned earlier which  
2 would have been after this on October the 25th is  
3 when I actually spoke to him. But again I left  
4 several messages.

5       Q       And he did not give you a statement at that  
6 time?

7       A       No.

8       Q       Were you also contacted by a Whitney Doctor?

9       A       Yes.

10      Q       And how was it that you were contacted by her?  
11 You were contacted by her or you contacted her?

12      A       Actually it was her attorney who first called  
13 me, Mark Romness I believe is his name.

14      Q       And based on that phone conversation did you  
15 set up a time to interview Whitney Doctor?

16      A       Yes.

17      Q       And after you prepare the arrest warrants,  
18 what do you physically do with them?

19      A       Well, I mean when you get the actual arrest  
20 warrant in your hand you have to prepare a package.  
21 And then you turn that into the NCIC officer. And  
22 what he will do is he'll enter it into the computer  
23 and that way if that suspect is stopped on the road  
24 they can run his name and then he'll come back  
25 wanted.

1 Q And is it you that goes out looking for them  
2 or someone else at CPD do that?

3 A It's sort of a combination. For a warrant of  
4 this nature, a violent crimes warrant, we do have  
5 warrant officers who that's their only job, to try to  
6 find individuals who are wanted.

7 Q Okay. Did you learn of Mr. Deas being  
8 arrested?

9 A Yes.

10 Q And where was he arrested?

11 A He was arrested at

12 Q Is there another name for that Franklin  
13 Street?

14 A Well, when I was notify originally, the  
15 officers believed it to be Cromwell. I found out  
16 later it was Franklin. They're right next to each  
17 other.

18 MS. SHEALY: Your Honor, at this time we would  
19 have a matter of law.

20 THE COURT: Mr. Foreman, ladies and gentleman,  
21 I have a matter of law I need to take up with the  
22 attorneys, it should be fairly brief. Please don't  
23 discuss the case and please leave your notepads in  
24 your seats.

25 (Whereupon, the jurors exit the courtroom.)

1 MS. SHEALY: Your Honor, my next series of  
2 questions --

3 THE COURT: You need to ask the questions and  
4 create a proffer.

5 MS. SHEALY: Okay.

6 IN-CAMERA DIRECT EXAMINATION

7 BY MS. SHEALY:

8 Q After the arrest of Ricky Deas, was there a  
9 search warrant executed on the address where he was  
10 arrested from?

11 A Yes.

12 Q Okay. And pursuant to that search warrant,  
13 were certain items seized?

14 A Yes.

15 Q And could you tell the Court what items had  
16 been seized?

17 A Well, as a result of the search warrant only a  
18 black T-shirt was recovered.

19 Q Okay. Prior to the search warrant actually  
20 being executed, did the officer who made the arrest  
21 find something in plain sight?

22 A Yes.

23 Q What did they find?

24 A A handgun.

25 Q And in addition to the handgun, was there any

1 ammunition?

2 A Yes.

3 Q Okay. And do you know where in the house or  
4 apartment that Mr. Deas was arrested in that the gun  
5 was found?

6 A As best as I can remember, I believe it was  
7 either on the nightstand or right next to him as he  
8 was sleeping. And this is what was related to me by  
9 the officer who actually recovered it.

10 MS. SHEALY: Your Honor, that is the testimony  
11 that we want to elicit regarding the gun.

12 THE COURT: Why is it relevant?

13 I don't mean to jump ahead of you. Your  
14 objection was relevance, correct?

15 MS. FORD: Yes, ma'am.

16 THE COURT: What is the fact or consequence in  
17 this litigation does it make more or less probable?

18 MS. SHEALY: Your Honor, this is how it  
19 becomes relevant. While Mr. Deas is at the county  
20 jail, he has a phone conversation during which he  
21 indicates that he states, they think they got the  
22 murder weapon, but they ain't got the murder weapon.  
23 It would be our position that that statement is  
24 acknowledges that he knows where the murder weapon  
25 is.

1 THE COURT: Does that statement stand in and  
2 of itself? why -- how does that make the gun  
3 relevant?

4 MS. SHEALY: Because during the conversation  
5 that he is having about the gun, he is acknowledging  
6 that he knows the gun that they have taken is not the  
7 murder weapon. And it would be our position that his  
8 knowledge is not -- the tone of the conversation, the  
9 conversation as a whole, is certainly suggestive of  
10 he knows it's not the murder weapon not because he  
11 wasn't there but because he was there and he knows it  
12 will not be linked back up.

13 THE COURT: It's still lost on me. why does  
14 that makes this gun relevant? The conversation  
15 stands on its own. He can be referring to anything.  
16 He could be referring to the gun they found -- I am  
17 just trying to figure out, this gun was not, as I  
18 understand it, the murder weapon.

19 MS. SHEALY: That's correct

20 THE COURT: And is the ammunition at all  
21 linked to the gun that was used?

22 MS. SHEALY: No.

23 MS. FORD: Your Honor. My concern, even  
24 though I do object to any mention of the gun being  
25 presented including this tape. The tape said, they

1 think they have a murder weapon, but they don't

2 THE COURT: You all are jumping ahead. I  
3 haven't dealt with the tape yet. But I will.

4 MS. FORD: Yes, ma'am. The only reason I'm  
5 bringing that up is because if that statement is  
6 allowed, we would actually -- the jury would need to  
7 know about this gun. Because if they didn't know  
8 about this gun, it would make it sound like --

9 THE COURT: Do you all maybe want to talk  
10 about whether you want to stipulate to it or not  
11 because I can tell you preliminary, although I have  
12 not heard the tape, I reserve judgment, I see the  
13 tape is really a CD of the recorded conversation, I'm  
14 unable to discern any precedent that would not let  
15 those CD's in.

16 MS. FORD: Judge, I would say that that  
17 particular conversation is irrelevant.

18 THE COURT: If he makes an admission it would  
19 be relevant as to motive and as to intent and absence  
20 of mistake.

21 MS. FORD: But he does not make any  
22 statements.

23 THE COURT: I don't know, I haven't heard  
24 them. Which puts me at a bit of a deficit. I don't  
25 know what it says. Not that lawyers mean to, but I

1 tend to find that what you all represent to me, which  
2 never is exactly what was said.

3 It's your job to advocate. You all tend to  
4 color things a little. So that when I listened to it  
5 it's never what you told me. Nothing personal, you  
6 are an advocate. You're supposed to do that.

7 So I don't know what the tape says. I haven't  
8 heard it, haven't listened to it. Maybe you all need  
9 to give them to me so that I can listen to them.

10 MS. SHEALY: I can certainly do that. Would  
11 you like me to?

12 THE COURT: I have to listen to it at home  
13 anyway because these computers' software is too  
14 advanced for what is being used at the jail. Which  
15 tells you how old my computer is that I'm listening  
16 to them on.

17 MS. SHEALY: For purposes of continuing right  
18 now --

19 THE COURT: I'm giving you all the option to  
20 maybe work it out if you can. If you can't, at this  
21 moment I'm going to exclude it until such time --  
22 what I'm hearing Ms. Ford saying is if the recording  
23 comes in she wants it in.

24 MS. SHEALY: Right. And that's why I'm saying  
25 it's relevant.

1 THE COURT: Maybe you all need to skip over it  
2 and have this witness him subject to recall and go  
3 back into it subject to the Court ruling on the  
4 recorded conversations.

5 Again, as I have indicated, I have researched  
6 this matter thoroughly previously, and I have been  
7 looking at it since before we started the trial  
8 because you all made me aware that it would be an  
9 issue in your pretrial documents that you submitted  
10 to the Court.

11 The United States Supreme Court has  
12 articulated very clearly you have absolutely no  
13 expectation of privacy during phone calls at the  
14 jail, especially when both sides were notified their  
15 being recorded.

16 The jail continually tells you that as you  
17 listen, as you are talking, you should know you are  
18 be recorded.

19 MS. FORD: I would say that every single  
20 conversation wouldn't come in under that.

21 THE COURT: I haven't said that, that's why I  
22 am going to listen to them, I don't know. I don't  
23 know what other contemporaneous objections you would  
24 make. And it's disadvantageous for me to try to  
25 anticipate what they would say when I don't know what

1 they say.

2 MS. FORD: Yes, ma'am.

3 THE COURT: Whether they would be relevant or  
4 not, I don't know.

5 MS. SHEALY: Your Honor, so I will just move  
6 on from that --

7 THE COURT: I think that might be the prudent  
8 course of action unless you all agree that you want  
9 it in.

10 MS. SHEALY: I don't think we are going to  
11 agree to that.

12 MS. FORD: I would have to wait and find out  
13 if the jail tape is going to come in. I understand  
14 the jail tapes are likely to come in, but on that  
15 particular conversation I believe it's irrelevant.

16 THE COURT: How many conversation are there  
17 that I need to listen to?

18 MS. SHEALY: I think there are two.

19 THE COURT: Do you have them?

20 MS. SHEALY: I'm going to try to pull them out  
21 for us. I need to narrow it down better for you than  
22 that.

23 THE COURT: Actually, they're listed.

24 MS. SHEALY: I mean the time.

25 Do you want me to do that now, Judge, or can

1 we do that right before we finish up? You want me to  
2 give it to you now?

3 THE COURT: If you have it I'd like it now.

4 MS. SHEALY: Okay.

5 MS. FORD: Your Honor, I also would add as far  
6 as this witness goes, he said several times he  
7 doesn't even really know where it was found, so I  
8 would say he is not competent to testify as to the  
9 gun being seized or found.

10 THE COURT: Well, he is the case agent. He  
11 can testify based on what is in the reports.

12 MS. FORD: Yes, ma'am.

13 THE COURT: That would not be hearsay. But I  
14 agree that the best evidence would be the person who  
15 found it. So that they would have the ability to  
16 meaningfully cross-examine him as to proximity of  
17 where the gun was found, et cetera.

18 MS. SHEALY: Your Honor, let me show this to  
19 Ms. Ford.

20 May I hand this up to you, Judge.

21 THE COURT: You may.

22 MS. FORD: Your Honor, there may also be an  
23 issue as to seizing the gun, they didn't have a  
24 warrant for the gun.

25 THE COURT: It was in plain sight as I

1 understand the testimony, but I'm not dealing with  
2 any of that until I hear the tape.

3 And Ms. Shealy has indicated she thinks it was  
4 prudent and I agree that this questioning she not go  
5 into it in the presence of the jury at this time,  
6 subject to him being recalled in the event they can  
7 lock it all together. And I'll have to see.

8 You've all indicated if I let in the recording that  
9 you want the testimony in which makes the issue moot,  
10 doesn't it?

11 MS. FORD: Yes, ma'am.

12 MS. SHEALY: Your Honor, I have only  
13 approximately six more questions before we are going  
14 to get into the defendant's statement. And as a  
15 reminder the gun is mentioned within that statement.

16 MS. FORD: Your Honor, possibly --

17 THE COURT: Right now, you all need stay away  
18 from that, right?

19 MS. SHEALY: I'm just wondering about -- I  
20 mean I need to go over with Detective Osborne Mr.  
21 Deas' statement before I call the next set of  
22 witnesses.

23 THE COURT: That's not -- in three pages of  
24 his statement there is only three lines that deal  
25 with the gun.

1 MS. SHEALY: Sure. I can lead up to that and  
2 have him stop at that point.

3 The other issue -- we have -- let me make sure  
4 Detective Osborn knows about the jail part, and the  
5 blunt part. Do you mind, Judge?

6 THE COURT: Go right ahead.

7 We have the jury waiting, I'm trying to figure  
8 out, what is the holdup?

9 MS. SHEALY: I need for him to be able to  
10 articulate what he was told that day by the  
11 defendant. I was going to, the two we already agreed  
12 upon, the blunt and the reference about the blunt.  
13 What I was going to do is cover them up so that he  
14 doesn't read that in. This has to be redacted.

15 And then I'm going to cut him short before we  
16 get to the jail part, okay.

17 THE COURT: Please look at it, make sure you  
18 all are in agreement.

19 MS. SHEALY: Detective Osborne, the parts that  
20 I cover up you cannot read in front of the jury,  
21 okay.

22 THE WITNESS: Okay.

23 MS. SHEALY: Your Honor, may I instruct the  
24 detective about what we have redacted?

25 THE COURT: Yes.

1 MS. SHEALY: Thank you.

2 MS. FORD: Your Honor, I don't know if you  
3 want to address it now, bring it up when it comes up,  
4 I know you ruled against us in the Jackson v. Denno  
5 hearing --

6 THE COURT: Once you've made that motion, it  
7 is preserved for the record.

8 MS. FORD: I have something else, Your Honor.

9 THE COURT: Yes.

10 MS. FORD: I would just move, in the statement  
11 he does not admit to anything. I would just say we  
12 are not presenting an alibi defense. If he takes the  
13 stand it would go to credibility. But as of now, he  
14 will not be taking the stand.

15 Things may change, of course. If that  
16 changes. We would argue that it's irrelevant. That  
17 it's more prejudicial than probative and that it  
18 should not come in under 404 as well.

19 THE COURT: Would the State like to respond?

20 MS. SHEALY: Your Honor, I would certainly  
21 assert that the statement that the defendant gave  
22 when being interviewed by Detective Osborne is  
23 relevant. It is what he said that night in response  
24 to the charges. It is where he said he was that  
25 night when asked by Detective Osborne.

1           The statement was voluntarily given. So  
2 certainly I think it is appropriate that the jury be  
3 made aware of what the defendant said that evening.

4           THE COURT: The Court already ruled the  
5 statement is admissable. The Court finds it is  
6 relevant. It is not more prejudicial than probative.  
7 Motion is denied to suppress on the alternative  
8 grounds.

9           MS. FORD: Thank you, Your Honor.

10          THE COURT: You're welcome.

11          Is the State ready to proceed? I'm only going  
12 to go until 5:30, so you need to tailor your  
13 questions to that.

14          MS. SHEALY: That may put us right at the end  
15 of mine.

16          THE COURT: Then we will take up cross in the  
17 morning.

18          Please bring in the panel.

19          How many other witnesses does the State have  
20 after this witness?

21          MS. SHEALY: We may be able to narrow it  
22 somewhat this evening. Judge, the next set will be  
23 more quick.

24          THE COURT: I just need you to give me an  
25 estimate of the number.

1 MS. SHEALY: Ten approximately.

2 THE COURT: Okay.

3 (Whereupon, the jurors enter the courtroom.)

4 THE COURT: Ladies and gentlemen, we  
5 appreciate your patience. We will now resume with  
6 the witness's testimony.

7 Ms. Shealy, you made proceed.

8 CONTINUED DIRECT EXAMINATION

9 BY MS. SHEALY:

10 Q Detective Osborne, you indicated to us that  
11 Richard Deas was arrested at ?

12 A right.

13 Q And what was the date  
14 of that arrest?

15 A That was October 23rd around 6:00 a.m.

16 Q And did you in fact go to that location?

17 A I did.

18 Q Prior to going to that location, did you get  
19 any type of a search warrant?

20 A Yes.

21 Q And what was the purpose of the search  
22 warrant?

23 A To locate any evidence relevant to the  
24 investigation.

25 Q Again this was approximately four days after

1 the killing?

2 A Yes.

3 Q Okay. Pursuant to that search warrant, were  
4 there some items of clothing that were taken into  
5 custody?

6 A Yes.

7 Q And could you describe to the jury what items  
8 of clothing were taken in?

9 A A black T-shirt.

10 Q What about any type of pants?

11 A We did take black pants, he was actually  
12 wearing black pants at the time he was arrested.

13 MS. SHEALY: Beg the Court's indulgence.

14 THE COURT: Uh-hum.

15 Q (By Ms. Shealy) Detective Osborne, let me  
16 show you this bag and just ask you whether you can  
17 identify the items within it?

18 A Yeah, this is the black T-shirt and black  
19 pants that were taken from his residence.

20 Q Okay. Tell me again where were the pants  
21 actually when you went there?

22 A Well, the pants, he was still wearing the  
23 pants. So I actually had take the pants from him at  
24 the station. I got a pair of blue pants from the  
25 house and brought them there and we switched them.

1 out.

2 MS. SHEALY: Your Honor, at this time we would  
3 offer this into evidence.

4 THE COURT: Any objection?

5 MS. FORD: Just object to relevance, Your  
6 Honor.

7 THE COURT: Overruled.

8 MS. FORD: Fourth Amendment.

9 THE COURT: Overruled. It is relevant as to  
10 corroborate.

11 (Whereupon, State's Exhibit No. 30 is marked  
12 and admitted into evidence.)

13 Q (By Ms. Shealy) So showing you what has been  
14 marked State's Exhibit 30, do you recall where the  
15 shirt was located?

16 A I'm trying to recall on the shirt. If I can  
17 look to my notes real quick.

18 Q Sure.

19 THE COURT: Please approach.

20 (Whereupon, a discussion was held at the bench  
21 off the record.)

22 Q (By Ms. Shealy) Detective Osborne, regarding  
23 the search warrant, were you present during the  
24 execution of the search warrant?

25 A Yes, I found the shirt.

1 Q Okay. So if you could look at your notes and  
2 tell us where you found it?

3 A I found it in the upstairs bedroom. It was  
4 located on the floor next to a chest of drawers. It  
5 was the same room that Mr. Deas was apprehended.

6 Q Okay. And tell us who lives at

7 A Shaniquone Williams.

8 Q What was your understanding of her  
9 relationship with Mr. Deas?

10 A They were seeing each other.

11 Q Then the pair of pants you indicate you  
12 actually took from him, where?

13 A At the station.

14 Q Okay. And then you gave him another pair of  
15 pants to wear?

16 A Yes. Shaniquone, I informed Shaniquone that we  
17 would need to take those pants so she provided me  
18 with another one of his pair of pants and then we  
19 switched them out at the station.

20 Q Now did you send these items that were just  
21 shown to the jury anywhere for testing of any sort?

22 A I sent them to our lab first where they can  
23 test it to see if there is any presence of blood.

24 Q And in fact was there any blood on the shirt?

25 A No.

1 Q How about the pants?

2 A No.

3 Q Shaniquone william's apartment, who else was  
4 present when he was arrested?

5 A I believe there was an infant child there and  
6 Stephanie Deas, Ricky's sister, was there as well.

7 Q Now did you have the occasion to interview  
8 Shaniquone Williams?

9 A Yes.

10 Q And you interviewed her when? Do you remember  
11 the date and time?

12 A Yes. By the time I got to Franklin, Ricky had  
13 already been transported to the station. I  
14 interviewed Shaniquone -- the first time I interviewed  
15 her was right there at the house right after we  
16 conducted the search warrant.

17 Q You actually took her statement there?

18 A Yes.

19 Q So that again would have been what date?

20 A That would have been on the 23rd I believe.  
21 Yes, the 23rd, Tuesday.

22 Q Did you have the occasion to interview Mr.  
23 Deas?

24 A Yes.

25 Q Could you describe for the jury when that

1 occurred?

2 A That would have been the same morning after I  
3 finished the interview with Shaniquone I went back to  
4 the station and I would have first met with Ricky at  
5 9:50 in the morning.

6 Q And could you walk through for us the process  
7 of interviewing him. What do you tell him first when  
8 you begin to talk?

9 A Well I told him, you know, that he was under  
10 arrest for murder. He knew that. In fact I believe  
11 he had already been served with the warrant.

12 I had advised him of his Miranda rights with  
13 the CPD Miranda warnings card.

14 (Whereupon, State's Exhibit No. 31 is marked  
15 for identification.)

16 Q (By Ms. Shealy) Let me ask you if you can  
17 identify this, Detective Osborne? It's marked as  
18 Exhibit 31. Do you know what that is?

19 A This is the Miranda warning card.

20 Q Is it the Miranda warning card that you used  
21 that day?

22 A Yes.

23 MS. SHEALY: Your Honor, at this time we would  
24 offer it into admit evidence.

25 THE COURT: Marked and admitted subject to the

1 objection.

2 Q (By Ms. Shealy) Now when you say Miranda  
3 warnings, I'm sure a lot of people have heard that on  
4 television and all, but could you explain to the  
5 jury, first of all, what is the importance of reading  
6 someone their Miranda warnings?

7 A Well, if you don't advise them of their  
8 Miranda warnings you cannot use the statement against  
9 them. It basically just lets them know what their  
10 rights are.

11 Q And that is the physical card that you had  
12 that day?

13 A Yes.

14 Q Please tell the jury what it was that you  
15 advised Mr. Deas.

16 A You have the right to remain silent. Anything  
17 you say can and will be used against you in a court  
18 of law. You have the right to talk with a lawyer and  
19 have him present during any questions. If you cannot  
20 afford to hire a lawyer, one will be appointed to  
21 represent you before any questioning if you wish one.  
22 If you decide to answer questions without a lawyer  
23 present, you have the right to stop answering  
24 questions at any time you so choose.

25 Q After reading those to him, what did you do

1 with the card?

2 A We flip it over. And then on the back said,  
3 do you want your rights? And he wrote, yes.

4 Q And when you say he wrote yes, did he sign it  
5 as well?

6 A Yeah, then it says, I understand all of my  
7 rights as read to me, and then he signed by suspect  
8 signature. I put the date and time and I signed it  
9 as the warning officer.

10 Q Okay. Grab that for a second. Now where were  
11 you when you read him his Miranda warnings?

12 A It was in the central investigation interview  
13 room.

14 Q Is that the same interview room that you spoke  
15 with Shoreka Miles in?

16 A I know it's the room I spoke to him. I'm  
17 almost certain it is the same room that I spoke to  
18 Shoreka.

19 Q Okay. First of all, tell us how Mr. Deas  
20 appeared when you were talking to him?

21 A He didn't seem to care.

22 Q Was he upset?

23 A No.

24 Q Did he appear to be under the influence of any  
25 type of alcoholic beverage or any type of drug?

1 A No.

2 Q Did he at any point say, no, I don't want to  
3 talk I want a lawyer?

4 A No.

5 Q Was anyone else present during the interview?

6 A Well, I asked Detective Flemming to come in  
7 later and help me speak to him. But, no, during that  
8 portion of the Miranda warnings and suspect statement  
9 it was just him and I.

10 Q When you take a statement from a defendant, is  
11 there a form that you all use to actually take the  
12 statement down on?

13 A Yes.

14 Q And can you tell us whether or not that form  
15 also has the Miranda warnings on it?

16 A It does.

17 Q And that is the actual document that you then  
18 record the statement?

19 A Right.

20 Q Now do sometimes defendants write a statement  
21 and sometimes you write a statement for them?

22 A Yes.

23 Q And are there ever occasions where both  
24 occurs, they write and you write?

25 A Many occasions, yes.

1 Q Why is that?

2 A Well, hardly every, and even a witness's  
3 statement, will an individual write as much  
4 information as you might be wanting to ask them. So  
5 if there is not enough information covered in there,  
6 there are still more questions that I have, then I  
7 will continue the statement on after that in my  
8 handwriting.

9 Q Okay. And when you were meeting with Mr.  
10 Deas, did he express a willingness to talk to you and  
11 to have a statement done?

12 A Yes.

13 MS. SHEALY: Your Honor, at this time --

14 Q (By Ms. Shealy) Let me ask you if this is a  
15 copy of the statement Mr. Deas gave. I'm showing you  
16 what has been marked State's Exhibit 29 for ID.

17 A Yes.

18 MS. SHEALY: Your Honor, at this time I'll  
19 offer that statement into evidence.

20 THE COURT: Marked and admitted subject to the  
21 objection, subject to the other pretrial matters.

22 MS. SHEALY: Beg the Court's indulgence just a  
23 moment.

24 THE COURT: Uh-hum.

25 MS. SHEALY: Your Honor at this time I would

1 ask Detective Osborne to publish that statement to  
2 the jury.

3 THE COURT: You may proceed.

4 Q (By Ms. Shealy) Detective Osborne, if you  
5 would tell the jury what in fact Mr. Deas told you?

6 A The first part that I'm reading here is what  
7 he wrote. He said, every night I be in my  
8 girlfriend's house before or around 12:00. Then I  
9 asked, this past Thursday night starting at about  
10 9:00 p.m., where were you?

11 Answer: I know I don't keep up with the time.

12 Question: When did you hear about Miles'  
13 murder?

14 Answer: One of my homeboys, I don't know  
15 which it been, told me about 5:00 p.m. the day after  
16 the murder on Friday. He told me Mile had been  
17 killed up Line.

18 How do you know Mile?

19 Answer: I did not know him, I seen him on  
20 Line. When I got home on September 1st, 2007, him  
21 and I were cool, not friends.

22 Question: On the night Miles was killed,  
23 where were you?

24 Answer: I took a cab, Express Cab to my  
25 girlfriend shaniqune williams' apartment,

1                   about 11:00 p.m. I stayed there all night.  
2           It was me, Shaniquone, and her baby Tyja, six months  
3           old. I stayed there all night. I left the next day  
4           about 3:00 or 4:00 to go to the mall with Slick,  
5           Rick, Bradley. He picked me up in his cousin's car,  
6           a white Altima.

7                   Where did you come from before you got to  
8           Shaniquone's apartment?

9                   Answer: Off the block of Line Street and  
10          Hanover.

11                   What were you doing on Line Street?

12                   I been by myself.

13                   Question: What happened?

14                   Answer: I had my mama's car parked on Line  
15          Street, some girl, my little brother's girlfriend,  
16          tried to report my mom's car stolen. The police  
17          showed up. I mean I wasn't out there. I mean I  
18          parked the car on Line Street, me and one homeboy,  
19          Laquelle (phonetic) Dickson, took the Express Cab  
20          from Line. The cab dropped him off at King Street  
21          Palace, then dropped me off on Franklin Street.

22                   How did you know the girlfriend reported your  
23          car stolen?

24                   Because she asked me to use -- because she had  
25          asked to used one of my Mama's, Altida Bennet, cars.

1 When my mom said no, she got mad and said she was  
2 going to report the car in her name stolen. That car  
3 was a green Cadillac that she, girlfriend, got in her  
4 name but my Mama used it and made payments.

5 The girlfriend said she was going to report  
6 the car stolen about three weeks ago. The  
7 girlfriend's name was either whiney or whitni.

8 why did you leave the car on Line?

9 Left the car on Line around Hanover because I  
10 went to fuck my girlfriend Tianai lives on Johnson  
11 street projects on Harris. I parked the car there  
12 during daylight. The homeboy called me at Tianai's  
13 apartment and told me about the car and the police  
14 shining a light on the car.

15 I called my Mama because I know what time it  
16 been. Slick called me, told me about the car, and  
17 got out there.

18 My Mama's car and everybody been gone. I  
19 never saw the police or anybody. Laquell been with  
20 me the whole time. We left from Line in a cab.

21 How did the police find out the car was on  
22 Line?

23 I ain't know. I guess he just been riding and  
24 saw it.

25 what were you wearing that night?

1           Blue short pants, tank top or white shirt,  
2 probably gray or white, I ain't know what kind of  
3 shoes.

4           Did anything happen to you last night?

5           No.

6           What kind of car does your mom have?

7           A purple Roadmaster.

8           Q        (By Ms. Shealy) Thank you. And after the  
9 statement was written out, did Mr. Deas have the  
10 opportunity to read the statement?

11          A        Well, sitting next to him I read the statement  
12 back to him and I asked him if there was any changes,  
13 let me know and we would correct it. And if the page  
14 was correct I asked him to sign the bottom of each  
15 page and he did.

16          Q        So the statement reflects his signature?

17          A        Yes, each page.

18          Q        Each page. Were there any changes that he  
19 made?

20          A        There was one change that he made. When I was  
21 writing it I understood him to say, at the beginning  
22 of page five, I thought he said, my car and everybody  
23 been gone. When I read it back to him he said my  
24 Mama's car and everybody been gone. And he put his  
25 initials there and circled it.

1 Q Now within the statement he mentioned someone  
2 named Whitney. And you told the jury you interviewed  
3 someone named Whitney Doctor?

4 A Yes.

5 Q And that was prior to the statement?

6 A Yes.

7 Q And Shaniquene, whose apartment he was at when  
8 he got arrested, you've told us that you took a  
9 statement from her while she was still at the  
10 apartment?

11 A Yes.

12 Q Okay. Had Mr. Deas already been transported  
13 at that point?

14 A Yes.

15 Q So as far as you know is Mr. Deas aware that  
16 you had already spoken to Shaniquene?

17 A No, he wasn't.

18 Q After he gave this statement indicating that  
19 he was with her that whole night, did you have the  
20 opportunity to talk to Shaniquene again?

21 A Well I did. I went back to verify the first  
22 statement that she gave me was correct.

23 Q Okay. And did you get a statement from her on  
24 both occasions?

25 A I believe I did, yes.

1 Q There was also a Tianai Lee mentioned within  
2 Mr. Deas' statement, did you interview her?

3 A I did.

4 Q And after talking to her, did you reconsider  
5 the charges against Mr. Deas?

6 A You mean consider dropping them?

7 Q Yes.

8 A No.

9 Q Can you tell us what a suspect kit is?

10 A It's a collection kit, it could have blood.  
11 The main thing it's going to have is DNA.

12 Q And were you present when a suspect kit was  
13 done on Mr. Deas?

14 A Yes, I was.

15 Q Was there another officer present with you to  
16 assist in that?

17 A I believe that was Officer Unterbrink. He's a  
18 crime scene officer.

19 Q And that is so that comparisons can be made to  
20 items of evidence to compare to his DNA with other  
21 DNA?

22 A That's correct.

23 Q Now let me ask you a couple questions about  
24 Shrod Young. Mr. Deas was arrested?

25 A Yes.

1 Q And at some point you have Shrod Young  
2 arrested?

3 A Yes.

4 Q Okay. I need you to explain to the jury why  
5 you had him arrested?

6 A Well, it was my opinion that his actions, or  
7 lack of cooperation in the investigation, was a  
8 violation of the law, obstruction of justice. So I  
9 met with a judge, prepared an affidavit for his  
10 arrest, and the judge signed it.

11 Q Okay. And when he was arrested, could you  
12 give us that date?

13 A He was arrested on November the 7th.

14 Q Did you interview him?

15 A I did, November 8th.

16 Q And was this the first time that you and he  
17 had a face-to-face, or had you ever had the  
18 opportunity to talk to him before?

19 A First time I met him.

20 Q Did you make any promises to him before he  
21 wrote his statement?

22 A No.

23 Q And did you ask him to tell you the truth or  
24 to tell you something else?

25 A No. I asked him to tell me the truth a number

1 of times.

2 Q Okay. Where were you when you interviewed  
3 him?

4 A That was in the same interview room that I  
5 would have interviewed Rick Deas.

6 Q Okay. And during the time period you were  
7 getting a statement from him, did you also show him a  
8 lineup?

9 A Yes.

10 Q Showing you what has been previously marked as  
11 State's Exhibits 24 and 25, I ask you are these the  
12 admonition form and the lineup that you showed Mr.  
13 Young?

14 A Yes.

15 Q Okay. Can you describe for us how that  
16 process went with Mr. Young?

17 A I brought him back to the station to the  
18 interview room. We would have got there about 9:30.  
19 I spoke to him for probably for about a half hour.

20 I was asking Shrod just to cooperate with the  
21 investigation, to tell me what had happened, tell me  
22 what he saw and he was reluctant.

23 You know, I told him I said, hey, he's your  
24 friend, he was your best friend. I remember asking  
25 him a number of times to do what was right, to do the

1 right thing, tell the truth. And at some point he  
2 finally said okay.

3 Q And at any time did he want to stop that  
4 interview and get an attorney?

5 A No.

6 Q When you showed him the lineup, tell us how he  
7 reacted to the photographs?

8 A When I read him the lineup admonition form, I  
9 showed him the lineup, he flip the page over and  
10 almost immediately he identified Little Ricky.

11 Q And what -- who were you asking him to  
12 identify? How -- do you remember how you -- did you  
13 ask him to identify the shooter, did you ask him to  
14 identify -- do you remember how you did it?

15 A Well, what he did was he had -- when he said,  
16 okay, I will tell you what I saw, he had verbally  
17 related to me what he had saw. So, then I read the  
18 lineup admonition form so he wasn't identifying the  
19 shooter. What he said he was identifying was the  
20 person that he saw pull out a gun on his friend,  
21 because he said he didn't actually witness the  
22 shooting. That he walked away and then heard the  
23 gunfire.

24 Q And how did he reflect on the lineup itself  
25 that the person he said was the guy who brought out

1 the gun?

2 A Well, what he said in his other comment, and  
3 then I wrote it and then said, is this accurate, he  
4 said yeah and put his initials by it, he said, that's  
5 the one I see, he killed my boy.

6 MS. SHEALY: Beg the Court's indulgence for  
7 one moment.

8 THE COURT: Uh-hum.

9 MS. SHEALY: I have no further questions of  
10 this witness at this time, Your Honor. Thank you.

11 THE COURT: You're welcome.

12 Mr. Foreman, ladies and gentlemen, we are  
13 going to take advantage of this break in testimony to  
14 take our evening recess. During the break, please do  
15 not discuss the case among yourselves or with anyone  
16 else. Please don't allow yourself to be exposed to  
17 any media coverage about this case.

18 Again, I know I sound redundant, but it is  
19 from well-founded experience that I give this  
20 instruction. Please don't allow yourselves to be  
21 exposed to any media coverage, that includes anything  
22 on the radio, television, Internet or radio.

23 Also, please don't do any independent research  
24 on the Internet. We have made some alternate  
25 arrangements for your parking. Tomorrow morning you

1 will not park at Cumberland, you will park next door  
2 which is the garage with the driveway between the  
3 Hibernian Hall and the courthouse.

4 In other words, either way coming down Meeting  
5 it is that narrow driveway just as you come past the  
6 Mills House coming from -- I'm not good at north,  
7 south, east, and west, you all have to bear with me,  
8 I'm a little directionally challenged.

9 But you are coming from the direction of the  
10 Mills house you would make a right turn, if you are  
11 coming from Broad Street make a left turn into that  
12 driveway between Hibernian Hall and the courthouse.  
13 You will park on the very top level of that garage.  
14 So you will go all the way to the top of the garage.  
15 And there will be designated parking spaces for you  
16 and there will be a member of the Sheriff's  
17 Department who will meet you in the morning and bring  
18 you into the building, okay.

19 If you have any questions ask the bailiffs and  
20 they will be glad to give you any clarification.  
21 Again, please don't have any contact with anyone as  
22 you enter the building. Again, I would not want an  
23 innocent conversation to be observed and  
24 misconstrued.

25 I hope that you all have a restful evening.

1 we truly appreciate your patience. And please leave  
2 your notepads in your seats. If you would go with  
3 your caretakers.

4 (Whereupon, the jurors exit the courtroom.)

5 THE COURT: Sir, you may step down. During  
6 this break please do not discuss your testimony with  
7 anyone.

8 Is there anything we need to take up before we  
9 break for the evening, from the State?

10 MS. SHEALY: No, Your Honor.

11 THE COURT: From the defense?

12 MS. FORD: No, Your Honor.

13 THE COURT: You all have a good evening. I  
14 will see you at 9:30.

15 (Whereupon, the proceedings in this matter  
16 before the Court were adjourned for the evening.)

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1 THE COURT: We are still missing a juror.

2 MS. SHEALY: Ms. Ford and I do have one  
3 matter, Your Honor.

4 THE COURT: Yes.

5 MS. SHEALY: Your Honor, Ms. Ford and I spoke  
6 both last night and this morning in an effort to see  
7 if we can avoid having to call the SLED agent. We  
8 both agreed to speak to David Osborne together, I  
9 recognize he has already testified, we would like to  
10 ask him a couple questions to see if he can give us  
11 the information we need from SLED to see the reports.  
12 And if you would allow me then to begin by asking him  
13 a few follow-up questions, and then Ms. Ford to do  
14 cross, we can avoid have to call the SLED agent.

15 THE COURT: Is that acceptable, Ms. Ford?

16 MS. FORD: Yes, Your Honor.

17 THE COURT: You all can do that.

18 MS. SHEALY: Thank you, Your Honor.

19 THE COURT: You are welcome.

20 MS. SHEALY: Your Honor?

21 THE COURT: Yes.

22 MS. SHEALY: We are in agreement if I'm  
23 allowed to ask David Osborne a few more questions we  
24 can avoid having to call the SLED agent.

25 THE COURT: Which SLED agent?

1 MS. SHEALY: That is Linda Thompson.

2 THE COURT: And that would be in reference to  
3 what topic?

4 MS. SHEALY: DNA from both swabs at the scene  
5 of the blood and fingernail scrapings.

6 THE COURT: Is that correct, Ms. Ford?

7 MS. FORD: Yes, Your Honor.

8 THE COURT: Our last juror has arrived.

9 Is the State ready to proceed?

10 MS. SHEALY: Yes, Your Honor.

11 THE COURT: Is the defense ready to proceed?

12 MS. FORD: Yes, Your Honor.

13 THE COURT: Please bring in the jury.

14 Could the witness please retake the stand.

15 I'll remind you, sir, that you are still under  
16 oath.

17 (Whereupon, the jurors enter the courtroom.)

18 THE COURT: Good morning, ladies and  
19 gentlemen, I hope you all had a restful evening. We  
20 will now resume with the examination of the witness.

21 Ms. Shealy, you may proceed.

22 MS. SHEALY: Thank you, Your Honor.

23 CONTINUED DIRECT EXAMINATION

24 BY MS. SHEALY:

25 Q Detective Osborne, just a few other questions.

1 You have told us that at the scene itself there were  
2 some areas of blood found on the road?

3 A Yes.

4 Q Okay. And you told us about Anita Maestas who  
5 was the crime scene investigator who went to the  
6 scene; is that correct?

7 A Yes.

8 Q And she swabbed those areas of blood and that  
9 was sent to SLED?

10 A That's right.

11 Q In addition to that you told us about a  
12 suspect kit that was taken from the defendant, Ricky  
13 Deas?

14 A That's right.

15 Q And that would have included some of his  
16 blood?

17 A That's correct.

18 Q And that blood was sent to SLED?

19 A Yes.

20 Q And then from the autopsy from the victim,  
21 Leroy Simmons, there were some fingernail clippings  
22 that were taken?

23 A That's correct.

24 Q And that also was sent to SLED?

25 A Yes.

1 Q Now there were also some underwear of the  
2 victim that had been received from the hospital?

3 A Right.

4 Q And a cutting from the underwear was sent to  
5 SLED; is that correct?

6 A Yes.

7 Q When you sent them to SLED, it was for  
8 purposes of seeing what DNA conclusions could be  
9 reached; is that correct?

10 A That's correct.

11 Q And the person at SLED who did that analysis  
12 would have been a young lady named Lindy Thompson?

13 A That's correct.

14 Q And she is a scientist that works at SLED?

15 A Yes.

16 Q And did you in fact receive a copy of the  
17 report from SLED?

18 A I did.

19 Q Now as it relates to the swabs that were found  
20 at the scene and the underwear from the victim, was  
21 there a match of DNA for those?

22 A Yes, they did match.

23 Q In other words the blood on the ground and the  
24 blood on the underwear were from the same individual,  
25 Leroy Simmons.

1 A Belonged to the victim, that's right.

2 Q Now regarding the fingernail clippings and  
3 scrapings, there were -- there was DNA found under  
4 the fingernails; is that correct?

5 A That's correct.

6 Q And some of that was Leroy Simmons, and some  
7 an unidentified person; is that correct?

8 A That's correct.

9 Q And it was not Ricky Deas's DNA under Leroy  
10 Simmons' fingernails?

11 A That's correct.

12 Q And in your area of expertise, do you know how  
13 DNA can get under fingernails?

14 A Not really, no.

15 Q That's not your area of expertise?

16 A No, it's not.

17 MS. SHEALY: Beg the Court's indulgence one  
18 moment.

19 THE COURT: Uh-hum.

20 MS. SHEALY: I have nothing further. Please  
21 answer any questions Ms. Ford may have.

22 THE COURT: Ms. Ford, you may proceed.

23 MS. FORD: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MS. FORD:

1 Q Detective, Mr. Simmons' family, they actually  
2 brought you Shoreka Miles as a witness, correct?

3 A That's correct.

4 Q And Fish, or Shrod Young, you learned of him  
5 from Leroy Simmons' family as well, correct?

6 A That's correct.

7 Q Sandra Green first told you about him?

8 A That's correct.

9 Q And then Mr. Simmons told you about him?

10 A That's correct.

11 Q And Shoreka, when you spoke to her, she also  
12 mentioned him, correct?

13 A Yes.

14 Q Because she says that she was with him when  
15 the shooting occurred?

16 A That's right.

17 Q And you weren't at the scene, right?

18 A No, I wasn't.

19 Q But as the case agent you look over  
20 everything, correct?

21 A Yes.

22 Q From your understanding, was there any mention  
23 of car with a flat tire there?

24 A Not that I can recall, no.

25 Q In a normal criminal investigation, if someone

1 says that they know the person who committed the  
2 crime, it's typical that there wouldn't be a photo  
3 lineup, correct?

4 A I don't think it's wrong to do either/or. I  
5 guess it would depend on how certain they are. I  
6 wouldn't show a photo lineup if a son is identifying  
7 a mother. But it depends on how well they know him.

8 If they only know him by nickname, then, yeah,  
9 I would show a photographic lineup.

10 Q And you showed Shoreka Miles a lineup, right?

11 A I did.

12 Q When you interviewed her it was your  
13 understanding that she did not know the person who  
14 shot Leroy Simmons, correct?

15 A I think that's accurate, yes.

16 Q The lineup that you showed her, the pictures  
17 came from a computer program, right?

18 A That's right.

19 Q But the computer gave you possible pictures,  
20 correct, based on a description?

21 A Right. For lack of a better term, I just call  
22 them fill-ins, options that I can put in the array,  
23 suspect and then the other fill-in photos.

24 Q So you personally picked all the other photos,  
25 right?

1 A Yes.

2 Q And are all the lineups pink tinted like the  
3 one in this case?

4 A No. That program -- we actually have two  
5 programs -- that program we are sort of phasing out  
6 and we are going more toward the county's program.  
7 And so no, I would say no because that's our lineup  
8 program which we are not really using so much  
9 anymore.

10 Q So the lineup up you all are going to that  
11 system has better quality pictures?

12 A I think that's true, yeah. It's certainly  
13 newer cameras, so yeah.

14 Q So you were present when Shoreka picked out  
15 Richard Deas, correct?

16 A Yes.

17 A And she took 30 seconds to pick him out,  
18 didn't she?

19 A Yes.

20 Q And your particular -- you asked her if she  
21 had seen the boys because she said there were two  
22 boys, correct?

23 A That's right.

24 Q You asked her if she had seen them, right,  
25 before that night?

1           A       well, I don't know if I asked her that about  
2 the guy who was pedaling the bicycle because she had  
3 said that she hadn't seen him before.

4           Q       Right,

5           A       with the shooter, yes, I did ask, have you  
6 ever seen him before, yes.

7           Q       And her response, she indicated she had seen  
8 him once earlier that night?

9           A       well, I don't know if she said, I seen him  
10 once earlier that night or I saw him earlier that  
11 night. I don't know if I was really -- maybe I  
12 should have been more clear in my questioning is what  
13 I'm saying.

14          Q       But that's the way that we understood it.

15          A       That's the way I understood it, yeah.

16          Q       She did not elaborate?

17          A       No.

18          Q       She didn't say, I saw him earlier that night  
19 and I'd seen him around?

20          A       No, she didn't say that.

21          Q       In fact she indicated that, she said the guy  
22 must have not been from the area, correct?

23          A       No, I don't remember her saying that.

24          Q       But she indicated that she had seen the  
25 shooter at 10:00 p.m.?

1 A Yes. I'd have to look at it but I think  
2 that's accurate.

3 Q But when you are writing a statement for a  
4 witness, it's important that you write down  
5 everything accurately, correct?

6 A As best I can, yes.

7 Q And you go to training and you learn how to do  
8 that in part, correct?

9 A Well I haven't been to any training that  
10 teaches me how to write down what someone says. I  
11 just write it down.

12 Q But in your training, your law enforcement  
13 training, you talk about taking statements from  
14 people, correct?

15 A Yes.

16 Q And when Shoreka Miles indicated that she had  
17 seen the shooter earlier in the night, it was your  
18 understanding he was wearing the same clothes,  
19 correct?

20 A I believe that's true, yes.

21 Q And that was a black T-shirt, right?

22 A Yes. Can I look at her statement?

23 Q Sure.

24 A Yes.

25 Q So she indicated he was wearing a black

1 T-shirt?

2 A Yes.

3 Q And black Dickey pants?

4 A Yes.

5 Q And black shoes?

6 A Black Dickey short pants and black shoes, yes.

7 Q I'm showing you what has been marked as part  
8 of State's Exhibit 30 which is black a T-shirt,  
9 correct?

10 A Yes.

11 Q Is there anything special about this T-shirt,  
12 unique?

13 A Are you talking about the size of it?

14 Q No, just the appearance?

15 A No, it's just a plain black T-shirt.

16 Q And no one identified this shirt as being  
17 anything, correct? Shoreka didn't say, yeah, that's  
18 the shirt?

19 A No.

20 Q And Shrod Young didn't say, yes, that's the  
21 shirt I saw the shooter wearing?

22 A No.

23 Q And I'm showing you the black pants that you  
24 also recovered that's also been marked as part of  
25 State's Exhibit 30. These are long black pants,

1 correct?

2 A Yes.

3 Q And they are -- do you know that brand? It's  
4 hard to pronounce, but they are not Dickeys, correct?

5 A That's correct.

6 Q And no one identified these pants as being  
7 anything special to the crime, correct?

8 A That's correct.

9 Q But you got these clothes as part of the  
10 search warrant, correct? When the search warrant was  
11 executed?

12 A That was that same day, yes. The shirt I took  
13 as a result of the search warrant, the pants he was  
14 wearing.

15 Q And when you went to get a search warrant,  
16 when you get a judge to sign a search warrant, you  
17 don't just say, I want to go in and find everything I  
18 can. Or I just want to get whatever I choose to get,  
19 correct? You put in a more detailed description,  
20 right?

21 A Yes.

22 Q And in your search warrant you indicated that  
23 you were looking for a black T-shirt?

24 A Yes.

25 Q And you put that in the warrant because

1 Shoreka Miles had indicated that that was what the  
2 shooter was wearing, right?

3 A That's correct.

4 Q And you executed this search warrant before  
5 you even talked to Shrod Young, correct?

6 A Correct. Well I'd spoken to him but he hadn't  
7 told me what had happened.

8 Q Yes. You didn't know about a hoodie, did you?

9 A No.

10 Q If you had known about a hoodie, would you  
11 have included that in your search warrant as  
12 something you were looking for?

13 A Yes.

14 Q So you didn't even know to look for a hoodie,  
15 correct?

16 A No.

17 Q A little earlier we talked about your  
18 training, okay. And you learned as part of your  
19 training how to take reports, right?

20 A Yes.

21 Q And you are supposed to be accurate?

22 A Yes.

23 Q And truthful?

24 A Yes.

25 Q And complete?

1 A Yes.

2 Q And you in particular, you're pretty thorough,  
3 right?

4 A I try to be, yes.

5 Q You tend to write a lot of supplements, yes?

6 A Yes.

7 Q And you do all this because a lot of people  
8 depend on them, right?

9 A Yeah. There are a number of reasons why we  
10 write it, to help my recollection now, but yeah,  
11 there are a lot of reasons.

12 Q Because you know the defense attorney will  
13 depend on it, right?

14 A Correct.

15 Q And the solicitor?

16 A Yes.

17 Q And as you said, your memory, right?

18 A Yes.

19 Q Because sometimes it's a year plus before you  
20 ever go to trial?

21 A Most of the time.

22 Q And in the meantime you have a lot of other  
23 cases?

24 A Every day.

25 Q You mentioned yesterday how when you were

1 talking to Shoreka Miles that she was crying,  
2 correct?

3 A Yes.

4 Q You never put that in your report though,  
5 right?

6 A I don't know if I put that in there or not.

7 Q You just recall that?

8 A Yes.

9 Q When you spoke to her, were you aware she had  
10 already spoken to an officer before?

11 A I knew she had spoken to Detective Cooper,  
12 yes.

13 Q You were aware that she told him something  
14 different than what she was telling you the day she  
15 met with you?

16 A Yes.

17 Q And you emphasized the importance of telling  
18 the truth to her, right?

19 A Oh, yeah.

20 Q And she seemed to understand?

21 A Yes.

22 Q When you take a statement, you give people an  
23 opportunity to change anything, right?

24 A Yes.

25 Q And you give them an opportunity to add

1 things, right?

2 A Yes.

3 Q So about 20 or so days later, probably a  
4 little under 20 days after you spoke to Shoreka  
5 Miles, you spoke to Shrod Young, correct? Or that's  
6 when you took his statement?

7 A Under 20 days, that's correct.

8 Q And he also admitted that he was present?

9 A That's correct.

10 Q But his account is different than Shoreka  
11 Miles, correct?

12 A It does have differences, yes.

13 Q Because according to him he didn't even see  
14 Shoreka until he saw Leroy bleeding, correct?

15 A That's correct.

16 Q And he was down on the corner on Line and  
17 Nassau, right?

18 A That's right.

19 Q So he wasn't at the tent?

20 A No.

21 Q And he only saw one person not two, correct?

22 A That's correct.

23 Q And there is no bicycle?

24 A That's correct.

25 Q And just to clear this up, Fish is saying that

1 he saw Richard Deas come from Hanover Street, right?  
2 That's what he's saying today, or at this trial.

3 A Right.

4 Q And from your understanding there is Line  
5 street and it's intersected by basically Meeting  
6 Street, Nassau Street and then Hanover Street,  
7 correct?

8 A I think that's right, yeah.

9 Q But Shrod Young, he told you -- or didn't he  
10 indicate that he wasn't exactly sure where Richard  
11 Deas came from but he thought it was Ducks Court?

12 A I'd have to go back and look at it. But the  
13 way I understand is that he wasn't exactly sure which  
14 way he had come from. But I thought he had said he  
15 thought he came from the direction of Hanover, and  
16 wasn't sure which way he fled. I'd have to look at  
17 it and read it.

18 Q But he told you actually he didn't see the  
19 shooting, right?

20 A That's correct.

21 Q So he didn't see anyone flee away?

22 A Well let me look at his statement.

23 Q Do you have a copy?

24 A I do, yes.

25 Q I believe page four.

1 A Oh, you are right. Yeah, he does say that.

2 Q So he indicates he came from Ducks Court?

3 A It's Ducks Court.

4 Q And Ducks Court is between, he told us  
5 yesterday, it's between -- off Line between Meeting  
6 and Nassau Street?

7 A Yes. See that's why when you were saying the  
8 intersections it actually goes Meeting/Line,  
9 Ducks/Line, Line/Nassau, then Line/Hanover. But  
10 Dukes doesn't go all the way through. Ducks is just  
11 a court.

12 Q It would be much smaller?

13 A Yes.

14 Q So it would be closer to Meeting -- or coming  
15 from Meeting Street than East Bay, correct?

16 A Yes.

17 Q You talked to Sandra Green at the hospital,  
18 right?

19 A That's right.

20 Q This was still the morning right after Mr.  
21 Simmons had died?

22 A Almost immediately after, yeah.

23 Q And that is when she indicated to you that  
24 Shrod Young told her that he had seen some stuff,  
25 right?

1 A That's right.

2 Q And she even gave a written statement, right?

3 A Yes.

4 Q And it is your understanding that Shrod Young  
5 was not willing to say who the person was at the  
6 time, correct?

7 A That's correct.

8 Q But from that conversation you were able to  
9 gather that there was some type of fight, correct,  
10 between the shooter and Leroy Simmons?

11 A Yes.

12 Q And that Leroy actually slammed the shooter  
13 into the car?

14 MS. SHEALY: Your Honor, I'm going to object  
15 to the hearsay.

16 MS. FORD: I'm not trying to prove --

17 THE COURT: Approach.

18 (Whereupon, a discussion was held at the bench  
19 off the record.)

20 THE COURT: Hearsay, sustained.

21 You may proceed, Ms. Ford.

22 MS. FORD: Thank you, Your Honor.

23 Beg the Court's indulgence.

24 THE COURT: Uh-hum. You may rephrase.

25 Q (By Ms. Ford) From your investigation, was

1 there a possibility of a robbery involved?

2 A The only, that I can recall, the only  
3 information of there possibly being a robbery  
4 involved would have come in the way of Mr. Simmons  
5 telling me that he thought his son had \$1,000 in his  
6 possession which we didn't recover. So that would  
7 seem to indicate that there was a possibility of  
8 there being a robbery. But we never had anything to  
9 substantiate that he had that kind of money on him.

10 Q So that was floating around, correct?

11 A That's where I got that information.

12 Q You did not get that information from anyone  
13 else?

14 A I cannot think of anything right now.

15 Q From Sandra Green?

16 MS. SHEALY: Your Honor, I renew my objection.

17 THE COURT: Overruled. I'm going to give some  
18 latitude. But he is not allowed to say what she  
19 said.

20 Q (By Ms. Ford) Or an indication that someone  
21 went to Mr. Simmons pockets after the shooting?

22 A I think I remember her saying something about  
23 Shrod mentioning that Ricky had went into his --

24 MS. SHEALY: Your Honor, I renew my objection.

25 THE COURT: Sustained, hearsay.

1 Sir, you can say what you did as a result.

2 Q (By Ms. Ford) Was a phone missing, a cell  
3 phone?

4 A Yes.

5 Q From Mr. Simmons?

6 A Yes.

7 Q Were you able to recover any cell phone of his  
8 at the scene?

9 A No.

10 Q But from your investigation he was on the  
11 phone?

12 A Yes.

13 Q When he was waiting for a cab?

14 A Well he had called a cab, yes.

15 Q But when he was outside he was on his cell  
16 phone?

17 A Well he called a cab. I don't know where  
18 exactly he was standing when he did.

19 Q And you told us how -- let's go to when you  
20 talked to Mr. Simmons, senior. He had also talked to  
21 Mr. Young, correct?

22 A Yes.

23 Q And from your understanding a name was not  
24 given to him either, right?

25 A That's right.

1 Q To be clear, name of the shooter?

2 A That's correct.

3 Q Through your investigation Shrod Young was  
4 actually a suspect, wasn't he?

5 A Suspect in what sense? As committing the  
6 murder?

7 Q Not as him being the actual shooter, but you  
8 looked for a connection between him and Richard Deas  
9 for example, correct?

10 A I did, yes.

11 Q You didn't find any, right?

12 A I could find no connection, no.

13 Q And when you were just talking to various  
14 people, there is a possibility that, a belief that  
15 Shrod Young --

16 MS. SHEALY: Your Honor, I object to hearsay.

17 THE COURT: I haven't heard the question yet.

18 Please restate the question.

19 Q (By Ms. Ford) Through your investigation you  
20 were able to hear, just like you heard people  
21 mentioning Ricky, you were able to hear that a  
22 possibility that Mr. Young set Mr. Simmons up in some  
23 way?

24 MS. SHEALY: I would object to that question.

25 THE COURT: Overruled.

1 Don't say what someone said to you.

2 A Well, I would say that without saying exactly  
3 what was said to me, the belief was that how could  
4 Shrod stand by and watch his best friend get murdered  
5 and not be involved in the murder.

6 Q But there isn't any proof of that, right?

7 A I never found anything that would suggest he  
8 was involved in the murder.

9 Q Shrod Young definitely did not want to  
10 cooperate with you, right?

11 A That's correct.

12 Q And you got his phone number, though, from Mr.  
13 Simmons?

14 A I got Shrod -- yes.

15 Q And you told us how you called Mr. Young on  
16 about October 19th?

17 A That's correct.

18 Q Then you called him again on the 25th?

19 A That's correct.

20 Q And the 25th was after Richard Deas was  
21 arrested, right?

22 A That's right.

23 Q Because he was arrested on the 23rd?

24 A Right.

25 Q But on the 25th, Mr. Young still did not want

1 to talk?

2 A That's correct.

3 Q And he even indicated, you can say I didn't  
4 see anything?

5 A Yes.

6 Q So on November 7th you take out a warrant for  
7 obstruction of justice, correct?

8 A Yes.

9 Q And on the 8th he was arrested for that  
10 charge?

11 A That's correct.

12 Q And on the 9th you picked him up from the jail  
13 and talked to him, correct?

14 A That's correct.

15 Q So you actually talked to him before he  
16 appeared in front of the judge for a bond setting,  
17 correct?

18 A That's correct.

19 Q Because just so everyone knows, when someone  
20 is arrested they're entitled to a bond hearing within  
21 a short amount of time, correct?

22 A That's correct.

23 Q And you spent about an hour and a half with  
24 Mr. Young?

25 A That sounds about right.

1 Q And in this statement he does identify Richard  
2 Deas, right?

3 A That's correct.

4 Q And he had known the shooter all along that it  
5 was someone he knew by Little Ricky?

6 A Yes.

7 Q At the -- when someone is arrested, they get  
8 the bond setting as we just discussed, right?

9 A Right.

10 Q And then some time later, a month or two, they  
11 get a preliminary hearing, correct?

12 A That's correct.

13 Q And Mr. Young had a preliminary hearing,  
14 right?

15 A Right.

16 Q And his charge was dismissed there, right?

17 A Yes.

18 Q And it was for lack of merit, wasn't it?

19 A Yes.

20 Q Basically saying that there wasn't evidence of  
21 obstruction of justice?

22 A That's -- I think that's rather accurate, yes.

23 Q And now when you arrest someone you have a  
24 warrant for their arrest, correct?

25 A Yes.

1 Q And in that warrant it includes a summary of  
2 the probable cause for the arrest, right?

3 A Right.

4 Q And probable cause is just a standard showing  
5 there is some evidence, right?

6 A More likely that he committed the crime than  
7 not.

8 Q And in your affidavit for Mr. Young, an armed  
9 robbery was mentioned. Was that a mistake?

10 A That was my mistake, yes.

11 Q So that was a typo?

12 A Yes.

13 Q And as the case agent you reviewed all the  
14 documents of a case?

15 A Yes.

16 Q And are you aware on the crime scene paperwork  
17 when they list Richard Deas as charges they mention  
18 -- or they list them as murder and robbery?

19 A That's crime scene paperwork?

20 Q Yes.

21 A I don't recall seeing any paperwork to that  
22 effect.

23 MS. FORD: Beg the Court's indulgence.

24 Q (By Ms. Ford) Would seeing a crime scene --  
25 would it refresh, help you to see that?

1 A If I've ever seen it before.

2 MS. FORD: May I approach?

3 THE COURT: (Affirmative head shake.)

4 A Well whoever wrote this, I'm trying to see a  
5 name, I don't see a name on it, what this is, this is  
6 a crime scene basically like a property sheet where  
7 they list evidence that they have taken into  
8 evidence. Right here they have a pair of shoes,  
9 boxers, jean shorts. And then they have two  
10 individuals, both the individuals that were arrested,  
11 they says Shrod Young, all other offenses.

12 Then I'm assuming that this is accurate, this  
13 would be the warrant number next to it. They have  
14 murder, then the warrant number next to it with  
15 Richard Deas. And then they say robbery with the  
16 warrant number next to it.

17 Well I got the two warrants. One was murder,  
18 one was commission of a violent crime while armed  
19 with a handgun. It wasn't robbery. Whoever wrote  
20 this was mistaken.

21 Q So that's a mistake?

22 A Yes. I did not charge Richard with robbery.

23 Q Yes. Let's go into when you talked to Richard  
24 Deas, okay?

25 First of all, do you know how old Richard Deas

1 was upon his arrest? He was 18, right?

2 A I think he was 18, yes.

3 Q Do you know what his weight is or was at the  
4 time, about 135? That's when he was booked?

5 A That might be about right.

6 Q Could you say what his height is?

7 A I could guess.

8 Q 5'4" or 5'6"?

9 A I think he might be even shorter than that.

10 Q And he lived downtown Charleston, correct?

11 A Yes.

12 Q And when he was arrested, he was arrested at  
13 6:00 in the morning?

14 A About there, yes.

15 Q And he was asleep, correct, when they came to  
16 get him?

17 A I wasn't there when he was arrested. I am  
18 assuming he was asleep, yes.

19 Q Then he was booked downtown, correct?

20 A That's correct.

21 Q So he wasn't booked at the jail, he was booked  
22 downtown?

23 A Right, yes.

24 Q And you spoke to him about 9:50 in the  
25 morning?

1 A That sounds about right, yes.

2 Q Like Mr. Young, you spoke to him before he had  
3 a chance to see a judge for a bond hearing?

4 A That's correct.

5 Q And when you talked to him it was primarily  
6 just you and him, right?

7 A That's correct.

8 Q At first when you asked about what he was  
9 doing, you read his statement yesterday, but at first  
10 he indicated he didn't know where he was, correct?

11 A Well when I asked him where he was Thursday  
12 night, at first he said basically he didn't keep  
13 track of the time like that.

14 Q Would you say, if you want to go home you need  
15 an alibi?

16 A No.

17 Q The room that you talked to him in, you talked  
18 about a little yesterday, but how big is this room?

19 A It's a smaller room, big enough to fit just  
20 three four-legged chairs in it with a little shelf  
21 that you can write on.

22 Q So there is not even a table in there?

23 A No. I mean not a free-standing table, but the  
24 shelf is attached to the wall.

25 Q When you take a statement, a defendant's

1 statement for example, there is a spot for a witness,  
2 correct?

3 A Yes.

4 Q There are actually two spots for a witness to  
5 sign, right?

6 A That's correct.

7 Q And on Richard Deas's statement, you act as a  
8 witness, correct?

9 A Yes.

10 Q So you sign every page, right?

11 A Yes.

12 Q But you didn't have a second witness, right?

13 A There was no second witness.

14 Q And you didn't try to record his statement at  
15 all, did you?

16 A No.

17 Q Do you know, does your station have the  
18 ability to record a statement?

19 A Yes.

20 Q And again you are taught to be accurate and  
21 complete when you give police reports, right?

22 A Yes.

23 Q And you document whenever you talk to a  
24 witness or a defendant, don't you?

25 A Yes.

1 Q You not only take a statement but you write a  
2 police report to go along with it, correct?

3 A Yes.

4 Q And in your police report you never indicated  
5 Richard's demeanor, did you?

6 A No.

7 Q You didn't say that he didn't seem to care?

8 A No. I didn't put that in the report, no.

9 Q So you are just remembering that now as when  
10 you testified that just?

11 A I don't think I'd ever forget that.

12 Q As a detective when you arrest someone, you  
13 know the elements of a crime, right?

14 A Yes.

15 Q And the elements of murder are basically  
16 malice to kill someone with malice aforethought,  
17 correct?

18 A Yes.

19 Q And malice is essentially --

20 MS. SHEALY: Your Honor, I object.

21 THE COURT: Sustained. Actually, approach for  
22 a moment.

23 (Whereupon, a discussion was held at the bench  
24 off the record.)

25 THE COURT: You may rephrase.

1 MS. FORD: Thank you, Your Honor.

2 Q (By Ms. Ford) Detective Osborne, from your  
3 investigation Richard Deas and Leroy Simmons they  
4 weren't strangers, were they?

5 A Well not according to Richard. He said he had  
6 knew him from the area.

7 Q And well Whitney Doctor, you spoke to her,  
8 correct?

9 A I did.

10 Q And from your understanding from her they knew  
11 who each other were, or Leroy Simmons knew who  
12 Richard Deas was?

13 A I don't want to say for sure. I'd have to go  
14 back and see if I specifically asked her that  
15 question.

16 Q Okay. But there is no evidence that Richard  
17 had ever fought with Leroy before, correct?

18 A No.

19 Q And there is no evidence of any threats by  
20 Richard to Leroy, correct?

21 A That's correct.

22 Q No evidence of any dispute, correct, between  
23 the two of them?

24 A I don't know that I would say that.

25 Q Talking about Whitney Doctor?

1 A Talking about the car, yes. I would probably  
2 characterize that as a dispute, yes.

3 Q Well that -- trying to think of how I should  
4 put this. Whitney Doctor, the night of the shooting,  
5 she had been with Leroy Simmons from your  
6 investigation?

7 A That's correct.

8 Q And earlier that day she was with Leroy  
9 Simmons and she saw Richard Deas with a car, correct?

10 A That's correct.

11 Q And this car was Richard's mom's car?

12 A That's correct.

13 Q But Whitney Doctor had actually purchased it,  
14 correct?

15 A That's correct.

16 Q And Richard's mom, Altida Bennet, was making  
17 the payments, correct?

18 A Or lack thereof.

19 Q But that was the agreement, though, right?

20 A That was the agreement, yes.

21 Q So there was a dispute between Whitney Doctor  
22 and Altida Bennet over this car, correct?

23 A That's correct.

24 Q And Leroy Simmons, he just happened to be with  
25 Whitney Doctor, right, when she saw this car?

1 A Well the first time, yes.

2 Q Okay. There is no confrontation between Leroy  
3 Simmons and Richard Deas, though, right?

4 A I was left with the impression that they never  
5 tried to approach him in the car.

6 Q So they never talked over this car or anything  
7 like that?

8 A No.

9 Q They never fought over this car, correct?

10 A No.

11 Q Is there any evidence that Richard knew that  
12 Leroy would change his clothes at Ms. Singleton's  
13 apartment?

14 A No.

15 Q Is there evidence that Richard knew that Leroy  
16 was best friends with Fish supposedly?

17 A No.

18 Q Is there any evidence that Richard knew that  
19 Leroy went to McDonald's with Fish?

20 A No.

21 Q Is there any evidence that Richard Deas knew  
22 that Fish gave Leroy a ride to Ms. Singleton's house?

23 A No.

24 Q Any evidence that Richard knew Leroy went to  
25 Ms. Singleton's apartment to change clothes before he

1 was going to go to his girlfriend's house?

2 A No.

3 Q From your understanding, the only people who  
4 would have known this would have been Fish, Ms.  
5 Singleton, and the girlfriend who Mr. Simmons called?

6 MS. SHEALY: Your Honor, I object to the  
7 question.

8 THE COURT: Please approach.

9 (Whereupon, a discussion was held at the bench  
10 off the record.)

11 THE COURT: Rephrase the question.

12 MS. FORD: Thank you.

13 Q (By Ms. Ford) We learned that according to  
14 testimony that Shrod Young took Leroy Simmons to  
15 Elaine Singleton's, correct?

16 A That's correct.

17 Q That he was in Elaine Singleton's apartment,  
18 correct?

19 A Mr. Simmons was, yes.

20 Q Yes. And that he was going to go to his  
21 girlfriend's house, correct?

22 A Yes.

23 Q When he left Ms. Singleton's, right?

24 A Yes.

25 Q So other than these three people, Shrod Young,

1 Elaine Singleton, and the girlfriend, is there anyone  
2 else, through your investigation, who knew what Leroy  
3 Simmons was going to do that evening at 2:30?

4 A No.

5 Q Fish, when you talked to him, he indicated he  
6 went to his aunt's, correct, to get help, Priscilla  
7 Brown?

8 A I don't know if he ever made it. I think he  
9 said that's where he was headed.

10 Q Did you ever try to talk to Priscilla Brown?

11 A No.

12 Q And there is the possibility of -- a few other  
13 people were mentioned as friends of Richard Deas,  
14 right?

15 A Yes.

16 Q That were mentioned in his statement?

17 A Yes. Associates.

18 Q Laquelle Dickson was one?

19 A Yes.

20 Q Did you ever talk to him?

21 A I made efforts to and did not locate him.

22 Q How about Ricky Bradley?

23 A No.

24 Q You never talked to him?

25 A No.

1 Q And you told us a little about the DNA, which  
2 I understand you don't know the technicalities,  
3 correct?

4 A Right.

5 Q But Richard Deas's DNA was not underneath Mr.  
6 Simmons' fingernails, correct?

7 A Yes.

8 Q An unidentified person's was?

9 A I know there was an unidentified person, I  
10 don't know if Leroy Simmons' DNA was found there as  
11 well, but I know there was an unidentified person,  
12 yes.

13 MS. FORD: Beg the Court's indulgence.

14 THE COURT: Yes, ma'am.

15 MS. FORD: Thank you. I have no further  
16 questions.

17 THE COURT: Any redirect of the witness?

18 MS. SHEALY: Yes, Your Honor.

19 THE COURT: You made proceed.

20 REDIRECT EXAMINATION

21 BY MS. SHEALY:

22 Q Detective Osborne, Ms. Ford was asking you  
23 about Ms. Miles and whether she indicated that she  
24 knew the defendant. Who did she know the defendant  
25 as? What name?

1 A Well at that time she never mentioned that she  
2 knew his name, and I never asked. So I mean it seems  
3 obvious now that I should have asked, do know his  
4 name, but I never asked.

5 Q And when you asked her if she had seen him  
6 before, you indicated that she mentioned the incident  
7 with the cigarette earlier?

8 A Right.

9 Q Did you at that point then say, did you know  
10 him before then?

11 A No, I didn't ask that either.

12 Q Okay. And in her statement, when she  
13 indicates that she had seen him before and it  
14 involved his asking for a cigarette, your writing of  
15 that statement says 10:00 p.m.?

16 A Yes.

17 Q Do you recall whether Shoreka Miles used the  
18 term p.m. or she just said 10:00?

19 A I don't recall.

20 Q Were you assuming that it was earlier in the  
21 evening?

22 A All right, was I assuming that it was earlier  
23 than the shooting?

24 Q Yes.

25 A Yes.

1 Q And were you -- did you -- do you recall  
2 whether she said a.m. or p.m. or you put p.m. down?

3 A I don't remember.

4 Q Okay. When Ms. Ford was asking you about, you  
5 responded that there were people who couldn't  
6 understand why Shrod Young stood there and did  
7 nothing?

8 A That's right.

9 Q Who were you hearing that from?

10 A Family members of the victim.

11 Q And they were upset that he didn't help Leroy  
12 out?

13 A And then not help the police. They couldn't  
14 understand how he could do that, and then not help  
15 the police afterwards.

16 Q And regarding the language on the warrant that  
17 you issued against Shrod Young --

18 MS. SHEALY: Beg the Court's indulgence just a  
19 second.

20 THE COURT: Uh-hum.

21 Q (By Ms. Shealy) Do you have a copy of that  
22 with you?

23 A I do not, no.

24 Q Let me ask you if you can identify this  
25 document, please?

1           A       This is the affidavit that I typed out to  
2 charge Shrod Young with obstruction of justice.

3           MS. SHEALY: Your Honor, at this time I would  
4 offer the affidavit.

5           THE COURT: Any objection?

6           MS. FORD: No, Your Honor.

7           THE COURT: Marked and admitted without  
8 objection State's next in line.

9           (Whereupon, State's 32 is marked and admitted  
10 into evidence.)

11          Q       (By Ms. Shealy) If you would, please, read to  
12 the jury what the affidavit states.

13          A       At the top, well, from the beginning it just  
14 says, in summary, that I appear and swear that Shrod  
15 Young, did within the county on October the 19th,  
16 2007, violate the law, description of offense,  
17 obstruction of justice which is common law.

18                 And then it says, the affiant states that  
19 probable cause to believe, and then it goes into the  
20 problem cause which I typed out. On October the  
21 19th, 2007, Shrod Young did intentionally and  
22 knowingly violate armed robbery law in the City of  
23 Charleston at Line and Hanover. On the above date at  
24 02:30 hours, CPD officers responded to the area of  
25 Line and Hanover for a shooting call for service.

1           Upon arrival officers located Leroy Simmons,  
2           II, who was suffering from gunshot wounds. Mr.  
3           Simmons was transported to MUSC where he later died  
4           as a result of his injuries. Investigator David  
5           Osborne met with two known witnesses who both stated  
6           they spoke to Shrod Young following the shooting.  
7           Shrod told both individuals he witnessed the  
8           shooting. He told one witness he knew the identity  
9           of the shooter.

10           IO later spoke to -- an IO is investigating  
11           officer -- later spoke to Shrod who told the IO he  
12           would not speak to him about the incident. He  
13           further said, I ain't no snitch.

14           The above is true and believable based on  
15           statement by known witnesses, the investigation of  
16           the Charleston Police Department, and the statements  
17           by Shrod to the IO.

18           Q       So other than that one line where you say you  
19           mistakenly typed in armed robbery, does anything else  
20           in the body of the warrant say anything about an  
21           armed robbery?

22           A       No, it doesn't. And this is this a computer  
23           program, so a lot of this is already pre-typed. And  
24           if I don't catch it or alter it or change it, then  
25           it's my mistake. It's definitely my fault.

1 Q What does it clearly say he is being charged  
2 with?

3 A Obstruction of justice.

4 Q Now Ms. Ford asked you about interviewing  
5 Whitney Doctor?

6 A Yes.

7 Q And do you recall -- do you have a copy of her  
8 statement to refresh your memory?

9 A I do.

10 Q Do you recall where she had seen Little Ricky  
11 in the evening hours of the 18th?

12 A Yes. She said she saw Little Ricky and the  
13 car at Line and Hanover.

14 Q On the 18th? Is that what you were saying?

15 A Yes.

16 Q Okay.

17 MS. SHEALY: And Court's permission, may I  
18 have him step down for a second?

19 THE COURT: You may.

20 Q (By Ms. Shealy) Okay. Showing you State's  
21 Exhibit 23, kind of get us oriented again. This is  
22 Meeting. This is Line.

23 A All right.

24 Q Okay. She said that she had seen Ricky Deas  
25 in what area earlier on the 18th?

1 A Intersection of Line and Hanover.

2 Q And you may look at the statement again, but  
3 when she saw him here, what was going on about the  
4 car?

5 A He was inside the car.

6 Q Okay. And do you recall why she was present  
7 at that point?

8 A I don't know. I know she was looking for her  
9 car. I don't know why she was exactly right there.

10 Q Why don't you take a look at it for me.

11 A Unless I am missing it, I see that she said  
12 she was with Miles.

13 Q Okay. Now as far as you recall her interview,  
14 were there two occasions that she was trying to get  
15 the car?

16 A Yes.

17 Q And on one of those occasions she told you  
18 that Rick Deas was out there and she and Miles were  
19 standing together?

20 A Yes.

21 Q In the Family Dollar parking lot?

22 A Yes.

23 Q And then subsequent to that, was she on  
24 Hanover when Ricky was there and the police came?

25 MS. FORD: Objection, leading.

1 THE COURT: Sustained leading.

2 Q (By Ms. Shealy) If you could describe to us  
3 the second event when she was out on Hanover  
4 regarding the car?

5 A I'm sorry, I see what you're saying now. The  
6 first event on October the 18th, Miles had actually  
7 called Whitney and said, I see your car out here on  
8 Line and Hanover. So that's what brought Whitney out  
9 to Line and Hanover.

10 And he was sitting in the car then. So, I'm  
11 sorry, so now we are going to the second one?

12 Q Yes.

13 A Okay, I'm sorry, what was the question?

14 Q I'm not sure what you remember what the  
15 question was. On the 18th, do you recall whether  
16 Whitney Doctor indicated that she saw Rick Deas while  
17 at Line and Hanover in the evening hours of the 18th?

18 A At 11:00 p.m., yes.

19 Q And tell us what you recall about the police  
20 officer showing up?

21 A Well, what she had told me was that the  
22 police, that they had called the police --

23 MS. FORD: Objection.

24 THE COURT: Sustained, hearsay.

25 A The police did show up, yes.

1 Q (By Ms. Shealy) Okay. And Ms. Ford asked you  
2 whether you were aware of any fights that Rick Deas  
3 had with Miles about the whole car situation. Were  
4 you talking about before this incident?

5 A No, this is what I was referring to. She said  
6 dispute and to me this is clearly a dispute.

7 Q Okay. And Ms. Ford asked you about a  
8 statement that Mr. Deas gave you. Tell the jury, if  
9 you would, again, please, who did he say he was with  
10 all night on the 18th leading into the 19th?

11 A On the night of the murder he said he was with  
12 Shaniqune Williams all night.

13 MS. SHEALY: Thank you, Your Honor, I have  
14 nothing further.

15 MS. FORD: Your Honor, can I ask one question  
16 on recross?

17 THE COURT: Sure.

18 RECCROSS EXAMINATION

19 BY MS. FORD:

20 Q Detective, is there any evidence that Richard  
21 Deas knew that Mr. Simmons called the police to -- or  
22 called Whitney Doctor to tell her that he saw the  
23 car?

24 A No.

25 MS. FORD: Thank you, Your Honor.

1 THE COURT: Any further questions from the  
2 State?

3 MS. SHEALY: No, Your Honor.

4 THE COURT: Sir, you are excused subject to  
5 being recalled.

6 Mr. Foreman, ladies and gentlemen, you all  
7 have been sitting about an hour. It is a rainy,  
8 dreary morning. I'm going to give you a few minutes  
9 to get your blood circulating a little bit.

10 We will take a brief restroom break. During  
11 this break please do not discuss this case and please  
12 leave your notepads in your seats. I anticipate it  
13 will be long enough for you all just to get your  
14 blood moving for about 10 minutes.

15 If you go with your caretakers.

16 (Whereupon, the jurors exit the courtroom.)

17 THE COURT: Is there anything before we break  
18 from the State?

19 MS. SHEALY: No, Your Honor.

20 THE COURT: From the defense?

21 MS. FORD: One second, Your Honor.

22 THE COURT: Whose the next State's witness?

23 MS. SHEALY: Shaniqua Williams.

24 THE COURT: Who will the State be calling  
25 after that?

1 MS. SHEALY: Whitney Doctor.

2 MS. FORD: I have nothing, Your Honor.

3 THE COURT: We will be at ease for about 10  
4 minutes.

5 (Whereupon, a recess was taken.)

6 THE COURT: Is this your original CD?

7 MS. SHEALY: It's mine.

8 THE COURT: Bear with me a moment. I have a  
9 note from the jury I inadvertently left it on my desk  
10 that I need to deal with.

11 who will your witness be after Ms. --

12 MS. SHEALY: Ms. Doctor?

13 THE COURT: Yes.

14 MS. SHEALY: Chris Barfield.

15 THE COURT: I would imagine each of these  
16 witnesses will be fairly brief.

17 MS. SHEALY: They are, Your Honor.

18 THE COURT: I got from the jury during the  
19 break. Does the jury have access to the court  
20 reporter's transcript signed by the foreperson.

21 And my response to them would be that -- I'm  
22 debating whether I'm going to tell them no, or  
23 whether I'm going to tell them simply that it's not a  
24 matter -- I think I'm going to tell them no. But I'm  
25 also going to tell them that I have some real

1 concerns now about premature deliberations, and that  
2 they're to have absolutely no discussion about  
3 procedure or otherwise during their break and that  
4 they're to strictly abide by that instruction.

5 That their only responsibility right now is to  
6 listen to the evidence as confined to this record  
7 through the lips of the sworn witnesses.

8 I tend to experience of late juries who think  
9 that it is their prerogative to be investigators.  
10 And I don't know whether it's the result of watching  
11 too much television or -- but I tend to think not. I  
12 had that experience in varying degrees before we had  
13 all these shows.

14 So is there any exception to the Court  
15 proceeding in that matter from the State?

16 MS. SHEALY: Beg the Court's indulgence just  
17 one moment.

18 THE COURT: And it may well become a very  
19 innocently. I noticed some jurors are not taking  
20 notes and some are taking copious notes. And they  
21 may have had a very casual conversation about that.  
22 I don't know, that's speculation on my part.

23 MS. SHEALY: The only concern I would have is  
24 at the appropriate time I would like for them to know  
25 if they want to re-hear something.

1 THE COURT: I can handle that but they're not  
2 going to get a transcript.

3 MS. SHEALY: I understand that.

4 THE COURT: It's premature. They need to be  
5 focusing, listening to the evidence. If they have a  
6 question during deliberation, I will address those  
7 and let them know they can re-hear testimony. But at  
8 this point for them to be making these kinds of  
9 inquiries leads me to believe they're having  
10 inappropriate conversation and I want to eliminate it  
11 immediately.

12 MS. SHEALY: Beg the Court's indulgence. Your  
13 Honor, would you consider telling them as you  
14 indicated you would, about they're not supposed to be  
15 deliberating or having those discussion and not  
16 address the question.

17 THE COURT: I'm going to address the question  
18 because it's been presented to me now it's in the  
19 record and I'm going to address it contemporaneously.

20 I can't ignore it, nor would I.

21 MS. SHEALY: I guess if you are telling them  
22 that they shouldn't even be discussing that at this  
23 time, it's addresses the question.

24 THE COURT: I could tell them that. But I  
25 don't see any harm in telling them that our rules

1 don't provide juries to have contemporaneous  
2 transcripts of the proceedings.

3 MS. SHEALY: I think that's all I have, Your  
4 Honor.

5 THE COURT: Any exception to the Court's  
6 handling from the defense, of the question?

7 MS. FORD: Your Honor, it might be necessary  
8 to ask the jurors individually if they have discussed  
9 it.

10 THE COURT: I don't think they have. I am  
11 probably overreacting. But I figure better to over  
12 than under-react.

13 MS. FORD: Other than that, no..

14 THE COURT: There is no indication to me that  
15 they have discussed the case. But I'm going to  
16 strictly admonish them.

17 I just noticed, and I suspect, again this is  
18 speculation on my part, that some people are taking  
19 notes, some people aren't. And without getting into  
20 a belabored discussed about it, people are different  
21 learners. Some people are auditory learners, some  
22 people are kinetic learners, some people, like me,  
23 are a combination. Once I hear it, I write it down,  
24 it's with me.

25 Everybody learns differently. Not everybody

1 has to write things down. Some people are visual.  
2 All they have to do is see it once.

3 I suspect, because maybe someone may have  
4 maybe made a cursory comment, or maybe it's just pure  
5 curiosity because they've watched the court reporter  
6 taking it down and I explained to them that she takes  
7 down a contemporaneous word-by-word account of the  
8 proceedings. It may just be curiosity. But I will  
9 gauge it. And I may ask the foreman if there has  
10 been any premature deliberation.

11 Is there any exception from the State?

12 MS. SHEALY: No, Your Honor.

13 THE COURT: From the defense?

14 MS. FORD: No, Your Honor.

15 THE COURT: Okay. Please bring in the jury,  
16 Mr. Robinson.

17 (Whereupon, the jurors enter the courtroom.)

18 THE COURT: Thank you. Ladies and gentlemen,  
19 the Court received your note which was: Does the  
20 jury get access to the court reporter's transcript?  
21 In response to that note I advise you that our rules  
22 do not provide for the jury to receive an immediate  
23 transcript of the proceedings, nor do you have access  
24 to it during jury deliberations.

25 I would say this, however, as a cautionary

1 note and I may be -- but it is my job to view --  
2 probably to overreact than under-react. I'm very  
3 concerned by the tone of this note that there may be  
4 premature deliberations regarding this case.

5 I need to caution you, that you are to have  
6 absolutely no discussion in any manner whatsoever,  
7 whether it be procedural or whether it be about the  
8 evidence that has been presented, that you are to  
9 have absolutely no discussion about this matter  
10 during the breaks, recesses or otherwise. It would  
11 be inappropriate.

12 And so I need to say that in the strongest  
13 terms possible. Now I need to ask the foreperson, so  
14 that I may preserve the record, has there been any  
15 premature deliberations regarding this cause during  
16 the breaks or recesses of this case to your  
17 knowledge?

18 THE FOREPERSON: No, ma'am, it just came up.  
19 I think most of us just wondered.

20 THE COURT: I thought it was curiosity.

21 But I have to -- again it is my job to  
22 overreact than under-react. I need to make sure you  
23 all are very clear regarding that, and to guard  
24 yourself. You are the finders of the facts. And it  
25 is so very essential, as I have explained, there is

1 no mechanism in our process to correct an erroneous  
2 determination of facts made by a trial jury.

3 That is why it's so very essential that you  
4 all remain fair and impartial, and that you guard  
5 your mind, and that you have absolutely no discussion  
6 about this case until you have heard all of the  
7 evidence, and which is from the lips of the witnesses  
8 as well as other documents that are introduced into  
9 the record, until you've heard the closing arguments  
10 of counsel, and most importantly the Court's  
11 instruction on the law so that you are able to apply  
12 the law to the facts as you find them and render a  
13 fair and impartial verdict in this case.

14 And I would ask that you all take that  
15 responsibility very seriously, and that you abide by  
16 those instructions.

17 Is there any exception to the Court's response  
18 from the State?

19 MS. SHEALY: No, Your Honor.

20 THE COURT: From the defense?

21 MS. FORD: No, Your Honor.

22 THE COURT: The Court's note will be marked as  
23 a Court's exhibit.

24 (Whereupon Court's Exhibit No. 13 is marked  
25 for identification.)

1 THE COURT: You may proceed.

2 MS. SHEALY: shanique williams.

3 THE COURT: Ladies and gentlemen, we will  
4 proceed with the trial testimony.

5 If the witness would come forward to be sworn.

6 MS. SHANIQUNE WILLIAMS,  
7 after having first been duly sworn to state the  
8 truth, the whole truth and nothing but the truth,  
9 testified on Her oath as follows:

10 THE COURT: You may proceed.

11 Ma'am, if you'll speak directly into the  
12 microphone, you seem to be a little soft-spoken.

13 You may proceed Ms. Shealy.

14 MS. SHEALY: Thank you, Your Honor.

15 THE COURT: You're welcome.

16 DIRECT EXAMINATION

17 BY MS. SHEALY:

18 Q Ms. Williams, do people call you Nicki?

19 A Yes, ma'am.

20 Q Focusing your attention back to the fall of  
21 2007, would you tell the jury who you were  
22 romantically involved with back then?

23 A Richard Deas.

24 Q And do you see Richard Deas in the courtroom?  
25 You might have to stand up.

1 A Yes, ma'am.

2 Q Where is he seated?

3 A Over there.

4 Q Okay. Now can you describe for us your all's  
5 relationship, would he ever spend the night at your  
6 apartment?

7 A Yes, ma'am.

8 Q And where were you living in October of 2007.

9 A

10 Q Franklin Street?

11 A Yes, ma'am.

12 Q Now let me ask you this. Do you know, or did  
13 you know Leroy Simmons, who people call Miles?

14 A No, ma'am.

15 Q Do you know Shoreka Miles?

16 A No, ma'am.

17 Q Do you know a guy named Shrod Young that  
18 people call Fish?

19 A No, ma'am.

20 Q Okay. Now as Ricky's girlfriend, did you know  
21 what area he kind of hung out with his friends?

22 A Yes, ma'am.

23 Q What area was that?

24 A Line Street.

25 Q If fact did you ever have the occasion to take

1 him over there?

2 A No. He used to sleep at my house and I'd drop  
3 him off.

4 Q He would what?

5 A Sleep at my house and I would drop him off.

6 Q During the course of your relationship with  
7 Mr. Deas, would he ever give you money?

8 A When I asked for it.

9 Q Okay. Now on Tuesday, October 23rd, okay?  
10 Were you present in your apartment when Mr. Deas was  
11 arrested?

12 A Yes, ma'am.

13 Q And tell the jury, if you would please, who  
14 else was present?

15 A His sister, Destiny, and my son Tyja.

16 Q And Tyja, your son, was how old?

17 A Eight months.

18 Q And you said sister, his sister Destiny?

19 A Yes, ma'am.

20 Q Were you present when the police officers took  
21 him away as well?

22 A Yes, ma'am.

23 Q Do you remember after that talking to  
24 Detective Osborne, who's seated in the courtroom?

25 A Yes, ma'am.

1 Q And where did that occur?

2 A At my house.

3 Q Okay. Now I need you to focus your attention  
4 on Thursday night, which was October the 18th into  
5 the morning hours of October 19th. And would you  
6 tell the jury, please, whether or not you saw Richard  
7 Deas?

8 A Yes.

9 Q Okay. Could you describe that for us?

10 A He came to my house like Thursday night around  
11 12:00 or 1 o'clock.

12 Q Okay. And when he arrived there, was he alone  
13 or did he have other people?

14 A He was with other people.

15 Q Tell the jury what happened once he got there?

16 A He got there, you know, opened the door. And  
17 I opened it. And I was going back up the stairs.  
18 And when I see the door still was open, I tell him,  
19 that, you know, boys can't come to my house.

20 Q You have to slow down for me and say that a  
21 little bit more clearly for me. You told him what?

22 A That no one else was coming to my house and he  
23 told me he was going to drop them off and come back.

24 Q And again that was around what time?

25 A 12:00, 1 o'clock.

1 Q So the last thing that you heard at that time  
2 was that he was going to be coming back to your  
3 apartment?

4 A Yes, ma'am.

5 Q What did you do with your door to your  
6 apartment thinking that he was coming back?

7 A Left it unlocked.

8 Q And did you at some time during those early  
9 morning hours wake up?

10 A Yes, ma'am.

11 Q Do you remember about what time it was you  
12 woke up?

13 A Around 3 o'clock.

14 Q Tell the jury, was Rick Deas at your apartment  
15 at that time?

16 A No, ma'am.

17 Q What did you do?

18 A Called him.

19 Q And tell the jury when it was that you next  
20 see Ricky?

21 A Next morning.

22 Q And when you see him the next morning, do you  
23 remember about what time it was?

24 A Probably around 8:00 or 9:00.

25 Q And on that Friday, that's Friday that you are

1 talking about?

2 A Yes, ma'am.

3 Q On Friday, how long was he at your apartment?

4 A He came and dropped money off to me and he  
5 left.

6 Q He came and dropped money off to you?

7 A Yes, ma'am.

8 Q What was the money for?

9 A Get my hair fixed.

10 Q Get your what?

11 A Hair fixed.

12 Q Okay. Does that help you remember what  
13 happened on Friday?

14 A Yes, ma'am.

15 Q Was that the first time he had given you money  
16 for your hair?

17 A Yes, ma'am.

18 Q So during the evening hours of the 18th until  
19 the morning hours of the 19th, did Rickey Deas sleep  
20 at your apartment?

21 A No, ma'am.

22 Q Now Detective Osborne came and talked to you  
23 for a second time?

24 A No, ma'am.

25 Q Do you remember? Well, when Detective Osborne

1 asked you about whether Rick Deas was with you that  
2 night, did you tell him that he was not?

3 A I tell him he was at my house but he didn't  
4 stay.

5 Q That he didn't spend the night?

6 A Yes, ma'am.

7 Q Now after Ricky got arrested, did you continue  
8 to talk to him when he was at the jail?

9 A Yes, ma'am.

10 Q And would you sometimes do that when he was,  
11 what, you were at his mother's house?

12 A Yes, ma'am.

13 Q Did you go visit him at the jail?

14 A Yes, ma'am.

15 Q Now at some point did you stop seeing him and  
16 stop talking to him on the phone?

17 A Yes, ma'am.

18 Q Would you tell the jury when the last time you  
19 heard from Ricky Deas was?

20 A Last time?

21 Q The last time.

22 A Friday.

23 Q This past Friday?

24 A Yes, ma'am.

25 Q And what did he ask you to do?

1           A       He didn't ask me to do anything. He told me  
2 come to court.

3           Q       I'm sorry, I need you to repeat your answer.

4           A       He asked me if I knew that we had to come to  
5 court.

6           Q       Okay. Did he make any other requests of you  
7 at that time?

8           A       No, ma'am.

9           Q       And this was Friday of last week?

10          A       Yes, ma'am.

11          Q       while he was in jail, did he ever tell you  
12 that if you needed any money you could get it from  
13 Slick?

14          A       Yes, ma'am.

15                MS. FORD: Your Honor, she is leading.

16                THE COURT: Sustained, leading.

17                MS. SHEALY: Thank you, Your Honor.

18          Q       (By Ms. Shealy) what, if anything, did  
19 Richard Deas indicate to you about Slick while you  
20 all had phone conversations at the jail?

21          A       Nothing.

22          Q       Okay. At any time did he indicate one way or  
23 the other whether you could get something from Slick  
24 if you needed it?

25          A       Yes.

1 Q Can you tell the jury what he indicated?

2 A He said that if I need anything, money, just  
3 ask slick for it.

4 Q Just ask what?

5 A Slick for it.

6 Q And again that evening, the 18th through the  
7 19th, he did not sleep at your apartment?

8 A No, ma'am.

9 MS. SHEALY: Beg the Court's indulgence.

10 THE COURT: Uh-hum.

11 MS. SHEALY: I have no further questions right  
12 now. Answer any questions Ms. Ford may have.

13 THE WITNESS: Okay.

14 THE COURT: Ms. Ford, you may proceed.

15 MS. FORD: Thank you, Your Honor.

16 THE COURT: You are welcome.

17 CROSS-EXAMINATION

18 BY MS. FORD:

19 Q Hi, Ms. Williams.

20 A Hi.

21 Q Ms. Williams, Richard was arrested, the police  
22 came at about 6:00 in the morning, right?

23 A Yes, ma'am.

24 Q You had gone to bed at 2:00 in the morning?

25 A Probably before then.

1 Q Do you remember telling me that you believe  
2 Richard --

3 MS. SHEALY: Objection Your Honor.

4 THE COURT: Basis?

5 MS. SHEALY: May we approach?

6 THE COURT: (Affirmative head shake.)

7 (Whereupon, a discussion was held at the bench  
8 off the record.)

9 THE COURT: You may proceed.

10 Ma'am, do you need the question repeated?

11 THE WITNESS: Yes, ma'am.

12 THE COURT: Repeat the question, please.

13 Q (By Ms. Ford) Do you remember telling me that  
14 you believe that Richard went to bed at about 2:00  
15 a.m.?

16 A Yes, ma'am.

17 Q The night that the solicitor asked you about,  
18 the night that Leroy Simmons died, when you saw  
19 Richard, he was wearing a khaki shirt, wasn't he?

20 A I cannot remember that night.

21 Q Would seeing your statement help you?

22 A Yes, ma'am.

23 MS. FORD: Mark for ID only, number five.

24 (Whereupon, Defense Exhibit No. 5 is marked  
25 for identification.)

1 Q (By Ms. Ford) I'm handing you what has been  
2 marked with Defendant's Exhibit No. 5. And what  
3 is it that I handed you? Is that your statement?

4 A Yes, ma'am.

5 Q A written statement that you gave to Detective  
6 Osborne?

7 A Yes, ma'am.

8 Q Have you had a chance to review it?

9 A Yes, ma'am.

10 Q So the night of the shooting you saw Richard  
11 wearing a khaki shirt, correct?

12 A I can't remember but that's what I told him in  
13 the statement.

14 THE COURT: Ma'am, please repeat your answer.

15 A I cannot remember exactly, but that's what I  
16 told him that when he came to my house.

17 Q And he was wearing blue short pants, correct?

18 A Yes, ma'am.

19 Q And they're, help me if I'm pronouncing this  
20 wrong, Coogie?

21 A Yes, ma'am.

22 Q Now let's go to that night back when Leroy  
23 Simmons was shot, okay?

24 A Uh-hum.

25 Q You told us today that Rickey came over about

1 11:00 p.m.?

2 A 12:00, 1:00.

3 Q 12:00 or 1:00 a.m.?

4 A Yes, ma'am.

5 Q And you recall giving a written statement to  
6 Detective Osborne, right?

7 A Uh-hum.

8 Q And you actually gave two written statements  
9 to Detective Osborne, right?

10 A Yes, ma'am.

11 Q And one you gave on the 23rd at 8:30 in the  
12 morning, correct?

13 A Yes, ma'am.

14 Q And the other you gave on the 23rd at about  
15 12:00 in the afternoon, correct?

16 A Yes, ma'am.

17 Q And so when you gave a statement, did you know  
18 that you were supposed to be truthful?

19 A Yes, ma'am.

20 Q And you actually told Detective Osborne that  
21 Ricky came over at 3:00 a.m., didn't you?

22 A I didn't tell him what time, I did not tell  
23 him 3:00 a.m.

24 Q He wrote your statement, right?

25 A Yes, ma'am.

1 Q But he let you read it, right?

2 A Yes, ma'am.

3 Q And you signed every page, correct?

4 A Yes, ma'am.

5 Q Did he give you a chance to go over it?

6 A No, ma'am.

7 Q So he didn't go over it with you?

8 A No, ma'am.

9 Q But your statement, it says 3:00 a.m. that's  
10 true, right?

11 A Yes, ma'am.

12 Q And it says 3:00 a.m. in your first statement,  
13 correct?

14 A Yes, ma'am.

15 Q And it says 3:00 a.m. in your second  
16 statement, correct?

17 A Yes, ma'am.

18 Q But today you are saying it was more like  
19 12:00 a.m.?

20 A I never told him the time, when he came back I  
21 told him it was like 3 o'clock.

22 Q So are you suggesting that Detective Osborne  
23 made 3:00 a.m. up?

24 A Probably.

25 Q Ricky, you had dated him for how long?

1           A       Since I have been talking with him and we  
2 started going together in September.

3           Q       September of '07?

4           A       Yes, ma'am.

5           Q       So you had been dating him about a month?

6           A       Yes, ma'am.

7           Q       He didn't smoke cigarettes, did he?

8           A       No, ma'am.

9           Q       When you saw him that night, he was in his  
10 mom's car, right? Purple Roadmaster?

11          A       Which night?

12          Q       The night of the shooting.

13          A       I didn't see a car.

14          Q       You didn't see a car?

15          A       No, ma'am.

16          Q       And you recall giving a statement, correct?

17          A       Yes, ma'am.

18          Q       And in that statement you told Detective  
19 Osborne, he left at -- excuse me, hold on. You told  
20 him that earlier that day he left at 11:00 a.m. in  
21 his Mama Tita's purple Roadmaster, correct?

22          A       When?

23          Q       And then you said, I talked to him on my cell  
24 all day, correct?

25          A       Yes, ma'am.

1 Q Around 3:00 a.m. Friday morning he came by in  
2 the purple car.

3 A No, ma'am.

4 Q That's what your statement says, though?

5 A I did not tell him I saw a car. He came in.

6 Q But that's what Detective Osborne put in your  
7 statement?

8 A Yes, ma'am.

9 Q So are you saying that Detective Osborne lied  
10 about the purple car?

11 A Yes, ma'am.

12 Q And you were not the only girl that Richard  
13 Deas was sleeping with, right?

14 A No, ma'am.

15 MS. FORD: Beg the Court's indulgence.

16 THE COURT: Yes, ma'am.

17 MS. FORD: Thank you. I have no further  
18 questions.

19 THE COURT: Any redirect?

20 MS. SHEALY: Yes, Your Honor. I believe we  
21 have a matter of law.

22 THE COURT: Please approach.

23 (Whereupon, a discussion was held at the bench  
24 off the record.)

25 THE COURT: You may proceed.

1 MS. SHEALY: Thank you, Your Honor.

2 REDIRECT EXAMINATION

3 BY MS SHEALY:

4 Q Shaniquone, did you have a chance to look at  
5 your statement?

6 A Yes, ma'am.

7 Q And do you have one statement up there or two?  
8 I think you actually have both up there.

9 As it relates to the 3 o'clock, okay, your  
10 statement reading that, he came around at 3 o'clock  
11 in the morning. Tell the jury, if you would, what  
12 stood out in your mind about what happened at 3  
13 o'clock?

14 A I called him.

15 Q You called him at 3:00?

16 A Uh-hum.

17 Q And regarding the purple Roadmaster, your  
18 statement you recall telling Detective Osborne that  
19 when you saw him earlier in the day on Thursday he  
20 was in his mother's purple Roadmaster?

21 A Yes, ma'am.

22 Q Now when he came over with his friends on  
23 Thursday evening, early into Friday morning, did you  
24 see how they arrived?

25 A No, ma'am.

1 Q Where were you when they got there?

2 A In the house.

3 Q You didn't walk outside to see how they got  
4 there?

5 A No, ma'am.

6 Q And when -- did you have a chance to look at  
7 your statement where it references to khaki shirt and  
8 the blue Coogie short pants?

9 A Yes, ma'am.

10 Q That outfit, do you remember when you saw him  
11 in that outfit?

12 A Friday morning.

13 Q Excuse me?

14 A Friday morning.

15 Q Okay. So when you were talking to Detective  
16 Osborne you indicated that you saw him in that when?

17 A Friday morning.

18 Q Friday morning. Do you remember what you saw  
19 him in on the Thursday late, Friday early?

20 A No, ma'am.

21 Q You don't remember what he had on then?

22 A Uh-uh.

23 MS. SHEALY: Okay, I have no further  
24 questions. Thank you.

25 MS. FORD: Your Honor, may I ask some

1 questions on recross?

2 THE COURT: You may proceed.

3 RECROSS-EXAMINATION

4 BY MS. FORD:

5 Q Ms. Williams, your statement to Detective  
6 Osborne, it specifically says he left at 11:00 a.m.  
7 in his Mama Tita's purple Roadmaster, right? First  
8 page?

9 A Yes, ma'am.

10 MS. SHEALY: I object to the form.

11 THE COURT: Please approach.

12 (Whereupon, a discussion was held at the bench  
13 off the record.)

14 THE COURT: You may proceed. Rephrase.

15 Q (By Ms. Ford) Ms. Williams, today you are  
16 saying that you saw Richard in the purple car earlier  
17 in the day, but that you were inside your apartment,  
18 couldn't see how he arrived that night?

19 A Yes, ma'am.

20 Q But in your -- you gave a written statement to  
21 Detective Osborne on October 23rd, correct?

22 A Uh-hum.

23 Q And in that statement it specifically says, he  
24 left at 11:00 a.m. in his Mama Tita's purple  
25 Roadmaster, correct?

1 A Yes, ma'am.

2 Q I talked to him on my cell all day. Around  
3 3:00 a.m. Friday morning he came by in the purple  
4 car, correct?

5 A Yes, ma'am.

6 Q He wanted to come in the house but I wouldn't  
7 let him because he was with three boys, correct?

8 A Yes, ma'am.

9 Q And then please go to page three. Today you  
10 are saying that you recall him in the khaki shirt in  
11 the morning, right, after -- in the early morning  
12 hours 8:00 a.m.ish, 9:00, right?

13 A Yes, ma'am.

14 Q But you don't recall what he was wearing when  
15 he saw you that night?

16 A I can't remember.

17 Q But you gave that statement to Detective  
18 Osborne, correct?

19 A Yes, ma'am.

20 Q And that was October 23rd?

21 A Yes, ma'am.

22 Q And in that statement he asked you, what did  
23 Rick say about -- next line, what was Ricky wearing  
24 when you saw him Thursday night? He asked you that  
25 question, correct?

1 A Yes, ma'am.

2 Q And your responses was, khaki shirt, blue  
3 Coogie short pants, correct?

4 A Yes, ma'am.

5 MS. FORD: That's all.

6 THE COURT: Any further questions from the  
7 State?

8 MS. SHEALY: Just briefly, Your Honor.

9 THE COURT: You may proceed.

10 REDIRECT EXAMINATION

11 BY MS. SHEALY:

12 Q Ms. Williams, when you were interviewed by  
13 Detective Osborne, did you tell him that Ricky  
14 indicated that he was leaving and going to come back?

15 A Yes, ma'am.

16 Q Did you -- what, if anything, did you tell  
17 Detective Osborne about whether he did come back?

18 MS. FORD: Objection. This is outside of what  
19 I asked.

20 THE COURT: Overruled. Stay within the scope  
21 of recross.

22 Q (By Ms. Shealy) Did you need me to rephrase  
23 that for you?

24 A Yes, ma'am.

25 Q when you were -- in the same statement as Ms.

1 Ford has asked you about -- when Detective Osborne  
2 asked you whether Ricky spent the night with you,  
3 what did you tell him?

4 A That he didn't.

5 Q That he what?

6 A He didn't spend the night.

7 Q And is that true?

8 A Yes, ma'am.

9 MS. SHEALY: I have nothing further, Your  
10 Honor.

11 THE COURT: Any objection to the witness being  
12 excused from the State?

13 MS. SHEALY: No, Your Honor.

14 THE COURT: From the defense?

15 MS. FORD: No, Your Honor.

16 THE COURT: Ma'am, you are excused.  
17 Call your next witness.

18 MS. SHEALY: Whitney Doctor.

19 MS. WHITNI DOCTOR,  
20 after having first been duly sworn to state the  
21 truth, the whole truth and nothing but the truth,  
22 testified on her oath as follows:

23 DIRECT EXAMINATION

24 BY MS. SHEALY:

25 Q Ms. Doctor, tell us a little bit about

1 yourself. How old are you?

2 A 20.

3 Q Are you in school right now?

4 A Nursing.

5 Q Where do you go to classes?

6 A Trident.

7 Q Okay. I need you to focus your attention back  
8 to the fall of 2007, okay?

9 A Yes, ma'am.

10 Q Let me first ask you, tell us about the purple  
11 Roadmaster?

12 A That's Tita's car.

13 Q That's who?

14 A Tita. Ricky's mama.

15 Q Okay. And let me show you what has been  
16 previously marked for ID as State's Exhibit 33, and  
17 ask you if you can identify that person?

18 A Yeah, that's Ricky's mama.

19 Q Ricky's mother. Okay.

20 MS. SHEALY: Your Honor, at this time I would  
21 offer to move it in.

22 THE COURT: Any objection?

23 MS. FORD: No, Your Honor.

24 THE COURT: Marked and admitted without  
25 objection, State's next in line.

1           (Whereupon, State's Exhibit No. 33 is admitted  
2 into evidence.)

3       Q     (By Ms. Shealy) I need you to slow down a  
4 little bit when you talk because you like to talk  
5 fast, all right?

6       A     All Right.

7       Q     When you say Tita is Ricky's mother, do you  
8 know what her name is?

9       A     I think Altida Deas.

10      Q     Altida Deas. When you say Ricky, who are you  
11 talking about?

12      A     Ricky Deas.

13      Q     Now when you say it was her car, the  
14 Roadmaster, tell us, if you would, how that came to  
15 be? Did you have any involvement in her getting a  
16 car?

17      A     Not her purple Roadmaster. The green  
18 Cadillac.

19      Q     I'm sorry, I confused the automobiles then.  
20 Tell us about the car that you helped her get?

21      A     She called me one day and she asked me to put  
22 a car in my name. And I told her yeah. So she come  
23 get me from the house in her purple Roadmaster, and  
24 we went to Yankos (phonetic) dealer in West Ashley  
25 and we signed the papers and we got the car.

1 Q Let me slow you down there. When you say we  
2 got the car and we signed the papers, whose name was  
3 the car gotten in?

4 A Mine.

5 Q Go ahead then. So then you all signed the  
6 papers and you got a car?

7 A We got a car, she did the insurance on the  
8 car, whatever, and we left.

9 And like a couple of weeks, not even, I don't  
10 even think it had been a week, the dealer called me  
11 and he was like, well this car ain't got no insurance  
12 on it. I was like, no, because the car do have  
13 insurance on it. When we left it had insurance on  
14 it. Well, the check bounced.

15 Q And because of that what were you, your  
16 conversation with the person from the dealership,  
17 what were you concerned was going to happen?

18 A He said, he told me, if anything happens to  
19 the car it's all going to be on you. Nobody else.  
20 It's going on you.

21 Q And was that because it was in your name?

22 A Right.

23 Q So based on that, what did you do?

24 A I texted her because I was at work.

25 Q Okay. And what did you text her?

1           A       I don't know exactly what the text say. I  
2 know it was like, well, I need you to pay for the  
3 car, something doing with paying on the car.

4                   She text me back she was like, she's in court.  
5 And I text back, all right. She text me back a  
6 little later saying something about putting it in  
7 Tashia's name, or whatever. And I was like, well,  
8 okay.

9                   So I started calling her, never received no  
10 phone calls from her. She didn't answer my phone  
11 calls, and I'm talking back to the dealer. And the  
12 dealer was like, well, she called me call and tell me  
13 to call somebody stuck on Savannah Highway. He was  
14 like, I even sent my tow-man out there and they  
15 didn't see no car.

16                   I was just like, you know what, this is like a  
17 couple weeks before my birthday. I ended up getting  
18 me a rental for my birthday because I was supposed to  
19 go out of town, but I didn't go. So like with the  
20 rental I had I went driving around late at night  
21 looking for the car.

22                   People was like, first he told, she told me,  
23 the dealer told me, she said something about Williams  
24 Street. So I ride on Williams Street, no car. So I  
25 road on down to Mile's car and he was like, you know

1 what, I seen that green Cadillac on Isabella Street.  
2 I don't know where that's at, but we went to Isabella  
3 Street and no car.

4 Q Let me interrupt you right there for a second.  
5 You mentioned Miles. Tell us about your relationship  
6 with Miles.

7 A I wouldn't say he's my boyfriend, but we were  
8 talking.

9 Q And during that time did you have occasion to  
10 tell him about what was going on?

11 A Right. Like one day I was driving late around  
12 one night and he was like, where you going? And I'm  
13 like, looking for a green car. He was like, what  
14 green car? I said, green car that I got for Tita.

15 And he was like, oh, I seen that car before. I  
16 was, whatever. And he was like, they drive around in  
17 it over there. I was like, when you see the car  
18 please just call me and tell me where the car at or  
19 whatever. And he was like, all right, I will. And  
20 after we started just hanging out.

21 Q Hanging out what?

22 A Like we used to go out places.

23 Q Well regarding the car itself, was there  
24 another occasion when you all thought you knew where  
25 the car was?

1       A       Yeah. As a matter of fact one day I was  
2 sitting on the corner of Line Street, me and Miles,  
3 we was just talking on the corner over there. And he  
4 was like, well, where are you going? I was like,  
5 home. So I looked further down at Line and this  
6 street is Hanover Street. And I was looking.

7       And I was like, time out, that's the car I get  
8 for Tita. So I went inside Family Dollar parking lot  
9 and Ricky was coming out of the car. Ricky was  
10 coming out of the car. I was like, he ain't got no  
11 license. So if something happens to this car, I have  
12 to pay. So I was standing in Family Dollar parking  
13 lot and I was like -- I called the first time I  
14 called was Officer Barfield, that's his name, and he  
15 came.

16       And I keep calling, keep calling. And I was,  
17 we're in Family Dollar parking lot, where you at?

18       Q       Let me stop you just for a second. When you  
19 say that you were at the Family Dollar parking lot  
20 and you were calling the police, who all was at the  
21 Family Dollar parking lot with you?

22       A       Me and Miles.

23       Q       You and Miles, okay.

24       MS. SHEALY: Beg the Court's indulgence.

25       THE COURT: Uh-hum.

1 Q (By Ms. Shealy) Okay. Showing you what has  
2 been previously marked as State's Exhibit No. 6. In  
3 just a second it's going to show up behind you.  
4 Okay.

5 A We were standing over there.

6 Q (By Ms. Shealy) Okay. And handing you this  
7 pointer, if you push this red button, it will do a  
8 little red dot. So show us where you and Miles were?

9 A I pushed the red button.

10 MS. SHEALY: If I can just get you to step  
11 down, with the Court's permission, and just come show  
12 it to us on the photograph.

13 Okay, you still can use the pointer.

14 A We went over there.

15 Q (By Ms. Shealy) Okay. Where, at that time,  
16 had you all seen the car with Ricky in it? Is it  
17 further down?

18 A Yeah. Like standing by the store, like a  
19 church right there.

20 Q It may not be on this picture either, but tell  
21 us if it is. State's Exhibit 7, does that show it?

22 A Yeah. As a matter of fact this car is it in  
23 the parking lot.

24 Q That's where it was?

25 A Uh-hum.

1 Q And on that occasion you called the police and  
2 Officer Barfield came out?

3 A Uh-hum.

4 Q Now by the time Officer Barfield got there,  
5 what happened?

6 A I got in the car with the officer. And the  
7 car had been gone after that, he rode off. And we  
8 like went around the corner and then the officer took  
9 me home that day.

10 Q The officer what?

11 A Officer Barfield took me home.

12 Q So no luck with getting the car?

13 A (Negative head shake.)

14 Q What happens next with the car?

15 A This time, like October 18th, the night before  
16 Miles had got shot, I had been in my bed about 11  
17 o'clock or 11:00, he called and he was like --

18 Q Who called?

19 A Miles. Miles called me like that car out here  
20 again. I'm like, all right. And I'm in my pajamas,  
21 I was sleeping. So I got up, left the house and I  
22 didn't -- because Office Barfield had gave me a card  
23 with his number on it and I called the police and he  
24 already had meet me out there.

25 So when he came he was like --

1 Q When you say he already had met you out there?

2 A Yes. I called up Officer Barfield said, the  
3 cars is outside. The car's in the same place where  
4 we saw it at. And he was like, okay. Well, I'm on  
5 my way, I will meet out there.

6 I was talking on my cell phone as I was  
7 running down Line Street. So when I came down Line  
8 Street or whatever Officer Barfiled was parked on  
9 this side and the car was sitting right there. And  
10 he was like, do I got permission to go in the car?  
11 And he had a little black stick thing. And I was  
12 like, yeah.

13 Then he opened up the car and there was  
14 nothing in the car but a CD player and some weed  
15 paper on the floor.

16 Q Okay. Now when he opened up the car, what  
17 were you telling him you wanted done with the car?

18 A Tow it. He told me he wouldn't be able to tow  
19 the car until I say this is my car, that I had papers  
20 saying this was my car. I had already went to the  
21 dealer and got every paper, all the paper, everything  
22 from the dealer. So Ricky was standing on the  
23 corner.

24 Q You need to slow down for me. You are talking  
25 about when you and Officer Barfield are at the car?

1 A Yes.

2 Q Where was Ricky?

3 A On the corner.

4 Q That would be have the corner of Line and  
5 what?

6 A Hanover.

7 Q Hanover?

8 A Right. Not the exact corner, but across from  
9 it, that's Line and Hanover.

10 Q Okay. And when he told you that he needed  
11 some proof, what did you then do?

12 A I called my mama.

13 Q Now when you saw Ricky, was the police officer  
14 out there?

15 A Yeah.

16 Q And what did you see Ricky doing?

17 A He was calling his mama I guess because she  
18 came out there racing out of the car fussing.

19 Q We are going to get to that in just a second.  
20 What was he specifically doing when you saw him?

21 A Talking on the phone.

22 Q He was on his cell phone?

23 A Uh-hum.

24 Q Now you call your mother and what does she do?

25 A She -- my mama does not want to go out of her

1 house. She was like, where are you at, where are you  
2 at? I was no, mama, I find the car. And I was like,  
3 I need the paperwork on top of my bed. She said,  
4 what paper? She said, what car? Because my mama did  
5 not know. My mama did not know nothing.

6 So she was like, what car? What car? I said,  
7 mama, I need the paperwork on the top of my bed. She  
8 was like, I'm coming. I said, mama, I need \$30  
9 dollars for you to tow the car. And she was like,  
10 Whitney, where you at? And she heard and she was  
11 like, who is that fussing at you? I was like, that's  
12 Tita, that's Tita. And she was like, I'm coming.  
13 And she ran down the street and she came with the  
14 papers.

15 Q Okay. Now so go back and tell us about Tita  
16 arriving on the scene.

17 Tell us how she acted when she got there?

18 MS. FORD: Objection, relevance.

19 THE COURT: Please approach.

20 (Whereupon, a discussion was held at the bench  
21 off the record.)

22 Q (By Ms. Shealy) If you would, Ms. Doctor,  
23 without saying what was being said, could you tell us  
24 how did -- you call her Tita?

25 A Uh-hum.

1 Q How did Tita appear when she came on the  
2 scene, how was she acting?

3 A Yelling at me.

4 Q And what ultimately happened with the car that  
5 evening?

6 A We towed it and -- we didn't get the keys  
7 back, so we towed it to my uncle's yard because we  
8 didn't put it in our yard because they would come  
9 and --

10 Q Without saying that. It got towed over to  
11 your uncle's house?

12 A Uh-hum.

13 Q And again when you were standing there talking  
14 to the police officer, Ricky was where?

15 A Standing on the corner on the phone.

16 Q Okay. And when your mother arrived with  
17 the paperwork, was that shown to Officer Barfield?

18 A Yes, ma'am.

19 Q Now did you give a statement to Detective  
20 Osborne?

21 A Yes, ma'am.

22 Q And did he -- was he looking for you or did  
23 you seek him out?

24 A Well, I was told that --

25 Q Without telling me, if you could avoid telling

1 me what somebody else said.

2 THE COURT: Ma'am, say what you did as a  
3 result of the conversation. Please don't repeat what  
4 was said to you.

5 A Well I went to him.

6 Q (By Ms. Shealy) You went to him?

7 A Uh-hum.

8 Q And at that time had Miles already died?

9 A (Affirmative head shake.)

10 Q You have to answer in court?

11 A Yes, ma'am.

12 Q Now later in the evening after the car had  
13 gotten towed, did you have the occasion to talk to  
14 Miles again on the phone?

15 A That night.

16 Q Like --

17 A After that.

18 Q After that?

19 A Uh-hum.

20 Q And were you expecting to hear from him again?

21 A Yeah, he was supposed to come get me.

22 Q And did he come get you?

23 A (Negative head shake.)

24 Q No, ma'am.

25 MS. SHEALY: I have no further questions.

1 Thank you.

2 THE COURT: Any questions for the witness?

3 MS. FORD: Yes, ma'am.

4 CROSS-EXAMINATION

5 BY MS. FORD:

6 Q Hi, Ms. Doctor.

7 A How are you doing?

8 Q Mr. Simmons, he knew who Richard Deas was,  
9 right?

10 A Who? Mr. Simmons?

11 Q Miles.

12 A Yeah.

13 Q He knew who Richard Deas was, right?

14 A Yeah.

15 Q And this car, it was Altida's car, or supposed  
16 to be her car, right?

17 A Uh-hum.

18 Q And Richard was just driving it around,  
19 correct?

20 A Uh-hum.

21 Q And so you saw Richard with the car several  
22 times that day, right? Or that night?

23 A No, I just saw him that one time we went to  
24 Family Dollar. I didn't see him plenty of times with  
25 the car because I when saw the car I called the

1 police.

2 THE COURT: Ma'am, I need you to repeat your  
3 answer and slow down a little bit for me.

4 A No, I only saw him that one time that day in  
5 the car.

6 Q At the Family Dollar?

7 A Uh-hum.

8 Q But then that night you got a call that the  
9 car was outside?

10 A Right.

11 Q And you saw Richard nearby?

12 A Uh-hum.

13 Q And Mr. Simmons, Miles, he was the one who  
14 called you, right?

15 A Right.

16 Q But is there any indication that Richard knew  
17 that Miles was the one who called you?

18 MS. SHEALY: Objection, Your Honor.

19 THE COURT: Basis?

20 MS. SHEALY: May we approach?

21 THE COURT: Uh-hum.

22 (Whereupon, a discussion was held at the bench  
23 off the record.)

24 THE COURT: You may proceed. And you may  
25 rephrase.

1 MS. FORD: Thank you, Your Honor.

2 Q (By Ms. Ford) When you saw Richard that  
3 night, he was wearing some brown Timberlands, wasn't  
4 he?

5 A And a brown shirt and black pants.

6 Q Brown tank top?

7 A Uh-hum.

8 Q And you had known Miles for about how long, a  
9 month or a week?

10 A A month, not even that long. I don't know,  
11 probably about a week and a half or two.

12 Q Week and a half or two. And so you all talked  
13 about the car, right?

14 A We talked about the car that one time.

15 Q And when you were talking about Ricky in the  
16 car, there was no mention of any kind of dispute,  
17 right?

18 A No.

19 Q Between Miles and Ricky?

20 A No.

21 MS. FORD: Beg the Court's indulgence.

22 THE COURT: Uh-hum.

23 MS. FORD: No further questions, Your Honor.

24 THE COURT: Any further questions from the  
25 state?

1 MS. SHEALY: Beg the Court's indulgence.

2 REDIRECT EXAMINATION

3 BY MS. SHEALY:

4 Q MS. Doctor, let me just clarify something. On  
5 one occasion you and Miles were at the Family Dollar  
6 parking lot?

7 A Uh-hum.

8 Q And that's when you all saw Ricky in the car?

9 A He was getting out of the car actually.

10 Q Okay, getting out of the car. And then you  
11 told us about a second incident where you all were at  
12 the corner of Line and Hanover and he was on the  
13 corner?

14 A Yeah, that's the night we found the car.

15 Q The night that you told us about regarding the  
16 Family Dollar parking lot, that wasn't the same  
17 night, was it?

18 A No, that was a different night.

19 Q Okay.

20 MS. SHEALY: I have nothing further. Thank  
21 you.

22 THE COURT: Any objection to the witness being  
23 excused from the State.

24 MS. SHEALY: No, Your Honor.

25 THE COURT: From the defense?

1 MS. FORD: May I have one question, Your  
2 Honor?

3 THE COURT: Yes, ma'am, you may proceed.

4 RE CROSS EXAMINATION

5 BY MS. FORD:

6 Q Ms. Doctor, when you talked to Officer  
7 Osborne, he asked you about what Ricky was wearing  
8 that night, correct?

9 A Uh-hum.

10 Q And he was referring to the night that you saw  
11 him?

12 A October 18th, the night that I came out there  
13 and got the car.

14 Q Right. So that's the night --

15 A Yeah.

16 Q -- of the shooting, correct?

17 A No, that's the --

18 Q Well, the 18th is the night, and a few hours  
19 later in the morning is when Miles is shot, correct?

20 A I guess, yes.

21 Q So that is the time period you are talking  
22 about when you are saying that he was wearing brown  
23 shoes and a brown shirt, correct?

24 A The time I gone and got the car, that's what  
25 he was wearing.

1 Q So that is the right time?

2 A Yeah.

3 MS. FORD: Thank you.

4 THE COURT: Any further questions of the  
5 witness?

6 MS. SHEALY: No, Your Honor.

7 THE COURT: Any objection to the witness being  
8 excused from the State.

9 MS. SHEALY: No, Your Honor.

10 THE COURT: From the defense?

11 MS. FORD: No, Your Honor.

12 THE COURT: Ma'am, you are excused.

13 You may call your next witness.

14 MS. SHEALY: Chris Barfield.

15 MR. CHRIS BARFIELD,

16 after having first been duly sworn to state the  
17 truth, the whole truth and nothing but the truth,  
18 testified on his oath as follows:

19 THE COURT: You may proceed.

20 MS. SHEALY: Thank you, Your Honor.

21 THE COURT: You're welcome.

22 DIRECT EXAMINATION

23 BY MS. SHEALY:

24 Q Officer Barfield, will you tell us a little  
25 bit about your educational background?

1           A       I went to Summerville High School, graduation  
2           in 1996. Then went to the Citadel and graduated in  
3           2000 with a bachelor's degree in business  
4           administration.

5           Q       Where are you currently employed?

6           A       Charleston Police Department.

7           Q       How long have you been employed there?

8           A       About six and a half years.

9           THE COURT: Can you please speak directly into  
10          the microphone for us, please.

11          THE WITNESS: Approximately six and a half.

12          THE COURT: You may proceed.

13          MS. SHEALY: Thank you.

14          Q       (By Ms. Shealy) I'd like for you to focus  
15          your attention back to October of 2007. First to the  
16          date of October 16th, 2007. Could you tell the jury  
17          whether you answered a call in the area of Line and  
18          Hanover?

19          A       I did.

20          Q       Would you describe to the jury what that call  
21          was in reference to?

22          A       I got called, we received a call from the  
23          complainant, Ms. Doctor, stating that her vehicle was  
24          in the area of Line and Hanover, and it was being  
25          driven by unauthorized people and she wanted to go