

VOL. I OF II

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM FLORENCE COUNTY

R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JUSTIN R. SIMMS

APPELLANT

APPELLATE CASE NO. 2013-002748

RECORD ON APPEAL

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SC Court of Appeals

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1 State of South Carolina) In the Court
2 County of Florence) Of General Sessions

3 Indictment No.: 2010-GS-21-01427
4

5
6 State of South Carolina,)
Plaintiff.)

7
8 vs.)

Transcript of Record

9
10 Justin Simms,)
Defendant.)

11
12
13 December 9-13, 2013
14 Florence, South Carolina

15 B E F O R E:

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

17
18 A P P E A R A N C E S:

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Attorney for the State

20 Chevron Scott, Esquire
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22 Attorneys for the Defendant

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1 THE COURT: All right, Solicitor, if you'd call
2 your next case for trial please?

3 MR. CLEMENTS: Thank you, Your Honor, if it please
4 the Court, Your Honor, we'd call Indictment
5 2010-GS-21-1427, State of South Carolina versus Justin
6 Simms.

7 THE COURT: All right, may I have a copy of the
8 indictment here.

9 All right, is Mr. Simms present?

10 MR. SCOTT: He is, Your Honor.

11 THE COURT: And represented by his attorney, Mr.
12 Scott; is that correct?

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

14 THE COURT: Is Mr. Simms ready for trial?

15 MR. SCOTT: We are, Your Honor.

16 THE COURT: All right. Thank you very much. You
17 may be seated.

18 JURY VOIR DIRE

19 Ladies and gentlemen of the jury panel, if you
20 would please give me your complete and undivided attention.
21 We're now going to select a jury for the trial of the State
22 versus Justin Rashawn Simms.

23 The purpose for the procedure we're fixing to go
24 through is to select a fair and impartial jury for the
25 trial of this case. As part of that I will ask you certain

1 questions and based on the questions that I must ask you I
2 will read and publish it to you the indictment in this
3 case.

4 The indictment is not evidence.

5 THE CLERK: Judge, I'm sorry, is there more jurors
6 outside?

7 Judge, let me go make sure, I think they might have
8 gone to the restroom.

9 THE COURT: All right.

10 THE CLERK: I'm seeing them slowly come in and I
11 hate for you to start asking them questions.

12 THE COURT: All right. Thank you. We may have to
13 flush them out.

14 MR. SCOTT: Your Honor, may it please, for purposes
15 of the record and I want to make sure that it's placed on
16 the record. I'm going to have a second chair, Mr. Robert
17 Stucks.

18 THE COURT: I'm going to have y'all introduce
19 yourselves momentarily to the jury.

20 MR. SCOTT: Thank you.

21 THE COURT: Yes, sir. Thank you. Thank you very
22 much.

23 As I stated, ladies and gentlemen, momentarily I'm
24 going to read or publish to you the indictment in the case.
25 The indictment is not evidence. The indictment is the

1 formal charging document by which an individual is placed
2 on notice of charges that have been brought against him or
3 her. It contains mere allegations and is no way evidence
4 of the allegations contained therein. So I'll read the
5 indictments to you and the counts in the indictment based
6 on the questions that I'll ask you as we go through this
7 procedure.

8 The case of 2010-GS-21-1427, Justin Rashawn Simms.
9 Count one, murder: That Justin Rashawn Simms did in
10 Florence County on or about January 10th, 2010,
11 feloniously, willfully, and with malice aforethought killed
12 one Marcus A. Weaver by means of shooting him in the back
13 with a handgun at the Days Inn on West Lucas Street,
14 Florence, South Carolina while attempting an armed robbery
15 and that the said Marcus A. Weaver did die as a proximate
16 result thereof in violation of Section 16-3-10, 20 and 60
17 of the South Carolina Code of Laws, 1976, as amended. That
18 is a charge or indictment of murder.

19 Count two, attempted armed robbery. That Justin
20 Rashawn Simms did in Florence County on or about January
21 10, 2010, the same alleged date, did that while armed with
22 a deadly weapon or while alleged either by action or words,
23 that he was armed while using a representation of a deadly
24 weapon or any object which a person present during the
25 commission of the robbery reasonably believed to be a

1 deadly weapon, to wit: A handgun, did attempt to rob
2 Marcus A. Weaver and/or Shawn Davis while at the Days Inn
3 on West Lucas Street, Florence, South Carolina by means of
4 force or intimidation of goods or monies of the said Marcus
5 A. Weaver and/or Shawn Davis in violation of Section
6 16-11-330(b) and 16-160 of the South Carolina Code of Laws,
7 1976, as amended.

8 Count three, possession of a weapon during the
9 commission of a violent crime that Justin Rashawn Simms did
10 in Florence County on or about that same alleged date,
11 January 10th, 2010, was in possession of a firearm or did
12 visibly display what appeared to be a firearm or visibly
13 display a knife to which -- to wit: A handgun during the
14 commission of a violent crime, to wit: Murder and/or
15 attempted armed robbery in violation of 16-23-490 of the
16 South Carolina Code of Laws, 1976, as amended.

17 Again, ladies and gentlemen, these are mere
18 allegations. The allegations are murder, attempted armed
19 robbery, and possession of a weapon during the commission
20 of a violent crime.

21 The State is represented by Solicitor Clements. If
22 you would introduce yourself and any member of your staff
23 that are gone assist you in the prosecution of this case,
24 Solicitor?

25 MR. CLEMENTS: Thank you, Your Honor, if it please

1 the Court and Counsel.

2 Good afternoon, ladies and gentlemen of the jury.
3 My name is Ed Clements. I did have to check; it is
4 afternoon now. I am the Solicitor of the Twelfth Judicial
5 Circuit, Florence and Marion Counties. A member of my
6 staff is seated here with me that will be in and out of the
7 courtroom is Ms. Vickie Singletary, who is a Victim Witness
8 Advocate for our office and she will be assisting me in the
9 selection of the jury. And I have Investigator Russell,
10 former Investigator, retired now, Russell Cox of the
11 Florence County Sheriff's Office and Investigator Thomas
12 McFadden of the Florence County Sheriff's Office are seated
13 here with us today. Thank you.

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

16 Mr. -- Mr. Simms is represented by Mr. Scott. If
17 you'd please introduce yourself and your co-counsel and
18 your client to the jury panel.

19 MR. SCOTT: Good afternoon. My name is Chevron
20 Scott. I am a lawyer here in Florence and a member of the
21 Darlington County Bar. I am a sole practitioner and I also
22 teach at Florence Darlington Tech. To my immediate left is
23 my client, Mr. Justin Simms, who is on trial and co-counsel
24 in this particular matter would be Robert Stucks, who is a
25 member of the South Carolina Bar as well.

1 THE COURT: Thank you. Thank you very much, Mr.
2 Scott. You may be seated.

3 Is any member of the jury panel related by blood or
4 marriage or close personal friends, have and social,
5 business, or professional relationship with Solicitor
6 Clements or with Ms. Singletary or any member of the
7 Florence County Solicitor's Office; if so, please stand?

8 You're, all right, yes, sir, you're number and
9 name?

10 THE JUROR: Tyrone Davis, Juror 35.

11 THE COURT: All right. And tell me your situation.

12 THE JUROR: My brother actually, he do yard work
13 for Mr. Clements.

14 THE COURT: All right. And what does he do?

15 THE JUROR: Sir?

16 THE COURT: What, what does your brother do?

17 THE JUROR: Clean his yard, yard maintenance for
18 him, clean up around his house and stuff like that.

19 THE COURT: All right. So he works for him
20 personally, not in the Solicitor's Office?

21 THE JUROR: Yes, sir.

22 THE COURT: All right. I'm sorry, I misunderstood.
23 Thank you.

24 Given that fact, could you still be a fair and
25 impartial juror in the trial of this case for both the

1 State and the Defense?

2 THE JUROR: Yes, sir.

3 THE COURT: Thank you. You may be seated. You may
4 stay with us.

5 Yes, sir; your number and name, please?

6 THE JUROR: No. 81, my name is Alan Lane.

7 THE COURT: All right. Tell me your situation.

8 THE JUROR: Your Honor, I attend the same church as
9 Mr. Clements. And my wife works with the husband of
10 another member of his staff.

11 THE COURT: All right. Does she work then with the
12 Solicitor's Office?

13 THE JUROR: No, sir.

14 THE COURT: No, sir, all right. Given those facts,
15 could you still be a fair and impartial juror on the trial
16 of this case for both the State and this Defense?

17 THE JUROR: Yes, sir.

18 THE COURT: Thank you. You may stay with us. Any
19 others?

20 (WHEREUPON there was no response from the jury
21 venire.)

22 THE COURT: And as to Mr. Simms' attorneys, Mr.
23 Scott and was it Mr. Suggs? I apologize.

24 MR. STUCKS: That's S-T-U-C-K-S, Your Honor.

25 THE COURT: Thank you. Thank you very much. I had

1 spelled wrong and pronounced wrong and I apologize.

2 Is any member of the jury panel related by blood or
3 marriage or close personal friends, have any social,
4 business or professional relationship with either of Mr.
5 Simms' attorneys, or Mr. Scott or Mr. Stucks; if so, please
6 stand?

7 (WHEREUPON there was no answer from the jury
8 venire.)

9 THE COURT: Has any member of the jury panel or any
10 member of your immediate family ever been represented by or
11 prosecuted by Solicitor Clements or any member of Solicitor
12 Clements staff; if so, please stand?

13 All right. Yes, your number and name please?

14 THE JUROR: 122, Wayne Pope.

15 THE COURT: All right. Step up here for me please.

16 (WHEREUPON there was a bench conference out of the
17 hearing of the jury venire and on the record.)

18 THE COURT: Good afternoon. How are you, sir?

19 THE JUROR: I have a -- my cousin was tried for
20 murder here. I'm sure it's over four years ago. It's --

21 THE COURT: Can you tell me his or her name?

22 THE JUROR: Sure. Donnie McKnight.

23 THE COURT: Donnie McKnight. And do you know who
24 prosecuted the case?

25 THE JUROR: The Solicitor's Office. He's in Lee

1 County.

2 THE COURT: Given that fact, could you still be a
3 fair and impartial juror in the trial of this case for both
4 Mr. Simms and the State.

5 THE JUROR: I believe so.

6 THE COURT: Now, when you say you believe so, maybe
7 you've never been on a jury before. So can?

8 THE JUROR: Oh, I can.

9 THE COURT: You can stay with us. Thank you very
10 much. You may be seated.

11 All right. And the same question as to the
12 attorneys for Mr. Simms. Has any member of the jury panel
13 or any member of your immediate family ever been
14 represented by either of the attorneys for Mr. Simms, Mr.
15 Scott, Mr. Stucks, or been a party to a lawsuit in which
16 either one of the attorneys represented the opposing party;
17 if so, please stand?

18 (WHEREUPON there was no response from the jury
19 venire.)

20 THE COURT: Is any member of the jury panel related
21 by blood or marriage, close personal friends, have any
22 social, business, or professional relationship with the
23 Defendant in this matter who has previously been introduced
24 to you, Justin Rashawn Simms; if so, please stand?

25 All right. Your number and name please?

1 THE JUROR: 54, Lynn Goins.

2 THE COURT: Step up here for me please, Ms. Goins.

3 MR. SCOTT: If it please, Your Honor, may we
4 approach?

5 THE COURT: Yes, sir, certainly.

6 (WHEREUPON there was a bench conference out of the
7 hearing of the jury venire.)

8 MR. SCOTT: Your Honor, previously we had already
9 spoken with this juror. She's a family member of Justin
10 Simms. We had already agreed to --

11 MR. CLEMENTS: She's his aunt.

12 THE COURT: So she's going to be set aside? Is
13 that what you want?

14 MR. SCOTT: Yes, sir.

15 MR. CLEMENTS: Yes, sir.

16 THE COURT: All right. Thank you.

17 I'm going to set you aside for the trial of this
18 case. You may return to your seat. Do not say anything to
19 your fellow jurors.

20 THE COURT: And that same question, has any member
21 of the jury panel or any member of your immediate family,
22 close personal friends, have any social or business or
23 professional relationship with the named victim in the
24 indictment on murder, who is Marcus A. Weaver; who is also
25 the named victim of the attempted armed robbery, along with

1 the name, Shawn Davis; related by blood or marriage, close
2 personal-friends, social, business or professional
3 relationship; if so, please stand?

4 MR. SCOTT: Your Honor, may we approach?

5 THE COURT: Yes, sir, certainly.

6 (WHEREUPON there was a bench conference out of the
7 hearing of the jury venire and the court reporter.)

8 THE COURT: It appears the name in the indictment
9 was misspelled. It's not Shawn Davis; it's Squan Davis.
10 Squan Davis.

11 (WHEREUPON there was no response from the jury
12 venire.)

13 THE COURT: Ladies and gentlemen, you heard me read
14 the indictment to you, the allegations that had occurred
15 January 10th, 2010, Days Inn on Lucas -- West Lucas Street,
16 Florence, South Carolina; Alleged murder, attempted armed
17 robbery, possession of a weapon during the commission of a
18 violent crime. Does any member of the jury panel have any
19 knowledge about the case from any source whatsoever; if so,
20 please stand?

21 (WHEREUPON there was no response from the jury
22 venire.)

23 THE COURT: Does any member of the jury panel have
24 any bias or any prejudice towards the parties, that's being
25 either Mr. Simms or the State or towards the subject matter

1 involved in the case; if so, please stand?

2 (WHEREUPON there was no response from the jury
3 venire.)

4 THE COURT: Has any member of the jury panel heard
5 or know anything about the case from any source whatsoever;
6 if so, please stand.

7 I'm going to call a rather lengthy list of names of
8 potential witnesses in the trial of the case. I would
9 advise that if any of the witnesses are present when your
10 names are called if you'd please stand and face the jury
11 panel.

12 I would advise the panel that the witnesses are not
13 required to be present during this procedure so you may
14 hear many names called and no one stands.

15 The question of course is, is any member of the
16 jury panel related by blood or marriage or close personal
17 friends or have any social, business, or professional
18 relationship with any of these individuals whose names I
19 now call and/or who stand before you; if so, please stand.

20 The first five names, Paul Bird, Chad Collins,
21 Russell Cox, I believe Mr. Cox is present in the courtroom
22 and previously introduced to you.

23 Thank you, Detective Cox.

24 Steve Driggers, Mark Fuleihan, F-U-L-E-I-H-A-N.

25 MR. CLEMENTS: Your Honor, it's pronounced

1 Fuleihan.

2 THE COURT: Well I was gone do it like that; I knew
3 it would be wrong. So anyway, if I pronounce them right, I
4 spell them wrong. Fuleihan; thank you, Solicitor.

5 The next five names, William Hester. All right,
6 your number and name please?

7 THE JUROR: Lonnie Wiggins, Juror 160.

8 THE COURT: All right. Step up here for me, Mr.
9 Wiggins.

10 (WHEREUPON there was a bench conference out of the
11 hearing of the jury venire.)

12 THE COURT: Good afternoon. Tell me your
13 situation.

14 THE JUROR: He's on the Ducks Unlimited Committee
15 with me.

16 THE COURT: Ducks Unlimited?

17 THE JUROR: Yes.

18 THE COURT: How long have you known him?

19 THE JUROR: Two years.

20 THE COURT: Two years.

21 THE JUROR: He's also investigated a robbery at my
22 house.

23 THE COURT: A robbery, burglary?

24 THE JUROR: Yes. At my house.

25 THE COURT: When was the burglary?

1 THE JUROR: This past year.

2 THE COURT: All right. Given those facts, I take
3 it he's with the Florence County Sheriff's Department?

4 MR. CLEMENTS: He is, Your Honor.

5 THE COURT: Given those facts, can you be a fair
6 and impartial juror in the trial of this case for both Mr.
7 Simms and the State?

8 THE JUROR: Yes, sir.

9 THE COURT: All right. Thank you. You may step
10 back. Thank you very much.

11 All right. 150 is going to stay with us.

12 MR. CLEMENTS: Your Honor, we have another
13 gentleman standing.

14 THE COURT: Oh yes, your number and name please?

15 THE JUROR: Gaskins, Juror 51.

16 THE COURT: All right. Yes, sir, you can come
17 forward for me please.

18 (WHEREUPON a bench conference was held out of the
19 hearing of the jury venire.)

20 MR. CLEMENTS: I believe it's 160. I thought you
21 said 150 for the record.

22 THE COURT: 1 -- what was it?

23 MR. CLEMENTS: 160, Your Honor.

24 THE COURT: All right. Yes, sir, Mr. Gaskins?

25 THE JUROR: Chad Collins, one of the witnesses, he

1 is my first cousin. I am kin to him. I just wanted to let
2 you know.

3 THE COURT: All right. Given that fact, can you
4 still be a fair and impartial juror in the trial of this
5 case?

6 THE JUROR: As I told you earlier, I do not support
7 a jury.

8 THE COURT: I thought what you told me earlier --
9 this is my memory, I'm not questioning you, I thought what
10 you told me earlier is that you didn't support this court.

11 THE JUROR: The courts or the jury. ATF has
12 classified me as an ONG.

13 THE COURT: All right. Thank you. Thank you very
14 much. You may return to your seat.

15 MR. CLEMENTS: Your Honor --

16 THE COURT: Yes, your number and name please?

17 THE JUROR: Lesli Kennedy, 78.

18 THE COURT: All right. Ms. Kennedy, if you'd
19 please come forward for me.

20 (WHEREUPON there was a bench conference out of the
21 hearing of the jury venire.)

22 THE COURT: It's Ms. Kennedy?

23 THE JUROR: Yes. Is that Dr. Bill Hester.

24 MR. CLEMENTS: That is his son. He works for the
25 Florence County Sheriff's Office. His dad is not Dr. Bill

1 Hester.

2 THE JUROR: I had a professional relationship with
3 Dr. Bill Hester, so if it's two different people, I'm good.

4 THE COURT: Okay. You're good.

5 THE JUROR: Thank you.

6 THE COURT: All right. Thank you. Thank you, Ms.
7 Kennedy.

8 THE COURT: The next four names, we'll get back on
9 this five track, is Keith Von Lutcken; how you pronounce
10 that, Solicitor.

11 MR. CLEMENTS: The Keith Von Lutcken, Your Honor,
12 he's now formerly with the Sheriff's Office and now our
13 Coroner.

14 THE COURT: All right. Thomas McFadden; this is
15 Detective McFadden to my front.

16 Adam Moore and Chris Owens.

17 The next five names ---

18 MR. SCOTT: You have one up.

19 THE COURT: Let's see, this is Juror Number 35?

20 THE JUROR: 35.

21 THE COURT: And tell me who you know.

22 THE JUROR: I know Investigator Tom McFadden.

23 THE COURT: Investigator McFadden.

24 THE JUROR: Yes, sir.

25 THE COURT: All right. Step up here for me please.

1 (WHEREUPON there was a bench conference out of the
2 hearing of the jury venire.)

3 THE COURT: Good afternoon. Tell me your
4 situation. You know Investigator McFadden?

5 THE JUROR: Yes, McFadden. We live much in the
6 same neighborhood.

7 THE COURT: Y'all live in the same neighborhood.

8 THE JUROR: Yes, sir, and we actually went to
9 school together.

10 THE COURT: All right. You went to school -- he
11 was way ahead of you in school, wasn't he?

12 THE JUROR: No, I believe behind me.

13 THE COURT: Don't you tell him I said that.
14 So you've known him a long while?

15 THE JUROR: Yes, sir.

16 THE COURT: And let's see, your brother works for
17 the solicitor?

18 THE JUROR: Yes, sir.

19 THE COURT: And is he your chief investigating
20 officer in the case?

21 MR. CLEMENTS: He is the chief investigating
22 officer on the case, Your Honor.

23 THE COURT: Given all those facts, can you be a
24 fair and impartial juror in the trial of this case for both
25 the state and Mr. Simms?

1 THE JUROR: Yes, sir.
2 THE COURT: You sure?
3 THE JUROR: Yes, sir, Your Honor.
4 THE COURT: Any question in your mind about it?
5 THE JUROR: No.
6 THE COURT: Thank you very much, stay with us.
7 All right. 35 is going to stay with us.
8 THE CLERK: Two more.
9 THE COURT: All right. Yes, your number and name
10 please?
11 THE JUROR: 155.
12 THE COURT: All right. Step up here for me please.
13 (WHEREUPON there was a bench conference out of the
14 hearing of the jury venire.)
15 THE COURT: Good afternoon. Tell me your
16 situation.
17 THE JUROR: I know McFadden and his wife.
18 THE COURT: How do you know him?
19 THE JUROR: His wife, Anne -- they play softball
20 together with my family.
21 THE COURT: Okay. How long have you known
22 Lieutenant McFadden?
23 THE JUROR: About four years.
24 THE COURT: How many?
25 THE JUROR: About four years.

1 THE COURT: Four?

2 THE JUROR: Yes.

3 THE COURT: All right. Given those facts can you
4 be a fair and impartial juror in the trial of this case for
5 both Mr. Simms and the State.

6 THE JUROR: Yes, sir.

7 THE COURT: Any doubt in your mind.

8 THE JUROR: No, sir.

9 THE COURT: Thank you. I believe you can stay with
10 us.

11 Yes, sir, your number and name please?

12 THE JUROR: Juror No. 62, Christopher Harrell.

13 THE COURT: All right. Step up here for me please.

14 (WHEREUPON there was a bench conference out of the
15 hearing of the jury venire.)

16 THE COURT: 155 stays with us.

17 Good Afternoon.

18 THE JUROR: Good afternoon, Judge.

19 THE COURT: All right. Yes, sir. Tell me your
20 situation.

21 THE JUROR: Adam Moore and I are church members.
22 We also serve in the Brotherhood together and we
23 communicate on a regular basis doing Brotherhood projects
24 for the church. And I have a close relationship with him
25 as a brother in Christ.

1 THE COURT: All right. And how long have you known
2 Mr. Moore?

3 THE JUROR: Five or six years, maybe.

4 THE COURT: Given those facts, with Mr. Moore being
5 a potential witness in the trial of this case, can you be a
6 fair and impartial juror in this case for both Mr Simms and
7 for the State?

8 THE JUROR: Yes, sir.

9 THE COURT: Any doubt in your mind about that?

10 THE JUROR: No, sir.

11 THE COURT: Thank you, I believe you can stay with
12 us.

13 THE JUROR: Thank you, sir.

14 THE COURT: Number 62 is going to stay with us.

15 The next five names, Larry Quick.

16 (WHEREUPON a juror stood.)

17 THE COURT: This is Mr. Williams?

18 THE JUROR: Wiggins.

19 THE COURT: Wiggins, No. 160?

20 THE JUROR: Yes.

21 THE COURT: All right. Step down here for me.

22 (WHEREUPON there was a bench conference out of the
23 hearing of the jury venire.)

24 THE COURT: All right. Yes, sir?

25 THE JUROR: I know Larry Quick. I took karate and

1 he's my instructor.

2 THE COURT: He's your instructor in karate?

3 THE JUROR: He is also a friend.

4 THE COURT: How long have you known him?

5 THE JUROR: Sixteen years.

6 THE COURT: Sixteen years. And what is his
7 involvement in this? Is he the deputy?

8 MR. CLEMENTS: Your Honor, he's over the evidence
9 room.

10 THE COURT: Okay.

11 MR. CLEMENTS: At the sheriff's office. He's just
12 -- he's a chain of custody witness.

13 THE COURT: Given the fact of your knowledge and
14 knowing him that period of time, could you be a fair and
15 impartial juror in the trial of this case for both Mr.
16 Simms and the State?

17 THE JUROR: Yes, sir.

18 THE COURT: Thank you, you may stay with us. Thank
19 you very much.

20 And that's 160.

21 Kathleen Streett, J.G. Watson, Benjamin
22 Weatherford, Keith Worsley.

23 All right. Yes, sir, your number and name please?

24 THE JUROR: 114, Mark Palmer.

25 THE COURT: All right. Step down here for me.

1 (WHEREUPON there was a bench conference out of the
2 hearing of the jury venire.)

3 THE COURT: Good afternoon.

4 THE JUROR: Good afternoon.

5 THE COURT: How are you?

6 THE JUROR: I believe I went to high school with
7 Mr. Worsley back in 89, so...

8 THE COURT: Given that fact -- when did you finish
9 high school? About two years ago?

10 THE JUROR: Yeah. '92.

11 THE COURT: In '92.

12 THE JUROR: Yes.

13 THE COURT: Given that fact, could you be a fair
14 and impartial juror in the trial of this case for both Mr.
15 Simms and the State?

16 THE JUROR: Yes, sir.

17 THE COURT: Thank you very much. You may be
18 seated. You may stay with us.

19 The next five names, Michelle Brown, Mitch Fulmore,
20 Jamie Kelly, Tommy Eslinger, Suzann Cromer.

21 The next five names, Matthew Fitts, Lori Giles, Ila
22 Simmons, Shana B. Sorrells, Amy Stephens.

23 The next five names, Doris P. Yarborough, Eowyn --

24 MR. CLEMENTS: Corcrain.

25 THE COURT: -- Corcrain, S. Erin Presnell, Jennifer

1 Cutter, Todd Matthews.

2 The next five names, Dianne Boatwright, Joshua L.
3 Carraway, Squan Davis, that's S-Q-U-A-N Davis, Debra McCray
4 Franklin, Shane Marcus Graham.

5 The next three names are Curtis ---

6 THE BAILIFF: Your Honor --

7 THE COURT: Yes, your number and name please?

8 MR. SCOTT: That's Mr. Graham.

9 THE COURT: Oh, that's Mr. Graham. All right.

10 Y'all can turn around and look at Mr. Graham. Shane Marcus
11 Graham, thank you, Mr. Graham.

12 The next three names, Curtis Joe, Jr., Jermaine
13 Jones, Francis Scott.

14 Any other potential witnesses from the State or the
15 Defense whose names I need to call, Solicitor or Mr. Scott?

16 MR. SCOTT: No, Your Honor, not from the Defense.

17 MR. CLEMENTS: No, Your Honor.

18 THE COURT: All right..

19 MR. CLEMENTS: Your Honor, may we approach?

20 THE COURT: Yes, sir.

21 (WHEREUPON there was a bench conference out of the
22 hearing of the jury and the court reporter.)

23 THE COURT: All right. Please -- please bear with
24 me just a few more minutes. Ladies and gentlemen, I assure
25 you the, the end of my questioning is in sight.

1 Has any member of the jury panel had a family
2 member or close personal friend -- has any member of the
3 jury panel had a family member or close personal friend
4 that was the victim of the crime of murder; if so, please
5 stand.

6 It's Number 62?

7 THE JUROR: Yes, sir.

8 THE COURT: All right. Yes, sir, step up here for
9 me please?

10 (WHEREUPON there was a bench conference out of the
11 hearing of the jury venire.)

12 THE COURT: And I've forgotten your name. I
13 remembered your number. That's so bad of me, but I try to
14 concentrate and remember.

15 THE JUROR: Christopher Harrel, sir.

16 THE COURT: Mr. Harrel. And tell me your
17 situation.

18 THE JUROR: I have an ongoing investigation. My
19 best friend and wife were brutally murdered in 2000 and my
20 emotions are still sketchy. I do believe that I could set
21 that aside on this case.

22 THE COURT: 2000; where did that happen at?

23 THE JUROR: At the old Moore's -- around New Bridge
24 out next to the paper mill.

25 THE COURT: Is this in Florence County?

1 THE JUROR: Yes, sir.

2 THE COURT: I'm from the Midlands.

3 THE JUROR: I'm sorry.

4 THE COURT: That's all right.

5 THE JUROR: The east point of Florence County.

6 THE COURT: Right. And, of course, here's the
7 thing, if you're selected on a jury panel -- you know our
8 purpose is to get a fair and impartial juror and jury. You
9 know, you can have things that happen in your past life you
10 and you have to set them aside. You have to make a
11 decision based on the evidence and the testimony that you
12 hear from the witnesses testifying under oath in the
13 courtroom.

14 THE JUROR: Yes, sir.

15 THE COURT: And the law as I tell you the law is,
16 regardless of what might have happened to a close friend of
17 your or a close friend of yours and his wife.

18 I believe you said you could put that out of your
19 mind. You could do that?

20 THE JUROR: Yes, sir. I believe that I could give
21 the defendant a fair trial. I can set my emotions aside
22 because this case is not related to me and it has no
23 bearing on the fact that my friend is deceased. I have no
24 impartial feelings toward law enforcement or of the
25 solicitor or anything like that. I believe I could be fair

1 in this trial because it don't have any personal
2 significance to my case.

3 THE COURT: All right. And you don't have any
4 doubt in your mind about that?

5 THE JUROR: No, sir. No doubt in my mind.

6 THE COURT: Just go stand over there at the gate
7 for me for just a moment.

8 THE JURY: Okay. Thank you, sir.

9 THE COURT: All right.

10 Y'all want me to ask him anything else?

11 MR. CLEMENTS: I don't think so, Your Honor. I
12 think that -- the case that he's responding to is one that
13 has remained unsolved.

14 THE COURT: Thank you. You may stay with us, Mr.
15 Harrell. Thank you, thank you very much. You may return
16 to your seat.

17 Yes, sir, your number and name please?

18 THE JUROR: Juror No. 43, could you repeat the
19 question?

20 THE COURT: Sure, certainly. The question was:
21 Has any member of the jury panel had a family member or
22 close personal friend that was a victim of a homicide, a
23 murder?

24 All right. And you're Juror 43?

25 THE JUROR: Juror 43.

1 THE COURT: All right. Step up here for me please,
2 sir.

3 (WHEREUPON there was a bench conference out of the
4 hearing of the jury venire.)

5 THE JUROR: I apologize for the delay. This was
6 about fifteen years ago.

7 THE COURT: Sure, yes, sir.

8 THE JUROR: It was a young man that I was help
9 raising from my church. And it was sort of like a stepson.
10 It wasn't blood related, but close.

11 THE COURT: Sure.

12 THE JUROR: And he was killed by somebody over in
13 Darlington. He was shot.

14 THE COURT: And how old was he?

15 THE JUROR: He was about 19 at the time.

16 THE COURT: And it was about fifteen years ago?

17 THE JUROR: Yes, sir. And I did get very involved
18 in that trial. I don't know what it has to do with this,
19 but...

20 THE COURT: Well, given that fact that that
21 occurred to your friend, like a stepson --

22 THE JUROR: Yes, sir.

23 THE COURT: Could you still be a fair and impartial
24 juror in the trial of this case both to the State and to
25 Mr. Simms?

1 THE JUROR: I would try, yes, sir.

2 THE COURT: And when you say you'll try, that may
3 be -- can you elaborate on that a little bit for me?

4 THE JUROR: I'm just against people getting shot.

5 THE COURT: Well, I don't know any of us want
6 people to get shot unless they deserve it, you know, it's
7 self defense. I mean it's justified.

8 THE JUROR: The man was convicted and put in jail
9 and I was involved in the trial, but again, I don't know
10 what that has to do with this.

11 THE COURT: Yes, sir. I believe I'm going to set
12 you aside for the trial of this case. All right? Please
13 do not say anything to your fellow jurors.

14 THE JUROR: Okay..

15 THE COURT: All right. Thank you. Thank you very
16 much.

17 THE JUROR: What should I do?

18 THE COURT: You can just go back and have a seat,
19 yes, sir.

20 And I asked -- I had asked earlier about personal,
21 social or professional relationship with any of the
22 attorneys, ladies and gentlemen, and it was brought to us
23 specifically and you may recall Mr. Scott did indicate that
24 he taught at Florence Darlington Tech. He's a professor at
25 Florence Darlington Tech.

1 Has any member of the jury panel been a student of
2 Mr. Scott? If so, please stand.

3 Thank you. Thank you very much.

4 And y'all want these -- I guess you do; you gave
5 them up here.

6 Does any member of the jury panel hold the belief
7 that marijuana should be legalized; if so, please stand.

8 Nobody's going to be drug tested or anything; I'm
9 just asking the question.

10 All right. Let's see, this is Number 160, correct?

11 MR. SCOTT: 62; Your Honor.

12 THE COURT: 62. All right. And this is 122 and
13 this is --

14 THE JUROR: Jesse Boyne, I think No. 14.

15 THE COURT: 14. All right. I'll take y'all's
16 responses by your standing as the answer to that question
17 would be yes.

18 All right. Mr. Harrell, given that fact, could you
19 still be a fair and impartial juror in the trial of this
20 case for both the State and the Defense?

21 THE JUROR: Yes, sir.

22 THE COURT: Thank you. You may be seated.

23 And 122, could you still be a fair and impartial
24 juror in the trial of this case for both the State and the
25 Defense?

1 THE JUROR: Yes.

2 THE COURT: Thank you. You may be seated.

3 And, Mr. Boyne, No. 14?

4 THE JUROR: Yes.

5 THE COURT: All right. Thank you. You may be
6 seated.

7 Any others?

8 (WHEREUPON there was no response from the jury
9 venire.)

10 THE COURT: Is any member of the jury panel, based
11 on your religious or philosophical viewpoint unable to
12 render judgment upon another human being? If so, please
13 stand.

14 Thank you very much. I find our panel is qualified
15 except those that I have set aside.

16 Madame Clerk, if you'd give us...

17 MR. SCOTT: May it please the Court, Your Honor,
18 may we approach?

19 THE COURT: Yes, sir.

20 (WHEREUPON there was a bench conference out of the
21 hearing of the jury and the court reporter.)

22 MR. SCOTT: Thank you, Your Honor.

23 THE COURT: Yes, sir. And what are the strikes,
24 Solicitor?

25 MR. CLEMENTS: Your Honor, I believe they are five

1 for the State and ten for the Defense.

2 THE COURT: Do you agree, Mr. Scott?

3 MR. SCOTT: I do, Your Honor.

4 THE COURT: All right. So five strikes for the
5 State; ten for the Defense and you have an experienced jury
6 because they were here when Judge Culbertson struck his
7 panel; is that correct?

8 MR. CLEMENTS: Yes, sir.

9 THE COURT: All right. Thank you very much.

10 JURY SELECTION

11 THE CLERK: 135, Anne Scurry.

12 What say the State?

13 MR. CLEMENTS: Please present Ms. Scurry.

14 THE CLERK: What say the Defendant?

15 MR. SCOTT: Please excuse this juror from this
16 trial.

17 THE CLERK: You've been excused from this trial.
18 35, Tyrone Davis.

19 What say the State?

20 MR. CLEMENTS: Please present Mr. Davis.

21 THE CLERK: What say the Defendant?

22 MR. SCOTT: Please excuse this juror.

23 THE CLERK: You've been excused from the trial.
24 122, Wayne Pope.

25 What say the State?

1 MR. CLEMENTS: Please excuse Mr. Pope from the
2 trial in this case.

3 THE CLERK: You've been excused from this trial.
4 55, William Goins.

5 What say the State?

6 MR. CLEMENTS: Please present Mr. Goins.

7 THE CLERK: What say the Defendant?

8 MR. SCOTT: Please seat Mr. Goins for this trial.

9 THE CLERK: Please have a seat in the jury box.
10 153, Sharon Turner.

11 What say the State?

12 MR. CLEMENTS: Please present Ms. Turner.

13 THE CLERK: What say the Defendant?

14 MR. SCOTT: Please excuse this juror from this
15 trial.

16 THE CLERK: You've been excused from this trial.
17 5, Wanda Arnett.

18 What say the State?

19 MR. CLEMENTS: Please present Ms. Arnett.

20 THE CLERK: What say the Defendant?

21 MR. SCOTT: Please seat this juror.

22 THE CLERK: Please have a seat in the jury box,
23 ma'am.

24 28, Donna Cribb.

25 What say the State?

1 MR. CLEMENTS: Please present Ms. Cribb.
2 THE CLERK: What say the Defendant?
3 MR. SCOTT: Please excuse this juror from this
4 trial.
5 THE CLERK: You've been excuse for this trial.
6 6, Robert Atkinson.
7 What say the State?
8 MR. CLEMENTS: Please present Mr. Atkinson.
9 THE CLERK: What say the Defendant?
10 MR. SCOTT: Please seat Mr. Atkinson for this jury.
11 THE CLERK: Please have a seat.
12 THE COURT: What do you do for Duke Energy?
13 THE JUROR: Sir?
14 THE COURT: What do you do for Duke Energy?
15 THE JUROR: I work at the Robinson Nuclear Power
16 Plant in maintenance.
17 THE COURT: How long you been there?
18 THE JUROR: 34 years.
19 THE COURT: Thank you.
20 THE CLERK: 116, Charlotte Parnell.
21 What say the State?
22 MR. CLEMENTS: Please present Ms. Parnell.
23 THE CLERK: What say the Defendant?
24 MR. SCOTT: Please excuse this juror.
25 THE CLERK: You've been excused for this trial.

1 15, Geraldine Broach.

2 What say the State?

3 MR. CLEMENTS: Please present Ms. Broach.

4 THE CLERK: What say the Defendant?

5 MR. SCOTT: Please seat this juror.

6 THE CLERK: Please have a seat in the jury box.

7 47, Timothy Flowers; what say the State?

8 MR. CLEMENTS: Please present Mr. Flowers.

9 MR. SCOTT: Please seat this juror.

10 THE CLERK: Please have a seat -- this way.

11 THE COURT: 61, Laura Hardee.

12 What say the State?

13 MR. CLEMENTS: Please present Ms. Hardee.

14 MR. SCOTT: Please excuse this juror.

15 THE CLERK: You've been excused for this trial.

16 163, Gerald Williams.

17 What say the State?

18 MR. CLEMENTS: Please present Mr. Williams.

19 THE CLERK: What say the Defendant?

20 MR. SCOTT: Please excuse this juror.

21 THE CLERK: You've been excused for the trial.

22 31, Eric Dallas.

23 What say the State?

24 MR. CLEMENTS: Please excuse Mr. Dallas from the
25 trial of this case only.

1 THE CLERK: You're excused from this trial only.

2 87, Paul Lowe.

3 What say the State?

4 MR. CLEMENTS: Madame Clerk, what was that number
5 again, please?

6 THE CLERK: 87.

7 MR. CLEMENTS: Thank you.

8 THE CLERK: What say the State?

9 MR. CLEMENTS: Please present Dr. Lowe.

10 THE CLERK: What say the Defendant?

11 MR. SCOTT: Please excuse this juror.

12 THE CLERK: You're excused for this trial only.

13 63, Russell Harter.

14 What say the State?

15 MR. CLEMENTS: Please present Mr. Harter.

16 THE CLERK: What say the Defendant?

17 MR. SCOTT: Please seat this juror.

18 THE CLERK: Please have a seat in the jury box,

19 sir.

20 THE COURT: Do y'all work together?

21 MR. SCOTT: Yes, sir.

22 THE COURT: Y'all do?

23 MR. SCOTT: Yes, sir.

24 THE COURT: Did y'all know you were both on jury
25 duty?

1 THE JUROR: Yes, sir.

2 THE COURT: Before you got here today?

3 THE JUROR: Yes, sir.

4 THE COURT: Okay.

5 THE CLERK: 62, Christopher Harrell.

6 What say the State?

7 MR. CLEMENTS: Please present Mr. Harrell.

8 THE CLERK: What say the Defendant?

9 MR. SCOTT: Please excuse this juror.

10 THE CLERK: You're excused for this trial only.

11 40, Lakeisha Dubose.

12 What say the State?

13 MR. CLEMENTS: Please present Ms. Dubose.

14 THE CLERK: What say the Defendant?

15 MR. SCOTT: Please seat this juror.

16 THE CLERK: Please have a seat in the jury box.

17 111, Michael Orange.

18 What say the State?

19 MR. CLEMENTS: Please present Mr. Orange.

20 THE CLERK: What say the Defendant?

21 MR. SCOTT: Please seat this juror.

22 THE CLERK: Please have a seat in the jury box.

23 THE COURT: What do you do for the city; you work

24 for the city?

25 THE JUROR: Heavy equipment operation.

1 THE COURT: How long you been with them?

2 THE JUROR: 16 years.

3 THE COURT: Thank you.

4 THE CLERK: 97, Devin McFadden.

5 What say the State?

6 MR. CLEMENTS: Please excuse Mr. McFadden from the
7 trial of this case only.

8 THE CLERK: You've been excused for this trial
9 only, sir.

10 14, Jesse Boyne.

11 What say the State?

12 MR. CLEMENTS: Number again please, Madam Clerk?

13 THE CLERK: 14.

14 MR. CLEMENTS: Thank you.

15 THE CLERK: What say the State?

16 MR. CLEMENTS: Please present Mr. Boyne.

17 THE CLERK: What say the Defendant?

18 MR. SCOTT: Please seat this juror.

19 THE CLERK: Please have a seat in the jury box.

20 104, Cindy Miller.

21 What say the State?

22 MR. CLEMENTS: Juror 104, Ms. Miller, please
23 present her.

24 THE CLERK: What say the Defendant?

25 MR. SCOTT: Please excuse this juror.

1 THE CLERK: You've been excused for this trial
2 only.

3 67, Howard Holloman.

4 What say the State?

5 MR. CLEMENTS: Please present Mr. Holloman.

6 THE CLERK: The State wish to challenge this juror
7 for cause?

8 MR. CLEMENTS: No.

9 THE CLERK: Please have a seat in the jury box.

10 103, Krystal Curtis.

11 What say the State?

12 THE COURT: She's on the first page.

13 MR. CLEMENTS: Please present Ms. Curtis.

14 THE CLERK: Does Defendant wish to challenge the
15 juror for cause?

16 MR. SCOTT: Please seat this juror.

17 THE CLERK: Please have a seat in the jury box.

18 134, Quandray Scott; what say the State?

19 MR. CLEMENTS: Please present Ms. Scott.

20 THE CLERK: Does Defendant wish to challenge the
21 juror for cause?

22 MR. SCOTT: Please seat this juror.

23 THE CLERK: Please have a seat in the jury box.

24 THE COURT: How many alternates y'all want, one or
25 two?

1 MR. CLEMENTS: Whatever the Court decides, Your
2 Honor, we're fine with.

3 THE COURT: All right. Give us two alternates,
4 please. Strike two and one, one and two non-cumulative;
5 y'all agree?

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

7 MR. SCOTT: Yes, Your Honor.

8 THE COURT: Thank you.

9 THE CLERK: 78, Lesli Kennedy.

10 What say the State?

11 MR. CLEMENTS: Please present Ms. Kennedy.

12 THE CLERK: What say the Defendant?

13 MR. SCOTT: Please excuse this juror.

14 THE CLERK: You've been excused for this trial
15 only.

16 3, Emily Anderson.

17 What say the State?

18 MR. CLEMENTS: Please present Ms. Anderson.

19 THE CLERK: What say the Defendant?

20 MR. SCOTT: Please seat this juror.

21 THE CLERK: Please have a seat in the jury box.

22 Alternate number two, 18, Alexander Brown.

23 What say the State?

24 MR. CLEMENTS: Please present Mr. Brown.

25 THE CLERK: What say the Defendant?

1 MR. SCOTT: Please seat this juror.

2 THE CLERK: Please have a seat in the jury box.

3 THE COURT: Any motions regarding the jury
4 selection process from the State?

5 MR. CLEMENTS: No, Your Honor.

6 THE COURT: From the Defense?

7 MR. SCOTT: None, Your Honor.

8 THE COURT: Thank you, Thank you very much.
9 The panel call back?

10 MR. CLEMENTS: Your Honor, if the panel will call
11 back after 6:30 tonight, we'll know when they need to be
12 back.

13 THE COURT: All right. Ladies and gentlemen, I'm
14 just going to ask if you were selected for the trial of
15 this case, I'm just going to ask you to maintain your
16 position momentarily while I give instructions to your
17 colleagues concerning the jury service for the remainder of
18 the week.

19 Ladies and gentlemen, if you were not fortunate
20 enough to be selected for the trial of the first case for
21 trial nor the second case for trial, please do not give up
22 hope. The week is young and there are other cases to be
23 tried. I have taken all of your morning and some of your
24 afternoon, but I'm going to release you from your jury
25 service for the remainder of the afternoon and the evening.

1 I'm going to ask you to please call back your juror
2 information number after 6:00 p.m., after 1800 hours
3 tonight, after six o'clock, call that number back. You'll
4 be known as the balance of the panel. It will prompt you
5 and give you instructions concerning your jury service for
6 the remainder of the week.

7 Any questions? Any questions? Everybody got their
8 number or they hand it when they go out?

9 THE CLERK: They'll hand it to them as they go out.

10 THE COURT: It's already in process.

11 All right. Thank you. Thank you very much. We
12 will hand out the number as you leave. Thank you very
13 much. You are now excused.

14 Solicitor, will you all approach the bench here for
15 a minute?

16 (WHEREUPON there was a bench conference out of the
17 hearing of the jury and the court reporter.)

18 THE COURT: Ladies and gentlemen of the jury panel,
19 momentarily I'm going to also release you from your jury
20 service for the remainder of the day. This case is no
21 different from any others. There are certain pretrial
22 matters that must be taken up outside of your presence and
23 rather than having you report back or hold you captive and
24 then not get to you today, it's better for us to try to
25 clear the decks and hopefully get a good start in the

1 morning.

2 I must give you certain instructions, however,
3 concerning your jury service and you must follow these
4 instructions during the course of your jury instruction --
5 of your jury service.

6 You may not discuss this case with others; that
7 includes your family, friends or anyone else. If anyone
8 tries to talk with you about the case, please report that
9 to the Court. Do not read, listen to, or watch any news
10 accounts about the case should there be any. You may not
11 use your computer, cellular phone or any other electronic
12 device with communication capability while in attendance at
13 trial or during deliberations. These devices, of course,
14 may be used during lunch and recesses, but may not be used
15 to obtain or disclose information which is prohibited.

16 Information which is prohibited includes any
17 information about a party, an attorney, a witness or a
18 Court Officer; news accounts about the case current or
19 past, if there were any, or are any; information collected
20 through juror research on any topic raised or testimony
21 offered by any witness; or information collected through
22 juror research on any other topic that the juror might
23 think would be helpful in deciding the case.

24 Ladies and gentlemen, you decide the case based on
25 the evidence and the testimony you hear from the witnesses

1 testifying under oath before you from the witness stand,
2 any charts, diagrams, photographs, exhibits that may be
3 introduced. The inferences that you find may properly be
4 drawn from the evidence and the law as I tell you the law
5 is, not from any outside influences whatsoever. So do not
6 do any independent investigation; do not do any
7 investigation on the internet or otherwise.

8 I would ask you to please be back in your jury
9 room -- the bailiff will show you where your jury room or
10 how to return in the morning -- If you'd please be back
11 promptly at 9:30 in the morning. If you'd please be back
12 promptly at 9:30 in the morning. Are there any questions?

13 No questions?

14 All right. You may follow your bailiff at this
15 time. Thank you. Thank you very much.

16 (WHEREUPON the jury left the courtroom at 1:39
17 p.m.)

18 THE COURT: Anything further from the State?

19 MR. CLEMENTS: Not at this time, Your Honor.

20 THE COURT: From the Defense?

21 MR. SCOTT: No, Your Honor.

22 THE COURT: Now is the, is Mr. Sims in custody?

23 MR. SCOTT: He is not, Your Honor.

24 MR. CLEMENTS: He's out on bond, Your Honor.

25 THE COURT: All right. Well, his bond is now

1 lifted. He's in custody of the Florence County Detention
2 Center.

3 MR. CLEMENTS: Thank you.

4 THE COURT: All right. Thank you, Sheriff, if
5 you'd take him into custody. Thank you. Thank you very
6 much.

7 Court will be in recess until 9:30 ---

8 MR. SCOTT: Your Honor, may we approach?

9 THE COURT: Yes, sir.

10 (WHEREUPON there was a bench conference out of the
11 hearing of the court reporter.)

12 THE COURT: Thank you very much. He's in custody
13 of the Florence County Detention Center.

14 Thank you very much. Court will be in recess until
15 9:30 in the morning.

16 (WHEREUPON this case was in recess until the
17 following morning.)

18 TUESDAY, DECEMBER 10, 2013

19 MR. SCOTT: Good morning, Your Honor.

20 THE COURT: Good morning. Is the Defendant
21 present?

22 MR. SCOTT: Your Honor, at this time, I believe he
23 is getting dressed, Your Honor.

24 THE COURT: I'm waiting on him.

25 MR. SCOTT: Yes, sir. With the Court's indulgence

1 I can go check on him.

2 THE COURT: Yes, sir, certainly.

3 THE BAILIFF: Judge, the juror just knocked on the
4 door and informed me that Juror No. 6, Mr. Robert
5 Atkinson, said he recognized one of the witnesses, that
6 they knew.

7 THE COURT: All right. I'll bring him in.

8 THE BAILIFF: All right, sir.

9 (WHEREUPON there was a pause in the proceedings.)

10 **PRETRIAL MOTIONS**

11 THE COURT: All right. It appears our -- Mr. Simms
12 is now present in the courtroom. I've been handed up two
13 motions. Solicitor, the first motion is a motion to
14 sequester the witnesses?

15 MR. CLEMENTS: Your Honor, we don't have any
16 argument on that. Whatever the Court sees fit to do on
17 that, Your Honor, we're fine with; except for the fact that
18 I do feel like I have two witnesses that ought to have the
19 right to remain in the courtroom. One is Investigator
20 Thomas McFadden who's my lead investigator on this case. I
21 need him here in the courtroom with me.

22 And the other, Your Honor, is actually one of the
23 victims of the attempted armed robbery and the half brother
24 of the deceased, who was in the car at the time he was shot
25 and that is Mr. Marcus Weaver's brother, Mr. Shane Graham.

1 THE COURT: All right, sir.

2 THE COURT: All right. Thank you, Solicitor.

3 Mr. Scott?

4 MR. SCOTT: May it please, Your Honor. May it
5 please, Your Honor, as it relates to the lead investigator,
6 we see -- I have no problem with him remaining in.
7 However, because Mr. Graham is an essential witness in this
8 particular matter, I believe that he should, he just, he
9 belongs in the same category as the rest of the witnesses
10 in regards to this matter and as such -- particularly when
11 it comes to our defense -- we -- I don't want him in the
12 courtroom listening to what everybody else says because
13 it's just simply not on, I think it would, it would hinder
14 our defense in this matter.

15 So accordingly I would respectfully request that
16 and I have no problem, as I said, with the lead
17 investigator staying, but not Mr. Graham.

18 THE COURT: Did he give a statement, Mr. Graham?

19 MR. CLEMENT: Yes, Your Honor, he did.

20 THE COURT: A sworn statement?

21 MR. CLEMENTS: No, Your Honor, it wasn't a sworn
22 statement.

23 THE COURT: But he did give a statement?

24 MR. CLEMENTS: Yes, sir.

25 THE COURT: All right. Well, under the victim's

1 bill of rights, he's authorized to stay and particularly
2 under State v. Carmackey when giving the statement, he can
3 certainly be impeached if he says anything different in his
4 testimony than he says in his statement. So he would be
5 authorized to stay.

6 Also the chief investigating officer may stay also.
7 Also the evidence custodian can stay and also any expert
8 witnesses can stay. There's no need to sequester expert
9 witnesses. They're not fact witnesses; they, actually they
10 can hear the testimony of other experts and use that in
11 their opinions if they want.

12 So in that regard, and same, same goes for the
13 Defense also. Did you want it reciprocal, Solicitor, I
14 mean I usually allow Defendants to have family members
15 present in the courtroom.

16 MR. CLEMENTS: Your Honor, we haven't been provided
17 with any list of any witnesses. The only witness we know
18 of potentially would be Mr. Simms himself. Of course, he
19 has the right to be in the courtroom, but if there are any
20 other defense witnesses, I would ask, Your Honor, that they
21 be treated the same way as the State's witnesses in regards
22 to sequestration.

23 THE COURT: All right. And that just goes to fact
24 witnesses. That doesn't go to non-fact witnesses. All
25 right.

1 Now, anything further in that regard, Mr. Scott.

2 MR. SCOTT: No, Your Honor.

3 THE COURT: All right. As to the second motion
4 concerning evidence in regards to the Ford Focus?

5 MR. CLEMENTS: Your Honor, we received a request
6 last week from Mr. Chevron Scott regarding examining the
7 Ford Focus. It was released by law enforcement back to the
8 family on, I think, February the 4th of 2010.

9 Your Honor, there was also reports and one
10 particular being the narrative of Corporal Paul Bird who
11 had formerly worked with forensics with the Sheriff's
12 Office, does not now, where he went out in the daytime
13 and -- and looked at the car assisted by Keith Lutcken and
14 they made some photographs. Your Honor, those photographs
15 have never been given to the prosecution and we've looked
16 for them for the last several weeks and they brought them
17 up -- They found them in another file, I think, of Mr.
18 Byrd's, and brought them up yesterday and I burned a disc
19 or had my staff burn a disc and give to Mr. Scott which I
20 think he had a chance actually to see them before I did. I
21 looked at them last night.

22 And I've got one of my staff burning a couple of
23 pictures from that disc of film, or disc of pictures, and
24 there's a couple of photographs that we think that
25 certainly has great probative value where they ran a rod

1 through two places where there was a shot from the front
2 seat to the back seat. Those also were shown on pictures
3 made that evening that Keith Lutcken made of the Ford Focus
4 when it was at the McLeod Hospital, because it was used to
5 deliver the victim there. But it does not have the shots
6 that were taken the next day, which Mr. Scott got yesterday
7 and I got yesterday.

8 There were however, Your Honor, reports explaining
9 exactly what they were and -- and I have the photographs
10 right here that we would submit should be used as evidence.
11 We do not believe there's anything exculpatory there
12 potentially and we didn't receive them until late yesterday
13 and they had to be found. They were not in the case file,
14 the main, the main forensic case file and the investigative
15 case file on this case; but they do have probative value
16 and they were described in these narratives, Your Honor,
17 that had been disclosed a long, long time ago.

18 So the description of what's been shown by the
19 photos was in -- in the narrative of the investigative
20 report and these are the pictures that we just got
21 yesterday. I don't think there's really any prejudice as
22 to when -- because they are what they are.

23 THE COURT: All right. Now, Solicitor, first off,
24 tell me what the Ford Focus has to do with anything.

25 MR. CLEMENTS: The Ford Focus, Your Honor, is the

1 vehicle that the victim was in.

2 THE COURT: Was that the victim's vehicle?

3 MR. CLEMENTS: It was the victim's vehicle he was
4 riding in that -- it was his half brother's vehicle.

5 THE COURT: That's Mr. Graham?

6 MR. CLEMENTS: That's Mr. Graham, yes, sir.

7 THE COURT: It was Mr. Graham's vehicle?

8 MR. CLEMENTS: Yes, sir.

9 THE COURT: Was Mr. Graham operating the vehicle?

10 MR. CLEMENTS: He was operating the vehicle at that
11 time, yes, sir.

12 THE COURT: And the victim was a passenger in the
13 vehicle?

14 MR. CLEMENTS: The victim was a passenger in the
15 vehicle.

16 Mr. Graham was driving. They pulled up; they
17 pulled into a parking space at the Days Inn. Mr. Simms and
18 the other two individuals with him, Mr. Carraway and Mr.
19 Joe, were parked on the other side. This was supposed to
20 be a marijuana transaction. Mr. Carraway and Mr. Simms,
21 the State alleges, came to the vehicle. Mr. Marcus Weaver
22 was sitting in, in the passenger side. Mr. Shane Graham
23 was in, behind the, the wheel; he was driving, and Mr.
24 Squan Davis was in the back-driver's side of the vehicle.

25 The State alleges and we believe the testimony is

1 going to show Mr. Carraway came up and was directed around
2 and got in the back passenger side and Mr. Simms snuck
3 around and Mr. Graham saw him in his side view mirror and
4 he came around and came to the passenger side door where
5 Mr. Weaver was and that's where we believe the shot was
6 fired and Mr. Weaver was hit in the back and, and it exited
7 out the front with a .380 caliber bullet, which caused his
8 death.

9 The first shot however was fired by Mr. Weaver with
10 a .45, went through his arm and through the seat into the
11 back seat of the car. There was at least two other shots
12 fired by Mr. Weaver while he was sitting in the car. One
13 went through the back seat -- and I can show you the
14 pictures, Your Honor.

15 THE COURT: Don't show me yet because I'm trying to
16 track ---

17 MR. CLEMENTS: Okay.

18 THE COURT: --- chronologically right now.

19 MR. CLEMENTS: Yes, sir.

20 MR. SCOTT: Your Honor, may it please, I'm not
21 quite sure if he's answered the question. I think, I
22 thought your question was what does, what's the
23 significance of the vehicle and the significance of the
24 vehicle in summary is that it is the main item of
25 evidentiary value in this particular case. That's the

1 whole, that's the foundation of the entire case.

2 MR. CLEMENTS: I don't know if it's the foundation
3 of the case, Your Honor. I'm trying to explain the
4 significance in detail.

5 THE COURT: And then the vehicle operated by Mr.
6 Graham delivered Mr. Weaver to the hospital?

7 MR. CLEMENTS: Yes, sir.

8 THE COURT: And you have photographs of that?

9 MR. CLEMENTS: Yes, sir, I have photographs of the
10 vehicle at the hospital and when it was examined the next
11 day.

12 THE COURT: Wait, let me stop you there. You don't
13 have any objection to those?

14 MR. SCOTT: I don't have any objections to the
15 photos as it relates to at the time of the incident if he
16 has those, but those, the ones he's talking about; that did
17 not happen at the time of the incident.

18 THE COURT: My question is do you have objections
19 to photographs of the vehicle when it was at the hospital?

20 MR. SCOTT: No, Your Honor; that's not my
21 contention; Your Honor.

22 THE COURT: All right. All right. So then we go
23 beyond that and we go to this officer that is no longer an
24 officer; what was his name?

25 MR. CLEMENTS: Paul Bird, Your Honor.

1 THE COURT: Byrnes?

2 MR. CLEMENTS: Paul Bird, Your Honor.

3 THE COURT: Bird. And Mr. Bird and the coroner,
4 January 11th?

5 MR. CLEMENTS: Yes, sir.

6 THE COURT: That day?

7 MR. CLEMENTS: Yes, sir.

8 THE COURT: They examined the vehicle?

9 MR. CLEMENTS: Yes, sir. That night it was taken
10 to impound.

11 THE COURT: The night of the 10th?

12 MR. CLEMENTS: Yes, sir.

13 THE COURT: And they examined the vehicle on the
14 11th?

15 MR. CLEMENTS: And on the 10th, Your Honor.

16 THE COURT: I understand on the 10th; that's at the
17 hospital?

18 MR. CLEMENTS: Yes, sir.

19 THE COURT: It was taken to impound; they examined
20 it on the 11th?

21 MR. CLEMENTS: Yes, sir.

22 THE COURT: And what Mr. Scott is objecting to is
23 the, is photographs that the State intends to produce or
24 present of the vehicle on the 11th?

25 MR. CLEMENTS: Yes, sir.

1 THE COURT: Is that right, Mr. Scott?

2 MR. SCOTT: Any subsequent photos taken.

3 THE COURT: All right. And when is the vehicle
4 released to the family or to Mr. Graham?

5 MR. CLEMENTS: On February the 4th, 2010.

6 THE COURT: All right. Now, you're representing to
7 me, Solicitor, that you were unable to locate these
8 photographs until recently?

9 MR. CLEMENTS: Yes, sir.

10 THE COURT: But there were reports by Mr. Bird --

11 MR. CLEMENTS: Yes, sir.

12 THE COURT: -- that indicated the vehicle was
13 examined, was photographed --

14 MR. CLEMENTS: Yes, sir.

15 THE COURT: -- and there's a report on that?

16 MR. CLEMENTS: Yes, sir. And also from Mr. Lutcken
17 as well.

18 THE COURT: And also from Mr. Lutcken. There were
19 two reports on that --

20 MR. CLEMENTS: It was Lieutenant Lutcken at that
21 time.

22 THE COURT: -- and both of those were given to the
23 defense?

24 MR. CLEMENTS: Yes, sir.

25 THE COURT: All right. Now what pictures of

1 that -- or those that you handed Mr. Scott do you object
2 to, Mr. Scott; all of them?

3 MR. SCOTT: All of them, Your Honor, except, hold
4 on, before -- let me, let me examine them one more time.

5 THE COURT: All right.

6 MR. SCOTT: Yes, Your Honor, all of them.

7 THE COURT: Would you have those marked for
8 identification purposes please, Solicitor?

9 MR. CLEMENTS: Yes, sir, Your Honor.

10 (WHEREUPON State's Exhibits No. 1 through 12 were
11 marked for identification.)

12 MR. CLEMENTS: And, Your Honor, if I may, I have
13 four of the pictures that were made that evening at the
14 hospital I'd like to mark for identification. Your Honor,
15 I think the Court would find it instructive to compare
16 with, with these pictures that Mr. Scott has objected to
17 and I believe, Your Honor, he does not object to these
18 four.

19 MR. SCOTT: That is correct, Your Honor, I have no
20 objection to the four that he is discussing at this
21 particular time.

22 THE COURT: All right.

23 (WHEREUPON State's Exhibits No. 13 through 16 were
24 marked for identification.)

25 THE COURT: You marked 13, 14, 15, and 16?

1 THE COURT REPORTER: Yes, sir. I'll initial them
2 after they're put in.

3 MR. CLEMENTS: Your Honor, I believe the reason Mr.
4 Scott really objects to these pictures made in the daytime,
5 Your Honor, is that what the State believes happened is Mr.
6 Weaver fired his gun at least four times while he was in
7 the front seat of the car and that two of those shots
8 passed through the back seat, and one ended up in the back
9 seat and then the morning of the 11th, Lieutenant Lutcken
10 and Officer Bird put rods through to show them where that
11 bullet went.

12 And it went from front to back, through the seat
13 into the back seat and the second one went from front to
14 back at an angle through the seat, hit the rocker panel of
15 the back passenger side door, which was open and -- and
16 exited the car. And then third shot went into the -- into
17 the seat from the front and was lodged in there and they
18 retrieved it from the seat.

19 There were many other shell casings outside the car
20 where Mr. Weaver got out and fired at the defendants before
21 he fell onto the pavement and all those shell casings are
22 .45 shell casings, they were all matched up by SLED to the
23 weapon that Mr. Weaver had. But there was one other shell
24 casing at the scene where the car was. It was a .380 which
25 the State alleges was the gun used by Mr. Simms to shoot

1 Mr. Weaver.

2 The importance of the pictures that were made in
3 the daytime of course where they would be instructive to
4 the jury because they have the rods passing through the
5 seat that demonstrates, it shows the path of the bullets
6 and, and Mr. Bird and Mr. Lutcken put that in the report
7 and will be testifying to that, Your Honor. And we believe
8 that the pictures are important to demonstrate that to the
9 jury so they can see that. We don't believe that any Brady
10 material present --

11 THE COURT: All right. Thank you. Anything
12 further, Solicitor?

13 MR. CLEMENTS: I don't believe so, Your Honor, not
14 at this time regarding these, these photographs.

15 THE COURT: Thank you. Thank you very much.
16 Mr. Scott?

17 MR. SCOTT: May it please, Your Honor, we do
18 believe that it is -- it comes up under Brady in the sense,
19 Your Honor, that whenever a, a defendant is, is given an
20 opportunity to defend themselves, then they should be given
21 the direct evidence in regards to this particular matter up
22 under Brady. Clearly to have an opportunity to physically
23 examine the alleged vehicle involved in this particular
24 incident, being able to have my people go out to examine
25 it. That would be critical to our defense. We have not

1 been afforded that opportunity.

2 And in particular, Your Honor, as it relates to the
3 pictures that were just received on yesterday. I was there
4 with the Solicitor when he got them. We'd already pulled
5 the jury. I've already got my case prepared for trial and
6 then these additional materials come up and I think in the
7 spirit of Brady, Your Honor, I just don't believe that they
8 should be admissible.

9 THE COURT: And you're, you're saying Brady that
10 they're, they're exculpatory?

11 MR. SCOTT: Your Honor, some of those and I
12 consider -- and I could argue the facts just as the
13 Solicitor did, but I choose not to do that at this
14 particular time, but I believe that some of those are, in
15 fact, exculpatory.

16 THE COURT: Well, of course, what -- had the
17 Defendant had ever made a motion to examine the Ford Focus?

18 MR. CLEMENTS: Last week, Your Honor, we received a
19 motion for that and I called Mr. Scott. I could not get
20 him but left him a voicemail and told him after I checked
21 with law enforcement and they didn't know the date, but
22 that car had been released back to the family.

23 THE COURT: Where is the car?

24 MR. CLEMENTS: Your Honor, I don't know if Mr.
25 Graham still owns the car or not. It's been several years.

1 (WHEREUPON there was a pause in the proceedings.)

2 MR. CLEMENTS: They sold it. Investigator McFadden
3 says they sold it --

4 How long ago?

5 THE INVESTIGATOR: Back then.

6 MR. CLEMENTS: Back then at that time. Of course,
7 they didn't want to keep that car because it had too many
8 bad memories, I imagine, Your Honor. The car was released
9 back to the family and they subsequently sold it shortly
10 thereafter.

11 THE COURT: And, Mr. Scott, as the Solicitor
12 indicated to the Court, there were statements in the report
13 of Investigator Bird and the coroner indicating their
14 examination of the car on January the 11th of 2010?

15 MR. SCOTT: Yes, Your Honor, that is in the report,
16 but that still negates the question as to me having an
17 opportunity to physically examine it. But for that -- and
18 at the time I was, I was told that this was a date certain
19 for the trial, that's when I put all this information
20 together.

21 I simply haven't had an opportunity to look at that
22 vehicle and I think it's important that -- for my client's
23 sake -- that I, I have an opportunity or my experts have an
24 opportunity to look at that vehicle.

25 THE COURT: All right. Well, of course the expert

1 can examine the photographs if they would like, but if the
2 proper foundation is laid, I would deny the motion as far
3 as Brady is concerned. That's the foundation of the
4 motion. But that of course would be subject to the proper
5 foundation for the photographs in front of the jury.

6 MR. SCOTT: Yes, Your Honor.

7 THE COURT: All right. Any other motions, Mr.
8 Scott?

9 MR. SCOTT: Just for purposes of the record, Your
10 Honor, I note my objection to the Court's ruling in this
11 matter.

12 THE COURT: Certainly, yes, sir.

13 Any other motion -- any motions from the State,
14 Solicitor?

15 MR. CLEMENTS: Your Honor, not at this time. I do
16 have some other photographs that we'd like to show and some
17 information as to what we'd like to present into evidence
18 that I need to discuss with Mr. Scott so we can decide what
19 we can agree on, Your Honor, while we're waiting for the
20 jury to come.

21 THE COURT: All right. Well I have one note from
22 our bailiff that Juror No. 6, Mr. Atkinson, recognized one
23 of the victims, excuse me, one of the witnesses, I take it
24 this morning. That's really all I know. So I need to talk
25 with Mr. Atkinson at some point in time.

1 MR. CLEMENTS: Yes, sir.

2 THE COURT: If y'all want to get straight on the
3 evidence.

4 MR. CLEMENTS: Your Honor, I guess the quickest way
5 is to go ahead and have them marked.

6 THE COURT: All right.

7 (WHEREUPON there was a pause while some of the
8 exhibits were marked for identification.)

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

10 MR. CLEMENTS: May it please the Court, Your Honor?

11 THE COURT: Yes, sir.

12 MR. CLEMENTS: Your Honor, We have pre-marked
13 exhibits for identification 1 through 63 with the exception
14 of a number 49 and a number 50; we have not used those
15 numbers yet. My understanding is that Items No. 1 through
16 15 are photographs that Mr. Scott objects to. Then the
17 other, all other pieces of evidence we have pre-marked for
18 identification he does not object to except I have to lay
19 the foundation for them. As long as I lay the proper
20 foundation, he will not object to those items; is that
21 correct?

22 THE COURT: You said 1 through 15?

23 MR. CLEMENTS: One through 15 are the pictures that
24 he's objecting to.

25 THE COURT: Earlier he didn't object to 13, 14, 15,

1 or 16.

2 MR. CLEMENTS: All right, Your Honor.

3 MR. SCOTT: May it please the Court, as it relates
4 to those -- to 13 through 14, those are the ones that were
5 done that particular night. I don't have any objections to
6 those. So it would be 1 through 12.

7 THE COURT: Correct. All right.

8 MR. SCOTT: One through 12.

9 MR. CLEMENTS: Yes, sir. Thank you, Your Honor.

10 THE COURT: 13, 14, 15, and 16 you have no
11 objections to?

12 MR. SCOTT: Right.

13 THE COURT: And the others you have to lay the
14 proper foundation?

15 MR. CLEMENTS: Yes, sir.

16 MR. SCOTT: That is correct, Your Honor.

17 THE COURT: All right. Thank you. Thank you very
18 much.

19 MR. CLEMENTS: Your Honor, we have some witnesses
20 in the courtroom. I'm going to ask them to leave and sit
21 in my conference room out there except for Mr. Quick, who
22 is our evidence custodian and Mr. McFadden. I asked
23 Investigator Cox and Mr. Adam Moore if they'll wait. I
24 think I have Chris Owens; he's going to be my first
25 witness. Can he stay during opening statements, Your

1 Honor?

2 THE COURT: Yes, sir. And then he'll be
3 sequestered.

4 MR. CLEMENTS: Okay. Your Honor, Investigator Cox
5 and Investigator McFadden will just be duplicative and so I
6 am not going to call Investigator Cox, but he's going to
7 stay in the courtroom and watch.

8 THE COURT: Certainly.

9 All right. Bring me Juror No. 6 please.

10 THE BAILIFF: Yes, sir.

11 THE COURT: Mr. Robert Atkinson.

12 (WHEREUPON the juror entered the courtroom.)

13 THE COURT: All right. You may stand there, Mr.
14 Atkinson. You're Juror 6, Robert Atkinson?

15 THE JUROR: Yes, sir.

16 THE COURT: And the bailiff reported to me this
17 morning that you indicated you recognized a witness?

18 THE JUROR: Yes, sir.

19 THE COURT: All right. Can you, can you elaborate
20 on that for me, please?

21 THE JUROR: Yes, sir. I got to thinking about it
22 yesterday after I got home of the names you had called out.

23 THE COURT: Yes, sir.

24 THE JUROR: And you called out a Dianne Boatwright,
25 and she's a lady that works out at the same place I do.

1 THE COURT: Dianne Boatwright.

2 THE JUROR: Yes, sir, and I passed her in the hall
3 this morning.

4 THE COURT: All right. So, you got to thinking
5 about the name yesterday evening and then you passed Ms.
6 Boatwright in the hall this morning, the same one that you
7 know that you work with.

8 THE JUROR: Yes, sir.

9 THE COURT: How long, I believe you told me you'd
10 work down there for thirty some years?

11 THE JUROR: Yes, sir.

12 THE COURT: How long have you worked with Ms.
13 Boatwright?

14 THE JUROR: I'm not sure. I've been there over 34
15 years. I'm not sure how long she's been there.

16 THE COURT: All right. Do y'all work in the same
17 general area? I've never worked in the --

18 THE JUROR: No, sir.

19 THE COURT: -- I've never worked in the place like
20 that.

21 THE JUROR: No, sir, I work in maintenance and she
22 worked in administration.

23 THE COURT: In administration?

24 THE JUROR: Yes, sir.

25 THE COURT: How much contact would you have with

1 her as, as a co-worker.

2 THE JUROR: Just basically passing each other and
3 just speaking is all.

4 THE COURT: All right. And when you heard the name
5 yesterday did it click in your mind or ---

6 THE JUROR: Not till later.

7 THE COURT: All right. All right. So in no way
8 were you having not answered yesterday, you wasn't
9 concealing the fact that you, you know a Dianne Boatwright?

10 THE JUROR: No, sir.

11 THE COURT: And you just thought about it later?

12 THE JUROR: Yes, sir.

13 THE COURT: And was going to say something this
14 morning, but then particularly when you saw Ms. Boatwright?

15 THE JUROR: Yes, sir.

16 THE COURT: All right. Well, given the fact that
17 y'all are co-workers, could you be a fair and impartial
18 juror in the trial of this case for both Mr. Simms and for
19 the State?

20 THE JUROR: Yes, sir.

21 THE COURT: Any doubt in your mind about that?

22 THE JUROR: No, sir.

23 THE COURT: Any question whatsoever?

24 THE JUROR: No, sir.

25 THE COURT: Any reason whatsoever why you feel like

1 you could not be a fair and impartial juror in the trial of
2 this case for both the parties, the State and Mr. Simms?

3 THE JUROR: No, sir, none.

4 THE COURT: All right. I'm going to ask you to
5 step back to the jury room momentarily for me. I may bring
6 you back out here; I may not.

7 THE JUROR: Okay.

8 THE COURT: You may step back momentarily.

9 (WHEREUPON the juror left the courtroom.)

10 THE COURT: All right. Solicitor, any position by
11 the State? Any additional questions you'd like me to ask
12 Mr. Atkinson?

13 MR. CLEMENTS: Your Honor, we feel like the Court
14 has covered the proper questions and we take no position;
15 whatever the Court decides.

16 THE COURT: All right. Mr. Scott?

17 MR. SCOTT: May it please, Your Honor, we have no
18 objection to this juror remaining with us.

19 THE COURT: All right. Thank you. Thank you very
20 much.

21 All right. With that being said, Madame Bailiff,
22 I'm going to appoint Juror No. 63, Russell Harter, as the
23 foreperson; and Mr. Atkinson will remain on our jury panel
24 and if you'd bring our jury please.

25 (WHEREUPON the jury entered the courtroom at 10:56

1 a.m.)

2 THE COURT: All right. Welcome back, ladies and
3 gentlemen on the jury panel. Madame Clerk, would you swear
4 our jury please?

5 (WHEREUPON the jury was sworn.)

6 THE COURT: Is there any member of the jury panel
7 unable to take the oath? If so, please stand.

8 Thank you. Thank you very much.

9 Mr. Harter, I appreciate you volunteering for that
10 very important position and I will certainly give you
11 further instructions concerning serving as the foreperson
12 of this jury. Where did you go to college?

13 THE FOREPERSON: Francis Marion.

14 THE COURT: Francis Marion?

15 THE FOREPERSON: Yes, sir.

16 THE COURT: I just wanted to make sure I didn't
17 appoint a Clemson graduate. That's a joke of course.
18 Thank you. Thank you again.

19 **OPENING REMARKS BY THE COURT**

20 THE COURT: Ladies and gentlemen of the jury, the
21 case we're about to try is the case of The State versus
22 Justin R. Simms. Of course, Mr. Simms was introduced to
23 you yesterday at my front left.

24 What I will now say is intended to serve as an
25 introduction to the trial of this case. These remarks, my

1 remarks at this time are not an instruction or charge on
2 the law on this case. I'll instruct you on the law that
3 applies to this case at the end of the trial before you
4 retire to consider your verdicts. This is merely an
5 explanation of the procedure that we will follow in the
6 trial of the case so that you may better understand what
7 may be happening..

8 The Defendant is charged by an indictment, a three
9 count indictment filed in this Court with the crime of
10 murder, attempted armed robbery, and possession of a
11 firearm during the commission of a violent crime. As you
12 heard me state before, this indictment is simply the formal
13 charging document by which the case is brought before the
14 Court and it is not in any sense evidence of any of the
15 allegations it contains.

16 The Defendant has pled not guilty to these charges
17 in this indictment. The State therefore has the burden of
18 proving each of the elements of the indictment -- each of
19 the crimes -- beyond a reasonable doubt and it will be your
20 duty, ladies and gentlemen, to decide whether the State has
21 met that burden.

22 Your purpose as jurors is to find and determine the
23 facts. You, ladies and gentlemen, are the sole judge of
24 the facts in this case. If at any time I make any comment
25 regarding the facts, you must disregard this. You are to

1 determine the facts from the testimony you hear and any
2 other evidence introduced into Court. It is up to you to
3 determine the inferences which you feel may properly be
4 drawn from the evidence. It is especially important that
5 you perform your duties of determining the facts diligently
6 and conscientiously because ordinarily there is no way to
7 correct an erroneous determination of the facts by a jury.

8 On the other hand and with equal emphasis, the same
9 law that makes you the judges of the facts make me the
10 judge of the law. The law as given by the Court is the
11 only law you may consider. You must accept it and follow
12 it even though you may disagree with it. I cannot tell you
13 what the facts are; you cannot disagree with me about what
14 the law is or should be.

15 Your job is to take the law as I give it to you and
16 apply it to the facts as you find them from the testimony
17 of the witnesses and any other evidence that is introduced.
18 After doing that, you will render your verdicts, true and
19 just verdicts, under the solemn oath that you just took as
20 jurors.

21 Until I advise you to begin your deliberations, you
22 must not discuss this case with anyone, that includes your
23 fellow jurors, friends, family members, or anyone else.
24 After the case is submitted to you, you must discuss it
25 only in the jury room with your fellow jurors.

1 The attorneys, the parties in this case have been
2 advised that they are not to talk to you at all. So if you
3 see anyone involved in the case or the witnesses and they
4 do not even say hello, they're not being unfriendly, they
5 are just following my instructions.

6 During the trial, do not read, listen to or watch
7 any news reports about the case should there be any. This
8 includes anything that may be in the newspaper, radio,
9 television or on the internet. You must not consider
10 anything that you may have read or heard about the case
11 outside of the courtroom whether before or during the
12 trial. It is important that you keep an open mind and not
13 decide any issue in the case until all of the evidence has
14 been presented and the parties have made their closing
15 arguments to you and I have instructed you on the law in
16 this case.

17 It is your solemn responsibility to determine the
18 guilt or innocence of the Defendant and your verdicts must
19 be based solely on the evidence that is presented in this
20 trial and on the law as I instruct you during and at the
21 close of the trial.

22 In just a moment, the Solicitor will make what is
23 called an opening statement in which the Solicitor will
24 explain to you the issues in the case, or at least what the
25 Solicitor thinks the issues are in the case. Mr. Scott,

1 one of the attorneys for the Defendant may also make an
2 opening statement although he is not required to do so.

3 The burden of proof beyond a reasonable doubt is on
4 the State of South Carolina and remains on the State of
5 South Carolina. A criminal Defendant in South Carolina,
6 regardless of the seriousness of the offenses charged, is
7 always presumed to be innocent and does not have to prove
8 himself or herself innocent and has no burden whatsoever.

9 Ladies and gentlemen, what the attorneys tell you
10 during their opening statements is not evidence in the
11 case. What the attorneys tell you in their closing
12 arguments is not evidence in the case. The questions by
13 the attorneys of the witnesses is not evidence in the case;
14 it's the framework by which the evidence, the testimony is
15 extracted from the mouth of the witnesses testifying under
16 oath. The attorneys are not sworn; they are officers of
17 the Court, but they are not sworn; they are not witnesses
18 in the case, but what they say, please pay very close
19 attention to. Please give them your complete and undivided
20 attention. The evidence will be presented to you by the
21 testimony of the sworn witnesses from this witness stand
22 and/or by any exhibits that may be introduced into
23 evidence.

24 From time to time during the trial, you may hear
25 one of the lawyers say something like, Your Honor, I

1 believe we have a question of law or a matter of law to
2 discuss with you. Or Your Honor, may we approach the bench
3 or sometime I myself might find it necessary to excuse you
4 from the courtroom for a short while so the attorneys and I
5 can discuss a matter of law. The reason I excuse you
6 during these times is because you are the judges of the
7 facts and sometimes when I am discussing matters of law
8 with the attorneys, it may be necessary for me to make some
9 comment as to the facts in connection with ruling whether
10 or not a particular law applies. I am not and will not
11 tell you what I think the facts are. The constitution does
12 not allow me to have an opinion as to the facts.

13 So I will excuse you from the courtroom while these
14 discussions take place so that in no way will you be
15 influenced by anything that I might say or do in connection
16 with the facts.

17 In determining what the true facts are in this
18 case, you must decide whether or not the testimony of the
19 witness or witnesses is believable. It will be my
20 responsibility to rule as a matter of law whether certain
21 testimony is admissible at all or not. In other words,
22 whether you to get to hear it at all or not; that's what
23 admissibility means. But once the testimony is admitted,
24 once you hear it, whether you believe it or not is for you
25 to determine and decide, using your good judgment and your

1 common sense, and the standard of the law as I tell you the
2 law is.

3 In deciding whether to believe a witness, you have
4 a right to consider the interest of any witness, the bias
5 of any witness, the prejudice of any witness, the
6 opportunity for the witness to have seen the matters and
7 things about which the witness may testify, and the way, or
8 the demeanor, that the witness displays to you while on the
9 witness stand. You have the right to consider anything
10 that is in the record that will help you evaluate the
11 testimony, the believability of the testimony of the
12 witnesses.

13 That means it will be your duty to pay close
14 attention to these witnesses, to observe, to listen to the
15 witness, to pay close attention to the attorneys and to the
16 Court. Don't let your thoughts wonder, but give strict
17 attention to the testimony in this case so that at the end
18 of all the testimony, after the closing arguments by the
19 attorneys, after the instruction on the law by the Court,
20 you will then be in a position to determine what the true
21 facts are and to apply the law to those facts and thus
22 render those true and just verdicts.

23 It will be your added responsibility, Mr. Foreman,
24 to preside in the jury room and be the jury spokesperson
25 here in Court. It will also be your duty to write the

1 verdict, but I will give you further instructions about
2 that at the conclusion of the case.

3 Now just a few administrative matters, ladies and
4 gentlemen, many times items of evidence, photographs,
5 charts, diagrams, exhibits, may be introduced and handed to
6 the foreperson while you're out here in your jury box and
7 passed among members of the jury while you're out here in
8 your jury box. You may look at those items all you wish.
9 Please remember if I allow an item into evidence, you will
10 also have that item with you in your jury room at the time
11 of your deliberations. So it will not be the only
12 opportunity that you will get to see and view those items.
13 Again, take all -- take all the time you wish to take.

14 There may be a firearm introduced during the course
15 of the testimony. It has a lock on it, it is cleared, it
16 is safe, it is not to be pointed at any individual, it is
17 to be handled by the barrel in that regard. I don't know
18 if there's ammunition or not unfired; if there is, the
19 firearm and the ammunition will never be in the jury room
20 at the same time. None of the items of evidence will be in
21 the jury room until the conclusion of the trial when it's
22 submitted to you for your, for your deliberations.

23 Another matter is seating. I need to keep up with
24 fourteen people. I need to keep up with our foreperson and
25 our two, our two alternates. If y'all would always

1 maintain those seats for me, please, Mr. Foreman, Madame
2 and Gentlemen Alternates, I would appreciate that and then
3 if I know all the seats are full then I know I have
4 everybody present. You may sit, the others may sit
5 anywhere you like in the jury box. It has been my
6 experience that many times, jurors are very territorial.
7 They like to sit in the same place, the same time, and have
8 the same view of the court, of the witness stand. If you
9 want to do that, that's certainly, that's certainly fine
10 with me. That is a matter of your, of your, personal,
11 personal preference in that regard.

12 From time to time, you may see me on the computer.
13 I don't tweet, repeat, e-mail, read the news or anything.
14 These are very good experienced trial lawyers. I may see
15 what I think to be a legal issue around the bend somewhere
16 off in the distance and I will do some legal research in
17 that regard. I tell you that because a juror complained to
18 me about it one time.

19 Imagine a juror complaining about me. I was just
20 mystified -- but if it does, if it does distract, distract
21 you, please let me know.

22 And finally, what am I really in charge of? I'm in
23 charge of taking breaks; that's what I'm in charge of and I
24 have a real simple rule. When I want to take a break, we
25 take a break; everybody's happy, nobody's sad. If you sit

1 out here too long, your thoughts get to wondering.
2 Probably not just you, it's others. Raise your hand. This
3 is an important case. This is an important case to Mr.
4 Simms. This is an important case to the State of South
5 Carolina. You have to determine what the true facts are.
6 If you need a break, please raise your hand. You're
7 probably not the only one that needs it and as I say, if
8 you set out here too long and you get to squirming in your
9 seats and your thoughts get to wondering, it's time for a
10 break.

11 I usually try to go about an hour and fifteen
12 minutes between breaks. I try to finish a witness up, you
13 know, before I take a break and see how long the next one
14 will be. But again, it's not some type of judicial
15 marathon. If any of you need a break, please, please let
16 me know. If you cannot hear a witness or see a witness or
17 see an exhibit properly, please indicate that to me or one
18 of our fine Bailiffs and we'll try to get that person to
19 speak up.

20 Any objections to anything I've told the jury from
21 the State, Solicitor?

22 MR. CLEMENTS: No, Your Honor.

23 THE COURT: Defense, Mr. Scott?

24 MR. SCOTT: No, Your Honor.

25 THE COURT: Thank you and thank you very much.

1 Ladies and gentlemen, we will now begin the trial.
2 Solicitor, you may address the jury.

3 **OPENING STATEMENTS**

4 MR. CLEMENTS: The you, Your Honor, may it please
5 the Court?

6 Good morning, ladies and gentlemen of the jury. I
7 don't know how happy you are to be here, but we're happy
8 for you to be here. Both sides have chosen you to decide
9 this case and as is the occasion in anywhere in our state,
10 if someone is accused of a crime, they have the right to a
11 jury trial. They have a right to have twelve individuals
12 consider the facts and weigh the facts and decide the case.

13 Now, they are innocent until proven guilty and Mr.
14 Simms as he has on his gray coat right now, he's also
15 cloaked with the presumption of innocence as he should be
16 in the United States. We are innocent until we're proven
17 guilty beyond a reasonable doubt.

18 Now, I represent the State of South Carolina. What
19 that means is that means that the burden of proof is on me
20 and I embrace that burden today. What I have to do is I
21 have to remove that cloak of innocence, that presumption of
22 innocence from Mr. Simms. And I have to show you beyond a
23 reasonable doubt from the evidence from this witness stand
24 that he is guilty.

25 Now, what is he charged with? He's charged with

1 murder, attempted armed robbery, and possession of a weapon
2 during the commission of a violent crime. And my job is to
3 try to present the facts to you through the evidence and
4 exhibits and the witnesses from that witness stand.

5 It's the Judge's role to tell you what the law is,
6 not me. But what I believe he's going to tell you at the
7 end of this trial is that when you're accused of murder,
8 you're accused of taking someone's life with malice
9 aforethought, with evil intent of a harm. And he may also
10 talk about a lesser-included-offense of murder called
11 voluntary manslaughter where you take somebody's life in
12 the heat of passion with legal provocation.

13 And he's going to tell you what attempted armed
14 robbery is. And that is simply when you try to rob someone
15 when you're armed with a weapon such as a handgun as
16 alleged in this case.

17 And then the third charge Mr. Simms faces is that
18 he possessed a weapon during the commission of a violent
19 crime; that while committing murder or manslaughter and/or
20 attempted armed robbery, that he had armed himself with a
21 weapon, which we believe to be and allege is a handgun, a
22 .380 handgun.

23 Now, what the evidence is going to show in this
24 case is that in January of 2010, out here at I-95 and
25 Highway 52 at the Days Inn, that it was a very dramatic and

1 traumatic night for six young men from here in the Pee Dee.
2 That in one car, a Ford Focus, that came here from Lake
3 City, South Carolina, that you had three young men,
4 including two brothers. You had Mr. Shane Graham, who was
5 driving his Ford Focus and he had picked up, the evidence
6 will show, the testimony will reveal, his half-brother,
7 Marcus Weaver, and Squan Davis from 's Trailer Park
8 in Lake City and brought them here to Florence to the Days
9 Inn. And that Mr. Graham was driving the car; he was
10 behind the wheel and seated beside him in the
11 front-passenger seat was his brother, Marcus Weaver. And
12 sitting directly behind Mr. Graham in the back seat was Mr.
13 Squan Davis.

14 And there was another vehicle that had been in
15 contact with them through cell phone calls and that was a
16 vehicle from Darlington driven by Mr. Curtis Joe, Jr. And
17 in that vehicle riding with him was another individual by
18 the name of Josh Carraway and Mr. Simms. And that they had
19 talked with one of the individuals, if not more, in the
20 Ford Focus; hadn't talked with Mr. Graham, but they had
21 talked with one of the others at least and there was
22 supposedly going to be a marijuana deal take place there at
23 the Days Inn.

24 And that when Mr. Graham came in and pulled in the
25 parking lot, Mr. Joe parked on the other side and the

1 testimony is going to be that Mr. Carraway and Mr. Simms
2 left Mr. Joe's vehicle and came around or through the
3 breezeway and came up to the Ford Focus. And we believe
4 that the evidence is going to show that Mr. Carraway jumped
5 in the back seat on the passenger side with Mr. Squan
6 Davis, right behind Mr. Marcus Weaver. And that there was
7 things said such as, "Give it up." "Where is it?" Or "Let
8 me see it." "Give it up."

9 And then all of a sudden chaos broke loose. I
10 don't know if you remember a movie from back, I think
11 around 2008, 2009, called Vantage Point and it had Dennis
12 Quaid in it and had, the movie was showed from all these
13 different vantage points, what happened in very traumatic
14 situation and how everybody saw it from their perspective
15 and you got put the puzzle together as you watch the movie.

16 Well, that's kind of what we're going to ask you to
17 do. Y'all are going to be the judges of the facts in this
18 case. You're going to weigh the evidence and weigh the
19 facts and you're going to apply the law that Judge McMahon
20 gives you. And you're going to put that puzzle together.
21 But before you do that, it's gone be my job to put the
22 puzzle pieces up before you because I have the burden of
23 proof.

24 And everybody in that car when that chaos broke
25 loose, everybody's focused on something different;

1 everybody's seeing something a little different from where
2 they sat, particularly in that car. But they're all in
3 this little enclosed car and a .45 goes off several times
4 and we're going to show you through the evidence that Mr.
5 Weaver was shot first through the arm, left arm, and that
6 he had a .45 and it was a large caliber bullet that hit him
7 in the arm and that he fired that gun, the evidence will
8 show, at least three times inside that car.

9 And a .45 automatic is, as you know, if you know
10 about guns, ejects the shell casings and there's shell
11 casings in the car, there's bullet fragments and there's
12 holes in the seat that show the trajectory. You're going
13 to hear testimony about that as the forensic officers of
14 the Florence County Sheriff's Office went and examined that
15 car the night of the event and the day after and see where
16 those bullets went.

17 And also you're gone hear testimony about evidence
18 that was collected out there on the scene and right outside
19 the car, right outside where Mr. Weaver was sitting, where
20 he got out after he had been shot in the back with a small
21 caliber bullet, he got out and continued firing his weapon
22 and left several shell casings out there on the scene, on
23 the asphalt, along with blood, and a phone that was dropped
24 and his gun that was dropped.

25 And then all those shell casings were collected and

1 taken to SLED for testing along with his .45 gun. And
2 you're going to hear there was one .380 shell collected and
3 no other. They are right there where the car was.

4 Now, you're going to hear about officers responding
5 to the Days Inn, finding a wounded individual there by the
6 name of Josh Carraway, who had been shot in the foot. And
7 that he had jumped the fence and come back to the office
8 after jumping the fence. And you're going to hear that Mr.
9 Graham picked his brother up and put him in the car and
10 raced him to the hospital and efforts were made to save his
11 life, but they failed.

12 And you're going to hear from Mr. Davis and Mr.
13 Graham what happened in that car when that chaos broke
14 loose. You will hear from Mr. Carraway about where he was.
15 And you're going to hear from Mr. Davis, who he saw in the
16 car. You're going to hear from Mr. Graham about who he saw
17 outside the car or what he saw outside the car, I should
18 say. And you're going to compare the physical facts of
19 what was found and what was examined and what was looked
20 at. And you're going to compare those to the statements
21 you're going to hear from the witness stand and you're
22 going to those facts. And you're going to conclude at the
23 end of all the testimony, at the end of the charge of the
24 law that the Judge gives you when he tells you to
25 deliberate, you're gone conclude that Mr. Weaver was shot

1 possibly by one person only and it was not possible from
2 anyone else there at that scene to shoot him in the back.

3 And you're going to weigh these facts out and
4 you're going to reach a verdict. That comes from the
5 Latin, veri dicto, to tell the truth, speak the truth. And
6 you're going to speak the truth beyond a reasonable doubt
7 because once you weigh all these facts out, there's no
8 other conclusion you can draw, but that Marcus Weaver was
9 shot and killed that evening in January 2010 at the Days
10 Inn by Mr. Justin Simms in the middle of a rip-off about a
11 marijuana deal.

12 You know, ladies and gentlemen of the jury,
13 horrible things happen when you're involved in doing things
14 you shouldn't be doing. And you're going to hear about
15 that. These young men were involved in something they
16 shouldn't have been doing and something horrible happened
17 and Marcus Weaver is now dead. It might now have been the
18 intended result, might not have been anticipated ahead of
19 time, but as the consequences rolled on and the
20 circumstances developed that you hear from the witness
21 stand, you're going to shake your head and you going to say
22 how sad, how tragic, how horrible, it should have never
23 happened. And you're going to find Mr. Simms guilty beyond
24 a reasonable doubt because that's what the facts are going
25 to dictate to you after you weigh it.

1 I want to thank you for your service to this
2 community. I want to thank you for your service to the
3 State of South Carolina that I represent. And I want to
4 thank you for your service to Mr. Simms. He deserves you
5 to give him every consideration. And we ask you to do that
6 because not only do we have a duty to find the truth and to
7 prosecute cases, we have a duty to do justice and we want
8 justice to be found.

9 So give Mr. Simms every consideration, but I submit
10 to you that the only thing that justice will dictate is
11 that you have to find Mr. Simms guilty beyond a reasonable
12 doubt; that he shot and killed Marcus Weaver. Thank you.

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

15 All right. Mr. Scott?

16 MR. SCOTT: Your Honorable Judge, the Court,
17 Solicitor Clements, ladies and gentlemen of the jury, good
18 morning. It's very easy for every one of us to look over
19 the news and see that somebody has been charged with a
20 murder or hideous crime and for us to automatically say
21 he's guilty. We say he's guilty because we know that the
22 police officers are not trying or don't have any kind of
23 biases against anyone; they just arrest people who they
24 believe that the evidence showed committed the crime.

25 So we -- we -- we automatically, we look at the TV

1 screen and we say guilty. That's what we do. I'm a lawyer
2 and I do it, unconsciously I do it.

3 But on yesterday morning the State, Mr. Clements on
4 behalf of the State, I on behalf of my client, we chose
5 each one of you individually to be a member of this jury.
6 That's because we believed that you would come before this
7 Court with no biases, no prejudices, no hidden agendas, no
8 guilty mind. Initially we believe that. That's why you're
9 seated.

10 Now, the question becomes is what is the evidence
11 going to show as it relates to this particular case. I
12 submit to you that I have a great deal of respect for
13 Solicitor Clements. I've known him a very, very long time.
14 But our versions of what evidence will show are drastically
15 different. And the reason why they're drastically
16 different is because we have a different perspective of
17 what the truth is.

18 Now, you heard the Solicitor tell you and you're
19 going to hear a lot of testimony right here about a drug
20 deal gone bad. That's exactly what it was. It was a drug
21 deal that went bad. But the question is not necessarily
22 about the drug deal gone bad as much as it relates to the
23 versions that you're going to hear from all of the
24 witnesses right here on this stand.

25 Now, the first question you're going to have to ask

1 yourself is this; who was robbing who? Because initially
2 one side said that the other side was robbing them; and of
3 course, the other side said that they were robbing them.
4 But I would submit to you that if I come to a fight without
5 a weapon and somebody comes to a fight with a weapon, I can
6 almost pre-suppose, and I'm sure you can pre-suppose with
7 your good common sense, that the person who had the weapon
8 is the one who had the bad intentions.

9 In this particular case, the evidence is going to
10 show that only one side had weapons that we know of. Only
11 one side did all of the shooting and that side that did all
12 the shooting wants you to believe that they didn't come
13 there with bad intentions. The side that had the weapon
14 wants you to believe that they didn't come there to rob
15 anybody; they just came there to sell drugs. Well, your
16 good common sense tells you that don't make no sense. Your
17 good common sense is going to listen to these witnesses
18 that the State is going to produce, get up here and tell
19 you a version of what they saw that makes absolutely no
20 sense whatsoever. It makes no sense.

21 It makes no sense for you to come to do a drug deal
22 and you have weapons. It makes no sense for you to do what
23 some of these witnesses are going to say that they did and
24 it's going to make no sense that some of the things that
25 they're going to tell you that they saw is not even

1 reasonable. And the only way it becomes reasonable to you.
2 if you understand the dynamics behind the versions of
3 truth.

4 You're going to hear as the Solicitor told you from
5 Shane Brown, who was a driver, whose brother, half-brother
6 was killed. He's going to tell you what he did and I want
7 you to ask yourself as you're listening to him, does it
8 make sense. You're going to hear from Squan Davis, who was
9 in the back seat. He's gonna tell you what he saw, what he
10 experienced and then you're going to ask yourself, does
11 that make sense.

12 You're going to hear from Curtis Joe, who is a
13 known drug dealer, who is a known violent criminal. He's
14 going to get up here and the Judge is going to tell you and
15 instruct you that you can believe or not believe any
16 testimony or any facts of any testimony of any witnesses.
17 But once you have established whether or not they have
18 credibility and in this particular case, I submit to you
19 that none of the witnesses that were actually there have
20 credibility and all of them have a motive to lie. I didn't
21 say deceive; I said they have a motive to lie.

22 I have everybody's version of what happened that
23 night. Everybody's version of what happened that night.
24 And one you piece it all together, the Solicitor told you
25 about the puzzle; well, you know what; if I got a puzzle

1 and when you're putting a puzzle together, you know they're
2 different parts and you kind of put them together and one
3 part kind of slides into another part? Well, if a part
4 doesn't slide into another part, if it doesn't fit; it's
5 not a part of the puzzle.

6 If any part of these witnesses testimony doesn't
7 fit, it's not a part of the puzzle. This young man's life
8 is on the line. Your decision today is going to affect not
9 only the rest of his life, but it's going to affect his
10 family's life, it's going to affect the victim's family's
11 life, it's going to affect everyone. And what I'm asking
12 from you on behalf of Justin Simms, is just for you to be
13 patient with us, to be patient as the State presents its
14 case and give each witness the utmost attention.

15 And I am firmly in belief that if you do that, if
16 you do your duty and once you see that all these things
17 don't fit, you're going to do what the Judge charges you to
18 do. You're going to do what you gave an oath to do, which
19 is to come back with a verdict that speaks the truth and
20 there is only one verdict that speaks the truth as it
21 relates to all of the charges and that verdict, ladies and
22 gentlemen, is not guilty because the versions that you're
23 going to hear simply don't add up. And once you see that
24 they don't, you should not hesitate to do the right thing.
25 And in this particular case, I'm firmly in belief that the

Chris Owens - Direct Examination by Mr. Clements

1 right thing and the only verdict that is going to speak the
2 truth, the only verdict that's going to make sense, the
3 only verdict that is reasonable, the only verdict that
4 stands for what justice is all about in this case is a
5 verdict of not guilty. Thank you.

6 THE COURT: Thank you. Thank you very much, Mr.
7 Scott.

8 Solicitor, you may call your first witness.

9 MR. CLEMENTS: Thank you, Your Honor, if it please
10 the Court, we'd call Officer Chris Owens.

11 THE COURT: All right. If you'd come around and be
12 sworn please?

13 CHRIS OWENS, HAVING BEEN SWORN TESTIFIES AS
14 FOLLOWS:

15 THE CLERK: Please be seated and state your full
16 name for the record.

17 **DIRECT EXAMINATION**

18 BY MR. CLEMENTS:

19 Q Good morning.

20 A Chris Owens.

21 Q And where do you work, Chris?

22 A I work for Florence County Sheriff's Office.

23 Q How long have you worked for Kenny Boone?

24 A For the past six years?

25 Q And how long have you been in law enforcement?

Chris Owens - Direct Examination by Mr. Clements

1 A Over ten.

2 Q And prior to working with Florence County Sheriff's
3 Office, where did you work?

4 A I worked with the City of Marion and the Town of
5 Nichols.

6 Q Okay. And what is your current job description?

7 A I'm a Crime Scene Investigator.

8 Q All right. And in 2010 in January what was your
9 job description at that time?

10 A I was a deputy working the streets.

11 Q All right. On patrol?

12 A Yes.

13 Q All right. Do you recall being out working on
14 January 10th, 2010?

15 A Yes, sir.

16 Q Can you please tell us what you were doing on that
17 evening?

18 A I was on patrol when I received a call from
19 dispatch to respond to the Days Inn located at Highway 52
20 and I-95 around 23:36 hours.

21 Q Okay. And in non-military time, what time is that?

22 A 11:36 at night, p.m.

23 Q 11:36 at night?

24 A Yes, sir.

25 Q All right. And what shift was that you were

Chris Owens - Direct Examination by Mr. Clements

1 working; what shift is that called?

2 A I was on night shift.

3 Q Night shift?

4 A Yes, sir.

5 Q And that goes from when to when?

6 A At nighttime it went from 7 p.m. to 7 a.m.

7 Q Okay. Twelve hour shifts?

8 A Yes, sir.

9 Q And on your shift of patrol there, how many other
10 officers do you have working on that shift with you?

11 A At that time, I think about eight.

12 Q And y'all have to cover the whole county?

13 A Yes, sir.

14 Q From past Lake City all the way up to Darlington
15 County line?

16 A Yes, sir.

17 Q Okay. All the way to Marion County line to Lee
18 County line?

19 A Yes, sir.

20 Q And there's just eight of you for that, right?

21 A At that time; yeah.

22 Q Now, when you received the call, approximately what
23 time was it?

24 A It was 20 or 11:36 p.m.

25 Q 11:36 p.m.?

Chris Owens - Direct Examination by Mr. Clements

1 A Yes, sir.

2 Q And who was the first one on the scene there; was
3 it you or another officer?

4 A No, sir, my Sergeant, Steve Driggers.

5 Q Okay. And how much after him did you get there?

6 A It -- it was a short time, a few minutes.

7 Q You were the second one on the scene?

8 A Yes, sir.

9 Q All right. And you -- how close were you when you
10 received the call?

11 A I couldn't tell you.

12 Q Okay. When you got the scene there, you found
13 Sergeant Driggers and what did y'all immediately do?

14 A At the time of the call, we had been advised that
15 there was a gunshot victim that was located at the lobby of
16 the Days Inn. Sergeant Driggers, like I said, he was the
17 one that arrived first and he was in charge of trying to
18 secure the scene as best he could until backup arrived.

19 Q How long did it take backup to arrive?

20 A I think just a few minutes because I -- I'm sure
21 that it was just a few minutes.

22 Q And so he went to secure the scene and where did
23 you go?

24 A Oh, when I, when I arrived on the scene, I made
25 contact with the victim in the lobby.

Chris Owens - Direct Examination by Mr. Clements

1 Q And who was that?

2 A He identified himself as Josh Carraway.

3 Q Okay. And you maintained him at time there?

4 A Yes.

5 Q Okay. And what did Sergeant Driggers do to, to
6 maintain the scene and protect the scene or protect the
7 scene from any kind of people coming on that shouldn't be
8 there?

9 A As I recall, the -- where the shooting take, had
10 taken place, he, there had been some evidence left behind
11 and he was in charge of just making sure that nobody
12 entered the crime scene.

13 Q As far as you know, did anyone else enter the crime
14 scene that didn't belong there?

15 A No, sir.

16 Q All right. Just law enforcement?

17 A Yes, sir.

18 Q Okay. And y'all maintained that crime scene for
19 what purpose?

20 A For evidence purposes to make sure that nothing is
21 spoiled.

22 Q As a patrol officer, do y'all collect evidence?

23 A Usually, no, sir.

24 Q Who collects evidence?

25 A The forensics guys do.

Chris Owens - Direct Examination by Mr. Clements

1 Q Okay. And that's what you're doing now?

2 A Yes, sir.

3 Q Okay. And who was the forensic officer that --
4 that reported there to that scene?

5 A It was -- if you don't mind, I have to see -- look
6 at these notes here.

7 Q Is that your report?

8 A Yes, sir, this is my report.

9 Q Okay. Did you see Adam Moore at the scene?

10 A He was there.

11 Q Okay. And what kind of officer is he?

12 A He worked in Crime Scene as the Crime Scene
13 Investigator.

14 Q Okay. All right. And so you saw him out on the
15 scene; did you see other Crime Scene Investigators as well?

16 A Lieutenant Keith Watkins was there as well.

17 Q Okay. Did Lieutenant Lutcken stay there or did he
18 leave and go somewhere else?

19 A He went to the hospital. I don't -- I don't even
20 know if I actually saw him at the motel or the first time I
21 saw him was at the hospital, but he did respond.

22 Q What did you do with Mr. Carraway?

23 A I began to try to get his version of what had taken
24 place for the initial report.

25 Q Okay. You say he was injured?

Chris Owens - Direct Examination by Mr. Clements

1 A Yes, sir.

2 Q How was he injured?

3 A He had been shot in the foot.

4 Q Okay. And after you talked to him -- did you talk
5 to him there at the Days Inn or did you go to -- you send
6 him to the hospital or what did you do with him?

7 A I talked -- I know I spoke with him at the lobby of
8 the Days Inn and he was then transported to McLeod
9 Hospital.

10 Q Okay. All right. By EMS or ambulance?

11 A Yes.

12 Q Okay. And did you have anything else to do with
13 Mr. Carraway after that or did you remain on the scene at
14 the Days Inn?

15 A I remained on the scene at the Days Inn until Crime
16 Scene arrived and then I did go to McLeod Hospital.

17 Q Okay. All right. And about how long a period was
18 it that you were there at the Days Inn?

19 A I don't recall.

20 Q Okay. All right. Did -- was there any trouble or
21 anything you had to deal with while you were at the Days
22 Inn; everything was under control?

23 A Yes, sir.

24 Q Other shift officers in your shift come to the
25 scene?

Chris Owens - Direct Examination by Mr. Clements

1 A Yes, that's correct.

2 Q Okay. What other shift officers do you recall,
3 about how many and who they were?

4 A Deputy Keith Worsley was there, Sergeant
5 Driggers -- it's been three years ago, I'm not even sure
6 who else was working with us at that time. Whoever would
7 have been working on the, what we refer to as the upper end
8 of Florence, Timmonsville area, they arrived as well.

9 Q Did y'all have enough -- sufficient officers to
10 maintain that scene?

11 A Yes.

12 Q Okay. All right. Once y'all turned that over to
13 Adam Moore, what, what did y'all do after that?

14 A Well, once the scene is turned over to him, then we
15 basically, as a patrol deputy, serve no other purpose than
16 just to make sure that people are out of the crime scene.

17 Q Okay. Is that what y'all did?

18 A Yes.

19 Q Okay.

20 MR. CLEMENTS: Court's indulgence, Your Honor.

21 THE COURT: Yes, sir.

22 BY MR. CLEMENTS:

23 Q All right. Is there anything else of significance
24 or importance that you did there at the scene at the Days
25 Inn?

Chris Owens - Direct Examination by Mr. Clements

1 A Yes, sir. Like I said, Mr. Carraway had been
2 struck by a bullet in the heel of his left foot. The fired
3 projectile was actually still lodged in his shoe and for
4 evidence purposes -- this was before any crime scene
5 technicians had arrived -- for evidence purposes, I secured
6 the shoe.

7 Q Okay. Officer Owens, I'm going to show you what's
8 been marked State's Exhibit 49 for identification purposes.
9 If you'd look in that and tell me first can you identify
10 that?

11 You may want to compare it to what's been marked as
12 State's Exhibit No. 50 as well.

13 A Okay. I think this is the shoe that I collected
14 from the scene at the time.

15 Q All right. You think or you know?

16 A I know.

17 Q And that is No. 50?

18 A Yes, sir.

19 Q And what is No. 49?

20 A This was the other shoe that he was wearing at the
21 time.

22 Q Okay.

23 MR. CLEMENTS: Your Honor, at this time, we move
24 State's Exhibits 49 and 50 into evidence.

25 MR. SCOTT: No objection.

Chris Owens - Direct Examination by Mr. Clements

1 THE COURT: State's 49 and 50 is in evidence
2 without objection.

3 (WHEREUPON State's Exhibits No. 49 and 50 were
4 entered into evidence.)

5 BY MR. CLEMENTS:

6 Q All right. Can you tell me, if you can, what, what
7 differentiates this other than it being the left shoe?

8 A What is different about this shoe is as far as this
9 one is, in the left shoe there's a hole here where the
10 bullet entered and struck Mr. Carraway in the heel of his
11 left foot.

12 Q Okay. And that's State's Exhibit 50?

13 A Yes.

14 Q Did you gather anything else there at the Days Inn?

15 A No, sir.

16 Q When you went to the hospital, can you tell the
17 jury what you did there?

18 A Yes, sir, we had received a call from just, from
19 central dispatch that there was another victim at McLeod
20 Hospital. Usually when an incident like this occurs, we
21 will notify the hospitals to be, you know, on the lookout
22 to see if any -- another gunshot victim comes in or a
23 stabbing victim or whatever the case may be and they will
24 call us if somebody shows up with injuries like what we
25 request they do.

Chris Owens - Direct Examination by Mr. Clements

1 At the time, they did notify us that there was
2 another gunshot victim and Lieutenant Mark Fuleihan arrived
3 at the hospital first. When he arrived on the scene --

4 Q And he was the Lieutenant over your shift?

5 A He, at the time he was lieutenant of my shift, yes,
6 sir.

7 Q Okay. And you responded to the hospital as well?

8 A I did.

9 Q Okay. Now, after you collected State's Exhibit No.
10 50, which was Mr. Carraway's left shoe, what did you do
11 with it before you left and went to the hospital?

12 A I gave it to Adam Moore.

13 Q Okay. All right. And where was Adam Moore at that
14 time?

15 A He had arrived on scene and had met me in the
16 lobby.

17 Q Okay. All right. All right. At the hospital,
18 what did you do?

19 A At the hospital, when I -- when Lieutenant Fuleihan
20 had arrived, he stated that there was a black Ford Fusion
21 that had parked directly in front of the Emergency Room
22 Entrance.

23 Q What did you do with regards to that black Ford
24 Fusion?

25 A The only thing that I recall doing was at -- after

Chris Owens - Direct Examination by Mr. Clements

1 I pulled up at the hospital was I shined my light down in
2 the window and saw that there was some shell casings lying
3 on the driver's seat. At that point, I did nothing further
4 with that at the time.

5 Q What did y'all do, if anything, to maintain the
6 integrity of that vehicle so it could be examined for
7 evidence?

8 A I think Lieutenant Mark Fuleihan stayed with the
9 vehicle while I went inside.

10 Q All right. Who else responded to the hospital for
11 the Sheriff's Office as far as forensics officers?

12 A Lieutenant Lutcken --

13 Q Okay.

14 A -- had responded.

15 Q All right. And did you do anything else there at
16 the hospital scene?

17 A I did. I did run the plates that were on the back
18 of the Fusion through central dispatch to get ownership
19 information.

20 Q And who did it reveal owned that vehicle?

21 A It came back to Shane Graham from Lake City, South
22 Carolina.

23 Q Okay. Is that Marcus Weaver's brother?

24 A Yes.

25 Q Okay. All right. And is that the extent of what

Chris Owens - Direct Examination by Mr. Clements

1 you did there at both the Days Inn and the hospital?

2 A I actually spoke with Investigator Cox, who had
3 arrived on scene and basically just filled him in on what I
4 had -- the information that I had gathered so far.

5 Q That being Investigator Russell Cox?

6 A Yes, it would be. I also spoke -- well, I advised
7 Investigator Cox that Weaver's brother, Shane Graham, had
8 been present at the time of the shooting and directed
9 Investigator Cox where he could find Mr. Graham for
10 questioning.

11 Q Okay. All right. And is that the extent of what
12 you did at that time?

13 A I think the only other thing that I did, I did sit
14 and listen while, briefly, while Investigator Cox spoke
15 with Shane Graham just to try to get another version of the
16 events for my report. The hospital staff actually bagged
17 everyone's hands that were present at the hospital that had
18 been involved in the incident just for integrity purposes
19 so that gun --

20 Q When you say they bagged their hands, can you
21 explain to the jury what they do?

22 A They place paper bags over their hands and tape
23 them so that no one can pull them off and this is done just
24 to preserve their hands so the gunshot residue test can be
25 performed.

Chris Owens - Direct Examination by Mr. Clements

1 Q Okay.

2 MR. CLEMENTS: I beg the Court's indulgence for a
3 moment.

4 THE COURT: Yes, sir.

5 BY MR. CLEMENTS:

6 Q First I want to show you what's been marked as
7 State's Exhibit 14. And does that look familiar to you or
8 not?

9 A Yes.

10 Q All right. What does State's Exhibit 14 -- what
11 does that reflect in that picture?

12 A This is the driver's seat ---

13 THE COURT: Could you speak up a little bit for me
14 please.

15 THE WITNESS: I'm sorry. This is the driver's seat
16 of the Ford Fusion with the two bullets located in there.

17 BY MR. CLEMENTS:

18 Q The driver's seat or passenger seat?

19 A I'm not sure which one it is as far as driver's or
20 passenger's, but this is the inside of the Ford Fusion.

21 Q Okay. All right.

22 MR. SCOTT: No objection.

23 MR. CLEMENTS: Your Honor, at this time, I move
24 State's Exhibit 14 into evidence.

25 THE COURT: 14 is in evidence without objection.

Chris Owens - Direct Examination by Mr. Clements

1 (WHEREUPON State's Exhibit 14 was entered into
2 evidence.)

3 BY MR. CLEMENTS:

4 Q I want to show you State's Exhibit 15. Is that,
5 can you differentiate between those two? Well, first, can
6 you recognize that or identify that?

7 A This appears to be a closer photo of the previous
8 one here.

9 Q All right.

10 MR. SCOTT: No objection, Your Honor.

11 MR. CLEMENTS: We move State's Exhibit 15 into
12 evidence, Your Honor.

13 THE COURT: Fifteen is in evidence without
14 objection.

15 (WHEREUPON State's Exhibit 15 was entered into
16 evidence.)

17 BY MR. CLEMENTS:

18 Q I'm going to show you what's been marked State's
19 Exhibit 22. And if you can, tell me, do you identify that
20 picture; yes or no?

21 A Yes.

22 Q Okay. Can you tell us who was in that picture?

23 A I cannot tell you who the subject is in this
24 picture, but I know that, I see that his hands are bagged
25 here, so he was present at the time I was there.

Chris Owens - Cross-Examination by Mr. Scott

1 Q Okay. And that, is that what you described when
2 you talked about bagging hands?

3 A Yes. Yes.

4 Q But you can't identify this individual?

5 A No, sir.

6 Q Okay. All right. And again please, we want to
7 make sure we didn't gloss over, what is the purpose of
8 bagging of the hands?

9 A It is to prevent any contamination, further
10 contamination of their hands, so the gunshot residue test
11 can be performed.

12 Q Okay. All right. And that's all you did; is that
13 correct?

14 A Yes, sir.

15 Q All right. Officer Owens, I appreciate that.
16 Please answer any questions that Mr. Scott or His Honor may
17 have?

18 THE COURT: Thank you. Thank you very much.
19 Mr. Scott?

20 **CROSS-EXAMINATION**

21 BY MR. SCOTT:

22 Q It's Deputy Owens; is that correct?

23 A It's Corporal Owens now, yes, sir.

24 Q Congratulations.

25 A Oh, thanks.

Chris Owens - Cross-Examination by Mr. Scott

1 Q Now, Corporal Owens, you said you were the first on
2 the scene as it relates to Josh Carraway; is that correct?

3 A No, sir, I was the second one on the scene, at the
4 initial scene, Days Inn. I was the second one on the
5 scene.

6 Q Okay. I know you said Sergeant Driggers was there,
7 right?

8 A Yes, sir, he was the first one.

9 Q He was there, but, and he had a -- do you know
10 whether or not he had spoken with Josh Carraway at that
11 point?

12 A I don't think he had spoken with Josh Carraway. As
13 far as speaking with Josh Carraway, I was the first officer
14 to do so.

15 Q Okay. And during that first conversation that you
16 had with him, you -- he discussed with you what, what
17 happened?

18 A Yes, sir.

19 Q And as far as your understanding, that was the
20 first time he had spoken with anyone.

21 A Yes, sir.

22 Q Okay. And based on your conversations with him,
23 what did you surmise had happened out there?

24 MR. CLEMENTS: Your Honor, I object. I think it
25 calls for hearsay response.

Chris Owens - Cross-Examination by Mr. Scott

1 THE COURT: I will sustain the objection.

2 BY MR. SCOTT:

3 Q Okay. Now, you said that you also found some shell
4 casings; is that correct?

5 A At the scene of the Days Inn or at the hospital?

6 Q Well I'm asking you, did you find those shell
7 casings at Days Inn or did you find them at the hospital?

8 A I observed some shell casings at the hospital in
9 the car.

10 There was some evidence at the scene of the Days
11 Inn, but I don't recall right now what it was, whether it
12 was shell casings or what. Sergeant Driggers was in charge
13 of guarding that.

14 Q So basically you just helped him to tape it off and
15 you spoke with --

16 A I never actually even taped it off. I went
17 straight to Mr. Carraway.

18 Q Mr. Carraway?

19 A Yes, sir.

20 Q So then Josh, he tells you a version of what
21 happened?

22 A Yes, he did.

23 Q And then you go to the hospital?

24 A Yes.

25 Q And at the hospital, you observe some shell

Chris Owens - Cross-Examination by Mr. Scott

1 casings, I think you said -- and I don't want to put words
2 in your mouth, but I think you said you observed some shell
3 casings in the driver's seat?

4 A If you'll give me a moment, I can tell you exactly
5 where. It said it was at. It says, according to my
6 report, there were two shell casings lying in the driver's
7 seat of a black-in-color Ford Fusion.

8 Q So there were two shell casings?

9 A That's what it says here in the report.

10 Q And there's no reason to believe that your report
11 is false?

12 A No, sir.

13 Q Okay. So we can -- we can -- we're pretty much
14 sure that it, it's accurate based on what you observed?

15 A Yes, sir.

16 Q So we can say that there were two shell casings?

17 A Yes.

18 Q Okay. And then after you observed the two shell
19 casings, that's when you met with Investigator Cox?

20 A Yes.

21 Q And then Investigator -- you told -- you advised
22 Investigator Cox as it relates to what you were told; is
23 that correct?

24 A That is correct, yes.

25 Q And then I think you said on direct that you spoke

Chris Owens - Cross-Examination by Mr. Scott

1 with, then he spoke with Shane Graham?

2 A That is correct.

3 Q And why did you tell us again that you stayed to
4 listen to that?

5 A I like to get more than one side of the story if I
6 can for my report.

7 Q So were the two sides of the story different?

8 A Yes.

9 Q Are they slight -- were they slightly different or
10 were they drastically different?

11 A They were drastically different.

12 MR. SCOTT: Court's indulgence?

13 THE COURT: Yes, sir.

14 BY MR. SCOTT:

15 Q Now, as you were asking -- answering questions I --
16 you were looking down. Were you referring to something as
17 you were looking down?

18 A My report here is the only thing I have in front of
19 me.

20 Q And when you say your report, explain to the jury
21 what that report is?

22 A After the incident took place, I had to type up a
23 narrative based on what I did, who I spoke with, basically
24 stating what had actually happened as far as I had
25 observed; what I heard.

Chris Owens - Redirect Examination by Mr. Clements

1 Q Okay. And I think if I'm looking at this, would
2 this be the same report?

3 A It is the same.

4 Q Okay. And I think on this report, you have here
5 and try to follow me --

6 A Yes.

7 Q -- right here you start talking about the victim.

8 A It's this right here.

9 Q Yes. Could you read what you wrote?

10 A It says, "The victim was in the lobby with a
11 gunshot wound to his left foot."

12 Q Okay. Continue.

13 A Continue? "I made contact with him and he
14 identified himself as Josh Carraway. Carraway stated that
15 he and his two friends --

16 MR. CLEMENTS: Objection, Your Honor, what he's
17 about to enter into is hearsay material. I don't believe
18 that's proper.

19 THE COURT: I'm going to sustain the objection.

20 MR. SCOTT: No further questions.

21 THE COURT: Redirect.

22 REDIRECT EXAMINATION

23 BY MR. CLEMENTS:

24 Q How unusual is it or not for you to get different
25 versions initially from different sides of an altercation?

Chris Owens - Redirect Examination by Mr. Clements

1 A It's not unusual at all.

2 Q Thank you. No further questions.

3 THE COURT: Recross, Mr. Scott?

4 MR. SCOTT: No, Your Honor.

5 THE COURT: Thank you. Thank you very much,
6 Corporal, you may step down.

7 MR. CLEMENTS: Your Honor, next we call Mr. Adam
8 Moore.

9 THE COURT: All right. Any objections to the
10 officer being excused?

11 MR. CLEMENTS: No objection to him being excused
12 from his subpoena, Your Honor.

13 MR. SCOTT: No objection, Your Honor.

14 THE COURT: All right. And you may be excused.
15 Who is your next one, Mr. Moore?

16 MR. CLEMENTS: Adam Moore, Your Honor. He's right
17 outside.

18 THE COURT: If you'd come around and be sworn for
19 me please.

20 ADAM MOORE, HAVING BEEN SWORN TESTIFIES AS FOLLOWS:

21 THE CLERK: Please be seated and state your full
22 name for the record.

23 THE WITNESS: Adam Moore.

24 MR. CLEMENTS: May we approach, Your Honor?

25 THE COURT: Yes, sir.

Adam Moore - Direct Examination by Mr. Clements

1 (WHEREUPON there was a bench conference out of the
2 hearing of the jury and the court reporter.)

DIRECT EXAMINATION

3
4 BY MR. CLEMENTS:

5 Q How you doing, Mr. Moore?

6 A Good.

7 Q Can you please tell this jury what your employment
8 was on January the 10th, 2010?

9 A I was employed by the Florence County Sheriff's
10 Office as a forensic technician more commonly known as
11 Crime Scene Investigator.

12 Q Are you in school now?

13 A I am.

14 Q All right. What are you studying to be now?

15 A Surgical Technology.

16 Q Okay. Now, Mr. Moore, can you please tell this
17 jury if you received a call in the evening, late evening of
18 January 10th and if you did, what you did in response to
19 that call?

20 A May I consult my notes?

21 Q Please?

22 A I did at approximately 11:49 p.m. on January 10th,
23 I was contacted.

24 Q And as a result of that contact, what did you do?

25 A I responded to 2111 West Lucas Street at the Days

Adam Moore - Direct Examination by Mr. Clements

1 Inn in reference to a shooting.

2 Q And what is West Lucas Street commonly referred to?

3 A Highway 52.

4 Q All right. Is that at Highway 52 and I-95?

5 A Yes, sir.

6 Q And did, and you responded to the Days Inn?

7 A I did.

8 Q When you got to the Days Inn, can you please tell
9 us what did you find?

10 A When I first arrived on the scene, I met with the
11 responding deputies and got a brief outline of what
12 happened.

13 Q Can you please tell us who those responding
14 deputies are?

15 A I met with Deputy Keith Worsley and Sergeant Steve
16 Driggers.

17 Q Okay. Did you also see Chris Owens at the time?

18 A No, sir, he had already left.

19 Q Okay. All right. And can you tell this jury what
20 you found there?

21 A Once on the scene, as a brief overview, just
22 looking at the evidence before doing any processing, I
23 observed a cigarette lighter, a cell phone, cell phone
24 battery, ski mask or a toboggan, a window tint box as well
25 as a handgun and shell casings.

Adam Moore - Direct Examination by Mr. Clements

1 Q Did you observe any other articles of clothing?

2 A There was one shoe.

3 Q Okay. I'm going to show you what's been marked
4 State's Exhibit 50. Can you look at that please and tell
5 me can you identify that.

6 A I can.

7 Q Can you tell us what that is?

8 A This is the shoe that was on scene that night.

9 Q Okay. And it was left there, did you find it on
10 the scene naturally or was it placed there by law
11 enforcement?

12 A It was placed there by law enforcement.

13 Q Okay. And do you know if that was Deputy Owens or
14 not?

15 A It was.

16 Q Okay. All right. And why would he leave this on a
17 crime scene for you?

18 A He had left it there --

19 MR. SCOTT: Your Honor, I'm going to object.

20 MR. CLEMENTS: Judge, I was going to --

21 THE COURT: I will sustain your objection.

22 MR. CLEMENTS: Okay. All right. Your Honor, I
23 assume that would call for speculation; is that the reason?

24 THE COURT: You're asking this witness to say why
25 another witness did a particular thing.

Adam Moore - Direct Examination by Mr. Clements

1 MR. CLEMENTS: Yes, sir.

2 THE COURT: I believe that's speculation.

3 MR. CLEMENTS: Well, he --

4 THE COURT: You can rephrase the question perhaps.

5 BY MR. CLEMENTS:

6 Q Let me think how to rephrase this now.

7 In your duty as a forensic officer, what's your
8 main description of what you do?

9 A To collect evidence.

10 Q Okay. And in the process of collecting evidence,
11 how often do other officers find something and, and turn it
12 over to you as the collector of the evidence?

13 A Very often.

14 Q Okay. What was different about what you just said
15 and what happened with this shoe that night, if anything?

16 A The shoe was not originally at the scene, at the
17 shooting scene itself, it was actually on the foot of a
18 victim. It was removed and left on scene for me to
19 collect.

20 Q Thank you.

21 Now, you told this jury what you observed when you
22 get there and that's, I guess you just come up and you just
23 start looking around --

24 A That's correct.

25 Q -- without discussing anything?

Adam Moore - Direct Examination by Mr. Clements

1 A Yes, sir.

2 Q Okay. After you do that overview and observe what
3 you can observe, please explain to this jury what you do in
4 detail?

5 A The -- after a brief overview of the scene, I
6 photograph the scene as it is found, just right as I found
7 it. After photographing it as it's found, evidence markers
8 are placed out to mark items of evidence. The scene is
9 re-photographed showing the items of evidence marked and
10 their relationship to each other.

11 Q And what you mark them with, tell us what that is,
12 how do you mark those pieces of evidence?

13 A They are numbered cones, triangle plastic with
14 numbers on them.

15 Q What color?

16 A They are yellow.

17 Q Okay. And they're yellow little triangles with
18 numbers on them?

19 A Yes, sir.

20 Q Okay. All right. And after you mark them all and
21 you take pictures with the markers, what do you do next.

22 A Once they're taken with the markers, that's the
23 entire scene, each item that's marked is photographed in
24 detail, both with and without a scale to show size.

25 Q Okay. All right. And then after you finish all

Adam Moore - Direct Examination by Mr. Clements

1 your photography, what do you then do?

2 A The evidence is then collected.

3 Q All right. Did you go to any other scene that
4 evening other than right there in that one particular
5 parking area?

6 A I did.

7 Q Where else did you go?

8 A McLeod Regional Medical Center.

9 Q All right. And what was your purpose for going
10 there?

11 A To meet with Lieutenant Lutcken, my supervisor, and
12 perform GSR Kit on the victim.

13 Q Which was who?

14 A Marcus Weaver.

15 Q Okay. All right. And is that the decedent victim?

16 A That's correct.

17 Q Okay. Did you perform GSR's on anyone else and if
18 so, who?

19 A We did, a Shane Marcus Graham.

20 Q All right. And who else, if anyone?

21 A No other GSR's.

22 Q Okay. Did anyone else, are you the only person
23 that does GSR's or other people do GSR's as well?

24 A I am not, other people do as well.

25 Q Okay. Lieutenant Lutcken, does he do GSR's as

Adam Moore - Direct Examination by Mr. Clements

1 well?

2 A Yes, everyone in the unit.

3 Q Okay. All right. And when you got to those people
4 to do the GSR test, how did you find them as far as their
5 hands?

6 A Typically with shootings, paper bags are placed
7 over the hands of anyone who is on scene, both victims and
8 potential subjects involved, and that was the case here and
9 both subjects had paper bags on their hands.

10 Q Okay. All right. And why did they have paper bags
11 on them?

12 A To try and preserve any gunshot residue particles
13 that may have been left on their hands by a shooting.

14 Q I'm going to show you what's been marked for
15 identification as State's Exhibit 46-A, B, and C.

16 46-A, do you recognize that and what that is?

17 A I do. This is a Gunshot Residue Collection Kit
18 that I performed on Marcus Weaver on January the 11th,
19 2010.

20 Q All right. Whose handwriting is that?

21 A That's my handwriting.

22 Q And it says received by whom?

23 A Received by me from Marcus Weaver.

24 Q Received Adam Moore?

25 A Yes.

Adam Moore - Direct Examination by Mr. Clements

1 Q Okay. And is this the Gunshot Residue Collection
2 Kit you do on every -- this is the brand and the style
3 y'all use at Florence County Sheriff's Office?

4 A Yes, sir, that's correct.

5 Q Okay. When you collect this, what do you then do
6 with it ultimately?

7 A Once it's collected, it's secured in our evidence
8 room and ultimately sent to SLED for processing in their
9 trace unit.

10 Q And once they process it, what do they do; send it
11 back to you with a report?

12 A Send it back; that is correct. Yes, sir.

13 Q All right.

14 MR. CLEMENTS: And this time, Your Honor, I move
15 State's Exhibit 46-A into evidence.

16 MR. SCOTT: As it relates to Marcus Weaver, no
17 objection.

18 THE COURT: 46-A is in evidence without objection.

19 MR. CLEMENTS: All right.

20 (WHEREUPON State's Exhibit 46-A was entered into
21 evidence.)

22 BY MR. CLEMENTS:

23 Q I'm going to show you 46-B. Do you recognize the
24 handwriting on that?

25 A Yes, sir.

Adam Moore - Direct Examination by Mr. Clements

1 Q Whose handwriting is that?

2 A That is my handwriting.

3 Q And can you tell us what that is?

4 A This is the GSR Kit from Shane Marcus Graham, also
5 January 11th, 2010.

6 Q And what did you ultimately do with that Gunshot
7 Residue Kit?

8 A It was also sent to SLED for trace analysis.

9 Q Okay. And that sent it back with a report to you?

10 A That's correct.

11 MR. CLEMENTS: Your Honor, we move 46-B into
12 evidence at this time.

13 MR. SCOTT: No objection to the kit for Shane
14 Graham, Your Honor.

15 THE COURT: 46-B is in evidence without objection.

16 (WHEREUPON State's Exhibit 46-B was entered into
17 evidence.)

18 BY MR. CLEMENTS:

19 Q I'm going to show you State's Exhibit 46-C and ask
20 if you recognize that handwriting?

21 A I do.

22 Q How do you recognize that handwriting?

23 A That's my supervisor's handwriting.

24 Q How many years have you looked at his handwriting?

25 MR. SCOTT: Objection, Your Honor, I'm going to

Adam Moore - Direct Examination by Mr. Clements

1 object to him testifying to anybody's signature unless
2 he -- he hasn't shown he's an expert on handwriting or
3 anything like that.

4 THE COURT: If you look at Rule 901, I believe it's
5 901.

6 Just a moment please. 901(B)(2), Non-expert.
7 opinion as to the genuineness of handwriting based upon
8 familiarity, not acquired for the purpose of admissibility.

9 That is a proper way to authenticate the
10 handwriting so I'll overrule the objection based on 901(A)
11 and (B) under (B)(2) so you may ask the questions,
12 Solicitor.

13 MR. CLEMENTS: Thank you, Your Honor.

14 BY MR. CLEMENTS:

15 Q Mr. Moore, how many years of experience have you
16 had looking at your supervisor's handwriting?

17 A I worked for Lieutenant Lutcken from 2000 to 2012.

18 Q All right. So twelve years of looking at his
19 handwriting?

20 A Yes, that's correct.

21 Q Did he write things for you often?

22 A Yes, he did.

23 Q Okay. And whose -- do you recognize that
24 handwriting on State's Exhibit 46-C?

25 A Yes, sir, I do.

Adam Moore - Direct Examination by Mr. Clements

1 Q Whose handwriting is that?

2 A That's Lieutenant Keith Lutcken's.

3 Q And who does it say received by there?

4 A It was received by Lieutenant Keith Lutcken.

5 Q And is this the same type evidence collection kit
6 that the Florence County Sheriff's Office always uses for
7 gunshot residue collection?

8 A It is.

9 Q Who collected this kit?

10 A Lieutenant Lutcken.

11 Q From whom?

12 A Josh Carraway.

13 Q Okay. All right. I'll just wait on this for
14 Lieutenant Lutcken.

15 All right. No objection to these?

16 MR. SCOTT: No objection.

17 MR. CLEMENTS: All right.

18 BY MR. CLEMENTS:

19 Q And did you receive these back from SLED and log
20 them back into evidence?

21 A They were received back.

22 Q Okay. And did you receive a report on them?

23 A I would have.

24 Q Okay. All right. Do you recall that?

25 A I do.

Adam Moore - Direct Examination by Mr. Clements

1 Q Okay. What was the report on 46-A and 46-B?

2 A 46-A is from Marcus Weaver. The reports that I got
3 back showed the right palm quantities of metals found did
4 not indicate the presence of gunshot residue. Right back,
5 the quantities of metals are consistent with gunshot
6 residue. Left palm, the quantities of metal, metals found
7 are consistent with gunshot residue and left back, the
8 quantities of metals found are consistent with gunshot
9 residue.

10 Q Okay. So Mr. Weaver didn't have any on his right
11 palm, but had it on his right back, his left palm, and his
12 left back?

13 A That's correct.

14 Q Okay. And his left back?

15 A That's correct.

16 Q Okay. And what are those metals for gunshot
17 residue?

18 A Gunshot residue consists of lead, barium and
19 antimony.

20 Q Okay. Are those metals in that combination found
21 much anywhere else?

22 A Not in that combination.

23 Q Okay. So Mr. Weaver was positive for gunshot
24 residue?

25 A According to this report, yes.

Adam Moore - Direct Examination by Mr. Clements

1 Q Okay. All right. All right. How about on Mr.
2 Shane Graham, State's Exhibit 46-B was it positive or
3 negative?

4 A For Shane Marcus Graham, the right palm, round lead
5 particles were found.

6 Round lead particles are one of the components of
7 gunshot residue.

8 Right back, the quantity of metals did not indicate
9 the presence of gunshot residue.

10 Left palm, round lead particles were found.

11 Again, round lead particles are one of the
12 components of gunshot residue.

13 Left back, the quantities of metals did not
14 indicate the presence of gunshot residue.

15 Q All right. So he did not have all the metals for
16 gunshot residue, but he did have round lead particles?

17 A That's correct.

18 Q All right. What's significant about them being
19 round?

20 A The round lead particles cannot be made by any
21 other kind of machining other than gunshot residue. That
22 is why they are so specific for gunshot residue.

23 Q Because of the heat?

24 A Because of the way the -- the gunshot residue is
25 formed, yes, sir.

Adam Moore - Direct Examination by Mr. Clements

1 Q All right. And where do you look for gunshot
2 residue on persons other than on their hands?

3 A It can be on clothing, and on articles that they
4 may have had; gloves, hats.

5 Q All right. And can it be transferred -- like you
6 pick up somebody that's been shot and gunshot residue, is
7 it transferred to your hands if you grab ---

8 MR. SCOTT: Objection, Your Honor, that's a leading
9 question, Your Honor.

10 THE COURT: You can rephrase your question.

11 MR. CLEMENTS: I'll refresh and rephrase it.

12 BY MR. CLEMENTS:

13 Q What is a possible way of getting that type residue
14 or that type particle on your hands?

15 A Any kind of contact with someone who has been in
16 contact with gunshot residue, it can transfer from person
17 to person.

18 Q Like would it, would or would not this be an
19 example: Picking up someone if they'd been shot?

20 A That would be a way of transferring.

21 Q Okay. All right. Thank you.

22 Now, if we can please, can you tell us did you take
23 photographs anywhere else in this investigation other than
24 there at the scene at the Days Inn?

25 A I did.

Adam Moore - Direct Examination by Mr. Clements

1 Q Where else?

2 A I photographed the victim at autopsy in Charleston.

3 Q Okay. All right. I'm going to show you some
4 pictures and if I can, I'm going to ask you a number of
5 questions and if I can do this where more quickly, but not
6 confusingly, I'm going to show you a picture and I'm going
7 to tell you what number exhibit it is.

8 A Okay.

9 Q And I'm going to ask you a question and the first
10 question is, can you identify this; yes or no?

11 Second question will be did you take this picture;
12 and number three, what does this picture depict?

13 A Okay.

14 Q Okay. And if we have an objection, you know to
15 wait.

16 A Yes, sir.

17 Q Okay. All right. I'm going to start with two that
18 are already into evidence without objection. State's
19 Exhibit 14; did you take that picture? Do you recognize
20 it?

21 A I recognize the picture, but I did not take that
22 picture.

23 Q Okay. All right. Did you see what this picture
24 depicts?

25 A Not in, not that night.

Adam Moore - Direct Examination by Mr. Clements

1 Q Okay. All right. Same questions on State's
2 Exhibit 15; is it the same response?

3 A Yes.

4 Q Okay. You didn't take this picture, but you know
5 what it is, but you didn't see it that night?

6 A Correct.

7 Q Okay. All right. Now State's Exhibit 13 has been
8 marked for identification purposes. Do you recognize that?

9 A Yes.

10 Q Did you take that picture?

11 A I did not.

12 Q Did you see that?

13 A Yes.

14 Q Okay. Can you tell us what that picture is?

15 A It is the backseat of the vehicle that was driven
16 to the hospital when the victim was dropped off.

17 Q That's a picture from that backseat?

18 A Yes.

19 Q Okay. All right.

20 MR. CLEMENTS: Your Honor, I move State's Exhibit
21 13 into evidence at this time.

22 MR. SCOTT: No objection.

23 THE COURT: State's 13 is in evidence without
24 objection.

25 (WHEREUPON State's Exhibit 13 was entered into

Adam Moore - Direct Examination by Mr. Clements

1 evidence.)

2 BY MR. CLEMENTS:

3 Q I'm going to show you State's Exhibit 16. Do you
4 recognize that?

5 A No.

6 Q Okay. All right. Now, did you take any other
7 pictures other than that night?

8 A I did.

9 Q Where did you take pictures at and when?

10 A On January the 13th of 2010, I was contacted and
11 asked to respond to the Days Inn to view video from the
12 night of the incident and that lead us to examine the scene
13 again for more potential evidence.

14 Q All right. And did you take pictures at that time?

15 A I did.

16 Q Okay. All right. I'm going to show you what's
17 been marked as State's Exhibit 27; did you take that
18 picture? Do you recognize it?

19 A I do recognize it and I did take that picture.

20 Q What is this?

21 A This is a picture of the Days Inn on West Lucas
22 Street. And that is the parking lot where the incident
23 occurred.

24 Q Okay. And is that a view of what particular area?

25 A That is the backside of -- back corner of the Days

Adam Moore - Direct Examination by Mr. Clements

1 Inn.

2 Q Okay. All right.

3 MR. CLEMENTS: I move this into evidence as State's
4 Exhibit Number 27, Your Honor?

5 MR. SCOTT: Objection to that, Your Honor.

6 THE COURT: You have an objection with that?

7 MR. SCOTT: I have an objection to that, Your
8 Honor.

9 THE COURT: All right. Step out please, ladies and
10 gentlemen of the jury panel. Do not discuss the case
11 during this brief recess.

12 We'll take about fifteen minutes.

13 (WHEREUPON the jury left the courtroom at 11:20
14 a.m.)

15 MR. CLEMENTS: Your Honor, to speed things up, I've
16 got at least one more daylight picture; I'll ask him and we
17 can discuss those.

18 THE COURT: What's your objection.

19 MR. SCOTT: My objection, Your Honor, is that that
20 is not a fair depiction of the actual crime scene at that
21 particular time, based on what the officer testified to as
22 it relates to events that happened days after.

23 THE COURT: All right. So --

24 MR. SCOTT: I -- I don't object to, to these where
25 the crime scene, but these -- the ones that he just

Adam Moore - Direct Examination by Mr. Clements

1 presented to me, I guess these exhibits, I don't have any
2 objections to those, but the daylight one, there's no --
3 there's no way for me to get a clear depiction of that
4 being the actual crime scene based on that picture, Your
5 Honor?

6 THE COURT: Okay. Let me see.

7 MR. CLEMENTS: All right.

8 THE COURT: There's another one?

9 MR. CLEMENTS: There's another one, Your Honor.

10 And if I may, I can tell you why -- what those are supposed
11 to depict. There was a video, that's not the best video in
12 the world, but it does show people running, two people
13 running, and one of them ran to the back fence and that was
14 Josh Carraway. And he's going to say that he ran away and
15 got shot in the foot, jumped that back fence. And when the
16 cars left, he went up to the office and that's where Chris
17 Owens found him shot in the foot.

18 And he ran to the back parking lot and jumped that
19 fence and that's why we have those two pictures.

20 THE COURT: On 27, you're referring to this fence?

21 MR. CLEMENTS: Yes, sir.

22 THE COURT: Which is a close-up on 28?

23 MR. CLEMENTS: Yes, sir.

24 THE COURT: And this is the fence Mr. Carraway
25 points out.

Adam Moore - Direct Examination by Mr. Clements

1 MR. CLEMENTS: Yes, sir.

2 THE COURT: And the difference is that there's no
3 difference except it was dark and these are taken in the
4 daylight.

5 MR. CLEMENTS: Yes, sir.

6 THE COURT: All right. Well, subject to that --
7 and you can cross-examine, 27 and 28 is in evidence,
8 subject to your objection.

9 MR. SCOTT: Thank you, Your Honor.

10 (WHEREUPON State's Exhibits 27 and 28 were entered
11 into evidence.)

12 THE COURT: All right. You may step down, Mr.
13 Moore and rest yourself during this brief recess. Do not
14 discuss your testimony with anyone.

15 THE WITNESS: Yes, sir.

16 THE COURT: The Court will be in recess for 15
17 minutes.

18 MR. SCOTT: I'm sorry, Your Honor, how long?

19 THE COURT: Fifteen.

20 MR. SCOTT: Thank you.

21 (WHEREUPON a brief recess was observed.)

22 THE COURT: Thank you. Please be seated. Thank
23 you very much. Anything from the State before we bring in
24 our jury, Solicitor?

25 MR. CLEMENTS: I'm sorry, Your Honor.

Adam Moore - Direct Examination by Mr. Clements

1 THE COURT: Anything from the State before bring in
2 our jury?

3 MR. CLEMENTS: No, sir.

4 THE COURT: Defense, Mr. Scott?

5 MR. SCOTT: No, Your Honor.

6 (WHEREUPON the jury entered the courtroom at 11:40
7 a.m.)

8 THE COURT: All right. Welcome back, ladies and
9 gentlemen, we're continuing the trial of the case by the
10 presentation of evidence and testimony by the State in
11 chief continuing the direct testimony of Officer Moore. If
12 you'd please continue to give the parties your complete and
13 undivided attention.

14 Solicitor, you may ask your next question.

15 MR. CLEMENTS: Thank you, Your Honor. If it please
16 the Court, I believe State's 27 and 28 are in evidence,
17 Your Honor.

18 THE COURT: Subject to previous objections 27 and
19 28 are in evidence.

20 MR. CLEMENTS: Yes, sir.

21 BY MR. CLEMENTS:

22 Q All right. Mr. Moore, State's Exhibit 26; do you
23 recognize it?

24 A I do, but I did not take that picture.

25 Q Okay. But you know what it depicts?

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1 A I do.

2 Q All right.

3 MR. CLEMENTS: Your Honor, we move State's Exhibit
4 26 into evidence at this time.

5 MR. SCOTT: No objection.

6 THE COURT: 26 into evidence without objection.

7 (WHEREUPON State's Exhibit 26 was entered into
8 evidence.)

9 BY MR. CLEMENTS:

10 Q State's Exhibit 25?

11 A I do.

12 Q Did you take that picture?

13 A I did.

14 Q Do you know what it represents?

15 A I do.

16 Q All right.

17 MR. CLEMENTS: Your Honor, we move that into
18 evidence at this time.

19 MR. SCOTT: No objection.

20 MR. CLEMENTS: State's No. 25.

21 THE COURT: 25 is in without objection.

22 (WHEREUPON State's Exhibit 25 was entered into
23 evidence.)

24 BY MR. CLEMENTS:

25 Q State's Exhibit 24, same questions.

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1 A I did take that picture.

2 Q Do you know what this represents?

3 A I do.

4 Q All right.

5 MR. CLEMENTS: Move 24 into evidence, Your Honor.

6 MR. SCOTT: No objection.

7 (WHEREUPON State's Exhibit No. 24 was entered into
8 evidence.)

9 BY MR. CLEMENTS:

10 Q State's Exhibit 23?

11 A I do.

12 Q You know what that represents?

13 A I know what it represents. I did not take that
14 picture though.

15 Q All right. You know what it represents.

16 MR. CLEMENTS: We move State's Exhibit 23 into
17 evidence at this time.

18 MR. SCOTT: I'm sorry, Your Honor, did he say he
19 did not take that picture.

20 THE COURT: He did.

21 MR. CLEMENTS: But he knows what it represents.

22 MR. SCOTT: I'm going to object to it.

23 THE COURT: Okay.

24 BY MR. CLEMENTS:

25 Q You know who took that picture?

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1 A I do.

2 Q Who did?

3 A Lieutenant Lutcken.

4 Q Lieutenant Lutcken?

5 A Yes, sir.

6 THE COURT: It's ID only.

7 MR. CLEMENTS: We'll hold off on that.

8 BY MR. CLEMENTS:

9 Q State's Exhibit 21; you recognize that?

10 A I do.

11 Q Who took that picture?

12 A Lieutenant Lutcken.

13 Q Were you present when he took them?

14 A I was not.

15 Q Okay. All right.

16 MR. SCOTT: Same objection.

17 MR. CLEMENTS: I just have that marked for ID right
18 now, Your Honor.

19 BY MR. CLEMENTS:

20 Q State's Exhibit 29?

21 A I know what it represents. I did not take that
22 picture.

23 Q Who took that picture?

24 A Lieutenant Lutcken.

25 Q Okay. Did you see this actually at a little bit

Adam Moore - Direct Examination by Mr. Clements

1 later time?

2 A I did.

3 Q Okay. All right. Didn't you -- who attended the
4 autopsy?

5 A I did.

6 Q All right. State's Exhibit 19; do you recognize
7 that?

8 A I do.

9 Q Who took that picture?

10 A Lieutenant Lutcken.

11 Q Okay. Did you see this personally?

12 A I did.

13 Q Okay. Where at?

14 A Both at the hospital that night and again the next
15 day at the autopsy.

16 Q All right. State's Exhibit 18, same questions.

17 A Yes, sir, I recognize it; I did not take the
18 picture; Lieutenant Lutcken did.

19 Q And you saw this in person?

20 A I did.

21 Q Okay. State's Exhibit 17.

22 A Again a picture Lieutenant Lutcken took of the
23 victim. I saw it that night and again at the autopsy.

24 Q Okay. All right. Now, let me ask you about

25 State's Exhibit 23, did you see that later that night after

Adam Moore - Direct Examination by Mr. Clements

1 he'd made this picture?

2 A I did.

3 Q Okay. Same question on State's Exhibit 21. Did
4 you see that later than night after Lieutenant Lutcken took
5 that picture?

6 A I did.

7 Q Okay. And that's how you recognize them?

8 A Yes.

9 Q And can identify them?

10 A That's correct.

11 Q All right..

12 MR. CLEMENTS: Your Honor, State's Exhibit 23, 21,
13 20, 19, 18 and 17, I believe are all similar and that we
14 would are similarly situated such that we would move to
15 enter them into evidence and I imagine Mr. Scott's
16 objection is the same as far as each one of these.

17 MR. SCOTT: That's correct.

18 THE COURT: Which is?

19 MR. CLEMENTS: That he didn't actually take the
20 picture, but --

21 THE COURT: You don't have a photographer to take
22 the picture.

23 A fair and accurate representation of what you saw.

24 THE WITNESS: Yes, sir, that's correct.

25 THE COURT: Any other objection, Mr. Scott?

Adam Moore - Direct Examination by Mr. Clements

1 MR. SCOTT: No other objection, just note mine for
2 the record.

3 THE COURT: All right. 23, 21, 20, 19, 18 and 17
4 are in evidence subject to the previous objection.

5 (WHEREUPON State's Exhibits No. 23, 21, 20, 19, 18
6 and 17 were entered into evidence.)

7 MR. CLEMENTS: Thank you, Your Honor.

8 BY MR. CLEMENTS:

9 Q I will show you State's Exhibit 44, do you
10 recognize that and did you take that picture?

11 A I do recognize it and I did take that picture.

12 Q Okay. Do you know what that depicts?

13 A I do.

14 Q Where was this located?

15 A That is in the parking lot of the Days Inn.

16 Q Okay. Same questions in regards to State's,
17 State's Exhibit 43; did you take that picture?

18 A I did take that picture.

19 Q Do you recognize this?

20 A Yes, sir.

21 Q And where was this picture made?

22 A Also in the parking lot of the Days Inn.

23 Q State's Exhibit 42; did you take this picture?

24 A I did.

25 Q Do you recognize that?

Adam Moore - Direct Examination by Mr. Clements

- 1 A I do.
- 2 Q And where was this located?
- 3 A Also the parking lot of the Days Inn.
- 4 Q State's Exhibit 41?
- 5 A I did take that picture and it is -- I recognize it
- 6 as a photograph from the Days Inn parking lot.
- 7 Q Same questions on State's Exhibit 40?
- 8 A Yes, sir, I recognize it. I did take that picture
- 9 and know what it represents.
- 10 Q State's Exhibit 39?
- 11 A I did take that picture as well and it is evidence
- 12 in the parking lot of the Days Inn.
- 13 Q Same questions on State's Exhibit 38?
- 14 A I did take that picture and it is evidence in the
- 15 parking lot.
- 16 Q State's Exhibit 29?
- 17 A I did take that picture as well and represents the
- 18 scene at the parking lot at the Days Inn.
- 19 Q State's Exhibit 30?
- 20 A I did take that picture and I recognize it and it's
- 21 also in the parking lot at the Days Inn.
- 22 Q State's Exhibit 31?
- 23 A I did take that picture. I recognize it as the
- 24 scene that night at the Days Inn.
- 25 Q State's Exhibit 32?

Adam Moore - Direct Examination by Mr. Clements

1 A I also took that picture and recognize it as the
2 scene at the Days Inn.

3 Q State's Exhibit 33?

4 A Again, I took that picture. I recognize it as the
5 scene at the Days Inn.

6 Q State's Exhibit 34?

7 A I took that picture and it is also at the scene at
8 the Days Inn.

9 Q State's Exhibit 35?

10 A I took that picture and it's the scene at the Days
11 Inn.

12 Q State's Exhibit 36?

13 A I took that picture and it's an item of evidence at
14 the scene at the Days Inn.

15 Q And lastly, State's Exhibit 37?

16 A I took that picture and it's an also an item of
17 evidence at the scene at the Days Inn.

18 MR. CLEMENTS: Your Honor, I would move to have
19 entered into evidence State's Exhibit 37.

20 MR. SCOTT: No objection.

21 (WHEREUPON State's Exhibit 37 was entered into
22 evidence.)

23 MR. CLEMENTS: State's Exhibit 36.

24 MR. SCOTT: No objection.

25 (WHEREUPON State's Exhibit 36 was entered into

Adam Moore - Direct Examination by Mr. Clements

1 evidence.)

2 MR. CLEMENTS: State's Exhibit 35.

3 THE COURT: Do you have objections to any of them?

4 MR. SCOTT: None, Your Honor.

5 THE COURT: All right. Just state however many
6 into the record.

7 MR. CLEMENTS: 34, 33, 32, 31, 30, 29, 38, 39, 40,
8 41, 42, 43, and 44, Your Honor.

9 THE COURT: Any objection to any of those, Mr.
10 Scott?

11 MR. SCOTT: No objection, Your Honor.

12 THE COURT: All right. Of those that are stated
13 into the record are in evidence without objection.

14 (WHEREUPON State's Exhibits 29 through 35 and 40
15 through 44 were entered into evidence.)

16 MR. CLEMENTS: Your Honor, we would request
17 permission for Mr. Moore to step down from the witness
18 stand.

19 THE COURT: Certainly.

20 You may step down, just keep your voice up while
21 you're away from the microphone.

22 BY MR. CLEMENTS:

23 Q Mr. Moore, I'm going to ask you to stand on this
24 side so the Court Reporter can hear your voice better -- I
25 know I'm loud -- and so the jury can hear you. And I'm

Adam Moore - Direct Examination by Mr. Clements

1 going to ask you to start with State's Exhibit 37 and
2 explain to the jury why you know that picture and what it
3 represents?

4 COURT REPORTER: Excuse me. Can he move closer to
5 the jury box? The witness, I can't see him.

6 THE COURT: Officer Moore, can you move closer to
7 the jury box.

8 THE WITNESS: Officer Moore, that's who you want,
9 isn't it, so you can see him?

10 COURT REPORTER: Yes, right there.

11 THE COURT: Thank you.

12 THE WITNESS: That's a picture of the item of
13 evidence I marked as No. 2 and is depicting a shell casing
14 on the scene at the Days Inn.

15 BY MR. CLEMENTS:

16 Q Do you know what type of shell casing that is?

17 A May I consult my notes?

18 Q Yeah. Bring them down.

19 A I will. It is a .45 ACP shell casing.

20 Q And where was that located?

21 A That was located in the parking lot of the Days
22 Inn.

23 Q And I'm going to ask, can you tell us about State's
24 Exhibit 36?

25 A Item No. 4, I believe -- no Item No. 2.

Adam Moore - Direct Examination by Mr. Clements

1 Q What is that of?

2 A That's also a .45 auto or .45 ACP shell casing at
3 Marker No. 1 in the parking lot of the Days Inn.

4 Q How close together were these shell casings?

5 A Within a couple of feet.

6 THE COURT: And what number is this one now,
7 Solicitor?

8 MR. CLEMENTS: No. 36, Your Honor.

9 THE COURT: Thirty-six? Thank you.

10 BY MR. CLEMENTS:

11 Q All right. State's Exhibit 32, 35, what does that
12 depict?

13 A That is in the parking lot of the Days Inn and
14 that's the items of Evidence Number Marker with the cones
15 No. 13, 14 and 15.

16 Q What are all those items?

17 A No. 13 is a cell phone; No. 14 is a cigarette
18 lighter and No. 15 is a cell phone battery.

19 Q And No. 15, the cell phone battery, do you know
20 whether it fits No. 13, the cell phone, or not?

21 A It did.

22 Q All right. State's Exhibit 32.

23 A That is an overview shot of the scene at the Days
24 Inn showing markers, No. 4 through 15 in the area and their
25 relationship to each other in the parking lot.

Adam Moore - Direct Examination by Mr. Clements

1 Q So what would be to the immediate left of this
2 picture?

3 A Items No. 3, 2 and 1.

4 Q Okay. So and there were fifteen items and they
5 were spread out over how big a parking area?

6 A Two parking spaces.

7 Q Two parking spaces, okay. All right.

8 State's Exhibit 34.

9 A That is a closer shot of Items No. 4 through 14.

10 Q What is No. 9, what is that?

11 A No. 9 is a pool of blood.

12 Q All right. What's No. 10?

13 A No. 10 is a Hi-Point JHP .45 handgun.

14 Q Okay. And what's delineated there as Item No. 12
15 in the picture?

16 A It is a Nike tennis shoe.

17 Q And is that -- what connection does that have to
18 what you identified earlier?

19 A That is the shoe that I identified earlier.

20 Q That came from Mr. Carraway?

21 A Yes, sir, that's correct.

22 Q All right. What are those little items right there
23 on in, looks like in the shoe?

24 A Those are firing bullet fragments.

25 Q So what happens when a bullet's fired?

Adam Moore - Direct Examination by Mr. Clements

- 1 A The projectile leaves the end of the barrel.
- 2 Q And hits something and what happens to it?
- 3 A Sometimes it'll break apart and sometimes it'll
- 4 stay together.
- 5 Q When it breaks apart, what does it create?
- 6 A Multiple fragments.
- 7 Q And that, is that what's there in the shoe?
- 8 A That's correct, yes.
- 9 Q Okay. All right. And what's Item No. 11 in that
- 10 picture there?
- 11 A No. 11 is a toboggan, black toboggan.
- 12 Q All right. We'll look at State's Exhibit 33 a
- 13 minute here. What is Item 6 here?
- 14 A Item 6 is a package of -- the brand name is GILA
- 15 window tint.
- 16 Q Is that stuff you put on top of your windows?
- 17 A Yes, sir, that's correct.
- 18 Q Is that an empty box or did it have some in it or
- 19 do you recall?
- 20 A I cannot recall.
- 21 Q Okay. It was just laying there?
- 22 A It was.
- 23 Q And did you document everything that was there?
- 24 A That's correct.
- 25 Q All right. And Item No. 3 there in Exhibit -- what

Adam Moore - Direct Examination by Mr. Clements

1 is that Item 3?

2 A No. 3 is a cell phone charger.

3 Q Okay. And where did you find it?

4 A It was in the parking lot at the Days Inn.

5 Q Okay. All right. And Item No. 5 and 9 are both
6 what?

7 A Marking spots of blood pooling.

8 Q All right. And by the time you arrived on the
9 scene, the vehicle was gone, correct?

10 A Correct, both victims were gone.

11 Q And the car?

12 A Yes.

13 Q Okay.

14 MR. CLEMENTS: I beg the Court's indulgence one
15 moment?

16 THE COURT: Yes, sir.

17 BY MR. CLEMENTS:

18 Q State's Exhibit 42, can you tell us about that.

19 A That is showing Item No. 10 with the scale which is
20 the Hi-Point .45 caliber pistol.

21 Q And you collected that?

22 A I did.

23 Q And once you collect a weapon like this, what do
24 you normally do with it?

25 A Immediately upon collection, we take the magazine

Adam Moore - Direct Examination by Mr. Clements

1 out and make sure the chamber is clear so we aren't toting
2 around a loaded gun as evidence.

3 Q Did you take the magazine out of this weapon?

4 A I did.

5 Q What did you find in it?

6 A The magazine had -- well the magazine was empty and
7 there was one live round in the chamber.

8 Q Okay. So there was one live round in the chamber
9 and the magazine was completely empty?

10 A Yes, that's correct.

11 Q How many shells did that magazine hold?

12 A I cannot testify to that. I don't know.

13 Q You never counted them?

14 A I didn't.

15 Q Okay. All right. But it's safe to say, or fair to
16 say that it would be several shell casings, several bullets
17 goes in the magazine?

18 A That's correct.

19 Q Okay. All right. State's -- and after you
20 immediately make sure that gun is not dangerous and
21 unloaded, what do you later do with it?

22 A We put it in a paper bag to collect it as evidence
23 and it's transported to the evidence room at the sheriff's
24 office and sometimes items of evidence are photographed
25 after the fact.

Adam Moore - Direct Examination by Mr. Clements

1 Q Okay. Did you do that with this?

2 A In this particular case, I did.

3 Q And then after that, what do you do with the gun?

4 A It was sent to SLED for firearms testing.

5 Q And what type of testing do you do with it in, in
6 comparison with any other pieces of evidence you may
7 discover?

8 A I -- I can't testify to that.

9 Q All right. For what purpose did you send it to
10 SLED?

11 A For it to be tested for firearms shell casing
12 matches, ballistic matches.

13 Q Okay.

14 A They do that.

15 Q So you submit it to SLED to test it against shell
16 casings?

17 A Correct.

18 Q Are the shell casings you gathered from that scene,
19 what did you do with those shell casings?

20 A They were sent to SLED.

21 Q To be tested with the weapon?

22 A That's correct.

23 Q Okay. What about the bullet fragments, what did
24 you do with those?

25 A They were also sent to SLED.

Adam Moore - Direct Examination by Mr. Clements

1 Q Okay. For the same purpose?

2 A That's correct.

3 Q Okay. All right. If you can, look at State's
4 Exhibit 43 now; what is that?

5 A That's Item No. 13, which is a Samsung Alltel
6 cellular phone.

7 Q Okay. And where was it found?

8 A It was in the parking lot at the Days Inn.

9 Q In the same area with the --

10 A That's correct.

11 Q -- and the shell casings?

12 A Yes, sir.

13 Q All right. State's Exhibit 27, look at that please
14 and tell us what does that depict -- that photograph? Why
15 did you take it?

16 A That is the back corner of the parking lot at the
17 Days Inn on January the 13th when I responded out after the
18 video was viewed. The video showed a subject run towards
19 the back of the motel and that is the back of the motel
20 where he appeared to run.

21 Q So what encloses that property back in the back?

22 A A fence.

23 Q Okay. All right. If you'd look at State's Exhibit
24 28?

25 A That is a close-up of the fence depicted in the

Adam Moore - Direct Examination by Mr. Clements

1 previous picture at the back of the property.

2 Q All right. Okay. Investigator -- excuse me, Mr.
3 Moore, if you would please, I have two more pictures I
4 think. I'm going to show you State's Exhibit 24. If you
5 can explain that to the jury and why you made that picture
6 and what that depicts?

7 A That is a picture of the Nike shoe, the heel area
8 at our lab and taken on a photo stand.

9 Q All right. Why did you take that picture?

10 A The brass shiny object in the indentation is a bullet
11 fragment, a fired bullet.

12 Q All right. What did you do with that bullet
13 fragment?

14 A After I photographed it, I collected it and it was
15 sent to SLED for firearms testing.

16 Q All right. Was that the only fragment in that
17 shoe?

18 A There were multiple pieces of jagged fragment in
19 the shoe.

20 Q And did you extract all of them and send them to
21 SLED?

22 A I did.

23 Q All right. State's Exhibit 25, can you tell us why
24 you took that picture and what it represents?

25 A That is a photograph of the gun that was found on

Adam Moore - Direct Examination by Mr. Clements

1 scene at the Days Inn showing the magazine and the .45
2 caliber bullet that was taken out of the chamber.

3 Q Okay. So this bullet was in the chamber of the
4 gun?

5 A That's correct.

6 Q Now for lay people that don't understand about
7 guns, can you explain what it means for the bullet to be in
8 the chamber?

9 A That bullet is in the gun; if the trigger is pulled
10 it's going to go; it's going to fire the bullet. It's not
11 in the magazine where it has to be physically loaded into
12 the gun to be fired. It was ready to be fired when I
13 pulled it out of the chamber.

14 Q Okay. What was in this magazine?

15 A Nothing.

16 Q The magazine was in the gun; where does it go in
17 this gun?

18 A It goes in the bottom, bottom part of the grip.

19 Q Okay. Up in the handle?

20 A Yes.

21 Q Okay. All right. All right. Do you recall, was
22 it one? many? a few? How will you characterize the
23 number of items you retrieved off of the scene at the Days
24 Inn for evidence?

25 A Multiple items.

Adam Moore - Direct Examination by Mr. Clements

1 Q All right. And what was the, the most numerous
2 items you collected?

3 A They were shell casings.

4 Q Okay. I want to show you several items here and
5 I'm going to ask you if you can identify those and tell us
6 where they came from, if you know. State's Exhibit 63;
7 what is that? And where did it come from?

8 A I do recognize this. It is the copper jacket
9 fragment that was located at Cone No. 8 on January the
10 11th, 2010.

11 MR. CLEMENTS: Okay. We'd move that into evidence,
12 Your Honor, State's Exhibit 63.

13 MR. SCOTT: No objection.

14 THE COURT: Sixty-three is in evidence without
15 objection.

16 (WHEREUPON State's Exhibit 63 was entered into
17 evidence.

18 BY MR. CLEMENTS:

19 Q Same questions for State's Exhibit 61. Identify
20 that for us, if you can. Tell us what it is and where it
21 was located.

22 A I can identify it and I can identify where it came
23 from, but I did not collect it.

24 Q Okay. All right. What is it?

25 A It is a fired bullet from the rear seat on the

Adam Moore - Direct Examination by Mr. Clements

1 driver's side of the vehicle.

2 Q Okay. Which vehicle?

3 A The vehicle that was driven to the hospital that
4 had the victim, Marcus Weaver, in it.

5 Q Ford Fusion?

6 A Yes, that's correct.

7 Q All right.

8 MR. CLEMENTS: We'd move State's Exhibit 61 into
9 evidence, Your Honor.

10 MR. SCOTT: No objection.

11 THE COURT: Sixty-one is in evidence without
12 objection.

13 (WHEREUPON State's Exhibit 61 was entered into
14 evidence.)

15 BY MR. CLEMENTS:

16 Q I show you State's Exhibit 56. Can you identify
17 that for us and tell us where it came from and what it is?

18 A I can identify it. It is a copper-jacket fragment
19 from the heel --

20 THE COURT: Excuse me. I can't hear.

21 Take care of whoever is talking back there for me
22 please.

23 Thank you. You may go ahead, excuse me.

24 THE WITNESS: Okay. It's a copper-jacket fragment
25 from the heel of the Nike shoe.

Adam Moore - Direct Examination by Mr. Clements

1 BY MR. CLEMENTS:

2 Q Okay. And you collected that?

3 A I did.

4 MR. CLEMENTS: Your Honor, we'd move State's
5 Exhibit 56 into evidence at this time.

6 MR. SCOTT: No objection.

7 THE COURT: Fifty-six is in evidence without
8 objection.

9 (WHEREUPON State's Exhibit 56 was entered into
10 evidence.)

11 BY MR. CLEMENTS:

12 Q State's Exhibit 52, same question.

13 A I do recognize this. I collected it. It is a .45
14 auto shell casing from Cone No. 7 at the Days Inn.

15 Q All right. State's Exhibit 57?

16 A This is a -- I recognize it. It is a .45 auto
17 shell casing collected from the driver's seat on January
18 11th, by Lieutenant Lutcken.

19 Q Okay. The driver's seat of the Ford Fusion?

20 A That is correct.

21 MR. SCOTT: No objection to the Exhibit.

22 THE COURT: Fifty-seven is in evidence without
23 objection.

24 MR. CLEMENTS: Your Honor, and we also move State's
25 Exhibit 52 in at the same time, Your Honor. We didn't move

Adam Moore - Direct Examination by Mr. Clements

1 that in; we were going to wait and move them in as a group
2 but I'll go ahead and do them.

3 MR. SCOTT: No objection.

4 THE COURT: Fifty-two is in evidence without
5 objection.

6 (WHEREUPON State's Exhibits 52 and 57 were entered
7 into evidence.)

8 BY MR. CLEMENTS:

9 Q State's Exhibit 54, please, can you answer the same
10 question in regards to that.

11 A I can. I -- I can identify this item. Lieutenant
12 Lutcken collected it. It is a .45 auto shell casing taken
13 from the console/emergency brake lever area of the Ford
14 Fusion.

15 Q Okay. Now a casing is what?

16 A A casing --

17 Q A spent bullet?

18 A That's correct, a spent shell casing once the
19 bullet has been fired.

20 Q All right. State's Exhibit 59 please, same
21 question.

22 A I collected this. It is a .45 auto shell casing
23 from the change holder and/or cup holder in the car, the
24 Ford Fusion.

25 Q Okay. State's Exhibit 55?

Adam Moore - Direct Examination by Mr. Clements

1 A It is another .45 auto shell casing that was
2 collected January 11th, by myself at the Days Inn.

3 Q That was in the wee morning hours of the 11th?

4 A That's correct.

5 MR. SCOTT: No objection.

6 MR. CLEMENTS: Your Honor, we would move 55 and 59
7 into evidence at this time.

8 THE COURT: No objections. 55 and 59 is in
9 evidence without objection.

10 (WHEREUPON State's Exhibits 55 and 59 were entered
11 into evidence.)

12 BY MR. CLEMENTS:

13 Q All right. I'm going to show you State's Exhibit
14 58, same questions on that.

15 A It's another .45 auto shell casing that was
16 collected by Lieutenant Lutcken between the console and the
17 passenger seat of the Ford Fusion.

18 Q Okay.

19 MR. SCOTT: No objection.

20 BY MR. CLEMENTS:

21 Q All right. So there was two casings between the
22 console and, and the seat on the Ford Fusion and one in the
23 cup holder; is that correct, three?

24 A I'm not a hundred percent.

25 Q You're not counting?

Adam Moore - Direct Examination by Mr. Clements

1 A No, sir, I wasn't.

2 Q Okay. State's Exhibit 51, can you identify that
3 for us please?

4 A This is a piece of copper-jacket fragment from the
5 side of the Nike shoe that I collected from the shoe.

6 MR. CLEMENTS: Your Honor, we would move State's 51
7 into evidence at this time.

8 MR. SCOTT: No objection.

9 THE COURT: All right. You didn't move 58 in.

10 MR. CLEMENTS: Fifty-eight, Your Honor, I'd move it
11 into evidence as well.

12 THE COURT: Fifty-one and Fifty-eight is in
13 evidence without objection.

14 (WHEREUPON State's Exhibits 51 and 58 were entered
15 into evidence.)

16 BY MR. CLEMENTS:

17 Q I'm going to show you State's Exhibit 53, please,
18 same question.

19 A It is Item No. 2, a .45 auto shell casing collected
20 by myself the morning of January the 11th, at the Days Inn.

21 Q Okay. And when you say that was the morning, that,
22 you went out there what time of night?

23 A I responded January 10th at 11:49 p.m.

24 Q So it -- there was only 15 minutes left of the
25 10th, right?

Adam Moore - Direct Examination by Mr. Clements

1 A That's correct.

2 Q It took you into the 11th?

3 A It did, processing the scene.

4 Q Okay. All right. State's Exhibit 62?

5 A This is a live .45 auto round bullet that was
6 located between the console and the passenger seat of the
7 Ford Fusion and it was collected by Keith Lutcken.

8 Q Okay. All right.

9 MR. CLEMENTS: We'd move State's Exhibit 62 into
10 evidence at this time.

11 MR. SCOTT: No objection.

12 THE COURT: State's 62 is in evidence without
13 objection.

14 (WHEREUPON State's Exhibit 62 was entered into
15 evidence.)

16 BY MR. CLEMENTS:

17 Q All right. And the last one of these items, Mr.
18 Moore, State's Exhibit 47, can you tell us what this is and
19 where it came from?

20 A It is Item No. 4, which is a Federal .380 auto
21 shell casing that was collected by myself on January the
22 11th.

23 Q Okay. And where did you collect that from?

24 A That was collected from the parking lot of the Days
25 Inn.

Adam Moore - Direct Examination by Mr. Clements

1 Q In what proximity to these other shell casings?

2 A Within the same area as the rest of the evidence
3 that was collected.

4 Q Okay. So we have one .380 cartridge; is that
5 correct?

6 A That's correct.

7 Q Did you, what did you find about any other .380
8 cartridges or bullets there?

9 A There was no other cartridges or bullets from a
10 .380.

11 Q And all the other bullets and shell casings that
12 were collected were what type of ammunition?

13 A .45 auto as well known as ACP.

14 Q Okay. And did all those, were all those the same
15 caliber that was used by the weapon you found on the scene?

16 A They are.

17 Q I've got two other things to show you. I want to
18 show you State's Exhibit 45 and see if you know or can tell
19 what that is by the markings on it and then I'm going to
20 ask you, if you would, to open it. Can you identify that?

21 A I can.

22 Q Who collected that?

23 A I collected it.

24 Q What is it?

25 A It is the handgun magazine and the live round that

Adam Moore - Direct Examination by Mr. Clements

1 was collected from the scene at the Days Inn.

2 Q And that's State's Exhibit -- what number?

3 A State's Exhibit 45.

4 Q State's Exhibit 45 is what type of caliber weapon?

5 A It's a .45 caliber weapon.

6 Q All right. Before we do anything, is it properly
7 secured and locked?

8 A It is.

9 Q Okay. All right. Can you please show this to the
10 jury.

11 A Pick it up?

12 Q Yeah.

13 A Okay. This is the Hi-Point JHP .45 auto, the
14 handgun that was retrieved from the scene at the Days Inn.

15 Q All right. And what is this with it?

16 A The live round that was taken out of the chamber of
17 this handgun.

18 Q Okay. All right. And what did you submit this to
19 SLED for?

20 A Submitted it for DNA analysis and for firearms
21 testing.

22 Q Okay.

23 MR. CLEMENTS: Your Honor, at this time, we move
24 State's Exhibit 45 into evidence.

25 MR. SCOTT: No objection.

Adam Moore - Direct Examination by Mr. Clements

1 THE COURT: State's 45 is in evidence without
2 objection.

3 (WHEREUPON State's Exhibit 45 was entered into
4 evidence.)

5 BY MR. CLEMENTS:

6 Q All right. The last thing I'm going to show you is
7 State's Exhibit 48. Can you identify that for us and tell
8 us what that is?

9 A I can. This is a scale drawing or not-to-scale
10 drawing of the scene that night at the Days Inn.

11 Q All right.

12 A And it was prepared by me and it depicts the items
13 of evidence, the numbered cones.

14 Q Okay. All right.

15 MR. CLEMENTS: Your Honor, may I have permission
16 for Mr. Moore to step down in front of the jury panel?

17 THE COURT: You're offering that?

18 MR. CLEMENTS: I am.

19 THE COURT: Forty-eight.

20 MR. CLEMENTS: Forty-eight, Your Honor.

21 MR. SCOTT: I was not aware, did he say it was
22 scale or not to scale.

23 THE COURT: Not to scale.

24 MR. SCOTT: No objection.

25 THE COURT: All right. State's 48 is in evidence

Adam Moore - Direct Examination by Mr. Clements

1 without objection and yes, sir, you may step down.

2 (WHEREUPON State's Exhibit 48 was entered into
3 evidence.)

4 THE COURT: You can change sides, Solicitor. You
5 can change sides.

6 BY MR. CLEMENTS:

7 Q If you could and would, would you take this State's
8 Exhibit 48 and explain to the jury how you made this
9 diagram, what it depicts, and significant points of it.

10 A This is a diagram that was made after the initial
11 responding out. We do a rough sketch on-scene tape
12 measurements are documented and then we have a computer
13 program that we can actually do drawings on the computer so
14 it's not hand-drawn and it looks more understandable.

15 This is a depiction of the scene as I found it that
16 night, early morning hours at the Days Inn. This is room
17 119, 121, 123, a breezeway, room 125, 127, and 129 of the
18 Days Inn.

19 There were four vehicles in the parking lot. Three
20 on the west side of the scene and one on the right side.

21 All of the shell casings and evidence are these
22 items numbered 1 through 15, and that corresponds to the
23 numbered cones, the yellow cones, that are in the pictures.
24 This parking spot here directly in front of the breezeway
25 stairway area was empty.

Adam Moore - Direct Examination by Mr. Clements

1 Q So again, how many .380 shell casings did you find?

2 A There was just one.

3 Q How many .45 shell casings?

4 A There were three on scene that I collected.

5 Q Okay. And the others collected by Lieutenant
6 Lutcken as well?

7 A Yes, sir.

8 Q Okay. All right. Please have a seat.

9 MR. CLEMENTS: I beg the Court's indulgence, Your
10 Honor, one second. I beg the Court's indulgence one
11 moment.

12 THE COURT: Yes, sir.

13 BY MR. CLEMENTS:

14 Q All right. Mr. Moore, I want to be sure I don't
15 leave anything out. You've explained to the jury
16 everything you did at the Days Inn; is that correct?

17 A That's correct.

18 Q And have you explained to this jury everything you
19 did at the hospital?

20 A Yes.

21 Q And there was only thing you did after that; is
22 that correct?

23 A That's correct.

24 Q And what was that?

25 A The 13th, when I went back out with Investigator

Adam Moore - Cross-Examination by Mr. Scott

1 Collins to the scene and took pictures of the back fence
2 area.

3 Q Okay. All right. And what did you do with regards
4 to the vehicle, the Ford Fusion, collect anything there?

5 A I assisted Corporal Bird and Lieutenant Lutcken in
6 processing the vehicle and I collected a .45 shell casing
7 from the cup holder area of the vehicle.

8 Q All right. And you assisted them with the other
9 things that they did?

10 A In some of them, yes.

11 Q All right. And you went to the autopsy; is that
12 correct?

13 A I did.

14 Q Okay. All right. Please answer any questions that
15 Mr. Scott may have.

16 THE COURT: Thank you, Solicitor.

17 Mr. Scott?

18 CROSS-EXAMINATION

19 BY MR. SCOTT:

20 Q Now you -- you stated earlier, Corporal Moore, that
21 you -- you got the GSR Kit back; correct?

22 A Correct.

23 Q And you stated, you also said on direct that Marcus
24 Weaver was found positive for gunshot residue; is that
25 correct?

Adam Moore - Cross-Examination by Mr. Scott

1 A That's correct, on his right-back-left palm and
2 left back.

3 Q So basically, in laymen's terms, that means that
4 sometime within a day or so or a couple of minutes before
5 that or whatever that he had fired a weapon?

6 A It's within -- positive is within a couple of
7 hours.

8 Q A couple of hours?

9 A Yes, sir.

10 Q A couple meaning two?

11 A Two to six.

12 Q Two to six?

13 A Yes, sir.

14 Q And you, you said you got there a little before
15 twelve, correct? You got to the scene, I mean.

16 A I arrived on scene --- at the Days Inn?

17 Q Yes.

18 A At 12:17 a.m. on the 11th.

19 Q And when did you -- and at what time did you take
20 the GSR Kit; what time did you wrap up the hands?

21 A I would have to see the kit to know what time it
22 was.

23 Q And I'm referring to State's Exhibits 46-A and
24 46-B.

25 A Exhibit 46-A is the GSR Kit from Marcus Weaver. I

Adam Moore - Cross-Examination by Mr. Scott

1 collected it at 1:56 a.m. on the 11th.

2 Q So approximately about an hour and a half after --
3 after you came on, based on what you said at 12:17?

4 A Yes, sir.

5 Q Okay. All right. And what about the other?

6 A The GSR Kit, which is State's Exhibit 46-B on Shane
7 Marcus Graham was collected at 2:05 a.m.

8 Q Shortly thereafter?

9 A Yes, sir.

10 Q It's well within the two to six hour range?

11 A Yes, sir.

12 Q You also said that the GSR Kit for Shane Graham, it
13 came back with some -- some, I guess evidence of gunshot
14 residue as well; is that correct?

15 A That's correct.

16 Q Okay. And it didn't, apparently from this, this
17 report, it did not come back with all of the quantities of
18 metal in a gunshot residue; is that right?

19 A That's correct.

20 Q Now what does that mean in layman's terms? Explain
21 it to us.

22 A He had what I said earlier, round lead particles.
23 The three components of gunshot residue are lead, barium
24 and antimony. Lead, round lead particles are one key in
25 gunshot residue that cannot be made by anything other than

Adam Moore - Cross-Examination by Mr. Scott

1 gunshot residue.

2 Q Well, let me ask you this. Is it possible that
3 Shane could have fired a weapon based on that GSR Kit
4 results?

5 MR. CLEMENTS: Objection, it's speculation.

6 MR. SCOTT: He's an expert in this. This is his
7 area of expertise and it's the State's witness.

8 THE COURT: Nobody's offered him as an expert.
9 It's sustained. He hasn't been qualified by this Court as
10 an expert.

11 BY MR. SCOTT:

12 Q Then as it relates to Shane Graham, the -- he had
13 residue on which palm?

14 A He had, the round lead particles were located on
15 the right palm and the left palm.

16 Q What is that an indication of?

17 A Grabbing something with gunshot residue on it.

18 Q Could it be because he had been firing the weapon;
19 is it possible?

20 THE COURT: I sustained that objection.

21 BY MR. SCOTT:

22 Q Do you know if Marcus Weaver was right-handed or
23 left-handed?

24 A I do not.

25 Q And you said on direct, I think you said there

Adam Moore - Cross-Examination by Mr. Scott

1 were, you only found two calibers of casings; is that
2 correct?

3 A On scene that night, yes, sir.

4 Q Okay. And you found a .45 and you found a .380?

5 A That's correct.

6 Q Didn't you also find a .25 as well?

7 MR. SCOTT: May I approach, Your Honor?

8 THE COURT: Yes, sir, certainly.

9 MR. SCOTT: I don't know if you can find it, but
10 I'm referring to --

11 THE WITNESS: Yes, I did.

12 BY MR. SCOTT:

13 Q Okay. But you didn't mention that in direct; is
14 that correct?

15 A That's correct.

16 Q So in other words, there were at least three
17 separate kinds of caliber weapons or bullets that were
18 found?

19 A Not directly at the crime scene itself, within the
20 immediate area.

21 Q Okay. Within the immediate area there were at
22 least three now -- in the immediate area?

23 A No. The .25 shell casing was collected days later
24 and it was a dirty casing that had been there a while.

25 Q And you also said you found some live rounds there.

Adam Moore - Cross-Examination by Mr. Scott

1 I think you said, according to your direct testimony, you
2 said I think as it relates to Exhibit 62, I think you said
3 that was a .45 live round; is that correct?

4 A It is.

5 Q Okay. So you found a live round, which is State's
6 Exhibit 62. And then you also found a live round as it
7 relates to the actual weapon itself; is that correct?

8 A It was a live round in the weapon, yes, sir.

9 Q Okay. All right. Is it possible that there
10 were -- based on your investigation, is it possible that
11 there could have been two .45's and not just one?

12 A No, sir.

13 Q Why not?

14 A The SLED firearms report ---

15 THE COURT: Step out please, ladies and gentlemen.

16 (WHEREUPON the jury left the courtroom at 12:29
17 p.m.)

18 THE COURT: Possibilities is not evidence. Is it
19 possible; that's why I sustained the other objection. Even
20 if he was offered as an expert, you would have had to ask
21 the question, not a possibility, but within your particular
22 degree of expertise within a reasonable degree of
23 scientific certainty, most probably had Shawn Graham --
24 whatever that gentlemen's name is -- fired a weapon.

25 That's an improper question. Now, we're going to

Adam Moore - Cross-Examination by Mr. Scott

1 possibilities about two .45's. There's got to be, I
2 understood State's 62 was a live .45 round in the Ford
3 Fusion.

4 THE WITNESS: That's correct..

5 THE COURT: Not on the scene.

6 THE WITNESS: No, sir.

7 THE COURT: Not at the Days Inn.

8 THE WITNESS: Not at the Days Inn.

9 THE COURT: There was no live .45 round found at
10 the Days Inn.

11 THE WITNESS: Except the one in the gun.

12 THE COURT: There was no, there was no live .45
13 round found at the Days Inn separate and distinct from the
14 weapon itself in State's 45.

15 THE WITNESS: No, sir, that's correct.

16 THE COURT: All right. So you can't build on
17 possibilities. You've got, you've got to have some
18 evidence that there were two guns. In other words, you got
19 a -- you got a live round in the .45 and then you got a
20 live round in the Ford Fusion miles away. And that's
21 speculation, that's a conjecture, and that's surmised.

22 Bring us our jury, please.

23 (WHEREUPON the jury entered the courtroom at 12:31
24 p.m.)

25 THE BAILIFF: One moment, Judge.

Adam Moore - Cross-Examination by Mr. Scott

1 THE COURT: All right. Ladies and gentlemen,
2 please continue to give the parties your complete and
3 undivided attention.

4 Thank you. Thank you very much, Mr. Scott. You
5 may continue.

6 BY MR. SCOTT:

7 Q My last question -- You said on direct that one of
8 the ways that gun residue can be transferred was by picking
9 up something that had gun residue on it; is that correct?

10 A That is.

11 Q Okay. Is -- can it also be taken off the same way?

12 A Explain or rephrase.

13 Q Based on your expertise in regards to this matter,
14 you testified earlier that there, a way that these
15 particles can be transferred to the palms would be by a
16 party pulling something or lifting something, correct?

17 A Correct.

18 Q My question is, could those same particles that you
19 just testified to on direct, could those be taken off as a
20 result of the same kind of action?

21 A What do you mean taken off.

22 Q Like if I had gun residue on me, by me pulling
23 something or pulling someone, could I also take, could the
24 gun residue be lifted off of my hands the same way it could
25 be put on my hands?

Adam Moore - Redirect Examination by Mr. Clements

1 A You're asking can it be removed?

2 Q Yes.

3 A Yes.

4 Q Okay. No further questions.

5 THE COURT: Redirect?

6 REDIRECT EXAMINATION

7 BY MR. CLEMENTS:

8 Q Mr. Scott asked you if you knew if Mr. Weaver was
9 right-handed or left-handed?

10 A Correct.

11 Q You saw him in the hospital, correct?

12 A That's right.

13 Q Where were his wounds?

14 A He had one wound in the entrance in the chest -- or
15 entrance in the back, exit in the chest and an entrance
16 wound in his left forearm and exit wound in the left back
17 of the forearm.

18 Q So he was shot through the left arm?

19 A Correct.

20 Q Shot through the left arm and shot through the
21 back?

22 A Yes.

23 Q Okay. All right. I'll leave that alone.

24 Let me ask you about this .25 caliber bullet. When
25 did you find that?

Adam Moore - Redirect Examination by Mr. Clements

1 A It was found January the 13th.

2 Q Two days later?

3 A Correct.

4 Q Where exactly was it found?

5 A It was found at the back of the parking lot of the
6 Days Inn near the fence area.

7 Q I'm going to show you what's been marked as State's
8 Exhibit 64 for identification. Can you identify that?

9 A I can. It is a .25 auto shell casing that I
10 collected January the 13th, 2010.

11 Q From the back of the parking lot?

12 A That's correct.

13 Q And approximately how far away was that from where
14 all the other stuff was collected?

15 A I don't recall.

16 Q Feet, yards ---

17 A Yards.

18 Q -- inches?

19 A Multiple yards.

20 Q Multiple yards. All right.

21 Take this and have a look at it, tell me what kind
22 of shape is that shell casing in?

23 MR. SCOTT: Objection, Your Honor.

24 THE COURT: Rephrase the question. Rephrase the
25 question.

Adam Moore - Redirect Examination by Mr. Clements

1 BY MR. CLEMENTS:

2 Q What kind of shape is that shell casing in?

3 THE COURT: I sustain the objection.

4 MR. SCOTT: Thank you.

5 MR. CLEMENTS: I beg the Court's indulgence. May
6 we approach the bench, Your Honor?

7 THE COURT: Sure.

8 (WHEREUPON there was a bench conference out of the
9 hearing of the jury and the court reporter.)

10 BY MR. CLEMENTS:

11 Q Would you please describe your observation of this
12 for me?

13 A It's a .25 auto shell casing manufactured by R-P,
14 which is Remington Peters and it is bent and partially
15 crushed and very worn.

16 Q How about the metal on it?

17 A It has been rubbed off.

18 Q All right. Now please, if you would, put it back
19 in there. Let's just -- all right. State's No. 55, can
20 you describe your observations of it?

21 A This is a .45 auto W-W Headstamp which is a
22 Winchester make cartridge and it is in the condition it
23 would as if fired from a gun and not been disturbed.

24 Q So what, what would be your characterization of how
25 this metal looks?

Adam Moore - Redirect Examination by Mr. Clements

1 A That metal is clean.

2 Q What would be your characterization of how the
3 metal looks on State's Exhibit 64, the .25 caliber?

4 MR. SCOTT: Your Honor, may we approach, Your
5 Honor?

6 (WHEREUPON there was a bench conference out of the
7 hearing of the jury and the court reporter.)

8 BY MR. CLEMENTS:

9 Q Again, what would be your characterization of the
10 metal on this?

11 A Very rough and scarred.

12 MR. CLEMENTS: Your Honor, ask permission to
13 publish these two to the jury, if I may?

14 THE COURT: Are you offering 64?

15 MR. CLEMENTS: Your Honor, I am offering 64 into
16 evidence.

17 THE COURT: All right. Mr. Scott.

18 MR. CLEMENTS: I thought I did.

19 THE COURT: No, sir, I don't believe you did.

20 MR. CLEMENTS: I apologize.

21 THE COURT: Any objections?

22 MR. SCOTT: No objections, Your Honor.

23 THE COURT: All right. 64 is in evidence without
24 objection and you may publish it.

25 (WHEREUPON State's Exhibit 64 was entered into

Adam Moore - Redirect Examination by Mr. Clements

1 evidence.)

2 BY MR. CLEMENTS:

3 Q Mr. Moore, why did you collect this old-bent-up .25
4 shell casing in State's Exhibit 64?

5 A Because as part of our -- my job was collecting
6 anything that could be potential evidence and that was a
7 potential piece of evidence I found at the scene on the
8 13th.

9 Q Now, can you tell me whether the other shell
10 casings you collected, whether they look like State's
11 Exhibit 55 or whether they look like State's Exhibit 64?

12 A The other ones, except for the .380 looked for --
13 like Exhibit 55.

14 Q They all looked like 55?

15 A That's correct.

16 Q And not like 64?

17 A That's correct.

18 Q All right. Let me ask you about the .380. As far
19 as that .380 shell in regards to its shininess, its
20 smoothness, its lack of being bent, how does it look; like
21 all those .45 shells or like this bent-up-old .25 shell?

22 A Like all the other .45 casings.

23 Q Okay. Now, just a little bit more.

24 Mr. Scott asked you about the gunshot residue on
25 Mr. Weaver's hands and Mr. Graham's hands. You, I believe,

Adam Moore - Redirect Examination by Mr. Clements

1 Mr. -- Mr. Weaver had gunshot residue where? Point it out
2 on me. Everywhere he had gunshot residue.

3 A He had gunshot residue on the right back, which is
4 here; on the left palm, here; and the left back, which is
5 there.

6 Q Where did he not have it?

7 A On the right palm.

8 Q On the right palm?

9 A Correct.

10 Q And would you please, if you would, point out on me
11 where Mr. Graham had lead particles.

12 A On his right palm and his left palm.

13 Q On his right palm and his left palm?

14 A Yes, sir, the two palms.

15 Q What about the backs?

16 A Nothing was found on the backs.

17 Q Okay. All right. What is the possibility of
18 collecting gunshot residue on clothing?

19 A Not very accurate.

20 Q Is it ever?

21 A It is done, but as a first, at this time, SLED was
22 not accepting clothing for gunshot residue. It was
23 strictly gunshot residue kits.

24 Q Okay. All right. On the hands?

25 A Correct.

Adam Moore - Redirect Examination by Mr. Clements

1 Q Okay.

2 MR. CLEMENTS: Your Honor, that's all the questions
3 we have of Mr. Moore.

4 THE COURT: Thank you. Recross, Mr. Scott?

5 MR. SCOTT: None, Your Honor.

6 MR. CLEMENTS: May he with released?

7 THE COURT: Thank you, you may step down. You may
8 be excused. Thank you for being with us today.

9 MR. CLEMENTS: Your Honor, I have one witness that
10 will be real short we could call now if we may.

11 THE COURT: What you call real short?

12 MR. CLEMENTS: I don't have but two questions.

13 THE COURT: All right. I'll remember that.

14 Call your next witness.

15 MR. CLEMENTS: I'll run go get him. I'll be right
16 back.

17 THE COURT: All right. If you could come around
18 and be sworn for us please.

19 WILLIAM HESTER, HAVING BEEN SWORN TESTIFIES AS
20 FOLLOWS:

21 CLERK: Please be seated and state your full name for
22 the record.

23 THE WITNESS: William Hester.

24 THE COURT: All right. Solicitor?

25 ///

William Hester - Direct Examination by Mr. Clements

DIRECT EXAMINATION

BY MR. CLEMENTS:

Q Can you please tell this jury who you are, where you work and what you do?

A Yes, sir, I'm Investigator William Hester. I work for the Florence County Sheriff's Office in Criminal Investigations Division.

Q All right. I've got one more question I want to ask you and that is: What did you do in regards to this murder investigation of Mr. Marcus Weaver; and what this is?

A I was contacted by Investigator McFadden. He was at the Sleep Inn Hotel and needed some help getting the video off of the DVR system. I went and met with Investigator McFadden. I took the information that needed to be taken off using a jump drive and gave the jump drive to Investigator McFadden.

Q And for what purpose?

A He needed that for an investigation that he was working.

Q Okay. All right.

MR. CLEMENTS: Your Honor, that's all the questions I have of Investigator Hester at this time.

THE COURT: Mr. Scott?

MR. SCOTT: No questions, Your Honor.

William Hester - Direct Examination by Mr. Clements

1 THE COURT: Thank you. Thank you very much,
2 Detective Hester.

3 THE WITNESS: Yes, sir.

4 MR. CLEMENTS: Your Honor, our next witness takes a
5 good amount of time.

6 THE COURT: All right.

7 MR. CLEMENTS: And I would suggest, Your Honor,
8 this might be a good time for the lunch break.

9 THE COURT: All right. Thank you. Thank you very
10 much, Solicitor.

11 All right. Mr. Foreman, ladies and gentlemen of
12 the jury, perhaps now would be a good time to take our
13 luncheon recess. I must remind you during this recess, you
14 may not discuss this case with anyone, that includes your
15 fellow jurors, lunch-mates, family, friends, or anyone
16 else. You may not read, watch, listen to any news accounts
17 about the case, should there be any.

18 You certainly may use your computer, cellular phone
19 or other electronic devices or communication capabilities
20 during your luncheon recess. However, you may not use them
21 to obtain or disclose prohibited information. Prohibited
22 information is information about a party, a witness, an
23 attorney, or a court officer, prior or current news
24 accounts of the case, should there be any, information
25 collected through juror research on any topic raised or

William Hester - Direct Examination by Mr. Clements

1 testimony offered by any witness or information collected
2 through juror research on any other topic the juror might
3 think would be helpful in deciding the case.

4 As you've heard on numerous occasions, you decide
5 the case based on the evidence and the testimony that is
6 presented to you from the witness stand by the witnesses
7 testifying before you under oath and any physical items of
8 evidence that are introduced. In other words, do not do
9 any independent investigation or any investigation on the
10 internet.

11 With that being said, I would ask you to please be
12 back promptly at 2:20. If you'd please be back promptly in
13 your jury room at 2:20.

14 You're now excused. I hope y'all have a pleasant
15 lunch. Thank you and thank you very much.

16 (WHEREUPON the jury left the courtroom at 12:50
17 p.m.)

18 THE COURT: All right. Anything further from the
19 State before we take our recess?

20 MR. CLEMENTS: Not at this time, Your Honor.

21 THE COURT: Defense?

22 MR. SCOTT: No, Your Honor.

23 THE COURT: And who's your next witness, Solicitor?

24 MR. CLEMENTS: Your Honor, it's going to be either
25 Keith Lutcken or Paul Bird, Your Honor, whichever one wants

Erin Presnell - Direct Examination by Mr. Clements

1 to go up first. It's going to take a little bit of time.

2 THE COURT: All right. Thank you. We'll be in
3 recess until 2:20. Thank you. Thank you very much.

4 (WHEREUPON a recess was observed for lunch.)

5 THE COURT: Welcome back ladies and gentlemen of
6 the jury panel. Hope y'all had a pleasant lunch. We're
7 continuing the trial of the case by the presentation of
8 evidence and testimony by the State in its case in chief.
9 If you would please continue to give the parties your
10 complete and undivided attention.

11 Solicitor, you may call your next witness.

12 MR. CLEMENTS: Thank you, Your Honor. If it please
13 the Court, we'd call Dr. Erin Presnell.

14 THE COURT: All right. If you'd come around and be
15 sworn for us, please, Doctor.

16 ERIN PRESNELL, HAVING BEEN SWORN TESTIFIES AS
17 FOLLOWS:

18 THE CLERK: Please be seated and state your full
19 name for the record.

20 THE WITNESS: My name is Susan Erin Presnell,
21 P-r-e-s-n-e-l-l.

22 **DIRECT EXAMINATION**

23 BY MR. CLEMENTS:

24 Q Ma'am, can you please tell the jury where you work
25 and what your job title is and is what you do.

Erin Presnell - Direct Examination by Mr. Clements

1 A I'm a forensic pathologist. I perform autopsies,
2 forensic autopsies at the Medical University of South
3 Carolina in Charleston.

4 Q And can you please tell the jury what forensic
5 pathology is exactly? I know everybody's seen CSI and all
6 these shows on television, but that's Hollywood, but can
7 you give us the real deal.

8 A It is Hollywood. Well forensic pathology
9 subspecialty of the broad field of pathology. Pathology in
10 general is the part of the medicine that's the diagnosis of
11 disease. So if you do to your family doctor and they do a
12 skin biopsy or a woman gets a breast biopsy or any kind of
13 tissue, if a surgeon takes out some tissue, that would go
14 to the pathologist. They look at it, look at it in the
15 microscope and diagnose degree process; if you have cancer
16 or you don't; you have an infection or you don't.

17 So I'm trained in general pathology, but I also sub
18 specialize in forensic pathology where we're not just
19 looking at a piece of tissue, we're looking at a whole
20 entire person that's passed through a procedure called an
21 autopsy. And although we are also looking for a disease
22 process, another component is to look for and evaluate any
23 type of trauma. And then through the whole -- the process
24 of the autopsy we'll generate an autopsy report with a
25 conclusion of the cause and manner of death.

Erin Presnell - Direct Examination by Mr. Clements

1 Q Would you please tell this jury what your
2 educational background is.

3 A Well, I'm a forensic pathologist. I did four years
4 of college at Clemson, and then four years of medical
5 school at MUSC. I then went into pathology residency
6 training. After you finish med school, you have to pick
7 your specialty, like pediatrics, family medicine. I chose
8 pathology, which was five years training and then an
9 additional year for sub specialty training. And then after
10 that, you take your board certifications. I'm boarded in
11 pathology and forensic pathology.

12 Q So you're board certified in both forensic
13 pathology and pathology?

14 A Yes.

15 Q Okay. Now, how long have you been practicing
16 forensic pathology?

17 A I've been on faculty at MUSC since 1999; so 14
18 years.

19 Q And have you ever been qualified as an expert in
20 the field of forensic pathology in State or Federal court?

21 A Yes, I have.

22 Q Approximately how many times?

23 A I'm going to estimate maybe 85ish, getting close to
24 a hundred.

25 Q All right.

Erin Presnell - Direct Examination by Mr. Clements

1 MR. CLEMENTS: Your Honor, at this time, we'd offer
2 Dr. Presnell as an expert in the field of forensic
3 pathology.

4 THE COURT: All right. Thank you.

5 Mr. Scott?

6 MR. SCOTT: Based on her qualifications, Your
7 Honor, we're not going to object except for the fact that
8 she went to Clemson.

9 THE COURT: All right. Thank you, thank you very
10 much.

11 Mr. Foreman, ladies and gentlemen of the jury
12 panel, normally a person cannot give opinion testimony.
13 Normally when a person testifies, they must testify as to
14 what they either saw, heard, or sensed by smell, or
15 something of that nature. However, there is an exception
16 when someone is qualified because of education or
17 experience. They're permitted to give their opinions in
18 certain areas if the Court qualifies in that way.

19 This witness, Dr. Erin Presnell will be qualified
20 in the area of forensic pathology to give opinion testimony
21 in that area. That does not mean that you must accept the
22 opinion, but it is evidence for you, the jury, to use in
23 any way you see fit.

24 Thank you, thank you, Solicitor. You may continue.

25 MR. CLEMENTS: Yes, Your Honor, if it please the

Erin Presnell - Direct Examination by Mr. Clements

1 Court.

2 BY MR. CLEMENT:

3 Q Dr. Presnell, did you have an occasion to do an
4 autopsy on Marcus A. Weaver?

5 A Yes, I performed an autopsy on January 11, 2010.

6 Q And how many days was that after his demise?

7 A It was the next day.

8 Q Okay. And in the performance of your duties to an
9 opinion to a reasonable degree of medical certainty as to
10 his cause and manner of death.

11 A He died from a gunshot wound to his back. And the
12 manner of death in our area would be classified as a
13 homicide.

14 Q Okay. Can you tell us in layman's terms what a
15 homicide is.

16 A Homicide in the medical examiner terminology means
17 death by -- at the hands of another.

18 Q Okay. So this was someone else taking his life?

19 A Correct.

20 Q Okay. By a gunshot wound?

21 A Correct.

22 Q Now, can you please tell the jury where exactly he
23 had gunshot wounds.

24 A He actually had two gunshot wounds. The fatal
25 gunshot wound was to his back, his right upper back just a

Erin Presnell - Direct Examination by Mr. Clements

1 little bit to the right of his midline. It went into his
2 back, went through the aorta, which is the main vessel
3 bringing blood from the heart to the rest of the body;
4 through the aorta, also hit the airway and the left lung
5 before it exited the front of the chest.

6 So that was the gunshot that was a fatal one. And
7 he actually had another gunshot wound that was on his left
8 arm, that there was a hole, kind of on the forearm area air
9 and then one back behind the elbow. These two holes
10 connected and it -- actually this gunshot would didn't
11 strike anything but soft tissue, but it was a second
12 gunshot wound.

13 Q Do you have any opinion or can you have any opinion
14 as to which one of these wounds occurred first.

15 A No, I can't tell at the autopsy which one happened
16 first.

17 Q Dr. Presnell, give me a moment, I have a couple of
18 pictures I need for you to look at.

19 Dr. Presnell, I'm going to show you what's been
20 marked as State's Exhibit 18 and State's Exhibit 19 in
21 evidence; and tell me if you can identify them and explain
22 them to us, starting with State's Exhibit 18.

23 A This actually does not have any of my labeling on
24 it. It appears to have been taken at the time of autopsy
25 and it demonstrates the gunshot wound to the arm.

Erin Presnell - Direct Examination by Mr. Clements

1 Q Okay. And I'm going to show you State's Exhibit
2 19.

3 A This appears to be a little bit closer picture of
4 the gunshot wound of the arm.

5 Q Okay.

6 MR. CLEMENTS: Your Honor, request permission to
7 publish these two photographs.

8 THE COURT: Mr. Scott?

9 MR. SCOTT: No objection.

10 THE COURT: That's 18 and 19?

11 MR. CLEMENTS: 18 and 19, Your Honor.

12 THE COURT: State's 18 and 19 is in evidence
13 without objection. You may publish!

14 BY MR. CLEMENTS:

15 Q Now, was that wound to the arm, was that through
16 and through?

17 A Yes, it was.

18 Q Okay. And it didn't hit anything but soft tissue.

19 A Correct.

20 Q Okay. Now, four more photos that I wish to show
21 you, Doctor. And I'm going to start with State's Exhibit
22 17. Can you identify that?

23 A Again there's no labeling, but it appears to be the
24 gunshot wound to the back.

25 Q Okay. And how about State's Exhibit 20.

Erin Presnell - Direct Examination by Mr. Clements

1 A That appears to be the gunshot wound to the back.

2 Q All right. And State's Exhibit 23?

3 A This is the exit gunshot wound on the front of the
4 body.

5 Q All right. And approximately, if you could show
6 the jury where, on me, where was that exit wound,
7 approximately?

8 A Approximately right hear. (Indicating)

9 Q And if you could, using me, show approximately
10 where the entrance wound was.

11 A It's the right upper back, just a little bit to the
12 right of midline. And the exit is on the left -- just a
13 little bit left of midline on the upper chest.

14 Q Now, do you have any opinion as far as any
15 differentiation or as to the size of the wound and arm as
16 opposed to the one in his -- that entered his back and
17 exited his chest?

18 A Well we do measurements on all the gunshot wounds.
19 And the ones on the arm are larger in size.

20 Q Now, let me ask you this, Dr. Presnell, you stated
21 that the gunshot wound entering the back was the fatal
22 wound.

23 A Yes.

24 Q Do you have an opinion as to a reasonable degree of
25 medical certainty if someone sustained that type of wound,

Erin Presnell - Direct Examination by Mr. Clements

1 would they be able to stand up out of car and shoot a gun
2 several times before they expired?

3 A It's possible, although I can't say definitively as
4 for -- as to this one individual case. But it's entirely
5 possible.

6 Q What would be, to a reasonable degree of medical
7 certainty, the maximum length someone could live after
8 sustaining that type of wound, if you can answer that
9 question?

10 A I would imagine seconds, maybe up to a minute; but
11 that's just a supposition.

12 Q Okay. All right. Now, as far as the wound to the
13 arm, do you have an opinion as to how disabling that type
14 of wound to the arm might have been.

15 A As far as -- I'm not sure. I mean, it did -- it
16 didn't actually hit anything vital. So, I'm not sure what
17 your question is asking, so...

18 Q It wouldn't disable someone from being able to move
19 around or get up or --

20 A Well, maybe move the arm, the left arm. It would
21 potentially do that.

22 Q Well, would that be a life threatening injury in
23 any way, as far as immediate life threatening?

24 A Not this gunshot wound to the arm.

25 Q Okay. Dr. Presnell, my last little bit of

Erin Presnell - Cross-Examination by Mr. Scott

1 questioning, were there any other wounds sustained by
2 Mr. Weaver?

3 A He did have an abrasion or scratch on his left
4 temple area and a little laceration, which is a split in
5 the skin, above his left ear.

6 Q Okay. Do you have an opinion to a reasonable
7 degree of medical certainty whether it would be possible to
8 sustain that kind of injury by falling on the asphalt?

9 A That could explain that particular injury, yes.

10 Q Or being hit in the head?

11 A Yes, some type of blunt trauma caused that injury,
12 whether it was him falling or something striking him.

13 Q Okay. Please answer any questions that Mr. Scott
14 may have.

15 THE COURT: Thank you, Solicitor.

16 Mr. Scott?

17 CROSS-EXAMINATION

18 BY MR. SCOTT:

19 Q Good afternoon, Doctor. Is it Presnell?

20 A Presnell, yes.

21 Q Presnell.

22 Now, you said on direct that you could not tell
23 which one of these wounds occurred first; is that correct?

24 A Right. Not at the time of autopsy, no.

25 Q Right. And you also said on direct as it relates

Erin Presnell - Cross-Examination by Mr. Scott

1 to the size of the wounds, what is that an indi -- what is
2 that an indication of? The sizes of the wound, whether it
3 be big or small?

4 A It's not. It's just -- it's just a measurement.
5 It doesn't indicate in particular much of a significance to
6 me.

7 Q Okay. So in other words as far as your autopsy is
8 concerned, it's not really -- it's not a part of your
9 autopsy assessment that you can determine the caliber of
10 those wounds? Or the caliber of weapon that made those
11 wounds?

12 A Right. So we cannot tell the caliber by the size
13 of the wound on the skin.

14 Q Okay. And you also said on direct that it's
15 possible that with both of these wounds that the victim
16 could have lived up to a minute, I think you said; is that
17 correct?

18 A Yes, I did say that and maybe what a better
19 phrasing would have been, to have been functioning or
20 moving around. Because clearly in this case EMS intervened
21 and transported him, trying resuscitating efforts for
22 several minutes or 15 minutes or so, approximately before
23 he was pronounced dead.

24 Q And as a part of your autopsy, you also check to
25 see other things in relationship to the deceased body; is

Erin Presnell - Cross-Examination by Mr. Scott

1 that correct?

2 A Yes.

3 Q And some of the things you checked, did you have an
4 opinion, as it relates to scientifically, whether or not
5 the party had been drinking or anything? Could you tell
6 that from the autopsy?

7 A Yes. One of the standard things we do with a
8 forensic autopsy is to draw blood for toxicology to test
9 for drugs and alcohol.

10 In this case, he had a blood alcohol level of .1.
11 And he also had some THC or marijuana metabolized, the
12 break-down product of marijuana in his blood.

13 Q Okay. And I think as it relates to that THC
14 metabolite, it says here, if I'm not mistaken, one of your
15 reports says 6.6 mcg. What does that mean in layman's
16 terms?

17 A It's just a measure, a concentration, like there
18 6.6 micrograms per liter in his blood, which is a pretty
19 small amount.

20 Q Pretty small amount.

21 But we can tell based on your results that he had
22 marijuana in his system and he also had a blood alcohol
23 level of -- I think you said .10?

24 A Correct. This -- we don't actually do the
25 toxicology testing. We collect the specimen and it's sent

Erin Presnell - Redirect Examination by Mr. Clements

1 to SLED. They do the analysis and generate the report,
2 which I include in my report.

3 Q Right. But they did the analysis and then they
4 sent it back to you and that's when you put it in your
5 report; is that correct?

6 A Yes.

7 Q Have you ever their reports to be inaccurate?

8 A No.

9 Q All right. Thank you.

10 MR. SCOTT: No further questions.

11 THE COURT: Redirect?

12 MR. CLEMENTS: Briefly.

13 **REDIRECT EXAMINATION**

14 BY MR. CLEMENTS:

15 Q Dr. Presnell, is the presence of a metabolite in a
16 small volume or a small amount as you said that was is that
17 an indication of recent or past marijuana consumption?

18 A It's a metabolite so it means he has used it in the
19 past. I can't tell you exactly how long ago, but the
20 marijuana's been broken down so that it's no longer active
21 in his system.

22 Q So not a recent usage.

23 A It may have been recent, like -- well, I don't know
24 what your definition of recent is, but it's been several
25 hours ago and now it's just broken -- a breakdown product

Erin Presnell - Redirect Examination by Mr. Clements

1 of marijuana left.

2 Q Thank you.

3 MR. CLEMENTS: Your Honor, I have no further
4 questions.

5 THE COURT: Recross?

6 MR. SCOTT: No further questions. Thank you.

7 THE COURT: Thank you. Thank you very much, Dr.
8 Presnell.

9 MR. CLEMENTS: Your Honor, we ask that Dr. Presnell
10 be released from her subpoena.

11 THE COURT: Any objections?

12 MR. SCOTT: Other than my objection to Clemson, I
13 have no objection.

14 THE COURT: Thank you. Thank you very much. You
15 may step down and you may be excused. Thank you for being
16 with us this afternoon.

17 All right. Solicitor, you may call your next
18 witness.

19 MR. CLEMENT: Your Honor, our next witness will be
20 Mr. Matthew Fitts, formerly from SLED.

21 THE COURT: All right. If you'd come around and be
22 sworn, please.

23 MATTHEW FITTS, HAVING BEEN SWORN TESTIFIES AS
24 FOLLOWS:

25 THE CLERK: Please be seated in the witness chair

Matthew Fitts - Direct Examination by Mr. Clements

1 and state your full name for the record.

2 THE WITNESS: Matthew Graham Fitts.

3 **DIRECT EXAMINATION**

4 BY MR. CLEMENTS:

5 Q Mr. Fitts, would you please tell this jury where
6 you work?

7 A Currently I'm employed by Orangeburg Department of
8 Public Safety and Claflin University in a joint effort to
9 develop a regional forensic lab in that area.

10 Q Prior to this employment, where were you employed?

11 A I was employed at South Carolina Law Enforcement
12 Division in the DNA Serology Forensic Laboratory.

13 Q Is that what's commonly referred to as SLED?

14 A Yes.

15 Q Okay. And can you explain to this jury what you
16 did there at the SLED lab?

17 A I received, you know, the evidence from crime
18 scenes in which we attempt to identify anything, any
19 biological material which would be blood, saliva, hair, and
20 attempt to get a DNA profile from that. And then we would
21 do standards from individuals and develop their DNA
22 profiles and compare those profiles to either include or
23 exclude somebody as a possible contributor to that item of
24 evidence.

25 Q How long were you employed at SLED as a DNA

Matthew Fitts - Direct Examination by Mr. Clements

1 Analyst?

2 A For approximately 15 years.

3 Q Can you please tell this jury what your educational
4 background is.

5 A I received my B.S. Degree and Doctorate Degree in
6 Microbiology from Clemson University. I spent three years
7 at St. Jude's Children's Research Hospital, five years at
8 the National Institutes of Health in Bethesda, Maryland,
9 and then joined the SLED in 1995.

10 Q Have you ever been qualified to testify as an
11 expert in the field of DNA analysis in State or Federal
12 Court?

13 A Yes, I have.

14 Q Approximately how many times?

15 A I'd say approximately 50 times.

16 MR. CLEMENTS: Your Honor, at this time, we would
17 offer Mr. Fitts as an expert in the area of DNA analysis?

18 THE COURT: Mr. Scott?

19 MR. SCOTT: No objection, Your Honor.

20 THE COURT: All right. Again, ladies and
21 gentlemen, you've heard me say this before, normally a
22 person cannot testify to opinion testimony. Normally when
23 a person testifies, they must testify as to either what
24 they saw, heard, or sensed by smell or something of that
25 nature. However, there is an exception when someone is

Matthew Fitts - Direct Examination by Mr. Clements

1 qualified because of educational experience. They're
2 permitted to give their opinion in certain areas if the
3 Court qualifies them that way.

4 This witness, Matthew Fitts, will be qualified in
5 the area of DNA and DNA analysis to give opinion testimony
6 in those areas. That does not mean that you must accept
7 the opinion, but it is evidence for you, the jury, to use
8 in any way you see fit.

9 Thank you, Solicitor.

10 BY MR. CLEMENTS:

11 Q Mr. Fitts, did you receive any evidence to analyze
12 in regards to the shooting death of Mr. Marcus Weaver?

13 A Yes, I did.

14 Q Can you please tell us who you received either
15 blood standards or buccal swabs from?

16 A I do not have -- since I'm not employed there, I do
17 not have a chain of custody report. I don't have the
18 information as to who I received them from.

19 Q All right. Let me pass this up to you. You have a
20 copy of this?

21 A Yes.

22 Q Okay.

23 A I do.

24 Q Okay. Did you receive any items to analyze in
25 regards to a Joshua Carraway?

Matthew Fitts - Direct Examination by Mr. Clements

1 A Yes, a buccal swab.

2 Q Okay. Did you receive a blood standard from
3 anyone?

4 A Yes, from Marcus Weaver.

5 Q Okay. And did you receive items from the crime
6 scene to analyze?

7 A Yes, I did.

8 Q Okay. And what items were, did you analyze?

9 A There was a lead fragment found on the pavement at
10 the flower bed; there was swabs from Cone No. 2; swabs from
11 Cone No. 9; swabs from window tint box; a cutting from a
12 black-in-color toboggan; a swab from black-in-color
13 toboggan, and then suspected hair recovered from the
14 black-in-color toboggan.

15 Q All right. The swab from Cone No. 2, what was the
16 date on that?

17 A The date is 1/13/2010.

18 Q Okay. All right. And did you have any results of
19 any matches in your analysis?

20 A Yes, I did. The DNA profiles developed from Items
21 20 and 21, which was swabs from Cone No. 9, and swabs from
22 window tint box matched the DNA profile of Marcus Weaver.

23 Q All right. Did you have any matches on Joshua
24 Carraway?

25 A No, I did not.

Matthew Fitts - Direct Examination by Mr. Clements

1 Q Did you have any matches on any other individuals?

2 A No, I do not.

3 Q Please answer any questions that Mr. Scott may
4 have.

5 THE COURT: Thank you, Solicitor.

6 Mr. Scott.

7 MR. SCOTT: No questions, Your Honor.

8 THE COURT: Thank you. Thank you very much. Thank
9 you for being with us this afternoon.

10 MR. CLEMENTS: Your Honor, may we have Mr. Fitts
11 released from his subpoena.

12 THE COURT: Any objections?

13 MR. SCOTT: No objection.

14 THE COURT: You may step down. You may be
15 released.

16 MR. CLEMENTS: Your Honor -- and may we approach
17 the bench.

18 THE COURT: Yes, sir.

19 (WHEREUPON there was a bench conference out of the
20 hearing of the jury and the court reporter.)

21 THE COURT: All right. Mr. Foreman, ladies and
22 gentlemen, if you'll step out momentarily, I need to take
23 up a matter of law with the attorneys.

24 Please do not discuss the case during this brief
25 recess.

Paul Bird - Direct Examination by Mr. Clements

1 (WHEREUPON the jury left the courtroom at 2:59
2 p.m.)

3 (WHEREUPON a brief recess was observed.)

4 THE COURT: Anything before we bring my jury
5 in from the State?

6 MR. CLEMENTS: Just thank you, Your Honor.

7 THE COURT: Defense?

8 MR. SCOTT: No, Your Honor.

9 THE COURT: All right. Bring us our jury please.

10 (WHEREUPON the jury entered the courtroom at 3:11
11 p.m.)

12 THE COURT: All right. Solicitor, you may call
13 your next witness.

14 MR. CLEMENTS: Thank you, Your Honor, we would call
15 Mr. Paul Bird.

16 THE COURT: All right. If you'd come around and be
17 sworn for us, Mr. Bird.

18 PAUL BIRD, HAVING BEEN SWORN TESTIFIES AS FOLLOWS:

19 THE CLERK: Please be seated and state your full
20 name for the record.

21 THE WITNESS: Paul Bird.

22 **DIRECT EXAMINATION**

23 BY MR. CLEMENTS:

24 Q Mr. Bird, in January of 2010 on the 10th of the
25 month, where were you employed; what were you doing?

Paul Bird - Direct Examination by Mr. Clements

1 A I was employed with Florence County Sheriff's
2 Office and was a Crime Scene Investigator.

3 Q And you were assigned to what unit under what
4 supervisor?

5 A The Crime Team Unit in Forensics under Lieutenant
6 Keith Lutcken.

7 Q All right. Who were some officers that worked with
8 you at that time in that unit?

9 A You have to forgive me a minute; we had a little
10 bit of change in the last year and I'll have to think about
11 that a minute.

12 We had a Corporal Adam Moore, Corporal Andrea
13 Plendin (phonetic), and myself, I believe at that time.

14 Q And Lieutenant Lutcken?

15 A And Lieutenant Lutcken, yes, sir.

16 Q All right. Were you called to work on a case
17 involving the death of Matthew, excuse me, Marcus A.
18 Weaver?

19 A I was.

20 Q And can you please tell this jury what you did in
21 regards to that investigation?

22 A Yes, I was called to respond to the Florence County
23 Sheriff's Office impound in order to process a
24 black-in-color 2007 Ford Fusion sedan. It was involved in
25 a shooting incident is what I'd been advised of.

Paul Bird - Direct Examination by Mr. Clements

1 Q And do you recall what day that was?

2 A It was January 11th, 2010, at approximately 2:30
3 p.m.

4 Q All right. So that's the afternoon after the
5 shooting? If you know.

6 A I wasn't involved in the other part of it. I'm not
7 a hundred percent certain when the actual shooting was.

8 Q Okay. But, but your activities took place that
9 afternoon?

10 A On the 11th, yes, sir.

11 Q Okay. All right. Can you tell this jury exactly
12 what you did and where the impound is?

13 A Okay. The impound is an area at the Sheriff's
14 Office, secure area, where vehicles are towed to be
15 processed for various reasons they may be impounded for law
16 enforcement. And what I did was respond to that to process
17 the vehicle. I was notified of it being a shooting type
18 incident so we were basically looking for latents, shell
19 casings, bullet fragments, bullet holes, things of that
20 nature.

21 Q When you say process the vehicle, put that in
22 layman's terms for me.

23 A Right. Processing is simply me going and looking
24 for evidence; collecting and processing it to collect
25 evidence.

Paul Bird - Direct Examination by Mr. Clements

1 Q Were you able to find any latent prints -- when you
2 say latents, are you referring to finger prints?

3 A Latent fingerprints, yes, latent meaning you can't
4 see them until we throw some dust or something like that on
5 there. And yes, there were a total of eight latent lifts
6 were obtained and labeled.

7 Q All right. Were those particular latent prints,
8 were they usable for identification or were they not?

9 A I don't believe that they would have been. And the
10 fact that I was not primary on this particular case, they
11 would have been turned over to the primary investigator on
12 that, which was Corporal Moore, and he would have actually
13 checked the prints and entered them into the computer to
14 see whether or not there may be a match or what have you.

15 Q Is it like TV when you find a fingerprint or not?

16 A It is not.

17 Q How often are they usable for identification; how
18 often are they unusable for identification?

19 A You find more that are not usable than you do
20 usable.

21 Q What makes a latent print unusable or unfit for
22 identification?

23 A Well, there wouldn't be enough of the actual
24 fingerprint there to actually make a comparison is
25 basically what you're looking for. There would be lots of

Paul Bird - Direct Examination by Mr. Clements

1 small fragments or lots of them on top of each other, which
2 we call overlay, and --

3 Q Smudges or things like that?

4 A Smudges -- whatever.

5 Q Part of a fingerprint?

6 A Sure.

7 Q Okay. All right. -- So you looked for latent prints.
8 What else did you do specifically?

9 A Specifically, the first thing that I did, and
10 always do when I take a case like that, would be to
11 photograph the interior and the exterior of the vehicle
12 before we process it to make sure that everything is as I
13 found it. At that point, in this particular case, I
14 have -- as I was taking photographs, I observed three
15 bullet holes in the front passenger seat and in various
16 areas of the vehicle what appeared to be bullet holes, some
17 bullet fragments, and shell casings.

18 Q Okay. And when you saw the bullet holes, what
19 direction were they moving from? back to front? front to
20 back? top to bottom?

21 A Well, it appeared that they originated from the
22 front passenger seat area.

23 Q All right. And -- and exited where?

24 A Exited the rear of the seat or back toward the back
25 seat of the vehicle.

Paul Bird - Direct Examination by Mr. Clements

1 Q Okay. How many bullet holes did you see moving
2 from front to back?

3 A Three.

4 Q Okay. And did all three bullet holes actually exit
5 the back seat, the back of the front seat, excuse me?

6 A I'm sorry?

7 Q I said exit the backseat, I meant exited the actual
8 back of the front seat; they entered the front of the front
9 seat, right?

10 A Right.

11 Q And went out the back of the front seat?

12 A Went out the back.

13 Q How many actually exited that seat or another way
14 of asking that question is was any of them trapped in that
15 seat?

16 A I was able to ---

17 MR. SCOTT: Your Honor, I'm going to object.

18 That's a leading question.

19 THE COURT: All right.

20 MR. CLEMENTS: I think it calls for a yes or no,
21 Your Honor, but I don't think that suggests which is ---

22 THE COURT: It's a compound question so rephrase
23 the question, Solicitor.

24 MR. CLEMENTS: Okay.

25 THE COURT: I sustain the objection.

Paul Bird - Direct Examination by Mr. Clements

1 BY MR. CLEMENTS:

2 Q You saw three bullet holes in the front; is that
3 correct?

4 A Correct.

5 Q All right. And how many holes coming out of the
6 back?

7 A Well, we had two. And I actually retrieved one
8 that was still caught in the seat. I had to actually cut
9 into the seat of the vehicle from the back and remove one
10 projectile, one spent bullet.

11 Q Okay. So three bullets entered; one was caught in
12 the seat and two exited; is that correct?

13 A Correct.

14 Q All right. What, if anything, did you do to try to
15 trace or determine the -- the path of the bullets?

16 A Well, to determine the path, the best thing we had
17 we call trajectory rods and they're actually just yellow
18 steel rods and we actually place those and follow the path
19 of the bullet goes through various objects at this point
20 being a seat in the vehicle, and we placed them there and
21 it actually follows the path of the bullet so we can
22 photograph it and try to get an idea of the angle or where
23 the actual origination was -- where it was fired from.

24 Q Did you use the rods in this, the processing of
25 this vehicle?

Paul Bird - Direct Examination by Mr. Clements

1 A Yes, sir, I did.

2 Q Did you take pictures?

3 A I did take pictures.

4 Q Okay.

5 MR. SCOTT: Your Honor, may we approach.

6 THE COURT: Yes, sir, Mr. Scott.

7 (WHEREUPON there was a bench conference out of the
8 hearing of the jury and the court reporter.)

9 BY MR. CLEMENTS:

10 Q I want to show you some --

11 MR. SCOTT: Subject to previous objection.

12 THE COURT: All right. And what are those numbers,
13 Solicitor? 1 through 12?

14 MR. CLEMENTS: Your Honor, they got shuffled. Let
15 me put them in order to be sure. They are, Your Honor,
16 Exhibits 1 through 12 for identification.

17 THE COURT: All right. Subject to previous
18 objection, I've reviewed my previous prior rulings.
19 State's 1 through 12 are in evidence.

20 MR. CLEMENTS: Thank you, Your Honor.

21 THE COURT: Subject to a foundation being laid.

22 MR. CLEMENTS: Yes, sir.

23 BY MR. CLEMENTS:

24 Q I'm going to show you what's been marked for
25 identification, State's Exhibits 1 through 12. And the

Paul Bird - Direct Examination by Mr. Clements

1 first question is: Do you recognize this? And the second
2 is who took this picture? State's Exhibit 1.

3 A I do recognize it and I took the photograph. This
4 is of the backseat, right back, with the door open on the
5 vehicle.

6 Q State's Exhibit 2?

7 A I do recognize this. I took this photograph and it
8 was more of a close shot of the door jamb area of the right
9 rear.

10 Q State's Exhibit 3?

11 A I do. Once again this is where I used a stick on
12 scale for a ruler to actually photograph the entry into the
13 seat, front seat.

14 Q And you took that picture?

15 A Yes, sir.

16 Q State's Exhibit 4?

17 A I recognize and took this photograph. This is
18 actually one of the spent bullets or projectiles laying on
19 the seat where they actually came to rest.

20 Q State's Exhibit No. 5?

21 A Okay. I took this photograph and once again it's
22 another photograph of one of the holes in the seat where
23 the projectile made entry.

24 Q State's Exhibit No. 6?

25 A And again another photograph of the projectile

Paul Bird - Direct Examination by Mr. Clements

1 entering the seat, which I took and there appears to be
2 also some possible blood there.

3 Q State's Exhibit No. 7?

4 A This is a overall side shot of the vehicle that I
5 took of the vehicle at the impound.

6 Q State's Exhibit No. 8?

7 A One that I took of the vehicle with the passenger
8 rear door open with the trajectory rods going through the
9 trajectory holes.

10 Q State's Exhibit No. 9?

11 A Another photograph that I took of the trajectory
12 rods. This would be from the driver's side rear door.

13 Q State's Exhibit No. 10?

14 A This is a photograph that I took to show the rod
15 coming through the front passenger seat with the front
16 passenger door open.

17 Q State's Exhibit No. 11?

18 A Again another shot that I took of the front showing
19 the trajectory rods through the front seat.

20 Q Is that the same trajectory rod or is that a
21 different one?

22 A That's a different one. I moved over to the other
23 side. I couldn't do them all at once, I didn't have enough
24 space.

25 Q Okay. State's Exhibit No. 12?

Paul Bird - Direct Examination by Mr. Clements

1 A And one that I took of another trajectory rod going
2 through the front passenger seat and this is of the rear
3 passenger door open.

4 Q Okay.

5 MR. CLEMENTS: Your Honor, at this time, we move
6 State's Exhibits 1 through 12 into evidence.

7 THE COURT: Subject to previous objection.

8 MR. SCOTT: Thank you, Your Honor.

9 THE COURT: All right. 1 through 12 is in evidence
10 and I reaffirm my previous ruling.

11 MR. CLEMENTS: Thank you.

12 (WHEREUPON State's Exhibits 1 through 12 were
13 entered into evidence.)

14 MR. CLEMENTS: And, Your Honor, I would ask to
15 have permission for Mr. Bird to step down in front of the
16 jury panel.

17 THE COURT: All right. Yes, sir, certainly.

18 BY MR. CLEMENTS:

19 Q If you'll stand right here so your voice will carry
20 to the Court Reporter.

21 A Okay.

22 Q Now, I'm going to show you State's Exhibit No. 11
23 and then show you State's Exhibit No. 12 and ask that you
24 explain that to the jury.

25 A Okay.

Paul Bird - Direct Examination by Mr. Clements

1 Q That's State's Exhibit 11. Can you explain to the
2 jury what you did with that trajectory rod and what that
3 shows and exactly where that is on the car, which seat.

4 A Okay. This is the front passenger seat obviously
5 with the door open and what I've done here is placed a rod
6 through the holes that we're finding here and what they do
7 is they follow the path of the projectile so that we can
8 get an idea of the angle that it may have been fired from
9 and what particular height vehicle we try to pinpoint the
10 exact location where it came from or at least close.

11 Q All right. Now look at State's Exhibit No. 12.

12 A Okay.

13 Q Explain how that relates to State's Exhibit No. 11
14 and what State's Exhibit 12 depicts?

15 A Okay. This is basically the other end of the back
16 side of the front passenger seat and as you can see, this
17 is what the -- the point of the rod has determined where
18 that bullet, went or the projectile. And what this is
19 showing is where it came and actually hit the door jamb of
20 the door right here. And for it to do this with no damage
21 to the door, well we were able to indicate that this door
22 was most likely open when this actual bullet was fired
23 through the seat here.

24 Q And if you would take a look at State's Exhibit No.
25 2 and tell us what that depicts?

Paul Bird - Direct Examination by Mr. Clements

1 A This is more of a close-up photograph of the
2 previous photograph without the trajectory rod that shows
3 where up here where the seat would have -- or the bullet
4 would have came out of the back of the seat and deflected
5 off and actually made a big dent and took the paint off
6 right here in the door jamb. This is the actual passenger
7 rear door jamb, with the door open.

8 Q And take a look at State's Exhibit No. 1. And how
9 does that relate to these three pictures we just recently
10 looked at?

11 A Again, this is the right rear passenger door open
12 without trajectory rods. You can see in this area here
13 some of the holes in the seat where the projectiles came
14 out. And again would be where they struck the door jamb
15 area right here and made the dent in the door jamb again
16 without any damage to the inside panel of the rear door,
17 which would cover that completely if it were shut.

18 Q All right. So -- and your testimony is more likely
19 than not that door had to be open?

20 A That's correct, that's my opinion.

21 Q All right. Now we'd like to look at State's
22 Exhibit No. 9.

23 A And again this would be from the rear seat driver's
24 side with the door open, the trajectory rod coming from the
25 front through this seat and showing the angle where the

Paul Bird - Direct Examination by Mr. Clements

1 actual projectile was traveling when the bullet was fired.

2 Q All right. Now let me ask you, there's two seats,
3 right? Which seat is this right here?

4 A This would be the driver's seat, the front driver
5 and then you've got your passenger. It's originating from
6 your passenger side over here. You can see the angle of
7 the rod.

8 Q And that goes through the passenger front seat?

9 A Well, it starts over here and cuts through right
10 here at the outer edge and this particular one, I can't
11 tell for sure if it's the passenger or the driver's in this
12 particular photograph.

13 Q All right. Let's look at State's Exhibit Eight.
14 Is that the same trajectory rod?

15 A It would be the same trajectory rod and once again,
16 like I said, it's coming, you see the exit here and it
17 enters up here in the front and especially this gives you
18 the angle to where the bullet was fired from.

19 Q Okay. And that's through the passenger seat?

20 A Entered the passenger, yes, right about right in
21 this passenger...

22 Q What did you find in the back seat as far as
23 regards to any bullet fragments or bullets?

24 A Well, there was actually -- ordinarily a full
25 bullet in pretty good shape, in my opinion, was actually

Paul Bird - Direct Examination by Mr. Clements

1 laying on the back seat and, and then one was actually dug
2 out of the seat. There were fragments on the seat and then
3 the one in the seat, I had to actually cut out.

4 Q Okay. All right. And then the one that went off
5 to the bottom of the door jamb; it probably exited the
6 vehicle?

7 A We didn't find that one.

8 Q You didn't find that one; okay. All right. Mr.
9 Bird, if you'll get back up in your chair.

10 Now, if you would tell us please which side of the
11 seat did those bullets enter and which side of the seat did
12 those bullets exit?

13 A Well, they appeared to enter from the front and
14 exit the rear.

15 Q Except for the one that stayed in there and got
16 caught in the seat?

17 A Right.

18 Q Okay.

19 A They all appeared to originate from the front of
20 the vehicle.

21 Q All right. Other than processing this vehicle,
22 what else did you do on this investigation?

23 A I believe it was the next, on the 26th of January,
24 2010, I assisted with a search warrant in Darlington County
25 at a residence.

Paul Bird - Direct Examination by Mr. Clements

1 Q All right. Anything else other than that?

2 A No, sir.

3 Q Who assisted you in the search warrants as far as
4 investigators or --

5 A It was myself and Investigator Russell Cox and
6 Investigator Thomas McFadden, as well as Lieutenant Keith
7 Lutcken. And there was some deputies from Darlington
8 County Sheriff's Office present as well.

9 Q Okay. All right. Anything else in regards to the
10 vehicle?

11 A No, sir.

12 Q All right. Did you or did you not go to any of the
13 scenes that were part of the crime scenes of this, either
14 the hospital or the Days Inn?

15 A No, sir, no other scenes..

16 Q You had nothing to do with any of that?

17 A No, sir.

18 Q Okay. All right. Do you recall, did you retrieve
19 any shell casings out of the car or was that something done
20 by somebody else out of this Ford Fusion?

21 A I did not retrieve or collect any shell casings.

22 Q Okay. All right. And Lieutenant Lutcken also
23 helped with processing this car?

24 A He was, yes, he assisted with the search of the
25 vehicle and the processing. I don't have that I collected

Paul Bird - Cross-Examination by Mr. Scott

1 any shell casings.

2 Q Okay. All right.

3 MR. CLEMENTS: I beg the Court's indulgence.

4 THE COURT: Yes, sir.

5 MR. CLEMENTS: Mr. Bird, thank you. Please answer
6 any questions Mr. Scott may have.

7 THE COURT: Mr. Scott?

8 CROSS-EXAMINATION

9 BY MR. SCOTT:

10 Q Good afternoon, Mr. Bird.

11 A Hi.

12 Q Just for clarification purposes, when shots were
13 fired into that vehicle, that rear passenger door had to be
14 open; correct?

15 A In my opinion, it was open. There was no damage to
16 the actual door panel on the door and for it to have hit
17 that door jamb and not do any damage to that panel, that
18 door would have to be open.

19 Q Okay. Now, on the 26th of January of 2010, you
20 were involved -- you say you were involved in a search
21 warrant at a residence in Darlington County; correct?

22 A Yes, sir.

23 Q And you went to that residence looking for
24 possible, a possible .380 handgun or shell casings;
25 correct?

Paul Bird - Cross-Examination by Mr. Scott

1 A That's correct.

2 Q Okay. And you used a metal detector searching that
3 ground looking for that gun or casing; correct?

4 A I did.

5 Q And what did you find?

6 A Nothing.

7 Q No further questions.

8 THE COURT: Redirect?

9 REDIRECT EXAMINATION

10 BY MR. CLEMENTS:

11 Q Mr. Bird, would it -- would the -- with the door
12 having to be open for one of those shots, would that
13 necessarily mean it was open for all three shots that
14 entered into that front passenger seat?

15 MR. SCOTT: I'm going to object to that question or
16 ask him to rephrase it; I think that's pure speculation on
17 their part.

18 THE COURT: Rephrase it.

19 BY MR. CLEMENTS:

20 Q Let me ask you this. You testified that you
21 believe the door had to be open for the, for the bullet
22 that hit the door jamb, but didn't damage the door; is that
23 correct?

24 A Correct.

25 Q What evidence -- is there any whatsoever evidence

Paul Bird - Cross-Examination by Mr. Scott

1 one way or the other regarding the other two shots that
2 were fired into that front passenger seat regarding the
3 door being open or closed?

4 A There's no way to determine that.

5 Q So you can't say one thing or another about that?

6 A No, sir.

7 Q Okay.

8 THE COURT: Recross?

9 MR. SCOTT: None, Your Honor.

10 THE COURT: Thank you and thank you very much, Mr.
11 Bird. You may now step down.

12 MR. CLEMENTS: Your Honor, we ask that Mr. Bird be
13 released from his subpoena.

14 THE COURT: Any objections?

15 MR. SCOTT: No objection, Your Honor.

16 THE COURT: All right. Yes, sir, you may be
17 released. Thank you for being with us.

18 MR. CLEMENTS: Your Honor, State would call Keith
19 Lutcken to the stand.

20 THE COURT: Yes, sir, come around and join us.

21 THE CLERK: If you'll come to the witness stand
22 and be sworn.

23 THE COURT: Yes, sir, if you'd come around and join
24 us please?

25 ///

Keith Lutcken - Direct Examination by Mr. Clements

1 KEITH LUTCKEN, HAVING BEEN SWORN TESTIFIES AS

2 FOLLOWS:

3 THE CLERK: Please be seated and state your full
4 name for the record.

5 THE WITNESS: First name is Keith, K-E-I-T-H, last
6 name is Von Lutcken spelled Von, V-O-N, capital
7 L-U-T-C-K-E-N.

8 THE COURT: All right. Solicitor.

9 MR. CLEMENTS: Thank you, Your Honor, may it please
10 the Court.

11 **DIRECT EXAMINATION**

12 BY MR. CLEMENTS:

13 Q Good afternoon, Coroner, how are you doing today?

14 A Good, sir.

15 Q Can you please tell us where you working on January
16 the 10th, 2010?

17 A At that particular time, I was employed by the
18 Florence County Sheriff's Office.

19 Q And what was your rank and job title?

20 A I was a Lieutenant over the forensics and crime
21 scene unit.

22 Q All right. Can you please tell this jury exactly
23 what that means. And what your responsibilities were.

24 A My responsibilities were to oversee the forensics
25 unit, the crime scene unit, the laboratory, the evidence

Keith Lutcken - Direct Examination by Mr. Clements

1 room and the impound work that we may get.

2 Q And who were a couple of the officers working for
3 you at that time that would have been involved in this case
4 with you?

5 A In this particular case, Corporal Adam Moore and
6 Corporal Paul Bird.

7 Q All right. And did you have occasion to be called
8 out the 10th of January?

9 A Yes, sir, on the 10th of January I was called at
10 approximately 10 minutes till midnight.

11 Q Where did you respond to?

12 A I was advised by Florence County Central Dispatch
13 at that time that we had two scenes. The first scene would
14 be at the Days Inn located on Lucas Street. The second
15 scene was located at McLeod Regional Medical Center located
16 at 555 East Cheves Street.

17 While I was in route, I advised Corporal Moore to
18 go ahead and respond to the Days Inn on Lucas Street and
19 secure any evidence and begin processing that scene; and I
20 would go on to the hospital.

21 Q When you got the hospital, tell this jury what you
22 found.

23 A When I pulled into the entrance to the hospital
24 going to the Emergency Room, there was a black Ford Fusion
25 sitting in the roadway with the driver's door open. There

Keith Lutcken - Direct Examination by Mr. Clements

1 were numerous city police officers and also Sheriff's
2 Department Deputies around the car securing it.

3 Q All right. What did you do with regards to the car
4 at that time?

5 A At that time -- first of all, when we arrive on the
6 scene, we get a briefing from the officers as to what had
7 transpired and found out that we had actually a victim in
8 the Emergency Room that had succumbed to his injuries. I
9 was told that the driver of the vehicle was the one that
10 drove him from the motel to the Emergency Room and once
11 they took him inside, at that time we went ahead and
12 secured the car as is. The driver's door was open and I
13 began photographing and looking for evidence in the car.

14 Q Did you find anything that evening in the car?

15 A Yes, sir, I did.

16 Q What did you find?

17 A There were numerous shell casings, spent shell
18 casings, .45 caliber casings. They were located in the
19 driver's seat, the passenger seat, and also in the rear
20 passenger seat.

21 Q Okay. And did you gather these shell casings?

22 A Yes, sir, they were photographed, documented and
23 collected.

24 Q Okay. Who took the photographs?

25 A I did.

Keith Lutcken - Direct Examination by Mr. Clements

1 Q And did you also take any other photographs that
2 evening?

3 A Yes, sir, I did.

4 Q I'm going to show you what's been marked as State's
5 Exhibit 16. Can you identify that picture for us?

6 A Yes, sir, State's Exhibit No. 16 are the shell
7 casings and the live .45 caliber cartridge that was
8 recovered from inside the vehicle.

9 Q And who made this photograph?

10 A I did.

11 Q And who gathered these items?

12 A I did.

13 MR. SCOTT: No objection, Your Honor.

14 THE COURT: All right. State's 16 is in evidence
15 without, without objection.

16 (WHEREUPON State's Exhibit 16 was entered into
17 evidence.)

18 MR. CLEMENTS: Thank you, Your Honor.

19 BY MR. CLEMENTS:

20 Q Can you please tell us exactly what is documented
21 there in State's Exhibit 16?

22 A State's Exhibit Number 16 is four Ziplock pouches
23 that contain -- each one of them contains a single
24 cartridge and also one contains a single shell casing, .45
25 caliber shell casing. So there's a total of four Ziplock

Keith Lutcken - Direct Examination by Mr. Clements

1 pouches; three .45 caliber spent cartridges and one live
2 cartridge.

3 Q Okay. And that -- that you retrieved at that time?

4 A Yes, sir.

5 Q Okay. All right. And you have notated where you
6 found them?

7 A Yes, I did and that time -- date and time.

8 Q All right. As far as the spent .45 casings, what
9 would be done with those?

10 A The spent casings would be sent off to the
11 laboratory, to the firearms section, to have them analyzed.

12 Q Where at?

13 A The State Law Enforcement Division in Columbia.

14 Q At SLED?

15 A Yes, sir, SLED.

16 Q And is that what you did with these shell casings?

17 A Yes, sir.

18 Q Okay. All right. After that, what else did you do
19 there at the hospital?

20 A After processing the car and gathering what we
21 could do at that time due to the poor lighting, the car was
22 towed to the Florence County Impound Yard where it could be
23 processed the following day under better lighting
24 conditions, and where we could go over it again. And at
25 that time, after the car was removed from the scene,

Keith Lutcken - Direct Examination by Mr. Clements

1 proceeded into the Emergency Room where I met with one of
2 the individuals that had been at the scene that night.

3 Q Okay. And one of the victims or the driver of the
4 car?

5 A I think it was one of the victims.

6 Q Okay. I'm going to show you what's been marked
7 State's Exhibit 22. Do you recognize that picture and if
8 you, do you know who took that picture?

9 A Yes, sir. I recognize the picture and I took it.

10 Q Okay.

11 A State's Exhibit No. 22.

12 Q Okay.

13 MR. SCOTT: No objection.

14 THE COURT: State's Exhibit 22 is in evidence
15 without objection.

16 (WHEREUPON State's Exhibit 22 was entered into
17 evidence.)

18 BY MR. CLEMENTS:

19 Q All right. Can you please, with the Court's
20 permission, step down in front of the jury and let's show
21 them this picture. And you explain to them why you took
22 this picture and what this picture represents.

23 A The picture, like I said, was taken by myself.
24 This is one of the individuals that was at the scene that
25 was shot. What he has on -- he's laying on the gurney,

Keith Lutcken - Direct Examination by Mr. Clements

1 both hands are bagged with paper bags as a standard
2 procedure for checking any residue that may be on the
3 individual. That does not necessarily mean that this
4 individual shot a gun, it's just standard procedure and
5 protocol for the sheriffs or for our forensics unit to bag
6 hands for all folks that were present at the time of the
7 shooting.

8 Q Why do you have to bag the hands; why does the
9 gunshot residue need to be protected?

10 A Gunshot residue is very fragile. Just merely the
11 air condition ducts, you know, turning on and the air
12 blowing out of them, ceiling fan, a person sticking their
13 hands in and out of their pockets or just sitting there
14 rubbing the hand, the stuff is so fragile it comes off the
15 hands. So it's very important that we protect it.

16 The emergency departments that are in Florence
17 County, they know to bag their hands until we can get there
18 to test them.

19 Q And they do that immediately?

20 A Yes, sir, they do.

21 Q Okay. All right. And do you know the individual
22 in this picture?

23 A I don't know him, no. I don't know him personally.

24 Q Did you collect gunshot residue from anyone that
25 night?

Keith Lutcken - Direct Examination by Mr. Clements

1 A Yes, I collected gunshot residue from him.

2 Q From this individual in this picture?

3 A Yes, sir.

4 Q I want to show you what's been marked as State's
5 Exhibit Number 46-C for identification and can you tell me
6 if you can identify that and know what that is?

7 A State's Exhibit, excuse me, No. 46-C is a Gunshot
8 Residue Evidence Collection Kit and this is a standard kit
9 that is issued by the State Law Enforcement Division or
10 SLED and this is what we used to test both hands.

11 Q Whose handwriting is on that?

12 A That's mine.

13 Q And who is the subject of that Gunshot Residue
14 Test?

15 A Josh Carraway.

16 Q Okay. And whose name is on that as being the
17 person who collected this information?

18 A It has my name on it.

19 Q Okay. Do you recall that?

20 A Yes, sir, I do.

21 Q All right.

22 MR. SCOTT: No objection, Your Honor.

23 THE COURT: 46-C is in evidence without objection.

24 (WHEREUPON State's Exhibit 46-C was entered into
25 evidence.)

Keith Lutcken - Direct Examination by Mr. Clements

1 BY MR. CLEMENTS:

2 Q Can you please tell this jury briefly how y'all go
3 about collecting gunshot residue.

4 A Yes, sir. The, the test actually consists of two
5 steps. And the first step is what we refer to as stubbies
6 and these are little vials. Each vial is marked with a
7 label telling you the location of the hands; right palm,
8 right back, left palm, left back. And then there's also a
9 control swab. After we collect the stubbies, the stubbies
10 are used to pick up particles of gunshot residue and it's
11 confirmations on the hands. After we complete this part of
12 it, they are in a sterile vial and they're packaged.

13 The second step is using a five percent nitric acid
14 solution on the swabs and we swab the individual's hands.
15 Again the same process as the stubbies; first place is the
16 right palm, right back, left palm, and left back. And then
17 we also do a control swab and then there's also swabs for
18 the shell casings if there's any present.

19 Q Okay. Do you know what gun pow -- gunshot residue
20 is consisted of?

21 A Yes, sir.

22 Q What?

23 A Barium, antimony, and lead.

24 Q Okay. And once you collect this information and
25 document it and notate and have it gathered and this

Keith Lutcken - Direct Examination by Mr. Clements

1 evidence back, what do you do with ultimately?

2 A Once this is done, the bag is sealed, it's
3 submitted into our evidence. And then subsequently it's
4 taken to the State Law Enforcement Division to their trace
5 lab to be tested.

6 Q And did you do this with 46-C?

7 A Yes, I did.

8 Q And did you receive it back with a report from
9 SLED?

10 A Yes, I did.

11 Q What was that report?

12 A I have to -- I'd have to see the report, if you
13 don't mind.

14 Q Okay. Now what, what else did you do there at the
15 hospital that evening, if anything?

16 A After photographing and collecting gunshot residue
17 from Mr. Carraway, at that time, went to the room where the
18 decedent was located to begin an examination and
19 photographs of him.

20 Q And what about the next day, did you assist anyone
21 that day in this investigation?

22 A The following day?

23 Q Yes.

24 A Yes, sir.

25 Q Tell the jury what you did for the --

Keith Lutcken - Direct Examination by Mr. Clements

1 A The following day, as I stated earlier, the car was
2 transported to the Florence County Sheriff's Office Impound
3 Lot and the following day we went over there, myself and
4 Corporal Bird, to process that vehicle.

5 Q And what did y'all find in that vehicle that day?

6 A Inside the vehicle we photographed. We took
7 another series of photographs and we also found some lead,
8 core lead fragments. Also some jackets that were collected
9 from the seat inside the car.

10 Q And what else did y'all do to document the car as
11 to what occurred or what could have occurred in that car?

12 A We used trajectory rods, which we use in a lot of
13 cases to show the trajectory of the projectiles themselves.

14 Q And what did you find about the shots that were
15 fired in this vehicle?

16 A What we found about the shots with the vehicle were
17 that all the rounds came from outside the vehicle to inside
18 the vehicle. They had a slight right-to-left deviation,
19 some more flatter planed than others, but most of them came
20 from right to left and into the passenger seat.

21 Q Now State's 46-A and B; do you recognize these,
22 what these are?

23 A Yes, sir, 46-A and 46-B are, again, Gunshot Residue
24 Collection Kits that were taken by Corporal Adam Moore.

25 Q And those were on what two individuals?

Keith Lutcken - Direct Examination by Mr. Clements

1 A The first one is Marcus Weaver and the other is
2 Shane Marcus Graham.

3 Q And 46-C, the one you collected, was on Josh
4 Carraway; is that correct?

5 A Yes, sir, that's correct.

6 Q What were the results on Marcus Weaver?

7 A On Mr. Weaver, the right palm, the quantities of
8 metals found did not indicate the presence of any gunshot
9 residue. The right back, the quantity of metals found are
10 consistent with gunshot residue; the left palm, the
11 quantities of metal found are consistent with gunshot
12 residue and the left back, the quantities of metal found
13 are consistent with gunshot residue.

14 Q All right. Let me stop right there. So show to
15 this jury on me, show where gunshot residue was found --
16 and you can step down and point it out -- and where was it
17 not found on Mr. Weaver?

18 A On Mr. Weaver, the palm -- on what we call the
19 palmer service, this was negative; it did not show any
20 metals consistent with gunshot residue.

21 THE COURT: That's the right or the left?

22 THE WITNESS: This is the right hand, yes, sir, I'm
23 sorry. The right back did have metals that were consistent
24 with gunshot residue. The left back also had metals
25 consistent with gunshot residue and also the left palm as

Keith Lutcken - Direct Examination by Mr. Clements

1 well had metals consistent with gunshot residue.

2 BY MR. CLEMENTS:

3 Q All right. As I'm holding State's Exhibit 45 here,
4 can you tell this jury where this gunshot residue come
5 from?

6 A When you fire the weapon -- of course when the --
7 when the firing pin inside that weapon, when you pull the
8 trigger, the firing pin strikes the head stamp of that
9 weapon, that ignites the gun powder and that forces the
10 lead fragment out of the shell casing down the barrel.
11 What also comes down the barrel is all the burning lead
12 particles. They come out of that barrel. And what happens
13 is when they come out, they create a mushroom; they've done
14 this through slow motion photography and it's very
15 interesting to watch, but what happens is it creates a
16 vacuum. That vacuum comes back and it deposits this
17 gunshot residue on the hands. It does it with
18 semi-automatic weapons. In the case of this, a pistol; it
19 does it with rifles; it does it with shotguns, any of your
20 rim fires, all of them.

21 And I know in a lot of cases, also you got to
22 remember, this being a semi-automatic weapon, when it goes
23 to kick a shell out, you also have burning powder that
24 comes through here also that comes back onto the hands and
25 to the sleeves of your clothes.

Keith Lutcken - Direct Examination by Mr. Clements

1 Q So the shell casings, they come out of here?

2 A That's correct.

3 Q This is what projected --

4 A This is what we refer to as right-forward ejection.
5 That gun goes off; it tosses it out to the right. A lot of
6 them have right top forward ejection, which go out to the
7 right and to the top and some have left forward. In this
8 case, this one has a right-forward ejection. With the
9 weapon in the hand here and this back surface of the hand,
10 that's where you're going to expect to find gunshot residue
11 particles.

12 Q Okay. Stay right there.

13 Now, can you show on my hands where anything that
14 might have been found on Mr. Shane Graham was found.

15 A Bear with me just one minute. Basically what we're
16 looking for, like I said, is the gunshot residue.
17 Typically when somebody fires a weapon, we don't expect to
18 find it in the palm surface. Like I just explained to you,
19 it's the exposed -- the surfaces that we look for. These
20 surfaces of the back the dorsal parts of the hand, the back
21 parts of the hand, particularly the weapon is where we look
22 to find this.

23 Q Okay.

24 A In the case of him, that's where we would have
25 looked to have found it is in these dorsal parts of the

Keith Lutcken - Direct Examination by Mr. Clements

1 hands and on the weapons.

2 Q All right. And Mr. Graham, was anything found on
3 top of his hands?

4 A Excuse me.

5 Q Not Mr. Weaver, but Mr. Graham, which would be
6 46-B?

7 A Shane Marcus Graham?

8 Q Yes.

9 A On the right palm, round lead particles were found.
10 Round lead particles are one of the components of gunshot
11 residue. Remember I told you barium, lead, and antimony
12 were the three components of gunshot residue. On the right
13 back quantities of metal found did not indicate the
14 presence of gunshot residue. And the left palm, round lead
15 particles were found and once again these are one of the
16 components of gunshot residue and on the left back the
17 quantities of metal did not indicate the presence of
18 gunshot residue.

19 Q So it'd be fair to say it was only round lead
20 particles on Mr. Graham, but no antimony, no barium?

21 A Correct.

22 Q And it was just on his palms, not on the back of
23 his hands?

24 A Correct.

25 Q Okay. All right. Can you demonstrate where, if

Keith Lutcken -- Direct Examination by Mr. Clements

1 anything, was found on Mr. Josh Carraway; was anything
2 positive for him?

3 A No, sir.

4 Q No, there was no gunshot residue whatsoever on Mr.
5 Carraway?

6 A On Mr. Carraway there was no gunshot residue found.

7 Q Okay. Thank you.

8 Now you, I think you testified earlier that the
9 next day you went with Mr. Bird, Corporal Bird, at that
10 time?

11 A Yes, sir.

12 Q And processed the vehicle?

13 A That's correct.

14 Q I want to show you State's Exhibit No. 8. Do you
15 recall that? And what do you recollect from that?

16 A Yes, sir, I do. This is -- once again we're
17 processing the car, photographing it. And this is one of
18 the trajectory rods that is inserted into the passenger
19 seat showing the trajectory of the round.

20 Q Do you recall if it was front to back or back to
21 front or what do you recall?

22 A It was from front to back.

23 Q Front to back; okay. And also I will show you
24 State's Exhibit 11. And I think that's one side and I
25 think State's Exhibit 12 was the other side. If you can

Keith Lutcken - Direct Examination by Mr. Clements

1 please, do you recall those photographs, when those were
2 made and what they depict to you?

3 A Okay. State's Exhibit No. 11 is another photograph
4 of the passenger seat showing another trajectory rod
5 indicating the flight path of that bullet and then
6 following up with State's Exhibit No. 12 is showing the
7 backside of the upper portion of that seat showing where
8 the round exited and where it ricocheted.

9 Q Okay. And State's Exhibit 2, do you recall that?

10 A Yes, sir.

11 Q Is that where it ricocheted?

12 A Yes, sir. State's Exhibit No. 2 is, people call it
13 different things; you may call it the frame or a lot of
14 people call it the rocker panel, but where the door opens,
15 that lower part of the floor, that metal part where the
16 frame is, we call it the rocker panel is where that bullet
17 that came through that seat in the last one actually
18 ricocheted. So I guess what I'm trying to say in that is
19 that particular door had to have been open at the time of
20 that shot going through because the door had no damage to
21 it.

22 As a matter of fact, the exterior of that car, the
23 windows, the mirrors, everything in that car had absolutely
24 no damage to the outside of it. Everything was to the
25 inside.

Keith Lutcken - Direct Examination by Mr. Clements

1 Q So they -- those shots went from what direction to
2 what direction?

3 A The shots traveled from outside the car inward
4 going from right to left with a slight deviation up or down
5 or to the left and came from the outside of the car.

6 Q All right. Well how about the shell casings you
7 found inside the car that would have been exited from the
8 right port of the gun; would that have been from the inside
9 of the car front seat or back seat?

10 A That would have been from the front seat.

11 Q From the front seat. Okay. All right. Did you
12 assist at all on the scene at the Days Inn?

13 A When I -- after I completed my examination of the
14 deceased, at that time, I went out to the Days Inn to see
15 Corporal Moore to see what progress he was making.

16 Q Going out there, did you assist in any way in
17 collection of that evidence?

18 A No, sir, everything had been done at that point.

19 Q Everything was --

20 A As a matter of fact, he met me at the hospital.

21 Q Please answer any questions that Mr. Scott may
22 have.

23 THE COURT: All right. Yes, sir.

24 Thank you, Solicitor.

25 Mr. Scott?

Keith Lutcken - Cross-Examination by Mr. Scott

CROSS-EXAMINATION

1
2 BY MR. SCOTT:

3 Q Good afternoon.

4 A Hey, Mr. Scott.

5 Q Congratulations on your new appointment.

6 A Thank you, sir.

7 Q Now you mentioned on direct that there were -- when
8 you first came on there, there were spent shell -- shell
9 casings and one live one in the car; is that correct?

10 A Yes, sir.

11 Q And then the next day, I think you said on direct,
12 you found some additional shell casings; is that correct?

13 A That's correct, there was another additional shell
14 casing, spent cartridge, that was found in the cup holder.
15 We didn't see it at first, there was something covering the
16 cup holder. And we didn't realize there was a cup holder
17 there.

18 Q And that would be the cup holder in the front in
19 the middle between the driver's side and the passenger
20 side?

21 A Correct.

22 Q You found it there?

23 A Yes, in the front compartment, right.

24 Q And you also went into a lot of, a lot of detail, I
25 mean very educational to me, about the gun residue.

Keith Lutcken - Cross-Examination by Mr. Scott

1 A Yes, sir.

2 Q And one of the things I have in my notes is, is you
3 said -- and I don't want to misquote you. I think you said
4 that gun residue is fragile. Could you kind of explain to
5 the jury a little bit more by what you mean by that?

6 A Basically what I explained earlier, like I said,
7 merely -- you know a lot of people have a habit rubbing
8 their hands, you know, or putting their hands in their
9 pockets. You know, they play with their hair and do
10 different things, you know, especially in cases where law
11 enforcement is called in, they're nervous, their hands are
12 in their pockets and that will remove it.

13 The air from an air condition duct, just that will
14 remove it, gunshot residue. I've seen it in many cases. A
15 ceiling fan on low can remove gunshot residue. So it is
16 very fragile.

17 Q Thank you very much.

18 Now -- and then you also said that what kinds of
19 weapons again can produce this, this gunshot residue?

20 A All weapons produce it. You have to understand
21 that all bullets have gun powder in them and that's what
22 we're looking for; we're looking for those particles so
23 when a gun goes off, regardless of the type of gun, if it's
24 a rim fire, which is a .22, if it's a revolver, if it's a
25 semi-automatic, if it's a rifle, shotgun, anything, machine

Keith Lutcken - Cross-Examination by Mr. Scott

1 guns, any of these things, you know. That round is pierced
2 and it goes down the barrel and you have hot burning gun
3 powder going behind it.

4 When that round goes out the end of the gun, you
5 have that stuff, like I told you earlier, serves as a
6 vacuum. It comes back and it mushrooms around and it makes
7 contact with the person's hands that are firing it.

8 Q Okay. I'm going to ask you this question. I'm not
9 quite sure if you can answer it, but if you can please,
10 please -- Does the different types of weapons produce a
11 different amount of gunshot residue or do --

12 A They do.

13 Q -- or for example do, does, does a automatic
14 produce more than, let's say a revolver?

15 MR. CLEMENTS: Your Honor, I'm not sure, I know Mr.
16 Von Lutcken knows all about the coroner's work, but I'm not
17 sure if he knows that much or has been qualified to express
18 that. I think that's getting into an expert area there.
19 So I would object to that at this time.

20 THE COURT: I overrule that objection. If he knows
21 the answer, he can give the answer.

22 MR. SCOTT: Thank you, Your Honor.

23 THE WITNESS: In some particular weapons, they do
24 give off more gun powder residue, but we also have to
25 understand too that it depends on what type of ammunition:

Keith Lutcken - Cross-Examination by Mr. Scott

1 You have cheap ammunition. You have all different kinds.
2 This also would depend on the grain of the bullets and the
3 amount of gun powder that's put into them as to how much.
4 So you know you're asking a question that really, you know,
5 can't be answered definitely because you know -- you
6 have -- you're comparing apples to oranges here. When you
7 have, like I said -- a lot of rounds have different
8 amounts, different measures, of gun powder in them. So to
9 answer it, sometimes yes, you know, a particular type of
10 gun, like you're saying in this, you know, a pistol, a
11 pistol would put off more gunshot residue than a rifle
12 will. Okay.

13 Q Thank you. Now -- and my final question is now if
14 I'm looking at -- do you have your report, your narrative
15 by any chance; do you have that narrative?

16 A I didn't bring it with me, no.

17 Q Okay.

18 A We can go over it.

19 Q Is this a fair depiction of your narrative?

20 A Yes..

21 Q Okay, just wanted to make sure.

22 Now, in your narrative you talk about the round
23 traveling from front to back and I think you even said on
24 direct that -- is there any question in your mind that the
25 passenger door was open for at least one of these shots?

Keith Lutcken - Cross-Examination by Mr. Scott

1 A The only problem with that, I mean the passenger
2 door either had to be open or the window had to be down.

3 THE COURT: What passenger door are we talking
4 about, this four-door car?

5 BY MR. SCOTT:

6 Q I'm sorry. The back passenger side.

7 A The back passenger side door, there's no question
8 it had to be open.

9 Q Thank you. No further questions.

10 THE COURT: Redirect by the Solicitor?

11 MR. CLEMENTS: Nothing, Your Honor. We ask that
12 Coroner Lutcken be excused from his subpoena.

13 THE COURT: Any objection?

14 MR. SCOTT: No objection, Your Honor.

15 THE COURT: Thank you. Thank you for being with
16 us, Coroner.

17 THE WITNESS: Yes, sir, Your Honor.

18 THE COURT: You may step down and you are excused.

19 THE WITNESS: Thank y'all.

20 MR. CLEMENTS: Your Honor, our next witness will be
21 Ms. Suzann Cromer.

22 THE COURT: All right.

23 SUZANN CROMER, HAVING BEEN SWORN TESTIFIES AS

24 FOLLOWS:

25 THE CLERK: Please be seated and state your full

Suzann Cromer - Direct Examination by Mr. Clements

1 name for the record.

2 THE WITNESS: My name is Suzann Cromer.

3 **DIRECT EXAMINATION**

4 BY MR. CLEMENTS:

5 Q Good afternoon, Ms. Cromer, how are you?

6 A I'm fine, sir.

7 Q Can you please tell this jury where you work and
8 how long you've worked there and what your job description
9 is.

10 A I work for the South Carolina Law Enforcement
11 Division, commonly referred to as SLED, as a firearms
12 examiner. As of next week, I will have been there 15
13 years.

14 Q Can you please tell this jury what your educational
15 background is.

16 A I have a Bachelor's Degree from Clemson University.
17 I did some graduate work at the University of South
18 Carolina in criminal justice. I have completed SLED's
19 in-house training program, which is a three-to-five year
20 intense study program, more of an apprenticeship, if you
21 will, where we work under court qualified firearms
22 examiners and take tests, written, oral, do practical
23 exercises. And then upon completion of that program, we
24 have to take a comprehensive final exam.

25 I've taken classes with the Association of Firearm

Suzann Cromer - Direct Examination by Mr. Clements

1 and Tool Mark Examiners, which is an international
2 organization for our profession. They get together once a
3 year where we hold seminars to discuss issues for a field.

4 I've taken extra workshops with them too such as
5 barrel making, ethics and toward firearms manufacturers.
6 I've also taken Hi-Point firearm familiarization. I've
7 taken classes through the South Carolina Chapter of the
8 International Association of Identification. I have also
9 taken classes with Bureau of Alcohol, Tobacco and Firearms,
10 commonly referred to as the ATF. And Hi-Point, sorry. And
11 Serial Number Registration and the Integrated Ballistics
12 Identification System.

13 Q And have you ever been qualified to testify as an
14 expert in firearms and tool marks in State or Federal
15 Court?

16 A Yes, sir, I have.

17 Q Approximately how many times?

18 A Approximately 70 times.

19 MR. CLEMENTS: Your Honor, at this time, we offer
20 Ms. Suzann Cromer as a expert in the area of firearms and
21 tool mark identification?

22 THE COURT: Mr. Scott?

23 MR. SCOTT: No objections, Your Honor.

24 THE COURT: Thank you. Thank you, Mr. Scott.

25 Mr. Foreman, ladies and gentlemen, again you've

Suzann Cromer - Direct Examination by Mr. Clements

1 heard me and I've said this twice before and you'll be able
2 to repeat it back probably before the end of the week.
3 Normally a person cannot give opinion testimony. Normally
4 when a person testifies they must testify as to either what
5 they saw, heard, sense by smell, or something of that
6 nature. However, there is an exception when someone is
7 qualified because of education or experience. They're
8 permitted to give their opinion in certain areas. The
9 Court qualifies them that way.

10 This witness, Agent Suzann Cromer, will be
11 qualified in the area of firearms examination and tool mark
12 identification to give her opinion testimony in those
13 areas. It does not mean you must accept the opinion, but
14 it is evidence for you, the jury, to use in any way you see
15 fit.

16 Thank you. And Solicitor you may continue.

17 MR. CLEMENTS: Thank you, Your Honor, may it please
18 the Court?

19 BY MR. CLEMENTS:

20 Q Explain to me and this jury exactly how you go and
21 match firearms or, or match tool marks. I guess the best
22 thing to do would be to start out by explaining to us
23 what's a tool mark?

24 A A tool mark is anything that is left behind on a
25 material from an actual tool. What we do in firearms

Suzann Cromer - Direct Examination by Mr. Clements

1 identification, because a firearm is a tool, so firearms
2 identification is a Subsection IV for identification.

3 What we do is we look ammunition components;
4 bullets, cartridge casings, shotgun shells, to determine
5 whether they were fired by or loaded into and extracted out
6 of a specific firearm.

7 Q And how do you match those to a particular weapon
8 or can you match it to a particular weapon?

9 A Yes, sir, we can. If I have the suspect weapon I
10 am given, what I will do is I will look at its general
11 rifling characteristics.

12 Q What are rifling characteristics?

13 A Okay. Rifling is what's put inside the gun barrel
14 to rotary motion on the bullet very similar to the
15 quarterback who throws a football. He wants it to go into
16 a tight spiral so it doesn't lob end over end towards the
17 target.

18 Well, the rifling is what puts that rotary motion
19 on the bullet. It's a series of raised and depressed areas
20 inside the gun barrel that start it to spin and you can
21 have a number of different combinations of lands and grooves
22 and then it can spin to the right or to the left.

23 Q Does that make it more accurate?

24 A Yes, sir.

25 Q Like a good spiral is an accurate pass?

Suzann Cromer - Direct Examination by Mr. Clements

1 A That's correct.

2 Q Okay. All right. Now, I didn't mean to interrupt
3 you, but I wanted to know to be sure we understood what
4 those rifling characteristics were.

5 A Okay.

6 Q Please continue.

7 A So what I do is I take that suspect weapon. I'll
8 look at it. I'll determine its general characteristics.
9 And then I'll look at my evidence, my cartridge casings, my
10 bullets, to determine whether or not, first how it appears.
11 It has to have the same general characteristics. It has to
12 be the same caliber. Then the markings on it, for each
13 phase the number of lands and grooves, which way it's going
14 to spin, those are all next.

15 So then it has to meet all those specific criteria
16 for me to actually test fire the firearm. And I do that in
17 our bullet recovery tank. Our Firearms Department is on
18 the second floor of our laboratory and we have a tank that
19 goes down to the first floor that's full of water. We
20 shoot into the water for several reasons; it will slow down
21 the bullet without taking away from or adding to the marks
22 that were left there by the rifling.

23 So then I will take them back and I will
24 microscopically match those bullets that I have knowingly
25 fired from that firearm and it gives me a feel for how this

Suzann Cromer - Direct Examination by Mr. Clements

1 particular firearm works.

2 And what I'm looking for is full scratches. We
3 call it striations. Those little imperfections from the
4 tools that put the rifling inside the gun barrel can be
5 imprinted on that bullet while it's being fired down that
6 barrel. So that's what I'm looking for is little
7 microscopic scratches. And what we actually do is have an
8 analysis. We're recognizing the patterns from those lanes
9 or from those defects from my test bullets that I've known
10 were fired and then I will compare them to my evidence and
11 if I find sufficient agreement, I can say that this bullet
12 was fired from this gun.

13 Q Okay. All right. And that works for the bullet,
14 right?

15 A That's correct.

16 Q Now a cartridge in a gun is comprised of more than
17 just a bullet, is that not right?

18 A That's correct.

19 Q What's the rest of the --

20 A What I'm looking at on a cartridge case, because
21 when you have, have a piece of ammunition it's called a
22 cartridge. When you fire it you have a bullet and a
23 cartridge case. That cartridge case that was fired in the
24 semi-automatic firearm, can be marked in several different
25 locations. Five, it can be marked by the breach space of

Suzann Cromer - Direct Examination by Mr. Clements

1 the gun. The breach space of the firearm is the part that
2 actually holds the head of the cartridge still during
3 firing and the firing pin will come through a hole in the
4 breach space, start at the primer of the cartridge case and
5 start the initial admission.

6 What it does is it creates sparks that go through a
7 flash hole that start the gun powder burning, creating lots
8 of pressure, that pressure will push the bullet down the
9 barrel, but it also pushes that cartridge case back into
10 the breach space of the gun and then any imperfections that
11 were left on it for me to trace can be imprinted on the
12 head of the cartridge case.

13 Also the firing pin can leave individual marks to
14 be, to be the ejector and the extractor. The extractor
15 pulls that head of that cartridge case in place while the
16 slide is moving. And what it does is, if you've ever seen
17 a movie with gunfire in it; you'll see that slide it will
18 go back and forth. When that pressure is building up and
19 the bullet is going backwards, the slide is going to come
20 back. So that extractor is going to hold that cartridge
21 case in the slide so it'll move backwards and then it'll
22 hit the ejector and it'll turn, it'll turn the cartridge
23 case and kick it out of the gun.

24 So all of those can leave individual markings on
25 the cartridge casing.

Suzann Cromer - Direct Examination by Mr. Clements

1 Q So it sounds like you've got a lot of different
2 things you can check to see if any marks are the same way
3 so you can match them; is that right?

4 A That's correct.

5 Q Okay. This isn't that different from fingerprints,
6 is it?

7 A I don't know, I've never done fingerprints.

8 Q Okay. All right. Fair enough.

9 Let me show you what's been marked as State's
10 Exhibit 45. And if you will look at this box here and see
11 if you recognize that?

12 A First off, this box has my lab number, my item
13 number, my initials and my IBIS sticker on it.

14 Q What's an IBIS sticker?

15 A IBIS is the Integrated Ballistics Identification
16 System. It's a digital data base for pictures of bullets
17 and cartridge casings.

18 Q So the gun kind of goes on a registry?

19 A It's kind of like that, very similar to AFIS, which
20 is the fingerprint system. What it does is it keeps these
21 pictures and any crime that happened while this was not in
22 police custody, will be looked at against it.

23 Q Okay. All right. Let me open this up. Does this
24 look familiar to you?

25 A What I'm doing is that I'm looking for where I

Suzann Cromer - Direct Examination by Mr. Clements

1 scribed my lab number, my item number and my initials on
2 this firearm; and yes, this is the one that I received.

3 Q Okay. And what kind of gun is that?

4 A It is a Hi-Point. May I pick it up.

5 Q You may.

6 A Hi-Point, Model JHP45 auto caliber. Serial No.
7 X432071.

8 Q And the little box here that goes with it in this
9 bag, what was that?

10 A That is an unfired .45 auto caliber cartridge.

11 Q And that was submitted with that gun?

12 A Yes, sir, it was.

13 Q Okay. And what was in the magazine when you got
14 the gun?

15 A I might need to check my notes. The magazine was
16 empty when I received this firearm.

17 Q Okay. So you received that firearm, an empty
18 magazine and that one bullet is all together; is that
19 correct?

20 A That one cartridge, yes, sir.

21 Q Okay. Now what was the first thing you did with
22 this gun?

23 A The first thing I do is I look at it and see if I
24 can see any trace evidence, any possible -- any possible
25 blood, fibers, and I collect it and then I'll clean the

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1 firearm.

2 Q And then what do you do with it after you clean it?

3 A I take two pages of notes on it. I look and see
4 whether or not it's safety's work, I determine if it's safe
5 to fire before I actually go test fire it.

6 Q Did you find this gun to be in good working order?

7 A Yes, sir, I did.

8 Q Okay. And what else other than this State's
9 Exhibit 45 gets submitted to you for testing on this case?

10 A I had received several fired cartridge casings and
11 bullets.

12 Q Now those fired cartridge casings and bullets, what
13 do you do with those to test them for identification
14 purposes?

15 A What I do is I weigh them, I measure them, I look
16 at them microscopically. I have a comparison microscope,
17 which allows me to see two things at the same time and
18 compare them. That's what I do and then I microscopically
19 compare them to those tests that I fired from that Hi-Point
20 firearm.

21 Q Now, what number of .45 shell casings did you
22 receive on this; do you know the exact number?

23 A Fired or unfired?

24 Q Fired.

25 A I received seven fired .45 auto-caliber cartridge

Suzann Cromer - Direct Examination by Mr. Clements

1 casings.

2 Q And what did you find out about those fired .45
3 caliber casings?

4 A They were all fired by this firearm.

5 Q They were all fired by State's Exhibit 45?

6 A Yes, sir, they were.

7 Q Okay. And there were how many again?

8 A Seven.

9 Q Seven. And what, if anything, did you do with the
10 unfired cartridges?

11 A I just looked at it and determined it was the
12 correct caliber to be used in this firearm.

13 Q So those unfired cartridges could have been used in
14 that State's Exhibit 45?

15 A Yes, sir, they could.

16 Q Okay. Now, how about in regards to any fired
17 bullets or fired bullet fragments?

18 A I received two fired bullet jacket fragments, one
19 fired bullet jacket, it was the whole jacket intact and
20 then one fired bullet.

21 Q What could you find out, if anything, regarding
22 those on identification?

23 A I determined that they were all fired by this
24 firearm.

25 Q Okay. And that is your opinion to a reasonable

Suzann Cromer - Direct Examination by Mr. Clements

1 degree of certainty in your field of expertise?

2 A Yes, sir, it is.

3 Q And in regards to the casings as well?

4 A Yes, sir.

5 Q Okay. What else were you sent to analyze, if
6 anything?

7 A I received one other fired cartridge case.

8 Q And what caliber was it?

9 A It was .380 auto.

10 Q Okay. And what, if anything, could you do with
11 that .380 casing?

12 A I could tell you that it was not fired by the
13 Hi-Point that I received and that it was also suitable, had
14 enough individual markings to possibly be identified with
15 another firearm.

16 Q If you received the firearm?

17 A If I received the firearm.

18 Q Did you ever receive the firearm?

19 A No, sir, I did not.

20 Q Okay. Was there anything else submitted to you for
21 identification or examination?

22 A Just the lead core, which was unsuitable for
23 identification.

24 Q Okay. And what makes that lead core or any lead
25 core unsuitable for identification?

Suzann Cromer - Direct Examination by Mr. Clements

1 A The lead core from the bullet never comes in
2 contact or should never come in contact with the rifling.
3 It's usually surrounded by a jacket that, that's what comes
4 into contact with the rifling.

5 Q So there's no marks there?

6 A For identification.

7 Q Okay. All right.

8 MR. CLEMENTS: I beg the Court's indulgence one
9 moment.

10 THE COURT: Yes, sir.

11 BY MR. CLEMENTS:

12 Q So is it safe to say that every .45 casing and
13 every .45 fragment that was submitted to you matched up and
14 was identified as being fired by State's Exhibit No. 45?

15 A Yes, every .45 auto-caliber piece of evidence that
16 was fired that I received was fired from this Hi-Point
17 firearm.

18 Q No evidence of any other .45's?

19 A No, sir.

20 Q And the only other evidence of any other gun that
21 was submitted to you was a spent .380 shell casing?

22 A That's correct.

23 Q Okay. Please answer any questions Mr. Scott may
24 have.

25 THE COURT: Thank you, Solicitor.

1 Mr. Scott.

2 MR. SCOTT: No questions, Your Honor.

3 THE COURT: Thank you.

4 And thank you very much for being with us, Ms.
5 Cromer.

6 MR. CLEMENTS: Your Honor, I would ask that Ms.
7 Cromer be released from her subpoena.

8 THE COURT: All right. Any objection?

9 MR. SCOTT: No objection, Your Honor.

10 THE COURT: All right. Yes, ma'am, you may step
11 down and you may be released.

12 THE WITNESS: Thank you, sir.

13 MR. CLEMENTS: May we approach, Your Honor?

14 (WHEREUPON there was a bench conference out of the
15 hearing of the jury and the court reporter.)

16 THE COURT: All right. Well, ladies and gentlemen,
17 perhaps now -- I realize it's a little early, but the
18 solicitor informed me he has finished a little quicker than
19 he thought he would and the next witness will be very
20 lengthy. So perhaps now would be a good time if we take
21 our evening recess and get a fresh start in the morning.

22 Remember, I must remind you, do not discuss this
23 case with anyone. That includes your fellow jurors,
24 family, friends or anyone else. Do not read, watch or
25 listen to any news reports about the case, if there should

1 be any. Do not use your computer, cellular phone or any
2 other electronic device to obtain or disclose any
3 prohibitive information. Prohibitive information includes,
4 but is not limited to the following: Information about a
5 party or witnesses, an attorney or court officer, news
6 accounts of the case, information collected through juror
7 research on any topics raised by any witnesses during the
8 testimony or information collected through juror research
9 on any other topic that the juror might think would be
10 important in deciding the case.

11 As I said, you'll be able to repeat this back to me
12 before the end of the week. Do not do any independent
13 investigation. Do not do any investigation on the
14 internet. Remember to keep an open mind. Do not begin
15 your deliberations until you have heard all of the
16 evidence, all of the testimony, the closing arguments by
17 the attorneys, instruction of the law by the Court, and
18 then directed by the Court to begin your deliberations with
19 your fellow jurors in your jury room.

20 With that being said, we'll take our evening
21 recess. I'd ask you to be back promptly at 9:30 in the
22 morning. 9:30 in the morning. Hope y'all have a pleasant
23 evening. Thank you very much.

24 (WHEREUPON the jury left the courtroom at 4:27
25 p.m.)

1 THE COURT: All right. Thank you.

2 Anything further, Solicitor?

3 MR. CLEMENTS: No, Your Honor, thank you!

4 THE COURT: Mr. Scott?

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

6 THE COURT: All right. Court will be in recess
7 until 9:30 in the morning.

8 (WHEREUPON this case was in recess until the
9 following morning.)

10 WEDNESDAY, DECEMBER 11, 2013

11 MR. CLEMENTS: May it please the Court, Your Honor.

12 THE COURT: Is the Defendant present?

13 MR. CLEMENTS: I do not believe he's here.

14 (WHEREUPON there was a pause in the proceedings.)

15 THE COURT: All right. It appears Mr. Simms is
16 present now.

17 Solicitor?

18 MR. CLEMENTS: Thank you, Your Honor, may it please
19 the Court. Your Honor, I'd like to move for a bench
20 warrant on Mr. Curtis Joe, Jr. And his address is

21 Avenue, Darlington, South Carolina.

22 Your Honor, he is a witness in this case. He was a
23 codefendant represented by Mr. Scott Floyd and Will Grove
24 is here this morning for Scott. Scott had a meeting of the
25 Circuit Public Defenders in Columbia this morning. But

1 Last night -- Mr. Joe was supposed to come late yesterday
2 afternoon. He was late and did not show up and then when
3 we got him on the phone and I was standing next to Scott
4 Floyd. Scott told him to be here at 8:15 in the morning
5 and where to meet me. He has not shown up yet. I have
6 tried the numbers I had for him and he did not, those
7 numbers either weren't in service or nobody answered them.
8 There's another number that we're going to try right now
9 that Mr. Floyd just texted to Mr. Grove and he is under
10 subpoena and he's not here.

11 He's one of my witnesses for today. I plan on
12 wrapping up testimony today and I don't know if he's just
13 late. Investigator McFadden said he'd shown up late to
14 everything he's supposed to be at with Mr. McFadden so --
15 but he is more than an hour late now and I'd move for a
16 bench warrant. Mr. Groves is aware of that. He's helping
17 us to try to locate him, but I would move for a bench
18 warrant.

19 THE COURT: Anything you'd like to add, Mr. Groves?

20 MR. GROVES: I think that about covers it, Your
21 Honor.

22 THE COURT: Mr. Scott?

23 MR. SCOTT: No, Your Honor.

24 THE COURT: All right. Someone can also do one of
25 those warrants to -- on the fugitive task force to ping his

1 phone if you want to look at that statute and see if that's
2 appropriate or not. He has several phone numbers. But
3 I'll issue a bench warrant on him.

4 MR. CLEMENTS: Your Honor, another matter we'd like
5 to take up, just a matter, excuse me. A matter of
6 housekeeping, Your Honor. I was planning on, my plan was
7 to call Mr. Shane Graham to the stand today, Mr. Joshua
8 Carraway, Mr. Curtis Joe, Jr., and Mr. Squan Davis and I
9 have provided copies of the NCIC's to Mr. Chevron Scott,
10 Your Honor, he's reviewed them. I provided a copy to Your
11 Honor as well.

12 We believe and I think Mr. Scott agrees that
13 there's no offenses there or convictions that can be used
14 for impeachment purposes on testimony and we'd just like to
15 put that on the record.

16 THE COURT: All right. You agree with that, Mr.
17 Scott? I have not reviewed them.

18 MR. SCOTT: I agree with as of me just getting this
19 a few minutes before you did, Your Honor. I mean I don't
20 see anything here, but there are some, I have some
21 questions as it relates to some older charges where there's
22 been no disposition on it. I'm going to try to get someone
23 else to run a check on that, but as of right now, just
24 based on what I have here, I'm in agreement with it.

25 THE COURT: All right. Well, if at any time before

1 the person testifies, or even while they're testifying, if
2 you think something is impeachable, tell me you've got a
3 matter of law and we'll certainly deal with it at that
4 time..

5 MR. CLEMENTS: All right. Thank you, Your Honor.

6 THE COURT: Anything else, Solicitor.

7 MR. CLEMENTS: No, Your Honor, only just for the
8 record, I'd like to note my understanding of the rules is I
9 don't have to give them to them until after they testify,
10 but I provided it to them ahead of time.

11 THE COURT: All right. Well, that moves the case
12 along.

13 MR. CLEMENTS: Yes, sir.

14 THE COURT: All right. Madame Clerk, what about
15 our, our jury, you want to advise the attorneys what you,
16 the information you have discovered about one of our
17 jurors?

18 THE CLERK: A juror, Lakeisha Dubose, No. 40, she
19 called one of the deputies and said that she had been in a
20 car wreck this morning. I just spoke with her at 9:30
21 about five minutes ago and she is, she had hit a parked car
22 and she is the process of trying to get a rental car and
23 that she is at home right now and doesn't have a way here,
24 but we can either get a deputy to go get her.

25 I asked her if she physically felt okay and she

1 said she did, but she could have, probably get a rental car
2 sometime today.

3 THE COURT: Y'all -- what y'all want me to do; what
4 you want me to do, Solicitor?

5 MR. CLEMENTS: Your Honor, I hate it for the lady
6 that she's had this happen to her this morning. My only
7 fear is what happens if someone gets sick because we're
8 down to our last alternate, but I would defer to the
9 Court's judgment and the Clerk's judgment, Your Honor.
10 That's just my concern.

11 As long as everybody's feeling well it might be
12 okay. But I do have some concern that we're down to our
13 last alternate.

14 MR. SCOTT: Your Honor, I think the reason why we
15 pick alternates is for situations such as this and based on
16 the fact that we had not one, but two alternates, Your
17 Honor, we're ready to move forward.

18 THE COURT: Well, I'll be glad to send a deputy to
19 get her now, I don't know how far away she is.

20 THE CLERK: I just looked, Judge, and she's from
21 Lake City, which would probably I believe, to relay her
22 here, I would assume 45 minutes maybe.

23 MR. SCOTT: At most.

24 MR. CLEMENTS: Your Honor, I'm sorry, I was, I
25 remembered the other issue with the, and I was thinking

1 that that guy got excused and an alternate replaced, but I
2 was, I was mistaken.

3 THE COURT: We got, we got two alternates.

4 MR. CLEMENTS: I'm okay then.

5 THE COURT: All right. Well then we've, if you
6 have no objection, Solicitor, and if you have no objection,
7 Mr. Scott, I'm going to release Ms. --

8 THE CLERK: Dubose.

9 THE COURT: -- Ms. Dubose from the jury panel and
10 then we will pick, draw, the name of the next alternate,
11 not, not the order in which they were drawn; put the names
12 in a hat and draw them.

13 MR. SCOTT: I don't, I don't have any objections to
14 that, Your Honor.

15 THE CLERK: Emily Anderson.

16 THE COURT: All right. Ms. Anderson.

17 Do we have all the jurors, Ms. Jo?

18 THE CLERK: Yes, sir, we have 13.

19 THE COURT: Ms. Anderson has been promoted. She
20 will now be a member of the jury.

21 THE CLERK: All right, sir.

22 THE COURT: All right. Anything further from the
23 State before we bring in our jury, Solicitor?

24 MR. CLEMENTS: No, Your Honor, thank you.

25 THE COURT: From the Defense, Mr. Scott?

1 MR. SCOTT: I'm sorry, Your Honor?

2 THE COURT: Anything further from the Defense
3 before we bring in our jury?

4 MR. SCOTT: No, Your Honor.

5 THE COURT: All right. Thank you.

6 THE CLERK: Before you do that, Judge, y'all had
7 issued a bench warrant on Curtis Joe.

8 THE COURT: Yes, ma'am.

9 THE CLERK: I need to get some information so I can
10 get that done.

11 THE COURT: Oh sure, yes, ma'am. Thank you, Madame
12 Clerk.

13 (WHEREUPON there was a pause in the proceedings.)

14 THE COURT: What's that alternate's name again?

15 THE COURT REPORTER: Anderson.

16 THE COURT: Say it again?

17 THE COURT REPORTER: Anderson.

18 THE COURT: What number is she?

19 (WHEREUPON the jury entered the courtroom at 9:43
20 p.m.)

21 THE COURT: Mr. Foreman, ladies and gentlemen of
22 the jury, good morning. Welcome back.

23 Ms. Anderson? All right, you have been promoted
24 from alternate juror to, to a member of the primary jury.

25 Ms. Dubose was involved in a traffic accident this morning.

1 I understand she's fine and she's just going to have some
2 transportation problems and such like that, but the Clerk
3 has talked with her by phone and she said she's fine. It
4 was just, I don't know if it was a fender bender or not,
5 but I did want to let y'all know that; and therefore, we're
6 going to press on and as I say, our Clerk has checked on
7 her and we'll continue to do so.

8 All right. As you recall, ladies and gentlemen,
9 we're continuing the trial of the case by the presentation
10 of evidence and testimony by the State in its case in
11 chief. If you would continue to give the parties your
12 complete and undivided attention.

13 And of course, Mr. Alternate, you, you can move
14 over if you would like to. You do not have to of course,
15 but you're certainly welcome to if you'd maintain one of
16 those two seats.

17 With that being said, Solicitor, you may call your
18 next witness.

19 MR. CLEMENTS: Thank you, Your Honor. If it please
20 the Court we'd call Mr. Squan Davis.

21 THE COURT: All right. Mr. Davis, if you would
22 come around and be sworn please.

23 SQUAN DAVIS, HAVING BEEN SWORN TESTIFIES AS
24 FOLLOWS:

25 THE CLERK: Please have a seat right there in the

Squan Davis - Direct Examination by Mr. Clements

1 witness chair and state your full name for the record.

2 THE WITNESS: Squan Davis.

3 THE COURT: Can you spell your first name for me
4 please.

5 THE WITNESS: S-Q-U-A-N.

6 THE COURT: All right. And make sure you speak up
7 so all the members of the jury can hear you, all right?

8 THE WITNESS: Yes, sir.

9 THE COURT: All right. Thank you very much.

10 Solicitor.

11 MR. CLEMENTS: Thank you, Your Honor.

12 **DIRECT EXAMINATION**

13 BY MR. CLEMENTS:

14 Q Mr. Davis, I'm going to stand back over here so if
15 I can hear you, I know these jurors can hear you. If you
16 can't hear me or I talk too fast as I'm apt to do, if
17 you'll tell me then I'll repeat a question. Okay?

18 A Yes, sir.

19 Q All right. Mr. Davis, how old are you?

20 A 24.

21 Q Where do you live?

22 A Lake City.

23 Q How long have you lived in Lake City?

24 A Ten years.

25 Q All right. Did you know Marcus Weaver?

Squan Davis - Direct Examination by Mr. Clements

- 1 A Yes, sir.
- 2 Q Was he a good friend of yours?
- 3 A Yeah, he was a friend.
- 4 Q And how long had you known Mr. Weaver?
- 5 A Eight or nine years.
- 6 Q Did you know his brother, Shane Graham?
- 7 A No, I did not know him.
- 8 Q Okay. Do you remember what you were doing on
- 9 January 10th, 2010?
- 10 A Yes, sir.
- 11 Q Can you please tell this jury who you were with and
- 12 what you were doing?
- 13 A What I was doing; well I was at the house first.
- 14 Q Okay. Your house?
- 15 A Yes, sir, asleep to be honest.
- 16 Q Okay.
- 17 A Then we went to like a little place, a little jute
- 18 joint or what not.
- 19 Q And where was that located?
- 20 A Lake City.
- 21 Q All right. And when you say we, who are you
- 22 referring to?
- 23 A When I say we, Marcus.
- 24 Q You and Marcus?
- 25 A Uh-huh.

Squan Davis - Direct Examination by Mr. Clements

1 Q Just the two of you?

2 A Yes, sir.

3 Q Okay. And y'all went to that little jute joint for
4 a while. And is that located near a trailer park?

5 A Yes, sir.

6 Q Which trailer park is that?

7 A Like close to Circle.

8 Q Okay.

9 THE COURT REPORTER: I didn't hear that.

10 THE COURT: Say that again.

11 THE WITNESS: Close to Circle.

12 BY MR. CLEMENTS:

13 Q E Circle?

14 A Yes, sir.

15 Q Okay. Is that 's Trailer Park?

16 A Close over there.

17 Q Okay. All right. Did you have occasion to catch
18 up or meet up with someone else?

19 A No, sir.

20 Q Okay. Did you have occasion to ask somebody to
21 give you a ride or ride with someone?

22 A No, sir.

23 Q Okay. All right. At what point in time that
24 evening did you get up with Shane Graham?

25 A It was getting kind of -- seven, eight; I seen him

Squan Davis - Direct Examination by Mr. Clements

1 Later on about seven or eight, somewhere around that time
2 frame.

3 Q All right. Where did you see Shane Graham?

4 A Same spot.

5 Q All right. And what did you do after you got --
6 after you saw Shane Graham?

7 A Said what I do?

8 Q Yes.

9 A That as Marcus's brother or what not.

10 Q Okay. Yeah. So what did y'all do?

11 A We just chillin around there.

12 Q All right. And did you ever go anywhere?

13 A No, sir.

14 Q All right. Later that evening did you go
15 somewhere?

16 A Later that evening, no, sir.

17 Q Okay. Well, at some point in time that evening did
18 you head towards Florence?

19 A We probably chillin about an hour or two, about an
20 hour or two before we head to Florence.

21 Q Okay. And when you headed to Florence, who were
22 you with?

23 A Marcus and Shane.

24 Q All right. And what were you riding in?

25 A Shane car.

Squan Davis - Direct Examination by Mr. Clements

1 Q All right. And where were you headed?

2 A Florence.

3 Q For what purpose?

4 A To purchase marijuana.

5 Q To purchase marijuana?

6 A Yes, sir.

7 Q All right.

8 MR. CLEMENTS: I beg the Court's indulgence one
9 moment.

10 When I go through pictures, I always start and go
11 through the wrong direction.

12 (WHEREUPON there was a pause in the proceedings.)

13 BY MR. CLEMENTS:

14 Q I'm going to show you what's been marked as State's
15 Exhibit No. 7; do you identify -- can you identify that?

16 A Yes, sir.

17 Q All right.

18 THE COURT: Speak up a little bit.

19 THE WITNESS: Yes, sir.

20 BY MR. CLEMENTS:

21 Q And whose car is that?

22 A It look like Shane's car.

23 Q It looks like Shane's car?

24 A Right.

25 Q Was that the car y'all were riding in that night?

Squan Davis - Direct Examination by Mr. Clements

- 1 A That's correct.
- 2 Q And I believe you told us that y'all were headed to
3 Florence to purchase some marijuana?
- 4 A Correct.
- 5 Q Where were you, well let me ask you this. Who were
6 you going to purchase marijuana from?
- 7 A Curtis Joe.
- 8 Q Curtis Joe? All right. Where was he from?
- 9 A Darlington.
- 10 Q All right. Did you know Curtis Joe?
- 11 A I have dealt with him before.
- 12 Q Dealt with him with marijuana before?
- 13 A Yes, sir.
- 14 Q All right. Did you know Justin Simms?
- 15 A No, sir.
- 16 Q Did you know Josh Carraway?
- 17 A No, sir.
- 18 Q All right. And how did -- how were you
19 communicating with Curtis Joe?
- 20 A Phone.
- 21 Q By phone?
- 22 A Yes, sir.
- 23 Q Okay. And what was the nature of the marijuana
24 transaction that y'all were going to do?
- 25 A You said what was the nature?

Squan Davis - Direct Examination by Mr. Clements

1 Q Yeah, like how much were you going to by or what
2 were you going to spend and who had the money?

3 A About a pound.

4 Q All right. Who had the money?

5 A Me.

6 Q You had the money?

7 A Yes, sir.

8 Q All right. And had you discussed this any with
9 Marcus?

10 A Yes, sir.

11 Q All right. So --

12 A He knew.

13 Q He knew. Okay. All right. And when you were
14 riding in the car, can you tell us who was seated where in
15 the car?

16 A Marcus in the passenger and I was behind Shane.

17 Q And who was driving?

18 A Shane.

19 Q Shane. Okay. Excuse me. And where in Florence
20 did you go?

21 A Days Inn.

22 Q Days Inn; on what street?

23 A Off the 52 Bypass.

24 Q All right. 52 like you're going to Darlington?

25 A Correct.

Squan Davis - Direct Examination by Mr. Clements

1 Q Okay. And when y'all got to the Days Inn, can you
2 tell us what happened, how you pulled in, how you knew
3 Curtis was there?

4 A All right. We pull -- he told us, he told me he
5 was there.

6 Q All right.

7 A And we pulled up like --

8 Q By cell phone?

9 A Yes, sir. And we pulled up like close to like a
10 little entrance, like a little path you could walk through
11 and look at the other side.

12 Q In the motel, kind of the breezeway at the motel?

13 A Exactly.

14 Q Okay.

15 A Exactly.

16 Q Pulled up close to there?

17 A Uh-huh.

18 Q Did you back in or did you pull straight in?

19 THE COURT: Let me just stop you there.

20 Don't go uh-huh or hu-huh; go yes, sir or no, sir
21 because she has to take it down.

22 THE WITNESS: Yes, sir.

23 THE COURT: All right. Thank you. Thank you very
24 much.

25 You may continue, Solicitor.

Squan Davis - Direct Examination by Mr. Clements

1 MR. CLEMENTS: Yes, sir, thank you, Your Honor.

2 BY MR. CLEMENTS:

3 Q Did you pull in or did you back in or do you
4 remember?

5 A We pulled in.

6 Q Pulled in?

7 A Yes, sir.

8 Q Towards the motel?

9 A Yes, sir.

10 Q Okay. All right. And did you ever get out the
11 car?

12 A Never got out.

13 Q All right. Can you tell us, tell the jury what
14 happened.

15 A Okay. When we pull up I call and he say he'd be
16 right out so he sends somebody else. He sent somebody --

17 Q How many people?

18 A One. I seen one person.

19 Q You saw one person?

20 A Yes, sir.

21 Q And where did that one person go to and what did he
22 do?

23 A When he came around the car, he came to my side,
24 but I was on that side so he walked around to the other
25 side.

Squan Davis - Direct Examination by Mr. Clements

- 1 Q Okay. What did he do on the other side?
- 2 A He opened the door.
- 3 Q All right. And then what did he do?
- 4 A Pulled the gun out.
- 5 Q All right. Now and what happened next?
- 6 A Started patting me down; he swing and punched me in
- 7 the face.
- 8 Q All right. Did he get in the car and sit in the
- 9 car?
- 10 A He kind of -- kind of stand like had his knees kind
- 11 of standing up inside the car holding a gun on everybody.
- 12 Q All right. And -- and he hit you?
- 13 A Correct.
- 14 Q All right. What was being said?
- 15 A He just, "Give it up."
- 16 Q All right. And what happened?
- 17 A And he hit Marcus with the gun or whatnot; he hit
- 18 Marcus with the gun.
- 19 Q All right. How quick did all this happen?
- 20 A Fast.
- 21 Q Fast?
- 22 A Yes, sir.
- 23 Q Okay. And what did you hear next?
- 24 A When he was trying to hold, he was holding
- 25 everybody down or whatnot -- or whatnot; then I heard

Squan Davis - Direct Examination by Mr. Clements

1 gunshots.

2 Q Okay. Where did they come from?

3 A Inside the car.

4 Q Okay. All right. Did you know, did you have any
5 knowledge whether or not Marcus had a gun?

6 A Did I have any knowledge; no, sir.

7 Q Okay. You don't know whether he did or not?

8 A Exactly.

9 Q Okay. All right. And so when gunshots went off,
10 what did you do?

11 A I ran.

12 Q All right. In which direction did you run in?

13 A Back to the store, like it was a Taco Bell and a
14 gas station together.

15 Q Okay. And you went there and when you got to Taco
16 Bell what did you do?

17 A I called my mother.

18 Q Okay.

19 A My mother and father.

20 Q All right. And what did they do?

21 A Came and got me.

22 Q Did you tell them what had happened or you just
23 told them you needed a ride?

24 A I just told them I needed a ride.

25 Q All right. And when did you find out what else

Squan Davis - Direct Examination by Mr. Clements

1 happened or how did you communicate with anybody you were
2 with after that?

3 A My family, beyond his family members told me.

4 Q Okay. And that's how you found out what happened?

5 A Exactly.

6 Q And what did you do?

7 A You say what I did?

8 Q Yeah, did you call the police? Did you contact
9 them? Or did you do anything like that?

10 A No, I did not contact them. They came to my house
11 the next morning or whatnot.

12 Q All right. And you say they, who came; do you
13 remember?

14 A No, sir.

15 Q Okay. Did you see any of the investigators here in
16 the courtroom that you saw that came and talked to you?

17 A No, sir.

18 Q Okay. All right. You remember anybody with
19 Florence City, Florence Sheriff's Office that you talked to
20 at all?

21 A Yes, sir.

22 Q Who did you talk with on it?

23 A Mr. McFadden.

24 Q Mr. McFadden. Okay. All right.

25 MR. CLEMENTS: Beg the Court's indulgence for just

Squan Davis - Direct Examination by Mr. Clements

1 a moment.

2 THE COURT: Yes, sir.

3 BY MR. CLEMENTS:

4 Q Now, after you ran to Taco Bell, did you have any
5 contact with, with Curtis Joe or anyone else in that car?

6 A Did I have any contact with them? Yes, he called,
7 he called back.

8 Q Who's he?

9 A Curtis Joe called.

10 Q Curtis Joe called back?

11 A Uh-huh.

12 Q For what purpose?

13 A He was like somebody had shot his home boy or
14 something like that.

15 Q What did you tell him?

16 A I told him I ain't know what you talking about. I
17 was -- it happened so quick all I heard was gunshots. I
18 ain't know who got killed or whatnot; I just ran for my
19 life.

20 Q Okay. All right. But you talked with Curtis Joe
21 right after that, right?

22 A Right after that.

23 Q Okay. All right. And he wanted to know what as
24 going on?

25 A Exactly.

Squan Davis - Cross-Examination by Mr. Scott

1 Q Okay.

2 A Exactly.

3 Q All right. Now, you saw one guy at the backseat,
4 right, you only saw one person?

5 A Correct.

6 Q Came around to your side of the car and then he
7 went around and got in on the other side?

8 A Correct.

9 Q And that's what you were focused on because he came
10 at you and started patting on you?

11 A Exactly. Exactly.

12 Q Saying where was it or is it?

13 A Exactly.

14 Q All right. Please answer any questions Mr. Scott
15 may have.

16 THE COURT: Thank you, Solicitor.

17 Mr. Scott?

18 CROSS-EXAMINATION

19 BY MR. SCOTT:

20 Q Mr. Davis, you said on direct that you recall
21 having a conversation with, with Detective McFadden; is
22 that correct?

23 A (The Witness nodded his head.)

24 Q Do you recall what, what date that was --

25 THE COURT: Answer out loud for me.

Squan Davis - Cross-Examination by Mr. Scott

1 THE WITNESS: Yes, sir.

2 MR. SCOTT: Do you recall what, what date that
3 was --

4 THE COURT: Answer out loud for me.

5 THE WITNESS: Yes, sir.

6 BY MR. SCOTT:

7 Q Do you recall what date that was on that you had
8 that conversation with Detective McFadden?

9 A I believe it was a Monday; I can't recall the date,
10 but I know it was a Monday if I'm not mistaken.

11 Q Could have been January the 12th two days
12 afterwards?

13 A Monday.

14 Q Monday?

15 A Yes, sir.

16 Q But you don't recall how many days afterwards you
17 had this conversation with ---

18 A The next day.

19 Q The next day?

20 A The next day.

21 Q And did, did he, were you aware did he read you
22 your rights like you had the right to remain silent and
23 that kind of thing; do you remember, do you recall him
24 doing that?

25 A I'm not too sure.

Squan Davis - Cross-Examination by Mr. Scott

1 Q Do you recall giving a statement to Detective
2 McFadden in regards to this matter?

3 A Correct.

4 Q Okay. Now you said that on direct that you were
5 the one who called -- I'm sorry, I don't want to -- were
6 you the one who called Curtis Joe for the marijuana
7 purchase or did Curtis Joe call you?

8 A I called him.

9 Q You called him. Now, when you called him you said
10 on direct, I think, that you were going to get a pound of
11 marijuana from him?

12 A Correct.

13 Q What was the price that you were going to pay for
14 this pound of marijuana?

15 A Probably about a thousand dollars.

16 THE COURT: A thousand dollars?

17 THE WITNESS: Yes.

18 BY MR. SCOTT:

19 Q And I think you also said that you didn't really
20 know Marcus Weaver's half-brother Shane that well; is that
21 correct?

22 A Correct.

23 Q So when you first -- and I think do, do you recall
24 telling Detective McFadden that you were at a bootlegger's
25 house?

Squan Davis - Cross-Examination by Mr. Scott

1 A Correct.

2 Q Okay. Now -- so you were at the bootlegger's house
3 with Marcus, correct?

4 A Correct.

5 Q So you called Curtis Joe, Curtis Joe is supposed to
6 meet you in order to purchase a pound of marijuana for a
7 thousand dollars?

8 A Correct.

9 Q Now once you were on -- once you were -- isn't --
10 somewhere in there didn't you and Marcus decide that you
11 were going to go to Marcus's mother's house; do you recall
12 that, do you recall telling Detective McFadden that?

13 A No, sir.

14 Q You don't recall telling him that you and Marcus
15 were going to Marcus's mother house to get some money for
16 some gas?

17 A I don't remember.

18 Q You don't recall that?

19 A No, sir.

20 Q Okay. And so you all get to the, you get to the
21 Days Inn and according to your direct, you're sitting in
22 the back seat?

23 A Correct.

24 Q On the driver's side?

25 A Correct.

Squan Davis - Cross-Examination by Mr. Scott

1 Q Someone who you don't know comes up and taps on the
2 window where you are sitting in the back seat, correct?

3 A Correct.

4 Q Now, why did you tell that person to go around if
5 you didn't know who he was?

6 A You said why I tell him to go around?

7 Q Yeah, why did you tell him to go around to the
8 other side?

9 A Because I just talked to Curtis Joe.

10 Q Okay. And Curtis Joe didn't, you knew Curtis Joe?

11 A Correct.

12 Q So in the conversation that you had with Curtis
13 Joe, did he tell you somebody else was coming?

14 A Correct.

15 Q Okay. Now somewhere -- did you all -- was the
16 first place you all were supposed to meet, was it at the
17 Days Inn?

18 A Correct.

19 Q Was it supposed to be in the car or was it supposed
20 to be in a room?

21 A The car.

22 Q So you never told Detective McFadden that you were
23 supposed to meet Curtis Joe to purchase this marijuana in a
24 room; you never told him that?

25 A Huh-huh.

Squan Davis - Cross-Examination by Mr. Scott

1 THE COURT: Yes, or no, now.

2 THE WITNESS: No, sir.

3 THE COURT: Was that yes or no?

4 THE WITNESS: No, sir.

5 THE COURT: Thank you.

6 BY MR. SCOTT:

-7 Q So somebody who you don't know comes up to your
8 window, taps on it; you tell him to go around?

9 THE COURT: Answer out loud for me.

10 THE WITNESS: Yes, sir.

11 BY MR. SCOTT:

12 Q What was Marcus and Shane doing at the time that
13 you told this gentleman that you didn't know to go around?
14 What were they doing?

15 A Nothing.

16 Q But they heard that. Obviously, they heard that,
17 right?

18 A Yes, sir.

19 Q Okay. So then this person that you don't know
20 walks around to the other side. And then based on your
21 direct testimony, he gets in. When he gets in does he say
22 something to you?

23 A Did he say something?

24 Q Yes. What did he say?

25 A "Give it up."

Squan Davis - Cross-Examination by Mr. Scott

1 Q He said give it up?

2 A Don't waste no time.

3 Q "No time." Now, so he says, "Give it up."

4 How did he point the weapon at you; let's
5 presuppose -- and I don't want to try to recreate anything
6 because I know it was traumatic for you, so please bear
7 with me and -- and I apologize for it. But how did he,
8 where was the weapon at in relationship to you using me as
9 him; did he hold it like this?

10 A (The witness nodded his head.)

11 THE COURT: Is that a yes?

12 THE WITNESS: Yes, sir.

13 BY MR. SCOTT:

14 Q Okay. So he held it up to you and he said, "Give
15 it up." At that moment, was he right-handed or
16 left-handed, do you remember?

17 A He had it in his right hand.

18 Q Right hand. So if he had it in his right hand,
19 that means -- and he started patting you down, right?

20 A Punching me. Punch me.

21 Q He punched you; where did he punch you at?

22 A In my face.

23 Q Which side?

24 A This side right here.

25 Q So he punched you on this side and then what did he

Squan Davis - Cross-Examination by Mr. Scott

1 do?

2 A He's holding the gun kind of like trying to hold
3 everybody down in the car with the gun.

4 Q I thought you said on direct that he patted, he
5 patted you down?

6 A Yeah, of course, but he tried to hold everybody
7 down in the car. When he got in the car, he pulled the gun
8 out, punched me in the face. He punched me in the face and
9 like, said, "Give it up."

10 Q Okay. Where was the patting though; you said on
11 direct he was -- he patted you down? I'm trying to
12 understand where did the patting come in at? If he punched
13 you --

14 A Uh-huh.

15 Q And he did like this, where did the patting come in
16 at?

17 A After he punched me.

18 Q So he punched you holding the gun and then he
19 patted you down?

20 A Uh-huh.

21 Q Okay. Now after he did that, on direct -- now I
22 don't want to put words in your mouth, but he hit Marcus?

23 A Correct.

24 Q Where did he hit Marcus at?

25 A Like in the back of the head.

Squan Davis - Cross-Examination by Mr. Scott

1 Q In the back of the head. So he was -- after he
2 patted you down, holding the gun, he hits Marcus?

3 A Correct.

4 Q Okay. Once he hit Marcus in the head, then what
5 happened?

6 A Marcus turned around and started shooting.

7 Q Marcus turned around and starts shooting?

8 A Correct.

9 Q Now, I thought you said on direct that you didn't
10 know whether or not Marcus had a gun or not?

11 A I didn't.

12 Q I'm sorry?

13 A I didn't.

14 Q You didn't know at the time, but once he started
15 shooting --

16 A I know.

17 Q -- you knew then?

18 A Exactly.

19 Q Did you know Marcus had a gun before you all got
20 there?

21 A No, sir.

22 THE COURT: Sheriff, will you take care of that
23 noise back there for me, please?

24 BY MR. SCOTT:

25 Q Now, you and Marcus had a conversation about buying

Squan Davis - Cross-Examination by Mr. Scott

1 these drugs before you called Curtis Joe; is that correct?

2 A Correct.

3 Q And in fact, in your statement to Detective
4 McFadden, didn't you say that Marcus was thinking about
5 purchasing some too?

6 A Yes.

7 Q Okay. So Marcus was going to and I think -- and I
8 don't want to put words in your mouth, but I think you said
9 in your statement you said that, that I was going to buy, I
10 was going to buy a half and Marcus was going to check it
11 out because he might buy some; does that sound about right?

12 A Correct.

13 Q Okay. How much is a half pound of weed on the
14 street?

15 THE COURT: What was the question?

16 MR. SCOTT: How much is a half a pound of weed on
17 the street?

18 THE COURT: Weed, okay. Thank you.

19 BY MR. SCOTT:

20 Q Weed meaning marijuana.

21 A About \$500.

22 Q About 500.

23 Do you recall in your statement to Detective
24 McFadden where you talked about -- after you told him that
25 Marcus wanted to kind of see how it looked to see whether

Squan Davis - Cross-Examination by Mr. Scott

1 or not he was going to purchase some, do you recall saying
2 something about, "I don't -- I don't think somebody will
3 get stupid over \$60;" do you recall saying that in your
4 statement?

5 A No, sir.

6 Q Okay. So you're at the bootlegger's house.

7 Let's go back. You were at the bootlegger, were
8 you drinking at the bootlegger's house?

9 A A little bit.

10 Q And you say for purposes of us trying to get some
11 clarification, what do you mean by a little bit? I mean
12 were you drinking beer or were you drinking liquor?

13 A Beer.

14 Q Beer; what kind of beer?

15 A Bud Light.

16 Q Bottle or --

17 A Can.

18 Q Can?

19 A Yes, sir.

20 Q How many Bud Light's did you have while you were
21 there?

22 A Probably two or three.

23 Q How many did Marcus have?

24 A I ain't counting his beer; I'm not too sure.

25 Q But he was drinking too?

Squan Davis - Cross-Examination by Mr. Scott

1 A He had a few beers.

2 Q And you guys had been there for about two hours I
3 think you said?

4 A Correct.

5 Q So you guys left from the bootlegger's and you --
6 how did you catch up with Shane if, if, Shane wasn't at the
7 bootlegger's house, was he?

8 A He was out there.

9 Q He was there?

10 A That's where I see him at.

11 Q Did he drink with y'all?

12 A I'm not too sure. I didn't see him drink.

13 Q Do you recall telling Detective McFadden in your
14 statement to him that Shane actually picked you guys up and
15 you guys were walking down the street and Shane picked you
16 up; do you recall telling Detective McFadden that?

17 A No, sir.

18 Q And you don't recall, you don't recall going to
19 Marcus's mother's house to get some money for gas?

20 A I done been over that.

21 Q I'm sorry?

22 A No, sir, I don't recall that.

23 Q Well, do you recall Shane getting some gas?

24 A I'm sorry --

25 Q On the way from Lake City to Florence, you all

Squan Davis -- Cross-Examination by Mr. Scott

1 didn't stop to get gas?

2 A I don't recall that.

3 Q I'm trying to understand how can you not -- how can
4 you not recall that if you were in the car and Lake City to
5 Florence is only about what, 20, 20 miles or so. So y'all
6 never stopped; you went straight to the Days Inn; that's
7 your testimony?

8 A No, we stopped.

9 Q Okay. You ran to Taco Bell afterwards, right?

10 A Correct.

11 Q Who did you, was there a -- you had your cell phone
12 with you?

13 A Correct.

14 Q So when you ran into the Taco Bell, what did you do
15 in Taco Bell?

16 A I called my mother.

17 Q You just ran inside and used the phone to call your
18 mother; you didn't do anything else and you just waited for
19 your parents to come?

20 A Correct.

21 Q All right. And then when your parents got there,
22 what did you tell them?

23 A That we was at the club and somebody tried to rob
24 us because I ain't want to tell them we was going to get
25 marijuana; you see what I'm saying.

Squan Davis - Cross-Examination by Mr. Scott

1 Q I can understand that. But you lied to them?

2 A I did.

3 Q You lied to your parents?

4 A I did.

5 Q Did you make any other phone calls other than your
6 parents?

7 A That's all.

8 Q You sure you didn't make any other phone calls
9 between the time you ran out the car and the time that you
10 called your parents?

11 A Positive.

12 Q Do you recall telling Investigator McFadden in your
13 statement that you called Marcus's people?

14 A No, sir.

15 Q So you don't recall telling Detective McFadden that
16 you called Marcus's sister?

17 A No, sir.

18 Q You don't recall asking her or calling her and
19 asking her for -- for Shane's number because you wanted to
20 get in contact with Shane to figure out what was going on
21 with all that went down?

22 A I think I did. I think I did something like that,
23 I'm not too sure though, it was a minute ago, I think I did
24 something like that.

25 Q Okay.

Squan Davis - Cross-Examination by Mr. Scott

1 A I tried to get Shane but I did not have his number.

2 Q Right. Right. I'm just trying to, I'm not trying
3 to put words in your mouth, Mr. Davis, I'm just trying to
4 get this jury --

5 A Yes, sir.

6 Q -- I'm trying to give them a clear understanding
7 about the facts and what happened?

8 A Yes, sir.

9 Q So now you recall?

10 A I kind of recall that.

11 Q You kind of recall it?

12 A Yes, sir.

13 Q So you called to get Shane's number because you
14 didn't have it because obviously you were concerned with
15 what had happened because you knew that Marcus was firing
16 that weapon?

17 A Correct.

18 Q Did you know whether or not Marcus hit anybody in
19 that car? And when I say hit, I mean do you, do you --

20 A I didn't see nobody hit, but I, it was a lot of
21 shooting.

22 Q A lot of shooting. But the first person you saw
23 shoot was Marcus?

24 A Correct.

25 Q How did Marcus, because Marcus, he was sitting on

Squan Davis - Cross-Examination by Mr. Scott

1 the passenger front side, right?

2 A Yes, sir.

3 Q So he was sitting, if I'm Marcus, you're in the
4 back seat, Shane Graham was right here. That means that
5 Marcus was right here. How did Marcus -- when did you see
6 Marcus -- how did Marcus start shooting; what did he do?

7 A He turned.

8 Q Did he turn to the left or to the right?

9 A He turned to the left.

10 Q He turned to the left?

11 A Uh-huh. Yes, sir.

12 Q Meaning my left. So he turned like this?

13 A Correct.

14 Q And all you know was he started shooting?

15 A Correct.

16 Q Now, you said earlier that when all the shooting
17 went down, I think you said that you, you dipped out?

18 A I did.

19 Q You ran?

20 A I ran. I ran for my life.

21 Q Do you recall telling Detective McFadden that
22 Marcus was shooting at you?

23 A I remember that.

24 Q Okay. All right. Because you didn't say that on
25 direct. That's why I want to make sure that we get all the

Squan Davis - Cross-Examination by Mr. Scott

1 facts in?

2 A Yes, sir.

3 Q So at what point do you recall when you jumped out
4 of the -- well let me ask you this. Did Marcus start
5 shooting at you when you were in the car or once you got
6 out of the car?

7 A Once I got out.

8 Q Well, let's presuppose that I'm Marcus; I turn
9 around and I start shooting. Obviously, well I don't want
10 to say obviously, but I'll let you answer the question.
11 You ran that way, correct, you opened the door and ran that
12 way, right?

13 A Correct.

14 Q So you got out -- I'm you, you got out and you run
15 this way or did you run that way?

16 A Actually I got out the car -- the door -- the
17 side -- the door was open. Like my door, like it wasn't
18 even open.

19 Q Okay. All right. Okay. So now you got out so
20 Marcus is shooting this way, you dipped out that way?

21 A Correct.

22 Q But I thought that a gentleman was right there?

23 A He was already out the car. He already went out
24 the car. As soon as Marcus started shooting he was already
25 out the car.

Squan Davis - Cross-Examination by Mr. Scott

1 Q Okay. So he, that guy dips out?

2 A Correct.

3 Q And then you go, you actually follow him; is that
4 correct?

5 A Exactly. I ran out, I thought Shane, I like
6 calling him, you know what I'm saying? I thought he was
7 shot too, to be honest, because there was so much shooting
8 in the car. I'm not going to stick around.

9 Q Wait a minute. When did you, when did you call
10 Shane?

11 A I called Shane out like "Shane, Shane, Shane," he
12 ain't saying nothing, you know what I'm saying? I was
13 saying his name.

14 Q As you were running out?

15 A No, as he --

16 Q As he was shooting?

17 A Exactly.

18 Q So you, you're yelling Shane --

19 A And I get no response.

20 Q -- you got no response and then you ran out?

21 A Correct.

22 Q Now, at what point, when you got out of the car was
23 Marcus still shooting at you?

24 A I think he was still shooting when I got out.

25 Q He was still shooting. And based on your previous

Squan Davis - Cross-Examination by Mr. Scott

1 statement to Detective McFadden, you never saw anyone else?

2 A I never saw anyone else.

3 Q You just, and so it's basically just one dude comes
4 up, and based on your testimony, he comes up and did he
5 have a gun?

6 A He, he had a gun.

7 Q Okay. He had a gun, he comes in and that's when
8 Marcus turns around and starts firing?

9 A Correct.

10 Q And I think in that statement that you gave to
11 Detective McFadden, you -- you kind of -- now I don't want
12 to put words in your mouth, but didn't you say something
13 like, "Man, Marcus saved my life, man"?

14 A He did.

15 Q He did?

16 A He did.

17 Q That's the way you felt and you still feel that
18 way?

19 A Exactly how I felt.

20 Q He saved your life by -- by doing what?

21 A I could have got killed.

22 Q How did he save you from getting killed?

23 A I don't know if he was shooter or not; he put the
24 gun, he put the gun on me and punched me in the face and
25 whatnot.

Squan Davis - Cross-Examination by Mr. Scott

1 Q But you said a few minutes ago that Marcus was
2 shooting at you?

3 A When he got out the car and he was laying on the
4 ground he probably already was shot; you see what I'm
5 saying.

6 Q Okay. Wait. Wait. So you see him laying on the
7 ground?

8 A Correct.

9 Q Okay. Because you didn't say that. I'm glad
10 you -- when -- how was he laying on the ground?

11 A Like kind of laying like on his stomach. He
12 probably blacked out. You know, he ain't tried to shoot at
13 me just intentionally. He probably ain't know. You see
14 what I'm saying?

15 Q When he was laying on the ground -- well how did
16 you know that if you were dipping out? I mean you just got
17 finished saying --

18 A I ran because I ran over there to him. You know
19 what I'm saying? I ran over to see if he was all right.
20 You see what I'm saying? When he starts shooting. I'm not
21 going to get shoot, shot.

22 Q So -- so now your testimony -- initially I thought
23 you said, Mr. Davis, that when Marcus started shooting --

24 A Okay.

25 Q -- you saw a gunshot, you blazed out, which means

Squan Davis - Cross-Examination by Mr. Scott

1 that you ran out; you did, right? That's what you said?

2 A -- already. All the shooting in the car first, you
3 see what I'm saying. He's already out the car. The boy in
4 the back seat had the gun; the boy in the back seat who had
5 the gun, he already -- when Marcus started shooting, he got
6 out of there; he got out.

7 Q Right. And you followed him?

8 A I got out the car.

9 Q Now, when you followed him --

10 A I didn't follow him, I ran for my life.

11 Q Okay. You ran so at what point did you look back
12 to see how Marcus was laying on the ground? If what you
13 just said is true; at what point did you, as you running,
14 as you're running and shots ablazing, you want us to
15 believe us that you just turned around in order to see what
16 was going on?

17 A Yes. Everything's close, you see what I'm saying;
18 everything is close. It's not no distance; it wasn't no
19 distance.

20 When I jump out the car -- the front -- the front
21 seat and the back seat was so close to each other; you see
22 what I'm saying.

23 Q Okay. Well, let's go back to you did that.

24 A Uh-huh.

25 Q And -- let's pre-suppose that I'm Marcus. Was I

Squan Davis - Cross-Examination by Mr. Scott

1 laying on the ground like this? Or was I laying on the
2 ground like this? Which one? Was I on my stomach or was I
3 on my back? Marcus that is.

4 A I think his stomach.

5 Q You think or you know, which one?

6 A I think it was the stomach.

7 Q Okay. You think it was his stomach?

8 A Yes, sir.

9 Q So -- you have to excuse my acrobatics here, but I
10 want to try to do this and I hope everybody gets -- okay.
11 So he's laying on his stomach?

12 A Uh-huh.

13 Q And I'm assuming at this point that he's shoot --
14 he's shooting at you now, right?

15 A He wasn't shooting at me; he shot. One shot you
16 see what I'm saying? At like -- he must have blacked out
17 or whatever, you see what I'm saying. He's just shooting,
18 he's just a shooting.

19 Q He was just shooting. Well, let me ask you this.
20 How many gunshots did you hear?

21 A A pretty good bit of them.

22 Q All right.

23 A I ain't, I ain't count them.

24 Q I can understand that. Was it more than three?

25 A Yeah, I believe I heard more than three gunshots.

Squan Davis - Cross-Examination by Mr. Scott

1 Q Was it more than six?

2 A I'm not too sure. I'm not too sure.

3 Q But you are sure that he was laying on his back and
4 he fired at least one shot?

5 THE COURT: I thought he said stomach.

6 THE WITNESS: Uh-huh.

7 BY MR. SCOTT:

8 Q Is that correct?

9 A On his stomach.

10 Q On his stomach. I'm sorry. So -- and that was the
11 last you saw of Marcus?

12 A Correct.

13 Q That's when you dipped into Taco Bell?

14 A Correct.

15 Q And called your momma?

16 A Correct.

17 Q Did you call your mom and your dad or just your
18 mom?

19 A My mother.

20 Q But your dad came too?

21 A Correct.

22 Q And I think you said that when you gave the
23 statement to Detective McFadden, you said that Shane knew
24 what was, Shane wasn't a part of the drug deal, right?

25 A He wasn't.

Squan Davis - Cross-Examination by Mr. Scott

1 Q But he knew what was going on at some point, right,
2 that's what you told -- isn't that what you told Detective
3 McFadden in your statement?

4 A I don't know if he knew or not, you see what I'm
5 saying.

6 Q You don't recall telling Detective McFadden that he
7 had -- he had -- he probably -- he probably had a feeling
8 though man?

9 A Yes, that's his brother, you see what I'm saying;
10 Marcus's brother.

11 Q So you, so you're saying that he knew what Marcus
12 was doing?

13 A I don't know. I'm just saying I don't know.
14 Marcus was his brother. I ain't no -- We ain't talked, we
15 ain't discussed it, but I'm pretty sure; Marcus is his
16 brother, you see what I'm saying?

17 Q I understand. So on the way to -- between the
18 bootlegger -- based on your testimony here, because you
19 didn't stop at Marcus's mom's house, but between the
20 bootlegger and Florence, you're on the phone negotiating
21 with Curtis Joe, right?

22 A Correct.

23 Q Now I think you also said in your -- in your
24 statement to Detective McFadden that you all told Shane
25 that y'all were going to meet a girl, right?

Squan Davis - Cross-Examination by Mr. Scott

- 1 A Correct.
- 2 Q Who told Shane that; was it Marcus or was it you?
- 3 A Marcus.
- 4 Q Marcus did?
- 5 A I didn't do no talking to Shane; that's his
6 brother. I ain't did no, I ain't, that's the first time I
7 ever met Shane that day.
- 8 Q Oh, first time ever?
- 9 A First time I ever met him.
- 10 Q But you and Marcus were boys though?
- 11 A I been knowing Marcus.
- 12 Q All right. So Marcus was on the phone talking to
13 some girls, right?
- 14 A Correct.
- 15 Q You were on the phone negotiating the deal with
16 Curtis Joe, correct?
- 17 A We been, we'd been negotiating exactly, but I
18 called him to let him know where I was at. You see what
19 I'm saying?
- 20 Q Didn't you tell Detective McFadden in your
21 statement that initially when you started talking to Curtis
22 Joe, Curtis Joe told you he couldn't have it when you
23 wanted him to, that he was going to be an hour or so late,
24 or whatever, and you was kind like, "Aw man, something's up
25 with that." Do you recall telling Detective McFadden that?

Squan Davis - Cross-Examination by Mr. Scott

1 A Correct.

2 Q Did that take place before you got on the road or
3 during the time you were on the road?

4 A That take place during -- during when I was on the
5 road. During the time I was on the road.

6 Q You want me to repeat the question?

7 A Yes, sir.

8 Q Sure. My question to you is you had conversations
9 with Curtis Joe about this drug deal and Curtis Joe was
10 telling -- based on what you told the investigator, Curtis
11 Joe gave you an excuse why he could -- it was going to be
12 an hour or so late, right?

13 My question to you is did that conversation about
14 him being an hour or so late, did that occur before you got
15 on the road going to Lake City or did that occur during the
16 time that you were in route from Lake City to the Days Inn?

17 A I'm not so sure on that. I'm not so sure, to be
18 honest with you, because I talked to him on the road too.
19 You see what I'm saying? I told him I'm on the way to
20 Florence.

21 Q Right.

22 A And he's like call me when I get to Florence. We
23 already, we already discussed all that.

24 Q Okay.

25 A Before we even left Lake City, we already had

Squan Davis - Cross-Examination by Mr. Scott

1 discussed all that. Everything was already set.

2 Q But you still had a conversation with him in route?

3 A Yeah, I told him I'm on the way.

4 Q So did, how long -- when you guys first parked in
5 the Days Inn, how long was it before you actually saw the
6 dude that came out and tapped on your window? About what
7 was the time span? And do you recall telling Detective
8 McFadden that it was about 30 minutes?

9 A Something around there, somewhere around there
10 about 30 minutes.

11 Q Okay. The time between that 30 minute gap, did you
12 have a conversation with Curtis Joe then?

13 A I probably called him back and said where you at?

14 Q Yeah, because it -- it -- it's -- it makes -- it's
15 reasonable to me if I'm saying -- if I'm coming -- I'm
16 coming to Florence to make a deal and if I get there and
17 I'm waiting more than a couple of minutes, I'm going to
18 call to see what's going on, right?

19 A Correct.

20 Q So you, you did that, right?

21 A Correct.

22 Q Okay. And that conversation that you had with
23 Curtis Joe between that 30 minute time period, what did you
24 say to Curtis Joe then; what was the conversation about?

25 A I asked him where you at and he said give me, give

Squan Davis - Cross-Examination by Mr. Scott

1 him 30 minutes or whatever. So -- but I think he's been
2 over there, you see what I'm saying? Because we, I ain't
3 see where he parked. So you see what I'm saying? They
4 ain't parked like close to us; they parked on the other
5 side.

6 Q They parked on the other side?

7 A So I couldn't tell you if he was there or not or if
8 he'd been there or not.

9 Q And for purposes -- how much money did you have on
10 you then?

11 A You say how much money did I have on me?

12 Q That night, how much money did you have on you?

13 A About \$800.

14 Q About \$800?

15 A Correct.

16 Q If a pound of weed costs a \$1,000, why did you only
17 have \$800 when you came to make the drug deal?

18 A You said why I had \$800?

19 Q Why did you have \$800 if a pound of weed cost
20 \$1,000? Based on what you said earlier.

21 A See I already had did business with them before,
22 see what I'm saying.

23 Q I don't understand what you're saying because to me
24 \$1,000 to buy something is \$1,000 to buy something.

25 A I already had dealt with him before. See what I'm

Squan Davis - Cross-Examination by Mr. Scott

1 saying?

2 Q Okay. And what does that mean?

3 A The last time I dealt with him, like the numbers
4 was short, his numbers was short and he say he'd make it
5 up. You see what I'm saying?

6 Q Okay. I -- I -- I don't know anything about drugs.
7 So when you say that the numbers are short, what does that
8 mean?

9 A See I got a quarter pound from him the last time,
10 you see what I'm saying. The first time I ever did
11 business with him, I got a quarter pound from him.

12 Q How long ago was that?

13 A At -- about a couple -- a month, a little bit
14 longer than a month before I had done two times, two or
15 three times.

16 Q All right. So the last time was a quarter, he gave
17 you a quarter pound and it should have been a pound?

18 A No. No. It should have been -- he give me like
19 two ounce and it should have been three or either four.
20 You see what I'm saying? It should have been four.

21 Q Should it have been three or four?

22 A Is should a been -- a quarter pound is four ounces.

23 Q Four ounces. So he only gave you three?

24 A Exactly.

25 Q So he shorted you?

Squan Davis - Cross-Examination by Mr. Scott

1 A He gave me like, he shorted me like an ounce and a
2 half; a ounce and a half.

3 Q You didn't know that when you got it?

4 A I told him.

5 Q You told him?

6 A See I done did business with him before, see what
7 I'm saying. We done did -- you see what I'm saying? We
8 done did business. It be a good business.

9 Q Right. Okay. But then if I give you, let's just
10 say I give you a, a pound. All right. Now, you're
11 experienced enough to know what a pound is, right?

12 A Not really, if it ain't on, not really.

13 Q So how do you know if you've got the right amount?

14 A Not really. You got to have the scale. You see
15 what I'm saying?

16 Q Okay. This particular time you were short because
17 you didn't have the scale?

18 A Exactly.

19 Q So he was supposed to, where in the conversation
20 that you had with Curtis Joe where you all discussed that
21 he was supposed to kind of, I guess give it to you for, I
22 guess you're saying for a discount price, right?

23 A Uh-huh; Correct.

24 Q Where in that conversation did you have that with
25 Curtis Joe?

Squan Davis - Cross-Examination by Mr. Scott

1 A When I had that?

2 Q Yeah. When did you have this conversation with him
3 about that?

4 A Earlier, earlier that day at the jute joint, like I
5 say.

6 Q Prior to you getting on the road?

7 A Exactly. He said he'd make it right.

8 Q Do you recall ever telling Detective McFadden all
9 this stuff that you're telling me and telling us now? Do
10 you recall telling him any of this?

11 A Correct.

12 Q Is that -- you do recall telling him or you do not
13 recall telling him?

14 A I do.

15 Q You recall telling him that?

16 A (Sound.)

17 THE COURT: Is that a yes? Answer please.

18 THE WITNESS: Correct.

19 BY MR. SCOTT:

20 Q And then if you told him all these things that
21 you're telling us now, it's fair to say that it would be in
22 the statement that you provided for him, right; he wouldn't
23 have any reason, you don't think, to leave this kind of
24 stuff out, would he?

25 A I don't think so.

Squan Davis - Cross-Examination by Mr. Scott

1 Q Did you have a gun that night?

2 A No, sir.

3 MR. SCOTT: I beg the Court's indulgence.

4 THE COURT: Yes, sir, certainly.

5 MR. CLEMENTS: No objection, Your Honor.

6 MR. SCOTT: May I approach, Your Honor?

7 THE COURT: Yes, sir.

8 BY MR. SCOTT:

9 Q This right here is a statement that -- you've
10 already testified that you gave a statement to him. I want
11 you to review that and see if that is, in fact, your
12 statement.

13 A Yes, sir.

14 Q Or better yet, if you would, on page two here, is
15 that your signature and your, your address?

16 A Correct. Yes, sir.

17 Q So it's -- so, do you recall giving that statement
18 to Investigator McFadden?

19 A It's my name right here.

20 Q Do you recall giving this statement?

21 A It's my --

22 THE COURT REPORTER: I didn't get that.

23 THE WITNESS: I still reading it and all. But this
24 is my name though, this is my name and address.

25 ///

Squan Davis - Cross-Examination by Mr. Scott

1 BY MR. SCOTT:

2 Q If you need some additional time to read it and
3 refresh your memory that will be fine. Take your time?

4 A Yes, sir.

5 MR. SCOTT: Your Honor, for purposes of the record,
6 I want to mark this as, as Defendant's Exhibit 1.

7 (WHEREUPON Defendant's Exhibit 1 was marked for
8 identification.)

9 MR. CLEMENTS: Without objection, Your Honor.

10 THE COURT: Well, he hasn't identified it yet.

11 MR. CLEMENTS: Okay.

12 THE COURT: He's --

13 BY MR. SCOTT:

14 Q Now, Mr. Davis, whenever you're ready just let me
15 know?

16 A I'm ready.

17 Q You're ready?

18 A Yes, sir.

19 Q Do you recall giving this statement?

20 A Yes, sir.

21 MR. SCOTT: At this time, Your Honor, I'd like to
22 mark this Defendant's Exhibit 1?

23 THE COURT: Without objection, is that correct,
24 Solicitor?

25 MR. CLEMENTS: That is correct, Your Honor.

Squan Davis - Cross-Examination by Mr. Scott

1 THE COURT: Defendant's 1 is in evidence without
2 objection?

3 (WHEREUPON Defendant's Exhibit 1 was entered into
4 evidence.)

5 Q Now, let me ask you this basic question. Do you
6 think you recalled more at the time you gave this statement
7 or now?

8 A You say I recall more --

9 Q Do you believe that you recalled more at the time
10 this statement was given, the day after or now?

11 A I don't know what you mean by that; explain
12 yourself on that.

13 Q Okay. Your memory -- you have a -- we all remember
14 things differently. My question to you is did you -- do
15 you believe that you remember more about what happened
16 during this event at or near the time that this event
17 happened, or do you recall more now as you're standing
18 before this jury and this Court today?

19 A When I first gave the statement I remembered more,
20 it's more fresher.

21 Q Right. Okay. Now what I want you to do is I want
22 you to turn to page five of that statement.

23 A Yes, sir.

24 Q Are you there?

25 A Yes, sir.

Squan Davis - Cross-Examination by Mr. Scott

1 Q Now right here at the bottom it says -- and I'm
2 right here now; it says, this is McFadden; McFadden says
3 what you call him for, and what did you say in response to
4 that question? You can read it for the jury.

5 A You talking about --

6 Q What did you say; Davis, that would be you?

7 A Right there, sir?

8 Q I want you to read to the jury what your response
9 is?

10 A Talking about I know -- I know, you know what I'm
11 saying? A little half or whatever, you know what I'm
12 saying.

13 Q So based on that, you were supposed to get a half a
14 pound, not a pound, based on what you said today, right?

15 A You say I believe a half a pound.

16 Q Yeah, that's what you said a little half and then
17 right after that McFadden says half of what? And what did
18 you say? I want you to read to the jury exactly what you
19 said.

20 A Half of weed, that's it.

21 Q Okay. So you wasn't going to get a pound of weed;
22 you were going to get half, right?

23 A Correct.

24 Q Okay. Now flip over to the next page?

25 A Uh-huh.

Squan Davis - Cross-Examination by Mr. Scott

1 Q McFadden say, Okay and then Davis, what did you
2 say?

3 A You know, I sell weed, that's it.

4 THE COURT: Speak up a little bit.

5 THE WITNESS: You know, I sell weed, that's it.

6 BY MR. SCOTT:

7 Q Okay.

8 THE COURT REPORTER: I didn't get; I didn't
9 understand him.

10 BY MR. SCOTT:

11 Q I'm -- here's what I'm -- let me help you.

12 A Yeah man.

13 Q I want you to, if you can, speak into the mic?

14 A You know, I sell weed, that's it.

15 Q And then on down, Davis asked you the questions, he
16 says how much half -- no -- no, you said, how much half;
17 McFadden says yeah and you're Davis, what did you say?

18 A Like 60.

19 Q Could you speak up?

20 A Like 60.

21 Q Like 60. And then McFadden says okay and then what
22 did you, could you speak into the mic and say -- tell the
23 jury what you said here.

24 A Like, like 60, you know what I'm saying? And,
25 Marcus like, you know what I'm saying? He want to see how

Squan Davis - Cross-Examination by Mr. Scott

1 it look, you see what I'm saying.

2 Q Right. And then right after that, what did you
3 say?

4 A So, he might get a little, a little bit.

5 THE COURT REPORTER: I didn't understand that.

6 BY MR. SCOTT:

7 Q Speak up..

8 A So, he might get a little bit.

9 THE COURT REPORTER: Thank you.

10 BY MR. SCOTT:

11 Q So you told Detective McFadden the day after that
12 you were gone get half and that it was 60, not a thousand,
13 but 60; is that correct?

14 A Correct.

15 Q And you also told him that Marcus was going to get
16 some too if it looked all right?

17 A It if looked good, yeah, he was going to get some
18 too.

19 Q Okay. And right at the bottom --

20 A He wanted to see it.

21 Q Okay.

22 A Yeah.

23 Q All right. Now, right at the bottom here, then
24 McFadden says, Yeah. And then what did you say, the very
25 last thing; read that for the jury?

Squan Davis - Cross-Examination by Mr. Scott

1 A Ain't no, Ain't no big deal. Talking about that?

2 Q Yes, sir, that part.

3 A Ain't no big deal, you know what I'm saying? No

4 big deal at all so you know what I'm saying? Word. We

5 chillin, you know what I'm saying? We drinking a little

6 bit. So, um, I believe Marcus had call his mother up, you

7 know what I'm saying? To get a few dollars from her or

8 whatever, you know what I'm saying? To get a few dollars

9 from her. Exactly, get a few dollars for her. He told her

10 to, um, that he was fixing to see a female or something,

11 you know what I'm saying.

12 Q Okay. So based on that, Marcus was going to his

13 mom's house in order to get some money and he was going to

14 tell his mom that y'all were going to see some girls,

15 right?

16 A I'm not too sure about it, but it says right on

17 there.

18 Q But that's your statement right; that's what you

19 said, correct? So obviously it's the truth, right?

20 A I ain't know about the mother situation, but some

21 of it is. Some of it is.

22 Q Okay. All right. Now I want you to flip over to

23 the next page.

24 Now then you said -- and I'm right here. Read that

25 to the jury; what did you say?

Squan Davis - Cross-Examination by Mr. Scott

1 A He ain't, he ain't told his mother, you know what
2 I'm saying.

3 Q And then McFadden says that y'all are going to get
4 weed?

5 A Uh-huh.

6 Q And you said?

7 A Yeah. Exactly, you know what I'm saying? Exactly,
8 he ain't told her that.

9 Q McFadden says, Okay. And then read to the jury
10 what you said.

11 A You know what I'm saying? So we went in his house,
12 junk, you know what I'm saying? He went over there and
13 pick up money and, um, so we went, we went to Florence, we
14 gas up. We gas up.

15 Q Now you said earlier that you didn't recall going
16 to get money from the mom, correct?

17 A Correct.

18 Q You also said earlier you never recalled you all
19 going to gas up; is that correct?

20 A Correct.

21 Q So based on this statement, what you said here
22 today is not true?

23 A I'm not saying that. Some of it, some of it is;
24 some of it's not.

25 Q Okay. Now I want you to flip over to page eight?

Squan Davis - Cross-Examination by Mr. Scott

1 A Uh-huh.

2 Q And let's begin right here. McFadden says Wayne
3 called back and what did you say?

4 A No, Wayne.

5 Q And then -- no -- no, I'm right here. You said no,
6 Wayne, and then he said Wayne called back and then what did
7 you say?

8 A Yeah, yeah, yeah, he like it on 52, you know what
9 I'm saying.

10 Q McFadden said, Yeah. And then what did you say?
11 Read that to the jury.

12 A If I'm not mistaken, he like, I thought he had a
13 room or he like come -- come -- come -- come in room, I'm
14 like Na, you know what I'm saying? Why, you know what I'm
15 saying? I ain't, why come in the room for, you know what
16 I'm saying.

17 Q And then later on down here, McFadden, he asks you,
18 he says you remember what room; you remember what room he
19 said come in and what did you say?

20 A Room 129, if I'm not mistaken.

21 Q And he said 129 and you said?

22 A 129, if I'm not mistaken, though.

23 Q He said okay and then you said again?

24 A You know what I'm saying.

25 Q What did you say right before that?

Squan Davis - Cross-Examination by Mr. Scott

1 A 129.

2 Q 129?

3 A You know what I'm saying.

4 Q And then McFadden said, Okay. And then what did
5 you say? Read that entire thing what you said.

6 A Why, so you know what I'm saying? I'm like, na,
7 why I got to go in the room for. We ain't never been going
8 in no room, you know what I'm saying? We ain't never been
9 going in no room.

10 Q Now you said earlier that you didn't recall y'all
11 having a conversation about going to a room or not going to
12 a room; is that correct?

13 A Correct.

14 Q So obviously you all had that conversation based on
15 this statement; is that correct?

16 A Had to, you know, but I meant -- we had to, but --

17 Q I understand. I understand. Now then I want you
18 to flip to page 10.

19 Now I want you to start right here and I want you
20 to read to the jury what you said the night after.

21 A Okay.

22 Q Or the day afterwards. Go ahead.

23 A I knock on the window and told him to go around.
24 So he went around, you know what I'm saying? So, um, he
25 point, he point as soon as he got in the car he, he said,

Squan Davis - Cross-Examination by Mr. Scott

1 give it up, you know what I'm saying? He started patting
2 everything, patting on me down, you know what I'm saying?
3 Patting me down, everything, you know what I'm saying? So,
4 um --

5 Q McFadden said, So, he was in the back seat at --
6 with you and you said?

7 A Yeah, with, with patting me down and he punch me in
8 the face, you know what I'm saying.

9 Q Now then you said I think you talked about there
10 was an exchange of fire; do you recall saying that?

11 A Uh-huh.

12 Q And matter of fact, it's right down -- right there,
13 right; read that for us.

14 A Turn around and start, turn around and start
15 shooting and they started exchanging fire, you know what
16 I'm saying.

17 Q So based on what you saw, there was an exchange of
18 gun fire between Marcus and who?

19 A The dude in the back seat with me.

20 Q The dude in the back sat with you?

21 A Correct.

22 Q And and you don't recall how many shots you heard,
23 you just -- you heard an exchange of gun fire?

24 A Correct.

25 Q And then you ran to Taco Bell and I want you to

Squan Davis - Cross-Examination by Mr. Scott

1 flip to page 12.-

2 A Yes, sir.

3 Q And just read the first sentence there; what does
4 it say?

5 A I might break a bone, I don't care if I break a
6 bone, so I ran to Taco Bell, you know what I'm saying.

7 Q And then McFadden said, Uh-huh and then you said?

8 A I call Marcus people, you know what I'm saying?
9 First --

10 Q Okay. Thank you. Thank you. So you -- so you --
11 we all know now that some of the stuff you -- where -- let
12 me ask you this: Where in that statement do you say
13 anything about you observing Marcus falling down or
14 whatever; look in there and see if you can find it for me;
15 see if it's in there?

16 A No, sir.

17 Q It's not in there?

18 A No, sir.

19 Q Let me ask you this: Did -- did Investigator
20 McFadden ever ask you that question that I asked you?

21 A About Marcus falling out?

22 Q Yeah.

23 A A minute ago, I believe it's been a minute ago.

24 Q But if he did, it would have probably been in this
25 statement, don't you think?

Squan Davis - Redirect Examination by Mr. Clements

1 So it's apparent during this particular statement
2 that you made that he didn't ask you that question or you
3 didn't tell him about it -- about that -- about Marcus
4 falling out, you didn't tell him that?

5 A I'm not too sure; I probably didn't; I'm not too
6 sure.

7 Q I mean if it's -- if it's in here I'm asking you to
8 find it if it's in here.

9 A It ain't in there though. It's not in there.

10 THE COURT: He answered the question it's not in
11 there.

12 MR. SCOTT: Okay. I beg the Court's indulgence.

13 I have no further questions of this witness.

14 THE COURT: Thank you. Thank you, Mr. Scott.

15 Redirect?

16 MR. CLEMENTS: Thank you, Your Honor.

17 **REDIRECT EXAMINATION**

18 BY MR. CLEMENTS:

19 Q Mr. Davis, you still got your statement?

20 A Yes, sir.

21 Q Please turn to page 11, and I'm right here. I'm
22 going to read what McFadden says and then I want you to
23 read your response, okay?

24 A Yes, sir.

25 Q The shooter backed up out the car after the --

Squan Davis - Redirect Examination by Mr. Clements

1 A Yeah, oh yeah, he trying to get, trying to get up
2 out, out there.

3 Q McFadden says, Yeah. And your response?

4 A Yeah, he scared too, he trying to get up out of
5 there, you know what I'm saying? He trying to get up out
6 of there and I think I see, you know what I'm saying? I
7 jump out the car and I ain't want to lie I know that was
8 Marcus laying on the ground. You know what I'm saying.

9 Q McFadden says, Yeah and you respond?

10 A He shot, he shot at me, you know what I'm saying?
11 I don't, he probably black out, you know what I'm saying?
12 He probably already been shot.

13 Q And McFadden says, Yeah. And you respond?

14 A You know what I'm saying? He probably see a shadow
15 or whatever. He shot at me, you know what I'm saying? He
16 laying on the ground and shot at me. So it's like I can
17 jump over the bullet, real talk.

18 Q Okay. So it is in there about it?

19 A Exactly.

20 Q Okay. All right. So y'all were wrong a minute
21 ago?

22 A Exactly.

23 Q Now you said earlier that you only saw one man in
24 the car; is that correct?

25 A Correct, that's all I seen.

Squan Davis - Redirect Examination by Mr. Clements

1 Q Okay. Will you please turn to page 13, please, and
2 I am right here. McFadden says, Yeah, how many people saw
3 at y'all's car?

4 A At our, two.

5 Q You said it how many times?

6 A Two.

7 Q You said two; you told him two twice. Well what,
8 what was in the door, back door with you; where was the
9 other one? Did that mean the other man; what was your
10 response on page 14?

11 A Like standing like right behind him, like kind of
12 like --

13 Q And McFadden says, Yeah. And you respond?

14 A You know what I'm saying? I ain't you, I ain't
15 even, honestly he must be came around and sneak up. Came
16 around the other side or something cause I ain't see him
17 with not one person came up, you know what I'm saying.

18 Q So you're talking about the second person there,
19 right?

20 A Correct.

21 Q So there was two people there?

22 A Had to be.

23 Q Okay. McFadden says, Uh-huh. And your response?

24 A It was like soon as they pulled the gun out or
25 whatever, homeboy just blitz the car, you know what I'm

Squan Davis - Redirect Examination by Mr. Clements

1 saying? He came right behind him, real talk, it happen
2 that quick, that quick.

3 Q And you're talking about the second man blitzed the
4 car, right?

5 A Correct.

6 Q Okay. Now McFadden says, all right. Investigator
7 Cox, you got any questions for him? And Cox said, You said
8 that the second fellow was, did he walk; did you see both
9 of them walk up together? And you -- your response?

10 A Was uh-huh.

11 Q And Cox said you saw one?

12 A And I say yes, sir.

13 Q And Cox said when did the second fellow come up to
14 the car?

15 A And I said, Soon as he pull, like he had to be
16 sneaking around or something, you see what I'm saying.

17 Q Okay. So there was two people at the car; is that
18 correct?

19 A Correct.

20 Q Okay. And this statement you gave was four years
21 ago; is that correct?

22 A Correct.

23 Q Now, when would you think your memory is better,
24 then or now?

25 A Then.

1 Q All right. I have no further questions.

2 THE COURT: Recross?

3 MR. SCOTT: No further questions.

4 THE COURT: Thank you. Thank you very much, Mr.
5 Davis, you may step down.

6 MR. CLEMENTS: Your Honor, we'd ask that he be
7 excused from his subpoena.

8 THE COURT: Mr. Scott? I'll take it up
9 momentarily? Just have him take a seat out in the
10 courtroom.

11 MR. CLEMENTS: Yes, sir.

12 THE COURT: All right. Mr. Foreman, ladies and
13 gentlemen of the jury, perhaps now would be a good time for
14 us to take our morning recess. Again I remind you during
15 this recess do not discuss this case with anyone, your
16 fellow jurors or anybody else. Remember to keep an open
17 mind until you've heard all the evidence and testimony.

18 With that being said, you may now go with the
19 bailiff to the jury room. We'll take about 15 minutes.

20 Thank you.

21 (WHEREUPON the jury left the courtroom at 10:54
22 a.m.)

23 THE COURT: All right. Mr. Scott?

24 MR. SCOTT: Your Honor, if it please, the reason
25 why I, I'm going to object to him being released at this

1 time is, it's pursuant to whether or not Curtis Joe is here
2 or not. I don't know what's going to happen with Curtis
3 Joe and until I know what's going to happen with Curtis
4 Joe, you know obviously, he had a conversation with Curtis
5 Joe; that's how all this happened. So I -- I just -- I'm
6 just not very comfortable right now excusing him from that
7 subpoena.

8 THE COURT: All right.

9 MR. CLEMENTS: I believe Curtis Joe is here, Your
10 Honor. I think they have him in the holding cell.

11 MR. SCOTT: Okay.

12 THE COURT: Well let's, let's, I'm going to not
13 allow Mr. Davis to leave at this time. He's still under
14 the subpoena of the Court.

15 MR. CLEMENTS: Your Honor, with that, should he
16 report back to my office to continue to be sequestered.

17 THE COURT: I, once -- yes, sir?

18 MR. SCOTT: I would respectfully request that he
19 not be in the room when Curtis Joe testifies.

20 THE COURT: You have a position on that, Solicitor?

21 MR. CLEMENTS: Your Honor, I think that it's been
22 manifested profoundly by both myself and Mr. Scott that,
23 that four years is a long time for Mr. Davis to remember
24 things. So I really don't care. I think that once he's
25 testified, I think he's got out from under sequestration,

1 but I'll defer to whatever Your Honor thinks. I know you
2 know the rules and the law of evidence much greater than I.

3 THE COURT: Well, I don't, I don't -- I'm not going
4 to disagree with that last statement, but I don't want it
5 in the record. If it wasn't for the record I might defer
6 to that last statement. I think the rule technically is
7 once a person testifies they, they are released from the
8 sequestration rule because the only way they can be
9 recalled is on a new matter or new material in reply or sir
10 reply. I think that's technically the rule. But given the
11 fact that he's only one of the -- of course, and his
12 statement's been offered and introduced into evidence.
13 However, I'm going to continue his sequestration. Let him,
14 let him report back to the Solicitor's office.

15 MR. SCOTT: Thank you, Judge.

16 THE COURT: All right. Thank you. We'll be in
17 recess about 15 minutes.

18 THE COURT REPORTER: Where is his statement.

19 THE COURT: I don't have it.

20 COURT REPORTER: Where is his statement.

21 MR. CLEMENTS: Nobody told him any better so he
22 carried it home with him.

23 (WHEREUPON the statement was handed to the court
24 reporter by the solicitor.)

25 THE COURT REPORTER: Thank you, I appreciate it.

1 (WHEREUPON a brief recess was observed.)

2 THE COURT: All right. Anything before we bring in
3 the jury from the State?

4 MR. CLEMENTS: Your Honor, we have one matter, and
5 that is that we have Curtis Joe here. He told me he was
6 here earlier when I was supposed to meet him. He did not
7 understand exactly where Mr. Floyd told him to meet me at,
8 but he is here now. I would ask that the bench warrant be
9 lifted.

10 THE COURT: All right.

11 MR. CLEMENTS: And he is sitting -- he's right here
12 and he is my next witness.

13 THE COURT: All right. Mr. Grove, anything you'd
14 like to add?

15 MR. GROVE: No, Your Honor.

16 THE COURT: All right. I will lift the bench
17 warrant in this matter. Thank you. Thank you very much.

18 Anything from the defense before we bring in the
19 jury, Mr. Scott?

20 MR. SCOTT: No, Your Honor.

21 (WHEREUPON the jury entered the courtroom at 11:15
22 a.m.)

23 THE COURT: All right. Welcome back, ladies and
24 gentlemen. We are continuing the trial of the case by the
25 presentation of evidence and testimony by the State in its

Curtis Joe, Jr. - Direct Examination by Mr. Clements

1 case in chief. Please continue to give all the parties
2 your complete and undivided attention.

3 Solicitor, you may call your next witness.

4 MR. CLEMENTS: Thank you, Your Honor. The State
5 would call Mr. Curtis Joe, Jr.

6 THE COURT: If you'd come around and -- come around
7 up here to the front right at the Bible to be sworn.

8 CURTIS JOE, JR., HAVING BEEN SWORN TESTIFIES AS
9 FOLLOWS:

10 THE CLERK: Please be seated in the witness chair.
11 And state your full name, for the record.

12 THE WITNESS: Curtis Joe, Jr.

13 THE COURT: All right.

14 **DIRECT EXAMINATION**

15 BY MR. CLEMENTS:

16 Q Mr. Joe, if you would sit up close to that
17 microphone, please. That young lady to your left is taking
18 down everything that's said. So if you will speak slowly
19 and clearly.

20 A Yes, sir.

21 Q And loud enough that this jury can hear you. I'm
22 going to stand back over here so if I can hear you, I know
23 they can hear you.

24 A Yes, sir.

25 Q All right. If you don't understand one of my

Curtis Joe, Jr. - Direct Examination by Mr. Clements

1 questions or other Counsel's questions, you ask us to ask
2 it again, we'll be happy to do so, okay?

3 A Yes, sir.

4 Q All right. What is your age, Mr. Joe?

5 A 25.

6 Q And where do you live?

7 A Darlington.

8 Q All right. And how much education do you have?

9 A Eleventh.

10 Q Eleventh grade?

11 A Yes, sir.

12 Q Okay. Now do you know Josh Carraway?

13 A Yes, sir.

14 Q Where is he from?

15 A Darlington.

16 Q Did you know Justin Simms?

17 A Yes, sir.

18 Q Where is he from?

19 A Darlington.

20 Q Okay. Did you know Squan Davis, also called
21 Sliceey?

22 A No, sir.

23 Q He -- have you dealt with anybody from Lake City,
24 selling marijuana?

25 A Yes, sir.

Curtis Joe, Jr. - Direct Examination by Mr. Clements

1 Q Okay. And the name Slicey or Squan Davis doesn't
2 sound familiar?

3 A Yes, sir.

4 Q Okay. All right. Do you recall what you were
5 doing on January 10th, 2010?

6 A Yes, sir.

7 Q All right. Did you receive a phone call from
8 anyone?

9 A Yes, sir.

10 Q And you recall who that was?

11 A I can't remember his name, but it was a boy from
12 Lake City.

13 Q Okay. What did he want?

14 A He wanted some marijuana.

15 Q All right. And did you make arrangements for a
16 marijuana sell and a meet with him?

17 A Yes, sir.

18 Q Okay. Where were y'all supposed to meet?

19 A At Days Inn on 52.

20 Q Okay. And did you go to Days Inn on 52?

21 A Yes, sir.

22 Q Who'd you have with you?

23 A Mr. Carraway and Simms.

24 Q Mr. Carraway and Simms?

25 A Yes, sir.

Curtis Joe, Jr. - Direct Examination by Mr. Clements

- 1 Q Okay. And did you meet people there at the 52 Days
2 Inn?
- 3 A The Lake City boy.
- 4 Q All right. And how did you communicate back and
5 forth with him?
- 6 A Cell phone.
- 7 Q All right. Did you talk to one or more of them?
- 8 A One.
- 9 Q One. Okay. And did y'all arrange by phone to meet
10 at the Days Inn?
- 11 A Yes, sir.
- 12 Q Okay. Were you talking about meeting somewhere
13 else before that or not?
- 14 A No -- no, sir.
- 15 Q All right. How were you going -- how did they want
16 to make the transaction work? Where?
- 17 A You say where?
- 18 Q Yeah. In a room? in a car? out in the parking lot?
19 Where?
- 20 A In the car.
- 21 Q Okay. In the car -- in their car?
- 22 A Yes, sir.
- 23 Q Okay. Did you go to their car?
- 24 A No, sir.
- 25 Q What did you think about going to their car?

Curtis Joe, Jr. - Direct Examination by Mr. Clements

1 A I ain't felt right. No, sir.

2 Q Okay. So what did you do, since you didn't feel
3 right about it?

4 A I was about to -- I was leaving.

5 Q All right. Did you leave?

6 A No, sir.

7 Q Okay. Where -- which side of the Days Inn did you
8 stop at and park?

9 A I parked beside them at first and then I ain't felt
10 right so I was leaving. And then Mr. Carraway told me he
11 was going over there, so I parked on the other side.

12 Q You parked on the other side?

13 A Yes, sir.

14 Q Would that be the Darlington side of the Days Inn
15 or the Florence side?

16 A The Darlington side.

17 Q Darlington side. Okay. All right. And did you
18 get out your car and go over to their vehicle?

19 A No, sir.

20 Q Who did?

21 A Mr. Carraway and Simms.

22 Q Mr. Carraway and Simms?

23 A Yes, sir.

24 Q Did they have any marijuana?

25 A Not that I know of, no, sir.

Curtis Joe, Jr. - Direct Examination by Mr. Clements

1 Q Did you have any marijuana?

2 A No, sir.

3 Q So what were you going to do if you weren't going
4 the sell marijuana?

5 A I was taking Josh over there. Josh was going to
6 rob them.

7 Q Going to rob them?

8 A Yes, sir.

9 Q Okay. And what was Justin going to do?

10 A He was just with him. I didn't even know he was
11 coming, but he was just with him. He just came with Josh.

12 Q When you picked --

13 A When I -- yeah, when I picked him up.

14 Q And where did you pick them up?

15 A Off the West End, off the West Side -- I can't
16 remember the street. I want to say -- it's a little
17 street.

18 Q Is that in Darlington or Florence?

19 A Yes, sir, Darlington.

20 Q Darlington and then you came over to Florence?

21 A Yes, sir.

22 Q Okay. And you didn't have any marijuana with you.

23 A No, sir.

24 Q Okay. So the plan was to do what?

25 A Josh was going to rob them?

Curtis Joe, Jr. - Direct Examination by Mr. Clements

1 Q Okay. All right. So you parked on the Darlington
2 side of the Days Inn and Josh and Justin got out of the car
3 and left?

4 A Yes, sir.

5 Q Did you see which direction they walked in?

6 A They walked through a -- they walked through the
7 breezeway, around.

8 Q A breezeway to the other side of the Days Inn?

9 A Yes, sir.

10 Q Okay. And what did you do?

11 A I was -- I sat in the car.

12 Q Yes, sir. What was the next thing you recall
13 happening that you saw or heard?

14 A A couple of minutes later I heard some -- I started
15 hearing gunshots.

16 Q You started hearing gunshots?

17 A Yes, sir.

18 Q What did you think?

19 A Somebody -- I knew somebody was shooting.

20 Q And what did you do?

21 A That's when I backed up and I was leaving.

22 Q You backed up, you were leaving?

23 A Yes, sir.

24 Q So you were going to leave Josh and Justin there?

25 A Yes, sir.

Curtis Joe, Jr. - Direct Examination by Mr. Clements

- 1 Q Okay. Where were you going to go?
- 2 A Where was I going to go?
- 3 Q Yeah.
- 4 A I was going to go on to my room.
- 5 Q Where's your room at?
- 6 A Motel 6.
- 7 Q Motel 6?
- 8 A Yes, sir.
- 9 Q Is that out at the same intersection of 95 and 52?
- 10 A It on the.
- 11 Q It's on the other side?
- 12 A Yes, sir.
- 13 Q Okay. So you had a room there?
- 14 A Yes, sir.
- 15 Q All right. Well did you get out of the parking
- 16 lot?
- 17 A No, sir.
- 18 Q What happened?
- 19 A That's when Simms was running to the car.
- 20 Q Simms was running to the car?
- 21 A Yes, sir.
- 22 Q He got in the car?
- 23 A Yes, sir.
- 24 Q What did he say?
- 25 DEFENSE ATTORNEY: Objection, Your Honor.

Curtis Joe, Jr. - Direct Examination by Mr. Clements

1 THE COURT: Basis?

2 MR. SCOTT: Hearsay, Your Honor.

3 THE COURT: No, sir this is party opponent. It
4 would be an exception.

5 BY MR. CLEMENTS:

6 Q What did Simms say?

7 A What did he said? He said that the boy started
8 shooting and Josh was still in the car. He think Josh was
9 still in the car.

10 Q So what did y'all do?

11 A Wait for -- waiting for -- I start call Josh, but
12 he didn't answer his phone. So we left and I took him
13 home.

14 Q All right. Did you ever talk to any of the Lake
15 City boys again?

16 A Yeah, I called them and ask them where Josh was.

17 Q What he say?

18 A They said they left him. He ain't with them.

19 Q All right. And you then took Simms back to
20 Darlington or you'd already taken Simms to Darlington?

21 A No -- yeah I had took him back to Darlington.

22 Q Before you made that call to the Lake City boys?

23 A Yes, sir.

24 Q Okay. Now; what did you do after you dropped Simms
25 off?

Curtis Joe, Jr. - Direct Examination by Mr. Clements

1 A I had went out.

2 Q Do what now?

3 A I said I had went out -- I went to a club.

4 Q Okay. All right. And what, if anything did Simms
5 say about shooting anybody?

6 A Repeat that?

7 MR. SCOTT: Objection, Your Honor, that's a leading
8 question, Your Honor.

9 MR. CLEMENTS: I said --

10 THE COURT: No, sir. I overrule that objection.
11 You may ask that.

12 BY MR. CLEMENTS:

13 Q What, if anything, did Simms say about shooting
14 anybody or shooting at anybody?

15 A He was just saying the dude started shooting them.
16 He didn't never say he shot him.

17 Q He didn't ever say he shot him.

18 A No, sir.

19 Q All right. How about later? Did he talk you to
20 you about this after that event happened in the next days
21 or a couple of days? Did you talk to him again?

22 A Yeah, I talked to him one time.

23 Q And what did Simms tell you about it then?

24 A He was just -- he asked me was I'm all right and he
25 asked me was I all right. And he just told me that Josh

Curtis Joe, Jr. - Direct Examination by Mr. Clements

1 had got shot and -- he said Josh had got shot. And he said
2 that the boy had shot himself in the arm and he had died.

3 Q Okay. All right. And he didn't say anything about
4 him shooting anybody or a gun or anything of that nature?

5 A No, sir.

6 Q Okay. All right. Did either -- did you either say
7 to him or him say to you or have any discussion about not
8 talking to anyone?

9 A Repeat that again.

10 Q Do you or him have any discussion or conversation
11 whatsoever about not talking to people about it -- this
12 event?

13 A Yes, sir.

14 Q Y'all did?

15 A Un-huh.

16 Q And what was that conversation about?

17 A He just said -- he was just saying don't talk about
18 the situation that the dude had shot himself and he had
19 died and he didn't want to talk about it.

20 Q All right. Did you get approached by law
21 enforcement?

22 A Did I get approached by law enforcement?

23 Q Yes. Regarding this incident?

24 A Yes, sir.

25 Q Did anybody come to you?

Curtis Joe, Jr. - Direct Examination by Mr. Clements

- 1 A Yes, sir.
- 2 Q Okay. Who was it came to you?. Do you recall?
- 3 A No, they put a warrant out on me.
- 4 Q Put a warrant out on you?
- 5 A Yes, sir.
- 6 Q All right. So did they pick you up or did you turn
- 7 yourself in?
- 8 A I turned myself in.
- 9 Q Where did you turn yourself in at?
- 10 A At the Florence -- at Effingham.
- 11 Q At Effingham?
- 12 A Yes, sir.
- 13 Q All right. And when you turned yourself in, who
- 14 did you talk to out there?
- 15 A Mr. McFadden.
- 16 Q All right. And what did Investigator McFadden do?
- 17 A He locked me up.
- 18 Q Okay. Did he give you my Miranda Warnings? Talk
- 19 to you about your Miranda Rights?
- 20 A You said did he did it.
- 21 Q Yeah, did he ever give you your Miranda warnings?
- 22 A Yes, sir.
- 23 Q Okay. And after he gave you your Miranda warnings
- 24 what did you do?
- 25 A I didn't want to talk to him. They only had locked

Curtis Joe, Jr. - Direct Examination by Mr. Clements

1 me up.

2 Q Okay. Later on, after that did you give a
3 statement to him?

4 A Yes, sir.

5 Q Did he ever see you in any photographs?

6 A Yes, sir.

7 Q Did you ever identify any people in those
8 photographs?

9 A Yes, sir.

10 Q Who did you identify?

11 A I identified Josh and Simms.

12 Q All right. And did you tell him what happened
13 then? When you gave him a statement did you tell him
14 everything that happened?

15 A Yes, sir.

16 Q Were you completely honest?

17 A Not really, no, sir.

18 Q All right. Why not?

19 A I was scared at the time.

20 Q All right. Are you scared today in front of this
21 jury?

22 A No, sir.

23 Q Why not?

24 A Because this is it; the truth will set me free.

25 Q And what are you charged with?

Curtis Joe, Jr. - Cross-Examination by Mr. Scott

1 A Accessory.

2 Q All right. Have you been made any promises or
3 anything?

4 A No, sir.

5 Q And -- but what you're telling today is the truth?

6 A Yes, sir.

7 Q You got any friends you trying to help?

8 A No, sir.

9 Q You got any enemies you trying to punish?

10 A No, sir.

11 Q You didn't go over to the other side of the Days
12 Inn that evening?

13 A No, sir.

14 Q You didn't see anything?

15 A No, sir.

16 Q You just heard stuff?

17 A Yes, sir.

18 Q Thank you. Please answer truthfully anything Mr.
19 Scott asks you.

20 A Yes, sir.

21 THE COURT: Thank you, Solicitor. Mr. Scott?

22 CROSS-EXAMINATION

23 BY MR. SCOTT:

24 Q Good afternoon, Mr. Joe.

25 A Good afternoon.

Curtis Joe, Jr. - Cross-Examination by Mr. Scott

1 Q You born and raised in Darlington?

2 A Yes, sir.

3 Q How long have you known Justin?

4 A I really can't say -- a good -- probably about a
5 good while though.

6 Q What is that? Two years, five years?

7 A I say -- I say probably about two years.

8 Q And based on your testimony here today --

9 A Yes, sir.

10 Q -- you and a gentleman that you don't know from
11 Lake City, you all had a drug transaction that you were
12 going to do, correct?

13 A Yes, sir.

14 Q And you, I think you said you were going to sell
15 him a pound?

16 A Yes, sir.

17 Q And I think you also said on direct that when you
18 got there, something didn't seem right to you?

19 A Yes, sir.

20 Q Explain to the jury what you mean when you say that
21 something didn't feel right to you?

22 A Because he called for a pound and he said he had
23 had his tax money and that he knew it was the beginning of
24 January and I know he had his tax money. And when we
25 pulled up and he -- and I asked him if he wanted to get in

Curtis Joe, Jr. - Cross-Examination by Mr. Scott

1 the car and said no. And he asked me how many people was
2 with me.

3 I told him -- I said how many peoples with him and
4 he told me. And then that was, that was when I pulled off
5 and I was like this ain't right that when -- when Mr.
6 Carraway -- when I pulled up on the other side, Mr.
7 Carraway was like not going to leave, I'm going to go get
8 them.

9 Q Okay. Now, so in other words, in your experience
10 in the drug game --

11 A Yes, sir.

12 Q -- you kind of -- basically you felt like they was
13 gone rob you?

14 A Yes, sir.

15 Q No doubt in your mind they was going to rob you;
16 that's why you pulled off, right?

17 A Yes, sir.

18 Q So you pulled off and you go to the other side,
19 right?

20 A Yes, sir.

21 Q Came out to the other side?

22 A Yes, sir.

23 Q And tell the jury who it was that said they were
24 going to go there?

25 A Mr. Carraway, Josh.

Curtis Joe, Jr. - Cross-Examination by Mr. Scott

1 Q Josh did?

2 A Yes, sir.

3 Q And as far as you know, the only thing Justin
4 was -- he was just riding with y'all, right?

5 A Yes, sir.

6 Q And did Justin say I'm going with you; I'm going to
7 get this money, let's do it; let's go get this money? Or
8 did Carraway say I'm going and Justin was just going along
9 with it?

10 A Yes, sir.

11 THE COURT: Which one was it.

12 THE WITNESS: Oh, Josh said he was going and he
13 asked Mr. Sims to come with him.

14 BY MR. SCOTT:

15 Q Based on -- had Josh, did you know what Josh had
16 planned before you guys got there?

17 A Yes, sir.

18 Q You knew he was going to try to rob them or you
19 knew that he was going there to help you with the drug
20 transaction?

21 A Yeah, I thought he was going to help me with them,
22 but when we got there, he said he was going to rob them.

23 Q Josh Carraway said that?

24 A Yes, sir.

25 Q So the next thing you know, Justin comes back to

Curtis Joe, Jr. - Cross-Examination by Mr. Scott

1 the car?

2 A Yes, sir.

3 Q And at the time that Justin came back to the car,
4 Justin was concerned about Josh, wasn't he?

5 A Yes, sir.

6 Q And didn't he tell you that them boys started
7 shooting?

8 A Yes, sir.

9 Q He said -- in fact, didn't he say them boys tried
10 to rob us?

11 A Yes, sir.

12 Q That's what Justin told you?

13 A Yes, sir.

14 Q Now when you were having this conversation with the
15 gentleman from Lake City, how -- how many times did you
16 talk to him between let's say 9:30 and the time that this
17 happened? How many times did you talk to him on the phone,
18 do you think?

19 A Between 9:30 and before the time the incident
20 happened?

21 Q Yes, sir.

22 A Probably about two or three times.

23 Q Two or three times?

24 A Yes, sir.

25 Q What were the length of those conversations?

Curtis Joe, Jr. - Cross-Examination by Mr. Scott

1 A What was the length?

2 Q Yeah, an estimate, what was it, are we talking
3 about just a couple of minutes or was it --

4 A A couple of minutes.

5 Q A couple of minutes?

6 A Yes, sir.

7 Q And during one of them conversations, you all were
8 going back and forth about where you all were going to
9 meet; is that correct?

10 A Yes, sir.

11 Q And originally you guys were supposed to be in
12 room, in I think room 129 of the hotel, right?

13 A Yes, sir.

14 Q Who arranged that; was it you or was it one of the
15 gentlemen from Lake City?

16 A I did.

17 Q So that's where you wanted to meet at?

18 A Yes, sir.

19 Q And then apparently who called back to say they
20 couldn't meet you there?

21 A I was on the phone with him and I asked him if he
22 want to, and I ask him did he want to meet me in a room and
23 he said no, come to the car. You know, I asked how many
24 people was with him and that when he told me and then
25 because he said he didn't want to come get in the car with

Curtis Joe, Jr. - Cross-Examination by Mr. Scott

1 me.

2 Q That's when you that you knew something was going
3 down?

4 A Yes, sir.

5 Q And you was ready to dip and leave?

6 A Yes, sir.

7 Q And Carraway was the one who kept going?

8 A Yes, sir.

9 Q Now, how much do you generally sell a pound of
10 marijuana for; what's the going rate?

11 I don't know anything about drugs, so tell me
12 what's the going rate?

13 A About twelve hundred.

14 Q Twelve hundred?

15 A Yes, sir.

16 Q What was the cost on the agreement, monetary
17 agreement, that you had with the gentleman from Lake City
18 this particular night to buy this pound of, of marijuana?

19 A Go through that again.

20 Q What were you going to charge the Lake City guy
21 that particular night for this pound of marijuana?

22 A Twelve hundred.

23 Q Twelve hundred?

24 A Yes, sir.

25 Q Now, was this your first time dealing with this guy

Curtis Joe, Jr. - Cross-Examination by Mr. Scott

1 from Lake City?

2 A Yes, I dealt with him on, in a club that I had met
3 him, but you know I dealt with him once in the club. That
4 how he -- I got to know him.

5 Q But you hadn't had a drug transaction with him --

6 A Oh, no, sir. No. No.

7 Q -- never before this?

8 A No, sir.

9 Q So if he testified in here that --

10 THE COURT: You can't pit witnesses.

11 MR. SCOTT: Court's indulgence.

12 THE COURT: Yes, sir.

13 THE WITNESS: Sir.

14 THE COURT: I was talking to him. Thank you.

15 (WHEREUPON there was a pause in the proceedings.)

16 BY MR. SCOTT:

17 Q This particular night, did -- did you seen Justin
18 with a gun?

19 A No, sir.

20 Q Did you see Carraway with a gun?

21 A No, sir.

22 Q And as far as your understanding is, Justin knew
23 nothing about any of this thing that was going on?

24 A No, sir, not from my understanding, no, sir. I
25 don't know what him and Josh talked about, but, no, sir.

Curtis Joe, Jr. - Redirect Examination by Mr. Clements

1 Q Were him and Josh there with --

2 A Yeah, they was together.

3 Q They were together?

4 A Yes, sir.

5 Q But you don't know what they talked about?

6 A No, sir.

7 Q You just know from your point of view?

8 A I didn't know he was coming here with his ride,
9 yes, sir.

10 Q No further questions.

11 THE COURT: Redirect?

12 REDIRECT EXAMINATION

13 BY MR. CLEMENTS:

14 Q Mr. Joe, you didn't really have any marijuana that
15 night to sell though, did you?

16 A No, sir.

17 Q So it was going to be a robbery the whole time?

18 A Yes, sir.

19 Q No further questions.

20 THE COURT: Recross?

21 MR. SCOTT: No -- none, Your Honor.

22 THE COURT: You may step down.

23 MR. CLEMENTS: Your Honor, we ask that Mr. Joe be
24 released from his subpoena.

25 THE COURT: Any objections?

Shane Graham - Direct Examination by Mr. Clements

1 MR. SCOTT: No objections, Your Honor.

2 THE COURT: All right. He may be released.

3 MR. SCOTT: May we approach, Your Honor.

4 (WHEREUPON there was a bench conference out of the
5 hearing of the jury and the court reporter.)

6 THE COURT: All right. Solicitor, you may call
7 your next witness.

8 MR. CLEMENTS: Your Honor, we'd call Shane Graham.

9 THE COURT: All right. Come around and be sworn
10 for us please, Mr. Graham.

11 SHANE MARCUS GRAHAM, HAVING BEEN SWORN TESTIFIES AS
12 FOLLOWS:

13 CLERK: Please be seated and state your full name for
14 the record.

15 THE WITNESS: Shane Marcus Graham.

16 **DIRECT EXAMINATION**

17 BY MR. CLEMENTS:

18 Q Mr. Graham, you are very soft spoken so I'm going
19 to ask you to please be sure you speak into that
20 microphone, okay?

21 A Yes, sir.

22 Q And speak up loudly so all this jury can hear you.

23 A Yes, sir.

24 Q Mr. Graham, how old are you?

25 A 26.

Shane Graham - Direct Examination by Mr. Clements

- 1 Q And what do you do?
- 2 A I currently work at Nan Ya in Lake City.
- 3 Q At Nan Ya in Lake City?
- 4 A Yes, sir.
- 5 Q Where were you raised?
- 6 A Lake City.
- 7 Q Where do you live now?
- 8 A Scranton.
- 9 Q Okay. What relationship did you have with Marcus
- 10 Weaver?
- 11 A He's my brother.
- 12 Q Okay. And how old was Marcus at the time of his
- 13 death?
- 14 A I believe he was 25 or 24.
- 15 Q And how old were you at the time of his death?
- 16 A 23.
- 17 Q Okay. Now, how close were y'all?
- 18 A Very close.
- 19 Q Did y'all have all the same friends or did you have
- 20 some of your friends and he had some of his friends?
- 21 A We had some mutual friends.
- 22 Q And how about Squan Davis, also known as Slice;
- 23 was that your friend or was that Marcus's friend?
- 24 A Marcus's friend.
- 25 Q Did you know him well at all?

Shane Graham - Direct Examination by Mr. Clements

1 A No, sir, not at all.

2 Q What kind of car were you driving back then in
3 January, 2010?

4 A A 2008 black Ford Fusion.

5 Q If I show you State's Exhibit 7, do you recognize
6 that?

7 A Yes, sir.

8 Q Whose car is that?

9 A That's my car.

10 Q Was this the car you were driving on the night of
11 January 10th, 2010?

12 A Yes, sir.

13 Q Do you remember picking -- excuse me -- do you
14 remember picking anyone up to give a ride to on January 10,
15 2010?

16 A Yes, sir.

17 Q Who did you pick up?

18 A Marcus and Squan.

19 Q Marcus and Squan?

20 A Yes, sir.

21 Q Had you been with them earlier that day?

22 A No, sir.

23 Q Where did you pick them up at?

24 A 's trailer park.

25 Q 's trailer park?

Shane Graham - Direct Examination by Mr. Clements

- 1 A Yes, sir.
- 2 Q Is that where a joint is called Little Billy's?
- 3 A Yes, sir, it's in that area.
- 4 Q Did you know what your brother and Squan had been
5 up to that day or what they were doing or planning?
- 6 A No, sir.
- 7 Q Okay. Well, after you picked them up, where did
8 y'all go?
- 9 A We -- we went to his mother's house to get gas
10 money.
- 11 Q Okay. When you say his mother's house?
- 12 A Marcus's mother.
- 13 Q Okay. So you and Marcus shared the same father; is
14 that correct?
- 15 A Yes, sir.
- 16 Q Okay. But his mother is different from your
17 mother?
- 18 A Yes, sir.
- 19 Q Okay. Now, when y'all went to Marcus's mother's
20 house -- where did she live?
- 21 A She stays on Beulah Road.
- 22 Q And what town is that in?
- 23 A Lake City.
- 24 Q Near Lake City?
- 25 A Yes, sir.

Shane Graham - Direct Examination by Mr. Clements

- 1 Q Okay. Did you get out and go in the house?
- 2 A No, sir.
- 3 Q Okay. Who went in the house?
- 4 A Marcus.
- 5 Q Squan go in the house?
- 6 A No, sir.
- 7 Q Okay. How long was Marcus there?
- 8 A Maybe five minutes, not long at all.
- 9 Q All right. And what was his purpose for going
- 10 there?
- 11 A To get gas money.
- 12 Q All right. So you could do what?
- 13 A Take him to the room in Florence.
- 14 Q Okay. All right. So where were you supposed to be
- 15 taking him in Florence?
- 16 A To see a girl.
- 17 Q To see a girl?
- 18 A Yes, sir.
- 19 Q Okay. And did you know where the girl was?
- 20 A He told me the Days Inn.
- 21 Q Okay. All right. On the ride there did y'all have
- 22 much conversation about what they were going to do in the
- 23 immediate future or not?
- 24 A No, sir.
- 25 Q Okay. What did y'all do, listen to music, what?

Shane Graham - Direct Examination by Mr. Clements

1 A I was listening to music and driving and they were
2 on their phones.

3 Q They were on their phones?

4 A Yes, sir.

5 Q All right. Do you know who Marcus was talking to
6 or not?

7 A It was a female.

8 Q How could you tell?

9 A Just, I guess by the giggling and laughing; you
10 know, you can tell if somebody talking to --

11 Q Did you say the giddiness and laughing?

12 A Yes, sir.

13 Q Now, and you say Squan was on his phone too?

14 A Yes, sir.

15 Q Do you know what Squan was talking about, could you
16 hear him?

17 A No, sir.

18 Q Okay. All right. So when you pulled on in to the
19 Days Inn -- which Days Inn was it?

20 A The one on Highway 52.

21 Q Okay. When you pulled in -- which side of the
22 motel did you pull into, the Florence side or the
23 Darlington side?

24 A Florence side.

25 Q All right. And during this time, can you recall

Shane Graham - Direct Examination by Mr. Clements

1 what conversations, if any, were going on?

2 A No, sir, I wasn't really paying attention.

3 Q Were the conversations, was anybody on their phone?

4 A No, sir.

5 Q Okay. Did you notice any other car go, pull in or
6 anything?

7 A No, sir, I wasn't paying it any attention.

8 Q Okay. And what did you, after you pulled in to
9 park, what do you recall happened next?

10 A Automatically sat there for a few minutes. I
11 noticed something in my rear view mirror on my side mirror.

12 Q Your side view mirror?

13 A Yes, sir.

14 Q You noticed someone doing what?

15 A Creeping around the back of the car.

16 Q Creeping around the back of the car?

17 A Yes, sir.

18 Q When you saw this, did you say anything to anybody
19 else?

20 A No, sir, I -- I was just observing.

21 Q All right. You were observing casually or intently
22 or what were you doing?

23 A I was intently looking in the mirror.

24 Q So following them?

25 A Yes, sir.

Shane Graham - Direct Examination by Mr. Clements

1 Q What did you feel when you saw someone creeping
2 around in your side view mirror?

3 A Just an adrenaline rush and didn't know what was
4 going on and then by the time I looked up, someone was
5 coming down through the breezeway.

6 Q Okay. So one person was creeping around, you could
7 see in your side view mirror; and one person -- and then
8 somebody else was coming through the breezeway?

9 A Yes, sir.

10 Q Okay. Now, let me ask you this -- and I'm you
11 sitting in the car and got the side view mirror right here,
12 where is the breezeway; is the breezeway here or is the
13 breezeway here?

14 A To my right.

15 Q To your right?

16 A Yes, sir.

17 Q Okay. So you were kind of focused on that and then
18 saw -- caught somebody else out your eye coming through the
19 breezeway?

20 A Yes, sir.

21 Q All right. What happened next?

22 A That's when I saw Marcus door fly open and someone
23 sticking the gun in saying, Give it up.

24 Q Marcus's door flew open; where was Marcus sitting?

25 A Beside me on the passenger side.

Shane Graham - Direct Examination by Mr. Clements

- 1 Q Beside you. Where was Squan sitting?
- 2 A Behind me.
- 3 Q Directly behind you?
- 4 A Yes, sir.
- 5 Q What, if anything, do you notice in the backseat
- 6 about anybody opening a back door or getting in the back
- 7 seat?
- 8 A I don't remember.
- 9 Q You don't remember?
- 10 A No, sir.
- 11 Q Were you focused on the back seat?
- 12 A No, sir.
- 13 Q What were you focused on?
- 14 A The gun in the front seat.
- 15 Q All right. So somebody opened Marcus's door and
- 16 yelled, Give it up?
- 17 A Yes, sir.
- 18 Q What kind of gun did you see?
- 19 A .380.
- 20 Q A .380?
- 21 A Yes, sir.
- 22 Q How do you know it was a .380?
- 23 A I -- I know how a .380 looks.
- 24 Q All right. You're familiar with handguns?
- 25 A Yes, sir.

Shane Graham - Direct Examination by Mr. Clements

1 Q Okay. And they yell, Give it up. Did you know at
2 that time -- have any knowledge prior to this about whether
3 Marcus had a gun or not on him?

4 A No, sir.

5 Q Okay. After that, that door flew open and with the
6 gun stuck in said, Give it up; what happened next?

7 A A few seconds went by and then I saw Marcus jump
8 towards the guy and that's when I put my head down and
9 shots started going off.

10 Q So you put your head down where, on the steering
11 wheel?

12 A Yes, sir.

13 Q And, and what did you do with your arms?

14 A I covered my head.

15 Q You covered your head up?

16 A Yes, sir.

17 Q What were you afraid of?

18 A Getting shot.

19 Q Okay. What happened next, did you hear one shot,
20 two shots, many shots?

21 A Many shots.

22 Q Many shots?

23 A Yes, sir.

24 Q All right. When did you pull your head up?

25 A After all the shots stopped.

Shane Graham - Direct Examination by Mr. Clements

1 Q After all the shots stopped?

2 A Yes, sir.

3 Q Well, you couldn't tell which one was the last one
4 without waiting for a little bit could you?

5 A No, sir, I just, they was all pushed in together so
6 many times.

7 Q All right. So you heard a lot of shots?

8 A Yes, sir.

9 Q Don't know how many?

10 A No, sir.

11 Q And then I imagine you had to wait to make sure
12 there wasn't any more shots?

13 A Yes, sir.

14 Q And then you lifted your head up?

15 A Yes, sir.

16 Q When you lifted your head up, where was Squan?

17 A Gone.

18 Q Gone?

19 A Yes, sir.

20 Q All right. Was the back driver's side door open or
21 shut; if you know?

22 A I can't remember.

23 Q You can't remember?

24 A No.

25 Q Was the back passenger door open or shut, if you

Shane Graham - Direct Examination by Mr. Clements

1 know?

2 A No, sir, I don't know.

3 Q You don't know?

4 A No, sir.

5 Q Was the passenger front door open?

6 A Yes, sir.

7 Q It was open?

8 A Yes, sir.

9 Q Where was Marcus?

10 A Lying on his stomach on the ground.

11 Q Lying on his stomach on the ground?

12 A Yes, sir.

13 Q Okay. When you saw that, what did you do?

14 A I jumped out the car and picked him up and put him
15 in the car and rushed him to the hospital.

16 Q All right. You jumped out the car; did you jump
17 out the driver's side or you go across and exit the
18 passenger side?

19 A The driver's side.

20 Q The driver's side?

21 A Yes, sir.

22 Q All right. Now, if I can --

23 MR. CLEMENTS: Y'all excuse me -- you may have to
24 absolutely pull me up; I'm getting old.

25 If I -- have permission to allow him to step down.

Shane Graham - Direct Examination by Mr. Clements

1 THE COURT: You may step down.

2 BY MR. CLEMENTS:

3 Q Marcus is laying down you said on his stomach. How
4 did you pick him up? I'm sure he was a lot lighter than
5 me?

6 A Starting at his chest --

7 THE COURT: Speak up a little bit for me, Mr.
8 Graham.

9 THE WITNESS: I started at his chest and kind of
10 grabbed his leg --

11 BY MR. CLEMENTS:

12 Q Okay.

13 A -- and placed him in the car.

14 Q All right. That's good. Thank you. And was he
15 saying anything?

16 A No, sir.

17 Q Were you saying anything to him?

18 A I was telling, I was holding his hand and
19 everything, you know.

20 Q And you got him in the car?

21 A Because tried to console him, yeah.

22 Q During that time that you were concerned about him,
23 did you look around and see anything else on the ground or
24 do you recall any of that?

25 A No, sir.

Shane Graham - Direct Examination by Mr. Clements

- 1 Q Is that all kind of a blur?
- 2 A Yes, sir.
- 3 Q You got him in the car; what did you do?
- 4 A I was talking to Marcus telling him to hold on and
5 everything and holding his hand and drove to the hospital.
- 6 Q Drove to the hospital?
- 7 A Yes, sir.
- 8 Q All right. When they got -- you got to the
9 hospital, where'd you pull up at?
- 10 A The front.
- 11 Q Okay. Right at the door?
- 12 A Yes, sir.
- 13 Q All right. And -- and they took him into the
14 Emergency Room; was this Carolinas or McLeod?
- 15 A McLeod.
- 16 Q All right. And did you go with him into the
17 Emergency Room?
- 18 A No, sir.
- 19 Q What did you do?
- 20 A I -- I was on -- I waited on -- I got on the phone.
21 The police officer was already there so I called my father.
- 22 Q Okay. All right. And did you talk with the police
23 officer?
- 24 A Briefly after, yes, sir, in one of the meeting
25 rooms.

Shane Graham - Direct Examination by Mr. Clements

1 Q All right. What was your state of mind at that
2 time?

3 A Very shook.

4 Q Very shook and upset?

5 A Yes, sir.

6 Q Did you tell them what happened?

7 A Yes, sir.

8 Q Did you tell them anything different than what
9 you're telling this jury today?

10 A No, sir.

11 Q What did they do to you other than just talk to
12 you?

13 A They took sample of my hands for testing for gun
14 residue.

15 Q Okay. All right. And did they ask you whether you
16 fired a gun or held a gun?

17 A Yes, sir.

18 Q Did you hold a gun that evening?

19 A No, sir.

20 Q Did you fire a gun that evening?

21 A No, sir.

22 Q Okay. Do you know whether Marcus did, did or not?

23 A No, sir, I didn't see it.

24 Q You don't know where the shots came from?

25 A No, sir.

Shane Graham - Direct Examination by Mr. Clements

- 1 Q All right. It was just in the car, right?
- 2 A Yes, sir.
- 3 Q Did you go back out to the scene at the Days Inn?
- 4 A Yes, sir, back in June.
- 5 Q Back in June?
- 6 A Yes, sir.
- 7 Q With me?
- 8 A Yes, sir.
- 9 Q Okay. And that night, did you go back out there to
- 10 explain anything to law enforcement or anything?
- 11 A No, sir.
- 12 Q Okay. What happened to your car?
- 13 A It was impounded.
- 14 Q Impounded?
- 15 A Yes, sir.
- 16 Q Did they explain to you why they had to impound
- 17 your car?
- 18 A Yes, sir.
- 19 Q What was that purpose for?
- 20 A It was a piece of evidence.
- 21 Q It was a piece of evidence?
- 22 A Yes, sir.
- 23 Q All right. Subsequent to that, this was January
- 24 10th, did you go to get your car back?
- 25 A Yes, sir, maybe a month or so later.

Shane Graham - Direct Examination by Mr. Clements

1 Q Okay. You can't recall the date?

2 A No, sir.

3 Q What did you do with the car after that?

4 A I took it home and --

5 Q Did you keep it?

6 A Yes, sir.

7 Q For how long?

8 A Maybe a year.

9 Q Okay. And then what did you do?

10 A It was a total loss.

11 Q All right. Did you have a wreck with it?

12 A Somebody shot in my car.

13 Q Okay. All right. And did you have to do any
14 repairs to your car as a result of this event on January
15 10th, 2010?

16 A Yes, sir.

17 Q What did you have to get repaired?

18 A The passenger seat and the -- I guess a bullet
19 ricocheted out the back door.

20 Q Okay.

21 A On the bottom door jamb.

22 Q On the bottom door jamb, you had to get that fixed?

23 A Yes, sir.

24 Q Okay. And you had to get the passenger front seat
25 fixed?

Shane Graham - Direct Examination by Mr. Clements

1 A Yes, sir.

2 Q Okay. All right.

3 MR. CLEMENTS: I beg the Court's indulgence a
4 moment.

5 (WHEREUPON there was a pause in the proceedings.)

6 BY MR. CLEMENTS:

7 Q All right. Let me be sure I got this clear.

8 How many people do you see in your side view mirror
9 creeping around the side of your car?

10 A Just one.

11 Q Just one? How many people did you see coming
12 through the breezeway?

13 A One.

14 Q And they really weren't the same two people?

15 A No, sir.

16 Q Those two people weren't the same and one person?

17 A No, sir.

18 Q Okay. So there were two people?

19 A Yes, sir.

20 Q How many people did you see at the front side
21 passenger door in the front?

22 A One.

23 Q And what -- what did he have in his hand?

24 A A gun.

25 Q And what kind of gun was it?

Shane Graham - Cross-Examination by Mr. Scott

1 A A .380.

2 Q And what did you see, or notice or pay attention to
3 in the back seat?

4 A I didn't notice anything.

5 Q You didn't pay any attention to that?

6 A No, sir.

7 Q Why not?

8 A Because of the gun; I saw it at the front.

9 Q You were focused on that?

10 A Yes, sir.

11 Q Okay. All right. But you saw two people come
12 towards your car; one on the side and one from the
13 breezeway?

14 A Yes, sir.

15 Q Mr. Graham, please answer any questions Mr. Scott
16 may have; thank you?

17 THE COURT: Thank you, Solicitor.

18 Mr. Scott?

19 CROSS-EXAMINATION

20 BY MR. SCOTT:

21 Q Good afternoon, Mr. Graham.

22 A Good afternoon.

23 Q Let me, let me, let me just say for the record,
24 I -- I -- my condolences to you.

25 Let's go back to when you first picked up Marcus

Shane Graham - Cross-Examination by Mr. Scott

1 and Squan. Now, were you ever at the bootleg; did you ever
2 spend any time at the bootleggers with them prior to you
3 meeting up with them?

4 A No, sir.

5 Q So the first time you saw them was not at the
6 bootlegger's place; it was like you were driving -- I think
7 you said you were driving and you kind of -- they were
8 walking, right?

9 A Yes, sir.

10 Q Okay. And then from there, whose idea was it to go
11 to Marcus's mother's house?

12 A Marcus.

13 Q So Marcus told you to go there. Did he tell you
14 why?

15 A To get gas money.

16 Q Did he tell you how much gas money he got?

17 A I believe he got sixty dollars.

18 Q Okay. So then you go to, you, you leave there and
19 Marcus tells you that you're going -- he wants to go see a
20 girl in a room at Days Inn, correct?

21 A Yes, sir.

22 Q And between Lake City and Florence, Marcus is on
23 the phone, you know he's talking to a girl based on the
24 conversation, correct?

25 A Yes, sir.

Shane Graham - Cross-Examination by Mr. Scott

1 Q But you don't know why Squan is on the phone?

2 A No, sir.

3 Q So you pull into Days Inn. You pulled in -- did
4 you back in or did you actually just pull in?

5 A Pulled straight in.

6 Q Pulled straight in, okay. So if you're pulling,
7 you pulled straight in, that means you would have been on
8 this side right here and Marcus would have been on this
9 side, correct?

10 A Correct. Yes, sir.

11 Q Okay. Now did you notice -- and I think you said
12 on direct, you said you noticed two people; that's what you
13 testified to today, you noticed two people?

14 A Yes.

15 Q Correct.

16 A Yes, sir.

17 Q Did one of those people, did you see them or hear
18 them at any time tap on the window?

19 A No, sir.

20 Q At any time did you see or did you hear Squan
21 motion for one of them to go around on the other side?

22 A No, sir.

23 Q So first thing that you knew, based on your
24 testimony, is that a guy comes to Marcus's side?

25 A Yes, sir.

Shane Graham - Cross-Examination by Mr. Scott

- 1 Q And he brandishes a gun?
- 2 A Yes, sir.
- 3 Q So if -- okay, I'm Marcus. All right. Okay. If
- 4 I'm Marcus and you saw -- was Marcus's window down?
- 5 A No, sir.
- 6 Q Well, how did, how did the person who brandished
- 7 the gun, how did they get in the car?
- 8 A They yanked the door open.
- 9 Q They yanked Marcus's door open?
- 10 A Yes, sir.
- 11 Q Which would have been the passenger door?
- 12 A Correct.
- 13 Q The person yanks it open, steps in and excuse me, I
- 14 know it's -- I'm not trying to -- I know it's traumatic,
- 15 but I'm just for illustration purposes -- so he, does he
- 16 brandish the gun directly to Marcus or does he brandish the
- 17 gun towards you?
- 18 A All of us.
- 19 Q When you say all of us, so kind of illustrate to me
- 20 how did he do it?
- 21 A He waved and pointed it front to back.
- 22 Q Front to back. He opens the door. Was he over
- 23 Marcus or was he like -- where was the gun in relationship
- 24 to Marcus; was it here, was it here or was it further over?
- 25 A More like towards his face.

Shane Graham - Cross-Examination by Mr. Scott

1 Q Toward Marcus's face, which would have been less on
2 Marcus so this would be if the gun was brandished like
3 this, correct?

4 A In front of his face, yes, sir.

5 Q In front of his face and then the next thing you
6 know, you heard shots?

7 A Correct.

8 Q And when you heard shots, you don't know who's
9 doing the shooting; you just go --

10 A Yes, sir.

11 Q And the next thing you know, you look up and Marcus
12 is face down on the ground?

13 A Yes, sir.

14 Q Were his feet still in the car or was his entire
15 body out of the car?

16 A I believe part of his foot was in the car.

17 Q One of them was or both?

18 A I can't recall how many.

19 Q Okay. So at that point, you don't see Squan
20 anymore?

21 A No, sir.

22 Q And you don't know who that person was who was
23 brandishing that weapon, do you?

24 A No, sir.

25 Q Had you ever met, had you ever met Curtis Joe

Shane Graham - Cross-Examination by Mr. Scott

1 before?

2 A No, sir.

3 Q Had you ever met Josh Carraway before?

4 A No, sir.

5 Q Had you ever met my client, Justin Simms, before?

6 A No, sir.

7 Q And as far as you knew, you didn't know anything
8 about Marcus and Squan drug dealing; you didn't know
9 anything about that?

10 A No, sir.

11 Q And you didn't have a gun?

12 A No, sir.

13 Q But you know about guns?

14 A Yes, sir.

15 Q Well let me ask you this. How do you know that was
16 a .38, I mean a .380? I'm sorry.

17 A It's by the shape of it.

18 Q What do you mean when you say by the shape of it, I
19 mean how --

20 A I mean it's, it's a handgun so all different
21 handguns have different sizes and shapes, different
22 calibers have different shape.

23 Q Okay. And you can just -- based on your knowledge,
24 you just know -- just by someone brandishing a weapon, you
25 can tell me what kind of caliber it is; is that what you're

Shane Graham - Cross-Examination by Mr. Scott

1 telling me?

2 A On some cases, yes, sir?

3 MR. SCOTT: Court's indulgence?

4 THE COURT: Yes, sir.

5 BY MR. SCOTT:

6 Q One last question. You said that he -- the -- the,
7 person opened Marcus's door; did you notice if the back
8 seat or the back door, passenger side door, was that
9 opened?

10 A No, sir.

11 THE COURT: No, sir, it wasn't or no, sir, you
12 didn't notice?

13 THE WITNESS: No, sir I didn't notice.

14 MR. SCOTT: Okay. Thank you. No further
15 questions.

16 THE COURT: Redirect?

17 MR. CLEMENTS: None, Your Honor.

18 THE COURT: Okay. Thank you.

19 MR. CLEMENTS: If we could release him from his
20 subpoena, please.

21 MR. SCOTT: I have no objection.

22 THE COURT: Thank you. Yes, sir.

23 MR. CLEMENTS: May we approach, Your Honor?

24 THE COURT: Yes, sir.

25 (WHEREUPON there was a bench conference out of the

1 hearing of the jury and the court reporter.)

2 THE COURT: All right. Mr. Foreman, ladies and
3 gentlemen of the jury, the Solicitor and Mr. Scott tells me
4 the next witness will be rather lengthy and if you recall I
5 like to start and finish a witness without breaking,
6 particularly without breaking for lunch. So I think we'll
7 take our luncheon recess at this time.

8 I remind you during this recess, you're not to
9 discuss this case with anyone including your fellow jurors,
10 lunchmates, family, friends or anyone else. Do not watch,
11 listen to or read any news reports about the case should
12 there be any. Do not use your computer or cellular phone
13 or any other electronic device with communication
14 capabilities to research any prohibited information, which
15 includes, but is not limited to the following: Information
16 about a party, a witness, an attorney or Court Officer,
17 news accounts of the case, information collected through
18 juror research on any topics raised or testimony offered by
19 any witness or information collected through juror research
20 on any other topic that the juror might think would be
21 helpful in deciding the case.

22 Remember to keep an open mind. Do not begin your
23 deliberations until you've heard all the evidence, all the
24 testimony, closing arguments by the attorneys and
25 instruction on the law by The Court and then directed by

1 the Court to be free to go to deliberations.

2 With that being said, if you'd please be back at
3 1:15. If you'd please be back promptly at 1:15. Thank
4 you. I hope y'all have a pleasant lunch.

5 (WHEREUPON the jury left the courtroom at 12:02
6 p.m.)

7 THE COURT: Anything further from the State before
8 we take our recess?

9 MR. CLEMENTS: No, Your Honor, thank you.

10 THE COURT: Defense?

11 MR. SCOTT: No, thank you. No, Your Honor.

12 THE COURT: All right. 1:15. Thank you very much.

13 (WHEREUPON Court observed a lunch recess.)

14 THE COURT: Anything before we bring in our jury
15 from the State?

16 MR. CLEMENTS: Nothing from the State, Your Honor.

17 THE COURT: Defense?

18 MR. SCOTT: Nothing, Your Honor.

19 THE COURT: Is the jury back?

20 THE BAILIFF: Yes, sir.

21 THE COURT: Please bring them in.

22 (WHEREUPON the jury entered the courtroom at 1:18
23 p.m.)

24 THE COURT: All right. Welcome back, ladies and
25 gentlemen. Hope y'all had a pleasant lunch. We're

Joshua L. Carraway - Direct Examination by Mr. Clements

1 continuing the trial by the presentation of evidence and
2 testimony by the State in its case in chief. If you would,
3 please continue to give the parties your complete and
4 undivided attention.

5 Solicitor, you may call your next witness.

6 MR. CLEMENTS: Thank you, Your Honor. If it please
7 the Court, we'd call Joshua Laverne Carraway.

8 THE COURT: All right. If you would come around
9 and be sworn for me, please, to my front right, Mr.
10 Carraway.

11 THE CLERK: Stop right there.

12 THE COURT: Stop right there.

13 JOSHUA LAVERNE CARRAWAY, HAVING BEEN SWORN
14 TESTIFIES AS FOLLOWS:

15 THE CLERK: Please be seated in the witness chair.
16 State your name for the record.

17 THE COURT: Joshua Laverne Carraway.

18 **DIRECT EXAMINATION**

19 BY MR. CLEMENTS:

20 Q Mr. Carraway, if you'll continue to speak up good
21 into that microphone like that and everything will be all
22 right. If I talk too fast or you don't understand one of
23 my questions, if you ask I'll rephrase it, okay?

24 A Yes, sir.

25 Q All right. Also sometimes we have a tendency to

Joshua L. Carraway - Direct Examination by Mr. Clements

1 say uh-huh and hu-huh. The Court Reporter has got to take
2 it down so say yes or no, okay?

3 Mr. Carraway, where are you from?

4 A Darlington.

5 Q You still live there?

6 A Yes, sir.

7 Q How old are you?

8 A 27.

9 Q You lived there in Darlington all your life?

10 A Yes, sir.

11 Q Did you know a fellow by the name of Squan Davis,
12 also known as Sliceey?

13 A No, sir.

14 Q Did you know a fellow by the name of Marcus Weaver?

15 A No, sir.

16 Q Do you know anybody by the name of Shane Graham?

17 A No, sir.

18 Q Do you know a fellow by the name of Curtis Joe,
19 Jr.?

20 A Yes, sir.

21 Q How long have you known Curtis Joe?

22 A About all my life.

23 Q About all your life. How about a Justin Simms; you
24 know a fellow by the name of Justin Simms?

25 A Yes, sir.

Joshua L. Carraway - Direct Examination by Mr. Clements

1 Q How long have you known Justin Simms?

2 A For a while.

3 Q For a while. Months? years?

4 A A couple of years.

5 Q All right. Do you see him in this courtroom today?

6 A Yes, sir.

7 Q Can you please point him out for me?

8 A That's him.

9 Q Which one?

10 A The one over there.

11 Q All right. Thank you.

12 MR. CLEMENTS: Let the record reflect he's
13 identified the Defendant.

14 BY MR. CLEMENTS:

15 Q Mr. Carraway, do you remember what you were doing
16 and where you were on January 10th, 2010?

17 A Yes, sir.

18 Q Could you please tell this jury what you were doing
19 and who you were with?

20 A On January the 10th, I was with Justin Simms and
21 Curtis. We was going to rob Marcus and them at Days Inn.
22 They wanted, they called Curtis's phone and they wanted to
23 buy a pound of marijuana and we got there, we ain't never
24 had the marijuana. We was going to rob them for the money
25 and leave.

Joshua L. Carraway - Direct Examination by Mr. Clements

1 Q Who were you with first that day, Justin or Curtis?

2 A Justin.

3 Q Justin; how did you and Justin get up with Curtis?

4 A Curtis called.

5 Q Curtis called you; did he call you or did he call
6 Justin?

7 A He called both of us.

8 Q He called both of you. Where did y'all meet up
9 with Curtis at?

10 A He pick us up from Darlington.

11 Q He picked you up from Darlington?

12 A Yes, sir.

13 Q And where did you go?

14 A To Florence, to Days Inn.

15 Q Y'all went straight to the Days Inn?

16 A Yes, sir.

17 Q At that time, did you know, did y'all have any
18 marijuana with y'all in the car?

19 A We was smoking on the way.

20 Q Smoking, a little bit to smoke. Was that enough to
21 sell?

22 A No, sir.

23 Q Now -- and at the time y'all went to the Days Inn,
24 about what time of day or night was it, if you recall?

25 A Like 11 o'clock.

Joshua L. Carraway - Direct Examination by Mr. Clements

- 1 Q About 11 o'clock?
- 2 A Yes, sir.
- 3 Q In the evening or daytime?
- 4 A Nighttime.
- 5 Q Nighttime. And do you recall how you were dressed?
- 6 A I had some big jeans, a jacket and some, some
- 7 Jordan shoes.
- 8 Q Jordan Nike shoes?
- 9 A Yes, sir.
- 10 Q Now, when y'all pulled into the Days Inn, which
- 11 side of the Days Inn did you pull into, the Florence side
- 12 or the Darlington side?
- 13 A We pulled in on the Florence side and we pulled
- 14 around to the Darlington side.
- 15 Q Pulled around to the Darlington side?
- 16 A Uh-huh.
- 17 Q All right. What was this -- what was the
- 18 discussion going on at that time, if any, in the car?
- 19 A Curtis was on the phone with them talking to them
- 20 and he said it was three guys in the car and he was about
- 21 to leave and I told him just go ahead and stop.
- 22 Q All right. And where did he stop at?
- 23 A On the Darlington side.
- 24 Q The Darlington side of the Days Inn?
- 25 A Yes, sir.

Joshua L. Carraway - Direct Examination by Mr. Clements

1 Q And when he stopped, then what, what kind of
2 conversation, if any, did y'all have?

3 A I just told him we was about to go ahead and go
4 ahead -- go through with it.

5 Q You were going to go ahead and go through with it;
6 that's what you told Curtis?

7 A Yes, sir.

8 Q All right. And what did you do?

9 A Me and Justin got out the car. I had a grocery
10 bag, I put a coat inside a grocery bag and put it inside my
11 coat to make it look like I had marijuana.

12 Q A grocery bag was what, a brown paper grocery bag
13 or a plastic?

14 A Plastic bag.

15 Q What did it look like?

16 A It was white and red.

17 Q White and red. And what did you put in it?

18 A A coat.

19 Q What kind of coat?

20 A Like a little thin coat.

21 Q A little thin coat?

22 A Yes, sir.

23 Q How did you put it in there to make it look like
24 marijuana?

25 A I folded it up.

Joshua L. Carraway - Direct Examination by Mr. Clements

- 1 Q All right?
- 2 A Like the weed was inside it.
- 3 Q Okay. And what did you do with that package that
- 4 you folded up and put together?
- 5 A Put it inside my coat.
- 6 Q Put it inside your coat?
- 7 A Yes, sir.
- 8 Q All right. How were you armed, if you were armed?
- 9 A I just had a cell phone in my hand, I wasn't never
- 10 armed.
- 11 Q You wasn't never armed?
- 12 A No, sir.
- 13 Q Well, was Justin armed?
- 14 A Yes, sir.
- 15 Q What -- how was he armed?
- 16 A He had .380 Hi-Point.
- 17 Q A .380 Hi-Point?
- 18 A Yes, sir.
- 19 Q Do you know what color it was?
- 20 A It was silver and black.
- 21 Q Silver and black; did you see it?
- 22 A Yes, sir.
- 23 Q Had you seen it before that day?
- 24 A Yes, sir.
- 25 Q What conversation did you have with Justin about

Joshua L. Carraway - Direct Examination by Mr. Clements

1 that gun?

2 A I had asked him to use the gun.

3 Q You asked him for you to use the gun?

4 A Yes, sir.

5 Q What did he say?

6 A No, he said that he was going with me.

7 Q Okay. Now, when you went to the Lake City boys'
8 car, you didn't know any of them, did you?

9 A No, sir.

10 Q Did you know what kind of car they were in?

11 A I think it was a Honda.

12 Q You think it was a Honda; what color was it?

13 A Black.

14 Q Black. Okay. You think you'd remember it if you
15 saw a picture of it?

16 A Yes, sir.

17 Q I'm going to show you what's been marked as State's
18 Exhibit No. 7; do you recognize that?

19 A Yes, sir.

20 Q What is that?

21 A It look like a Honda.

22 Q It look like a Honda?

23 A Yeah.

24 Q It ain't a Honda; it's a, would it surprise you if
25 I told you it was a Ford?

Joshua L. Carraway - Direct Examination by Mr. Clements

1 A I ain't really paid it too much attention to the
2 car.

3 THE COURT: Speak up now; when you get closer your
4 voice tends to drop a little.

5 THE WITNESS: I ain't really paid too much
6 attention to the car.

7 BY MR. CLEMENTS:

8 Q But do you recognize this car?

9 A Yes, sir.

10 Q How do you recognize this car?

11 A The car I got in.

12 Q That's the car you got in and where did you get in
13 the car at?

14 A Behind the passenger door.

15 Q Can you point out where?

16 A Right here.

17 Q Okay. I'm famous for shuffling them up; make sure
18 I've got it in the right spot. Josh, can you tell the jury
19 exactly to the best of your recollection what y'all did
20 when -- well, let me ask you this first. Where were you
21 sitting at in Curtis's car?

22 A In the back seat.

23 Q In the back seat?

24 A Yes, sir.

25 Q And where was Justin sitting?

Joshua L. Carraway - Direct Examination by Mr. Clements

1 A In the front seat.

2 Q Okay. Can you tell us what you did when you got
3 out of that car, where you went, what direction you took,
4 what direction Justin took; tell the jury that please.

5 A When I got out the car when we was going to the car
6 to meet Marcus and them, we walked through the walkway
7 together. So I went and got in the car by myself; Justin
8 stayed in the walkway. When I got in the car, I walked
9 around the car behind the car and got in behind Marcus.
10 When I got in behind Marcus, I shut my door.

11 Q All right. And what did, what did Justin do?

12 A Justin came around the front of the car, no, behind
13 the car, when he came behind the car, he opened the door.

14 Q Which door?

15 A He opened my door first.

16 Q Opened your door first?

17 A Yes, sir.

18 Q Did he slowly open it or did he jerk it open quick;
19 what happened?

20 A He just opened it.

21 Q All right. Then what did he do next?

22 A He went to the passenger door and opened the
23 passenger door.

24 Q He opened it on the front or the back?

25 A The front behind.

Joshua L. Carraway - Direct Examination by Mr. Clements

- 1 Q So that was Marcus's door?
- 2 A Yes.
- 3 Q All right. You keep saying you're going to the car
- 4 where Marcus and them are, did you know Marcus?
- 5 A No, I didn't know Marcus.
- 6 Q Well, how do you know his name so well now?
- 7 A I just know his name.
- 8 Q All right. You had some time to learn his name
- 9 from the time this happened until now, right?
- 10 A Yes, sir.
- 11 Q Now you say you got in which seat?
- 12 A Behind Marcus, behind the passenger seat.
- 13 Q And when you got in that back seat, what did you
- 14 say and what did you do?
- 15 A I asked them to let me see the money and they
- 16 asked, they wanted to see the weed. I told him the weed
- 17 was straight; I wanted to make sure the money wasn't
- 18 counterfeit. Marcus was turned around in the seat looking
- 19 at me and wanted me to pull the weed out, but I ain't never
- 20 had pulled it out.
- 21 Q And what was Squan doing?
- 22 A He was just sitting there.
- 23 Q Where?
- 24 A Squan was in the back seat beside me.
- 25 Q Was that a small backseat or a large backseat?

Joshua L. Carraway - Direct Examination by Mr. Clements

1 A Kind of small.

2 Q All right. And did that happen before or after
3 Justin yanked open the door?

4 A Well, when Justin yanked open the door and he put
5 the gun in the car, I had hit Squan in the head with my
6 cell phone.

7 Q Okay.

8 A And when it started the gunfire, I just jumped out
9 the car and ran.

10 Q You jumped out the car and ran; when you heard the
11 gunfire was your door open or shut?

12 A It was open.

13 Q Can you tell where the gunfire came from?

14 A No, sir.

15 Q Do you know who fired the first shot?

16 A I think it was Marcus.

17 Q Do you know that for a fact though?

18 A No, sir.

19 Q And you jumped out the car and ran; which direction
20 did you run in?

21 A Straight to the back of the hotel.

22 Q Did you go through by the doors or did you on the
23 other side of the parking lot?

24 A I just ran straight in the parking lot.

25 Q Straight in the parking lot?

Joshua L. Carraway - Direct Examination by Mr. Clements

- 1 A Yes, sir.
- 2 Q And what did you find at the back of the parking
3 lot?
- 4 A I jumped across the gate, a fence back there in the
5 back.
- 6 Q What kind of fence was it?
- 7 A A wooden fence.
- 8 Q A wooden fence. And between that car and that
9 wooden fence, did anything happen to you?
- 10 A Yeah, I got shot.
- 11 Q You got shot where?
- 12 A In the foot and the leg.
- 13 Q In the foot and in the leg?
- 14 A Yes, sir.
- 15 Q And what did you do?
- 16 A I laid down. Once I jumped the gate, I laid down,
17 I seen the car leaving and I jumped back across the gate
18 and I went to the front of the hotel.
- 19 Q And when you went to the front of the hotel and you
20 saw them leave, what did you do?
- 21 A Well, the girl up front, I was trying to call a
22 ride, but she had called the ambulance for me; she said I
23 was bleeding.
- 24 Q All right. Where were you hit at exactly?
- 25 A In the bottom of my leg and in the bottom of my

Joshua L. Carraway - Direct Examination by Mr. Clements

1 foot.

2 Q All right. And what did you, after she called the
3 ambulance, what did you do?

4 A Stayed there until the ambulance came and they took
5 me to the hospital and the police came up there and
6 questioned me and put bags on my hands and took gun residue
7 off my hands and took my clothes and they let me go home.

8 Q They let you go home?

9 A Yes, sir.

10 Q They thought you were just a victim, didn't they?

11 A Yes, sir.

12 Q When you were at the office there at the front of
13 the Days Inn, did you talk to any law enforcement officers
14 there?

15 A No, sir.

16 Q Nobody?

17 A No, sir.

18 Q Okay. Just the EMS?

19 A Yes, sir.

20 Q Were the officers around at that time?

21 A Yes, sir.

22 Q They were, they were standing around?

23 I'm going to show you what's been marked State's
24 Exhibit No. 50. Do you recognize this?

25 A Yes, sir.

Joshua L. Carraway - Direct Examination by Mr. Clements

- 1 Q What is that?
- 2 A My shoe.
- 3 Q Which shoe is this?
- 4 A Left shoe.
- 5 Q Which foot did you get shot in?
- 6 A My left, my left foot.
- 7 Q All right. Any holes in that shoe?
- 8 A Yes, sir.
- 9 Q Is that where you got struck?
- 10 A Yes, sir.
- 11 Q I'm going to show you State's Exhibit 49; what is
- 12 that?
- 13 A My right shoe.
- 14 Q Your right shoe. How'd you -- State's Exhibit
- 15 Fifty, your left shoe, where you got shot, how did that
- 16 wind up staying at the Days Inn scene?
- 17 A I think I took the shoe off. I took the shoe off
- 18 when I got to the front office there.
- 19 Q And left it there?
- 20 A Yes, sir.
- 21 Q And the other shoe, where did you wear it to?
- 22 A To the hospital.
- 23 Q Okay. I'm going to show you a few pictures and ask
- 24 if you can identify these. State's Exhibit 44, do you
- 25 recognize that at all; do you know what that is?

Joshua L. Carraway - Direct Examination by Mr. Clements

1 A A battery to a cell phone.

2 Q A battery to a cell phone, okay. This is State's
3 Exhibit 43, do you know what that is?

4 A Yes, sir.

5 Q What is it?

6 A My cell phone.

7 Q Your cell phone?

8 A Yes, sir.

9 Q State's Exhibit 43 and State's Exhibit 44, does
10 that battery in State's Exhibit 44, where does that go to?

11 A To my cell phone.

12 Q Okay. And what did you do with your cell phone?

13 A I had dropped it.

14 Q You dropped it?

15 A Yes, sir.

16 Q When?

17 A When I was running, when I jumped out the car.

18 Q Did you drop anything else that you know of?

19 A My charger and a lighter and the bag.

20 Q And the bag, did you drop it outside the car or
21 inside the car or do you know?

22 A I can't remember, but I think I dropped the bag
23 inside the car.

24 Q All right. I'm going to show you State's Exhibit
25 Number 39, do you recognize that?

Joshua L. Carraway - Direct Examination by Mr. Clements

- 1 A Yes, sir.
- 2 Q What is that?
- 3 A My phone charger.
- 4 Q Well, how do you know it's your phone charger?
- 5 A Because I had it on me.
- 6 Q You had it on you at that time?
- 7 A Yes, sir.
- 8 Q And you know where it happen -- where it ended up;
- 9 what happened to it?
- 10 A No, I didn't know I dropped it.
- 11 Q You didn't know?
- 12 A No, sir.
- 13 Q I'm going to show you what's been marked as State's
- 14 Exhibit 35, and it's got some markers on there, one No. 13;
- 15 do you know what's there at that marker No. 13?
- 16 A No, sir.
- 17 Q You don't know what that is?
- 18 A It look like a cell phone.
- 19 Q It looks like a cell phone?
- 20 A Yes, sir.
- 21 Q How about, well I don't have a picture of that.
- 22 How about No. 14 there; can you tell what's on No. 14
- 23 there?
- 24 A The battery. It look like a battery.
- 25 Q That looks like the battery or how about No. 15,

Joshua L. Carraway - Direct Examination by Mr. Clements

1 what does that look like?

2 A Well, the battery look like No. 15. That's a
3 lighter on No. 14.

4 Q That's a lighter in No. 14?

5 A Yes, sir.

6 Q What color is that lighter; do you know?

7 A It look purple.

8 Q Well, did you have a lighter on you?

9 A Yes, sir.

10 Q What color?

11 A Purple.

12 Q All right. Just bear with me.

13 I'm going to show you what's been marked as State's
14 Exhibit 27. Do you recognize that?

15 A Yes, sir.

16 Q What is that?

17 A The back of Days Inn where I ran to.

18 Q The back of Days Inn where you ran to?

19 A Yes, sir.

20 Q All right. How about State's Exhibit 28, do you
21 recognize that?

22 A Yes, sir, that's the fence that I jumped behind
23 Days Inn.

24 Q Okay. I'm going to show you State's Exhibit Number
25 22, do you recognize that?

Joshua L. Carraway - Direct Examination by Mr. Clements

- 1 A Yes, sir.
- 2 Q Who is that?
- 3 A Me.
- 4 Q What's that on your hands there?
- 5 A Bags that the police put on my hands.
- 6 Q All right. And when did they put those on you?
- 7 A Time I got to the hospital.
- 8 Q Time you got to the hospital?
- 9 A Yes, sir.
- 10 Q Before then, did you go to the bathroom?
- 11 A No, sir.
- 12 Q Did you wipe off your hands or wash your hands or
- 13 do anything to your hands between the incident happening
- 14 and them putting those bags on your hands?
- 15 A No, sir.
- 16 Q I'm going to show you what's been marked as State's
- 17 Exhibit 13. Do you recognize that at all?
- 18 A Yes, sir, that's the bag I had in my coat.
- 19 Q That's the bag you had in your coat?
- 20 A Yes, sir.
- 21 Q And what were you trying to make that bag look
- 22 like?
- 23 A Marijuana.
- 24 Q And do you know where that bag's located in this
- 25 picture?

Joshua L. Carraway - Direct Examination by Mr. Clements

1 A In Marcus car.

2 Q Okay. I show you State's Exhibit No. 9, do you
3 recognize anything there?

4 A Nothing but the bag.

5 Q All right. Now you said you were shot in the leg
6 and in the foot?

7 A Yes, sir.

8 Q Do you know when you got shot; was it while you
9 were still in the car or right after you exited the car or
10 closer down towards the fence? Do you know when you got
11 hit?

12 A No, sir.

13 Q Why don't you know when you got hit?

14 A I was so scared I ain't even noticed till I got to
15 the front desk.

16 Q You didn't know until you got to the front desk?

17 A No, sir.

18 Q Well, were you limping or anything or in pain,
19 feeling any burning or anything like that?

20 A Not until I sit down at the front desk until the
21 ambulance came.

22 Q All right. What did it sound like when you were
23 sitting in that car and the guns started going off?

24 A Sound like a lot of shooting; it was a lot of
25 shooting.

Joshua L. Carraway - Direct Examination by Mr. Clements

- 1 Q How loud was it in that car?
- 2 A It was real loud.
- 3 Q All right. Did you see who shot?
- 4 A No, sir.
- 5 Q So you can't tell when Marcus shot; you can't tell
- 6 if Justin shot?
- 7 A No, sir.
- 8 Q All right. Other than the .380 that you saw Justin
- 9 with did you see any other gun?
- 10 A No, sir.
- 11 Q Okay. When you got to the hospital, did law
- 12 enforcement -- they taped up your hands and then they did a
- 13 gunshot residue test on you?
- 14 A Yes, sir.
- 15 Q Can you tell the jury what they did when they did
- 16 that test?
- 17 A Well, they took my hands out the bag one by one,
- 18 they took out some powder stuff and put on each finger,
- 19 rubbed my hands around, both hands.
- 20 Q Front and back?
- 21 A Yes, sir.
- 22 Q Did law enforcement talk to you?
- 23 A Yes, sir.
- 24 Q Who talked to you?
- 25 A I can't remember his name.

Joshua L. Carraway - Direct Examination by Mr. Clements

1 Q Do you see him in the courtroom?

2 A No. No, sir.

3 Q All right. And you can't tell whether he was --
4 was he a white man or an African American man?

5 A He was a white man.

6 Q Older, younger?

7 A Kind of old.

8 Q Kind of old about like me?

9 A Not like you, but he was kind of older.

10 Q Okay. All right. Did you talk to him?

11 A Yes, sir.

12 Q And did you tell him the truth?

13 A No, sir.

14 Q Why not?

15 A I was scared.

16 Q Did -- did -- did it seem like to you that anybody
17 was suspicious of you at that time?

18 A No, sir.

19 Q All right. And so you didn't tell them what really
20 happened?

21 A No, sir.

22 Q Did you have an occasion to talk to law enforcement
23 later?

24 A Yes, sir.

25 Q Who did you talk to then?

Joshua L. Carraway - Direct Examination by Mr. Clements

- 1 A Mr. McFadden and the guy right over there by you.
- 2 Q Investigator Cox?
- 3 A Yes, sir.
- 4 Q Is he, do you think he might have been the person
- 5 you talked to the hospital?
- 6 A No, that weren't him.
- 7 Q That wasn't him? All right. When you talked to
- 8 Mr. McFadden, how -- how did y'all talk, where did y'all
- 9 talk?
- 10 A Mr. McFadden and them came, they came to my house
- 11 to talk to me.
- 12 Q All right. And were you truthful with them then?
- 13 A No, sir.
- 14 Q Did they search your house at that time?
- 15 A Yes, sir.
- 16 Q Y'all give them consent to search?
- 17 A Yes, sir.
- 18 Q All right. Did they find anything?
- 19 A No, sir.
- 20 Q Why weren't you truthful with them then at that
- 21 time?
- 22 A I was scared and nervous.
- 23 Q Were you a suspect then?
- 24 A Yes, sir.
- 25 Q What -- ultimately after that, after they talked to

Joshua L. Carraway - Direct Examination by Mr. Clements

1 you, what did they do to you?

2 A They just questioning me about, give me the names
3 of telling them who I was with.

4 Q When you first got asked that, were you honest?

5 A No, sir, I give them some fake names. I guess they
6 found the people whose names that was fake that I give
7 them, questioned them and they came back and talked to me
8 and told me I was lying and then I told them the truth
9 about the names.

10 Q They got on you pretty good in front of your mom,
11 didn't they?

12 A Yes, sir.

13 Q About lying?

14 A Yes, sir.

15 Q Did you ultimately tell them who was with you?

16 A Yes, sir.

17 Q But did you tell them all the truth then?

18 A No, sir.

19 Q Who did you tell them was with you that time?

20 A I just told them it was me and Curtis and Justin.

21 Q All right. Was that who it was?

22 A Yes, sir.

23 Q But you didn't tell them all the truth?

24 A No, sir.

25 Q When were you arrested?

Joshua L. Carraway - Direct Examination by Mr. Clements

- 1 A Like on the 14th.
- 2 Q 14th of January?
- 3 A Yes, sir.
- 4 Q And when did they talk to you at your house?
- 5 A On the -- they came and searched on the 13th.
- 6 Q And they came back and arrested you?
- 7 A Yes, sir.
- 8 Q Came to you your house, picked you up?
- 9 A Yes, sir.
- 10 Q And did you give a taped, a recorded statement to
- 11 Investigator McFadden?
- 12 A Yes, sir.
- 13 Q What did you tell him then?
- 14 A I told him everything that happened, but I think I
- 15 still lied on the tape though.
- 16 Q What do you think you lied about?
- 17 A About the marijuana, what we was going there to do.
- 18 Q Were -- were you trying to act like y'all were
- 19 really selling marijuana?
- 20 A Yes, sir.
- 21 Q Were you really selling marijuana?
- 22 A No, sir.
- 23 Q What were you doing?
- 24 A Going to rob them.
- 25 Q All right. Did, did Mr. McFadden and Mr. Cox, did

Joshua L. Carraway - Direct Examination by Mr. Clements

1 they ever show you any pictures of anybody?

2 A No, no, sir.

3 Q Okay. And you didn't know any of the Lake City
4 boys?

5 A No, sir.

6 Q When you went to the hospital, you didn't have a
7 cell phone with you then, did you?

8 A No, sir.

9 Q When, if ever, did you talk to Curtis Joe and
10 Justin Simms about this incident? When was the first time
11 you talked with them after this incident occurred and what
12 did y'all talk about?

13 A Well, I ain't never talked to Curtis like that. I
14 had talked to Justin like the next day after I got out the
15 hospital.

16 Q The next day you talked to Justin?

17 A Yeah.

18 Q What did y'all talk about?

19 A He was basically questioning me, asking me what
20 they said, did I tell on them and stuff like that.

21 Q All right. What did he say about anybody getting
22 shot?

23 A Just like when he put the gun in the car and when
24 Marcus shot he just pulled the trigger and it had jammed on
25 the first shot and he ran.

Joshua L. Carraway - Direct Examination by Mr. Clements

- 1 Q All right. So let me be sure I understand what
2 you're saying. When you said after Marcus shot, he pulled
3 the trigger; who pulled the trigger?
- 4 A Justin pulled the trigger.
- 5 Q How many times did he fire the gun?
- 6 A One.
- 7 Q And what happened after he fired the gun that first
8 time?
- 9 A It jammed.
- 10 Q And what did he say he did?
- 11 A He said he just ran too.
- 12 Q And what did he say he did with the gun?
- 13 A He say he buried it.
- 14 Q What about the clothes he had on?
- 15 A He burnt that up.
- 16 Q And what did he say about talking to anybody?
- 17 A Just like don't tell on them, you know what I'm
18 saying? It was real, don't tell on them.
- 19 Q Josh?
- 20 A Yes, sir.
- 21 Q You lied to the EMS people with the police standing
22 around at the Days Inn, didn't you?
- 23 A Yes, sir.
- 24 Q Then at the hospital, you didn't tell the truth?
- 25 A Yes, sir.

Joshua L. Carraway - Direct Examination by Mr. Clements

1 Q And when Investigator Cox talked to you and
2 Investigator McFadden, you didn't tell the truth?

3 A No, sir.

4 Q And then you gave a recorded statement and you
5 didn't tell all the truth then?

6 A No, sir.

7 Q Is there anything, and if there is, I want you to
8 tell it today in front of this jury, is there anything
9 you're holding back about what you did?

10 A No, sir.

11 Q You telling this jury the truth?

12 A I'm telling the truth.

13 Q What was your intentions when you went to that car?

14 A To rob Marcus and them and take the money.

15 Q And who was with you?

16 A Justin Simms.

17 Q And was he doing that with you?

18 A Yes, sir.

19 Q So he planned on doing the same thing together with
20 you?

21 A Yes, sir.

22 Q Has any promises been made to you today for
23 anything, for your testifying?

24 A No, sir.

25 Q What do you have to do?

Joshua L. Carraway - Cross-Examination by Mr. Scott

1 A Tell the truth. I'm just trying to get this behind
2 me and tell the truth so I can get on with my life.

3 Q Even if it means prison time?

4 A Yes, sir.

5 Q Josh, I want you to answer every question Mr. Scott
6 asks you.

7 A Yes, sir.

8 THE COURT: Thank you. Thank you, Solicitor.

9 Mr. Scott.

10 MR. SCOTT: Court's indulgence.

11 THE COURT: Yes, sir.

12 (WHEREUPON there was a pause in the proceedings.)

13 CROSS-EXAMINATION

14 BY MR. SCOTT:

15 Q Good afternoon, Mr. Carraway?

16 A Good afternoon.

17 Q How long have you know Justin again?

18 A A couple of years.

19 Q On this night in question, when you were at the
20 Emergency Room, did you give a statement to the police at
21 that time?

22 A Not that I recall. No, they ain't never wrote
23 nothing down.

24 Q Now that day, going back to January the 10th, 2here
25 did you say you were again?

Joshua L. Carraway - Cross-Examination by Mr. Scott

1 A With Justin Simms and Curtis.

2 Q Had you been with Justin Simms --

3 A Earlier, yeah.

4 Q -- and Curtis Joe all day?

5 A No, me and Justin was together all day.

6 Q You and Justin were together?

7 A And Curtis picked us up.

8 Q And Curtis picked you up. Did you know about the
9 drug deal before Curtis picked you up?

10 A Well, he told me that somebody wanted to buy some
11 weed and we can rob them. He had called my phone.

12 Q So Curtis Joe told you that you all could rob some
13 boys?

14 A Yes, sir.

15 Q From Lake City?

16 A Yes, sir.

17 Q So let me -- let me make sure I've got this
18 straight. So your testimony here today to this jury and
19 this Court is that all of you all knew that you were going
20 to rob the boys from Lake City prior to even getting to the
21 Days Inn?

22 A Yes, sir.

23 Q Okay. Now when you pulled in, you were in the back
24 seat?

25 A Yes, sir.

Joshua L. Carraway - Cross-Examination by Mr. Scott

1 Q Now, if Curtis was the one who set up the deal, do
2 you know why he didn't go with you?

3 A No, I don't know why.

4 Q So he just set up the deal and said, Josh, I'm
5 going to let you handle it?

6 A I was supposed to go to the car with the weed, like
7 I had the weed, give the weed and pull out the money, I was
8 suppose to take the money and run.

9 Q Okay. We got that part, but my question is -- is,
10 if Curtis Joe set it up and if you all were going to rob
11 them as you testified here today, Curtis Joe didn't tell
12 you why he decided not to go and to just let you go and
13 allegedly let my client go?

14 A No, sir.

15 Q There was no conversation about him going with you?

16 A No, he just said he was going to wait till we get
17 back and he stayed in the car.

18 Q That's when you got out. That what you're telling
19 this Court today, and you had a -- you had a bag that you,
20 you were kind of faking like you had the weed in the bag?

21 A Yes, sir.

22 Q But you didn't have a gun?

23 A No, sir.

24 Q That night you saw my client with a gun?

25 A Yes, sir.

Joshua L. Carraway - Cross-Examination by Mr. Scott

1 Q When did you first see the gun that night?

2 A I been seen the gun. He been had the gun.

3 Q Okay. Maybe you don't understand my question. Let
4 me -- let me try to ask it again. That particular night in
5 question, when did you see my client with a weapon?

6 A Before we left to get in the car with Curtis.

7 Q How did you see it; explain to the jury how -- how
8 you saw that, that weapon?

9 A Well, before when Curtis called me to go rob Marcus
10 and them, he was like do you got a gun? I was like no,
11 Justin got one. I can see if Justin will let me use his
12 gun. Justin wouldn't let me take his gun. He said he was
13 going too.

14 Q What you're telling this jury today, what you just
15 told them about seeing this weapon, did you tell that to
16 Officer McFadden at any time throughout this entire
17 investigation?

18 A No, sir, I don't think so.

19 Q Did you tell Officer McFadden anything about, prior
20 to today, did you tell Officer McFadden anything about when
21 you all were getting ready to go to Days Inn that you all
22 had a conscious plan to rob the boys from Lake City?

23 A Yes, sir.

24 Q You did?

25 A Yes, sir.

Joshua L. Carraway - Cross-Examination by Mr. Scott

1 Q When did you tell him that?

2 A After, after I done got arrested and stuff and he
3 came and talked to me in my holding cell. He got me out my
4 holding cell and took me to the room and I told him.

5 Q You told him that all y'all boys decided to do
6 that?

7 A Yes, sir.

8 Q Do you recall the first version, you've already
9 testified that you lied the first time that you -- you were
10 questioned, correct?

11 A Yes, sir.

12 Q Do you recall and can you tell the jury, if you can
13 recall, specifically what you said about the incident or in
14 other words, what was your version at the time when you
15 were first questioned?

16 A I just told them that I was out there trying to buy
17 some weed and I just got shot; that I ain't know nobody and
18 I ain't knowed who nobody was.

19 Q And this was done at the hospital; is that correct?

20 A Yes, sir.

21 Q And you gave those statements?

22 A Yes, sir.

23 MR. SCOTT: I move to make this Defendant's Exhibit
24 No. 2 for the record?

25 MR. CLEMENTS: No objection.

Joshua L. Carraway - Cross-Examination by Mr. Scott

1 MR. SCOTT: May I approach, Your Honor.

2 THE COURT: Certainly.

3 BY MR. SCOTT:

4 Q If you would, Mr. Carraway, I want you to tell me
5 is -- is that your signature right there?

6 A Yes, sir.

7 Q And what is the time on this if you can see?

8 A 1:15 p.m.

9 Q Okay. Now, what I want you to do is review that
10 and see if you recall giving that statement to the
11 investigators?

12 A Yes, sir.

13 Q Now, what I want you to do is, just -- you can use
14 this as a reference. I want you to turn to page two,
15 bottom of page two. I'm sorry. You see the numbered
16 pages -- page -- yeah, right there. And if you would, I
17 want you to, at the bottom of page two, and I'm right here,
18 you can just, I'm right here at the bottom and apparently
19 this statement was -- the person who took this statement
20 from you was Investigator Cox according to this particular
21 statement; is that right?

22 A Yes, sir.

23 Q Now, Investigator Cox asked you he said, All right.
24 Tell me what took place tonight at Days Inn and who was
25 with you and when you got there. And what did you say?

Joshua L. Carraway - Cross-Examination by Mr. Scott

1 You can read it for the jury. Yes, sir.

2 A I said, All right, Jermaine was driving and Curtis
3 was in the --

4 Q I'm sorry, if you would just speak up louder for
5 the jury please.

6 A It said, All right. Jermaine was driving and
7 Curtis was in the --

8 Q And Investigator Cox said, Jermaine who. And who
9 do you say?

10 A Jermaine Jones.

11 Q Which that was a lie, wasn't it?

12 A Yes, sir.

13 Q Flip over to page three. And right here at the
14 bottom, right here, right there after Investigator Cox
15 asked you, he said, Who was the guy's name? And what did
16 you say?

17 A Where you at now? Right here?

18 Q Who was the guy's name and you said what? Read it
19 for the jury, please.

20 A Me and Jermaine was going to meet some girl and
21 Curtis had to, um, meet some guys at motel, at Days Inn.

22 Q Keep going.

23 A And he had got out the car and started talking
24 to --

25 Q So at this time, you told the investigator that

Joshua L. Carraway - Cross-Examination by Mr. Scott

1 Curtis Joe was the one who got out of the car; is that
2 correct?

3 A Yes, sir.

4 Q Okay. Now -- and then Cox said what reason did he
5 meet them, meaning Curtis. And what did you say for the
6 record?

7 A He was going to buy some drugs from a guy, from
8 some guys, or going to sell the guys some weed, some drugs,
9 and --

10 Q Okay. Now so initially you told them that Curtis
11 got out and he was going to buy some drugs, right?

12 A Yes, sir.

13 Q Flip over to page four and I'm right here. And
14 Investigator Cox says, All right. And then what did you
15 say?

16 A And the next thing you know, they was talking and
17 they just started shooting at each other. So the guys in
18 the black Honda got out the car and start shooting at the
19 car and I jumped out the car and ran behind Days Inn and
20 came to the front and called the police.

21 Q And then Investigator Cox said, All right, Curtis
22 was shooting at the guy on the driver's side. And you --
23 you said what?

24 A Um --

25 Q And he said the passenger side and what did you

Joshua L. Carraway - Cross-Examination by Mr. Scott

1 say?

2 A The dude was shot at Curtis first.

3 Q The dude was shooting at Curtis first; is that
4 right?

5 A Yes, sir.

6 Q And then he asked you what kind of gun did Curtis
7 have and what did you say?

8 A Yes, sir, then I seen Curtis reach in his pants and
9 I guess he started shooting back.

10 Q And then he said what kind of gun did Curtis have
11 and you said?

12 A .380.

13 Q And then he said .380 and you said?

14 A .380.

15 Q And then Investigator Cox said, All right, how many
16 times did Curtis shoot and what did you say?

17 A I think, two or three times.

18 Q Two or three times?

19 A Yes, sir.

20 Q And he asked you how many times did the other guy
21 shoot and what did you say?

22 A The other guy shot like ten times.

23 Q Now that was your first statement?

24 A Yes, sir.

25 Q And all of that was a lie?

Joshua L. Carraway - Cross-Examination by Mr. Scott

1 A Yes, sir.

2 Q And why did you lie again?

3 A I was scared.

4 Q You always lie when you're scared?

5 A No, I was just really scared. I ain't never been
6 in no trouble, nothing like this right here. I was real
7 nervous, real scared.

8 Q But you would agree that this statement that you
9 gave --

10 A False.

11 Q -- is -- is a lie?

12 A (The witness nodded.)

13 THE COURT: Say yes or no.

14 THE WITNESS: Yes, sir.

15 BY MR. SCOTT:

16 Q Now, then you had an occasion to have a -- you did
17 another statement; is that correct, you gave another
18 statement to, I think you said Investigator McFadden; is
19 that correct?

20 A Yes, sir.

21 Q Do you remember where this statement -- where he
22 took this statement at?

23 A I think in Florence at the, at --

24 THE COURT REPORTER: I'm sorry, I didn't get that.

25 THE WITNESS: Back in Florence at Effingham.

Joshua L. Carraway - Cross-Examination by Mr. Scott

1 THE COURT REPORTER: Okay.

2 BY MR. SCOTT:

3 Q Could it have been on the date of January the 20th?

4 Does that sound about right?

5 A Yes, sir.

6 Q And you do -- there's no doubt in your mind you
7 recall giving the statement to him at that time?

8 A Yes, sir.

9 Q And Investigator McFadden would be the fine,
10 distinguished gentleman right there with that nice suit on?

11 A Yes, sir.

12 Q And a badge?

13 A Yes, sir.

14 MR. SCOTT: I'd like to mark this as Defendant's
15 Exhibit, I believe it's 3 for purposes of the record.

16 MR. CLEMENTS: No objection.

17 BY MR. SCOTT:

18 Q And the statement that we're referring to, is this
19 your signature right here?

20 A Yes, sir.

21 Q And what is the time on that?

22 A 12:24 p.m.

23 Q If you would, could you review that to make sure
24 that that is, in fact, your statement?

25 A Yes, sir.

Joshua L. Carraway - Cross-Examination by Mr. Scott

1 Q Now, what I want you to do is I want you to turn to
2 page three, if you would. Now McFadden asks you, and
3 that's -- I'm sorry, that's Investigator McFadden asks you,
4 he said, You called me to come talk to you. All right, in
5 your own words, I want you to explain what took place that
6 night and what did you say?

7 A Okay. Me and Justin and Curtis went to the hotel
8 to meet -- they went to meet some guys there.

9 Q Now flip over to page four at the very top and what
10 did you say in regards to why you all were going to meet
11 these individuals?

12 A Which one? At the top.

13 Q Yes, sir.

14 A I think they was -- I think they was -- we was
15 selling --

16 THE COURT: Speak up a little bit for me please.

17 THE WITNESS: I think they was, I think they was,
18 we was selling to them.

19 BY MR. SCOTT:

20 Q Okay. So now you, were you not sure then whether
21 you were buying or selling?

22 A No, sir, like I said, I was just nervous.

23 Q You were nervous?

24 A Yeah.

25 Q So you wasn't going to tell the truth because you

Joshua L. Carraway - Cross-Examination by Mr. Scott

1 were nervous?

2 A No, it wasn't that, I was just real nervous.

3 Q Okay. Now go down to the very bottom of page four,
4 if you would. And the last -- and what did you say here
5 for purposes of the record? Please read it out loud.

6 A So we went to --

7 THE COURT: Speak up.

8 MR. CLEMENTS: Your Honor, I want to object. I
9 think the proper way is for him to read the question and
10 then get the response and he's kind of skipping around.

11 THE COURT: Well, it's in evidence now. You didn't
12 object so --

13 MR. CLEMENTS: Yes, sir.

14 THE WITNESS: So we went to, I went to the car,
15 talk to one of the guys. One of the guys, um, was about to
16 purchase the weed and Justin came from behind the car with
17 a gun, put it inside the car, told them to give it up. He
18 open the passenger door, put the gun in, in the car. He
19 was trying to go in, in his pockets, that when I just
20 heard, I just heard shots, hearing gun shots fire and I
21 just jumped out the car, ran and got shot in the foot and I
22 ran back to the front desk and called the police. And then
23 basically that was it.

24 BY MR. SCOTT:

25 Q So according to this second statement, it didn't

Joshua L. Carraway - Cross-Examination by Mr. Scott

1 happen exactly the way that you testified here today; is
2 that correct?

3 A No, sir.

4 Q But you're admitting that you were not telling the
5 truth then?

6 A Yes, sir.

7 Q And then I think later on, on the next page, page
8 five, Officer McFadden asks you, says I'm saying where --
9 where he -- I'm talking about when you were in the back
10 seat with the other boy, where was Justin and what did you
11 say?

12 A Justin was outside of the car.

13 THE COURT: Speak up for me.

14 THE WITNESS: Justin was outside of the car. He
15 came around behind the car.

16 BY MR. SCOTT:

17 Q And Investigator McFadden said, Uh-huh. And then
18 you said what?

19 A And open my door. He opened my door first and put
20 the gun in the car, was like, give it up. And then he went
21 to the passenger door.

22 Q Now, all that was a lie or some of it was a lie --

23 A Some of it.

24 Q -- you kind of put it all together, correct?

25 A Yes, sir.

Joshua L. Carraway - Cross-Examination by Mr. Scott

1 Q Okay. All right. Turn to page seven. And this is
2 nearing the end of the interview and I'm right here where
3 McFadden, he says, Oh, okay, we have -- we have to take a
4 pause. All right. Um, anything else you want to add or
5 take away and what did you say?

6 A I said, Basically the reason for me lying from the
7 beginning, I was scared that, that the guys was going to
8 shoot my momma house up and everything, so I lied. So that
9 was why I called the investigators back to tell the truth
10 about everything.

11 Q Okay. So at the time you gave this second
12 statement, at the end of it, according to what you just
13 read to this jury, you told the investigator the reason why
14 you lied from the beginning was because you were scared the
15 guys were going to shoot up your momma house, right?

16 A Yes, sir.

17 Q That's why you're telling the truth then?

18 A Yes, sir.

19 Q But you're admitting today that you wasn't even
20 telling the truth then, correct?

21 A No, not the whole, not all of the truth.

22 Q When did you have a conversation with any of --
23 with either Justin or with Curtis Joe, where either one of
24 them threatened to shoot up your momma house.

25 A I ain't never had a conversation with them. I said

Joshua L. Carraway - Cross-Examination by Mr. Scott

1 they was going to shoot my momma house up.

2 Q So if you never had that conversation with them,
3 why did you tell the police that?

4 A Because like I said, I was nervous and stuff like
5 that do happen. Somebody find out you telling on them,
6 somebody going to try to do something to you so that you
7 won't tell on them.

8 Q And then your testimony here today is that after
9 the -- first of all -- I think you said on direct that
10 Marcus fired first; is that correct?

11 A Yes, sir.

12 Q Did you see what kind of gun he had?

13 A No, sir.

14 Q But you know he had a gun?

15 A Yes, sir.

16 Q Did you see the gun?

17 A No, sir.

18 Q Well, how did you know he had a gun if you didn't
19 see it?

20 A He had the gun pointing at me through his coat.

21 Q Marcus did?

22 A Yes, sir.

23 Q So he never showed it to you?

24 A No, sir.

25 Q All right. You got in on the back passenger side,

Joshua L. Carraway - Cross-Examination by Mr. Scott

1 right?

2 A Yes, sir.

3 Q Well, let me ask you this, was there ever an
4 occasion where when you first came to the car, did Squan
5 Davis kind of tap on the window and tell you to go around
6 to the other side?

7 A Yes, sir.

8 Q You recall that?

9 A Yes, sir.

10 Q You walked around to the other side and you got in.
11 So who was beside you?

12 A The dude in the back seat, Squan, I think that's
13 his name.

14 Q Okay. So Squan -- let's presuppose that I am you
15 and you are Squan, okay? So when you got in, your
16 testimony here today is you just showed them the bag?

17 A No, I ain't never showed them nothing.

18 Q What did you do when you first got in?

19 A I got in, it was like what up, I said what up to
20 everybody. They asked where the weed was at and I asked
21 where the money was at. It was like let me make sure the
22 weed is straight and I was like let me make sure the money
23 ain't counterfeit.

24 Q At this time, you had a conversation with Squan
25 back and forth; is that right?

Joshua L. Carraway -- Cross-Examination by Mr. Scott

1 A No, me and Marcus was talking. Marcus was turned.

2 Q Okay. So Marcus, I'm Marcus. Marcus -- you and
3 Marcus was having a conversation, not Squan?

4 A Yeah.

5 Q What was Squan doing?

6 A He was just sitting there.

7 Q So you're having a conversation with Marcus and
8 that's when what happened?

9 A That's when Justin came and opened up the door.

10 Q Which door did he open first?

11 A He opened my door first.

12 Q Opened your door; did he stick the weapon in at
13 that time?

14 A No.

15 Q He didn't; he just opened the door?

16 A He just opened the door.

17 Q And what did he say?

18 A Then he went to the next door and he opened up
19 Marcus's door and put the gun in the car.

20 Q So it was opened in the passenger -- back
21 passenger --

22 A He came behind the car and he came from behind the
23 car he opened up my door, that was the right side door, and
24 he opened up Marcus's door.

25 Q So he had to step around in order to get around,

Joshua L. Carraway - Cross-Examination by Mr. Scott

1 right?

2 A Yes, sir.

3 Q So he wasn't brandishing the gun then, was he?

4 A No, sir. He had it in his hand though.

5 Q So he opens it, he steps around, according to your
6 testimony?

7 A Uh-huh.

8 Q And then he opens up Marcus's door, correct?

9 A Yes, sir.

10 Q He puts the gun in. At that time what did you do?

11 A That's when I just hit the guy that was beside me
12 with my hand and told him to give it up and I started
13 searching his pockets. The next thing I know, I heard
14 gunshots.

15 Q And that's when you dipped out, didn't you?

16 A Yes, sir.

17 Q Now, when you dipped out, I think your testimony
18 was that you, you ran; where did you run to?

19 A Behind the hotel.

20 Q And I think that --

21 MR. SCOTT: Court's indulgence.

22 THE COURT: Yes, sir.

23 (WHEREUPON there was a pause in the proceedings.)

24 BY MR. SCOTT:

25 Q I think earlier the Solicitor showed you State's

Joshua L. Carraway - Cross-Examination by Mr. Scott

1 Exhibit 28; is that correct?

2 A Yes, sir.

3 Q And this is the fence that you jumped over?

4 A Yes, sir.

5 Q Could you explain to the jury how you jumped over
6 that fence?

7 A I just grabbed the top of it and when I got to the
8 top, I just fell over.

9 Q What -- were you wearing gloves?

10 A No.

11 Q Okay. So if you would, could you step down for me?

12 If you would, let's presuppose that this is the
13 fence. First of all, how high was the fence; was it --

14 A It wasn't -- (out of the hearing of the court
15 reporter.)

16 THE COURT REPORTER: I can't hear him.

17 BY MR. SCOTT:

18 Q How did you, how did you reach it, pretending that
19 this is the fence, how did you reach it?

20 A I jumped up and grabbed it.

21 Q Okay. Go ahead.

22 A I jumped up.

23 Q You grabbed it and you pushed yourself over?

24 A I pushed myself over.

25 Q Now, once you pushed yourself over, did you land on

Joshua L. Carraway - Cross-Examination by Mr. Scott

1 your feet?

2 A No.

3 Q How did you land?

4 A I landed on my back.

5 Q Okay. Well just, just illustrate, if you would,
6 for the, for the jury, how you landed?

7 A Like I jumped over, I just fell like that right
8 there. And then I got up --

9 THE COURT REPORTER: I can't hear him.

10 THE COURT: We can't hear him.

11 THE COURT REPORTER: I can't hear him.

12 THE WITNESS: But when I peeped through, I seen the
13 car leave and I got back up, like the fence was broke and I
14 kind of squeezed myself through the fence and went back to
15 the front.

16 BY MR. SCOTT:

17 Q Okay. And based on your -- your recollection, you
18 don't recall speaking to a officer at the hotel?

19 A No, sir.

20 Q I think you also said on direct that you didn't
21 know you were shot until you got in the hotel?

22 A Yeah.

23 Q You sure about that?

24 A Yeah.

25 Q Well, if you didn't know you got shot, why did you

Joshua L. Carraway - Cross-Examination by Mr. Scott

1 take your shoe off outside the hotel?

2 A My shoe was in the front of the hotel.

3 Q So you -- you lost your shoe as soon as you got out
4 the car?

5 A No, when I got to the front, she was like, You is
6 bleeding. And I look at my leg and I seen the gunshot on
7 my leg. It was a graze.

8 Q Did you still have your shoes on then?

9 A Yeah.

10 Q And that's when you kicked it off?

11 A I took it off in the front.

12 Q So you admit that on two separate occasions you had
13 an opportunity to tell the truth and you lied?

14 A Yes, sir.

15 Q And you actually gave written statements, correct?

16 A Yes, sir.

17 Q You admit today that -- or you are asserting today
18 you want to come clean?

19 A Yes, sir.

20 Q And that's why you're telling us the truth today?

21 A Yes, sir.

22 Q You didn't leave out anything today?

23 A No, sir.

24 Q So the whole truth and nothing but the truth so
25 help you God?

Joshua L. Carraway - Redirect Examination by Mr. Clements

1 A Yes, sir.

2 Q Well, let me ask you this question. Why should the
3 jury believe you now as opposed to these other statements
4 that you gave?

5 A Like I say, I was scared, thinking about my family,
6 my kids and stuff like that. I just tell the truth now, go
7 ahead and get it over with and get everything straightened
8 out with myself.

9 MR. SCOTT: Court's indulgence.

10 THE COURT: Yes, sir.

11 (WHEREUPON there was a pause in the proceedings.)

12 BY MR. SCOTT:

13 Q Well, let me ask you this: Did you ever hit Marcus
14 on the head?

15 A No, sir, I never touched Marcus.

16 Q Nothing further.

17 THE COURT: Redirect?

18 MR. CLEMENTS: Thank you, Your Honor, if it please
19 the Court?

20 **REDIRECT EXAMINATION**

21 BY MR. CLEMENTS:

22 Q Josh?

23 A Yes, sir.

24 Q In Defendant's Exhibit 2 and Defendant's Exhibit 3,
25 which are statements you gave --

Joshua L. Carraway - Redirect Examination by Mr. Clements

1 A Yes, sir.

2 Q -- and Mr. Scott asked you about. Look at these.
3 What, if anything, is in those two statements that
4 implicates to you that you were trying to rob somebody?

5 A What you mean?

6 Q What did you tell, you said you didn't tell the
7 truth then?

8 A Yes, sir.

9 Q At least not completely?

10 A Uh-huh.

11 Q What did you say in, in your statement, Defendant's
12 Exhibit 2, that you gave at the hospital, what is in there
13 that shows that you admit that you were trying to rob
14 somebody and you were going to rob somebody, anything?

15 A No, sir.

16 Q Nothing?

17 A No.

18 Q Matter of fact there's all kind of lies in -- in
19 Defendant's Exhibit 2, isn't it?

20 A Yes, sir.

21 Q And in Defendant's Exhibit 3, is there a lot of
22 truth in Defendant's Exhibit 3?

23 A Yes, sir.

24 Q But there's some lies in Defendant's Exhibit 3; is
25 that correct?

Joshua L. Carraway - Redirect Examination by Mr. Clements

1 A Yes, sir.

2 Q What, if anything, is in Defendant's Exhibit 3 that
3 shows that you're admitting that you were going to rob
4 somebody with a gun, anything?

5 A No, sir.

6 Q Nothing in there?

7 A No, sir.

8 Q Are you admitting to this jury today that you were
9 going to rob somebody with either you asking to have a gun
10 or somebody with you with a gun?

11 A Yes, sir.

12 Q You admit to that today?

13 A Yes, sir.

14 Q And that's the full truth?

15 A Yes, sir.

16 Q Is that the difference between telling the full
17 truth and what you told Investigator McFadden when you gave
18 him a statement?

19 A Yes, sir.

20 Q That's the full truth?

21 A Yes, sir.

22 Q Because y'all didn't have any marijuana?

23 A No, sir.

24 Q You were going to rob the boys from Lake City?

25 A Yes, sir.

Joshua L. Carraway - Redirect Examination by Mr. Clements

1 Q And when you gave the statement to Mr. McFadden, is
2 there anything in that statement that you haven't already
3 corrected that you need to correct and tell us the truth on
4 other than the fact that you were going to rob them and
5 didn't have marijuana; if you would, look at that and see
6 if there's anything else you need to correct that was a
7 lie.

8 A This one right here.

9 Q Yes, sir?

10 A No, sir. The only thing about Dwayne, I was lying
11 about the Dwayne name.

12 Q You were lying about Dwayne's name?

13 A Yeah, I don't know nobody named Dwayne.

14 Q And you were lying about having marijuana?

15 A Yes, sir.

16 Q And you weren't telling them that you were going to
17 try to rob them?

18 A Yes, sir.

19 Q But everything else you stand by in this statement
20 as being true?

21 A Yes, sir.

22 Q Okay. Thank you, Mr. Carraway.

23 THE COURT: Recross?

24 MR. SCOTT: I have absolutely nothing further for
25 this witness, Your Honor.

Joshua L. Carraway - Redirect Examination by Mr. Clements

1 THE COURT: Thank you. Thank you very much, Mr.
2 Carraway; please step down.

3
4 How long is your next witness, Solicitor.

5 MR. CLEMENTS: Your Honor, it will be our last
6 witness and I think it will take a little bit of time.

7 THE COURT: All right. Perhaps now would be a good
8 time to take our afternoon recess.

9 Mr. Foreman, ladies and gentlemen, we'll take about
10 a 15 minute recess. Do not discuss the case during this
11 brief recess.

12 MR. CLEMENTS: Your Honor, and if we could have Mr.
13 Carraway released from his subpoena and I believe ---

14 THE COURT: I'll take that up in a moment.

15 MR. CLEMENTS: Yes, sir.

16 THE COURT: All right. Thank you. Y'all can go.

17 (WHEREUPON the jury left the courtroom at 2:21
18 p.m.)

19 THE COURT: All right. Solicitor.

20 MR. CLEMENTS: Your Honor, Mr. Carraway can be
21 released from his subpoena.

22 THE COURT: Mr. Scott?

23 MR. SCOTT: I have no objection, Your Honor.

24 THE COURT: All right. He may be released.

25 The Court will be in recess 15 minutes.

Joshua L. Carraway - Redirect Examination by Mr. Clements

1 (WHEREUPON a brief recess was observed.)

2 THE COURT: Anything before we bring in our jury,
3 Solicitor.

4 MR. CARRAWAY: No, Your Honor.

5 THE COURT: Mr. Scott?

6 DEFENSE ATTORNEY: No, Your Honor.

7 (WHEREUPON the jury entered the courtroom at 2:39
8 p.m.)

9 THE COURT: Ladies and gentlemen, please continue
10 to give the parties your complete and undivided attention.

11 Solicitor, you may call your next witness.

12 MR. CLEMENTS: Thank you, Your Honor. If it please
13 the Court, we'd call Investigator Thomas McFadden.

14 THE COURT: All right. If you'd come around and be
15 sworn for us please.

16 INVESTIGATOR THOMAS MCFADDEN, HAVING BEEN SWORN
17 TESTIFIES AS FOLLOWS:

18 THE CLERK: Please be seated and state your full
19 name for the record.

20 THE WITNESS: Thomas Jermaine McFadden.

21 THE COURT REPORTER: You're going to have to talk
22 louder than that.

23 THE WITNESS: Thomas Jermaine McFadden.

24 THE COURT REPORTER: Thank you.

25 ///

Thomas McFadden - Direct Examination by Mr. Clements

DIRECT EXAMINATION

BY MR. CLEMENTS:

Q All right. I'm going to warn you because I know you. Don't talk too fast.

A I'll slow down.

Q All right. And can you please tell this jury where you work; what your job duties are; and how long you've been in law enforcement.

A I'm Criminal Investigator for the Florence County Sheriff's Office. And I've been in law enforcement sixteen years. I'm on the major crime unit. I work homicides, robbery and property crimes.

Q How many years you been in law enforcement?

A 16.

Q And how many years have you been with the Florence County Sheriff's Office?

A 13.

Q Where did you work before that?

A Lake City.

Q Can you please tell this jury how you came to be involved in this particular investigation?

A I was approached by Investigator Russell Cox and I think I was off that day when the incident first happened and he approached me later that afternoon and asked me could assist him on a case he had on a robbery or something

Thomas McFadden - Direct Examination by Mr. Clements

1 that took place and somebody had died and he needed my
2 assistance.

3 Q And you began to assist?

4 A Yes, I did.

5 Q What is the first thing you did in this
6 investigation?

7 A There was a guy, he had one individual he said one
8 that was shot and he wanted me to talk to him, get him,
9 talk to him and get a statement. He said he didn't believe
10 some of the stuff he was saying.

11 Q And who was that individual?

12 A That was Joshua Carraway.

13 Q Did you go and talk with Mr. Carraway?

14 A Yes, I did.

15 Q Where did you go to talk to Mr. Carraway?

16 A The first time I think we went down to Darlington
17 to his house, his mom's house.

18 Q Okay. And did you talk to him that time?

19 A Yes, I did.

20 Q You Mirandize him?

21 A Yes, I did.

22 Q And did you, what else did you do at his house
23 besides just talk to him?

24 A I actually searched his house and checked his house
25 at that time.

Thomas McFadden - Direct Examination by Mr. Clements

1 Q Did you get a search warrant or did you get consent
2 from his mom?

3 A No, his mom gave consent; she told us to check it.
4 She told me we wouldn't find nothing in her house; she
5 don't allow guns in her house. So --

6 THE COURT REPORTER: I can't understand you.

7 BY MR. CLEMENTS:

8 Q You got to slow down talking.

9 A Okay. She gave consent. She said she don't allow
10 guns in her residence at her house so she didn't mind us
11 checking her house. So we searched the house.

12 Q How many people were involved in that search?

13 A Me and Investigator Russell Cox.

14 Q All right. Did you search the entire house?

15 A Yes, we did.

16 Q Search the yard?

17 A Yes.

18 Q Okay. You talked to Mr. Carraway?

19 A Yes, we did.

20 Q Did he give a report or a written statement at that
21 time?

22 A No, it was just verbal.

23 Q Okay. And as a result of taking that statement,
24 what did y'all do next?

25 A We -- he gave a name of an individual, I think it

Thomas McFadden - Direct Examination by Mr. Clements

1 was like Jermaine Jones; he gave a fake name for a kid
2 called Jermaine Jones I had to follow up on. When I pulled
3 up at the kid; at Jermaine Jones, I think he had a, he had
4 a Timmons ville address, he said that was one of the guys,
5 that was the guy that was in the car.

6 Q And you followed up on that?

7 A Yeah, we followed up on that.

8 Q Did that turn out to be true?

9 A No, it was a lie.

10 Q Okay. All right. What did -- what did you do next
11 in your investigation?

12 A We called in Shane Graham, we called him back to
13 the office. We interviewed him as well, because I'd never
14 talked to anybody. Investigator Cox talked to some of the
15 people. He had already talked to Shane.

16 Q Slow down.

17 THE COURT REPORTER: He needs to be louder because
18 I've got my back to him.

19 BY MR. CLEMENTS:

20 Q All right. And after you talked with Shane Graham
21 and got his information, where'd you go next?

22 A After we talked to Shane, I went to the, I had to
23 go to the Days Inn because they say they thought the
24 location had video, well, both of them Sleep Inn and Days
25 Inn.

Thomas McFadden - Direct Examination by Mr. Clements

1 Q Did you get Investigator Hester and Collins
2 involved in it?

3 A Yeah, Hester, Collins and Kathleen Streett.

4 Q What did they do?

5 A Went out there and did a report.

6 Q And they got a recording?

7 A Yes, they did.

8 Q And they turned it over to you?

9 A Yes, they did.

10 Q And that's from surveillance from where?

11 A That's from the Sleep Inn.

12 Q Where's the Sleep Inn in conjunction to the Days
13 Inn?

14 A Parallel; they're side by side.

15 Q Okay. And what did you do with the video they
16 downloaded from the Sleep Inn?

17 A It was placed into evidence.

18 Q All right. I'm going to show you what's been
19 marked as State's Exhibit 65 for identification purposes.
20 Can you identify that for me?

21 A That's the copy of the video from the Sleep Inn
22 Motel.

23 Q And what -- what do you have to do with the video
24 so that we can use it in Court?

25 A Burn it to a CD.

Thomas McFadden - Direct Examination by Mr. Clements

1 Q Okay. And is that what you did?

2 A Yes, we did.

3 Q And is that this CD?

4 A Yes, it is.

5 Q All right.

6 MR. CLEMENTS: Your Honor, at this time, we'd move
7 State's Exhibit 65 into evidence.

8 MR. SCOTT: No objection, Your Honor.

9 THE COURT: 65 is in evidence without objection.

10 (WHEREUPON State's Exhibit 65 was entered into
11 evidence.)

12 BY MR. CLEMENTS:

13 Q After obtaining the video surveillance tapes and
14 downloading it into the CD, what did you do next,
15 Investigator McFadden?

16 A We reviewed the video.

17 Q Okay. And after reviewing that video -- and we're
18 going to get you to show that in just a little bit, tell us
19 what you did to follow up on what happened and what you
20 observed there?

21 A After -- after I saw the video?

22 Q Yes.

23 A Oh, you want me to tell what I saw on the video or
24 what I did after.

25 Q What you did after you watched the video.

Thomas McFadden - Direct Examination by Mr. Clements

1 A Oh, we brought in, we brought Squan back and
2 interviewed Squan Davis. We talked to him.

3 Q Okay. Took a statement from him?

4 A Took a statement from him.

5 Q Did you show him any photographs or get him to do a
6 laydown or anything?

7 A Yes.

8 Q And what, describe to this jury what you did and
9 why, what your purpose was?

10 A I had to show him a photograph of who was in the
11 car and once he looked at the video, you could actually
12 tell there was more than, there was two people at the car.
13 So we had to show him a video to determine who was in the
14 back seat with him because you could see one person going
15 to the back of the car in the backseat. And you could tell
16 there was a different person at the front toward the car.
17 So I had to show my laydown to show to see who was the
18 person in the backseat.

19 Q And who -- did he -- was he able to identify
20 anyone?

21 A Yeah, he identified Joshua Carraway.

22 Q As being the person in the back seat with him?

23 A In the backseat with him.

24 Q Okay. What else did you do, if anything, with Mr.
25 Davis; did you take a recorded statement from him?

Thomas McFadden - Direct Examination by Mr. Clements

1 A Yeah, I took a recorded statement from him, yes, I
2 did.

3 Q And what did you do next in your investigation?

4 A After we did that, after we interviewed him, I
5 think we went back to Joshua Carraway because at some point
6 in time, we arrested him after we realized he was lying.

7 Q All right. First, what do you think Mr. Carraway
8 was?

9 A We thought -- he was pretending to be a victim, but
10 I didn't believe -- a lot of the stuff he was saying wasn't
11 believable. I was telling Investigator Cox he was lying
12 and he wasn't telling the whole truth.

13 Q But he was shot?

14 A He was shot so I knew he was in the car. That
15 bullet proved, I told Russell the truth that he was in that
16 backseat, that whoever back there was shot. So if he got
17 grazed in the back seat.

18 Q And after bringing him back in, did y'all take a
19 statement from him again?

20 A Yeah, we took a statement.

21 Q I want to show you what's been marked as Defense
22 Exhibit, Defense Exhibit No. 2. Were you involved in --
23 in -- in the taking of this statement of Joshua Carraway?

24 A Yes, that's my handwriting; that's --

25 Q The one that was taken at -- at McLeod?

Thomas McFadden - Direct Examination by Mr. Clements

1 A No, I wasn't in that one.

2 Q But there's Miranda Forms attached to it; were you
3 a witness to this Miranda Form?

4 A Yes.

5 Q Okay. And that was dated on the 13th?

6 A Yes, sir.

7 Q Is that when y'all talked to him at his house?

8 A That was the first one.

9 Q So the actual Miranda Form doesn't have anything to
10 do with this --

11 A No.

12 Q -- this taken at the hospital?

13 A No, I wasn't with that one.

14 Q Okay.

15 THE COURT: Let me see that, Defendant's 2.

16 MR. CLEMENTS: Yes, sir.

17 THE COURT: All right. Thank you.

18 BY MR. CLEMENTS:

19 Q Investigator McFadden, let me ask you -- when
20 Investigator Cox asked you to assist him --

21 A Uh-huh.

22 Q -- Did you become aware that Investigator Cox had
23 taken a statement from Josh Carraway at the hospital?

24 A Yes.

25 Q And at that time, Carraway was considered a suspect

Thomas McFadden - Direct Examination by Mr. Clements

1 or a victim?

2 A He was considering him a victim at that time.

3 Q Okay. Did you review that statement?

4 A I didn't, he just briefed me and told me what he
5 talked about.

6 Q Briefed you and told you what was told to him in
7 the statement?

8 A In the statement.

9 Q And then on the 13th, y'all went and talked to Mr.
10 Carraway at his house?

11 A Yes.

12 Q Is that correct?

13 A That's correct.

14 Q At that time, is that when y'all -- which is
15 included here on Defendant's Exhibit 2 -- is that when
16 y'all did the Miranda Warnings?

17 A Yes, that's the Miranda Warnings Form.

18 Q But at his house, you didn't take his regular
19 recorded statement?

20 A No, I didn't.

21 Q But he told you some information?

22 A That's when the, that's when Jermaine Jones was
23 given to me.

24 Q Okay.

25 A And I pulled him up.

Thomas McFadden - Direct Examination by Mr. Clements

1 Q And you found that out to be untruthful?

2 A Untruthful after we interviewed Jermaine Jones.

3 Q Okay. Now I'm going to show you here Defendant's
4 Exhibit Number 3 and it's got -- what is that top page
5 there, what is that called?

6 A The Statement Form, the Statement Interview Form.

7 Q And is this routine for the Florence County
8 Sheriff's Office; do y'all use this?

9 A Yeah, we use it to get the basic information.

10 Q Okay. And did you participate in filling that out
11 at all?

12 A Yes, I did.

13 Q And then the date on that is when?

14 A It's the 20th, January 20th.

15 Q 20th?

16 A The 20th, yeah, 2010.

17 Q Okay. The next page, can you tell the jury what
18 that next page is?

19 A It's a Miranda Form, Miranda Warning Form.

20 Q Okay.

21 A Where we read him his rights.

22 Q And did you participate in filling this out?

23 A Yes; I filled out the top portion and he have to
24 initial, print his name and he have to read the waiver at
25 the bottom saying he wasn't threatened or promised or

Thomas McFadden - Direct Examination by Mr. Clements

1 mislead in any way to make his statement.

2 Q And when you say he, who is that?

3 A Joshua Carraway.

4 Q Did he initial that?

5 A Yes, he did.

6 Q On each one of these rights?

7 A Yes.

8 Q And is that his signature right there?

9 A Yes, at the bottom.

10 Q And whose signature after that is the witness?

11 A That's mine.

12 Q You can read that?

13 A Yeah, that's mine.

14 Q So you write as fast as you talk?

15 A That's me.

16 Q Okay. But you, you participated in that?

17 A Yes, I did.

18 Q And then there was a statement taken that day?

19 A Yes.

20 Q And you participated in taking that statement?

21 A Yes, I did.

22 Q Okay. And at that point in time, did Mr. Carraway
23 admit to you that they were going to rob the Lake City
24 boys?

25 A No, he was still lying in that statement.

Thomas McFadden - Direct Examination by Mr. Clements

- 1 Q Okay.
- 2 A Yeah.
- 3 Q Was there some truth in that statement --
- 4 A Some truth.
- 5 Q -- based upon the information that you had followed
- 6 up on?
- 7 A He took Jermaine Jones out of that statement and he
- 8 put himself, Curtis Joe and Justin Simms at the scene at
- 9 that time.
- 10 Q Okay. And did you ever talk to Curtis Joe?
- 11 A Yes, I did.
- 12 Q And got a statement from him?
- 13 A Yes, I did.
- 14 Q Now after the 20th, after getting that statement
- 15 from Mr. Carraway -- and you had already had Mr. Davis
- 16 identify Mr. Carraway from the photographs?
- 17 A Yes, sir.
- 18 Q What was your next piece of work you did to follow
- 19 up on this?
- 20 A Carraway was charged at that time after doing this
- 21 statement. We did a search warrant at Simms's residence.
- 22 Q At Simms's residence?
- 23 A His grandmother's residence.
- 24 Q His grandmother's residence?
- 25 A Yes.

Thomas McFadden - Direct Examination by Mr. Clements

1 Q And that's where he lived?

2 A That's where he was staying at the time.

3 Q Okay. And who participated in the execution of
4 that search warrant?

5 A It was some Darlington County Investigators and
6 Deputies, Investigator Russell Cox, Paul Bird with our
7 Forensics Unit came over. I'm thinking that may have been
8 all, probably some other people, but I'm pretty sure that
9 was the main core.

10 Q What were you looking for?

11 A I put in the search warrant any and all weapons,
12 firearms, ammunition, et cetera, something related to that
13 incident the night of Mr. Weaver died.

14 Q Did you find any weapons there at that household?

15 A No.

16 Q Did you find a .45 caliber weapon?

17 A No.

18 Q Did you find a .380 caliber weapon?

19 A No.

20 Q Did you find any .380 caliber ammunition?

21 A No.

22 Q Did you find any .45 caliber ammunition?

23 A Yeah, he had a box of .45's there.

24 Q Okay. And did you find out who those belonged to?

25 A I think -- I can't recall off the top of my head.

Thomas McFadden - Direct Examination by Mr. Clements

1 Q Okay. And did you find any other types of
2 ammunition?

3 A No.

4 Q Okay. Find any clothes or anything related to,
5 anything whatsoever related to that scene?

6 A No.

7 Q Okay. Now, after the execution of that search
8 warrant, what was your next path you took?

9 A I think we obtained a warrant for Mr. Simms at that
10 time.

11 Q Okay. And after getting a warrant for Mr. Simms,
12 did you follow up with anyone else?

13 A We followed up with Curtis Joe -- yeah, we followed
14 up with Curtis Joe. Yeah, we followed up with Curtis Joe.
15 I followed up with Curtis Joe before then, before I
16 obtained a warrant. Curtis Joe -- I followed up with him
17 before Mr. Simms.

18 Q Okay. So you followed up with Curtis Joe?

19 A Yeah, because --

20 Q What did you do with Curtis Joe?

21 A He was charged as well, but he implicated, he
22 implicated both of the individuals later.

23 Q Carraway and Simms?

24 A Carraway and Simms, but he couldn't say what took
25 place on the other side of the motel. He just knowed that

Thomas McFadden - Direct Examination by Mr. Clements

1 was the two that was on that side.

2 Q Okay. But he didn't know what happened because he
3 claims to have never gone on that side?

4 A Yeah, he never went on that side.

5 Q Okay. All right. But did you arrest him?

6 A Yes, he was also charged.

7 Q You took a statement from him?

8 A Yeah, he turned hisself in and said he had a
9 problem giving a statement without his attorney and then
10 after his attorney, he, you know, advised him to give a
11 statement. Then he gave a statement at that time.

12 Q Okay. So you took statements from Shane Graham?

13 A Shane Graham.

14 Q Squan Davis?

15 A Squan Davis, yes.

16 Q Josh Carraway?

17 A Joshua Carraway.

18 Q And Curtis Joe?

19 A Yes, Curtis Joe.

20 Q Okay. Any -- take any other statements from anyone
21 else?

22 A No, that was it.

23 Q That was it, okay. Now, after you have Mr.
24 Carraway, Mr. Simms, Mr. Joe, all in custody, and you have
25 reviewed the video from the motel next door, the

Thomas McFadden - Direct Examination by Mr. Clements

1 surveillance video, what did you then do?

2 A That final statement you see, the one where
3 Carraway requested to see me --

4 Q Okay.

5 A That final where he requested to see me, we brought
6 him back over.

7 Q He was in jail at that time?

8 A He was in jail at that time.

9 Q Okay. And what did you with regards to debriefing
10 or discussing with the forensics officers what they had
11 found and comparing physical evidence to what you had
12 gotten in statements?

13 A Oh, I -- may I explain -- I asked him what they had
14 because I'd explained to them from everybody's statement
15 that it seemed like everybody saw everything they seen,
16 everybody saw a different angle. So I had to ask them to
17 explain it in what they found from the car because in fact
18 Paul Bird was processing the car, him and Chief Lutcken and
19 they explained to me -- they explained to me that there was
20 a shot from front to back from the passenger seat.

21 I asked him was there any shots from back to front
22 and they said no, there wasn't a shot from back to front.
23 So Shane Graham, his theory was that the person that shot
24 was at the front door. Squan's theory was the person had
25 to be in the back seat.

Thomas McFadden - Direct Examination by Mr. Clements

1 Q Okay. Is he -- he saw somebody in the back seat
2 and Shane never saw anybody in the back seat?

3 A Shane, the whole time Shane thought there was
4 nobody in the back seat.

5 Q Okay.

6 A He said it had to be up front; he disputed me about
7 the person being in the back seat.

8 Q Now, were you aware of what kind of -- what caliber
9 shell casings were on the scene?

10 A Yeah, they explained to me there was .45 shell
11 casings.

12 Q And one what kind of shell casing?

13 A A .380.

14 Q One .380 and no other type of shell casings?

15 A No other type of shell casings.

16 Q All right. Can you tell us about the video that
17 you received? Can you step down here?

18 A Yeah.

19 Q With the Court's permission?

20 THE COURT: Yes, sir, certainly you may step down.
21 Keep your voice up for us.

22 THE WITNESS: I will. I'll probably have to look
23 at it a couple of times. It's blurry, it's not a good
24 video, but you can see images.

25 BY MR. CLEMENTS:

Thomas McFadden - Direct Examination by Mr. Clements

1 Q Stand over here so your voice will carry better to
2 the Court Reporter. And I'm going to pass State's Exhibit
3 Number 65 here to Mr. Godbolt. (The video is loaded into
4 the DVD Player.)

5 Is this, do you find this to be typical or not of
6 surveillance type cameras?

7 A Yeah, a lot, a lot of them has started to update a
8 little better, but it's a typical for a lot of the videos.

9 Q Would it be fair to say it kind of is what it is;
10 it's not like watching TV?

11 A No. I haven't seen it in so long.

12 THE COURT REPORTER: I can't hear him.

13 THE WITNESS: I haven't seen the video in a while
14 so --

15 (WHEREUPON the video was playing.)

16 BY MR. CLEMENTS:

17 Q And can you please, if you would, explain and use
18 this laser pointer and point out to us and tell us -- or
19 explain to us what is what. Because you've watched this
20 several times in the past; is that correct?

21 A Yes.

22 Q And you've been out there on many occasions?

23 A This is from the Sleep Inn parking lot right here.
24 Two hotels side by side; the Sleep Inn and this is the Days
25 Inn.

Thomas McFadden - Direct Examination by Mr. Clements

1 Q And which side of the Days Inn is that; the
2 Florence side or the Darlington side?

3 A Yes, this is the Florence side; the Darlington side
4 is on the other side.

5 Q Okay. Now let me ask you this. Where is the back
6 of the motel?

7 A It'll be -- this dump truck, this dump truck points
8 towards this way; it'll be the back of the hotel.

9 Q So the back of the hotel would be about right here?

10 A Yeah.

11 Q Okay. And what is that area right there called?

12 A A breezeway.

13 Q Okay. And is there another breezeway up here?

14 A Yeah, there's another one, a couple of them around
15 there.

16 Q And if you would please, point out about where the
17 Lake City boys parked their car?

18 A It was up in this area here.

19 Q Okay. All right. You can step back just a little
20 bit, Investigator.

21 A I'll probably have to look at it again, but you'll
22 see an image of an individual come through there at some
23 point in time.

24 Q Just tell Mr. Godbolt to stop when you want to
25 stop.

Thomas McFadden - Direct Examination by Mr. Clements

1 This video surveillance run twenty-four hours a
2 day?

3 A You see that first image right there, the person
4 coming up to the car.

5 That's the first image right there.

6 Q Speak up.

7 A There's another image.

8 THE COURT: You need to speak up.

9 THE WITNESS: Right here by the car.

10 THE COURT: Speak up.

11 THE WITNESS: The second movement by the car here.

12 You can see him right here. The second image
13 right here. One individual and the second individual
14 running down the walkway back through the alley, the
15 breezeway.

16 BY MR. CLEMENTS:

17 Q All right. Can you follow both people at the same
18 time?

19 A It happens so fast, you have to go back again. Go
20 back a little bit. Go back. You can see --

21 THE COURT: Speak up a little bit for me.

22 THE WITNESS: I'm asking him to back it up. You
23 see, you see images of --

24 BY MR. CLEMENTS:

25 Q Pause it right there.

Thomas McFadden - Direct Examination by Mr. Clements

1 A Pause it. You can see the images -- back it up.
2 You're going to see three images; you'll see one go this
3 way; that would be Squan going back towards Taco Bell
4 there, there's restaurants back this way.

5 You'll see the image coming this way, that'll be
6 Carraway. And you'll see another image go back this way
7 towards the --

8 Q The breezeway?

9 A Yeah, where Davis is in the car waiting for Simms.

10 MR. SCOTT: Your Honor, I'm going to object to him
11 saying and characterizing exactly who that was. There
12 hasn't been any foundation laid for who those individuals
13 were based on his testimony.

14 THE COURT: All right. Well, you can certainly
15 comment on the direction in which the individual is going.

16 THE WITNESS: Okay. I'll just show the image of
17 the three individuals leave from the car.

18 BY MR. CLEMENTS:

19 Q All right. Pause it right there. All right.
20 Which individual you want us to follow, Investigator
21 McFadden?

22 A Just mash play first. Follow this individual right
23 here, this one individual. See this image right here.

24 Q Yeah.

25 A There it goes -- follow that image right there.

Thomas McFadden - Direct Examination by Mr. Clements

1 And they're coming back behind the car. The image, you can
2 see the image behind the backside.

3 THE COURT: Speak up a little bit for me.

4 THE WITNESS: The image behind the backside of the
5 car.

6 In a few seconds, you'll see several flashes.

7 THE COURT: Speak up.

8 THE WITNESS: If you follow my red dot, you'll see
9 flashes in a seconds.

10 BY MR. CLEMENTS:

11 Q Back it up.

12 A Back it up again. Back it up a little bit more. I
13 just want to make sure you all can see the images right
14 here at the back part of the car. You'll see the flashes.
15 When you see everybody scatter, you'll see images go at
16 different directions, three different directions when you
17 see the flashes start.

18 The images - the other flashes. If you let it
19 play, it will probably go to -- Shane will get out --

20 MR. SCOTT: Objection, Your Honor, to him
21 identifying --

22 THE WITNESS: The image --

23 THE COURT: All right. The individual -- nobody
24 disagrees -- excuse me a minute. Nobody disagrees who was
25 driving the car, but be that as it may; rephrase your

Thomas McFadden - Direct Examination by Mr. Clements

1 answer please.

2 THE WITNESS: You see an individual, another image
3 of the individual getting out and you see the brake lights
4 of the car and the car back out.

5 BY MR. CLEMENTS:

6 Q All right. Thank you.

7 A There's another image in there. The car is backing
8 out. Headed to -- I'm assuming to the hospital at that
9 time. But if they get a chance to view the video it will
10 be between 50 -- all that will take place between 50 and 52
11 and you can watch the two buildings. You can watch the
12 entries where the images are and if you watch it a couple
13 of times you'll see the images when they leave the car.

14 Q All right. When you watched this and you had --
15 how many different images were you trying to follow?

16 A Three different images.

17 Q So you have to watch it multiple times?

18 A Several times to actually see.

19 Q To watch and focus on each individual image?

20 A Yes, I did. And there's really a fourth image I
21 had to watch to find out who -- they picked the individual
22 up off the ground; I didn't see that part, but I seen the
23 fourth image, but I later learned that was somebody picking
24 a person off the ground.

25 Q And the car exited?

Thomas McFadden - Direct Examination by Mr. Clements

1 A The car exited.

2 Q Thank you.

3 THE WITNESS: You've got to speak louder.

4 BY MR. CLEMENTS:

5 Q Investigator McFadden, you saw how many images
6 leave where the vehicle was on that video?

7 A Three.

8 Q And what -- and they went in what three directions?

9 A One went down the towards the Florence side back
10 toward the 52 side.

11 Q Back towards Highway 52?

12 A Back towards the Highway 52 side, towards the
13 Florence side. The second image went to the back of the
14 motel towards what I showed you where the dump truck was.

15 Q Is that by a line of shrubbery?

16 A Yes. Straight down there you'll see the dump truck
17 and then the image went straight down that to the back but
18 there's a fence back there.

19 Q Okay.

20 A The third image, you'll see that one run in the
21 light and was running on the walkway and went down the
22 breezeway back toward the Darlington side.

23 Q Okay. And did you, after those three images left,
24 did you see a fourth image?

25 A You see the fourth image come around the backside

Thomas McFadden - Direct Examination by Mr. Clements

1 of the car, a few second later you see the lights come on
2 the car.

3 Q And did the car leave?

4 A The car backs out and leaves.

5 Q All right. How did this video surveillance, when
6 you matched it up to statements that were given to you,
7 were you able to mesh those together?

8 A Yeah, it gave me a better sense of everything from
9 all the statements and give me a better sense of what
10 everybody was talking about.

11 Q Okay.

12 A Everybody's statement was different saying which
13 way they went or the way they left. The only statement I
14 didn't have one was Mr. Simms.

15 Q Okay. All right. All right. Thank you.

16 MR. CLEMENTS: I beg the Court's indulgence one
17 moment.

18 THE COURT: Yes, sir.

19 (WHEREUPON there was a pause in the proceedings.)

20 MR. CLEMENTS: Please answer any questions that Mr.
21 Scott may have.

22 THE COURT: Thank you, Solicitor.

23 Mr. Scott?

24 ///

25 ///

Thomas McFadden - Cross-Examination by Mr. Scott

CROSS-EXAMINATION

1
2 BY MR. SCOTT:

3 Q Investigator McFadden, I -- you spoke briefly about
4 your qualifications and you say you've been with the
5 department for like 16 years, but how long have you been an
6 actual investigator?

7 A 10 years.

8 Q 10 years. Were you the lead investigator on this
9 case?

10 A I -- once I came, once I was asked to help out, I
11 took the role as the lead, but it was really Investigator
12 Russell Cox's case.

13 Q But you -- you -- but I -- explain to the jury what
14 a -- what a lead investigator does?

15 A They usually take command of the whole
16 investigation. They take control of it. They'll call
17 you -- with my experience with working mainly all the
18 homicides in the county, Investigator Cox asked me to come
19 in to assist him and help him out with the case.

20 Q And you're responsible for gathering all of the
21 evidence and that kind of thing; is that correct?

22 A Correct.

23 Q And in this particular case, you, you oversaw all
24 of the evidence that was actually collected; is that --

25 A Not all of it, but just the main parts that I

Thomas McFadden - Cross-Examination by Mr. Scott

1 wanted because I think some people had already, they was
2 already processing the car and there was stuff with -- with
3 the shell casings and some stuff was already done when he
4 asked me to step in. So I think some of the stuff was
5 already in process before I got involved in it.

6 Q So when you just said to this jury, you said stuff
7 that you kind of focused; what were you focusing on?

8 A My focus was on the individuals involved, the --
9 the -- the quote, unquote, suspects or possible suspects
10 and possible victims in the case.

11 Q And once you came on the scene, once you spoke with
12 Investigator Cox, who was assisting you, he told you that
13 he didn't believe Joshua?

14 A No, he didn't. He said something wasn't right
15 about Mr. Carraway.

16 Q Did he -- did he tell you specifically what he
17 thought wasn't right about his --

18 A He said he didn't believe him. He thought he was
19 lying; he didn't believe, you know, something else happened
20 out there. He didn't believe Carraway.

21 Q Okay. And you took the statement from Shane
22 Graham; is that correct?

23 A Yes, I did.

24 Q And you took the statement from Squan Davis?

25 A Yes, I did.

Thomas McFadden - Cross-Examination by Mr. Scott

1 Q Now when you took the statement from Squan Davis,
2 he told you that someone came and got in the backseat with
3 him; is that correct?

4 A That's correct.

5 Q And then he told you that that person brandished a
6 gun, correct?

7 A Correct.

8 Q He told you that that person hit him in the face;
9 is that correct?

10 A Correct.

11 Q And he told you that that person is the one who hit
12 Marcus in the back of the head I believe, is that correct?

13 A Yeah, that's correct.

14 Q And we know that that person is Joshua Carraway?

15 A Joshua Carraway was in the vehicle backseat.

16 Q Do you have any reason not to believe what Squan
17 Davis said?

18 A No.

19 Q In fact, doesn't he ID Joshua Carraway as the
20 shooter?

21 A He said, he said, yeah, he said that he believed
22 the person in the backseat had to be the shooter.

23 Q And if we know that person was Joshua Carraway,
24 then we can reasonably infer that he meant Joshua Carraway
25 was the shooter?

Thomas McFadden - Cross-Examination by Mr. Scott

1 A Yes.

2 Q Now you -- we showed the video, and you were going
3 through the video. And I think you told the jury to first
4 start focusing on the 50:45 mark; is that correct? Do you
5 remember saying that?

6 A Yes.

7 Q Doesn't someone come up around the 50:19:20 mark?

8 A Yeah, there was an image; that was the first image
9 from one side.

10 Q Well I'm curious, then. Why did you tell the jury
11 to start at 50:45 if you knew there was another image that
12 came at 50:19?

13 A 50:19.

14 Q Yes, 50:19, 50:20?

15 A But when I told them, when they look at it, they
16 need to focus from 50 to 52; that way they can see the
17 whole entire video. But at that point in time, we was at
18 that second image that came up. I'm sure they saw the
19 50:19. So I was at the second, we want them to see there
20 was a second image that came up.

21 Q Well, we can both agree that there was an image
22 that came from around the 50:19, 50:20?

23 A Yeah, that was the first image that came up just
24 before that. Anytime after 50, you'll see all the images
25 come up.

Thomas McFadden - Cross-Examination by Mr. Scott

1 Q And then there was at least about a 15 -- 15 second
2 pause, so you say?

3 A Yeah, there was a delay.

4 Q Okay. Let's just do it in our heads then, 15
5 seconds. That's about 15 seconds, approximately?

6 A Close enough.

7 Q I'm asking -- is it shorter or faster?

8 A They're close enough. They'll get to see the
9 video.

10 Q No, I'm asking you a question, Officer McFadden.

11 A They're close enough, yes, sir.

12 THE COURT: They know what 15 seconds is; they can
13 look at the clock.

14 BY MR. SCOTT:

15 Q Okay. Now, doesn't that, during that pause, I
16 think it was Davis who also testified that Joshua Carraway
17 came around to the other side?

18 A Yes.

19 Q That's depicted right in from 50:19 and, I mean,
20 50:19 to 50:45 so to speak?

21 A So to speak, yeah.

22 Q So that makes sense?

23 A It makes sense.

24 Q It actually corresponds exactly with what Squan
25 Davis said?

Thomas McFadden - Cross-Examination by Mr. Scott

1 A Yes.

2 Q Did you collect the, the remains or the clothing of
3 Marcus Weaver?

4 A No, I didn't have to deal with that part.

5 Q Who collected that?

6 A It had to be the people at the hospital, forensics.
7 Somebody in that aspect. I never seen Weaver. Only, I saw
8 images of him later from autopsy photos.

9 Q Did you ever get an opportunity to ask one of the
10 lead investigators to go over the -- all the evidence?

11 A I just, just the basic stuff that -- the photos of
12 him at the hospital when they first showed me pictures of
13 him at the hospital, the wounds, the entry and exit wounds
14 to the back, the injuries to his arm, the vehicle and the
15 shell casings. I just saw the basic, you know, basic stuff
16 for that.

17 Q Now when you had an occasion to actually take
18 Joshua Carraway's statement?

19 A Uh-huh.

20 Q Did you believe what he said then?

21 A No, I thought he was lying.

22 Q What made you think he was lying that time?

23 A His demeanor. When he told you he was nervous, he
24 was nervous the entire time. You can read a person and
25 tell if they telling the truth or lying. So he was lying;

Thomas McFadden - Cross-Examination by Mr. Scott

1 he was nervous. He didn't want to, I don't want to say
2 quote, unquote, I guess it was like he said, tell on
3 people; they call it snitching and he didn't want to tell
4 on people, especially when he gave me the Jermaine Jones.
5 That was a little common guy. He a little job, a square I
6 call him.

7 Q You're not trying to rationalize him lying to you
8 are you?

9 A No, I ain't rationalizing it. He lied; that's why
10 he was charged.

11 MR. SCOTT: I beg the Court's indulgence?

12 THE COURT: Yes, sir.

13 MR. SCOTT: No further questions, Your Honor.

14 THE COURT: Redirect?

15 MR. CLEMENTS: No further questions.

16 THE COURT: Thank you. Thank you very much. You
17 may step down.

18 THE WITNESS: Thank you.

19 MR. CLEMENTS: Your Honor, the State rests.

20 THE COURT: Thank you. Thank you, Solicitor.

21 All right, ladies and gentlemen, at this point in
22 time, let's take up one matter with the attorneys outside
23 of your presence. I'm going to give y'all about a 15
24 minute recess. Please do not discuss the case with anyone
25 during this recess. Thank you and thank you very much.

1 (WHEREUPON the jury left the courtroom at 3:20
2 p.m.)

3 MID TRIAL MOTIONS

4 THE COURT: Any motions, Mr. Scott?

5 MR. SCOTT: Judge, for purposes -- for procedure
6 purposes, I think introduced two documents into evidence.
7 I think that precludes me from making a motion for directed
8 verdict. If it does not I'll make that motion for directed
9 verdict at this time.

10 THE COURT: All right. Thank you. Thank you very
11 much.

12 In applying the standard that I must apply at this
13 point, looking at the existence or nonexistence of evidence
14 either direct or substantial circumstantial evidence in a
15 light most favorable to the State, I respectfully deny the
16 motion as to all charges of murder, attempted armed
17 robbery, and possession of a weapon during the commission
18 of a violent crime.

19 Do you all need to interview your client as to his
20 right to testify or not to testify.

21 MR. SCOTT: At this time, Your Honor, I would
22 respectfully request that the Court do that.

23 THE COURT: All right. If you'd come around to the
24 microphone please, Mr. Simms.

25 Madame Clerk, would you place Mr. Simms under oath

1 for me please? No Clerk?

2 (WHEREUPON the Court swore the defendant.)

3 JUSTIN SIMMS, HAVING BEEN SWORN TESTIFIES AS

4 FOLLOWS:

5 QUESTIONING OF THE DEFENDANT

6 THE COURT: Thank you. You may put your hand down.

7 Tell me your full name please.

8 THE DEFENDANT: Justin Rashawn Simms.

9 THE COURT: And how old are you, Mr. Simms?

10 THE DEFENDANT: I'm 22 years old, sir.

11 THE COURT: And how much education do you have?

12 THE DEFENDANT: Eleventh grade.

13 THE COURT: There's some things that I have to go
14 over with you at this stage. I go over them with everyone
15 who is on trial and I always require that their responses
16 be under oath. That's why I placed you under oath; do you
17 understand?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: We have reached a stage of the trial
20 where the State has rested and your, your side, the
21 defense, has the opportunity to present additional evidence
22 to the jury if you want to do so. I believe there's also,
23 there's already three exhibits, Defense 1, 2, and 3 in
24 evidence. Do you understand where we're at in the trial of
25 this case?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: In that regard, you may call witnesses
3 to testify and if you choose to testify yourself, you may
4 do so; do you understand?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: No one can force you to testify. You
7 have the absolute right to remain silent and if you choose
8 not to testify, I will tell this jury that they cannot hold
9 your silence against them. I will further tell them that
10 they may not even discuss the fact that you do not testify
11 in the jury room; do you understand?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Does Mr. Simms, Solicitor or Mr. Scott,
14 have any prior criminal history that would subject him to
15 impeachment under Rule 609.

16 MR. CLEMENTS: Your Honor, I am not aware. Let me
17 check one more time to be sure, but I am not aware that he
18 has any.

19 MR. SCOTT: Your Honor, I'm not aware of any --
20 any -- any charges other than this one.

21 MR. CLEMENTS: Your Honor, I know of no
22 dispositions of any offense that would allow me to impeach
23 him under the Rules.

24 THE COURT: Thank you, Solicitor.

25 Mr. Simms, the decision about whether you testify

1 or not is your decision to make and yours alone. I expect
2 that you have conferred with your attorneys and others
3 whose opinions you value on important decisions, but the
4 decision about whether you testify or not at all is your
5 call to make, your decision; do you understand.

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Has anyone exercised any undue
8 influence over you to get you to choose to testify or not
9 to testify.

10 THE DEFENDANT: What did you say? I don't think
11 I --

12 THE COURT: Has anyone influenced you to testify or
13 not to testify?

14 THE DEFENDANT: Oh, no, sir.

15 THE COURT: Today are you under the influence of
16 any medication, drugs, or alcohol or anything that
17 negatively affects your thinking ability?

18 THE DEFENDANT: No, sir.

19 THE COURT: Do you suffer from any physical or
20 mental problems that affect your thinking today?

21 THE DEFENDANT: No, sir.

22 THE COURT: Whatever decision you have made about
23 whether to testify or not to testify, is it your decision
24 made of your own free will and accord?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you have any questions you would
2 like to ask me about your decision to testify or not to
3 testify?

4 THE DEFENDANT: No, sir.

5 THE COURT: All right. I'll ask him the final
6 question after the break. I'll give him a few more moments
7 to discuss it with, with his attorneys.

8 You may return to your seat, Mr. Simms.

9 Mr. Scott, could you tell us if you intend to call
10 any witnesses or present any other testimony.

11 MR. SCOTT: At this time, Your Honor, I am --

12 THE COURT: Excluding Mr. Simms. I'm going to give
13 you an opportunity to talk with him some more.

14 MR. SCOTT: Okay. But for Mr. Simms, there will be
15 no -- no other defense witnesses.

16 THE COURT: All right. Well, why don't we take us
17 about a 15 minutes or about 12 minutes. About 3:35 we'll
18 be back and that will give you additional opportunity to
19 speak with him.

20 MR. SCOTT: Thank you.

21 THE COURT: Thank you very much. Court will be in
22 recess until 3:35.

23 (WHEREUPON a brief recess was observed.)

24 THE COURT: If you would just stand up for me
25 please in place and understand you're still under oath.

1 Did you have the opportunity to speak with your attorney
2 further about your right to testify or not to testify?

3 THE DEFENDANT: I have.

4 THE COURT: Have you made your decision?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: What is your decision?

7 THE DEFENDANT: I'm not going to.

8 THE COURT: All right. Is that your decision?

9 THE DEFENDANT: My decision.

10 THE COURT: Made of your own free will and accord?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: To not testify?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. Do you have any questions
15 you'd like to ask me about that decision?

16 THE DEFENDANT: No, sir.

17 THE COURT: Thank you and thank you very much. You
18 may be seated.

19 I find that the Defendant has made the decision not
20 to testify and that decision is made freely, knowingly and
21 voluntarily.

22 All right. If you would bring us our jury please?
23 Excuse me just a moment. Anything further before I bring
24 the jury out.

25 ///

DEFENSE POST-TRIAL MOTIONS

MR. SCOTT: Not at this time, Your Honor. The Defense rests and we would respectfully request and renew our motion for directed verdict.

THE COURT: All right. Thank you and I will renew my previous ruling, but I'm going to allow you to also do that formally in front of the jury.

All right. You have concerns about that, Mr. Scott.

MR. SCOTT: No, Your Honor.

THE COURT: Bring us our jury please.

(WHEREUPON the jury entered the courtroom at 3:38 p.m.)

THE COURT: All right. Welcome back, Mr. Foreman, ladies and gentlemen of the jury, as you heard before we just took this brief recess, the State has rested. What that means is the -- you have heard all the evidence and all the testimony you're going to hear from the State in its case in chief.

The Defendant has already placed three items, I believe, into evidence: Defense 1, 2, and 3.

Additionally, the Defense may present additional evidence or testimony in the case. Please remember, ladies and gentlemen, the State has the burden of proving its case beyond a reasonable doubt. A criminal defendant in South

1 Carolina is always presumed to be innocent, regardless to
2 the seriousness of the charges that that person may be
3 charged with.

4 Additionally, the criminal Defendant in South
5 Carolina has no burden of proof whatsoever. No burden to
6 prove himself or herself innocent. The burden is on and
7 always remains on the State of South Carolina to prove its
8 case beyond a reasonable doubt.

9 In additional to the three Exhibits that have been
10 introduced by the defendant, the defendant may offer
11 additional evidence or testimony if the defendant chooses
12 to do so.

13 So we will now turn our attention to Mr. Scott and
14 ask of Mr. Scott, does the -- you may call your first
15 witness.

16 MR. SCOTT: At this time, Your Honor, the Defense
17 rests.

18 THE COURT: All right. The Defense rests. Thank
19 you and you renew your motions, Mr. Scott?

20 MR. SCOTT: That is correct, Your Honor.

21 THE COURT: All right. And I'll renew my previous
22 rulings.

23 In that regard, ladies and gentlemen, that means
24 that you've heard all the evidence and you've heard all the
25 testimony you're going to hear in the trial of this case.

1 The posture that the case is at is it's time for
2 the closing arguments by the attorneys. Our Appellate
3 Courts frown upon trial judge's submitting cases to the
4 juries for their deliberations after 4:00 p.m. in the
5 afternoon. The order in which we follow, the procedure in
6 which we follow in the closing is the State could open on
7 the law; do you intend to open on the law, Solicitor.

8 MR. CLEMENTS: Your Honor, I would prefer to just
9 do it all at one time at the end.

10 THE COURT: All right. So the procedure we'll
11 follow is Mr. Scott would close on behalf of his client
12 first, followed by the closing argument by the Solicitor,
13 followed by the charge on the law by the Court. That can
14 amount to good amount of time. It would be, I would say,
15 5:30 or so before the case would be submitted to you.

16 So with that being said, we're going to take our
17 evening recess. I realize the work that y'all have put
18 into this week and I really want y'all to be fresh at the
19 time of the closing arguments by the attorneys and the
20 instruction on the law by the Court.

21 And so with that being said, ladies and gentlemen,
22 please remember my instructions. Do not discuss this case
23 with anyone, that includes your fellow jurors, family and
24 friends or anyone else. Do not read, watch, listen to, any
25 news reports about the case whether on radio, television,

1 newspaper or internet. Do not do any independent research
2 on the internet or any other manner or any personal
3 investigation into the matter. Remember, you decide this
4 case based on the evidence and testimony that's been
5 presented to you in this courtroom by the witnesses
6 testifying under oath from this witness stand and any
7 exhibits that's been brought before you and any reasonable
8 inferences you may think may be properly be drawn from the
9 evidence.

10 With that being said, you're now excused for the
11 remainder of the afternoon. I would ask you to please be
12 back promptly at 9:30 in the morning. Please be back
13 promptly at 9:30 in the morning. You are excused. I hope
14 you all have a pleasant evening.

15 This gentleman with the bow tie, you didn't need
16 training wheels to tie that, did you?

17 THE JUROR: No, sir.

18 THE COURT: That's the real deal there, isn't it.
19 I like that. Have a good evening.

20 (WHEREUPON the jury left the courtroom at 3:43
21 p.m.)

22 THE COURT: All right. All right. Just to place
23 on the record, the Clerk is now making a copy of the
24 proposed charges. As I say, I have not reviewed it. I do
25 intend to charge the hand of one, hand of all. I do not

1 intend to charge any lesser-included offenses.

2 At this time, I understand that Mr. Scott may
3 present a closed credibility charge in the morning or any
4 other charges that y'all want to present in the morning,
5 I'd be glad to review them. I'll be here by 9 o'clock.

6 MR. SCOTT: Thank you, Your Honor.

7 MR. CLEMENTS: Thank you, Your Honor.

8 THE COURT: Thank you. Thank you very much. I
9 hope everybody has a pleasant evening. See you at 9:30 in
10 the morning.

11 (WHEREUPON the Court was in recess for the
12 evening.)

13 THURSDAY, DECEMBER 12, 2013

14 THE COURT: All right. Anything from the State
15 before we bring in our jury, Solicitor?

16 MR. CLEMENTS: Your Honor, the only thing we ask is
17 that you query the jury as to -- to make sure that they
18 have not read SC Now on the internet or newspaper or looked
19 at -- I don't know that there's been any TV coverage, but
20 make sure none of them have been tainted by anything from
21 the news media.

22 MR. SCOTT: That was my only concern, Your Honor.

23 THE COURT: All right. And I understand y'all
24 reviewed the proposed charges and there's no objections
25 from the State. I did change it from armed robbery to

1 attempted armed robbery; is that correct.

2 MR. CLEMENTS: That's correct, Your Honor.

3 THE COURT: And in talking with both you and
4 Mr. Scott, I will, obviously will change the example on
5 hand of one, hand of all which I have not yet done. That
6 was just my standard thing to charge. And I will do that
7 and use an example as to burglary.

8 MR. CLEMENTS: Thank you, Your Honor.

9 THE COURT: All right. As far as those in the
10 courtroom that are spectators, I would advise you I allow
11 now movement in or out of the courtroom during the closing
12 arguments by the attorneys. The procedure we follow is
13 Mr. Scott would go first. After Mr. Scott's closing, you
14 may leave if you would like before Mr. The solicitor
15 begins. After the solicitor's closing, you may leave if
16 you would like before I begin charging the jury.

17 The doors will be locked during the course of the
18 closing arguments and during the course of my instruction
19 to the jury, so please keep that in mind. I allow no
20 movement about, no movement in or out of the courtroom
21 while the attorneys or while I am addressing the jury.

22 Also in this -- by way of observation all the
23 parties have been very respectful to the Court throughout
24 the process of this proceeding. Thank you for that and I
25 would ask you to continue in that same spirit and that same

1 respect for the authority and decorum in the courtroom.

2 With that being said -- do we have our jury?

3 THE BAILIFF: Yes we have, Your Honor.

4 THE COURT: Madame Clerk -- Madame bailiff I should
5 say.

6 (WHEREUPON the jury entered the courtroom at 9:35
7 a.m.)

8 THE BAILIFF: One moment, Your Honor.

9 THE COURT: Mr. Foreman, ladies and gentlemen of
10 the jury, good morning.

11 THE JURY: Good morning.

12 THE COURT: Welcome back. Momentarily we'll begin
13 the closing arguments by the attorneys. But before we do
14 that, I would like to ask has any member of the jury panel
15 seen or read or heard any news accounts about the case
16 since you have been on jury duty? If so, please stand.

17 (WHEREUPON there was no answer.)

18 THE COURT: Nothing on television, nothing on the
19 radio, nothing on the internet or other newspaper; is that
20 correct.

21 (WHEREUPON there was no answer.)

22 THE JURY: Has any member of the jury panel
23 discussed the case with anyone while you have been a member
24 of the jury? If so, please stand.

25 (WHEREUPON there was no answer.)

1 THE COURT: All right. Thank you. Thank you very
2 much. Thank you again for your attention and hard work
3 throughout the course of this trial.

4 As I stated we're at the stage of the closing
5 arguments by the attorneys. The procedure we follow is
6 Mr. Scott will close on behalf of his client first,
7 followed by a closing by the solicitor on behalf of the
8 State. Thereafter, depending on how much time has passed,
9 how much time those closing arguments take, we may or may
10 not take, we may or may not take a short recess before I
11 instruct you on the law.

12 After that procedure, the closing arguments and my
13 instruction to you, the case will be submitted to for your
14 deliberation and for your verdict. If you would please
15 give the parties your complete and undivided attention as
16 you have done throughout the trial of this case.

17 With that being said, Mr. Scott, you may address
18 the jury.

19 **CLOSING ARGUMENTS**

20 MR. SCOTT: Please Honorable Court, Mr. Clements,
21 ladies and gentlemen of the jury, good morning. Yesterday
22 before I left out of the courtroom, I had an opportunity to
23 go to my client and shake his hand. And I told him, I said
24 I'm going to work on my closing and I'll see you in the
25 morning.

1 He squeezed my hand and he looked me in the eye and
2 he said, Follow your heart. The last thing he said to me
3 before he left out of the courtroom as he was being lead
4 out, he said, Follow your heart. What I'm going to try to
5 do this morning is I'm going to try to take you through all
6 of the things that you -- that you heard on that witness
7 stand in a way that makes sense. And what I'm going to try
8 to do is get you to see what I see. And if I can get you
9 to see what I see, you will come back with a verdict that I
10 believe speaks the truth and, and a verdict that I believe
11 speaks on justice.

12 Having said that, I think I told you in my opening,
13 I said that this -- you will hear a lot of different
14 versions of the events. And I think even the Solicitor, he
15 talked about the movie, Vantage Point, where you all these
16 people saying things from different views. But this is not
17 quite like Vantage Point. But it is a puzzle. And what
18 I'm going to do is I'm going to attempt to put all this
19 puzzle together for you.

20 With that being said, Mr. Robert Stucks, he's my
21 second chair, he's going to assist me. The Court's
22 indulgence.

23 THE COURT: Yes, sir.

24 (WHEREUPON there was a pause in the proceedings.)

25 MR. SCOTT: Now, the first -- first thing I want to

1 do is I want to go through what I call the independent
2 witnesses. And to me an independent witness is someone who
3 is not a part of the trial. They're just someone who the
4 State called as someone to just give you some information,
5 some evidence on the case.

6 And the first independent witness that you heard
7 was Dr. Presnell. And she was the one who actually did the
8 autopsy. And what she told you on this witness stand was
9 she told you about the bullet wounds. She told you about
10 the one in the arm and the one in the back on direct. On
11 cross examination, she told you that at the time of Marcus
12 Weaver's death that he had a alcohol level of .10.

13 Now, all of you know that if you're .08 you're
14 considered to be mentally impaired. But in other words, he
15 had been drinking at the time, and we know he had been
16 drinking at the time because right here on the witness
17 stand, his friend, Squan Davis, told you that, told you
18 that they had been at the bootlegger's house having some
19 drinks.

20 So the first part of the puzzle deals with, we're
21 dealing with someone who had .10 alcohol level.

22 Now, then Lieutenant Lutcken I think, who is now
23 our coroner, he told you about gunshot residue and he told
24 you that gunshot residue is fragile and he told you that it
25 is very, very easy for you to wipe gunshot residue on and

1 off of you. And he told you that, from right here.

2 Now, the State exhausted a lot of time telling you
3 about the different kits of Marcus Weaver, Shane Graham,
4 and Joshua Carraway. And they told you that Joshua
5 Carraway did not have any gunshot residue on him. Well,
6 there's a reason why he didn't have it. Because remember
7 when he got up here on this witness stand and he told you
8 he said, after the shots were fired, what did he do? He
9 ran on the fence; he reached up on the fence and he
10 actually illustrated to you how he reached over the fence,
11 he jumped over the fence; he didn't land on his feet, he
12 landed on his back like this with his hands on the ground.
13 Now, all of you know and those you who play baseball, you
14 know like when you running and you're going to steal the
15 base and you got dust on your hands, the first thing you
16 do; that's the first thing you do.

17 That explains -- and on top of that, he also told
18 you once he got off the ground he ended up going to the
19 hotel. That's where he says that he knows, somebody told
20 him I think, he said an employee told him he'd been shot,
21 remember? And -- and all of you know that if you'd been
22 shot and if you're bleeding, the first thing you're going
23 to do is you're going to go to the bathroom; you're going
24 to go somewhere in order to try to wipe this stuff off.
25 That is an explanation for why he did not have gunshot

1 residue on his hands.

2 Now, the State could have brought someone to
3 testify from the hotel that he didn't do anything once he
4 got there, but they didn't. What the State did was they
5 asked Joshua Carraway did he do anything with his hands and
6 of course, I'm going to get to Josh Carraway; just bear
7 with me. So the second part of the puzzle deals with
8 gunshot residue.

9 Now, after -- now after all the presentation of
10 evidence, the last person you heard from, from the State,
11 was Investigator McFadden. And Investigator McFadden, what
12 he did was he attempted to show you a video.

13 Now, I got to be quite -- I got to be honest with
14 you, I've seen that video over 50 times over the last three
15 years and if you can look at that video and tell me who did
16 what, you are -- you are much better than I am, but I
17 can't. What the video does do is it verifies only one
18 witness's version of events -- only one. And that would be
19 when Squan Davis sat on this -- sat on --

20 THE COURT: You can't sit in the witness stand.

21 MR. SCOTT: --- and sat in that chair and he said --
22 and he told you what happened.

23 He said that when they got there, Joshua Carraway
24 came around to his side of the door and then he told, he
25 tapped on the door and he told Joshua Carraway to walk

1 around the other side. When you look at that video, you
2 see that image; that image is Joshua Carraway. He's
3 walking around. That's exactly what happened. And then
4 what did Squan tell you happened inside once he went to the
5 other side?

6 He said that Joshua Carraway got in the car and
7 that Marcus Weaver, who was in the passenger side front
8 seat, they were having a conversation about the drugs. And
9 Joshua Carraway was saying let me see the money and Marcus
10 Weaver was saying let me see the drugs. Squan testified to
11 that. Actually Joshua Carraway testified to that portion.
12 Now Shane Graham, I do believe that based on the testimony,
13 he, I believe that when he first drove them to that hotel,
14 he didn't know what was going down. But once they got
15 there, there should be no doubt in any of our minds that he
16 knew what was going down.

17 But remember what he testified to? He testified
18 that when they pulled in, he was looking because he was
19 trying to scope it out. He saw two images and the next
20 thing he knows, somebody comes on Marcus Weaver's side and
21 they pull out a gun and then he sees a tussle and then he
22 hears shots fired. That's what he said. But we already
23 know that's not true. It can't be true because you can't
24 tell me that he didn't see Joshua Carraway walk around that
25 car. You can't tell me he didn't see and hear the

1 conversation that was going on inside that vehicle before
2 this allegedly happened with Marcus tussling with somebody
3 with a gun.

4 And the clear indication from the video is that
5 that never happened. So we got to stick to Davis's version
6 of what happened, which is the next portion of the puzzle.
7 Davis's version is the only version, is the only version
8 that makes sense.

9 Now the next portion deals with -- remember we --
10 you heard testimony from Davis, Squan Davis, and he said
11 that he had \$800. I asked him how much money; he said he
12 had \$800 to buy a pound of marijuana. Now in his previous
13 statement that you're going to have an opportunity to look
14 at, it wasn't a pound, it was half a pound. Also you
15 remember Curtis Joe? Curtis Joe testified about he had
16 agreed for it to be 1200. That was the price, 1200, which
17 for those, if you know nothing about drugs, that's probably
18 about the going rate for a pound of marijuana, not 800.

19 But then Squan told you that the reason why he was
20 going to give him 800 instead of a thousand, which was
21 their negotiated price, was because Curtis Joe had shorted
22 him earlier. That's what he testified to. But Curtis Joe
23 told you that was the first time he had ever had any kind
24 of dealings with Squan Davis. Now I don't know about you,
25 but I was born and raised in Mechanicsville, and I don't

1 know if any of you have ever heard of Mechanicsville, but
2 it's kind of like the country here.

3 One of the things that you don't do if you are a
4 drug dealer, you don't rob the people who you're supplying
5 drugs to. Nobody does that. And particularly in this
6 case, why would they rob -- why would Curtis Joe want to
7 rob Marcus Weaver and Squan Davis when they had cell phone
8 numbers. They were going -- they were talking to each
9 other. They knew each other from the club. So he had to
10 have known there was going to be consequences if he -- if they
11 did rob them. And Curtis Joe told you on the stand that he
12 never had any intent to rob anybody.

13 He also, Curtis Joe, told you on the stand that he
14 didn't even know Justin was going to be a part of the thing
15 until Justin got there. It was supposed to be him and
16 Carraway. Curtis Joe also told you he never saw Justin
17 with a weapon. Never saw it.

18 Now there's a saying, and it goes, Fool me once,
19 shame on you; fool me twice, shame on me. Now, I've been
20 practicing law for a number of years. I have never, never
21 seen a witness on the witness stand with the credibility of
22 Joshua Carraway. I've never seen any witness like him before
23 in my entire life and I am disgusted that he was even put
24 on the stand. You cannot trust him. He is a liar;
25 everybody knows he's not telling the truth. And how do you

1 know that; because Investigator McFadden got up here and he
2 told -- he said from the very beginning, he said
3 Investigator Cox did not believe Joshua Carraway's first
4 statement.

5 And his first statement was what he told them at
6 the hospital that night after he had been shot. They
7 thought he was a victim and he told them that Jermaine
8 Jones, somebody we know was not even a part of it, that him
9 and Curtis, they went to the car and that gunshots blazed.
10 That's what he told them the first night.

11 Now after they did the investigation that -- what
12 they do, then he came back and they called, allegedly, he
13 called -- Joshua Carraway calls Investigator McFadden and
14 wants to talk to him again at his momma's house. And at
15 his momma's house, he tells a different version and you're
16 going to have it because it's going to be a part of the
17 exhibits here that you'll have an opportunity to read.

18 And in the second statement, he says that he went
19 to the car and he's trying to get this deal together and
20 all of a sudden, Justin comes out of the blue with a gun
21 and wants to rob them and he says in that statement, and
22 you can read it, he said, I did not know that Justin was
23 going to rob them boys. That's what he said in the second
24 statement.

25 Now, I can tell you this, as a lawyer, whenever we

1 see witnesses who have inconsistent statements, we're like,
2 we're like predators. We're like -- like -- like fishes
3 because we, we ready, because we going to pounce on them
4 and I was ready once Carraway was on that stand. I was
5 ready to pounce on him because of the inconsistencies
6 between the first statement and the second statement. But
7 then he got on the witness stand and he says something
8 totally different than he's ever said before. He added all
9 kind of stuff in there. It was so outrageous until I think
10 it took everything in my power not to just sit over there
11 and do like this right here. It took everything in my
12 power.

13 He never, in all his statements that you've got
14 there, he never talked about him and Justin and Curtis Joe
15 having an already prearranged plan to rob those young men
16 from Lake City. He never said that, but he said it on the
17 witness stand. He also said on the witness stand that he
18 knew that Justin had a .380 and that they had talked about
19 a .380 and that he even asked him to use the .380 for the
20 robbery; that's what he said right there on the stand.
21 Guess what, it's nowhere in any of those statements that he
22 ever made.

23 I'm almost sure that probably surprised
24 Investigator McFadden too. Then he tells you on the stand
25 that he was going to rob those boys, so he wrapped up stuff

1 and put it in a bag and wanted to pretend as though he was
2 going to rob them. But first of all, he was going to rob
3 them, how you going to rob somebody and you ain't got no
4 gun? Who does that? Who goes to rob somebody without a
5 gun? He wants you to believe that he did. He also wants
6 you to believe that Justin was the one who shot Marcus
7 Weaver. He wants you to believe that.

8 Guess what? He never in any of his statements, he
9 never said anything remotely like that. And as a matter of
10 fact, if you can recall the testimony of Investigator
11 McFadden, he sat right there and he told you that Squan
12 Davis said that the shooter was in the back seat right
13 where he was. He was very, Squan Davis was very clear
14 about the sequences and what happened, very clear. He said
15 there's no doubt in his mind that the shooter was in the
16 back seat. He ID's them because -- you know that because
17 Investigator McFadden said, Yeah, he picked them out; he
18 picked them out of the lineup. He ID'd them based on a
19 picture. He knew and he -- and so why is Joshua not the
20 trigger man? Why is he not on trial? Why is h not the one
21 in Justin's seat?

22 Now, you're going to hear a lot of talk and I'm
23 pretty sure that the State is going to talk about this
24 concept of the hand of one is the hand of all and the Judge
25 is going to charge you on the hand of one is the hand of

1 all. But in order for you to find the hand of one is the
2 hand of all, you've got to find that there was some kind of
3 common scheme, some kind of common design. And at the very
4 outset, Justin knew nothing about what Joshua Carraway was
5 going to do, absolutely nothing. And you know that because
6 the codefendant, Curtis Joe, told you. Who better to know
7 what was going to go down than the one who arranged it, the
8 one who organized it, the one who's the drug dealer?

9 Curtis Joe told you the truth. Curtis Joe came in
10 here and told you the truth and Joshua Carraway came in
11 here and told you lie after lie after lie.

12 Now if the State had a witness who did what Joshua
13 Carraway did, the State would be eating him up. The State
14 would tell you, you cannot trust him, don't listen to a
15 word they say. But in order for the State to prevail and
16 get a guilty verdict from you in this case, they have
17 pushed all in on Joshua Carraway. They pushed all in.
18 Joshua Carraway is the only one who ID's my client. Nobody
19 else does. Mr. Davis got up here, he ID'd Joshua Carraway.
20 Shane Graham, he couldn't -- he didn't ID anybody. He
21 didn't know who it was. The only person who was
22 responsible for the death of Marcus Weaver was Joshua
23 Carraway. You can't trust him. He's undependable. He
24 does not tell the truth.

25 Now, I don't know if you all were paying as close

1 attention to Joshua Carraway as I was, but as he was
2 testifying, you know, you kind of -- you kind of look at
3 people and you can kind of tell whether they're telling the
4 truth or not. You -- you -- did you notice when he was on
5 the stand, he never really made any kind of eye contact
6 with me; did you notice that? And even after he read from
7 the statement that I wanted him to read, he would look up,
8 but he would always look back down.

9 And then he tried to tell you on this stand the
10 reason why he told all those lies before was that he was
11 nervous, he was afraid, he was scared. I -- I got to be
12 real with you; I mean I got to be real, I got to be because
13 that's a bunch of boloney. He knows exactly what he's
14 doing. He's manipulated the system to get out of a murder
15 charge and that's what he is doing. He has manipulated the
16 system and he's manipulated the investigation because he's
17 telling them all kinds of different things. You cannot
18 trust him. I would not trust not one single word that he
19 says.

20 If you don't trust anything that Joshua Carraway
21 says, there's only one verdict that you can come back with
22 on all of the charges because nobody puts Justin at that
23 scene but Carraway. Only one person killed Marcus Weaver.
24 Only one person is responsible for his death.

25 Now, I've known Justin his whole life. I went to