

VOL I OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Horry County

John C. Hayes, III, Circuit Court Judge

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S.C. Supreme Court

TYRONE BEATY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLANT CASE NO. 2015-000023

APPENDIX

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT
2006-GS-26-1747-1748

State of South Carolina,)
)
 Plaintiff,)
)
 -VS-)
)
 Tyronne Beaty,)
)
 Defendant.)
 _____)

TRANSCRIPT OF RECORD

July 12-16, 2010
Conway, South Carolina

B E F O R E:

HONORABLE STEVEN H. JOHN, Circuit Judge.

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

Heather Von Herrmann, Esquire
Office of the Solicitor
P.O. Box 1276
Conway, South Carolina 29528
Attorney for the State

G. Scott Bellamy, Esquire
Hearn, Brittain & Martin
1206 Third Avenue
Conway, South Carolina 29526
Attorney for the Defendant

DIXIE COX EUBANK
OFFICIAL REPORTER.

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(THE FOLLOWING TAKES PLACE IN THE PRESENCE OF THE JURY PANEL.)

THE COURT: I will be asking you more specific questions as to the potential jurors for this particular case. As we did downstairs, if I ask a question and you need to respond to it, then I'm going to need for you to stand and identify yourself, both your name and your juror number if you would.

In this particular case, the State of South Carolina has charged the Defendant in this matter, Mr. Tyrone Beaty, with the crimes of murder and armed robbery. Now, I'm going to read to you certain information contained in the indictment. Before I do that, I'm going to tell you the indictment is merely the charge that the State has brought against the Defendant. It is not evidence. It cannot be considered by anyone as evidence in the case. That will come from the witnesses and any other documents or exhibits that may be properly introduced during the trial of the case.

The only reason I am reading to you this charge or the charges against the Defendant is to see if you happen to know anything about this case, heard about this case, have any information that you might need to share with the Court about this particular case.

The charge brought by the State of South Carolina

1 against the Defendant, Tyronne Beaty, says that the State
2 charges that he did in Horry County in October of 2005
3 wilfully, feloniously, and intentionally kill the victim,
4 Miles Thomas Slay, II, with malice aforethought, either
5 express or implied, by means of shooting the victim, and
6 the victim did die as a proximate result thereof in Horry
7 County, in violation of the Code of Laws of the State of
8 South Carolina, 1976, as amended.

9 Further, the State charges that the Defendant,
10 Tyronne Beaty, did in Horry County in October of 2005,
11 while armed with a deadly weapon, to wit, a pistol, take
12 and carry away the personal property of, from, or in, the
13 immediate presence of Miles Thomas Slay, II, with intent
14 to deprive him of possession of that property by use of
15 force, threats, or intimidation in violation of the Code
16 of Laws of the State of South Carolina, 1976, as amended.

17 Is there any member of the jury panel in this matter
18 that knows anything about this case, has any information
19 they need to share with the Court at this point in time?
20 If so, please stand. (No response.)

21 The potential or possible witnesses in this
22 particular case are as follows: They are Detective John
23 Lewis, Robert Kegler, Detective Allen Large, Detective
24 Todd Cox, Robbie Caulder, Lorie Rabon, Peter Cestare, all
25 those of the Horry County Police Department. Dan DeFreese

1 of South Carolina Law Enforcement Division; Renee
2 Hardwick, a 911 operator; Dr. Cynthia Schandl of M.U.S.C.;
3 Neil Hill; Corey Smalls; Antonio Smalls; Daniel Prater,
4 P-R-A-T-E-R; Johnny Ray; Dominique Carr; Patrick McDowell;
5 Jarrett Jeffcoat; Vicki Parham; Betty Butler; Catherine
6 Leisy, L-E-I-S-Y; Kenny Kinsey, K-I-N-S-E-Y; Alfred
7 Stuckey; Nathan McCoy; Deandre Bishop; Bridget Allen; and
8 Shirelle Johnson.

9 Is any member of the jury panel related by blood or
10 marriage, close personal friends, acquaintances of, knows
11 any of these possible or potential witnesses in this case?
12 If so, please stand. (No response.)

13 All right, is there any member of the jury panel that
14 either you, yourself, or a member of your immediate family
15 has ever had any matters of any kind handled by the
16 Fifteenth Circuit Solicitor's Office? Now, remember,
17 that's the prosecuting office that covers Horry and
18 Georgetown Counties. If so, please stand. (No response.)

19 Is there any member of the jury panel that is related
20 by blood or marriage, close personal friends,
21 acquaintances of anybody employed by the Fifteenth Circuit
22 Solicitor's Office either here or in Georgetown County?
23 If so, please stand. (No response.)

24 Solicitor, if you would stand and identify yourself,
25 please, ma'am.

1 MS. VON HERRMANN: Yes, sir, Your Honor. Thank you.

2 Ladies and gentlemen, my name is Heather Von
3 Herrmann. I'm a prosecutor here in Horry County. I am
4 employed by your elected official, Greg Hembree, and my
5 duties here are to prosecute criminal cases.

6 THE COURT: And, Mr. Bellamy, if you would stand and
7 identify yourself and any lawyers that might be working
8 with you.

9 MR. BELLAMY: My name is Scott Bellamy. I am an
10 attorney here in Conway, have been practicing about twenty
11 years. I am here with my client, Mr. Tyronne Beaty, and
12 his family who is also here in the courtroom. Thank you.

13 THE COURT: Is there any member of the jury panel
14 that's related by blood or marriage, close personal
15 friends, acquaintances of, knows either of these two
16 lawyers that have identified themselves to you, or in
17 regards to Mr. Bellamy regarding his practice of law, have
18 you ever been a client of his either in the past or
19 currently? If so, please stand. (No response.)

20 All right, does any member of the jury panel believe
21 you have got any or have any kind of personal, political,
22 religious, philosophical belief that you believe would
23 prevent you from being a fair and impartial juror? If so,
24 please stand.

25 Yes, sir, your name and juror number, please.

1 JUROR 125: I am Juror 125. My name is James Garris.

2 THE COURT: All right, sir. Come forward and talk
3 to me, please, sir.

4 Counsel, if y'all want to come around, please.

5 (The Court speaks to Mr. Garris off the record.)

6 THE COURT: Yes, sir, your name and juror number,
7 please.

8 JUROR 139: Joseph Grant, 139.

9 THE COURT: All right, sir. Could you come forward,
10 please, Mr. Grant.

11 (The Court speaks to Mr. Grant off the record.)

12 THE COURT: Yes, ma'am, your name and juror number,
13 please.

14 JUROR 253: 253, Morgan Pensa.

15 THE COURT: All right, ma'am. Could you come up and
16 talk to me, please, ma'am.

17 (The Court speaks to Ms. Pensa off the record.)

18 THE COURT: All right, Juror Number 125, Mr. Garris,
19 could you come back up and talk to me for a second,
20 please, sir, if you don't mind.

21 (The Court speaks to Mr. Garris off the record.)

22 THE COURT: All right, now, the next question I
23 have, ladies and gentlemen, is whether or not you,
24 yourself, were a former law enforcement officer or you
25 have a current family member who is now in law enforcement

1 or was in the past in law enforcement, so if any of that
2 applies to you, please stand.

3 Yes, ma'am, your name and juror number right here,
4 please, ma'am.

5 JUROR 321: Maureen Sullivan, 321.

6 THE COURT: Yes, ma'am, and what relation was that?

7 JUROR 321: My twin brother is the Deputy Assistant
8 Director of the United States Marshal Service with
9 jurisdiction in Virginia, and my son is a detention
10 officer with the City of Myrtle Beach.

11 THE COURT: All right, very good. Now, can you give
12 to the State of South Carolina and to the Defendant a fair
13 and impartial trial? Can you be a fair and impartial
14 juror in this case?

15 JUROR 321: I'm biased toward the law enforcement.

16 THE COURT: All right, ma'am. What I'm going to do,
17 Madam Clerk, is I'm going to transfer this juror to a term
18 of civil court only. All right, so what I'm going to do
19 Madam Clerk, you're going to transfer her to the week of
20 September 30th -- September 20th. Transfer this juror
21 to ---

22 JUROR 321: I'm sorry; I'm going to be in New York
23 then for business, sir.

24 THE COURT: All right, ma'am; I'll find another
25 week, October 25th. Transfer this juror to the week of

1 October 25.

2 Thank you, ma'am. You're excused from this week of
3 Court. Thank you very much.

4 All right, yes, ma'am, your name and juror number,
5 please.

6 JUROR 370: Juror Number 370, Arline Elston.

7 THE COURT: Yes, ma'am.

8 JUROR 370: My son is in Nashville, Tennessee. He's
9 a police officer. He's not in South Carolina.

10 THE COURT: Okay, very good. Can you give to the
11 State of South Carolina and to the Defendant a fair and
12 impartial trial? Can you be a fair and impartial juror in
13 this case?

14 JUROR 370: Yes, sir.

15 THE COURT: Thank you very much, ma'am.

16 All right, why don't we just start right there in the
17 middle. Yes, ma'am.

18 JUROR 46: Number 46, Lisa Brown.

19 THE COURT: Yes, ma'am.

20 JUROR 46: I have a brother-in-law that is a police
21 officer for Montgomery County Police Department in
22 Maryland.

23 THE COURT: All right. Can you give to the State of
24 South Carolina and to the Defendant a fair and impartial
25 trial? Can you be a fair and impartial juror in this

1 case?

2 JUROR 46: Yes, sir.

3 THE COURT: Thank you very much, ma'am.

4 Next to her, please, ma'am.

5 JUROR 281: Sirrena Riotto, Juror Number 281, and my
6 husband is a customs' officer. He's Federal, as well.

7 THE COURT: All right, and is that in the State of
8 South Carolina or somewhere else?

9 JUROR 281: He's in Wilmington, North Carolina.

10 THE COURT: Very good; okay. Can you give to the
11 State of South Carolina and to the Defendant a fair and
12 impartial trial? Can you be a fair and impartial juror in
13 this case?

14 JUROR 281: Yes.

15 THE COURT: Thank you very much, ma'am.

16 Yes, ma'am, your name and juror number, please.

17 JUROR 302: 302 (Teresa Simon). Gloria Wilson,
18 probation officer.

19 THE COURT: Yes, ma'am. All right, ma'am, you were
20 a probation officer or you know a probation officer?

21 JUROR 302: My sister.

22 THE COURT: Your sister was?

23 JUROR 302: Yes.

24 THE COURT: Okay, and was that here in South
25 Carolina?

1 JUROR 302: Right here.

2 THE COURT: All right, here in Horry County?

3 JUROR 302: Yes.

4 THE COURT: All right, very good. Can you give to
5 the State of South Carolina and to the Defendant a fair
6 and impartial trial? Can you be a fair and impartial
7 juror in this case?

8 JUROR 302: Yes, sir.

9 THE CLERK: I apologize, Your Honor. Could we get
10 her name and juror number again.

11 THE COURT: All right. Your name and juror number
12 again, please, ma'am.

13 JUROR 302: Teresa Simon, 302.

14 THE COURT: All right, thank you very much.

15 All right, yes, sir, your name and juror number,
16 please.

17 JUROR 60: James Cannon, Juror 60.

18 THE COURT: All right, sir, and ---

19 JUROR 60: My father is a police officer in Conway.

20 THE COURT: All right, sir. Can you give to the
21 State of South Carolina and to the Defendant a fair and
22 impartial trial? Can you be a fair and impartial juror in
23 this case?

24 JUROR 60: Yes, sir.

25 THE COURT: Thank you very much.

1 JUROR 253: Morgan Pensa, 253. My father is a deputy
2 sheriff in Florida.

3 THE COURT: In Florida?

4 JUROR 253: Yes.

5 THE COURT: All right, ma'am. Can you give to the
6 State of South Carolina and to the Defendant a fair and
7 impartial trial? Can you be a fair and impartial juror in
8 this case?

9 JUROR 253: Yes, sir.

10 THE COURT: Thank you very much, ma'am.

11 Yes, ma'am, your name and juror number, please.

12 JUROR 58: Doris Campbell. It is 58, and my son is a
13 police officer in Charleston County.

14 THE COURT: Okay, Charleston, West Virginia, or
15 Charleston, South Carolina?

16 JUROR 58: South Carolina.

17 THE COURT: Oh, Charleston, South Carolina. Okay,
18 very good. Can you give to the State of South Carolina
19 and to the Defendant a fair and impartial trial? Can you
20 be a fair and impartial juror in this case?

21 JUROR 58: Yes, sir.

22 THE COURT: Thank you very much.

23 Yes, sir, your name and juror number, please.

24 JUROR 103: My name is Donald Edwards, 103.

25 THE COURT: Yes, sir.

1 JUROR 103: I'm an auxiliary police officer.

2 THE COURT: All right, sir, and is that for Horry
3 County or ---

4 JUROR 103: North Myrtle Beach.

5 THE COURT: In North Myrtle Beach, all right. Can
6 you give to the State of South Carolina and to the
7 Defendant a fair and impartial trial? Can you be a fair
8 and impartial juror in this case?

9 JUROR 103: Yes, sir.

10 THE COURT: Thank you very much.

11 All right, anybody else? (No response.)

12 All right, is there, other than any jurors that have
13 already spoken to me, is there any member of the jury
14 panel that has seen, heard, read anything in any way about
15 this particular matter? If so, please stand. (No
16 response.)

17 All right, is there any member of the jury panel that
18 you, yourself, or a member of your immediate family is a
19 member of any kind of victim's rights or law enforcement
20 support organization? Let me just give you a couple of
21 examples. It's not an exhaustive list of any kind, but
22 just examples of what I'm talking about.

23 You've got like Citizens Against Violent Crime, or
24 Mothers Against Drunk Driving, or South Carolina Law
25 Enforcement Officers Association, the South Carolina

1 Sheriffs Association, just some kind of law enforcement
2 support organization or victim's rights organization. If
3 so, please stand.

4 Yes, ma'am, your name and juror number, please.

5 JUROR 281: Sirrena Riotto, 281.

6 THE COURT: Yes, ma'am.

7 JUROR 281: The South Carolina Law Enforcement
8 Association.

9 THE COURT: All right, very good. Can you give to
10 the State of South Carolina and to the Defendant a fair
11 and impartial trial? Can you be a fair and impartial
12 juror in this case?

13 JUROR 281: Yes.

14 THE COURT: All right, the next question, ladies and
15 gentlemen, that I'm going to ask you is whether or not
16 you, yourself, or a member of your immediate family has
17 ever been the victim of a crime. Now, I am not going to
18 ask you what occurred, nor do I want you to volunteer any
19 information to me about what occurred. The question is
20 going to be straightforward, was it yourself or a family
21 member, and then I'll ask the qualification question, so
22 is there any member of the jury panel, either you,
23 yourself, or a member of your immediate family, ever been
24 the victim of a crime? If so, please stand.

25 All right, yes, sir, your name and juror number,

1 please.

2 JUROR 1: I am Eugene Abercrombie, Juror 1.

3 THE COURT: All right. Was it yourself or a family
4 member?

5 JUROR 1: Both.

6 THE COURT: Can you give to the State of South
7 Carolina and to the Defendant a fair and impartial trial?
8 Can you be a fair and impartial juror in this case?

9 JUROR 1: Yes, sir.

10 THE COURT: Thank you very much.

11 Yes, ma'am, your name and juror number, please.

12 JUROR 225: Barbara McDowell, 225.

13 THE COURT: And was it yourself or a family member?

14 JUROR 225: Myself.

15 THE COURT: Can you give to the State of South
16 Carolina and to the Defendant a fair and impartial trial?
17 Can you be a fair and impartial juror in this case?

18 JUROR 225: Yes.

19 THE COURT: Thank you very much.

20 Yes, sir, right there.

21 JUROR 157: James Hearl, 157.

22 THE COURT: Was it yourself or a family member?

23 JUROR 157: It was a family member, but extended
24 family.

25 THE COURT: All right, very good. That's all right,

1 don't explain to me. Can you give to the State of South
2 Carolina and to the Defendant a fair and impartial trial?
3 Can you be a fair and impartial juror in this case?

4 JUROR 157: Yes, sir.

5 THE COURT: Thank you very much.

6 All right, yes, ma'am, right behind him.

7 JUROR 302: 302, a family member.

8 THE COURT: All right, ma'am. Can you give to the
9 State of South Carolina and to the Defendant a fair and
10 impartial trial? Can you be a fair and impartial juror in
11 this case?

12 JUROR 302: Yes, sir.

13 THE COURT: Thank you very much.

14 Yes, ma'am, there on the end there.

15 JUROR 335: 335, Kandis Todd.

16 THE COURT: Yes, ma'am. Yourself or a family
17 member?

18 JUROR 335: A family member.

19 THE COURT: Can you give to the State of South
20 Carolina and to the Defendant a fair and impartial trial?
21 Can you be a fair and impartial juror in this case?

22 JUROR 335: Yes, sir.

23 THE COURT: Thank you very much.

24 Yes, ma'am.

25 JUROR 216: 216, Courtney Manchester.

1 THE COURT: Yourself or a family member?

2 JUROR 216: A family member.

3 THE COURT: Can you give to the State of South
4 Carolina and to the Defendant a fair and impartial trial?
5 Can you be a fair and impartial juror in this case?

6 JUROR 216: Yes, sir.

7 THE COURT: Thank you very much.

8 Yes, sir, your name and juror number.

9 JUROR 139: Joseph Grant.

10 THE COURT: All right, sir.

11 JUROR 139: 139.

12 THE COURT: All right, and was it yourself or a
13 family member?

14 JUROR 139: A family member.

15 THE COURT: Can you give to the State of South
16 Carolina and to the Defendant a fair and impartial trial?
17 Can you be a fair and impartial juror in this case?

18 JUROR 139: No, sir.

19 THE COURT: I'm sorry. You said yes or no?

20 JUROR 139: No.

21 THE COURT: All right, sir, come forward and talk to
22 me, please.

23 (The Court speaks to Mr. Grant off the record.)

24 THE COURT: All right, I'm going to ask you what I
25 classify as my general or catch-all question. Do you know

1 of any reason, have any question in your mind, any doubt
2 in your mind that you believe you cannot give to the State
3 of South Carolina and to the Defendant a fair and
4 impartial trial, that is for any reason whatsoever you
5 believe you cannot be a fair and impartial juror in this
6 case? If so, please stand. (No response.)

7 All right, further questions from the State?

8 MS. VON HERRMANN: Nothing from the State, Your
9 Honor.

10 THE COURT: Further questions from the Defense?

11 MR. BELLAMY: None other than what was previously
12 submitted, Your Honor.

13 THE COURT: All right, very good.

14 All right, so ladies and gentlemen, what's going to
15 happen now is the Clerk of Court is going to call out
16 names of potential jurors. If and when your name is
17 called, you would come forward and you will stand
18 basically at a place, right in front of the Court
19 Reporter, Miss Dixie, right here, and turn and face to the
20 back of the courtroom.

21 At that point in time, the Clerk of Court will
22 inquire of the State whether to present or to excuse the
23 juror. Obviously if you're excused by the State, you go
24 back and have a seat. If you're presented by the State,
25 then the Clerk will inquire of the Defense whether to seat

1 or to excuse the juror.

2 Again, if you're excused, go back and have a seat
3 from whence you came. If you are seated, then the Clerk
4 of Court will instruct you to go have a seat in the jury
5 box, so if you happen to have any personal items, a book,
6 or a purse, or anything of that nature and your name is
7 called, please bring that with you in case you are seated,
8 you can go directly to the jury box.

9 All right, Madam Clerk, if you would call out the
10 names, please, ma'am.

11 THE CLERK: 125, James Garris.

12 What say the State?

13 MS. VON HERRMANN: Please present the juror.

14 THE CLERK: Defense?

15 MR. BELLAMY: We would excuse Mr. Garris from the
16 trial of this particular case, Your Honor.

17 THE CLERK: You're excused from this particular
18 case. 35, Christopher Bluemke.

19 What say the State?

20 MS. VON HERRMANN: Please present the juror.

21 THE CLERK: Defense?

22 MR. BELLAMY: Your Honor, we would excuse Mr.
23 Bluemke from the trial of this particular case.

24 THE CLERK: You're excused from this particular
25 case.

1 46, Lisa Brown. What say the State?
2 MS. VON HERRMANN: Please present the juror.
3 THE CLERK: Defense?
4 MR. BELLAMY: Seat Ms. Brown. Thank you.
5 THE CLERK: Please be seated in the jury box.
6 318, Barbara Stanko. What say the State?
7 MS. VON HERRMANN: Please present the juror.
8 THE CLERK: Defense?
9 MR. BELLAMY: Seat Ms. Stanko. Thank you.
10 THE CLERK: Please be seated in the jury box.
11 335, Kandis Todd. What say the State?
12 MS. VON HERRMANN: Please present the juror.
13 THE CLERK: Defense?
14 MR. BELLAMY: Seat Ms. Todd.
15 THE CLERK: Please be seated in the jury box.
16 115, Ella Floyd. What say the State?
17 MS. VON HERRMANN: Please present the juror.
18 THE CLERK: Defense?
19 MR. BELLAMY: Seat Ms. Floyd.
20 THE CLERK: Please be seated in the jury box.
21 213, Douglas Madaga. 213, Douglas Madaga. What say
22 the State?
23 MS. VON HERRMANN: Please present the juror.
24 THE CLERK: Defense?
25 MR. BELLAMY: We would excuse the juror in the trial

1 of this particular case.

2 THE CLERK: You're excused from this particular
3 case.

4 294, Lacy Sellers. What say the State?

5 MS. VON HERRMANN: Please excuse the juror from the
6 trial of this case.

7 THE CLERK: You're excused from this particular
8 case.

9 227 Shenika McIntyre. What say the State?

10 MS. VON HERRMANN: Please excuse the juror from the
11 trial of this case.

12 THE CLERK: You're excused from this particular
13 case.

14 60, James Cannon. What say the State?

15 MS. VON HERRMANN: Please present the juror.

16 THE CLERK: Defense?

17 MR. BELLAMY: We would excuse Mr. Cannon from the
18 trial of this particular case.

19 THE CLERK: You're excused from this particular
20 case.

21 370, Arline Elston. What say the State?

22 MR. BELLAMY: What was that number again, Madam
23 Clerk?

24 THE CLERK: 370.

25 MS. VON HERRMANN: Mr. Bellamy, it's 107 on our

1 list.

2 THE CLERK: What say the State?

3 MS. VON HERRMANN: Please present the juror.

4 THE CLERK: Defense?

5 MR. BELLAMY: Seat Ms. Elston.

6 THE CLERK: Please be seated in the jury box.

7 303, David Singleton. What say the State?

8 MR. BELLAMY: What was the number, Madam Clerk? I'm
9 sorry.

10 THE CLERK: 303.

11 MS. VON HERRMANN: Please present the juror.

12 THE CLERK: Defense?

13 MR. BELLAMY: Seat Mr. Singleton.

14 THE CLERK: Please be seated in the jury box.

15 154, Chelsie Hauck. What say the State?

16 MS. VON HERRMANN: Please present the juror.

17 THE CLERK: Defense?

18 MR. BELLAMY: We would excuse Ms. Hauck from the
19 trial of this particular case.

20 THE CLERK: You're excused from this particular
21 case.

22 246, Elizabeth Newbigging. What say the State?

23 MS. VON HERRMANN: Please excuse the juror from the
24 trial of this case.

25 THE CLERK: You're excused from this particular

1 case.

2 302, Teresa Simon. What say the State?

3 MS. VON HERRMANN: Please excuse the juror from the
4 trial of this case.

5 THE CLERK: You're excused from this particular
6 case.

7 281, Sirrena Riotto. What say the State?

8 MS. VON HERRMANN: Please present the juror.

9 THE CLERK: Defense?

10 MR. BELLAMY: Seat the juror, please.

11 THE CLERK: Please be seated in the jury box.

12 83, Thomas Curry. What say the State?

13 MS. VON HERRMANN: Please present the juror.

14 THE CLERK: Defense?

15 MR. BELLAMY: Seat Mr. Curry.

16 THE CLERK: Please be seated in the jury box.

17 337, Joseph Trombino, Jr. What say the State?

18 MS. VON HERRMANN: Please present the juror.

19 THE CLERK: Defense?

20 MR. BELLAMY: We would excuse Mr. Trombino from the
21 trial of this particular case.

22 THE CLERK: You're excused from this particular
23 case.

24 138, Shanna Graham. What say the State?

25 MS. VON HERRMANN: Please present the juror.

1 THE CLERK: Defense?

2 MR. BELLAMY: Seat Ms. Graham.

3 THE CLERK: Please be seated in the jury box.

4 103, Donald Edwards. What say the State?

5 MS. VON HERRMANN: Please present the juror.

6 THE CLERK: Defense?

7 MR. BELLAMY: Excuse Mr. Edwards in the trial of
8 this particular case.

9 THE CLERK: You're excused from this particular
10 case.

11 264, Chad Port. What say the State?

12 MS. VON HERRMANN: Please present the juror.

13 THE CLERK: Defense?

14 MR. BELLAMY: We would excuse Mr. Port from the
15 trial of this particular case, Your Honor.

16 THE CLERK: You're excused from this particular
17 case.

18 309, Shirley Smothers. What say the State?

19 MS. VON HERRMANN: Please present the juror.

20 THE CLERK: Defense?

21 MR. BELLAMY: Seat Ms. Smothers.

22 THE CLERK: Please be seated in the jury box.

23 11, Angela Archambault. What say the State?

24 MS. VON HERRMANN: Please present the juror.

25 THE CLERK: Defense?

1 MR. BELLAMY: Is it Archambau?

2 THE CLERK: Archambault.

3 MR. BELLAMY: Please present Ms. Archambault. Thank
4 you.

5 THE CLERK: Please be seated in the jury box.

6 231, Pamela Melhorn Richard. What say the State?

7 MS. VON HERRMANN: Please present the juror.

8 THE CLERK: Defense?

9 MR. BELLAMY: We would excuse Ms. -- is it Richard
10 Melhorn?

11 THE CLERK: Melhorn Richard.

12 MR. BELLAMY: Melhorn Richard. Thank you.

13 THE CLERK: You're excused from this particular
14 case.

15 1, Eugene Abercrombie. What say the State?

16 MS. VON HERRMANN: Please present the juror.

17 THE CLERK: Defense?

18 MR. BELLAMY: We would excuse Mr. Abercrombie in the
19 trial of this particular case.

20 THE CLERK: You're excused from this particular
21 case.

22 58, Doris Campbell. What say the State?

23 MS. VON HERRMANN: Please present the juror.

24 THE CLERK: Defense?

25 MR. BELLAMY: Seat Ms. Campbell.

1 THE CLERK: Please be seated in the jury box.

2 THE COURT: We're going to have two alternates.

3 They will be one and two on the alternates.

4 THE CLERK: 367, Sharon Young. What say the State?

5 MS. VON HERRMANN: Please present the juror.

6 THE CLERK: Defense?

7 MR. BELLAMY: We would excuse Ms. Young from the
8 trial of this particular case, Your Honor.

9 THE CLERK: You're excused from this particular
10 case.

11 130, Cynthia Gilbert. What say the State?

12 MS. VON HERRMANN: Please present the juror.

13 THE CLERK: Defense?

14 MR. BELLAMY: We would excuse Ms. Gilbert from the
15 trial of this paragraph case.

16 THE CLERK: You're excused from this particular
17 case.

18 225, Barbara McDowell. What say the State?

19 MS. VON HERRMANN: Please present Ms. McDowell.

20 THE CLERK: Defense?

21 MR. BELLAMY: Seat Ms. McDowell, please.

22 THE CLERK: Please be seated in the jury box.

23 THE COURT: All right, Ms. McDowell, if you'll
24 please remember you're an alternate in this particular
25 case.

1 As to the next alternate, it's again one and two.

2 THE CLERK: 157, James Hearl. What say the State?

3 MS. VON HERRMANN: Please present the juror.

4 THE CLERK: Defense?

5 MR. BELLAMY: Seat Mr. Hearl.

6 THE CLERK: Please be seated in the jury box.

7 THE COURT: All right, Mr. Hearl, you are also an
8 alternate in this particular case, sir.

9 All right, any objections to the jury as empaneled
10 from the State?

11 MS. VON HERRMANN: No, Your Honor.

12 THE COURT: From the Defense?

13 MR. BELLAMY: Your Honor, if I might have just a
14 moment to confer with my client.

15 THE COURT: Yes, sir.

16 MR. BELLAMY: Your Honor, might we approach?

17 THE COURT: Yes, sir.

18 (A Bench conference was held in the presence, but out
19 of the hearing, of the jury.)

20 THE COURT: All right, ladies and gentlemen of the
21 panel, if you would go to your jury room, please. The
22 Bailiff will take the jury to the jury room, please.

23 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF**
24 **THE JURY, BUT IN THE PRESENCE OF THE JURY PANEL.)**

25 THE COURT: All right, ladies and gentlemen of the

1 jury panel, I have a matter of law that I have to take up
2 with the lawyers, so I'm going to ask that y'all go to
3 basically the rooms that are outside of the courthouse, in
4 the hallway. There are some waiting rooms that are over
5 there. The deputies will show you where those rooms are,
6 so if y'all will go there. Please don't go anywhere
7 because I'm going to have to call you back into the
8 courtroom, so if you will go with the deputy to those
9 waiting rooms, please. Thank you:

10 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF
11 THE JURY AND THE JURY PANEL.)

12 THE COURT: All right, Mr. Bellamy, I'll be glad to
13 hear from you, sir.

14 MR. BELLAMY: May it please the Court, Your Honor.
15 We would make a motion based on Batson as the State struck
16 two African-American jurors in this particular case, and
17 we believe that possibly to be improper and ask that the
18 State give a race-neutral reason for that.

19 THE COURT: All right, sir, and which jurors are
20 you ---

21 MR. BELLAMY: 115 is the first one, and I'm going
22 through, Judge, trying to find the second one.

23 MS. VON HERRMANN: We sat 115.

24 MR. BELLAMY: All right, I'm sorry.

25 THE COURT: 115 is on the jury.

1 MR. BELLAMY: So that one is on the jury.

2 MS. VON HERRMANN: That one is on the jury.

3 MR. BELLAMY: Give me just a second, Judge.

4 THE COURT: 227; it's 227 and ---

5 MS. VON HERRMANN: 302.

6 THE COURT: --- 302.

7 MR. BELLAMY: Yes, sir, Judge.

8 THE COURT: All right, 227 is Ms. Shenika L., I
9 guess, McIntyre, and then Juror Number 302 is Teresa A.
10 Simon, so let's start with Juror Number 227, Solicitor.

11 MS. VON HERRMANN: Yes, sir, Your Honor. Juror
12 Number 227 is unemployed and also lives in the Burgess
13 Community. The facts of the case that we're going to have
14 presented here all took place around that Burgess
15 Community, and I struck her for those two reasons,
16 unemployed and living in the Burgess Community.

17 THE COURT: All right, very good, all right, and
18 what about ---

19 MS. VON HERRMANN: With regard to 302, when we were
20 downstairs and the entire panel was being qualified, she
21 was asked the -- she was asked a question about her
22 employment and seemed to have trouble answering that
23 question. She was asked by the Clerk if she was employed
24 and she said that she was single. I have some concerns
25 about her ability to comprehend what's going on.

1 THE COURT: All right, very good. I think
2 eventually she answered that she doesn't work, and I think
3 your recollection is correct when she first -- she never
4 said her employment. When the Clerk asked her, she again
5 answered that she was not married, and the Clerk had to
6 ask again, and then she said, "Don't work."

7 All right, the State in this particular matter, the
8 Court believes, has offered a race and gender-neutral
9 explanation as to these two particular jurors. The Court
10 finds that the underlying -- or the reason offered by the
11 State does not violate the Batson restrictions in this
12 particular matter. What would the -- I would turn to you,
13 Mr. Bellamy, then to any evidence that you have that the
14 State's explanation is a mere pretense or pretextual as
15 far as the explanation given by the State in this
16 particular matter.

17 MR. BELLAMY: No, sir, Your Honor.

18 THE COURT: All right, very good. Again, under
19 Batson v. Kentucky, I do find that the State did strike
20 similar individuals that were unemployed, going by the
21 answers given by the particular jurors and find also,
22 again, that the explanations given by the State are
23 proper, are race-neutral, and are not merely pretextual in
24 excusal. Therefore, I would find that there is no Batson
25 v. Kentucky or J.E.B. v. Alabama violation in this

1 particular matter.

2 Anything further from the Defense at this point in
3 time?

4 MR. BELLAMY: No, sir, Your Honor.

5 THE COURT: All right. Deputy, could y'all ask the
6 jury panel to come back in, please.

7 (THE JURY PANEL ENTERS THE COURTROOM.)

8 THE COURT: All right, ladies and gentlemen, I have
9 resolved the issue of law we had to take up outside of
10 your presence. Based upon that, I'm going to accept the
11 jury as empaneled in this particular matter. Therefore,
12 I'm going to be able to excuse you for the balance of
13 today. I told the other jurors that were not selected to
14 come up for this process to call back tomorrow after 6:00
15 P.M., so I will have you follow those same instructions.
16 Call back tomorrow that juror information line. Call that
17 tomorrow after 6:00 P.M. Follow those instructions,
18 whatever they may be at that point in time. With that,
19 you are now excused. Thank you very much.

20 Madam Clerk, if you would ask the jury to come back
21 in, please.

22 (THE FOLLOWING TAKES PLACE IN THE PRESENCE OF THE
23 JURY.)

24 THE COURT: All right, ladies and gentlemen, what
25 I'm going to do is ask that you -- in a minute, I'm going

1 to ask that you go back to your jury room and do one thing
2 before I excuse you for the balance of today, because
3 we're going to start the testimony of this case tomorrow.
4 There's some matters of law in this particular case I have
5 to take up this afternoon. There's no sense in y'all
6 sitting there waiting for me to do that, so we'll start
7 the testimony tomorrow morning, but before I excuse you,
8 I'm going to ask that you go back to your jury room and
9 select your foreperson for this particular jury, so let me
10 tell you very briefly what the foreperson's duties and
11 responsibilities are during a trial.

12 If we're here in the courtroom and the foreperson
13 needs the Court to give some attention to some matter that
14 the jury has found, like the witnesses need to speak up,
15 or the lawyers need to speak up, or whatever the matter
16 is, basically the foreperson will raise their hand and get
17 the Court's attention, and we'll handle that matter,
18 whatever it is.

19 Now, if you're back in the jury room and some issue
20 comes up and the jury needs some attention, then the
21 foreperson has got to take out the pad and pen that's
22 provided over there, write out a note, sign it, get it to
23 Bailiff, and then that note will come to me, and again,
24 we'll handle the matter, whatever it is.

25 That's during the evidentiary portion of the trial.

1 When we are -- when we have concluded the evidentiary
2 portion of the trial, that is all the witnesses have
3 testified, all the documents or exhibits have been
4 introduced, whatever they may be, and we've heard the
5 closing arguments of the attorneys, and I've given you the
6 law that you're going to apply to the facts as you so find
7 them to be in this case, and I send the case to you for
8 your deliberation and your unanimous decision in this
9 particular matter, the foreperson's duties and
10 responsibilities change in this regard.

11 You're going to act like the chairman at a meeting.
12 An important duty that the foreperson has is to make sure
13 that everybody that wants to has an opportunity to speak,
14 everybody's voice has an opportunity to be heard on the
15 ultimate issue to be decided. Now, as to that ultimate
16 issue to be decided as to the verdict in this particular
17 case, the foreperson's voice and vote carries no more
18 weight than any other member of the jury. Everybody is on
19 an equal plane in that regard, but somebody needs to be in
20 charge and, if necessary, guide the discussions, if
21 necessary.

22 The final duty and responsibility of the foreperson
23 is once the jury has well and truly deliberated in this
24 case and reached its unanimous decision on this particular
25 matter, the foreperson is going to take the verdict form

1 that the Court is going to provide to you and the
2 foreperson is going to check the appropriate block or
3 write the appropriate word and thereafter sign their name
4 as the foreperson indicating that this indeed is the
5 unanimous verdict, it is the verdict of everybody, the
6 unanimous verdict of the jury in this particular case, so
7 understanding the duties and responsibilities of the
8 foreperson, I'm going to ask that you go back to the jury
9 room, select that foreperson, knock on the door, let the
10 -- let the Bailiff know who the foreperson is, and at that
11 point in time, then we'll ask that you be back tomorrow
12 morning at 9:30, in your jury room by tomorrow morning at
13 9:30. We're going to start the trial at that point in
14 time as far as the evidentiary portion of it.

15 Now, the two alternates, Mr. Hearl and Ms. McDowell,
16 y'all can vote on the foreperson, but obviously being the
17 alternates, the two of you cannot be the foreperson, okay,
18 so if y'all will go back, select your foreperson, knock on
19 the door and let the Bailiff know. Thank you.

20 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF**
21 **THE JURY.)**

22 THE COURT: All right, before we break for lunch, is
23 there anything from the State at this point in time?

24 MS. VON HERRMANN: No, nothing, Your Honor.

25 THE COURT: From the Defense?

1 MR. BELLAMY: No, sir, Your Honor.

2 THE COURT: All right, very good. If y'all will be
3 back -- let's be back at 2:15, please. If y'all will be
4 back at 2:15 and we'll go forward with the motions at that
5 point in time.

6 MS. VON HERRMANN: Thank you, Your Honor.

7 THE COURT: Thank you very much.

8 MR. BELLAMY: Your Honor, ---

9 THE COURT: Yes, sir.

10 MR. BELLAMY: We need to let Anita know to be here
11 at 2:15, Anita.

12 THE COURT: I'm sorry, Mr. Bellamy; is your client
13 out on bond at this point in time?

14 MR. BELLAMY: He is, Your Honor.

15 THE COURT: All right. Have you communicated with
16 the bonding agency to make sure that they will stay ---

17 MR. BELLAMY: I have, Your Honor, and it's J.B.
18 Bonding. I talked to him this morning. He indicated that
19 he would be willing to stay on the bond, Judge.

20 THE COURT: All right. Mr. Beaty, if you would
21 stand up for me, please, sir. (Mr. Beaty stands.) All
22 right.

23 Now, let me explain a couple of things to you. Your
24 attorney has made a request that you stay out on bond
25 during the course of the trial until the matter is

1 submitted to the jury. Once the matter is submitted to
2 the jury, you will be in the custody and control of the
3 deputy sheriffs at that point in time, but up until that
4 point, the attorneys may either request to let you stay
5 out on bond.

6 Now, if I let you do that, it's under these terms.
7 One, you understand that it's in your best interest to be
8 here to help your attorney defend this case?

9 MR. BEATY: Yes, sir.

10 THE COURT: This trial will go on whether or not you
11 are here. It has been called for trial. It's for trial.
12 We are proceeding to trial at this point in time. If you
13 do not come back at the appointed time, the trial will
14 proceed in your absence. Do you understand that?

15 MR. BEATY: Yes, sir.

16 THE COURT: All right, sir. Also, obviously if you
17 don't come back when you are supposed to, a bench warrant
18 will be issued for arrest and the law enforcement will
19 pick you up and then you will be in custody until a
20 verdict is rendered in this particular matter. You
21 understand that?

22 MR. BEATY: Yes, sir.

23 THE COURT: All right, sir. Further, I'm directing
24 you and giving you a direct order that you must come back
25 each and every time the Court tells you to come back, so

1 at this point in time it's going to be at 2:15 you must
2 come back. If you disobey that direct order of the Court,
3 and that is each and every time I tell you that the time
4 is to come back at a certain time, that -- and you fail to
5 come, besides these other things that we've talked about,
6 you could then be held in contempt of court for disobeying
7 a court order.

8 Notwithstanding whatever the jury may decide in this
9 particular matter, there would be a separate proceeding
10 held to see whether or not you would be held in contempt
11 of court for which you could be sent to the Department of
12 Corrections for a period of one year for not obeying the
13 Court's order. Do you understand that?

14 MR. BEATY: Yes, sir.

15 THE COURT: Therefore, under these terms and
16 conditions, I'm going to allow you to stay out on bond
17 since the bonding agency is going to stay out -- stay on
18 your bond during this time.

19 All right, anything else?

20 MS. VON HERRMANN: Nothing from the State.

21 MR. BELLAMY: No, sir.

22 THE COURT: All right. See y'all back at 2:15 then.

23 (OFF THE RECORD)

24 ON THE RECORD

25 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF

1 the date that they discovered the victim's body, but the
2 incident itself took place on the 20th. I'd just like to
3 amend that indictment. I certainly don't think that it
4 changes the nature of the offense or anything that would
5 deprive the Defendant of notice or prejudice him in any
6 way, and I would just ask the Court to make that amendment
7 so as not to cause any confusion down the road.

8 THE COURT: All right, very good.

9 All right, Mr. Bellamy, does the Defense have any
10 objection to that?

11 MR. BELLAMY: We would object to that, Judge. It
12 talks about the killing occurring on a specific date, and
13 obviously the evidence in this case as it's presented
14 would indicate another date, but we would not -- we would
15 object to it, Judge, for the record.

16 THE COURT: All right. As the Supreme Court has
17 dealt with the issues in Gentry and in other cases, the
18 indictment being a notice document, a typographical error
19 or error as set forth, number one, doesn't divest the
20 Court of jurisdiction certainly regarding this particular
21 matter. Notice was certainly given and more than the
22 necessary information was set forth in the two indictments
23 for the Defendant to know what it was he was charged with
24 and for the Defendant to know what he was to defend.
25 Whether or not the matter as alleged happened on the 21st

1 or the 20th, there is no information the Defense has given
2 to me of any prejudice caused by this, that it interferes
3 with their defense in any way, that it surprised them
4 regarding the date regarding the alleged offense.

5 Therefore, I find that the motion by the State to amend
6 the indictment to change the date from the 21st to the
7 20th -- and that would be on both indictments, is that
8 correct, Solicitor?

9 MS. VON HERRMANN: That's correct, Your Honor.

10 THE COURT: So that it would say that Tyrone Beaty
11 did in Horry County on or about the 20th day of October
12 either wilfully, feloniously, intentionally killed the
13 victim or while armed with a deadly weapon did take and
14 carry away the personal property?

15 MS. VON HERRMANN: Yes, sir.

16 THE COURT: All right, very good. That is so
17 granted.

18 MS. VON HERRMANN: Thank you, Your Honor.

19 THE COURT: All right, Mr. Bellamy.

20 MR. BELLAMY: May it please the Court, Your Honor.
21 Before I get to the -- I guess the larger motion that I
22 have here, I think there's a couple of things that we can
23 probably put on the record.

24 I had made a motion concerning some phone records and
25 the way that they had been obtained. I think that issue

1 is moot at this point as the Solicitor has indicated that
2 she does not intend to introduce those records.

3 THE COURT: Is that correct, Solicitor?

4 MS. VON HERRMANN: That is correct.

5 THE COURT: All right, very good, so that issue is
6 resolved.

7 MR. BELLAMY: All right. The other issue, and the
8 Solicitor, I think, may have mentioned this, is that we
9 would have a stipulation as to a particular chemist report
10 from the State Law Enforcement Division involving drugs
11 and some weight, but that we would be able to stipulate to
12 that to avoid the two or three witnesses that that would
13 create.

14 THE COURT: All right, and that's your understanding
15 also, Solicitor?

16 MS. VON HERRMANN: That's correct.

17 THE COURT: All right, very good. All right.

18 MR. BELLAMY: Next, Judge, the Solicitor and I had
19 discussed I was going to make a motion to sequester the
20 witnesses. She has, I believe, agreed to that with the
21 exception of there are two sort of lead detectives, John
22 Lewis and Todd Cox, and that she may interchange one or
23 other of those to be in the courtroom depending on, I
24 guess, where she is in her case or what she would need,
25 and I would have no objection to those two -- one of those

1 being in the courtroom, not both, and that if she needed
2 to interchange them, we have no objection to that.

3 THE COURT: All right, and other than that, then,
4 there would be the witnesses, either State or Defense,
5 would be sequestered?

6 MR. BELLAMY: Yes, sir, Your Honor.

7 MS. VON HERRMANN: Yes, sir.

8 THE COURT: All right, so ordered. All right.

9 MR. BELLAMY: And lastly, Judge, I know we had a
10 brief pre-trial about this this morning. I would make a
11 motion, and by way of history so this is on the record,
12 the situation in this particular case is that the victim
13 in this case, Miles Slay, was found deceased on October
14 21st, 2005. There was an investigation involving that
15 death. He was found shot.

16 There was two people identified as having been with
17 him prior to his death and seeing him leave with a
18 particular individual that night, and being this person,
19 Mr. Corey Smalls, being the last person to be seen with
20 the victim while the victim was alive, the police through
21 their investigation got in touch with Mr. Corey Smalls
22 based on that information from these two people who saw
23 the victim leave with Mr. Smalls, brought him in for an
24 interview, and the interview was tape-recorded, video-
25 taped and audio-tape-recorded, and during that interview

1 at the very beginning of the interview when the process is
2 starting, even prior to Miranda being given, the
3 Defendant, -- and he is a co-defendant in this case also
4 charged with murder and armed robbery, the co-defendant,
5 Mr. Corey Smalls, who I would for the record indicate is
6 in the courtroom with his attorney, Ms. Anita Floyd, but
7 prior to even Miranda being given, Mr. Smalls invokes his
8 right to counsel and asked for an attorney and for his
9 father.

10 The two detectives in the room, being John Lewis and
11 Detective Todd Cox, Detective Lewis remains in the room;
12 Detective Cox leaves the room, returns minutes later
13 indicating that, "Well, you don't have a lawyer. You
14 didn't pay him, so we're going to go on and go about this
15 and see where it goes."

16 THE COURT: Okay. That was an individual that was
17 different than Ms. Floyd? She was not the ---

18 MR. BELLAMY: That's correct; that's correct, Judge,
19 yes. Ms. Floyd was not involved at that point, and let me
20 back up just to make sure the record is clear.

21 There is a separate attorney that represents Mr.
22 Corey Smalls on unrelated charges, I believe, in
23 Georgetown County or outside of this county. That
24 attorney apparently took Mr. Corey Smalls to the Horry
25 County Police Department, dropped him off, and left,

1 leaving Mr. Corey Smalls there. There in the interview
2 room, during the interview, even again before Miranda is
3 even given, he invokes his right to counsel, asked for his
4 lawyer.

5 The police -- Detective Cox, I believe, walked out of
6 the room, returned, and said, "You haven't paid him. You
7 know, he's not coming in here, but we're going to go on
8 and get about it," and, of course, it's on video tape if
9 Your Honor needs to review that.

10 THE COURT: All right, sir.

11 MR. BELLAMY: They do go on and indicate -- and take
12 a statement which is approximately four to five hours in
13 length, which again is audio and video-taped, and well --
14 and as an aside, there's a second point in the statement
15 where he invokes his right to counsel, and the interview
16 continues even after that for at least an hour, hour and a
17 half, but during this interview, Judge, he, up until this
18 point in the investigation, my client, Mr. Tyronne Beaty,
19 nor Mr. Antonio Smalls, nor Mr. Neil Hill, who are the
20 four co-defendants, have been mentioned by anybody. The
21 only person that they are a person of interest would be
22 Mr. Corey Smalls.

23 During his interview, Mr. Corey Smalls begins to
24 implicate after some period of time, but implicates my
25 client, Mr. Antonio Smalls, and Neil Hill, also then gives

1 them a lot of information about other people that they may
2 want to speak to, places they may want to go to secure
3 video tapes and surveillance, things of that nature.

4 Subsequent to that interview, which again was about
5 five hours, -- and let me say this: Mr. Corey Smalls at
6 the time was in custody. There was an arrest warrant
7 which was issued the day before for him for murder, so he
8 was in custody at the time.

9 Subsequent to that, the police then taped the
10 information that they obtained in that statement and go to
11 questioning all -- any manner -- number of people,
12 securing video tapes and doing other things as a result of
13 that interview with Mr. Corey Smalls.

14 It is my position and my motion, Your Honor, that any
15 and everything that was learned by law enforcement, by the
16 State, in that statement be suppressed as being fruit of
17 the poison- -- number one, that if the Court would review
18 this video tape and determine if the Court did determine
19 that the statement was done in violation of his Sixth
20 Amendment right to counsel, then everything that follows
21 from that statement would therefore be excluded, including
22 any information that would have been secured that allowed
23 them to go to other people and get lawful -- what would
24 otherwise be lawful information.

25 And Judge, I would say while there is case law that

1 says that only the person whose rights have been violated
2 can challenge that violation, in essence what the State
3 would be allowed to do in this case is obtain a statement
4 in violation of the Sixth Amendment, to get all that
5 information, and then come here and say, "Well, we're not
6 going to call his case for trial today," so, therefore,
7 there's no one who can make that motion to exclude it, and
8 we're going to try these other people, even though the
9 statement is not valid and should never have been taken,
10 we're going to take all that information and go gather
11 other information," or analogous to "We can break into
12 someone's house or go in with an invalid search warrant,
13 get information about all these other people and then go
14 prosecute them," but never pursue anything against the
15 owner of the home, thereby depriving my client of the
16 opportunity to challenge that statement.

17 We believe that fairness and due process should allow
18 Mr. Tyrone Beaty to challenge this statement as being in
19 violation of the Sixth Amendment. It should have never
20 happened. It did, and we can't unring the bell, so to
21 speak, but quite frankly, the evidence in this case is
22 substantially against at least my client, Tyrone Beaty,
23 and the other co-defendants, not necessarily Mr. Corey
24 Smalls, is all flows from this one statement. They have
25 no idea about Tyrone Beaty at the time they take this

1 statement, and I would say that because it is in violation
2 of the Sixth Amendment, it deprives my client of any due
3 process to allow that statement and everything derived
4 from it. This would allow the State to go unfettered and
5 obtain illegal statements and then say, "Well, we're not
6 going to prosecute that guy, but we're going to take all
7 this information and get everybody else."

8 I would ask the Court to review the video, and
9 there's three video tapes. I have -- the relevant one
10 would be the beginning video tape. Most of it is just
11 banter back and forth, and the other ones, but the first
12 video tape, I would ask the Court to review that to
13 determine if there has been a violation of Mr. Corey
14 Smalls' Sixth Amendment right to counsel. Again, he's not
15 on trial here this week, so I'm not sure even if he wanted
16 to that he would have a right in the trial of Tyronne
17 Beaty to even challenge that statement because he's not on
18 trial here today, but I do not think that should deprive
19 my client of the opportunity to have suppressed evidence
20 which was improperly obtained from police officers, and
21 let me go on to say this: I don't have information that
22 Detective Cox or Detective Lewis did anything but make a
23 mistake. They -- in my opinion, they made a mistake.

24 They should have terminated the interview at the
25 point he invoked his right to counsel. They did not, so

1 I'm not here suggesting that there's some, you know, plan,
2 or plot, or conspiracy between them necessarily, but in
3 effect, that's what happened. The interview should have
4 been terminated. It was not, and everything that followed
5 after should be suppressed on behalf of my client, Mr.
6 Tyronne Beaty. Thank you.

7 THE COURT: All right. Now, as I understand it, and
8 it's your information that Mr. Corey Smalls is going to
9 testify in this case against your client, Mr. Tyronne
10 Beaty, correct? That's your information and you
11 understand it?

12 MR. BELLAMY: Yes, as of right now, that's my
13 understanding, Judge.

14 THE COURT: All right, that he would so testify and
15 obviously be open to cross examination as to all relevant
16 issues as to whether or not why he gave the statement,
17 under the circumstances of the statement is he getting any
18 benefit from it, but all that would be available to you at
19 that point in time, correct?

20 MR. BELLAMY: Yes, sir. Yes, sir, Your Honor.

21 THE COURT: And if it's not your understanding that
22 what we have here is what the police officers are going to
23 attempt to talk about, it's going to be coming straight
24 from that other co-defendant, Mr. Smalls, who is going to
25 come into Court under oath and so testify, correct?

1 MR. BELLAMY: Yes, sir, Your Honor, not that they're
2 trying to introduce the tape of the previous statement or
3 the officers do it, but he would be here live.

4 THE COURT: All right, very good.

5 All right, Solicitor, let me hear from you, please,
6 ma'am.

7 MS. VON HERRMANN: Thank you, Your Honor. I had
8 handed up to the Court some case law previously during our
9 pre-trial conference, and I'd just like to put the
10 citations for those cases on the record and talk about
11 them briefly.

12 The first is United States v. Benny Shaftner, and
13 it's 524 F.2d 1021. It was a 1975 case, and the holding
14 in that case was that a Defendant does not have standing
15 to object to the introduction of a confession of co-
16 defendants on the ground that it was not voluntarily
17 given. This case, Your Honor, is pretty much right on
18 point. The co-defendant in that case attempted to exclude
19 the -- the original Defendant's statement and say that the
20 things that came from that were fruit of the poisonous
21 tree, and the Court said that that co-defendant does not
22 have standing to raise that issue, that constitutional
23 arguments are person-specific and that those individuals
24 have the right to raise those issues and no one else, and
25 the Shaftner case, I think Your Honor has had an

1 opportunity to read.

2 Also, I handed up to the Court United States v.
3 Handley, 763 F.2d 1401. That case essentially says the
4 same thing. Defendant has standing to object on the
5 ground of the Fifth Amendment, self-incrimination
6 privilege, as to the admission of his own statements only,
7 also the established principles that the suppression of
8 the product of a Fourth Amendment violation can be
9 successfully urged only by those whose rights were
10 violated by the search itself, not by those who are
11 aggrieved solely by the introduction of damaging evidence.
12 Co-conspirators and co-defendants have not been accorded
13 special standing. That is quoted in this case, quoting
14 Alderman v. United States, and I also handed that case up
15 to the Court as well. The citation on Alderman, 394 U.S.
16 165.

17 I believe I handed up the Garlington case to the
18 Court also, 168 Georgia Appellate Court 264. That's a
19 2004 case, and that case reiterizes what the other cases
20 have said. Co-defendants statements, Garlington argues
21 that the trial court should have excluded his co-
22 defendants' statements because they did not waive their
23 Miranda rights, just like this case. Constitutional
24 rights are generally considered to be personal to the
25 accused and they must be asserted by the ones whose rights

1 are actually infringed. Therefore, Garlington lacked
2 standing to raise this error.

3 That, Your Honor, is the gist of my argument, and I
4 don't think that we either reach any of these other issues
5 because I don't believe Mr. Bellamy has standing to raise
6 the issue. However, if the Court would like to hear from
7 me about Mr. Smalls and what his intention is from this
8 point on to the future, I would be happy to -- to address
9 the Court as well.

10 THE COURT: All right. I don't think that's
11 necessary at this point in time. I want to stick with the
12 standing issue first, but Ms. Floyd, you are here
13 representing the interest of your client, Mr. Smalls, is
14 that correct, ma'am?

15 MS. FLOYD: Yes, sir.

16 THE COURT: All right, very good, and based upon
17 your representation of him, is it your understanding that
18 he will be called by the State as a witness in this matter
19 against Mr. Beaty, and his intention is to testify in that
20 particular case, is that correct?

21 MS. FLOYD: That's correct, Your Honor.

22 THE COURT: All right. You also not only regarding
23 the charges arising out of this issue, but you also
24 represent Mr. Smalls on other matters, other criminal
25 charges, that he is facing from the State of South

1 Carolina that are unrelated to this particular matter, but
2 are of a serious nature, is that correct?

3 MS. FLOYD: That is correct, Your Honor.

4 THE COURT: All right, ma'am. Have the -- has your
5 client and the State of South Carolina to your
6 understanding entered into any kind of proffer agreement
7 of any kind?

8 MS. FLOYD: He has, Your Honor.

9 THE COURT: All right, very good, and as a result of
10 that, he has agreed to testify for the State in this
11 matter against Mr. Beaty, is that right?

12 MS. FLOYD: Yes, sir.

13 THE COURT: All right, very good. One other
14 question; on behalf of Mr. Beaty regarding his testimony
15 in -- I'm sorry, on behalf of Mr. Smalls in this case
16 against Mr. Beaty, is your client, Mr. Smalls, as best you
17 can tell me right now intending to raise any
18 constitutional issues as to how he was questioned in this
19 matter or any constitutional issues as to his testimony in
20 this particular matter?

21 MS. FLOYD: Your Honor, I have discussed that in
22 detail, in great detail, with Mr. Smalls, and he has come
23 to the conclusion, and I concur, that to raise anything
24 would be irrelevant for his particular situation.

25 THE COURT: All right, and so he does not intend to

1 so raise the issue?

2 MS. FLOYD: Yes, that is correct, Your Honor.

3 THE COURT: All right, very good. Thank you, ma'am.
4 Anything else, Mr. Bellamy?

5 MR. BELLAMY: No, sir, Your Honor.

6 THE COURT: All right, very good. In addition to
7 the cases that were submitted to me by the Solicitor's
8 Office, I also will say for the record the Court also
9 examined a number of other cases, those being Lindley v.
10 The State. It's a Georgia case found at 264 S.E.2d 881.
11 Also, Sims v. State, a Georgia case found at 252 S.E.2d
12 501. Also, Thomas v. State, found at 45 S.E.2d 783. I
13 went back -- well, also, I examined certain North Carolina
14 cases besides the ones cited, those being State v. Ford at
15 323 S.E.2d 385, and I went back and looked besides the
16 Shaftner and Handley cases. The exclusionary rule in Matt
17 v. Ohio, found at 367 U.S. 643, 81 Supreme Court 1684, I
18 find that we have a threshold issue here that does not
19 call upon the Court to determine whether or not the rights
20 of another individual were violated.

21 I find that the Defendant, Mr. Tyrone Beaty, does
22 not have standing to object to the testimony of Mr. Smalls
23 in this matter based upon the Fourth, Fifth, or Sixth
24 Amendment to the Constitution of the United States of
25 America. This is an issue and a ruling by the Court that

1 a party will not be heard to complain of the violation of
2 another person's constitutional rights, again those being
3 under the Fourth, Fifth, and Sixth Amendment to the
4 Constitution of the United States, and, therefore, the
5 Court's ruling is Mr. Beaty does not have standing to
6 raise the issue and is not necessary, and the Court does
7 not make a determination as to whether or not Mr. Smalls'
8 rights were violated in this matter because that issue
9 cannot be brought to the Court's attention by Mr. Beaty.
10 Thank you very much.

11 MS. VON HERRMANN: Thank you, Your Honor.

12 MR. BELLAMY: Thank you.

13 THE COURT: Further motions on behalf of the
14 Defense?

15 MR. BELLAMY: No, Your Honor.

16 THE COURT: All right, very good. The jury is
17 coming back in tomorrow morning at 9:30. Counsel, I would
18 appreciate it if y'all would be here at least by 9:15 to
19 make sure that y'all are ready to go when the jury gets
20 here.

21 Mr. Beaty, obviously you came back from lunch. I am
22 giving you the same instructions I gave you earlier under
23 the conditions of your bond that you are to be present
24 tomorrow morning by 9:30, understanding again that the
25 trial will go on whether or not you are present, and all

1 the other things I told you about the bench warrant and a
2 potential contempt of court citation and hearing. Do you
3 understand that?

4 MR. BEATY: Yes, sir.

5 THE COURT: All right, very good. All right, we
6 will resume again tomorrow morning at 9:30.

7 Anything further from the State?

8 MS. VON HERRMANN: Nothing further, Your Honor.

9 THE COURT: Mr. Bellamy?

10 MR. BELLAMY: No, sir, Your Honor.

11 THE COURT: All right. Solicitor and Mr. Bellamy,
12 the exhibits or things that y'all wanted to mark, are you
13 going to be working with the Court Reporter on those?

14 MR. BELLAMY: Yes, sir.

15 THE COURT: Very good. Thank you.

16 VOIR DIRE FOR DEFENSE MARKED AS COURT'S EXHIBIT 1.

17 AERIAL PHOTOGRAPH MARKED FOR IDENTIFICATION AS

18 STATE'S EXHIBIT NUMBER 1.

19 TWO (2) PHOTOGRAPHS OF CAR MARKED FOR IDENTIFICATION AS

20 STATE'S EXHIBITS NUMBER 2 AND 3.

21 THREE (3) PHOTOGRAPHS MARKED FOR IDENTIFICATION AS

22 STATE'S EXHIBITS NUMBER 4, 5, AND 6.

23 SIX (6) SMALL PHOTOGRAPHS MARKED FOR IDENTIFICATION

24 AS STATE'S EXHIBITS NUMBER 7, 8, 9, 10, 11, AND 12.

25 FIFTEEN (15) PHOTOGRAPHS MARKED FOR IDENTIFICATION AS

1 STATE'S EXHIBITS NUMBER 13, 14, 15, 16, 17, 18,
2 19, 20, 21, 22, 23, 24, 25, 26, AND 27.

3 CASSETTE TAPE MARKED FOR IDENTIFICATION AS
4 STATE'S EXHIBIT NUMBER 28.

5 VIDEO MARKED FOR IDENTIFICATION AS STATE'S
6 EXHIBIT NUMBER 29.

7 FOOD LION RECEIPT MARKED FOR IDENTIFICATION AS
8 STATE'S EXHIBIT NUMBER 30.

9 THREE (3) PLASTIC BAGS MARKED FOR IDENTIFICATION
10 AS STATE'S EXHIBIT NUMBER 31.

11 SHELL CASINGS, EIGHT (8) BOXES AND ONE (1) VIAL,
12 MARKED FOR IDENTIFICATION AS STATE'S EXHIBIT
13 NUMBER 32.

14 ZIPLOC BAG WITH FLOUR MARKED FOR IDENTIFICATION
15 AS STATE'S EXHIBIT NUMBER 33.

16 PHOTOGRAPH OF DECEASED MARKED FOR IDENTIFICATION
17 AS STATE'S EXHIBIT NUMBER 36.

18 (OFF THE RECORD - End of Day)

19 TUESDAY, JULY 13, 2010

20 ON THE RECORD

21 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF
22 THE JURY.)

23 THE COURT: Going on now to the State versus Tyronne
24 Beaty, is the State ready for the jury to come in?

25 MS. VON HERRMANN: Your Honor, we do have two

1 matters that I think we need to place on the record prior
2 to the jury coming in. One is just simply that we had a
3 pre-trial conference with Your Honor back in chambers
4 regarding the clothing that was seized from the Sea Mist
5 Hotel. That clothing was seized shortly after the crime
6 was committed.

7 There was a presumptive test for blood and gunshot
8 residue which was performed in the past week on that
9 clothing. The test was -- it was negative for blood,
10 negative for GSR. After talking with Your Honor, I
11 believe that my understanding is that Mr. Bellamy will not
12 be waiving any issue with regard to the clothing not being
13 tested, or if he does raise that issue, that we will be
14 allowed to place that test into -- into evidence.

15 THE COURT: And I understand the Defense's position
16 was not to allow it because of the lateness of this,
17 balancing the interest of justice. If it's going to
18 become an issue raised by the Defense, then I would allow
19 the State to reply to it, but because of the lateness, I'm
20 not going to allow the State to make any reference to it
21 in any way in the presentation of the direct evidence.

22 If the Defense cross examines or if the Defense makes
23 it an issue in the Defendant's case in chief, then I'll
24 hear the State about bringing up those matters in reply.

25 Yes, sir, Mr. Bellamy.

1 MR. BELLAMY: And if I might, just to make sure I'm
2 clear so I don't -- would I be allowed to question the
3 fact that they did seize it, but go no further as to why
4 it was tested or anything like that?

5 THE COURT: Well, if you ask that, then they would
6 be able to -- I'm going to say they are now going to be
7 able to answer. They can explain why it took them how
8 many years. I don't know why it took them how many years
9 to do it from the time they seized it to when they did the
10 test, but we waited for all those many years, and now we
11 decided last week to do the test and this is what it
12 shows, I'll allow them to answer that.

13 MR. BELLAMY: I won't ask the question.

14 THE COURT: All right, very good.

15 MS. VON HERRMANN: The other matter that we have is
16 we brought before the Court yesterday is a potential
17 State's Exhibit. The Court asked us to reproduce those in
18 black and white, ---

19 THE COURT: Yes, ma'am.

20 MS. VON HERRMANN: --- if you want to look at those,
21 and I'd like to hand those up and. ---

22 THE COURT: Okay, and you showed those to Mr.
23 Bellamy in black and white?

24 MS. VON HERRMANN: I have.

25 THE COURT: All right.

1 MR. BELLAMY: May I approach, Judge, so I can tell
2 which one that we're referring to?

3 THE COURT: Yes, please. Absolutely. Okay, these
4 haven't been marked.

5 (An off-the-record conference was held at the bench with
6 the Court.)

7 THE COURT: All right, looking at State's Exhibit
8 34, the Defense's objection was to the extraneous -- what
9 the Defendant's statement was, the extraneous matter as to
10 apparently the blood off to the side. I find that making
11 the photograph black and white has lessened any prejudice,
12 if there was any prejudice, to the Defendant in this
13 particular matter, and I find that 33 is a proper exhibit
14 to be allowed in evidence, assuming that it's properly
15 identified by the State, to show the bullet that was
16 recovered as set forth in this photograph as shown in
17 connection to this particular crime and the weapon.

18 Did y'all do tests on these bullets?

19 MS. VON HERRMANN: Yes, sir.

20 THE COURT: On all these that you are showing, okay.
21 Again, regarding State's 37, I find that the Defendant's
22 objection to the other matters shown in here, whether it
23 be the blood or the other details, I find it is important
24 to the State's case and probably be allowed into evidence
25 showing where the bullets were found in the vehicle to tie

1 into the State's testing and testimony about those
2 particular bullets in this particular matter.

3 Assuming that the testimony would cover that
4 particular issue, I would find that 36 would be a proper
5 exhibit to be used, but you will need to tie it in, and
6 until it's tied in, if the photograph is previously
7 identified, it's not going to be shown to the jury until
8 we tie in the issue.

9 Okay, on 35, there's no objection to that one. All
10 right, thank you very much. With that, is the State now
11 ready for the jury?

12 MS. VON HERRMANN: Yes, sir, Your Honor.

13 THE COURT: Is the Defense ready for the jury?

14 MR. BELLAMY: Yes, sir, Your Honor.

15 THE COURT: All right, very good.

16 Ask the jury to come in, please.

17 **(THE FOLLOWING TAKES PLACE IN THE PRESENCE OF THE**
18 **JURY.)**

19 THE COURT: All right, good morning, ladies and
20 gentlemen. I trust you found everything to your
21 satisfaction when you came to the jury room this morning.

22 The first thing that's going to happen in this
23 particular case, that is the State of South Carolina
24 versus Tyronne Beaty, is the Clerk of Court is going to
25 administer your oath to you, so if you would, please, all

1 of you stand at this time.

2 (The jurors' oath is administered by the Clerk of
3 Court.)

4 THE COURT: If there is any member of the jury panel
5 that did not affirmatively take the oath as given by the
6 Clerk, if you would so indicate by raising your hand at
7 this time. (No response.) I find there is no response
8 from the jury as to that question. Therefore, the jury is
9 properly sworn in this particular matter.

10 Ladies and gentlemen, as I told you at the very
11 beginning, the State has brought these charges against the
12 Defendant, and those charges being the crimes of murder
13 and armed robbery. Because the State has brought these
14 charges against the Defendant, the burden of proof in this
15 matter is now and always throughout the entirety of this
16 trial, until all of you unanimously reach a decision, the
17 burden of proof remains on the State of South Carolina to
18 prove the Defendant guilty beyond a reasonable doubt.

19 It's an important rule of law that the Defendant is
20 presumed innocent. As he sits there right now, he is
21 presumed innocent and he stays that way until and if you
22 believe the State has produced to you sufficient evidence
23 which you believe and which convinces you beyond a
24 reasonable doubt of the guilt of the Defendant of the
25 crime or crimes charged.

1 The Defendant has nothing to show to you. The
2 Defendant has nothing to prove to you. In reality, the
3 Defendant need not be here because the State has to prove
4 the case. The State by the evidence it produces must
5 prove the guilt of the Defendant beyond a reasonable
6 doubt.

7 One of your jobs in this particular case will be to
8 weigh that evidence that the State produces, to judge that
9 evidence that the State produces, to judge the credibility
10 and believability of the witnesses that come before you in
11 this particular trial, to judge the credibility and
12 believability of any documents or evidence that is
13 presented to you in this particular trial, and when you
14 find that evidence which convinces you of its truth, you
15 take that evidence you find to be true and you weigh that
16 evidence against the State's burden to prove the Defendant
17 guilty beyond a reasonable doubt, and by your oath that
18 you just took, you have told me that you will follow this
19 and you will follow this rule and you will use that to
20 guide your decision in this matter. If you cannot do
21 this, you need to tell the Court now and I will remove you
22 from the jury because that is how all criminal cases, not
23 only here in this county and this state and the United
24 States are done. The State has the burden. The State has
25 to prove its case to you beyond a reasonable doubt.

1 Now, looking at that, how the case will proceed when
2 we get done with these opening statements, we'll have the
3 opening statements of the attorneys. Now, the opening
4 statements are not evidence, can't be considered by you as
5 evidence. They're important because they introduce the
6 case to you from the perspective of the State and the
7 Defense, but that's not evidence. That evidence will come
8 to you from the witness stand or documents and evidence
9 that will be introduced.

10 When we get done with the opening statements, we will
11 have the pads and pens for you so that you can take notes.
12 Now, I'm going to remind you about this, if you'll
13 remember about taking notes. Sometime when we have a
14 habit of taking notes, we're concentrating on the thing we
15 heard and we're making that note, and we're not paying
16 attention to the next question and answer that might be
17 equally or more important than the note that you're
18 taking, so please remember that, and please remember that
19 when you're discussing it in the jury room. Just because
20 somebody has something written down on a piece of paper,
21 you're guided by the collective wisdom of the jury in
22 those particular matters, not because somebody wrote
23 something down on a piece of paper, all right, not saying
24 it's unimportant, but you have to understand that you have
25 to listen to everybody's point of view and everybody's

1 wisdom on a particular issue.

2 We'll hear all the evidence in the case. When we get
3 done with the evidentiary portion of the case, we'll have
4 the closing arguments of the attorneys. The closing
5 arguments of the attorneys, again, are important. They
6 are each side's summation to you, but again, they're not
7 evidence. You've already heard that. That's their point
8 of view as to what they believe the evidence has shown to
9 you and ultimately what they're asking you to do as a
10 result of your unanimous verdict.

11 After that, I'm going to give you the law that you're
12 going to apply to the facts and evidence you find to be
13 true in this case, and then I'll submit the case to you
14 for your deliberations and your unanimous decision.

15 Until I send the case to you for your decision, your
16 unanimous decision in this matter, I'm going to ask you
17 to, number one, don't talk about the case and what you've
18 heard about the case with your fellow jurors until at the
19 end, because if you discuss it ahead of time, you're
20 probably doing so before you've heard all the evidence in
21 the case, before you know the law that you have to apply
22 to the facts that you find to be true, and also sometimes
23 when we speak an opinion, then it's sometimes hard to go
24 back and change your mind and say, "Well, gee, what I just
25 said was apparently wrong and now I believe X," so as best

1 you can, you're keeping an open mind, because you
2 understood, you've got to hear all the evidence. You've
3 got to know the law. Then you make your decision. Don't
4 make your decision ahead of time. That comes at the end,
5 and you'll have all the time you deem necessary to talk
6 about the case before you come to your unanimous decision
7 in this particular matter, so with that, I'm going to turn
8 it over to the lawyers for their opening statements in
9 this matter.

10 All right, Solicitor.

11 MS. VON HERRMANN: Thank you, Your Honor.

12 Love or money, that's why people kill one another,
13 for love or money, and this case is no exception. It
14 wasn't about love, but it was all about money. This is a
15 drug deal gone bad.

16 The victim in this case, Miles Slay, was a drug
17 dealer. He had Seventeen Thousand Dollars and he wanted
18 to go buy some cocaine. He called an individual named
19 Corey Smalls, who is also charged in this case, and we'll
20 hear from Mr. Smalls, and he said to Mr. Smalls, "I've got
21 this money and I want to buy some cocaine."

22 Mr. Smalls is a drug dealer. He didn't want to miss
23 out on this opportunity, but he goes and try to figure out
24 a way that he can come up with something close to a kilo
25 of cocaine, because Seventeen Thousand Dollars isn't quite

1 enough. He can't come up with the drugs, so what he does,
2 he calls Mr. Beaty, and he says, "Hey, Tyronne, this guy
3 has got this money and we need to get our hands on it,"
4 and so Tyronne doesn't have the money either, but he comes
5 up with a plan.

6 There's four of them, Mr. Beaty, Tyronne Beaty, and
7 his cousin, Neil Hill, Corey Smalls, and his cousin,
8 Antonio Smalls, and what they decide that they're going to
9 do is they're going to take some real cocaine that Tyronne
10 had and then they're going to go and they're going to get
11 some flour, and they're going to mix it up, they're going
12 to bag it up so that it looks like the appropriate amount.
13 They're going to take it to the guy; they're going to rip
14 him off, take his money, they're going to show him the
15 real stuff, they're going to hand him the fake dope, and
16 they're going to leave, but something went wrong, bad
17 wrong, in this case, because when they left to go and make
18 that drug transaction, Tyronne got out of the car and he
19 had a gun, and he took that gun and he went up to the
20 window of that car, and he took that money, and he shot
21 and he killed him, and he got in the car and left.

22 That's the testimony you're going to hear today and
23 tomorrow, and at the end of this case, I don't think
24 you're going to have any doubt in your mind that this is
25 another killing for money. Thank you.

1 THE COURT: All right, Mr. Bellamy.

2 MR. BELLAMY: May it please the Court.

3 THE COURT: Yes, sir.

4 MR. BELLAMY: Madam Forelady, ladies and gentlemen
5 of the jury, the Solicitor stood up here and told you what
6 you are going to hear, what people are going to say. I'm
7 not going to do that. I'll let people sit up there and
8 tell you. That's where the evidence comes from, there, so
9 I'm not going to go through what everybody is going to say
10 or not say, but there are some things I want to talk to
11 you about.

12 The Solicitor said, "It's just as simple as that," I
13 believe was her words. "At the end of the day, there
14 won't be any doubt." Well, I suggest to you it ain't
15 going to be as simple as that. It ain't going to be as
16 simple as that. This case at the end of the day for
17 ultimately the twelve of you, individually and
18 collectively as a jury, is going to be about trust, trust,
19 who do you trust or who do you believe, can you trust the
20 people the State is going to put up there to tell you
21 something.

22 Would you trust them if you were walking down the
23 street and they were trying to sell you something, for
24 something just a minor decision you might have to make,
25 because at the end of the day you're going to have to

1 judge, as His Honor has told you, the credibility of
2 people. Can you trust them? Would you trust them if you
3 had to make a sort of medium kind of decision in your
4 life? Would you trust them? And this week, you're going
5 to have to trust them with the very life of my client.

6 Would you make a decision, probably the biggest
7 decision that some of you may ever make? Would you trust
8 these people to make a decision in this courtroom? That's
9 what it's going to come down to, can you trust them.

10 I introduced myself a little bit earlier. My name is
11 Scott Bellamy. I'm an attorney. I practice here in
12 Conway. I've been in private practice just about fifteen,
13 sixteen years. One time, a long time ago, I sat at the
14 other table and was a prosecutor. I'm here today
15 representing Mr. Tyrone Beaty and his family. Tyrone
16 sits here today, along with his mother, his wife, child,
17 aunt, uncle, with his very life in your hands.

18 This is an important day for him, an important week.
19 It's important for the State, too, but my client's life
20 literally is in your hands.

21 MS. VON HERRMANN: Objection, Your Honor. May we
22 approach?

23 THE COURT: Yes.

24 (A Bench conference was held in the presence, but out
25 of the hearing, of the jury.)

1 MR. BELLAMY: I'll talk to you at this point about
2 some legal concepts, and His Honor went over some of them,
3 but I'd like to go back over some of them as well.

4 I'd like to talk about the burden of proof. The
5 burden of proof is on the State. A Defendant is never
6 required to prove or bring evidence in, because when the
7 State with all its resources, the local police, state
8 police, whatever, when the State decides they're going to
9 accuse me, you, or Mr. Beaty of something, no matter how
10 great the charge or how small, the State can't just bring
11 a document in that says, "I accuse," as His Honor read to
12 you the other day, yesterday. They have to bring
13 evidence, evidence that you can look at here, see, touch,
14 that proves something.

15 Did you hear what His Honor said just a minute ago?
16 Evidence is only good if it's believed, so putting
17 witnesses up or something in doesn't make it good
18 evidence, but it's only evidence if it's believed, but
19 they have that burden, and they have the burden to bring
20 everything to you, everything, and sometimes I submit to
21 you that cases are decided on the evidence brought or the
22 evidence not brought, what wasn't done, and I ask you to
23 keep these things in your mind as you listen to the
24 testimony, and that's what I'm asking you to do when I'm
25 going to talk to you here this morning, is things I want

1 you to be thinking about as you listen to the evidence,
2 and then at the end hopefully I can tie it all together
3 for you.

4 Now, there are going to be three people, the
5 Solicitor has already alluded to them, that are going to
6 testify in this case, and that's really the case. Now,
7 there's going to be some forensic evidence and some other
8 stuff, and all of it is important and I want you to pay
9 attention, because it's going to be important and it will
10 all tie together, but ultimately it will be three people,
11 and you are judging them; can you trust them?

12 And there's a couple of things I want to point out to
13 you and ask you to consider as you listen to them when
14 you're making that determination as to credibility,
15 trustworthiness, believability.

16 The first thing I'd say to you is -- and this doesn't
17 apply just here in the courtroom. This applies every day
18 in life. What does a person have to gain or lose? What's
19 their interest in telling you something? What's their
20 interest?

21 I'll tell you a story about that. When I was a
22 little boy, my grandmother, I stayed with her a good bit
23 of the time. I was about six or seven years old. I come
24 in one day, and I said, "Granny," I said, "I'm going to
25 trade my bike and get a magic ball. A boy about fourteen

1 years old down the road said this ball would do all kinds
2 of things, I could throw it to the moon, and I could do
3 all kinds of stuff; I could jump on it and fly," and she
4 sat me down, and I didn't understand it so much then, but
5 I do now, and she said, "He wants your bike." You've
6 always got to think about the interest of the person who
7 is telling you something as to whether you can believe it,
8 if they have something to gain or to lose, and I ask you
9 to consider that as you listen.

10 The second thing I ask you to consider when you
11 listen to them, what's their past? I've always been told
12 the past a lot of times is going to tell you what the
13 future is, because if you look at what somebody's done, a
14 lot of times that's going to tell you what they're going
15 to do. Are they good people or not good people? Listen
16 for that as you listen to their testimony, then testify.

17 The third thing I would ask you to consider as you
18 listen when you are judging this trustworthiness, have
19 they been forthright and honest consistently all along, or
20 have they not.

21 There's one thing I always heard. An old lawyer told
22 me this when I started practicing. He said if a client
23 tells you -- announces that they're going to tell you the
24 truth or announces that they have told you the truth,
25 they're probably lying to you, because you shouldn't have

1 to tell somebody, "Now, this is going to be the truth."
2 Listen for that.

3 And the last thing I want you to consider in judging
4 the credibility and trustworthiness of these witnesses, as
5 you listen to them, there's going to be certain things in
6 this case that we're going to know, that we won't -- that
7 Ms. Von Herrmann and I won't disagree on, certain things
8 that are known, and then there's going to be statements;
9 do the statements match what we know?

10 Now, there's not going to be any forensic evidence or
11 anything else that's going to tell you that my client,
12 Tyronne Beaty, as the Solicitor has told you, took a gun
13 out and shot and killed this man, and let me say this, let
14 me say this: I believe the family of Mr. Slay is here in
15 the courtroom. The Solicitor has described him as a drug
16 dealer. I don't know about all that, but he is dead;
17 ain't no question about it, and I in no way minimize the
18 loss of a human life for any reason, but it is no more
19 just to convict somebody who didn't do it just because
20 someone has died. We're not going to make it right by
21 convicting Tyronne Beaty because he's dead, as bad as that
22 is.

23 The next thing I want to talk to you about is the
24 presumption of innocence and what that means. His Honor
25 has told you, but I'd like to go over that just briefly.

1 I've had jurors -- and I sat on a big jury panel like
2 y'all were downstairs yesterday and everybody was standing
3 up telling where they worked and stuff like that, and
4 nobody ever picked me to be on a case, but I listened to
5 people talk and try to always figure out what's going on.

6 As I listened, what I heard was most people sort of
7 kind of thought, you know, the Defendant come and sat down
8 and the lawyer, they said, "Wonder what he did?" See,
9 they're already thinking he done it, "But, you know, he
10 probably did it. He wouldn't be here if he didn't do it.
11 The police charged him. The Judge is here, the
12 prosecutor. All these people looked at it. We wouldn't
13 be here if he didn't do it," and I think -- and that's not
14 a bad, you know, thing about any individual, but I think
15 human nature tells us sort of that.

16 That's the way we treat them, and I think if you look
17 at this rail here, and you looked at this as innocent, and
18 all the way down there at the other end at Madam Forelady
19 as guilty, most of us come -- and this is innocent and
20 that's guilty, and I guess right here in the middle would
21 be a don't know. Most of us probably come in somewhere
22 closer over here toward guilty. We might come in right
23 here, but where we should be or where he should be is he
24 didn't do it.

25 And jurors have asked, said, "Well, I don't know him.

1 I don't know this person. I don't know you. I don't know
2 any of these witnesses. How can I believe somebody didn't
3 do something when I don't know? Shouldn't I at least just
4 be in the middle, don't know?" The law says no, says
5 you've got to be there. So how do you do that? I'll tell
6 you. I'm sure everybody on this jury has a person in
7 their life, might be their cousin, might not be, might be
8 their wife, might not be, but somebody, could be your
9 preacher, your mama, whoever it is, that's important to
10 you, a person you've got the most faith and trust in in
11 this world, and you get a call today saying that person
12 has done something, might not be this, but something
13 illegal, bad, and the first thing that you say or think
14 is, "I'm not going to believe it. I don't believe it.
15 They're going to have to prove that to me."

16 Tyronne Beaty is that person this week in your life.
17 That's where you have to put him when you start out this
18 trial. "I won't believe it. They're going to have to
19 prove it and prove it beyond any reasonable doubt, not
20 probably, not might, not could have, beyond any doubt, and
21 that's where I want you to take -- start with Tyronne
22 Beaty this week. He is that person in your life.

23 And lastly, let me say this -- it might not be the
24 last. I have one more thing to say after this. Sometimes
25 in life and in this courtroom we sit here for days and

1 listen to testimony, and after all is said and done,
2 questions are asked, evidence put in, sometimes we don't
3 know. We don't know.

4 We've all had situations in our life when people have
5 told us something and we talked to two or three different
6 ones, and we just can't figure it out. We don't know what
7 the truth is, and sometimes that happens here in the
8 courtroom, and I think sometimes when we come in here we
9 think, "Well, we've got to -- we've got to know. We've
10 got to decide left or right, up or down, good or bad;
11 we've got to decide."

12 Well, if this is innocent and that's guilty,
13 everything in between is I don't know. Everything until
14 you get to right at this point is I don't know, and
15 there's nothing wrong with that as a jury, because
16 sometimes we don't know because we can't trust what we've
17 heard, and evidence is only evidence if it's believed, and
18 remember the things that I asked you to consider as you
19 listen to them, and now lastly, I want to thank you for
20 being here. I know as I listened to some of you
21 downstairs, everybody has got lives, and jobs, and this is
22 a hardship on everybody. I know that, but I appreciate
23 you being here. My client, Mr. Tyrone Beaty, and his
24 entire family thanks you for being here. It's an
25 important week.

1 I know you will listen to the evidence. I get to
2 talk to you again a little bit later on, but I ask that
3 you pay close attention to all the questions, everything
4 the Solicitor asks, everything I ask. Thank you so much.

5 THE COURT: All right, ladies and gentlemen, before
6 we get started, let me do two things. One, and I probably
7 should have told you this at the very beginning, but the
8 opening statements by the State and Defense led me to say
9 this to you: In this particular case, the -- and
10 sometimes jurors have misconceptions about this. Just
11 because somebody is charged with the crime of murder,
12 there are certain penalties that are not in play in this
13 particular case, and this is not a death penalty case.
14 The whole process would have been completely and totally
15 different had it been.

16 You will not be asked in this matter to decide a
17 sentence. You will be asked to decide whether or not the
18 State has proved the Defendant guilty beyond a reasonable
19 doubt, and based upon that, the Court will impose the
20 sentence, but just to let you know so that you understand,
21 this is not a death penalty case.

22 All right, Madam Clerk, do you have the pads and
23 pens?

24 THE CLERK: Yes, sir.

25 THE COURT: All right. Could you hand those out to

1 the jury, please, ma'am. When the Clerk hands those to
2 you, if y'all don't mind, if you would just -- you can
3 just put your first name on the top of the pad so that we
4 know whose pads they are because we're going to be
5 collecting them as you leave, so we may know who they --
6 she will hand them out. Madam Forelady, if you will just
7 sit down, the Clerk will hand them out. Just take out a
8 pen and she will do all that, okay? Just keep one pad and
9 one pen for yourself.

10 All right, has everybody put their first name on the
11 pad? Has everybody done that, please, so we can identify
12 them, please.

13 All right, Solicitor, your first witness, please,
14 ma'am.

15 MS. VON HERRMANN: Thank you, Your Honor. The State
16 calls Corey Smalls.

17 THE COURT: Solicitor and Mr. Bellamy, can y'all
18 come up here for a second.

19 (A Bench conference was held in the presence, but out
20 of the hearing, of the jury.)

21 THE COURT: What we're going to do, ladies and
22 gentlemen, and I don't mean to be introducing myself into
23 this case because it's not my job, but Mr. Smalls has an
24 attorney. Apparently they've told me she is downstairs in
25 Family Court, and we've got to go get that attorney and

1 have her present when Mr. Smalls testifies, so can you
2 take -- have Mr. Smalls go back with y'all.

3 If you will go back in the jury room and give me
4 about five minutes, I'm going to get that attorney, bring
5 her up here, and then we'll start. Just leave your pads.
6 Just go to the jury room and we'll start in five minutes.
7 Thank you, much.

8 Go find Ms. Floyd, please.

9 Everyone else remain seated until the jury retires,
10 please.

11 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF**
12 **THE JURY.)**

13 THE COURT: All right, we'll take a short break for
14 five minutes until we get Ms. Floyd in here.

15 (OFF THE RECORD)

16 **ON THE RECORD**

17 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF**
18 **THE JURY.)**

19 THE COURT: Do you want to bring Mr. Smalls out and
20 just sit him at the table.

21 Is the State ready to proceed?

22 MS. VON HERRMANN: Yes, sir, Your Honor.

23 THE COURT: All right, and Defense?

24 MR. BELLAMY: Yes, sir, Your Honor.

25 THE COURT: All right, very good. Ask the jury to

1 come in, please, sir.

2 (THE FOLLOWING TAKES PLACE IN THE PRESENCE OF THE
3 JURY.)

4 THE COURT: All right, Solicitor, your first
5 witness, please, ma'am.

6 MS. VON HERRMANN: Thank you, Your Honor. The State
7 calls Corey Smalls.

8 THE COURT: Mr. Smalls, if you would come around to
9 be sworn, please, sir, over here.

10 COREY SMALLS, being first duly sworn, testifies as
11 follows:

12 THE CLERK: Be seated and state your full name and
13 spell your last for the Court.

14 MR. SMALLS: My name is Corey Napoleon Smalls,
15 S-M-A-L-L-S.

16 THE COURT: All right, Solicitor.

17 MS. VON HERRMANN: Thank you, Your Honor.

18 DIRECT EXAMINATION BY MS. VON HERRMANN:

19 Q. Mr. Smalls, where are you from?

20 A. Murrells Inlet.

21 Q. Lived there your whole life?

22 A. My whole life.

23 Q. What do you do for a living?

24 A. What I do for a living? I really don't do nothing,
25 but now I'm unoccupied right now.

1 Q. Mr. Smalls, do you sell drugs?

2 A. Oh, yeah, I sell drugs. Yeah, that's what I do.

3 Q. And let's just -- let's just get this right out in
4 the open.

5 A. All right.

6 Q. Just go ahead with it. You've got a rap sheet, ---

7 A. Yes, ma'am.

8 Q. --- a criminal history, possession of crack,
9 distribution of crack, possession with intent?

10 A. (Nods in the affirmative.)

11 THE REPORTER: Excuse me, please. I need a verbal
12 answer.

13 A. Oh, yes, ma'am.

14 Q. Possession with intent to distribute crack?

15 A. Yes, ma'am.

16 Q. Failure to stop for a blue light?

17 A. Yes, ma'am.

18 Q. Breaking and entering into an automobile?

19 A. Yes, ma'am.

20 Q. Resisting arrest?

21 A. Yes, ma'am.

22 Q. You've got some pending charges?

23 A. Yes, ma'am.

24 Q. You're charged in this case with murder and armed
25 robbery, ---

1 A. Yes, ma'am.

2 Q. --- is that correct?

3 A. Yes, ma'am.

4 Q. And you've also got a trafficking in cocaine case
5 out there, is that correct?

6 A. Yes, ma'am.

7 Q. So you've pretty much spent a good portion of your
8 adult life selling drugs?

9 A. Yes, ma'am.

10 Q. Did you know the victim in this case, Miles Slay?

11 A. Yes, ma'am.

12 Q. How did you know him?

13 A. I met him through my cousin, Wesley Quick.

14 Q. And what was -- when did you meet him?

15 A. I met him in like -- like in August, July, August
16 of '05.

17 Q. A couple of months before this incident took place?

18 A. Yes, ma'am.

19 Q. All right, and did you have some dealings with
20 Miles?

21 A. Yes, ma'am.

22 Q. Tell the jury, please, what kind of dealings you
23 had with him.

24 A. We had some drug dealings. You know me, I'm -- he
25 was supplying me at the time, you know, getting my stuff

1 from him and what not.

2 Q. Let me direct your attention to October the 20th of
3 2005. Do you remember that day?

4 A. Yes, ma'am.

5 Q. Tell me what you did -- where did you wake up that
6 morning?

7 A. I was at my hotel room, Best Western off of 26
8 North when I got a call from Miles. It was early that
9 morning, and he woke me up, and he was looking for a large
10 amount of drugs or what not, and I said, "Well, I'll see
11 what I can do for you. I'm going to see if I can find
12 somebody, you know, who -- who want -- who got what you
13 wanted," which he wanted a brick of cocaine.

14 Q. Let me -- let me break it down a little bit.
15 You're talking awfully fast, and we're trying to ---

16 A. All right.

17 Q. --- we're trying to take all this in.

18 A. Yeah.

19 Q. So who was it that called you that morning?

20 A. Miles.

21 Q. And he said that he wanted a brick?

22 A. Yeah, he wanted a brick of cocaine.

23 Q. All right. Tell the jury, please, what is -- what
24 is a brick of cocaine?

25 A. A brick of cocaine is one thousand grams, thirty-

1 six ounces, of cocaine.

2 Q. Is that also known as a kilo?

3 A. A kilo, yes.

4 Q. What does a kilo specifically cost on the -- on the
5 street?

6 A. Anywhere from Twenty Four Thousand to like Thirty
7 Thousand.

8 Q. And did Mr. Slay tell you how much money he had?

9 A. Yeah. He said he had Sixteen Thousand Dollars that
10 he wanted to spend.

11 Q. And what did you tell him about that?

12 A. I told him, "For Sixteen Thousand Dollars, you
13 can't get a brick for no Sixteen Thousand Dollars down
14 here."

15 Q. What did you try to -- what did you try to do for
16 him?

17 A. I was trying to connect him to some of my people
18 who I thought had it at the moment.

19 Q. And were you successful in that?

20 A. No, I was not successful.

21 Q. And did you come into contact with the Defendant,
22 Mr. Beaty, that day?

23 A. Yes, ma'am.

24 Q. Tell me how that happened, please.

25 A. When I couldn't get in contact with my first

1 dealer, okay, I had called Tyronne Beaty, and I told him
2 that I had somebody who wanted to buy a brick, and he said
3 that he was going to get in contact and he would call me
4 back, so he called me back and he said that he couldn't
5 get a whole brick, know what I'm saying, but he said he
6 would look out for Sixteen Thousand Dollars, so I hang the
7 phone up and I call Miles, and I said, "Well, Miles,
8 listen, my man said that he don't have a whole brick for
9 you, but he'll look out, you know what I'm saying, for
10 Sixteen Thousand Dollars, you know what I'm saying, he'll
11 give you twenty-seven ounces," and Miles say, "Well, the
12 numbers don't sound right." I said, "Well, the only thing
13 I could do is relay the message. Do you want me to look
14 out?" I said, "Do you want me to call some of my people?
15 I did that and I got in contact with somebody for you.
16 This is what he got on the table, so if you want it or
17 not."

18 Q. And then tell me -- tell the jury what you did
19 next, please.

20 A. Okay. What I did next, my cousin, Antonio Smalls,
21 he came inside the room looking for some toothpaste, and I
22 said, "Well," -- his nickname is Punch, so I said, "Punch,
23 we've got to go to the Inlet because Tyronne Beaty told me
24 to meet him in Murrells Inlet at my house," and so he
25 said, "Okay," so after he got done brushing his teeth, we

1 left.

2 MR. BELLAMY: Your Honor, I would object to what
3 other people told him other than a statement of my
4 client ---

5 A. Okay, so ---

6 THE COURT: Just a second.

7 MR. BELLAMY: --- as being hearsay.

8 THE COURT: As to what's already been testified, I'm
9 going to allow that, but, Solicitor, if you'll be careful
10 in the questions that you ask so as not to elicit hearsay
11 testimony.

12 MS. VON HERRMANN: I will.

13 THE COURT: Okay, thank you.

14 Q. So, Mr. Smalls, your cousin, Antonio, ---

15 A. Yes, ma'am.

16 Q. --- his nickname is ---

17 A. Is Punch.

18 Q. --- Punch? All right. Were you all together there
19 at -- you were together there at the motel?

20 A. Uh-huh (affirmative response).

21 THE COURT: You need to say yes or no.

22 A. Oh, yes, ma'am. I'm sorry.

23 THE COURT: The Court Reporter can't tell what uh-
24 huh is.

25 A. Okay. I apologize. Yes, ma'am, we was at the

1 hotel together.

2 Q. When did you leave the hotel?

3 A. When did we left? We left the hotel, I'm going to
4 say around like ten, eleven, something like that. I can't
5 remember. It was like in the morning or afternoon when we
6 left.

7 Q. What were y'all driving?

8 A. We was driving Antonio Smalls' car. He had a blue
9 Lincoln at the moment, and we had left there and -- but
10 prior to going to Murrells Inlet, I had called Tyrone
11 Beaty back to let him we was coming, and he said, "It's
12 best to get another car," so I called one -- the people,
13 one of my client at that time I was supplying drugs to,
14 and we switched cars, you know.

15 Q. Why did -- why did you need to switch cars? What
16 did Antonio's car look like?

17 A. It's a -- it's a blue Lincoln, like a older model
18 Lincoln.

19 Q. Flashy?

20 A. No, it wasn't flashy, didn't have no rims or
21 nothing on it, just a regular ol' Lincoln.

22 Q. A big car?

23 A. Uh-huh (affirmative response).

24 Q. Why -- why did you think -- why would y'all need to
25 change cars?

1 **A.** At the moment, I wasn't even thinking why. I just
2 went off of what he said, so we went and we switched cars.

3 **Q.** What did you do next?

4 **A.** Okay, what we did next, I got in contact with my
5 client and I got the car, and from there we had took
6 Antonio car to a Bridget Allen's home, her residence, and
7 we left her car there, and so from there we went -- and we
8 went to Murrells Inlet and went to ---

9 **Q.** Let me stop you for just one moment. I'm going to
10 show you what's been marked as State's Exhibit 2 for
11 identification and ask you to take a look at that and tell
12 me what that is.

13 **A.** That's -- that's the car we was driving at the
14 time. That's the car that we switched out for that car
15 right there.

16 **Q.** This is the car that you got from your client?

17 **A.** Yes, ma'am.

18 **Q.** And does this fairly and accurately represent that
19 vehicle?

20 **A.** Accurately, yes; yes, ma'am.

21 MS. VON HERRMANN: I would move to have this
22 admitted in evidence, Your Honor.

23 MR. BELLAMY: Your Honor, could I just look at it
24 for just a second?

25 THE COURT: Yes, sir.

1 MR. BELLAMY: No objection.

2 THE COURT: All right. It's in evidence without
3 objection.

4 PHOTOGRAPH OF CAR ADMITTED INTO EVIDENCE AS
5 STATE'S EXHIBIT NUMBER 2.

6 Q. I'm now going to show you what's been marked as
7 State's Exhibit Number 3 for I.D. and I'm going to ask you
8 the same thing. What does that picture represent?

9 A. That picture represent the car that we had the day
10 that -- the night that Miles got killed.

11 Q. And does it fairly and accurately represent that?

12 A. Fairly accurate.

13 MS. VON HERRMANN: I would move to have this
14 admitted as well, Your Honor.

15 MR. BELLAMY: No objection to State's 3.

16 THE COURT: All right. It's in evidence without
17 objection.

18 PHOTOGRAPH OF CAR ADMITTED INTO EVIDENCE
19 AS STATE'S EXHIBIT NUMBER 3.

20 Q. All right, when I interrupted you, Mr. Smalls, you
21 told me that you had gone down to Murrells Inlet?

22 A. Yes, ma'am.

23 Q. All right. What -- why did you go down to Murrells
24 Inlet?

25 A. Because that's what Tyronne Beaty wanted to met us

1 at, right there at my mama and daddy house in Murrells
2 Inlet.

3 Q. And did that happen? Did you meet him there?

4 A. Yes, ma'am.

5 Q. What happened when you met up with him?

6 A. All right, when we pull up in the yard, Tyronne
7 Beaty and his cousin, Neil, they came up behind us in a
8 Jeep, like not even a couple of seconds later, behind us
9 in a Jeep. They got out of the Jeep and they got in the
10 back seat, and when he got in the back seat, Tyronne was
11 like, "Man, man, look," you know what I'm saying, "man,
12 let's rob him," you know what I'm saying, he -- he -- we
13 had a plan to rob him, so I look at my cousin, Antonio,
14 and my cousin, Antonio, got me like we just agreed through
15 -- through looking at each other, but Tyronne Beaty was
16 like, "Man, oh, man, y'all got to do nothing. Just let me
17 rob him and we'll split the money," you know what I'm
18 saying. I'm messed up at the moment and I'm saying, "I
19 ain't" -- I said, "Man," telling him, I said, "We can't do
20 that, man." He said, "Man, look, y'all ain't got to do
21 nothing. Just let me do this," you know what I'm saying,
22 so he convinced me into agreeing with it.

23 Q. Now, let me stop you right there. Up until that
24 point in time, did you think that he was going to have the
25 whole amount of the drugs?

1 **A.** At that -- before we got to my house? Yeah, at
2 that moment, yes, I thought he was going to have the full
3 amount of drugs, yes.

4 **Q.** All right, so when you got to your house, who was
5 driving that vehicle?

6 **A.** My cousin, Antonio Smalls, was driving at the time.

7 **Q.** And where were you seated in the car?

8 **A.** I was sitting in the passenger seat.

9 **Q.** And where did Mr. Beaty, Tyronne Beaty, sit?

10 **A.** Tyronne Beaty, he got behind me. He was behind me
11 at that moment.

12 **Q.** And who was with him?

13 **A.** Neil, Neil Hill.

14 **Q.** And who is Neil Hill?

15 **A.** His cousin.

16 **Q.** So when they got into the car -- you were talking
17 real quickly. I want to -- I want to make sure I
18 understand what -- what it is that you said. What did
19 Tyronne say to you?

20 **A.** He said, "Man, listen man. Man, let's rob him." I
21 mess up at the time. I need the money, and I'm like,
22 "Man, I don't know if I can do that," you know what
23 I'm ---

24 **Q.** What does that mean, "I messed up at the time"?

25 **A.** He -- he's down and out, you know what I mean. He

1 was trying to find a way to come up, and I guess I was his
2 way of coming up, through Miles.

3 Q. And so what happened then?

4 A. Okay, he convinced -- he convinced me and my
5 cousin, Antonio, to agree due to the fact that, "Okay,
6 well, you ain't got to do nothing," you know what I'm
7 saying, so when we left there, we went to Food Lion and
8 that's when he had went to Food Lion and bought like -- I
9 don't know if it was baking so- -- I don't know if it was
10 flour or pancake mix and some sandwich bags, and he put
11 everything inside to make it like it was real cocaine, and
12 he had one real stuff, and after a while he was bagging
13 everything up, my cousin, Antonio Smalls, like, "Man, I
14 want to pick my daughter up from daycare."

15 Q. Let me stop you for just a second. Let me show you
16 what's been marked as State's Exhibit 6, ---

17 A. Uh-huh (affirmative response).

18 Q. --- and tell me what this is, please.

19 A. That's Food Lion right there off of Glenn's Bay
20 Road.

21 Q. Is that where you all went?

22 A. Yes, ma'am, that's ---

23 Q. That's a fair and accurate representation?

24 A. Yes, ma'am.

25 MS. VON HERRMANN: I'd move to have State's Exhibit

1 6 admitted into evidence.

2 MR. BELLAMY: Without objection to State's 6.

3 THE COURT: All right. State's 6 is in evidence
4 without objection.

5 PHOTOGRAPH OF FOOD LION ADMITTED INTO EVIDENCE

6 AS STATE'S EXHIBIT NUMBER 6.

7 Q. I need you to slow down a little bit because you
8 talk awfully fast ---

9 A. Yes, ma'am.

10 Q. --- and it's hard for us to take it all in when you
11 talk so fast, okay?

12 A. I apologize. Yes, ma'am.

13 Q. You're in the car?

14 A. Yes, ma'am.

15 Q. And that's where the plans were formulated?

16 A. Yes, ma'am.

17 Q. You said that you weren't for it to begin with, but
18 the fact of the matter is once they talked about -- once
19 Tyronne talked about it, you were in?

20 A. Yes, ma'am.

21 Q. Antonio was in?

22 A. Yes, ma'am.

23 Q. Neil was in?

24 A. Yes, ma'am.

25 Q. Y'all were all in and ---

- 1 **A.** Yes, ma'am.
- 2 **Q.** --- you were going to rip him off?
- 3 **A.** Yes, ma'am.
- 4 **Q.** So then you go to the Food Lion?
- 5 **A.** Yes, ma'am.
- 6 **Q.** And who got out of the car at Food Lion?
- 7 **A.** Tyronne Beaty was the one that got out of the car
- 8 at Food Lion, and he went inside and purchased whatever it
- 9 was going to purchase to get ---
- 10 **Q.** What -- what was it specifically that you know that
- 11 he purchased?
- 12 **A.** I would say it was flour in a substitution of the
- 13 real cocaine, and sandwich bags, and a grey duct-tape.
- 14 **Q.** Now, let's talk about -- a little bit about
- 15 cocaine. When you sell someone some cocaine, how is it
- 16 normally packaged?
- 17 **A.** It's packaged inside a sandwich bag.
- 18 **Q.** So it doesn't come in a box?
- 19 **A.** Huh-uh (negative response).
- 20 **Q.** Doesn't come in an envelope, a sandwich bag?
- 21 **A.** Yes, ma'am.
- 22 **Q.** Kind of the tools of the trade?
- 23 **A.** Yes, ma'am.
- 24 **Q.** Whose idea was it to substitute flour in to make
- 25 the package look bigger?

1 **A.** Tyronne Beaty.

2 **Q.** And where did the real cocaine come from?

3 **A.** The real cocaine came from him. He was the one
4 that supplied the real cocaine at the moment, along with
5 the substitution of the fake one, you know what I'm
6 saying.

7 **Q.** Did he have that real cocaine when he got into the
8 vehicle with you all at your house?

9 **A.** Yes, ma'am.

10 **Q.** Did you see it at that time?

11 **A.** No, I didn't see it at the time. At the time I saw
12 it was when we left Food Lion and he was behind me in the
13 back seat bagging everything up and then he showed me the
14 fake stuff along with the real stuff and like, "Look, I'm
15 going to get him with this right here, and then I'm going
16 to -- you know what I'm saying. I'm going to get him, you
17 know what I'm saying, to look at the real stuff to get him
18 to get him to get this right here," and that's when I saw
19 -- that's when I saw the real thing at that moment, so I'm
20 like, "Okay."

21 **Q.** Somebody who deals with cocaine, can they tell the
22 difference between looking at it, the real stuff and
23 flour?

24 **A.** Not really. It -- it -- it varies, you know what
25 I'm saying; it varies.

1 Q. Are they -- are they similar?

2 A. It's similar. It could be similar, yes.

3 Q. But if you got right up on it, do you think you'd
4 be able to tell?

5 A. Yeah, you can tell if you got right up on it.

6 MR. BELLAMY: Your Honor, I would object as to what
7 someone might be able to do. I think it's too speculative
8 and it's an opinion.

9 MS. VON HERRMANN: I'll rephrase the question.

10 THE COURT: All right.

11 Q. Would you be able to tell?

12 A. I'd be -- yes. I been dealing with it long enough,
13 I -- I'd be able to tell.

14 Q. All right, so what did you all do then after he
15 bagged that flour up?

16 A. All right, well, we went to the daycare to pick
17 Punch -- Antonio Smalls' daughter up, and while we was
18 there, Tyronne Beaty had got out of the car and went
19 inside the daycare and threw something in the trash, and
20 at the same time, he slipped and threw the real cocaine in
21 the trash because when we left, after we pick up Antonio's
22 daughter, he was looking for the cocaine and he was like,
23 "Man, turn back around. Turn back around," so we turn
24 around and went back to the daycare and he went in the
25 daycare and find the cocaine in the trash can.

1 Q. All right, let me get this straight. Y'all were
2 throwing some trash away at a daycare, and he accidentally
3 throws real cocaine away?

4 A. Yeah. Well, he was the one that really got out of
5 the car and throw the trash away at the daycare, but in
6 the process, he must have -- somehow the real cocaine got
7 mixed up with the trash and we had to go back. He told us
8 to turn around and go back, and he went inside there. He
9 came back, like, "Man, I got it. I got it," and so we're
10 looking at him like, "Are you crazy?" you know.

11 Q. So now you guys are in the car. You've got a child
12 in the car with you?

13 A. Yes, ma'am.

14 Q. And you've got -- how much real cocaine was it?

15 A. I'd say it probably was a little over a ounce,
16 probably like thirty grams, the way I saw it, because at
17 the time, he was like, "Look. Look," and when I looked at
18 it -- so I'm saying it was a little over an ounce.

19 Q. So you've got an ounce of real cocaine and then
20 you've got the fake stuff ---

21 A. Yes, ma'am.

22 Q. --- packaged up?

23 Where did you go then?

24 A. Okay, we left there, we went to drop Antonio's
25 daughter off at Bridget Allen's residence.

1 Q. Who is Bridget Allen?

2 A. Bridget Allen is a friend of mine.

3 Q. And did y'all let Bridget know you were coming, or
4 did you take the child there ---

5 A. See, we just had pulled up in the yard, and --
6 because this is after we had dropped Antonio car off there
7 first, and then we let her know, "Okay, can you watch
8 Monnie?" We call Punch -- Antonio daughter Monnie, you
9 know what I'm saying, until we come back, and she agreed
10 to it.

11 Q. And at that point, did you drop her off because you
12 knew you were going to rip this guy off?

13 A. Yeah, we drop her off there so we can go and rip
14 the guy off.

15 Q. All right. Who picked the spot where you all were
16 going to rip him off?

17 A. Tyrone Beaty was the one that picked the spot for
18 us to rip him off.

19 Q. All right. What was -- what was your part of the
20 plan? What were you going to do?

21 A. What I was going to do be that Miles called me,
22 what I was going to do, he had me drop off at Foxtrot, and
23 why was he dropping me off at Foxtrot, I was waiting for
24 Miles to come. There was a store right there, and waiting
25 for him to come, and I went -- while I was there, I went

1 to talk to my friend, Vicki, and so I called Miles; okay,
2 after Tyronne Beaty show us where we was going to rip the
3 guy off at, you know what I'm saying, right there off of
4 Butler Drive, right there off of Enterprise Road. There's
5 a parking lot right there, and he said, "Well, like I'm
6 going to see if we can sit right here. We going to drop
7 you off there. When he come, bring us over there, you
8 know, bring him to the spot." I'm like, "Okay, I'll do
9 that."

10 Q. And when you said that you went to Foxtrot, what is
11 Foxtrot?

12 A. It's an apartment complex off of Enterprise Road.

13 Q. Let me show you what's been marked as State's
14 Exhibit 4 and ask you what that is?

15 A. That the Wilco right across the road from Foxtrot,
16 right across the highway.

17 Q. All right, and that's a fair and accurate
18 representation, is that correct?

19 A. Yes, ma'am, uh-huh.

20 MS. VON HERRMANN: I would move State's Exhibit 4
21 into evidence.

22 MR. BELLAMY: No objection to State's 4, Your Honor.

23 THE COURT: All right. State's 4 is in evidence
24 without objection.

25 PHOTOGRAPH OF WILCO ADMITTED INTO EVIDENCE AS

1 STATE'S EXHIBIT NUMBER 4.

2 Q. All right, let's look at this picture for a second.

3 You were across the road here, ---

4 A. Yes, ma'am.

5 Q. --- correct?

6 A. Yes, ma'am.

7 Q. And you had a telephone conversation?

8 A. Yes, ma'am.

9 Q. With who?

10 A. With Tyronne Beaty.

11 Q. All right, and what was the gist of that
12 conversation?

13 A. Okay, after Miles had pull up, he pull up real --
14 like on the other side of that car right there, and while
15 I was walking across the road to get there, I call
16 Tyronne. I said, "Well, Tyronne, he here. What -- what
17 you want me to do?" He said, "Bring him to the spot," so
18 while I was walking, at the same time I was pulling up on
19 the car. I'm like, "Well, he got somebody else with him,"
20 because I saw two more people with him.

21 Q. With who?

22 A. I saw two other people with Miles, ---

23 Q. All right.

24 A. --- okay, and I said, "Well, they got two more
25 people with them, so what you want me to do?" He said,

1 "Man," -- he started speaking in a Jamaica tone, for what
2 I don't know, you know what I'm saying.

3 Q. A Jamaican accent?

4 A. Like a Jamaican accent.

5 Q. Hey, Mon?

6 A. Yeah.

7 Q. All right.

8 A. And I can't speak Jamaican real good, but he was
9 saying, "Tell them to get out," you know what I'm saying,
10 because he don't trust them to come to the area, you know
11 what I'm saying. Basically, I said, "Miles," I said,
12 "Well, you've got to leave your own boys here while we go
13 -- because my man don't want you to come -- he don't want
14 you to bring anybody to his house.

15 Q. Did you know those two people that were with Miles?

16 A. I know one of them. I ---

17 Q. What was his name?

18 A. His name is Dominique.

19 Q. Dominique?

20 A. Uh-huh (affirmative response).

21 Q. All right, and how about the other guy?

22 A. The other guy, I seen him before, but I don't -- I
23 don't know his name.

24 Q. What did he look like, a black guy, a white guy?

25 A. A white guy.

1 Q. Heavy?

2 A. Yeah, kind of like heavy-set.

3 Q. Had you seen him any time before then?

4 A. Yeah, I seen him -- I seen him. Like I said, I
5 seen him before, but I don't actually really know him that
6 good.

7 Q. Okay. I think that you -- you told the police
8 actually that his name was Daniel, is that correct?

9 A. Yeah, Daniel. That's -- yeah. It was so long ago,
10 yeah.

11 Q. So that's the -- that's the fellow that ---

12 A. Yeah, that was him.

13 Q. --- was there? All right, and did you then
14 instruct the two of them that they had to stay there?

15 A. Yeah; yeah. I told them, I say, -- I say, "Man" --
16 I told Miles, I say, "Man, listen, they going to have to
17 stay here while I take you to meet my man, or what not,"
18 and so Miles, "Okay, that's cool. Y'all stay until I come
19 back, you know what I'm saying. I'm going to take care of
20 this and I'm going to come right back," and so at that
21 time, I was at the back seat of the driver, but when they
22 had got out, I got out of the back seat and I went around
23 to the passenger seat, and I took him down Enterprise Road
24 to where Tyronne Beaty wanted us to meet him at.

25 Well, being that that was a new area for me, because

1 I just came home from prison, so I didn't know all that
2 stuff had built up at that time, so we passed it the first
3 time. Then I said, "Hold up." I said, "Man, this don't
4 look like the spot," but I said, "Turn around. Turn
5 around." He turned around and we passed on the way coming
6 back. I said, "Man," I said, "Where the spot at?" So I
7 said, "Turn around one more time," and he turned around,
8 and I said, "Man, drive slow," and that's when I saw the
9 road. It says Butler Drive, parking, right, something
10 like that. I said, "Turn right here. Turn right here,"
11 so we turned and we went down that road, and I tell him
12 to, you know, to drive slow so I won't miss where they was
13 at, you know what I'm saying, so when I saw the car ---

14 Q. Whose car?

15 A. The car, the gold car that we was all driving at
16 that time, and I said, "Okay, turn -- turn -- turn right
17 here," and so we had turn in. We turn in ---

18 Q. Let me -- let me stop you right there. Let's just
19 go back just a little bit. I'm going to show you State's
20 Exhibit 5 and see if you can identify that for me.

21 A. Yeah, that's -- that's what we was in. I was on
22 the passenger side right there.

23 Q. This is what Miles was in?

24 A. Yeah, that was what Miles was driving.

25 Q. A fair and accurate representation?

1 A. Fair and accurate, yeah.

2 MS. VON HERRMANN: I would move to have State's
3 Exhibit 5 admitted.

4 THE COURT: Any objection?

5 MR. BELLAMY: No objection to State's 5, Your Honor.

6 THE COURT: All right, sir. In evidence without
7 objection.

8 PHOTOGRAPH OF VEHICLE ADMITTED INTO EVIDENCE
9 AS STATE'S EXHIBIT NUMBER 5.

10 Q. And I'm also going to show you what's been marked
11 State's Exhibit 1.

12 A. Yes, ma'am.

13 Q. Can you tell me what that is?

14 A. Yeah. That's the map of the area where
15 everything ---

16 Q. Is that -- have you had an opportunity to review
17 that?

18 A. Yes, I have.

19 Q. And you feel like that fairly and accurately
20 represents that area?

21 A. Yes.

22 MS. VON HERRMANN: I'd move State's Exhibit 1 in as
23 well.

24 MR. BELLAMY: No objection.

25 THE COURT: All right, sir. In evidence without

1 objection.

2 LARGE AERIAL PHOTOGRAPH ADMITTED INTO EVIDENCE

3 AS STATE'S EXHIBIT NUMBER 1.

4 Q. All right.

5 MS. VON HERRMANN: Your Honor, could I have him step
6 down for one moment?

7 THE COURT: Is there any objection to that?

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

9 THE COURT: All right. Just make sure y'all stand
10 right in front of that microphone over there, that box in
11 the middle of the rail.

12 Q. Okay, so you're going to have to talk kind of loud,
13 and that's the microphone there, all right?

14 A. Yes, ma'am.

15 Q. All right, so let's look at this map, and point out
16 to me -- I think we've got it labeled already ---

17 A. Uh-huh (affirmative response).

18 Q. --- where the Wilco is.

19 A. The Wilco is this right here.

20 Q. And is that where you met up with Miles?

21 A. Yes, ma'am.

22 Q. All right, and then show the jury, please, if you
23 will, where you went from that point.

24 A. Where we went from here ---

25 Q. Let's do -- let's do this real quick.

1 A. Yes, ma'am.

2 Q. Let me just -- let me get you to identify some
3 areas. What is this road right here?

4 A. That's Highway 707.

5 Q. Okay. Where does that road go to?

6 A. This road, it lead from Murrells Inlet all the way
7 up to Socastee, but it's leaded to Enterprise Road.

8 Q. All right, and so then where did you all go from
9 the Wilco?

10 A. We left from the Wilco and we went down this road
11 right here.

12 Q. Is that Enterprise?

13 A. Yeah, I think that is Enterprise right here,
14 because this is the Butler Road that we turn down off,
15 because when we left, that's where we left right here,
16 and ---

17 Q. But you -- you went past this, is that what ---

18 A. We went past it at first. We passed it at first,
19 and then we turn around and we pass it again. For the
20 third time, we got it on the third time, right here. This
21 was like a new area for me because I just came home from
22 the penitentiary at the time.

23 Q. All right, and there are some other areas that we
24 have identified on here that you've testified about, too.
25 This Food Lion here is Glenn's Bay Road. Would that be

1 the Food Lion that you went to?

2 A. Yes, ma'am.

3 Q. All right, and how about -- I believe you testified
4 about Bridget Allen's house?

5 A. Yeah.

6 Q. Would that be where her house is located?

7 A. Yeah. That is her house right here, yes, ma'am.

8 Q. Is this all pretty -- the area pretty close
9 together within ---

10 A. Yes, ma'am.

11 Q. Within a couple of miles anyway?

12 A. Yes, ma'am.

13 Q. All right, and -- and so you grew up what would be
14 south of here, is that correct?

15 A. Yes, ma'am.

16 Q. But you are pretty familiar with this ---

17 A. Yeah, I'm familiar.

18 Q. --- area right here?

19 A. Uh-huh (affirmative response).

20 MS. VON HERRMANN: All right, let me have you go
21 ahead and have a seat back up there.

22 Q. When you all pulled down by the road, did you know
23 the exact location that you had to -- or you sort of had
24 to look for it?

25 A. When me and Miles left Wilco?

1 Q. Yes.

2 A. I had to look for it at first.

3 Q. Okay, but once you pulled down Butler Road, how did
4 you know where to go?

5 A. Because I know where to go at because that's why I
6 told him to drive slow once we get down this road because
7 like there was an open area anyway, and the car that I
8 knew of, the gold car, was sitting right there, so when I
9 saw it, I'm like, "Okay, turn right here. Turn right
10 here," and that's when we turned.

11 Q. Who was driving that -- that gold Maxima?

12 A. My cousin, Antonio Smalls, was driving that Maxima
13 at the time.

14 Q. Did he drive it the whole day?

15 A. Yeah, he drive it the whole day.

16 Q. Did Tyrone ever drive that vehicle?

17 A. No, ma'am.

18 Q. Did Neil Hill ever drive that vehicle?

19 A. No, ma'am.

20 Q. All right, so you pulled in there, and what
21 happened next?

22 A. All right, when we pulled inside there, we park
23 beside the car, like a little -- not right beside it, but
24 we parked, and Tyrone came up ---

25 Q. Let me stop you. Which way did the gold car face?

1 **A.** The car was facing the road.

2 **Q.** All right, and when you all pulled up, where were
3 you parked, facing in, or did you all flip around and park
4 face out?

5 **A.** No, we was facing in. This -- they was facing this
6 way (indicating) and then when we pulled in, we was facing
7 towards the woods area.

8 **Q.** Okay, so then the driver's side of each car would
9 have been beside each other, is that correct?

10 **A.** It was like this right here (indicating). The
11 driver's side of the gold car would have been facing the
12 back side of the driver side of the Jeep.

13 **Q.** I got'cha. I understand, so you're not side by
14 side; you're a little bit apart?

15 **A.** Yes, ma'am.

16 **Q.** And how many feet would you estimate was between
17 the two vehicles?

18 **A.** I would say at the most -- at the most, I would say
19 about nine, eight, nine feet, somewhere up in there.

20 **Q.** So you were saying that when you pulled up in
21 there, what was it that you did?

22 **A.** I -- when -- when we pull up, Tyrone Beaty came
23 walking up and Miles is like, "Oh, I know my man. I know
24 him," and so I'm like, "Okay, if you know him then," I got
25 out of the car. I got out of the Jeep, and that's when I

1 went to the gold car, and by that time, I got some ---

2 Q. Let me -- let me stop you. This is important, so
3 let's slow this down a little bit.

4 A. Yes, ma'am.

5 Q. When you pull up, you see Tyrone?

6 A. Yes, ma'am.

7 Q. Where was he standing?

8 A. He was standing like behind the Maxima. He was
9 standing behind it, like further feet from it, but it was
10 behind -- he was behind the Maxima, so that's why when we
11 pulled up, Miles recognize him right away. He's like,
12 "Oh, I know my man. I know him."

13 Q. Did -- did y'all realize that that was going to
14 happen, that Miles was going to recognize him?

15 A. No, ma'am.

16 Q. And the plan was to -- what was -- the plan
17 involved you up until this point, ---

18 A. Yes, ma'am.

19 Q. --- right, and so what -- what changed by the fact
20 that he -- that Miles happened to know Tyrone?

21 A. What changed is that -- let me see. In my mind, it
22 really wasn't too much thing that changed, is the fact
23 that, "Well, okay, well, now y'all deal with each other.
24 What goes on, that's between y'all," you know what I'm
25 saying, so it's like when he say, "I know my man," he said

1 it -- he was excited because I felt that there was a trust
2 that he could have trusted Tyronne Beaty the way he said
3 it, like, "Oh, I know him."

4 MR. BELLAMY: I would object to what he felt. He
5 can testify to what he heard.

6 THE COURT: I think he was talking about his own
7 particular feelings, and I'm going to allow it. Thank
8 you.

9 A. Yeah, and so that's when I got out of the Jeep, and
10 when I went walking towards the car, the Maxima ---

11 Q. When you say Jeep, you're referring to that Toyota
12 Highlander?

13 A. Yeah, yes, ma'am, I'm referring to that, and that's
14 when I went to the car, the gold Maxima, and so by the
15 time I got to the Maxima and sat down in it, I heard
16 Tyronne Beaty, "He's grabbing for something. He's
17 grabbing for something," so we all had looked like,
18 "What's going on?" So when we looked, Tyronne Beaty and
19 Miles was tugging-a-war with a bag of money. He was
20 tugging-a-war with it, and so the next thing you know,
21 Tyronne Beaty pulled his gun out and he shot in the Jeep,
22 pow, pow, pow, three time, and so he ran. I was already
23 sitting in the Jeep, so all us like, "What's wrong with
24 Tyronne," and so when he ---

25 MS. VON HERRMANN: Could we just have one moment?

1 THE COURT: Yes.

2 (Pause.)

3 THE COURT: All right, go ahead. Continue on.

4 **A.** So she shot him -- he shot him. He shot in the
5 Jeep like three times, and then when he ran to the car
6 that we all was sitting in, he throw the bag of money in
7 my lap like he was in a rush to go. He throw the bag of
8 money in my lap, and so right before Antonio pull off, he
9 said, "Hold on for a minute," because Miles was still
10 living at the time, okay, he was like, "Hold on. Hold on.
11 Hold on," so he jumped back out the car and went back and
12 finished him off, and how I know that he was dead, because
13 the last thing Miles did was he screamed like, "Oh-h," and
14 he lean over, so I'm like, "Ah, man."

15 Somehow I know Tyronne just kill that man, and it
16 mess me up because at the time I felt he didn't care about
17 me because I was the person that touched his Jeep, you
18 know what I'm saying. I thought he didn't care about me
19 because of the fact that my face was seen through other
20 people. He would kind of hide his image behind everything
21 else, but left me there, left me out, you know what I'm
22 saying. I didn't have any mind that he was going to kill
23 this man, you know. I mean, it hurted me that he did
24 that, and I felt bad that I let him -- I'm my own man, but
25 I felt bad that I let him influence me to even go down

1 with something like this, you know what I'm saying.

2 Q. Well, and -- and let's just back up again. You
3 said that you saw them struggling over the money?

4 A. Yes, ma'am.

5 Q. How was -- how was the money packaged?

6 A. The money was packed. It was a bag inside a white
7 bag, because the outside was white, so when he throw it in
8 my lap, I was -- I was dazed, so I'm looking at it like
9 (indicating), not the fact that we had the money. I was
10 looking at it because my attention was nowhere else but
11 other than what he did.

12 Q. Did -- you knew -- you knew that Miles had that
13 money in the car prior to your arriving at Butler Road?

14 A. Yes, ma'am.

15 Q. Did -- did you see where he had the money?

16 A. I didn't see where he had the money, but I know he
17 had the money because that's the sole purpose of him
18 meeting us, but I didn't know exactly where he had the
19 money at.

20 Q. All right. What did he do with that gun when he
21 got back in the car?

22 A. What he did with the gun? When he got back in the
23 car, I looked at him, and I asked him, I said, "Tyronne,
24 man, why you -- why you -- why you shot that man?" Man,
25 he was wiping the gun at the same time he was taking the

1 clip out. He said, "Man, I had to shoot him. I had to
2 shoot him." He said, "He know me," so I look at him like,
3 "Man, you ain't had to kill that man, man. You didn't."
4 He was like, "Well, he snatched the bag of money out my
5 hand -- out my lap, you know what I'm saying. He was
6 like, "I'm going to hold onto the money. I'm going to
7 hold onto the money just in case something go down, you
8 know what I'm saying. I got the money," this and that,
9 this and that, so I look at him, and so when we left, at
10 the same time while he doing all this ---

11 Q. Let me stop you for just a second because I think
12 -- I think you're cleaning it up a little bit for this
13 jury.

14 A. Yeah.

15 Q. And you said what, "Hey, Tyronne, what are you
16 doing?" I mean, ---

17 MR. BELLAMY: I would object. He's testified. The
18 Solicitor is trying to tell him he's cleaning it up. Let
19 him testify.

20 THE COURT: Mr. Bellamy, your objection is ---

21 MR. BELLAMY: Leading, Your Honor.

22 THE COURT: Leading. Thank you.

23 Solicitor, don't lead your witness.

24 Q. You used some foul language previously, didn't --
25 you used some foul language at that time, didn't you, ---

1 A. Yes, ma'am.

2 Q. --- when you got in the car, so just go ahead and
3 tell the jury what it was you said.

4 A. I was like, "Man, why in the fuck you kill that
5 man?" basically, you know what I'm saying, "Why in the
6 fuck you did that, man?"

7 Q. And what did he say to you? What did he -- where
8 did he put the gun?

9 A. What he did with the gun -- I know he was unloading
10 the gun with his shirt, wiping it, and he threw a bullet
11 out the window. Whatever bullet he had left, he threw it
12 out the window, but what he actually did with the gun, I
13 can't -- I don't know what he did with the gun, but at the
14 moment, he -- he was finish taking the bullets out of --
15 the left bullets out of the clip and throw it out the
16 window while we was -- while we was moving.

17 Q. And did you say that he took the money from you?

18 A. Yes, ma'am. He took -- he snatched it out of my
19 lap. I mean, I didn't have no grasp of it, but he -- like
20 I'm holding -- I'm holding onto this right here
21 (indicating).

22 Q. Where did he put it?

23 A. He put it in his lap.

24 Q. And where did you all go?

25 A. I -- well, we left -- we went down that road, went

1 down the back -- the back way. We then went back down
2 Enterprise Road and went down -- went out the back way,
3 and ---

4 Q. Well, let's look at this. When you say the back
5 way, which way did you go?

6 A. We went out -- when we left here, when we left out
7 of Butler Road, we bust -- we bust a left down Enterprise
8 Road, but we didn't went back out towards where the -- we
9 went out this way and we went down Bay Road if I'm not
10 mistaken. Yeah, we went down Bay Road, the back side of
11 707, ---

12 Q. Okay.

13 A. --- and then when we left there, that's when we
14 went to Bridget -- we went to Bridget house, and ---

15 Q. All right. What -- are you familiar with guns?

16 A. Yeah, I'm a little familiar with guns.

17 Q. You've used a gun before?

18 A. Yeah, I use a gun before. I mean, I know what a
19 gun is, yeah.

20 Q. What type gun was that?

21 A. I'm going to say a forty caliber.

22 Q. A big gun, a small gun?

23 A. It was a big gun, about that size right there,
24 black.

25 Q. A revolver, semi-automatic?

1 **A.** One with a clip inside of it.

2 **Q.** All right, so you went to Bridget Allen's house?

3 **A.** Yeah. I went to Bridget Allen house and we all got
4 out of the car at that time. They -- Punch -- I mean
5 Antonio, Tyronne Beaty, and Neil jump inside of Punch --
6 Antonio car, because that's where his car was at. They
7 jump out of the car, and that's when I took the gold car I
8 had and take it back to my client, and I parked it by the
9 -- by the -- I parked it by the mailbox in that
10 neighborhood and I call -- I like, "Man, look, your car by
11 the mailbox. Go and get your car," so I ran back down the
12 road thinking that they still will be at Bridget house,
13 which they wasn't. They left, so I call Antonio. I say,
14 "Antonio, where" -- I say, "Punch" -- "Antonio, where you
15 at?" "Man, I'm tak-" -- "I'm dropping -- I'm dropping
16 Tyronne Beaty and Neil off. I'll be -- I'll be right
17 back."

18 MR. BELLAMY: Your Honor, I would -- again, that
19 would be hearsay.

20 THE COURT: All right, sir.

21 Just continue on, Solicitor.

22 **Q.** Did you run back into Antonio again that day?

23 **A.** Yeah. He came -- it was that night. He came --
24 after he dropped them off, he came back to Bridget Allen
25 house where I was waiting on him at, and I jumped inside

1 the car, which is the blue Lincoln, and he went and get
2 his daughter out of the house, because his daughter was
3 there through the whole time. He went to get his daughter
4 out of the house and we left there, and that's when we had
5 dropped his daughter off at the game room at the 544. It
6 was a game room that his wife -- not his wife, his baby
7 mama, was working at, and we drop her off, and then we
8 went back to my hotel room, Best Western, 26 North, and
9 when I got there, I had call my girlfriend at the time,
10 Felicia, and I told Felicia everything what happen because
11 at that time, Felicia, she was a Federal investigator, so
12 I'm like, "Man, I need to tell Felicia what going on," you
13 know, so that night I call Felicia and I told Felicia
14 everything from -- basically what I'm telling y'all,
15 that's what I told her, and Felicia started crying, you
16 know, and so she was like ---

17 Q. Well, we don't want you testifying about what
18 anybody else has said.

19 A. Okay.

20 Q. Let's go back a little bit.

21 A. Yes, ma'am.

22 Q. Did you -- did you ever see that money again?

23 A. No, I never seen that money again.

24 Q. All right. What did Tyronne tell you he was going
25 to do with the money?

1 A. He said he was going to hold on to the money just
2 in case anybody got locked up or whatever, he would use
3 the money, you know what I'm saying.

4 Q. In other words, if you all got arrested for this,
5 he was going to use -- use the money?

6 A. Yeah.

7 Q. And you never got any part of that money, did you?

8 A. No, ma'am.

9 Q. And when you got arrested, were you able to afford
10 a lawyer?

11 A. No, ma'am.

12 Q. Did the Public Defender appoint a lawyer to you?

13 A. Yes, ma'am.

14 MR. BELLAMY: Your Honor, I'd like to approach.

15 THE COURT: Yes, sir.

16 (A Bench conference was held in the presence, but out
17 of the hearing, of the jury.)

18 MR. BELLAMY: Thank you, Your Honor.

19 Q. That's Ms. Floyd, and she's seated here in the
20 courtroom, is she not?

21 A. Yes, ma'am.

22 Q. Did you turn yourself in to the police?

23 A. Yes, I had turn myself in to the police.

24 Q. And did you give them a statement about what had
25 happened?

1 A. Yes, I give them a statement of what happen.

2 Q. When you -- were you completely honest when you
3 first started talking to them?

4 A. At first, I wasn't honest, because at the time I
5 was -- really wanted to protect him, but at the same time
6 protect myself, but I got -- I'm not that good of a liar,
7 so it -- me lie, trying to protect him, but at the same
8 time trying to protect myself, caused them to have
9 reasonable cause to lock me up for murder, and that's when
10 everybody came about.

11 Q. And did you tell them -- did you tell the police
12 about Antonio's role, your cousin?

13 A. Yes, ma'am.

14 Q. And did you tell them about Neil Hill's role?

15 A. Yes, ma'am.

16 Q. Did you -- you and your lawyer have met several
17 times to discuss this case, is that correct?

18 A. Yes, ma'am.

19 Q. And, in fact, you and your lawyer met with me prior
20 to the trial of this case ---

21 A. Yes, ma'am.

22 Q. --- to talk about this case, is that right?

23 A. Yes, ma'am.

24 Q. And your law- -- you, and your lawyer, and I
25 entered into an agreement, ---

1 A. Yes, ma'am.

2 Q. --- is that correct?

3 A. Yes, ma'am.

4 Q. And that's called a proffer letter, right?

5 A. Yes, ma'am.

6 PROFFER LETTER, 1/25/10, MARKED FOR IDENTIFICATION

7 AS STATE'S EXHIBIT NUMBER 38.

8 Q. I will show you what's been marked as State's
9 Exhibit 38 for I.D. Is that the proffer letter you just
10 described?

11 A. Yes, ma'am. My signature is right there.

12 MS. VON HERRMANN: And I would move to have this
13 admitted into evidence.

14 MR. BELLAMY: Your Honor, may we approach?

15 THE COURT: Yes, sir.

16 (A Bench conference was held in the presence, but out
17 of the hearing, of the jury.)

18 THE COURT: All right, I'm going to allow State's 38
19 into evidence. Solicitor, you will substitute a copy.
20 You will black out Paragraph 2 in this particular matter
21 and have the item re-marked as State's Exhibit 38 and that
22 will be the one that will be in evidence in this
23 particular matter, all right?

24 MS. VON HERRMANN: Yes, Your Honor. Thank you.

25 THE COURT: Thank you.

1 PROFFER LETTER, 1/25/10, EXCEPT PARAGRAPH 2,
2 ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 38.

3 Q. With regard to that proffer agreement, did I make
4 any promises to you?

5 A. No, ma'am.

6 Q. You're pleading guilty in this case, is that
7 correct?

8 A. Yes, ma'am.

9 Q. Is there any -- any secret agreement between you,
10 or I, or your lawyer, or anything else the jury doesn't
11 know about?

12 A. No, ma'am.

13 Q. Let me ---

14 MS. VON HERRMANN: Hang on for one second.

15 THE COURT: Yes, ma'am.

16 Q. You hope that you will get some benefit, is that
17 correct?

18 A. Yes, ma'am.

19 Q. And I have told you per the terms of that proffer
20 agreement that I would make the Judge aware of your level
21 of cooperation?

22 A. Yes, ma'am.

23 Q. But other than that, is there any benefit that you
24 have received?

25 A. No, ma'am.

1 Q. Thank you.

2 MS. VON HERRMANN: I don't have any further
3 questions.

4 THE COURT: All right, cross examination.

5 MR. BELLAMY: May it please the Court.

6 THE COURT: Yes, sir.

7 CROSS EXAMINATION BY MR. BELLAMY:

8 Q. Mr. Smalls, are you going to plead guilty to
9 murder?

10 A. Am I going to plead guilty to murder?

11 Q. You just told the Solicitor you're going to plead
12 guilty in this case. Are you pleading guilty to murder?

13 A. I'm not pleading guilty to murder.

14 Q. Oh, okay, so when she says you're going to plead to
15 something, you ain't going to plead to murder, though, are
16 you, because that carries thirty years to life, don't it,
17 so you ain't going to plead to that, are you?

18 A. Huh-uh (negative response).

19 THE COURT: You need to answer yes or no.

20 A. Oh, no, sir.

21 Q. Okay. Now, what about the armed robbery, are you
22 going to plead guilty to that, and that carries ten to
23 thirty? Are you going to plead to that?

24 A. Yes, I'm -- I'm -- I was a part of the robbery. I
25 was a part of it, ---

1 Q. Are you going to plead to it?

2 A. --- so yes, I'll plead to that, because I was a
3 part of the armed robbery, yes.

4 Q. Okay, so when the Solicitor says you're going to
5 plead guilty in this case, you're not going to plead to
6 any murder?

7 A. I'm not going to plead to the murder, but I'm going
8 to plead to armed robbery because it's -- it all had
9 happen at one time, so that's what I was referring to when
10 she said that.

11 Q. But you're going to plead to the armed robbery, but
12 you had nothing to do with the armed robbery?

13 A. I mean, I initiated it in a way because I agreed to
14 him robbing him, and I said -- so ---

15 Q. And let's talk about a couple of other charges.
16 You are looking at twenty-five to thirty years for
17 trafficking cocaine in Georgetown, aren't you?

18 A. Uh-huh (affirmative response).

19 Q. A minimum of twenty-five where you serve eighty-
20 five percent, right?

21 A. Yeah.

22 Q. Are you pleading to that?

23 A. I mean, it's my charge.

24 Q. I'm asking you if you're pleading to it?

25 A. Yes, I'm pleading to it.

1 Q. Okay, and you don't think you're going to get some
2 help by being up here, Corey?

3 A. It's -- it's not about the help. It's about being
4 honest and being truthful for what your client did.

5 Q. All right. That's what we want -- we want to talk
6 about being honest.

7 A. Uh-huh (affirmative response).

8 Q. You an honest fellow?

9 A. I try my best to be honest.

10 Q. Do you?

11 A. Yes.

12 Q. Do you?

13 A. (No response.)

14 Q. And I'm not going to go back through your record,
15 but you've got four or five drug charges, resisting, all
16 these other things, and in fact, the trafficking charge
17 you've got happened in '07 or '08, two or three years --
18 while you're out on bond ---

19 A. Uh-huh (affirmative response).

20 Q. --- for murder and armed robbery, you go get
21 another trafficking charge, don't you?

22 A. Yes.

23 Q. But you're an honest person?

24 A. Uh-huh (affirmative response).

25 Q. We can trust Corey Smalls, can't we? Can I trust

1 you?

2 A. It's all about your intentions.

3 Q. Okay. Now, you talk about the truth. You
4 initially indicated you didn't tell the police the truth
5 on October 24th, right?

6 A. Uh-huh (affirmative response).

7 Q. And -- but then ultimately you -- in that statement
8 you did tell them the truth, right?

9 A. Yes.

10 Q. And the truth you told them on October 24th, 2005,
11 is just as much truth as you're telling them today, right?

12 A. Yes.

13 Q. You're sure, now?

14 A. Well, when I came back with the truth, yes.

15 Q. Okay, so when you ended that statement, it was
16 true, ---

17 A. Yes.

18 Q. --- to the police, and, in fact, there's three
19 videos, and I don't know if you looked at them, there's
20 five hours of you?

21 A. Uh-huh (affirmative response).

22 Q. And you gave a statement on video tape for five
23 hours, right?

24 A. Yes.

25 Q. Now, did you tell them about going to Bridget's

1 house in any of those five hours, and I'll let you listen
2 to all five if you want to, ---

3 A. That was set. That was five years ago, and I can't
4 really exactly remember ---

5 Q. Well, let me ask it this way: The truth is you
6 never mentioned going to Bridget's house, did you?

7 A. In the interview?

8 Q. In the five hours?

9 A. Okay, when the five hour interview -- at -- when I
10 first went, like I say, I was trying to protect Tyronne
11 Beaty. I was trying to protect myself, but in the process
12 of lying at that moment, I got caught lying, so that's
13 when I came up with the truth later on.

14 Q. And that's -- my point is, though, ---

15 A. Yeah.

16 Q. --- you've already testified for me now ---

17 A. Yeah.

18 Q. --- that at the end you told them the truth, right?

19 A. Yes.

20 Q. All right. Now, in the end, did you tell them
21 about picking up the gold -- that you were the one that
22 got the gold Maxima? Did you ever tell them that in that
23 five hour statement, not from the beginning, but at any
24 time in there did you tell them about your role in getting
25 the Maxima?

1 **A.** I can't -- in that interview now, I don't think I
2 did.

3 **Q.** Okay. You never tell them in there about going to
4 Bridget's house, do you?

5 **A.** Uh-huh (affirmative response), yes, sir.

6 **Q.** You don't tell them about going back to Bridget's
7 house afterwards, do you?

8 **A.** Yes, sir.

9 **Q.** You never tell them about picking up Antonio's
10 child, do you?

11 **A.** Yes, sir.

12 **Q.** When you say "Yes, sir," you never did, did you?

13 **A.** I'm just -- I don't think I did, because like I
14 say, that was five years ago and my mind was ---

15 MS. VON HERRMANN: I'm going to object. He said
16 that he does not remember.

17 THE COURT: I appreciate that, and you can ask him
18 questions on redirect if you choose, but I'm going to
19 allow the cross examination.

20 MR. BELLAMY: The tapes are here. The tapes are
21 here.

22 MS. VON HERRMANN: I think you should refresh his
23 recollection.

24 THE COURT: Solicitor, I don't need any extraneous
25 comments. I made a ruling. We'll continue on.

1 Continue on.

2 Q. You don't tell them anything in there about going
3 to Food Lion in those five hours, do you?

4 A. Like I say, I cannot remember anything that
5 happened five years ago because my mind -- I was -- what
6 happen that night had my mind so messed up to where I did
7 agreed that I did lied in the interview with the tape, so
8 I can't remember exactly what I said, but later on down
9 the road, yes, I have told them the truth. That what got
10 us here right now today.

11 Q. Well, let's hold on a minute. I'm talking about
12 that five hours, four days after this happened.

13 A. I can't remember.

14 Q. So you don't remember it?

15 A. I can't remember.

16 Q. Okay, but you don't deny you never told them any of
17 the things I just asked you, do you?

18 A. Like I say, I can't remember exactly what I said,
19 because if it's a lie, I can't remember, but the truth
20 stands forever. The lies, like I can't remember if I --
21 because like I said, I did agree to lying to them because
22 I was trying to protect your client and I was trying to
23 protect myself at the same time, but I failed.

24 Q. Okay. Now, well, let's just -- before we get any
25 further, you gave the statement October 24th, do you agree

1 with that?

2 A. Yeah, I remember giving a statement.

3 Q. Okay, and in early November, I believe November the
4 2nd, ---

5 A. Uh-huh (affirmative response).

6 Q. --- you gave a second -- not a video, but an audio-
7 taped statement to Detective Vokov, did you not, ---

8 A. Yeah, I remember ---

9 Q. --- at J. Reuben Long?

10 A. Yes.

11 Q. Okay. What other -- now, you've told me in neither
12 of those statements do you mention anything you talked
13 about here today. When did you tell the police what
14 you're telling us now? What statement was that?

15 A. Well, I remember when the detective came to me, if
16 it was in November -- okay, when he came to me in
17 November, this was after my cousin, Antonio Smalls got
18 locked up, and he said, "Smalls" -- this is what I
19 remember, because this is the truth: He said, "Smalls, I
20 told your cousin, Antonio Smalls," -- he said, "Your
21 cousin, Antonio Smalls, tell me everything. I remember
22 y'all" -- he said, "I know y'all went to Food Lion. I
23 know Tyronne Beaty was involved. I know" -- so I was
24 like, "Yes, sir." He brought out the pictures. He said,
25 "Is this Tyronne Beaty or is this Neil?" And I said,

1 "Yes," ---

2 Q. Do you want me to play that taped statement?

3 That's a taped statement where you asked for a lawyer and
4 they stopped the conversation. You don't say any of that
5 stuff, did you?

6 A. Was that ---

7 MS. VON HERRMANN: Objection.

8 A. Was that the interview, the first interview? I'm
9 speaking about the second part when they came to J. Reuben
10 Long. Now, I'm speaking about the part, the time when
11 they came to J. Reuben Long. I'm not speaking about ---

12 Q. That's what I'm talking about.

13 A. --- right there, you know what I'm saying.

14 Q. I listened to that tape, and we can let you listen
15 to it ---

16 A. Okay, yeah.

17 Q. --- and see if you tell them what you ---

18 THE COURT: Mr. Bellamy, are you asking questions or
19 are you making statements?

20 MR. BELLAMY: I'm probably making a statement,
21 Judge. I'm sorry.

22 THE COURT: All right, sir.

23 Q. Now, my point is, Corey, that when you talked for
24 five hours on those video tapes, ---

25 A. Uh-huh (affirmative response).

1 Q. --- you never tell them what you've told here
2 today, did you?

3 A. Because ---

4 Q. You tell them a different person, aren't you?

5 A. Because I lied on that day, yes, on those first
6 interview, yes.

7 Q. Okay, and you told the Solicitor in this statement
8 here when you talked to the police you did it, about
9 telling them the truth, but that's -- that's not true, is
10 it?

11 A. If that's prior to the interviews, all I ever did
12 was bogus, but later on down the road, everything was
13 true. According to that right there, if it's according to
14 those right there, those interviews, ---

15 Q. Corey, I can't understand what you're saying.

16 A. Those statement -- those interviews right there, I
17 agree that at first I lied because I was trying to protect
18 your client. I was trying to protect myself. That was my
19 first time I ever dealt with this, if it's in that
20 interview.

21 Q. But again, and I'm not trying to belabor the point,
22 but you just told me that ultimately you did tell them the
23 truth in this interview?

24 A. No, I never -- I never said that.

25 Q. You didn't say that just a few minutes, five

1 minutes ago?

2 **A.** I never said -- I said it was prior to the one at
3 J. Reuben Long, I said, because they came to see me, the
4 one at J. Reuben Long, that's when I agreed to it then
5 because they brought the pictures that -- after they
6 caught my cousin, Antonio Smalls. There was more than one
7 time that they came to see me. There was more than one
8 time.

9 **Q.** Well, can you tell me when that was?

10 **A.** I can't remember the dates.

11 **Q.** You don't remember the dates?

12 **A.** I can't remember the dates, but I know ---

13 **Q.** Well, just help us with this: Tell us who came.

14 **A.** I can't even tell you. I know the face. I know
15 the -- I'm pretty much good with faces. I'm not that good
16 with names.

17 **Q.** Well, now, here's a face you won't forget, John
18 Lewis ---

19 **A.** Yeah.

20 **Q.** --- if you spent five hours with him.

21 **A.** Yeah, that's the five hours -- that's the first
22 one.

23 **Q.** Is he the one that you ended up telling what you
24 call "the truth" to?

25 **A.** No. I lied to him. He was the fir- -- because I

1 went -- I went to them, yeah.

2 **Q.** So he's not the one you gave this mystery statement
3 to?

4 **A.** Uh-huh (affirmative response).

5 **Q.** And you can't tell us who it is?

6 **A.** It was another -- it was another detective that
7 came to J. Reuben Long, and that's the one that I kind
8 of ---

9 **Q.** Okay, again, I want to be sure we're clear on this.
10 I thought you told me that you told him the truth in this,
11 but now you say you lied to him and all that, so the day
12 in question, just so we're clear, the stories you've told
13 here today is contained in a statement that was given to a
14 law enforcement officer, and that's the truth, right?

15 **A.** Uh-huh (affirmative response), yes.

16 **Q.** And in that statement, you're telling the same
17 story you're telling here today?

18 **A.** The prior to which they came ---

19 **Q.** I don't care when, where; I want to know if, in
20 fact, you told a police officer the same story you're
21 telling here today, and I'll find that fellow and we'll
22 bring him here and see if it's true.

23 **A.** I give him -- the one that came to see me in J.
24 Reuben Long after he visited my cousin, Antonio Smalls,
25 cousin, my cousin, Antonio Smalls, told him everything and

1 I possibly agreed to it, "Like yeah, yeah, that's him.
2 Yes, Food Lion, we did went there, yes," but I didn't
3 actually sit and break the whole thing down from A to Z.
4 Certain things that I did agree to, and yes, I did ask for
5 an attorney, but certain things that I did agree to.

6 Q. Well, I guess my point is the stories you're
7 telling this jury today you've never told before to any
8 law enforcement officer, have you?

9 A. Well, I did -- okay, I'm -- I'm going to put this
10 into consideration of Felicia Smith. She's a Federal
11 investigator. I break everything down to her, and that's
12 why I brought myself to the detective here, you know what
13 I'm saying, because she -- she was the one that told me to
14 turn myself in and tell them the truth, but I feel like
15 that, but as a Federal investigator, yes, I have told
16 Felicia Smith everything.

17 Q. You told her everything?

18 A. I told her everything, everything that I'm telling
19 them right here, I told them everything.

20 Q. Now, let me -- now that you've brought her up -- I
21 wasn't going to talk about her right now, but they took
22 your phone when you turned yourself in, didn't they? They
23 got your phone, didn't they?

24 A. Yeah, they took my phone.

25 Q. And I'll see if I can find a photograph of it, but

1 she texted you when you were going to talk to the police,
2 didn't she?

3 A. Yes.

4 Q. And she told you, "Just act like you don't know
5 what they're talking about"? Isn't that what she texted
6 you?

7 A. Yeah, that's -- that what she text me, but that was
8 -- I guess she was trying to get me to change my mind at
9 the second end, and that's -- I mean, that's ---

10 Q. You just told us she told you, "Just tell the
11 truth"?

12 A. That's when I -- when I went -- yes, she told me to
13 tell the truth. I went verbally -- but when I went to
14 turn myself in that Monday to talk to them, I guess she
15 was like, "Well, don't tell them everything," you know
16 what I'm saying, because I guess she felt that I didn't
17 had a attorney at the moment, so she was trying to protect
18 me, I guess, you know what I'm saying, not to tell the
19 detective everything.

20 Q. She texted you and said, "Just act like you don't
21 know what they're talking about"?

22 A. Yeah.

23 Q. And this is a Federal agent?

24 A. Uh-huh (affirmative response).

25 Q. So again, you've never told the story you have told

1 -- told today?

2 MS. VON HERRMANN: I'm going to object; asked and
3 answered.

4 MR. BELLAMY: Well, I ---

5 THE COURT: Don't argue. I'm going to allow you to
6 answer the question. Thank you.

7 A. Uh-huh (affirmative response).

8 Q. And I'm not trying to get complicated, but the
9 story you've told here today, ---

10 A. Uh-huh (affirmative response).

11 Q. --- that complete story, have you ever told that
12 story, this story today, ---

13 A. Uh-huh (affirmative response).

14 Q. --- to any police officer or law enforcement
15 officer, whether prior to being arrested, or at J. Reuben
16 Long, or at any time over the last five years?

17 A. Partially, yes, to one of the detectives. I can't
18 remember, but he was a short detective that came to see me
19 and partially, yes. I didn't told them -- I didn't break
20 it down from A to Z, but I agreed to some of the things
21 that he asked me because my cousin, Antonio, already told
22 them everything, so I'm like, "Yes, that is him. Yes,
23 that is the Food Lion we went to. Yes," and then I'm
24 like, "You know what," at the end of it, I'm like, "Man,
25 you know what I'm saying, I want -- I want -- I want me a

1 lawyer," ---

2 Q. Okay.

3 A. --- so I partially did agree to some of the things
4 that was the facts, but actually sitting down and break it
5 down, no, I haven't.

6 Q. So the answer is no, you haven't, right?

7 A. (No response.)

8 Q. Right?

9 A. Are you ask- -- say that again.

10 Q. Yes, sir. So the answer to your question is you've
11 never told this whole story ---

12 A. I never told the whole story, you know. I ---

13 Q. --- to any law enforcement officer ---

14 A. To any ---

15 Q. Today is the first day?

16 A. I mean, like, I still consider it as me telling a
17 part of it, though. I mean, I don't -- I'm not saying
18 never, but I told a -- I partially -- I didn't break the
19 whole thing down; I didn't. After you break the whole
20 thing down, but in some of those words -- in your aspect
21 now, I haven't told them, no law enforcement anything, in
22 the way you want to see it, if that's what you're looking
23 for.

24 Q. Now, in this five hour statement here, you say
25 you're protecting Tyronne?

1 **A.** Yeah. I was trying to protect him by not giving up
2 no names or nothing like that, you know what I'm saying.

3 **Q.** In fact, you, in that statement, deny ever having
4 seen or had anything -- talked to Mr. Miles Slay, who got
5 shot?

6 **A.** Yeah, all that was in that first five hours right
7 there, yes.

8 **Q.** And they way they get you to tell some of the
9 truth, and I say some of the truth, ---

10 **A.** Uh-huh (affirmative response).

11 **Q.** --- they play something for you, don't they?

12 **A.** Yeah. When they get the recording of Miles' cell
13 phone, on voice mail, and heard my voice right there,
14 so ---

15 **Q.** And your voice is on his cell phone?

16 **A.** Uh-huh (affirmative response).

17 **Q.** But before they played that, you denied ever having
18 talked to him in days, weeks, didn't you?

19 **A.** Yes, I did.

20 **Q.** So they played it for you?

21 **A.** Uh-huh (affirmative response).

22 **Q.** And then -- so you remember telling them, "Yes, I
23 did talk to him," right?

24 **A.** Uh-huh (affirmative response).

25 **Q.** And at that point what you're telling me is that

1 you were going to do a deal, but it never went down,
2 right?

3 A. Yes.

4 Q. Then -- then they -- and then you never saw at that
5 point -- you said you didn't even see, but then they
6 confront you some more, and you admit that you may have
7 saw him at the Wilco station by accident?

8 A. Uh-huh (affirmative response).

9 Q. That's right?

10 THE COURT REPORTER: Excuse me?

11 A. Oh, I'm sorry; I'm sorry. Yes, ma'am.

12 Q. She's got to hear you.

13 A. Yes, ma'am. I apologize. Yes.

14 Q. So then you said, "Maybe I saw him by accident,"
15 but then he left, and you left, and you don't know
16 anything else, ---

17 A. Yes.

18 Q. --- is that correct?

19 A. Yes; yes.

20 Q. Then you -- they bring in a tape that looks about
21 like this, I guess, and they put it on the table, and they
22 say, "Listen here, fellow, we've got the video from the
23 gas station?"

24 A. Yes.

25 Q. They didn't, but you thought they did, and then you

1 admit at that point, "Okay, okay, I rode off with him,"
2 right?

3 A. Yes.

4 Q. Then you tell them you rode off -- that he dropped
5 you off at a trailer park, didn't you?

6 A. Yes.

7 Q. And that he met up with somebody, and you walked
8 back to Foxtrot, to the apartment complex, right?

9 A. Yes.

10 Q. And that you didn't have anything else to do with
11 it?

12 A. Yes.

13 Q. All right. Then they keep talking, and finally
14 they get you down there on Butler Road?

15 A. Yes.

16 Q. And -- but then you tell them that you followed
17 these other people down there, right?

18 A. Yes.

19 Q. You said that everybody was at the trailer park,
20 right?

21 A. Yes.

22 Q. And that you went to the Butler Road ---

23 A. Yes.

24 Q. --- place?

25 A. Yes.

1 Q. Now, at some point in your statement, you talked
2 about -- you deny ever talking to Corey about this -- I
3 mean, Corey, you denied talking to Tyrone out there on
4 Butler Road? You didn't do that? You just got out of the
5 car, right?

6 A. Yes.

7 Q. And what you tell the police in this story and on
8 these tapes is that you jumped out of the car and they
9 left you there, isn't it?

10 A. Yes.

11 Q. And you never change that story, do you?

12 A. Everything that was in that tape, I agreed to the
13 fact that I was lying because of the fact that like I
14 said, I was trying to defend him and I was trying to
15 defend myself. I'm not a good of a liar. You even -- you
16 even know yourself that I lied in that tape, ---

17 Q. Oh, I ---

18 A. --- you know what I'm saying. I'm not a good of a
19 liar, so when he brought the tape -- when you heard my
20 voice, I had no choice but to say, "Yeah," you know what
21 I'm saying, "I know Miles." He had evidence of my voice
22 on the tape when I told Miles to come at Wilco, that
23 Tyrone Beaty was waiting on him, "We're waiting on him,"
24 you know what I'm saying. Yes, all -- all -- I agreed
25 that I lied on that right there.

1 Q. All right. Let me talk about a couple of other
2 things. You indicated on direct examination you did not
3 know this Daniel person that was with Miles Slay?

4 A. I seen him before. I seen him a few times through
5 my cousin. I met him through my cousin, Cleveland, as
6 well, but I didn't really know his name, like that, you
7 know what I'm saying, but yes, I know him, but not like I
8 know anybody else.

9 Q. Now, there's no question that the only phone calls
10 back and forth is between you and Miles, right, ---

11 A. Uh-huh (affirmative response).

12 Q. --- on your cell phone, and you and your
13 cousin, ---

14 A. Uh-huh (affirmative response).

15 Q. --- isn't that right?

16 A. Uh-huh (affirmative response).

17 THE COURT: You need to answer yes.

18 A. I'm sorry; I'm sorry. Yes, sir; yes, sir.

19 Q. And, in fact, later that night, you receive a phone
20 call from Mr. Slay's cousin, or family, or some of those
21 people he was with when he left with you, right?

22 A. Yes; yes, sir.

23 Q. And what do you tell them?

24 A. Okay, when we had left, the truth is, when we had
25 left the scene after Tyrone Beaty shot and killed Miles,

1 they recognized that we didn't come right back, so Daniel
2 called my phone and was like, "Yo, where Miles at?" I
3 said, "Man, I don't know where Miles at because he dropped
4 me off somewhere. I don't know where he at." Then I
5 asked him, "Yo, do y'all got any weed," trying to calm
6 things down because of the fact my mind was running so
7 wild.

8 Q. All right. Let me -- let me ask you this: Your
9 testimony is that within a hour, hour and a half, of
10 watching this murder, ---

11 A. Uh-huh (affirmative response).

12 Q. --- and when that call was made to you, ---

13 A. Uh-huh (affirmative response).

14 Q. --- looking for Miles, were you with Mr. Beaty?

15 A. Yeah, I was -- I was with Tyronne.

16 Q. You were still with him?

17 A. I was with Tyronne Beaty. We was heading out
18 through the back way at that time.

19 Q. Okay, so you were on the phone at that time, and
20 you're wanting to go get some weed?

21 A. I was doing that to throw Daniel off that something
22 had happened to Miles, because I was actually with the guy
23 who had a gun, so what can I say? Tyronne at that time --
24 Tyronne shot Miles. He probably would have turn around
25 and shot me, so I had to throw it off like he didn't know

1 that I was talking to the person who saw me with Miles.

2 Q. Okay, but at some point that night, you go straight
3 to Bridget's house and we've got this -- or I believe the
4 testimony is that that's what you did?

5 A. Yes. That's her house right there.

6 Q. Ten minutes to get there, maybe fifteen?

7 A. About fifteen, yes.

8 Q. Ten or fifteen minutes, so within fifteen minutes
9 of this happening, Mr. Beaty is gone, right?

10 A. All of us was together, but when we got to Bridget
11 house, yes, he left, him, Tyrone.

12 Q. That's my point; fifteen minutes of then, Mr. Beaty
13 is gone?

14 A. Yes.

15 Q. Okay, and you had a cell phone?

16 A. Uh-huh (affirmative response).

17 Q. Did you ever call Miles' family back and tell them
18 what happened?

19 A. No, I never -- I never call them back.

20 Q. Did you ever call the police back?

21 A. Never called no police or anything, no.

22 Q. But you say you told Felicia, and what's this
23 cousin, is it Winston or who is it?

24 A. Wesley.

25 Q. Wesley?

1 A. Wesley Quick; that's my cousin.

2 Q. You told him, too?

3 A. Yeah, I told him.

4 Q. Okay.

5 A. The only thing I told Wesley is like, "Man, Miles
6 just got killed." That's the only thing that I told
7 Wesley, and I hang the phone up, and we was heading to my
8 hotel room, and when I got to my hotel room, I went
9 straight to my room and that's when I called Felicia.

10 Q. Okay. Now, and there's no question that you're the
11 one -- there's a fellow named McDowell in this case, isn't
12 there? Isn't he the one that had the Maxima?

13 A. McDowell? Are you talking about the white guy with
14 the red hair?

15 Q. I don't know.

16 A. I don't know. I know him -- if that's the one with
17 the Maxima, I know him by Red. I don't even know ---

18 Q. No question that he would come and say that you are
19 the only one that called him about getting the car?

20 A. Yeah, I was the only one that called him to get the
21 car because that was my client at the time.

22 Q. He was your client? What kind of client was he?

23 A. I was in the drug game at the moment.

24 Q. And didn't you pay him with crack cocaine for the
25 use of this car?

- 1 **A.** Yeah. Like I say, I -- like I say, he was my
2 client at the time and the bad terms, I give him ---
- 3 **Q.** You paid him with crack to use the car?
- 4 **A.** Yeah, I give -- I give him crack, yeah.
- 5 **Q.** And, now, Bridget, she would have seen y'all
6 whenever you dropped the child off, right?
- 7 **A.** Uh-huh (affirmative response).
- 8 **Q.** She would have seen that?
- 9 **A.** She was in the house when we brought the daughter
10 through the door. We brought her, like, "Bridget can you
11 watch Monnie for us," and ---
- 12 **Q.** But she was there at the house when y'all rolled
13 up?
- 14 **A.** She was there at the house, yes.
- 15 **Q.** She was there at the house when all of you rolled
16 up supposedly after, so she would have been there,
17 right, ---
- 18 **A.** Yes.
- 19 **Q.** --- and would have seen, and the next day you go --
20 now it says something -- it was your birthday?
- 21 **A.** Yeah, it was my birthday.
- 22 **Q.** This was a Thursday. On Friday, it was your
23 birthday?
- 24 **A.** Yeah.
- 25 **Q.** You go celebrate, don't you, ---

1 A. But really ---

2 Q. --- you and your girlfriend?

3 A. Yeah.

4 Q. Y'all go to Columbia and you buy you some new
5 clothes, don't you?

6 A. Really, I never -- I never went to Columbia, but
7 that's what I told the detective. I was right -- I was in
8 Bishopville, you know what I'm saying. I was in
9 Bishopville at Felicia house.

10 Q. All right, and then -- and then you come back and
11 you stay at the Sea Mist Resort, don't you? You get you a
12 room there, don't you?

13 A. Yeah. See, when I left, I didn't went to party. I
14 didn't went to buy no clothes. Only -- I went because I
15 wanted to talk to Felicia because like I said, she was a
16 Federal investigator, and I went to talk to her personally
17 other than the phone, so when I went to there and talk to
18 Felicia, I break everything down to her, and so while I
19 was talking to Felicia, I got a call from my little
20 brother, and my little brother say, -- Dayton Smalls; he
21 was like, "Corey, man, what going on?" I said, "Why?
22 What's up?" He said, "Man, a detective at grandmama house
23 looking for you." I said, ---

24 Q. Now, we can't talk about what other people told
25 you.

1 **A.** No. I'm bringing the facts. You want the whole
2 story? You want the truth?

3 **Q.** Rules of evidence provide ---

4 THE COURT: Gentlemen.

5 MR. BELLAMY: Excuse me.

6 THE COURT: Mr. Bellamy, if you've got an
7 objection ---

8 MR. BELLAMY: I would object to hearsay, Judge.

9 THE COURT: You asked the question. Answer the
10 question.

11 **A.** All right, so my brother was like, "They looking
12 for you," you know what I'm saying, so he like, "If you
13 want the number, I'll call Mary Ann and get the number
14 from Mary Ann. He left a car at Mary Ann," so I call my
15 aunt, Mary Ann. I said, "Aunt Mary Ann," I said, "what's
16 the detective number," so she gave me the detective
17 number, and Felicia was right beside me. I call the
18 detective. I said, "Sir," I said, "This is Corey Napoleon
19 Smalls." I said, "I was told you are looking for me." He
20 said, "Yes. Where are you?" I said, "Sir, I'm in
21 Columbia," so he say, "How soon would it be before you
22 come back home because I need to ask you some questions,"
23 but the whole time I was in Bishopville," so I say, "What
24 kind of question you need to ask me?" He say, "I want to
25 ask you a question about an assault." I say, "Ask me a

1 question about an assault," when the whole time I know it
2 was about murder, so I'm like, "Well," I say, "I don't
3 know anything about no assault," and so I'm like -- that's
4 when I was about to hang up with him.

5 He say, "Well, how soon will it be before you come
6 back because I really need to talk to you," and I look at
7 Felicia. Felicia say, "You" -- she did this (indicating).
8 "You need to go and talk to them people," so I like,
9 "Well, I'll be down there tomorrow," because at this time,
10 it was Sunday, so I left and I went back home, and after
11 Felicia -- she got a room in her name at the Sea Mist,
12 okay, so the next morning, which was Monday, that's when I
13 call a lawyer by the name of Julian Hanna and my daddy. I
14 call Julian Hanna and my daddy because I wanted them to be
15 with me when I go and talk to these people.

16 In my mind, it was about telling the truth at the
17 moment, right, so we went and meet Julian Hanna at Inlet
18 Sitters where my daddy -- or my mama was working at, and
19 so we got out the car and got inside with Julian Hanna,
20 and we went to Conway Police Department, and I call the
21 detective. I said, "Sir, this is Corey Smalls." I say,
22 "I'll be there in five minute." He said, "No, no, no."
23 He say, "Come back tomorrow because," he say, "we about to
24 -- I'm about to leave. I'm about to get off." I say,
25 "No, listen man." I say, "I know what you want to talk to

1 me about." I say, "Man, I'm coming." I say, "Man, I need
2 to talk to you," and so he say, "Well, come on then," so
3 when we pull up, Julian Hanna, and my daddy, and I, we sat
4 in the lobby waiting for them, and that's when the
5 detective came, and that's when I got up -- Julian Hanna
6 -- I didn't told Julian Hanna what happened. I didn't
7 told my daddy what happened.

8 They were just there, you know, and so we went in the
9 interview room, but yes, while on the way there, Felicia
10 told me -- she text me. She did say that. She said,
11 "Don't tell them everything," you know what I'm saying, so
12 I say -- at that time, I'm like, "Man, she just told me to
13 tell the people the truth." Then she tells me -- I'm
14 there. I'm walking in to the place, you know, saying --
15 so it had my mind messed up at the time, because at the
16 time, I didn't -- we came with Julian Hanna, so she was
17 basically telling me that because I had the right, with a
18 attorney, to talk to these people, that's why she tell me,
19 "Don't tell them everything," basically what she saying,
20 if I don't have an attorney.

21 Okay, so when I went inside there without my
22 attorney, which I didn't have none because I didn't retain
23 Julian Hanna, and so the officer here, he asked me ---

24 Q. Excuse me; I'm sorry. Officer who?

25 A. Detective -- I don't know his name -- Detective ---

1 Q. The officer here, okay?

2 A. Yeah, the detective, and he asked me, he said, "I'm
3 going to need you to go back to the day of -- of -- of
4 Thursday. Can you remember anything that happened
5 Thursday," which was the day before the murder. In my
6 mind, he was trying to get me to see if I remember
7 anything Thursday so I could remember everything that
8 Friday, what happened Friday, so I played dumb. I played
9 dumb, like, "Man, I can't remember. I was -- "Man, I was
10 smoking weed. My mind bad." I was playing dumb, but the
11 whole time, I know what he was getting at.

12 I should have told him the truth, but I didn't, you
13 know what I'm saying, because the fact, like I said, I was
14 trying to protect him and I was trying to protect me,
15 because nobody at that moment was -- nobody at that moment
16 wasn't -- they didn't know nothing about nobody else at
17 the moment but me because of the last -- because the last
18 two persons who said I was last seen with the guy, which
19 was Dominique and Daniel, so right away, I knew what it
20 was, and so the whole time I was lying, lying, lying, and
21 I wasn't -- I wasn't good at it, so he said, "Well," --
22 and actually asked me a question about did I ever speak to
23 Miles. I said, "No. I don't know no Miles now. I never
24 -- I never" -- but the whole time, my mind like this,
25 like, "Oh, man." I'm going like this (indicating), so he

1 like, "Well, I meet you here." I said, "Yes, I did. I
2 just want a attorney." I said, "Man, I would like to
3 speak to my attorney. I would like to speak to my
4 attorney," because he was trapping me off. I mean, he was
5 trapping me off, so he brought the tape out. "I need you
6 to hear something," so he brought the tape.

7 Q. If I might, we've already been over that, and that
8 wasn't the question I asked you, ---

9 A. Yeah.

10 Q. --- I thought, at some point, but let's move on,
11 and what I'd like you to do is I'd like to go back over
12 what happened out there on Butler Road, so ---

13 A. All right; all right.

14 Q. --- we'll move on from all these statements and
15 when you told what or who you didn't tell.

16 A. All right.

17 MR. BELLAMY: Let me bring these over here, if I
18 might, Your Honor, and I would ask if it would be okay if
19 he steps down.

20 THE COURT: Y'all either use the microphone --
21 you've got to connect a microphone on ---

22 MR. BELLAMY: I'm going to bring it down here in
23 front of the jury and let him just ---

24 THE COURT: All right, sir; that's fine.

25 MR. BELLAMY: Your Honor, if it would be okay, I

1 would ask Mr. Smalls to step off the witness stand.

2 THE COURT: You can step down to the ---

3 Q. If you would, Mr. Smalls, and, you know, this is
4 not an art class and nobody is going to get a grade on
5 this, but would you draw for me the two cars, and I know
6 this is not to scale, but relative to the position that
7 they were in. Would you draw that for me, please.

8 A. The car, the gold car, that they was in, this is
9 the gold car. It was facing the highway, facing the
10 highway. When we came in, this is the Jeep. It was
11 facing this way.

12 Q. Okay. Now, could you tell me -- and the gold car,
13 for the jury again, can everybody see? (No response.)
14 The gold car was the car that who was in?

15 A. This is the car that ---

16 Q. Put the initials of the people.

17 A. Antonio was here.

18 Q. Okay. Put "A.S." there, Antonio Smalls, correct?

19 A. Antonio Smalls, yes, ---

20 Q. Okay.

21 A. --- was in the driver's seat.

22 Q. Okay.

23 A. Neil was here, and Tyronne was like -- when I came,
24 we pull up, Tyronne was like standing in the back.

25 Q. Put a mark there, please, and put "T.B." there,

1 Tyronne Beaty. He was right on the passenger side, back
2 of the gold Maxima?

3 A. Yes. He was standing back there, yes, sir.

4 Q. Now, if you will, draw here what you think the
5 feet, how the distance between -- this is the driver's
6 side of this car, the driver's side of this car. About
7 how far -- what was the distance in between?

8 A. I'm going to say -- I'm going to say about eight
9 feet.

10 Q. About eight feet, okay. Now, and there's been some
11 photographs shown ---

12 MR. BELLAMY: Is 5 in evidence? I believe it is.

13 THE COURT REPORTER: Yes.

14 THE COURT: Yes.

15 Q. Let me show you State's Exhibit 5, Mr. Smalls. You
16 recognized that, I believe, earlier?

17 A. Uh-huh (affirmative response).

18 Q. And if you would, this area out here, so everybody
19 can see it, there's an open field, I guess, so there's no
20 shrubs, or bushes, or trees between these cars, right?

21 A. Uh-huh (affirmative response).

22 Q. It's just flat land ---

23 THE COURT: You need to answer out loud.

24 A. Yes, sir. I mean, there ain't no shrub bushes or
25 nothing.

1 Q. Okay, so -- and this would be the vehicle that Mr.
2 Slay was in, correct?

3 A. Yes, sir.

4 Q. And this is the passenger side?

5 A. Yes, that's -- yes, sir.

6 Q. So the other vehicle would have been facing the
7 opposite direction on the other side?

8 A. Yes, sir.

9 Q. Now,, it's your testimony -- I'll let you do this.
10 You draw for me where Mr. Slay was.

11 A. Mr. Slay?

12 Q. And do initials, please.

13 A. All right. Miles, he was in the driver -- the
14 driver's side.

15 Q. Okay. Put "M.S." there.

16 A. (Witness writes on document.)

17 Q. And you were seated where when the car came up?

18 A. When we pulled up?

19 Q. Yes.

20 A. I was right here in the passenger side.

21 Q. Was there anybody else in the vehicle?

22 A. No, sir.

23 Q. Okay, and -- all right, when you get there, Mr.
24 Beaty is standing here, ---

25 A. Uh-huh (affirmative response).

1 Q. Okay, and what happens?

2 A. I -- Miles was like, "Oh, I recognize him. I know
3 the guy," so Beaty started walking ---

4 Q. Okay, let me slow you down. That was while you
5 were still in the car?

6 A. I was still in the car.

7 Q. While you were pulling up or after you came to a
8 stop?

9 A. After we came to a stop, because we was already at
10 a halt, and that's when he recognized Tyronne Beaty.

11 Q. Was it daylight or dark?

12 A. It was like dusky dark. It was getting to be dark.

13 Q. Okay, so as you're pulling up -- and I'm sorry,
14 when you stopped is when he said it, correct?

15 A. Uh-huh (affirmative response).

16 Q. Okay, and when he says that, what do you do, and
17 let's take a blue pen and mark for me where you go with
18 the blue pen.

19 A. (Witness writes on document.) All right. Well, I
20 got out; I got out. When he said that, because Tyronne
21 Beaty was already walking up, and he was like, "Well, I
22 recognize him," so I like, "Okay. Well, that's" ---

23 Q. Go around front now; right, now, you go around
24 front of the car you're in?

25 A. Yeah, the front of the car we was in, and that's

1 when I went to this side because I was thinking Tyronne
2 Beaty was going to get in the passenger seat. That's why
3 I got out, too, because -- but he went to the window to
4 where Miles was at.

5 Q. Now, so do y'all stop and talk anywhere?

6 A. No. I pass him. By the time I got here, he was
7 already walking up.

8 Q. Okay.

9 A. That's when I already -- I went and I got in the
10 car right here.

11 Q. Okay, and you -- okay, now put yourself there. All
12 right, and are you in the car with the door closed?

13 A. (Witness writes on document.) The door was like
14 half-way open, about to be closed. I went to close it
15 when I heard just that quick Tyronne Beaty keep grabbing
16 something, grabbing for something, and that's when I
17 looked back. I looked back, and everybody else was
18 looking, too.

19 Q. All right, now, let me ask you: When you say you
20 looked back, ---

21 A. Yeah.

22 Q. --- were these cars parallel or is this car ---

23 A. This car -- this car here was just -- it was -- it
24 was up a little -- it was up a little bit. It wasn't like
25 straight here. Like it ain't so big, but this car was

1 like here and this car like right here, but it was like
2 eight feet apart, so ---

3 Q. You would have to look a little bit back ---

4 A. Yeah.

5 Q. --- to see the front part of this car?

6 A. Yeah.

7 Q. It wasn't like it was ---

8 A. No.

9 Q. --- you could look straight across?

10 A. No.

11 Q. You'd have to look a little bit back?

12 A. Yeah.

13 Q. And you are seated here?

14 A. Yeah.

15 Q. And, now, there's a bag on this window, right?

16 A. Yeah, yes, that's a bag on this window right here.

17 Q. But you could see out of this window?

18 A. Yeah, I could see.

19 Q. And out of the back window?

20 A. Out of the back, yeah.

21 Q. And how long do you think it took you to get from
22 here to get seated, ten seconds?

23 A. Yeah, about ten second, if that.

24 Q. Okay, and write that down there in blue, ten
25 seconds.

1 A. (Witness writes on document.)

2 Q. All right, and then you're here; go over that
3 again.

4 A. He grabbed something. I heard Miles say -- I'm
5 sorry; I heard Tyronne Beaty like he grabbed something, he
6 grabbed for something, and when we looked back, they was
7 tugging around over the bag. They was tugging on it.

8 Q. Okay, tugging on what bag?

9 A. The bag of money.

10 Q. How do you know it's a bag of money?

11 A. Because after he shot him, after he shot in the
12 car, Miles had throw the money in the same bag, and he
13 grabbed and he throw it in my lap.

14 Q. Okay. Now, so you're watching the whole time, and
15 let's use red, or green, for Tyronne, and I know you've
16 already drawn a line there, but if you would, re-draw that
17 line and show me where Mr. Beaty is.

18 A. You say -- you talking from right here?

19 Q. Yes, from where he is at the back of the car to
20 where you say he went to the driver's window.

21 A. When he -- after he got -- after he shot and got
22 the money? After he shot and got the money, ---

23 Q. Just draw a line from -- if you would, from where
24 he was standing, ---

25 A. Yeah.

1 Q. --- how he went to go to the Jeep.

2 A. (Witness writes on document.) He went boom,
3 straight, straight over there.

4 Q. Okay, and again, that would be about ten feet maybe
5 that he would have walked, ---

6 A. Yeah, something like that, ---

7 Q. --- right?

8 A. --- yeah.

9 Q. Okay, and when he gets there, where is he standing
10 relative to the driver's window or door?

11 A. He was to the window.

12 Q. Okay, right at the door?

13 A. Uh-huh (affirmative response).

14 Q. Okay. Put his initials there for me.

15 A. (Witness writes on document.)

16 Q. Okay, was the door open or closed?

17 A. At the time the door was closed because when we
18 looked, it was tug-o-warring through the window.

19 Q. And the door was closed?

20 A. The door was closed at the moment.

21 Q. Okay. Now, how long does the tussling go on, five
22 seconds, ten seconds?

23 A. When -- when I looked, I can't -- I can't really
24 say the timing, know what I'm saying, but it was a few
25 seconds. It was liked when I looked back, he was

1 grabbing, "Yo, yo. He grabbed for something. He grabbed
2 for something," so when I -- I mean, they were already in
3 the motion of it, so I ---

4 Q. So how long did that last, that tugging?

5 A. Well, when I look back, snuggled back, pow, pow,
6 pow, that's when I saw him -- I heard, "He's grabbing
7 something, grabbing something," but when I looked back,
8 that's when he boom, boom, boom.

9 Q. So by the time -- the time it took you to turn your
10 head, he was shooting, is that what you're saying?

11 A. Yeah. When I look, after he had pull the gun
12 out ---

13 Q. What I'm asking, now, did you see the tussling or
14 did you not see the tussling?

15 A. I see -- I look -- I saw the tussling, because when
16 he shot him, Miles was still holding onto the money.

17 Q. Okay.

18 A. He was still holding onto the money, you know what
19 I'm saying, so that's -- for one time, pow. Miles hold
20 the money. The second time, pow. Miles had the money,
21 and by the third time, Miles let go of the money.

22 Q. And then -- and then he came back to where?

23 A. He came back ---

24 Q. Draw me a line to where he came back.

25 A. He came back to this side of the car right here.

1 He was behind ---

2 Q. Did he get in the car?

3 A. Yeah, he got in the car, ---

4 Q. Okay.

5 A. --- because I was right there.

6 Q. Now, Antonio and Neil never get out of the car, is
7 that your statement?

8 A. Huh-uh (negative response).

9 Q. Okay. Now, you realize that in that five hour
10 statement you talk about both of them getting out, don't
11 you, but that was a lie, right?

12 A. No, I don't remember that now. I don't remember
13 that.

14 Q. Well, you can look at it, but you deny that?

15 A. Yeah. I don't remember saying that they got out of
16 the car.

17 Q. All right. Now, let's go back up to here. He
18 comes to here. You look, and about the time you look is
19 when he starts shooting, ---

20 A. Uh-huh (affirmative response).

21 Q. --- was seconds, okay, and Mr. Slay is seated in
22 the car?

23 A. Yeah, he was seated in the car.

24 Q. With the door closed?

25 A. Yeah, the door was closed at the time.

- 1 Q. And my client, you say, ---
- 2 A. Uh-huh (affirmative response).
- 3 Q. Had a gun in which hand?
- 4 A. He had a gun in this hand right here (indicating).
- 5 Q. His right hand?
- 6 A. In his right hand.
- 7 Q. Okay, and that he shot him through the window.
- 8 A. Yeah. He ---
- 9 Q. The window was down?
- 10 A. The window was down, and he shot through the
- 11 window.
- 12 Q. Okay, so was his hand inside of the car, ---
- 13 A. Yeah.
- 14 Q. --- like if here's the window, ---
- 15 A. Yeah.
- 16 Q. --- his hand was actually in the car?
- 17 A. Yeah, shooting down in his lap, yeah, in the
- 18 stomach, like in the lower area.
- 19 Q. Okay. How close would that gun have been to Mr.
- 20 Slay?
- 21 A. If he was sitting in the car and I was on this
- 22 side, so I can't really say how close the gun was to him,
- 23 like this right here. I can't really say, but I know it
- 24 was close enough the way he got hit.
- 25 Q. Okay, but not much room between that door and where

1 he was seated, was there?

2 A. Let's say this -- I guess this -- let's say this
3 would be the door. He was like this right here
4 (indicating), but he was like this right here.

5 Q. So he's inside the car?

6 A. Miles is inside the car. Tyronne Beaty was
7 standing outside the car, pointing in ---

8 Q. But he had his arm within the car?

9 A. Uh-huh (affirmative response).

10 Q. Okay, and did Miles ever get out of the car?

11 A. No, Miles never got out of the car.

12 Q. All right, so after this, how many shots were there
13 then?

14 A. The first shots were three shots I heard, and he
15 came ---

16 Q. And then Mr. Beaty came back and threw something in
17 your lap?

18 A. Throw a bag of money in my lap.

19 Q. Did he get in the car and sit down?

20 A. He got in the car and say, "Pull up," and he got
21 back out and ---

22 Q. And shot again?

23 A. --- and finish him off like that, and then that's
24 when he went and wipe all the fingerprints off the car,
25 off the thing, wipe all his fingerprints off the ---

1 Q. Hold on. Let me ask you about that, now. You just
2 testified for the Solicitor and you didn't mention
3 anything about wiping anything off?

4 A. I mean -- I mean -- cause there's lots of things
5 that happened at that time, a lot of things that I
6 remember, you know what I'm saying; it's coming to me as
7 I'm speaking about.

8 Q. So things start coming to you and you remember them
9 now?

10 A. Yeah, I mean, he wiped all the fingerprints off the
11 Jeep -- off the frame of the car door, you know.

12 Q. Okay. Now, where was he when he shot him the
13 second time?

14 A. He went back to the same area. He went back ---

15 Q. Right to the door and then he shot him again?

16 A. Yeah.

17 Q. All right, and then what? Now, you say he -- did
18 anybody else get out of the car?

19 A. No, nobody else got out of the car.

20 Q. And then y'all took off?

21 A. Yeah, we took off.

22 Q. All right, but -- and like you told the police in
23 that one statement, you didn't jump out of the car and run
24 back to Miles, did you?

25 A. No, I never jump out of the car. I was in the car

1 until the time we got to Bridget Allen house and
2 everything like that, but like I say in that interview,
3 yes, I did admit to lying, because I was ---

4 Q. You admit now to lying. You didn't admit then
5 necessarily, but you admit now that all that was a lie?

6 A. Yeah; yeah, but I'm saying all this right here, ---

7 Q. Now this is true?

8 A. --- all this is behind me.

9 Q. All right. In fact, -- all right, you can go have
10 a seat back up there.

11 A. (Witness returns to the witness stand.)

12 MR. BELLAMY: The Court's indulgence for just a
13 second, Judge.

14 Q. You had over Five Hundred Dollars in cash when you
15 went to talk to the police about this supposed assault,
16 didn't you?

17 A. I had some money on me, yes.

18 Q. Over Five Hundred Dollars in cash?

19 A. I can't remember exactly. I know it was like a few
20 hundred dollars.

21 Q. And you were staying at the Sea Mist Resort at the
22 time?

23 A. Uh-huh (affirmative response).

24 Q. And at the time supposedly this happened, you were
25 renting the penthouse at the Best Western and had been

1 there for two weeks, hadn't you?

2 A. Yeah, I had been there for two weeks.

3 Q. Did you ever write any letters to your wife -- or
4 she's not your wife. She's identified as wife here on
5 your phone, but Felicia, while in jail?

6 A. Yeah, I wrote a letter to Felicia, yes.

7 Q. Did you ever talk about in those letters about
8 money and how you needed money and stuff like that ---

9 A. How I needed money?

10 Q. --- during this time period?

11 A. If I say anything about needing money, it's about
12 me probably getting a lawyer, you know what I'm saying,
13 paying the lawyer and probably for bond purpose.

14 Q. Okay, and you testified on direct that every --
15 that until the moment that Mr. Beaty comes down there, and
16 you say you called him to come down there, until he got
17 there, you had no plan to do anything wrong other than a
18 dope deal, and that's wrong, but other than that, you
19 didn't have any plans to do anything wrong, did you?

20 A. No, sir.

21 Q. This is one hundred percent Mr. Beaty's idea to
22 switch the cars, Mr. Beaty's idea to put the child over
23 here, Mr. Beaty's idea to do this? Everything was Mr.
24 Beaty? Nothing was ---

25 A. No, it wasn't his idea to put the child here. It

1 was Punch idea to let -- you know what I'm saying, to put
2 his child there, but according to all the robbery and all
3 that, it was ---

4 Q. That's all Tyronne Beaty?

5 A. Tyronne Beaty, yeah.

6 Q. Switching cars, ---

7 A. Switching, yeah.

8 Q. --- all the talking, every bit of it, and before he
9 got there, there wasn't any talk about that, right?

10 A. Excuse me?

11 Q. That before he got there, there wasn't no talk
12 about that, was there?

13 A. Huh-uh (negative response).

14 Q. And -- and Mr. Beaty done all this?

15 A. Yes.

16 Q. Okay, and what -- let me ask you this: Your
17 testimony is that -- that he convinced you to do this, ---

18 A. Uh-huh (affirmative response).

19 Q. --- right?

20 A. Yes.

21 Q. And what were you going to get?

22 A. He -- he -- he was the man behind all this.

23 Whatever he willing to give me at that moment, you know

24 what I'm saying, it was on him. There wasn't no amount

25 discussed. The only thing he say, that he would look out

1 for me and my cousin, Antonio. There was no amount.

2 Q. You were going to get you something; you wanted
3 money, didn't you?

4 A. I'm saying, that was the whole -- that was his
5 idea, to look out, you know what I'm saying, because I'm
6 putting him on to a lick, in someone's words, but I never
7 got no money, none of us. At least me and my cousin,
8 Antonio, never saw no money.

9 Q. Who took Mr. Beaty away from Bridget's, do you
10 know?

11 A. My cousin, Antonio Smalls.

12 Q. How did Mr. Beaty get to -- your testimony, how did
13 he get to you, and I guess it was Murrells Inlet?

14 A. Yeah, Murrells Inlet. He was in ---

15 Q. The Hot Road, is that what they call it?

16 A. Yeah.

17 Q. How did he get there?

18 A. He was inside a -- I think it was -- not a dark
19 gray, a black Jeep, Chrysler Je- -- a Cherokee Jeep.

20 Q. Do you know who was driving it?

21 A. No, I don't know. I know it was a female driving,
22 but I don't know who was driving it.

23 MR. BELLAMY: The Court's indulgence for just one
24 second.

25 THE COURT: Yes, sir.

1 MR. BELLAMY: I don't have anything further, Mr.
2 Smalls.

3 THE COURT: Redirect.

4 MR. BELLAMY: The Solicitor may have some redirect.

5 MS. VON HERRMANN: Thank you, Your Honor.

6 REDIRECT EXAMINATION BY MS. VON HERRMANN:

7 Q. Mr. Smalls, you're no saint, are you?

8 A. Ma'am?

9 Q. You're no saint, are you?

10 A. No, ma'am.

11 Q. And you don't claim to be?

12 A. No, ma'am.

13 Q. You're a drug dealer?

14 A. Yes, I am a drug dealer.

15 Q. And when y'all set this deal up, you expected to
16 get some money?

17 A. Uh-huh (affirmative response).

18 Q. That's the way ---

19 A. Yes, ma'am; yes, ma'am.

20 Q. --- it works. When you set up a lick -- what's a
21 lick?

22 A. A lick is like a robbery or anything like that, a
23 robbery.

24 Q. When you set up a lick, you get paid, right?

25 A. Yes, ma'am.

1 Q. All right. Let's go back, and let's talk about
2 these five hours of tape.

3 A. Yes, ma'am.

4 Q. You admitted to knowing Miles Slay?

5 A. Yes, ma'am.

6 Q. You admitted that he made a phone call to you?

7 A. Yes, ma'am.

8 Q. You admitted that you went to Foxtrot?

9 A. Yes, ma'am.

10 Q. You admitted who you saw when you went to Foxtrot?

11 A. Yes, ma'am.

12 Q. You said you went to the Wilco?

13 A. Yes, ma'am.

14 Q. You admitted riding in the car with Miles Slay?

15 A. Yes, ma'am.

16 Q. You admitted you went to Butler Road?

17 A. Yes, ma'am.

18 Q. You said you followed some other people?

19 A. Yes, ma'am.

20 Q. You said a person named Jamaica was going to make a
21 deal with Miles?

22 A. Yes, ma'am.

23 Q. Who is Jamaica?

24 A. The Jamaica that I was speaking about really was a
25 made-up image. The reason why I said Jamaica, because

1 when he was speaking in a Jamaican tone when I went and
2 meet Miles, it give me an idea to say it was a Jamaican,
3 to say it like I say it to save him, because I didn't want
4 to say Shady or Tyronne Beaty, so I just say it was a
5 Jamaican.

6 Q. But you did say Shady, right?

7 A. Yeah. Yes, ma'am.

8 Q. All right. Who is Shady?

9 A. Tyronne Beaty.

10 Q. So you told the police that y'all set up a deal
11 which was between Shady and Miles?

12 A. Yes. That ---

13 Q. You told them that, right?

14 A. Yes, ma'am.

15 Q. You told them you saw Miles with Daniel and
16 Dominique?

17 A. Yes, ma'am.

18 Q. You told the police that the victim was shot by
19 Jamaica or Shady?

20 A. Yes, ma'am.

21 MR. BELLAMY: Your Honor, I would object as to
22 leading at this point.

23 THE COURT: I'll -- I'm going to allow the questions
24 as currently posed. Thank you.

25 You may continue.

- 1 Q. You told the police how the money was packaged?
- 2 A. Yes, ma'am.
- 3 Q. You told them it was in a white, plastic bag?
- 4 A. Yes, ma'am.
- 5 Q. You told the police you called Daniel?
- 6 A. Yes, ma'am.
- 7 Q. You drew the police a diagram?
- 8 A. Yes, ma'am.
- 9 Q. You showed them where you were?
- 10 A. Yes, ma'am.
- 11 Q. You talked about the incident location?
- 12 A. Yes, ma'am.
- 13 Q. You described the incident location?
- 14 A. Yes, ma'am.
- 15 Q. You described both vehicles?
- 16 A. Yes, ma'am.
- 17 Q. You described your position?
- 18 A. Yes, ma'am.
- 19 Q. You told the police where you went after you left
- 20 there?
- 21 A. Yes, ma'am.
- 22 Q. You told them you were at the Sea Mist?
- 23 A. Yes, ma'am.
- 24 Q. You called the police?
- 25 A. Yes.

1 Q. And you told them that you were willing to come in
2 and speak with them?

3 A. Yes, ma'am.

4 Q. And you did come in and speak with them?

5 A. Yes, ma'am.

6 MS. VON HERRMANN: I have no further questions.

7 THE COURT: Questions on those questions posed by
8 the Solicitor?

9 RECROSS EXAMINATION BY MR. BELLAMY:

10 Q. You didn't tell them you went back to Bridget's
11 house after the incident, did you? Did you?

12 A. That I went back to Bridget house after ---

13 Q. After the incident?

14 A. Right after the incident.

15 Q. In the statements, ---

16 A. Right after the incident -- right after the
17 incident, we went to Bridget house.

18 Q. You've got to listen to me. She's asking about
19 these five hours of statements.

20 A. Okay.

21 Q. In these five hours of statement, you don't tell
22 them you went to Bridget's house before, during, or after,
23 do you?

24 A. I remember telling them that I went ---

25 Q. Just yes or no, and you can explain.

1 **A.** Yes, I remember telling them I went back to where
2 -- I guess I told them I went back to Bridget house and
3 from Bridget, we went to the Sea Mi- -- we went back to
4 the motel room.

5 **Q.** You never tell them that you went to Bridget's
6 house before or after no statements, Mr. Smalls.

7 **A.** It was five years ago.

8 **Q.** And you tell them in those statements that you left
9 the scene on 'foot and never went with those people is what
10 you tell them, didn't you?

11 **A.** Yes, in those right there, yeah.

12 **Q.** That's right, and that's what she's asking you
13 about.

14 **A.** Which I thought she mean like prior to that, other
15 than that right there.

16 **Q.** And you make up a story in there about going to a
17 trailer park, too, don't you?

18 **A.** Yes, I did.

19 **Q.** And you never tell them about riding around and
20 smoking dope and drinking beer, or anything like that, or
21 going to Food Lion in there either, do you?

22 **A.** Huh-uh (negative response).

23 **Q.** Okay, so the truth just ain't in there?

24 **A.** No, it's ---

25 **Q.** You tell what truth you have to tell when they

1 confront you with phone messages and everything else, ---

2 A. Yeah.

3 Q. --- don't you?

4 A. Yeah, and that's when I review everything else.

5 Q. And the only time you've ever told this story that
6 you've told here today is today, and you want to talk
7 about bits, and pieces, and maybe parts, but the whole
8 story you've told here today has never been told to a
9 police officer in five years?

10 A. Well, according -- well, to this right here, you
11 know what I'm saying, in bits and pieces, I mean if you --
12 if you looking as to me not telling the truth in the bits
13 and pieces, but later, after this right here, I did told
14 them, but I didn't told them everything from A to Z. I
15 didn't told them the way I break it down right now, you
16 know what I'm saying.

17 I didn't told them, but according to what my cousin,
18 Antonio, told them, later that he came and asked me, then
19 I told them yes, we was at the Food Lion, yes; he bought
20 that from Food Lion, yes. He went and he throw the bullet
21 out the highway because one of the detectives was supposed
22 to come back and get me that Friday. He said, "Well, you
23 sure them bullets out there?" I say, "Yes, them bullets
24 out there." He supposed to come and get me that Friday,
25 so yes, I did told him the truth after that right there,

1 so ---

2 Q. And that officer would be able to come in here and
3 confirm that, that you told him all this stuff?

4 A. The big -- it -- it -- it was the big guy that was
5 with him.

6 Q. Todd Cox?

7 A. The big guy. He ---

8 Q. We'll bring him in here.

9 A. I asked him, because I told him about the bullets
10 and all. He supposed to come and get me that Friday.

11 Q. That's good. That's good.

12 A. Yeah, because he said, "Well, I'll be back Friday."

13 Q. And he's the one you told it to?

14 A. Yeah. He said, "I will be" -- he said, "I will be
15 back Friday to come and get you if you would show me where
16 those bullets was at," but he never came back.

17 Q. Okay.

18 THE COURT: Anything else, Mr. Bellamy?

19 MR. BELLAMY: No, sir.

20 THE COURT: Anything else, Solicitor?

21 MS. VON HERRMANN: No, Your Honor.

22 THE COURT: All right. You may step down, Mr.

23 Smalls.

24 MR. SMALLS: Yes, sir.

25 MS. VON HERRMANN: Your Honor, we do have the -- the

1 exhibit that was redacted and ---

2 THE COURT: All right.

3 Just let him have a seat right there, please.

4 I will have the Court Reporter keep Exhibit 38. Just
5 use that one as a Court's Exhibit, and the other one will
6 go in.

7 TWO-PAGE PROFFER LETTER ORIGINALLY MARKED FOR
8 IDENTIFICATION AS STATE'S EXHIBIT NUMBER 38
9 NOW MARKED AS COURT'S EXHIBIT 2.

10 MS. VON HERRMANN: May we approach.

11 THE COURT: Just one second. Let's get this squared
12 away first.

13 Ladies and gentlemen, we're going to stop for lunch.
14 I'm going to have you leave your pads and pens in your
15 seat, please. The Clerk will take control of those.

16 When you go to lunch, remember I told you y'all
17 aren't supposed to be talking about this case, and
18 obviously nobody is supposed to talk to you about it, so
19 what I will ask that you do is if you happen to go to
20 lunch at one of these places that's, you know, within
21 walking distance, a couple of blocks of the courthouse,
22 there's any number of restaurants; if you're going to go
23 to any of those, wear your juror badge so that the people
24 will know, because they might not recognize all of y'all
25 as being on the jury, but if they see that, then they'll

1 know, "We're not supposed to be talking about the case,"
2 because they just might be talking about it in general
3 about what they're going to do this afternoon about the
4 case, or whatever, so do that.

5 And obviously if somebody persists in talking about
6 the case in your presence or persists in trying to talk to
7 you about it, as best you can find out who that person is,
8 report that to the Court and we'll take care of that
9 situation, all right?

10 Now, I would like you back at -- it's about 12:25.
11 If y'all will be back at 1:45. Be back in your jury room
12 at 1:45, all right? You are now excused. Thank you very
13 much.

14 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF**
15 **THE JURY.)**

16 THE COURT: All right, anything else from the State
17 at this point in time?

18 MS. VON HERRMANN: Not at this time.

19 THE COURT: From the Defense?

20 MR. BELLAMY: None, Your Honor.

21 THE COURT: Ms. Floyd, is there something you needed
22 to bring up to the Court at this point in time?

23 MS. FLOYD: No, sir. I was wondering ---

24 THE COURT: I assume that Mr. Smalls will go back --
25 he's in Georgetown, correct?

1 MS. VON HERRMANN: Your Honor, I actually would like
2 to have him kept here at J. Reuben. It's our intention to
3 plead him at ---

4 THE COURT: Oh, okay. All right. Well, then you'll
5 just discuss that with the Sheriff's Office about that,
6 okay?

7 MS. VON HERRMANN: Yes, sir.

8 THE COURT: All right, 1:45 then. Thank you very
9 much.

10 (OFF THE RECORD)

11 **ON THE RECORD**

12 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF**
13 **THE JURY.)**

14 THE COURT: All right, is the State ready to call
15 its next witness?

16 MS. VON HERRMANN: Yes, sir, Your Honor.

17 THE COURT: Is the Defense ready?

18 MR. BELLAMY: Yes, sir, Your Honor.

19 THE COURT: Very good. Ask the jury to come in,
20 please.

21 **(THE FOLLOWING TAKES PLACE IN THE PRESENCE OF THE**
22 **JURY.)**

23 THE COURT: All right, Solicitor, your next witness,
24 please, ma'am.

25 MS. VON HERRMANN: Thank you, Your Honor.

1 The State calls Jarrett Jeffcoat.

2 THE COURT: All right, sir, please come around to be
3 sworn.

4 JARRETT JEFFCOAT, being first duly sworn, testifies
5 as follows:

6 THE CLERK: Please be seated. State your full name
7 for the record and spell your last.

8 MR. JEFFCOAT: Full name is Jarrett Jeffcoat. Last
9 name is spelled J-E-F-F-C-O-A-T.

10 DIRECT EXAMINATION BY MS. VON HERRMANN:

11 Q. Good afternoon, Mr. Jeffcoat.

12 A. Good afternoon.

13 Q. Thank you for your patience.

14 A. You bet.

15 Q. Tell the jury, please, how you are employed.

16 A. I'm employed with Food Lion. I'm a loss prevention
17 investigator. I've been with Food Lion for twenty years,
18 and I've been in the loss prevention department for ten
19 years, the last ten years.

20 Q. And tell the jury, please, what your duties are in
21 that regard.

22 A. My basic job functions are to identify associate
23 theft, associate dishonesty, associate integrity. We also
24 work in conjunction with the local authorities to provide
25 information should they seek it.

1 Q. And did you have occasion to take a look at some
2 items -- let me show you -- actually, let me show you
3 what's been marked as State's Exhibit 29 and ask you if
4 you can identify that for me?

5 A. Yes. It appears to be a Food Lion video cassette.

6 MS. VON HERRMANN: Your Honor, I would move this
7 into evidence. It will be State's 29.

8 THE COURT: Any objection?

9 MR. BELLAMY: I assume that's what we previously --
10 has been disclosed.

11 MS. VON HERRMANN: It is.

12 MR. BELLAMY: No problem, Judge.

13 THE COURT: All right, sir. In evidence without
14 objection.

15 MS. VON HERRMANN: Thank you.

16 VIDEO CASSETTE ADMITTED INTO EVIDENCE AS
17 STATE'S EXHIBIT NUMBER 29.

18 Q. And tell the jury, please, how the video system
19 worked at Food Lion, or rather how it worked in 2005 when
20 this particular video was made.

21 A. Yes, in 2005, the system was basically a VCR with
22 roughly nine to twelve cameras in a store, and the cameras
23 would be linked to the VCR and also what's called a
24 multiplexer, which is like a converter, and the
25 multiplexer converts the video that is taped into the VCR,

1 so what it does, it has nine to twelve frames, or nine
2 cameras, and if you could picture nine frames on a screen,
3 and it starts at the first screen, and it takes a one
4 second -- one to three second intervals for it to record
5 the first frame to the last frame, back to the first
6 frame.

7 MS. VON HERRMANN: Your Honor, I would ask that Mr.
8 Jeffcoat be allowed to step down and I be allowed to
9 publish State's 29 to the jury.

10 THE COURT: Any objection to publication?

11 MR. BELLAMY: No, sir, Your Honor.

12 THE COURT: You may do so.

13 Step down, sir.

14 Q. There's no sound on this, is that correct?

15 A. Yes, no sound.

16 MR. BELLAMY: Your Honor, may I?

17 THE COURT: Yes, sir, certainly.

18 (Food Lion video cassette is played for the jury.)

19 Q. Is someone checking out there?

20 A. Yes.

21 Q. I know there are going to be several views of that
22 individual checking out.

23 A. Yes.

24 Q. Would that be the same scene there, only from a
25 different perspective?

1 A. The same scene, but it's actually zoomed in a
2 little bit closer.

3 Q. And again, this would be just a different angle, is
4 that correct?

5 A. Correct.

6 Q. And I notice in this video, some portions bears a
7 date at the top of the frame, is that correct?

8 A. Yes. That shows the date and the time.

9 Q. And this is just something that you regularly keep
10 at the store for some period of time, correct?

11 A. Yes, correct.

12 Q. How long do you typically keep these tapes?

13 A. In '05, we actually keep the tapes -- they would
14 cycle out every thirty days, so at the first of the month,
15 the tapes are typically labeled, one for the 30th, or the
16 date of the month, and one for thirty-one, so on, we'll
17 say September 1st, that tape would be used, and then on
18 October 1st, it would be recorded over and used again.

19 MS. VON HERRMANN: Thank you. Please have a seat
20 again.

21 Your Honor, I'm going to rewind this to the
22 appropriate spot so when it goes back it will be ---

23 THE COURT: Yes, ma'am.

24 Q. And if you will, please, take a look at what's been
25 marked State's Exhibit 30 and tell me what that is.

1 **A.** This was an actual transaction that occurred at the
2 register. On it shows the date, time, the register, the
3 transaction number, and the store location, and the
4 cashier, the number.

5 MS. VON HERRMANN: And I would ask that Mr. Jeffcoat
6 be allowed to come down -- let me move this into evidence
7 first.

8 **Q.** Is this something that's regularly kept in the
9 course of business?

10 **A.** Yes.

11 MS. VON HERRMANN: I would move State's Exhibit 30
12 into evidence.

13 THE COURT: Any objection?

14 MR. BELLAMY: No, sir, Your Honor.

15 THE COURT: And what date was that, please, ma'am?

16 MS. VON HERRMANN: This is 10/20/05.

17 THE COURT: Thank you.

18 MS. VON HERRMANN: And I would ask that he be
19 allowed to come down and show this to the ---

20 THE COURT: You may do so.

21 If I did not say, State's 30 is in evidence without
22 objection.

23 FOOD LION RECEIPT ADMITTED INTO EVIDENCE AS

24 STATE'S EXHIBIT NUMBER 30.

25 **A.** Basically what this is is a receipt that's

1 generated at the store ---

2 THE COURT: You need to please speak up. You're
3 kind of covering that microphone right there, so you need
4 to speak up.

5 A. This is a receipt that is generated at the store.
6 It's kept in our database. Our stores are able to go in
7 any time and look at a transaction on a certain date or
8 time, and what it denotes here is the actual items that
9 were scanned at the register, and down here it denotes, if
10 you could see this, it shows the date, it shows the time,
11 it shows the store number, it shows the register number,
12 it shows the transaction number, and it shows the cashier
13 number that actually ran it. Each cashier is given a
14 sequence of numbers.

15 Q. And does that correspond with the video that we
16 just watched here a moment ago?

17 A. Yes.

18 Q. And would you tell the jury, please, what items
19 were purchased on that -- what date is that?

20 A. This is dated for 10/20/05 at 17:27, which is 5:27
21 in the evening.

22 Q. Okay, and what items were purchased?

23 A. Martha White plain flour, Food Lion sandwich
24 spread, duct tape, Food Lion lunch bag, and this bottom
25 thing here is actually an on-sale item. It just denotes

1 that an item was on sale. It takes a certain percentage
2 of it off.

3 Q. The second item that you mentioned, I believe that
4 you said -- that actually is a sandwich bag, a sandwich
5 bag, is that correct?

6 A. Yes. I was incorrect. That's a Food Lion pleated
7 sandwich bag.

8 MS. VON HERRMANN: Thank you very much.

9 Your Honor, I have no further questions for this
10 witness.

11 THE COURT: All right. Cross examination?

12 MR. BELLAMY: No questions, Judge.

13 THE COURT: Do you wish the witness to be excused?

14 MS. VON HERRMANN: I do, Your Honor.

15 THE COURT: Any objection?

16 MR. BELLAMY: No, Your Honor.

17 THE COURT: All right. Sir, you are released from
18 your subpoena and may go back to your regular duties.
19 Thank you.

20 MS. VON HERRMANN: Your Honor, at this time the
21 State would call Renee Hardwick.

22 THE COURT: Would you come around and be sworn,
23 please, ma'am.

24 RENEE HARDWICK, being first duly sworn, testifies as
25 follows:

1 THE CLERK: Please be seated. State your full name
2 and spell your last.

3 RENEE HARDWICK: Sharon Renee Hardwick,
4 H-A-R-D-W-I-C-K.

5 DIRECT EXAMINATION BY MS. VON HERRMANN:

6 Q. Ms. Hardwick, how are you currently employed?

7 A. I am the Deputy Director of Horry County 911.

8 Q. And how long have you been in that position?

9 A. Twenty years.

10 Q. And you've testified in a number of trials, have
11 you not, ---

12 A. Yes, ma'am.

13 Q. --- with regard to 911 tapes?

14 A. Yes, ma'am.

15 Q. And I'm going to show you what's been marked as
16 State's Exhibit for I.D. 28 and have you take a look at
17 that item if you will.

18 A. Okay.

19 Q. Have you had an opportunity to review that
20 particular item?

21 A. I have.

22 Q. And does it fairly and accurately represent the
23 contents of the 911 call that was placed?

24 A. Yes, ma'am. am'

25 MS. VON HERRMANN: I'd ask -- move to have this

1 entered into evidence as State's 28.

2 THE COURT: Any objection?

3 MR. BELLAMY: No, Your Honor.

4 MS. VON HERRMANN: And I'd ask to be allowed to
5 publish it to the jury.

6 THE COURT: No objection. Again, Solicitor, I'm
7 sorry, did you have the witness identify the date?

8 MS. VON HERRMANN: Yes, absolutely.

9 Q. Is the date of this call October the 21st of 2005?

10 A. Yes, ma'am.

11 Q. And where did that call come from? Do you know
12 which location it was? Is that a Butler Road location?

13 A. Yes, ma'am. It was a call off of -- a resident off
14 of Butler Road.

15 Q. Thank you.

16 CASSETTE TAPE OF 911 CALL ADMITTED INTO
17 EVIDENCE AS STATE'S EXHIBIT NUMBER 28.

18 (State's Exhibit Number 28 is played in its entirety
19 for the jury.)

20 MS. VON HERRMANN: I have no further questions for
21 this witness. Please answer any questions Mr. Bellamy
22 has.

23 THE COURT: Cross examination?

24 CROSS EXAMINATION BY MR. BELLAMY:

25 Q. Ms. Hardwick, what time did that call come in?

1 A. Approximately 1:30.

2 Q. 1:30 on?

3 A. October the 21st of 2005.

4 Q. Would that be 1:30 ---

5 A. P.M.

6 Q. Okay.

7 MR. BELLAMY: Thank you so much.

8 THE COURT: Any redirect?

9 MS. VON HERRMANN: No, Your Honor, and I would ask
10 that the witness be allowed to be excused.

11 THE COURT: Any objection?

12 MR. BELLAMY: No, sir.

13 THE COURT: All right, ma'am, you are released from
14 your subpoena and may go back to your regular duties.
15 Thank you.

16 MS. VON HERRMANN: The State calls Robert Kegler.

17 THE COURT: Please come around to be sworn up here,
18 please.

19 ROBERT KEGLER, being first duly sworn, testifies as
20 follows:

21 THE CLERK: Please be seated. State your full name
22 and spell your last name.

23 ROBERT KEGLER: Robert Kegler, K-E-G-L-E-R.

24 DIRECT EXAMINATION BY MS. VON HERRMANN:

25 Q. Could you tell the jury how you are currently

1 employed.

2 A. I'm employed with the Horry County Police
3 Department.

4 Q. And how long have you been with the Horry County
5 Police Department?

6 A. It will be eleven years next month.

7 Q. And were you -- were you working on October the --
8 October the 21st of 2005?

9 A. I was.

10 Q. And what was your position at that time?

11 A. I was a corporal.

12 Q. And did you respond to an incident on Butler Road?

13 A. I did.

14 Q. And what did you -- do you know what time you
15 arrived there?

16 A. Approximately twenty minutes after one in the
17 afternoon.

18 Q. Tell the jury, if you will, as a matter of
19 procedure, what happens when a 911 call comes in how that
20 -- how that gets to the Police Department.

21 A. When a 911 call is called in to a dispatch center,
22 the dispatchers send us to the call via radio. I was in a
23 vehicle, received a call, and proceeded to it.

24 Q. So you have some idea of the nature of the scene
25 that you were arriving to, is that correct?

1 A. Correct.

2 Q. All right, and I'm going to show you some
3 photographs, State's Exhibit 7, and ask if you can
4 identify that for me?

5 A. I can. It's a picture from the scene on that day.

6 Q. Is that a fair and accurate representation?

7 A. Yes, ma'am.

8 Q. All right. Let me show you also State's Exhibit 8.
9 Is that also a fair and accurate representation of that
10 scene?

11 A. It is.

12 Q. And also, State's Exhibit 9, what about that?

13 A. It's an accurate picture, yes.

14 Q. State's Exhibit Number 10?

15 A. It is.

16 Q. State's Number 11?

17 A. Yes, ma'am, it is.

18 Q. And State's Number 12?

19 A. Yes.

20 MS. VON HERRMANN: I would move to have those
21 admitted into evidence, Your Honor.

22 THE COURT: Any objection?

23 MR. BELLAMY: I don't think so, Judge. I just want
24 to look at them real quick.

25 THE COURT: All right, sir.

1 MR. BELLAMY: (Reviews photographs.) No, sir, Your
2 Honor.

3 THE COURT: Thank you.

4 SIX (6) SMALL PHOTOGRAPHS OF INCIDENT SCENE
5 ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER
6 7, 8, 9, 10, 11, AND 12.

7 Q. Tell me what you observed when you first arrived on
8 this scene.

9 A. I observed a blue-in-color SUV parked next to a
10 metal building on Butler Road. The window -- or the door
11 was open on the driver's side, and I observed a male
12 inside the vehicle that appeared to be deceased.

13 Q. Were there any other people in that -- in the
14 immediate vicinity of that vehicle at the time you
15 arrived?

16 A. Not in the immediate area, no, ma'am.

17 Q. Bystanders, perhaps, in the perimeter of the area?

18 A. Yes, but not in the immediate area.

19 Q. And so what did you do to secure the area?

20 A. I took yellow crime scene tape that is issued to us
21 at the Police Department and secured the area by creating
22 a wide perimeter.

23 MS. VON HERRMANN: And I would ask that he be
24 allowed to come down and publish these photographs to the
25 jury.

1 THE COURT: Any objection?

2 MR. BELLAMY: No, Your Honor.

3 THE COURT: You may do so. Just remember, Officer,
4 to speak loudly in front of that microphone over there,
5 sir.

6 A. Sure. (Witness steps down from the witness stand.)
7 Okay, this picture here is the SUV that I observed when I
8 first pulled up to the scene. Like I said, it was parked
9 next to the metal building by where I was dispatched to.

10 Q. You can go ahead and show that to them if you want
11 to.

12 A. Okay. (Displays photograph to the jury.)

13 This picture here is a wider shot of the same
14 thing. It is the SUV in question next to the metal
15 building, and my patrol vehicle is actually in this
16 picture as well, right on the perimeter of where the --
17 where I began to secure the scene.

18 This picture is a side view of the same SUV parked
19 next to the metal building. Again, in this one, you can
20 see the crime scene tape as well.

21 This picture is a front view of the vehicle. You
22 can see my patrol car in the background.

23 This picture is a rear view picture of the SUV
24 parked next to or close to the metal building where I was
25 dispatched to.

1 And the last picture is a close-up of the SUV taken
2 from the passenger side.

3 **Q.** When you arrived there, did you touch anything or
4 tamper with anything in that area?

5 **A.** No, ma'am.

6 **Q.** And did you have -- did either you or you have
7 someone set up a crime scene log?

8 **A.** I did.

9 **Q.** What is the purpose of a crime scene log?

10 **A.** It -- what it does is indicate everybody who went
11 in and out of the crime scene for documentation purposes
12 so that there's an accurate account of who went -- entered
13 the crime scene.

14 **Q.** And did you do anything further regarding this
15 investigation?

16 **A.** No, ma'am. I wrote the initial police report. I
17 notified my supervisor who, in turn, did what he needed to
18 do in order to get Investigations on scene.

19 **Q.** So it's the protocol then that you would -- you
20 would call your supervisor and your supervisor would then
21 call Detectives, or Violent Crimes, or whoever that he
22 felt like needed to come out?

23 **A.** It is.

24 **Q.** Okay.

25 MS. VON HERRMANN: Thank you. I don't have any

1 further questions for this witness. Please answer any
2 questions Mr. Bellamy has.

3 THE COURT: Cross examination.

4 CROSS EXAMINATION BY MR. BELLAMY:

5 Q. And you probably just answered it with that
6 question, but I want to ask you anyhow. Did you go around
7 the neighborhood and question people about did anybody see
8 anything, hear anything, or would that have been an
9 investigator, detective, or somebody else?

10 A. I did not question anybody. The original
11 complainant who called spoke to me briefly. I do not
12 recall what he said at all, but the investigators would
13 have been the ones to go speak with neighbors.

14 Q. Okay, thank you.

15 MR. BELLAMY: No further questions.

16 THE COURT: Anything else, Solicitor?

17 MS. VON HERRMANN: Nothing, Your Honor. I would
18 just ask that this witness be excused.

19 THE COURT: Any objection?

20 MR. BELLAMY: No, sir, Your Honor.

21 THE COURT: All right, Officer, you are released
22 from your subpoena and may go back to your regular duties.

23 OFFICER KEGLER: Thank you.

24 THE COURT: And your next witness, Solicitor.

25 MS. VON HERRMANN: Your Honor, if I may wait until

1 the jurors finish looking at those photographs.

2 THE COURT: Yes, ma'am.

3 MS. VON HERRMANN: But our next witness will be
4 Robert Caulder.

5 THE COURT: Please come forward to be sworn, sir.

6 JOHN R. CAULDER, being first duly sworn, testifies as
7 follows:

8 THE CLERK: State your full name and spell your last
9 name.

10 JOHN R. CAULDER: John R. Caulder, C-A-U-L-D-E-R.

11 DIRECT EXAMINATION BY MS. VON HERRMANN:

12 Q. How are you?

13 A. I'm doing fine. How are you?

14 Q. I am doing well. Tell the jury how you are
15 employed.

16 A. I am employed as the Senior Crime Scene
17 Investigator in the Horry County Police Department.

18 Q. How long have you been employed in that capacity?

19 A. I've been with the Crime Scene Unit since 2004.

20 Q. And on this particular day in question, on October
21 the 21st of 2005, what was your position at that time?

22 A. I was the crime scene investigator, the first crime
23 scene investigator, on the scene.

24 Q. And was there another crime scene investigator that
25 was there as well?

1 **A.** Yes, my supervisor, Specialist Peter Cestare.

2 **Q.** When you arrived at the crime scene, give the jury
3 your initial impression of what you saw there.

4 **A.** Immediately upon arrival, road officers Kegler and
5 Brummett had secured the scene. Pretty much what happens
6 at that point, we just find out kind of what's going on.
7 There was a Masonic Lodge to the right of the area that
8 was cordoned off, and there was a new vehicle, a SUV type
9 vehicle, parked to the left of the Masonic Lodge with the
10 driver's door ajar.

11 At that point in time, kind of made a brief walk
12 around the building, kind of to the area, where we waited
13 for detectives to get a search warrant for the vehicle and
14 noticed that there was a black male, deceased victim,
15 lying in the front seat of the vehicle.

16 **Q.** And was there a search warrant that was obtained in
17 this case?

18 **A.** Yes, there was.

19 **Q.** Why do you -- why do you observe the outside of the
20 area before you observe the inside of the area? What's
21 the importance of that?

22 **A.** The importance is because you don't know with that
23 type of scenario, with it closed down, with it being a
24 Masonic Lodge or that type of business with not a lot of
25 traffic, it being the only vehicle, you want to try to

1 remain true as far as the scene goes, as far as tire wear
2 impressions, anything that may have been moved around or
3 is kind of out of place as far as the scene itself.

4 Q. And when you go into a scene, do you label certain
5 items as you find them?

6 A. Basically what happens first is we will photograph
7 the scene so it remains true, so nothing can be -- so we
8 can go back at a later date and time, if we need to, and
9 put it back into place, but immediately if we come upon a
10 piece of evidence or what we deem is evidentiary value on
11 the scene, we'll place a placard beside it whether it be
12 -- we use numbers. You may see alphabet -- alphabetic
13 numbers. We use letter numbers, so we place them down by
14 the items that we are going to collect. Then we
15 photograph those items.

16 Q. And did you do that in this case? Did you take
17 photographs initially and then also with items that you
18 located that were numbered?

19 A. Yes, ma'am.

20 Q. And do you use a metal detector to go around the
21 area to locate ---

22 A. Yes, ma'am, in certain scenarios and in this case,
23 yes, ma'am. Since there was a -- what we observed to be a
24 shooting involved, we try to do that to try to locate any
25 other type of metals, such as casings, things like that,

1 that we may overlook with just the blind eye.

2 Q. I'm going to show you some photographs here. This
3 is State's Exhibit 13. I'm going to ask you if you can
4 identify that?

5 A. Yes, ma'am. That's the driver's side exterior of
6 the vehicle as I saw it upon arrival and then placing the
7 placards there. There were three baggies and a casing
8 that was found outside on the driver's side of the
9 vehicle.

10 MS. VON HERRMANN: For expediency's sake, you know,
11 I would ask if he could identify -- if he is able to
12 identify each of these ---

13 THE COURT: That's fine.

14 MS. VON HERRMANN: --- and if Mr. Bellamy doesn't
15 have any objection. I think he's had an opportunity to
16 look at them.

17 MR. BELLAMY: That's correct, Your Honor.

18 THE COURT: Okay.

19 Q. And does each and every one of those photographs
20 fairly and accurately represent the scene as it appeared
21 that day?

22 A. Yes, ma'am, they do.

23 MS. VON HERRMANN: Your Honor, I would move State's
24 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26,
25 and then 34, 35, 36, and 37 in evidence.

1 THE COURT: Any objection?

2 MR. BELLAMY: I don't think so, Judge. I just --
3 I've seen these, but I just want to go through just a
4 minute.

5 THE COURT: All right, sir.

6 MR. BELLAMY: Your Honor, I have no objection. I
7 believe there was the one photograph that we had
8 previously discussed not being published at this time.

9 THE COURT: All right. What number is that?

10 MS. VON HERRMANN: That's Number 36.

11 THE COURT: 36, all right, so State's 13 through 26,
12 34, 35, and 37 are in evidence without objection.

13 MS. VON HERRMANN: Thank you, Your Honor.

14 SEVENTEEN (17) PHOTOGRAPHS OF INCIDENT SCENE ARE
15 ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER
16 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24,
17 25, 26, 34, 35, AND 37.

18 MS. VON HERRMANN: And I would ask that he be
19 allowed to step down so that he can publish these
20 photographs to the jury.

21 THE COURT: Any objection to publication?

22 MR. BELLAMY: No, sir, Your Honor.

23 THE COURT: You may do so.

24 MS. VON HERRMANN: Thank you, Your Honor.

25 Q. Let's just go through these one by one. State's

1 Exhibit 13, if you will show this to the members of the
2 jury and point out to them what items are located there.

3 **A.** This is Evidence Items 1, 2, 3, and 4 that you
4 could see inside of the car door itself, the Toyota
5 Highlander, which is parked here. You can partially see
6 the victim that's lying inside of the Highlander, and
7 Evidence Item Number 9 -- Evidence Items Number 9 is a
8 spent shell casing. Items 1, 2, 3, and 4 that you can see
9 are small plastic baggies containing an un- -- at that
10 time an unknown white powdery-type substance.

11 **Q.** All right, and I'm going to show you State's
12 Exhibit 14.

13 **A.** This is just a close-up view of that Item Number 1
14 that you saw. This is the clear plastic bag that contains
15 the white powdery, at that time, unknown substance.

16 **Q.** You mentioned a moment ago that one of the items
17 located in there -- what item is that, Number 6, that's a
18 shell casing?

19 **A.** Number 9.

20 **Q.** And we'll get to that in one moment. State's
21 Exhibit 15?

22 **A.** It's just a closer view of Evidence Item Number 2,
23 another clear white -- unknown white substance in a bag
24 that was found on the exterior driver's side of the
25 vehicle.

1 Q. And State's 16?

2 A. Number 3, this is a small -- this is a spent shell
3 casing. It's kind of hard to -- the rocks kind of blend
4 in with it.

5 Q. Tell the jury if you will, please, what is a spent
6 shell casing? What does that mean?

7 A. It's just a -- the casing of a bullet, is what the
8 actual lead gun powder is encased in that's fired, when
9 it's fired from a weapon, in this case probably a semi-
10 automatic weapon. It ejects out of the chamber of the
11 weapon, and that is what's left. That just means the
12 bullet has been fired.

13 Q. So there are two separate parts of the bullet and
14 then a shell casing, is that correct?

15 A. That is correct.

16 Q. And State's Exhibit 17?

17 A. This is the interior, just the interior shot of the
18 front driver's of the Toyota Highlander. You could see
19 the victim and items -- Evidence Items Number 4 and Number
20 5, and you can see the -- another clear bag with the
21 unknown white powder. It's there at the -- it's right
22 there at the base of the door.

23 Q. And State's Exhibit 18?

24 A. This is a close-up of Number 5. This is another
25 spent shell casing, and it was right there at the door,

1 this previous photograph, right there at the apex of the
2 door. This is just a close-up, and like I say once again,
3 that's just a spent shell casing.

4 Q. And State's 19?

5 A. This is Item Number 6. This is from the -- from --
6 thinking correctly, this is from the passenger side
7 exterior on the ground on the passenger side of the
8 vehicle. This is a projectile. This is what is extended
9 from the casing. When a weapon is fired or handgun is
10 fired, this is the actual what everybody calls a bullet.
11 It's actually referred to as a projectile.

12 Q. Let me get you to hold up there for one second.
13 I'm going to show you State's 5 in evidence. Can you show
14 the jury, please, on that photograph where this particular
15 projectile was found?

16 A. This is the Toyota Highlander. This is the
17 exterior side of it, and this is Evidence Item Number 6.
18 This is -- and that, of course, is a close-up of that
19 projectile. This was where it was located.

20 Q. As you observe that photograph, is there something
21 in particular about that Highlander and the shell casing
22 there?

23 A. As far as the window being busted out and -- or
24 the ---

25 Q. What is this right here?

1 **A.** These here are -- it's kind of hard to see with
2 these up close, and you'll probably get the opportunity
3 later to see them better, but on the actual sides of the
4 vehicle are exit marks made from the -- from a fired
5 projectile where they actually enter from the inside of
6 the vehicle and exit the outer shell of the vehicle.

7 **Q.** How do you know that that is an exit as opposed to
8 an entrance?

9 **A.** When a -- when a projectile is fired, there's --
10 after it enters -- if it enters, say, inside of this
11 vehicle, it bevels outward. When it hits, it will cause
12 the interior side to kind of cave and follow the fired
13 path. The outside will actually bevel outward from the
14 path of the bullet, and then it exits.

15 **Q.** And with regard to the broken glass there, is it
16 unusual that the glass is broken into the -- inside the
17 vehicle?

18 **A.** As far as if it were -- if whomever was standing on
19 the driver's side and fired these rounds and they went
20 through -- if the window was rolled up and a projectile
21 passed through, it would have shattered the glass or it
22 could have been from the percussion from the actual fired
23 bullet. There's no actual way to tell because there -- it
24 is just broken glass now, but the percussion from the
25 actual projectiles hitting the doors could actually have

1 caused the glass to break.

2 **Q.** And State's Exhibit Number 20?

3 **A.** This is Items 7 and 8. I haven't seen an overview
4 of this, but what this is, this is the passenger seat of
5 the Toyota Highlander. You notice the broken glass from
6 the window, the passenger window, on the seat. Items 7
7 and Items 8 are -- they are two brass-colored projectiles,
8 kind of like Number 6, but these were actually found
9 inside of the vehicle.

10 **Q.** And State's 21?

11 **A.** It gets confusing to me with these numbers; it's
12 hard for me to tell with the little line across it. It's
13 always been confusing to me. This is the actual item
14 found from the driver's side of the vehicle, the casing
15 that was with the other item. The reason why it's not
16 labeled as -- like 1, 2, 3, and 4, along with the driver's
17 side is because after the immediate search, then when we
18 broke out metal detectors, this was actually found just a
19 little ways up from the powder on the driver's side, and
20 this is a spent shell casing.

21 **Q.** Let me show you State's Exhibit 22.

22 **A.** This is the -- the inside of the Toyota Highlander
23 right there above the center console in the little
24 compartment area. This is the driver's license that was
25 found inside of the vehicle in that little overhead

1 storage compartment. It is photographed and collected to
2 help identification with the victim.

3 Q. And is that, in fact, how the -- how the victim was
4 identified in this case?

5 A. Yes, ma'am.

6 Q. And State's 23?

7 A. This is Evidence Item Number 29. This is, I want
8 to say -- I'm not looking at my paperwork. This is going
9 to be the front pass- -- or the front driver's seat of the
10 Toyota Highlander, and this is a spent shell casing that
11 was found, having been the victim has already been removed
12 at this time, so that's why you're not seeing him. This
13 is actually the seat that was under him.

14 Q. That's the passenger ---

15 A. No. This is ---

16 Q. I mean, that's the driver's side?

17 A. The driver's side front seat.

18 Q. State's Exhibit 24?

19 A. The Evidence Item Number 40, this is also a spent
20 shell casing. I don't have my paperwork with me to find
21 exactly where it was located, but that is the spent shell
22 casing there by the C.D.

23 Q. Here is the other picture, State's Number 25.

24 A. This is the passenger side of the vehicle. When I
25 said about the beveling, you can actually see this is

1 where one of the projectiles exited the passenger side
2 door, front door, of the vehicle and this is a close-up
3 with scale. You can see the beveling outward, how it kind
4 of opens up as the projectile comes from the interior to
5 the exterior, opens up, and that's how you determine which
6 way the projectile was coming from.

7 Q. And State's Exhibit 26. Now I'm going to go to the
8 interior of that vehicle.

9 A. This is the interior of the Highlander. This is
10 the back -- the predominant part of the picture is the
11 back rear seat of the Highlander, and this evidence item
12 that was collected from the back seat, which are Evidence
13 Items 10 that you can see, pretty much 10, 11, 12, 13, 14,
14 15, 16, and 17. Some of them are hard to see, but with
15 other photographs, you can actually see every one of them
16 had to -- that's just an overview of the back seat from
17 the driver's side.

18 Q. Okay, and we'll get more in depth about this in a
19 moment, but those items that are in there, there are a
20 number of drink bottles and things like that, is that
21 correct?

22 A. Yes, ma'am.

23 Q. And were those items processed?

24 A. Yes, ma'am, they were.

25 Q. Thank you, and State's Exhibit Number 35.

1 **A.** This is Evidence Number 25. This is the victim as
2 found lying. On 25 is a silver in color cell phone that
3 was found on his person.

4 **Q.** And State's 37?

5 **A.** This is just an -- just an overview of the front
6 passenger seat. I mean, you could still see the glass,
7 the broken glass from the passenger window. This is
8 pretty much before any of the placards are put into place.
9 This is upon arrival how it is seen. This is before any
10 -- any person that -- from law enforcement, first arrival,
11 before anybody touches anything. This is how it's
12 photographed. This is the way we find it.

13 **Q.** And State's Exhibit 34?

14 **A.** This is a projectile. The victim here, this
15 projectile was found on the victim himself. It was just
16 kind of -- it had entered and exited him, but did not exit
17 the clothing that he was wearing. In this photograph, we
18 collected before the body is moved, but that's what that
19 is a photograph of.

20 **Q.** You can have a seat back on the witness stand. All
21 right, in addition to what we've seen in these
22 photographs, during the time that you were conducting your
23 investigation, there was some blood that was found at a
24 residence down the road, is that correct?

25 **A.** Yes, ma'am.

1 Q. And did you all test that?

2 A. We did -- we did presumptives at the scene.

3 Q. Okay, and when you did that presumptive test, was
4 it presumptive for human blood?

5 A. Our test doesn't differentiate between human or
6 animal.

7 Q. Okay.

8 A. It just tells us it's positive for blood.

9 Q. And when that ultimately came back, it was not
10 human blood, is that correct?

11 MR. BELLAMY: Your Honor, may we -- may we approach?

12 THE COURT: Yes.

13 (A Bench conference was held in the presence, but out
14 of the hearing, of the jury.)

15 Q. All right, let's talk a little bit about
16 fingerprints. Did you collect fingerprints at that
17 location?

18 A. From the -- from the actual -- not that day, from
19 items that were processed at a later time from that scene.

20 Q. All right. Let's talk a little bit about how that
21 works. How long have you been in doing fingerprint work?

22 A. Since 2005, just about, less than a year after I
23 came to crime scene.

24 Q. And what -- do you have some specialized training
25 in that particular area?

1 **A.** Yes, ma'am. . You have to go through a basic forty
2 hour class with the South Carolina Criminal Justice
3 Academy. I have also been certified for the automated
4 fingerprint identification or the AFIS System through
5 SLED, which is an eight hour course that just allows you
6 to put fingerprints into the AFIS, and I also have
7 continuing training in excess of a hundred and twenty
8 hours with the F.B.I. through latent print photography and
9 latent print work itself.

10 **Q.** Explain to the jury, please, what that -- what the
11 AFIS System is.

12 **A.** The Automated Fingerprint Identification System is
13 an automated system where if you have a latent print,
14 which is -- latent meaning is a unseen, is a hidden print,
15 that can only be detected after some type of development
16 process as compared to a known print.

17 Known means I take your fingerprints and actually
18 roll them, and that's a known. A latent fingerprint is
19 put into the AFIS System, which is pretty much a camera
20 attached to a database through the South Carolina
21 interface. That latent print is then ran using algorithms
22 that is set up through Motorola that I don't -- I don't
23 have a lot of clue about, but -- as far as the algorithms
24 go, but you place the latent fingerprint into the AFIS
25 System through criteria which are certain characteristics

1 within a fingerprint which are such as bifurcations,
2 ending ridges, the ridges and furrows that are on your
3 actual fingerprint, and the pattern type.

4 The AFIS System uses what you put into it and sends
5 back an X-amount of possible matches, possible meaning
6 that's what the machine thinks is a match. Well, that's a
7 starting point for us because it gives us certain
8 fingerprints, known fingerprints, that we can compare that
9 latent to. Then it's a process after it sends the knowns
10 back. We have to compare the latent to each known the
11 machine sends back.

12 Q. Have you testified previously in court as an expert
13 in fingerprint analysis?

14 A. As an expert, no, ma'am, but I have testified as
15 far as latent and fingerprint work goes.

16 Q. All right, and in the finger- -- and you did take
17 these fingerprints in this case, is that correct?

18 A. Several fingerprints off of some of the items I had
19 processed, yes, ma'am.

20 Q. And other prints were taken by your supervisor, ---

21 A. That is correct.

22 Q. --- is that correct, so do you know which ones you
23 took and which ones he took?

24 A. Off the items I processed, yes, ma'am, and he
25 processed the exterior of the Toyota Highlander.

1 Q. And in looking at those prints, you all were not
2 able to make -- make any determination about whether any
3 of the prints you found were related to any of the
4 defendants in this case, is that correct?

5 A. No, ma'am.

6 Q. And tell the jury, please, with regard to the gold
7 Maxima, when was that vehicle actually -- when did that
8 come into your possession?

9 A. I'm showing on my paperwork that I processed it in
10 the first of November. As far as when it was towed in or
11 that information, I -- I don't know. They just give me a
12 search warrant and ask that I process it and what I should
13 be looking for while I am processing it, so what day it
14 was towed to the Police Department, that I do not know.

15 Q. But that would be the date that you actually did
16 the list of the fingerprints?

17 A. Yes, ma'am, from the Maxima.

18 Q. Tell the jury -- let's talk a little bit about
19 fingerprints. What types of items create a good
20 fingerprint and what types of items do not create a good
21 fingerprint?

22 A. Basically when talking about a -- fingerprints,
23 fingerprints are ninety-nine percent water, sweat that's
24 created. The other one percent is just basic oils and
25 other things that can lend -- medications. Young ladies,

1 such as yourself there, you like wearing lotions. That
2 creates that other one percent.

3 As far as surfaces, you can leave behind a
4 fingerprint any time or none of the time. It's not a --
5 it's not a given that you leave a fingerprint behind just
6 by touching something. When it comes to vehicles, the
7 dashboard of a vehicle is pretty -- most of the time, and
8 I have done quite a few, is not real conducive with
9 fingerprints because it is a rough, non-porous edge, which
10 means it has a bunch of tiny divots in it, so you're not
11 actually touching the entire surface with your
12 fingerprint.

13 The exterior of cars, windows, gear shifts, rearview
14 mirrors, items such as this, flat, non-porous areas, are
15 actually the best spots to lift a print from.

16 MS. VON HERRMANN: Your Honor, at this time, the
17 State and the Defense has stipulated as to a drug report,
18 and I would like to ask this witness to identify and move
19 it in through him.

20 THE COURT: Is there any objection to that, Mr.
21 Bellamy?

22 MR. BELLAMY: No objection to the report. I'm not
23 sure coming in through this witness. I thought it would
24 just be a straight stipulation. That's fine.

25 MS. VON HERRMANN: That's fine. We can do it that

1 way, and I'll just question him about it.

2 THE COURT: All right.

3 Q. Before I move on to this, the things like -- what
4 -- what types of environmental things would affect
5 fingerprints? Would the weather affect it?

6 A. Weather can affect it. Some thunderstorms we have
7 here in the south can affect it over a period of time, but
8 if a -- for the most part, the only thing that really gets
9 rid of fingerprints is you have to actually wipe them away
10 if a fingerprint is left behind. Like I say, just because
11 you touch it doesn't mean that there's going to be a
12 fingerprint. Then you're looking at door handles, things
13 -- items that are touched frequently, you're looking at
14 constant rubbing, so chances are -- around door handles is
15 not really a good place because they are constantly
16 touched.

17 Q. So let me show you State's Exhibit 39. I think
18 you've had an opportunity to look at that in the past?

19 A. Yes, ma'am.

20 Q. What is that?

21 A. This is a SLED Evidence Intake Report, or it's
22 actually the SLED Report where ---

23 THE COURT: Before we do that, you're moving State's
24 39 in through stipulation, is that correct?

25 MS. VON HERRMANN: Yes, sir.

1 THE COURT: All right. Thereby there would be no
2 objection, so it's in evidence without objection.

3 SLED EVIDENCE INTAKE REPORT ADMITTED INTO EVIDENCE
4 AND MARKED AS STATE'S EXHIBIT NUMBER 39.

5 THE COURT: You may proceed.

6 MR. CAULDER: Thank you, Your Honor.

7 A. It's a SLED Evidence Report. After things are
8 taken from our laboratory that we can't process at our
9 laboratory, they're taken up to the state agency, which is
10 SLED, the State Law Enforcement Division, and this is the
11 drug analysis report that was sent back from them.

12 Q. If you will, read that report to the jury.

13 A. It states my name, my department, my address. It
14 says, "Drug Analysis," dated December 14, 2009, the SLED
15 lab number, our case number, which is 0592898, the
16 incident date, which the actual date of recovery was, the
17 21st of October, 2005. It has the victim listed as Miles
18 Slay, and four suspects, Neil Hill, Corey Smalls, Antonio
19 Smalls, Tyrone Beaty.

20 It just states that it's an official report from the
21 State Law Enforcement Division, Forensic Services
22 Laboratory, and it's to be used in connection with an
23 official criminal investigation. Examinations were
24 conducted under the assurance, no previous examinations of
25 persons of evidence submitted in this case have been or

1 will be conducted by any other laboratory or agency, and
2 it's signed Ronald L. Lloyd, Director of South Carolina
3 Law Enforcement Division, and then below that, it has
4 items of evidence that were submitted by our agency to
5 them.

6 It says, "Sub Number 2." It states, "On December 14,
7 2005, items were received on E241266 from Lorie Rabon of
8 the Horry County Police Department," Lorie Rabon being the
9 evidence supervisor. That E241266 is a SLED Best Kit
10 number, and it has Item 52.1, which was a brown paper bag
11 containing plastic Ziploc bag, number 1, containing powder
12 substance. Results, no controlled substance detected.

13 Item 52.2 was a brown paper bag containing plastic
14 Ziploc bag, number 2, containing powder substance.
15 Results, no controlled substance detected.

16 Item 52.3 was a brown paper bag containing plastic
17 Ziploc bag, number 4, containing powder substance.
18 Results, cocaine found, 24.34 grams or 375.61 grains,
19 which is a -- it says C2, which is a Schedule 2 controlled
20 substance.

21 And the last page of the report just states that the
22 chemical analyst was a Nathan R. McCoy.

23 Q. And so the items that were sent off to SLED to be
24 analyzed, just in layman's terms, were those the three
25 bags that you found around the -- around the area there?

1 **A.** That is correct.

2 **Q.** Let me get you to just pull these out in order and
3 see if you can identify them.

4 **A.** This is our -- is that 52.1 for the SLED number,
5 which is our Item Number 1 in those photographs, and this
6 is the -- this paper -- this plastic bag here is the bag
7 that was actually sent to SLED, the powder was sent to
8 SLED in, but it was repackaged by me because of having to
9 process the actual bag that they were in. This was
10 actually sent back from SLED, and this is the white powder
11 that was tested by SLED, their Item Number 52.1.

12 MS. VON HERRMANN: All right, that's State's Exhibit
13 Number 33, and I would move State's 33 into evidence at
14 this time.

15 THE COURT: Any objection?

16 MR. BELLAMY: No, sir.

17 THE COURT: All right, so State's 33 is in evidence
18 without objection.

19 ZIPLOC BAG CONTAINING WHITE POWDER ADMITTED
20 INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 33.

21 **A.** This is my Evidence Item Number 2, which is the
22 State laboratory's Number 52.2. This is the white or the
23 clear plastic bag that I sent it in as it was repackaged,
24 and this is the powder that was sent back from SLED.

25 MS. VON HERRMANN: Have we marked that one yet? I

1 don't believe we've marked that. Let me mark this one for
2 I.D. please.

3 ZIPLOC BAG CONTAINING WHITE POWDER MARKED FOR
4 IDENTIFICATION AS STATE'S EXHIBIT NUMBER 40.

5 Q. And I know you just identified this, but if you
6 will, just do that one more time for the record, please.

7 A. This is how it was sent back from SLED, my Evidence
8 Item Number 2, it was the package back from SLED.

9 MS. VON HERRMANN: I would move in State's 40.

10 THE COURT: Any objection?

11 MR. BELLAMY: No objection.

12 THE COURT: In evidence without objection.

13 ZIPLOC BAG CONTAINING WHITE POWDER ADMITTED INTO
14 EVIDENCE AS STATE'S EXHIBIT NUMBER 40.

15 A. And this is my Evidence Item Number 4, the SLED
16 Number 52.3. This is the package in which I repackaged it
17 and sent it to SLED in that, and this is how the powder
18 was sent back from SLED, repackaged back to us.

19 Q. All right. That item that you are holding now, it
20 came back positive for cocaine?

21 A. That is the one that the SLED report identified as
22 cocaine.

23 Q. All right.

24 MS. VON HERRMANN: Your Honor, may we approach for
25 one moment?

1 Mr. Bellamy, do you have any objection to that
2 introduction?

3 MR. BELLAMY: (Nods in the negative.)

4 THE COURT: What number is that, first?

5 A. 41, Your Honor.

6 THE COURT: All right, so State's 41 is in evidence
7 without objection.

8 SMALL ZIPLOC BAG CONTAINING COCAINE ADMITTED
9 INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 41.

10 THE COURT: All right, ladies and gentlemen, State's
11 41 having been identified as a controlled substance, under
12 the laws of the State of South Carolina, the Court has
13 allowed that to be an exhibit in this particular case.
14 That item will not be submitted to you in your jury room
15 as an exhibit. If for some reason you need to look at it
16 again, you can ask to come back to the courtroom and it
17 will be shown to you, but it obviously will not be sent to
18 you in the jury room, it being a controlled substance.
19 Thank you very much.

20 You may continue, Solicitor.

21 MS. VON HERRMANN: Thank you, Your Honor.

22 Q. I'm going to show you State's Exhibit 31 and ask if
23 you can identify that as well?

24 A. This is the three plastic bags that the three
25 powder substance were found in at the scene. These are

1 the three plastic bags that they were found in on the
2 scene. I will try not to touch them because they have
3 been processed. They were taken out. Like I say, they
4 were placed -- they were placed -- after the powder
5 substance was taken out of the plastic bags as found on
6 the scene, they were placed in this other white bag, but
7 after they were removed from -- the powder was removed
8 from the plastic bags, they were then processed in our
9 laboratory back at the Horry County Police Department, and
10 this is the three of those bags.

11 Q. And what is that black -- the black stuff?

12 A. Upon removing the powder out of the bag and
13 transferring it to another plastic container, there were
14 cyanoacrylate, which is super glue, -- they were placed in
15 a chamber; the super glue was heated for about three
16 minutes. It forms a -- like a smoke. The super glue
17 heats up and it creates a smoke. The actual smoke will
18 adhere to any possible latent prints or fingerprints that
19 may be on the bag itself and turns them a white, kind of
20 like a white.

21 At that point in time, they were then taken and a
22 chemical called black powder or it's called liquid black
23 powder, is applied to it at which point in time it's then
24 sprayed off and if there's any latent prints, which is the
25 print is on the bag itself, the system and the powder

1 together will enhance that fingerprint that's located on
2 it.

3 Q. If I can get you to just put those back in the ---

4 A. Okay.

5 Q. Did you during the course of your investigation
6 attend the autopsy of Mr. Slay?

7 A. Yes, ma'am. I attended with Detective Lewis.

8 Q. And at the time of the autopsy, was a projectile
9 removed from that victim's body?

10 A. If you'll give me just a second to ---

11 Q. Sure. Take your time.

12 A. Yes, ma'am.

13 Q. And was that bullet collected and taken into
14 evidence by the Horry County Police Department?

15 A. Yes, ma'am. They were handed over to Detective
16 Lewis from the attending physician.

17 Q. And were you present when that took place?

18 A. Yes, ma'am.

19 Q. And did you then take that bullet and do something
20 with it?

21 A. It was packaged and sent to SLED's lab in Columbia.

22 Q. And were -- let's talk a little bit about the --
23 about -- about the bullets that you found there. One
24 bullet that came out of the victim's body, is that
25 correct?

1 A. Yes, ma'am.

2 Q. And how many other projectiles were recovered?

3 A. If you'll give me just a second, I'll ---

4 Q. Would the SLED report help you to refresh your
5 recollection about that?

6 A. There is -- with the -- the one from the autopsy
7 were a total of five projectiles, and the casings, there
8 were four -- five, correction, five, forty-five caliber
9 spent shell casings that were sent to SLED.

10 Q. Five projectiles, five shell casings?

11 A. Yes, ma'am.

12 MS. VON HERRMANN: The Court's indulgence.

13 I don't have anything further for this witness, Your
14 Honor.

15 THE COURT: All right. Cross examination?

16 MR. BELLAMY: May it please the Court, Your Honor.

17 THE COURT: Yes, sir.

18 CROSS EXAMINATION BY MR. BELLAMY:

19 Q. Officer Caulder, I've got some questions for you
20 concerning -- first of all, I want to talk about this --
21 your indulgence for a minute.

22 I want to show you what is now Exhibit 25, which you,
23 I believe, previously identified?

24 A. Yes, sir.

25 Q. That being the hole, exit hole, from the ---

1 A. Passenger side ---

2 Q. --- passenger side of the vehicle?

3 A. Yes, sir.

4 Q. How far down would that have been from the top of
5 the glass? Do you have some notes? I noticed in some
6 other photographs there were some measurements taken.
7 Could you tell us that?

8 A. I have here in my report, it says the exit of the
9 projectile on the passenger door to bottom of window,
10 which would have been the center -- the center of the
11 actual -- the hole, the exit hole itself to the bottom of
12 the window on the passenger side, so from there to the
13 middle of the hole down, it's six and a quarter inches.

14 Q. Okay, and did you do anything to determine the
15 angle that this particular projectile going from in to out
16 would have been? Would it have been degrees one way or
17 the other, or was it straight across?

18 A. I -- I don't recall. I do recall placing
19 trajectory rods, but I don't recall the actual angle that
20 was determined or if any were determined.

21 Q. Now, the glass that was broken, ---

22 A. Yes, sir.

23 Q. --- the passenger side, in looking at the window,
24 it appears as if the window was rolled up, correct?

25 A. Yes, sir.

1 Q. Because you can identify glass going up the side
2 that's still on the side, correct?

3 A. Yes, sir.

4 Q. And it's fair to say that in the photographs that
5 all of the glass would be on the side of the vehicle, and
6 there was none on the outside, correct?

7 A. That is correct.

8 Q. And it is quite possible that someone shot from the
9 outside of the vehicle and shot and broke that glass, is
10 that not correct as well?

11 A. Yes, sir.

12 Q. So it -- the bullet hole we see in the door clearly
13 did not -- would not have impacted the glass? The
14 vibration of it, I guess, could, but yet there's no glass
15 on the outside of the car, correct?

16 A. If there was, it was a minute amount.

17 Q. Okay, so all of it is on the inside?

18 A. Yes, sir, the predominant amount.

19 Q. Now, there are two projectiles that you find in the
20 passenger seat, is that correct?

21 A. That is correct.

22 Q. Now, did you know or see whether those projectiles
23 are on top of the broken glass, or if it's underneath the
24 broken glass, or some combination thereof?

25 A. I did not note it, no, sir, other than the

1 photography did not note it.

2 Q. Well, if you had done that, wouldn't that help
3 indicate which shots were at least fired at least in some
4 sequence, would help you to maybe identify the broken
5 glass as coming after or before?

6 A. Yes, sir.

7 Q. Okay. Now, let's go through some of -- and if you
8 don't mind, I'm going to ask you to come down and kind of
9 do a little drawing for me if I can get this easel thing
10 set up.

11 If you would draw the vehicle, and I -- obviously
12 what I would like you to do is just draw the vehicle at
13 this time, and then I'd like to go through some of the
14 items that were collected at least outside of the ---

15 A. (Witness draws on diagram.) I mean, ---

16 Q. That's good.

17 Q. All right, this being obviously the front of the
18 vehicle?

19 A. Yes.

20 Q. Now, if you -- and I don't know whether you did or
21 not. Obviously this is not going to be to scale, but I'm
22 going to ask you to write some things down. The Item
23 Number 1 on your list, and you may need your notes for
24 this.

25 A. Yes, sir.

1 Q. Okay. Item Number 1, which would be one of the
2 bags containing the powder substance. Can you indicate
3 where -- okay, is that where ---

4 A. Yes, sir.

5 Q. You just want to put Item 1?

6 A. Yes.

7 Q. We'll just do that. Okay.

8 A. (Witness writes on diagram.)

9 Q. Now, if you would tell us the distance that this
10 was found, and did you take -- well, first, did you take
11 measurements?

12 A. Yes, sir.

13 Q. Would you write somewhere, and if you want to maybe
14 catalog it down here, that might be easier than trying to
15 do it there, and just give us the distance that that was
16 found relative to the vehicle.

17 A. All distances that were taken are from the -- going
18 to be from -- for this side anyway, are going to be from
19 the center of the front and the center of the rear tires,
20 back in this direction. Number 1 is going to be seventy-
21 two inches from the center of the front tire, and one
22 hundred and two inches center the rear tire, so it's going
23 to be seventy-two and one zero two.

24 Q. Okay. Now, let's go to Item Number -- now, this
25 line here, what is that?

1 A. That's the door, the front door.

2 Q. Okay, so it would have been behind that according
3 to your calculations, or ---

4 A. Yes, sir, pretty much -- pretty much right up under
5 it, right in this area right ---

6 Q. Right there.

7 A. --- up under the door.

8 Q. All right. Now, let's go to Item 2, and that,
9 again, is another plastic bag. If you'll give us the
10 measurements on that.

11 A. It's still going to be in this general area, and
12 it's going to be fifty-two inches, front tire, and forty-
13 five inches from the rear tire.

14 Q. Okay.

15 A. Excuse me -- fifty-two.

16 Q. Would that be closer, I believe?

17 A. Yes, sir.

18 Q. That's okay.

19 A. I've got fifty-two foot. There was a typeover; it
20 was way off according to that, but it wasn't fifty-two
21 foot.

22 Q. Okay. Well, let's go to Item -- but your records
23 indicate fifty-two feet?

24 A. Yes.

25 Q. And I'll leave that to you to explain. Let's go to

1 Item 3, being one shell casing. Can you identify where
2 that was found and give us the measurements, please.

3 A. Still in this same general vicinity, and it's going
4 to be fifty-one inches from the center of the front tire
5 and fifty-nine from the center of the rear tire.

6 Q. So that being, again, closer to the front than to
7 the rear in that measurements?

8 A. Yes, sir.

9 Q. Okay. Now, let's go to Item -- that was Item 3?

10 A. Yes, sir.

11 Q. Item 4.

12 A. Item 4 is still another plastic bag, and that's
13 going to be right on the end, just right in the door
14 jamb, ---

15 Q. Okay.

16 A. --- right in this area here, 4, and I have is
17 fifty-three -- again, it's got fifty-three foot, but it's
18 probably going to be fifty-three inches from the front
19 tire and fifty-four inches from the rear tire.

20 Q. All right, Item 5.

21 A. It is in the doorway here also. 4 and 5 are
22 together just inside of the ---

23 Q. And 4 -- and 5 would be -- and let's, if we would,
24 mark Number 1, just a brief description of what that is, a
25 bag or something.

1 A. (Witness writes on diagram.)

2 Q. All right.

3 A. You want to go to 5?

4 Q. Yes, let's go to 5. On your list, it's Number 5,
5 and we're not going to do every -- there's thirty or forty
6 some of these. We're not going to do every one; I
7 promise.

8 A. Number 5 is a casing.

9 Q. Okay, and can you give us the measurements on that?

10 A. Fifty-four from -- fifty-four inches, the front
11 tire; fifty-three inches, the rear tire.

12 Q. Okay, and that's the casing?

13 A. Yes, sir.

14 Q. Now -- and let's talk about -- I think Ms. Von
15 Herrmann described a casing, but a casing, and if you
16 know, and I know this isn't your area of expertise, but
17 the casing is what a bullet is encased in prior to being
18 fired?

19 A. Yes, sir.

20 Q. And it is what is ejected from the gun after it is
21 fired, correct?

22 A. Yes, sir.

23 Q. Okay, so it's not the actual bullet that is shot
24 out; it's what remains behind?

25 A. Yes, sir, just ---

1 Q. And if you know, in a semi-automatic pistol, a
2 special revolver, the casing, does it automatically come
3 out or does it have to be manually ejected, or do you
4 know?

5 A. It is manufactured to automatically expel itself
6 after the actual implosion, the firing of the firing pin,
7 that small explosion that occurs from the firing pin
8 striking the primer and igniting the gun powder. The
9 actual jerk back of the weapon is what creates the shell
10 casing to eject. There can be misfires, but that's the
11 actual principle that it was built to work on.

12 Q. Okay, so it automatically would eject?

13 A. Yes, sir.

14 Q. Okay. Let's go to Item 9. We'll skip down. What
15 item is that?

16 A. That is another spent shell casing.

17 Q. Okay. Where -- what is the measurements on that?

18 A. I've got seventy-five feet from the front tire and
19 a hundred and twenty-one feet from the rear tire.

20 Q. Okay. That's Item 9?

21 A. Yes, sir.

22 Q. Okay. Now, let's go to Item 27, and what was that
23 item?

24 A. A small, clear, hard plastic top from the front
25 driver's seat.

1 Q. Okay, and where was it located in reference to the
2 victim?

3 A. It was located under the victim.

4 Q. Under him, okay, so just put -- and that would be
5 Item 27?

6 A. Yes, sir. I'm going to draw a little seat. It
7 ain't much of a good one, but ---

8 Q. So it's found underneath him?

9 A. Yes, sir.

10 Q. All right. Now, Item 29, what would that be?

11 A. It is a silver-in-color forty-five spent shell
12 casing.

13 Q. And where was that found?

14 A. That was also located in the seat.

15 Q. And that would have been under the victim by your
16 notes?

17 A. Yes, sir.

18 Q. If you would, just -- go to 27 and write out -- and
19 what was the other one, 29, what it would be and, I guess,
20 seat under victim.

21 A. (Witness writes on diagram.)

22 Q. Okay. I have one more I want to talk about. Item
23 40, and we'll go to that; that would be what?

24 A. That is a silver-in-color C.D. and one spent forty-
25 five caliber shell casing from compartment on the front

1 passenger door.

2 Q. All right, and if you'll ---

3 A. It's going to be -- there's two little
4 compartments. You've got the door handle; it's going to
5 be kind of hard to draw that.

6 Q. It's on the passenger side, correct?

7 A. It is on the front passenger, yes, sir, which would
8 have been kind of like a door handle and then the little
9 compartment down at the bottom.

10 Q. That you would put something in?

11 A. Yes, sir, a little storage area.

12 Q. And that's a -- what was found there again, a
13 forty-five ---

14 A. A forty-five caliber spent shell casing, yes, sir.
15 (Witness writes on diagram.)

16 Q. Okay, and I believe that's all I'm going to need.
17 You can go back and have a seat.

18 Now, Officer Caulder, you also were able to, through
19 your examination of the crime scene, identify certain
20 latent prints or prints in this -- the blue Highlander,
21 correct?

22 A. Yes, sir.

23 Q. Okay, and I believe twenty-two, twenty-three lifts
24 were done from the vehicle, either inside or outside, or
25 you tell me?

1 **A.** Specialist Cestare, which was -- is -- is my
2 supervisor, processed the exterior of the vehicle, and let
3 me find his ---

4 MS. VON HERRMANN: Your Honor, I would object to
5 that. I think the supervisor would be the more
6 appropriate to testify to that.

7 THE COURT: Well, I appreciate that. I don't know
8 that he's asked any questions about those.

9 **A.** Yes, sir, according to Specialist Cestare's
10 paperwork, he did lift twenty-two latent lifts from the
11 exterior of the Toyota Highlander.

12 **Q.** Okay, and so that I'm clear, your job and Special
13 Agent Cestare is to find the prints, and then you forward
14 those to SLED, the State Law Enforcement Division, for
15 them to do a comparison?

16 **A.** No, sir. Our responsibility, if a latent print is
17 to be looked at, then we in-house that ourselves. Some
18 fingerprints, if no fingerprints can be determined, or in
19 some instances if prints are identified as someone, it
20 also -- it always has to be verified. We don't have
21 enough persons in-house to actually verify fingerprints,
22 so that in some instances we may have to send a latent
23 print, or shoe wear, or tire wear, things like that, may
24 have to go to SLED because they have the certified persons
25 that we necessarily don't.

1 I can look at a print and identify a person, but the
2 problem is as far as protocol that is set up and
3 nationally recognized is that we have to have it verified
4 by another independent examiner.

5 Q. Okay. In this case, these prints, I believe, were
6 sent to SLED, were they not?

7 A. Some were off the -- pretty much -- I don't know if
8 all of them were. Some of them weren't; some of them
9 were.

10 Q. Okay. Now, of the ones that you had a print, okay,
11 that you looked at to try to identify, ---

12 A. Yes, sir.

13 Q. --- and I understand SLED did some separate from
14 y'all, would you have been the one who actually did that
15 comparison or would it have been Special Agent Cestare?

16 A. That would have been me.

17 Q. Okay. Now, of the ones that you were able to get,
18 and this is off of the blue Highlander, ---

19 A. Yes, sir.

20 Q. --- you were referring to, outside, inside,
21 wherever, okay, were you able to match -- did you have the
22 known prints or get the known prints of Tyronne Beaty?

23 A. I don't think that -- I never had the privilege of
24 having the known prints of Mr. Beaty. No, sir, I didn't.

25 Q. Okay. Well, whose -- the print that you were

1 comparing to -- so you've got unknown from a vehicle and
2 you're comparing them -- did you run that through AFIS?

3 A. Yes, sir.

4 Q. Okay, and in running that through AFIS, nothing
5 came back to indicate that any of those were my client's,
6 were they?

7 A. No, sir, not off -- not Mr. Beaty's, no, sir.

8 Q. Okay, none at all out of the twenty -- how many did
9 you say there were?

10 A. Twenty-two from the Highlander.

11 Q. And of the ones that were sent to SLED, and if you
12 don't know, we can let the SLED agent testify to this, do
13 you know if any of those which were compared to Mr. Beaty
14 came back as being his?

15 A. From the paperwork I have received from SLED, no,
16 sir, none was identified back to Mr. Beaty, no, sir.

17 Q. Okay, so we have known -- or I guess we have prints
18 that are unknown. We know someone touched something and
19 we've got ridge whatever, and I'm not an expert in this,
20 that come back as not being belonging to my client?

21 A. Yes, sir, that is correct.

22 Q. And now there were some prints sent to SLED that
23 came back that it was -- it was no conclusion as to one of
24 the particular defendants in this case, isn't that
25 correct?

1 A. There were some inconclusives, yes, sir, but I
2 don't -- I don't know to who.

3 Q. If I showed you the fingerprint report, would that
4 help you, from SLED or ---

5 A. No, sir. That's their report.

6 MR. BELLAMY: That's not his report, so if it's not
7 proper, ---

8 THE COURT: All right, sir.

9 MR. BELLAMY: --- I'll let the SLED agent ---

10 THE COURT: So then it wouldn't be a proper question
11 to him then.

12 MR. BELLAMY: Thank you, Your Honor. I'll move on.

13 Q. Now, but needless to say, those items went to SLED
14 and they tested them and came to their own conclusions,
15 correct?

16 A. That is correct.

17 Q. Now, you also indicated, and I may have to get that
18 thing back, in one of your reports that you took tire
19 impressions out there that night, ---

20 A. Yes, sir.

21 Q. --- is that correct?

22 A. Yes, sir.

23 Q. And I might want you to come -- do you have the
24 location of those that we could put on this diagram if you
25 don't mind?

1 A. I'm -- let me just make sure.

2 Q. Okay. I believe that one of them is Item 34.

3 A. I have it. It was mixed in with the rest of these
4 papers just a second ago.

5 Q. I'm sorry.

6 MR. BELLAMY: May I approach the witness, Your
7 Honor?

8 THE COURT: Yes, sir.

9 Q. If I recall, this is within your report, but
10 there's an indication there, and that might help you some.

11 A. Okay.

12 Q. Officer Caulder, I'm sorry; is that, the page I've
13 just showed you, part of the report that you completed?

14 A. Yes, sir.

15 Q. So where, do you know, and if you would draw it on
16 the diagram you've previously done, if you are aware of
17 where that tire impression was done?

18 A. Once again, I'm sorry, Your Honor.

19 THE COURT: It's all right.

20 A. All right, Your Honor.

21 THE COURT: All right, Mr. Bellamy.

22 A. (Witness draws on diagram.)

23 Q. And this would be -- well, tell us what -- where
24 and what you found in reference to tire impressions.

25 A. What I have listed is I have a tire cast

1 impressions which were behind the Masonic Lodge building,
2 which was on the northeast corner of the building. I will
3 draw it. I'm kind of out of room on this. The building
4 is actually, as I say, to the passenger side of the
5 vehicle, the northeast corner. It's going to be this area
6 over here where the casting was actually found.

7 The measurements, as far as measurements, and the
8 measurements weren't collected for this item, and what
9 happens is just a cast is taken of the tire impression and
10 then the casting taken of the impression itself.

11 Q. Now, how many -- did you get more than one
12 impression?

13 A. Yes, sir, two, and the other tire impression came
14 from in this general area back behind the Toyota
15 Highlander from where Butler Road -- between Butler Road
16 and the back of the Highlander. (Witness draws on
17 diagram.)

18 Q. Got'cha. Thank you; you can have a seat back up
19 there, and those items that you collected, did you do a
20 comparison or did you send those to SLED for them to
21 compare them?

22 A. Those items were sent to SLED.

23 Q. Okay, and did you also send -- did you secure tire
24 prints, and I don't know how you do this, but tire prints
25 on this gold Maxima we've been talking about to send up to

1 be compared?

2 A. Yes, sir, ---

3 Q. Okay.

4 A. --- that is correct.

5 Q. So you sent -- much like the fingerprints, you sent
6 a known impression to compare against an unknown?

7 A. Yes, sir.

8 Q. So that was sent to SLED?

9 A. Yes, sir.

10 Q. Now, you indicate or indicated that the best -- and
11 I know there's no absolutes in this, but you sort of
12 alluded to this, that the best surfaces to get
13 fingerprints off of are not bumpy, but more of a flat,
14 non-porous type surface, correct?

15 A. When dealing with vehicles, yes, sir.

16 Q. With vehicles, or with anything, would that not be
17 true?

18 A. No, sir. It's a different story when it comes to
19 paper ---

20 Q. Wait; wait -- go ahead.

21 A. --- paper items, things like that. There's other
22 -- because there's certain chemicals you can use on porous
23 items as opposed to ---

24 Q. Okay, so you can get things off of porous items as
25 well as non-porous?

1 A. Yes, sir.

2 Q. But your indication would be non-porous is
3 generally -- is the best surface to leave behind a print?

4 A. Yes, sir.

5 Q. Now, let's talk about the autopsy. You went to the
6 autopsy?

7 A. Yes, sir, I attend it for photographs.

8 Q. For photographs, and I believe Detective Lewis
9 attended as well, ---

10 A. Yes, sir.

11 Q. --- did he not? Okay, and you secured the clothing
12 from there, is that not -- is that correct?

13 A. They were released to Detective Lewis who, in turn,
14 gave them to me to put into evidence, yes, sir.

15 Q. And y'all have kept those in evidence?

16 A. Yes, sir.

17 Q. And also the projectiles, bullets we'll call them,
18 that were collected at the scene were also sent -- where
19 were they sent?

20 A. They were sent to SLED, too, to their Firearms
21 Division.

22 Q. Okay. Do y'all have those here?

23 A. Yes, sir. They -- they're in that box right there,
24 over here to -- behind the ---

25 Q. The little one?

1 A. Yes, sir, or that's what they were in.

2 Q. Tell me what those would be without -- don't take
3 them out.

4 A. I'm sorry. I'm sorry. This is ---

5 Q. Do you know what those are?

6 A. Yes, sir. They're the casings and the projectiles
7 from the scene and from the autopsy.

8 Q. And those were sent by you to the State Law
9 Enforcement Division ---

10 A. Yes, sir.

11 Q. --- or by someone?

12 A. By someone in Evidence, yes, sir.

13 Q. For their analysis?

14 A. Yes, sir.

15 Q. Okay. The shell casings, do they, if you know, do
16 they have the same head stamp? Are they the same
17 manufacturer type bullet or are they different casings, or
18 do you know?

19 A. If you would give me a second, ---

20 Q. Okay.

21 A. --- I may have it listed as far as when I collected
22 them on scene. I do not have them listed as far as the
23 way -- just all I have from the way I collected them, they
24 are -- it just is a forty-five caliber spent shell casing.

25 Q. Okay. Did y'all take the cell phone out of there

1 as evidence?

2 **A.** Yes, sir. It was collected as Evidence 25,
3 Evidence Number 25.

4 **Q.** Pursuant to a search warrant?

5 **A.** Yes, sir.

6 **Q.** Now, did you also examine, and if you didn't and it
7 was another officer, the gold Maxima? Y'all came into
8 possession of that at some point, correct?

9 **A.** Yes, sir, that is correct.

10 **Q.** All right, and did you examine it for fingerprints
11 or DNA and that sort of thing?

12 **A.** Yes, sir. The exterior of the car, as well as the
13 interior of the car, was processed.

14 **Q.** All right, and was there anything of value that you
15 determined, was there any DNA that was found that you
16 could send off to be analyzed?

17 **A.** Nothing was found from the interior of the car, the
18 exterior of the car. The only items located were latent
19 prints.

20 **Q.** Okay. Did y'all send those off or do your own
21 comparison?

22 **A.** Yes, sir, they were sent off as well with the other
23 items.

24 **Q.** Okay, so you didn't do any comparisons with the
25 prints from the Maxima?

1 **A.** No, sir.

2 **Q.** But in the inside of the vehicle, were you able to
3 get any -- anything -- any blood, for instance, out of the
4 Maxima?

5 **A.** No, sir. No items were collected from the interior
6 of the Maxima.

7 **Q.** What about any hair, fiber, anything of that nature
8 from the Maxima?

9 **A.** No, sir.

10 **Q.** What about in your processing of the Highlander,
11 were you able to get any DNA or any hairs or fibers out of
12 there?

13 **A.** I believe no hairs or fibers were found, and the
14 only DNA that come back -- if -- if you would give me just
15 a second.

16 **Q.** Take your time.

17 **A.** No hairs or fibers that were found on the inside of
18 the Highlander.

19 **Q.** And the DNA from inside the Highlander ---

20 **A.** Was -- was from clothing that was turned in ---

21 **Q.** Clothes; is that from the autopsy?

22 **A.** Yes, sir, and from -- let me make sure, but
23 anything that was turned in only came back to -- as far as
24 DNA came back belonging to the victim, and that's from a
25 SLED report that I have.

1 Q. Okay. Let me ask, on the inside of this vehicle,
2 the Highlander, did you look or were you able to get blood
3 splatter from the vehicle when the bullet may have struck
4 Mr. Slay? Did you look in the vehicle for blood splatter
5 which may have helped you figure out how this happened?

6 A. At that -- at that time, I didn't. Now, Specialist
7 Cestare may have looked for blood spatter at that point in
8 time during -- during his -- when he looked into the
9 vehicle. I didn't because at this point in time, I'm
10 pretty much doing everything up unto a point.

11 He's kind of doing everything, and I'm kind of
12 mimicking what he's doing because, like I say, I have just
13 recently started, so I'm under a probation period, so he
14 -- as far as blood spatter, there was none that was inside
15 of the vehicle.

16 Q. That you observed?

17 A. Yes, sir.

18 MR. BELLAMY: The Court's indulgence for just one
19 second.

20 THE COURT: Yes, sir.

21 MR. BELLAMY: Thank you, Officer Caulder. I don't
22 have anything.

23 Thank you, Your Honor.

24 THE COURT: Redirect?

25 MS. VON HERRMANN: Thank you, Your Honor.

1 REDIRECT EXAMINATION BY MS. VON HERRMANN:

2 Q. This just wasn't a great case in terms of coming up
3 with forensic evidence, was it?

4 A. No, ma'am.

5 Q. You didn't come up with any prints that matched any
6 of the defendants?

7 A. No, ma'am.

8 Q. Sometimes crime scenes are very rich in forensic
9 evidence, is that correct?

10 A. That's correct.

11 Q. And sometimes they are not?

12 A. That is true.

13 Q. And where would you put this one on the scale of
14 being able to extract forensic evidence?

15 A. Pretty slim just as far as the given scenario, the
16 type of scene it was. It was just not a very good chance
17 of anything.

18 Q. And we -- you know, most of us have seen these
19 shows on television, CSI and all of that, but things don't
20 really work in real life like they work on T.V., do they?

21 MR. BELLAMY: Judge, I would object to that type of
22 question.

23 THE COURT: I'm going to allow it. Thank you.

24 Q. It's difficult to go out there and just be able to
25 extract fibers, and hair, and DNA, and those types of

1 things, isn't it?

2 A. That is correct.

3 Q. Do you feel like under the circumstances that you
4 did the best job you could in trying to find these items?

5 A. Yes, ma'am.

6 MS. VON HERRMANN: Thank you. I don't have any
7 further questions.

8 THE COURT: Any questions on the questions asked by
9 the Solicitor?

10 MR. BELLAMY: No, sir, Your Honor.

11 THE COURT: Do you wish the witness to be excused?

12 MS. VON HERRMANN: I do, Your Honor.

13 THE COURT: Any objection?

14 MR. BELLAMY: I would ask that he be kept under
15 subpoena, Your Honor. I obviously don't want him here --
16 he doesn't have to stay in the courtroom, but be available
17 should we need him.

18 THE COURT: All right, sir, you will remain under
19 subpoena. You do not need to remain in the courthouse,
20 but you will still be until the conclusion of the case at
21 the call of the Court.

22 OFFICER CAULDER: All right. Thank you, Your Honor.

23 THE COURT: Thank you very much.

24 All right, ladies and gentlemen, we're going to take
25 a break, about ten or fifteen minutes. If you will just

1 leave your note pads and pens there and we will come back
2 to them.

3 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF
4 THE JURY.)

5 THE COURT: All right, Counsel, we will take a short
6 break, about ten or fifteen minutes. Thank you.

7 (OFF THE RECORD)

8 ON THE RECORD

9 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF
10 THE JURY.)

11 THE COURT: Is the State ready to proceed?

12 MS. VON HERRMANN: Yes, Your Honor.

13 THE COURT: Defense?

14 MR. BELLAMY: Yes, sir, Your Honor.

15 THE COURT: All right. Ask the jury to come in,
16 please.

17 (THE FOLLOWING TAKES PLACE IN THE PRESENCE OF THE
18 JURY.)

19 THE COURT: All right, Solicitor, your next witness,
20 please, ma'am.

21 MS. VON HERRMANN: The State calls Daniel Prater.

22 THE COURT: Please come around to be sworn, sir.

23 DANIEL PRATER, being first duly sworn, testifies as
24 follows:

25 THE CLERK: Please be seated. State your full name

1 and spell your last name.

2 MR. PRATER: Daniel Robert Prater, P-R-A-T-E-R.

3 DIRECT EXAMINATION BY MS. VON HERRMANN:

4 Q. Good afternoon, Mr. Prater.

5 A. Hello.

6 Q. Did you know the victim in this case, Miles Slay?

7 A. Yes, ma'am.

8 Q. How did you know him?

9 A. Well, we were friends.

10 THE COURT: Could you speak up. You've either got
11 to speak directly into the microphone or get your voice
12 up.

13 A. We were friends. We had got to know each other
14 hanging out in the gym, and music, and just, you know,
15 come to be pretty good friends.

16 Q. How long had you known him?

17 A. For about six or seven months, not -- not that
18 long, just come to know him.

19 Q. And were y'all pretty tight in that period of time?

20 A. Yes, ma'am, you could say that.

21 Q. What did -- what did Miles do for a living?

22 A. He sold drugs, anything really that he could do to
23 make a dollar.

24 Q. And you've actually been in a little bit of trouble
25 yourself in the past, haven't you?

- 1 **A.** Yes, ma'am.
- 2 **Q.** All right, and let's talk about that real quick.
- 3 You have a burglary and grand larceny?
- 4 **A.** Yes, ma'am.
- 5 **Q.** Trafficking in cocaine?
- 6 **A.** Yes, ma'am.
- 7 **Q.** Possession with intent to distribute marijuana?
- 8 **A.** Yes, ma'am.
- 9 **Q.** Misprision of a felony?
- 10 **A.** Yes, ma'am.
- 11 **Q.** And resisting arrest, is that correct?
- 12 **A.** Yes, ma'am.
- 13 **Q.** All right, and I think you may have some charges
- 14 pending in our office right now that are unrelated to this
- 15 case, is that correct?
- 16 **A.** Yes, ma'am.
- 17 **Q.** All right, and you and I have spoken before about
- 18 this case. Have any promises been made to you at all
- 19 about your testimony in this case?
- 20 **A.** No, ma'am.
- 21 **Q.** All right. We didn't enter into a proffer
- 22 agreement or anything like that, and I'm not even the
- 23 Solicitor prosecuting your case, am I?
- 24 **A.** No, ma'am.
- 25 **Q.** Okay. All right, do you recall October the 20th of

1 2005?

2 A. Yes, ma'am.

3 Q. Do you recall that day?

4 A. Yes.

5 Q. What were you doing that day?

6 A. Well, I woke up, called Miles to come by and take
7 me out. We was going to the gym to hang out. I woke up
8 probably about ten-thirty. He picked me up about a little
9 after eleven, after I got showered and everything, and we
10 proceeded to our day. He had a friend of mine, another
11 friend of ours, Dominique, with him, and we all went to
12 the gym and hung out there for a couple of hours, and
13 then ---

14 Q. What gym would that have been?

15 A. The Crabtree Gym at the Air Force Base.

16 Q. What did y'all do there at the gym?

17 A. Shot basketball, worked out for a little while. We
18 just, you know, tried to stay in shape.

19 Q. What was -- what was Miles driving on that day?

20 A. He had a rental car. It was a Toyota Highlander, I
21 believe.

22 Q. If you would just bear with me for one moment here.
23 I'm going to show you State's Exhibit 5. Is that the
24 vehicle that he was driving on that particular day?

25 A. Yes, ma'am.

1 Q. And he came and picked you up, is that correct?

2 A. Yes, ma'am.

3 Q. And besides going to the gym, what else did you all
4 do that day?

5 A. Well, we just rode around, looked at cars to buy,
6 went out to eat.

7 Q. Where did you go eat?

8 A. Socastee Station. It's a place over off of 707.

9 Q. What time was that?

10 A. It was more toward the end of the afternoon. We
11 was trying to beat the rush. The rush special is probably
12 about four o'clock or so.

13 Q. What time does the lunch special end?

14 A. I'd say about four-thirty, something like that.

15 Q. And you made it get a lunch special that day?

16 A. Yes, ma'am, we made it.

17 Q. And what did you do after that?

18 A. After that we just kind of rode around, stopped to
19 a couple of houses, a couple of Miles' people, and rode
20 around some more, and we was waiting on a phone call.

21 Q. Who were you waiting on a phone call from?

22 A. Were a guy named Corey Smalls.

23 Q. And why were y'all waiting on that phone call?

24 A. Well, Miles had some things set up to where he was
25 supposed to purchase some cocaine from Corey and them.

1 Q. Did he have some money with him?

2 A. Yes, ma'am.

3 Q. Did you see the money?

4 A. Yes, ma'am.

5 Q. And how -- how was that money packaged?

6 A. It was just in a -- he had it in a white bag like a
7 store bag, but you couldn't -- you couldn't see through
8 the bag or nothing like that, and he just had it sitting
9 in the center console of the truck whenever I saw it.

10 Q. Okay, placed in the center console?

11 A. Yes, ma'am.

12 Q. Did he have the top down on that console?

13 A. Yes, ma'am.

14 Q. And are you familiar with Corey Smalls?

15 A. I've only met him a time or two before that on the
16 streets.

17 Q. And do you know with regard to this drug deal, what
18 was -- what was Corey's role, to the best of your
19 knowledge, supposed to be?

20 MR. BELLAMY: Your Honor, I would object as to what
21 he thinks. I would like to know the foundation or the
22 basis ---

23 THE COURT: Why don't you rephrase the question.

24 MR. BELLAMY: --- the basis for how he would know
25 that, Your Honor.

1 THE COURT: I understand. Why don't you rephrase
2 the question, Solicitor.

3 Q. Did you have conversations with Miles during the
4 course of that day?

5 A. Yes, ma'am.

6 Q. And did you discuss this drug deal that was going
7 to take place?

8 A. Yes, ma'am.

9 Q. And did you talk about Corey Smalls ---

10 A. Yes.

11 Q. --- during the course of that?

12 A. Yes, ma'am.

13 Q. And do you know of your own knowledge what Corey
14 Smalls' role was to be in that drug deal?

15 MR. BELLAMY: Your Honor, again I don't -- I don't
16 know how he would know that unless he talked to Mr.
17 Smalls. Otherwise it would be hearsay coming from a third
18 party.

19 THE COURT: I appreciate that. Based on the fact
20 that Mr. Smalls has already testified, I'm going to allow
21 the question to be asked at this point in time.

22 Go ahead.

23 Q. Do you know what Mr. Smalls', Corey Smalls', role
24 was to be?

25 A. Well, as far as I know, I didn't know there was

1 anybody outside of that. I just knew that he was meeting
2 Corey to get some dope from him.

3 Q. And where -- where did you all go after he had this
4 conversation?

5 A. Well, after we had -- after we all was talk- -- I
6 mean, to start, we all talked at the gym, and then we
7 talked while we were riding around, but after we went to
8 Enterprise to a gas station was where he was supposed to
9 be meeting Corey at.

10 Q. I'm going to show you State's Exhibit 4. What's
11 that?

12 A. That's the Wilco on the corner of 707 and
13 Enterprise Road.

14 Q. And is that where you went to meet Corey?

15 A. Yes, ma'am.

16 Q. All right. Where were you all parked?

17 A. Actually right here where this silver car is, in
18 that exact same parking spot.

19 Q. And if you're looking directly at the building,
20 that would be on the right ---

21 A. On the right-hand side, yes, ma'am.

22 Q. All right, and did you at some point come into
23 contact with Corey?

24 A. Yes, ma'am.

25 Q. Tell me how that happened.

1 **A.** Well, he came -- Corey come walking up from behind
2 the car. I didn't see him pull in or nothing like that,
3 and when he walked up to the car he give Miles daps, you
4 know. He just dapped him up like that (indicating), and
5 then when he -- he looked in the car and was seeing who
6 was else in there, and there was another guy in there,
7 Dominique. You know, he kind of said what to him, and
8 then he saw me being in there, and I just met him kind of
9 recently to that, and he, you know, gave me daps and
10 everything like that, like ---

11 **Q.** So you didn't -- you knew who Corey was, but you
12 didn't know him real well?

13 **A.** No, ma'am, I didn't know him that well.

14 **Q.** And again, when he -- when he approached the
15 vehicle, he -- did you see another car driving off, or did
16 he appear to be walking from somewhere, or ---

17 **A.** He just kind of appeared to be coming maybe from
18 the apartments and from behind the Foxtrot Apartments,
19 because I didn't see him walking down the road or nothing.
20 He just kind of popped out.

21 **Q.** So when he walks up, are you all all seated in the
22 Highlander?

23 **A.** Yes, ma'am.

24 **Q.** All right. Where is Mr. Slay seated?

25 **A.** The driver's seat.

1 Q. And where was Dominique seated?

2 A. The passenger seat.

3 Q. And where were you seated?

4 A. In the rear passenger.

5 Q. Which side -- oh, the rear passenger you said?

6 A. Yes, ma'am.

7 Q. I'm going to show you State's Exhibit 26 and ask
8 you to take a look at that. What is that?

9 A. It's a pack of Newports, a Mountain Dew bottle, and
10 a bottle of water.

11 Q. Is this the Highlander that you all were in?

12 A. Yes, ma'am.

13 Q. Are those your Newports?

14 A. Yes, ma'am.

15 Q. Is that your Mountain Dew?

16 A. Yes, ma'am.

17 Q. Is that your bottle of water?

18 A. Yes, ma'am.

19 Q. There's a McDonald's bag down there, too. Is that
20 y'all's?

21 A. Yes, that was ours, not from that day, though.

22 Q. All right, and when Corey comes up to the car, was
23 he -- did he have a cell phone, do you know?

24 A. Yes, ma'am.

25 Q. Did he -- did he talk to someone on that cell

1 phone?

2 **A.** Yeah. He, you know, said whatever to everybody.
3 He called somebody, and then he was walking back and forth
4 onto the right side of the store, front of the car, was
5 talking on the phone so that we couldn't hear him.

6 **Q.** So you couldn't hear the conversation he was
7 having?

8 **A.** No, ma'am.

9 **Q.** And did he come back to the vehicle at some point?

10 **A.** Yes, ma'am.

11 **Q.** What happened at that point?

12 **A.** When he come back to the vehicle, he was like, "All
13 these people can't ride," and Dominique was like, "All
14 right, I'll stay here." Then he was like, "No, I'm
15 talking about like him. You know, he don't like white" --
16 he was looking at me, and he was like, "You know, he don't
17 like white people."

18 **Q.** Corey said ---

19 **A.** He said, "You know he don't trust white people,"
20 excuse me, is what he said.

21 **Q.** Corey said, "He don't like white people"?

22 **A.** Yeah; yes, ma'am.

23 **Q.** Do you know who "he" was?

24 **A.** No, ma'am.

25 **Q.** He didn't name any names?

1 **A.** No, ma'am.

2 **Q.** What did you do?

3 **A.** Well, I told Miles that I don't trust the situation
4 and I don't think that he should go by himself, and Miles
5 said it was all right, and I got out of the car and was
6 waiting on Miles.

7 **Q.** All right, and when you got out of the car, did you
8 just hang out there at the Wilco?

9 **A.** Yes, ma'am.

10 **Q.** I show you State's Exhibit Number 1. Take a look
11 at that for me. Do you see the Wilco on that map?

12 **A.** Yes, ma'am.

13 **Q.** Right, that's where you were, and where was Corey
14 seated in the car?

15 **A.** When he got in, he got into my seat, because I --
16 whenever he came up to Miles' window, I leaned across the
17 back seat and rolled the window down like this
18 (indicating), and where we was like both on the same side
19 of the car, and then when he got in, I jumped in behind
20 Miles because there was more room right there and, you
21 know, everything, slid over for him to get in the back
22 seat.

23 **Q.** So he got in the back seat first?

24 **A.** Yes, ma'am.

25 **Q.** And then at some point, did he get into the front

1 seat with Miles?

2 A. Yes, ma'am. When me and Dominique got out, that's
3 when they switched seats, and he got up front.

4 Q. And when they left, when they left the Wilco, which
5 way did they go?

6 A. They took a left onto Enterprise Road.

7 Q. All right, and this is Enterprise Road here. Just
8 point out to the jury, please, which way they would have
9 -- which way they would have gone.

10 A. This way (indicating).

11 Q. All right. Did you wait there at the Wilco?

12 A. Yes, ma'am, for a little while. I waiting around
13 about ten minutes, and then I kind of walked over to the
14 warehouses that are beside the 707 gun shop and stuff,
15 which the properties are joined together.

16 Q. Were you expecting Miles to come back and pick you
17 up? Was that the plan?

18 A. Yes, ma'am.

19 Q. Did you, and Dominique, and Miles discuss that he
20 would be coming back to pick you up?

21 A. Yeah.

22 Q. And at some point, did you become concerned about
23 it?

24 A. Yes, ma'am.

25 Q. And what did you do as a result of that?

1 **A.** Well, I called Miles, and Miles wouldn't answer his
2 phone, so I wait a little bit, probably about twenty more
3 minutes later, and I called him again, and then I wind up
4 seeing somebody at the gas station that I knew, and I
5 asked them could they give us a ride to the house until I
6 can call a ride to come pick us up because Miles didn't
7 come back to get us, and I had a feeling something was
8 wrong because he wouldn't just leave me on the side of the
9 gas station knowing that I was there.

10 **Q.** Did you receive a call at some point later from
11 Corey?

12 **A.** Yes, ma'am.

13 **Q.** What time was that approximately?

14 **A.** I'd probably say around eight-thirty or so, between
15 seven forty-five to eight-thirty, somewhere in that area.
16 It was closer to dark.

17 **Q.** And why was Corey calling you?

18 **A.** Well, he called -- he called me and was asking me
19 about some weed.

20 **Q.** Some weed, marijuana?

21 **A.** Yeah.

22 **Q.** Did you -- did you ever meet up with Corey again?

23 **A.** No, ma'am.

24 **Q.** And when Miles turned down that road on Enterprise,
25 did you ever see him after that day?

1 A. No, ma'am.

2 MS. VON HERRMANN: I don't have any further
3 questions. Please answer any questions Mr. Bellamy has.

4 THE COURT: All right, cross examination.

5 MR. BELLAMY: May it please the Court. The Court's
6 indulgence.

7 THE COURT: Yes, sir.

8 CROSS EXAMINATION BY MR. BELLAMY:

9 Q. Mr. Prater, you -- did you ever see Tyronne Beaty
10 that night?

11 A. No, sir.

12 Q. And you were with Miles, I believe, most of that
13 day or all of that day?

14 A. Just about all that day.

15 Q. In fact, y'all had actually -- I think y'all had
16 went to Florida that week, had you not?

17 A. Yes, sir.

18 Q. And that was for a dope deal, wasn't it?

19 A. Yes, sir.

20 Q. But it didn't happen?

21 A. No, sir.

22 Q. And to your knowledge, Miles Slay never had any
23 conversation with Tyronne Beaty, did he?

24 A. No, sir.

25 Q. And, in fact, we know now that they've got Miles'

1 phone. But you have no reason to believe he ever talked
2 to my client, do you?

3 A. (No response.)

4 Q. Do you know if they had ever met?

5 A. No, sir.

6 Q. You don't they'd ever met?

7 A. Not that I'm aware of.

8 Q. Okay, and you were hanging out pretty steady, going
9 to Florida, you were with Miles pretty much all the time,
10 weren't you?

11 A. So to -- not -- not all the time constantly. I had
12 my own life and he had his.

13 Q. But y'all would go -- you went to Florida with him,
14 right?

15 A. Yeah.

16 Q. And you hung out with him pretty much a good bit of
17 the time? I'm not saying twenty-four hours a day, but a
18 good bit of the time?

19 A. Yeah.

20 Q. It was your understanding that the deal was between
21 Corey and Miles, correct?

22 A. To my understanding, Corey was kind of like a
23 middle man.

24 Q. Okay. Well, your earlier testimony was that it was
25 just -- you didn't know anything about anybody else, just

1 Miles and Corey? That was what you ---

2 A. Well, at that time, yeah.

3 Q. And then after you got to the Hess station is when
4 Corey said something about somebody else?

5 A. Yes, sir, that's correct.

6 Q. That's the first that ever came up?

7 A. Yes, sir.

8 Q. Okay, and do you know Corey Smalls?

9 A. Just met him a couple of times.

10 Q. A couple of times?

11 A. Yes, sir.

12 Q. Did he have your phone number or you have his phone
13 number?

14 A. I think I -- I think he had -- we both had each
15 other's numbers, but we didn't never call each other or
16 nothing like that. We just, you know, swapped numbers
17 through his cousin.

18 Q. Okay. Now, who called Corey Smalls, that night
19 after Miles rode off with him? Who called him?

20 A. I did.

21 Q. You called on which phone, your phone?

22 A. From my phone.

23 Q. Okay, and the purpose of that was to look for ---

24 A. Miles.

25 Q. --- Miles?

1 **A.** Correct.

2 **Q.** How long after Miles had ridden off?

3 **A.** Probably about thirty to forty-five minutes.

4 **Q.** Did you get him the first time -- I'm talking about
5 Corey, not Miles, but did you get Corey that first time
6 you talked to him?

7 **A.** Did I get Corey? Yes, sir.

8 **Q.** I mean the first time you called him. I'm sorry;
9 that didn't make sense. The first time you called him,
10 were you able to talk to Corey?

11 **A.** Yes, sir.

12 **Q.** And that would have been -- do you remember what
13 time they rode off, and I've got notes from this and what
14 you've said in the past, but do you remember looking at
15 the clock in the car?

16 **A.** Probably around -- seem like it said six -- quarter
17 to seven, something like that, and more evening time.

18 **Q.** Okay. Would you disagree that you previously made
19 a statement that you looked at the clock and remember it
20 being 6:59? Does that help you?

21 **A.** Yeah, that ---

22 **Q.** Now, so about thirty to forty minutes after that,
23 did you call Miles or did you call Corey?

24 **A.** I called Miles first.

25 **Q.** And did you get an answer?

1 A. Huh-uh (negative response).

2 Q. Okay, so then you called Corey?

3 A. Yes, sir.

4 Q. Again, that would be thirty to forty-five minutes
5 later, or thirty minutes to an hour?

6 A. A little bit right after calling Miles, forty-five
7 minutes or so after they left the store.

8 Q. And he answered the phone?

9 A. Yes, sir.

10 Q. And tell me the -- what you asked him and what he
11 told you.

12 A. I said, "Hey, Corey, where is Miles at," and he
13 said, "He dropped me off down here in Burgess. I don't
14 know where he's at."

15 Q. And then hung up the phone, but then you got a call
16 from him, didn't you, later?

17 A. Yes, sir.

18 Q. He called your phone?

19 A. Yes, sir.

20 Q. About nine, isn't that right?

21 A. Probably in that -- yeah, in that area.

22 Q. The purpose in calling you at nine o'clock or after
23 was for him to -- he was trying to buy marijuana from you?

24 A. Yes, sir.

25 Q. He wanted you to bring him some dope?

1 **A.** Uh-huh (affirmative response).

2 **Q.** And that's at least two hours after Miles leaves
3 you, correct, ---

4 **A.** Something like that.

5 **Q.** --- if not more?

6 **A.** If not less.

7 **Q.** Okay, but he leaves you at 6:59 and you get a call
8 at nine. That would be at least two hours, wouldn't it?

9 **A.** Yeah, somewhere in that area.

10 **Q.** Okay.

11 **A.** I'm not too sure of the times.

12 **Q.** And what -- did you have any other conversation
13 during his phone call to you?

14 **A.** During Corey's phone call to me, no.

15 **Q.** Other than the marijuana?

16 **A.** Other than the fact that I said, "Hey, where is
17 Miles at?" and he was like, "Man, that nigger is out
18 probably grinding right now," and that was all that was
19 said, and I said, "That don't sound right. Something
20 ain't right," and I hung up.

21 THE COURT: Yes, ma'am?

22 THE FORELADY: Could you repeat that last question?

23 THE COURT: Ma'am, if you need the witness to speak
24 up, we'll do so. They can't ask the questions or give you
25 the answers again. If you need them re-played, we can

1 have them re-played. Do you want them re-played?

2 THE FORELADY: Please.

3 MS. VON HERRMANN: May we approach, Your Honor?

4 THE COURT: Yes.

5 (A Bench conference was held in the presence, but out
6 of the hearing, of the jury.)

7 THE COURT: We're going to have it re-played.

8 (The last question and answer was played for the jury.)

9 Q. Let me ask you, other than him wanting you -- to
10 buy marijuana from you, what -- and talk ---

11 A. Put it in layman terms for y'all, what that means?

12 Q. What -- what -- yeah. I didn't understand.

13 A. Okay.

14 Q. Just say what he said, and then if you want to
15 break it down, I'll let you break it down, but I didn't --
16 I can't -- I couldn't understand what you said, but try to
17 make it a little clearer, and then if you want to, you can
18 explain in, as you said, layman's terms what that means,
19 so go ahead.

20 A. All I was saying that was he said, "He's probably
21 out grinding right now," which means he's out on the block
22 making money or selling dope, whatever is the ---

23 Q. You were there with him all day that day, ---

24 A. Yes, sir.

25 Q. --- Miles, I'm talking about?

1 **A.** Yes, sir.

2 **Q.** Had y'all been shooting guns or anything that day?

3 **A.** Huh-uh (negative response).

4 **Q.** Had you shot guns ---

5 THE COURT: Sir, you need to answer yes or no.

6 **A.** No, sir.

7 **Q.** You've got to answer yes or no, or explain, however
8 you want to, but she can't pick up uh-huhs and nodding.

9 How about -- that was -- do you know what day of the week
10 this was?

11 **A.** No, sir, I don't remember which day of the week it
12 was.

13 **Q.** Well, let's go back when you went to Florida. How
14 many -- do you recall shooting guns or anything with Miles
15 in the previous week?

16 **A.** No, sir.

17 **Q.** And had you been with him about every day, at least
18 during parts of the time?

19 **A.** Maybe thirty minutes for one day or something like
20 that.

21 MR. BELLAMY: The Court's indulgence, Your Honor.

22 THE COURT: Yes, sir.

23 MR. BELLAMY: I don't have any further questions,
24 Your Honor.

25 THE COURT: Do you have some redirect?

1 REDIRECT EXAMINATION BY MS. VON HERRMANN:

2 Q. Did Miles show the money to Corey?

3 A. Yes, ma'am.

4 Q. You saw him show the money?

5 A. Yes, ma'am.

6 Q. And did Corey have the dope with him when he went
7 to the Highlander?

8 A. When he came up to the car when I was in it? No,
9 ma'am.

10 Q. So was it your impression that they had to go
11 somewhere else to get the dope?

12 A. Yes, ma'am.

13 Q. Corey didn't have it?

14 A. No, ma'am.

15 Q. They had to go somewhere else?

16 A. They had to meet somebody else.

17 Q. So that would make Corey the middle man, wouldn't
18 it?

19 MR. BELLAMY: Your Honor, I would object to the
20 leading nature and it's outside the ---

21 THE COURT: I'm going to allow the question. Thank
22 you.

23 MR. BELLAMY: I believe it's outside the cross of
24 redirect.

25 THE COURT: I don't believe so. I'm going to allow

1 -- I don't believe it was outside the cross examination.
2 I think it pertains to the cross examination. I'm going
3 to allow it.

4 You may continue.

5 Q. Did Miles ever say anything to you about going and
6 ripping somebody off for the drugs?

7 A. No, ma'am.

8 Q. It was a straight-up deal?

9 A. He was a straight-up kind of man. He was just
10 trying to make some money to feed his family and do the
11 right -- you know.

12 MS. VON HERRMANN: Thank you. I don't have any
13 further questions.

14 THE COURT: Anything on those questions, Mr.
15 Bellamy?

16 MR. BELLAMY: No, sir, Your Honor.

17 THE COURT: All right, sir..

18 Do you wish the witness to be excused?

19 MS. VON HERRMANN: I do, Your Honor.

20 THE COURT: Any objection?

21 MR. BELLAMY: We would ask he be kept under
22 subpoena, Your Honor.

23 THE COURT: Have you subpoenaed him?

24 MR. BELLAMY: Have I? I don't think I have. We
25 don't have a problem. We can release him, Judge.

1 THE COURT: All right, sir.

2 All right, sir, you are released from the State's
3 subpoena and you may go back to your regular activities,
4 sir.

5 MR. PRATER: Thank you, Your Honor.

6 THE COURT: All right, Solicitor and Mr. Bellamy,
7 y'all come talk to me for one second, please.

8 (A Bench conference was held in the presence, but out
9 of the hearing, of the jury.)

10 THE COURT: All right, ladies and gentlemen, it
11 appears that the next witness at least has the potential
12 for being rather lengthy through direct and cross
13 examination. Looking at the time and remembering what I
14 told you on Monday, that I know you have lives outside of
15 the courthouse, we're going to stop for the day and let
16 you go home.

17 I want you back tomorrow morning at nine o'clock. I
18 want you back in your jury room at 9:00 A.M., and we'll
19 start the trial at that point in time. Please remember
20 now I told y'all not to talk about this case, and
21 obviously you know you're not supposed to be talking about
22 it among yourselves, so when you go home and you see your
23 husband, and wife, boyfriend, girlfriend, friend,
24 whomever, I mean, obviously you can tell them you're on a
25 jury. Other than that, you can't talk to them about it.

1 You can't respond to any questions about that. If you
2 did, unintentionally they'd give you their opinion about
3 this matter. Obviously they don't have one and y'all
4 shouldn't have one at this point in time, so please don't
5 talk about the case. When it's over with, you can talk as
6 much or as little as you want to about it. That's your
7 choice, but before you make a decision, please don't talk
8 about it and don't allow anybody to talk to you about it.

9 With that, I'll see you back tomorrow morning at nine
10 o'clock. Thank you very much. Just leave your pads and
11 pens there and we'll give them back to you in the morning.

12 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF**
13 **THE JURY.)**

14 THE COURT: All right, anything further from the
15 State at this point in time?

16 MS. VON HERRMANN: Nothing, Your Honor.

17 THE COURT: All right. Anything further from the
18 Defense?

19 MR. BELLAMY: No, sir, Your Honor.

20 THE COURT: All right. We'll resume back tomorrow
21 morning at nine o'clock again in this matter. Mr. Beaty,
22 you understand the terms and conditions of you staying out
23 on bond?

24 MR. BEATY: Yes, sir.

25 THE COURT: All right, very good. See y'all back

1 tomorrow morning at nine o'clock. Thank you very much.

2 (OFF THE RECORD)

3

ON THE RECORD

4 MS. VON HERRMANN: I have a matter I'd like to take
5 up just very briefly with the Court. I understand that
6 Your Honor is going to leave Mr. Beaty out on bond.
7 However, I do have other witnesses. He's aware of who
8 those witnesses are, and I want to make absolutely certain
9 that there is no contact ---

10 THE COURT: Well, obviously if that should take
11 place, I'm sure Mr. Bellamy has talked to his client and
12 the relatives about that, that if they should do so,
13 that's committing a crime and should they do so, they
14 would be immediately arrested.

15 (OFF THE RECORD - End of Day)

16

WEDNESDAY, JULY 14, 2010

17

ON THE RECORD

18

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF

19

THE JURY.)

20

THE COURT: Thank you. You may be seated. Is the
21 State ready for the jury?

22

23

24

25

MS. VON HERRMANN: Your Honor, I do have just a
couple of matters that I would like to bring to the
Court's attention. The first one is that we have -- I'm
going to have Neil Hill and Antonio Smalls both testifying

1 today. They have also entered into proffer agreements,
2 and we've redacted those -- we're redacting one now.
3 We've already redacted one of them, but I just wanted to
4 hand that up to the Court and also to Mr. Bellamy just to
5 make sure that we've got approval on that before I try to
6 enter that into ---

7 THE COURT: All right. We took out the same
8 paragraph about the polygraph?

9 MS. VON HERRMANN: It is, Your Honor. Mr. Hill's
10 proffer agreement is slightly different than the others in
11 that it was actually given back in 2005, so the language
12 is the same, but the appearance of it is slightly
13 different, and I just wanted to show that to the Court.

14 THE COURT: All right, very good.

15 MR. BELLAMY: Your Honor, I've had an opportunity to
16 review it and I believe it is consistent with what the
17 Court had previously ruled on the other proffer agreement.

18 THE COURT: All right, very good.

19 MS. VON HERRMANN: Your Honor, the other matter that
20 I have is that it is -- it came to my attention this
21 morning that prior to Daniel Prater testifying, that he
22 was spoken to by the Defendant in this case. I'm having
23 Mr. Prater come back over because I wanted to get some
24 more information about that, but it certainly does concern
25 me that the Defendant would be contacting witnesses prior

1 to their testimony.

2 THE COURT: Well, I'm going to let you investigate
3 that and if we need to put Mr. Prater under oath out of
4 the presence of the jury to find out what took place and
5 then let you go from there to see if there's any charges
6 that need to be brought regarding that.

7 MS. VON HERRMANN: Thank you, Your Honor.

8 THE COURT: All right, thank you very much.

9 All right, is the Defense ready for the jury?

10 MR. BELLAMY: Yes, sir, Your Honor.

11 THE COURT: Ask the jury to come in, please.

12 MS. VON HERRMANN: Do you want to go ahead and mark
13 that for I.D. It is for the next witness.

14 PROFFER AGREEMENT FOR NEIL HILL, NOVEMBER 14, 2006,
15 MARKED FOR IDENTIFICATION AS STATE'S EXHIBIT
16 NUMBER 42.

17 **(THE FOLLOWING TAKES PLACE IN THE PRESENCE OF THE**
18 **JURY.)**

19 THE COURT: Y'all don't need to sit in those same
20 seats. You just fill in wherever you are. Again, you
21 don't need to sit in the same seats. Just fill in. Thank
22 you.

23 All right, Solicitor, are you ready for your next
24 witness?

25 MS. VON HERRMANN: Yes, sir, Your Honor. The State

1 calls Neil Hill.

2 THE COURT: All right. Come up here to the Clerk,
3 please.

4 NEIL HILL, being first duly sworn, testifies as
5 follows:

6 THE CLERK: Please be seated. State your full name
7 and spell your last name.

8 MR. HILL: Spell my last?

9 THE CLERK: Yes.

10 MR. HILL: My name is Neil Hill, Neil Nehi Hill.
11 Last name, H-I-L-L.

12 DIRECT EXAMINATION BY MS. VON HERRMANN:

13 Q. Good morning, Mr. Hill; how are you?

14 A. All right.

15 Q. A little bit nervous today?

16 A. Yes, ma'am.

17 Q. Tell me where you live, please.

18 A. I live in Conway.

19 Q. And how long have you lived in Conway?

20 A. Basically since I've been living down here, between
21 Conway and Surfside.

22 Q. How long has that been?

23 A. About ten years.

24 Q. Now, you've -- you've got a criminal record, is
25 that correct?

- 1 **A.** Yes, ma'am.
- 2 **Q.** You've got a possession with intent to distribute
3 marijuana?
- 4 **A.** Yes.
- 5 **Q.** And a failure to stop for a blue light, ---
- 6 **A.** Yes.
- 7 **Q.** --- is that correct? All right. Let me direct
8 your attention to October the 20th of 2005. Do you
9 remember that day?
- 10 **A.** Yes.
- 11 **Q.** And where did you wake up that morning?
- 12 **A.** At home.
- 13 **Q.** Where -- and who was there with you at that house?
- 14 **A.** Me -- my baby mother, and my son, and my own step-
15 daughter.
- 16 **Q.** At some point during the day, did you speak with
17 Tyronne Beaty?
- 18 **A.** Yes, ma'am.
- 19 **Q.** And let's talk a little bit about Tyronne Beaty.
20 Tyronne Beaty is your cousin?
- 21 **A.** Yes, ma'am.
- 22 **Q.** How are you all -- how are you cousins?
- 23 **A.** My dad and his dad are brothers.
- 24 **Q.** And y'all are close?
- 25 **A.** Yes.

1 Q. Your families are close?

2 A. Yes.

3 Q. And you don't really want to be here today, do you?

4 A. No, ma'am.

5 Q. All right. When you talked with Tyronne that
6 morning, what was the gist of that conversation?

7 A. It wasn't that morning. It was kind of like in the
8 afternoon, ---

9 Q. Okay.

10 A. --- you know, but he had call me to ask me to ride
11 with him to Murrells Inlet because Corey Smalls had owed
12 him some money. He owed him a Thousand Dollars and he was
13 going to ask him about his money, and if he didn't have
14 his money, there was going to be a altercation between him
15 and Corey, and he asked me to come along with him in case
16 Antonio jumped in.

17 Q. Okay, and so you -- you were sort of there for
18 protection, is that correct?

19 A. Yes, ma'am.

20 Q. All right, so did you drive down to Murrells Inlet?

21 A. Yes, ma'am.

22 Q. And when you got down there, where did you go?

23 A. We went to the -- we went -- first he stopped at
24 his mother house, seen his mother, and then we went on a
25 Hot Road.

1 Q. On a Hot Road?

2 A. Yes, ma'am.

3 Q. Is that where Corey Smalls lived?

4 A. Yes, ma'am.

5 Q. All right. Who was there at the Hot Road when you
6 arrived?

7 A. Corey and Antonio was pulling out of the front
8 yard.

9 Q. They were?

10 A. Yes, ma'am.

11 Q. And what were they driving?

12 A. A gold Maxima.

13 Q. Let me show you State's Exhibit Number 2. Is that
14 the gold Maxima they were driving?

15 A. It look just like it.

16 Q. And who was driving that vehicle?

17 A. Antonio.

18 Q. Where was Corey seated?

19 A. At the time when we first got to Murrells Inlet,
20 Corey -- Corey and Antonio was only in the car, so Corey
21 was sitting in the passenger side. Antonio was driving.

22 Q. Okay, and who drove you and Corey to that location?

23 A. I didn't ---

24 Q. Excuse me. Who drove you and Tyrone to that
25 location?

- 1 **A.** His girlfriend.
- 2 **Q.** What was she driving?
- 3 **A.** A Cherokee.
- 4 **Q.** And did she just drop you off there?
- 5 **A.** Yes, ma'am.
- 6 **Q.** And she went on?
- 7 **A.** Yes, ma'am.
- 8 **Q.** Did you get into the vehicle with Corey and
9 Antonio?
- 10 **A.** Yes, ma'am.
- 11 **Q.** Where were you seated?
- 12 **A.** I was seated -- at first I was seated behind the
13 driver in the back seat.
- 14 **Q.** All right. Let's talk about Corey and Antonio.
15 How long have you known Corey?
- 16 **A.** I mean, I really -- I really haven't known Corey,
17 you know. I really never known Corey. I just always
18 heard about Corey.
- 19 **Q.** Y'all aren't good friends or buddies?
- 20 **A.** No, ma'am. I don't even associate with Corey. How
21 about Antonio, are y'all pretty tight or not?
- 22 **A.** No, ma'am; the same -- the same thing with ---
- 23 **Q.** With Antonio?
- 24 **A.** Yes, ma'am.
- 25 **Q.** So once you get in the car, what is the discussion?

1 I don't want you to tell me anything that Corey said.

2 What did Tyronne say when he got into the car?

3 A. Tyronne basically didn't say nothing because before
4 we got in the car, he ask Corey about his money, and Corey
5 was like he about to go take care of something. After he
6 take care of what he got to take care of, he's going to
7 buy something from him and also pay him, so he was like we
8 can ride with him if we would like, ---

9 Q. Okay.

10 A. --- and so we got in the car and rode with him.

11 Q. All right, and where did you go from there?

12 A. From there, we was riding around, and at some point
13 we had went by Food Lion.

14 Q. All right. Now, you all had a discussion prior to
15 going to Food Lion about ripping off this person who had
16 the money, correct?

17 A. No, ma'am, because when he got in the car --
18 because when they first got in the car, after we got in
19 the car, we was smoking and drinking.

20 Q. Did they have that discussion before they got in
21 the car?

22 A. I never heard no discussion about they ripping
23 nobody off.

24 Q. You never heard the discussion about them ripping
25 anybody off?

1 A. No, ma'am.

2 Q. All right. What did you go to Food Lion for?

3 A. He had went to Food Lion because the window in the
4 car was broke, and I know he went into Food Lion to
5 purchase tape for the window, and he also, when he came
6 back out, he had flour and sandwich bags.

7 Q. All right, and what -- who had the flour and
8 sandwich bags?

9 A. Tyronne.

10 Q. All right, and what did he do with the flour and
11 the sandwich bags?

12 A. I seen him bend over. He was bend over like this
13 (indicating), like he was bagging the flour up.

14 Q. All right. Was he -- what was he putting it into?

15 A. A sandwich bag.

16 Q. All right, and how long was he -- was he -- was it
17 just Tyronne that went into that Food Lion ---

18 A. Yes, ma'am.

19 Q. --- or did anybody else go in there?

20 A. Yes, ma'am, just Tyronne.

21 Q. Where did y'all go from there?

22 A. From there, we was still riding around, and the
23 next thing I know, Antonio was like he had to go pick his
24 daughter up from daycare.

25 Q. Where was that daycare located?

- 1 **A.** Socastee.
- 2 **Q.** And did y'all go to the daycare?
- 3 **A.** Yes, ma'am.
- 4 **Q.** And did you pick his daughter up?
- 5 **A.** Yes, ma'am.
- 6 **Q.** While you were there at the daycare, did either
- 7 Antonio or Tyronne get out of the vehicle?
- 8 **A.** Antonio got out.
- 9 **Q.** And what did he do?
- 10 **A.** He got out to go get his daughter, also throw some
- 11 trash away inside the daycare.
- 12 **Q.** And when he threw the trash away, did he throw
- 13 something else away along with it?
- 14 **A.** Yes, ma'am.
- 15 **Q.** What was that?
- 16 **A.** Some cocaine.
- 17 **Q.** All right. Whose cocaine was that?
- 18 **A.** Tyronne.
- 19 **Q.** Had you seen that before?
- 20 **A.** No, ma'am.
- 21 **Q.** You had never seen that cocaine?
- 22 **A.** No, ma'am.
- 23 **Q.** How did you know that it had been thrown away?
- 24 **A.** Because he was like -- Tyronne was like, "I can't
- 25 -- I can't find -- I can't find my stuff," and he was

1 like, "What you looking for?" He was like, "I can't find
2 my -- my coke," and was looking for it or what not. He
3 told Antonio to go look and see if he threw it away.
4 Antonio got back out and went in.

5 Q. And did he find it?

6 A. Yes, ma'am.

7 Q. All right, so tell me what then was left in the
8 car. The cocaine was back in the vehicle, right?

9 A. Yes, ma'am.

10 Q. All right. Where was that located? Where was the
11 cocaine? Did Tyronne have that in his hands, or was it on
12 the floor, or where was that located?

13 A. He probably put it in his pocket.

14 Q. But you didn't see him put it in his pocket?

15 A. No, ma'am.

16 Q. All right. What about the flour?

17 A. It probably was still between his legs in the bag.

18 Q. All right. Did you look at it?

19 A. No, ma'am, because I was leaning to the left
20 because I was -- I was about asleep because I was
21 intoxicated. We was drinking 211's, which was the beer,
22 and we was also smoking marijuana.

23 Q. You were -- and where were you seated again?

24 A. I was seated behind the driver.

25 Q. And what did y'all do after you left the -- after

1 you left the daycare?

2 **A.** Antonio went and dropped his daughter off at
3 Bridget house.

4 **Q.** And what did -- what did y'all do next?

5 **A.** After that, I had dozed off. I remember -- I
6 remember his daughter getting out at Bridget house, and
7 once I had dozed off, I remember being woke up again at
8 the soccer field.

9 **Q.** You woke up at the soccer field?

10 **A.** Yes, ma'am.

11 **Q.** Down ---

12 **A.** That's where they had the Burgess -- the Burgess
13 Bike Show.

14 **Q.** All right. Is that on Butler Road?

15 **A.** I don't know the name of the road exactly.

16 **Q.** All right. Well, we'll just take a look at this
17 map. This is State's Exhibit Number 1 I'm going to show
18 you. Let me just get you oriented here a little bit.

19 This is the Wilco. Are you familiar with the Wilco?

20 **A.** I think that's right by Foxtrot.

21 **Q.** Yes, it is, and how about this, what is that?

22 **A.** Food Lion.

23 **Q.** All right. Is that the Food Lion ---

24 **THE COURT:** You need to speak up, sir.

25 **A.** Yeah, that's Food Lion.

1 Q. That's the Food Lion that you went to?

2 A. Yes, ma'am.

3 Q. All right, and how about this spot right here,
4 would that be Bridget Allen's residence?

5 A. Yes, ma'am.

6 Q. All right, so you're at Bridget's and then you fall
7 asleep?

8 A. Yes, ma'am.

9 Q. And when you ---

10 A. I was on the way -- I was on the way to sleep
11 between going to the daycare and going to Bridget house.

12 Q. Okay. When you got to Bridget's house, did you
13 wake up for a minute?

14 A. No. I looked -- I looked over -- I looked up and
15 looked over and I seen Antonio's daughter getting out of
16 the car. His daughter was getting out of the car, and I
17 seen -- I seen Bridget face, so I remember seeing her
18 face, and I just turned my head back the other way.

19 Q. All right, so you just went back to sleep?

20 A. Yes, ma'am.

21 Q. All right, and then when you woke up, where were
22 you again?

23 A. At the soccer field.

24 Q. Is that off of Enterprise Road?

25 A. Yes, ma'am.

1 Q. All right. This is Enterprise Road right here that
2 I'm indicating on this map. Can you show the jury,
3 please, where that soccer field would be?

4 A. Right here (indicating).

5 Q. That would be right there on Butler Road?

6 A. Yes, ma'am.

7 Q. And when you woke up at the soccer field, what
8 happened next?

9 A. Tyronne woke me up and ask me if I need to use the
10 bathroom. I told him yeah. Me, and him, and Antonio got
11 out and we walked into the bathroom area. I went in and
12 used the bathroom, and as we was coming back out, Tyronne
13 told me to sit in the front seat, so I sat in the front
14 seat, and me and Antonio was still in the car, and Antonio
15 started talking to him about somebody owe him some money,
16 and he asked him what do he think he should do about it,
17 you know, so eventually, like I was telling you, I don't
18 really associate with Antonio, though, so I lean back over
19 and I was just sitting there, and I doze back off, and it
20 seem like fifteen minutes later I heard gunshots go off.

21 Q. All right. Well, were you -- when you heard the
22 gunshots go off, did that wake you up?

23 A. Yes, ma'am.

24 Q. All right, and when you woke up, were you still at
25 the soccer field or were you somewhere else?

1 **A.** I can't remember. It was dark, but I don't think
2 we was at the soccer field.

3 **Q.** All right. You think you were somewhere else?

4 **A.** Yes, ma'am.

5 **Q.** All right. Was there another vehicle there?

6 **A.** I never remember no other vehicle.

7 **Q.** You didn't remember another vehicle?

8 **A.** I didn't see no vehicle because it was dark.

9 **Q.** You heard some shots?

10 **A.** Yes, ma'am.

11 **Q.** And what did you do when you heard those shots?

12 **A.** I jumped up and I seen Tyronne jump in the car and
13 then I seen Corey jump in the car, and I was like, "What's
14 going on? What's going on?" and Corey was like, "To the
15 death, to the death," and, I mean, "Ain't nothing. Ain't
16 nothing." I'm like, "What's going on?" Corey like, "It
17 ain't nothing. It ain't nothing. If I find out" ---

18 **Q.** And then y'all just drove off?

19 **A.** --- "If I find out -- if I find out -- if I find
20 out you seen something or know something, I'm going to
21 come see you."

22 **Q.** And then y'all just drove off?

23 **A.** Yes, ma'am.

24 **Q.** All right. Let me talk to you about a statement.

25 Do you remember giving -- let me just ask you -- actually,

1 let me ask you a couple of other things first. When you
2 got -- when you drove off ---

3 A. Yes, ma'am.

4 Q. --- from Butler Road, where did y'all go then?

5 A. From Butler Road, we went to Bridget house.

6 Q. And when ---

7 A. When they -- when they pulled up at Bridget house,
8 I seen Antonio car parked in the back yard.

9 Q. What kind of car was that?

10 A. Like it was a gray Lincoln.

11 Q. Let's go back. How many shots did you hear?

12 A. I think like three or four.

13 Q. And then did you hear some more shots after that?

14 A. No, ma'am.

15 Q. All right, and y'all go to Bridget's house, and who
16 does what?

17 A. Corey was like, "I'm got to go take the car back."

18 Q. What car would that have been?

19 A. The gold car.

20 Q. All right, and then what did you do?

21 A. Me and Tyronne was pushing the issue for Antonio to
22 drop us off, ---

23 Q. All right.

24 A. --- which -- which he did.

25 Q. All right, and where did he drop you off?

1 **A.** He drop -- he dropped us off between Southbridge
2 and the church right there on Glenn's Bay Road, ---

3 **Q.** Okay.

4 **A.** --- and I jumped out of the car and ran through the
5 -- through the path and ran in the house.

6 **Q.** All right. Did you see any money?

7 **A.** No, ma'am.

8 **Q.** And did you hear Tyronne say anything about any
9 money?

10 **A.** No, ma'am.

11 **Q.** All right.

12 **A.** I heard Tyronne say -- I heard Ty- -- I heard -- I
13 heard Corey call Tyronne when we was getting out of the
14 car, and Tyronne was like, "I'm not f-ing with you. I'm
15 not f-ing with you. You got me -- you got me caught up in
16 this B.S. I'm not f-ing with you," and, I mean ---

17 **Q.** All right. Let me ask you this: Did you and your
18 lawyer, Mr. Monckton, ---

19 **A.** Uh-huh (affirmative response).

20 **Q.** --- speak with me about this case?

21 **A.** Yes, ma'am.

22 **Q.** And did we discuss the facts of this case?

23 **A.** Yes, ma'am.

24 **Q.** In detail?

25 **A.** Yes, ma'am.

1 Q. And were you truthful at that time?

2 A. Yes, ma'am.

3 Q. All right, and did we enter into the proffer
4 agreement?

5 A. Yes, ma'am.

6 Q. And by the terms of the proffer agreement, you
7 agreed to testify truthfully today in court?

8 A. Yes, ma'am.

9 Q. And in the same way that you told me and your
10 lawyer the story previously?

11 A. Yes, ma'am.

12 Q. All right.

13 MS. VON HERRMANN: Let me get this marked.

14 (State's Exhibit Number 42 was previously marked.)

15 Q. I'm going to show you State's Exhibit 42. You tell
16 me what that is. Is that the proffer agreement that we
17 entered into?

18 A. Yes, ma'am.

19 Q. Is that your signature on the back?

20 A. Yes, ma'am.

21 MS. VON HERRMANN: I would move in State's Exhibit
22 42.

23 THE COURT: Any objection?

24 MR. BELLAMY: No, sir, Your Honor.

25 THE COURT: It's in evidence without objection.

1 PROFFER AGREEMENT OF NEIL HILL ADMITTED INTO EVIDENCE

2 AS STATE'S EXHIBIT NUMBER 42.

3 Q. And, Mr. Hill, you have not testified in conformity
4 with your earlier statement, did you?

5 A. How? You saying did I testify?

6 Q. Listen to me. Did you tell me before ---

7 MR. BELLAMY: Your Honor, I would object. She's
8 making herself a witness in this case.

9 Q. Did you tell ---

10 THE COURT: You need to rephrase your question,
11 Solicitor.

12 Q. Did you tell the police earlier that you went to
13 Corey's house?

14 A. Yes, ma'am.

15 Q. That Tyronne had a conversation with Corey and that
16 they talked about ---

17 MR. BELLAMY: Your Honor, may -- may we approach?

18 THE COURT: Yes, sir.

19 (A Bench conference was held in the presence, but out
20 of the hearing, of the jury.)

21 THE COURT: You can continue, Solicitor.

22 MS. VON HERRMANN: Thank you, Your Honor.

23 Q. Did you tell me at that time that when you were in
24 the car with Tyronne, Neil -- I mean, Tyronne, Corey, and
25 Antonio, that y'all discussed the drug rip?

1 A. No, I did not.

2 Q. Did you tell the police, and did you tell others,
3 including your attorney, that Tyrone showed Corey some
4 cocaine that was in a plastic bag when y'all were driving
5 around?

6 A. I said did he show him some cocaine?

7 THE COURT: Let's ---

8 A. I never said that he show him cocaine.

9 THE COURT: I'm sorry, sir. Stop. Stop. Let's
10 stop for a second.

11 Ladies and gentlemen, go to the jury room for a
12 second, please, ma'am.

13 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF**
14 **THE JURY.)**

15 THE COURT: And before we went any further, Mr.
16 Monckton, you're present in the courtroom, is that
17 correct?

18 MR. MONCKTON: That's correct, Your Honor.

19 THE COURT: And you are counsel for Mr. Neil Hill,
20 is that correct?

21 MR. MONCKTON: That's correct, Your Honor.

22 THE COURT: All right. Do you want to take any
23 opportunity at this point in time to talk to your client
24 about the proceedings at this point in time?

25 MR. MONCKTON: Your Honor, just for a second, if I

1 may.

2 THE COURT: And advise him as to anything you might
3 deem proper.

4 We'll take a short break for about five minutes.

5 Thank you very much.

6 (OFF THE RECORD)

7 ON THE RECORD

8 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF
9 THE JURY.)

10 THE COURT: All right, you may be seated.

11 MR. MONCKTON: We're ready, Your Honor.

12 THE COURT: All right, very good. Is the State
13 ready?

14 MS. VON HERRMANN: Yes, sir.

15 THE COURT: Defense?

16 MR. BELLAMY: Yes, sir.

17 THE COURT: Ask the jury to come in, please.

18 (THE FOLLOWING TAKES PLACE IN THE PRESENCE OF THE
19 JURY.)

20 THE COURT: All right, Solicitor, you may continue.

21 Q. Mr. Hill, you knew this was going to be a drug rip?

22 A. I figured out that it was going to be a drug rip
23 when I seen him bagging up the flour.

24 Q. Well, you knew -- you knew what was going on?

25 MR. BELLAMY: Your Honor, I would ask that she ask

1 -- not ask leading questions.

2 THE COURT: Rephrase that last question, Solicitor.

3 Q. Did you know what was going to happen?

4 A. Yes, ma'am. When I seen him bagging up the flour,
5 I figured they was going to rip somebody off.

6 Q. And whose suggestion was it that y'all go to Food
7 Lion?

8 A. Tyronne.

9 Q. And there was some discussion about what was going
10 to happen when this drug rip went down, wasn't there?

11 A. What do you mean by what was going to happen?

12 Q. Did Tyronne tell you what his role in the drug rip
13 was supposed to be?

14 A. I mean, he never told me nothing about far as what
15 was going on, like what he was going to do or anything
16 like that now.

17 Q. Who was going to hand the cocaine off to the -- to
18 the victim?

19 A. I think Ty- -- I think Tyronne.

20 Q. Did Tyronne tell you that?

21 A. Yes, ma'am.

22 Q. So Tyronne told you he was going to hand the drugs
23 off?

24 A. Yes, ma'am.

25 Q. Did you see the money?

1 A. No, ma'am.

2 Q. Did you hear Tyronne discussing the money?

3 A. I heard him and Corey arguing over some money.

4 Q. Did Tyronne say that he was going to hold the
5 money?

6 A. I can't remember him saying anything about him
7 holding the money. I know that him and Corey was having a
8 argument on the phone about money.

9 Q. And what about holding the money for bail, did you
10 hear a conversation about that?

11 A. I think I heard Tyronne tell Corey he better hold
12 it for bail.

13 Q. Tyronne told Corey?

14 A. Yes, ma'am.

15 Q. To hold the money for bail?

16 A. I think he told Corey he better hold the money for
17 bail, like Corey better hold the money for bail basically.

18 Q. All right, so if you just had said in your taped
19 interview earlier that Tyronne said that he was going to
20 hold the money for bail ---

21 A. I said that Tyronne said that he was going to hold
22 the money for bail? When did I say that?

23 Q. On your taped interview, Mr. Hill.

24 A. I don't remember that, ma'am.

25 MR. BELLAMY: Your Honor, may we approach?

1 THE COURT: Yes, sir.

2 (A Bench conference was held in the presence, but out
3 of the hearing, of the jury.)

4 Q. I show you this video at the Food Lion.

5 A. Yes, ma'am.

6 Q. Have you seen this before?

7 A. I -- yes, ma'am, I seen it.

8 MR. BELLAMY: Your Honor, may I?

9 THE COURT: Yes, sir, absolutely.

10 Q. Come on and step down here, if it's okay with the
11 Court, Mr. Hill. Let the jury be able to see as well, all
12 right? I'm going to play this video and you let me know
13 if you see somebody that you know from this video. (Food
14 Lion video is played.) Do you recognize that person? Who
15 is that?

16 A. Tyronne.

17 THE COURT: You need to speak up, sir. Nobody can
18 hear you.

19 Q. Speak up.

20 A. Tyronne.

21 THE COURT: Speak up, sir. Nobody can hear you.

22 Q. You said Tyronne?

23 A. Yes, ma'am.

24 Q. Where were you when this was going on?

25 A. In the car.

1 Q. Asleep?

2 A. No, ma'am.

3 Q. You were awake at that point?

4 A. (Nods in the affirmative.)

5 Q. All right, you can go have a seat. Again, Mr.

6 Hill, Tyronne is your cousin, right?

7 A. Yes, ma'am.

8 Q. And y'all are very close. You don't want to hurt
9 your cousin, do you?

10 A. Do I want to hurt him?

11 Q. You don't want to hurt your cousin, do you?

12 A. No, ma'am, but right now I'm in a position now I
13 have to look out for Neil. I can't think about nobody but
14 Neil right now.

15 Q. And you knew what was going on?

16 A. Yes, ma'am.

17 Q. And you know that someone was killed as a result of
18 this?

19 A. Yes, ma'am.

20 MS. VON HERRMANN: I don't have anything further.

21 THE COURT: Cross examination?

22 MR. BELLAMY: May it please the Court.

23 CROSS EXAMINATION BY MR. BELLAMY:

24 Q. As I understand it, Mr. Hill, the purpose of you
25 and Mr. Beaty going, according to your testimony, to

1 Murrells Inlet is because Corey Smalls -- and he goes by
2 C.O.?

3 A. Yes, sir.

4 Q. Owed Tyronne some money?

5 A. Yes, sir.

6 Q. And Corey said, "I'll get your money. I've got
7 something to work out, and I'm going to get it today for
8 you"?

9 A. Yes, sir.

10 Q. So when you went down there, there was no plan to
11 necessarily ride off with them? In fact, they were
12 already pulling out when y'all pulled up? They were
13 going?

14 A. Yes.

15 Q. And they said, "Y'all can ride with us if you want
16 to"?

17 A. Yes.

18 Q. And they already had the gold Maxima?

19 A. Yes.

20 Q. And this business -- did you overhear a discussion
21 between Corey where Mr. Beaty, over here, Corey and Mr.
22 Beaty, where he convinced him to do something, meaning
23 Tyronne was trying to convince Corey to go do something,
24 rob some people and stuff like that?

25 A. No, I never heard that. You said did I hear

1 Tyronne trying to convince Corey to go rob somebody?

2 Q. Yes.

3 A. No.

4 Q. Now, you indicated that you fell asleep?

5 A. Yes, sir.

6 Q. You woke up at the soccer fields out there off
7 Enterprise Road?

8 A. Yes.

9 Q. Okay, and you went to the restroom?

10 A. Yes.

11 Q. Then you fell asleep again?

12 A. I got back in the car, sat down, and dozed back
13 off.

14 Q. Okay, and then you heard three, maybe four shots?

15 A. Yes.

16 Q. And you -- was Corey -- when you heard those shots,
17 was he out of the car or in the car?

18 A. Corey was out of the car because when I jumped up,
19 I seen Tyronne jump in. Then I seen Corey jump in the
20 car.

21 Q. Who jumped in first?

22 A. Tyronne.

23 Q. Did you see anything in Tyronne's hand?

24 A. No.

25 Q. But you did see something in Corey's hands, didn't

1 you?

2 A. I couldn't really tell what it was.

3 Q. But he had something?

4 A. Yes.

5 Q. But not Tyronne?

6 A. No.

7 Q. Now, did you hear Corey on the phone -- okay, well,
8 let me back up. Y'all went to Bridget's house, correct?

9 A. After? Before or after the shooting?

10 Q. After.

11 A. After, yes, sir.

12 Q. And Corey -- you get out of the Maxima?

13 A. Yes, sir.

14 Q. Tyronne gets out of the Maxima?

15 A. Yes, sir.

16 Q. And Punch gets out of the -- Punch is Antonio?

17 A. Yes, sir.

18 Q. The three of y'all get out, and who takes the
19 Maxima?

20 A. Corey.

21 Q. And you go -- what do you do at that point? You
22 get in the Lincoln?

23 A. Yes. Before we got in the Lincoln, we was
24 basically pushing the issue for Antonio to drop us off
25 while Corey was gone.

1 Q. Okay. How long did it take for you to talk
2 Antonio/Punch into taking y'all?

3 A. A couple of seconds.

4 Q. A minute, maybe?

5 A. Yes.

6 Q. And then the three of y'all jump in the
7 Lincoln, ---

8 A. Yes.

9 Q. --- or get in the Lincoln, and go to the
10 Southbridge area off of Glenn's Bay?

11 A. Yes.

12 Q. And did you see in the time from when y'all pulled
13 off -- after you hear the shots, they jump in and you
14 pulled immediately off, correct?

15 A. Yes.

16 Q. Okay. Was Corey on the phone between that time,
17 which would be off Burgess Road ---

18 A. Are you talking about when -- after the shooting?

19 Q. Yes.

20 A. No, he wasn't.

21 Q. Okay, so ---

22 A. He wasn't on the phone.

23 Q. Let me show you State's 1. From Butler Road, ---

24 A. Uh-huh (affirmative response).

25 Q. --- okay, ---

- 1 A. They came around the back way. They didn't ---
- 2 Q. From Holmestown, y'all go down by the landing?
- 3 A. Right.
- 4 Q. And then back up by Myrtle Beach Golf & Yacht ---
- 5 A. And come back on 707, yes.
- 6 Q. And then come here, so y'all -- that would take ten
- 7 or fifteen minutes maybe total?
- 8 A. Yeah.
- 9 Q. Did Corey get on the phone during that time ---
- 10 A. No, he didn't.
- 11 Q. --- before y'all got out of the car?
- 12 A. No, he didn't.
- 13 Q. And let me talk to you briefly about what you said.
- 14 When Corey jumped back in the car, and you said this in
- 15 your previous statement which was video-taped, that he
- 16 said something about "Take this to the death"?
- 17 A. Yes.
- 18 Q. I think I know what that means, but would you
- 19 explain what that means to this jury.
- 20 A. It means that whatever happened, you're going to
- 21 take to the grave with you.
- 22 Q. That you can't tell nobody, and who said that,
- 23 Corey?
- 24 A. Yes.
- 25 Q. And he said -- did he say anything else, if he

1 heard that you had said anything, what he was going to do?

2 A. He said that he was going to come see me, meaning
3 he was going to come do harm to me.

4 Q. Were you afraid of him?

5 A. Yes.

6 Q. Now, you got dropped off at Southbridge, correct?

7 A. Yes.

8 Q. And you and Tyronne took a cab back to Conway,
9 correct?

10 A. Yes.

11 Q. And so you -- were you riding in the back seat with
12 him in the cab?

13 A. Yes.

14 Q. Did you see any money with him?

15 A. No, I did not.

16 Q. Did you see any gun on him?

17 A. No. We didn't even speak. When we got -- we got
18 -- we got off at my house -- when we got out at my house,
19 he just gave me -- gave me five and jumped in the truck
20 with his girlfriend and left, and I went in the house with
21 my family.

22 Q. Is that the same person who dropped y'all off?

23 A. Yes.

24 Q. So it's fair to say, Mr. Hill, there was never any
25 plan to kill anybody that you heard?

1 A. No.

2 Q. Never any plan to hurt anybody?

3 A. No.

4 Q. Never any plan to rob anybody, rob them and take a
5 gun and pull it on somebody, was there?

6 A. No.

7 Q. That was never a plan, was it?

8 A. No. I think they was just going to -- going to
9 beat him out of his money.

10 Q. It might have been to trick somebody maybe?

11 A. Yeah, might have been a better word to use.

12 Q. But there was never any plan or anybody even
13 thought that anything like this would happen?

14 MS. VON HERRMANN: Objection, Your Honor. I have a
15 matter of law that we need to take up.

16 THE COURT: All right. Y'all come and talk to me
17 first.

18 (A Bench conference was held in the presence, but out
19 of the hearing, of the jury.)

20 Q. Mr. Hill, to clarify now, did you hear when you
21 were present any conversation between my client and either
22 Antonio or Corey about robbing anybody?

23 A. No, I didn't.

24 Q. Did you hear any conversation about using --
25 between my client and Corey or Antonio about using a gun

1 out there?

2 A. No, I didn't.

3 Q. And you ---

4 A. I know -- I know -- I know -- I know Tyronne was
5 like Corey tried to -- Corey tried to get him to hide a
6 gun for him, but he was like he wouldn't because of the
7 simple fact that, you know, I mean, he didn't want his
8 fingerprints on the gun.

9 Q. And that was Corey? Corey wanted that done?

10 A. Yes. He wanted him to hide it.

11 Q. Now, and you rode down there with Tyronne?

12 A. To Murrells Inlet?

13 Q. Yes, sir.

14 A. Yes.

15 Q. In the car with him, and that was from Conway?

16 A. Yes.

17 Q. And you rode back with him?

18 A. Yes.

19 Q. Now, ---

20 A. I ask -- I asked him what was going on. I asked
21 Tyronne what was going on, what happened.

22 Q. And that was after the fact?

23 A. I asked him, you know what I mean. I asked him
24 what was going on when he jumped in the back of the car.
25 I asked him like, "What's going on?" but he wouldn't say

1 nothing. He put his head down. I don't -- I don't know
2 if he was scared or what, you know, because me, myself,
3 when I jumped over, I was -- I was shocked, you know, to
4 not know what was going on. They was jumping in the car.
5 I know I heard gunshots. I didn't know if they was in a
6 shootout or somebody was shooting at them. I did not
7 know.

8 Q. Did my client ever threaten you, Neil?

9 A. No, he hasn't.

10 Q. Did Corey ever threaten you?

11 A. Yes.

12 MR. BELLAMY: I don't have any further questions.

13 THE COURT: Redirect?

14 MS. VON HERRMANN: A couple, Your Honor.

15 REDIRECT EXAMINATION BY MS. VON HERRMANN:

16 Q. Tyronne told you he was going to meet Corey?

17 A. Yes.

18 Q. You don't know what conversation he had with Corey
19 before you caught up with Tyronne, do you?

20 A. No, ma'am.

21 Q. You weren't privy to that conversation?

22 A. No, ma'am.

23 Q. You weren't privy to any conversation according to
24 your testimony between Tyronne and Corey, were you?

25 A. No, ma'am.

1 Q. And so you don't even know what was discussed in
2 the car because you were just asleep the whole time,
3 right?

4 A. I wasn't asleep the whole time.

5 Q. Well, you didn't hear any conversations about it?

6 A. It wasn't really no conversation about what they
7 was going to do, you know. Tyronne was like, "We can go
8 to Food Lion," and, I mean, he got the tape and
9 everything, and I think he was like something about the
10 flour -- something about the flour would be better or
11 something. I don't know.

12 Q. You knew it was a drug rip?

13 A. Yes, ma'am, I figured it was going to be one.

14 Q. No question about that?

15 A. Yes, ma'am.

16 Q. Y'all all agreed to it, even if you didn't have --
17 even if you didn't discuss it, ---

18 A. I didn't -- I didn't ---

19 Q. --- you knew it was going to happen?

20 A. I didn't agree to it.

21 Q. You didn't say, "Y'all better let me out of this
22 car. I'm not going to have anything -- I'm not having
23 anything to do with any drug deals. I'm not involved in
24 that kind of stuff"?

25 A. No, I didn't say that. I didn't say, "Let me out."

1 I don't got nothing to do with no drug deal."

2 Q. So you knew there was going to be a drug rip?

3 A. I figured there was going to be one when I seen him
4 bagging up the flour.

5 Q. And you stayed in the car?

6 A. Yes, ma'am.

7 Q. You stayed in the car?

8 A. Yes, ma'am.

9 Q. And you didn't ask to be let out of the car?

10 MR. BELLAMY: Your Honor, she's leading the witness.

11 I'd ask her to ask appropriate questions.

12 THE COURT: At this stage, I'm going to allow her to
13 ask the questions as posed under the rules.

14 Q. You didn't ask to be allowed out, did you?

15 A. No, ma'am.

16 Q. All right, and when this whole thing was going
17 down, you've got -- you've got your cousin in the car with
18 you? You could have said, "Hey, hold on. I've got to get
19 out. I can't do this," right?

20 A. Yes, ma'am.

21 Q. You're a big boy?

22 A. Yes, ma'am.

23 Q. And you didn't do that?

24 A. Yes, ma'am.

25 Q. And you knew it was going down, and you stuck with

1 it?

2 A. I didn't -- I didn't ---

3 Q. You knew it was going down, didn't you?

4 A. --- know anything about -- I knew that they was
5 probably going to take somebody or rip somebody off
6 because I seen them bagging up the flour for myself.

7 MS. VON HERRMANN: I don't have anything further.

8 THE COURT: Anything else?

9 MR. BELLAMY: One question, Judge, and I think it
10 relates to her redirect.

11 RECROSS EXAMINATION BY MR. BELLAMY:

12 Q. She asked you about not hearing conversations prior
13 to going down there between my client and Corey?

14 A. Something like?

15 Q. Prior to y'all going down there?

16 A. Going to Murrells Inlet?

17 Q. Yes, sir.

18 A. Before? When he called me?

19 Q. Yes.

20 A. I haven't -- he hadn't even talked to him.

21 Q. Okay, and was it apparent when you first got there
22 -- well, let me back up. Tyronne told you why he was
23 going there, correct?

24 A. Yes.

25 Q. And was it apparent when you overheard the

1 conversation between Tyronne that Tyronne was solely there
2 to get some money that he was owed?

3 A. Yes.

4 Q. And you overheard that conversation?

5 A. Yes.

6 Q. And that was the purpose of going down there?

7 A. That was the purpose of me even going.

8 Q. Okay, and you heard a conversation between Tyronne
9 and Corey that confirmed that, did you?

10 A. Yes.

11 MR. BELLAMY: Thank you.

12 MS. VON HERRMANN: Just one in follow-up, Your
13 Honor.

14 THE COURT: Yes, ma'am.

15 REDIRECT EXAMINATION BY MS. VON HERRMANN:

16 Q. The conversation that you heard, they worked their
17 business -- they worked their business out before y'all
18 ever got in the car, didn't they?

19 A. They had to.

20 Q. They had it all worked out before they ever got --
21 before y'all ever got in the car?

22 A. They had to because I never heard any -- the
23 conversation about them going to rip the guy off, because
24 I never -- I hadn't even -- I didn't even know the guy.

25 Q. So they had taken care of their business about this

1 Thousand Dollars, right?

2 A. Yes, ma'am.

3 Q. Before y'all ever got in the car?

4 A. Yes, ma'am.

5 Q. And there wasn't any need for y'all to get in that
6 car, was there?

7 A. If they had of taken care of their business, no,
8 ma'am, there wouldn't have been no need.

9 Q. They had resolved -- they had resolved their
10 issues?

11 A. Yes, ma'am.

12 Q. So there was no other reason for them to get in
13 that car?

14 A. If they would -- if they would have resolved their
15 issues, it wouldn't have been no reason for us to get in
16 the car.

17 Q. And as far as you know, the issues were resolved?

18 A. What happened?

19 Q. As far as you know, the issues between Tyronne and
20 Corey were resolved, correct?

21 A. Yes, ma'am, because Corey said that he had
22 something to go take care of. After he take care of it,
23 he was going to pay him and buy something else.

24 MS. VON HERRMANN: Thank you. I don't have any
25 further questions.

1 THE COURT: All right, you may step down, sir.

2 Do you wish the witness to be excused from his
3 subpoena?

4 MS. VON HERRMANN: Please, Your Honor.

5 THE COURT: Any objection?

6 MR. BELLAMY: No, sir, Your Honor.

7 THE COURT: All right, you're excused from your
8 subpoena, sir, and I don't think I said it, Mr. Bellamy,
9 but on -- I was using -- I said according to the rules. I
10 was using Rule 607 as to your last objection.

11 Your next witness, Solicitor.

12 MS. VON HERRMANN: Thank you, Your Honor. The State
13 calls Antonio Smalls.

14 Judge, may Mr. Bellamy and I approach for a moment?

15 THE COURT: Yes, ma'am.

16 Come around and be sworn, sir. Come around front.

17 (A Bench conference was held in the presence, but out
18 of the hearing, of the jury.)

19 ANTONIO SMALLS, being first duly sworn, testifies as
20 follows:

21 THE CLERK: Please be seated. State your full name
22 and spell your last name.

23 MR. SMALLS: Antonio Smalls.

24 THE COURT: Spell your last name, please, sir.

25 MR. SMALLS: S-M-A-L-L-S.

1 THE COURT: All right, sir.

2 All right, Solicitor.

3 MS. VON HERRMANN: Thank you.

4 DIRECT EXAMINATION BY MS. VON HERRMANN:

5 Q. Mr. Smalls, where do you live?

6 A. Enterprise Road.

7 Q. How long have you lived there?

8 A. Since about 2001.

9 Q. How long have you lived in Horry County?

10 A. Since 2003.

11 Q. Enterprise Road, is that in Horry County?

12 A. Yes, ma'am.

13 Q. You have got two felony -- prior felony convictions
14 from fifteen years ago, is that correct?

15 A. Yes, ma'am.

16 Q. And I think you have a pending distribution of
17 cocaine charge, is that correct?

18 A. Yes, ma'am.

19 Q. Let me -- let me direct your attention to Thursday,
20 October the 20th, 2005. Do you remember that day?

21 A. Yes, ma'am.

22 Q. Tell me what you did, where you woke up that
23 morning.

24 A. I woke up in a motel room on the beach called the
25 Best Western.

1 Q. All right. Where is that located?

2 A. Myrtle Beach.

3 Q. And who was there with you, anybody?

4 A. Me and my cousin, Corey Smalls.

5 Q. And what did you do after y'all woke up?

6 A. Smoked a couple of joints and watched T.V.

7 Q. At some point, did Mr. Smalls, Corey, receive a
8 telephone call?

9 A. Yes, ma'am.

10 Q. Who was that telephone call from if you know?

11 A. I don't know the guy name by him, but it was a
12 phone call.

13 Q. All right, and what did y'all do as a result of
14 that phone call?

15 A. My cou- -- the phone call was about buying a large
16 quantity of drugs or something.

17 Q. Did you know a guy named Miles Slay?

18 A. No, ma'am.

19 Q. You didn't know him?

20 A. No, ma'am.

21 Q. You know who he is now, though?

22 A. Yes, ma'am.

23 Q. And during the course of your conversations with
24 Corey, did you -- did you learn somehow that Mr. Slay was
25 the one who was going to purchase those drugs?

1 A. Yes, ma'am.

2 Q. And so what did you all do? Did Corey make any
3 more calls?

4 A. Yeah. He try to -- he made a phone call to try to
5 see if we could get what the person wanted. He made a
6 couple of phone calls and nobody answered, so he called
7 somebody else to see if he could get what the person
8 wanted.

9 Q. All right, and was he able to find some drugs?

10 A. No, ma'am.

11 Q. Do you know if he had a conversation with Tyronne
12 Beaty?

13 A. Yes, ma'am.

14 Q. And what did y'all do as a result of the
15 conversation that he had with Mr. Beaty?

16 A. My cousin asked me to drive him to Murrells Inlet
17 to pick up Tyronne Beaty and Neil Hill.

18 Q. On your way -- what were y'all driving at the time
19 when you left the hotel?

20 A. A Lincoln Towncar.

21 Q. Was that your car?

22 A. Yes, ma'am.

23 Q. What did y'all do with that car?

24 A. Went to Bridget Allen house.

25 Q. Did you drop her off there?

1 A. Yes, ma'am.

2 Q. And did you at some point pick up another vehicle?

3 A. Yes, ma'am.

4 Q. What kind of vehicle was that?

5 A. A Nissan Maxima.

6 Q. Why -- why did y'all do that?

7 A. My car wasn't running right that -- that day.

8 Q. And so Corey knew somebody that had a car?

9 A. Yes, ma'am.

10 Q. And you get in the Maxima. Who is driving the
11 Maxima?

12 A. I'm driving the Maxima.

13 Q. And where did y'all go from there?

14 A. After we left Murrells Inlet, we got on Highway 17.
15 I proceeded to drive. The back window of the car was
16 broke, so we had to go to Food Lion to get some tape to
17 try to fix the window.

18 Q. Let me -- let me back up just a little bit. Did
19 you and Corey go down to Murrells Inlet alone?

20 A. Yes, ma'am.

21 Q. All right, and once you got down to Murrells Inlet,
22 where -- where were you?

23 A. I was in my grandmother's yard.

24 Q. And at some point did y'all run into Tyrone Beaty
25 and Neil Hill?

1 A. Yes, ma'am.

2 Q. When did that happen?

3 A. Probably like about thirty minutes after we got to
4 Murrells Inlet.

5 Q. Do you know anything about Corey owing Tyronne some
6 money?

7 A. Not that I know of.

8 Q. Did you hear any discussion about Corey owing
9 Tyronne any money?

10 A. No, ma'am.

11 Q. Do you think Corey would have told you if he'd owed
12 Tyronne some money?

13 MR. BELLAMY: Your Honor, I would object to what
14 Corey might think he would. I think that's an improper
15 question.

16 THE COURT: Rephrase your question, Solicitor.

17 Q. You didn't have -- there was no discussion that you
18 overheard about that?

19 A. No, ma'am.

20 Q. And you and Corey didn't have a discussion about
21 that?

22 A. No, ma'am.

23 Q. So when you get there, you run into the two of
24 them. What happens next?

25 A. They get in the car. Everybody is talking, and I

1 proceed -- I get on the highway, go down Highway 17, and
2 we went to Food Lion.

3 Q. Why did you go to Food Lion?

4 A. Because Tyronne Beaty wanted to get flour, scotch
5 tape, and Ziploc bags.

6 Q. Was it scotch tape or was it duct tape?

7 A. Duct tape.

8 Q. What was the duct tape for?

9 A. To fix the back window.

10 Q. What was wrong with the back window?

11 A. It was broke.

12 Q. I'm going to show you a picture of State's Exhibit
13 Number 3. Is that the gold Maxima?

14 A. Yes, ma'am.

15 Q. All right. Tell me about that back, passenger side
16 window.

17 A. It was broke when we got the car.

18 Q. All right. Is it -- was it just busted out?

19 A. Yes, ma'am.

20 Q. There was a piece of -- a piece of plastic there?

21 A. Yes, ma'am.

22 Q. Y'all were going to fix the window?

23 A. Uh-huh (affirmative response).

24 Q. All right, and what was the flour for?

25 A. The flour was for -- so the person could see what

1 he was getting, I guess.

2 Q. So when you say that the person could see what they
3 were getting, there was a plan, was there not, to rip
4 somebody off on a drug deal?

5 A. Yes, ma'am.

6 Q. And you knew that?

7 A. Yes, ma'am.

8 Q. And y'all had discussed that in the car?

9 MR. BELLAMY: Your Honor, again I think she's
10 leading her witness.

11 MS. VON HERRMANN: I'll rephrase it.

12 THE COURT: All right.

13 Q. Had you discussed that in the car?

14 A. Yes, ma'am.

15 Q. Was Neil Hill in that car?

16 A. Yes, ma'am.

17 Q. Was he awake during that conversation?

18 A. He was awake.

19 Q. So he heard that conversation?

20 A. Yes, ma'am.

21 Q. And when you went to the Food Lion -- well, tell --
22 tell the jury, if you will, what was the plan for this
23 drug rip?

24 A. The plan was to give him the flour in the bag so
25 when he seen it he would have thought it was the drugs and

1 he would have bought it.

2 Q. And did y'all know how much money he had?

3 A. No, ma'am.

4 Q. So was there some real cocaine?

5 A. Yes, ma'am.

6 Q. And then some fake cocaine?

7 A. Yes, ma'am.

8 Q. Who had the real cocaine?

9 A. Tyronne Beaty.

10 Q. Where did he have it?

11 A. In his pocket.

12 Q. You saw it?

13 A. Yes, ma'am.

14 Q. And why did you need some real stuff and some fake
15 stuff?

16 A. I guess he needed the real stuff so when he looked
17 at it, he would think that's what he was getting.

18 Q. All right, so the stuff that was to be shown
19 originally, I guess, would -- would be the real stuff,
20 right?

21 A. Yes, ma'am.

22 Q. Have you had an opportunity to review a Food Lion
23 video tape, security tape, a Food Lion video?

24 A. Yes, ma'am.

25 Q. And when you reviewed that tape, did you recognize

1 anyone in that tape?

2 A. Yes, ma'am.

3 Q. And who was the person that you recognized in that
4 tape?

5 A. Tyronne.

6 Q. And do you recall him going into the store?

7 A. Yes, ma'am.

8 Q. And did anyone else go into the store?

9 A. No, ma'am.

10 Q. Did you drive him to the store?

11 A. Yes, ma'am.

12 Q. Did you drive that gold Maxima the whole day?

13 A. Yes, ma'am.

14 Q. What did he do when he came out of the Food Lion?

15 A. He came out of the Food Lion. He got into the car.
16 Then he try to fix the window, and he tape it up as best
17 he could, and we left.

18 Q. All right, and where was he seated at that time?

19 A. He was seated behind me.

20 Q. And could you see what he was doing?

21 A. No, ma'am.

22 Q. Was there some discussion in the car about what was
23 being done?

24 A. No, ma'am.

25 Q. Where -- and where was Neil at that time?

1 A. Neil was sitting behind me.

2 Q. Neil was sitting behind you and ---

3 A. Well, the passenger -- on the other side of the
4 passenger.

5 Q. So Neil was in the back seat passenger side, and
6 Tyronne was in the back seat driver's side?

7 A. Yes, ma'am.

8 Q. How big of a car is that Maxima?

9 A. A compact.

10 Q. Pretty close ---

11 A. Yes, ma'am.

12 Q. --- to see what's going on in there?

13 A. (No response.)

14 Q. All right. Where did y'all go from the Food Lion?

15 A. After we left the Food Lion, my cousin wanted me to
16 drop him off at Foxtrot Villas.

17 Q. All right. Well, let me stop you for a second
18 there. Do you have a daughter?

19 A. Yes, ma'am.

20 Q. Was your daughter with you that day?

21 A. Yes, ma'am.

22 Q. Was she with you when you dropped Corey off at
23 Foxtrot?

24 A. No, ma'am.

25 Q. All right. When did you pick her up?

1 **A.** I don't know the time frame, but I remember picking
2 my daughter up from the daycare.

3 **Q.** Did you pick her up after y'all left Food Lion?

4 **A.** Yes, ma'am.

5 **Q.** All right, so where is her daycare?

6 **A.** It was located in Socastee.

7 **Q.** All right. You drove to Socastee, is that correct?

8 **A.** Yes, ma'am.

9 **Q.** And is everybody still in the car at that time?

10 **A.** Yes, ma'am.

11 **Q.** All right. What happens when you get to the
12 daycare?

13 **A.** I walk in the daycare like I normally would do,
14 pick my daughter up, walk her to the car. I told her to
15 get in the back seat, and I got in the car and I drove
16 off. During that time we drove -- was driving off,
17 Tyronne said he dropped something in the garbage by
18 accident and asked me can I go back, so I turned around
19 and went back.

20 **Q.** What was it that he had dropped by accident?

21 **A.** Some cocaine.

22 **Q.** Is that the same cocaine you had seen him with
23 earlier?

24 **A.** Yes, ma'am.

25 **Q.** Were y'all a little bit panicky there that your

1 ounce of cocaine was gone?

2 A. Yes, ma'am.

3 Q. What did he have to say about that?

4 A. He said he had to get it out of the trash before it
5 goes in the trash.

6 Q. So you went back to the daycare?

7 A. Yes, ma'am.

8 Q. And who got out?

9 A. I got out.

10 Q. And you went and found it?

11 A. Uh-huh (affirmative response).

12 Q. You brought it back in the car, is that right?

13 A. Yes, ma'am.

14 Q. All right, and who did you hand that of to?

15 A. Tyronne.

16 Q. Did you handle that cocaine after that time?

17 A. No, ma'am.

18 Q. And tell us now, you -- I think you mentioned a
19 minute ago that you dropped Corey off at Foxtrot. Tell us
20 what Foxtrot is.

21 A. Foxtrot is a apartment complex.

22 Q. Where is that located?

23 A. Enterprise Road.

24 Q. Is it across the street from the Wilco?

25 A. Yes, ma'am.

1 Q. Let me show you a photograph, State's Exhibit 4.
2 Would that be that Wilco?

3 A. Yes, ma'am.

4 Q. It's easy to walk from Foxtrot over to the Wilco?

5 A. Yes, ma'am.

6 Q. All right. Why did you drop him off at Foxtrot?

7 A. I drop him off at Foxtrot because he was supposed
8 to meet up with the -- with the victim.

9 Q. And that was something you all had -- all discussed
10 in the car?

11 A. Yes, ma'am.

12 Q. And where did you go after you dropped Corey off?

13 A. After we dropped Corey off, I drove down Enterprise
14 Road.

15 Q. I want you to step down here just for a minute,
16 Antonio, ---

17 MS. VON HERRMANN: With the Court's indulgence?

18 THE COURT: Yes, ma'am.

19 Q. Here's the Wilco. Show them where you drove from
20 there.

21 A. I drove down Enterprise Road.

22 Q. All right. You're going to have to -- there's a
23 microphone right there. You're going to have to talk kind
24 of loud and speak up so that everybody can hear you.

25 A. I drove down Enterprise Road. I had to use the

1 bathroom, so it was a ball field, turn down the ball
2 field. Everybody got out of the car to use the bathroom,
3 used the bathroom and got back in the car. During that
4 time, my phone rung. It was my cousin, Corey, on the
5 phone.

6 Q. Okay.

7 A. And he want to talk to Tyronne.

8 Q. All right. Let me ask you -- we'll get back to
9 that in just a second, but did you all, while we're
10 standing here with the map, did you all drive anywhere
11 else?

12 A. No, ma'am.

13 Q. All right, so the location where you ultimately
14 ended up with the deal, was that located here on Butler
15 Road?

16 A. Yes, ma'am.

17 Q. Is that in Horry County?

18 A. Yes, ma'am.

19 Q. Okay. Go ahead and have a seat. All right, so you
20 were saying that there was a phone call?

21 A. Yes, ma'am.

22 Q. And the phone call was from Corey?

23 A. Yes, ma'am.

24 Q. And was it to your phone?

25 A. Yes, ma'am.

1 Q. And he spoke with Tyronne then?

2 A. Yes, ma'am.

3 Q. And tell me what Tyronne -- what Tyronne's end of
4 that conversation was.

5 A. I don't really remember what the conversation was
6 because I was in the car and he was kind of like standing
7 outside the car.

8 Q. Tyronne was standing outside the car?

9 A. Yes, ma'am.

10 Q. All right, and then did he get back in the car?

11 A. Yes, ma'am.

12 Q. And what was the plan? What was the plan about how
13 -- how was Corey supposed to know where you all were and
14 how was he supposed to know where to bring the victim?

15 A. I don't know how that came about, but I was told to
16 drive at the Moose -- the Moose Lodge. When I arrived
17 there, I pulled in. Tyronne told me to back the car in,
18 so I did what I was told.

19 Q. Okay. He said -- so Tyronne was the one who -- he
20 picked the location?

21 A. Well, I think my cousin did.

22 Q. Okay, and so y'all drove in there and he told you
23 to turn around. Which way would you have been facing?

24 A. I was backed in.

25 Q. Backed in?

1 A. Yes, ma'am.

2 Q. All right, and then tell us what was the
3 conversation while y'all were sitting there?

4 A. As we -- as we arrived there, me and Neil was
5 talking. Tyronne really wasn't saying much. During that
6 time, I seen a small SUV pull up.

7 Q. All right. Let me -- let me slow you down just a
8 minute here. I've got a photograph that I want to show
9 you.

10 MS. VON HERRMANN: The Court's indulgence, please.

11 THE COURT: All right.

12 Q. You said that was a Moose Lodge. Do you think it
13 might have been a Masonic Lodge?

14 A. (No response.)

15 Q. It's some kind of lodge, ---

16 A. Yes, ma'am.

17 Q. --- is that correct? All right, so, I'm sorry; I
18 interrupted you with my trying to locate this photograph,
19 but at any rate, when you get in there, did you see -- did
20 you ever see a gun?

21 A. No, ma'am.

22 Q. Had you seen -- did y'all have a discussion about a
23 -- about a gun at some point?

24 A. Yes, ma'am.

25 Q. All right, and tell the jury, please, when you had

1 the discussion about the gun.

2 MR. BELLAMY: Your Honor, if she would specify when
3 she said, "Y'all had a discussion," specifically who she
4 is referring to the discussion was with.

5 THE COURT: I am -- let's just wait and see what the
6 answer is from the witness, and we can go from there. We
7 don't want to suggest, as you indicated before, the answer
8 to the witness.

9 Go ahead.

10 A. I didn't see the gun until my cousin and the victim
11 arrived.

12 Q. All right, and then when they arrived, where did --
13 where did you see it?

14 A. On his lap.

15 Q. On whose lap?

16 A. Tyronne lap.

17 Q. All right. Where was he seated?

18 A. During that time he was sitting in the back on the
19 back passenger side.

20 Q. All right, and so did you turn around and see it?

21 A. Yes, ma'am.

22 Q. Are you -- are you familiar with guns at all?

23 A. Kind of.

24 Q. Do you know -- were you -- can you tell me what
25 kind of gun it was that you saw?

- 1 **A.** It looked like a nine, or a Glock, or something.
- 2 **Q.** So it was not a revolver?
- 3 **A.** No, ma'am.
- 4 **Q.** It was a semi-automatic weapon?
- 5 **A.** Yes, ma'am.
- 6 **Q.** Was it a big gun or a little gun?
- 7 **A.** Not too big, regular size.
- 8 **Q.** Do you know what a twenty-two is?
- 9 **A.** Yes, ma'am.
- 10 **Q.** Is that a big gun or a little gun?
- 11 **A.** That's a little gun.
- 12 **Q.** Was this -- you think this looked like a twenty-
- 13 two?
- 14 **A.** Probably a little bigger than that.
- 15 **Q.** You think it's a bigger caliber than that?
- 16 **A.** Yes, ma'am.
- 17 **Q.** All right, and when you saw the gun, what did you
- 18 do?
- 19 **A.** I started to panic a little bit.
- 20 **Q.** You didn't -- you didn't know that there was a gun
- 21 until then?
- 22 **A.** Yes, ma'am.
- 23 **Q.** What did he say about the gun?
- 24 **A.** He didn't say anything.
- 25 **Q.** Did you ask him about it?

1 A. No, ma'am.

2 Q. Why didn't you ask him about it?

3 A. I was scared.

4 Q. Now I'm going to show you what's been marked as
5 State's Exhibit 27 and ask you if you can identify that?
6 Is that the area on Butler Road?

7 A. Yes, ma'am.

8 Q. Is that the lodge that you had referred to earlier?

9 A. Yes, ma'am.

10 Q. Does that picture fairly and accurately reflect
11 that?

12 A. Yes, ma'am, it looks like.

13 Q. Is that how it looked the day that you all -- that
14 you rode up on it?

15 A. Yes, ma'am.

16 MS. VON HERRMANN: I'd move State's Exhibit 27 in.

17 THE COURT: Any objection?

18 MR. BELLAMY: No, sir, Your Honor.

19 THE COURT: All right. State's 27 is in evidence
20 without objection.

21 PHOTOGRAPH OF INCIDENT SCENE ADMITTED INTO EVIDENCE

22 AS STATE'S EXHIBIT NUMBER 27.

23 Q. Let me see if the jury can see.

24 MS. VON HERRMANN: I'm going to ask that you step
25 down one more time if Your Honor would not mind.

1 THE COURT: All right.

2 Q. Where did you -- where was it that you pulled in
3 when you first arrived?

4 A. I pulled in here, and I was told to back up, so I
5 pulled back out and I backed in right -- right around this
6 area.

7 Q. All right, so the front of your car would have been
8 facing ---

9 A. Facing that way (indicating).

10 Q. Which would -- which would be the road, is that
11 correct?

12 A. Yes, ma'am.

13 Q. Go ahead and have a seat. And your cousin, Corey,
14 -- you saw a vehicle drive up, correct?

15 A. Yes, ma'am.

16 Q. What type of vehicle was that?

17 A. A Toyota something. I don't ---

18 Q. What color was it?

19 A. Like a sky blue.

20 Q. I'm going to show you State's Exhibit Number 5. Is
21 that that vehicle?

22 A. Yes, ma'am.

23 Q. And where was Corey seated?

24 A. In the passenger vehicle.

25 Q. And who was seated in the driver's seat?

1 **A.** The victim.

2 **Q.** What did they do when they came in?

3 **A.** They pulled up and they was discussing something.
4 I'm not sure what they was discussing, and my cousin got
5 out of the car and came to the car we was sitting in.

6 **Q.** Let me stop you right there. Where -- did they
7 turn back around, or where was their car facing?

8 **A.** Their car was facing inside the gate.

9 **Q.** So it was not facing the same -- in the same
10 direction as the other car?

11 **A.** Their car was pointing -- face our car.

12 **Q.** So were the windows on the driver's side windows
13 side by side on the car?

14 **A.** No, ma'am.

15 **Q.** All right. Describe how they -- describe how they
16 -- the cars were located.

17 **A.** Ten or fifteen yards apart.

18 **Q.** All right, and ten or fifteen yards or ten or
19 fifteen feet?

20 **A.** Ten or fifteen yards.

21 **Q.** All right, and where was the -- you were seated in
22 the front driver's side of your vehicle?

23 **A.** Yes, ma'am.

24 **Q.** So if you looked to your left, what would you have
25 seen?

1 A. The building, the Moose Lodge building.

2 Q. And so the other vehicle would have been sort of
3 behind you, is that correct?

4 A. Yes, ma'am.

5 Q. All right. Now, tell me what happened next after
6 Corey gets out of the car.

7 A. Corey gets out of the car and he walks to the car
8 we were sitting in.

9 Q. And what was he doing?

10 A. Smoking a Black & Mild.

11 Q. All right. Is that -- that's a cigar?

12 A. Yes, ma'am.

13 Q. Was he inside the car, or was he standing in the
14 back ---

15 A. He was standing off the side at the back of the
16 car.

17 Q. All right, the back passenger side or back driver's
18 side?

19 A. The back passenger side.

20 Q. And did you see Tyrone Beaty exit the vehicle?

21 A. Yes, ma'am.

22 Q. And where did he go?

23 A. To the victim's car.

24 Q. Did he have anything in his hands at that time?

25 A. No, ma'am.

1 Q. Where did he have the -- where did he have the fake
2 dope?

3 A. In his pocket.

4 Q. And did you -- were you able to see the gun at that
5 time? Do you know where he had that?

6 A. I didn't see no gun at the time.

7 Q. And so what was the next thing that you saw happen?

8 A. When I looked to the right, Neil Hill had his head
9 back.

10 Q. He did? Was he -- was he awake or was he sleeping?

11 A. He was awake, but he had his eyes closed. We was
12 talking, and I heard gunshots.

13 Q. What did you do when you heard the gunshots?

14 A. I -- I jumped.

15 Q. What did you see at that time?

16 A. I see Tyronne leaving the victim's car.

17 Q. All right. Did you -- how many shots did you hear
18 fired?

19 A. Three shots.

20 Q. And did you see Tyronne fire those shots?

21 A. I didn't see him, but I heard them.

22 Q. Was anybody else up at the victim's vehicle at that
23 time?

24 A. No, ma'am.

25 Q. Was Corey up at the vehicle at that time?

- 1 **A.** No, ma'am.
- 2 **Q.** Again, where was Corey?
- 3 **A.** The car I was in, he was sitting behind it or
4 standing behind it.
- 5 **Q.** And what happened next?
- 6 **A.** When Tyronne came back to the car, I looked at the
7 victim's car, and it look like he was trying to reach for
8 something, and I'm looking at Neil Hill and he's looking
9 at me, and I heard two more gunshots.
- 10 **Q.** All right. You heard two more gunshots?
- 11 **A.** Yes, ma'am.
- 12 **Q.** All right. Was Tyronne outside -- was Corey in the
13 car at that time?
- 14 **A.** He was outside of the car.
- 15 **Q.** And Tyronne outside of the car at that time?
- 16 **A.** Yes, ma'am.
- 17 **Q.** So let's -- because I'm unclear about this. The
18 jury may be unclear. There were initially three shots?
- 19 **A.** The first time, yes, ma'am.
- 20 **Q.** All right, and then there was some period of time
21 and then there were two more shots?
- 22 **A.** Yes, ma'am.
- 23 **Q.** All right. Did Tyronne say you as y'all were
24 pulling out, "Wait a minute. We -- I've got to go back"?
- 25 **A.** No, ma'am.

1 Q. All right, so he was -- he was still out there, ---

2 A. Yes, ma'am.

3 Q. --- by the car, and you could see when the -- when
4 the second shots were fired that he was near that vehicle,
5 is that correct?

6 A. Yes, ma'am.

7 Q. Did you see Tyronne show the cocaine to the victim?

8 A. Yes, ma'am.

9 Q. And did you hear him ask the victim for the money?

10 A. I seen his lips moving, but no, I didn't.

11 Q. So you could tell there was a conversation going
12 on, but couldn't -- couldn't overhear what was being
13 said, ---

14 A. Yes, ma'am.

15 Q. --- is that accurate? All right. How about the
16 money, did you see the money?

17 A. After he moved -- came from the car, he had a bag
18 in his hand.

19 Q. Who had a bag in his hand?

20 A. Tyronne.

21 Q. And you saw that once he had gotten in the vehicle?

22 A. Yes, ma'am.

23 Q. All right. What did he do with that money?

24 A. He stuck it under his shirt.

25 Q. Did Corey have anything in his hand other than his

1 Black & Mild?

2 A. No, ma'am.

3 Q. And so what happened next?

4 A. My cousin, Corey Smalls, said to Tyronne, "Why did
5 you do that? Why did you do it?"

6 Q. And what did Tyronne say?

7 A. And he said, "He was reaching for something."

8 Q. And did you say anything? Were you involved in
9 that conversation?

10 A. No, ma'am.

11 Q. You were just driving?

12 A. Yes, ma'am. I was doing what I was told.

13 Q. Where did you drive?

14 A. I drove down Enterprise Road until we got to a boat
15 landing. I made a left.

16 Q. So did you -- show me which way -- this is where
17 you were on Butler Road. Show me which way you went when
18 you pulled out of there.

19 A. I left back out the opposite way.

20 Q. All right, and then where did you go from there?

21 A. I went to Bridget Allen house.

22 Q. Trace with your finger, please, for the jury just
23 which route you would have taken.

24 A. I had to go this route right here (indicating),
25 somewhere up in here, came to a short-cut.

1 Q. And then you ultimately ended up over at Bridget's
2 house?

3 A. Yes, ma'am.

4 Q. Are you related to Bridget?

5 A. No, ma'am.

6 Q. Do you know if Bridget is related to Tyronne?

7 A. Not that I know of.

8 Q. You know that Neil is Tyronne's cousin, right?

9 A. Yes, ma'am.

10 Q. All right. So when y'all go to Bridget's house,
11 what happened there?

12 A. We get to Bridget house. Everybody get out of the
13 car. I went inside Bridget house to get my daughter.
14 During that time, my cousin say he want to take the car
15 that we had back to the person he got it from.

16 Q. All right, and did you see the money once you were
17 over at Bridget's house?

18 A. No, ma'am.

19 Q. Did you hear Tyronne say anything about the money?

20 A. No, ma'am.

21 Q. All right. Did you get any of that money?

22 A. No, ma'am.

23 Q. Was there a discussion about the money being like
24 used for bail?

25 A. Yes, ma'am.

1 Q. Who said that?

2 A. Tyronne Beaty.

3 Q. Tell the jury, please, specifically what he said
4 about the money.

5 A. My cousin, Corey Smalls, asked him about the money,
6 and he said he's not giving up no money because we might
7 need it for bond.

8 Q. And do you know if Corey got any of that money?

9 A. Not that I know of.

10 Q. Do you know if Neil got any of that money?

11 A. No.

12 Q. So Corey left and dropped the vehicle off?

13 A. Yes, ma'am.

14 Q. So that left you there at Bridget's house ---

15 A. Yes, ma'am.

16 Q. --- with Neil and Tyronne?

17 A. Yes, ma'am.

18 Q. All right. Where -- what did you all do at that
19 point?

20 A. At that point, I was so hysterical and scared,
21 Tyronne asked me can I drop him off up the road, so we got
22 in my Lincoln Towncar, proceeded up the road, and I
23 dropped him off.

24 Q. Did you drop Neil off there as well?

25 A. Yes, ma'am.

1 Q. And where specifically did you drop him off?

2 A. Like a little bit past a Kangaroo station. I don't
3 even remember what the area was, but it was a little bit
4 past a Kangaroo station.

5 Q. Did you see the gun at that point in time?

6 A. No, ma'am.

7 Q. So did you see the gun after you all got out of the
8 -- out of the vehicle at Bridget's?

9 A. No, ma'am.

10 Q. And when was the next time that you spoke with
11 Tyronne?

12 A. I think it was Friday morning.

13 Q. And what did he say?

14 A. I told him that I had got a phone call from the
15 detective saying he wants to talk to me.

16 Q. And what did Tyronne say?

17 A. He said please go down there and tell them what
18 they -- tell them the truth, whatever, so we can get some
19 sleep, because he couldn't sleep.

20 Q. All right. That's Tyronne or Corey?

21 A. Tyronne.

22 Q. All right, and did you go down there and talk to
23 the police?

24 A. Yes, ma'am.

25 Q. And did you tell the police the truth?

1 A. Yes, ma'am.

2 Q. And did you tell them the things that you've told
3 the jury here today?

4 A. Yes, ma'am.

5 Q. All right, and were any promises made to you about
6 your pending charges that you have?

7 A. No, ma'am.

8 Q. You've got a murder charge and an armed robbery
9 charge, correct?

10 A. Yes, ma'am.

11 Q. Along with everybody else?

12 A. Yes, ma'am.

13 Q. And a distribution of some drugs?

14 A. Yes, ma'am.

15 Q. And you and I and your lawyer have got together and
16 we entered into an agreement, did we not?

17 A. Yes, ma'am.

18 Q. I want to show you State's Exhibit 43. Is that the
19 agreement, proffer agreement, that we entered into?

20 A. Yes, ma'am.

21 Q. Is that your statement there on the back page?

22 A. Yes, ma'am.

23 MS. VON HERRMANN: I'd move to have those
24 introduced.

25 THE COURT: Any objection?

1 MR. BELLAMY: No, sir, Your Honor.

2 THE COURT: All right. It's in evidence without
3 objection.

4 PROFFER AGREEMENT FOR ANTONIO SMALLS ADMITTED INTO
5 EVIDENCE AS STATE'S EXHIBIT NUMBER 43.

6 Q. And you and I have discussed this case before
7 today, right?

8 A. Yes, ma'am.

9 Q. What were my instructions to you about your
10 testimony today?

11 A. You said that you wasn't going to promise me
12 anything, just come on and tell my side of the story, tell
13 the truth.

14 Q. And have you done that today?

15 A. Yes, ma'am.

16 Q. Thank you.

17 MS. VON HERRMANN: I have no further questions.

18 THE COURT: Cross examination.

19 MR. BELLAMY: May we approach for one second, Your
20 Honor?

21 THE COURT: Yes, sir.

22 (A Bench conference was held in the presence, but out
23 of the hearing, of the jury.)

24 THE COURT: Thank you, Mr. Bellamy.

25 MR. BELLAMY: May it please the Court.

1 THE COURT: Yes, sir.

2 CROSS EXAMINATION BY MR. BELLAMY:

3 Q. You are Corey's cousin, right?

4 A. Yes, ma'am -- yes, sir.

5 Q. Okay. Now, let's kind of go over some things. You
6 gave a statement back in 2005, correct?

7 A. Yes, sir.

8 Q. And it was audio-taped, is that right? It wasn't
9 video taped, or do you know?

10 A. I think it was audio-taped.

11 Q. Okay. They had a little tape recorder or something
12 there?

13 A. Excuse me?

14 Q. They had a tape recorder there, so it was audio-
15 taped, right?

16 A. Yes, sir.

17 Q. And it was a rather lengthy statement? It was
18 several hours that you were in there with, I believe,
19 Detective Lewis and Detective Cox. Do you remember that?

20 A. Yes, sir.

21 Q. And so no question, you gave that statement?

22 A. Yes, sir.

23 Q. Did you give any other statements to police in
24 relation to this case after that?

25 A. No, sir.

1 Q. Okay, so that's the only statement you've ever
2 given, ---

3 A. Yes, sir.

4 Q. --- okay, that you remember? All right. Now, is
5 it fair to say, Mr. Smalls, that during that statement
6 that you lied? You don't tell the truth, do you?

7 A. I tell the truth.

8 Q. In the whole statement?

9 A. At first when they ask me, I act like I didn't know
10 what was going on.

11 Q. So at the first part, you don't even mention
12 anything about seeing Corey that day, Tyronne that day, or
13 anybody, do you?

14 A. Yes, sir.

15 Q. And that's probably at least half of the time that
16 you completely deny anything, don't you?

17 A. Yes, sir.

18 Q. Okay, and the police, Detective Lewis and Detective
19 Cox, keep telling you that you're lying and you'd better
20 change your story, don't they?

21 A. Yes, sir.

22 Q. And they tell you that you're on a sinking ship,
23 better get off. They're going to throw you a life jacket,
24 aren't they?

25 A. Yes, sir.

1 Q. And so you change your story, but that happens
2 about four or five times that you change your story. It's
3 not two stories. You sort of add to every time a little
4 bit, don't you?

5 A. Yes, sir.

6 Q. All right. Now, let's talk about a couple of
7 things. Before you see my client, Mr. Beaty, you and
8 Corey have some conversation up there at the Best Western,
9 don't you?

10 A. Yes, sir.

11 Q. About this fellow who is wanting to buy drugs,
12 right?

13 A. Yes, sir.

14 Q. And Ty- -- not Tyronne. Corey tells you that man
15 is calling to get robbed, isn't that what Corey tells you?

16 A. No, sir.

17 Q. He didn't tell you that?

18 A. No, sir.

19 Q. Well, when you con- -- let me ask you this: When
20 you confront him about this buy, about maybe not wanting
21 to do this, or you not wanting to be a part of it, or
22 maybe he didn't -- shouldn't be a part of it, doesn't he
23 say something to the effect of, "F--- that. I need the
24 money"?

25 A. Yes, sir.

1 Q. He says that, doesn't he?

2 A. Yes, sir.

3 Q. And that's before Tyronne or Neil is there? That's
4 at the hotel, isn't it?

5 A. Yes, sir.

6 Q. So that's -- Corey had a plan then that he needed
7 money, didn't he?

8 A. Yes, sir.

9 Q. Now, and you also told them on that statement on
10 the 25th of October, and I can show it to you, I've got it
11 transcribed, that you didn't know who had the gun, but
12 that only Corey was out of the car. Didn't you tell them
13 that?

14 A. Yes, sir.

15 Q. Now, and I guess it's your testimony today that you
16 don't know who shot anybody, do you?

17 A. Yes, sir.

18 Q. That's your testimony?

19 A. Yes, sir.

20 Q. All right. I do want to correct one thing, I think
21 the record may be mistaken, or maybe you are right. You
22 indicated it was ten or fifteen yards between these cars?

23 A. Yes, sir.

24 Q. Okay. Now, ten or fifteen yards would be thirty to
25 forty-five feet, and I'm fairly good at estimating, but

1 that would be, I guess, about as far as I am to that back
2 wall. Were y'all that far apart?

3 A. Yes, sir, about that close, yeah.

4 Q. So you were from here to that back wall?

5 A. Yes, sir.

6 Q. Okay. Now, y'all went and got this Maxima well
7 before Tyronne was there, right?

8 A. No, sir.

9 Q. Y'all got it before, though, didn't you?

10 A. Yes, sir.

11 Q. And y'all were leaving in the Maxima at the time
12 you saw Tyronne, correct?

13 A. Yes, sir.

14 MR. BELLAMY: And if the Court would allow me, I
15 would like to bring the easel over for Mr. ---

16 THE COURT: Yes, sir.

17 MR. BELLAMY: Your Honor, if he could be allowed to
18 step down.

19 THE COURT: Yes, sir.

20 Q. Would you step down for me, Mr. Smalls. I'm sorry.
21 And I'm going to give you a black marker to start with
22 here. If you would, draw the cars in the positions that
23 they were in out there, and I know this isn't going to be
24 to scale, but just as best you can, and maybe draw an
25 arrow or like a point on which way the car was facing.

1 A. (Witness draws on diagram.)

2 Q. What is that? I don't know what that is.

3 A. This is the car we in facing the road.

4 Q. Okay.

5 A. The car that my cousin, Corey Smalls, and the
6 victim came in was facing this way.

7 Q. Okay. Where is the car in rela- -- if this is the
8 car you're in, and it's parked, I'm assuming?

9 A. Uh-huh (affirmative response).

10 Q. You stop. Where is that other car?

11 A. Facing this way (indicating).

12 Q. Okay, but where is it? Is it here? Is it here?
13 Where would it be?

14 A. About right here.

15 Q. Well, draw -- draw the other car if you would for
16 me, please.

17 A. (Witness draws on diagram.) It's facing this way,
18 towards us.

19 Q. All right, so it is in front?

20 A. Uh-huh (affirmative response).

21 Q. Okay. Now, you might want to stand to the side.
22 If you would just stand just a little bit back. Now, if
23 you would mark -- put -- and the car you were in was what
24 kind of car?

25 A. A Nissan Maxima.

1 Q. And this is this car?

2 A. Yes, sir.

3 Q. All right, so write "Maxima" out here for me.

4 A. (Witness writes on diagram.)

5 Q. And just put -- and this would be the ---

6 A. Toyota.

7 Q. Just put "TOY." "

8 A. (Witness writes on diagram.)

9 Q. All right, so facing this way, and they're apart,
10 so as you're -- where would you be seated? Put a -- let's
11 put a red where you are. Let's put a red in the car where
12 you are, where you would be seated.

13 A. (Witness writes on diagram), seated right here.

14 Q. Okay. Now, let's put blue where Neil was.

15 A. Neil was right here. (Witness writes on diagram.)

16 Q. You've got to speak up, please.

17 A. He was in the passenger front car.

18 Q. Okay. Now, let's put green where Tyrone was, and
19 speak up, please.

20 A. (Witness writes on diagram.) The passenger to the
21 back of the car, the back passenger.

22 Q. On the back passenger side?

23 A. Yes, sir.

24 Q. Okay. Now, let's go up to this vehicle. Let's use
25 blue to indicate where Mr. Slay was.

- 1 **A.** He was driving the car. (Witness writes on
2 diagram.)
- 3 **Q.** Okay, and let's use, let's say, green for Corey.
4 Where was he?
- 5 **A.** Sitting in the passenger car, ---
- 6 **Q.** Okay.
- 7 **A.** --- passenger seat. (Witness writes on diagram.)
- 8 **Q.** All right. Now, when they pull up, how far -- let
9 me say this: Y'all are facing towards each other, but
10 some distance apart here. How far is the front of that
11 car to the front of your car if you could estimate for me?
- 12 **A.** About from here to that first row of seats.
- 13 **Q.** The first row of seats?
- 14 **A.** Yes, sir.
- 15 **Q.** I'm right here, so that would be about eighteen
16 feet?
- 17 **A.** About right.
- 18 **Q.** So it's eighteen feet in front of you?
- 19 **A.** Yes, sir.
- 20 **Q.** Okay. Let me write that down for you. (Mr.
21 Bellamy writes on diagram.) So this is eighteen feet, is
22 that right?
- 23 **A.** Yes, sir.
- 24 **Q.** Now, what's the difference between the side of this
25 car and the side as far as parked like that? Do you see

1 what I'm saying?

2 A. Yes, sir.

3 Q. How far apart? Is that that forty-five feet you
4 talked about or fifteen yards?

5 A. No, it wasn't that far.

6 Q. Okay. Well, how far apart then?

7 A. About eighteen, eighteen feet.

8 Q. Okay. Now, I understand the front of the cars are
9 eighteen feet away, ---

10 A. Okay.

11 Q. --- but if you were to -- the door of this car to
12 the door of that car, how far this way (indicating) would
13 it be?

14 A. About twenty, twenty-five feet, or something.

15 Q. Apart?

16 A. Apart.

17 Q. Okay, so twenty to twenty-five feet (Mr. Bellamy
18 writes on diagram). Okay, and is that where the car
19 stopped?

20 A. Yes, sir.

21 Q. And y'all were already parked?

22 A. Yes, sir.

23 Q. Okay, and what happened? Where do you say -- did
24 you indicate Corey got out in the beginning? You might
25 need to slide back. But Corey got out of the car?

1 **A.** Corey Smalls got out of the car.

2 **Q.** Okay. Now, draw me a line. Let's do it with the
3 green since he's green in there. Draw me a line of where
4 Corey went.

5 **A.** (Witness writes on diagram.) He walked to the back
6 of the car.

7 **Q.** The back of which car now so the record will
8 indicate ---

9 **A.** The back of the Maxima.

10 **Q.** Okay, so he walked to the back of the Maxima, and
11 what did he do? Now, put an "X" where he is.

12 **A.** (Witness writes on diagram.)

13 **Q.** All right, and now, so is he at the back or is he a
14 little bit to the passenger side back?

15 **A.** At the back bumper of the car.

16 **Q.** Okay, and now put "C.O." there. That's his -- not
17 his initials, but that's what we call him, okay?

18 **A.** (Witness writes on diagram.)

19 **Q.** Okay. Now, did he get out of the car, meaning
20 Corey, first and come here?

21 **A.** Yes, sir.

22 **Q.** Okay. He was the first person to get out?

23 **A.** Yes, sir.

24 **Q.** And at the time he got out and came here, where was
25 Mr. Beaty?

1 A. Sitting right here at the back of the car.

2 Q. He was still seated in the car?

3 A. Yes, sir.

4 Q. Okay. Now, and let me -- I want to try to clarify
5 this. I thought -- and if I'm wrong, you can correct me,
6 but on direct examination you told us that Mr. Beaty was
7 in back behind -- directly behind you?

8 A. At first, he was.

9 Q. Okay.

10 A. Before I dropped my cousin off.

11 Q. Okay. Then he got into the passenger seat?

12 A. He got into the back passenger -- yeah.

13 Q. Okay. Now, so C.O. comes to here?

14 A. Yes, sir.

15 Q. And Mr. Slay, does he get out of his car?

16 A. No, sir.

17 Q. So he's still seated in his car?

18 A. Yes, sir.

19 Q. All right, and what do you do, or what happens at
20 that point? Does anybody get out of the car at that
21 point?

22 A. No, sir. At that point, like I say, me and Neil,
23 we started talking, so I don't believe he exited the car,
24 the Maxima.

25 Q. Okay, and let's draw a line again with the green,

1 and draw a line from the path he took and where he went
2 when he -- excuse me; you might want to -- back to the
3 side.

4 **A.** (Witness writes on diagram.) During that time,
5 Tyronne exited the car, and he walked to the victim's car,
6 the driver's door.

7 **Q.** Okay, and stopped?

8 **A.** Stopped.

9 **Q.** Okay. Now, let's put just maybe right up here
10 "T.B." up there.

11 **A.** (Witness writes on diagram.)

12 **Q.** All right. Now, so he's standing. So as you're
13 sitting in the car, you're looking straight out, right?

14 **A.** Yes, sir.

15 **Q.** Okay, and as you're looking straight at it, how
16 close if -- let's say I'm -- I'm sitting in the driver's
17 seat. How close was Mr. Beaty to that car if I'm -- if I
18 were driving?

19 **A.** About eighteen foot.

20 **Q.** No, no, no. He's eighteen feet away from the car?

21 **A.** Oh, from the car?

22 **Q.** Yeah, yeah, yeah. Mr. Beaty, he's standing here by
23 the driver's side window, right?

24 **A.** Uh-huh (affirmative response).

25 **Q.** So is he right close to it ---

- 1 **A.** Yeah; he ---
- 2 **Q.** --- within a couple of feet?
- 3 **A.** He's close to it.
- 4 **Q.** Real close?
- 5 **A.** Real close.
- 6 **Q.** Okay. Could he reach his hand inside the car?
- 7 **A.** Yes, sir.
- 8 **Q.** Okay, so within one to two feet?
- 9 **A.** Yes, sir.
- 10 **Q.** Okay, so let's write -- and I'll write that. (Mr.
11 Bellamy writes on diagram.) So Mr. Beaty here is one to
12 two feet from the car, all right?
- 13 **A.** Yes, sir.
- 14 **Q.** Now, so you're watching. Now, where is, again,
15 C.O.? Is he still standing back here smoking the Black &
16 Mild?
- 17 **A.** Yes, sir.
- 18 **Q.** All right. Now, and it's your testimony, I
19 believe, from before, that when Mr. Beaty leaves the car
20 and walks over here, you do not see anything in his hands?
- 21 **A.** No, sir.
- 22 **Q.** Okay, and you don't see a gun at that time?
- 23 **A.** No, sir.
- 24 **Q.** Okay, and he walks to the car?
- 25 **A.** Yes, sir.

1 Q. And you cannot hear what's being said, is that your
2 statement?

3 A. Yes, sir.

4 Q. All right. Was your window ---

5 THE COURT: Please speak up in your answers.

6 A. All right.

7 Q. Speak up loud, okay? You can't hear what's being
8 said, but you indicated that you could see lips moving, or
9 the mouth moving. Would that be for both Mr. Slay and Mr.
10 Beaty?

11 A. Just Tyrone.

12 Q. Just Tyrone?

13 A. Yes, sir.

14 Q. Could you see Mr. Slay as he was seated in the car?

15 A. Yes, sir.

16 Q. Okay, because you could see through his front
17 window, couldn't you?

18 A. Yes, sir.

19 Q. And then you started, as you indicated, you start
20 talking to Neil, ---

21 A. Yes, sir.

22 Q. --- correct, and then you hear what?

23 A. Gunshots.

24 Q. Okay, how many?

25 A. Three.

1 Q. And when you heard them, which direction were they
2 coming from?

3 A. The front of me.

4 Q. Huh?

5 A. The front of me.

6 Q. The front, okay, and so then you look and what do
7 you see?

8 A. When I look, I see Tyronne wiping the car with his
9 hands, like this (indicating).

10 Q. With his hands?

11 A. Yes, sir. He left that car and came back to the
12 car we was driving.

13 Q. And gets in?

14 A. And gets in.

15 Q. Now, where does he get in the car?

16 A. Right here (indicating).

17 Q. He gets back in the same spot?

18 A. The same spot.

19 Q. Okay. Where does C.O. go?

20 A. My cousin, Corey, runs to this side of the car, the
21 back, and he gets in. During that time, Corey and Tyronne
22 starts arguing over what happened.

23 Q. Now, did you see anything in Tyronne's hand when he
24 come back?

25 A. No, sir.

1 Q. Okay, and did you see anything in Corey's hands?

2 A. No, sir.

3 Q. Now, they -- they're arguing, and then is that when
4 you leave and go to Bridget's down Enterprise to the
5 landing?

6 A. Yes, sir.

7 Q. And y'all go to Bridget's house?

8 A. Yes, sir.

9 Q. All right, and I believe there you, Tyronne, and
10 Neil get out of the car?

11 A. Yes, sir.

12 Q. Okay, and Corey leaves?

13 A. Yes, sir.

14 Q. And then how long were you there until you took
15 Tyronne and Neil to the Southbridge\Kangaroo area off of
16 Glenn's Bay?

17 A. Probably like fifteen minutes.

18 Q. Okay, but then you took them and dropped them off?

19 A. Yes, sir.

20 Q. And then you took your daughter back to the
21 Inlet, ---

22 A. Yes, sir.

23 Q. --- and dropped her off at the game room, and some
24 other things?

25 A. Yes, sir.

1 Q. Okay. Did you see anybody shoot that night? You
2 didn't see anybody shoot, did you?

3 A. No, sir, but I heard the shots.

4 Q. You heard shots, but you didn't see anybody shoot?

5 A. Yes, sir.

6 Q. Okay, and when you looked up, where was Mr. Beaty
7 standing? How close was he to that car?

8 A. About one ---

9 Q. One foot?

10 A. One foot.

11 Q. You can have a seat back up there.

12 MR. BELLAMY: The Court's indulgence for just one
13 second.

14 THE COURT: Yes, sir.

15 Q. Did Corey use the phone from the point y'all left
16 Butler Road and Bridget's house? That takes how long to
17 get there between those two places, Butler Road being
18 here, coming down, just off of Holmestown Road? That's
19 takes about ten minutes, right?

20 A. Yes, sir.

21 Q. All right. During that ten minutes after you say
22 this happened, was Corey on the phone?

23 A. Not to my knowledge.

24 Q. Okay, and then after that point, he was gone with
25 the Maxima? He would not have been around Tyrone at that

1 point, correct?

2 A. Yes, sir.

3 Q. Do you ever recall him after he -- the two of y'all
4 hooked back up together, do you ever recall him being --
5 calling a Daniel Prater or looking for marijuana that
6 night after this happened?

7 A. No, sir.

8 Q. You don't recall that?

9 A. No, sir.

10 Q. Do you recall people -- anybody calling him and his
11 phone ringing, looking for this Mr. Slay fellow?

12 A. Yes, sir.

13 Q. You recall that?

14 A. Yes, sir.

15 Q. But you don't recall him looking for marijuana?

16 A. No, sir.

17 Q. Okay. Now, you also tell the police in this
18 statement that C.O. had a brown bag and that he was faking
19 it, and that C.O. had the flour? Don't you tell them in
20 that statement here to the police on the 25th day of
21 October, 2005?

22 A. I don't remember saying that.

23 Q. You deny saying that?

24 A. I don't remember saying it.

25 Q. You don't remember saying it?

1 A. No, sir.

2 Q. But now you do say that at some point that the only
3 person out of the car was Corey when you heard the shots?
4 You do tell the police that at first, don't you?

5 A. Yes, sir.

6 Q. And then the police tell you they don't like that
7 story, and you're on the sinking ship with no life jacket
8 and you better give them something different, and that's
9 when you change and add Mr. Beaty, isn't it?

10 A. Yes, sir.

11 Q. So you had to tell them something? They didn't
12 like it, did they? They didn't like what you were telling
13 them, so you had to tell them something different to help
14 yourself, right?

15 MS. VON HERRMANN: I'm going to object to that, Your
16 Honor.

17 Q. Did you change your story after they told you you
18 were on a sinking ship?

19 A. Yes, sir.

20 Q. And before that, you had never mentioned Mr. Beaty
21 as shooting anybody, or having no gun, or none of that
22 business, had you?

23 A. Yes, sir.

24 Q. You told them that it was Corey out there when the
25 shots went off, didn't you?

1 A. I never said that.

2 Q. You didn't say that?

3 A. No, sir.

4 Q. Well, you didn't mention anything about my client
5 doing anything until they told you that you needed to get
6 off the ship?

7 THE COURT: You need to answer.

8 A. Yes, sir.

9 Q. The question wasn't asked, "Okay, but it was just
10 Corey and this other dude?" And your answer is, "Uh-huh
11 (in the affirmative), Line 19 through 21. Is that a
12 question and answer that was given to you in your
13 statement, previous statement?

14 MS. VON HERRMANN: Your Honor, I'd like to take a
15 look at that, and I don't know that that's proper to ---

16 THE COURT: Sustain the objection.

17 MS. VON HERRMANN: If he wants to put that in
18 evidence.

19 Q. Did you -- was that a question and answer in a
20 previous statement that you gave, yes or no?

21 A. No, sir.

22 Q. Let me ask you about your cousin, Corey. He's a
23 member of a gang, isn't he? Isn't he?

24 A. Not that I know of.

25 Q. Are you familiar -- well, what about you?

1 A. I'm not affiliated with no gang.

2 Q. You're not affiliated with no gang?

3 A. No, sir.

4 Q. Are you familiar with The Bloods?

5 MS. VON HERRMANN: Objection, Your Honor.

6 THE COURT: Sustained.

7 Q. Let me show you this and see if you recognize that.

8 MS. VON HERRMANN: I'd like to see what he's handing
9 him and have that marked.

10 THE COURT: Solicitor.

11 Mr. Bellamy, if you're going to ask the witness to
12 identify something, if you haven't shared it with the
13 Solicitor, please do so.

14 MR. BELLAMY: I got it from the Solicitor, Your
15 Honor.

16 THE COURT: All right, very good then.

17 MR. BELLAMY: These would be the letters written by
18 Mr. Smalls, Corey.

19 MS. VON HERRMANN: I'd like to see the particular
20 letter that he intends to show him.

21 THE COURT: Just show it to her.

22 MR. BELLAMY: (Hands document to Ms. Von Herrmann.)

23 MS. VON HERRMANN: Your Honor, I don't have any
24 objection to this if he wants to mark it and put it in,
25 but I've got an objection if he doesn't intend to do that.

1 MR. BELLAMY: Your Honor, I'm going to show him and
2 ask him if he recognizes anything on it.

3 THE COURT: I'll allow you to show it to him and see
4 if he recognizes it.

5 Q. Let me ask you to look at this, Mr. Antonio Smalls.
6 Now, there's some ---

7 THE COURT: Don't describe it. Just ask him if he
8 recognizes it.

9 Q. Do you recognize that handwriting?

10 A. No, sir.

11 Q. You don't recognize that as being your cousin?

12 MS. VON HERRMANN: Objection.

13 Q. Yes or no?

14 A. No, sir.

15 Q. Okay. Now, but you say that Corey is not a member
16 of any gang?

17 A. Not to my knowledge.

18 Q. Nor are you?

19 A. No, sir.

20 Q. What about Mr. Slay, was he a member of some -- a
21 group called The Folk Nation?

22 A. Not to my knowledge.

23 Q. Are you familiar with any tattoos that your cousin,
24 Corey, might have on his forearms?

25 A. No, sir.

1 Q. You're not? The door to the SUV on the driver's
2 side, open or closed?

3 A. Closed.

4 Q. It was closed when you left it, wasn't it?

5 A. Yes, sir.

6 MR. BELLAMY: The Court's indulgence.

7 Q. Let me ask you this, just one more question.
8 You've got pending distribution of drug charges, don't
9 you?

10 A. Yes, sir.

11 Q. And that carries fifteen years?

12 A. Not -- not that I know of.

13 Q. Well, it carries some jail time.

14 MS. VON HERRMANN: Objection.

15 Q. Well, do you know how much it carries?

16 A. No, sir.

17 Q. You're also charged with murder and armed robbery,
18 aren't you?

19 A. Yes, sir.

20 Q. And that's ten to thirty?

21 MS. VON HERRMANN: Objection.

22 THE COURT: It's already been asked and answered by
23 previous witnesses and not objected to, so I'm going to
24 allow it.

25 Q. It carries up to thirty on robbery, right?

1 A. Yes, sir.

2 Q. And thirty -- and, in fact, I believe it's in your
3 proffer agreement that's already introduced into evidence
4 by the State that -- or Mr. Hills, that it carries thirty
5 to life for murder, right?

6 A. Yes, sir.

7 Q. And you expect, don't you, Mr. Smalls, to get some
8 help because you're up here testifying?

9 A. I wasn't promised nothing.

10 Q. You just came on your own free will and accord?

11 A. Yes, sir.

12 Q. And you don't anticipate that anything better is
13 going to happen because you're up here talking?

14 A. No, sir.

15 MR. BELLAMY: I don't have any further questions,
16 Mr. Smalls.

17 THE COURT: Redirect.

18 MS. VON HERRMANN: Just a couple.

19 REDIRECT EXAMINATION BY MS. VON HERRMANN:

20 Q. Mr. Bellamy asked you about a statement that Corey
21 said; he asked that, "I need the money." Do you remember
22 him asking you about that question?

23 A. Yes, sir -- I mean, yes, ma'am. I'm sorry.

24 Q. And he said -- he asked you about that, and that
25 statement took place at the motel, is that correct?

1 A. Yes, ma'am.

2 Q. And that was prior to when you all had gone and met
3 Tyronne and Neil, correct?

4 A. Yes, ma'am.

5 Q. But it was after a telephone conversation that
6 Corey had had with Tyronne, is that correct?

7 A. Yes, ma'am.

8 Q. All right, and was he saying that in response to
9 something shortly after that telephone conversation?

10 A. Yes, ma'am.

11 Q. You said at some point that you did not -- during
12 your interview that you didn't know who shot Miles,
13 correct?

14 A. Yes, ma'am.

15 Q. And the fact of the matter is you were there?

16 A. Yes, ma'am.

17 Q. And you did hear the shots?

18 A. Yes, ma'am.

19 Q. Was there anyone even remotely in the area of Miles
20 Slay's vehicle other than Tyronne Beaty?

21 A. No, ma'am.

22 Q. The shots came from in front of you?

23 A. Yes, ma'am.

24 Q. Was there any other individual other than Tyronne
25 Beaty in front of you?

1 A. No, ma'am.

2 Q. Did you know where Corey Smalls was standing?

3 A. Yes, ma'am.

4 Q. Did you know where Neil Hill was sitting?

5 A. Yes, ma'am.

6 Q. Did you know where you were sitting?

7 A. Yes, ma'am.

8 Q. Were there any other people in that location?

9 A. No, ma'am.

10 Q. In fact, that location -- who picked out that
11 location?

12 A. If I'm not mistaken, Corey Smalls.

13 Q. Okay, and that location was picked out because
14 there wasn't going to be any -- a bunch of people around
15 there, isn't that true?

16 A. Yes, ma'am.

17 Q. Now, also during that interview that Mr. Bellamy
18 asked you about, you told the police that Tyronne told you
19 that that was a forty-five caliber gun? Do you remember
20 that?

21 A. No, ma'am.

22 MR. BELLAMY: Your Honor, I didn't -- I don't
23 believe I covered that on cross examination.

24 THE COURT: Let's -- let's move along, Solicitor.

25 Q. You also testified that you didn't see anything in

1 Tyronne's hand when he was going to the car, correct?

2 A. Yes, ma'am.

3 Q. But you did testify that he had a gun and the dope
4 in his pocket?

5 A. Yes, ma'am.

6 Q. And you saw the money and you saw the gun at
7 Bridget's house, correct?

8 A. No, ma'am.

9 MR. BELLAMY: Your Honor, ---

10 Q. When the police -- when you talked to the police,
11 you gave them a statement, correct?

12 A. Yes, ma'am.

13 Q. And, in fact, you went with -- offered to go or did
14 go with officers from the Horry County Police Department
15 and you showed them the crime scene area, correct?

16 A. Yes, ma'am.

17 Q. And you drove around and you told them where you
18 had dropped Corey off, and where Bridget's house was, and
19 where the scene was, and described to them what was done,
20 and what had taken place on that day, is that correct?

21 A. Yes, ma'am.

22 Q. Thank you.

23 MS. VON HERRMANN: I don't have any further
24 questions.

25 THE COURT: Anything on those questions?

1 MR. BELLAMY: No, sir, Your Honor.

2 THE COURT: All right.

3 Do you wish the witness to be excused, Solicitor?

4 MS. VON HERRMANN: Yes, sir, Your Honor.

5 THE COURT: Any objection?

6 MR. BELLAMY: No, sir, Your Honor.

7 THE COURT: All right, sir, you are released from
8 your subpoena at this time.

9 All right, ladies and gentlemen, we're going to take
10 a short break for about ten or fifteen minutes. If you
11 would just leave your note pads and your pens in your seat
12 and we'll resume back shortly. Thank you.

13 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF**
14 **THE JURY.)**

15 THE COURT: All right, we'll take a short break for
16 about ten or fifteen minutes. Thank you.

17 (OFF THE RECORD)

18 **ON THE RECORD**

19 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF**
20 **THE JURY.)**

21 THE COURT: All right, Solicitor, is the State ready
22 to proceed?

23 MS. VON HERRMANN: Yes, sir, Your Honor.

24 THE COURT: Defense?

25 MR. BELLAMY: Yes, sir, Your Honor.

1 THE COURT: Very good. Ask the jury to come in,
2 please.

3 (THE FOLLOWING TAKES PLACE IN THE PRESENCE OF THE
4 JURY.)

5 THE COURT: All right, Solicitor, your next witness,
6 please, ma'am.

7 MS. VON HERRMANN: Thank you, Your Honor. The State
8 calls Dan DeFreese.

9 THE COURT: Please come around to be sworn, sir.

10 DAN DEFREESE, being first duly sworn, testifies as
11 follows:

12 THE CLERK: Please be seated. State your full name
13 and spell your last name.

14 AGENT DEFREESE: My name is Frank Dan DeFreese, and
15 that's D-E-F-R-E-E-S-E.

16 DIRECT EXAMINATION BY MS. VON HERRMANN:

17 Q. Agent DeFreese, how are you currently employed?

18 A. I work for the South Carolina Law Enforcement
19 Division in the laboratory in Columbia.

20 Q. How long have you been employed by SLED?

21 A. For forty-three years.

22 Q. And tell the jury, if you will, please, what
23 specifically do you do there at SLED.

24 A. I'm assigned to the department within the
25 laboratory where we do the analysis of firearm and

1 toolmark evidence.

2 Q. And please give the jury the benefit of your
3 educational experience and any training you may have in
4 that area.

5 A. Sure. Well, I'm a graduate of the University of
6 South Carolina in Columbia, and after my employment with
7 SLED, I undertook a course of instruction that lasted
8 about two and a half years to learn the techniques
9 involved in firearm and toolmark analysis. My principle
10 instructor was a gentleman by the name of Millard Cate.
11 Mr. Cate established the SLED laboratory when SLED itself
12 was established in 1947, and Lieutenant Carl Stokes, who
13 was also an examiner at the time -- there were only the
14 three of us, and I was employed in 1967.

15 After about two and a half years of instruction under
16 their direct supervision, I began accepting cases on my
17 own and testifying as to my results, which I have been
18 doing since 1969. I am a member of the -- of several
19 professional organizations, including the Association of
20 Firearm and Toolmark Examiners. I've testified in courts
21 throughout this State and in Federal Court, and in courts
22 in other states.

23 Q. And ---

24 MR. BELLAMY: Your Honor, I would agree. I am very
25 familiar with Mr. DeFreese, and that he is very qualified

1 to testify as to toolmarks and firearm examination.

2 MS. VON HERRMANN: I would move at this time to have
3 him admitted as an expert, Your Honor.

4 THE COURT: All right. He is qualified in those
5 fields. Any other fields that you expect him to testify
6 in?

7 MS. VON HERRMANN: Just the field of firearms
8 identification and analysis.

9 THE COURT: All right, very good. He's qualified to
10 give his opinion.

11 MS. VON HERRMANN: Thank you.

12 Q. Tell the jury, if you will, what the difference is
13 between a revolver and a semi-automatic pistol.

14 A. Well, both are handguns, but a revolver is a type
15 of handgun that has a rotating central member that's
16 cylindrical in shape that has a number of chambers cut
17 into it, that's a manually operated firearm that, for
18 instance, holds usually anywhere between five and nine
19 rounds. The operator would open or somehow place the
20 cartridges within the various chambers in the cylinder and
21 then as the hammer is cocked and the trigger is pulled,
22 the cylinder rotates to bring the next chamber into
23 alignment with the barrel and permit the cartridge to be
24 fired, and at the conclusion of the firing, the gun would
25 have to be manually reloaded, that is the cartridges

1 removed either all at once or one by one.

2 A semi-automatic pistol is the type of handgun that
3 does not typically have a cylinder in it in which some of
4 the energy from the cartridges being fired is used to
5 extract and eject the fired cartridge case, load another
6 cartridge in the chamber and prepare the firearm for the
7 next shot to be fired.

8 Most semi-automatic pistols have a magazine that's
9 located in the grip into which a number of cartridges can
10 be placed. Thereafter, the top cartridge in the magazine
11 is charged into the barrel and the gun is fired, and each
12 time it is fired, a bullet leaves the barrel, and each
13 time it is, a fired cartridge case is automatically
14 extracted and ejected from the firearm to prepare it so
15 the next cartridge can be fired, and they typically hold
16 anywhere from about six to sixteen, eighteen, or more
17 rounds.

18 **Q.** So in a situation -- I know you're not -- have not
19 been here for the testimony in this case, but in a
20 situation where one found shell casings, would it be fair
21 to assume that the weapon used was a semi-automatic as
22 opposed to a revolver?

23 **A.** It's certainly an indication of it.

24 **Q.** Thank you, and did you have a number of items
25 submitted to you by the Horry County Police Department in

1 this case?

2 **A.** I did.

3 **Q.** I'm going to show you what's been marked as State's
4 Exhibit 32 and ask you if you can -- I know you've had an
5 opportunity to go through that -- identify what it is that
6 are there in that box.

7 **A.** State's Exhibit 32 has a number of containers in
8 it. Within those containers, there are five fired forty-
9 five caliber bullets, and there are five fired forty-five
10 auto-caliber cartridge cases.

11 **Q.** And how do you know when you receive an item like
12 this from a police department, is there some sort of
13 protective measure that's used to make sure that that
14 evidence stays intact?

15 **A.** There is.

16 **Q.** And tell the jury, please, about how that works.

17 **A.** When a police agency brings evidence to the SLED
18 laboratory, certain information is collected about the
19 evidence and then the person bringing it puts the evidence
20 in a container, which is taped and it's sealed with
21 evidence tape. It's signed and dated, and thereafter
22 within the laboratory when evidence moves from hand to
23 hand, it does so as a sealed container.

24 So, for instance, if it's brought in, evidence
25 personnel will have the contributor seal it. I will come

1 to the evidence room, pick up a sealed package. I will
2 open it, do my examination of it and then re-seal the
3 package to prepare it for subsequent return to the
4 submitting agency.

5 Q. And when you received this, what's been marked here
6 in this exhibit, did that appear to have had those
7 safeguards and to have been properly secured?

8 A. It did.

9 MS. VON HERRMANN: I would move to have State's
10 Exhibit 32 moved into evidence at this time.

11 THE COURT: Any objection?

12 MR. BELLAMY: I want to look at it just briefly.

13 THE COURT: Yes, sir.

14 MR. BELLAMY: May we approach, Your Honor?

15 THE COURT: Yes, sir.

16 (A Bench conference was held in the presence, but out
17 of the hearing, of the jury.)

18 MS. VON HERRMANN: Again, Your Honor, I would move
19 State's Exhibit 32 in, subject to the conference we had
20 there.

21 THE COURT: All right, subject to -- I will allow it
22 into evidence subject to the testimony of one of the
23 officers later.

24 MS. VON HERRMANN: Thank you, Your Honor.

25 MR. BELLAMY: Thank you, Your Honor.

1 (State's Exhibit Number 32 previously marked for
2 identification.)

3 **Q.** Just take a look at those items, and if you will,
4 pull those out and tell the jury what those items are.

5 **A.** Within State's Exhibit 32, the box, there are nine
6 smaller boxes and one plastic vial. An item of evidence,
7 when it's brought in the laboratory, is assigned an item
8 number. You will see labels here marked 20, 21, 22, 23.
9 This one was too small, and it's marked with Item 19.
10 Items, what I refer to in my -- for my laboratory records
11 is Items 19 through 23 were fired forty-five auto-caliber
12 bullets.

13 These have various captions on them. They were
14 placed there by the submitting agency.

15 **Q.** And does the submitting agency make those markings
16 so that they can identify those as to where they collected
17 them?

18 **A.** Yes. This is the bullet that -- one of the
19 bullets. It's a copper alloy-jacketed bullet, what's
20 known as a full metal case bullet. As part of my
21 examination, I microscopically compared the markings on
22 the five bullets contained in these various containers
23 that I've labeled 19 through 23. I found sufficient
24 matching individual markings on all but one.

25 I perhaps should back up and mention that when

1 bullets are fired through a rifled gun barrel, and the gun
2 barrels of pistols and revolvers are typically rifled, the
3 rifling grips the bullet as the bullet is being pushed
4 through the barrel and out of the gun. That causes the
5 bullet to spin to make the bullet accurate in flight, but
6 it also marks the bullet with a unique signature from that
7 gun barrel, which can be identified back to that
8 particular gun, so in my microscopic analysis of these
9 bullets, I was looking for a unique individual striated or
10 scratch type markings that were placed on these bullets by
11 the gun that fired them, if indeed they were fired by one
12 gun, and I found that, as I say, with the exception of
13 Item 20.

14 Item 20 had a number of similarities to the other
15 four bullets, but Item 20 was somewhat more damaged than
16 the other ones, and I just did not see sufficient
17 agreement to conclude that this was fired by the same gun
18 barrel to the exclusion of another gun barrel. It
19 certainly could have been fired by the same gun, but I
20 just can't say so for sure.

21 **Q.** And is the reason that you can't say so is because
22 there was damage to that -- that particular bullet?

23 **A.** Yes. There was damage and just a lack of the kind
24 of markings that I'm looking for for identification
25 purposes. It just wasn't enough to say for sure.

1 Q. And with regard to the other four bullets there --
2 well, let's talk about all of them. Are those all forty-
3 five caliber bullets?

4 A. Yes, they are.

5 Q. All right, and the four that you have there
6 definitely have a match?

7 A. Correct.

8 Q. And Number 20 is a bullet which was damaged and you
9 can't say whether it did or did not come from the same
10 gun, is that correct?

11 A. Correct. They all have the same number of land and
12 groove impressions on them. They are all constructed the
13 same. They are all forty-five caliber. They are all full
14 metal case -- you know, they are all consistent in their
15 construction, but as I say, one of them just didn't have
16 enough markings on it.

17 Q. And again, I think you just said that this is the
18 same type ammunition?

19 A. Yes.

20 Q. And just is it consistent -- is it consistent with
21 the other ---

22 A. Yes. All the observable physical characteristics
23 of the bullet that I call Item 20 are the same as the
24 other bullets.

25 Q. And sometimes that happens and you're just not able

1 to make a perfect match?

2 **A.** True. It frequently happens because the bullets
3 are traveling at high speeds, and when they run into
4 objects, they can become damaged, and when they are too
5 badly damaged and don't have enough of -- enough
6 characteristics for identification left on them, you just
7 can't say.

8 **Q.** Let's talk a little bit -- I believe you've got
9 some shell casings in there as well, is that correct?

10 **A.** I do.

11 **Q.** And if you will pull those out and just show those
12 to the jury.

13 **A.** I'm pulling -- these, I refer to as my Items Number
14 24 through 28, and they are all the same in construction.
15 I have Item 24 in my hand, and this is a -- it's marked on
16 its head stamp, the mark that was put there by its
17 manufacturer, "CCI," which is the maker; it's marked "NR"
18 which stands for not reloadable, and then it's marked "45
19 Auto," and each of these bears the same markings.

20 This is a type of cartridge case that's known as a
21 CCI Blazer. The cartridge case itself is made out of
22 aluminum and it has a type of primer that's somewhat
23 difficult to remove, and it's made that way so that people
24 will not attempt to reload these cartridge cases. They're
25 only intended to be fired one time.

1 I looked for the kinds of markings on each of these
2 cartridge cases that would permit me to conclude they were
3 fired by the same gun, if indeed they were, but these
4 cartridges simply did not have enough markings on them to
5 conclude that they were fired by one gun. The markings
6 just were not -- they weren't of a quality and
7 sufficiency. They were the same to the extent that they
8 were there, but they were not sufficient to say they were
9 all fired by one gun, but they could have been.

10 Q. Are consistent with being fired by one gun?

11 A. Yes, they could have been fired by one gun.

12 Q. You don't have anything there in looking at those
13 that would make you believe that they were fired by
14 separate guns?

15 A. No; no. They were -- they were -- the markings on
16 them were sufficient to eliminate a great many guns, but I
17 -- they were just not sufficient to say that one gun and
18 only one gun fired these.

19 Q. Did you have a gun that was submitted to you by the
20 Horry County Police Department?

21 A. I did.

22 Q. And did you have an opportunity to examine that?

23 A. I did.

24 Q. And what findings did you make with regard to that?

25 A. The firearm that was submitted was a Star Model PD

1 forty-five auto-caliber pistol, and I obtained test
2 bullets and cartridge cases from that gun and I compared
3 them with the fired bullets and cartridge cases in Item
4 32, and they were sufficiently different so that I could
5 conclude that that gun did not fire any of these cartridge
6 cases or any of these bullets.

7 Q. And when that gun came to you, was it loaded or
8 unloaded?

9 A. It was unloaded at the time it was received, but
10 there were six unfired forty-five auto-caliber cartridges
11 that were received with the gun.

12 Q. So those -- those bullets then appeared to go with
13 that gun, is that correct?

14 A. Well, they were the correct caliber cartridges, you
15 know, not bullets. They were the correct caliber of
16 cartridge for use in that gun, and they are the same
17 caliber of cartridge that all of this evidence in Item 32
18 is, but those bullets were a different brand of ammunition
19 and they were loaded with jacketed hollow-point bullets,
20 whereas the bullets involved in these items are full metal
21 case round-nose bullets.

22 Q. So in other words, you got a gun that's submitted
23 to you by the police department and then you have the
24 projectiles and shell casings that you discussed earlier,
25 and those two were not consistent with one another?

1 **A.** No. The only thing that was the same was the
2 caliber, but they were not the same brand; they were not
3 the same type. The gun that was submitted had different
4 rifling standards, that is different widths of lands and
5 grooves, and its firing pin and breach face markings were
6 different from the ones that remain on the five fired
7 cartridge cases in Item 32.

8 **Q.** And the gun that you received, was that in working
9 order?

10 **A.** It was. It was a little -- it had been processed
11 for fingerprints and it was dry. Its action lacked
12 lubrication, so it didn't want to close well, but once the
13 slide closed, it would fire okay.

14 **Q.** So it would fire once, and then maybe you would
15 have a problem ---

16 **A.** Right.

17 **Q.** --- with getting it to fire again? Okay, and just
18 to clarify, that gun is not consistent with the bullets
19 found?

20 **A.** Right. That gun did not shoot any of these
21 specimens in Item 32.

22 **Q.** Thank you.

23 MS. VON HERRMANN: I don't have any further
24 questions. Please answer any questions Mr. Bellamy may
25 have.

1 THE COURT: Mr. Bellamy.

2 MR. BELLAMY: May it please the Court, Your Honor.

3 CROSS EXAMINATION BY MR. BELLAMY:

4 Q. You described, Agent DeFreese, a difference between
5 a revolver and a semi-automatic, correct?

6 A. Yes, sir.

7 Q. And a revolver -- and, well, you tell me because
8 you know more than I do about it, but does not eject the
9 casing or the thing that the bullet would be enclosed in,
10 does it?

11 A. It doesn't extract and eject a cartridge case every
12 time it's fired. It's manually loaded and manually
13 unloaded.

14 Q. Okay, but with a revolver, it would automatically
15 -- do you have one of the shell casings that we could look
16 at?

17 A. Sure.

18 Q. Okay. We'll leave it in the ---

19 A. Okay.

20 Q. This is one of the shell casings that you received?

21 A. Yes, it is.

22 Q. Now, and within this would be the, I guess, the gun
23 powder, primer, whatever it is, in the bullet?

24 A. Right. The whole cartridge is made up of a bullet,
25 a cartridge case, a primer, and then the propellant powder

1 that's inside the cartridge case.

2 Q. Okay, and this is what is left behind with either
3 the gun in the revolver or ejected out of the semi-
4 automatic?

5 A. Correct.

6 Q. Okay.

7 A. That's a fired cartridge case.

8 Q. Okay, and this item is hollow, so there's nothing
9 in the middle, right?

10 A. Correct.

11 Q. All right. Now, when a semi-automatic -- and did
12 you -- were you able to determine what type of gun or
13 types of gun that may have fired these casings or that
14 bullet? I know you don't have a gun to compare to; you
15 compared it to one and that's not it, but do you know what
16 types of gun may have fired those bullets and these
17 casings?

18 A. Yes, sir. I have -- I prepared, as I -- as I
19 frequently do in cases where no firearm is submitted or
20 the incorrect firearm is submitted, I prepared a list of
21 possible makes of firearms that could have fired the
22 bullets in this case, and that's based on their general
23 rifling characteristics, that is on the number of land and
24 groove impressions, the direction of land and groove
25 twists, and on the widths of the lands and grooves, and we

1 have a database that we correlate with to give the
2 investigators an idea of what brand of firearm they might
3 be looking for.

4 Q. Okay, and of the ones you identified in your
5 report, are you familiar with those guns?

6 A. Yes.

7 Q. Okay, and they are semi-automatics?

8 A. Most of them are semi-automatic pistols. Actually,
9 three of them are sub-machine guns.

10 Q. All right, but what happens if I were -- I don't
11 want to point at the jury; I'll point at you. If I'm
12 pointing a gun at you, ---

13 A. Yes, sir.

14 Q. --- my finger being the gun, and I shoot, ---

15 A. Yes.

16 Q. --- the projectile goes toward you?

17 A. Yes.

18 Q. And the shell casing goes where?

19 A. Well, it depends on the gun. It depends on the
20 particular pistol. It depends on a great many factors.

21 Q. On the guns that we've identified as pistols, ---

22 A. Yes.

23 Q. --- not the sub-machine guns, but these guns that
24 you've identified that may have fired this, which were
25 pistols, where would the projectile have went?

1 A. Where would the cartridge casing have gone?

2 Q. Yeah, yeah, yeah, not the projectile, the
3 cartridge, yeah, the casing.

4 A. It depends on a lot of factors. Generally
5 speaking, you like to think of firearms, such as semi-
6 automatic pistols, as extracting to the right of the
7 shooter, but ---

8 Q. This way (indicating)?

9 A. Yes. Like if I were pointed at you, it would go
10 this way (indicating), ---

11 Q. This way?

12 A. --- but it doesn't always work that way, ---

13 Q. Okay.

14 A. --- because factors such as the angle at which the
15 gun is pointed, and whether the gun is straight up or
16 whether the gun is twisted to the side, ---

17 Q. But would you anticipate that wherever the gun is,
18 that the hole where it ejects is on the right side,
19 correct?

20 A. Most of them are toward the right side. Some of
21 them are actually open top slides, and some of them will
22 eject to the right. Some of them will eject ---

23 Q. But if you could identify ---

24 A. --- virtually straight up.

25 MS. VON HERRMANN: Your Honor, I would ask that he

1 be allowed to answer the question.

2 THE COURT: Mr. Bellamy, ---

3 MR. BELLAMY: Yes, sir.

4 THE COURT: --- just let him answer the question.

5 MR. BELLAMY: Yes, sir.

6 **A.** Some of them eject to the -- many of them extract
7 and eject to the right. Some of them will extract and
8 eject so the cartridge case goes literally straight up.

9 **Q.** Okay.

10 **A.** Some of them will eject to the left, and that
11 assumes that a gun is being held in a substantially
12 vertical position. Some of them will extract and eject to
13 the right and slightly forward, some slightly to the rear,
14 and it depends on a great many factors, such as the angle
15 at which the gun is held, the force with which the gun is
16 gripped, because frequently when -- when one doesn't apply
17 sufficient force to the gun, it may eject in a totally
18 different direction than it does when you have a really
19 tight grip on it, so the long and short of it is I can't
20 say for sure.

21 **Q.** Is it fair to say that the vast majority eject to
22 the right and slightly back, though?

23 **A.** Many -- many of them do.

24 **Q.** Most do; would that be a fair statement?

25 **A.** I'm not sure I can say that most do. Many of them

1 do extract to the -- so that they eject to the right, but
2 as to whether they go forward or backward, I just can't --
3 I can't give you a number on that.

4 Q. Okay. Are you able to say more or less than fifty
5 percent? Can you do that for me or not, ---

6 A. No.

7 Q. --- and if you can't, you can't?

8 A. No, not really.

9 Q. Do any of them -- would any of them eject forward,
10 say, four feet?

11 A. Yes, I've seen them do that.

12 Q. You've seen them do that?

13 A. Yes. It can happen.

14 Q. Now, the guns that we're talking about that you've
15 identified, those guns, do you know how they eject?

16 A. I didn't independently study each of the guns that
17 I listed in my possible makes for the ejection pattern on
18 them because even -- even different guns of the same make
19 and model may not eject to the same place.

20 Q. Would you say this, Mr. DeFreese, the same gun
21 would eject the same way every time or a similar way,
22 would it not?

23 A. No.

24 Q. It wouldn't?

25 A. No.

1 Q. So it may eject forward one time, backwards one
2 time, up or down?

3 A. Yes.

4 Q. Okay.

5 A. It can -- that also can happen.

6 Q. It's possible?

7 A. Right. When I go to the range to qualify myself,
8 most of them are -- most of my rounds are ejected to the
9 right shooting a Glock pistol. Every once in a while, one
10 of them will come right up and go down my collar. I don't
11 know why it does that, but they just go different places
12 different times.

13 Q. But generally they would -- the same gun would
14 eject in the same manner generally?

15 A. They tend to, but if you change the brand of
16 ammunition, if you change the way you hold the gun, if you
17 change the tilt of the gun slightly, I just can't say with
18 any confidence that it's going to always going to go to
19 the right, or it's always going to go to the right and
20 forward, because it varies from shot to shot.

21 Q. Okay. Thank you.

22 THE COURT: Any redirect?

23 MS. VON HERRMANN: No, sir, Your Honor, and I would
24 ask that he be released from his subpoena.

25 THE COURT: Any objection to the witness being

1 excused?

2 MR. BELLAMY: I believe I have him under subpoena as
3 well, Judge. I'd like to keep him here for a little bit
4 to talk to him.

5 THE COURT: All right, very good.

6 All right, Mr. DeFreese, you remain under the
7 Defense's subpoena. You are released from the State's
8 subpoena, and until the Defense releases you, you need to
9 stay with us. Thank you, sir.

10 AGENT DEFREESE: All right, sir.

11 MS. VON HERRMANN: Your Honor, may we approach for a
12 moment?

13 THE COURT: Absolutely.

14 (A Bench conference was held in the presence, but out
15 of the hearing, of the jury.)

16 THE COURT: All right, ladies and gentlemen, the
17 next witness by the State is a pathologist, the medical
18 doctor, and that particular individual, because of their
19 duties, though they were supposed to be here will not be
20 here for a considerable period of time, so what we're
21 going to do is we are going to break for lunch and I'm
22 going to have you come back at two o'clock. Hopefully by
23 two o'clock that witness will be released from their other
24 activities. As you understand, they might have other
25 duties than coming to Court, and we will resume at two

1 o'clock.

2 Remember, don't talk about the case. Don't allow
3 anybody to talk to you about the case. Remember what I
4 told you about going to lunch around here. If you are
5 going to, remember to wear your button so people don't say
6 things in your presence that they would normally say, but
7 now they will see your jury button so they will recognize
8 you.

9 All right, I'll see you back at two o'clock. Thank
10 you very much. Again, just leave your pads and pens
11 there, your pads and pens in your seat.

12 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF**
13 **THE JURY.)**

14 THE COURT: All right, we'll be back here at two
15 o'clock.

16 MS. VON HERRMANN: Thank you, Your Honor.

17 Mr. DeFreese, I understand that the Defense attorney
18 is going to talk to you, so if you want to do that now and
19 then maybe he can release you.

20 All right, thank you very much.

21 (OFF THE RECORD)

22 **ON THE RECORD**

23 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF**
24 **THE JURY.)**

25 THE COURT: All right, Solicitor, are you ready for

1 the jury to come in?

2 MS. VON HERRMANN: Yes, sir, Your Honor.

3 THE COURT: And Defense?

4 MR. BELLAMY: Yes, sir, Your Honor.

5 THE COURT: Very good. Could we ask the jury to
6 come in, ma'am.

7 **(THE FOLLOWING TAKES PLACE IN THE PRESENCE OF THE**
8 **JURY.)**

9 THE COURT: All right, Solicitor, your next witness,
10 please, ma'am.

11 MS. VON HERRMANN: Thank you, Your Honor. The State
12 calls Dr. Cynthia Schandl.

13 THE COURT: All right. Please come around to be
14 sworn, ma'am.

15 DR. CYNTHIA SCHANDL, being first duly sworn,
16 testifies as follows:

17 THE CLERK: Please be seated. State your full name
18 and spell your last name.

19 DR. SCHANDL: Cynthia Anna Schandl,
20 S-C-H-A-N-D-L.

21 THE COURT: All right, Solicitor.

22 MS. VON HERRMANN: Thank you.

23 DIRECT EXAMINATION BY MS. VON HERRMANN:

24 **Q.** Dr. Schandl, how are you currently employed?

25 **A.** I am employed at the Medical University of South

1 Carolina in Charleston, South Carolina, as a forensic
2 pathologist and Assistant Professor in the Department of
3 Pathology and Laboratory Medicine.

4 Q. Are you a licensed physician?

5 A. Yes, I am a licensed physician in the states of
6 South Carolina and Florida.

7 Q. If you will, give the jury, please, just the
8 benefit of your educational and professional experience.

9 A. So in order to become a forensic pathologist, one
10 must complete college. I have a Bachelor's Degree from
11 the California State University in San Bernadino. One
12 must then complete medical school. I went to medical
13 school at the Medical University of South Carolina in
14 Charleston, South Carolina. During those years, I also
15 attended graduate school and also obtained my Ph.D., so
16 from the Medical University, I obtained my M.D. and Ph.D.
17 degrees in '99.

18 After that training, so after medical school and
19 graduate school, I became fully licensed in the state and
20 then continued my training in what is called a residency
21 program. The different facets of medicine each have a
22 training program called a residency program. The one that
23 I chose is that in pathology and laboratory medicine,
24 which is a four year training program. I chose to do that
25 training, again, at the Medical University of South

1 Carolina.

2 Following that training, one can choose to then
3 practice in pathology or get further training. I chose to
4 get further training in the field of forensic pathology
5 and thus did another one year fellowship also at the
6 Medical University in the field of forensic pathology, and
7 at the combination of that training, I did take Board
8 examinations, National Board examinations, in the fields
9 of anatomic pathology, clinical pathology, and forensic
10 pathology, and thus I am Board Certified in those three
11 areas.

12 Since that time, I have been on faculty at the
13 Medical University of South Carolina since 2004.

14 **Q.** And tell the jury, if you will, what exactly is it
15 that a forensic pathologist does?

16 **A.** Pathology itself is the study of disease. Forensic
17 pathology concerns itself with those areas that may have
18 medical-legal consequences. Frequently what we're looking
19 at are autopsies in individuals, that we will perform
20 autopsies on individuals who have died under circumstances
21 that are not known to be natural, so, for example, we may
22 not perform an autopsy, a forensic autopsy, on someone who
23 has been in a hospital with a diagnosis of cancer.

24 On the other hand, if we have a person of that same
25 age, perhaps sixty or seventy, who is at home and has no

1 medical history, that might be referred to us because we
2 don't know what that cause of death is. We don't know if
3 it was natural, it's a fall, which would be accidental is
4 involved or some other thing, and so also in the State, we
5 would get those cases that are thought to be homicides,
6 suicides, so we would get homicides, suicides, accidental
7 deaths, and natural deaths where that cause has not been
8 determined prior to death.

9 **Q.** How many autopsies do you think that you've
10 performed?

11 **A.** I have performed over a thousand cases.

12 **Q.** And when you perform an autopsy, and I think you
13 talked about it here just a moment ago, but is there some
14 specific finding that you are looking to make at the
15 conclusion of that autopsy?

16 **A.** Yes. Generally speaking, particularly in forensic
17 pathology, we are directed to find a cause of death, which
18 may be something like a heart attack or might be something
19 like a gunshot wound, and then we're also directed to try
20 to identify a manner of death, and those manners of death
21 are state determined, so they tell us what we can choose
22 from, and those manners of death in this State are
23 homicide, suicide, natural, accidental, and undetermined,
24 if a manner cannot be determined.

25 **MS. VON HERRMANN:** Your Honor, I would move to have

1 Dr. Schandl qualified as an expert in the field of
2 forensic pathology.

3 THE COURT: Do you wish to voir dire the witness as
4 to her qualifications?

5 MR. BELLAMY: Just briefly, Your Honor.

6 THE COURT: Very good. You may do so.

7 VOIR DIRE EXAMINATION BY MR. BELLAMY:

8 Q. Dr. Schandl, or how do you pronounce it?

9 A. Schandl.

10 Q. I'm sorry. Now, if I could, ---

11 MR. BELLAMY: And you're seeking to qualify her as a
12 forensic pathologist?

13 MS. VON HERRMANN: In the field of forensic
14 pathology.

15 Q. If you would, what's the difference between a
16 pathologist and a forensic pathologist?

17 A. A pathologist, again, is the broad field that
18 covers clinical pathology and anatomic pathology, which
19 are the two sort of broad fields of pathology, but it also
20 covers all the sub-specialties, which include forensic
21 pathology, hematic pathology, clinical chemistry, dramatic
22 pathology, and a whole 'nother -- a whole group of
23 specialties, so forensic pathology is a sub-specialty of
24 pathology.

25 Q. And how does one become a forensic versus a -- some

1 of those others that you mentioned? Is there additional
2 education, training, or specific training that these
3 others don't have?

4 **A.** Yes, so for, again, for the sub-specialty training
5 after the training for the broad areas of pathology,
6 clinical and anatomic pathology, you can then train
7 further in a fellowship specific to that sub-specialty
8 that you have most interest in, and in my case, it was
9 forensic pathology, so that, again, entailed an additional
10 year of training with its own separate National Board
11 examination.

12 **Q.** And you did that training where?

13 **A.** At the Medical University of South Carolina.

14 **Q.** And when we say training, is that -- and you have
15 to help me -- classroom, like I think of going to college,
16 you go to a classroom, or is this a practical thing where
17 you're in assisting with autopsies or things of that
18 nature, or is it a combination?

19 **A.** It's a combination of both, so as a forensic
20 pathology fellow, you come and every day you perform
21 autopsies under the direction of the attending
22 pathologists who have already had their training, so
23 you're performing cases during the day, and you're also
24 going to different seminar series and doing different
25 readings and so forth to back up that knowledge as you are

1 around your cases that you are doing for the day, so it's
2 really a combination of both.

3 Q. And you indicated that you took a national test?

4 A. Yes. The American Board of Pathology has a
5 National Board examination.

6 Q. Would that be specific to forensic pathology?

7 A. They have one specific to forensic pathology.

8 Q. And I understand you took it -- you took that?

9 A. That's correct.

10 Q. And when was that that you took that?

11 A. 2005.

12 Q. 2005, okay. Have you been employed the entire time
13 at M.U.S.C.?

14 A. Yes, sir.

15 Q. Okay, and when we say forensic, again that would be
16 something beyond a person dying in the hospital or it
17 would be something that would be unusual, as you stated?

18 A. Well, again, we get cases referred of all different
19 types, but forensic pathology is directed at those cases
20 that are not due necessarily to natural deaths.

21 Q. And do you have special training in like gunshot
22 wounds, things of that nature, knife wounds, things that
23 would be again not natural?

24 A. Yes, sir.

25 Q. Okay, and you have -- would that be part of that

1 year training that you have done?

2 **A.** That's correct.

3 **MR. BELLAMY:** The Court's indulgence.

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

5 **MR. BELLAMY:** Your Honor, I don't have any objection
6 to Dr. Schandl being qualified as an expert in the field
7 of forensic pathology.

8 **THE COURT:** All right. I am going to qualify her to
9 give her opinion in the field of forensic pathology.

10 You may continue, Solicitor.

11 **MS. VON HERRMANN:** Thank you, Your Honor.

12 DIRECT EXAMINATION CONTINUES BY MS. VON HERRMANN:

13 **Q.** Did you have occasion to conduct an autopsy on the
14 victim in this case, Miles Slay?

15 **A.** Yes, ma'am, I did.

16 **Q.** And on what date did that occur?

17 **A.** The autopsy was performed on October 22nd of 2005.

18 **Q.** All right, and how did that -- how did the body
19 come to you?

20 **A.** Well, since we are in the State of South Carolina,
21 which is a Coroner state, each of the individual counties
22 have elected officials who are the Coroner for that
23 county, so it is the Coroner who contacts our office, or
24 the other offices around the State that employ forensic
25 pathologists, and let us know that there is a case and

1 that they would like to send it to us, so in this case we
2 were contacted by the Deputy Coroner of Horry County who
3 told us that an individual would be coming to us, and so
4 that's how -- that's how we are introduced to the case, is
5 through the Coroner.

6 **Q.** And when you began your autopsy on Mr. Slay, what
7 was the first thing -- what is the first thing that you do
8 in this autopsy, or any autopsy for that matter?

9 **A.** So essentially the individual will come to us and
10 then we would bring that individual up from the morgue up
11 to the autopsy suite. That individual will be placed on
12 an autopsy table as he is received by our office, so he
13 may be entirely clothed, or if he has been to the
14 hospital, it's likely the clothing has been removed, but
15 however he gets to us is how he comes onto the autopsy
16 table.

17 At that point, a series of photographs will be taken
18 to document how he comes to us. In addition, we will
19 begin to diagram what we see, and then we will take the
20 clothing off, and if it's important to the case, we may
21 also document things with the clothing, defects to the
22 clothing, whether there's blood stains on it or other
23 things that we need to look at, so that the clothing
24 becomes in its own separate examination essentially. It
25 comes off of the body as well.

1 We will then take another set of photographs of the
2 individual without the clothing. Again, we're looking for
3 things that might be identifying features as well, such as
4 a tattoo or scars, things like that, as well as any
5 injuries or other things that we might see in any
6 particular case, so photographs get taken at that point.

7 Then after the photographs, again we're working at
8 diagrams and we're looking at identifying features, hair
9 length, weight, length of the body, does the person have a
10 beard, what is their eye color, those sorts of things, so
11 we will document all those things on every individual, and
12 then once those things are documented, we will move to any
13 injuries if injuries might be present, and then we will
14 begin to document those.

15 In the case of gunshot wounds, which this is a
16 multiple gunshot wound case, we will document those
17 injuries both by a diagram so essentially where are those
18 defects in the body, as well as in a form that tells us
19 that -- directs us to say where exactly are they on the
20 body, so top of the head, left or right of midline, and
21 that actual description of the defect itself, so we have
22 many different pieces of paperwork that we are filling out
23 as we are going through the case.

24 And so after we've documented that, so on the
25 external we have all these different defects to the body,

1 then we'll move to what's classically considered the
2 autopsy and begin, you know, the "Y" incision to look
3 inside of the body to try and figure out which organs may
4 have been struck, in this case, by bullets or other
5 things, if there's natural disease processes going on, and
6 so forth, so that's essentially one of the later steps is
7 to document those internal findings.

8 Also in the course of an autopsy, fluids are taken in
9 order to look at any toxicological findings, so those are
10 sent away for toxicological studies, and then we also take
11 representative sections from the organs, again, to look at
12 under the microscope, both to document injury, as well as
13 any natural disease processes going on, so that -- that's
14 sort of an overview of basically how we do every single
15 autopsy, and in this case, it was a case of multiple
16 gunshot wounds.

17 **Q.** Okay, and so we'll get to the gunshot wounds in a
18 moment, but aside from those gunshot wounds, tell the
19 jury, please, how you found Mr. Slay's physical condition
20 to be.

21 **A.** Okay. We found him to be about five foot, six, and
22 two hundred and thirty pounds. He was -- he was clothed,
23 so he had on a tee shirt, like an undershirt. He had
24 shorts and socks. His shoes were -- he wasn't wearing
25 them by the time I got him, the shoes that came with him.

1 Let's see; what other things might you be interested
2 in?

3 **Q.** Did you find him to be in good health otherwise?

4 **A.** Yes, both just looking at him externally, as well
5 as at the conclusion of the autopsy, after looking at all
6 the organs and taking sections and looking at them under
7 the microscope. Let me see if we found anything as far as
8 his health. He did have some focal mild coronary artery
9 atherosclerosis, a little bit of plaque in one of his
10 coronary arteries, and that was it.

11 **Q.** And what did you determine in this case ultimately
12 caused Mr. Slay's demise?

13 **A.** Well, ultimately he was killed as a result of the
14 multiple gunshot wounds. In particular, one of the
15 gunshot wounds went through the aorta, which is the
16 largest blood vessel in the body. It's about the size of
17 a garden hose in caliber, and so it did hit the aorta and
18 the left lung, one of these particular bullets that went
19 through his body.

20 Another one also hit the right lung. Another one of
21 the projectiles hit the right lung, so -- and the
22 remaining gunshot wounds, although they did damage to his
23 soft tissues and invariably fractured different areas,
24 didn't go into the body cavities, so essentially the cause
25 of death in this case was that gunshot wound that went

1 through the aorta and the left lung.

2 Q. And did you do a diagram in connection with this
3 case?

4 A. Yes, ma'am.

5 Q. And do you have that with you?

6 A. Yes, I do.

7 MS. VON HERRMANN: Before we get to that, let me ask
8 the Court to allow her to stand down, and I'll stand up
9 here and I will be your model or your dummy, depending on
10 who you are talking to, but if you would just step down
11 here, and I will stand here and if you will just show them
12 sort of where those shots came from.

13 THE COURT: Could you move a little bit closer,
14 Solicitor and Doctor, to that -- you see that box on the
15 rail, that's a microphone.

16 DR. SCHANDL: Thank you, sir.

17 MR. BELLAMY: Your Honor, might I -- so I can see a
18 little bit better?

19 THE COURT: Absolutely.

20 A. So he had a number of defects to his body. It's
21 difficult to tell you exactly how many times he was shot.
22 He was shot either five, or six, or seven times, and I
23 will explain that. All of the gunshot wounds went all the
24 way through his body and out with the exception of one, so
25 in one instance we had a gunshot that was recovered; we

1 did recover the bullet. Okay, so with every other gunshot
2 wound, there are at least two holes in the body, okay, so
3 the question about how many times was he shot is
4 complicated by the fact that if the bullet goes all the
5 way through the body, it is possible that it can then re-
6 enter the body and go through it a second time, okay?

7 So what we have with this case is we have a through
8 and through, so again all the way through, a gunshot wound
9 to his right hand ---

10 Q. And kind of show on me where ---

11 A. Essentially with a hole here and a hole here
12 through the right hand (indicating). We have a through
13 and through gunshot wound that went ---

14 Q. Well, you can show it on yourself if it's easier
15 for you.

16 A. I just -- I'm used to doing that.

17 Q. Okay, whichever you're more comfortable with.

18 A. Okay, that's fine, so a through and through gunshot
19 wound that went through the -- basically the side of the
20 arm or the shoulder, the left side, out about here
21 (indicating), okay, so it's coming out. Now, there's
22 another entrance wound about here (indicating), so it's
23 possible again that this pathway may have continued to
24 this pathway which went from here to the other side of the
25 face and out, okay, so I don't know -- I can't tell you

1 for sure if this is one gunshot all the way through or two
2 gunshots, okay, so we've got the one through the hand, the
3 one through the left shoulder, the one through the neck to
4 the face.

5 And there's another one that's here, about here, on
6 the left chest (indicating) that comes out right here on
7 the neck. Now, this one I'm quite certain then re-enters
8 right here on the neck because there is a continuous what
9 we call a graze wound that's connecting this gunshot
10 wound, this exit gunshot wound, with this re-entrance
11 gunshot wound, which then continues to come out the face
12 here.

13 This is the one that went through the aorta and the
14 left lung, and then it continued here and shattered the
15 jaw over here and some teeth, okay, so this one I'm quite
16 certain is a single gunshot wound that caused four
17 different defects in this individual, so again, that one
18 through the hand, one through this shoulder, possibly also
19 that continuing through the neck to the face, one through
20 here (indicating), to the neck, to here, and out the face,
21 okay?

22 Now, the other one is to the back at about here
23 (indicating), and it travels across the mid-line, hit the
24 right lung, and ends up in this arm, okay, and then we
25 have another one that travels from the lateral --

1 posterior lateral thigh back here and then exits about
2 here on the upper buttocks on the right-hand side, okay,
3 so traveling from about here (indicating) to about here in
4 an upward direction, depending on, of course, where the
5 body is.

6 And let me refresh my memory. We have one that goes
7 to (i) is the one I'm looking for, (g) to (i), so there's
8 another one that is here (indicating) that crosses the
9 mid-line without entering the chest cavity and comes out
10 the front of the right arm, okay, so again we'll just go
11 through them one more time.

12 One goes through the right hand. It's certainly
13 possible that it then re-entered at some other place; I
14 don't know where. One goes through this shoulder and then
15 possibly through the neck and out the side of the face.
16 One goes from here and out the front of the arm. One goes
17 from here, up to here, back into the neck and out of the
18 face, and one goes from the back across the mid-line
19 through this lung, and this is the one we find the bullet
20 in the right arm, okay, so he was shot either five, or
21 six, or seven times, depending upon those variables.

22 Q. Thank you, and the bullet that you removed from Mr.
23 Slay, what did you -- did you turn that over to the Horry
24 County Police Department?

25 A. Yes, we did turn that over to John Lewis of the

1 Horry County Police Department.

2 Q. And there was also a crime scene person there as
3 well that day, is that correct?

4 A. There certainly likely was. I don't have that
5 information here.

6 Q. Okay. The distance of each of these shots, are you
7 able to make a determination about the distance of the gun
8 to the body?

9 A. I call each of these gunshot wounds distant. Now,
10 what -- what I mean by that is there are certain things
11 that we look for on the skin around the gunshot wound that
12 may tell us that it is a contact wound, and we might see
13 soot on the wound, around the wound, or that it is a close
14 range gunshot wound, in which case we might see stippling
15 around the wound. Stippling is when particular matter
16 comes out of the muzzle or the end of the gun and
17 scratches the skin, so those are the two things that we
18 can see with our eyes. We can see soot, which suggests a
19 contact wound, or we can see stippling, which suggests a
20 close range wound.

21 In this, I did not see either soot or stippling
22 associated with any of the defects to him, so I would
23 consider that distant, but we have to keep in mind or I do
24 keep in mind that to me as a forensic pathologist, distant
25 is the same thing as indeterminate because it is -- I'm

1 looking at something that I don't see, not something that
2 I do see, so it's a negative finding.

3 So that doesn't mean that it's not closer than
4 distant because it is possible that there are other things
5 going on that I'm unaware of. Perhaps there is an
6 intermediate target, so the bullet went through something
7 and hit the skin, and maybe it was just this far away
8 (indicating), but I would never know that, because it hit
9 something and I don't have this. I have the person, so
10 that's one possibility, so there are a number of different
11 possibilities that can make distant not be distant, which
12 is why I prefer to call it indeterminate.

13 Q. And do you do a toxicology screen as well as part
14 of the autopsy?

15 A. We draw blood and send it to a private laboratory
16 for toxicology studies, yes.

17 Q. And did you get a toxicology report back in this
18 case?

19 A. Yes, ma'am.

20 Q. And did you find anything of any significance in
21 that toxicology report?

22 A. One moment. There was ethanol, which is alcohol,
23 at a level of twenty-two milligrams per deciliter, which
24 is 0.022 percent.

25 Q. And let me stop you right there. When you say

1 that, the legal alco- -- the legal blood alcohol limit in
2 South Carolina is .08. Is this less than .08?

3 **A.** Yes, it is significantly less than 0.08. It is
4 0.02. And the other -- another finding is Delta Nine
5 Carboxyl Tetrahydrocannabinol, which is an inactive
6 metabolite of THC, so a cannabinoid, and then there's also
7 nicotine, which is from cigarettes or chewing some kind of
8 tobacco product, and its metabolite, cotinine.

9 **Q.** With regards to THC, is that something that's
10 typically found in marijuana?

11 **A.** Yes. THC is definitely something that is generally
12 found in marijuana. What we see in his blood is an
13 inactive metabolite of that, which is from marijuana.

14 **Q.** And so that means that he had some marijuana in his
15 system at some point in time?

16 **A.** That's correct. We presume since he has the
17 metabolite that at some time in the past he had the active
18 drug on board.

19 **Q.** But at the time, this time that the autopsy was
20 conducted, the blood was drawn, there was not a sufficient
21 amount to say that he was under the influence of
22 marijuana?

23 **A.** That's correct.

24 **Q.** All right. Let's talk again just briefly about the
25 bullet pattern. You have a number of shots that take

1 place in the upper body, entrance and exit wounds,
2 correct?

3 **A.** Yes.

4 **Q.** And then there are two other that appear to be in
5 the lower portion of the body, is that correct?

6 **A.** Well, there's one pathway in the lower body, so
7 from the left thigh to the buttock, there's that one.

8 **Q.** Would that be consistent with someone being shot if
9 they were in a seated position and slumped over?

10 **A.** That is possible. That is possible. It's
11 impossible for me to tell you how the person was in space
12 because, again, I get them after the fact outside of that
13 situation. I don't know if they were moving when the
14 trigger was pulled. You know, I don't know if they were
15 bending over, if they were standing on their head, or
16 what, so all I can tell you is where did it hit him and
17 where did it come out.

18 **Q.** And one of the things that you consider in looking
19 at those gunshot wounds is the potential for movement
20 within the victim's body while those shots are taking
21 place, is that -- is that true?

22 **A.** That is something that I have to keep in mind, but
23 I cannot tell you where the shooter was. I cannot tell
24 you where the victim was at the time of any individual
25 gunshot wound.

1 Q. And movement, ---

2 A. Because they move. People move.

3 Q. Now, there was a shot that you described that was a
4 through and through the interior of the right hand, is
5 that correct?

6 A. Yes.

7 Q. And appearing to exit on the outside of that hand.
8 Is that -- would that wound be consistent with a defensive
9 type wound?

10 A. Any wound that's to the hands or even to the
11 forearms is considered a defensive wound because one can
12 presume that one would attempt to defend themselves if
13 they were being fired upon, so it is consistent with a
14 defense wound.

15 Q. And in this case, did you determine what the cause
16 of death was?

17 A. Yes, ma'am.

18 Q. And what was that cause of death?

19 A. Lung and aorta perforation due to distant
20 perforating gunshot wound to the left chest ---

21 Q. And ---

22 A. --- and contributory, multiple distant penetrating
23 and perforating gunshot wounds to the back, chest, neck,
24 and extremities.

25 Q. And what did you determine to be the manner of

1 death?

2 **A.** The manner of death is classified as homicide.

3 **MS. VON HERRMANN:** Thank you, Your Honor. I have no
4 further questions. Please answer any questions Mr.
5 Bellamy has.

6 **A.** Yes, ma'am.

7 **THE COURT:** Cross examination.

8 **MR. BELLAMY:** May it please the Court, Your Honor.

9 **CROSS EXAMINATION BY MR. BELLAMY:**

10 **Q.** Doctor, you, in your report, which I have here, you
11 described these wounds as all being distant. You don't
12 use the term "indeterminate" in here, do you?

13 **A.** No, I don't believe I used that term in the report.

14 **Q.** But as I understand it, you -- you described them
15 as interchangeable?

16 **A.** Yes, sir.

17 **Q.** But if -- let's say a hand wound, assuming -- and
18 I'll give you a hypothetical and you can tell us, if
19 there's nothing on my hand and a gunshot was close -- this
20 far away, a foot away, you would expect to see soot or
21 stippling, would you not?

22 **A.** A foot away begs the question. I can't tell you
23 one way or the other. If it was against the skin, I would
24 expect to see soot. If it was very near to the skin, I
25 would expect to see stippling, but as soon as you get more

1 than six inches or a foot away, you're got to test fire,
2 or I really cannot tell you what you would expect to see.
3 It's very variable after that.

4 Q. Okay. Did you see any soot or stippling on any of
5 the clothing that was taken?

6 A. No, I did not see.

7 Q. Okay, and did you turn over that clothing to the
8 law enforcement people?

9 A. Yes, sir.

10 Q. Did you do a diagram noting the -- the -- any
11 damage to the clothing?

12 A. Yes, sir.

13 Q. Do you have that with you?

14 A. Yes, I believe so.

15 MR. BELLAMY: Is that report in evidence?

16 MS. VON HERRMANN: No.

17 THE COURT: No.

18 Q. Did you review that?

19 A. Yes, sir.

20 Q. In particular, in the shorts, or pants, or
21 whatever, was there any damage to the clothing?

22 A. Yes. There is a defect to the back left side of
23 the shorts, sort of in the seat area of the shorts.

24 Q. The back left of the shorts?

25 A. Yes, sir.

1 Q. And would that be consistent with the wound that
2 you described to the back of the leg?

3 A. Yes, sir.

4 Q. Okay. Now, in the process of doing this, and I
5 know you went through with Ms. Von Herrmann and described
6 it on her. I may want you to do sort of a similar thing,
7 but in addition to that, you did take measurements and did
8 angles of each of these wounds, did you not?

9 A. That's correct.

10 Q. So would you mind coming down and on me kind of
11 going through these, but maybe write on this thing here,
12 describe the angle and direction of each of these wounds,
13 which I believe you did, is that correct?

14 A. I do estimate the angle and direction of each of
15 the wounds, yes.

16 MR. BELLAMY: Your Honor, may she come down and do
17 that?

18 THE COURT: Yes, sir.

19 Q. And I'll let you pick whichever wounds you want to
20 start with, and maybe if you would label it Number 1, and
21 then show them on me where it went in and came out and
22 then your measurements as related to that.

23 A. Okay.

24 Q. Is that okay?

25 A. Yes. I think I can -- I think I can work with

1 that.

2 Q. And, now, and if it will make it simpler for the
3 jury, I know you labeled them, you know, "B" and "L" and
4 things like that. Maybe if we just did it 1, 2, 3, 4, ---

5 A. I'm happy to help you with that.

6 Q. --- would that be okay? It might be simpler, okay?
7 Whichever one you want to pick, if you would show on my
8 body, and then would you write up there what -- tell us
9 what the measurements and write those for us.

10 A. Sure.

11 Q. Okay.

12 A. Okay, so I had made a list of -- of the different
13 wounds so that I would know what I'm telling you guys is
14 right, so that I have it on one page, okay, so that's what
15 I'm looking at now is my notes based on my report, and in
16 this -- on here I have a gunshot wound Number 1, and I
17 have them individually, so in this -- in this description
18 what we're going to have is each of them is going to be an
19 individual.

20 We're not going to talk about them going through and
21 through, and back in, and all that good stuff, except for
22 the one which -- the one that I told you was really quite
23 obvious, okay, so Number 1 is the one that went into the
24 lateral left neck here (indicating), and out on the right
25 facial cheek here, and so this one is going from left to

1 right, and the angle is like this, right? This is what we
2 call anatomic position, so all of our measurements are
3 based on someone standing, completely still, not moving,
4 and looking straight forward with their palms facing
5 forward, okay, so if a person is going to be -- stand like
6 that, it's fifteen degrees up, slightly forward, and again
7 to the right, okay, so neck slightly forward, a bit up,
8 and that way.

9 The one I've got here as Number 2 is the one that
10 went to the left lateral chest here and then came out of
11 the neck. This is the one that I know then re-entered and
12 then went out the front of the face on the right-hand
13 side, okay, so again it's going from -- to the right, left
14 to right, about thirty degrees up, slightly forward. Is
15 this what you ---

16 **Q.** Yes; this is just perfect.

17 **A.** Okay. Number 3 -- okay, and this is the one again
18 -- that's the one that went through the aorta and through
19 the lung, and then back through and fractured the jaw.
20 Number 3 to the left upper back here, up here, okay, that
21 one went again through the right -- and that's the one
22 that went through the right lung again and we recovered
23 that bullet in the right lung, and again, left to right
24 about twenty-five degrees up and slightly forward, so
25 before -- what I am saying is, if you would stand sideways

1 here, this would be neither forward nor back. This would
2 be forward, and this would be back, so when I'm saying
3 forward, I'm saying a little bit forward like that, okay,
4 slightly left and straight on.

5 Okay, Number 4 is the one that's to the interior left
6 axilla, so right around here, and that's the one that
7 crosses the mid-line without going through the chest. It
8 comes out on this shoulder, so again left to right,
9 slightly up, slightly forward.

10 5, this is the one that ---

11 Q. Would you go back to 4 for just a second for me.

12 A. Sure.

13 Q. 4 was where now? Tell me that again.

14 A. From here, the axilla, across the mid-line and out
15 the front of the right arm.

16 Q. Okay, so does it go into my arm?

17 A. No. The axilla is your arm; that's here.

18 Q. Okay, and then it comes out, and would that be
19 slightly forward or slightly back if it comes out my arm?

20 A. It's slightly forward.

21 Q. Okay.

22 A. Number 5, from the left lateral shoulder, this is
23 the one that is going through the arm and comes out here,
24 and this is the one that we possibly -- it might go back
25 in, but just the same, we know it goes from here to here.

1 We have that figured out for sure, and it's left to right
2 again, thirty degrees up and slightly forward.

3 And then 6 is the one that goes through the hand, and
4 the nature of the wounds, the defects to the hand, were
5 such that I could not tell whether it was coming this way
6 and going out this way, or going this way and going that
7 way. It looks to me more likely that's it going in here
8 and coming out here, but I cannot tell you that for a
9 fact, so like, you know, depending on whether it's either
10 going up or it's going down. It's going left or it's
11 going right, so I don't want to confuse it by putting
12 something on there.

13 And then the last one is the one that's to the left
14 posterior lateral thigh. That's the -- right about here,
15 I suppose, and then it's going across and up and comes out
16 right about here on the buttock, and that one is again
17 from left to right, about sixty degrees up and slightly
18 back. That's everybody.

19 Q. That's everybody? Thank you, and if I could, just
20 so we've got these labeled, but ---

21 A. You want to know where ---

22 Q. Yeah, if you could write out right here just ---

23 A. The letters?

24 Q. No, let's don't do letters. How about if we put
25 like neck to cheek right there in that one, and that might

1 help us, because it's hard to remember one that we've ---

2 Q. --- just a brief description.

3 A. (Witness writes on diagram.) So 1 is -- you can
4 read. I'll just put this up here.

5 Q. And that's the one that re-entered, which would be
6 Number 2, into the -- came out of -- under the chin and
7 re-entered, okay?

8 A. Uh-huh (affirmative response).

9 Q. And 3 would be in the back?

10 A. Uh-huh (affirmative response). Okay, and I'll
11 write on here so that you guys know what these silly words
12 mean. Anterior is going to be front.

13 Q. Let me -- when you say anterior, if my mid-line is
14 right here, I guess where the crease of these pants are,
15 the front would be anterior. Anything behind that is ---

16 A. Posterior.

17 Q. Posterior.

18 A. Anterior is going to be the front; posterior is
19 going to be the back. Lateral is the side. I think
20 that's everybody, okay.

21 Q. Thank you.

22 MR. BELLAMY: Well, I might want one other thing.
23 May we approach?

24 THE COURT: Yes, sir.

25 (A Bench conference was held in the presence, but out

1 of the hearing, of the jury.)

2 Q. I have what's been marked as State's Exhibit 35,
3 okay? Have you seen these photographs, ---

4 A. I have seen ---

5 Q. --- some of them?

6 A. --- seen photographs. I couldn't say if I've seen
7 this photograph.

8 Q. Okay. If I were to tell you, I guess, that this is
9 Mr. Slay, the individual you did the autopsy on, and this
10 is the position of the body when it was found, ---

11 A. Okay.

12 Q. Could you -- and for the jury we'll do it in a
13 couple of places, point -- can everybody see, and I'll
14 walk down so that everybody can see and we'll get a little
15 bit closer, Doctor, and point -- if you want to use my
16 pen, that might be better, point to the location of Wound
17 7, the entrance of Wound 7, what would be the entrance
18 point of Wound 7.

19 A. So this is his left leg, his left thigh right here,
20 and the entrance wound is to the side and back, so it's
21 probably right around this area, and I can't tell you for
22 sure because the hole is in the pants, but it's right
23 about there.

24 Q. Well, let me ask you, the hole in the pants, is it
25 in this -- and this is black and white, but these were red

1 and white, I believe, or red and black pants, is it in
2 this portion of this color, and if you want to go look at
3 your notes?

4 A. Yeah, I will have to take a look at that.

5 Q. Go look at your notes of the diagram of the
6 clothing.

7 A. My diagram would indicate that it's more to the
8 back than to the side. It's more likely that it is in the
9 black portion of those shorts.

10 Q. So, okay, so it would be not this portion, but it
11 would be this por- -- this colored portion here, that
12 color?

13 A. Yes.

14 Q. And if you would, again, if you want to use my
15 glasses or something, point to it ---

16 A. So it's somewhere -- somewhere in this -- this
17 region here, but again, I can't tell you exactly.

18 Q. Okay, and it's going up sixty degrees and slightly
19 back?

20 A. That's correct.

21 Q. Can we move over here and show the -- again, I'll
22 let you ---

23 A. Okay, so that the one that's to the left thigh
24 again, the left posterior lateral thigh, is somewhere in
25 this region of his anatomy.

1 Q. So it's in the darker shaded -- it went through the
2 darker shaded clothing?

3 A. That's my interpretation. I don't specify that in
4 my notes. I can't tell you that for a fact. That is my
5 interpretation because as I say, it is the posterior
6 aspect of the shorts which would suggest more back than
7 side that that's where it is.

8 Q. Okay, and again, that wound was going up, if you're
9 anatomically correct, up at sixty degrees and slightly
10 back?

11 A. That's correct.

12 Q. Thank you. You can have a seat.

13 MR. BELLAMY: The Court's indulgence.

14 THE COURT: Yes, sir.

15 Q. Can you, Doctor, tell us which wound would have
16 been first, second, third, fourth, fifth, essentially six
17 and seven?

18 A. No, sir, I cannot tell that.

19 Q. Okay. Is there -- the one that you indicated that
20 would have killed him, that would have been -- how long
21 would it have taken Mr. Slay to have died from that wound?

22 A. That would be very highly variable. I -- I cannot
23 answer that question.

24 Q. Are there any other wounds that were post-mortem or
25 indicative of the person's having died and then he was

1 shot?

2 **A.** No, sir.

3 **Q.** And, Doctor, the shorts that have the hole in it,
4 do the police have those?

5 **A.** Yes, sir.

6 **Q.** And all the other clothing?

7 **A.** That's correct.

8 **Q.** You indicated that in order to determine the amount
9 of -- and I don't know if soot, stippling, or what comes
10 out of the end of the barrel, if you had the ammunition,
11 the bullet that has the primer and gun powder, whatever,
12 in it, if you had that, would that help you determine how
13 much would come out if you test-fired it and did the piece
14 of paper thing like we talked about?

15 **A.** Yes, sir. If you're -- if you're asking questions
16 about distance of fire, the greatest variable is going to
17 be the gun itself and the ammunition that is used, so what
18 is done traditionally, if you have the weapon and the same
19 type of ammunition that was used is what they call test-
20 fire the gun, and so what they'll do is they'll -- they'll
21 take the gun and they'll shoot at a target, and they'll,
22 you know, start at contact and see what that does, and
23 then back up and see what it does at each distance and
24 when exactly no residue and no particular matter is
25 deposited on that target, so that's the most accurate way

1 to determine distance, so you really need to do that if
2 you're going to say that it's, you know, at least thirteen
3 inches or whatever the case may be, if you're going to
4 qualify what you mean by distant.

5 Q. If you had the ammunition, but without the
6 particular gun, could you do it using the ammunition and
7 one of the peripheral types of gun it may be? Would that
8 be better than not knowing at all?

9 A. It might give you an idea, but it would not be as
10 accurate.

11 MR. BELLAMY: I don't have anything further for the
12 Doctor. Thank you.

13 THE COURT: Redirect?

14 MS. VON HERRMANN: None, Your Honor. I would just
15 ask that she be released from her subpoena.

16 THE COURT: Any objection to the witness being
17 excused?

18 MR. BELLAMY: No, sir, Your Honor.

19 THE COURT: All right, Doctor, you are released from
20 your subpoena and may go back to your regular duties.
21 Thank you, ma'am.

22 DR. SCHANDL: Thank you.

23 THE COURT: All right, Solicitor, your next witness,
24 please, ma'am.

25 MS. VON HERRMANN: Yes, sir, Your Honor. The State

1 calls Peter Cestare.

2 THE COURT: All right. Please come around and be
3 sworn.

4 PETER CESTARE, being first duly sworn, testifies as
5 follows:

6 THE CLERK: Please be seated. State your full name
7 and spell your last name.

8 MR. CESTARE: Peter Cestare, C-E-S-T-A-R-E.

9 DIRECT EXAMINATION BY MS. VON HERRMANN:

10 Q. Tell the jury, if you will, please, by whom you are
11 employed.

12 A. I am employed with the Horry County Police
13 Department, and my current position title is Specialist.
14 I'm in charge of the Crime Scene, and Property and
15 Evidence sections.

16 Q. We had a gentleman, Robbie Caulder, in here earlier
17 who testified during the week. Are you his supervisor?

18 A. Yes, I am.

19 Q. How long have you been with -- how long have you
20 been in policing?

21 A. Since 1981. I've been with Horry County since --
22 for about seven years. I'm in my eighth year now.

23 Q. And tell the jury, please, what is a crime scene
24 specialist?

25 A. My position is overall forensic investigation for

1 all cases within Horry County.

2 Q. And what do you do? What are your duties?

3 A. I supervise on a day to day basis the crime scene
4 investigators. I respond to investigations as well and
5 oversee and direct their responsibilities and duties at
6 investigations.

7 Q. And during the course of those duties, do you
8 analyze crime scenes?

9 A. Yes, I do.

10 Q. And are you called upon periodically to reconstruct
11 crime scenes?

12 A. Yes, I am.

13 Q. And tell the jury, please, what your educational
14 experience is and what training you've had in that
15 particular area.

16 A. Prior to Horry County, I was employed by the New
17 York City Housing Police Department under N.Y.P.D. I was
18 a detective, rose through the ranks from police officer to
19 detective commander there. I was in charge of their
20 special investigations unit which would consist of major
21 cases, homicides, mechanical deaths, things of that
22 nature. I've been trained by the N.Y.P.D. in crime scene
23 processing, forensics processing, DNA collection and
24 handling of evidence by N.Y.P.D. and the Department of
25 Justice, blood stain pattern interpretation and analysis

1 by both N.Y.P.D. and the Department of Justice, crime
2 scene processing and analysis by N.Y.P.D. and the
3 Department of Justice, crime scene reconstruction by
4 N.Y.P.D. and the Department of Justice, ballistics
5 alignment, laser and trajectory by N.Y.P.D. and the
6 Department of Justice -- I'm sorry, by N.Y.P.D., AFIS,
7 Automated Fingerprint Identification System, through both
8 SLED and Motorola, the manufacturer of the equipment. I'm
9 trained in photography through Nikon, the Nikon School of
10 Photography, and I've been trained in fingerprinting, fume
11 and chemical treatment and alternate light source, both by
12 N.Y.P.D. and by Horry County Police Department.

13 Q. All right, so would all of those things sort of
14 fall under the purview of forensic investigation?

15 A. Yes, it would.

16 Q. And have you been qualified as an expert in court
17 previously?

18 A. Yes, ma'am, I have.

19 Q. How many times approximately?

20 A. Here in Horry County, probably seven, eight, and in
21 New York, upwards of fifty.

22 MS. VON HERRMANN: Your Honor, I would move to have
23 him qualified as an expert in the field of forensic
24 investigation.

25 THE COURT: Do you wish to voir dire the witness

1 about his qualifications?

2 MR. BELLAMY: No. I'm familiar with him. I think
3 he's qualified to testify.

4 THE COURT: All right. I am going to qualify him to
5 give his opinion in the field of forensic investigation.

6 A. Thank you, Your Honor.

7 Q. I'm going to start off just with a couple of things
8 that the jury has seen before. This is State's Exhibit
9 31. If you would just take a look at that, just open it
10 up if you will and tell me what that is.

11 OFFICER CESTARE: Do you have gloves by any chance,
12 or is there any objection to me handling the evidence in
13 there?

14 MS. VON HERRMANN: I have no objection to you
15 handling it.

16 THE COURT: We don't have any gloves anywhere?

17 MR. BELLAMY: I'm not sure which one that is.

18 MS. VON HERRMANN: 31.

19 THE COURT: We don't have any gloves anywhere?

20 A. I'll just ---

21 Q. If you want to just look at it, you don't need to
22 pull it out.

23 A. Okay. They are sandwich bag, sandwich baggie
24 packaging. I can take them out without touching them.
25 They are a typical plastic type of sandwich bag or baggie

1 packaging material.

2 Q. And are those the bags that were taken from -- from
3 the crime scene in this case where both fake and the real
4 cocaine were found?

5 A. Yes, that's correct. They were taken from there.

6 MS. VON HERRMANN: I would move these into evidence
7 at this time.

8 THE COURT: All right. What was the State's exhibit
9 again?

10 MS. VON HERRMANN: That was Number ---

11 MR. BELLAMY: 31.

12 THE COURT: 31?

13 MS. VON HERRMANN: 31.

14 THE COURT: Any objection?

15 MR. BELLAMY: No, sir, Your Honor.

16 THE COURT: All right, State's 31 is in evidence
17 without objection.

18 BAGGIES IN SMALL MANILLA ENVELOPE ADMITTED IN

19 EVIDENCE AS STATE'S EXHIBIT NUMBER 31.

20 Q. And I also want to ask you about State's Exhibit
21 Number 32 and ask you to identify what that is for me.

22 A. State's Exhibit 32 will be collected by
23 Investigator Caulder. They are forty-five caliber spent
24 shell casings, shell casings three, four, five. There are
25 five spent shell casings and two, three, four, five

1 projectiles.

2 Q. And were you present when those were collected?

3 A. Yes, I was.

4 Q. And were those placed in ---

5 A. I'm sorry; let me back up one moment. I was
6 present when the shell casings were collected and some of
7 the projectiles. Others were collected, I believe, during
8 the autopsy. I was not at the autopsy.

9 Q. Okay, so there's one projectile that was collected
10 at the autopsy and so you were not there for that, but the
11 remainder, you were present for the collection of those
12 particular items?

13 A. Correct.

14 Q. And were these items then placed in your custody
15 and control, or your officers, and sent ultimately to SLED
16 to test?

17 A. Yes. They were collected by Caulder, packaged by
18 him under my supervision, and brought back to the police
19 station and subsequently transferred to SLED.

20 Q. Thank.

21 MS. VON HERRMANN: I would move State's Exhibit 32
22 into evidence.

23 THE COURT: Is there any objection?

24 MR. BELLAMY: No objection.

25 THE COURT: All right. State's 32 is in evidence

1 without objection.

2 BOX CONTAINING NINE SMALLER BOXES AND ONE PLASTIC
3 VIAL ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT
4 NUMBER 32.

5 Q. All right, let's talk about Thursday, October the
6 21st, of 2005. Were you at the crime scene that occurred
7 on Butler Road?

8 A. Yes, I was.

9 Q. And what was your role in being there?

10 A. I was notified by our communications section, our
11 dispatchers, that patrol units had responded there and
12 found a deceased male inside a vehicle in a grassy area
13 adjacent to a building. I directed the response from my
14 unit and responded to that location as well to supervise
15 the investigation.

16 Q. And what did you specifically do when you first
17 arrived?

18 A. We first come on location obviously before we make
19 any entry into the immediate area surrounding, in this
20 case, where the vehicle is. Obviously we do a wide-
21 pattern walkaround of the grassy area and building to get
22 an overall look at everything. When you -- when you begin
23 to process a crime scene, we start way out at the outer
24 edges of it and work our way in. That way, we're sure
25 that we don't contaminate any evidence or trample any

1 evidence in the process of making our path into that
2 scene, and in this case, obviously patrol officers had
3 been up to the vehicle or close enough to the vehicle to
4 identify that there was a male deceased in the vehicle, as
5 well as paramedics and so forth, so we have to carefully
6 comb that area coming in to make sure that all evidence is
7 collected.

8 Q. I'm going to show you -- and ultimately you reached
9 the inside of the vehicle, is that correct?

10 A. Yes.

11 Q. I'm going to show you what's been marked as State's
12 Exhibit 20 and ask you to take a look at that photograph.

13 A. Yes.

14 Q. And also, State's Exhibit Number 5, and I notice on
15 those two photographs that the passenger side, front
16 passenger side window appears to be shattered, is that
17 correct?

18 A. Yes. In State's Exhibit 5, it's obvious.

19 Q. And when -- when you see that shattering effect
20 from there, what determination, if any, could you make
21 about -- well, let me just broaden it. When you look at
22 that scene in particular, could you make any determination
23 about whether there were any shots fired from the
24 passenger side of that vehicle or whether all of the shots
25 were fired from the driver's side?

1 **A.** In this -- first understand in both of these
2 photos, let me just go back one second, these photos have
3 been slightly altered from the standpoint of there are
4 evidence markers in them. No other alterations have been
5 done to these other than the placement of evidence
6 markers.

7 On State's Exhibit 5, there's a view on the passenger
8 side of that vehicle. On this -- on this photograph, it
9 is obvious to me that the window, the passenger window,
10 front passenger window, had been in the up position or
11 closed position as you would commonly think of it, and
12 when it busted, the glass being a tempered glass, which is
13 used on all automobiles, spider cracks or splinters and it
14 fell back in because of the angle of the glass, how it
15 pitches, it fell back into the seat.

16 State's Exhibit 20, again has been slightly altered
17 by the placement of two evidence markers there, shows
18 evidence markers indicating two projectiles on that seat,
19 as well as glass from that front passenger window.

20 With respect to your question concerning shots
21 through the passenger window, it's my opinion that there
22 were no shots fired from the passenger side of that
23 vehicle. All evidence relating to the shots was from the
24 driver's side of the vehicle.

25 PHOTOGRAPH OF CONSOLE MARKED FOR IDENTIFICATION AS

1 STATE'S EXHIBIT NUMBER 44.

2 Q. I'm now going to show you what's been marked as
3 State's Exhibit 44 and ask you if you can take a look at
4 this and identify this for me.

5 A. Yes. State's Exhibit 44 is untouched; there's no
6 alteration to the photo, no evidence markers or anything
7 in it. It is a -- typically a straight downward shot
8 photograph of the center console of the vehicle. This
9 photograph was taken after the victim had been removed
10 from the vehicle.

11 Q. And is it a fair and accurate representation of
12 what it is depicting here?

13 A. Yes.

14 MS. VON HERRMANN: I would move State's Exhibit 44
15 into evidence.

16 MR. BELLAMY: Your Honor, may we approach?

17 THE COURT: Absolutely.

18 (A Bench conference was held in the presence, but out
19 of the hearing, of the jury.)

20 THE COURT: All right, so you have an objection to
21 that particular ---

22 MR. BELLAMY: As to relevance. I'm not sure what
23 the relevance is.

24 THE COURT: All right, very good. I'm going to
25 allow it in evidence over the objection of the Defense.

1 MS. VON HERRMANN: Thank you, Your Honor.

2 THE COURT: You may continue.

3 PHOTOGRAPH ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT
4 NUMBER 44.

5 Q. And what is that -- what is that depicting there?

6 A. That's the console of the vehicle in between the
7 two front seats, the driver's seat and the passenger seat.

8 Q. And is that open or closed?

9 A. It's open.

10 Q. And that is -- I don't see any numbers or anything
11 here, so this would have been ---

12 A. After the -- after the victim was removed from the
13 vehicle and prior to the complete inventory of the
14 vehicle.

15 Q. So neither you nor anyone else that you aware of in
16 the police department would have opened that console?

17 A. No. That's the way we found it.

18 Q. Was a murder weapon ever recovered in this case?

19 A. No, ma'am, it was not.

20 Q. Was there a gun that was recovered in this case?

21 A. Yes, there was, from the victim.

22 Q. All right, it was recovered from the victim. Where
23 was it located?

24 A. It was -- may I stand?

25 Q. Certainly.

1 MS. VON HERRMANN: Your Honor, could we allow him to
2 step down to the jury?

3 THE COURT: Yes, ma'am.

4 A. The victim ---

5 THE COURT: You need to stand right in front of that
6 box that's on the rail there.

7 A. The victim was -- was seated on the passenger side
8 of the vehicle and slumped -- I'm sorry, in the driver's
9 side of the vehicle and slumped right towards the
10 passenger side of the vehicle. When we moved him out of
11 the vehicle or in the process of trying to do that, we
12 felt an object on his right side. We lifted up his shirt
13 and -- he had on a tee shirt. We lifted up the tee shirt,
14 and tucked in the waistband of the pants was a forty-five
15 caliber handgun.

16 Q. All right, and was that handgun then packaged and
17 sent up to SLED as well?

18 A. Yes, it was. That handgun was sent for SLED -- to
19 SLED for an analysis to compare it against the casings and
20 projectiles that were found there.

21 MS. VON HERRMANN: If you'll just stay right there
22 for one moment.

23 Q. I'm going to show you what's been marked as State's
24 Exhibit 17; it's in evidence, and would this be the side
25 of the shirt that the gun was located on, or would it be

1 the other side?

2 **A.** No. This is a view -- again, a slightly altered
3 photo as you will see the evidence markers in there. This
4 is a view from the driver's -- from the open driver's door
5 of the vehicle. Standing just to the side of the vehicle,
6 I'm looking in the driver's door, and as you can see, as I
7 mentioned, the victim, is seated in the driver's seat,
8 slumped to the right, and no, the side that the weapon is
9 on would be underneath him at the seat.

10 **Q.** Okay. I'm going to show you what's been marked as
11 State's Exhibit 36 for identification. I don't want you
12 to show this to the jury, but I just want you to kind of
13 take a look at this and tell the Court, please, if you
14 think that that would aid and assist you in describing to
15 the jury how you found that location and with relevance to
16 that weapon that you found on the victim.

17 **A.** Yes, it would aid me in being able to tell you what
18 the position of the weapon is. It would also bring a
19 second photograph into that center console area, showing
20 it open.

21 **Q.** Okay, and does it fairly and accurately represent
22 what it purports to depict? It is in black and white, but
23 other than the fact that it's in black and white, does it
24 fairly and accurately ---

25 **A.** Yes, that's correct. Again, it's got a slight

1 alteriza- -- alter to it because of the evidence marker
2 put in it. Outside of that and the coloring, that's
3 exactly the way the photo was taken.

4 Q. Thank you.

5 MS. VON HERRMANN: Your Honor, I would ---

6 MR. BELLAMY: Judge, I'm still not sure ---

7 THE COURT: All right, I appreciate that. What is
8 that? Which Exhibit is it?

9 MR. BELLAMY: It's State's 36.

10 THE COURT: All right, it's State's 36. State's 36,
11 you're offering it in evidence?

12 MS. VON HERRMANN: Yes, sir, Your Honor.

13 THE COURT: And you have an objection?

14 MR. BELLAMY: Yes.

15 THE COURT: All right, as to relevance?

16 MR. BELLAMY: Judge, I objected as to the nature of
17 the photograph.

18 THE COURT: All right, and the nature of the
19 photograph?

20 MR. BELLAMY: The Solicitor indicated there was a
21 specific reason why -- why that position needed to be
22 there, and I'm not sure what -- the officer hasn't said --
23 I didn't understand what he said.

24 THE COURT: All right, and I appreciate that.

25 Based on the testimony presented, I'm going to allow

1 36 in evidence over the objection of the Defense.

2 MS. VON HERRMANN: Thank you, Your Honor.

3 PHOTOGRAPH OF VICTIM ADMITTED INTO EVIDENCE AS
4 STATE'S EXHIBIT NUMBER 36.

5 Q. So if you will, just pull that up and let's take a
6 look at that. The jury is allowed to see that now.

7 A. This is the photo that was just introduced.

8 THE COURT: Sir, you -- you need to speak up, sir.
9 I'm sorry.

10 A. I'm sorry. This is the photograph that was just
11 introduced as State's Exhibit 36. This is a photograph
12 from the passenger side of that vehicle, looking at the
13 victim in there, and you will see, as I indicated, how he
14 is slumped to the right, a slump to that passenger side.

15 You will also see that the center console area is
16 open somewhat. The previous photo showed that as well.
17 The gun that the victim has on him is underneath his shirt
18 and under this waistband at -- pretty much at where he's
19 pressed against the seat or where his body is against the
20 seat in -- and that console area.

21 Q. Thank you. After reviewing those two photographs
22 and seeing what you observed there at the crime scene on
23 that day, do you have an opinion about whether or not ---

24 MR. BELLAMY: Your Honor, I would like to approach
25 the bench on this. I have an objection, Judge.

1 THE COURT: Okay. Well, I understand the objection.
2 I have to hear the question first.

3 MR. BELLAMY: Okay.

4 THE COURT: I mean, let me hear the question, and
5 then don't answer it, but let me hear the question first.

6 Q. Do you have an opinion about whether or not the
7 victim was attempting to reach that weapon?

8 THE COURT: All right, don't answer it.

9 All right, y'all come and talk to me.

10 (A Bench conference was held in the presence, but out
11 of the hearing, of the jury.)

12 Q. Was that gun exposed in any way?

13 A. No, ma'am, it was not. It was covered by the shirt
14 and within the -- tucked into the waistline of the -- of
15 the pants.

16 Q. Now, let's talk a little bit about -- you said that
17 was in the right-hand side, ---

18 A. Yes, the right side.

19 Q. --- is that correct?

20 I'm going to show you what's been marked as State's
21 Exhibit 45 and ask if you can identify that?

22 A. Yes. State's Exhibit 45 looks -- is a photograph
23 of the -- of the victim's hand.

24 Q. Does that fairly and accurately represent that
25 scene as it was on that particular day?

1 **A.** Yes, it does.

2 MS. VON HERRMANN: I would move to admit State's
3 Exhibit 45.

4 THE COURT: Any objection?

5 MR. BELLAMY: I would object, Judge, as to
6 relevance. The Doctor has already testified as to the
7 entrance and exit wounds. I'm not sure that
8 this officer even took this photograph or whose hands are
9 in here, but I would object to it as cumulative. The
10 Doctor has already testified, and ---

11 THE COURT: Why don't you ask the -- if you want to
12 cover some rationale or purpose for this particular
13 witness.

14 MS. VON HERRMANN: Yes, sir, Your Honor.

15 **Q.** Taking a look at this photograph, do you think that
16 this would aid and assist you, and aid and assist the
17 jurors in your explanation of that crime scene?

18 **A.** Yes, I believe it will.

19 **Q.** And in what way do you believe that -- that will
20 aid you?

21 **A.** This photo was taken to -- to specifically show
22 something that I observed on the victim's hand that day.

23 THE COURT: I'm going to allow State's 45 into
24 evidence over the objection of the Defense.

25 PHOTOGRAPH OF VICTIM'S HAND ADMITTED INTO EVIDENCE

1 AS STATE'S EXHIBIT NUMBER 45.

2 THE COURT: You may continue.

3 MS. VON HERRMANN: Thank you.

4 Q. Let's take a look at this photograph here. I don't
5 know if you can see that or not.

6 THE COURT: Just go, yeah, go right in front of that
7 microphone.

8 Q. What is this a photograph of?

9 A. This photograph shows the victim's right hand. You
10 can clearly tell it's the right hand by the placement of
11 the thumb and fingers. What you see on this photograph is
12 both -- is two wounds, entrance and exit, and what makes
13 this photograph unique to me is that it's what I would
14 refer to as a defensive wound. This photograph indicates
15 to me ---

16 MR. BELLAMY: Your Honor, I am going to ---

17 A. --- that this person's hand was up.

18 THE COURT: I am going to allow him, based upon the
19 Court qualifying him as a forensic investigator and his
20 experience, I am going to allow him to testify and respond
21 to that question. Thank you.

22 A. This photograph would indicate that this person's
23 hand was up in a defensive manner blocking something
24 coming at him, a shot. Commonly a defensive wound is --
25 there's two, two types of wounds when you classify wounds

1 on a body, offensive and defensive, offensive being the
2 aggressor, defensive being the person who is trying to
3 defend themselves or protect themselves. This would
4 appear to me to be a defensive wound, like the hand was
5 placed up.

6 There's also a bruising pattern here ---

7 MR. BELLAMY: Your Honor, I would object. He's now
8 getting into medical sort of things. The Doctor was here.
9 She testified.

10 THE COURT: Well, I -- I -- okay, I understand your
11 objection is to exceeding his qualifications, and I
12 respectfully disagree. I'm going to allow him. You can
13 certainly cross examination -- cross examine him. I will
14 allow the question and the answer.

15 A. It appears that there is a bruise pattern in the
16 hand, but there's obviously an entrance and exit wound on
17 the hand.

18 Q. And does -- in your experience, and I believe
19 you've had an opportunity on that day to view the victim's
20 body and the position of the victim body, you also map out
21 sort of where those entrance and exit wounds are on the
22 victim's body, is that correct?

23 A. Yes. At the time we mapped all of the wounds that
24 were observed by us on the body, and that along with the
25 photographs and everything from the scene are taken to the

1 autopsy so that the doctor that -- if the doctor in the
2 autopsy has any questions, obviously they weren't at the
3 scene, they can review our photographs. The investigator
4 that's assigned in this case, John Robert Caulder, Robbie
5 Caulder, attended the autopsy and would be able to point
6 out all of the wounds that we found, and the doctor would
7 make a determination at that point as to what's an entry
8 and what's an exit wound, what's an entry and correlates
9 to any projectiles within the body.

10 THE COURT: Solicitor, I hate to interrupt, but I
11 need to -- sir, if you could come back to the witness
12 stand for a minute, please, and ladies and gentlemen of
13 the jury, if you would go to the jury room for a moment,
14 please. Just leave your notes, pads and pens there.

15 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF**
16 **THE JURY.)**

17 THE COURT: Solicitor, and Mr. Bellamy.
18 (Ms. Von Herrmann and Mr. Bellamy speak with the Court off
19 the record.)

20 (Alternate Juror Hearl enters the Courtroom.)

21 THE COURT: Mr. Hearl, could you come around,
22 please, sir. (The Court speaks with Mr. Hearl off the
23 record.)

24 Let's just take a short break for about five minutes,
25 and then Madam Clerk, you report back to me, all right?

1 Thank you.

2 (OFF THE RECORD)

3 ON THE RECORD

4 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF
5 THE JURY.)

6 THE COURT: Ms. Von Herrmann and Mr. Bellamy, I
7 explained to you the nature of the family emergency that
8 was faced by the alternate. He has called home and it is
9 necessary for him to go to the hospital, so I am going to
10 excuse that particular juror. Is there any objection from
11 the State?

12 MS. VON HERRMANN: None, Your Honor.

13 THE COURT: From the Defense?

14 MR. BELLAMY: No, sir, Your Honor.

15 THE COURT: And obviously we will continue on with
16 the other juror remaining as the alternate, and so the
17 record is clear, I have excused Juror Number 157, James W.
18 Hearl, and Ms. Barbara C. McDowell, Juror Number 225, will
19 remain as the other alternate.

20 MS. VON HERRMANN: Your Honor, have the jurors been
21 instructed about what the situation is?

22 THE COURT: I am going to at this point in time just
23 tell them when they come back in.

24 All right, ask the jury to come back in.

25 Madam Clerk, will you go collect that note pad and

1 pen of Mr. Hearl, please.

2 Counsel, for your information, I instructed the Clerk
3 to collect the note pad and pen that Mr. Hearl was using,
4 and those notes will be destroyed.

5 Madam Clerk, you will make sure those notes are
6 shredded.

7 (THE FOLLOWING TAKES PLACE IN THE PRESENCE OF THE
8 JURY.)

9 THE COURT: All right, Madam Forelady, ladies and
10 gentlemen of the jury, one of your fellow jurors, the
11 alternate, Mr. Hearl, had a serious family emergency.
12 Based upon a phone call he made home, I've excused Mr.
13 Hearl from any further service in this particular case.

14 All right, Solicitor, you may continue on.

15 NOTE FROM JURY MARKED AS COURT'S EXHIBIT NUMBER 3.

16 DIRECT EXAMINATION OF OFFICER CESTARE CONTINUES:

17 Q. When we left off, you had been talking about the
18 shots that was through the victim's hand.

19 A. Yes.

20 Q. Is there any way to determine a sequence of shots
21 when you arrive at a scene like this?

22 A. In some cases you can. In this case, the only
23 thing I can -- I can tell you is from looking at the
24 totality of the scene itself, the victim in the car, how
25 everything was placed.

1 MR. BELLAMY: Your Honor, I would object. He's now
2 -- the Doctor has testified there is no way to determine
3 which one was first, and he's a crime scene specialist,
4 and I appreciate that ---

5 THE COURT: I understand that, and I don't -- I
6 didn't understand his answer to be that, but if -- I'll --
7 at this point in time, I've got to hear his answer and
8 then we'll see if I'll allow it. Thank you.

9 Go ahead.

10 A. As I mentioned earlier, in looking at that injury,
11 it is in my opinion a defensive wound which would indicate
12 his hand was up. When you look at the photos you've shown
13 here, State's Exhibit 20, State's Exhibit 36, clearly show
14 the victim's arm in a downward angle towards the front
15 passenger floorboard. In order for that shot to have been
16 through his hand, it could not have occurred where his
17 hand is now, so, therefore, his hand had to be up when
18 that shot occurred.

19 Q. Unable to tell with regard ---

20 THE COURT: I'm going to allow that. Thank you.

21 Go ahead.

22 Q. But unable to determine other than perhaps it being
23 a defensive wound what -- which one of those shots
24 occurred in what sequence, is that correct?

25 A. That's correct.

1 Q. Let's go back and talk about this vehicle quickly.
2 I'm going to show you State's Exhibit 25 and we did talk
3 about it for a moment, but what is -- what is that
4 photograph?

5 A. Okay, State's Exhibit 25 orientates in this manner:
6 It shows an exit hole through the pass- -- front passenger
7 door of that vehicle, and if I may, State's Exhibit 5 --
8 correct, that's 5, shows the overall vehicle. This is
9 simply a close-up of that bullet hole in the -- in the
10 door. That -- in looking at it, obviously that is an
11 exit, which meant it went from the inside of the vehicle
12 out.

13 I measured in the processing of that vehicle that
14 path, the trajectory, the angle at which the bullet went
15 through the door panel, the inside door panel, and through
16 the outer door skin, and it was measured at a fifteen
17 degree downward angle, so the bullet is traveling
18 downward.

19 Q. Okay, but the -- just in terms of how high would
20 you estimate that particular hole, bullet hole, to be?

21 A. I don't have a -- I don't have a distance on it
22 from the ground. Offhand, I don't know if it's in the ---

23 Q. What did you ---

24 A. The path of it is at a fifteen degree downward
25 angle.

1 Q. Downward angle?

2 A. So it's being -- it's coming from the driver's side
3 out the passenger side at a fifteen degree downward angle.

4 Q. Do bullets lose velocity as they travel?

5 A. Yes, they do.

6 Q. Tell the jury, please, how that -- how that
7 happens.

8 MR. BELLAMY: Judge, again, he's a crime scene --
9 ballistic guy was here. I would think he would be the
10 more appropriate person to testify to this and, Your
11 Honor, I've not been -- this has not been disclosed to
12 me ---

13 THE COURT: I'm going to sustain that objection.

14 MS. VON HERRMANN: Okay.

15 Q. Let me have you look at State's Exhibit 36 and
16 there obviously is some blood in that photograph. Did you
17 do any kind of blood spatter analysis in this particular
18 case?

19 A. No, ma'am, I did not because it was apparent that
20 the incident -- the victim was in the vehicle throughout
21 the course of the incident in my opinion, so, no, no blood
22 spatter analysis was done on that vehicle.

23 Q. What is blood spatter analysis typically used for?

24 A. To show movement. Real quick, an easy to
25 understand blood spatter and blood analysis is that blood

1 travels at different speeds depending upon what is making
2 it travel. In this case, the victim is in the vehicle so
3 that the area of containment is fairly small. There was
4 no need to really do a workup for blood spatter in this
5 vehicle.

6 Q. That's something that if you had a question about
7 whether a person was cut, or stabbed, or -- that might be
8 something you would look at in a case like that, correct?

9 A. Yes.

10 Q. But not appropriate really for this case?

11 A. Not in this particular incident, no.

12 Q. There's also some -- a photograph there of the
13 interior of the car where the two projectiles are sitting
14 in the passenger seat and there's some glass in there?

15 A. Yes, ma'am.

16 Q. Is there any way to determine whether those
17 projectiles landed on the seat first and the glass broke,
18 or whether the glass had broken beforehand and then the
19 projectiles landed there?

20 A. No. I was not -- I couldn't be able to tell you
21 that.

22 Q. Did you ever retrieve any clothing from Tyronne
23 Beaty in this case?

24 A. No, ma'am, I did not.

25 Q. In terms of forensic evidence, how many cases do

1 you think you've worked over the years?

2 **A.** I'm sorry; say again.

3 **Q.** How many cases do you think you've worked on over
4 the years?

5 **A.** Well over a thousand.

6 **Q.** In terms of what you all were able to gather in
7 terms of forensics in this case, a lot of forensic
8 evidence, you know, fifty-fifty with other cases, or not a
9 whole lot, how would ---

10 **MR. BELLAMY:** Judge, I would object to comparing to
11 other cases. He can talk about what he's done in this
12 case, but to compare it to other cases he's worked, I
13 think is not proper.

14 **THE COURT:** I -- I didn't understand. I understood
15 it to go to his experience as to what he has done in the
16 past.

17 **MS. VON HERRMANN:** And my question, Your Honor, is
18 there a lot of forensic evidence in this case compared to
19 other cases that he's worked on.

20 **THE COURT:** I don't -- I think you need to rephrase
21 your question, Solicitor, to be a little bit more specific
22 as to what area that you would be looking for him to
23 comment.

24 **Q.** Did you find any hair in this case?

25 **A.** Not in -- no.

1 Q. Did you find any fibers?

2 A. No.

3 Q. Find prints?

4 A. I'm sorry?

5 Q. Prints?

6 A. Yes.

7 Q. All right, and did any of those prints match up to
8 any of the co-defendants?

9 A. Not that I'm aware of, no.

10 Q. Were you able to find blood spatter evidence?

11 A. There's blood evidence, but no spatter analysis was
12 done.

13 Q. So my question, then, is this: There's not a whole
14 lot of forensic evidence in this case, is there?

15 A. I would have to say no. I mean, there's not a lot
16 of evidence that was collected.

17 Q. Thank you. That's my question.

18 MS. VON HERRMANN: I don't have any further
19 questions. Please answer any questions Mr. Bellamy has
20 for you.

21 THE COURT: Cross examination.

22 MR. BELLAMY: May it please the Court, Your Honor.

23 THE COURT: Yes, sir.

24 CROSS EXAMINATION BY MR. BELLAMY:

25 Q. Let me ask you -- let's go through some things that

1 what -- that are work related, okay, and you have your
2 notes and everything there?

3 **A.** I've got -- yeah, I've got a good amount of notes,
4 okay.

5 **Q.** Now, you did collect the evidence of the victim in
6 this case, did you not, the victim's clothing that he was
7 wearing at the time he was found?

8 **A.** Yes, sir.

9 **Q.** Okay. That was -- that was found, and you have
10 that currently in evidence, don't you?

11 **A.** Yes, sir, I believe we do.

12 **Q.** Did you ever do any -- and there was a hole in the
13 back of the pants of that victim, was there not, or
14 shorts?

15 **A.** I can't say with certainty.

16 **Q.** If I show you a photograph of that and I ask you if
17 you recognize it, that will help refresh your
18 recollection?

19 **A.** Yes, sir.

20 **Q.** Does that help refresh your recollection?

21 **A.** Yes, sir, it does.

22 **Q.** Okay. In fact, there was a hole in the back of the
23 pants, wasn't there?

24 **A.** Yes.

25 **Q.** Did you measure from the change in the color how

1 far back it was?

2 **A.** No, sir, I did not.

3 **Q.** The clothes that were taken from the autopsy, did
4 you -- talking about there's not a lot of forensic
5 evidence here, did you take those clothes and send them to
6 SLED to look for gunpowder residue?

7 **A.** I did not, sir. I can't speak for that evidence
8 that was handled by Investigator Caulder.

9 **Q.** Okay, but that's quite possible to take clothing
10 and look for gunpowder residue which can help determine
11 how close a shot was -- the gun barrel was from the
12 person, isn't that true?

13 **A.** I can't speak on behalf of ballistics, for them.

14 **Q.** Well, you can tell us about defense wounds, but is
15 it possible to -- for SLED to analyze clothing for
16 gunpowder residue? Now, what that means, somebody else
17 can tell us, but is that a possibility?

18 **A.** It's possible that they can analyze clothing to see
19 if there is gunpowder on it, yes.

20 **Q.** Okay, and that wasn't done in this case, was it?

21 **A.** I do not know, sir.

22 **Q.** Who would? You're the crime scene supervisor who
23 collects evidence. Do you have notes there that might
24 help you with that?

25 **A.** Yes. I have an evidence supervisor that deals with

1 SLED, and the individual investigator in this case would
2 have been Caulder, who deals with SLED.

3 Q. Okay, but can you tell us if that was sent to SLED
4 to be analyzed for gunpowder residue?

5 A. I cannot, sir, no.

6 Q. Okay. Now, there were also tire tracks or
7 impressions taken from that area where you went out there
8 to the scene, right?

9 A. Yes, sir.

10 Q. There were tire impressions taken from there,
11 correct?

12 A. There were tire impressions photographed, yes.

13 Q. And a cast actually was made, correct?

14 A. I believe so. Let me look back at the notes from
15 there. Yes, sir, there was.

16 Q. Okay, and you also obtained the known tire prints
17 of this gold Maxima, did you not?

18 A. I did not do that, sir, no.

19 Q. Well, as head of the crime scene people out there,
20 do you know if known prints of that gold Maxima were taken
21 to compare to the unknown tire tracks at the scene?

22 A. If you will give me just a moment.

23 MS. VON HERRMANN: Your Honor, I'm actually going to
24 object because Caulder has already testified that he ---

25 THE COURT: I appreciate that, but I'm going to

1 allow him to answer the question.

2 **A.** Bear with me just a minute. I've got to find all
3 this paperwork. I don't see the paperwork for that. I
4 may not have it with me.

5 **Q.** Maybe if I rephrase this, it might speed it up.

6 **A.** All right.

7 **Q.** No question you got the tire cast or impression
8 from the scene where the victim's vehicle was located,
9 correct?

10 **A.** Yes, sir.

11 **Q.** And that was taken because it was believed to
12 possibly help identify what type car may have also been
13 there, correct?

14 **A.** It was in the general area, yes, sir.

15 **Q.** Okay, so it would not have been in an area far away
16 that would have been irrelevant. It was an area that you,
17 as a crime scene investigator, thought would be relevant,
18 correct?

19 **A.** Anything within that field would have been
20 relevant, yes, sir.

21 **Q.** And is it fair to say also that you did get the
22 gold Maxima at some point in time and have custody of it?

23 **A.** Yes, sir, we did.

24 **Q.** So is it fair to say that then you had what has
25 been identified as a witness -- as a vehicle that was at

1 the location, correct, other than the victim's?

2 A. Yes, sir.

3 Q. And you also had these other known tire tracks,
4 correct?

5 A. Yes, sir.

6 Q. And you would have probably sent all that to SLED
7 so we could have a SLED agent come here and tell us
8 whether it is or isn't, right?

9 A. It would have been looked at, and whether or not it
10 was sent to SLED, I can't tell you that information.

11 Q. But you wouldn't deny if I had a SLED report from
12 latent prints and that that came back to y'all -- I'm not
13 going to talk about what it says, but if, in fact, SLED
14 sent a report back to Detective Lewis on that particular
15 issue?

16 A. Okay.

17 Q. Okay. Now, in addition to that, there were twenty-
18 two latent lifts taken from the crime scene, and when I
19 say crime scene, I mean out there, you know, not the
20 Maxima, but the crime scene which would have been out
21 there where the victim was found, is that not correct?

22 A. Yes, sir.

23 Q. And there were twenty-two, so there were twenty-two
24 prints taken, and I believe your testimony to the
25 Solicitor is that none of those matched my client, Tyrone

1 Beaty?

2 **A.** Not to my knowledge, none of them, yes, sir.

3 **Q.** But they also tested them against the two known
4 people in the vehicle, being Mr. Daniel Prater and
5 Dominique Carr, who had last been with the victim prior to
6 his death, and they weren't theirs either, were they?

7 **A.** I did not test them, so I can't attest for that.

8 **Q.** You don't disagree with that, though, do you?

9 **A.** I can't tes- -- I can't testify to it.

10 **Q.** Who could? Would it be Caulder or SLED?

11 **A.** Caulder.

12 **Q.** All right. Now, Caulder testified that things were
13 sent to SLED, that certain items were sent to SLED?

14 **A.** Yes, sir.

15 **Q.** And isn't it true that there's at least four of
16 those prints that come back, that they're not sure about
17 Antonio Smalls, that they were -- everybody else in this
18 case but Antonio Smalls, that he can't be ruled out? You
19 wouldn't disagree with that either? SLED sent that report
20 to Detective Lewis over here.

21 **A.** If that's what the report indicates.

22 **THE COURT:** Mr. Bellamy, are you asking a question
23 or are you making a statement? You're testifying.
24 Rephrase your question.

25 **Q.** Do you know if SLED sent a report back to your

1 department as to their findings as far as latent prints in
2 this case?

3 A. Yes, sir, they did.

4 Q. Okay, and who would have -- who would that have
5 been sent to?

6 A. That would have been sent to Detective Lewis and
7 more than likely a copy to Investigator Caulder.

8 Q. Okay. Now, have you reviewed that report?

9 A. I've looked at it. I've not reviewed it for ---

10 Q. Okay. Now, also, so there's a SLED report out
11 there on latent prints? There's a SLED report out there
12 on -- is that correct?

13 A. Yes, sir.

14 Q. There's a SLED report out there on these tire
15 tracks, is that correct?

16 A. That one I've not seen. I can't say that.

17 Q. Well, what about -- let's talk about DNA. Were
18 things sent to the DNA forensic department up at State Law
19 Enforcement Division for their analysis, items that y'all
20 collected from the crime scene or other places?

21 A. I can't say with any certainty, sir.

22 Q. Okay. Well, ---

23 A. I did not send them. It's possible someone else
24 did.

25 Q. Specifically the clothing of the victim, was it

1 sent to DNA, cuttings of the clothing of the victim? Was
2 it sent to DNA for analysis? Do you have a chain of
3 custody or anything there that would help you with that?

4 **A.** And again, sir, I didn't send them so I can't say
5 whether they were or weren't.

6 **Q.** Well, do you know if State Law Enforcement Division
7 sent a report back as to their findings for the DNA
8 evidence y'all sent?

9 **A.** The only report that I have back from SLED in my
10 possession is in reference to latent prints.

11 **Q.** Oh, so you do have that report?

12 **A.** Yes, sir, I have got a copy of that.

13 **Q.** I had just asked you concerning Mr. Antonio Smalls.

14 **MR. BELLAMY:** I'm not sure what I'm going to ask,
15 but I think they might object, and maybe SLED needs to ---

16 **Q.** Mr. Cestare, are there prints from the crime scene
17 that could possibly be Antonio Smalls, but no other person
18 in this case?

19 **A.** I don't think I can answer that. I think SLED
20 answered that already.

21 **Q.** And they sent a report to that effect? They sent a
22 report, right?

23 **A.** Yes, sir.

24 **Q.** Okay, so they would need to tell us that?

25 **A.** Yes, sir.

1 Q. Okay. Now, and as to DNA, you aren't sure if
2 anything was sent or if they sent a report back?

3 A. I don't have a report back, so, yes, sir, I do not
4 know what was sent, if anything was sent.

5 Q. Okay, and you don't deny that there were fingernail
6 -- fingernail clippings from the victim's hands sent up
7 there, do you?

8 A. Sir, again, I don't know what was sent up there.

9 Q. And who would know, the lead -- who is the lead
10 detective in this case if you know?

11 A. Detective Lewis.

12 Q. He's sitting right here?

13 A. Yes, sir.

14 Q. And he would get these reports back typically and a
15 copy to Crime Scene, correct?

16 A. A copy to the crime scene investigator, yes, sir.

17 Q. Do you know, or if you don't, you don't, about the
18 law enforcement going out to the house of the girlfriend
19 of my client, Tyrone Beaty, and taking photographs?

20 A. No, sir, I was not present at that. I have nothing
21 I can say against that.

22 Q. But as a crime scene supervisor, can you look
23 through your notes and indicate if that did, in fact,
24 occur?

25 A. If they went to what location, sir?

1 Q. To the home of the girlfriend, which was identified
2 as being with my client the night this happened, and take
3 photographs or take any items ---

4 MS. VON HERRMANN: I'm going to object, Your Honor.
5 In fact, I've got a motion as well.

6 THE COURT: All right, very good.

7 Ladies and gentlemen of the jury, go to your jury
8 room, please.

9 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF
10 THE JURY.)

11 THE COURT: Yes, ma'am, be glad to hear from you.

12 MS. VON HERRMANN: Yes, sir, Your Honor. Mr.
13 Bellamy has just made a statement wherein he said
14 something about his Defendant being with his girlfriend on
15 the night of this incident. That's clearly injecting
16 alibi into this trial. There's been no notice of alibi
17 sent to the Solicitor's Office, and I think it's
18 completely improper.

19 THE COURT: Mr. Bellamy.

20 MR. BELLAMY: Your Honor, her witness, Neil Hill,
21 testified that when they went back to Conway, his
22 girlfriend picked him up that night. That's all I'm
23 alluding to. I'm not alluding that he ---

24 THE COURT: Well, then, you need to rephrase the
25 question, that after the shooting and after Mr. -- your

1 client was brought back, you know, after the shooting,
2 then ---

3 MR. BELLAMY: I was not trying to intend or imply
4 alibi at all, Judge, just that there was evidence that
5 there was a particular person with my client after the
6 shooting and did they go to that home and look for
7 evidence.

8 THE COURT: You need to rephrase your question to
9 make it much more clear as to what you're asking in the
10 time frame. Otherwise, it's an improper question.

11 MR. BELLAMY: I'll do that, Judge.

12 THE COURT: All right, very good.

13 MS. VON HERRMANN: In addition to that, Your Honor,
14 I think Mr. Bellamy has opened the door with regard to the
15 SLED reports. He's asked Special Agent Cestare specific
16 questions about SLED reports. We have those SLED reports
17 and I would like to be able to ask him questions about
18 those SLED reports ---

19 THE COURT: I'll be glad for you to do so on
20 redirect.

21 MS. VON HERRMANN: Thank you, Your Honor.

22 THE COURT: All right, ask the jury to come back in.

23 MR. BELLAMY: Your Honor, as to the SLED reports, I
24 asked questions about were they sent back. I didn't ask
25 him what the results were.

1 THE COURT: You asked questions that were asking for
2 results in those.

3 MR. BELLAMY: And he answered he couldn't give me
4 those because he's not a SLED agent, and I ---

5 THE COURT: I understand that, but, you know, you
6 asked those questions. Now, if the reports are shown to
7 him, then he's going to be able to say what the results
8 are since you asked him to talk about them.

9 MR. BELLAMY: Well, can I go ahead and show them,
10 Judge?

11 THE COURT: You might as well, because I'm going to
12 allow the State to do so, so if you want to, you go right
13 ahead, and then they're going to be able to cover
14 everything that's in the report once you do that.

15 MR. BELLAMY: I understand, Judge.

16 THE COURT: All right. Now, are you going to
17 introduce it into evidence?

18 MR. BELLAMY: No, sir, Judge. Can I do -- I don't
19 think I can do it then, nor I don't think -- can she,
20 unless she introduces them, so I'm not going to ask that
21 question then.

22 THE COURT: Are you going to make any reference to
23 the SLED reports in your closing argument?

24 MR. BELLAMY: About what's in them?

25 THE COURT: Or any comments about that the State

1 could have done X or the State could have done Y, or
2 what ---

3 MR. BELLAMY: I can't tell you, Judge. I don't
4 know.

5 THE COURT: Well, ---

6 MR. BELLAMY: If you tell me what -- if you would
7 give me some guidance as to what ---

8 THE COURT: Well, I'll just say you need to be
9 extremely -- if you're not going -- if they're not coming
10 in, you need to be extremely careful in your closing
11 argument about what you say, and then I'll just listen to
12 the State to see if there is an objection. Thank you.
13 We'll just continue on.

14 If the State wants to offer those in evidence, are
15 you going to have an objection?

16 MR. BELLAMY: I believe it's more proper for a SLED
17 agent to come in and ---

18 THE COURT: I appreciate that. My question to you,
19 if the State wants to offer them in evidence, do you have
20 an objection?

21 MR. BELLAMY: I don't have an objection.

22 THE COURT: State, do you want to offer them in
23 evidence?

24 MS. VON HERRMANN: Yes, sir.

25 THE COURT: All right. Then I'll allow the State to

1 do that at this point in time, ---

2 MR. BELLAMY: So I can ---

3 THE COURT: --- they'll be in evidence, and then
4 you're going to be able to ask him questions about
5 documents that are in evidence, so ---

6 MR. BELLAMY: Thank you.

7 THE COURT: --- you go ahead and get those marked,
8 Solicitor, by the Court Reporter, please.

9 MS. VON HERRMANN: Let me think about this for a
10 second.

11 **(THE FOLLOWING TAKES PLACE IN THE PRESENCE OF THE**
12 **JURY.)**

13 (A Bench conference was held in the presence, but out
14 of the hearing, of the jury.)

15 SOUTH CAROLINA LAW ENFORCEMENT DIVISION REPORT,
16 LATENT PRINTS DIVISION, MAY 16, 2006, INTRODUCED
17 INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 46.

18 SOUTH CAROLINA LAW ENFORCEMENT DIVISION REPORT,
19 DNA DEPARTMENT, APRIL 17, 2007, INTRODUCED
20 INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 47.

21 SOUTH CAROLINA LAW ENFORCEMENT DIVISION REPORT,
22 EVIDENCE PROCESSING, DECEMBER 16, 2008, INTRODUCED
23 INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 48.

24 SOUTH CAROLINA LAW ENFORCEMENT DIVISION REPORT
25 REGARDING LATENT PRINTS, APRIL 25, 2006, INTRODUCED

1 INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 49.

2 THE COURT: All right, if you would identify all
3 those documents, please, Solicitor.

4 MS. VON HERRMANN: Yes, sir, Your Honor. These are
5 the -- this will be State's Exhibit 46, which would be
6 South Carolina Law Enforcement Division, Latent Prints
7 Division, referring to tire impressions from a Nissan
8 Maxima.

9 Number 47 will be South Carolina Law Enforcement
10 Division, a report from the DNA Department.

11 48 will be a South Carolina Law Enforcement Division
12 report from Evidence Processing.

13 And 49, a South Carolina Law Enforcement Division
14 report regarding latent prints.

15 THE COURT: All right, and as I understand it,
16 that's being introduced by the State, the agreement by the
17 Defense? There's no objection by the Defense, is that
18 correct?

19 MR. BELLAMY: That's correct, Your Honor.

20 THE COURT: All right, so State's 46, 47, 48, and 49
21 are in evidence without objection.

22 MS. VON HERRMANN: Thank you, Your Honor.

23 MR. BELLAMY: Thank you, Your Honor.

24 CROSS EXAMINATION BY MR. BELLAMY CONTINUES:

25 Q. I know that was difficult because you're not from

1 SLED, but this will make it easier. These are reports
2 that we've agreed to let come on in and that you could
3 testify from, okay?

4 A. Yes, sir.

5 Q. I know it's not your reports specifically, but go
6 back to the tire impressions. I'm going to hand you what
7 is now in evidence as State's 46, and that is a report
8 from SLED that deals with the tire impressions, correct?

9 A. Yes, sir, and rolled impressions, yes.

10 Q. Okay, so in essence they took the cast from the
11 incident location that you found where there had been a
12 car ---

13 A. Yes, sir.

14 Q. --- that left an impression, and they compared it
15 to this gold Maxima that we've been talking about this
16 week, correct?

17 A. Yes, sir.

18 Q. And did they reach a conclusion as to whether the
19 car that left that impression at the scene was that gold
20 Maxima?

21 A. Yes, sir, and no conclusion was rendered due to the
22 quality of Item 50, which was the tire impression cast.
23 In other words, it's -- it's soft soil, so they weren't
24 able to get a clear enough cast to ---

25 Q. Read on. They did get it on the second one, did

1 they not?

2 **A.** Right, and then tire impression cast from behind
3 northeast corner of the Masonic Lodge is not identified
4 with Items 46 through 49, 46 through 49 being the rolled
5 impressions from that vehicle, so that was not identified,
6 yes, sir.

7 **Q.** The conclusion is that there were two casts made.
8 One was not a good enough cast; the other was, but it
9 wasn't the Maxima, correct?

10 **A.** Yes. There again, it's a grass field, so anybody
11 could have driven up on it.

12 **Q.** Okay, but y'all thought it was important to take?

13 **A.** Yes, sir.

14 **Q.** Okay. Now, I'm going to hand you now what's marked
15 as State's Exhibit 47; which is a DNA analysis ---

16 **A.** And just for the record, sir, the date on that
17 report is wrong. They have the incident date incorrect.

18 **Q.** Okay, and I asked you previously about fingernail
19 clippings and you were unable to ascertain whether that
20 had been done. I would ask that you look at 39-R and 39-L
21 and indicate whether fingernail clippings of the victim
22 were taken?

23 **A.** Yes, sir, clipping were taken from both the left
24 hand and right hand of Miles Thomas Slay.

25 **Q.** And fingernail scraping clippings?

1 A. Clippings, sir.

2 Q. Okay. Did they determine if there was anything
3 underneath there, or do you know? Do you know who took
4 those?

5 A. I don't, sir. I don't know who took them, and I
6 don't know what the analysis was requesting.

7 Q. Let's talk about the latent lifts. I show you
8 what's been marked as State's 49, and you had already
9 indicated you had this before, correct?

10 A. Yes, sir, I believe I do if it's the same one. May
11 I ---

12 Q. And I'll let you look at this. Maybe I'll hold
13 this and does that look like the same report?

14 A. Yes, sir; yes, sir, it is.

15 Q. Now, on this there was -- the latent lifts that
16 were taken were sent to SLED for their comparison, right?

17 A. I'm sorry, sir; I didn't hear you.

18 Q. I'm sorry. The latent lifts that y'all got from
19 the crime scene were sent to SLED for their analysis, or
20 some of them?

21 A. Yes, sir. These are the lifts from the Toyota
22 Highlander.

23 Q. Okay, and on Item -- and they are -- let me see --
24 if you want to review it to help yourself, are there any
25 of those that are matched to my client, or the two other

1 known people, Dominique Carr and Daniel Prater, who were
2 in the car?

3 A. And you're asking specifically if they were
4 identified to who, sir?

5 Q. To Tyronne Beaty, Daniel Prater, or Dominique Carr?

6 A. No, sir, not that I see in here, and I -- unless
7 I'm missing something.

8 Q. Now, are there some that listed as no conclusion?
9 I think three of them?

10 A. That's correct, sir.

11 Q. And that would be as to which particular
12 individual?

13 A. Some were not suitable at all for comparison.

14 Q. The ones that were suitable is what I'm talking
15 about, the ones where you have a print ---

16 A. Uh-huh (affirmative response).

17 Q. --- and they're comparing them?

18 A. No conclusion be rendered to the quality of Item 40
19 to Antonio Smalls.

20 Q. Antonio Smalls, okay, and ---

21 A. And there's one -- let me just see what the other
22 one is here. That's all I see.

23 Q. How many did you see? They came to no conclusion
24 as to Mr. Smalls, Antonio Smalls?

25 A. Roughly fifteen if I'm counting this accurately.

1 Q. Fifteen?

2 A. Yes, sir.

3 Q. Okay. Now, and before I hand you this, I'm going
4 to ask you as a crime scene specialist, do you send items
5 to the State Law Enforcement Division for what we call
6 evidence processing to -- for them to try to extract DNA
7 from items?

8 A. In some instances, yes, sir. In other instances,
9 we will do the prep work for it.

10 Q. When you say -- would y'all actually attempt to
11 extract DNA from an item and then send that, package it
12 somehow and send it to SLED, or would you send it to SLED
13 and let them extract it?

14 A. It's done both ways, sir.

15 Q. And in this case, do you know if y'all did any DNA
16 extraction work, and look through your notes and see if
17 there's any -- anything that indicates that there was DNA
18 extraction work done?

19 A. Yes, sir, I have -- I do have a sheet here from
20 SLED on some DNA work.

21 Q. I'm sorry; would you say that again?

22 A. I do have a SLED -- a copy of a SLED report here
23 referencing some DNA work, yes, sir.

24 Q. DNA work or evidence processing?

25 A. DNA for analysis, a SLED report.

1 Q. Could I see that?

2 A. (Witness hands document to Mr. Bellamy.)

3 Q. Okay, that's got some DNA tests. What I'm
4 referring to is whether DNA was extracted from an item,
5 where it's taken from clothing, from a cigarette butt, or
6 other item. Did y'all locally, I'm talking about the
7 County Police, do any of you have a report, a County
8 Police report, that indicates that y'all attempted to
9 extract DNA off of or from any item collected?

10 A. I don't have that information, sir. I don't know.
11 I did not.

12 Q. Okay. Are you aware as a supervisor if Officer
13 Caulder -- now, he had just started at that time, is that
14 my understanding, in Crime Scene? He was on probation, I
15 think?

16 A. Not probation, but he was new to Crime Scene, yes,
17 sir.

18 Q. And I didn't mean it in a bad way. I think that's
19 what he said when he testified, but he was relatively new.
20 Do you have any indication as to whether any of that work
21 was done to extract DNA from any of the items that y'all
22 collected?

23 A. I don't have that information, sir. I don't know.

24 Q. Now, do you know, and I'll show you this, what is
25 now marked as State's 48, which is a Evidence -- from

1 Evidence Processing of the State Law Enforcement Division,
2 and if you know, isn't that the place where evidence goes
3 to be processed and then sent off, either looking for
4 fingerprints there, DNA, and then they send it to the
5 appropriate department for them to analyze, correct?

6 **A.** Within SLED, yes, sir, that's correct.

7 **Q.** The Evidence Processing point is where you would
8 send an item and they try to extract from that what they
9 can and then send it to whoever that has a specialty in --
10 whether it's Trace, Fingerprints, Toolmarks, whatever it
11 may be, correct?

12 **A.** To some degree, sir, and it's not always
13 extracting. Sometimes DNA is as simple as swabbing this
14 counter for touched DNA, so you wouldn't be extracting it.
15 You'd simply be ---

16 **Q.** But you could find it on something like that?

17 **A.** Yes, sir.

18 **Q.** Now, what items does it indicate on that SLED
19 report were sent, and when we talk about DNA, we're
20 talking about human bodily fluids or something that has, I
21 guess, what DNA is, hair, saliva, something from a person?
22 In other words, DNA is not gunpowder residue? It's not
23 those sort of things, and drugs? DNA is from a person,
24 correct?

25 **A.** DNA would -- you are looking for something to

1 identify it back to a person, yes, sir.

2 Q. To a specific person?

3 A. Yes, sir.

4 Q. So in this report, what items were sent to SLED to
5 be processed and what were they processed for as indicated
6 by that report?

7 A. This report indicates that items -- as SLED keyed
8 in the items, Item Number 34, 35, 36, 37, and 38,
9 respectively, being a short sleeve tee shirt, a sleeveless
10 tee shirt, shorts, a pair of socks, pair of shoes.

11 Q. And those would have been from the victim and
12 analyzed for DNA evidence, correct?

13 A. I cannot tell you that with any certainty. It
14 doesn't say what they're from. I'd have to see the SLED
15 log-in sheets to tell you what -- where those pieces
16 correlate to.

17 Q. Okay, well, and if you don't know where they come
18 from, but it appears that they are processed for DNA
19 evidence?

20 A. They were -- yes, sir, they were brought to see if
21 there was DNA available to be sent on to the DNA lab.

22 Q. Okay.

23 A. Yes, sir.

24 Q. So they processed and sent it on ---

25 A. Yes, sir.

1 Q. --- according to this report?

2 A. Yes, sir.

3 Q. And it may help you -- I believe you have the DNA
4 report up there, correct?

5 A. Yes, sir, I think I do.

6 Q. And if we look at these together, and I'm sorry
7 this seems complicated, but I believe it would help you to
8 look at items off of here and compare them to the DNA
9 which indicates what they are?

10 A. Okay.

11 Q. Does that make sense?

12 A. Sure. Yes.

13 Q. So the items that were 34, 35, 36, and 37, and 38,
14 so what those items are, are reflected in the DNA report,
15 aren't they?

16 A. Well, with the exception of 35, yes, sir. Thirty
17 -- I see 34, 36, 37. I do not see 35 indicated here --
18 34, 35, 36, 37, 38 -- yes, everything but 35 appears to be
19 contained on these sheets.

20 Q. Okay, and now the only items sent for processing --
21 you're aware of no processing done locally?

22 A. I don't understand your question, sir.

23 Q. Okay. Items that were collected to extract -- and
24 when I use the word "extract," I don't know what --
25 because you talk about it could be just a ---

1 **A.** Say a locating or whatever, okay.

2 **Q.** Whatever, swabbing or something for DNA. As far as
3 swabbing or attempting to locate DNA in this case, did
4 anyone do that here locally?

5 **A.** Yes, sir. Evidence would be looked at in our
6 office by the investigator.

7 **Q.** But do you have any notes that indicate that any of
8 the evidence collected was looked at for DNA?

9 **A.** No, sir. That's what I said earlier; I don't have
10 that information, but if it went to SLED, it had to be
11 looked at in order to be transported up there.

12 **Q.** Okay. I guess my question is, though, do you have
13 any report from Crime Scene, from you, or Officer Caulder
14 that indicates that any evidence was processed here for
15 DNA?

16 **A.** Not that I'm aware of. In this case where SLED is
17 going to be doing -- as you indicated on that, evidence
18 processing, it would have been looked at by Caulder and
19 then transported to SLED for them to process and then
20 analysis.

21 **Q.** Okay, so ---

22 **A.** So obviously if it's at SLED, Caulder looked at it,
23 so yes, it ---

24 **Q.** But when you say looked at it, I understand he
25 looked at it. He had to pick it up and put it in the

1 thing, but did he process it specifically for DNA
2 evidence, any of the items that was collected?

3 **A.** Sir, everything that we touch essentially is
4 processed by us in one form of a -- or another.

5 **Q.** Okay. Do you have a report that says that?

6 **A.** No, sir; there wouldn't be.

7 **Q.** Okay. Now, you just told me, I believe, or
8 testified, but I think you probably told me what -- in
9 response to a question about extracting DNA. You could
10 get DNA off of that, can't you?

11 **A.** In some instances, yes, sir.

12 **Q.** DNA, because when -- I believe it was Officer
13 Caulder that testified when you put your hand down,
14 there's sweat and oil that's left behind, and not -- yeah,
15 sweat and oil out of your fingers that are left behind,
16 but potentially right there, you could get my DNA,
17 correct?

18 **A.** Potentially, yes.

19 **Q.** Okay, so potentially just by touching something,
20 you could swab it and potentially get DNA?

21 **A.** Yes, sir, in some cases, yes.

22 **Q.** Okay, and I understand not in every case, but in
23 some cases, that could be done?

24 **A.** Yes.

25 **Q.** So if you have an item that is known to have been

1 touched or someone says it's been touched by -- Mr.
2 Bellamy is the only one that touched that item, then that
3 would be something you would want to test for DNA and
4 swab, because that would be -- if you find my DNA, that
5 would be powerful evidence, wouldn't it?

6 **A.** It would be powerful evidence, yes, but not
7 everything can be swabbed.

8 **Q.** Well, I understand. You might not get it, but you
9 would need to swab it to determine if you could get that
10 DNA, correct?

11 **A.** In some cases, yes.

12 **Q.** Or in some cases you would extract it if it's a
13 porous material possibly?

14 **A.** It could be as simple as finding a droplet of blood
15 or finding a hair or a fiber, sure.

16 **Q.** So it could be anything, hair, fiber, saliva,
17 blood, ---

18 **A.** Yes, sir.

19 **Q.** --- or what you leave behind when you touch
20 something?

21 **A.** Yes. DNA is your genetic fingerprint essentially.

22 **Q.** And you have no record of any swabbing being done
23 of any evidence, correct, that y'all have, and I
24 understand SLED may have done whatever they did?

25 **A.** Not that I'm aware of, sir, no.

1 MR. BELLAMY: The Court's indulgence.

2 THE COURT: Yes, sir.

3 Q. I would like to go back right before I believe we
4 took a little break and clarify one of my questions that I
5 think may have been confusing, if you know. There's been
6 evidence in the case that Mr. Beaty was, after this event
7 occurred allegedly, that my client afterwards was with his
8 girlfriend, she picked him up in Conway. Do you have any
9 record of your people or Crime Scene going to this lady's
10 house and photographing the house or anything of that
11 nature?

12 A. No, sir, I have no knowledge of that.

13 MR. BELLAMY: The Court's indulgence.

14 THE COURT: Yes, sir.

15 MR. BELLAMY: I don't have any further questions of
16 Mr. Cestare. Thank you.

17 THE COURT: Redirect?

18 REDIRECT EXAMINATION BY MS. VON HERRMANN:

19 Q. Y'all don't -- y'all don't do DNA at the police
20 department here, do you?

21 A. We don't analyze it, no, ma'am.

22 Q. So when you have a question about DNA, you package
23 it up, ---

24 A. We call SLED.

25 Q. --- and you send it to SLED?

1 In this case, y'all sent a number of items that were
2 taken from the autopsy, the victim's clothing from the
3 autopsy, and you sent them up to SLED for DNA, correct?

4 **A.** Again, I -- I don't know exactly what these items
5 are from without seeing the SLED Intake Sheet on it.

6 **Q.** Well, let's just look at the items that were
7 submitted here: Short sleeve tee shirt, correct?

8 **A.** Uh-huh (affirmative response).

9 **Q.** Sleeveless tee shirt, ---

10 **A.** Yes.

11 **Q.** --- correct? Shorts, correct?

12 **A.** Yes.

13 **Q.** A pair of socks and a pair of shoes?

14 **A.** Yes.

15 **Q.** And y'all sent those items up to DNA at SLED and lo
16 and behold, those items taken from the autopsy come back
17 with DNA from Miles Slay, the victim, is that correct?

18 **A.** Yes. Items 34, 36, 37, 39 are consistent with the
19 DNA profile from Miles Slay.

20 **Q.** So it's not surprising that the victim's bloody
21 clothing comes back positive for DNA to the victim, is it?

22 **A.** That would be correct, yes.

23 **Q.** All right. Let's take a look at these tire
24 impressions. Where did this incident take place?

25 **A.** In a grassy, sandy field adjacent to a Masonic

1 Lodge on Butler -- Butler Road.

2 Q. A Masonic Lodge, a meeting place, right?

3 A. Well, the grassy area is their parking area, yes.

4 Q. Lots of cars coming in and out?

5 A. Yes, ma'am.

6 Q. Two tire impressions, one of them no conclusion,
7 correct?

8 A. Yes.

9 Q. One of them, not identified as the Maxima, right?

10 A. Correct.

11 Q. Latent prints, y'all took a bunch of prints off the
12 Highlander?

13 A. Yes, ma'am.

14 Q. Twenty-two of them?

15 A. Yes.

16 Q. And sent them off to SLED; SLED processed them. Of
17 all the prints, no prints identified to Tyronne Beaty,
18 right?

19 A. Correct.

20 Q. No prints identified to Neil Hill, correct?

21 A. Correct.

22 Q. No prints identified to Corey Smalls?

23 A. Correct.

24 Q. No prints identified to Dominique Carr?

25 A. Correct.

1 Q. No prints identified to Daniel Slater, correct?

2 A. Correct.

3 Q. All right. No conclusions as to Antonio Smalls,
4 correct?

5 A. Correct.

6 Q. And read that and tell me why there's no conclusion
7 as to Antonio Smalls.

8 A. They were not suitable for South Carolina Automated
9 Fingerprint, AFIS, System.

10 Q. Those prints, they don't know whether those prints
11 belong to Antonio Smalls, or me, or you, or anybody else,
12 is that correct?

13 A. Correct.

14 Q. All right, so the gist of it is we've got DNA on
15 the victim's bloody shirt that belonged to the victim. We
16 got nothing with regard to prints, and we got nothing with
17 regard to tire impressions, right?

18 A. Correct.

19 Q. All right. Thank you.

20 MS. VON HERRMANN: I don't have any further
21 questions.

22 THE COURT: Anything on those questions, Mr.
23 Bellamy?

24 MR. BELLAMY: Yes, sir, on the one -- the last
25 question, I believe.

1 RECROSS EXAMINATION BY MR. BELLAMY:

2 Q. As far as Antonio Smalls, there were three of them
3 that didn't come back -- came back no conclusion, correct?

4 A. Uh ---

5 Q. The rest of those prints -- well, let me let you
6 answer. I'm sorry.

7 A. Yes.

8 Q. Is that correct?

9 A. Yes.

10 Q. So the other nineteen, they were able to compare
11 Mr. Smalls' prints to what your known -- unknown prints
12 off of the car were, and that's not him either, right?

13 A. No, that's not correct. Some of them say no value
14 for identification. Some of the lifts were not ---

15 Q. Okay. I understand.

16 A. --- good enough for ---

17 THE COURT: Mr. Bellamy, allow him to finish his
18 answer.

19 Q. The ones that were ---

20 THE COURT: Mr. Bellamy, allow him to finish his
21 answer.

22 Finish your answer, sir.

23 A. There are several prints indicated here, lifts, and
24 -- and -- where it says, "Result, no value for
25 identification." In other words, the lift did not pull

1 enough ridge detail in order to identify to anybody.

2 Q. To anybody in the world?

3 A. Yes, sir.

4 Q. And I know -- I'm not talking about those. I'm
5 talking about the ones where you actually got a valid
6 print off the car and were analyzed by SLED. Some of the
7 ones they did analyze Antonio Smalls and can say were not
8 his, correct?

9 A. Correct.

10 Q. Okay, so there's a print on the car that says it's
11 not anybody in this case, but on three specific ones, they
12 can't tell -- they can't say it's not Antonio, can they?

13 A. Well, they're saying to please resubmit inked palm
14 prints and so forth ---

15 Q. On who?

16 A. On Antonio Smalls.

17 Q. Okay. Did y'all do that?

18 A. I don't know, sir.

19 MR. BELLAMY: I don't have anything further.

20 THE COURT: Anything else, Solicitor?

21 MS. VON HERRMANN: No, sir.

22 THE COURT: Do you wish the witness to be excused?

23 MS. VON HERRMANN: I do, Your Honor.

24 THE COURT: Any objection?

25 MR. BELLAMY: No, sir, Your Honor.

1 THE COURT: All right, sir. You are released from
2 your subpoena and may go back to your regular duties.

3 OFFICER CESTARE: Thank you, Your Honor.

4 THE COURT: Further witnesses on behalf of the
5 State?

6 MS. VON HERRMANN: Your Honor, may I approach?

7 THE COURT: Yes, ma'am.

8 (A Bench conference was held in the presence, but out
9 of the hearing, of the jury.)

10 THE COURT: All right, ladies and gentlemen, based
11 on what the attorneys have informed me, we're going to
12 stop for the evening. We are now stopping during the
13 middle of a rain storm, but I am sorry. All right, I
14 would like for you to be back tomorrow morning at nine
15 o'clock. Be back tomorrow morning at nine o'clock in your
16 jury room and we will reconvene and start again at that
17 point in time.

18 Please remember what I told you yesterday, don't talk
19 about the case. Don't allow anybody to talk to you about
20 it. Don't talk about it at home, or on the way, or, you
21 know, you understand. You have to decide this case solely
22 and completely on the evidence that's presented in the
23 courtroom and from no other source. Obviously that would
24 mean y'all can't do any research on it. You can't look up
25 anything. I know everybody wants to look up things on the

1 Internet, and obviously you can't do that. You can't
2 Twitter somebody about the case. After it's over with,
3 you can do whatever you want. Until the case is over
4 with, you decide it on what you hear in the courtroom and
5 no other source, all right? See you back tomorrow morning
6 at nine o'clock. Thank you very much.

7 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF**
8 **THE JURY.)**

9 THE COURT: Anything further from the State at this
10 point in time?

11 MS. VON HERRMANN: Nothing, Your Honor.

12 THE COURT: From the Defense?

13 MR. BELLAMY: No, sir, Your Honor.

14 THE COURT: All right. See y'all back tomorrow
15 morning at nine o'clock. Thank you very much.

16 (OFF THE RECORD - End of Day)

17 **THURSDAY, JULY 15, 2010**

18 **ON THE RECORD**

19 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF**
20 **THE JURY.)**

21 THE COURT: All right, we were talking in chambers,
22 Counsel, about the two issues regarding the charge in this
23 case, and one of those was the felony murder inference,
24 and since it's fairly short, I'll just read that.

25 "If one intentionally kills another during the

1 commission of a felony, the inference of malice may arise.
2 If facts are proved beyond a reasonable doubt sufficient
3 to raise an inference of malice to your satisfaction, this
4 inference would simply be an evidentiary fact to be taken
5 into consideration by you, along with all the other
6 evidence in the case, and you may give it the weight that
7 you decide it should receive."

8 I intend to charge that in conjunction with my charge
9 for murder. Is there any objection that you wanted to
10 state on the record to that, Mr. Bellamy?

11 MR. BELLAMY: Yes, sir, Your Honor. I would object
12 to that as previously done back in chambers. I believe it
13 would be confusing for the jury.

14 THE COURT: All right, sir, and the reason or the
15 grounds for that would be?

16 MR. BELLAMY: I believe it would confuse the jury,
17 Your Honor.

18 THE COURT: All right, very good. The State also
19 asked for the Court to charge the inference of malice
20 arising from the use of a deadly weapon, and this goes --
21 and there was an objection to that by the Defense bringing
22 up the case of State v. Belcher, as cited by the South
23 Carolina Supreme Court in 2009, found at 685 S.E.2d 802.

24 I also took into consideration besides that case a
25 case found at 2009 West Law 489, 36 -- 3654, 489, 3654,

1 and that is a In the Interest of Walter M., a minor under
2 the age of seventeen, who was charged with a murder and
3 tried in the Family Court, in making my decision in this
4 particular case.

5 Reading State v. Belcher, I don't know that this
6 particular case is covered by the issues of State v.
7 Belcher. What State v. Belcher causes us to do, since the
8 Supreme Court didn't set it forth exactly as causing the
9 Circuit Bench to read the tea leaves as to where the
10 Supreme Court is going with that particular decision,
11 it's my belief that where the Supreme Court of this State
12 will eventually arrive at is the proposition that the
13 instruction that malice may be inferred from the use of a
14 deadly weapon will no longer be the law of the State of
15 South Carolina under any circumstances, no matter what
16 those circumstances may be.

17 Though State v. Belcher does not cover the facts of
18 this particular case, I respectfully decline to grant the
19 State's request to charge an inference of malice by the
20 use of a deadly weapon.

21 MS. VON HERRMANN: Thank you, Your Honor.

22 THE COURT: All right, with that, any other
23 questions by the State as to the charge that we've already
24 talked about?

25 MS. VON HERRMANN: None with regard to the charge,

1 Your Honor.

2 THE COURT: All right, and from -- as to the charge
3 from the Defense?

4 MR. BELLAMY: None, other than as previously
5 objected to. I would have one separate issue that I
6 mentioned to the Solicitor and wanted to bring it to the
7 attention of the Court before I did during my closing so
8 as not to ---

9 THE COURT: All right, very good.

10 MR. BELLAMY: I may, or I may not, in reference to
11 one of the gunshot wounds try to do a little demonstration
12 with my assistant, Ms. Mills, over here in front of the
13 jury as part of my closing argument, and it involves one
14 of the gunshot wounds, Judge.

15 THE COURT: All right.

16 MR. BELLAMY: And -- but I want to bring -- I
17 mentioned it to the Solicitor and bring it to the Court's
18 attention because I don't want her walking over here and
19 everybody thinking, "Well, what in the world is that
20 fellow doing?"

21 THE COURT: You don't want to -- want to be like Jim
22 Dunn and snatch the -- snatch the lady up out of the
23 witness chair and assault her and say, "Is that how your
24 husband assaulted you?"

25 MR. BELLAMY: I'm not going to -- I'm not -- well,

1 in some ways I wouldn't mind being like Jim Dunn, in a lot
2 of ways not, Judge, but no, it won't be like that, but it
3 involves, you know, the gunshot wound to demonstrate
4 possibly angles and things like that and having a person
5 -- and have her seated in a chair. It won't take but a
6 second, Judge.

7 THE COURT: Does the State have an objection to
8 that?

9 MS. VON HERRMANN: No, sir, Your Honor.

10 THE COURT: All right, very good. Based on the way
11 you've described it to me, I'll be glad for you to do
12 that. I don't know, Mr. Bellamy, if Judge Floyd ever told
13 you that story, but he ---

14 MR. BELLAMY: He did.

15 THE COURT: And it shocked everybody, me included.

16 MR. BELLAMY: I hope not to shock anybody.

17 THE COURT: All right. As also discussed, I wanted
18 to go over a couple of things with y'all so that we didn't
19 have to bring the jury in and then send them back out. As
20 I understand it, Solicitor, what's the position as far as
21 any further presentation by the State?

22 MS. VON HERRMANN: The State would rest, Your Honor.

23 THE COURT: All right, very good.

24 Mr. Bellamy, is your client prepared for the Court to
25 discuss his constitutional rights as to testifying in this