

VOLUME ONE OF TWO

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Berkeley County

Stephanie P. McDonald, Circuit Court Judge

RECEIVED

MAY - 4 2015

S.C. Supreme Court

GARY L. GRANT,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002306

APPENDIX

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COUNTY OF BERKELEY) NINTH JUDICIAL CIRCUIT
2007-GS-08-00308-319;
00342-00345; 00347;
1748; 1751

STATE OF SOUTH CAROLINA,)
PLAINTIFF,)
Vs.) TRANSCRIPT OF RECORD
GARY GRANT, JERMAINE)
HARTWELL, AND MARQUITA)
SMITH)
DEFENDANTS.)
_____)

AUGUST 27 - 30, 2007
MONCKS CORNER, SOUTH CAROLINA

B E F O R E:

THE HONORABLE DEADRA JEFFERSON, JUDGE

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THE COURT: Mr. Jones, you may proceed.

MR. JONES: Which -- which one would you like to ...

THE COURT: Either one you'd like to go forward on.

MR. JONES: Your Honor, first motion I would have and I actually have a copy to hand -- before the motion to continue. May I approach, Your Honor?

THE COURT: You may.

MR. JONES: Just basically going through. I received notice of this trial date on Friday, August the 17th, just by virtue of a phone call. I've never had a status conference, never received any notice in writing of anything. THE COURT: Do the rules require that?

MR. JONES: Your Honor, I -- I would say that there are -- there should be some sort of timely notice for a trial of this size.

THE COURT: How long has the case been on the docket? How long have the charges been pending against your client?

MR. JONES: Your Honor, they've been pending since, I -- I guess, what? August of -- 6th, of 2006.

THE COURT: So that's been a year, correct?

MR. JONES: It has, Your Honor.

THE COURT: Uh-huh.

MR. JONES: But Your Honor, I -- I would tell you in some of the conversations I had with the Solicitor, my

1 recollection was they were going to try the principals,
2 then try my girl in there. And Your Honor, I -- I submit
3 that everybody else had written notice, from what I
4 understand at least, four to six weeks in advance. Then to
5 get a phone call. I actually received the -- the
6 indictments August 22, which were, I guess -- I understand
7 that there were -- original documents done in January. But
8 the indictments that I received were actually represented,
9 I guess, to the Grand Jury August 22nd.

10 THE COURT: Did they change the offenses?

11 MR. JONES: I don't think they changed the offenses,
12 Your Honor. They did add an offense which ---

13 THE COURT: Pardon me?

14 MR. JONES: They did add a burglary first which we had
15 no notice of, never been any letter any correspondence ---

16 THE COURT: Have you had full discovery?

17 MR. JONES: I have -- well, other than the -- the
18 original statement of Mr. Hollins, who's testifying, which
19 is also one of the issues that I'm raising here, is that
20 that statement I received from the public defender. She
21 called me on Thursday and stated her client was going to be
22 testifying. And then stated -- and I, you know, inquired
23 as to what changed. And she said, "Well, there's another
24 statement." Which I didn't have, which, I'm not sure if
25 she lost it or -- or what the issue was.

1 THE COURT: You have the statement now, correct?

2 MR. JONES: I do have the statement now.

3 THE COURT: When did you get the statement?

4 MR. JONES: She faxed it at 5:01 on Friday or on
5 Thursday I received in my -- sometime -- you know, sometime
6 Friday morning. I actually at that time called Mr. Bolus
7 and sent him the statement also.

8 THE COURT: Who was this -- this statement made by?

9 MR. JONES: The statement's made by Kerry Hollins who
10 is the co-defendant who's testifying and -- and ---

11 THE COURT: Ms. Kennedy represents Mr. Hollins.

12 MR. JONES: Correct, Your Honor.

13 THE COURT: And when was the statement made?

14 MR. JONES: The statement was made, I would say, I
15 think August the 4th.

16 THE COURT: Of this year.

17 MR. JONES: Of -- when the -- when the -- this act
18 occurred.

19 THE COURT: In '06?

20 MR. JONES: Of '06, Your Honor.

21 THE COURT: And does it incriminate your client?

22 MR. JONES: Very much so.

23 THE COURT: Uh-huh. But I would imagine the
24 allegations come as no surprise. With this being a year
25 old, you would know the substance of the State's case

1 against your client.

2 MR. JONES: Well, Your Honor, I knew what the
3 allegations are, but again -- but -- but the fact that --
4 the twist on the allegations are is that it's not a matter
5 of he says my client is involved. It's a matter he says my
6 client was in essence the principal actor and originator of
7 this.

8 THE COURT: Well, that doesn't prejudice your client,
9 however, because she's being charged with accessory after
10 the fact on each of these offenses.

11 MR. JONES: Well, the -- I think it would
12 substantially prejudice her, Your Honor, in that if he's
13 lying about that, then -- then all of his statement may be
14 false. And -- and the only way that I can flesh that out
15 is to talk about -- I've got a 19 year old, who's never
16 been in trouble, never been arrested, and he's saying she's
17 the brain child of this operation, tried in conjunction
18 with two co-defendants and one testifying who's not on
19 trial who have a substantial history and a background in
20 this.

21 And because of the -- the prejudicial nature of being
22 able to get into their background and their history and
23 their experience in this area and prejudicing them, I can't
24 argue that unless we're severing it. If I get into,
25 "Ladies and gentlemen of the jury, you truly believe that

1 this 19 year old was really the brain child as this guy's
2 arguing up here," and I can't get into the circumstances
3 behind that, I'm certainly prejudiced and I certainly lose
4 the ability of a defense. Or -- or at least some
5 mitigating factor.

6 If she had -- if she had substantial record and all,
7 that's one thing. But they're saying -- not they, but the
8 -- only testifying witness has passed it off and said this
9 19 year old is the brain child of this thing, with four
10 other co-defendants who have substantial histories and
11 backgrounds in this -- in this issue and -- and -- and --
12 and I can't fight that -- I can't fight that argument.

13 THE COURT: Are you saying you're not going to be able
14 to cross-examine Mr. Kerry Hollins?

15 MR. JONES: Well, I -- well, I can't -- well, I can
16 cross-examine him but I -- but it's limited. But what I
17 can't do is get into the nature of collectively -- the
18 collective criminal experience of ---

19 THE COURT: Well, you wouldn't be able to get into
20 that whether they were involved in this trial or not.

21 MR. JONES: Well, Your Honor, if it were severed I
22 don't know that it would be an issue about talking about if
23 -- if -- if they were severed and it's just my client on
24 trial, and Mr. Hollins is sitting up here saying, "Listen,
25 she was really the main -- she was the brain child of all

1 this. She set all this up." And I was sitting there
2 knowing, well, let's look at the rap sheets on the four and
3 let's look at the collective experience and who do we
4 really think set this thing up, I think -- I think ---

5 THE COURT: How you gonna get their rap sheets before
6 the jury?

7 MR. JONES: Well, Your Honor, I -- I -- I'm not -- one
8 is -- I'm not even sure that one of the guys couldn't come
9 in and testify to that fact. I'm not sure if he had ---

10 THE COURT: You wouldn't be able call any of those co-
11 defendants in this trial.

12 MR. JONES: In this trial I wouldn't.

13 THE COURT: And in her trial you wouldn't be able to.
14 They don't have any duty to come here and testify, and the
15 Court can't force them to ---

16 MR. JONES: But they would be ---

17 THE COURT: --- they would be under oath. That
18 testimony could be used against them in their trial.

19 MR. JONES: Your Honor, if I -- in theory, even if
20 they agreed. If they said, "We want to come and testify.
21 We want to get the truth out."

22 THE COURT: In theory they would never do that.

23 MR. JONES: Well, I mean I -- I -- I --

24 THE COURT: Mr. Bolus is telling me I'm correct.

25 MR. JONES: Well, you're probably right, Your Honor.

1 But again, even if I brought in witnesses, I mean -- Your
2 Honor, there is no way that I can refute this argument that
3 Mr. Collins [sic] has come up in this statement that I
4 received that there's no way that I can adequately put on a
5 defense on this at this time.

6 And -- and again, I just got notice that he was
7 testifying a couple of days ago. I just got notice of this
8 trial by cell phone last Friday. You know, and -- and
9 granted, is -- have I thought through every aspect of it,
10 there's no way -- there's absolutely no way. And I know
11 that the trial has been on since August, but you also know
12 practically speaking, there's no way that every case I can
13 prepare for every single trial starting the moment I get
14 the cases. It's just not practical, it's not realistic,
15 and no attorney can do that.

16 And -- you know, and to give a week's notice, whereas
17 if I had six-weeks notice, obviously I could have
18 incrementally prepared.

19 THE COURT: I think as a practical matter, nobody gets
20 six-weeks notice.

21 MR. JONES: Your Honor ---

22 THE COURT: It's not unusual -- it's not unbelievable
23 to me that you would have gotten a call on Friday. That's
24 the way it works.

25 MR. JONES: Every big -- Your Honor, I -- every case

1 that I've ever had there's been a status conference,
2 there'd have been some notice that there was a week that it
3 was coming up, and that I knew. And we may or may not be
4 going. And I've gotten calls to say, "Hey, we're not
5 going. Hey, we are going."

6 But I -- I've never had a case where I think no notice
7 of the week of trial and where I have received a phone call
8 on Friday afternoon on.

9 And I'm not saying -- Your Honor, I'm not saying that
10 it was intentional, but -- but -- but if it affects my
11 ability with the client, I mean, you got a girl up here for
12 murder, kidnaping ---

13 THE COURT: Not for murder. She's charged with
14 accessory after.

15 MR. JONES: Well -- well, accessory on the -- but in
16 essence, the way ---

17 THE COURT: Before the fact.

18 MR. JONES: --- the statement -- I mean, to -- to give
19 notice on a charge -- I mean, it is rare that I have a DUI
20 trial that comes up with just only a week's notice. I mean
21 --

22 THE COURT: But that's different. That's magistrate's
23 court. They run a whole different system than y'all do.

24 MR. JONES: Sure. But clearly, Judge, I mean, a
25 week's notice without -- I don't remember any cases where

1 I've not had some notice that I've got to begin to
2 incrementally prepare for a case, and -- and then to get a,
3 you know, call on a Friday and say we're going forward.

4 I mean, just practically speaking, I mean, I --
5 there's just -- I don't know again that you can prepare and
6 that you can -- you know, that anybody's prepared to
7 automatically go forward like that. And -- and I think
8 that it would prejudice my client. I think that -- that,
9 you know, if everybody else got written notice, you know, I
10 -- I think that in a case like this I would be entitled to
11 the same. And I think it -- it -- it -- it -- it -- it
12 matters.

13 And I think it -- it limits my ability to research
14 everything. I get offers. I don't have time to talk. I
15 get a new indictment for burglary on the 22nd, I guess when
16 it went before the Grand Jury on that one. I get it on the
17 23rd. And even if they say, "Well, we'll dismiss and we're
18 not going forward on that." Again, I've got to sit down
19 with the client and discuss a whole new charge that I've
20 not been retained technically on.

21 (Sotto voce discussion between the Court and law
22 clerk.)

23 MR. JONES: And -- and -- and I've got to take time
24 away from her trial preparation to discuss a whole new
25 charge that I received on there. I mean ---

1 THE COURT: It all arises out of the same facts. I
2 can not really in good faith believe this comes as any
3 great surprise to you.

4 MR. JONES: But Judge, if I had to anticipate every
5 single thing they ---

6 THE COURT: I'm assuming that because I don't know
7 which of the indictments is new or not new. But they all
8 look to me like they arise out of one set of facts.

9 MR. JONES: But sure. But -- but again, every
10 attorney prepares for the charges that -- that they have.
11 I mean, if -- if they haven't charged her with burglary by
12 this time, I mean, and again, they give me notice on the
13 17th, they send it to the Grand Jury on the 22nd, and I get
14 it on the 23rd, what -- nobody expects that. I mean,
15 that's not -- that's not ---

16 THE COURT: Unfortunately, the way our system is
17 structured, it happens all the time.

18 MR. JONES: In seven -- Judge, in seven years I've
19 never had it drop like that where I didn't have notice that
20 burglary was coming. Never been in a letter, never been
21 mentioned, never been said, "If you don't take this offer,
22 this is coming down the pipe."

23 And then, even if they drop that and cure that, again,
24 the problem is the week before, I've got the duty of trying
25 to explain that to a client, taking away from trial prep.

1 I've got the duty of trying to explain to -- to a client
2 that I didn't miss something, this is something that is new
3 on there. I mean, if -- if it's a matter I got to
4 anticipate everything single thing that's going to come,
5 you know, then -- pointing or presenting a firearm or --
6 there are any number of charges they could have been
7 charged with.

8 Judge, it's not reasonable to ask an attorney to
9 anticipate every single crime. I mean, you prepare for the
10 crimes you have in front of you, unless they're -- you --
11 you've gotten notice that that may be coming down the pipe.
12 But when they come down after you've been put on a trial --
13 notice for trial, I've never had that happen other than
14 when I'd be -- I was told in advance this was going to
15 happen.

16 And again, what's different for everybody else to get
17 notice and -- and not my client in this case.

18 THE COURT: Anything further?

19 MR. JONES: Just a second, Your Honor. Just make sure
20 I don't have a --

21 And the other issue, Your Honor, is I have -- I have
22 two witnesses: One I've tried to subpoena, a North
23 Charleston police officer, in reference to some assault and
24 -- and if it wasn't a domestic. It was a, you know, simple
25 assault by the testifying co-defendant -- who was a prior

1 boyfriend -- on my client, going to the fear element and --
2 and those issues on there.

3 I also have a witness to that assault who actually
4 took her to the police and also met with the police who's
5 in North Carolina, which there wasn't any way that I could
6 get jurisdiction. We did speak with her I think on
7 Tuesday, and -- but there's no way she could get down here
8 for this.

9 The officer I haven't heard from, we -- we did the
10 subpoena, we went -- we did that on Tuesday. He has no
11 idea what this is about. I can't get in the police report.
12 If she doesn't testify, you know, I -- I -- I would like to
13 get him here because obviously, again, if -- if Kerry's
14 saying she's the -- you know, the -- Mr. Hollins is
15 testifying that she's the brain child of this whole thing,
16 she's responsible for everything and all that, it's hard to
17 believe that, you know, with his abusive nature and all,
18 that she's able to influence him. I think it -- it -- it
19 would go to the opposite.

20 Again, there's no way I can subpoena people in advance
21 when I don't have notice there's a trial period at some
22 point coming up, which is the whole reason why typically
23 notice is given, so that you can get relevant witnesses
24 there. You know, that -- that -- you can't do that when
25 you -- when you get the notice on a Friday afternoon. And

1 -- and -- and again, I think they are -- I think they do go
2 to -- to the fear she discusses in her statement. And --
3 and I think -- I think they are relevant to the case and
4 they're necessary witnesses.

5 (Sotto voce discussion between the Court and law
6 clerk.)

7 THE COURT: Anything further, Mr. Dixon? I'm sorry.
8 Jones. I'm sorry.

9 MR. JONES: Your Honor, again, just as to the
10 severance issue, I think it's necessary to protect both the
11 co-defendants and protect my client. Nothing further on
12 that, Your Honor.

13 THE COURT: Who'd like to respond?

14 MR. JENNINGS: Your Honor, just to clear up a little
15 bit of the time line. This -- I -- I put all these cases -
16 - all five of these defendants were on our trial docket in
17 which Judge Dennis held that meeting on Friday, June the
18 22nd. We faxed out the notice like we always do. And I
19 think Ms. Kennedy was the only attorney there and was there
20 representing the Public Defender's Office on a number of
21 other charges -- defendants.

22 The case was originally docketed for August 6th and
23 then based on peoples' schedules, we set it for this week.

24 As far as formal letters, I think I only sent a letter
25 to Mr. Bolus, based on his request due to some other

1 hearings that he had scheduled. So it wasn't a -- a -- in
2 my mind, a formal docket or a formal notice was done at the
3 docket meeting, and then I sent Mr. Bolus a letter to
4 assist in his scheduling.

5 As far as conversations we've had concerning the case,
6 it was always known from my perspective that the cases were
7 up for trial this week. And we have attempted to work out
8 a resolution with Ms. Smith, Mr. Hollins, and Mr. King
9 whereby they would plead guilty to some charge and then
10 testify. As -- as of right now, only Mr. Hollins has taken
11 advantage of that. He's the only co-defendant set to
12 testify.

13 I think under -- if we accept the time line of Mr.
14 Jones, I think he's had 10 days form notice if he's just
15 relying on that telephone call. But I would submit to the
16 Court that he had had discussions about that prior, and I
17 just fail to see the significance of -- of however Kerry
18 Hollins is going to portray his client. That's certainly
19 things that he can delve into on cross-examining him.

20 The truth is that in her -- she gave a written
21 statement admitting to setting up this robbery, which is
22 what she's charged with, accessory before the fact. So
23 basically ---

24 THE COURT: Mirandized and everything before she gave
25 the statement?

1 MR. JENNINGS: Yes, Your Honor. If we have -- if we
2 need to address that, she gave two false statements, the
3 State alleges, the night of the incident and then two days
4 later, on the 4th, after she was confronted with some of
5 the inconsistencies in her statement, she provided a final
6 written statement where she admitted to Detective Merrithew
7 that she had in fact been having conversations with Kerry
8 Hollins the day prior to this robbery taking place. And in
9 her words had -- had somebody that they could perform a
10 lick on and was in multiple phone conversations with him
11 the night of this incident, talking to him from the Red
12 Lobster where they tried to set up the robbery, then at the
13 Ruby Tuesday, where they tried to set up the robbery. Fell
14 through at all those places. Ultimately, she even went and
15 met this group of defendants out on Highway 78 to show them
16 where Dexter Perry was staying, drove back to Goose Creek,
17 led them back to the apartment where he was that evening,
18 and basically led them right to -- right to the victim.

19 So how that distinction comes down as to whether she's
20 the mastermind or whether she displayed a extremely vital
21 role in setting up this armed robbery, I don't think it of
22 any significance that warrants a continuance.

23 THE COURT: What did you all offer Ms. Smith?

24 MR. JENNINGS: Originally, Your Honor, we had offered
25 to plead to accessory before the fact to armed robbery,

1 which would have honestly exposed her to a sentence of 10
2 to 30 years. As recently as this morning, we made an offer
3 to her where she could plead guilty to accessory before the
4 facts, to voluntary manslaughter, kidnaping with concurrent
5 sentences and that would have exposed her to a sentence of
6 2 to 30 years. It's my understanding that she has rejected
7 that offer.

8 THE COURT: Mr. Jones, is that correct that those are
9 the offers that have been extended to your client?

10 MR. JONES: Those are, Your Honor.

11 THE COURT: Okay. And the last one being accessory
12 before the fact, with concurrent sentences on the -- on
13 voluntary manslaughter, which would be the lesser included
14 of murder, and kidnaping; is that correct? With an
15 exposure of 2 to 30 years.

16 MR. JENNINGS: Right. And I think that --

17 (Sotto voce discussion between Mr. Jennings and Ms.
18 Wilson.)

19 THE COURT: Uh-huh. That's what I said. Concurrent
20 with a minimum exposure of two years, maximum of 30.

21 (Sotto voce discussion between Mr. Jennings and Mr.
22 Jones.)

23 MR. JENNINGS: Your Honor, she is ---

24 THE COURT: What is her maximum exposure at this time
25 if these sentences were to be run consecutively with one
26 another? As I understand it that is -- she has -- one,

1 two, three, four, five, six, seven indictments will be --
2 basically ---

3 MR. JENNINGS: I think there'd be one set she would be
4 -- obviously, she could be sentenced up to life for murder
5 ---

6 THE COURT: Uh-huh.

7 MR. JENNINGS: --- and then 30 years for the kidnaping
8 and 30 years for the armed robbery.

9 THE COURT: So in essence, that would be a life
10 sentence.

11 MR. JENNINGS: Correct.

12 THE COURT: Because all of those are no parole and no
13 suspension offenses.

14 MR. JENNINGS: That's correct.

15 THE COURT: But under the deal that you all offered
16 her, she would have the ability to be on parole, correct?

17 MR. JENNINGS: Well, if they extended that ---

18 THE COURT: Two to 30, some of that could be
19 suspended, couldn't it?

20 MR. JONES: He -- he stated 85 percent of that would
21 be ---

22 THE COURT: Oh. Kidnaping.

23 MR. JONES: Whatever active -- she would have to do 85
24 percent of whatever active sentence.

25 THE COURT: Oh, God. Mr. Jones, have you communicated

1 these offers to your client?

2 MR. JONES: I have, but we just got this a little
3 while ago. I mean, I -- I'd -- I'd love to talk with her
4 for a moment before ---

5 THE COURT: I think you should.

6 MR. JONES: And as far as ---

7 THE COURT: Because she was -- because I was about to
8 put it on the record for PCR purposes. You know, Court --
9 the Court takes no position ---

10 MR. JONES: Judge ---

11 THE COURT: --- one way or the other about offers.

12 MR. JONES: If I could maybe -- if I could talk to her
13 away from her family for just a moment and all, to talk
14 with her one-on-one for a minute. I'd like to -- to --

15 THE COURT: Well, what I'm going to do is I'm going to
16 go ahead and rule on the motions. And then I'm going to
17 give you an opportunity to do that. Then we'll check to
18 see if Mr. Barnwell and Mr. Bolus's clients have been
19 brought over so we can hear Mr. Barnwell's motion.

20 I will say for the record -- and I feel comfortable
21 saying this -- because we do this all the time we have a
22 greater appreciation for the offer.

23 (To Defendant Smith) The Court takes no position one
24 way or the other about the offer. I have no feeling. I
25 come to work every day. I'm a bit of a workaholic, because

1 I prefer to be working than sitting and I think every
2 lawyer in this room would attest to that.

3 So whether I'm trying your case or someone else's,
4 that's what I'm going to be doing this week. So it really
5 doesn't matter to me whether you plead guilty or you don't
6 plead guilty. And I don't mean that to sound flowery, but
7 I'm just going to be direct with you. You have a great
8 deal of exposure.

9 How old is your client, Mr. Jones?

10 MR. JONES: Your Honor, she turned 20 ---

11 DEFENDANT SMITH: 20 now.

12 THE COURT: You're 20?

13 DEFENDANT SMITH: 20. Yes, ma'am.

14 THE COURT: Okay. You're 20 years old.

15 DEFENDANT SMITH: Uh-huh.

16 THE COURT: Okay. I need you to really fully
17 comprehend this and I'm going to have a little chat with
18 you before you speak with Mr. Jones. Again, I emphasize, I
19 take no position about the offer that has been made.

20 DEFENDANT SMITH: Okay.

21 THE COURT: The one great luxury I have is that I have
22 the ability to be completely neutral about fact finding. I
23 will say, however, that life in South Carolina means life.
24 That means you never get out. Even if you get deathly ill,
25 they put you in the infirmary, and you die there.

1 Again, I believe in being very direct with people.
2 These are no parole offenses, which means none of it can be
3 suspended, which means even if you get the minimum on the
4 other charges, absent the murder conviction, you would
5 spend the rest of your life in prison. That's a long time
6 for a 20 year old.

7 Coupled with the fact that many people who are wiser
8 than me, that have more experience in the system, say
9 they've never seen anyone survive 30 years in the system,
10 much less life. That they usually end up not living very
11 long, just because of the sheer conditions of it, the sheer
12 solitude of -- of the whole situation. And then the fact
13 that most people just lose hope being in jail that long.
14 Okay?

15 Now, the solicitor's office has extended to you an
16 offer that would allow you to plead to certain offenses,
17 giving you a minimum exposure of two years and a maximum
18 exposure of 30 years.

19 (To Mr. Jennings) Would you all take any position on
20 sentence, or would you all simply leave that to the
21 discretion of the Court, after she has testified?

22 MR. JENNINGS: The victim's family is certainly going
23 to have ---

24 THE COURT: Uh-huh.

25 MR. JENNINGS: --- a position to take.

1 THE COURT: Do you know what that position's going to
2 be? They going to want the maximum?

3 MR. JENNINGS: Well, they hold her highly culpable in
4 the incident and she was actually related. She was a
5 cousin of the victim and ---

6 THE COURT: I would imagine, however, that their --
7 their -- their stance might soften some if her substantial
8 cooperation leads to the conviction of these other folk.

9 MR. JENNINGS: They certainly are eager to see her
10 show some --

11 THE COURT: Accountability.

12 MR. JENNINGS: -- accountability and take
13 responsibility for her actions.

14 THE COURT: Okay. Ms. Smith, I want you to -- and I'm
15 going to rule on the motions that your lawyer has made,
16 that being the motion for continuance and a motion for
17 severance. I'm going to rule on those motions, and then
18 I'm going to give you what I feel will be a meaningful
19 opportunity to discuss this with him.

20 Only you can determine what your exposure is. Only
21 you can determine if you can live with -- and it's my job
22 to see the worst case scenario. The worst case scenario
23 for you is life. But I take a very generous position
24 regarding that. If I can -- if the defendant can live with
25 the consequences, I can live with the consequences.

1 Because only you can make that decision about your
2 consequences. I cannot. Because I'm not the one that
3 would have to deal with those consequences. It has very
4 little affect on my life. Okay?

5 So I want you to have a very informed discussion.
6 Again, the Court takes no position regarding it. But for
7 PCR purposes, I am going to question you regarding it,
8 because I want the record to be very clear that the -- that
9 the offer was fully communicated to you by your lawyer,
10 that you are satisfied with the way he communicated it to
11 you, and that you had a full and adequate opportunity to
12 discuss it with him. Because I find that hindsight in many
13 instances is 20/20, and people see things very differently
14 after certain things have transpired versus how they see
15 them before they transpire.

16 So that is -- would be the only reason I would be
17 asking those questions of you, solely for the purposes of
18 what we call a "post-conviction relief action," in the
19 event that your perception today is substantially different
20 than potentially then.

21 Now, as regards the motion for continuance, the Court
22 would find that there is no basis for the motion for
23 continuance, that this case has been on the docket pending
24 for more than a year, that there was a docket meeting held
25 on June 22nd, 2007, with Judge Dennis, and at that time

1 this matter was placed on the trial docket. The Court will
2 find that that is more than substantial notice. As we all
3 know, our system is run by the solicitor's office, which is
4 a constitutional office and they run the dockets and they
5 determine when a case is called. It is not unusual to get
6 a call on Friday that your case is up for Monday, and that
7 is why trial lawyers must always be in the posture of being
8 ready to try their cases. Especially when it's back -- it
9 is -- has that much age on it, and frankly, with the docket
10 as we have it now, it would not be any different -- Mr.
11 Jones would not be any differently situated than a lawyer
12 that if this case were to resolve, that we would call and
13 tell them that they are up for trial in the morning.

14 If he needs assistance -- I do not find persuasive his
15 argument regarding the -- getting witnesses here. I think
16 that you'll have more than adequate time to get any
17 witnesses here that you need to get here. You'd have the
18 same problem with the witness in North Carolina. They're
19 outside the subpoena power of the Court. They would have
20 to come here voluntarily in any event. And unfortunately,
21 we encounter problems with officers all the time because in
22 lots of incidences they're required to take annual leave
23 and otherwise come and testify, and they're not willing to
24 do that. And I can't say that I blame them. So there
25 really is no guarantee with any more time that you would

1 have had any better opportunity to secure these witnesses.
2 And I would find and note for the record that you had more
3 than adequate time to secure their presence if that is your
4 desire, because, of course, you will not be required to
5 present any testimony before probably Wednesday, based on
6 the amount of witnesses that the State has in this matter.

7 I would find that based on your other assertions
8 regarding Kerry Hollins, there's no indication in the
9 record that you will not have a meaningful opportunity to
10 cross-examine Mr. Hollins and to inquire into his
11 credibility as a witness as to the weight the jury should
12 give his testimony. And I have not heard anything that
13 convinces me that you will not be able to fully explore
14 your argument or your theory which is that your client was
15 the least culpable in these alleged incidences.

16 As regards the motion for severance, that motion is
17 denied. As you know, a motion for severance is addressed
18 at the sound discretion of the Court, absent an abuse of
19 discretion. The general rule allowing the trial for cause
20 with equal force when a co-defendant's motion is based on
21 the likelihood that he and a co-defendant would present
22 mutually antagonistic defenses. And basically, that is
23 your argument, that the defenses are antagonistic, that --
24 and that, basically, as I hear it, that's -- that's the
25 basic grounds of your motion. And that, of course, based

1 on case law, is not sufficient basis for the ordering of a
2 severance.

3 As we all know, criminals or criminal defendants who
4 are jointly tried are not entitled to separate trials as a
5 matter of right. That is based on *State vs. Nichols*, N-i-
6 c-h-o-l-s, and *State vs. Boys*, B-o-y-s, as well as *State*
7 *vs. Crowe*, C-r-o-w-e; as well as *State vs. Harvey*, which is
8 clearly enunciated that co-defendants having different
9 trials strategies and some evidence admissible against one
10 but not the other is not a basis to severe, as well as the
11 inability to make a co-defendant testify or having a co-
12 defendant available to testify based on *State vs. Allen*.
13 As well as whether other defendants will put up evidence or
14 not put up evidence is not a basis for severance.
15 Therefore, the motion is denied.

16 Now, you want to take some time and speak with your
17 client, and then I will -- I'm going to resume and put some
18 things on the record regarding the PCR matters that I've
19 indicated.

20 (To the bailiff) And has -- have they arrived with Mr.
21 Barnwell's client, Mr. Jermaine Hartwell? Could you check
22 that for me as well as Gary Grant.

23 MR. JONES: I'm going to see if they vacated that
24 room. It's probably available just for now.

25 THE COURT: Feel free.

1 (Multiple sotto voce discussions between various
2 people including the Court, Mr. Jones, Mr. Bolus, Mr.
3 Jennings and the bailiff.)

4 THE COURT: Are we waiting to hear Mr. -- is there
5 some reason we're waiting to hear the motion?

6 MR. BARNWELL: Your Honor ---

7 THE COURT: I'm waiting on them to find a table. But
8 I don't think that -- we have to wait to hear the motion.
9 Your client's present, correct, Mr. Barnwell?

10 MR. BARNWELL: He is present, Your Honor. Yes, Your
11 Honor.

12 THE COURT: You may proceed.

13 MR. BARNWELL: Your Honor, let me go ahead and hand up
14 all -- all my motions which you and Mr. Jennings are aware
15 about, which point in time we'll be hearing them. I'd like
16 to go ahead and have those be filed, Your Honor.

17 THE COURT: I think we've already dealt with the bulk
18 of them.

19 MR. BARNWELL: Well, some of them -- some we may --
20 may have dealt with, Your Honor.

21 THE COURT: I think we've already determined that the
22 motion to present introduction of the photos is moot,
23 because the State doesn't intend to introduce any. The
24 video testimony we've determined is moot unless the door is
25 opened for purposes of rebuttal or cross-examination. The

1 motion to suppress was granted without objection. We're
2 looking for a table right now. I don't really think
3 there's any basis for that as long as we give you
4 sufficient privacy with your client, but I'm going to make
5 an attempt to accommodate you. The *Biggers* motion was
6 dealing with the line-up. We've already determined we're
7 going to deal with that, although not right this moment.
8 The admissibility of prior convictions I will not deal with
9 until it becomes relevant, meaning until such time that
10 your client determines he's going to testify. So that only
11 leaves us with the motion for severance.

12 MR. BARNWELL: Thank -- thank you, Your Honor.

13 THE COURT: You're welcome.

14 MR. BARNWELL: Your Honor, Mr. Hartwell is being --
15 being tried with Mr. Grant and -- and Marquita Smith. Mr.
16 Grant, I believe, will be identified as a person who did
17 certain most violent behavior. I think there is -- is some
18 testimony that ---

19 (The bailiffs carry in a table.)

20 THE COURT: (To the bailiffs) You can come on. Thank
21 you.

22 MR. BARNWELL: --- there is some testimony that my
23 client actually killed the victim. Certainly ---

24 THE COURT: (To the bailiffs) Push it up some more for
25 me. Oh, I see what you're doing. Well, that might work.

1 (Sotto voce discussion between the Court and law
2 clerk.)

3 THE COURT: (To the bailiffs) Could we maybe do an
4 "L"? Could we push this back further this way and then
5 just set that on the end of it. You see what I mean by
6 that?

7 (Multiple sotto voce discussions between the bailiffs,
8 the clerk of court, and the Court.)

9 THE COURT: Okay. Mr. Barnwell, that gives you space
10 for you and your client. Actually, it'll probably be
11 better for Mr. Jones and his client to be right here. That
12 leaves you -- you on one end and Mr. Bolus on the other
13 end. And that gives everybody sufficient and adequate
14 space I think.

15 All righty. That works. That's good. And it may
16 give you extra room is Ms. Smith decides to do what --
17 whatever she and Mr. Jones decide they're going to do.

18 Okay. I think that's more than adequate.

19 Mr. Barnwell, you may continue.

20 MR. BARNWELL: Your Honor ---

21 THE COURT: (To the bailiff) Thank you.

22 MR. BARNWELL: --- I think there's a danger that
23 there'll be -- the jury will find that Mr. Hartwell guilty
24 by association with -- with this other much more violent
25 co-defendant. In addition, Mr. Hartwell's defense is

1 completely antagonistic to the other defenses. Mr.
2 Hartwell's defense is that he did not agree to any sort of
3 robbery. That he did not harm the victim ---

4 (Sotto voce discussion between the Court and law
5 clerk.)

6 MR. BARNWELL: --- he did not -- did -- did not harm
7 the victim in any way, Your Honor. His -- his -- his
8 defense which -- is -- is that he was -- was -- well, he
9 certainly was -- was present at the -- at the -- at -- at
10 the location of -- of -- of the -- the crime, but he -- he
11 -- his position is that he was there to have discussions
12 with the victim, not -- not to -- to harm in any way and
13 then -- and that -- that he had heard of robberies that
14 were being proposed. He rejected that and very strongly
15 told the -- the co-defendants that -- that that's not
16 something that -- that they should do. And also very
17 strongly told co-defendants that they should not harm --
18 harm the victim, Your Honor.

19 THE COURT: Anything further on the motion for
20 severance?

21 MR. BARNWELL: Your Honor, that -- that that -- that
22 that is the antagonistic nature of -- of -- of the Hartwell
23 defense.

24 THE COURT: Who would like to respond to the motion
25 for severance?

1 MR. BARNWELL: Your Honor, I think the case law's
2 pretty clear and that the fact that the Court of Appeals
3 and the Supreme Court's used the same language (as read):
4 "The antagonistic defenses or co-defendants accusing each
5 other of committing a crime does not satisfy the requisite
6 prejudice that is needed to support severance of
7 defendants. The defendants are going to have to show some
8 specific trial right that is going to be infringed upon by
9 the joint trial."

10 In this case, all the witnesses are the same, they
11 would testify in either trial, and simply the fact that
12 antagonistic defense is pointing the finger at each other
13 does not satisfy that prejudice.

14 THE COURT: Anything further, Mr. Barnwell?

15 MR. BARNWELL: No. No. Nothing further, Your Honor.

16 THE COURT: Motion for severance is denied. The case
17 law from the U.S. Supreme Court as well as the South
18 Carolina Supreme Court is very clear that the fact that
19 defendants may have a mutual antagonistic defense and other
20 type characterizations of that -- of that same category or
21 the effort of one defendant to shift the blame from himself
22 to a co-defendant neither control nor eliminate the
23 question of severance and does not form a basis for a
24 motion for severance. Of course, motion for severance is
25 addressed at the sound discretion of the Court and again,

1 as I've already indicated, the right for defendants to be
2 tried separately is not a matter of right -- the request to
3 be tried separately is not a matter of right and a mutually
4 antagonistic defense does not form a basis for the motion
5 for severance, and therefore, the motion is denied.

6 The defendant, of course, must demonstrate some
7 prejudice resulting from the trial. The Court would find
8 that there has been no such showing of prejudice.

9 Okay. The other motions we -- I -- I would think that
10 on the *Biggers* motion, that's not going to come up in
11 opening statements, is it?

12 MS. WILSON: No, ma'am.

13 MR. BOLUS: Not from me.

14 THE COURT: Okay. Why don't we take that up at the
15 time that the -- that the evidence is sought to be
16 introduced. I think that might be a little more efficient
17 in terms of our time -- our usage of time. Because I'd
18 like to go ahead and get started qualifying the jury if we
19 finish roll call. They were supposed to let me know when
20 that was done. I hadn't -- I think Ollie went to check,
21 but I'm not sure.

22 (To the bailiff) Could you check for me and see if
23 they've finished with about mileage and everything for the
24 jury?

25 (Sotto voce discussion between the Court, law clerk,

1 and the court reporter.)

2 THE COURT: Mr. Bolus, as I understand it, you had no
3 issues, no pre-trial motions, other than the *Biggers*.

4 MR. BOLUS: Yes, Your Honor.

5 THE COURT: And we've already determined that there --
6 the solicitor has no intention of mentioning any other
7 crimes that are pending in Charleston against your client.

8 MR. BOLUS: That's correct.

9 THE COURT: Can we see if Mr. Jones has had sufficient
10 time to speak with his client and where they -- how much
11 time he needs to talk with her.

12 (Sotto voce discussion between the Court and the
13 bailiff.)

14 THE COURT: Let me ask: Mr. Barnwell and Mr. Bolus,
15 do you all plan to have your clients present during roll
16 call or general jury qualifications?

17 MR. BOLUS: Do we want them present or --

18 THE COURT: Do you want them present?

19 MR. BOLUS: Yeah. I mean, he's here and he -- he's
20 dressed up, ready to go.

21 THE COURT: Okay. I'm just asking.

22 MR. BOLUS: Okay.

23 THE COURT: We generally don't have defendants present
24 during general jury qualification.

25 MR. BOLUS: Okay.

1 THE COURT: But I mean, if they're here, I don't have
2 any objection to it. I would imagine State has no
3 objection to it; is that correct?

4 MR. JENNINGS: We have no objection.

5 THE COURT: Okay. Please make sure Mr. Bolus's client
6 is seated next to him.

7 (To the bailiff) We need an extra chair for Mr.
8 Barnwell's client. No, no. We -- well, I need to see what
9 Mr. Jones's client is going to do. We need an extra chair,
10 don't we?

11 (Sotto voce discussion between the bailiffs.)

12 THE COURT: Because Mr. Bolus's client is going to sit
13 to his right. We need another chair here.

14 Mr. Jones, do you need additional time to speak with
15 your client?

16 MR. JONES: Judge, I think she may, but she wanted to
17 just get with her parents real quick about this. And --
18 and -- and I wanted to also speak with them one time just
19 so she ---

20 THE COURT: Can we go get her clients -- or her
21 parents, please, and bring them back there, because we're
22 getting ready to start jury qualification. I've delayed it
23 as long as I can.

24 MR. JONES: I understand.

25 THE COURT: I need to know what she's going to do so I

1 can know how I need to situate the defendants.

2 MR. JONES: I appreciate the Court's indulgence on
3 this.

4 (Sotto voce discussion between the court reporter and
5 the clerk of court.)

6 MR. JONES: Your Honor, may we step in the hallway
7 real quick?

8 THE COURT: Uh-huh.

9 (Sotto voce discussion between the Court and the court
10 reporter.)

11 THE COURT: Okay. Mr. Jones, I assume your client is
12 going forward?

13 MR. JONES: Your Honor, that's what she's indicated
14 she wants to do.

15 THE COURT: Okay. Ms. Smith, stand for me, please,
16 and raise your right hand to be sworn.

17 MARQUITA SMITH, after having
18 been duly sworn, testifies as follows:

19 DIRECT EXAMINATION BY THE COURT:

20 Q And Ms. Smith, is it correct, you've been here during
21 the proceedings, correct?

22 A Yes, ma'am.

23 Q And you understood and heard as the solicitor
24 published for the record the offer that had been extended
25 to you which was allowing you to -- to plead to certain

1 counts of accessory before the fact and giving you an
2 exposure of the minimum of two years or maximum of 30
3 years; is that correct?

4 A Yes, ma'am.

5 Q Have you had a full opportunity to discuss the deal as
6 it had been extended with your lawyer?

7 A Yes, ma'am.

8 Q And is it correct that you now wish to reject those
9 offers?

10 A Yes, ma'am.

11 Q You understand that this rejection to some extent is
12 permanent?

13 A (No audible answer.)

14 Q Okay. I need you to say "yes" or "no."

15 A Yes, ma'am.

16 Q And you're doing that freely and voluntarily and of
17 your own will?

18 A Yes, ma'am.

19 Q You feel you're subject to any duress in making this
20 decision?

21 A No, ma'am.

22 Q Are you making this decision as a matter of strategy,
23 that being a strategy threshed out with your attorney?

24 A Yes, ma'am.

25 THE COURT: Okay. Mr. -- Mr. Jones, is that accurate?

1 MR. JONES: Your Honor, it -- it's -- it is her -- I'm
2 not sure if there's a strategy particularly involved in it.
3 It's a decision that she makes based on the principal and
4 her understanding of her culpability. But I don't know
5 that I would say there's a strategy that I've ---

6 THE COURT: Have you fully discussed the matter with
7 her?

8 MR. JONES: We have -- we've gone through it, Judge,
9 from every angle I can think of.

10 THE COURT: All right. And you've fully disclosed to
11 her the full nature of the -- of the offer that has been
12 extended.

13 MR. JONES: I have, Your Honor.

14 THE COURT: And it is her desire to reject it.

15 MR. JONES: It is, Your Honor.

16 THE COURT: And do you agree with that decision?

17 DEFENDANT SMITH: Yes, ma'am.

18 THE COURT: I'm asking your lawyer.

19 DEFENDANT SMITH: Oh, sorry.

20 THE COURT: It's okay.

21 MR. JONES: Your Honor, I -- I -- I agree that it --
22 it is her decision and I think it's -- it's -- it's up to
23 her to make -- you know, I can't to some extent give my
24 recommendation on, you know, what I would do in her shoe.
25 But -- but I -- I agree, it is her decision to make and --

1 and I've explained every option that -- what in my opinion
2 was.

3 THE COURT: Okay. Thank you very much.

4 Now, before we bring in the jury for qualification,
5 let me ask Mr. Jennings and Ms. Wilson: Have -- has an
6 offer been extended likewise to Mr. Grant, Mr. Bolus's
7 client?

8 MR. JENNINGS: Your Honor, it's my -- I've had
9 conversations with both Mr. Bolus and Mr. Hartwell -- I'm
10 sorry, Mr. Barnwell. And both inform me that the statement
11 made based on their conversations with their clients they
12 do not have any intention of pleading guilty.

13 THE COURT: Why does ---

14 MR. JENNINGS: And each have been offered 30-year
15 sentence on murder. They would not accept that.

16 THE COURT: Okay. So no offer has been extended; is
17 that correct?

18 MR. JENNINGS: Based on those conversations, no we did
19 not.

20 THE COURT: Okay. Mr. Bolus and Mr. Barnwell, is that
21 -- were you -- was the State inclined to offer that?

22 MR. BOLUS: We never even got to that point, Your
23 Honor.

24 THE COURT: Okay.

25 MR. JENNINGS: As based on our conversations, it was

1 not a -- I think Mr. Barnwell said his client might be
2 willing to do 15 years and Mr. Bolus just said that Mr.
3 Grant had no intentions of pleading and we never went down
4 that road any further.

5 THE COURT: Okay. Mr. Bolus, is that a correct --
6 correct characterization as Mr. Jennings has presented it
7 to the Court?

8 MR. BOLUS: My client had other words, but they
9 weren't -- that is a summation of that and I asked him
10 point blank if he pled guilty of whatever charges, they
11 would run concurrent, you know, negotiation of 30 years.
12 He rejected that and (to Defendant Grant) is that still?
13 Yes. He's rejected that, so that's about it.

14 THE COURT: (To Defendant Grant) Sir, I need you to
15 stand for me and raise your right hand to be sworn.

16 GARY GRANT, having been duly sworn
17 testifies as follows:

18 THE COURT: Mr. Grant, I need you not to put your
19 hands in your pockets. It's going to make my deputies
20 itchy and they're going to want to put the shackles back on
21 you. Okay?

22 DEFENDANT GRANT: Yes, ma'am.

23 THE COURT: And I've asked them not to shackle your
24 hands. Okay?

25 DEFENDANT GRANT: Yes, ma'am.

1 DIRECT EXAMINATION BY THE COURT:

2 Q Now, have you listened to what Mr. Jennings and your
3 lawyer have represented to the Court?

4 A Yes, ma'am.

5 Q And is it correct that no offers have been extended
6 because you've indicated that you have no desire to plead
7 guilty; is that correct?

8 A Yes, ma'am.

9 Q Okay. And you feel fully informed in that position?

10 A Yes, ma'am.

11 Q Okay. And you would represent to the Court that any
12 offers that have been made your lawyer has fully
13 communicated those to you?

14 A Yes, ma'am.

15 Q Okay. Thank you, sir. You may take your seat.

16 THE COURT: Mr. Barnwell, likewise, is it correct that
17 no offer's been extended to your client based on their --
18 his indication that he had no desire to plead guilty; is
19 that correct?

20 MR. BARNWELL: Your Honor, my discussion with Mr.
21 Jennings was that the guilty plea that would take life in
22 prison off the table it would be 30 years on the murder.
23 There was no indication whether it would be concurrent or
24 not concurrent. I assume they'd be -- they would take life
25 off -- off the table as -- the burglary as well. But what

1 it was is that life would be taken off the table if he pled
2 -- pled guilty.

3 THE COURT: Uh-huh.

4 MR. BARNWELL: I communicated that with Mr. Hartwell -
5 -

6 THE COURT: Uh-huh.

7 MR. BARNWELL: -- he said he rejected that, did not --
8 did not want -- did not want to take that offer.

9 THE COURT: Okay. Sir, could you stand for me please
10 and raise your right hand to be sworn.

11 **JERMAINE HARTWELL**, having been
12 duly sworn, testifies as follows:

13 DIRECT EXAMINATION BY THE COURT:

14 Q Mr. Hartwell, what Mr. Barnwell has just told the
15 Court, is that correct?

16 A Yes, ma'am.

17 Q And the offers that were made by the State, they were
18 fully communicated to you?

19 A Yes, ma'am.

20 Q And you have fully discussed those with Mr. Barnwell?

21 A Yes, ma'am.

22 Q And you have no desire to enter a plea other than that
23 of not guilty; is that correct?

24 A Yes, ma'am.

25 Q Okay. You may take your seat.

1 THE COURT: I'll reinforce for the record the only
2 reason I've asked these questions is for PCR purposes ---

3 MR. BARNWELL: And let me ---

4 THE COURT: --- in the event that it is ever alleged
5 that any offers were not fully communicated to your
6 clients.

7 MR. BARNWELL: Let -- let me add one -- one -- one
8 thing, Your Honor.

9 THE COURT: Yes, sir..

10 MR. BARNWELL: As Mr. Jennings said, Mr. Hartwell did
11 say he'd be willing to plead 15 years. I communicated that
12 to -- to Mr. Jennings.

13 THE COURT: Uh-huh.

14 MR. BARNWELL: But he rejected that.

15 THE COURT: Okay. That is accurate, correct, Mr.
16 Jennings?

17 MR. JENNINGS: Yes.

18 THE COURT: Okay. Let's see. Do ---

19 MR. BOLUS: Your Honor, I would like to note that
20 obviously, we did get some offer, but it was like, the
21 murder and some other things. But there was no discussion
22 about -- I asked him if he would agree to 30 years and I
23 think Mr. Jennings said "no." Is that correct? It would
24 still be "no"?

25 MR. JENNINGS: What?

1 MR. BOLUS: If he pled to guilt on murder or anything
2 else concurrent 30 years. I don't think you ever -- you
3 said, "probably not."

4 MR. JENNINGS: Yeah. I never -- we never got to any
5 kind of --

6 THE COURT: Well, let me ask the question differently.
7 Now that we're here at the cusp of selecting a jury, would
8 it be -- and of course, the Court takes no position one way
9 or the other. Again, I have no posture regarding it.

10 Do you all believe that it would be of benefit to now
11 talk, or are you all telling me that this -- that it is of
12 no benefit?

13 MR. JENNINGS: We're prepared to go to trial, Your
14 Honor.

15 THE COURT: Okay.

16 MR. BOLUS: It's -- and I don't think my client -- (to
17 Defendant Grant) even if you offered 30 years concurrent,
18 you would still reject that?

19 DEFENDANT GRANT: Yes, sir.

20 MR. BOLUS: So there's really no ---

21 THE COURT: Okay. I just wanted to make sure that was
22 clear for the record. Again, hindsight being 20/20.

23 Now, that then just leaves us with the *Biggers* hearing
24 which we'll take up simultaneously with the introduction of
25 that evidence. There are no *Jackson vs.. Deno* issues, as I

1 understand it. Is that also -- that's correct for Ms.
2 Smith also, correct?

3 MR. JONES: It is, Your Honor.

4 THE COURT: All right. Okay. What we will then do is
5 I need all -- how many jurors do we have?

6 THE BAILIFF: Fifty-six jurors.

7 THE COURT: Fifty-six. I need all of you to move over
8 here, because the jury's going to be over here. And then I
9 need -- ya'll move on this side. I'm sorry.

10 (Sotto voce discussion between the Court and multiple
11 people.)

12 Go and bring in all the jurors and then, Ollie, you
13 proceed with roll call and you come get me when you're done
14 and we'll go forward with jury qualifications.

15 CLERK OF COURT: Yes, ma'am.

16 THE COURT: Is there going to be any request by formal
17 arraignment, Mr. Bolus?

18 MR. BOLUS: Request for formal arraignment?

19 THE COURT: Do you want a formal arraignment?

20 MR. BOLUS: No, I don't think so.

21 THE COURT: Mr. Barnwell?

22 MR. BARNWELL: No. No, Your Honor.

23 THE COURT: Mr. Jones?

24 MR. JONES: No, Your Honor.

25 THE COURT: Let the record reflect that there are no

1 requests for formal arraignment, and will be waived.

2 THE COURT: You may be seated. State ready to
3 proceed?

4 MR. JENNINGS: State's ready, Your Honor.

5 THE COURT: Is the defense ready to proceed?

6 MR. BOLUS: Yes, Your Honor.

7 THE COURT: The strikes are 10 and 20.

8 MR. BOLUS: Your Honor, we've also agreed to
9 independently restrict ourselves. I would -- Bolus and
10 Grant to take seven strikes, Mr. Barnwell will take six,
11 and Mr. Jones will take seven. Rather than putting our
12 heads together we're just going to do seven, six, and
13 seven.

14 THE COURT: And that is correct, Mr. Barnwell?

15 MR. BARNWELL: Yes, Your Honor,

16 THE COURT: And Mr. Jones?

17 MR. JONES: It is, Your Honor.

18 THE COURT: Okay. You may proceed, Madam Clerk.

19 MR. JENNINGS: Your Honor, would you like me to call
20 the case for trial?

21 THE COURT: That might help. I'm -- you know what,
22 let's start over. As my nephew would say, "Can I have a
23 do-over?"

24 MR. JENNINGS: May it please the Court, Your Honor.

25 THE COURT: Yes, sir. You may proceed. And I

1 apologize. The record should reflect the defendants do not
2 request a formal arraignment. And actually, are all the
3 allegations the same on each indictment?

4 MR. JENNINGS: Yes, ma'am.

5 THE COURT: Pretty much?

6 MR. JENNINGS: Two are about -- Ms. Smith's charged
7 with accessory before the fact and we go forward on two
8 indictments against her.

9 THE COURT: Tell me which ones those are.

10 MR. JENNINGS: We're proceeding on 2007-GS-08-1748,
11 charges her with accessory before the fact of murder. And
12 2007-GS-08-1751, that charges her with accessory before the
13 fact of armed robbery.

14 THE COURT: Tell me which indictment -- what you'll be
15 proceeding on regarding Mr. Hartwell.

16 MR. JENNINGS: On Mr. Hartwell, Your Honor, we will be
17 proceeding on 2007-GS-08-345 --

18 THE COURT: Wait one second.

19 MR. JENNINGS: -- charges him on burglary in the first
20 degree.

21 THE COURT: Uh-huh.

22 MR. JENNINGS: 2007-313, charges him with armed
23 robbery. 342 is burglary in the first degree, 311 is
24 kidnaping, 308 is kidnaping --

25 THE COURT: Uh-huh.

1 MR. JENNINGS: -- 309 is kidnaping --

2 THE COURT: Uh-huh.

3 MR. JENNINGS: -- 310 is kidnaping --

4 THE COURT: Uh-huh.

5 MR. JENNINGS: 312 is murder.

6 THE COURT: Okay. And as regards Mr. Grant.

7 MR. JENNINGS: As to Mr. Grant, Your Honor, we are
8 calling 2007-GS-08-314 which charges him with armed
9 robbery; 315, 316, 317, and 318 are four counts of
10 kidnaping, 319 is an indictment for murder. And 343 and
11 347 charge him with two counts of burglary in the first
12 degree.

13 THE COURT: Ladies and gentlemen, we're going to
14 select a jury for the cases of the *State of South Carolina*
15 *vs. Gary Grant*, the *State vs. Jermaine Hartwell*, and the
16 *State vs. Marquita C. Smith*. Those indictments allege as
17 follows: As it regards Gary Grant, indictment 2007-314,
18 the offense indicted is armed robbery. That indictment
19 alleges that Gary Grant did in Berkeley County on or about
20 the 2nd day of August, 2006, while acting in concert with
21 co-defendants, take from the person or presence of Dexter
22 Perry the goods or monies of Dexter Perry, such goods or
23 money being described as an amount of U.S. currency and/or
24 jewelry while armed with a deadly weapon to wit a handgun;
25 alleging a violation of Code Section 16-11-330 of the Code

1 of Laws of South Carolina.

2 Indictment 2007-315, an indictment for kidnaping. And
3 that indictment alleges as follows: That Gary Grant did in
4 Berkeley County on or about the 2nd day of August, 2006,
5 while acting in concert with co-defendants, seize, abduct,
6 confine, or carry away Birdie Cobbs by any means -- by any
7 means whatsoever without the authority of law, and against
8 the will and consent of Birdie Cobbs; alleging a violation
9 of Code Section 16-39-10 of the Code of Laws as amended.

10 Indictment 2006 -- 7-316, an indictment for kidnaping,
11 alleges as follows: That Gary Grant did in Berkeley County
12 on or about the 2nd day of August, 2006, while acting in
13 concert with co-defendants, seize, abduct, confine, or
14 carry away Joe Husser, by any means whatsoever without the
15 authority of the law, and against the will and consent of
16 Joe Husser; alleging a violation of Code Section 16-39-10
17 of the Code of Laws as amended.

18 Indictment 2007-317, an indictment for kidnaping, that
19 alleges that Gary Grant did in Berkeley County on or about
20 the 2nd day of August, 2006, while acting in concert with
21 co-defendants seize, abduct, confine, or carry away Dexter
22 Perry by any means whatsoever, without the authority of the
23 law and without the consent of Dexter Perry -- this --
24 alleging a violation of Code Section 16-39-10 of the Code
25 of Laws.

26 On Indictment 2007-318, an indictment for kidnaping,

1 which alleges as follows: That Gary Grant did in Berkeley
2 County on or about the 2nd day of August, 2006, while
3 acting in concert with co-defendants, seize, abduct,
4 confine, or carry away Odoner -- or -- I assume that is how
5 it is pronounced, O-d-o-n-e-r, Cobbs, Jr., by any means
6 whatsoever without the authority of the law and against the
7 will and consent of Odoner Cobbs, Jr.; alleging a violation
8 of Code Section 16-39-10 of the Code of Laws.

9 On Indictment 2007-319, an indictment for murder,
10 which alleges as follows: That Gary Grant did in Berkeley
11 County on -- on the 2nd day of August, 2006, while acting
12 in concert with co-defendants, feloniously, willfully, and
13 with malice aforethought, kill and murder one Dexter Perry,
14 by means of blunt force trauma to the head and/or gunshot
15 wounds, and Dexter Perry did die in Berkeley County as an
16 approximate result thereof, on August 2nd, 2006; alleging a
17 violation of Code Section 16-310 of the Code of Laws as
18 amended.

19 Indictment 2007-343, an indictment for burglary in the
20 first degree, which alleges as follows: That Gary Grant
21 did in Berkeley County on or about the 2nd day of August,
22 2006, while acting in concert with co-defendants, willfully
23 and unlawfully and feloniously entered the dwelling located
24 at [REDACTED] Snow Goose Circle, Goose Creek, South Carolina
25 without consent and with the intent to commit a crime

1 therein; to wit, kidnaping and armed robbery. These acts
2 occurred with the following circumstance of aggravation, to
3 wit: the entering or remaining occurred during the hours
4 of darkness and/or when in effecting entry or while in the
5 dwelling or in immediate flight, or he and another -- or
6 another participant in the crime was armed with a deadly
7 weapon, to wit, a handgun and/or did cause physical injury
8 to a person who was not a participant in the crime and/or
9 used or threatened to use the dangerous -- the use of a
10 dangerous instrument and/or displayed what is a -- or
11 appeared to be a pistol or other firearm; alleging a
12 violation of Code Section 16-11-311, of the Code of Laws as
13 amended.

14 And Indictments [sic] 2007-347, an indictment for
15 burglary in the first degree, which alleges as follows:

16 That Gary Grant did in Berkeley County on or about August
17 2nd, 2006, while acting in concert with co-defendants,
18 willfully, unlawfully, and feloniously enter the dwelling
19 located at [REDACTED] Dutch Fork Road, Ladson, South Carolina,
20 without consent and with the intent to commit a crime
21 therein, to wit, kidnaping and armed robbery. These acts
22 occurring with the following circumstances of aggravation,
23 to wit, the entering or remaining occurred during the hours
24 of darkness and/or when in effecting entry, or while in the
25 dwelling or immediate flight, he or another participant in

1 the crime was armed with a deadly weapon, to wit, a
2 handgun, and/or did cause physical injury to a person who
3 was not a participant in the crime, and/or used or
4 threatened to -- the use of a dangerous instrument and/or
5 displayed what is or appeared to be a pistol or other
6 firearm; alleging a violation of Code Section 16-11-311 of
7 the Code of Laws as amended.

8 And as it regards Jermaine Hartwell, Indictment 2007-
9 308, which is an indictment for kidnaping, and Indictment
10 2007-308 [sic], which is an indictment for kidnaping, and
11 Indictment 2007-310, which is an indictment for kidnaping,
12 as well as Indictment 2007-311, which is an indictment for
13 kidnaping; and those indictments allege as follows: That
14 Jermaine Hartwell did in Berkeley County on or about the
15 2nd day of August, 2006, while acting in concert with co-
16 defendants, seize, abduct, confine, or carry away Joe
17 Husser, Birdie Cobbs, Dexter Perry, and Odoner Cobbs, Jr.,
18 by any means whatsoever without the authority and against
19 the will and consent of Joe Husser, Birdie Cobbs, Dexter
20 Perry, and Odoner Cobbs, Jr.; alleging these actions to be
21 in violation of Code Section 16-39-10 of the Code of Laws
22 as amended.

23 And Indictment 2007-312, which is an indictment for
24 murder, which alleges as follows: That Jermaine Hartwell
25 did in Berkeley County on or about August 2nd, 2006, while

1 acting in concert with co-defendants, feloniously,
2 willfully, and with malice aforethought, kill and murder
3 one Dexter Perry by means of blunt force trauma to the head
4 and/or gunshot wounds, and Dexter Perry did die in Berkeley
5 County as an approximate result thereof on or about August
6 2nd, 2006; alleging a violation of Code Section 16-310 of
7 the Code of Laws as amended.

8 And Indictment 2007-313, which is an indictment for
9 armed robbery, which alleges as follows: That Jermaine
10 Hartwell did in Berkeley County on or about August 2nd,
11 2006, while acting in concert with co-defendants, take from
12 the person of or presence of Dexter Perry the goods or
13 monies of Dexter Perry, such goods or monies being
14 described as an amount of U.S. currency and/or jewelry,
15 while armed with a deadly weapon, to wit, a handgun;
16 alleging a violation of Code Section 16-11-330 of the South
17 Carolina Code of Laws as amended.

18 And Indictments 2007-342 and 2007-345, both
19 indictments for burglary in the first degree, which allege
20 as follows: That Jermaine Hartwell did in Berkeley County,
21 on or about August 2nd, 2006, while acting in concert with
22 co-defendants, willfully, unlawfully, and feloniously
23 entered the dwellings located at [REDACTED] Snow Goose Circle,
24 Goose -- Goose Creek, South Carolina, and the dwelling
25 located at [REDACTED] Dutch Fork Road, Ladson, South Carolina,

1 without consent and with the intent to commit a crime
2 therein, to wit, kidnaping and armed robbery, these acts
3 occurring with the following circumstances of aggravation:
4 the entering or remaining occurred during the hours of
5 darkness and/or when effecting entry or while in the
6 dwelling or in immediate flight alleging that he or another
7 participant in the crime was armed with a deadly weapon, to
8 wit, a handgun, and/or did physical injury to a on who
9 was not a participant in the crime; and/or used or
10 threatened the use of a dangerous instrument, and/or
11 displayed what is appeared to be a pistol or firearm;
12 alleging a -- violations of Code Section 16-11-311 of the
13 Code of Laws as amended.

14 And as to the defendant Marquita C. Smith, Indictment
15 2007 -- (sneezes) excuse me -- 1748, which is an indictment
16 for accessory before the fact of a felony, that felony
17 being murder, that indictment alleges as follows: That
18 Marquita C. Smith did in Berkeley County between the 1st
19 day of August, 2006, and the 2nd day of August, 2006,
20 willfully, unlawfully, and knowingly advised, urged, or in
21 some way aid and abet Kerry Hollins and/or Gary Grant
22 and/or Kareem King and/or Jermaine Hartwell in the
23 commission of the murder of Dexter Perry, and the defendant
24 was not present at the scene when one or more of the above
25 named participants, while acting in concert, did with

1 malice aforethought, kill and murder Dexter Perry by means
2 of a gunshot wound; and Dexter Perry did die as a proximate
3 result August 2nd, 2006; alleging violations of Code
4 Section 16-140 and 16-310 of the of the Code of Laws as
5 amended.

6 And Indictment 2007-1751, accessory before the fact of
7 a felony, that felony being armed robbery, alleging as
8 follows: That Marquita Smith did in Berkeley County
9 between the 1st day of August, 2006, and the 2nd day of
10 August, 2006, willfully, unlawfully, and knowingly advise,
11 urge, or in some way aid and abet Kerry Hollins, and/or
12 Gary Grant, and/or Kareem King, and/or Jermaine Hartwell in
13 the commission of the armed robbery of Dexter Perry, and
14 the defendant was not present at the scene when one or more
15 of the above named participants, while acting in concert,
16 did take from the person or presence of Dexter Perry the
17 goods or monies of Dexter Perry, such goods or monies being
18 described as an amount of U.S. currency and/or jewelry,
19 while armed with a handgun; alleging a violation of Code
20 Section 16-140 and 16-11-330 of the Code of Laws as
21 amended.

22 If counsel for the State would stand and introduce
23 himself, as well as anyone who will be assisting him in the
24 trial of this case; and also publish the names of the
25 members of your office.

1 MR. JENNINGS: Good afternoon, ladies and gentlemen.
2 My name is Blair Jennings and I'm deputy solicitor of
3 Berkeley County. Myself and Scarlett Wilson, solicitor for
4 Charleston and Berkeley County, will be trying this case.
5 Sergeant Gerry Merrithew of the Berkeley County Sheriff's
6 Department was the lead detective on the case. He along
7 with several other members of the sheriff's department will
8 be assisting us. You will probably see Fred Folk moving in
9 and out of the courtroom. He's an investigator in my
10 office. He'll be helping us with the evidence, and
11 photographs, and those sort of things.

12 THE COURT: Thank you. Publish the names of the
13 members of your office also, please.

14 MR. JENNINGS: The entire office?

15 THE COURT: Uh-huh.

16 MR. JENNINGS: We have currently in our office myself,
17 Blair Jennings. The attorneys in our office are Kristi
18 Harrington, Bob Cook, Jennifer Porter, John Church, Peter
19 Phillips, and Ashley Hudson. In addition we have four
20 staff: Debbie Marsh, Debra Gentry, Hosier Sims ---

21 THE COURT: I meant the lawyers.

22 MR. JENNINGS: Oh, just the lawyers.

23 THE COURT: Uh-huh.

24 MR. JENNINGS: Okay. That's it.

25 THE COURT: Thank you. Counsel for -- for Mr. Grant,

1 Mr. Bolus, if you would introduce yourself and tell us the
2 names of any members of your firm, anyone who will be
3 assisting you in the trial of this case, and introduce your
4 client to the panel. Mr. Barnwell, if you will provide us
5 with the same information, and likewise, Mr. Jones. You
6 may proceed in that order.

7 MR. BOLUS: I'm Tommy Bolus. I represent Gary Grant
8 and I practice with my brother Keith Bolus. And my
9 secretary Kim Bell give me my paycheck and that's it.
10 Thank you.

11 THE COURT: If you would introduce your client to the
12 panel.

13 MR. BOLUS: You want him to stand up?

14 THE COURT: Uh-huh.

15 MR. BOLUS: This is Gary Grant.

16 THE COURT: Mr. Barnwell.

17 MR. BARNWELL: Elliott Barnwell. I practice in
18 Colleton, Berkeley, and Dorchester Counties. My office is
19 located in Colleton County. My client is Jermaine
20 Hartwell.

21 THE COURT: And Mr. Jones.

22 MR. JONES: My name is Craig Jones and I practice in
23 the tri-county area. I'm a solo practioner. I have a
24 paralegal, Connie Konki. I also have a law student who's
25 left today. Betty Castono is also working with me. My

1 client is Marquita Smith.

2 THE COURT: Thank you. Ladies and gentlemen, we're
3 going to go through a process that is called "voir dire."
4 That's just a fancy way of saying we're going to ask you
5 some questions so that the attorneys can more effectively
6 exercise their peremptory challenges during the jury
7 selection process.

8 If a question should apply to you, I will ask that you
9 stand, and in a loud, clear voice, please indicate your
10 name, your juror number, and an answer to the question if
11 applicable. And also remain standing until the Court has
12 finished its questioning of you.

13 If you feel a question is too personal, that you don't
14 feel comfortable answering it in the presence of the panel,
15 please make me aware of it, and I will speak with you
16 privately with the court reporter and the lawyers. It is
17 absolutely essential that we have accurate information.

18 Is there anyone with the panel related by blood or
19 marriage to Dexter Perry, Birdie Cobbs, Joe Husser, Odoner
20 Cobbs, Jr., Gary Grant, Jermaine Hartwell, or Marquita
21 Smith? Is so, please stand at this time.

22 JUROR PANEL: (No response.)

23 THE COURT: Is there any member of the panel a close
24 personal, social, or business relationship with Dexter
25 Perry or any of his relatives, Birdie Cobbs, Joe Husser,

1 Odoner Cobbs, Jr., Gary Grant, Jermaine Hartwell, or
2 Marquita Smith? If so, please stand at this time.

3 If you would tell me your name and your juror number.

4 JUROR: I'm Virginia Peace, 127.

5 THE COURT: And what is your relationship, Ma'am?

6 JUROR: I know her mom.

7 THE COURT: And you're referring to Ms. Smith?

8 JUROR: Ms. Smith, as well as her father.

9 THE COURT: And how would you characterize that
10 friendship? Is it a friendship, an acquaintance, you just
11 know them in passing?

12 JUROR: Acquaintance at church.

13 THE COURT: How often would you say you see them?

14 JUROR: Not that often.

15 THE COURT: Okay. If you'd remain standing.

16 And yes, ma'am.

17 JUROR: Shalanda Warren, juror number 183. I'm
18 friends with Ms. Smith.

19 THE COURT: You said you're friends?

20 JUROR: Yes.

21 THE COURT: How would you characterize that?

22 JUROR: Go to the same church.

23 THE COURT: Do you socialize?

24 JUROR: Yes.

25 THE COURT: Okay. As a result of these experiences,

1 do you both feel you can remain fair and impartial, and
2 render a fair and impartial decision in this case based
3 solely on the evidence as it will be presented, and on the
4 law as the Court will charge? Number 127?

5 JUROR: If it please the Court, I would prefer not to
6 be a juror on this trial.

7 THE COURT: Okay. I need you to answer my question
8 with a "yes" or a "no." And there is no right or wrong
9 answer. I just need you to be as honest with me as
10 possible. And my question is determined -- is trying to
11 determine if you can be fair and impartial, put aside any
12 predispositions you may have, and make a decision based
13 solely on the evidence and the law as the Court directs
14 you?

15 JUROR: Yes, I can.

16 THE COURT: And without going into too much detail,
17 were you trying to tell me you could not be fair and
18 impartial, or were you simply trying to tell me it's just
19 an uncomfortable position you don't want to be put in?

20 JUROR: Right. Very uncomfortable. I would not like
21 to be put in that position.

22 THE COURT: Okay. Any exception to excusing the juror
23 for cause from the State?

24 MR. JENNINGS: No, Your Honor.

25 THE COURT: Mr. Bolus?

1 MR. BOLUS: None.

2 THE COURT: Mr. Barnwell?

3 MR. BARNWELL: No, Your Honor.

4 THE COURT: Mr. Jones?

5 MR. JONES: No, Your Honor.

6 THE COURT: Ma'am, you're excused from the trial of
7 this case only. I -- you can take your seat.

8 Yes, ma'am.

9 JUROR: I'm very --

10 THE COURT: I can't hear you.

11 JUROR: -- uncomfortable --

12 THE COURT: Okay. Can you answer my question with a
13 "yes" or "no" answer?

14 JUROR: Yes.

15 THE COURT: You feel you can be fair and impartial?

16 JUROR: No.

17 THE COURT: I can't hear you.

18 JUROR: No.

19 THE COURT: Okay. So the answer then is "no"?

20 JUROR: (No audible answer.)

21 THE COURT: You need to answer verbally.

22 JUROR: No.

23 THE COURT: Okay. You'll be excused from this panel
24 only. You may take your seat.

25 The following are a list of potential witnesses. I

1 would ask that you listen very carefully:
2 Sergeant Kevin Ham
3 Detective J. D. McElvogue
4 Captain Rick Ollic
5 Detective Michael Crumley
6 Lieutenant Mark Mason
7 Detective Bobby Shuler
8 Detective Dean Kokinder
9 CSI Crystal Spence
10 Investigator D.H. Owens
11 Sergeant Gerry Merrithew
12 All of the Berkeley County Sheriff's Department
13 Chandra Chisolm
14 John Davis of the South Carolina Highway Patrol
15 Agent John Ortuno, Agent Dan DeFreese; both of the
16 South Carolina Law Enforcement Division
17 Tawana Davis [sic]
18 Odoner Cobbs, Jr.
19 Jose Husser
20 Birdie Cobbs
21 Amber Cobbs
22 Chris Nelson
23 Kerry Hollins
24 Kim Collins of the Medical University -- Dr. Kim
25 Collins of the Medical University of South Carolina

1 Dr. Stuart Leon of the Medical University of South
2 Carolina

3 Jodi Williamson, Berkeley County EMS

4 Connie Perry

5 and Kareem King

6 Is there anybody of the panel related by blood or
7 marriage to any of the people that I've just listed or does
8 anyone have a close personal or business relationship with
9 any of these individuals? If so, please stand at this
10 time.

11 Yes, sir. If you would tell me your name and your
12 juror number.

13 JUROR: 168, my name is Donald Wessinger, and I know
14 Rick Ollic.

15 THE COURT: And when you say you know him, how well do
16 you know him?

17 JUROR: I have coached his son in baseball and I've
18 assisted him in coaching baseball.

19 THE COURT: And how long ago was that, sir?

20 JUROR: Last year.

21 THE COURT: All right.

22 JUROR: And the year before that.

23 THE COURT: Sir, as a result of this relationship, do
24 you feel that you could remain fair and impartial, and
25 render a fair and impartial decision in this case based

1 solely on the evidence as it will be presented and on the
2 law as the Court will charge?

3 JUROR: Yes, I can.

4 THE COURT: Thank you, sir. You may take your seat.
5 Has any member of the panel ever -- yes, ma'am.

6 JUROR: I know Crystal Spence.

7 THE COURT: I need you to tell me your name and your
8 juror number.

9 JUROR: I'm sorry. Dena Glaze, number 68.

10 THE COURT: And you said you knew Crystal Spence of
11 the Berkeley County Sheriff's Office?

12 JUROR: Yes.

13 THE COURT: How would you characterize that
14 relationship?

15 JUROR: She was a past client.

16 MR. BOLUS: She was a --

17 THE COURT: Past client. How long ago was that,
18 ma'am?

19 JUROR: It's been a few years.

20 THE COURT: When was the last time you would estimate
21 you've seen her?

22 JUROR: I think I -- I ran into her in the mall.

23 THE COURT: Okay. But I mean in terms of her being a
24 client, how long ago -- I mean, how long ago would that
25 have been?

1 JUROR: Four years.

2 THE COURT: Four years? Is that what you said?

3 JUROR: Yes, ma'am.

4 THE COURT: As a result of this experience, do you
5 feel that you can remain fair and impartial, and render a
6 fair and impartial decision in this case based solely on
7 the evidence that will be presented and on the law as the
8 Court will charge?

9 JUROR: Yes, ma'am.

10 THE COURT: Thank you, ma'am. You may take your seat.

11 Has any member of the panel ever been represented by
12 any of the attorneys involved in this case or anyone with
13 whom they practice law? If so, please stand at this time.

14 (No response.)

15 THE COURT: Is there any member of the panel who is
16 related by blood or marriage to or have a close personal or
17 social relationship with any of the attorneys involved, or
18 anyone with whom they practice law? If so, please stand at
19 this time.

20 (No response.)

21 THE COURT: Is there any member of the panel who has
22 formed or expressed an opinion about any issue or matter
23 involved in this case. If so, please stand at this time.

24 (No response.)

25 THE COURT: Is there any member of the panel aware of

1 any bias or prejudice toward either the plaintiff -- I'm
2 sorry. Doing too much Civil Court -- bias or prejudice
3 toward the State or the defendants in this case? If so,
4 please stand at this time.

5 (No response.)

6 THE COURT: Is there any member of the panel -- was a
7 member of the panel a member of the Grand Jury which issued
8 the indictments in this case? If so, please stand at this
9 time.

10 (No response.)

11 THE COURT: Is there any member of the panel who is a
12 member of or contributor to any group which has as its
13 primary concern a promotion of law enforcement or victims
14 rights. These groups would include but are not limited
15 too: Mothers Against Drunk Driving, Students Against Drunk
16 Driving, Citizens Against Violent Crime, People Against
17 Rape, or Citizens Advocating a Return to Decency and
18 Ethics? If so, please stand at this time.

19 (No response.)

20 THE COURT: Is there any member of the panel that has
21 any personal knowledge of any of the facts alleged in this
22 case? Is so, please stand at this time.

23 (No response.)

24 THE COURT: Is there any member of the panel or any
25 member of your family ever lived in the area [REDACTED] Snow

1 Circle, Goose Creek, South Carolina; or [REDACTED] Dutch Fork
2 Drive, Ladson, South Carolina? If so, please stand at this
3 time.

4 (No response.)

5 THE COURT: Is there any member of the panel or any
6 member of your family ever been a victim of a violent
7 crime? Is so, please stand at this time.

8 Yes, ma'am. If you would tell me your name and your
9 juror number.

10 JUROR: 74, Teresa Hamaker.

11 THE COURT: and was it you or a family member, ma'am?

12 JUROR: Family member.

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

18 JUROR: Yes, ma'am.

19 THE COURT: Thank you. You may take your seat.

20 Yes, ma'am?

21 JUROR: I had a family member.

22 THE COURT: Tell me your name and your juror number.

23 JUROR: Lisa Falkowski, 55.

24 THE COURT: You said 55?

25 JUROR: Uh-huh.

1 THE COURT: And was it -- you said it was a family
2 member?

3 JUROR: Yes, ma'am.

4 THE COURT: As a result of this experience, ma'am, do
5 you feel that you can remain fair and impartial and render
6 a fair and impartial decision in this case based solely on
7 the evidence as it will be presented, and on the law as the
8 Court will charge?

9 JUROR: Yes, ma'am.

10 THE COURT: Thank you, ma'am. You may take your seat.
11 Yes, ma'am.

12 JUROR: Betty Wheeler, 169. And it's a family member.

13 MR. BOLUS: 169?

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

19 JUROR: Yes, ma'am.

20 THE COURT: Thank you, ma'am. You may take your seat.

21 Does any member of the panel know of any reason
22 whatsoever why he or she should not serve as a juror in
23 this case, with particular emphasis being placed on your
24 ability to be both fair and impartial to the State and the
25 defendants? If so, please stand at this time.

1 (No response.)

2 THE COURT: Are there any additional questions from
3 the State?

4 MR. JENNINGS: None from the State, Your Honor.

5 THE COURT: From the defense, Mr. Bolus?

6 MR. BOLUS: I would just like to know if Tawana Davis
7 is the same Tawana Deas? My -- said Deas, D-e-a-s.

8 MR. JENNINGS: That's correct. That's a -- it should
9 be D-e-a-s, Your Honor.

10 MR. BOLUS: Deas, not Davis. Tawana Deas.

11 THE COURT: Did I say "Davis"?

12 MR. BOLUS: Well, it says "Davis" on his, but I know
13 it's Deas, D-e-a-s.

14 THE COURT: Okay. I think that I may have said her
15 name, but out of an abundance of caution --

16 THE COURT REPORTER: It does say "Davis" on the list,
17 Your Honor.

18 THE COURT: Well, I read that list and I -- I read the
19 ones that were not on his. So I probably would have said
20 "Deas." But I'm going to ask again out of an abundance of
21 caution.

22 Is there any member of the panel related by blood or
23 marriage to or have a close personal or social relationship
24 with Tawana Deas? If so, please stand at this time.

25 (No response.)

1 MR. BOLUS: Thank you.

2 THE COURT: Anything additional, Mr. Barnwell?

3 MR. BARNWELL: No, Your Honor.

4 THE COURT: Anything additional, Mr. Jones?

5 MR. JONES: No.

6 THE COURT: Thank you. The strikes are 10 and 20.

7 Madam Clerk, you may proceed when you're ready.

8 (Sotto voce discussion between the Court and Clerk of
9 Court.)

10 THE COURT: Ladies and gentlemen, if your name is
11 called, please follow the following procedure. (To
12 bailiff) Can I borrow a deputy to demonstrate this for me?

13 Please do what the deputy is doing: Come straight up
14 the aisle. You will come and stand in front of the podium
15 in between these two tables and turn around facing back out
16 toward the panel, just as the deputy is doing. And you
17 will either be seated on the panel or returned to your
18 seat. Please bring all of your personal belongings.

19 Thank you for accommodating me. I always feel like
20 I'm on an airplane going, "These are the exits."

21 (Sotto voce discussion between Clerk of Court and the
22 Court.)

23 THE COURT: I appreciate your accommodating me.

24 All right. Ladies and gentlemen, if you just give us
25 a moment while the computer does its work, we'll begin with

1 the jury selection process.

2 (Sotto voce discussion between the Court, law clerk,
3 and Clerk of Court.)

4 THE COURT: We're going to go in order. He's got
5 seven, he's got six. Mr. Bolus, tell me again: seven,
6 six, and --

7 MR. BOLUS: Yes, ma'am. We're going to limit
8 ourselves to seven, six, and seven.

9 THE COURT: All right. Seven, six, and seven.

10 (To Clerk of Court.) So he will exhaust his at seven;
11 he will exhaust his at six; and he will exhaust his at
12 seven. And you will go in the order that they are standing
13 each time.

14 So the State will go first, and then you'll go Mr.
15 Bolus, Mr. Barnwell, and Mr. Jones on each person.

16 (Sotto voce discussion between the Court and Clerk of
17 Court.)

18 THE COURT: Madam Clerk, you may proceed when you're
19 ready.

20 CLERK OF COURT: Ladies and gentlemen of the jury,
21 when I call your name, please come forth and bring your
22 personal belongings with you. If I say, "Seat the juror,"
23 please have a seat in the jury box. If I say, "Excuse the
24 juror," please return to your original seat.

25 Juror 155, John R. Theriot. What saith the State?

1 MR. JENNINGS: Please present Mr. Theriot.
2 CLERK OF COURT: What saith defense?
3 MR. BOLUS: Present the juror. Since this is ---
4 THE COURT: No, no. Mr. Barnwell?
5 MR. BARNWELL: Please present the juror.
6 THE COURT: Mr. Jones?
7 MR. JONES: I wish to strike this juror.
8 CLERK OF COURT: Strike him?
9 THE COURT: Uh-huh. Juror's excused.
10 CLERK OF COURT: Excuse the juror.
11 Juror No. 30, Ronald D. Brunner. What saith the
12 State?
13 MR. JENNINGS: Please present Mr. Brunner.
14 CLERK OF COURT: What saith ---
15 MR. BOLUS: Present the juror.
16 CLERK OF COURT: Mr. Barnwell?
17 MR. BARNWELL: Present the juror.
18 MR. JONES: Present the juror.
19 CLERK OF COURT: Seat the juror.
20 Juror 180, Tobie L. Mixon. What saith the State?
21 MR. JENNINGS: Please present Ms. Mixon.
22 MR. BOLUS: Present her.
23 CLERK OF COURT: Mr. Barnwell?
24 MR. BARNWELL: I'm sorry. What was her number?
25 THE COURT: I'm sorry. 180. I apologize.

1 MR. BARNWELL: Please -- please present.

2 MR. JONES: Present the juror.

3 CLERK OF COURT: Seat the juror.

4 Juror 49, Justena R. Derosa. What saith the State?

5 MR. JENNINGS: Please present Ms. Derosa.

6 CLERK OF COURT: What saith Mr. Bolus?

7 MR. BOLUS: Present the juror.

8 CLERK OF COURT: Mr. Barnwell?

9 MR. BARNWELL: Please present the juror.

10 MR. JONES: Please present her.

11 CLERK OF COURT: Seat the juror.

12 Juror 73, Liane Gunther. What saith the State?

13 MR. JENNINGS: Please present Ms. Gunther.

14 MR. BOLUS: Present her.

15 CLERK OF COURT: Mr. Barnwell?

16 MR. BARNWELL: Please excuse her.

17 CLERK OF COURT: Excuse the juror.

18 (Sotto voce discussion between the bailiff and the
19 juror.)

20 CLERK OF COURT: Juror 82, Terry B. Hill. What saith
21 the State?

22 MR. JENNINGS: Please present Mr. Hill.

23 CLERK OF COURT: Mr. Bolus?

24 MR. BOLUS: Please excuse Mr. Hill.

25 CLERK OF COURT: Excuse the juror.

1 Juror 181, Angel Ortiz. What saith the State?

2 MR. JENNINGS: Please present Ms. Ortiz.

3 CLERK OF COURT: Mr. Bolus?

4 MR. BOLUS: Present the juror.

5 CLERK OF COURT: Mr. Barnwell?

6 MR. BARNWELL: Please present the juror.

7 CLERK OF COURT: Mr. --

8 MR. JONES: Please excuse this juror.

9 CLERK OF COURT: Excuse the juror.

10 Juror 42, Tamela L. Collins. What saith the State?

11 MR. JENNINGS: Please present Ms. Collins.

12 CLERK OF COURT: Mr. Bolus?

13 MR. BOLUS: Please present her.

14 CLERK OF COURT: Mr. Barnwell?

15 MR. BARNWELL: Please present Ms. Collins.

16 CLERK OF COURT: Mr. Craig [sic]?

17 MR. JONES: Please excuse the juror.

18 CLERK OF COURT: Excuse the juror.

19 Juror 44, Christie S. Daniel. What saith the State?

20 MR. JENNINGS: Please present Ms. Daniel.

21 CLERK OF COURT: Mr. Bolus?

22 MR. BOLUS: Please present Ms. Daniel.

23 CLERK OF COURT: Mr. Barnhill [sic]?

24 MR. BARNWELL: Please present the juror.

25 MR. JONES: Please present the juror.

1 CLERK OF COURT: Seat the juror.
2 Juror 106, John H. McNeill. What saith the State?
3 MR. JENNINGS: Please present Mr. McNeill.
4 CLERK OF COURT: Mr. Bolus?
5 MR. BOLUS: Please excuse Mr. McNeill.
6 CLERK OF COURT: Excuse the juror.
7 Juror 150, Hubert L. Sullivan. What saith the State?
8 MR. JENNINGS: Please present Mr. Sullivan.
9 MR. BOLUS: Please present him.
10 CLERK OF COURT: Mr. Barnwell?
11 MR. BARNWELL: Please present Mr. Sullivan.
12 CLERK OF COURT: Mr. Craig [sic]?
13 MR. JONES: Please present Mr. Sullivan.
14 CLERK OF COURT: Seat the juror.
15 Juror 27, Chiu Ying Brown. What saith the State?
16 MR. JENNINGS: Please present Ms. Brown.
17 CLERK OF COURT: Mr. Bolus?
18 MR. BOLUS: Please present her.
19 CLERK OF COURT: Mr. Barnwell?
20 MR. BARNWELL: Please present her.
21 MR. JONES: Please present her.
22 CLERK OF COURT: Seat the juror.
23 Juror 59, Earl Frasier, Jr.. What saith the State?
24 MR. JENNINGS: Please excuse Mr. Frasier from service
25 in this case.

1 CLERK OF COURT: Excuse the juror.
2 Juror 158, Theodore L. Toburen. What saith the State?
3 MR. JENNINGS: Please present Mr. Toburen.
4 CLERK OF COURT: Mr. Bolus?
5 MR. BOLUS: Present Mr. Toburen.
6 MR. BARNWELL: Please excuse Mr. Toburnen.
7 CLERK OF COURT: Excuse the juror.
8 Juror 93, Fidel M. Justiniano. What saith the State?
9 MR. JENNINGS: Please present Mr. Justiniano.
10 CLERK OF COURT: Mr. Bolus?
11 MR. BOLUS: Please excuse the juror.
12 CLERK OF COURT: Excuse the juror.
13 Juror 169, Betty F. Wheeler. What saith the State?
14 MR. JENNINGS: Please present Ms. Wheeler.
15 CLERK OF COURT: Mr. Bolus?
16 MR. BOLUS: Please excuse Ms. Wheeler.
17 CLERK OF COURT: Excuse the juror.
18 Juror 51, Catherine M. Doty. What saith the State?
19 MR. JENNINGS: Please present Ms. Doty.
20 CLERK OF COURT: Mr. Bolus?
21 MR. BOLUS: Please present her.
22 CLERK OF COURT: Mr. Barnwell?
23 MR. BARNWELL: Please excuse Ms. Doty.
24 CLERK OF COURT: Excuse the juror.
25 Juror 143, Leroy V. Simmons, Jr. What saith the

1 State?

2 MR. JENNINGS: Please present Mr. Simmons.

3 CLERK OF COURT: Mr. Bolus?

4 MR. BOLUS: Please present him.

5 MR. BARNWELL: Please present Mr. Simmons.

6 MR. JONES: Please present Mr. Simmons.

7 CLERK OF COURT: Seat the juror.

8 Juror 72, Clarence G. Gregg, Jr. What saith the
9 State?

10 MR. JENNINGS: Please present Mr. Gregg.

11 CLERK OF COURT: Mr. Bolus?

12 MR. BOLUS: Present the juror.

13 CLERK OF COURT: Mr. Barnwell?

14 MR. BARNWELL: Please present the juror.

15 CLERK OF COURT: Mr. Craig [sic]?

16 MR. JONES: Please present the juror.

17 CLERK OF COURT: Seat the juror.

18 Juror 100, Walter E. Lynn. What saith the State?

19 MR. JENNINGS: Please present Mr. Lynn.

20 CLERK OF COURT: Mr. Bolus?

21 MR. BOLUS: Present Mr. Lynn.

22 MR. BARNWELL: Present Mr. Lynn.

23 MR. JONES: Present Mr. Lynn.

24 CLERK OF COURT: Seat the juror.

25 Juror 104, Keon T. McCoy. What saith the State?

1 MR. JENNINGS: Please present Mr. McCoy.
2 CLERK OF COURT: Mr. Bolus?
3 MR. BOLUS: Present Mr. McCoy.
4 MR. BARNWELL: Present Mr. McCoy.
5 MR. JONES: Present Mr. McCoy.
6 CLERK OF COURT: Seat the juror.
7 Juror 137, William T. Roberson. What saith the State?
8 MR. JENNINGS: Please present Mr. Roberson.
9 CLERK OF COURT: Mr. Bolus?
10 MR. BOLUS: Present the juror.
11 CLERK OF COURT: Mr. Barnwell?
12 MR. BARNWELL: Please excuse this juror.
13 CLERK OF COURT: Excuse the juror.
14 Juror 117, Allysa L. Moyer. What saith the State?
15 MR. JENNINGS: Please present Ms. Moyer.
16 MR. BOLUS: Present Ms. Moyer.
17 MR. BARNWELL: Present Ms. Moyer.
18 MR. JONES: Present Ms. Moyer.
19 CLERK OF COURT: Seat the juror.
20 Juror 141, Everett D. Sherlock. What saith the State?
21 MR. JENNINGS: Please present Mr. Sherlock.
22 CLERK OF COURT: Mr. Bolus?
23 MR. BOLUS: Present Mr. Shelock.
24 MR. BARNWELL: Present Mr. Sherlock.
25 MR. JONES: Present Mr. Sherlock.

1 CLERK OF COURT: Seat the juror.

2 THE COURT: Two alternates.

3 CLERK OF COURT: Juror 182, Ted J. Rucker.

4 (Sotto voce discussion between the Court and Clerk of
5 Court.)

6 CLERK OF COURT: What saith the State?

7 MR. JENNINGS: Please present Mr. Rucker.

8 CLERK OF COURT: Mr. Bolus?

9 MR. BOLUS: Present him.

10 CLERK OF COURT: Mr. Barnwell?

11 MR. BARNWELL: Please present him.

12 MR. JONES: Please excuse this juror.

13 CLERK OF COURT: Excuse the juror.

14 Juror 56, Vanessa T. Foreman. What saith the State?

15 MR. JENNINGS: Please excuse Ms. Foreman for service
16 in this case.

17 CLERK OF COURT: Excuse the juror.

18 Juror 74, Teresa K. Hamaker. What saith the State?

19 MR. JENNINGS: Please present Ms. Hamaker.

20 CLERK OF COURT: Mr. Bolus?

21 MR. BOLUS: Please excuse the juror.

22 CLERK OF COURT: Excuse the juror.

23 Juror 172, Oscar E. Wilson. What saith the State?

24 MR. JENNINGS: Please present Mr. Wilson.

25 MR. BOLUS: Present the juror.

1 MR. BARNWELL: Present the juror.

2 MR. JONES: Please present the juror.

3 CLERK OF COURT: Seat the juror.

4 Juror 57, John R. Forsythe. What saith the State?

5 MR. JENNINGS: Please present Mr. Forsythe.

6 CLERK OF COURT: Mr. Bolus?

7 MR. BOLUS: Please present the juror.

8 CLERK OF COURT: Mr. Barnwell?

9 MR. BARNWELL: Please present the juror.

10 MR. JONES: Please excuse this juror.

11 CLERK OF COURT: Excuse the juror.

12 Juror 186, James B. Platzer. What saith the State?

13 MR. JENNINGS: Please present Mr. Platzer.

14 CLERK OF COURT: Mr. Bolus?

15 MR. BOLUS: Please excuse the juror.

16 CLERK OF COURT: Excuse the juror.

17 (Sotto voce discussion between the Court and Clerk of
18 Court.)

19 CLERK OF COURT: Juror 61, Shelby M. Gaillard. What
20 saith the State?

21 MR. JENNINGS: Please excuse Ms. Gaillard from service
22 in this case.

23 CLERK OF COURT: Excuse the juror.

24 Juror 26, Elizabeth J. Browder. What saith the State?

25 MR. JENNINGS: Please present Ms. Browder.

1 CLERK OF COURT: Mr. Bolus?

2 MR. BOLUS: Present the juror.

3 MR. BARNWELL: Please present the juror.

4 MR. JONES: Please present the juror.

5 CLERK OF COURT: Seat the juror.

6 THE COURT: Are there any motions regarding selection
7 of the jury from the State?

8 MR. JENNINGS: None from the State, Your Honor.

9 THE COURT: From the Defense, Mr. Bolus?

10 MR. BOLUS: None.

11 THE COURT: Mr. Barnwell?

12 MR. BARNWELL: None, Your Honor.

13 MR. JONES: None, Your Honor.

14 THE COURT: To those who were not selected, we thank
15 you for your time and your attention. This process has
16 taken us a little longer than it normally takes us. Again,
17 we appreciate your time and your patience. We would ask
18 that you call the jury information line after six o'clock
19 tomorrow evening for further instructions regarding your
20 service. We hope you have a wonderful day, and you're
21 excused with the Court's thanks.

22 (Remainder of jury panel exits the courtroom.)

23 THE COURT: Any objection to the jury being sworn from
24 the State?

25 MR. JENNINGS: No, Your Honor.

1 THE COURT: From the Defense, Mr. Bolus?

2 MR. BOLUS: None.

3 THE COURT: From the Defense, Mr. Barnwell?

4 MR. BARNWELL: None, Your Honor.

5 THE COURT: From the Defense, Mr. Jones?

6 MR. JONES: None, Your Honor.

7 THE COURT: Ladies and gentlemen, please stand and
8 raise your right hand so that the Clerk might administer
9 the oath.

10 (All jurors comply and are sworn.)

11 THE COURT: Ladies and gentlemen, I'm going to ask
12 that you indulge me just a little bit longer this -- this
13 afternoon. We -- again, you've heard me indicate that
14 we've taken a little longer today than we normally take.
15 Part of that is that we had you all come in a little later
16 so that we could dispose of some other business this
17 morning, unrelated to this case. And again, we appreciate
18 your patience.

19 I'm going to excuse you to your jury room, and what I
20 need for you all to do right now is to elect your
21 foreperson. Your foreperson is your spokesperson here in
22 the courtroom. They don't have any greater vote or voice
23 than you do. It is simply an administrative function.
24 What they really do is fill out the verdict form during
25 deliberations and if they jury has any questions during

1 deliberations, it is their responsibility to write out
2 those questions. Again, a foreperson is simply an
3 administrative function. A foreperson has no greater vote
4 or voice than any other member of the jury.

5 I'm going to ask that you elect person, and that you
6 write that person's name and juror number down on the pad
7 that is provided in the jury room. The alternate's can
8 observe this process, but they cannot vote in this process,
9 nor can they serve as the foreperson of the jury.

10 During this process, please do not talk about the
11 case. Please do not speculate about what you think it may
12 or could be about. I anticipate that once we -- you have
13 done that, that I will excuse you for the evening and we'll
14 begin fresh in the morning with opening arguments, the
15 Court's instructions, and testimony. Again, please do not
16 discuss the case, and as soon as you've elected your
17 foreperson, please knock on the door and let the bailiff
18 know. And we will then receive you back into the
19 courtroom. I'll give you additional instructions, and
20 we'll excuse you for the evening. If you would go with the
21 bailiff.

22 (Jury exits at 5:31 p.m.)

23 (Sotto voce discussion between the Court and law
24 clerk.)

25 THE COURT: Is there anything while we're waiting for

1 the jury electing their foreperson, from the State?

2 MR. JENNINGS: No, Your Honor.

3 THE COURT: From the Defense?

4 MR. BOLUS: No.

5 MR. BARNWELL: No.

6 MR. JONES: Nothing, Your Honor.

7 THE COURT: Okay. Well, we'll just stand down until
8 the jury does what they do, and then we will -- I
9 anticipate we'll break for the evening and then we'll have
10 opening instructions and opening arguments.

11 How many witnesses does the State plan to call?

12 MR. JENNINGS: Your Honor, we will probably call --

13 THE COURT: I didn't hear you.

14 MR. JENNINGS: I believe 16 or 17.

15 THE COURT: Okay. How long do you anticipate it will
16 take you to do that? When will you -- when do you
17 anticipate finishing your case if we being tomorrow
18 morning?

19 MR. JENNINGS: Mid-day Wednesday/Wednesday afternoon.

20 THE COURT: Okay. I'm not going to hold you to it,
21 Mr. Bolus, do you all -- I'm just asking for planning
22 purposes: Do you plan to call any witnesses?

23 MR. BOLUS: No. None.

24 THE COURT: Mr. Barnwell?

25 MR. BOLUS: My client may ---

1 THE COURT: Of course. I -- I -- I always ---

2 MR. BOLUS: None for the ---

3 THE COURT: --- assume -- I count clients. But I'm
4 talking about in addition to your client.

5 Mr. Barnwell?

6 MR. BARNWELL: None in addition to my client.

7 THE COURT: And Mr. Jones?

8 MR. JONES: Your Honor, possibly two, but they'd be
9 very, very brief.

10 THE COURT: Well, I mean, you don't -- you don't have
11 to -- I'm just -- just for planning purposes, I'm just
12 trying to sort of get a grasp on the week so that we won't
13 -- I don't want anybody to feel time constrained in the
14 presentation of their case.

15 And not to anticipate, but are they're going to be any
16 requests for any lesser included offenses?

17 MR. JENNINGS: None from the State.

18 THE COURT: I won't hold you to it. I'm just trying
19 to sort of anticipate some things as we go along. Of
20 course, I know, as the evidence develops, that may all
21 change. But worst case -- I prefer to have everything in
22 the pot and work backwards, because I have to subtract
23 things rather than having to wait at the last minute to add
24 things.

25 MR. BOLUS: I don't think so. From what I've seen,

1 it's either straight up or straight down kind of thing.

2 THE COURT: Okay.

3 MR. BOLUS: I may not agree with everything, but I
4 don't see where ---

5 THE COURT: Mr. Barnwell, is that your assessment
6 also?

7 MR. BARNWELL: That's the same assessment.

8 THE COURT: Mr. Jones?

9 MR. JONES: Your Honor, I might would see possibly an
10 attempt to strong armed, you know, at this point. But --
11 but I would anticipate that might be a possibility.

12 THE COURT: Okay.

13 (Sotto voce discussion between the Court and a
14 deputy.)

15 THE COURT: The jury's elected No. 72, Mr. Clarence
16 Gregg, as their -- as their foreperson. We'll have that
17 note marked as a Court's Exhibit.

18 (Marked Court's Exhibit No. 1, foreperson election
19 juror note.)

20 THE COURT: Anything before we bring in the jury and
21 with -- excuse them for the evening?

22 MR. JENNINGS: Nothing from the State, Your Honor.

23 THE COURT: Anything from the Defense, Mr. Bolus?

24 MR. BOLUS: No, ma'am.

25 THE COURT: Mr. Barnwell?

1 MR. BARNWELL: No, Your Honor.

2 THE COURT: Mr. Jones?

3 MR. JONES: No, Your Honor.

4 THE COURT: Please bring in the jury.

5 (Jury enters at 5:44 p.m.)

6 THE COURT: Mr. Foreman, ladies and gentlemen, as I
7 indicated, we're going to break for the evening. You all
8 have had a very long afternoon. We will resume in the
9 morning at 9:30. At that time, you will get the Court's
10 opening instructions, as well as hear opening arguments
11 from the attorneys and at that time I anticipate that we
12 will begin actual trial testimony.

13 As I indicated, it is my estimate that this case will
14 go all week long. So absence something else changing, I
15 wanted you to be able to make plans for the week.

16 During the break it is essential that you have
17 absolutely no communication about this case with anyone.
18 That includes your family members or friends or among one
19 another. Please don't speculate about what you think this
20 case may or could be about. You are the fact finders in
21 this case, and as a result, it is essential that you remain
22 fair and impartial until you've heard all of the evidence,
23 the attorneys' closing arguments, and the Court's
24 instructions on the law; and until you are released to
25 deliberate regarding this matter. Please don't read,

1 watch, or listen to any news accounts about this case. I'm
2 not aware of any prior to court this morning, but I would
3 assume as this case progresses that there may well be
4 something on the news -- in the newspaper, radio,
5 television, or otherwise. And even on the internet. I
6 would ask that you strictly abide by those instructions.
7 And please don't watch, read, or listen to any accounts;
8 please don't Google the subject or any of the defendants,
9 and please don't do any independent research of any type of
10 any matter that may well be included in this trial.

11 When you return to the courthouse in the morning,
12 you're going to return directly to your jury room, and the
13 bailiffs are going to show you how to do that. When you
14 return in the morning, it is also again essential that you
15 have no contact with anyone that you do not recognize to be
16 a juror. People look very different out in the hallways
17 and in the parking lot, restaurants, and otherwise, and I
18 would hate for an innocent conversation, for you to be
19 talking about the weather or something totally unrelated to
20 this case, and someone observing and misconstrue that and
21 think you were talking about the case. So I would ask that
22 you strictly abide by that instruction.

23 Hope that you all have a wonderful evening. We'll see
24 you in the morning at 9:30, at which time we will begin the
25 trial of this case. Again, we thank you for your patience.

1 We hope that you have a restful evening. We'll see you in
2 the morning. If you would go with your caretaker.

3 (Jury exits at 5:47 p.m.)

4 THE COURT: Anything before we adjourn for the
5 evening, from the State?

6 MR. JENNINGS: One thing. Now that the case has been
7 called and the jury sworn, we would ask that Ms. -- Ms. --
8 bond be revoked and she taken into custody during the trial
9 of the case.

10 THE COURT: Mr. Jones?

11 MR. JONES: Your Honor, we would post that -- she's
12 not a flight risk. She's been cooperative. She made every
13 roll call, she lives with her parents, she's a student at
14 ECPI, and again, it would certainly make it much more
15 effective for me to be able to meet with her in the
16 evenings and to be able -- than to come up here from
17 Charleston for this. She's not going anywhere. She is in
18 no point given ---

19 THE COURT: I -- I really don't have any option. The
20 burden is the standard. It's not whether she's a flight
21 risk. Statute provides that once the case is called, the
22 bond obligation is ended. Therefore, I have no way of
23 assuring her appearance. And the bond -- the bondsman has
24 no responsibility to her. So I have no option but under
25 statute to grant the request. Really not a request. The
26 State's operation statute. If you can get a bondsman to

1 write her another bond in the interim, you certainly can do
2 that. It's going to require another bonding fee, but there
3 aren't many bondsmen that are going to do that once a trial
4 gets started.

5 MR. JONES: Thank you, Your Honor.

6 THE COURT: You're welcome. I'll see you all in the
7 morning. If you all could for me, please, mark as many
8 exhibits as you can. If you all need to get here earlier,
9 do that so that we can have as little stop and going as
10 possible, the ones that you all can agree upon. Those you
11 cannot agree upon, just set those aside and we'll deal with
12 them in the morning.

13 MR. BOLUS: Thank you, Judge.

14 THE COURT: You're welcome. Y'all have a good
15 evening. I'll see you in the morning.

16 **AUGUST 28, 2007; DAY 2**

17 THE COURT: Is the State ready to proceed?

18 MR. JENNINGS: The State is ready, Your Honor.

19 THE COURT: Is the Defense ready to proceed?

20 MR. BOLUS: Yes.

21 MR. JONES: Yes, Your Honor.

22 MR. BARNWELL: Yes, Your Honor.

23 THE COURT: And just for the record, I disclosed to
24 counsel prior to beginning this morning that the media had
25 requested a camera, and as I understood, there is no

1 objection from the State or the Defense: Bolus, Barnwell
2 or Jones. Is that also correct?

3 MR. BOLUS: Yes.

4 MR. BARNWELL: That's correct, Your Honor.

5 MR. JENNINGS: Yes.

6 MR. JONES: Yes.

7 THE COURT: Okay. Are we ready to proceed with
8 opening argument?

9 MR. JENNINGS: Yes.

10 MR. BOLUS: Yes.

11 THE COURT: Mr. Barnwell?

12 MR. BARNWELL: Yes.

13 THE COURT: Mr. Jones?

14 MR. JONES: Yes.

15 THE COURT: Okay. We will bring in the jury. I will
16 give opening instruction. It will then be followed by
17 opening argument. And what I plan to do is just go in the
18 order as you all are seated. Is that acceptable to the
19 defendants?

20 MR. BOLUS: That's fine.

21 MR. BARNWELL: Yes.

22 MR. JONES: Yes.

23 (Sotto voce discussion between the Court and Clerk of
24 Court.)

25 COURT OFFICER: Come to order.

1 THE COURT: You may be seated. Is the jury ready?

2 COURT OFFICER: Ready, Your Honor?

3 THE COURT: Yes.

4 COURT OFFICER: Counsel will rise for the jury,
5 please.

6 (The jury enters at 9:58 a.m.)

7 THE COURT: You may be seated. Good morning Mr.
8 Foreman, ladies and gentlemen. I hope that you all had a
9 restful evening. As I indicated last night, we are at the
10 stage where we are beginning the trial of this case. You
11 will first hear from the Court and I will give you some
12 opening instructions so that you will know how we will be
13 proceeding in this matter. You will then hear opening
14 arguments from the lawyers in this case.

15 Ladies and gentlemen of the jury, the cases that we're
16 about to try is [sic] the *State of South Carolina vs. Gary*
17 *Grant, Jermaine Hartwell, and Marquita Smith.*

18 What I will now say is intended to serve as an
19 introduction to the trial of this case. These remarks are
20 not an instruction on the law. I will instruct you on the
21 law applicable to this case at the end of the trial before
22 you retire to consider your verdict. This is merely an
23 explanation of the procedure that we will follow in the
24 trial of this case so that you may better understand what
25 may be happening.

1 Bear with me one moment.

2 (Sotto voce discussion between the Court and Clerk of
3 Court, and the bailiff.)

4 THE COURT: The defendants are charged by indictments
5 filed in this court with the -- as to Mr. Grant and Mr.
6 Hartwell with the offenses of armed robbery, four counts of
7 kidnaping, murder, and two counts of burglary in the first
8 degree. Ms. Smith is charged with the offenses of
9 accessory before the fact of a felony, that felony being
10 murder, and accessory before the fact of a felony, that
11 felony being armed robbery, the elements of which I will
12 explain to you at the conclusion of this case after you
13 hear the closing arguments of counsel.

14 The indictments are simply the charges by which these
15 cases are brought into court, and they are not in any sense
16 evidence of the allegations they contain.

17 The defendants have pled not guilty to the
18 indictments. The State, therefore, has the burden of
19 proving each and every element of the offenses in the
20 indictments beyond a reasonable doubt. It will be your
21 duty, ladies and gentlemen, to decide whether the State has
22 met their burden or not.

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

1 must disregard it. You are to determine the facts from the
2 testimony you hear and the other evidence introduced into
3 court. It is up to you to determine the inferences which
4 you feel may be properly drawn from the evidence.

5 It is especially important that you perform your duty
6 of determining the facts diligently and conscientiously,
7 because ordinarily there is no way to correct an erroneous
8 determination of facts made by a trial jury.

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

16 Your responsibility, ladies and gentlemen, is to take
17 the law as I instruct you and apply it to the facts as you
18 find them from the testimony of the witnesses and any other
19 evidence that is introduced. After doing that you will
20 render your verdict, a true and just verdict, under the
21 solemn oath that you have taken as jurors in this case.

22 Until I advise you to begin your deliberations, you
23 must not discuss this case with anyone including your
24 fellow jurors, friends, family members, and anyone else
25 involved in this case. After the case is submitted to you,

1 you must discuss it only in the jury room with your fellow
2 jurors. The attorneys and the parties have been advised
3 that they should not speak with you at all. So if you
4 should see anyone involved in the case at a restaurant, or
5 in the parking lot, or in the courthouse lobby, and they
6 don't speak with you, please don't think they're being
7 unfriendly. But please know that they are strictly
8 adhering to the Court's instructions.

9 During the trial you're instructed that you're not to
10 read, watch, or listen to any news reports about this case.
11 That includes anything that may be in the newspapers, on
12 the Internet, radio, or television. And as I instructed on
13 last night, you're strictly instructed not to do any
14 independent research of any type involving any matter in
15 this case on the Internet on your own. You must not
16 consider anything that you may have read or heard about
17 this case outside of the courtroom, whether before or
18 during the trial.

19 It is essential that you maintain an open mind and not
20 decide any issue in this case until all of the evidence has
21 been presented, the parties have made their closing
22 arguments, and I have instructed you on the law applicable
23 to this case.

24 It is your solemn responsibility to determine the
25 guilt or innocence of the defendants, and your verdict must

1 be based solely on the evidence as it is presented to you
2 in this trial, and on the law as I will instruct you during
3 and at the close of this trial.

4 Now, in just a moment the solicitor will make an
5 opening statement in which the solicitor will explain to
6 you the issues in this case, or at least what the solicitor
7 believes the issues to be in this case. The attorney for
8 the defendants may also make opening statements, although
9 they are not required to do so.

10 What the attorneys tell you during their opening
11 statements is not evidence in this case; it is only their
12 contention as to what they believe the issues to be. The
13 evidence in this case will be presented to you by the
14 testimony of sworn witnesses from the witness stand, and/or
15 by exhibits that may be introduced into evidence.

16 From time to time during the trial you may hear one of
17 the lawyers say something like, "Your Honor, I object."
18 Just as in sports, business, or any other structured
19 activity, there are certain rules that we must obey in the
20 presentation of evidence. These rules ensure that you
21 receive the most trustworthy and reliable evidence
22 available. An objection is the procedure that an attorney
23 calls -- by where -- by which an attorney calls a possible
24 violation of those rules to my attention as the judge of
25 this court. And for this reason you should not fault an

1 attorney's objection against him nor her, nor should you
2 conclude from the Court overruling or sustaining an
3 objection that I favor one side or the other.

4 Also from time to time you may hear one of the
5 attorneys say something like, "Your Honor, we have a matter
6 of law," or they may ask to approach the bench; or I may
7 ask them to approach the bench, or it might be necessary
8 for me to excuse you from the courtroom for a short while
9 while the attorneys and I discuss matters of law. The
10 reason we do this is because, as I've explained, you are
11 the judges of the facts in this case. And sometimes when
12 I'm discussing matters of law with the attorneys, it may be
13 necessary for me to make some comment as to the facts in
14 connection with making a ruling as to whether a particular
15 law or matter of procedure or evidentiary rule applies.
16 And as I've indicated, I'm not allowed to have an opinion
17 about the facts. So I will excuse you from the courtroom
18 while these discussions take place, so in no way will you
19 be influenced by anything that the Court may say or do in
20 connection with the facts of this case.

21 In determining what the true facts are in this case,
22 you must decide whether or not the testimony of the witness
23 or witnesses is believable. It will be my responsibility
24 to rule as a matter of law as to whether certain testimony
25 is admissible at all or not; but once the testimony is

1 admitted, whether or not you believe it, is solely for you
2 to determine.

3 In deciding whether to believe a witness, you have the
4 right to consider the interest of any witness; the bias of
5 any witness; the prejudice of any witness; the opportunity
6 for the witness to have seen the matters and things about
7 which the witness may testify; and the way the witness acts
8 on the witness stand. You have a right to consider
9 anything that is in the record that will help you evaluate
10 the testimony of the witnesses. That means, that it is
11 your duty, ladies and gentlemen, to pay close attention to
12 the witnesses, to observe them, to listen to them, and to
13 pay close attention to the attorneys in the court.
14 Although I know sometimes it is very difficult, please do
15 not allow your thoughts to wander, but give strict
16 attention to the testimony, so that at the end of the
17 testimony, after the arguments of counsel, and the
18 instructions on the law as given by the Court, you will
19 then be in a position to determine what the true facts are,
20 and to apply the law to those facts, and thus render a true
21 and just verdict in this case.

22 Ladies and gentlemen, you will be given the
23 opportunity during the course of this trial to take notes,
24 and Mr. Hutto is going to pass out those notebooks to you
25 along with some pencils. And I will ask that on the first

1 page of those notebooks if you would write your juror
2 number so that you will be able to identify your notes.

3 And as I've indicated, during the course of this trial
4 you will be given the opportunity to take notes. Note
5 taking is a privilege that you may choose to exercise or
6 choose not to exercise. Please do not feel compelled to
7 take notes; not everyone finds note taking helpful to them.
8 If you should decide to take notes, please don't try to
9 record everything that is said; because, as I've indicated,
10 you are the finders of the facts and it is essential that
11 you rely on your powers of observation in determining the
12 believability and credibility of witnesses. So it is
13 important that you not allow note taking to become a
14 distraction to you. Because quite frankly it is physically
15 impossible to take down everything that is said. So again,
16 please do not allow this privilege, if you should decide to
17 take notes, to dilute your observation -- your powers of
18 observation of the matters of which are -- are taking place
19 in court.

20 If you decide to take notes, you might want to keep an
21 outline of the main points that are being presented. Once
22 you are sent to your jury room to deliberate, you may want
23 to take a few minutes to review your notes and allow them
24 to refresh your recollection of the trial, evidence, and
25 the general arguments that have been presented to you.

1 Ladies and gentlemen, you must leave your notepads in
2 your seats during breaks and recesses, and we will collect
3 them in the evening. And please rest assured that your
4 privacy will be protected and no one will read your notes.

5 I would remind you that your notes are for your
6 specific and your individual purposes. They are not to be
7 shared with anyone. They are only for the purpose of
8 refreshing your own recollections. I would remind you,
9 also, that juror notes should not be given any greater
10 weight than a recollections of other jurors. The
11 recollections of individual jurors should be considered as
12 reliable as notes taken by other jurors.

13 It is your added duty, Mr. Foreman, to preside in the
14 jury room and to be the jury spokesperson here in court.
15 It will also be your duty to write the verdict, but I will
16 give you additional instructions regarding that at the
17 conclusion of the trial during the Court's instructions on
18 the law.

19 In order to preserve everyone's rights, I will give
20 the parties an opportunity to object to anything that the
21 Court has said by way of opening instruction.

22 Are there any exceptions from the State?

23 MR. JENNINGS: No, Your Honor.

24 THE COURT: Any exceptions, Mr. Bolus?

25 MR. BOLUS: None.

1 THE COURT: Mr. Barnwell?

2 MR. BARNWELL: None, Your Honor.

3 THE COURT: Mr. Jones?

4 MR. JONES: None, Your Honor.

5 THE COURT: The State may proceed when you're ready.

6 MS. WILSON: Thank you, Your Honor.

7 THE COURT: You're welcome.

8 MS. WILSON: May it please the Court?

9 THE COURT: Yes, ma'am.

10 MS. WILSON: On August the 2nd, 2006, Dexter Perry was
11 ambushed, he was abducted, and he was assassinated. Ladies
12 and gentlemen, over the next few days you'll hear the
13 evidence of this case, and you'll see that all those --
14 although those words are very clean and crisp and clear,
15 this crime was anything but. It was mean and it was dirty,
16 and you will see that what happened to Dexter Perry was
17 that he was tackled, he was dragged, he was taken away by
18 car, and then he was shot time after time after time after
19 time after time. And that all of this happened -- all of
20 this happened because this woman right here -- this woman,
21 Marquita Smith, set him up. She set him up; she lured him
22 to be robbed by these men.

23 And if that weren't bad enough, you'll hear testimony
24 that the victim, Dexter Perry, was her cousin. That they
25 had spent the evening together. They had been to dinner.

1 They had two friends with them, and that all the while he
2 was on the phone, she was telling that group of guys where
3 Dexter was. She was telling them that he had money. She
4 left him there like a sitting duck.

5 He wasn't armed; he wasn't dangerous; he was out
6 having dinner. He was trying to make friends with another
7 woman that he was interested in, and as he left her home at
8 Snow Goose Circle, he was ambushed by these men and two
9 others, one of whom you'll hear from.

10 What I want to do with you -- do now is to go through
11 the law in this case, because the judge will tell you there
12 are a number of crimes that we allege were committed, and I
13 want to make sure that you understand the elements of those
14 crimes. Now, at the very end of the case the judge again
15 will go through and instruct you in more detail about what
16 the elements of those offenses are. But during the next
17 few days, we will present to you the evidence of armed
18 robbery, kidnaping, burglary first, and murder.

19 The first location that I was telling you about was at
20 Snow Goose Circle. That's where Tawana Deas, a witness
21 that you will hear from very shortly, lived. She was a
22 friend of Ms. Smith's and she was also a friend of the
23 victim's, Mr. Perry. And that's where this all began, over
24 in Goose Creek, at that trailer.

25 Mr. Perry set out to leave after they had their

1 evening together, and as he walked out, he was tackled.

2 Ms. Smith acted like she was a victim, like she was an
3 ambush victim, like she didn't know what was going on.

4 Dexter Perry was taken in the car he had driven by these
5 men to another location, a second location, which was [REDACTED]
6 Dutch Fork Drive, and that's where Odoner and Birdie Cobbs
7 lived. They lived there with their nephew, Joe Husser.

8 Joe had just gone to bed that night. He'd just
9 finished talking to a friend of his, rolled over, when he
10 heard Dexter Perry being brought in and roughed up by this
11 group of men. Odoner was held at gunpoint, pushed to the
12 floor. Joe Husser was beat about the head with a pistol,
13 all the while they were demanding money, demanding money
14 from Dexter.

15 Dexter didn't live there. For whatever reason,
16 perhaps Ms. Smith, these men thought that he had a stash of
17 money there. Odoner was telling them, "We don't have
18 money." Birdie was telling them, "We don't have the
19 money." Joe Husser was pulling out drawers, trying to show
20 them that they didn't have this stash of money. And while
21 there, the defendants -- the defendants executed Dexter
22 Perry. They shot him five times.

23 And there was a witness of this, a witness who had
24 been to dinner with Ms. Smith, who had been to dinner with
25 Mr. Perry and with the other lady. He had come back. He

1 had come back to Dutch Fork, and he heard the ruckus in the
2 trailer. And he pulled back the window beside the air-
3 conditioning unit, and he looked in, and saw what was
4 happening to his friend. You'll hear from that witness
5 this morning as well.

6 Ladies and gentlemen, you'll see that we don't spend a
7 lot of time trying to show you which of these two men
8 actually pulled the trigger. We may never be able to tell
9 you exactly who pulled the trigger and who shot which shot.
10 But what you will hear when the judge gives you her
11 instructions is, that in a crime like this, the hand of one
12 is the hand of all. If a crime is committed by two or more
13 persons and they're acting together in the commission of an
14 offense, the act of one is the act of all. When people
15 join into arm rob, when they join into kidnap, when they
16 join into commit a burglary first, the action of one is the
17 action of them all. In other words, when they're acting
18 together assisting -- assisting each other, one man's move
19 is just as good as the other man's move, because they're
20 counting on each other. Think about that. The hand of one
21 is the hand of all, because they're a team working for a
22 common goal. And the facts in this case will show you that
23 their team was trying to arm rob Dexter Perry for whatever
24 they thought he had.

25 That applies not only to murder, it applies to the

1 kidnapping. It doesn't matter which one of the men actually
2 had their hands on Dexter as long as they were all working
3 together for that common goal. Now, you may say, "It
4 should matter. It should matter who actually pulled the
5 trigger." But I ask you to remember that this is a legal
6 principle; it's not a moral principle. The fact that one
7 person pulled the trigger and another person was standing
8 there helping is something for the judge to consider.
9 That's something that goes more towards punishment than
10 guilt. Once you find that they're acting together for a
11 common plan, it doesn't matter who did what, because they
12 were acting together.

13 And again, although we can't prove to you exactly who
14 pulled the trigger when, you will see that they were all
15 acting together. And I submit to you if anyone was exactly
16 positive of how this happened, they would be a witness.
17 They would be a witness to this. Unfortunately, Dexter
18 Perry is not here to be a witness, and that's why you're
19 considered a judge of the facts, because you can't be a
20 witness. If you are convinced of something before we
21 started a hundred percent, that would mean that you
22 wouldn't be eligible to be a juror. You would have to be
23 testifying on the stand.

24 But at the close of the case, you'll have all the
25 information you need to judge the facts. And as the judge

1 mentioned, she will give you the law. You don't have to
2 worry about deciding what the law is; she'll do that for
3 you. And then with her instructions, coupled with what you
4 learn here this week, you'll make your decision. You'll
5 make your decision in considering all of the elements.

6 First of all of murder: Murder is the killing of
7 another person with malice aforethought. And malice simply
8 means wickedness without just cause or excuse, hatred, ill
9 will, or hostility. Now, we don't have to prove that these
10 defendants hated Dexter Perry. We have to show you malice;
11 if there was ill will; if there was wicked -- wickedness in
12 what they were doing. And I submit to you that when you
13 hear the facts of the case, you'll believe that.

14 This is also a felony murder. And all that means is,
15 whenever an unlawful act of malice is committed, and it's
16 during the commission of a felony -- and the judge will
17 tell you that an armed robbery, a kidnaping, a burglary
18 first, that those are felony -- felonies. When those
19 crimes are being committed and somebody is killed, it's
20 murder. It's murder. You'll also hear about armed
21 robbery. And you'll hear the street term that maybe you've
22 never heard before. It's called "a lick." When these
23 people were talking about what they were going to do, they
24 used the -- the term "a lick." Marquita Smith knew
25 where these guys could get a lick, and you'll hear

1 testimony that on the street, that in Marquita's world, a
2 lick meant armed robbery.

3 An armed robbery is defined probably just like you
4 think it would be. It's taking the goods of another from a
5 person with intent to deprive them of those goods, and
6 doing so while armed with a deadly weapon.

7 You will also hear testimony about kidnaping. Now,
8 you might have conjured up in your mind things from the
9 movies, where a person is held and a ransom is asked for.
10 Kidnaping under the law doesn't involve ransom. It
11 involves not being free to go. It involves being held
12 against your will. And in this case, you will hear
13 testimony that Dexter Perry, when he was taken from that
14 first place to the second place, he wasn't free to go, that
15 he was being held at gunpoint. You'll hear testimony that
16 when they got to the second location, and they went into
17 the Cobbs' home, that Odoner, that Birdie, and that Joe
18 Husser, that they weren't free to go; that they were scared
19 for their lives, that they were being held against their
20 will. And that is the definition of kidnaping.

21 It is unlawful to seize, combine -- confine, inveigle,
22 decoy, abduct, or carry away. Any one of those things, it
23 doesn't have to be all of them. In other words, just
24 because Joe Husser wasn't taken from that trailer to some
25 remote location, doesn't mean he wasn't kidnaped. When he

1 was being held there, when he had a gun to his head and he
2 wasn't free to get up and go as he pleased; he was
3 kidnaped. You'll hear testimony about that.

4 You will also hear testimony about the burglaries.
5 The first location: Dexter Perry is there with Marquita
6 and with their mutual friend Tawana. He gets ready to
7 leave. He's ambushed. He tries to get back into the
8 house. They come in after him; they kick open the door.
9 Inside you'll see the blood spatter. You'll see what
10 happened to him inside.

11 A burglary in the first degree is simply when someone
12 enters a dwelling without consent and they intend to commit
13 a crime therein, and that while during that entry or while
14 in the dwelling that the person, the defendants, are armed
15 with a deadly weapon; that they cause physical injury to
16 someone; that they threaten the use of a dangerous weapon;
17 or that they are armed with a firearm or a weapon -- a
18 dangerous weapon. You'll hear that when they were at
19 Tawana Deas'. You'll hear about that when they went to the
20 second location at Dutch Fork, how they came in guns
21 a'blazing.

22 And at the end of this case, ladies and gentlemen,
23 you'll have all of the evidence that you need to see that
24 Marquita Smith was at the very heart of this. She wasn't
25 at Dutch Fork. She was at the first location, where Tawana

1 Deas was, where she had lured Dexter Perry, where she had
2 let these men know Dexter would be. She was feigning the
3 role of the victim. But what she did was she set things in
4 motion, and what she did was she contemplated this armed
5 robbery. And common sense would tell you when an armed
6 robbery is involved, someone can get hurt and someone can
7 die. It is a natural consequence of what she planned.

8 She is charged with accessory before the fact. And
9 those elements are: That she knowingly advised and urged -
10 - used the telephone, made calls, tipped people off --
11 urged the defendants. And you'll hear that she urged
12 Dexter Perry where he should go, and what he should be
13 doing. And that she, by doing that, aided and abetted the
14 defendants in the commission of the armed robbery and
15 murder.

16 And again I tell you, although she was not at that
17 second location, where she knew that that armed robbery was
18 going to happen; when she helped plan it; when she lied to
19 the police; meanwhile Dexter Perry is being murdered; she's
20 an accessory before the fact.

21 I appreciate your time, ladies and gentlemen. I
22 appreciate your patience. I just ask you to remember that
23 but for Marquita Smith -- but for Marquita Smith, this
24 wouldn't have happened. But for Marquita Smith, Jermaine
25 Hayward [sic], who you -- you'll hear is known as "Manny,"

1 and Gary Grant, they wouldn't have known where Dexter Perry
2 was.

3 And at the end of this week, what we will ask you to
4 do is to give a verdict that speaks the truth. We will ask
5 you to give a verdict that gives each of these defendants
6 exactly what they deserve. And I submit to you that based
7 on the evidence you will see, these defendants deserve, and
8 they have earned, a guilty verdict on each count. Thank
9 you.

10 MR. BOLUS: Please the Court?

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

12 MR. BOLUS: Ladies and gentlemen, this is not a civil
13 case. We're not talking about 50 percent, 50.1 percent in
14 favor of the State, or 50.1 percent in favor of the
15 Defense, this is a criminal case, and the big difference
16 here is, that everything this lady -- this prosecutor's
17 told you, she has to prove beyond a reasonable doubt. She
18 has to take away all the confusion around this case. She
19 has to satisfy you in your heart, your soul, and your mind
20 that my client, Gary Grant, beyond a reasonable doubt, was
21 involved in this crime. And you have to -- you separate
22 the State, with its awesome power, from the people of South
23 Carolina. These are the people of South Carolina. You're
24 the people of South Carolina. We just don't have to come
25 into a courtroom and we rubber-stamp what the prosecutor

1 has to say. You have to get together and go over the
2 evidence, every bit of the evidence.

3 You have to decide should you believe Kerry Hollins?
4 You know, if the hand of one is the hand of all, then Kerry
5 Hollins is a murderer; that's all there is to it. He's
6 their witness. You've got to understand -- and you'll find
7 out about the dealings made with the prosecution that this
8 is the right way to do things.

9 Can you trust Kerry Hollins' testimony? Because he's
10 their main witness. You know, for whatever -- I -- I don't
11 know why he is, but that's what he is. And then you have
12 to decide, if he's got a criminal record, this or that, is
13 he believable?

14 Then you'll have a -- you're going to hear about a lot
15 of confusion out there that night. Now -- but one thing
16 that isn't confusing, their own witness, Joe Husser -- no,
17 Chris Nelson -- this Chris Nelson fellow that started the
18 shooting. And I don't know if he's going to be a witness
19 for the Prosecution, but he's the one that started the
20 shooting and he's the State's witness. The defendants, if
21 they were there or not, they didn't start any shooting.
22 The shooting started outside of the trailer. You've got to
23 factor that in when you decide whether these men and this
24 lady are guilty of anything, especially murder. That's the
25 big one; the big one in this case is the murder. Burglary

1 is big too, but you've got to decide with all of the
2 evidence, beyond a reasonable doubt, if they've proved
3 their case.

4 You'll be interested to find out whether they find out
5 -- dit they find any guns? Did they find any bullets? Did
6 they find any fingerprints? Did they find any goods from
7 the armed robbery, anything like that? If they don't
8 produce these things you got to say, "Hmm. There's some
9 confusion about this case. Should we just believe what the
10 prosecutor is saying? Should we just believe what Mr.
11 Hollins is saying? And should we just find these people
12 guilty because, you know, it's been a long day and I want
13 to go home. It's Labor Day weekend."

14 No, ma'am. No, sir. That's not the deal here. Make
15 them prove everything beyond a reasonable doubt.

16 And the judge will give you a definition of reasonable
17 doubt at the end of the trial. But I tell you one thing,
18 it's not just a hunch, it's not just a suspicion, it's not
19 just, well, if I was betting, I'd bet against the
20 defendants. It's not those things. It's the kind of
21 knowledge and confidence in your own minds, if you go home
22 this weekend, you have no doubt that you made the right
23 decision. And reasonable doubt is a high burden. It's the
24 most -- it's the highest burden we have in the law. And
25 it's not just a preponderance of the evidence.

1 We're not deciding who ran a stop sign here, who rear-
2 ended Mrs. Jones in the back end, what -- how much money
3 should she get for her chiropractor's bill. This is not
4 this kind of case. This is a big case. It's about as big
5 as it gets. And you owe it to the defendants, not just to
6 the State, but you owe it to the defendants to pay very
7 good and close attention. And you're like
8 investigators. You're like the Sherlock Holmes's here.
9 You have to decide. When y'all go back there and y'all
10 start preparing your notes and talking about it and -- I
11 don't know if y'all saw *Twelve Angry Men*, it used to be on
12 TV; it's a movie -- how everybody decided one way, but one
13 person, you know said, "No, I don't like the way it's
14 going." And at the end of the trial, at the end of the --
15 the show, one person who kept -- who had a great mind, had
16 great logic, convinced the other eleven jurors of his
17 position. So actually the -- the jurors did more of the
18 legal work in the show than the lawyer. You never even saw
19 the lawyers.

20 But that's your job this week, at the end of this
21 trial, to go back there and you've got -- you got three
22 defendants and you got about 14 charges. You have to
23 decide not just, well, are they guilty of something? Are
24 they guilty of this? You just don't say, "Well, they're
25 guilty of everything." You have to decide, are they guilty

1 of anything? And then you go through each charge on each
2 defendant. And that doesn't mean if one person did one
3 thing, they're all guilty of everything, so you can get
4 that out of your minds.

5 I think the prosecutor just wants to throw paint on
6 the wall -- and that's great (indicates.) This is the
7 first time I've ever seen this. It's high tech, and I'm
8 just a local lawyer, but I've never seen that. It's a
9 great show. But don't let them throw paint on the wall and
10 just whitewash this whole thing. Just shove it here, eat
11 all of it, you know, convict them of everything. You have
12 more to do this week than just believing the prosecutor.
13 So go over the evidence very closely and that's all we can
14 ask for. Thank you.

15 THE COURT: Mr. Barnwell?

16 MR. BARNWELL: Ladies and gentlemen, my name is Elliot
17 Barnwell. We've already met. My client, Jermaine
18 Hartwell, has been introduced to the whole jury panel. I'd
19 like to thank you for your attention. I'd like to relate
20 what we're doing here to your everyday experience. We're
21 going to talk about witnesses, the facts, and the law.

22 Mr. Hartwell intends to testify as a witness. He will
23 testify that he knew there was a robbery, but he did not
24 participate in this robbery; did not plan this robbery, did
25 not harm the victim.

1 Mr. Dexter Perry had sold Mr. Hartwell some bad drugs,
2 and Hartwell wanted to discuss that with him to see if
3 Perry would make it right. He went along with these
4 people.

5 You will -- may hear evidence that -- forensic
6 evidence, blood evidence, things like that, that he was at
7 the scene. He was at the scene, both at Goose Creek and at
8 Ladson. He actually got shot at Dutch Fork. He was
9 definitely there, but he did not participate in this
10 robbery. "The hand of one is the hand of all" means you
11 agreed -- you agreed to sign on. But he didn't agree to
12 sign on.

13 What does it mean "the jury is the sole judge of the
14 facts"? The jury decides what happened. That's what --
15 that's what your job is. When somebody is booked, and
16 fingerprinted, arrested, you want someone to say, "Let's
17 take a good look at this." That's what you're asked to do,
18 let's take a good look at this. You decide the facts. You
19 decide what happened.

20 What is law of this case? Her Honor will instruct you
21 on the law. I feel confident she will not have a
22 PowerPoint presentation.

23 THE COURT: I don't know. I might surprise you.

24 MR. BARNWELL: What she says overrules a PowerPoint.
25 She is the one that will tell you what the law - the law

1 is, and if there is any difference between what anybody
2 else says and I say -- or the State says -- anybody else
3 says about the law, she is the one who will tell you.

4 Some people have mixed feelings about the law. They
5 close their ears because they think it's too complicated.
6 This is not gobbledygook. This -- this -- these are
7 instructions and they've been used for a long time. You're
8 not asked to interpret some complicated insurance policy or
9 something. These instructions are understandable.
10 Please listen very carefully to that.

11 There are two things that I'd like to emphasize about
12 instructions. One is presumption of innocence. You'll --
13 you will be instructed about the presumption of innocence.
14 What -- what does presumption of innocence mean? It means
15 that, according to the law, Mr. Hartwell is innocent unless
16 the State proves this case beyond a reasonable doubt.

17 The other thing I'd like to emphasize is that very
18 thing, reasonable doubt. Mr. Bolus touched on that. If
19 you have your doubts, doubts can be affecting your reasons.
20 So we discuss with the other -- other jurors, say, "These
21 are my doubts, these are my reasons, and I have a
22 reasonable doubt."

23 The other thing that I'd like to ask you is -- is
24 fight for your doubts. If you have doubts, fight for your
25 doubts. And even if you're the only one and you can't
26 convince anybody else, one is enough. One juror is enough.

1 So tick to your guns. Thank you very much.

2 THE COURT: Mr. Jones?

3 MR. JONES: Ladies and gentlemen, we also met
4 yesterday. My name's Craig Jones and I represent Marquita
5 Smith. And we -- certainly seems like she's the star in
6 this show. You saw the solicitor walk right over here and
7 point right in her face.

8 One thing that she said and struck me was that she
9 contemplated this armed robbery. Ladies and gentlemen,
10 part of this is y'all have got to decide whether there was
11 an armed robbery and what she contemplated. Because
12 certain crime occurred doesn't necessarily mean that she
13 contemplated it. And again, the solicitor also -- it's got
14 to be a natural consequence.

15 Well, I would ask that y'all listen to all the facts,
16 listen to all the witnesses, and listen to all the
17 evidence. Aside from just proving that crimes occurred,
18 you kind of have a secondary -- with accessory, a secondary
19 function is that you've got to determine what she knew or
20 should have known.

21 Ladies and gentlemen, I would ask that you would
22 listen very carefully. I would ask that you would weigh
23 in. People are held responsible for what they do. You
24 don't hold them responsible for everything that happens
25 after that. At some point it's just too far beyond what

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1 you can foresee.

2 I would ask you keep an open mind, understand that
3 this is a long, complicated deal. There are a lot of
4 people, there's a lot of confusion in this, but the focus
5 is: What did these people do? What did they know or
6 should have known? And I would ask that you would just
7 listen to the evidence or take what either side says,
8 filter through your experience: "If that were me, would I
9 or should I have known?

10 I just ask you to be patient. We thank you for your
11 duty on this. Thank you. Y'all have got an important
12 role. Let it get started.

13 THE COURT: The State may call its first witness.

14 MR. JENNINGS: Thank you, Your Honor.

15 THE COURT: You're welcome.

16 MR. JENNINGS: May it please the Court, the State
17 calls Tawana Deas.

18 THE COURT: Ms. Deas, if you would come to the witness
19 stand to be sworn.

20 **TAWANA DEAS**, after being duly
21 sworn, testifies as follows:

22 WITNESS: My name is Tawana Deas, D-e-a-s.

23 THE COURT: And could you spell your first name for
24 the benefit of the court reporter?

25 WITNESS: T-a-w-a-n-a.

26 THE COURT: Thank you. Mr. Jennings, you may proceed.

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1 MR. JENNINGS: Thank you, Your Honor.

2 THE COURT: You're welcome.

3 DIRECT EXAMINATION BY MR. JENNINGS:

4 Q Good morning, Tawana.

5 A Good morning.

6 Q How old are you?

7 A Nineteen.

8 Q Where are you living now?

9 A [REDACTED].

10 Q And back in August of last year where were you living?

11 A [REDACTED].

12 Q Is that in Berkeley County?

13 A Yes, Goose Creek.

14 Q Are you from this area?

15 A No, Charleston.

16 Q Okay. Where ---

17 A North Charleston.

18 Q --- did you -- did you grow up in North Charleston?

19 A Uh-huh.

20 Q Where'd you go to school?

21 A Middle school; I went to Alice Burney. And you want
22 to know high school?

23 Q Uh-huh.

24 A High school; I went to Garret Academy and then I
25 transferred to Stafford High School.

26 Q Okay. And right now, are you working?

- 1 A Yes.
- 2 Q And how about any other school?
- 3 A Yeah. I went -- attended Miller-Motte Technical
- 4 College.
- 5 Q And what are you studying there?
- 6 A Surgical technology.
- 7 Q And your job at First Federal, what do you do for
- 8 First Federal?
- 9 A I'm a bank teller.
- 10 Q How long have you been there?
- 11 A For about a year and four months.
- 12 Q Do you know a woman by the name of Marquita Smith?
- 13 A I do.
- 14 Q Do you see her in the courtroom?
- 15 A I'm far-sighted -- near-sighted. I can't see from far
- 16 away.
- 17 Q Okay. Focus over here (indicates.) Do you see Ms.
- 18 Smith? Can you see that far?
- 19 A Yes, I can see.
- 20 Q Okay. Can you point her out to the jury, please?
- 21 A (Complies.)
- 22 Q What color shirt is she wearing?
- 23 A Pink.
- 24 MR. JENNINGS: Your Honor, for the record to reflect
- 25 she identified Ms. Smith.

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1 THE COURT: Let the record so indicate.

2 Q How did you know Ms. Smith?

3 A I met her in high school at Stratford.

4 Q And how would you describe your relationship in August
5 of last year?

6 A In August, up until this happened, it was good.

7 Q Were y'all friends?

8 A Yeah, you could say we were friends.

9 Q And what kind of things would y'all typically do
10 together?

11 A We'd go out to eat together, go to the mall; she'd
12 come chill at my house, stuff like that.

13 Q Did you know the fellow by the name of Dexter Perry?

14 A I did.

15 Q And how did you know Dexter?

16 A I met him at a step show we had at Stratford.

17 Q Did you know that he and Marquita have any kind of
18 relationship between them?

19 A I knew that they were family members, yes.

20 Q Okay. And how often would you see Dexter?

21 A Probably -- probably about twice a month, sometimes
22 three.

23 Q And just knew him through Marquita?

24 A Not -- that's not how I met him, but I knew they were
25 related.

1 Q Okay. How about Kerry Hollins; did you know him?

2 A Through Marquita.

3 Q And what was Kerry Hollins' relationship with
4 Marquita?

5 A Her boyfriend.

6 Q Did you know a fellow named Gary Grant?

7 A No.

8 Q Jermaine Hartwell?

9 A No.

10 Q Kareem King?

11 A No.

12 Q Any of those people ever been in your apartment?

13 A No.

14 Q I want to talk with you about August 1st of last year.
15 Do you remember what happened that day?

16 A Yeah, I remember.

17 Q Okay. What -- what did you do during that day, kind
18 of leading up to that evening?

19 A I went to work, and after I got off I went to this
20 modeling tryout for this modeling agency at this hotel.

21 And --

22 Q Now, when you were working, you were at First Federal?

23 A Yes, sir.

24 Q Did you have any plans for that evening to meet
25 anybody?

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- 1 A Yes. We -- I received a phone call from Marquita
2 Smith. I was at the modeling agency and we were supposed
3 to go out to eat, which we have done before, so it was not
4 a problem. And I told her that I would call her back after
5 I finished with my modeling thing.
- 6 Q Was anybody else going to go eat with you?
- 7 A Just me, Chris, her, and Dexter.
- 8 Q And who is Chris?
- 9 A Chris is Dexter's friend.
- 10 Q Do you know his full name?
- 11 A Yes, Christopher Nelson.
- 12 Q And you knew him through Dexter?
- 13 A Yes.
- 14 Q Did y'all happen to talk about where you were going to
15 meet?
- 16 A Yeah. We were supposed to go to Red Lobster.
- 17 Q And where is Red Lobster?
- 18 A Right there on Mall Drive.
- 19 Q And what time did you meet up with Marquita?
- 20 A I say I finished about seven, and I had to go back to
21 my aunt's house, because I had my cousin with me and my mom
22 at the modeling agency thing. So I'd probably say I met up
23 with her around nine.
- 24 Q And where did y'all meet up?
- 25 A She met me at my aunt's house.

1 Q And where did your aunt live?

2 A On Dorchester Road.

3 Q And what did y'all do after you met there?

4 A I think that's when we headed to Red Lobster.

5 Q Whose car did you go in?

6 A Marquita.

7 Q Anybody else with y'all?

8 A No. Just me and her.

9 Q So, did you -- y'all were going to meet Dexter and
10 Chris?

11 A Right.

12 Q Were you -- who was talking to him, letting them know
13 where y'all were going?

14 A I think we -- we both -- we were using the cell phone
15 that night, but --

16 Q Who had cell phones?

17 A Me and Marquita.

18 Q And so tell us what happened before you went to the
19 Red Lobster?

20 A We went to Red Lobster and we sat down, and we
21 couldn't order our food until we had -- we had to put
22 everybody [sic] order in at one time. So we called them to
23 see what they wanted. Bout the time that they would get
24 there, Red Lobster would already be locked their doors, and
25 the hostess or waiter, whatever you want to call her, told

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1 us if they come, and the doors are already be locked, we'd
2 have to pay for their food. So we decided to leave and go
3 somewhere else where they'd have enough time to meet us
4 there.

5 Q Do you know what time the Red Lobster was supposed to
6 close?

7 A No. I don't remember.

8 Q Where -- so after Red Lobster, where did y'all decide
9 to go?

10 A To Ruby Tuesday.

11 Q And where is that Ruby Tuesdays?

12 A We went to the one by the mall first and they were
13 closing early, so we ended up going to the one on Ashley
14 Phosphate.

15 Q Okay. And did Dexter and Chris eventually meet y'all
16 there?

17 A Yes.

18 Q How -- how did they know where -- the different places
19 you were going?

20 A Because we kept in contact with the cell phone.

21 Q Okay. What -- tell us about dinner. Just describe
22 how that went.

23 A Tell -- tell you about what?

24 Q Who was -- did Chris and Dexter get there?

25 A Yeah, they came in.

1 Q And what was Marquita doing during dinner?

2 A Well, we ordered -- we ordered their food for them,
3 which was steak and mashed potatoes. And when they got
4 there, Marquita left the table, I'd say, about two times on
5 her cell phone. And on one time she told me that Kerry's -
6 - Kerry is at McDonalds, which is across the street from
7 Ruby Tuesday. Obviously, he wasn't supposed to know where
8 she was going.

9 Q Who wasn't -- who wasn't supposed to know where she
10 was going?

11 A Kerry, her boyfriend at the time.

12 Q He wasn't supposed to know where she was?

13 A No.

14 Q Why is that?

15 A I don't know.

16 Q Okay. What -- do you know what time y'all left the
17 Ruby Tuesday?

18 A I can't remember the exact time.

19 Q Okay. When y'all left, where did you go?

20 A Okay. When we left, we -- KuKu -- I'm sorry, KuKu Co
21 -- Dexter and them was parked right next to us and they
22 left to -- we followed -- like, followed them out and we
23 both got on the "I." And Marquita told me -- she was like,
24 "Let's follow them." So I was like, "Okay. Whatever."
25 Because we didn't know what they were going to do, so I

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1 went, "Okay. Whatever."

2 So as we driving on the "I," I'm paying attention to
3 what exit they get off, and I thought they got off on
4 Aviation, so I told her to get off on Aviation. So we got
5 off on Aviation, and obviously they didn't get off on
6 Aviation. So she had like a little -- "Why didn't -- why
7 did you tell me it was Aviation, was Aviation?" Whatever.
8 "Take me to get my car," because we was in her car. So she
9 took me back to my aunt's house, and I got my truck and I
10 went home. I had to go to work eight o'clock in the
11 morning, so I wasn't planing on staying out all night.

12 Q Now, did you know why she wanted to follow them?

13 A Just to see, I guess, what they were up to or what
14 they were going to do.

15 Q Okay. And who was -- it was Dexter and Chris -- were
16 in the other car?

17 A Yes.

18 Q Was she -- what was Marquita doing while y'all were
19 driving?

20 A I think she was on her cell phone. I'm not sure.

21 Q And -- so then y'all lost them?

22 A Yeah.

23 Q You got off on the interstate at the wrong time and
24 you went back to your aunt's house?

25 A Right.

1 Q Then when you headed back to your apartment, was
2 anybody with you?

3 A Yes.

4 Q Who's that?

5 A My brother and two of my cousins.

6 Q Okay. So where did you go on the way back to your
7 apartment?

8 A What do you mean, where did I go?

9 Q Did you go straight back?

10 A Yeah. I went straight home.

11 Q Okay. Now, did you know where Dexter and Chris were
12 going?

13 A No.

14 Q Did you -- did you see Dexter again that night?

15 A Yes.

16 Q And where was that?

17 A At my apartment.

18 Q Did you know he was going to come back by your
19 apartment?

20 A Uh-huh. He called me on the phone. And I told him
21 not to come because I had to go to work so early, which was
22 eight o'clock in the morning. And he said he was coming
23 anyway. And when he got there, I was on the phone with
24 Marquita. And he's knocking on the door -- knock, knock,
25 knock, knock, knock. I said, "I'm not opening the door for

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1 him, because I told him that I got to go to work eight
2 o'clock in the morning.

3 "Open the door for him. Open the door." So I opened
4 the door, because I don't want him to disturb nobody else
5 and then they complain and it comes back on me. So I open
6 the door and he comes in.

7 And I'm still on the phone with Marquita and she's
8 like, "Well, since y'all not doing anything I'm coming over
9 there." I'm like, "Well, come on. We're not doing
10 nothing. You can come on."

11 Q And so who told you to open the door and let Dexter
12 in?

13 A Marquita. But I have my own -- I can open the door if
14 I want to, but I chose to.

15 Q Uh-huh.

16 A Not because she --

17 Q So did Marquita ultimately come over to your
18 apartment?

19 A Yes. She got there.

20 Q And so who all was at your apartment? Who were all
21 the people there?

22 A Me, Dexter, and Marquita.

23 Q And tell us what happened when Marquita got there.

24 A When Marquita got there, Dexter didn't know she was
25 coming, and he heard the knock on the door. And he

1 hesitated for me to open the door, but I already knew that
2 it was her. So I opened the door and she came in, and she
3 stood by my bar. I had a bar in my kitchen. So she stood
4 by my bar and she asked me for a pair of pants. She had a
5 skirt on. I just went in my room and I gave her a pair of
6 my school scrubs, and gave them to her. So I gave her a
7 bag to put her skirt back in, and she said she was going to
8 put the skirt in her car. So she walks down the steps and
9 she gets to the bottom of the stairs, and she said, "I'm
10 going to leave your door unlock." And I said, "You're
11 coming right back, right?" And she said, "Yeah," so I'm
12 like, "Okay. Whatever."

13 She goes put it in her car, whatever, she comes back
14 inside the house.

15 Q Okay. How long do you think it was that -- that
16 Dexter and Marquita were over at your house?

17 A It wasn't -- it wasn't too long. No more than 20
18 minutes.

19 Q And then what happened when everybody got ready to
20 leave?

21 A Okay. Dexter got a call from Chris Nelson, which he
22 say he dropped him off to some girl house. So he was going
23 to go pick him up, and we go to go walk him downstairs and
24 he says ---

25 MR. BARNWELL: Your Honor, could I -- could we --

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1 could we approach the bench?

2 THE COURT: Yes.

3 (Bench conference.)

4 THE COURT: Before we proceed, I'm not sure if I heard
5 a device go off. If anyone has any cell phones, pagers, or
6 other electronic devices in the on position, I'm putting
7 you on notice they either need to be switched to vibrate or
8 turned off. If they go off during the proceedings, the
9 deputies will confiscate them and you will not get them
10 back.

11 You may proceed, Mr. Jennings.

12 MR. JENNINGS: Thank you, Your Honor.

13 DIRECT EXAMINATION BY MR. JENNINGS:

14 Q Now, Tawana, you said that Marquita had asked you for
15 a pair of pants and you gave her some scrubs from school?

16 A Right.

17 Q When she went outside to take her skirt, how long do
18 you think she was outside?

19 A It wasn't long.

20 Q Okay. A couple of minutes?

21 A Yeah. A couple of minutes.

22 Q Tell us what happened then as Dexter got ready to
23 leave. If you could, kind of describe the layout of your
24 apartment. How is it -- is it one floor or two floors?
25 How do you get out?

1 A Okay. It's one floor and the only way you can get in
2 and out is at the steps. Soon as you walk in there's a
3 wall to the left, a wall to the right, and the stairs. And
4 you have to go up the stairs, and then the apartment's on
5 the top.

6 Q So when Dexter got ready to leave, did anybody walk
7 out with him?

8 A Yeah. Me and Marquita did.

9 Q And tell us, if you would, what happened when you were
10 walking out.

11 A When we was walking out, I have -- it's just a
12 concrete right there and you can't see -- standing right
13 there you can't see the parking lot until you go out to the
14 left. So we walked out to the left just a little bit, and
15 Marquita asked me -- she said, "Do people be out here this
16 time of night?" And I said, "I don't know." Because
17 really I be in my house by this time. So we talking, all
18 three of us just together, whatever. And she says,
19 "Something doesn't feel right. You need to go back in the
20 house." So I'm like, "What," whatever.

21 Then she said that she -- she think she see something
22 -- somebody. So my brother and my cousins weren't there;
23 they left to go to Wal-Mart. So I'm thinking that's just
24 them coming back. So I look; I'm like, "I don't see
25 nobody."

DIRECT EXAMINATION BY MR. JENNINGS - TAWANA DEAS Page 141

1 And I look again, and there's somebody ducking --
2 where you can't see them -- there's somebody ducking down
3 at the bushes on the left-hand side. And all you do is you
4 look and you see somebody ducking down.

5 So after I saw that -- after I saw that, then I went
6 to run inside my house and Dexter was right behind me. And
7 he got the door closed and I never looked back, and all you
8 hear is the door gets kicked open. So I run up the --
9 finish running up the steps. And I have a balcony door,
10 and my brother smokes; and when he smokes I make him go
11 outside and he locks the door.

12 And I had on -- I had on fake nails so it was hard for
13 me to get the --the latch up, but I finally got it up and
14 my nail had already popped off. And most people think that
15 my balcony is right directly over my door, but it's not.
16 It's off to the side just a little bit.

17 So I got it open and I slide it just a little bit, and
18 I ease out and I went all the way to the right. And I was
19 thinking if I ran in my room, somebody could come after me.
20 So it's either jump down or somebody could still be coming
21 after me. It wasn't a big, drastic jump to where I could
22 break something. So I did jump down, and I started running
23 straight to the road; and I did have my cell phone in my
24 hand. And what I did was call 9-1-1; that was the first
25 person I called.

DIRECT EXAMINATION BY MR. JENNINGS - TAWANA DEAS Page 142

1 Q So as you're walking outside, it's you, Marquita, and
2 Dexter, right?

3 A Right.

4 Q Okay. Who told you that something didn't feel right?

5 A Marquita did.

6 Q And who did she tell you should go back into the
7 house?

8 A Could you repeat that?

9 Q Who -- who did she tell you should go back into the
10 house?

11 A Me.

12 Q And I'm going to show you Exhibit -- show you what's
13 marked as State's Exhibit 6.. Do you recognize that?

14 A I do.

15 Q And whose -- whose apartment is that?

16 A Mine.

17 Q Okay. And State's Exhibit 7.

18 A Mine.

19 Q Okay. What's that a picture of?

20 A My door open.

21 Q And State's Exhibit 8?

22 A It's been kicked open and a piece of the ---

23 THE COURT: I'm sorry. I can't hear you.

24 A It's kicked open and a piece of the wood and of the
25 door is on the floor.

DIRECT EXAMINATION BY MR. JENNINGS - TAWANA DEAS Page 143

1 Q State's Exhibit No. 9?

2 A Where the whole door was ripped off and more wood is
3 on the floor.

4 Q State's Exhibit 10 and State's Exhibit No. 5? Those -
5 --

6 A You see blood on the carpet and on the tile floor.

7 Q Those were photographs that were taken at your
8 apartment that night?

9 A Right.

10 Q Or that morning?

11 A (No audible answer.)

12 Q These photographs are fair depictions of what your
13 apartment looked like that morning ---

14 A Right.

15 Q --- when all of this was done?

16 MR. JENNINGS: Your Honor, we would offer State's
17 Exhibits 5, 6, 7, 8, 9, and 10 into evidence.

18 THE COURT: Any objection?

19 MR. BOLUS: None.

20 MR. JONES: None, Your Honor.

21 MR. BARNWELL: None, Your Honor.

22 THE COURT: Marked and admitted without objection.

23 (Marked State's Exhibits 5, 6, 7, 8, 9, and 10,
24 photographs.)

25 Q I'm going to show you first, State's Exhibit 6,

1 Tawana. Can you describe -- that's the front door of your
2 apartment?

3 A Right.

4 Q Okay. So you can use that and just point. Push that.

5 As you were walking out, as you testified, Ms. Smith
6 told you something didn't feel right and -- and said that
7 you should go back inside. Is that the door that you and
8 Mr. Perry ran into after you saw the person crouching in
9 the parking lot?

10 A Right.

11 Q Okay. And if you -- just point -- how you -- and you
12 went up the stairs?

13 A Yeah.

14 Q Okay. And I believe you said Mr. Perry also made it
15 into the apartment?

16 A Yeah.

17 Q And got the door closed?

18 A Got it closed.

19 Q Okay. And then as you were going up the stairs, what
20 was -- what did you hear happening ---

21 A The door ---

22 Q --- lobby there?

23 A The door being kicked in.

24 Q Show you State's Exhibit 7. And that was your front
25 door?

DIRECT EXAMINATION BY MR. JENNINGS - TAWANA DEAS Page 145

1 A Yes.

2 Q And prior to that night, this area of dirt there on
3 your door, was that there?

4 A No.

5 Q State's Exhibit No. 9. As you're looking -- as you're
6 looking at the door, I assume it closes right here,
7 correct?

8 A Correct.

9 Q That's where the latch would be in the doorknob?

10 A Right.

11 Q Is that what your door looked like when you walked out
12 to walk Dexter and Ms. Smith out?

13 A No, it did not.

14 Q And State's Exhibit No. 8 is just another photograph
15 of the same area that was taken from the outside. And
16 that's what your entryway looked like after the door was
17 kicked in?

18 A Right.

19 Q Now obviously, any other people -- did you see who it
20 was that was chasing y'all back into your apartment?

21 A No, I did not.

22 Q But once you got the door closed, did any of the
23 people that kicked in your door, did they have permission
24 to enter your apartment?

25 A No, they did not.

1 Q What -- as you were going up into your apartment or on
2 the porch, could you hear what was happening --

3 A Yes.

4 Q -- outside?

5 A Uh-huh.

6 Q Or down in your --

7 A Yeah.

8 Q What did you hear?

9 A You -- I heard him talking and them shuffling and
10 saying, shut up. And what he said was, "Y'all don't even
11 have to do it like that." And all you hear was somebody
12 saying, "Shut up. Shut up."

13 Q And who was saying, "You don't have to do it like
14 that"?

15 A I believe it was Dexter.

16 Q So then you jump off your balcony?

17 A Right.

18 Q Why -- why did you jump off your balcony?

19 A Because I didn't want nobody to come after me and get
20 me.

21 Q And what did you do then after you were outside?

22 A I ran towards the road -- towards Devon Forest Road
23 where I called 9-1-1, and tried to flag a car down.

24 Q Did you ultimately make it back to your apartment?

25 A Once the police arrived to the front, because I stayed

DIRECT EXAMINATION BY MR. JENNINGS - TAWANA DEAS Page 147
1 on the phone the whole time with 9-1-1 until she told me it

2 was safe to go back to the front.

3 Q And did you ever see Ms. Smith again?

4 A Yeah, I did.

5 Q Where did you see her?

6 A In the middle of the grass. My balcony is up here,
7 she was like over on this side.

8 Q Uh-huh. And did she tell you -- indicate to you she
9 knew anything about what had happened?

10 A No, she didn't.

11 Q Did she indicate to you she had any knowledge about
12 who might have done this?

13 A No, she didn't.

14 Q Was Dexter Perry still there?

15 A No, he wasn't.

16 Q Did you ever see Dexter Perry again?

17 A No, I didn't.

18 Q Did you go back into your apartment that night?

19 A No, I didn't.

20 Q Okay. I'm going to show you these photographs:

21 State's Exhibit No. 5; this is State's Exhibit No. 10.

22 This blood that was in the entryway, was that there
23 prior to the people kicking in your door and chasing you
24 and Dexter Perry?

25 A No, it wasn't.

1 Q State's Exhibit No. 5. On that first step, that
2 blood, was that in your apartment prior to the door being
3 kicked in?

4 A No, it wasn't.

5 Q Did Marquita Smith ever tell you that she had any
6 knowledge about what happened that night?

7 A No, she didn't.

8 MR. JENNINGS: Beg the Court's indulgence?

9 THE COURT: Uh-huh.

10 Q Tawana, did you know any of -- you know Kenyetta
11 Smith?

12 A I know of him, yes.

13 Q Okay. That night, while you were waiting for the
14 police to -- to get there after you called 9-1-1, were
15 there other people out in the parking lot there?

16 A They got there -- they were there -- she was there.

17 Q Kenyetta Smith was?

18 A Yes.

19 Q Okay. And do you know how she found out to be there?

20 A Marquita called her.

21 Q Were those people there prior to the police arriving?

22 A I don't know if they got there before, after, or the
23 same time, because I didn't walk to the front until the
24 police was already up there.

25 Q You waited until you knew the sheriff's department was

CROSS-EXAMINATION BY MR. BARNWELL/ TAWANA DEAS

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1 there ---

2 A Right.

3 Q --- until you went back.

4 MR. JENNINGS: That's all I have. If you would,
5 answer any questions of the defense attorneys, please.

6 THE COURT: Mr. Bolus?

7 MR. BOLUS: None on behalf of Mr. Grant.

8 THE COURT: Mr. Barnwell?

9 CROSS-EXAMINATION BY MR. BARNWELL:

10 Q How -- how long had you known Dexter Perry?

11 A I would say about two years.

12 Q Three years?

13 A Two.

14 Q Two years? Did you know what kind of work he did?

15 A No work.

16 Q Did you ever know him to have large sums of money?

17 A At times.

18 Q What -- how -- how -- how large sums of money?

19 A He -- he never was a person -- he never -- he -- he
20 never disclosed to me how much money he had in his pocket
21 or anything like that.

22 Q Did he give money to the mother of his child?

23 A I don't know.

24 Q Now, when you were at the -- the Red Lobster, was
25 Jermaine Hartwell there?

1 A No, sir.

2 Q And how bout when you were at Ruby Tuesday, was
3 Jermaine Hartwell there?

4 A I didn't see him, sir.

5 Q Did Marquita Smith mention Jermaine Hartwell?

6 A No, sir.

7 Q After you went home, I think you had your brother and
8 your two cousins, you don't know where Marquita Smith went
9 during that time, do you?

10 A No, sir.

11 Q And you saw the people ducking outside, you don't know
12 who -- who those people were?

13 A No, sir.

14 MR. BARNWELL: I -- I don't have any further
15 questions.

16 THE COURT: Mr. Jones.

17 CROSS-EXAMINATION BY MR. JONES:

18 Q Tawana, briefly; when y'all went to -- when y'all met
19 and went to Ruby Tuesdays, all four of y'all sat down in
20 the restaurant to eat, hang out, correct?

21 A Right.

22 Q Did Dexter pull out any money at that time? Did you
23 see any money on Dexter at that time?

24 A Yes, he did.

25 Q Was it a couple of dollars or do you think it was a

1 large sum? I know you wouldn't know an exact sum, but --

2 A It was just a couple of twenties.

3 Q Okay. And did you see what happened -- in -- in going
4 back now -- let's see the best order to go in on this.

5 During the time that y'all were going from Red Lobster, and
6 I guess even up to Red Lobster, you were using your phone
7 some times to call Dexter, and Marquita was at some time
8 talking to Dexter; is that correct? You said earlier both
9 of y'all were talking --

10 A Correct.

11 Q Back and forth. When you were leaving -- when you
12 were going from -- after Ruby Tuesday and you missed the
13 exit and you got off on Aviation, did you ever notice any
14 cars following you or anything?

15 A No, I didn't.

16 Q Your brother and two cousins, did they live with you?

17 A My brother did at the time.

18 Q Okay. And so they were at your aunt's, and when you
19 went to get your vehicle, they just rode with you back over
20 to your place?

21 A Correct.

22 Q And then they took your car, or did they have a car
23 there, to Wal-Mart?

24 A They were on foot.

25 Q Okay. Just walk -- walked over to the Wal-Mart?

1 A Right.

2 Q Just going to pick up a few things?

3 A Right.

4 Q Did they give you any indication of "We'll be gone an
5 hour; we'll be gone" -- or they just said they're going to
6 Wal-Mart?

7 A They just said they're going to Wal-Mart.

8 Q Was it unusual for Marquita -- when Dexter got to your
9 house and then Marquita called and said since y'all aren't
10 doing anything I'm going to come over, is it unusual for
11 Marquita to come over and just hang out with you?

12 A No.

13 Q You said when Marquita changed into the, I guess,
14 pants and took the clothes outside she said, "I'm going to
15 leave the door unlocked," went outside, and you think it
16 was probably just a couple of minutes or so?

17 A A couple of minutes.

18 Q When Marquita said, "Go back inside," or "Something is
19 not right," was Dexter right there with y'all?

20 A Yes.

21 Q She wasn't -- did she whisper it to you or did she
22 just say it?

23 A She just said it.

24 Q When you started running and you started running back
25 into the house, was it because of anything Marquita did, or
26 was it because you saw individuals coming your way?

1 A It's because I saw someone myself.

2 Q When the struggle was going on -- and I know you said
3 it took you a few minutes to unlatch the door and
4 everything -- did you ever hear Marquita saying, "Grab him;
5 get the money," anything like that?

6 A No, I didn't.

7 Q When you were going back up the stairs and you were
8 trying -- did you see what -- where Marquita was at any of
9 that -- any of that point?

10 A No.

11 Q Did -- when -- how long do you think it was -- from
12 when you went over the balcony and met up with Marquita,
13 how long do you think it was before the two of you met up?

14 A A couple of minutes, because I was on -- because I ran
15 toward the road to try to flag someone down. No one
16 stopped, and I was still on the phone with 9-1-1. And then
17 I proceeded to tap on the neighbor's door downstairs. But
18 they had a dog that was barking, and they never came to the
19 door. And after that, that's when I saw her.

20 Q So how many -- your apartment unit, do you know many
21 units are in your -- is it, you know, four and four or ...

22 A It's shaped very odd: It's like two in the front,
23 mine's was off to the side. Then there's some around the
24 other side. It's just shaped differently.

25 Q Is it a -- is this a fairly large complex?

26 A Yeah.

1 Q So there are neighbors on each side around you? You
2 know, maybe there's at least -- at least -- you have at
3 least what? probably three neighbors?

4 A And then there are people in front of me. It's --
5 yeah.

6 Q When you met up with Marquita, were you still on the
7 phone with the police?

8 A Yes.

9 Q Did at any point she say, "Hang up, hang up," or
10 anything like that, or try to take the phone or anything?

11 A No.

12 Q With regard to Marquita and Dexter's relationship, was
13 there anything that, in your opinion, you would say was
14 negative about it? Did she ever say, "I can't stand
15 Dexter. I don't like Dexter," anything like that?

16 A No.

17 Q When she --

18 MR. JONES: Nothing further, Your Honor.

19 THE COURT: Any redirect of the witness?

20 **RE-DIRECT EXAMINATION BY MR. JENNINGS:**

21 Q That night, after the police got there, you had an
22 opportunity to talk with the detectives --

23 A Right.

24 Q -- told them what happened? At any point that night
25 did Marquita ever tell you she knew anything about what
26 happened to Dexter?

RE-DIRECT EXAMINATION BY MR. JENNINGS / TAWANA DEASPage 155

1 A No.

2 Q Did she tell you anything about any knowledge of the
3 people that were involved?

4 A Not that I can recall that night. No.

5 MR. JENNINGS: That's all I have, Your Honor. Thank
6 you.

7 MR. BOLUS: No questions.

8 MR. BARNWELL: No questions.

9 MR. JONES: Just one, Your Honor.

10 **RE-CROSS EXAMINATION BY MR. JONES**

11 Q Did she appear frightened at that time at all? Could
12 you tell?

13 A Not -- not really, no.

14 THE COURT: Anything further from the state.

15 MR. JENNINGS: No, Your Honor.

16 THE COURT: Any objection to the witness being excused
17 from the State?

18 MR. JENNINGS: No, Your Honor.

19 THE COURT: From the defense, Mr. Bolus?

20 MR. BOLUS: None, Your Honor.

21 THE COURT: Mr. Barnwell?

22 MR. BARNWELL: No, Your Honor.

23 THE COURT: Mr. Jones?

24 MR. JONES: No, Your Honor.

25 THE COURT: Ma'am, you're excused.

1 Mr. Foreman, ladies and gentlemen, you all have been
2 sitting since before 10 o'clock. I'm going to give you a
3 very short morning break so that you can refresh
4 yourselves. Please leave your notepads in your seats and
5 please do not discuss the case during the break. If you
6 need anything, please let the bailiffs know. We'll be out
7 about ten minutes.

8 (Jury exits at 11:17 a.m.)

9 THE COURT: You may be seated. Is there anything
10 before we proceed from the State?

11 MR. JENNINGS: Just for planning issues, Your Honor.
12 We got one law enforcement witness that the next set of
13 witnesses will be getting, there's identification issues.

14 THE COURT: Okay.

15 MR. JENNINGS: I don't know if counsel still wants to
16 have the -- do the *Bigger's* hearing, but we'll be ready to
17 take those issues up.

18 THE COURT: Okay. Anything from the defense before we
19 proceed?

20 (Sotto voce discussion between Mr. Bolus and Mr.
21 Jennings.)

22 THE COURT: Is defense ready to proceed?

23 MR. BOLUS: Yes, Your Honor.

24 MR. JONES: Yes, Your Honor.

25 MR. BARNWELL: Yes, Your Honor.

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1 THE COURT: Please bring in the jury.

2 (Jury enters at 11:37 a.m.)

3 THE COURT: You may be seated. Ladies and gentlemen,
4 I hope that you all had a good break. We'll now resume
5 with the trial testimony. You may proceed.

6 MS. WILSON: Thank you, Your Honor.

7 THE COURT: You're welcome.

8 MS. WILSON: The State calls Detective Michael
9 Crumley.

10 MICHAEL CRUMLEY, having been first
11 duly sworn, testifies as follows:

12 COURT OFFICER: State your full name for the record
13 and spell your last name.

14 WITNESS: Michael Crumley, C-r-u-m-l-e-y.

15 THE COURT: You may proceed.

16 MS. WILSON: Thank you, Your Honor.

17 THE COURT: You're welcome.

18 DIRECT EXAMINATION BY MS. WILSON:

19 Q Detective Crumley, where are you employed?

20 A With the Berkeley County Sheriff's Office.

21 Q And how long have you been with that office?

22 A I've been with them since July of 2006.

23 Q How about before that, were you in law enforcement?

24 A Yes, ma'am, I was. Coming up on ten years.

25 Q What other agencies did you work with?

DIRECT EXAMINATION BY MS. WILSON / MICHAEL CRUMLEY Page 158

1 A With the Dorchester County Sheriff's Office, then with
2 Goose Creek Police Department.

3 Q Now, on the late night of August the 1st, into August
4 the 2nd, 2006, were you working for Berkeley County then?

5 A Yes, I was.

6 Q And at that point, were you in the detective unit?

7 A No, ma'am. I was not.

8 Q What were you doing?

9 A I was assigned to uniform patrol. I drove a marked
10 police car in full uniform, responded to calls as they were
11 dispatched.

12 Q Let me ask you this: When -- when you had that role,
13 explain to the jury how it would typically work if you got
14 a call out to a burglary, or something that occurred at a -
15 - a business? How did your department go through the
16 process of investigating a crime?

17 A Well, for just everyday calls, usually we would handle
18 small on-scene interviews with witnesses, gathering
19 statements. On a major incident, however, our job was the
20 initial response, secure the crime scene, secure any
21 witnesses, make sure that the suspects are not still
22 lurking about, make sure it's safe, and then we notify the
23 detectives and the crime scene unit to come on in and pick
24 it up from there.

25 Q So, when you were on the road working as a deputy,

DIRECT EXAMINATION BY MS. WILSON / MICHAEL CRUMLEY Page 159
1 your function in -- with a major crime would be to secure

2 the scene, and then other detectives would come in to
3 investigate and do crime scene things of that nature?

4 A That's correct.

5 Q Now, on this night, at 1:34 in the morning of August
6 the 2nd, 2006, did you get a call out?

7 A Yes, we did.

8 Q And where was that call to?

9 A To [REDACTED] Snow Goose Circle. That's in the Davenpoint
10 apartment complex off Highway 176.

11 Q And is that here in Berkeley County?

12 A Yes, ma'am, it is.

13 Q Okay. And you got a call out at 1:34. Where were you
14 when you got the call?

15 A I was in Goose Creek. I'd say about three miles up
16 the road in the area of 176 and Central Avenue.

17 Q And how long did it take you from the time dispatch
18 called you out to get to the scene?

19 A Three -- three minutes.

20 Q What did you do when you got there?

21 A I drove into the apartment complex and located the
22 apartment, and -- and -- and I arrived with other -- other
23 deputies that responded with me as well. I secured the --
24 the scene while those other deputies went inside the
25 apartment to conduct a protective sweep.

DIRECT EXAMINATION BY MS. WILSON / MICHAEL CRUMLEY Page 160

1 Q Okay. Tell the jury what you mean by "protective
2 sweep" when they went in that apartment.

3 A Well, basically we were responding to a burglary in
4 progress as it was dispatched to us. So when we got there,
5 located the place, several of the deputies went -- went
6 inside the apartment to do a very quick search, to make
7 sure no one was hiding in any of the closets, or to make
8 sure that nobody was -- needed medical assistance or
9 anything to that effect inside the apartment..

10 Q Was the apartment cleared?

11 A Yes, it was.

12 Q And when you went up to the apartment did you notice
13 anything about the doorway or just the entrance area?

14 A I didn't go inside the apartment, but the door was
15 ajar when we got there. I noticed that the door frame was
16 broken with a piece of it laying on the floor. I noticed a
17 few droplets of blood right there as you walked into the
18 door. There was a cell phone laying there -- that you
19 could see it laying on the floor.

20 Q Now, let me ask you this: You said it took you
21 roughly three minutes or less to get -- to get there; is
22 that right?

23 A That's correct.

24 Q Okay. When you arrived on the scene, was there anyone
25 else who had been called there, who had beat you to the

DIRECT EXAMINATION BY MS. WILSON / MICHAEL CRUMLEY Page 161
scene?

1
2 A We arrived all together.

3 Q Okay.

4 A There was ---

5 Q We who?

6 A There was other uniformed patrol deputies.

7 Q I'm talking about lay people, like civilians.

8 A Yes, there was.

9 Q Who was that?

10 A Let's see. There was a Kenyetta Smith.

11 Q Okay.

12 A She had arrived there before us.

13 Q So Kenyetta Smith actually beat you to the scene?

14 A Yes.

15 Q And did you determine how she knew to even go to the
16 scene?

17 A Yes, we did.

18 Q And how was that?

19 A When I spoke to Marquita Smith, she informed me that
20 she had called her. That that was her cousin, and right
21 after this thing happened, this incident happened, she
22 called her. That was her first call.

23 Q Now, while there at the scene, did you have an
24 opportunity to speak with Marquita?

25 A Yes, I did.

DIRECT EXAMINATION BY MS. WILSON / MICHAEL CRUMLEY Page 162

1 Q And did you also have an opportunity to obtain a
2 written statement from her?

3 A I did.

4 Q I'm going to show you State's Exhibit 50. Do you
5 recognize that?

6 A Yes, I do.

7 Q What is that?

8 A This is a statement given by Marquita Smith, witnessed
9 by me, my signature at the bottom.

10 Q And when you took that statement from Marquita, was
11 she under arrest or anything like that?

12 A No.

13 Q Okay. At that point, how many victims did you think
14 there had been out there at Snow Goose Circle?

15 A At that point, there were two victims that we believed
16 to be at Snow Goose Circle with us. And then, of course,
17 Dexter Perry was nowhere to be found at that point.

18 Q So, all tolled, you thought you had three victims ---

19 A Three victims.

20 Q --- involved in this burglary? Okay. So she was not
21 a suspect at that point?

22 A No.

23 Q Okay. And you took a statement from her. Is that
24 your handwriting or her handwriting?

25 A No. That's her handwriting.

DIRECT EXAMINATION BY MS. WILSON / MICHAEL CRUMLEY Page 163

1 Q Okay. And is that her signature there at the bottom
2 of the statement?

3 A It is.

4 Q And over to the left, where it says "witness," whose
5 signature is that?

6 A That's mine.

7 MS. WILSON: Your Honor, at this time we'd offer
8 State's Exhibit 50 into evidence?

9 THE COURT: Any objection?

10 MR. BARNWELL: I'd like to take a look at it.

11 MR. BOLUS: We need to look at it.

12 THE COURT: Any objection, Mr. Bolus?

13 MR. BOLUS: None.

14 MR. BARNWELL: None.

15 MR. JONES: None, Your Honor.

16 THE COURT: Marked and admitted without objection.

17 (Marked State's Exhibit No. 50, written statement by
18 Marquita Smith.)

19 DIRECT EXAMINATION CONTINUES BY MS. WILSON:

20 Q Now, this was taken, I believe it says at 1:50 in the
21 morning?

22 A Yes.

23 Q Okay. Can you read to the jury the statement that Ms.
24 Smith gave you that night at 1:50 in the morning?

25 A Sure. It says (as read): "I was at my friend Tawana

DIRECT EXAMINATION BY MS. WILSON / MICHAEL CRUMLEY Page 164

1 Deas' house --

2 THE COURT: I need you to speak into the microphone.

3 You're coming across ---

4 WITNESS: I'm sorry.

5 THE COURT: --- a little muffled. Thank you.

6 A (As read) "I was at my friend Tawana Deas' house, [REDACTED]
7 Snow Goose Circle. Me and my friend, Tawana Deas, was
8 together and my cousin Dexter Perry. We was walking to his
9 car and about three guys came out of nowhere, knocked me
10 down and took my cousin and took off running. Dexter can't
11 be found. He was driving a '95 purple Nissan."

12 Q That's all that she said in that statement?

13 A That's it.

14 Q And did she tell you anything about Kerry Collins in
15 that statement?

16 A No.

17 Q Did she tell you anything about somebody named "Manny"
18 in that statement?

19 A No.

20 Q Anything about Gary Grant?

21 A No.

22 Q Anything about having any clue about where Dexter
23 Perry might be?

24 A No.

25 Q Nothing?

CROSS EXAMINATION BY MR. JONES / MICHAEL CRUMLEY Page 165

- 1 A Nothing at all.
- 2 MS. WILSON: Beg the Court's indulgence.
- 3 THE COURT: Uh-huh.
- 4 MS. WILSON: That's all, Your Honor.
- 5 THE COURT: Mr. Bolus?
- 6 MR. BOLUS: No questions.
- 7 THE COURT: Mr. Barnwell?
- 8 MR. BARNWELL: No questions.
- 9 THE COURT: Mr. Jones?
- 10 MR. JONES: Just a few, Your Honor.
- 11 THE COURT: You may proceed.
- 12 CROSS-EXAMINATION BY MR. JONES:
- 13 Q Detective Crumley, briefly, when Marquita was on the
- 14 scene when you got there, was she -- was she with Ms. Deas
- 15 at that time?
- 16 A Yes.
- 17 Q So it was Ms. Deas, Ms. Kenyetta Smith, and Marquita
- 18 Smith, correct? The three of them were there when you got
- 19 there --
- 20 A That's correct.
- 21 Q -- at that time? Do you know what Kenyetta Smith's
- 22 relationship is to the victim, to Dexter Perry?
- 23 A I don't know.
- 24 MR. JONES: Nothing further, Your Honor.
- 25 THE COURT: Any redirect of the witness?

DIRECT EXAMINATION BY MR. JENNINGS / ODoner Cobb Page 166

1 MS. WILSON: No, ma'am. May he be excused?

2 THE COURT: Any objection from the defense?

3 MR. BOLUS: None.

4 MR. BARNWELL: No objection.

5 MR. JONES: No, Your Honor.

6 THE COURT: Sir, you're excused.

7 You may call your next witness.

8 MR. JENNINGS: Beg the Court's indulgence.

9 (Sotto voce discussion between all counsel.)

10 MR. JENNINGS: Your Honor, the State calls Odoner
11 Cobbs.

12 THE COURT: Mr. Cobbs, if you would come forward,
13 please, to be sworn.

14 ODoner Cobbs, having been first
15 duly sworn, testifies as follows:

16 COURT OFFICER: State your full name for the record
17 and spell your last name.

18 MR. COBB: Odoner Cobb, C-o-b-b.

19 DIRECT EXAMINATION BY MR. JENNINGS:

20 Q I want you to make sure you talk in the microphone,
21 okay?

22 A All right.

23 Q You need to talk loud enough so all the people at the
24 end of the row can hear what you got to say, okay?

25 A Okay.

DIRECT EXAMINATION BY MR. JENNINGS / ODONER COBB Page 167

- 1 Q So sit up and talk into the microphone.
- 2 Spell your name -- your last name again for the court
- 3 reporter.
- 4 A C-o-b-b [sic].
- 5 Q And how do you pronounce your first name.
- 6 A Odoner.
- 7 Q How old are you?
- 8 A Fifty-six.
- 9 Q Where do you live?
- 10 A Ladson, South Carolina.
- 11 Q What's your address?
- 12 A [REDACTED].
- 13 Q And is that in a --
- 14 A Mobile park.
- 15 Q Okay. What's the name of the park?
- 16 A Silver Fox.
- 17 Q And that's right up there by Highway 78 and College
- 18 Park Road?
- 19 A Right.
- 20 Q Okay. Who do you live at [REDACTED] Dutch Fork with?
- 21 A My wife and my daughter.
- 22 Q And what's your daughter's name?
- 23 A Amber Cobbs.
- 24 Q And your wife?
- 25 A Birdie Cobbs.

1 Q How long have you been married?

2 A Since '93.

3 Q Okay. Have you lived at [REDACTED] Dutch Fork for that long?

4 A Yes.

5 Q Where are you working?

6 A Pops Top Upholstery.

7 Q And what do you do for Pops Top shop?

8 A Just about everything.

9 Q What kind of work do y'all do in general?

10 A Vinyl tops, seat covers, head liners.

11 Q So it's like an upholstery place?

12 A Right.

13 Q Amber is your daughter. Do you have another daughter?

14 A Yes.

15 Q And what's her name?

16 A Tasha Marie.

17 Q And where does she live?

18 A Atlanta.

19 Q How old is she?

20 A Thirty.

21 Q And how old's Amber?

22 A Eighteen.

23 Q In August of 2006, that's the time period we're
24 talking about, you and Birdie obviously lived in your
25 house. Did Amber live there?

DIRECT EXAMINATION BY MR. JENNINGS / ODoner Cobb Page 169

- 1 A Right.
- 2 Q And was anybody else staying there with you?
- 3 A My nephew.
- 4 Q And what's his name?
- 5 A Joe Alex.
- 6 Q And where was -- was he from Charleston or did he live
- 7 someplace else?
- 8 A No. He lived in Rock Hill.
- 9 Q And what was he doing down in Charleston?
- 10 A Just came up for the weekend.
- 11 Q Chris Nelson; do you know Chris?
- 12 A Yes.
- 13 Q How do you know Chris?
- 14 A He's my nephew also.
- 15 Q And would he stay at your house as well?
- 16 A Yes.
- 17 Q In August of last year was he spending time there at
- 18 your house?
- 19 A Off and on.
- 20 Q Okay. How about Dexter Perry? Do you know Dexter?
- 21 A Yes.
- 22 Q How did you know Dexter?
- 23 A Through Chris.
- 24 Q And what was Chris and Dexter's relationship?
- 25 A Best friends.

- 1 Q So you would see Dexter over at the house?
- 2 A Every now and then.
- 3 Q Did he have any stuff at y'all's house?
- 4 A No.
- 5 Q Keep any clothes there?
- 6 A No.
- 7 Q Any of his personal belongings?
- 8 A None.
- 9 Q How about Gary Grant? Do you know Gary Grant?
- 10 A No.
- 11 Q Okay. Jermaine Hartwell?
- 12 A No.
- 13 Q Kareem King?
- 14 A No.
- 15 Q Ever give any of those fellows permission to come into
- 16 your house?
- 17 A Not ever.
- 18 Q I want to talk with you specifically about August the
- 19 1st, and then into that early morning of August the 2nd --
- 20 A Okay.
- 21 Q -- of last year. Did you work on the 1st?
- 22 A Yes.
- 23 Q And tell us what you did when you got home.
- 24 A Took a shower, got something to eat, and watched TV.
- 25 Q What time do you normally get home from work?

DIRECT EXAMINATION BY MR. JENNINGS / ODONER COBB Page 171

1 A Five o'clock.

2 Q And you -- so you sit down. You got a living room in
3 your house?

4 A Yes.

5 Q And how about Ms. Birdie, was she home that night?

6 A Yes, she was.

7 Q And Amber, was she home?

8 A Yes, she was.

9 Q And just tell us what happened during the course of
10 the night.

11 A Well, I think it was around -- maybe a little after
12 12, I just got through making me a sandwich and coming back
13 out of the kitchen. The door flied [sic] open and Dexter
14 came slamming through the door with -- like I said, I never
15 seen them before that night. Heavyset and dark skin and
16 dread locks, and the gun to Dexter.

17 They made me lie on the floor, and I keep trying to
18 look up at them. I looked twice, and he told me if I look
19 up at him again, he'd put the gun to my head and he'd blow
20 my damn brains out.

21 Q Now, a little bit after midnight, you said, you're
22 sitting, watching TV, and fixed a sandwich?

23 A Right.

24 Q Where was Ms. Birdie?

25 A In the bedroom.

1 Q So she'd already gone to bed?

2 A Right.

3 Q All right. How about Amber?

4 A She was in her room.

5 Q Was Joe at the house?

6 A Yes.

7 Q And where was he?

8 A In the back bedroom sleeping.

9 Q So who was the only person in the living room?

10 A I was.

11 Q The door comes flying open. Did anybody knock on the
12 door?

13 A No.

14 Q Anybody ask permission to come into your house?

15 A No.

16 Q Okay. Did you give anybody -- this group that came
17 in, did you give them permission?

18 A No, I haven't.

19 Q And who -- who comes into the -- into the house first?

20 A Dexter came through the door first. The other
21 heavysset dark-skin dude, he came in next; and the other
22 light-skin dude, he came in, and the other two went in the
23 back bedroom.

24 Q Now, when Dexter came in, did you see -- did he have
25 any weapons?

DIRECT EXAMINATION BY MR. JENNINGS / ODONER COBB Page 173

1 A No.

2 Q The first guy in the door, the heavyset fellow, did he
3 have any weapons?

4 A Yes.

5 Q Okay. What did he have?

6 A A pistol.

7 Q And how about the other guys that came in, did they
8 have weapons?

9 A Yes.

10 Q What kind of weapons?

11 A Well, all of them had pistols.

12 Q Okay. You don't know what type of pistol?

13 A No.

14 Q So Dexter didn't have a pistol, but all the others
15 that came in, they were all armed?

16 A Right.

17 Q Any doubt about that?

18 A No doubt about it.

19 Q And what -- what did they tell you to do when they
20 came into your house?

21 A Lay on the floor.

22 Q Okay. Who told you to do that?

23 A The heavyset, dark-skinned dude.

24 Q Why'd you lay down?

25 A Because he had a gun pointed at me.

DIRECT EXAMINATION BY MR. JENNINGS / ODONER COBB Page 174

1 Q Okay. And what was going to happen if you didn't do
2 it?

3 A He said he was going to shoot me.

4 Q When they came into your home, did you have the lights
5 on in the house?

6 A Just the kitchen light.

7 Q Okay. You could see -- you saw it was Dexter that
8 came in?

9 A Oh, yeah.

10 Q The other fellows that all had the guns, did they have
11 any masks on?

12 A No.

13 Q Or anything over their face?

14 A No.

15 Q The heavysset fellow that -- that said he was going to
16 blow your brains out if you looked at him, anything that
17 kept you from seeing his face?

18 A Nothing.

19 Q What happened then, as you were -- as you were laying
20 on the floor, and they've got the guns pointed at you?
21 What happened after that?

22 A They asked me who all was in the house, and I told
23 them my wife and my daughter. And they told my wife to
24 come in out of the room. My wife suffers with arthritis
25 and she told them to give her a little time. And he went

DIRECT EXAMINATION BY MR. JENNINGS / ODONER COBB Page 175
1 to the bedroom door and told her to come on out.

2 Q Which one was that?

3 A The heavyset.

4 Q Okay. Where was Dexter while all of this was taking
5 place?

6 A He was on the floor. The other light-skin dude, he
7 had the gun pointed -- the heavyset fellow told him, you
8 know, the light-skin one, "Keep your eye on them," when he
9 went to my bedroom door.

10 Q Uh-huh. All right. Did -- at some point did they
11 move Dexter from the floor into the back room?

12 A Yes.

13 Q All right. Tell us what happened with that.

14 A They picked him up, dragged him back there. He keeps
15 saying, "The money is back there. It's back there. It's
16 back there." That's all he was saying.

17 Q Who was saying that?

18 A Dexter.

19 Q Okay. And how many of them went back into the back
20 bedroom?

21 A The heavyset dark-skin one, he drug Dexter back there.

22 Q And the light-skin, did you ever hear them call the --
23 the light-skinned fellow by name?

24 A Manny.

25 Q Okay. You heard them say "Manny"?

1 A Yes.

2 Q Could you hear what was happening back in the back
3 bedroom?

4 A No.

5 Q Do -- do you know anybody else that was in the back
6 bedroom besides the fellows with the guns and Dexter?

7 A My nephew.

8 Q Okay. And who was that?

9 A Joe Alex.

10 Q So then what happened after they drag Dexter back
11 there at gunpoint, what happens after that?

12 A I don't know what happened back there, but they
13 brought him back up front and threw him back on the floor.

14 Q What did you do while they took Dexter into the back
15 room?

16 A The other fellow hold a gun on me while I was on the
17 floor.

18 Q So at any time while you were laying there on the
19 floor with these guns pointed at you, did you think that
20 you were free to move?

21 A No.

22 Q Free to leave the house?

23 A No, I wasn't.

24 Q Did -- when Dexter came back, what did they do with
25 him?

DIRECT EXAMINATION BY MR. JENNINGS / ODONER COBB Page 177

1 A Put him on the floor. And he keep saying, "Manny, you
2 done hit me twice." And he said, "That ain't all. I'm
3 going to hurt you again." And he hit him with the butt of
4 the gun again.

5 Q They kept hitting Dexter?

6 A Yes.

7 Q What happened after that?

8 A That's when someone from outside shot inside, and
9 after that Dexter got up and ran in our bedroom. And then
10 that's when all the shots started ringing out.

11 Q Did you see who -- what did the people with the guns
12 do when Dexter got up and ran towards the back?

13 A Start shooting.

14 Q Did you see what was happening?

15 A No. Not at the moment.

16 Q Okay. What was -- what kept you from being able to
17 see?

18 A Because the other fellow still had me down on the
19 floor.

20 Q Let me show you a couple of things, Odoner. State's
21 Exhibit 48, you -- you -- showing you this diagram. Do you
22 recognize what that's a diagram of?

23 A That's my home.

24 Q Okay. And does that fairly and accurately show what
25 the inside of your house looks like?

1 A Yes.

2 Q Okay. Show you what's marked as State's Exhibit 26.

3 Do you recognize that?

4 A Yes.

5 Q What's that a picture of?

6 A My sofa.

7 Q Okay. That's in your house?

8 A Yes.

9 Q All right. And State's Exhibit 31. What's that a
10 picture of?

11 A My livingroom.

12 Q Okay. State's Exhibit 32.

13 A My living room.

14 Q State's Exhibit 33.

15 A The kitchen.

16 Q And State's Exhibit 35.

17 A My kitchen and the hallway.

18 Q And those pictures all fairly show what your house
19 looked like that night?

20 A Right.

21 Q Okay.

22 MR. BARNWELL: Your Honor, I object to these
23 photographs.

24 THE COURT: No speaking objections. Please approach.

25 (Bench conference.)

DIRECT EXAMINATION BY MR. JENNINGS / ODONER COBB Page 179

1 THE COURT: The pictures will be marked and admitted
2 subject to Mr. Barnwell's objection, which goes to weight,
3 not admissibility. You may proceed.

4 You did not object to the diagram, however, Mr.
5 Barnwell; is that correct?

6 MR. BARNWELL: No, Your Honor.

7 THE COURT: Mr. Bolus?

8 MR. BOLUS: I don't have any objection.

9 THE COURT: Mr. Jones.

10 MR. JONES: No, Your Honor.

11 THE COURT: The diagram, which is number 48, is marked
12 and admitted without objection; 26, 31, 32, 33, and 35 are
13 marked without the objections of Mr. Bolus or Mr. Jones,
14 and subject to Mr. Barnwell's objection. You may proceed.

15 (Marked State's Exhibits 26, 31, 33, 35, and 48.)

16 MR. BARNWELL: Can you note in the record what the
17 substance of my objection was?

18 THE COURT: I think my ruling is self-explanatory, but
19 if need be we'll amend the record. You may continue, Mr.
20 Jennings.

21 MR. JENNINGS: Thank you.

22 DIRECT EXAMINATION BY MR. JENNINGS:

23 Q Odoner, this is your front door?

24 A Yes. Yes.

25 Q And which -- which sofa were you sitting on in the

1 living room?

2 A The long one.

3 Q You -- you ---

4 THE COURT: Sir, I'm going to need you to speak
5 directly into the microphone. You sound a little muffled.
6 Thank you.

7 Q You were sitting on this couch?

8 A Yes.

9 Q All right. And which area of the floor were you --
10 were you forced to lay down on when the gentlemen came in
11 with the guns?

12 A The third cushion.

13 Q Right here (indicates)?

14 A Yes.

15 Q All right. And this -- this area is what?

16 A The kitchen.

17 Q Okay. And this back bedroom, whose bedroom is that?

18 A My wife and I.

19 Q And is that where Ms. Birdie was when the men came
20 into your house?

21 A Yes.

22 Q Okay. And this first bedroom is whose room?

23 A My daughter's.

24 Q Okay. Coming down this hallway, this back bedroom was
25 whose?

DIRECT EXAMINATION BY MR. JENNINGS / ODONER COBB Page 181

1 A Joe Alex was sleeping in there.

2 Q So Joe Alex was in this room, Amber was in this room,
3 and Ms. Birdie was in this room?

4 A Right.

5 Q Where were you laying when the shot came in the front
6 door?

7 A In the center cushion, in between them.

8 Q Where was -- where was the heavysset guy with the gun
9 when the shot came in?

10 A On the end of the love seat.

11 Q Okay. And the -- the gentleman you refer to as Manny,
12 where was he?

13 A He was sitting on the other side of the love seat,
14 right in here (indicates).

15 Q Just right over there? Put -- just put it up -- you
16 can stand up if you need to, but if you just to point to
17 the jury, where was Manny sitting?

18 A Right there (indicates).

19 Q Okay. And then what happened -- where was Dexter when
20 the shot came in?

21 A About right there (indicating).

22 Q Where was he on the ground when the shot first
23 happened?

24 A Who? Dexter?

25 Q Yes.

1 A Dexter was right there (indicates).

2 Q Okay. And then what did Dexter do when the -- when
3 the shot came into the -- into the home?

4 A Got up and ran. Well, that's the back -- back door.

5 Q Uh-huh.

6 A But that don't come open, so he left there and went --
7 and when the shots came, he ended up right in between
8 there.

9 Q Okay. And the men with the guns that were inside your
10 house, what did they do when Dexter got up and ran?

11 A The heavysset dude, he ran behind him right there.
12 Manny stand up, I was right there, and that's when the
13 shots rang out.

14 Q The shots inside of your house?

15 A Right.

16 Q I show you State's Exhibit No. 33. This area on this
17 wall towards us, that was -- that's what part of your
18 house?

19 A That right there?

20 Q Yes.

21 A My kitchen, part of the kitchen.

22 Q Okay. This is the kitchen?

23 A Right.

24 Q And down this hallway, whose bedroom is back here?

25 A Me and my wife.

DIRECT EXAMINATION BY MR. JENNINGS / ODoner COBB Page 183

1 Q And is that the direction that Dexter ran?

2 A Right.

3 Q What happened after -- after the people inside your
4 house shot Dexter, what happened after that?

5 A They took off.

6 Q Okay. How did they get out of your home?

7 A Through the front door.

8 Q And what did you do after they left?

9 A That's when my daughter came out of her room, and my
10 wife was down in between the hallway.

11 Q Uh-huh.

12 A And my daughter thought she had done got shot, and I
13 got up and I ran back.

14 Q And looking at State's Exhibit 33, where was Ms.
15 Birdie?

16 A Laying in between right there (indicates).

17 Q On the floor?

18 A Yes.

19 Q Did you get a chance to check on her?

20 A Yes.

21 Q And how was she?

22 A We helped her up, and then that's when my daughter ran
23 right here; and she looked back that way and that's when
24 she saw Dexter in between the bed and the closet.

25 Q Okay. Did you get a chance to go back and see Dexter?

1 A Yes.

2 Q What kind of condition was he in?

3 A Bad.

4 Q Could you see if he was injured?

5 A Yes.

6 Q Tell -- tell the jury what he looked like?

7 A Well, he had a gunshot wound here, bullet hole here,
8 and I was trying to compress the -- the bullet hole in his
9 chest, you know, to slow down the bleeding. And he just
10 keep bleeding and he just keep saying, "Help me, ODoner,
11 help me." That's it, until the sheriff department got
12 there.

13 Q Okay.

14 A And that was it.

15 Q And the EMS people got there?

16 A Yes.

17 Q Did the detectives ultimately get there to your house?

18 A Yes.

19 Q Did you have the chance to talk with them?

20 A Afterwards.

21 Q Okay. And you gave a description of the people that
22 were in your house?

23 A Right.

24 Q And you were -- I think you've already talked -- one
25 was a heavyset fellow?

DIRECT EXAMINATION BY MR. JENNINGS / ODoner Cobb Page 185

1 A Right.

2 Q Do you remember what he looked like?

3 A Yes.

4 Q And how did you describe him to the detectives?

5 A Heavyset, dark-skin, with dreadlocks.

6 Q Okay. And the other people? Manny, how did you
7 describe him?

8 A About my build, light-skin, light brown-skin.

9 Q Okay. And as far as whether they were armed or
10 unarmed, what did you tell the detectives?

11 A They was armed.

12 Q All of them.

13 A Yes.

14 Q Now, the next day did the detectives come by and have
15 some photographs for you to look at?

16 A Yes.

17 Q And who was at the house?

18 A Me and my wife.

19 Q And did you get a chance to look at some pictures?

20 A Yes.

21 Q Did you see anybody in the pictures that you
22 recognized?

23 A Yes.

24 Q Let me show you what's marked ---

25 THE COURT: Counsel, please approach?

DIRECT EXAMINATION BY MR. JENNINGS / ODONER COBB Page 186
(Bench conference.)

THE COURT: You may proceed.

DIRECT EXAMINATION BY MR. JENNINGS:

Q Odoner, I'm going to show you this -- what's been marked as State's Exhibit No. 1. That's a group of six photographs.

A Right.

Q And did the detectives show you those?

A Yes.

Q And did you recognize any of these six pictures as being a person that was in your house?

A I did.

Q And which photograph did you identify?

A Number 2.

Q And is that your signature?

A Yes, it is.

Q Okay. And did you tell the detective?

A Yes.

Q And who was this gentleman? What role did he play in being in your house?

A That's the heavysset one that was holding a gun to my head.

Q Okay. And what did he tell you?

A Lay on the floor and if not he was going to blow my damn brains out.

DIRECT EXAMINATION BY MR. JENNINGS / ODONER COBB Page 187

1 Q Okay. When you saw these pictures, was there any
2 doubt in your mind that that gentleman was in your house?

3 A No doubt at all.

4 Q Do you see him here today?

5 A Yes.

6 Q Where is he?

7 A Right there (indicates).

8 Q Which -- of the people sitting at the table, which one
9 is he?

10 A The second one right there (indicates).

11 MR. JENNINGS: Okay. Let the record reflect he
12 identified Mr. Grant, Your Honor.

13 THE COURT: Let the record so indicate.

14 Q Odoner, is there any doubt in your mind that Gary
15 Grant was in your house that night?

16 A No doubt at all.

17 Q Any doubt that he was armed with a handgun?

18 A No.

19 Q And had the gun pointed at your head?

20 A Right.

21 Q And he brought Dexter Perry into your house?

22 A Yes, he did.

23 Q Gary Grant was with the group of people that shot and
24 killed Dexter Perry?

25 A Yes.

1 Q Any doubt in your mind?

2 A No doubt at all.

3 MR. JENNINGS: Beg the Court's indulgence?

4 THE COURT: Uh-huh.

5 MR. JENNINGS: All right, ODoner, if you could answer
6 any questions that any of the defense attorneys might have,
7 please.

8 THE COURT: Mr. Bolus you may proceed.

9 MR. BOLUS: Thank you.

10 **CROSS-EXAMINATION BY MR. BOLUS:**

11 Q Mr. Cobb, you said there was one light on in your
12 house?

13 A Yes.

14 Q And so Pthe pictures that were put into evidence, your
15 house was not lit up like that, not that night?

16 A Yeah. When the kitchen light on and then the TV was
17 on, it lights up pretty good.

18 Q Okay. You don't -- you don't know who shot Dexter, do
19 you? You don't know personally who shot Dexter?

20 A No.

21 Q Okay. And you said that -- did you have a
22 conversation with Dexter before? Did he say anything about
23 who shot him?

24 A No, he said, you know, "Manny," you know, "hit me
25 twice."

- 1 Q Manny?
- 2 A Yes.
- 3 Q Manny hit me. Was Manny doing the hitting?
- 4 A The time they had him in my house, yeah.
- 5 Q Okay.
- 6 A He hit him once. I don't know.
- 7 Q Manny?
- 8 A Yes.
- 9 Q You saw that happen?
- 10 A Yes.
- 11 Q And is he in the courtroom?
- 12 A No.
- 13 Q He isn't?
- 14 A (No audible response).
- 15 Q And you said in your statement to the police --
- 16 MR. BOLUS: Could I show him the statement, Judge?
- 17 THE COURT: Uh-huh.
- 18 Q You said "the heavysset male." You see that mark?
- 19 A Yes.
- 20 Q The heavysset male, would that be describing Mr. Grant
- 21 there?
- 22 A Yes.
- 23 Q You said he had a .38. That's a revolver, you know,
- 24 with the -- the -- the wheel, the .38?
- 25 A Yeah.

1 Q It has a wheel.

2 A Well, it looked like a .38 to me. All I know it was a
3 pistol.

4 Q Well, a revolver is different then a pistol, because
5 later in your statement you say that the light, short,
6 thin, black male in his 20's came in armed with a pistol.
7 Do you understand the difference?

8 A Well, between what? Between a pistol and --

9 Q A revolver?

10 A Yes, sir.

11 Q And you're saying the heavysset man had the revolver,
12 which is normally -- could be a .38, right?

13 A Right.

14 Q That's with the wheel in it?

15 A Right.

16 Q And you said that the thin man had a pistol. Who's
17 the thin man? Do you know who that is, the light-skin man?

18 A Dexter was calling him "Manny."

19 Q Dexter was calling that man "Manny"?

20 A Yes.

21 Q So according to your statements, you're saying Mr.
22 Grant had a .38 and Mr. Manny had a .45 or a pistol?

23 A All -- all I know, all of them had guns.

24 Q But I need to know a little more than that because you
25 made the statement, and it's underlined for you. You don't

1 -- and because you're looking at a fellow who's got a --
2 you say a .38 to your head.

3 A It looked like it was a .38 to my head, yes.

4 Q Okay. And he -- who was -- who was, quote, "pistol
5 whipping," or doing anything to Dexter? That was Manny?

6 A Yes.

7 Q The light -- the light skinned, thinner man?

8 A Yes.

9 Q Okay. Now, nowhere in your statement do you say in
10 your statement that someone said they were going to blow
11 your brains out, right?

12 A The -- the heavysset fellow had the -- the one that had
13 the gun to my head, he's the one made the statement, that
14 if I look up at him again, he'll blow my damn brains out.

15 Q Okay. That's not in your statement. You said it
16 today.

17 A Excuse me?

18 Q Can you find it in your statement?

19 A No. I don't see it in here.

20 Q All right. I'll get the statement -- you're statement
21 back. So that's something you said today, but you didn't
22 tell the police back when you made the statement, right?

23 A Yes, I did.

24 Q Oh, you did?

25 A Yes.

1 Q Okay. You said that someone from the outside of the -
2 - your trailer at some point began shooting, right?

3 A Right.

4 Q So these -- the men that were in your trailer, in your
5 home, did not open up with any kind of shooting before that
6 happened?

7 A No.

8 Q Okay. And do you know who the man was on the outside
9 of the trailer?

10 A I don't know who it was on the outside. All I know
11 the bullets came in at the time.

12 Q Have you talked to Chris Nelson since this happened?

13 A Yes.

14 Q And did Chris Nelson say that he began the shooting?

15 A Yes.

16 Q And Chris Nelson is -- is what? Dexter's best friend?

17 A Yes, he is.

18 Q So he -- he claimed to shoot -- I think he -- he said
19 three times, right?

20 A Right.

21 Q And he claimed to have a .38 revolver also, didn't he?

22 A I don't know what kind of gun he had.

23 Q Okay. But you know he did the shooting?

24 A So I heard, yes.

25 Q Okay. He's told you that too, hasn't he?

1 A No. I haven't been able to ask him that. I heard
2 that.

3 Q You've never met Chris Nelson?

4 A That's my nephew, but I never asked him that.

5 Q Oh. But you understand from the investigators and all
6 that in this case that he began the shooting?

7 A That's what I was told, yes.

8 Q Okay. When the police officers showed you the -- the
9 photos to identify, what did they tell you?

10 A Could I recognize anyone on them pictures. They
11 didn't let me and my wife see -- see all the pictures at
12 the same time.

13 Q Did they tell you that someone in that picture may be
14 the person that did this?

15 A No.

16 Q They said what exactly?

17 A Asked me could I identify anyone on that picture -- on
18 that paper.

19 Q And then you identified Mr. Grant?

20 A Yes.

21 Q Did you feel that the pictures they were showing you
22 probably would have had the person they claimed to be in
23 the trailer? I mean, do you think they were showing you a
24 picture that they had at least one person that had been in
25 your trailer?

1 A No.

2 Q You didn't?

3 A Because when they -- when they showed me the pictures,
4 I recognized him right off.

5 Q Okay. But he is not the man that was beating or
6 pistol-whipping Dexter, is he?

7 A Not inside my home, no.

8 Q Okay. And he's the man that you claim had the .38 and
9 not the pistol?

10 A Yes.

11 Q All right. Were you around your home later -- a few
12 days later when they did find some money and drugs in your
13 house?

14 A They found that the same day -- the same morning.

15 Q They found like \$1,653 in money and 48 grams of
16 marijuana in your house?

17 A That [sic] what I was told.

18 Q And said the victim's bedroom. Did Dexter live with
19 you?

20 A No, he didn't.

21 Q Whose bedroom they would have found that in?

22 A My nephew.

23 Q Chris Nelson?

24 A No.

25 Q Who?

- 1 A My little, young nephew.
- 2 Q What's his name?
- 3 A Minor 1
- 4 Q
- 5 A Yes.
- 6 Q Well, did Joe Husser live with you?
- 7 A He just came home for the weekend. He didn't live
- 8 with me.
- 9 Q How old's Minor 1
- 10 A Fourteen.
- 11 Q Fourteen. And so they found the marijuana and \$1,653
- 12 in Minor 1 bedroom?
- 13 A The room he was sleeping in, yes.
- 14 Q Okay. And -- but Dexter was saying that the money was
- 15 in the back?
- 16 A All he was saying was "in the room, it's in the room."
- 17 Q All right. He was saying, "It's in the room, it's in
- 18 the room"?
- 19 A Yes.
- 20 Q And Chris Nelson is his best friend?
- 21 A Yes.
- 22 Q He's Dexter's best friend?
- 23 A Yes.
- 24 Q And when he -- you heard -- did you see him peering
- 25 through the windows or through your ---

CROSS-EXAMINATION BY MR. BARNWELL / ODoner Cobbs Page 196

1 A I was on the floor. They had me on the floor in the
2 living room.

3 Q Okay. But Chris Nelson began the shooting as far as
4 you understand?

5 A As far as I understand, yes.

6 MR. BOLUS: That's all. Thank you.

7 THE COURT: Mr. Barnwell.

8 CROSS-EXAMINATION BY MR. BARNWELL:

9 Q How -- how often was Dexter Perry in your house?

10 A Not that often.

11 Q Did you ever know him to have large sums of money when
12 he was there?

13 A Not to my knowledge.

14 Q Were these pictures of your house taken the same night
15 this incident happened or in -- in the daytime or when --
16 when -- when were they taken?

17 A I think it was taken the same night.

18 Q How -- how -- how long did this whole incident take?

19 A I don't know. Probably about 45 minutes to an hour.

20 Q And how many people -- people did you see in your
21 house?

22 A I saw two and the other two ran in the back. I didn't
23 saw when the other two ran in the back.

24 Q The other two came in later?

25 A Yes.

CROSS-EXAMINATION BY MR. BARNWELL / ODONER COBBS Page 197

1 Q And you said -- said that -- that you do not see Manny
2 in the courtroom?

3 A I'm not -- I'm not sure.

4 Q You just identified one -- one person from -- from
5 the lineup, right?

6 A Right.

7 Q Did you make a -- did you make a statement at the
8 time?

9 A Excuse me?

10 Q I'm sorry. Did you make a statement to the police
11 officers?

12 A Yes, I did.

13 Q Did you say in your statement a heavysset dude hit KuKu
14 two times?

15 A I believe I did.

16 Q The other two people that came in after the first, how
17 much later would they -- would they have come in?

18 A Like I said, the time they had me on the floor and
19 they just came in and went straight in the back.

20 Q You ever had a gun point at you before?

21 A No.

22 Q You sure you could recollect everything clearly that
23 happened?

24 A Yes.

25 Q You didn't say anything about anybody addressing Manny

1 in your statement, did you?

2 A Addressing him?

3 Q Calling -- calling the name -- the name "Manny" in
4 your statement?

5 A Dexter.

6 MR. BARNWELL: I don't have any further questions,
7 Your Honor.

8 THE COURT: Mr. Jones?

9 CROSS-EXAMINATION BY MR. JONES:

10 Q Did Dexter ever spend the night over there?

11 A No.

12 Q How often did Chris stay over there?

13 A He lived with us must have been about a year before he
14 moved out.

15 Q And after he had moved out, did he ever periodically
16 come and stay there?

17 A Occasionally, yes.

18 Q Which room did he stay in when he did?

19 A The back bedroom.

20 Q Is that -- would that be Minor 1 room?

21 A Yes.

22 Q Do you know who called the police in reference to this
23 matter?

24 A My wife.

25 Q And when she called the police, had -- everybody --

CROSS-EXAMINATION BY MR. JONES / ODONER COBBS Page 199

1 was it over? Was everybody gone or was it still going on?

2 A No. They done left.

3 Q You think the whole ordeal took about 45 minutes,
4 probably?

5 A Give or take, yes.

6 Q At any time -- have you ever met my client, Ms. Smith?

7 A No.

8 Q Have you ever seen her before?

9 A No.

10 Q Did you ever see her over in the -- around your house
11 on that day or any other day?

12 A No.

13 Q That time that night, did you ever hear her name? Did
14 you ever hear the name "Ms. Smith" or "Marquita"?

15 A No, I didn't.

16 Q Did you see the getaway car when the guys left or any
17 cars leave that you would think was the --

18 A No, I didn't.

19 Q Did Dexter -- I guess Chris would have a key to -- to
20 the house, right? Or does Dexter -- did Dexter not have --
21 I mean, I'm sorry -- Chris. Does Chris have a key to -- to
22 your house?

23 A No, he didn't.

24 Q Do you know if the door was locked or unlocked that
25 night?

RE-DIRECT EXAMINATION BY MR. JENNINGS / ODONER COBB Page 200

1 A It was unlocked.

2 MR. JONES: Nothing further, Your Honor.

3 THE COURT: Any redirect of the witness?

4 MR. JENNINGS: Yes, Your Honor.

5 THE COURT: You may proceed.

6 RE-DIRECT EXAMINATION BY MR. JENNINGS:

7 Q Odoner, I believe Mr. Barnwell asked you, you've never
8 had a gun pointed at you before like this, have you?

9 A No.

10 Q Anybody ever kick in the door to your house?

11 A No.

12 Q Anybody come into your house before with guns and
13 force you at gunpoint to lay down on the floor?

14 A No, never.

15 Q So is it fair to say it was a pretty hectic situation?

16 A Yes.

17 Q Is there any question that every person -- did you
18 have a weapon that night?

19 A No, I didn't.

20 Q Did you see Dexter Perry with a weapon?

21 A No, I didn't.

22 Q Ms. Birdie, did she have a weapon?

23 A No, she didn't.

24 Q How about Amber? She have a weapon?

25 A No. No, she didn't.

RE-DIRECT EXAMINATION BY MR. JENNINGS / ODONER COBBPage 201

1 Q Every person that came into your house that wasn't
2 invited, what did they have with them?

3 A A weapon.

4 Q Every one of them?

5 A Yes, sir.

6 Q No doubt about that?

7 A No doubt about it.

8 Q And what were they asking Dexter for when they came
9 into your house?

10 A Where is it?

11 Q Any question -- whether it was a .38 or a different
12 kind of weapon, that when Gary Grant was in your house, any
13 -- any question he had a gun?

14 A No question about it.

15 Q Any question that Gary Grant pointed that gun at your
16 head and told you he was going to blow your brains out if
17 you looked at him?

18 A No question about it.

19 Q Any question that Manny, when he was in your house,
20 had a gun?

21 A No question about it.

22 Q Do you have any problem remembering what happened that
23 night?

24 A No, I don't.

25 Q And in fact, they -- they showed you some other

DIRECT EXAMINATION BY MR. JENNINGS / BIRDIE COBBS Page 202
1 pictures, didn't they, and you didn't identify anybody?

2 A No.

3 Q But when you looked at State's Exhibit No. 1, what
4 stood out about the person in those six pictures?

5 A The only different he didn't have dreadlocks -- I
6 mean, he had the dreadlocks.

7 Q Okay. But this picture that you signed your name
8 above, he was in your house?

9 A Yes, sir. He was.

10 MR. JENNINGS: That's all I have, Your Honor.

11 MR. BOLUS: Nothing further.

12 MR. BARNWELL: No further questions.

13 MR. JONES: Nothing further.

14 THE COURT: Any objection to the witness being excused
15 from the State?

16 MR. JENNINGS: None, Your Honor.

17 THE COURT: From the Defense?

18 MR. BOLUS: None, Your Honor.

19 MR. BARNWELL: No, Your Honor.

20 THE COURT: Mr. Jones?

21 MR. JONES: No. I'm sorry, Your Honor.

22 THE COURT: Sir, you're excused.

23 Will Counsel approach for me, please?

24 (Bench conference.)

25 THE COURT: You may proceed. You may call your next

DIRECT EXAMINATION BY MR. JENNINGS / BIRDIE COBBS Page 203
1 witness.

2 MR. JENNINGS: Your Honor, the State calls Birdie
3 Cobbs.

4 BIRDIE COBBS, having been first
5 duly sworn, testifies as follows:

6 COURT OFFICER: Please be seated. State your full
7 name for the record and spell your last name.

8 WITNESS: My name is Birdie Cobbs, C-o-b-b-s.

9 DIRECT EXAMINATION BY MR. JENNINGS:

10 Q Good morning, Ms. Birdie.

11 A How are you doing?

12 Q How are you doing?

13 A Fine.

14 Q We just heard from Odoner. He's your husband, right?

15 A Yes.

16 Q How long have y'all been married?

17 A Since '93.

18 Q And he already told us all this. Y'all live at [REDACTED]
19 Dutch Fork?

20 A Yes, we do.

21 Q Okay. And that's in Berkeley County?

22 A Yes.

23 Q That over by -- that's Highway 78 and College Park?

24 A Yes.

25 Q And is there a shopping center right in front of

1 y'all's neighborhood?

2 A Yes.

3 Q On August the 1st of last year, who -- you -- you and
4 Odoner were obviously living at your house?

5 A Yes.

6 Q And y'all's daughter, Amber?

7 A Yes.

8 Q Okay. And Joe Husser?

9 A Yes.

10 Q And what relation is he to you?

11 A My nephew.

12 Q Okay. On -- is it your side or Odoner's?

13 A On -- my brother's son.

14 Q That's your brother's son?

15 A Yes.

16 Q Does -- and he has a brother?

17 A Yes.

18 Q What's his name?

19 A I -- I used to not call him by a nickname, but his
20 name is Alex.

21 Q Okay.

22 A Alex. And Christopher is my nephew.

23 Q That's your brother's son?

24 A That's my brother's kids.

25 Q Now we're talking about August the 1st of 2006.

DIRECT EXAMINATION BY MR. JENNINGS / BIRDIE COBBS Page 205

1 A Uh-huh.

2 Q The night that all this happened.

3 A Uh-huh.

4 Q You were home that night?

5 A Yes, I was.

6 Q And what time did you go to bed?

7 A I went to the bedroom about nine o'clock.

8 Q And who was in the house when you went to bed?

9 A It was me, my husband, my nephew, and my daughter.

10 Q Which nephew was there?

11 A Alex.

12 Q Okay. I'm going to show you what is already in
13 evidence, it's State's Exhibit 48. You've -- we've shown
14 you this diagram before. It's a diagram of your house?

15 A Uh-huh.

16 THE COURT REPORTER: Could you say "yes" or "no,"
17 please.

18 A Yes.

19 Q That's the livingroom?

20 A Yes.

21 Q And your kitchen?

22 A Yes.

23 Q Down this hall, whose bedroom is this?

24 A That is my bedroom.

25 Q Okay. So when you went to bed about nine o'clock, is

DIRECT EXAMINATION BY MR. JENNINGS / BIRDIE COBBS Page 206
1 that the bedroom you were in?

2 A Yes.

3 Q And just tell the jury what, if anything, woke you up
4 during the night or what happened that morning?

5 A Well, when I went to bed, I didn't go straight to
6 sleep, you know, I be looking at television off and on and
7 I fell asleep. And I don't know what time it was, but I
8 heard like a little stomping noise. It sounded like it
9 been on the outside. I didn't hear no voices or anything.

10 Q Uh-huh.

11 A And my husband didn't say anything, and I didn't
12 figure nothing been wrong with it like that. And I stayed
13 right there in the room.

14 Q Okay.

15 A And then few minutes later a guy came to the room and
16 said, "Stay there."

17 And after a while my husband said, "Birdie Ann, come
18 on out here." And I got arthritis. I said, "Give me a
19 few minutes." You know, I really didn't think anything was
20 really wrong, even though somebody was standing at my door
21 I didn't -- I didn't know.

22 And so the next voice I hear say, "Come on out there."
23 So I go on out there and my husband said, "Sit right there.
24 Do what they say to do," and I sat down and then I started
25 getting nervous.

DIRECT EXAMINATION BY MR. JENNINGS / BIRDIE COBBS Page 207

1 Then I started to say, "Oh my God, what's going on?"

2 And I hold my head down and I could have saw my husband's

3 foot were a pistol, a grey looking pistol point at him.

4 And I just start getting real nervous.

5 But then I heard a voice say, "It's in the wall. It's

6 in the wall. Tear up the wall." And I just start getting

7 real nervous. And then I don't know how much time passed

8 and then I heard gunshots. Glass from my front door --

9 screen door, I heard that, and I don't know how I got on

10 the floor. And I remember hearing gunshots, gunshots. And

11 I said, "Oh, my God. Please don't shoot me. Please don't

12 shoot me."

13 And next voice I heard was my baby girl. She was

14 pregnant. And she said, "Oh my God, they shot Mama." And

15 I said, "No. No. I -- I'm all right. Help me up." And

16 her and her brother helped me up, and then she started

17 screaming again and said, "Oh, they shot Dexter." And my

18 husband went in the room, I called 9-1-1, and the

19 paramedics and the police department came out.

20 Q Now, you were in the -- you were in your bed and you

21 said somebody came to your door?

22 A Uh-huh.

23 Q Was it -- I guess, the only two men in your house were

24 your husband and Joe Alex?

25 A Right.

1 Q Was it one of those two?

2 A No. No. No. No. Uh-huh.

3 Q Had you ever seen this person before?

4 A No, I never did saw this person before.

5 Q Okay. Then you heard Odoner call you out?

6 A Yes.

7 Q Okay. And where did you walk out of your bedroom?

8 A Like where the bed -- to get back towards the kitchen

9 --

10 Q You can use this. Just point -- push on that button
11 and point on the picture.

12 A I was right there (indicates.) There's my bed. And
13 maybe coming out right here, washer and dryer.

14 (Sotto voce discussion between the witness and Mr.
15 Jennings.)

16 Q And where did you end up when you came out of your
17 room? Where did you sit down?

18 A To my table.

19 Q Right there?

20 A Yeah, right there.

21 Q Okay. Now, who -- you said when you came out you got
22 nervous?

23 A Uh-huh.

24 Q What -- what got you nervous?

25 A Well, I sit down and I saw the gun pointing at my

DIRECT EXAMINATION BY MR. JENNINGS / BIRDIE COBBS Page 209
1 husband. That's when I got nervous -- behind the gun.

2 Q Okay.

3 A Uh-huh.

4 Q So did your husband have a gun?

5 A No.

6 Q Who had a gun?

7 A I didn't see the person who had the gun. I honestly
8 didn't see the person who had the gun.

9 Q Well, was the gun on the floor or was it in somebody's
10 hand?

11 A It was in somebody's hand, but honest to God, I didn't
12 see who had the gun.

13 Q How many people did you see in the livingroom?

14 A To be honest with you, when I came out, I didn't see
15 nobody in the livingroom. I didn't even see my husband.
16 Only time I knew that my husband been in there, other than
17 his voice is that he was on the floor.

18 Q Okay. And where was he on the floor in the
19 livingroom? Point with that.

20 A Okay. He was -- couch, couch -- right up in there.

21 (Sotto voce discussion between Mr. Jennings and Ms.
22 Cobbs.)

23 Q So once you sat down at the table you could see him?

24 A I could see his foot. Uh-huh.

25 Q And you could see that somebody had a gun pointed at

1 him?

2 A Yes.

3 Q Did you ever see -- once you came out of your room,
4 did you ever see Dexter?

5 A No.

6 Q Did you ever see Joe Alex?

7 A No.

8 Q And as far as the person -- the person that came to
9 your door and then was in the livingroom, did that person
10 have anything over his face?

11 A No.

12 Q Any kind of mask?

13 A No.

14 Q Anything that kept you from being able to see him?

15 A No.

16 Q What kind of look did you get at him?

17 A Medium height, medium built, dark-skin, fuzzy hair,
18 fuzzy beard, and he had on like a blue-type looking denim
19 short pants. And his shirt was blue or black with some --
20 I think yellow and red-looking shirt. If my mind serve me
21 right.

22 Q Uh-huh. And then that was the description you gave
23 the police officers?

24 A Yes. Uh-huh.

25 Q Okay. And I think you -- you testified you heard

DIRECT EXAMINATION BY MR. JENNINGS / BIRDIE COBBS Page 211
1 gunshots and ended up on the floor?

2 A Yes.

3 Q And the next thing you knew, who was checking on you?

4 A My daughter. I heard my daughter voice. That's the
5 next voice I heard was my daughter.

6 Q Okay. And by the time that you realized what was
7 going on, were any of the people with the guns still in
8 your house?

9 A No. When I heard my daughter's voice? No. No one
10 still was in the house.

11 Q Who was injured?

12 A Dexter.

13 Q And you called 9-1-1?

14 A I called 9-1-1.

15 Q And so the police came that night?

16 A They came that night.

17 Q You had an opportunity to talk with a detective?

18 A Yes.

19 Q Give a statement?

20 A Yes.

21 Q And the next day, did they come back and show you some
22 photographs?

23 A Yes.

24 Q What did they ask you to do with those?

25 A Well, they bring the photograph and they asked me to

DIRECT EXAMINATION BY MR. JENNINGS / BIRDIE COBBS Page 212

1 look through the pictures in the photographs and see if I
2 can recognize any one of those fellows might would been in
3 my house.

4 Q Were you able to identify anybody?

5 A I was able to identify one of them.

6 Q Let me show you what's marked as State's Exhibit No.

7 2.

8 A Uh-huh.

9 Q You saw --

10 A I saw that one. That's my signature.

11 Q Okay. That's your signature right there?

12 A Uh-huh. I told the detective at the time he had no
13 hair --

14 Q Uh-huh.

15 A -- and no beard.

16 Q Okay.

17 A Uh-huh.

18 Q So he actually looked a little different than this
19 photograph?

20 A Yes, he did. Uh-huh.

21 Q And you -- that -- that gentleman was in your house?

22 A Yeah. I could recognize him with his face. What I
23 did, I took the paper --

24 Q Uh-huh.

25 A -- and I asked him could I go in the room and sit on

DIRECT EXAMINATION BY MR. JENNINGS / BIRDIE COBBS Page 213
1 my bed. And I just sit there. Then I asked God to show me

2 this person face again, and that's the face that I come up
3 with.

4 Q Okay. And this was the person that you saw where, in
5 your house?

6 A At my door, my bedroom door.

7 Q Okay. Do you see him in the courtroom today?

8 A Yes. Right there (indicates.)

9 Q Where is he?

10 A With the black suit on, with the hair.

11 Q Okay. So he -- does he look more like -- today does
12 he look more like he did that night than he does in the
13 picture?

14 A He look more that night beside -- he had a beard.

15 Q Okay.

16 MR. JENNINGS: Your Honor, if the record can reflect
17 she identified Mr. Grant.

18 THE COURT: Let the record so indicate.

19 Q And as you're sitting here today, is there any doubt
20 in your mind that Gary Grant was in your home that night?

21 A There isn't no doubt in my mind.

22 Q And had anything like this ever happened to y'all
23 before?

24 A Well, we been there since 1992, when we bought the
25 trailer. We never had no problem with nothing in our home,

1 nothing whatsoever.

2 Q Anybody ever kick in the front door?

3 A No. No.

4 Q Come in with guns?

5 A No. No, no, no.

6 MR. JENNINGS: All right, Ms. Birdie. Thank you very
7 much. And if you would, just answer any questions that the
8 defense attorney might have.

9 THE COURT: Mr. Bolus.

10 CROSS-EXAMINATION BY MR. BOLUS:

11 Q Ms. Birdie, you didn't see anyone with a gun?

12 A No, I didn't see anybody with a gun.

13 Q And do you understand that the first shot was fired by
14 Chris Nelson? Do you understand that?

15 A I -- that's what I heard, yes.

16 Q And Chris Nelson is?

17 A My nephew.

18 Q He's your nephew?

19 A Yes.

20 Q And there was drugs and money in the back bedroom,
21 right?

22 A That's what I learned.

23 Q And Chris Nelson is Dexter's best friend?

24 A Yes.

25 Q And Dexter was a drug dealer, right?

CROSS-EXAMINATION BY MR. BOLUS / BIRDIE COBBS

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1 A I can't honestly answer that because I don't know. I
2 don't know his -- his -- you know, about him.

3 Q But your 14-year-old boy isn't a drug dealer, is he?

4 A No. No 14-year-old boy shouldn't be a drug dealer.

5 Q I agree, ma'am.

6 A Uh-huh.

7 Q But Dexter, does he -- did he stay in the back bedroom
8 from time to time?

9 A He didn't stay in my home. He was not a resident in
10 my home. He would come and visit my nephew. They would go
11 out and sometimes they would come and hang out in the back
12 bedroom, looking at, you know ---

13 Q Dexter?

14 A Dexter, uh-huh. And sometimes, you know, my -- some
15 of their friends might come by.

16 Q And Chris would be in the back bedroom sometimes?

17 A Yes. Uh-huh.

18 Q And had you ever seen Chris's gun before, his five-
19 shot .38?

20 A No. I didn't know he had a gun.

21 Q You know it now though?

22 A Yes, I do.

23 MR. BOLUS: All right. Thanks a lot.

24 THE COURT: Mr. Barnwell?

25 Mr. Hutto. Mr. Hutto, could you adjust that

CROSS-EXAMINATION MR. BARNWELL & JONES/ BIRDIE COBBS Page 216
1 microphone for me, please, towards the witness? Thank you.

2 You may proceed, Mr. Barnwell.

3 CROSS-EXAMINATION BY MR. BARNWELL:

4 Q You saw some guns pointed at your husband?

5 A I saw one gun pointed at him.

6 Q And you say you couldn't identify who had the gun?

7 A No, I can't.

8 Q And you only identified one -- one person?

9 A Yes, I did.

10 MR. BARNWELL: I don't have any further questions.

11 THE COURT: Any questions, Mr. Jones?

12 MR. JONES: Just a few, Your Honor.

13 THE COURT: You may proceed.

14 CROSS-EXAMINATION BY MR. JONES:

15 Q Mrs. Cobbs, I think you said one of the guys was
16 talking about tearing up the wall and that kind of stuff.
17 Did they tear up anything in the house?

18 A They did tear up the back bedroom.

19 Q They did?

20 A Yes.

21 Q Real quick, I know that with the drugs that were found
22 in the house, you don't think those were your 14-year-old
23 son's?

24 A No.

25 Q The drugs and money that was back there?

1 A No. Uh-huh.

2 Q Let me ask you: You said sometimes some of Dexter's -
3 - and friends of his -- some of Dexter and Chris's friends
4 come by?

5 A He had another friend. His last name was Slaws
6 (phonetic). I remember vaguely stuff like that. He know
7 who I let comes in my house: Dexter, that particular guy,
8 and the one other friend was my other nephew -- old nephew
9 girlfriend's son. They was the persons that was allowed to
10 come in my house --

11 Q Okay.

12 A -- because I know them very well.

13 Q If they have any other friends over, they -- you don't
14 let them in, they've get to hang out outside?

15 A Yeah. But there -- there ain't been nobody else
16 really coming over. Uh-huh.

17 Q Did you -- have you ever seen my client before?

18 A No. Uh-huh. I don't know her.

19 Q Did you ever hear anything that night, the name
20 "Marquita" or "Quita" or "Ms. Smith" or anything that night
21 when any of these guys were talking?

22 A No. Uh-huh. I don't know.

23 Q And you were the one that called 9-1-1, correct?

24 A Yes, I had called 9-1-1.

25 Q And when you called 9-1-1, pretty much everything was

RE-DIRECT BY MR. JENNINGS / BIRDIE COBBS
over, and everybody was taken off by then?

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A Yes. Uh-huh.

MR. JONES: Thank you. Nothing further.

THE COURT: Any redirect of the witness?

RE-DIRECT BY MR. JENNINGS:

Q Ms. Birdie, prior to that night you had never seen Gary Grant before?

A No, I never did.

Q And if there were other people in your house, you didn't see who they were?

A No, I didn't see who they were.

Q Certainly none of these people had ever been there before?

A No. Uh-uh.

Q Wouldn't have had any reason to know anything about your home, that y'all lived there, or that Dexter was friends with Chris?

A None of them guys who had been there they shouldn't know nothing about my home.

MR. JENNINGS: Thank you very much.

RE-CROSS EXAMINATION BY MR. BOLUS:

Q But Ma'am, Chris Nelson knew a lot about your home, right?

A Yes. Uh-huh.

Q Because he -- he socialized with your -- with Dexter

RE-CROSS-EXAMINATION BY MR. BOLUS / BIRDIE COBBS Page 219

1 in the back bedroom, right?

2 A Uh-huh. Chris -- he was a resident at my home.

3 Q He was what?

4 A He was a resident. He had stayed with me. He had
5 stayed with me for a time, then he move out, and then he
6 came back to stay with me.

7 Q Chris would move in an out sometimes?

8 A No, not in and out. He came to stay with me and he
9 left for about -- maybe about a year, and he asked can he
10 come back to stay. And I told him he could stay until
11 December because we got to get the back bedroom ready for
12 my grand baby. And he say yes.

13 Q And Dexter and Chris palled around a lot?

14 A Yeah. They socialized.

15 Q Well, what was Chris -- does he live in the same
16 neighborhood or right around the corner? He wasn't living
17 there then, was he?

18 A No. Uh-uh.

19 Q Why was he even hanging around the house? Do you
20 know?

21 A That's my nephew. He's allowed to come to my house.

22 Q I know, but at one o'clock at night, what would he be
23 doing around there?

24 A I -- I don't know why he came up at that time.

25 Q Yeah, I don't know either.

1 A Uh-huh.

2 Q But he had a gun.

3 A Well, I can't say why he had a gun.

4 Q Uh-huh.

5 A Uh-huh.

6 Q And he did the shooting.

7 A He had shot -- as I understand he had shot in the
8 front door.

9 Q And drugs were in the back bedroom where him and
10 Dexter used to hang around.

11 A Well, I didn't know that, sir.

12 Q But you know now?

13 A Yes, I do.

14 Q Okay.

15 A Uh-huh.

16 Q And the money?

17 A Yes, I do. Uh-huh.

18 Q Okay. Thanks.

19 MR. BARNWELL: Nothing further.

20 THE COURT: Mr. Jones?

21 MR. JONES: Nothing further.

22 THE COURT: Anything further from the State?

23 MR. JENNINGS: No, Your Honor

24 THE COURT: Any objection to the witness being excused
25 from the State?

1 MR. JENNINGS: No, Your Honor.

2 THE COURT: From the Defense?

3 MR. BOLUS: No.

4 MR. BARNWELL: No.

5 MR. JONES: No, Your Honor.

6 THE COURT: Ma'am, you're excused. Do you need some
7 help getting down?

8 MS. COBBS: I can get it.

9 THE COURT: The steps can be a little tricky.

10 Mr. Foreman, ladies and gentlemen, we're going to take
11 advantage of this break in testimony to take our luncheon
12 recess. We're going to break until two o'clock. During
13 the break please do not discuss the case among yourselves
14 or with anyone else. Please do not have any contact with
15 anyone in or about the courthouse when you return from
16 lunch.

17 Please leave your notepads in your seats, and as I've
18 explained, please do not allow yourself to have any media
19 exposure about this case. As you-all know, there is a
20 television camera in the courtroom at this time. I would
21 imagine there will be articles about this in the newspaper.
22 I don't know that there will be blurbs or otherwise during
23 the luncheon break, but I would ask that you take special
24 attention to make sure that you are not exposed to any
25 media coverage about this case during the break.

1 When you return, please return directly to your jury
2 room, and I anticipate that we will resume promptly at two.
3 Leave your notepads in your seats, we'll secure them during
4 the break, and I hope that you all have a wonderful
5 luncheon recess. We'll see you at two o'clock.

6 The gallery needs to remained seated. No one is to
7 move. Thank you.

8 (The jury exits at 12:55 p.m.)

9 THE COURT: (To bailiff) Is that door closed? Is
10 that door closed?

11 You may take your seats. I neglected to do this
12 before we got started this morning, and I feel out of an
13 abundance of caution I need to address it now. First and
14 foremost, by order of the Chief Justice there can be no
15 cell phones, pagers, or other electronic devices in the on
16 position while we're in the courtroom while we're in
17 session. So I would ask that everyone abide by that rule
18 and not have any electronic devices in the on position. If
19 you must have one, I would ask that you have it on vibrate.
20 I'm warning -- I giving -- I hate the word "warning," but, I
21 guess it's the only one that's available to me. If any of
22 your devices go off, the deputies will take them and they
23 will not be returned to you. They will become the property
24 of the Berkeley County Sheriff's Department. So I don't
25 want that to have to happen to anyone because those are

1 expensive. Cell phones are very expensive. So are pagers
2 and other devices.

3 Also, out of an abundance of caution, I need to remind
4 everyone that there's a certain decorum that must be
5 observed in this courtroom. This is a courtroom. It is a
6 place of dignity. I expect it to be treated in that way.
7 I do not expect there to be excessive walking while there
8 are lawyers talking, especially when the Court is talking
9 there is to be no walking, and when witnesses are being
10 examined. It is distracting to the jury. This is not a
11 large room and when there is a lot of movement, it causes
12 the jurors and other personnel in the courtroom to pay
13 attention to what is going on out in the gallery instead of
14 the testimony, which is the duty that they are charged with
15 observing.

16 And also, I would be remiss -- I guess I really would
17 have to have my head in the sand not to recognize that this
18 is a very tense trial, that there is a lot of emotion that
19 may well run high. And I know that there are many members
20 of the defense families that are present in the gallery, as
21 well as members of the victims, as well as the victims
22 remaining, and members of Mr. Perry's family. I do not
23 expect there to be any interaction between any of you. I
24 do not expect there to be any conversations, any passing
25 remarks.

1 I need to advise you that I have -- we are going to
2 have extra security, and I've charged them with the
3 responsibility of maintaining this courtroom's decorum. If
4 there is any breach of that decorum, you will be taken into
5 custody. So I need to just advise you of that in advance
6 so that everyone can take control of their emotions.
7 Although I know that is difficult at times because human
8 emotion, in and of itself, is hard to control at times.

9 Now, in order to avoid any unnecessary contact -- and
10 I'm going to charge the deputies with this responsibility
11 also -- I do not expect there to be a mass stampede out of
12 the courtroom every time we have a break or when we break
13 for recesses. I
14 expect each of -- each segment of the gallery to leave the
15 courtroom separately. And I expect you all, if you plan to
16 go to lunch outside of the campus of the courthouse, that
17 you also do that in an orderly manner. And you do that
18 separately, because there will be security personnel in the
19 parking lots, and they will have the delegated authority to
20 deal with anything that may happen, which could lead to --
21 I -- I guess I'm trying to say very delicately you don't
22 want their intervention because it could lead to something
23 that you do not anticipate. So I would ask that everyone
24 handle themselves accordingly. I have great anticipation
25 that everyone will handle themselves accordingly and that

1 they will treat one another with respect and dignity, and
2 the dignity which this courthouse demands. Okay?

3 So I would imagine that this side will leave by
4 themselves and that this side will leave by themselves.
5 And I'm referring to the left and the right-hand side of
6 the courtroom. And we will have the deputies and the
7 bailiffs to assist you with that process.

8 I hope everyone has a great lunch. We'll resume at
9 two o'clock.

10 THE COURT: Is the State ready to proceed?

11 MR. JENNINGS: Yes, Your Honor.

12 THE COURT: Is the Defense ready to proceed?

13 MR. BOLUS: Yes.

14 MR. BARNWELL: Yes, Your Honor.

15 MR. JONES: Yes, Your Honor.

16 THE COURT: Who's the next witness?

17 MS. WILSON: Chris Nelson.

18 THE COURT: Do we have him already in the courtroom so
19 we don't have to wait?

20 BAILIFF: He's right in the lobby.

21 THE COURT: Go ahead and bring him in.

22 Please, bring in the jurors.

23 (To the bailiff) Have him stand right there until the
24 jury comes in.

25 (To Mr. Nelson) And sir, if you will please spit your

DIRECT EXAMINATION BY MS. WILSON/ CHRIS NELSON Page 226
1 gum out. Someone give him a piece of tissue, please.

2 MR. NELSON: I don't have any gum in my mouth.

3 THE COURT: You don't have any gum? Okay. I'm sorry.

4 (The jury enters at 2:14 p.m.)

5 THE COURT: You may be seated. The State may proceed.

6 MS. WILSON: The State calls Chris Nelson.

7 CHRIS NELSON, having been first
8 duly sworn, testifies as follows:

9 COURT OFFICER: State your full name for the record
10 and spell your last name.

11 WITNESS: Christopher Nelson, N-e-l-s-o-n.

12 THE COURT: You may proceed.

13 DIRECT EXAMINATION BY MS. WILSON:

14 Q Chris, how old are you?

15 A Twenty-one.

16 Q Lean into that microphone a little bit more and I'll
17 do the same.

18 A Okay.

19 Q Twenty-one?

20 A Yes, ma'am.

21 Q How far did you go in school?

22 A I completed -- I completed the twelfth.

23 Q Did you graduate?

24 A At Stratford High School.

25 Q Stratford?

- 1 A Yes, ma'am.
- 2 Q So you grew up in this area?
- 3 A Yes, ma'am.
- 4 Q And lived here all your life?
- 5 A Yes, ma'am.
- 6 Q How are you or are you related to the Cobbs?
- 7 A How am I related to the Cobbs? My aunt, my aunt.
- 8 Q So Birdie Cobbs is your aunt?
- 9 A Yes, ma'am.
- 10 Q Okay. And how about the victim who was killed in this
- 11 case, Dexter Perry? How did you know him?
- 12 A He's my best friend.
- 13 Q How long had you known Dexter?
- 14 A I would say 15 years.
- 15 Q Fifteen years. Did you all go to school together?
- 16 A Yeah. Yes, ma'am.
- 17 Q Where was he from?
- 18 A Summerville.
- 19 Q How about Marquita Smith? Did you know her?
- 20 A I went to school with her.
- 21 Q Were you all in the same grade?
- 22 A No. She was a grade ahead of me.
- 23 Q So how long had you known Marquita?
- 24 A Probably sixth grade.
- 25 Q And do you see her here today?

1 A Yes, ma'am.

2 Q Where is she?

3 A Right there (indicates.)

4 MS. WILSON: Your Honor, please let the record reflect
5 that she's [sic] identified the defendant.

6 THE COURT: Let the record so indicate.

7 Q Now, Chris, do you work?

8 A Yes, ma'am.

9 Q What do you do?

10 A Paint.

11 Q Paint what?

12 A I paint buildings, houses.

13 Q Who do you do that for?

14 A Henry Paint.

15 Q Henry?

16 A Yes, ma'am.

17 Q And how long have you been working for them?

18 A Eight months.

19 Q How about back in August of 2006, were you working
20 back then?

21 A No, ma'am.

22 Q And was Dexter working back then?

23 A No, ma'am.

24 Q How were you supporting yourself?

25 A Hustling.

DIRECT EXAMINATION BY MS. WILSON/ CHRIS NELSON Page 229

1 Q What does that mean?

2 A Selling drugs.

3 Q What kind of drugs?

4 A Marijuana.

5 Q How about Dexter, was he selling drugs also?

6 A Yes, ma'am.

7 Q Okay. And what kind of drugs did Dexter sell?

8 A Marijuana.

9 Q Do you remember the day that Dexter was killed?

10 A Yes, ma'am.

11 Q Can you tell the jury how your day started off, and
12 the events that led up to your and Dexter's being together?

13 A Me and Dexter, we been together about -- probably 12
14 o'clock.

15 Q Twelve o'clock in the afternoon?

16 A In the afternoon. He came -- he came -- came over abd
17 we hook up some music in his car. And then ---

18 Q What kind of car did he have?

19 A He had a station wagon.

20 Q And when you say y'all "hooked up some music," what do
21 you mean?

22 A Like hook up some -- hook up some speakers,
23 subwoofers.

24 Q Okay. And what did y'all do after that?

25 A Really joked around. We -- we had a bar-b-que down

1 the street and --

2 Q Down the street where?

3 A A couple of trailers down.

4 Q Okay. Down from where?

5 A From the residence -- from my residence: [REDACTED] Dutch
6 Fork Drive.

7 Q And is that the Cobbs' residence also?

8 A Yes, ma'am. Yes, ma'am.

9 Q Okay. So you were staying with them?

10 A Yes, ma'am.

11 Q All right. So during the day people were cooking out?

12 A Yes, ma'am.

13 Q That was on a Monday, I believe?

14 A Yes, ma'am.

15 Q Was that unusual for people to cook out on Monday?

16 A No.

17 Q Okay. Did you and Dexter stay around the trailer park
18 that whole day?

19 A No, ma'am.

20 Q What did y'all do?

21 A We went out -- we went out, I'd say, about nine
22 o'clock.

23 Q At night?

24 A Yes, ma'am.

25 Q Where did y'all go?

DIRECT EXAMINATION BY MS. WILSON/ CHRIS NELSON Page 231

- 1 A Ruby Tuesday.
- 2 Q All right. Had you all been anywhere before that?
- 3 A No. We stayed around there whole day.
- 4 Q Okay. Let me ask you this: When y'all left the
- 5 trailer park, what car were y'all driving?
- 6 A He was driving his station wagon.
- 7 Q Okay.
- 8 A Yeah.
- 9 Q And did y'all drive the station wagon to Ruby
- 10 Tuesdays?
- 11 A Yes, ma'am. Yes, ma'am, we did.
- 12 Q You did?
- 13 A Yes, ma'am.
- 14 Q Okay. And why did y'all go to Ruby -- Ruby Tuesdays?
- 15 A We went out with some -- with some girls.
- 16 Q What girls?
- 17 A Marquita and Tawana.
- 18 Q All right. Let me ask you this so I'm clear: Before
- 19 you went to Ruby Tuesdays that night, had you been to see
- 20 your friend Ebony at all?
- 21 A Ebony? No, ma'am.
- 22 Q Okay. You hadn't been there yet?
- 23 A No, ma'am.
- 24 Q So you went to go meet who at Ruby Tuesdays?
- 25 A Meet Tawana.

- 1 Q Okay.
- 2 A We went to meet Tawana and Marquita.
- 3 Q All right. And how did you know Tawana?
- 4 A Through school. Through school.
- 5 Q Okay. And were you dating or seeing either of those
- 6 women?
- 7 A No, ma'am.
- 8 Q Was Dexter?
- 9 A Yes, ma'am.
- 10 Q Which one?
- 11 A Tawana.
- 12 Q So the four of y'all met up at Ruby Tuesdays?
- 13 A Yes, ma'am.
- 14 Q Okay. And did you have dinner there?
- 15 A Yes, ma'am.
- 16 Q What did Marquita do, if anything, during your dinner?
- 17 Did she stay at the table the whole time?
- 18 A No, ma'am.
- 19 Q What was she doing?
- 20 A She was on the phone outside most of the time.
- 21 Q And do you know who she was talking to?
- 22 A No, ma'am.
- 23 Q Did you find that unusual?
- 24 A Yes, ma'am.
- 25 Q After dinner, what did you and the other three do?

- 1 A After dinner?
- 2 Q After the dinner?
- 3 A After dinner -- after dinner, me and Dexter went back.
- 4 Q Where did y'all go?
- 5 A Went back to -- back to my residence.
- 6 Q All right. And that's, again, Birdie and Odoner's
- 7 place, right?
- 8 A Yes, ma'am.
- 9 Q Okay. And y'all drove the station wagon back there?
- 10 A Yes, ma'am.
- 11 Q Do you know where Tawana and Marquita went?
- 12 A No, ma'am.
- 13 Q How long did you and Dexter stay at the Cobb's place?
- 14 A About 30 minutes.
- 15 Q What happened next?
- 16 A He took me to Summerville.
- 17 Q How did he take you to Summerville?
- 18 A I had -- I had my little cousin car, Amber.
- 19 Q Amber?
- 20 A Yes, ma'am.
- 21 Q Okay. And is that Birdie and Odoner's daughter,
- 22 Amber?
- 23 A Yes, ma'am.
- 24 Q And what kind of car did she have?
- 25 A A purple Nissan Altima.

1 Q Okay. And who was driving when y'all went to
2 Summerville?

3 A Dexter.

4 Q Why didn't y'all take his station wagon?

5 A We really -- we really -- really didn't feel like
6 driving it. We had no gas, really, so we took her car.

7 Q You had no what?

8 A No gas.

9 Q Okay. All right. So you go to Summerville?

10 A Yes, ma'am.

11 Q And who were you going to see there?

12 A A friend of mine's, Ebony.

13 Q All right. What was the plan? Was Dexter going to go
14 to Ebony's also with you?

15 A No. He was going to go around the corner.

16 Q Okay. Do you -- when you say "around the corner," do
17 you mean literally down the street and around the corner?

18 A Five minutes away.

19 Q Five minutes away?

20 A Yes, ma'am.

21 Q And who was he going to be visiting there?

22 A A friend of his.

23 Q Do you know what friend that was?

24 A Chandra.

25 Q Chandra?

DIRECT EXAMINATION BY MS. WILSON/ CHRIS NELSON Page 235

1 A Chandra, yes.

2 Q Chandra. Okay.

3 Did -- once you got dropped off at Ebony's house in
4 Summerville, how long were you planning to stay there and
5 how were you going to get home from there?

6 A Dexter was coming back and get me.

7 Q He was supposed to come back and get you?

8 A Yes, ma'am.

9 Q And did that happen?

10 A No, ma'am.

11 Q Okay. Explain to the jury what happened when you got
12 ready to leave Ebony's and -- and what you were trying to
13 do.

14 A I was -- I was trying to get back. I called Dexter
15 twice and he answered ---

16 Q Did you get him?

17 A Yeah, he answered the phone. I talked to him; he said
18 he was on his way. I called back again --

19 Q Did he tell you where he was?

20 A Yeah. Second time I recognized -- I heard Tawana
21 voice in the background, so I know he -- know he was at
22 Goose Creek.

23 Q Okay. Now let me ask you this: You said that you
24 were at Ebony's, you were thinking Dexter was just going
25 around the corner --

1 A Yeah

2 Q -- to another girl's house?

3 A Yes, ma'am.

4 MR. BARNWELL: Your Honor, could I approach?

5 THE COURT: Yes.

6 (Bench conference.)

7 THE COURT: You may proceed.

8 Q All right. So on this second call that you made to
9 Dexter, you recognized someone's voice in the background?

10 A Yes, ma'am.

11 Q And that was whose voice?

12 A Tawana.

13 Q One of the girls that you'd just been at ---

14 A Yes, ma'am.

15 Q --- Ruby Tuesdays with?

16 A Yes, ma'am.

17 Q Okay. Now, after that phone call with Dexter, were
18 you expecting him to come pick you up?

19 A No.

20 Q Okay. Why not?

21 A He was all in Goose Creek, so I told him I -- I'd get
22 Ebony to -- to take me -- take me back.

23 Q You would get Ebony to take you home?

24 A Yes, ma'am.

25 Q Instead of Dexter?

- 1 A Yes, ma'am.
- 2 Q All right. So, did Ebony do that?
- 3 A Yes, ma'am.
- 4 Q And where did she take you?
- 5 A She took me to my grandmother house.
- 6 Q Okay. Why didn't she take you back to Birdie and
- 7 Odoner's?
- 8 A Because I told -- I told Dexter to meet me there.
- 9 Q To meet you where?
- 10 A At -- at my grandmother house.
- 11 Q All right. So at this point, you've scrapped the plan
- 12 for Dexter to come pick you up and you're supposed to meet
- 13 him at your grandmother's house?
- 14 A Yes, ma'am.
- 15 Q And did that happen?
- 16 A No, ma'am.
- 17 Q Why did you pick your grandmother's house, again,
- 18 instead of Odoner and Birdie's?
- 19 A Because we ain't supposed to take the car.
- 20 Q Because you weren't supposed to take what car?
- 21 A Amber car.
- 22 Q Okay. I don't understand.
- 23 A We -- we didn't ask nobody. We just took the car.
- 24 Q Okay.
- 25 A Yes, ma'am. So I told him to meet around the corner

1 so I can drive back to the house.

2 Q So you could drive -- Okay. Dexter had the car ---

3 A Yes, ma'am.

4 Q --- at Tawana's. He wasn't supposed to have it?

5 A Yes, ma'am.

6 Q It'd be better for you to drive it back?

7 A Yes, ma'am.

8 Q Okay. So you were supposed to meet at the grandmama's
9 house?

10 A Yes, ma'am.

11 Q All right. Did Dexter ever show back up at the
12 grandmama's house?

13 A No, ma'am.

14 Q All right. How long did you wait for him?

15 A About 40/45 minutes.

16 Q What did you do after it had been 40/45 minutes?

17 A I walk round the corner to my -- to my residence to
18 see if it was there.

19 Q To Birdie and Odoner's?

20 A Yes, ma'am.

21 Q How -- how long of a walk was it for you to go from
22 your grandmama's house to Birdie and Odoner's?

23 A Probably about a minute and half.

24 Q So you were just walking, not running?

25 A Yes, ma'am.

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1 Q Okay. Did -- did anything unusual happen when you got
2 back to their place?

3 A Yeah.

4 Q Okay. Explain to the jury what you saw and what you
5 did when you got back over there.

6 A When I got back to the -- when I got back to the
7 house, the door -- the -- the car was there.

8 Q What car?

9 A The burgundy car.

10 Q The burgundy car that you were supposed to be picking
11 up at your grandmother's house?

12 A Yes, ma'am.

13 Q It was at Birdie and Odoner's?

14 A Yes, ma'am.

15 Q All right. What was the condition of the car?

16 A The door was open.

17 Q What door?

18 A The driver door.

19 Q Did that seem weird?

20 A Yeah. Yes. Yes, ma'am.

21 Q Did you see anything inside the car?

22 A Yeah. I saw like some blood -- blood in the car.

23 Q What happened after you saw that?

24 A I heard a lot of racket and noise coming from the
25 house.

1 Q Coming from which house?

2 A My house. My house.

3 Q You were still at Birdie and Odoner's, right?

4 A Yes, ma'am.

5 Q And when you heard the racket, what did you do?

6 A I went to the window.

7 Q Which window?

8 A My window. I went to -- I went to my window. There
9 was an AC unit in my window. I went to ---

10 Q Who -- who else's window was that besides yours?

11 A At the time it was me and my brother's.

12 Q Okay. Who's your brother?

13 A Joe. Joe Husser.

14 Q Is that Joe Allen?

15 A Yes, ma'am.

16 Q All right. So the room that you and Joe Allen had,
17 had a window unit on it?

18 A Yes, ma'am.

19 Q All right. And you heard a racket?

20 A Yes, ma'am.

21 Q Explain to the jury how you went to the window and
22 looked in.

23 A I went to the window -- I went to the window with the
24 AC unit in it, and it's got a slide. And I slide the side
25 -- so I slide the side open. I went slide -- one of the

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1 slides open, and I looked inside the house and see what's
2 happening.

3 Q And what did you see?

4 A I seen somebody had Dexter inside the room.

5 Q All right. Were the lights on in that room?

6 A Yes, ma'am.

7 Q It's -- it was dark outside?

8 A Yes, ma'am.

9 Q And the light in the room was on?

10 A Yes, ma'am.

11 Q When you say somebody had Dexter, tell this jury what
12 you mean by that.

13 A I mean somebody had him with a gun. He was bleed --
14 he was bleeding ---

15 Q How.

16 A Had him -- They had him like this (indicates) with a
17 gun, and he was bleeding from his head. He was bleeding
18 from his head.

19 Q Could you hear anything that was being said?

20 A Yeah.

21 Q What was being said?

22 A Where the money at?

23 Q Who was saying "where the money's at?"

24 A The person that had Dexter.

25 Q And what was Dexter doing?

1 A He told them -- he was -- really he was pleading for
2 his life. He told them he didn't have no money.

3 Q All right. What do you mean he was pleading for his
4 life?

5 A He was -- he was panicking. He had his hands up like
6 he was -- he was afraid, he was scared.

7 Q Could you see if there was anybody else in the room
8 besides Dexter and the man holding him?

9 A I see -- I seen my brother's leg, but I hadn't seen
10 nobody else in the room.

11 Q So that's Joe Allen's leg?

12 A Yes, ma'am.

13 Q And where did you see his leg?

14 A He was in the corner. He was in -- he was in the
15 corner -- corner of the room.

16 Q Did it look like he was standing up or like he was
17 laying [sic] down?

18 A Laying [sic] down.

19 Q After you saw this -- okay. You've now seen the car
20 with the door open, what you think is blood, heard the
21 racket, you've gone to the window and seen Dexter being
22 held at gunpoint, your brother on the floor. What did you
23 do?

24 A I ran down the -- I -- I ran for help.

25 Q Why didn't you do something just then?

1 A I wasn't thinking. I just ran for help.

2 Q Did you have anything that could have helped out the
3 situation right there on the spot?

4 A No, ma'am.

5 Q You didn't have a gun?

6 A No, ma'am.

7 Q So ---

8 A I ran -- after that, I ran down the street, I ran ---

9 Q You ran down the street?

10 A I ran about I'd say five trailers down. I went to --
11 I went to five trailers down. I went to -- I went to
12 another one of my relative's house. I had cousin living
13 there.

14 Q All right. And was -- did you have to go in their
15 house?

16 A No. I ran out -- somebody was outside.

17 Q How many of them were outside?

18 A I'd say about six.

19 Q What did you tell them?

20 A Somebody please help me. Somebody call -- somebody
21 call the ambulance. Someone call the police.

22 Q Why did you tell them to call the ambulance?

23 A Because he was bleeding. He was bleeding.

24 Q All right. So you're telling those relatives to call
25 the ambulance and the police?

1 A Yes, ma'am.

2 Q Did you get anything from them?

3 A Yes, ma'am.

4 Q What did you get?

5 A A firearm.

6 Q What kind of gun?

7 A A .38 revolver.

8 Q Had you ever seen that gun before?

9 A No, ma'am.

10 Q When you got the gun what did you do, Chris?

11 A I went down -- ran down the street. I -- I ran down
12 the street. There was somebody walking inside the house.

13 Q Okay. Let's back up. You ran down the street to
14 where?

15 A I ran -- I ran back to my -- back to my residence.

16 Q Okay. Where Odoner and Birdie live?

17 A Yes, ma'am.

18 Q Okay. And you said there was somebody on the street?

19 A Somebody -- it was somebody on the porch. Somebody's
20 walking inside the house.

21 Q Did you recognize that person that was going in the
22 house?

23 A No, ma'am.

24 Q Was it somebody that you thought belonged in the
25 house?

- 1 A No, ma'am. Nobody in my residence.
- 2 Q Did you know what kind of car they were in?
- 3 A Yes, ma'am.
- 4 Q What kind of car?
- 5 A A G6 Pontiac.
- 6 Q What color?
- 7 A Silver.
- 8 Q All right. Did you know any reason that car was
- 9 supposed to be at your house?
- 10 A No, ma'am.
- 11 Q All right. What did you do after you saw this person
- 12 trying to go in your house?
- 13 A I fired.
- 14 Q You fired what?
- 15 A I fired -- fired my firearm.
- 16 Q Okay. Who did you shoot at?
- 17 A I tried to shoot at the person walking in -- walking
- 18 inside the house.
- 19 Q Do you know if that person saw you?
- 20 A No, ma'am.
- 21 Q Do you know if you hit him?
- 22 A No, ma'am.
- 23 Q How many times did you shoot, Chris?
- 24 A Three times.
- 25 THE COURT: I'm sorry. Please repeat the answer.

1 WITNESS: Three times.

2 Q Tell this jury why you shot at that man.

3 A I was scared.

4 Q What were you scared of?

5 A I mean, I had -- I had -- I had my best friend and I
6 know I had family and relatives in the house. So I just --
7 I was really trying to protect them.

8 Q And you don't know whether you hit that person or not?

9 A No, ma'am.

10 Q After you shot at them, what did you do?

11 A I ran back.

12 Q Ran back where?

13 A Back -- back where I got the firearm from.

14 Q Okay. What did you do with the gun?

15 A I dropped it.

16 Q Where?

17 A In the grass. I was running -- running back -- I ran
18 back -- I was back of the trailers and I -- I dropped the
19 firearm.

20 Q Why did you drop it?

21 A I was -- I was -- I was scared.

22 Q What did you do after you got to their place?

23 A I told -- told everybody, again repeatedly -- I told
24 them to -- somebody please call the police.

25 Q After you fired the gun at Birdie and Odoner's to the

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1 man going in the house, did you hear any other gunshots?

2 A Yes, ma'am.

3 Q Do you know how many gunshots you heard?

4 A A lot.

5 Q And where were those gunshots coming from?

6 A The livingroom.

7 Q Inside the house?

8 A Yes, ma'am.

9 Q Or inside the trailer?

10 A (No audible answer.)

11 Q All right. So you went back to where you got the gun
12 from?

13 A Yes, ma'am.

14 Q And you told them, again, you needed help?

15 A Yes, ma'am.

16 Q Okay. And do you know if any of them called the
17 police?

18 A No, ma'am.

19 Q How long did you stay back at that place where you got
20 the gun?

21 A I want to say about six minutes.

22 Q Okay. What did you do then?

23 A After the -- after the guys been at the house they
24 left, I went back down there just see what was going on.

25 Q How did you know they had left?

1 A I -- I saw them -- I saw them leave.

2 Q How did you see them leave?

3 A They left out.

4 Q How?

5 A In the car.

6 Q What car?

7 A The G6. The Pontiac.

8 Q So the G6 that had been at Odoner and Birdie's, you
9 saw that leave?

10 A Yes, ma'am.

11 Q All right. And after it left, you did what?

12 A I went -- I went back down there to see -- see if
13 everybody was okay.

14 Q And was everybody okay?

15 A Except for Dexter.

16 Q Tell the jury what you saw.

17 A I walked in the house. Soon I walk [sic] in the house
18 my little cousin say, "Dexter's looking for you. Dexter --
19 Dexter shot." And ---

20 Q Okay. Which little cousin?

21 A My little -- my little cousin, Amber.

22 Q The one whose car y'all had used?

23 A Yes, ma'am.

24 Q Okay. She said Dexter's looking for you?

25 A Yes. Dexter's shot.

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1 Q All right. And did you find Dexter?

2 A Yes, ma'am.

3 Q Where was he?

4 A He was in my aunt room.

5 Q Your aunt's room?

6 A Yes, ma'am.

7 Q And that -- was that the same room you had seen him in
8 earlier?

9 A No, ma'am. Opposite side of the house.

10 Q The opposite end of the house?

11 A Yes, ma'am.

12 Q Okay. Tell the jury what Dexter -- what the condition
13 Dexter was in when you got to him?

14 A Dexter was shot, heavily bleeding, and he couldn't ---

15 Q Was he saying anything?

16 A Yes, ma'am.

17 Q What was he saying?

18 A I be asking him who did it, and he told us who did it.

19 Q What did he tell you?

20 A He said Manny -- he said Manny did it.

21 MR. BARNWELL: Your Honor, could I approach?

22 THE COURT: Yes, you may.

23 (Bench conference.)

24 THE COURT: Mr. Barnwell has objected to the statement
25 as hearsay. It is overruled as an excited utterance or a

1 dying declaration if the appropriate foundation can be
2 established.

3 Q You said that when you saw Dexter, he was bleeding?

4 A Yes, ma'am.

5 Q Bleeding heavily?

6 A Yes, ma'am.

7 Q What was his demeanor like? I mean, how did he seem
8 to you?

9 A At the time?

10 Q Yes.

11 A In pain. In pain.

12 Q Did he seem afraid?

13 A Yes, ma'am.

14 Q And you mentioned that he told you who did it?

15 A Yes, ma'am.

16 Q Who did he tell you did it?

17 A He said -- he said Manny did it.

18 Q And did the name "Manny" mean anything to you?

19 A Yes, ma'am.

20 Q And the person that you saw in the room with Dexter,
21 holding him at gunpoint, do you know who that person was?

22 A Yes, ma'am.

23 Q Who was that person?

24 A Manny.

25 Q And how was it that you knew of this person named

1 Manny?

2 A I seen him around. I seen him around.

3 Q Do you remember where?

4 A Clubs -- clubs, events.

5 Q Were you friends with this guy?

6 A Never talked to him before.

7 Q And do you see the person you knew as Manny and the
8 person you saw holding Dexter at gunpoint in the courtroom?

9 A Yes, ma'am.

10 Q Where is he?

11 A Right there (indicates.)

12 Q What does he have on?

13 A I believe he's has a black -- he got black on.

14 Q What color tie?

15 A Black.

16 MS. WILSON: Your Honor, please let the record reflect
17 he's identified the defendant.

18 THE COURT: Which one?

19 MS. WILSON: The defendant Jermaine Hartwell.

20 THE COURT: Let the record so indicate.

21 Q After -- after he said those things, Chris, did the
22 ambulance arrive at any time?

23 A Yes, ma'am.

24 Q And was Dexter still alive when the ambulance got
25 there?

1 A Yes, ma'am.

2 Q And what did you do? Did you stay there at the
3 trailer or did you leave?

4 A I went to the hospital.

5 Q How did you go to the hospital?

6 A My cousin Mike, he took me.

7 Q And when was it that you found out that Dexter had
8 died?

9 A After I talked to my aunt, they told me -- the
10 detectives told me I had to come back to the house. I want
11 to say like 30 minutes after Dexter was in the hospital, I
12 found out.

13 Q You found out at the hospital?

14 A No, ma'am. I -- I -- I was back in my residence when
15 I found out.

16 Q Okay. So you went back. And did you talk to the
17 police at that point?

18 A Yes, ma'am.

19 Q I'm going to hand you a pointer.

20 (Sotto voce discussion between Ms. Wilson and the
21 witness.)

22 You've seen the diagram of Birdie and Odoner's
23 trailer, right?

24 A Yes, ma'am.

25 Q And if you could just tell the jury -- show the jury

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1 where your room and the room that you shared with Joe Allen
2 was.

3 A Right here.

4 Q Okay. And you talked about peering through the -- the
5 little expandable window thing by the window unit in that
6 room. Where was that? What side of the trailer was that
7 on?

8 A Right here (indicates).

9 Q And that's where you first saw Dexter being held by
10 this guy Manny?

11 A Yes, ma'am.

12 Q When you left and came back, show the jury where you
13 were standing when you shot at the person going into the
14 trailer.

15 A I was about right here (indicates).

16 Q Okay. And where was the person standing that you were
17 shooting at?

18 A About right here by the door (indicates).

19 Q Here?

20 A Yes, ma'am.

21 Q And how far away was the car that -- that Amber had,
22 the car that you and Dexter had taken? Where was that
23 parked?

24 A Probably right here (indicates).

25 Q All right. How about the silver Pontiac G6? Where

1 was that parked?

2 A It was across the street.

3 Q It was across the street?

4 A Yes, ma'am.

5 Q Now, when you -- after you shot at the person at the
6 steps -- you left and you came back and you found Dexter,
7 or Amber told you that Dexter was calling for you -- where
8 was he when you found him?

9 A He was back here (indicates). He was in my aunt room.

10 Q And was anybody else back there with him when you came
11 back?

12 A No, ma'am.

13 Q He was by himself?

14 A Yes, ma'am.

15 Q So back to your room with Joe Allen. You were
16 standing right there looking in the window unit?

17 A Yes, ma'am.

18 Q How -- where in the room was Dexter being held at
19 gunpoint?

20 A He's -- he was over right by the closet door --
21 against the closet door.

22 MS. WILSON: Beg the court's indulgence.

23 THE COURT: Uh-huh.

24 Q I'm going to show you what's been marked as State's
25 Exhibit 12, State's Exhibit 30, and State's Exhibit 28. Do

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1 you recognize those photos?

2 A Yes, ma'am.

3 Q And do -- does each of the photos -- does it
4 thoroughly and accurately represent the scenes as they were
5 that night?

6 A Yes, ma'am.

7 MS. WILSON: Your Honor, at this time we'd offer
8 State's Exhibits 12, 28, and 30.

9 THE COURT: Any objection to these, Mr. Bolus?

10 MR. BOLUS: No.

11 THE COURT: Mr. Barnwell?

12 MR. BARNWELL: No objection.

13 THE COURT: Mr. Jones?

14 MR. JONES: None, Your Honor.

15 THE COURT: Marked and admitted without objection.

16 (Marked State's Exhibits 12, 30, and 28, photos.)

17 DIRECT EXAMINATION BY MS. WILSON:

18 Q That's State's Exhibit 12. Again, if you can show the
19 jury using the pointer where you were standing when you saw
20 the man at the front porch.

21 A (Indicates.)

22 Q You were right there?

23 A Yes, ma'am.

24 Q Okay. And where was he?

25 A Right here. Right here (indicates).

1 Q And that's where you shot?

2 A Yes, ma'am.

3 Q Do you know if you hit the door or hit the trailer at
4 all?

5 A Yes, ma'am.

6 Q How do you know?

7 A The glass broke.

8 Q I'm going to show you State's Exhibit 30. What is
9 that a photograph of?

10 A That's my room.

11 Q Is that the room that Joe Allen also shared with you?

12 A Yes, ma'am.

13 Q Okay. If you can show the jury what you were talking
14 about when you were saying you were looking in through the
15 window.

16 A Right here (indicates).

17 Q And -- and in that photograph is the expandable thing
18 open or closed?

19 A It's open.

20 Q And this part right here, the black part, is that to
21 the outside?

22 A Yes, ma'am.

23 Q I'm going to show you State's Exhibit 28, Chris. What
24 is that a picture of?

25 A That where Dexter was laying at.

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1 Q And whose room was that?

2 A It's my aunt room.

3 THE COURT: I'm sorry. Please repeat the answer.

4 Whose room did you say it was, sir?

5 WITNESS: That was my aunt room.

6 THE COURT: Okay. You may continue.

7 Q And before that night, Chris, was all that blood on
8 the mattress?

9 A No, ma'am.

10 Q Whose blood was that?

11 A Dexter.

12 Q Chris, did you know what the men who had Dexter were
13 looking for?

14 A No, ma'am.

15 Q Did you know that Dexter was going to be robbed that
16 night?

17 A No, ma'am.

18 Q Did you know he was going to be kidnaped?

19 A No, ma'am.

20 Q Did you know people were going to be breaking into
21 Birdie and Odoner's house, the house they let you stay in?

22 A No, ma'am.

23 Q When was the first time you realized that something
24 like that was happening?

25 A The first time?

1 Q Yeah. When did you realize it was happening?

2 A When I got there.

3 Q When you got there?

4 A Yeah.

5 Q Okay. And when you saw them in your room, Dexter
6 being held at gunpoint in your room, did you have an idea
7 of what they were looking for?

8 A Yeah.

9 Q What were they looking for?

10 A They said -- he say he were looking for some money.

11 Q Did you have money in that room?

12 A Yes, ma'am.

13 Q How much money did you have in there?

14 A \$1500.

15 Q \$1500 that you got from what?

16 A From -- same -- same thing I told you earlier. I
17 mean, I hustled, so that was my money.

18 Q From marijuana?

19 A Yes, ma'am.

20 Q Did you also have some marijuana in the room?

21 A Yes, ma'am.

22 Q And was that stolen? Did the marijuana get taken?

23 A No, ma'am.

24 Q Did the money get taken?

25 A No, ma'am.

CROSS-EXAMINATION BY MR. BOLUS / CHRIS NELSON

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1 Q Do you know why not?

2 A No, ma'am.

3 Q Where was the money?

4 A The money was in my shoe.

5 Q And where was your shoe?

6 A Under the bed.

7 Q Do you know if Dexter knew you had money in your shoe?

8 A No, ma'am.

9 Q Had you told Dexter you had a stash of money?

10 A No, ma'am.

11 Q Had you told him you had a stash of marijuana?

12 A No, ma'am.

13 Q Had you told any of those other guys? Had you told
14 Manny that?

15 A No, ma'am.

16 Q Did you have any idea that somebody would be looking
17 for that in your room?

18 A No, ma'am.

19 MS. WILSON: That's all I have, Your Honor.

20 THE COURT: Mr. Bolus?

21 CROSS-EXAMINATION BY MR. BOLUS:

22 Q Chris, why didn't you just pick up the phone and call
23 9-1-1?

24 A I didn't have my phone.

25 Q But you had a -- and you ran back and your first

1 thought was to grab a gun?

2 A No. No, I wasn't -- no. No, sir. My first thing was
3 call the police.

4 Q Okay. And then you got the gun and come back to
5 protect your property, which was your marijuana and your
6 money that was in your shoe?

7 A No. I protect my family.

8 Q Okay. So you shot at an unarmed man who was walking
9 into the house rather than somebody that's holding your --
10 your best friend in his room, you shoot at the other man
11 going into the house?

12 A I had to run past him first.

13 Q Huh?

14 A If I was going in the house, I had to run past him
15 first.

16 Q Well, what did you think would happen when you opened
17 up with the five-shot .38? What do you think's going to
18 happen? You got -- you -- you testified that you had men
19 holding your -- well, Manny holding your best friend and
20 you take a pop shot at a guy walking into the house?

21 A Yes, sir.

22 Q Well, is that protecting your family?

23 A Yes, sir.

24 Q How?

25 A How?

1 Q Yeah.

2 A I don't want nobody else -- I -- I didn't want nobody
3 else to go in the house.

4 Q You already knew there was at least one person in the
5 back room and this wasn't the guy that you shot at, the guy
6 in the back room. Manny wasn't the one you shot at.

7 A Yeah.

8 Q Right?

9 A Yeah.

10 Q So your idea of protecting the family is to unload two
11 -- well, three times -- at least three times at this man
12 that's walking up the stairs?

13 A He might have been armed.

14 Q Well, he might have been, but you don't know if he
15 was.

16 A Yeah.

17 Q You just took a shot?

18 A Yeah. I shot.

19 Q Because your marijuana was in that back room, and your
20 money was in that back room, and that's what you wanted to
21 protect.

22 A It wasn't about marijuana. It was about my family.

23 Q It was?

24 A Yeah.

25 Q Well, if your family's inside that mobile home, how is

1 that protecting them to shoot into the mobile home, just to
2 shooting at will into the mobile home?

3 A I wasn't shooting at will. I was shooting at him.

4 Q You were shooting at him?

5 A Yeah.

6 Q Well, you started shooting long before you heard -- I
7 mean, there was no gunfire prior to your gunfire.

8 A Yeah.

9 Q Right?

10 A Yeah.

11 Q And there could have been a very good chance --
12 assumed he was robbed, there might have been no problems
13 after that, until you opened up with -- with your gun.

14 A They were bare-faced.

15 Q Huh?

16 A They were bare -- I mean, they had nothing -- they had
17 no mask on. I don't think they --

18 Q That was your conclusion?

19 A Yeah. They had no masks on, especially the guy
20 walking in the house.

21 Q Okay. Well, under that conclusion, there's -- there's
22 three other people in the -- the place that were not --

23 A I seen one. I didn't see two, I seen one.

24 Q No. Your relatives were in there.

25 A Yeah. My relatives were in the house. I seen one

1 person. See Manny. And I see Manny inside the house, I
2 see somebody going inside the house.

3 Q You made the statement that says they weren't wearing
4 masks. You felt like that gave you the opportunity and the
5 obligation to open up at will. Is that what you're saying?

6 A No. That didn't give me no opportunity at will to
7 shoot. I -- really, I was scared. I was just trying to
8 protect my family. That's it.

9 Q Uh-huh. Well, yeah. But when you gave your first
10 statement to the police, you didn't say anything about the
11 gun, did you?

12 A No.

13 Q You were a little worried about that, weren't you?

14 A Yeah. I was.

15 Q Yeah. Because you started a gunfight. You were a
16 little worried about that, weren't you?

17 A I wasn't worried about that. I didn't say nothing
18 about it.

19 Q Well, you didn't say nothing about it. Then they took
20 another statement, what, a day later or a few hours later,
21 or what?

22 A A few hours -- yeah. A few hours later.

23 Q Okay. (As read) "I saw the guys in there holding a
24 gun to my friend's head. I shot at him. I shot three
25 times."

1 You did not shoot at the man holding the gun at your
2 best friend's head. You did not shoot at that man, did
3 you?

4 A No, I didn't shoot at him.

5 Q Your statement says you shot at that man, but really
6 you shot at the man going into the -- into the house on the
7 front porch.

8 A Yeah.

9 Q And then after that, all hell broke lose, so to say,
10 right?

11 A Yeah.

12 Q Okay. And it all started after you started shooting,
13 right?

14 A I -- yeah. Five shots inside the house. Yeah.

15 Q Okay. And you understand maybe -- do you understand
16 that Dexter was shot with -- one -- one -- one of the
17 bullets, I think in his hand, was a .38?

18 A Yeah.

19 Q You understand that?

20 A Yeah.

21 Q And that's the same caliber gun you were shooting.

22 A Okay.

23 Q Isn't that right, a .38 caliber?

24 A I was shooting a .38 caliber.

25 Q You were shooting a .38 caliber?

- 1 A Yeah.
- 2 Q And Dexter was shot, I think, in the hand with a .38.
- 3 There's a little bullet hole in his hand?
- 4 A I mean, yeah. I guess so.
- 5 Q Okay. And then, to protect your family, you -- you
- 6 ran away and threw the gun away?
- 7 A I didn't throw the gun away. I dropped the gun.
- 8 Q What's the difference?
- 9 A Dropping the gun?
- 10 Q Yeah.
- 11 A I'm -- I'm scared. I'm scared. I dropped the gun.
- 12 If I throwed [sic] the gun, I throwed [sic] it. I did not
- 13 throw it, I dropped it.
- 14 Q Well, you dropped it where?
- 15 A I dropped it when I was running. I dropped it behind
- 16 the trailers.
- 17 Q And the cops ever find it?
- 18 A No, they never found it.
- 19 Q So dropping the gun behind the trailer is not the same
- 20 as throwing it away. I guess there's a difference in your
- 21 mind?
- 22 A Yeah. I dropped it. I was scared. I didn't throw no
- 23 gun.
- 24 Q Is that the gun you do business with when you're
- 25 selling marijuana?

1 A No. No. I don't have no firearm.

2 Q No?

3 A I don't have no firearm. At the time I didn't -- I
4 didn't have no firearm at the time. Now I own a firearm.

5 Q How do you know where to get a firearm?

6 A I didn't know to get a firearm.

7 Q Somebody just gave it to you because they like you?

8 A No. Like when I -- when I came and I ran down there
9 somebody really pulled a firearm out on me. And ---

10 Q So you're saying, "Call the police. Call an
11 ambulance," ---

12 A Yeah.

13 Q --- and all the sudden someone says, "Here, have this
14 gun"?

15 A No. Before -- before then. Before then when I got
16 down there. Before then -- before -- before I ranned [sic]
17 up. If you run up to somebody, they be scared. They done
18 -- they didn't know where I was coming from. They pulled
19 out from -- I told them to call the police. As -- as they
20 -- as they was pulling the gun out, I took the gun and I
21 ran down the street.

22 Q Well, someone pulled a gun on you because they were
23 afraid of you?

24 A Yeah. They didn't know where I was coming from. It
25 was dark.

1 Q And then how did you take it from them?

2 A I took it from them ---

3 Q Wrestle it?

4 A No. I snatched it out of his hand.

5 Q Really?

6 A Yeah.

7 Q And then you went somewhere else to say, "Call the
8 police," or did you go anywhere else?

9 A No. I ran down the street. I told them to call the
10 police and I ran down to my residence.

11 Q Oh. So you -- you stole a gun from somebody who had a
12 gun on you and you're yelling back -- while you're running
13 away to shoot somebody, you're yelling at them, "Call the
14 police ---"

15 A No. After I snatched the -- after I snatched the gun,
16 I told them to call the police. They done seen what's
17 happening. Everybody said, "What's wrong."

18 I ran -- that's when I ran down the street.

19 Q And you took it upon yourself to commence firing and
20 handling the situation yourself?

21 A Yes, sir.

22 Q All right. It's your money and you're marijuana in
23 the back?

24 A Yes, ma'am.

25 Q Yes, sir. Thank you.

1 THE COURT: Mr. Barnwell?

2 CROSS-EXAMINATION BY MR. BARNWELL:

3 Q How long have you been selling drugs?

4 A At the time -- at the time it was about -- at the time
5 it was about eight months.

6 Q Eight months?

7 A Yeah.

8 Q Selling cocaine too?

9 A No, sir.

10 Q Heroin?

11 A No, sir.

12 Q What about Dexter Perry? How long had he been selling
13 drugs?

14 A The same time, about eight -- about eight months.

15 Q And you -- and he had large sums of money from time to
16 time?

17 A Large sums of money? Not -- large -- like large sums
18 of money, yes, sir.

19 Q Like -- like \$3,000?

20 A Yes, sir.

21 Q And this was -- this was -- this was your gun, wasn't
22 it, this gun that you shot with?

23 A No. It was not my gun.

24 Q Not your gun?

25 A No.

1 Q Didn't Dexter keep his drugs back there too?

2 A No, sir.

3 Q All your drugs?

4 A All those, those were mine, sir.

5 Q And Dexter keep his money back there?

6 A No.

7 Q You identified Jermaine Hartwell. Well, wasn't he the
8 one that was walking the house that you shot -- shot at?

9 A No, sir.

10 Q Well, wasn't that -- wasn't that -- wasn't he not the
11 one who was holding the gun, wasn't he the one going in the
12 house?

13 A He wasn't the one going in the house. He was in the
14 back room. He wasn't going -- he was not -- when I -- when
15 I was firing?

16 Q When you fired. Wasn't -- wasn't -- wasn't -- wasn't
17 Mr. Hartman going in -- in the house at that point in time?

18 A No, sir.

19 Q You looked in there through the air-conditioner. You
20 could see your -- see Joe Allen Husser's legs. You -- you
21 couldn't be -- but you -- or you couldn't really tell who
22 that -- else it was, could you?

23 A No, I couldn't tell who it was was in the room with
24 him.

25 Q It wasn't -- it wasn't Mr. Hartwell, was it?

1 A Yeah -- I mean Mr. Hartwell had Dexter. I don't know
2 -- I don't know who -- I know -- I know I saw my brother
3 leg and I saw -- I saw Manny with Dexter. He was holding
4 Dexter up. That's what I seen.

5 Q You went and ate at Ruby Tuesdays?

6 A Yes, sir.

7 Q And you never saw Jermaine Hartwell there, did you?

8 A No, sir.

9 Q You made -- you made two -- two statements; is that
10 right?

11 A Okay.

12 Q And you didn't -- you didn't say anything about --
13 about Mr. Hartwell being -- being -- having -- having a gun
14 on -- on Dexter, did you, in your statement?

15 A In my statement? In my statement --

16 Q That's right. You didn't say anything about him
17 having a gun -- a gun -- gun or -- or you didn't have any
18 say -- representing by -- from holding Dexter Perry in your
19 statements?

20 A Yeah. He says it's my statements. It's not in my
21 statements.

22 Q But you didn't -- you didn't make any kind of
23 identification. They didn't show you -- I mean you didn't
24 have a photo lineup to identify him with anybody that was
25 there, right?

1 A A photo lineup of who?

2 Q Of Jermaine Hartwell?

3 A The next day I got a photo line up with him. I mean
4 -- at the time?

5 Q At the time.

6 A No. Uh-uh.

7 Q All right. Didn't you find out later that Mr.
8 Hartwell, in fact, got shot?

9 A I never found that out.

10 Q Huh?

11 A I never -- I never heard of that.

12 Q You never heard that?

13 A No.

14 Q You never heard he's -- he's the one who got shot?

15 A No. No, sir.

16 Q He got shot in the chest. You didn't get -- didn't --
17 didn't -- didn't find that out?

18 A No, sir.

19 Q So how -- how long it take you to -- to run from the
20 house down -- about five trailers down, and -- and get this
21 gun and come back?

22 A About 15 seconds.

23 Q About 15 seconds?

24 A Yeah. About 15 -- 10 -- 10/15 seconds.

25 Q To run down there and -- and -- and tell -- tell

1 somebody to call the 9-1-1, and -- and get the gun?

2 A Yes, sir.

3 Q Who -- who -- whose gun was it?

4 A I don't know whose gun it was. I don't know who I
5 took it from him. I know I -- I -- I ---

6 Q Somebody had a gun, didn't know you, gave you a gun?

7 A Yes, sir. They didn't -- they -- they knew me, but
8 they give me the gun. I didn't know ---

9 Q You don't know who ---

10 A There were several -- several people -- several people
11 down there, so ---

12 Q You don't know who that was. But them -- but somebody
13 had a gun. They -- they -- they didn't recognize you. So
14 they were holding a gun, and then somehow you got a hold of
15 the gun and -- and -- and --

16 A No. They recognize me after they seen who I was. I
17 mean, they live right down the street from me. Everybody
18 know my face. After they recognize who I was --

19 Q But you don't -- but you don't know who that is? You
20 don't -- didn't recognize them?

21 A No, sir. I was panicking. I didn't -- I didn't see.

22 Q You shot a person going inside the house?

23 A Yes, sir.

24 Q You then -- you then go around to -- to -- to the room
25 and open up the air conditioner and -- and -- and shoot in

CROSS-EXAMINATION BY MR. JONES / CHRIS NELSON

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1 there?

2 A No, sir.

3 THE COURT: Anything further, Mr. Barnwell?

4 MR. BARNWELL: I don't have anything further of this
5 witness.

6 THE COURT: Mr. Jones.

7 CROSS-EXAMINATION BY MR. JONES:

8 Q All right. I'm going to back up a little bit,
9 starting kind of back when you first started testifying.
10 Y'all originally were in -- Dexter normally drives a
11 station wagon, correct?

12 A Yes, sir.

13 Q What color is it?

14 A Green.

15 Q Green. Which is what y'all were in the whole time
16 that y'all were -- you know my client, Marquita Smith,
17 correct?

18 A Yes, sir.

19 Q And Tawana Deas?

20 A Yes, sir.

21 Q The whole time y'all were with them, y'all were in the
22 station wagon --

23 A Yes, sir.

24 Q -- correct? He didn't switch to the purple Nissan
25 until he took -- took you to Ebony's?

1 A Yes, sir.

2 Q Is that correct?

3 A Yes, sir.

4 Q Now, at Ruby Tuesdays -- let me ask you this: You
5 said that in your statement that Dexter had \$3,000. Now,
6 you know, how -- how did you know that?

7 A When?

8 Q You said -- I guess you said (as read), "Known Dexter
9 for a long time. Last week Dexter had over 3,000." He
10 just show you or count it out in front of you and tell you?

11 A Yeah.

12 Q When did he -- when was that? Do you remember
13 when that was?

14 A A week -- a week before he passed.

15 Q Okay. Now the night at Ruby Tuesdays, he actually had
16 some money that night, too, and he showed it to the girls
17 at Ruby Tuesdays, correct?

18 A Yeah. I never seen no money, but he had some money
19 on him.

20 Q Okay. Now, the solicitor asked you, said my client,
21 Marquita Smith, was getting up, making some calls, and you
22 thought that was -- did you say suspicious?

23 A Yes, sir.

24 Q Did you think something was going on?

25 A No, sir.

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1 Q So it -- that really didn't become suspicious until
2 after everything happened, correct?

3 A Yes, sir. Yes, sir.

4 Q Okay. Because originally you thought that another
5 individual had set Dexter up, Nicole Spells, correct?

6 A Yes, sir.

7 Q Because she tried to set him up ---

8 MS. WILSON: Your Honor, I'm going to object.

9 THE COURT: Basis?

10 MS. WILSON: May we approach?

11 THE COURT: Uh-huh.

12 (Bench conference.)

13 THE COURT: You may proceed, Mr. Jones.

14 MR. JONES: Thank you, Your Honor.

15 THE COURT: You're welcome.

16 CROSS-EXAMINATION BY MR. JONES:

17 Q You know that the phone calls that you said you were
18 calling Dexter to come pick you up and all of that, where
19 was it -- who -- where were those calls made from?

20 A Who -- calls Ebony -- from Ebony's phone.

21 Q Okay. You don't have a cell phone?

22 A I did. Dexter had it at the time.

23 Q Okay. Okay. All right. So prior to this date, you
24 and Dexter normally didn't carry guns?

25 A No, sir.

1 Q Now, on that day I think you had said that there was
2 cookout in the trailer park in the neighborhood?

3 A Yes, sir.

4 Q What's the -- the sort of lay out? Is there a -- is
5 there a main road down or a main thoroughfare down the
6 trailer park and just trailers on each side?

7 A Yes, sir.

8 Q Coming down standard, kind of?

9 A Yes, sir. One --

10 THE COURT REPORTER: I'm sorry?

11 A I said "yes." Straight. Straight, long road.

12 Q Okay. Straight, long road.

13 And was that cookout still going on -- I know y'all
14 went to Ruby Tuesdays. Then y'all came back, switched the
15 cars. At that time you were going to Ebony's, he was going
16 to the other person's house, was the cookout still going
17 on? People ---

18 A Not -- not -- it was dying down. I would say dying
19 down.

20 Q It was dying down. There were still a few people
21 around?

22 A Yes, sir.

23 Q Okay. Now, let me -- does your mother and grandmother
24 -- is that the same place?

25 A Yes, sir.

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1 Q And that's not very far from the Cobbs' then?

2 A No, sir.

3 Q How far -- do you know -- have you ever been to
4 Tawana's house?

5 A Yes, sir.

6 Q How -- do you know, how far would that roughly be from
7 your house?

8 A I want to say 10, 10/15 minutes.

9 Q Okay. All right. Let me make sure I -- I've kind of
10 got the timing right. You -- you're walking up from your
11 grandmother's to the trailer park at this time. Is your
12 trailer located on the -- you know, I know you said it's a
13 long strip and there's trailers along each side. Would
14 your trailer be located kind of in the middle, was it
15 located on the end?

16 A It was like on the end.

17 Q Okay.

18 A Yes, sir.

19 Q And you're -- so you come up; you're -- you're
20 walking. No reason for you to be in a hurry or anything,
21 right?

22 A Yes, sir.

23 Q Taking your time. You get up there and you see the
24 purple Nissan outside with the doors open?

25 A Yes, sir.

1 Q And that -- and that sends off flags to you, right?

2 A Yeah.

3 Q You look over, look in the car and see, I guess, blood
4 on the seat somewhere?

5 A Yes, sir.

6 Q That point in time -- at this time you haven't seen
7 any -- anybody out with a -- you hadn't seen any -- anybody
8 out with a gun or anything to alert you that there's a
9 robbery or anything, right?

10 A No, sir.

11 Q Did you -- why didn't you just walk up to the house
12 and just walk in the door and say, "Hey, what's going on?"

13 A I -- I -- I heard the racket.

14 Q Okay. So you heard the racket from out there where
15 the car was?

16 A Yeah. Yes, sir.

17 Q Now, were there any other neighbors gathered around
18 there listening to the racket or anything?

19 A No, sir.

20 Q So --

21 MR. JONES: (To Ms. Wilson) Can I put the -- the
22 illustration for the trailer layout? Could I borrow
23 y'all's pointer.

24 (Sotto voce discussion between Mr. Jones and State's
25 counsel.)

CROSS-EXAMINATION BY MR. JONES / CHRIS NELSON

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- 1 Q Do you -- do you have a pointer up there? Would you
2 show me one time where the car was?
- 3 A (No audible answer.)
- 4 Q That would be the front of the trailer also. The road
5 would be running right in front of that.
- 6 A Yes, sir.
- 7 Q Those are the front steps, correct?
- 8 A Yes, sir.
- 9 Q Now, which room did you look in the window of? I'm
10 sorry?
- 11 A Right here (indicates).
- 12 Q Okay. Now, when you went to look in the window, did
13 you walk around from this direction or did you come around
14 from this direction?
- 15 A I came around from the back of the car.
- 16 Q Is that pointer working? I wasn't seeing it show up
17 on the screen.
- 18 A Yeah. I came from the back of car, where the car was
19 at.
- 20 Q Am I going the right way right now (indicates) or am I
21 going the wrong way?
- 22 A Right.
- 23 Q Okay. You went like this (indicates)?
- 24 A Yes, sir.
- 25 Q It's like flies on something. But we got that

1 straight. All right. So you walked around, looked in that
2 way?

3 A Yes, sir.

4 Q Now, was the air conditioner on or off at that time?
5 Do you even recall?

6 A It was off.

7 Q Okay. So you slid back the little panel and looked in
8 there, and at that point in time -- so you were looking
9 down kind of this little hallway right here?

10 A Yes, sir.

11 Q And then at that point in time you would have come
12 back out here and would you have gone this way? I don't
13 want to get back into a little laser fight here again, but
14 would you have gone this way, or would you have gone back
15 toward the exit sign when you were going down the street?

16 A Yeah. I went back up the street.

17 Q I'm sorry. Is "up" going to be to the left or to the
18 right?

19 A This is the house right here. This is the street
20 right here.

21 Q Right. Oh, the street --

22 A Where that street ---

23 Q I'm with you. Okay. So you would have gone up that
24 way?

25 A Yes, sir.

1 Q Correct?

2 A Yes, sir.

3 Q And you went five or six trailers down?

4 A Yes, sir.

5 Q Now, whose trailer was that again?

6 A That was one of my relatives, one of my cousins.

7 Q Okay. So it just so happened somebody out there had a
8 gun?

9 A Yes, sir.

10 Q And as you're rushing up --

11 A Yes, sir.

12 Q -- they pulled down.

13 A Yes, sir.

14 Q And they didn't get -- you said you -- you snatched
15 the gun. You didn't -- didn't just, you know -- you know
16 what I mean, judo move or something like that and ---

17 A No. More like -- more -- just more like, "We need it
18 for -- what you need it for? I forced it -- I -- I took it
19 out their hand. They was wondering why I needed it for.

20 Q Now, when you run up is the guy pointing at you like
21 this (indicates)?

22 A Yes, sir.

23 Q And did you -- I mean, he thinks you're going to
24 attack him or something.

25 A Yes, sir.

1 Q And then -- then you run up and he -- he says, "Oh.

2 Okay. You're good."

3 A No. He didn't say that. He -- he backed up. As he
4 backed up he was like, "What's wrong?" I like just the --
5 that's when I told him to just call the police. Call the
6 police. And he was wondering -- he was -- he was wondering
7 why, and that's when I took the firearm.

8 Q And then you ran -- went back down to the house?

9 A Yes, sir.

10 Q At that point you get back down to the house, you're
11 out somewhere this way (indicates). Now, at -- at this
12 time, have you seen the Pontiac at all, the silver Pontiac?

13 A Yes, sir.

14 Q Where -- where was it at in reference to everything
15 again?

16 A He was -- he was reversing, backing up.

17 Q You said he was across the road, so he -- he would be
18 over this way (indicates), right?

19 A Yes, sir. Yes, sir.

20 Q All right. I'm getting it straight. And so did you
21 see that the first time? When you were up there the first
22 time looking through the vent, did you see the Pontiac
23 there?

24 A I saw the Pontiac when I -- I came through the hole --
25 hole in the fence, I seen the Pontiac.

CROSS-EXAMINATION BY MR. JONES / CHRIS NELSON

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1 Q Being the very first?

2 A The very -- very first.

3 Q Did you see any movement or anything or did you not
4 see that. You just --

5 A Yeah. I walked right past them. Just walk right past
6 him.

7 Q Okay. So when you get back up there, the guy's
8 walking in here, and that's when you exchange the gun -- or
9 -- or fire off the gun?

10 A Yes, sir. Time I ran back, he -- the -- the Pontiac,
11 when he parked, he parked across the street.

12 Q Okay.

13 A He parked across the street.

14 Q So when you ran, you ran back out this way, back out
15 toward where you'd gotten the gun?

16 A Yes, sir.

17 Q And then you waited there for six minutes or so, and I
18 -- I guess things calmed down or whatever, and you then
19 felt safe to go back?

20 A Yes, sir.

21 Q Had the police arrived by that time?

22 A About five minutes later.

23 Q Okay. The police arrived about five minutes later.

24 So all total between -- what you'd say between the time you
25 walked up to the trailer from your grandmother's and the

1 time the police arrived, how long would you say?

2 A I want to say 15/20 minutes.

3 Q When you looked in there and you said the - the lights
4 were on and everything, had they cut on the lights in the
5 house? Do you know -- I mean, like when you -- you said,
6 "I can see clearly." The lights were on in the house and
7 everything. You know, was it -- was it, you know, one
8 light on, no -- was it just the TV, was there overhead
9 lights on, were there lights on in numerous rooms?

10 A No. I couldn't tell. Only thing I seen the light --
11 the light -- the light in the back room.

12 Q Okay.

13 A That [sic] what I saw.

14 Q Minor 1 now, Minor 1 not your brother, right?
15 That's a -- a relative.

16 A Yes, sir.

17 Q And Joe Allen is your brother?

18 A Yes, sir.

19 Q Correct. Now -- and does -- do you and Minor 1 room
20 together when you're there or you and Joe room together?

21 A It was the summertime, so Minor 1 stayed with my
22 grandfather for the whole summer. So at the time it was me
23 and my brother room..

24 Q Okay. You and Joe?

25 A Yes, sir.

REDIRECT EXAMINATION BY MS. WILSON / CHRIS NELSON Page 285

1 Q Allen.

2 And you said as far as the \$1600, you really weren't
3 worried about anybody finding it or anything in there, I
4 think.

5 A No, sir.

6 Q But you were some worried because you put it in your
7 shoes, right?

8 A Yes, sir.

9 Q You put it into a drawer or leave it out on -- on the
10 -- on the counter.

11 MR. JONES: Nothing else at this time, Your Honor.

12 THE COURT: Any redirect of the witness?

13 MS. WILSON: Yes, ma'am.

14 THE COURT: You may proceed.

15 REDIRECT EXAMINATION BY MS. WILSON:

16 Q Chris, when Mr. Bolus was asking you questions, and he
17 was asking you about why you fired at the person going up
18 the steps or into the trailer --

19 A Yes, ma'am.

20 Q -- you remember those questions?

21 A Yes, ma'am. Yes, ma'am.

22 Q And you said something about they didn't have on any
23 masks?

24 A Yes, ma'am.

25 Q What did that mean to you? That these people robbing

1 Dexter in your aunt and uncle's trailer didn't have on
2 masks, what did that mean?

3 A I felt - I felt they was coming to hurt them, being no
4 mask for somebody to rob somebody and have no mask on.

5 Q Why does it matter if they have a mask on or not?

6 A I don't know nobody that do no -- no robbery if they -
7 - I mean, barefaced. These -- they had nothing on their --

8 Q If they're barefaced what does that mean?

9 A That somebody see you.

10 Q You can be identified?

11 A Yes, sir. I mean, Yes, ma'am.

12 Q Okay. So when you saw these people with no masks and
13 you saw that guy with a gun, did you think he was going to
14 leave any witnesses?

15 A No, ma'am.

16 Q Okay. And when you fired those shots at that guy
17 going in the house, did he have on a mask?

18 A No, ma'am.

19 Q Did you think he was going to leave a witness?

20 A No, ma'am.

21 Q And when you went to the hospital to find out how
22 Dexter was doing, you said you talked back to your aunt and
23 uncle or your mom? Who'd you talk to from the hospital?

24 A My auntie. I believe I talked to my auntie. She told
25 me I had to come back.

- 1 Q Your auntie?
- 2 A Yes, ma'am.
- 3 Q And she told you to come back?
- 4 A Yes, ma'am.
- 5 Q Why?
- 6 A The detectives wanted to talk to me.
- 7 Q The police were there; that's right?
- 8 A Yes, ma'am.
- 9 Q Okay. So you left where? MUSC?
- 10 A Yes, ma'am.
- 11 Q And you drove back to Berkeley County?
- 12 A Yes, ma'am.
- 13 Q To talk to the police?
- 14 A Yes, ma'am.
- 15 Q You didn't go to Ebony's house?
- 16 A No, ma'am.
- 17 Q You didn't go to your grandmama's house?
- 18 A No, ma'am.
- 19 Q You went to whose house?
- 20 A I went to -- I went to my residence.
- 21 Q Where who was?
- 22 A Was -- The police was there.
- 23 Q The police were there?
- 24 A Yes, ma'am.
- 25 Q And you told them what happened?

1 A Yes, ma'am.

2 Q And when you first came on that scene and saw Dexter
3 in that back room, who had him?

4 A When I got back there?

5 Q When you first got there -- when you first got there
6 that night, and he was being held at gunpoint, who had him?

7 A Manny.

8 Q Who?

9 A Manny.

10 Q All right. Any question about that?

11 A No, ma'am.

12 Q Any question that Manny had a gun?

13 A No, ma'am.

14 Q Okay. And after you saw Manny with that gun holding
15 your best friend, what did you go do?

16 A I went for help.

17 Q Okay. Where did you go for help?

18 A Down the -- About five trailers down.

19 Q And what did you tell those people to do?

20 A Somebody to please call -- call for help.

21 Q Okay. And after they recognized you, what did you
22 take from them?

23 A A firearm.

24 Q Why did you think you needed a firearm?

25 A They had a firearm.

RE-CROSS-EXAMINATION BY MR. BOLUS / CHRIS NELSON Page 289

1 Q Who had firearms?

2 A Manny.

3 MS. WILSON: That's all, Your Honor.

4 RE-CROSS-EXAMINATION BY MR. BOLUS:

5 Q Did you know Manny?

6 A I don't know him.

7 Q How do you -- well, did you know him before?

8 A No. I seen him around.

9 Q You what?

10 A I seen him around.

11 Q You see him around?

12 A Yes, sir. Yes, sir.

13 Q You -- you -- you -- you recognized him from seeing
14 him around?

15 A Yes. Yes, sir.

16 Q Does he know you? If y'all -- would y'all recognize
17 each other?

18 A No.

19 Q And it didn't occur to you that -- to do anything
20 other than -- I mean, in order to help your family and keep
21 something from happening, you couldn't have said, "Hey,"
22 you know, done anything like yell, scream, or do anything
23 to let them know they're being seen? Your first thought
24 was to go get a gun?

25 A My first -- first thing was to go -- go -- go -- my

RE-CROSS-EXAMINATION BY MR. BARNWELL / CHRIS NELSON Page 290

1 first thing was go get help. That's my first thing. It
2 was not go get a gun.

3 Q But you didn't get any help.

4 A Hopefully somebody called.

5 Q Okay. But -- but nobody -- I mean, it's unfortunate
6 Dexter got killed, but your assumptions are all wrong about
7 wearing the mask and all that; because your family,
8 basically, was left alone, your family, your people you're
9 staying. No harm came to them. I'm not lessening what
10 happened to Dexter, but they were left alone, right?

11 A Yes, sir.

12 Q You made some assumptions that night that were
13 erroneous; isn't that correct?

14 A (No audible answer.)

15 Q You did not need to go get a gun and start a gun
16 fight, did you, son?

17 A (No audible answer.)

18 Q You didn't need to, did you?

19 A No, sir.

20 Q Thank you.

21 RE-CROSS-EXAMINATION BY MR. BARNWELL:

22 Q Went down five trailers and then how many people
23 there? Six?

24 A Six or seven.

25 Q Six or seven?

RE-CROSS-EXAMINATION BY MR. BARNWELL / CHRIS NELSON Page 291

1 A About that much.

2 Q And you didn't say, "Y'all -- y'all come on with me.
3 Come -- come -- come down to my trailer. Something going
4 on"?

5 A No. They saw my actions. They saw my actions.

6 Q Huh?

7 A They -- I saying -- I saying everybody down there saw
8 my actions. And I mean, they followed me, but they didn't
9 came behind me.

10 Q You didn't -- you didn't -- you didn't ask them to do
11 that, did you?

12 A No. No, sir.

13 Q You didn't have any concern about masks or no masks,
14 you just reacted. You just ran down there and got this gun
15 you say from somebody, wasn't your gun.

16 A No, it wasn't my gun.

17 Q You just reacted, come back, and start firing. You
18 didn't -- you didn't wait for the police to come to say you
19 could identify some -- what you saw or whatever. You're
20 not going be -- not going -- going to wait to be a witness.
21 Not going to wait to let the law take care -- take care of
22 things. You're going to take the law in your own hands and
23 start firing in there. Is that -- is that -- is that what
24 you did?

25 A Yes, sir.

RE-CROSS-EXAMINATION BY MR. BARNWELL / CHRIS NELSON Page 292

1 Q And you weren't worrying about witnesses or no
2 witnesses. You didn't think about that. You just reacted.

3 A Yes, sir.

4 Q And you seen -- you say you seen Manny in a club?

5 A Yeah, I seen him. Yeah, I seen him a number of times.

6 Q How many times?

7 A About ten.

8 Q But he didn't know you?

9 A He don't know me.

10 Q You didn't -- you didn't speak to him?

11 A Not at all.

12 MR. BARNWELL: I don't have anything further.

13 THE COURT: Mr. Jones?

14 MR. JONES: Nothing further.

15 THE COURT: Any redirect?

16 MS. WILSON: No, ma'am.

17 THE COURT: Any objections to the witness being
18 excused from the State?

19 MS. WILSON: No, ma'am.

20 THE COURT: From the Defense?

21 MR. BOLUS: No, Your Honor.

22 MR. JONES: No, Your Honor.

23 THE COURT: Mr. Barnwell.

24 .(Sotto voce discussion between Mr. Bolus and Mr.
25 Barnwell.)

1 MR. BARNWELL: No.

2 THE COURT: Sir, you're excused.

3 Mr. Foreman, ladies and gentlemen, we're going to take
4 advantage of this recess -- I mean, of this break in
5 testimony. You-all have been sitting about an hour and
6 twenty minutes. I want to give you a short recess. During
7 the break, please do not discuss the case among yourselves.
8 If you need anything, please let your caretakers know, and
9 please leave your notepads in your seats. I anticipate
10 we'll be out just enough time for you all to refresh
11 yourselves, which should be about 10 minutes. I plan for
12 us to resume at 3:30. You will go with the bailiffs.

13 (The jury exits at 3:22 p.m.)

14 THE COURT: You may be seated. Before we break, I
15 neglected to do this before lunch. I had just forgotten.
16 I promised Mr. Barnwell that I would put on the record his
17 objection regarding the photograph -- the -- the photos of
18 the Cobbs' residence, which were admitted subject to his
19 objection.

20 The basis of his objection was that the lighting in
21 the photos were different than they were at the time of the
22 event. I overruled his objection and found that those type
23 of objections go to weight not admissibility, that he would
24 have more than adequate opportunity to examine those
25 matters on cross-examination of the witness. But there

1 were no real, legitimate issues regarding the authenticity
2 of the photos, and therefore, no basis for them to have
3 been excluded.

4 And also, for purposes of -- I had a sidebar when Mr.
5 Jennings began to ask questions of Mr. Odoner Cobbs
6 regarding the photographic line up. And at the bench, all
7 counsel for the -- well, Mr. Jones did not raise an
8 objection -- did not request a *Biggers* hearing, but it is
9 my understanding, and please correct me if I'm inaccurate,
10 that Mr. Bolus and Mr. Barnwell, you've both withdrawn any
11 requests for a *Biggers* hearing; is that correct?

12 MR. BOLUS: Yes.

13 MR. BARNWELL: That's correct.

14 THE COURT: And they've both indicated to the Court at
15 the bench that you all felt that the matters that concerned
16 you regarding the line up, that you could adequately
17 inquire of those on cross-examination of the witnesses?

18 MR. BOLUS: Yes.

19 MR. BARNWELL: That's correct.

20 THE COURT: Okay. Is there anything else before we
21 break?

22 MR. JENNINGS: No, Your Honor.

23 MR. BOLUS: No.

24 MR. BARNWELL: No.

25 MR. JONES: No, Your Honor.

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1 THE COURT: It'll probably be a little more than ten
2 minutes. We had a couple of jurors that wanted to smoke.
3 So I'm thinking about 3:35. We'll be at ease.

4 THE COURT: You may be seated. Is there anything from
5 the State before we proceed?

6 MS. WILSON: No, ma'am.

7 THE COURT: From the Defense?

8 MR. BOLUS: No.

9 MR. BARNWELL: No, ma'am.

10 MR. JONES: No, Your Honor.

11 THE COURT: And I indulged the jury for a little
12 longer break so that they could smoke, and also I noticed
13 that they were suffering from that same malady we all have
14 after lunch. So I wanted to give them a good amount of
15 time to get their blood circulating for the rest of the
16 afternoon.

17 (To the bailiff) Would you please get the jury.

18 THE COURT: Who's the next witness?

19 MS. WILSON: Joe Allen Husser.

20 (The jury enters at 4:00 p.m.)

21 THE COURT: You may be seated.

22 MS. WILSON: Joe Allen Husser.

23 THE COURT: If you would come to the witness stand to
24 be sworn, sir.

25 JOE ALEX HUSSER, having been first

1 duly sworn, testifies as follows:

2 COURT OFFICER: State your name and spell your entire
3 name for the record.

4 WITNESS: My name is Joe Husser. First name Joe, J-o-
5 e; middle name Alex, A-l-e-x; last name Husser, H-u-s-s-e-
6 r.

7 THE COURT: You may proceed.

8 DIRECT EXAMINATION BY MS. WILSON:

9 Q So your middle name is Alex?

10 A Yeah. Not Allen, Alex.

11 Q And do some of your older relatives call you "Alex" or
12 "Joe Alex"?

13 A Yeah.

14 Q Okay. But you go by Joe?

15 A Correct.

16 Q Okay. Joe, how old are you?

17 A Twenty-six.

18 Q And make sure you speak in that microphone.

19 A Twenty-six.

20 Q And how far did you go in school?

21 A Twelfth grade.

22 Q Where did you go to school?

23 A Stratford High School.

24 Q And at some point after finishing high school, did you
25 move away?

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- 1 A Yeah. I moved to Rock Hill, South Carolina.
- 2 Q Why did you move up there?
- 3 A To go to school, go to college.
- 4 Q You went to college up there?
- 5 A Yeah. Tech.
- 6 Q Okay. And how long did you live in Rock Hill?
- 7 A Going on six years now.
- 8 Q Almost six years?
- 9 A Yeah.
- 10 Q Okay. Now, at some point, did you move back to the
- 11 Berkeley County area?
- 12 A Correct. Last year.
- 13 Q Last year?
- 14 A Uh-huh.
- 15 Q And how long before Dexter was killed was it that you
- 16 moved back here?
- 17 A About four to five days.
- 18 Q Four or five days?
- 19 A Uh-huh.
- 20 Q And when you moved back to this area, who were you
- 21 staying with?
- 22 A With my aunt and uncle.
- 23 Q And who are they?
- 24 A Birdie and Odoner Cobbs.
- 25 Q Do you have a brother who also lived there or stayed

1 there on occasion?

2 A Correct. Christopher Nelson.

3 Q Christopher Nelson?

4 A Uh-huh.

5 Q And was that the young man who just testified earlier?

6 A Correct.

7 Q Okay. And when you moved down here, where were you
8 working?

9 A I was working for a construction company called
10 "Genesis."

11 Q And are you still working for them?

12 A No, I'm not.

13 Q At the time you were though.

14 A Yes, ma'am.

15 Q What kind of work did you do for them?

16 A It was contracting. I laid down concrete.

17 Q Okay. And during the week of August 1st/August 2nd,
18 were you working?

19 A Correct.

20 Q And on that Monday of the 1st, did you work?

21 A Yes, I did.

22 Q Do you remember about what time it was when you got
23 off work?

24 A It was in between five and six o'clock, afternoon.

25 Q What did you do that afternoon when you got off?

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1 A When I got off, me and a couple of friends went by the
2 store, got a couple of beers, some meat, and we cooked out
3 on the grill.

4 Q Where did y'all cook out?

5 A Down at my cousin house and ---

6 Q How far is your cousin's house from Birdie and
7 Odoner's?

8 A I'd say probably about four or five trailers.

9 Q And so when you say "house," you mean just where they
10 lived? It was actually a trailer?

11 A Correct. Yeah.

12 Q Okay. Y'all cooked out some meat, you said?

13 A Yeah.

14 Q And bought some beer?

15 A Right.

16 Q Was that a typical thing for your ---

17 A Yeah. Pretty much.

18 Q Okay. And did you leave the area of the trailer park
19 that night?

20 A No, I didn't.

21 Q Where did you stay during that night?

22 A Well, that night, I stayed at my aunt house. I left
23 that home probably about 12 o'clock that night.

24 Q Had you seen Dexter Perry at all that night?

25 A I seen him earlier when I first got off work. I saw

1 him and my brother together. And then later on that night
2 I seen him when he came back through, later on that night,
3 probably like eight -- between eight and nine, when he came
4 back by himself. And he stopped by and talked to me for a
5 minute, well, talked to a whole group of us out there for a
6 minute. And then he left out.

7 Q So your -- your brother Chris and Dexter were together
8 a couple of times that you saw that day; is that right?

9 A Yeah. Correct.

10 Q Okay. And did they tell you where they were going or
11 what they were doing?

12 A No. They said -- they just told me they were just
13 going
14 out.

15 Q So the whole evening you're between Odoner and
16 Birdie's and the trailer four or five trailers down, and --
17 -

18 A Correct.

19 Q --- they'd been cooking out?

20 A Correct.

21 Q And what time was it that you went back to go to bed
22 to Odoner's house?

23 A It was about 12 o'clock, around 12/12:30.

24 Q And what did you do when you got back there?

25 A I got back. I got -- took a shower, I got on the

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1 telephone, I called my -- my child's mother, and we talked
2 for about 30/40 minutes, hung up the phone. And I say
3 probably about between 1:30/2:00 somewhere, a commotion or
4 whatnot going on. I got up out of the bed, go down the
5 hall to see what was going on.

6 Q All right. So when you first heard a commotion or
7 something unusual, you were in the bed?

8 A Correct.

9 Q Had you fallen asleep?

10 A No.

11 Q So you were still awake?

12 A Right.

13 Q You hear a commotion. Tell the jury what it sounded
14 like.

15 A It sounded like -- I don't know. I -- I thought it
16 was like my brother Kuk and they were playing around in
17 there, because ---

18 Q When you say "Kuk," who are you referring to?

19 A Dexter Perry.

20 Q So when you heard this commotion, you thought it was
21 Chris, your brother, and Dexter kidding around or
22 something?

23 A Correct.

24 Q What made you think maybe it wasn't something so
25 innocent?

1 A Because I had heard my uncle say, "Y'all got take that
2 out -- take this out of here," something -- said something
3 like that. I thought they was fooling around. So I got up
4 to go -- go check, see what it was. You know, it was kind
5 of like a -- kind of like a loud bang. So I got up to see
6 what was going on, you know, and I went down the hall.

7 Q What did you see when you walked down that hall from
8 the room where you were staying?

9 A When I walked down the hallway, I got half -- I got
10 halfway through when I saw it was two dudes and they was
11 holding Dexter, one on each side. And I ---

12 Q Tell -- tell the jury what these two guys looked like
13 that you saw holding him.

14 A They was black males, probably -- brown skinned,
15 probably stood about say from like 5'10"/5'11", something
16 like that. All black: black hat, probably a doo-rag --
17 black doo-rags, something like that.

18 Q How about their weight? What was their weight like?

19 A Again, probably -- probably about 165/170, something
20 like that.

21 Q And when you say that they -- they had Dexter, explain
22 what you mean by that.

23 A One of -- was holding him by the arms, side-by-side.

24 Q Did they have anything in their hands?

25 A Yeah.

1 Q What did they have?

2 A They had -- they had pistols.

3 Q Now, when you use the term "pistol," does that mean
4 anything special about a gun. Is that a particular kind of
5 gun?

6 A Yeah. I say like a revolver.

7 Q One of them had a revolver?

8 A Yeah.

9 Q Or did they both have revolvers?

10 A Looked like both had revolvers, but I know I got a
11 revolver thrown in my face, so that's -- I knew that one
12 was a revolver.

13 Q All right. When you went to go see what was going on
14 and you see the two guys, did you notice anything about
15 Dexter as far as his condition at that point?

16 A I noticed he was bleeding from the head.

17 Q He was bleeding?

18 A Yeah.

19 Q And were you dressed?

20 A No. I was in my boxers.

21 Q Did you have any kind of weapon at all?

22 A No weapons.

23 Q What did you do after you saw the two men with guns
24 holding Dexter?

25 A I just -- I threw my hands up.

1 Q Did you see where Odoner was?

2 A No. I didn't see him.

3 Q Did you see where your Aunt Birdie was?

4 A I didn't see her either.

5 Q How about Amber?

6 A I didn't see her either.

7 Q You threw up your hands?

8 A Correct.

9 Q And then what happened?

10 A They asked -- he told me don't look at them, you know,
11 turn around. A guy came and put a pistol in my face, and
12 asked me where the money was at. But I don't know where no
13 money is at.

14 So that -- when I turned around, he directed me into a
15 room, you know, with the gun to my head, told me to find
16 that money. So I just started, you know, searching through
17 the rooms, because I didn't -- I didn't know what was
18 going. So I start searching through the room looking for
19 anything, find any kind of money or anything to give me.
20 And I came -- I came across is all -- the dresser opened --
21 the dresser -- I gave them the bag. And they look in the
22 bag. Bad didn't contain any money, and I -- I -- I got
23 pistol whipped from behind. So I don't know who -- who
24 pistol whipped me, but one of the guys pistol whipped me.

25 Q Did they hit you in the head?

1 A Correct.

2 Q Do you know if you started bleeding at all?

3 A Yeah. I -- I started bleeding.

4 Q After they hit you in the head -- or let me ask you
5 this: You said they hit you with the gun?

6 A Correct.

7 Q Do you know which one of them hit you with the gun?

8 A I can't really say which one hit me with the gun.

9 Q Okay. After they hit you with the gun, what did you
10 do?

11 A They told me to get down on the floor.

12 Q Did you do that?

13 A Correct.

14 Q Where was Dexter while this was going on?

15 A Well, one -- one guy he had me, the other guy had --
16 had Dexter. He was in the hall, like, between the bathroom
17 -- would have been the hallway between the bathroom and the
18 room. And they -- they was holding him there. And they
19 kept asking him where -- where -- where the money at, and
20 he kept telling them, you know, just check around, check
21 around the room, you know.

22 Q At any point did Dexter and the guy who had him come
23 into the room where you were?

24 A Yeah.

25 Q What happened when they walked Dexter in the room,

1 when the guy walked Dexter in the room?

2 A They was asking him to show them where the money was.

3 Q What was he doing?

4 A I -- I couldn't really tell you.

5 Q What was he saying?

6 A He was saying, you know, just check around. He was
7 like, you know, if it isn't there -- you know, it ain't
8 there, it ain't there, you know. And I didn't -- I didn't
9 know what to say.

10 Q When you got on the floor, did they do anything to you
11 while you were on the floor?

12 A No. I told them -- when I got on the floor, I told
13 them, I says "Just check -- check around the room," you
14 know. I said check -- check the walls or whatever, check
15 underneath the bed, closet, whatever, you know. And that's
16 when they started tearing up the room, looking around.

17 Q Did they put anything over you?

18 A Yeah. They threw a cover over my head.

19 Q Did you have a wallet in the room?

20 A Yes, I did.

21 Q And did you have anything in the wallet?

22 A Yes.

23 Q Did -- do you know if they found your wallet?

24 A Well, my -- I never found my wallet, so I figured my
25 wallet was --

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1 Q So when you went to bed that night after you talked
2 with the mother of your child --

3 A Right.

4 Q -- you had your wallet in the room with you?

5 A Correct.

6 Q And after all this happened, no wallet?

7 A No wallet popped up.

8 Q Who -- you said you pulled open a drawer and gave them
9 a bag?

10 A Correct.

11 Q Why did you do that?

12 A That -- that was the first thing I saw was a bag. And
13 I gave it to them.

14 Q Did you know if it had money in it or not?

15 A I didn't know what it had in it.

16 Q When they walked Dexter in, who was doing the
17 searching through the room, Dexter or the two men?

18 A The two men.

19 Q All right. Did you at any point realize that your
20 brother, Chris, had come back and had peered in the window
21 or was back in the area?

22 A No, ma'am.

23 Q What was the next thing that -- that happened as far
24 as the robbery goes?

25 A One of the guys who was in there searching initially -

1 - I heard a commotion -- commotion in the hallway, and then
2 I don't know if they was struggling or whatnot, but they --
3 that had to been struggling.

4 Q What was Dexter saying during the struggle?

5 A He was -- he was telling them, you know, "You ain't
6 got to be doing this. You know what I'm saying? And the
7 money is this, that, and a third, you know. And guys, you
8 know, would be-- they was just telling him to shut up, you
9 know, pistol whipping him, this, that, and a third. He was
10 like, "We're out of there. There's no money here." He
11 told them to go ahead and leave.

12 Q Are you saying "this isn't the third?

13 A No, I'm saying, 'this, that, and a third.' That was -
14 -

15 Q This, that, and a third.

16 A Yeah.

17 Q Okay. Did Dexter seem afraid?

18 A In a sense -- in a sense he did seem -- seem afraid.
19 You know what I'm saying? He was kind of bold with them
20 because he was telling them, you know, 'This ain't right,"
21 you know what I mean? And he didn't have any money or
22 whatnot.

23 Q What was the next thing that you saw or heard?

24 A The next thing was just a commotion in the hallway and
25 that's all I heard from then on. I just heard gunshots

1 from them on.

2 Q And tell me about the gunshots that you heard. Could
3 you tell where the first group of gunshots came from?

4 A I -- I -- I couldn't tell. It sounded like it was in
5 the house.

6 Q All right. Do you know how many gunshots you heard
7 all together?

8 A Heard like from five to six gunshots.

9 Q What happened after you heard the gunshots?

10 A After I heard the gunshots, I got up and I was coming
11 down the hallway. As I was coming down the hallway -- when
12 I came down the hallway the first time, the living room was
13 kind of -- kind of lit up because that lamp was on, the TV
14 was on; I think the light over the stove was on.

15 When I got -- by the next time, the lamp was on the
16 ground and that was the only light that was on. So the
17 house was kind of dark, you know. I just heard my aunt
18 yelling. I didn't see my uncle. I looked for Ku, I ran to
19 the room -- into my aunt room, turned on the light. I
20 didn't see nobody, so I ran out and then I ran down the
21 street trying to get help.

22 Q All right. Did you see Dexter anywhere?

23 A I didn't see him.

24 Q Okay. You -- you said you saw your aunt, right?

25 A Yeah. I heard my aunt.

- 1 Q Okay. Did you see Odoner, your uncle?
- 2 A No, I didn't see him.
- 3 Q Did you see Amber?
- 4 A I didn't see Amber either.
- 5 Q Why did you run out of the trailer?
- 6 A Because I couldn't -- I couldn't find a phone. So I
- 7 ran out to try to get help.
- 8 Q Were you dressed at that point?
- 9 A No, I was still wasn't dressed.
- 10 Q Okay. So you ran out in your boxers?
- 11 A That's right.
- 12 Q Did you have on shoes?
- 13 A No.
- 14 Q Where did you run?
- 15 A I ran -- I ran up to my cousin house, try to use her
- 16 telephone.
- 17 Q The same one that that ---
- 18 A At the cookout.
- 19 Q --- cookout?
- 20 A Correct.
- 21 Q Okay. And did you have any luck there?
- 22 A No. Their phone -- their phone was disconnected.
- 23 Q And where did you go after that?
- 24 A I just took off from the -- I was thinking about
- 25 running out to the Hess gas station. Then I realized, you

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1 know, kind of look like with them boxers or whatever
2 showing. I kind of ran out and made a u-turn and came back
3 around to the front entrance of the trailer park.

4 Q Did you see anything then?

5 A As I was coming back through, as I -- when I came back
6 -- came back around, there's -- there was a champagne-
7 colored, silver-colored, Pontiac G4 was coming from behind
8 the trailer park, right there. In between -- between the
9 alley -- between Fred's and the trailer park.

10 Q Could you tell how many people were in it?

11 A What I -- what I was looking at it, it looked like
12 there was just one person in it.

13 Q Had you seen that car anywhere near Odoner and
14 Birdie's trailer?

15 A Well, first of the week when I first got there, I say
16 for about two days, I seen that car come in the trailer
17 park.

18 Q Well, you were only there four days, right?

19 A Correct.

20 Q Okay. So sometime in that four days, you had seen it
21 in the trailer park?

22 A That's correct.

23 Q Did you know who that car belonged to at all?

24 A No, I didn't. I just know it had out-of-state tags on
25 it.

1 Q After you had run around, you -- you've seen the
2 silver Pontiac, where did you go then?

3 A I went back to the house -- to my aunt house.

4 Q And what did you discover when you got back?

5 A When I got there, my brother and a couple of other
6 friends ---

7 Q Is that Chris?

8 A Chris, correct. Chris. He was in the house already.
9 They was in the room. They was helping Kuk onto a bed.

10 Q Okay. Who's Kuk?

11 A Dexter Perry.

12 Q They were helping him onto the bed?

13 A Correct.

14 Q And did you notice anything about his condition?

15 A Right. He -- he -- he was shot. He was shot. He --
16 so we had tried to tell him, you know, stay still and don't
17 try to make any - any -- any sudden moves or whatnot like
18 that. Because he was trying to get up.

19 And you now, one thing my brother kept asking him,
20 "Who did this to you," and whatnot. And he was like he --
21 he don't know. He don't know. He was like, "I got his
22 name. It's -- it's a guy name 'Manny'." And that's all he
23 kept saying. So ---

24 Q Manny?

25 A Right. So we asked him see where he was shot at and

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1 he turned over. Kind of turned over and lift up his shirt
2 and show us where he was shot at.

3 Q Did he talk about any of the pain he was having or
4 anything?

5 A Well, he -- he just said, you know -- you know, just
6 call the medical -- the medicine. The medicine's on it's
7 way. He was like just, "Please. Just tell them that, you
8 know, it's burning. I'm shot." You know ---

9 Q He kept saying it's burning?

10 A Yeah.

11 Q What did he say was burning?

12 A I guess the gunshots.

13 Q You -- when he was saying that Manny had done it, did
14 you know who Manny was?

15 A No, I didn't.

16 Q You had been here for four days?

17 A Correct.

18 Q Were you still there when the police came?

19 A Yes, I was.

20 Q Do you know about how long it took them to get to your
21 aunt and uncle's house?

22 A Well, it took -- I don't know who had -- it was like
23 some -- I think Summerville police or some out of county
24 cruisers got there first before the -- the Berkeley County
25 got there. And I say -- I say about probably 20 -- 20

1 minutes.

2 Q Okay. So it took a little while?

3 A Correct.

4 Q And you waited there?

5 A Right.

6 Q And you talked with the police when they arrived?

7 A Yes, I did.

8 MS. WILSON: If you could use this pointer right here.

9 (Sotto voce discussion between Ms. Wilson and the
10 witness.)

11 Q Have you seen that diagram before?

12 A Correct.

13 Q All right. Now, if you could explain to the jury
14 where you were sleeping before you heard all the commotion.

15 A I was sleeping in this room right here (indicates.)

16 Q Okay. Make sure you speak into the microphone.

17 A I was sleeping in this room right here.

18 Q Okay. And then you heard a commotion and you went
19 where?

20 A I went -- I went there. This is the hallway right
21 here, I went down through the hallway, past that bedroom,
22 my -- other bedroom, into the livingroom.

23 Q All right. And that's where you first saw what?

24 A That's when I first saw two suspects holding Dexter
25 Perry.

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1 Q Okay. And you said both of them were armed?

2 A Correct.

3 Q Now, after they took you, where did they take you?

4 A They took me back into the -- back into the room that
5 I -- I slept in.

6 Q Back into your room?

7 A Yeah. Well, not my room. I shared that with my
8 brother.

9 Q Okay. With Chris?

10 A Correct.

11 Q I'm going to show you State's Exhibit 34, State's
12 Exhibit 21, and State's Exhibit 22. Do you recognize those
13 photographs?

14 A Yes, I do. Yes, I do.

15 Q And are those photographs fair and accurate depictions
16 of the room that you shared with your brother after this
17 event?

18 A Yes, it is.

19 MS. WILSON: Your Honor, at this time we we'd offer
20 State's 22, 21, and 34.

21 THE COURT: 22, 21, and 34?

22 MS. WILSON: Yes, ma'am.

23 THE COURT: Please show them to counsel.

24 MR. BOLUS: No objection.

25 MR. BARNWELL: No objection.

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1 MR. JONES: No objection.

2 THE COURT: Marked and admitted without objection.

3 (Marked State's Exhibits 21, 22, and 34, photos.)

4 DIRECT EXAMINATION BY MS. WILSON:

5 Q First Joe, State's 22 -- wait. I'm sorry. State's
6 34, what is that a photo of?

7 A That's -- that's a photo of the bedroom. That's the
8 bed.

9 Q How did the mattress get up leaning against the TV
10 like that?

11 A That's when they were searching for -- searching for
12 the money, I guess.

13 Q Did you put it up there like that?

14 A No, I didn't.

15 Q Who did?

16 A The suspects.

17 Q And State's Exhibit 21. How about all of this stuff
18 that's on the floor around in there. How did that get
19 there?

20 A Same way, the suspects got to it.

21 Q Suspects what?

22 A Suspects -- I guess they turned it over when they was
23 looking for the money. The only -- only thing I did was --
24 that's -- that's where the bag was at that I pulled out
25 when I -- when I was looking. That's the only thing I did.

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1 Q And State's 22, what is this red area right there?

2 A It looks like a blanket.

3 Q And here's the same mattress ---

4 A Yes, it is.

5 Q --- that was leaning against the TV?

6 A Uh-huh.

7 Q And how about this right here, what is that?

8 A It's the AC unit.

9 Q I'm want to see if -- State's Exhibit 49, have you
10 seen a copy of this aerial map before?

11 A Yes, I have.

12 Q And do you recognize this as the area around Birdie
13 and Odoner's trailer?

14 A Yes.

15 Q And also your grandmother's house?

16 A Correct.

17 Q Okay.

18 MS. WILSON: Your Honor, at this time we'd offer
19 State's 49.

20 THE COURT: Any objection?

21 MR. BARNWELL: No objection.

22 MR. JONES: None.

23 THE COURT: Mr. Bolus, any objection?

24 MR. BOLUS: No objections, Your Honor.

25 THE COURT: Marked and admitted without objections.

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(Marked State's Exhibit No. 49, aerial map.)

THE COURT: Is it warm in here to anyone or do we need to adjust the air? Are you all comfortable? Okay. I just want to make sure.

(Sotto voce discussion between counsel and the Court.)

THE COURT: I'm always hot. I had to ask to make sure.

DIRECT EXAMINATION BY MS. WILSON:

Q Joe, I'm going to ask if you'll come down here so you can look at the map closer up down here. Do you mind stepping down?

A (Complies.)

Q Now, looking at this map, can you just with your -- with this pen, show the jury where Dutch Fork Road is.

A (Indicates.)

Q And where is the trailer where Birdie and Odoner and you were staying?

A (Indicates).

Q And can you see the little porch that was on that trailer in that photograph? Right there? And so that's where Birdie and Odoner lived, right?

A Right.

Q And when you mentioned that you ran down the street to go use the telephone at another cousin's house, where did you go?

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1 A I came out the house and went directly down --
2 straight down to this trailer right here.

3 Q Okay. And that's where you said the phone was
4 disconnected?

5 A Correct.

6 Q Okay. And then you ran somewhere else after that.
7 Show the jury on the map what area you went to.

8 A I cut through a yard, there's ---

9 Q Speak up.

10 A I cut through a yard. There's a fence right here
11 (indicates) and there's a hole in this fence. So I went to
12 the back, to an alley behind Fred's --

13 Q Uh-huh.

14 A -- and I came out this way, take you up here to
15 Highway 78.

16 THE COURT: I need him to speak up some more because I
17 -- his back's to the jury and don't think the court
18 reporter probably can hear.

19 A I came out of the trailer, I ran down the trailer park
20 to the beginning, I got down here to my cousin house. I
21 got down here. She told me the phone disconnected, I cut
22 through the yard -- through the yard to the back, and
23 behind there's a fence that has a hole in it. I came
24 through there's an alley way, right there is Fred's. I cut
25 back to the right and came down, and I got up about right

1 here (indicates) and I came back though and looked around
2 and came back through the trailer park, went back to my
3 aunt house.

4 Q Where were you when you saw the Silver Pontiac?

5 A Right here (indicates).

6 Q And what did you see the Silver Pontiac do?

7 A When he came out, he made a right and went back down
8 17 like he's going towards Summerville.

9 Q Okay. Now, just let me ask you, again: Birdie and
10 Odoner's house is right there, where is your grandmother's
11 house?

12 A On Moses Extension right here.

13 THE COURT REPORTER: I'm sorry. On what?

14 Q On Moses Extension?

15 A Correct.

16 Q And was it the small one with the brown roof?

17 A There is a beige one.

18 Q Okay. The --

19 A Yeah, right here (indicates).

20 Q All right. The black roof on Moses?

21 A Yes.

22 Q Okay. So your grandmother's house is there and then
23 Odoner and Birdie's is there?

24 A Correct.

25 Q And on this photograph, which end of the trailer would

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1 your bedroom had been on, this end or the other end?

2 A On this end (indicates).

3 Q Okay. The end nearest the street?

4 A Correct.

5 Q All right. You can have a seat. Thank you.

6 MS. WILSON: Beg the court's indulgence?

7 THE COURT: Uh-huh.

8 Q Now, Joe Alex, I'm going to show you what's been
9 marked State's Exhibit 4, and ask you if you recognize
10 this. You seen this before?

11 A Yes, I have.

12 Q And can you tell the jury about when it was that you
13 were shown this group of photos in State's Exhibit 4?

14 A The next day I was shown the photos.

15 Q And who showed you the photos in this display?

16 A A detective.

17 Q A detective that's right here?

18 A Correct.

19 Q And did he ask you to see if you recognized anyone?

20 A Yes, he did.

21 Q And who did he ask you to see if you recognized?

22 A The guy named Manny.

23 Q Okay. Did you recognize anybody in this photo
24 display?

25 A Yes, I did.

1 Q And who did you recognize?

2 A Manny.

3 Q How did you know who Manny was?

4 A This picture, this guy didn't -- when they came in,
5 none of them had any masks. The two I saw didn't have on
6 any mask.

7 MS. WILSON: You got to speak up.

8 A I said the two I saw didn't have on any mask, so, you
9 know, I got a good description of them.

10 Q Did you know the person at all before that night?

11 A No, I didn't.

12 Q When was the first time you had seen the person you're
13 saying's named Manny?

14 A The night of the incident.

15 Q Okay. And how did you realize his name was Manny?

16 A From -- from Kuk saying. That's the only person he
17 could identify.

18 Q Was Manny?

19 A Was Manny.

20 Q When you saw this line up of photographs, were you
21 able to identify anybody?

22 A Yes, I was. I was able to identify Manny.

23 Q Okay. And what photograph was he?

24 A Number five.

25 Q Photograph number five?

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1 A Correct.

2 Q And what did this person depicted in photograph number
3 five do the night that you saw him?

4 A He was one of the guys that had -- was holding Kuk by
5 the arm.

6 Q Did he ever take control of you?

7 A No. He was on Kuk the whole time.

8 Q So this guy Manny had Kuk the whole time?

9 A Right.

10 Q And that's the guy you recognized in photograph number
11 5.

12 A Correct.

13 Q Is that correct?

14 A Uh-huh.

15 MS. WILSON: Your Honor, at this time we'd offer
16 State's Exhibit 4?

17 THE COURT: Any objection?

18 MR. BOLUS: No.

19 MR. BARNWELL: No objection.

20 MR. JONES: No objection.

21 THE COURT: Marked and admitted without objection.

22 (Marked State's Exhibit No. 4, group of photos.)

23 DIRECT EXAMINATION BY MS. WILSON:

24 Q And this person depicted in State's Exhibit 5, do you
25 see him here today?

1 A Yes, I do.

2 Q And where is he?

3 A Sitting right there.

4 Q And what does he have on?

5 A A black suit.

6 Q And what kind of tie?

7 A Grey tie.

8 Q Is he in the corner there?

9 A Yes, he is.

10 MS. WILSON: Your Honor, please let the record reflect
11 he's identified Defendant Jermaine Hartwell.

12 THE COURT: Let the record so indicate.

13 Q And this guy, Manny, that you recognized from that
14 night, did he have a firearm that night?

15 A Yes, he did.

16 MS. WILSON: Your Honor, at this time I'd ask that we
17 publish State's Exhibit 4. I just want to hold it up.

18 THE COURT: You can do it on the ---

19 MS. WILSON: It won't hold it up.

20 THE COURT: You can do it on the ---

21 MS. WILSON: It won't -- it won't --

22 THE COURT: Let's try it.

23 MS. WILSON: Excuse me?

24 THE COURT: Let's try.

25 DIRECT EXAMINATION BY MS. WILSON:

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1 Q Okay. And which one did you pick out?

2 A Number five.

3 Q And that's the man you say is Jermaine Hartwell in the
4 corner there?

5 A Correct.

6 Q And he was the one holding Dexter at gunpoint?

7 A Correct.

8 MS. WILSON: That's all I have, Your Honor.

9 THE COURT: Mr. Bolus, any questions for the witness?

10 MR. BOLUS: Yes, Your Honor.

11 THE COURT: You may proceed.

12 CROSS-EXAMINATION BY MR. BOLUS:

13 Q But you were shown other -- you were shown four
14 different line ups?

15 A Probably so.

16 Q And the only person you've ever picked out any of the
17 line ups being in the place was Mr. Hartwell?

18 A No. I picked out -- I picked out Mr. Hartwell. I was
19 shown some more line ups and I picked out another suspect,
20 too.

21 Q But you don't see that other suspect in the courtroom?

22 A No.

23 Q Okay. Because you said in your statement that you --
24 you -- "I'm not certain and can't positively identify for
25 sure anyone in three of the line ups."

1 So they showed you some line ups that you couldn't
2 identify anybody in?

3 A Right. No. No. They -- they showed me some line
4 ups and I wasn't too particular about one person in the
5 line up. The other person -- I got kind of confused, so
6 that's just how it went down.

7 Q Yeah. But did the police tell you they were looking
8 for someone named Manny?

9 A Yeah. But I picked him out, but there was another
10 suspect too, that I couldn't really identify.

11 Q But all the line ups didn't have the same folks in
12 them or either at least have Mr. Hartwell or Mr. --
13 whoever, Hollins, correct?

14 A I guess the fourth one that they showed me, in number
15 five, that was -- that was Manny, that's the guy I picked
16 out. That's the guy I remembered.

17 Q And you never picked out Gary Grant?

18 A Right. I -- I've never seen Gary Grant.

19 Q You didn't ever see him?

20 A Correct.

21 Q And you just --

22 MR. BOLUS: Mr. Grant, would you stand up?

23 Q Does this man look to you to be 165 to 170 pounds?

24 A No. That's why I didn't describe him because I didn't
25 see him.

1 Q That's right. You -- you -- I appreciate your
2 truthfulness. Because you described -- you described
3 everyone in your statements as being between like 165/170?

4 A Correct.

5 Q Thin males?

6 A Correct.

7 Q And you would class him, I would think, as a heavyset
8 male?

9 A Right. I sure would. Like I said, I didn't see him.
10 I seen the other two that did weigh between 165 and 170 and
11 stood 5'10" to 5'9".

12 Q What do you weigh?

13 A I weigh 185.

14 Q And --

15 MR. BOLUS: You can sit down, Gary.

16 Q And did you see Odoner there? Odoner, I think they
17 call him? Did you see him in the -- the mobile home when
18 you came out?

19 A My uncle?

20 Q Yeah.

21 A No. I didn't -- I didn't see him when I came out.

22 Q You never -- did they take you throughout the trailer,
23 the mobile home?

24 A They took me -- no, they didn't take me throughout the
25 mobile home. They took me -- when I came out of my room,

1 out of the back room down the hallway, we start from there.

2 And they took me back into the room.

3 Q You never -- you never got to the livingroom area?

4 A No. I got to right there between the livingroom and
5 the door. Right -- like there's a door. Soon as you open
6 that door, there's a hallway and the livingroom. I got
7 right there. So I was like in between in the doorway. I
8 was in between the livingroom -- I stepped out in the
9 hallway.

10 Q And you ended up in the same room, the back room, with
11 Dexter Perry?

12 A Correct.

13 Q And you had a cover on you?

14 A At the end. At the end I did, yeah. They threw a
15 cover over me. I told them to search for the money, yeah,
16 and when they flipped over the bed -- when they flipped the
17 bed over, the cover flipped on my head because I got --
18 they had me on the floor.

19 Q And Dexter Perry was in the room with you?

20 A Yeah. He was standing -- he was in the hallway area.

21 Q He got shot in the back bedroom?

22 A He got shot in my aunt -- my aunt bedroom.

23 Q Which is in the other --

24 A It was down -- down the other side of the trailer. My
25 room is on one side of the trailer and my aunt lives on the

1 other side of the trailer.

2 Q Okay. So you were -- your -- your feet -- your feet
3 were exposed? You were covered up, but your legs were
4 exposed?

5 A Correct, yeah. It's -- it's my head.

6 Q And they were at one end of the -- you were at the
7 opposite end of the mobile home?

8 A Yeah. But at the time, they -- they all was in the
9 room. They was in the room searching for the -- for the
10 money and whatnot. And Dexter ---

11 Q On the other side?

12 A No. They were in the room that we was in. In the
13 room that they -- they took me in, that's where it was at.
14 That's where everything took -- not everything, but that's
15 where they were looking for the money took place. They
16 didn't search nowhere else for the money.

17 Q So you had your room and a bedroom, then the
18 livingroom, then your aunt's room?

19 A Right. As soon as you walk in you had -- you had the
20 livingroom and then you walk down the hall, it's -- it's a
21 bedroom to your left and there's a bathroom to your left
22 and then there's my room to the end.

23 Q And you -- you didn't -- you weren't in the room where
24 their -- when the actual shots hit Dexter? You were not --
25 -

1 A I was -- I was -- I was not in that room, no.

2 Q And you ran out in your boxers?

3 A Correct.

4 Q And when did you -- when were you allowed to go back
5 in -- I assume the police came pretty quick, didn't they?

6 A No. They hadn't got there.

7 Q When did you get back to your room to start looking
8 around at things?

9 A I didn't get to my room to start looking around for
10 things. I came back -- when I came back to the -- to the
11 house, I went directly into my aunt -- my aunt bedroom
12 because that's where the lights was on, and I heard all the
13 commotion and whatnot and I -- and I went in there. And as
14 I was entering, that's when they were just putting Dexter
15 Perry onto the bed.

16 Q And then did the police soon show up with you still in
17 the mobile home?

18 A Yeah.

19 Q What I'm interested in is there's no allegation, any
20 indictments, or anything that any of your property was
21 stolen. There's nothing in the statements or anything.
22 And for you to make a statement like your wallet is
23 missing, you do not know beyond a reasonable doubt or know
24 for sure what happened to your wallet, do you?

25 A Yeah, I do. Because if my -- it would have been

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1 missing -- I checked the house. I mean, unless one of the
2 guys who came there who was searching the house, forensic
3 team or whatever, they picked the wallet up and took it
4 with them. But I doubt that because that's the case when I
5 called and asked Sergeant Ford. But he would have told me.

6 Q That's the point -- yeah. Go ahead.

7 A When I called the Sergeant and told him that my wallet
8 was missing, he would -- he would have said if -- if one of
9 the other -- somebody had it, he would have told me who had
10 it. But I told him that the wallet was missing. The
11 wallet was sitting on the night stand.

12 Q But it's -- you do not know and it -- no one's charged
13 with stealing your wallet. You do not know, for sure, for
14 sure, what happened to your wallet?

15 A Correct.

16 Q Okay.

17 A I didn't see them take my wallet.

18 Q That's right. And there's no report on that and the
19 first I've ever heard about it is right now, and you didn't

20 ---

21 MS. WILSON: Your Honor, I object.

22 THE COURT: Basis?

23 MS. WILSON: Mr. Bolus is testifying.

24 THE COURT: I'm sorry?

25 MS. WILSON: Mr. Bolus is testifying as to when he

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1 first found out information. I'm just objecting to that.

2 THE COURT: It was in the form of a question. I'm
3 going to give him some latitude.

4 Mr. Bolus, if you would confine your questions to the
5 appropriate form.

6 MR. BOLUS: Thank you.

7 THE COURT: You're welcome.

8 CROSS-EXAMINATION BY MR. BOLUS:

9 Q So -- and people did come into your mobile home right
10 after this thing, and at some point -- at some point, what
11 24 hours later, you noticed your -- your wallet was
12 missing?

13 A I noticed it that night. We wasn't able to get into
14 the house because once the cops -- forensics got there,
15 they took over.

16 Q But you noticed it after the police came and all that.
17 And you noticed your wallet was gone, and you made a phone
18 call and said your wallet was gone?

19 A Right. Later on -- later on that morning, you're
20 right. Correct. I did, sir.

21 MR. BOLUS: That's all I got.

22 THE COURT: Mr. Barnwell?

23 DIRECT EXAMINATION BY MR. BARNWELL:

24 Q Mr. Husser, you made three statements; is that
25 correct?

1 A Correct.

2 Q That would be correct, three statements? All -- all
3 on the same day?

4 A Well, one was the next day, I think.

5 Q The next day. One was late at night?

6 A Yes.

7 Q And one was the next day?

8 A Yeah. And one was that morning, too.

9 Q One statement -- I think they said 2:45 a.m. -- you
10 said as far as identification (as read): "Ran for help,
11 two black males about 5'10", one black shirt, blue shorts,
12 and black shoes on. I can't say about the other. Ran out
13 and saw a white car and took off running for help."

14 Is that -- is that -- is that -- that your
15 identification as far as the first -- the first statement
16 you made?

17 A Right.

18 Q All right. So you -- you've got one -- one -- one has
19 got a black shirt, blue shorts, black shoes. That's --
20 that's one of them.

21 A Right.

22 Q And you can't say about the other one? You talk about
23 two -- two -- two people that night?

24 A Right.

25 Q One of them you can identify; one you can't.

1 A Well, I -- I identified what the one was wearing.

2 Q Then you made another statement. This is a three-page
3 statement where you say (as read): "Two black males that
4 had Kuk and did this, both black males. One was 5'9"/5'10"
5 about 165/170 pounds, dark-skin, about 25 -- 20/25 years
6 old, wearing a black shirt with some type of writing, blue
7 jean shorts, and black tennis shoes. He had on a black doo
8 rag, a little bit of hair on the chin, not a goatee, and he
9 had sideburns. The other one --" I mean, excuse me, "He's
10 the one that pistol whipped me, and he had a silver-colored
11 revolver with brown wood handle grips." Then you say -- as
12 far as identification -- "The other male had on a black
13 hat. I didn't get a real good look at him and he was
14 possibly 20/25 years old; same height and weight and brown-
15 skinned." Then you say -- as far as identification -- "The
16 third male who had seen this -- seen until this was over,
17 and then ran out the trailer with a dark-skin black male,
18 six feet, 6'/6"1', 170/180 pounds, probably the same range
19 of the others." Is that -- is that your identification?

20 A Correct.

21 Q All right. You then -- you then just -- it wasn't
22 just one line up, it was two; wasn't it? Two line -- two
23 line ups where you identified people?

24 A Right.

25 Q All right. This one here, which I'll show you, is

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1 State's Exhibit Number 3. Show this to you. Is that -- is
2 that your signature?

3 A That is my signature.

4 Q That's -- that's above this -- this photograph which
5 has 114537 at the bottom?

6 A Correct.

7 Q Is that -- is that the person that had the facial hair
8 and the sideburn, the one that you said you could identify
9 -- and the one you said you could identify as far as
10 description of -- of -- that -- that's the one that -- that
11 -- that had -- had the -- the black shirt and black shorts
12 on. Isn't that -- isn't that who you identify as him, the
13 one with facial hair and the sideburns?

14 A Facial hair? No. That's -- that's not the guy. That
15 -- that was -- that guy was Manny.

16 Q I'm sorry?

17 A That guy was Manny, the one who had the sideburns.

18 Q Doesn't -- doesn't this -- doesn't this guy have the
19 facial -- facial hair and the sideburns? Didn't you
20 identify him?

21 A Right. I did.

22 Q All right.

23 MR. BARNWELL: Publish this to the jury, Your Honor.

24 THE COURT: He needs to ---

25 MS. WILSON: It's not in evidence, Your Honor.

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1 MR. BARNWELL: Not in evidence? I would ---

2 THE COURT: Would you move to admit it?

3 MR. BARNWELL: I'd move to -- I think y'all are
4 familiar with it. See if there are any objections.

5 (Sotto voce discussion between counsel.)

6 THE COURT: The State have any objections?

7 MS. WILSON: Defendant's 1?

8 MR. BARNWELL: Defend -- Defendant's 1. Is this got
9 this other sticker. You're saying it's not.

10 THE COURT: Is there any objection from the State?

11 MS. WILSON: No, ma'am.

12 THE COURT: From the ---

13 MR. JENNINGS: No, ma'am.

14 (Marked Defendant's Exhibit No. 1, group of photos.)

15 THE COURT: Marked and admitted without objection.

16 MR. BARNWELL: Publish this to the jury now?

17 THE COURT: Please use the overhead to publish it.
18 It's that device right there. Right in front of the
19 bailiff.

20 MR. BARNWELL: Oh, I'm sorry. I'm not used to all
21 this high tech stuff.

22 THE COURT: It's okay. It's easy.

23 CROSS-EXAMINATION BY MR. BARNWELL:

24 Q That -- that -- that one with the -- your signature
25 above, that -- that was -- that was an identification; is

1 that right?

2 A Correct.

3 Q Then the other one -- that I don't see right now. You
4 don't have a signature -- a signature on this one. There's
5 no signature on this one, Number 5, is what you're talking
6 about?

7 A Correct.

8 Q And he's got no facial hair, no sideburns, right? Is
9 that correct?

10 A He's got a -- he got a little bit of facial hair.

11 Q Not -- let me -- let me -- let me read that again,
12 because I think that was -- I don't think that was a
13 mustache you were talking about. Says (as read): "He had
14 a little bit of hair on the chin, not a goatee. He had
15 sideburn." You didn't say mustache, you said that he hair
16 on the chin?

17 A Correct.

18 Q So two people you identified was -- was that exhibit I
19 just showed you, Defense Exhibit 1, and this exhibit here,
20 right?

21 A Right.

22 Q Now, isn't the person that you identify in this
23 statement is the person that was a hundred and -- 5'9" to
24 1'10" [sic], 165/170 pounds, dark-skin, about 20 to 25
25 years, wearing a black shirt with some type of writing,

1 blue jeans and shorts, black tennis shoes, had a black doo
2 rag, a little bit of hair on his chin, not a -- not a
3 goatee. Then there's this other fellow I just -- not --
4 not him.

5 A Probably at the time he had no goatee, he had a little
6 bit of hair on his chin.

7 Q I'm talking about this other -- other one that I
8 showed you, this other one with your signature above it.
9 Isn't that the one with the sideburns and the goatee?

10 A Yeah.

11 Q Isn't that -- isn't that -- isn't that the one you
12 were -- were sure about and the other -- other two, from
13 your statements, you weren't sure about them at all; isn't
14 that correct?

15 A No. No, that ain't correct. I -- I wasn't sure about
16 the third person, not seeing him I didn't -- I didn't -- I
17 didn't get a good look at him.

18 Q All right. When you said this is the first -- this is
19 the longer statement. It said (as read), "The other male
20 had on a black hat. I didn't get a real good look at him.
21 But he was probably 25/30 years old, same height, weight,
22 brown-skin." So you didn't get a good look at him; isn't
23 that right?

24 A (No audible answer.)

25 Q And then the third male, that's the one you saw

1 running out. You didn't get a good look at him at all?

2 A Right.

3 Q And the -- the -- the other -- other statement, the
4 one you made first, is -- is you had him wearing a black
5 shirt, blue shorts, and the black shoes. That's the one
6 you identified and you said (as read), "I can't say because
7 the other one ran out." Isn't that correct?

8 A Yeah. The one that ran out, that's the third person.
9 And two of them I know for certain. There the only two I
10 saw.

11 Q Well, couldn't the one that run out been Mr. Hartwell,
12 not -- not -- not -- not these two, because you weren't
13 sure at all except the one in your statements? Then you
14 come back later, the next day, and make another statement.
15 Now, were you told anything between those two times you
16 made those two statements?

17 A No, I wasn't told nothing. When the officer presented
18 these photos in front of me, I knew I remembered. I knew I
19 remembered Manny from -- from the -- from the goatee. I
20 remember him from having the goatee. He was holding -- he
21 had Kuk, Dexter Perry. And it was this other fellow, I
22 guess his name was Kerry or something, I know he had -- he
23 was the guy that pistol whipped me, so I know him. But he
24 was the one that threw the gun in my face when I came.
25 That's why I didn't get a super good look at him. I didn't

1 get real too good look, but I remember a couple of details.

2 Q Is that Kerry -- Kerry Hollins you're talking about?

3 A Yeah, Kerry. Yeah, Kerry.

4 Q Huh?

5 A Yeah.

6 Q Kerry Hollins?

7 A Correct.

8 Q Is Kerry Hollins the other one you identified?

9 A Correct.

10 Q And you didn't -- you -- you -- had you ever seen any
11 of these people before?

12 A No. I haven't.

13 Q You didn't -- you didn't -- you keep referring to my
14 client as "Manny." You didn't know him as "Manny," did
15 you?

16 A No. I didn't know, I didn't know. Not until that
17 night.

18 Q And Dexter Perry didn't show you any photographs, did
19 he?

20 A No, he sure didn't.

21 Q How -- how -- how you call -- call him "Manny"?

22 A Because that's what he call him, and that's what -- he
23 was saying, "Manny" ---

24 Q He didn't identify him as anything -- anything else?

25 Did he say, "Manny is Jermaine Hartwell"? Did he say that?

1 A No, he didn't say that.

2 Q He didn't say that?

3 A No.

4 Q You said at one point Mr. Bolus was talking to you,
5 you got confused. What did you get confused about?

6 A Who got confused?

7 Q Didn't you say -- didn't you say that?

8 A No. I didn't say that. I never said that.

9 Q What was this -- what -- what -- what was this bag?
10 Was anything in the bag that you pulled out?

11 A In the bag?

12 Q Yeah.

13 A I don't know what was in the bag. I grabbed the bag
14 and gave it to them.

15 Q Think you had a cover over your head or something part
16 of the time?

17 A Yeah. Some part of the time close to the end.

18 Q You didn't see anything when you had the cover over
19 your head, correct?

20 A Not at that time.

21 Q And you're not sure who -- who -- who pistol whipped
22 you. That's from behind?

23 A I'm thinking this guy -- this guy Kerry. He's -- he's
24 the guy that came and threw a pistol in my face, and then
25 he was the guy that walked me down the hallway.

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1 MR. BARNWELL: I don't have any further questions.

2 THE COURT: Mr. Jones?

3 CROSS EXAMINATION BY MR. JONES:

4 Q The one thing you're sure of, this is one of the guys
5 that had the pistol?

6 A Yes.

7 Q He was in the house?

8 A Correct.

9 Q No doubt about it?

10 A No doubt.

11 Q And is this -- did you pick him out -- this line up
12 was done in September of last year, correct? This was done
13 about a month after the shooting and all occurred?

14 A I'm not sure about that.

15 Q Now, they come in, they say, "We need some money. We
16 want money," or whatever. You go into that back bedroom
17 and start looking through these bags, right? to see if
18 there's anything in there, correct?

19 A Right. I started looking through the -- through the
20 dresser and through a -- it's like an entertainment system.

21 Q And you told them you didn't have any money?

22 A Correct. And I told them I didn't know anything about
23 any money.

24 Q And you opened the drawers, show them that you didn't
25 have any money?

1 A Correct.

2 Q No money was in your wallet, right?

3 A Yeah. Money was in my wallet.

4 Q So first thing you did is go and -- they got your
5 family at gunpoint. These guys are holding your family at
6 gunpoint. The first thing you do is go and look through
7 bags, open your drawer and show them anything. I mean, you
8 might could get these fellows -- if you gave them your
9 wallet and your money, you might could get these fellows
10 out the house, right?

11 A I wasn't thinking about my wallet at the time.

12 Q But now you're thinking about it, right? But you
13 still -- you don't -- you don't have any idea what happened
14 to that wallet, right?

15 A No. I don't have any idea what happened to it.

16 (Sotto voce discussion between Mr. Jones and State's
17 counsel.)

18 Q Do you have that pointer right there?

19 A Yes, I do.

20 Q Do you know where -- let me just ask you: You ran,
21 you came out the trailer. And you're pointing at the right
22 one.

23 You ran -- am I going the right path down (indicates)
24 down?

25 A Yeah.

1 Q Now, you didn't run into Chris anytime?

2 A No. I didn't -- I didn't see Chris until I came back
3 into the trailer.

4 Q Now, when you -- where is the Hess Station in relation
5 to this?

6 A It's -- it's on -- I don't think it's on there.

7 Q Okay. So it's ---

8 A There is ---

9 Q Which way did you go? Would you just do the arrow
10 which way you would go to the Hess station?

11 A (Indicates) That's going towards this.

12 Q So the Hess Station is way down here?

13 A It was right across --

14 Q So it's way down here?

15 A Yeah. It's right across from -- yeah.

16 Q Okay. None of your neighbor's have phones in your
17 neighbor's house. You didn't go bang on any doors or
18 anything?

19 A I don't know -- my neighbor's Mexican. I don't know
20 them. I was already close to the road and my cousin, she
21 didn't have a phone. So you know ---

22 Q You stopped at your cousin's first?

23 A Yeah.

24 Q Then you went from there on?

25 A Correct.

1 Q Now, would that be the same cousin's house that Chris
2 would have gone to? How many cousins do y'all have in the
3 trailer park?

4 A She only one that there. It was my aunt and my
5 cousin.

6 Q How -- is this a big road right here? Is this pretty
7 -- can two cars pass each other going back and forth on
8 there?

9 A In the trailer park?

10 Q Yeah.

11 A Correct.

12 Q This road right here?

13 A Yeah.

14 Q Would you say it was equivalent to a two-lane road?

15 A Yeah.

16 Q And you never passed Chris any time during this time
17 or anything?

18 A No, I didn't.

19 Q Now, have you ever been in law enforcement or done
20 anything of that sort, corrections or anything of that
21 sort? As in being any kind of -- as in a police officer or
22 a corrections officer? Have you ever done that as a job or
23 anything or have any background in that?

24 A I worked security work.

25 Q And did you -- I mean, is the term -- I know you used

1 the term "suspects" a few times. Is that something that
2 you kind of picked up during this case?

3 A No.

4 Q It's not. So you normally just use the word
5 "suspects" for --

6 A Yeah. I mean, it's part of my vocabulary. I mean --

7 Q Okay.

8 A Yeah.

9 Q I think -- let's flip back right quick. Put that down
10 before I walk off with it.

11 And the -- the silver car that you saw, now, that's
12 the car that you think had been -- you think -- you think
13 they might have been casing out the trailer park? I think
14 you said in your statement you thought it'd been in and out
15 of there over the past couple of weeks.

16 A Right.

17 Q You think they were probably casing that trailer park?

18 A Right.

19 MR. JONES: Nothing further, Your Honor.

20 THE COURT: Any redirect of the witness?

21 MS. WILSON: Yes, ma'am.

22 THE COURT: You may proceed.

23 REDIRECT BY MS. WILSON / JOE HUSSER

24 Q Joe, going back to the events of that night and your
25 statement, how many people, other than your family and

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1 Dexter, were in the trailer that night? How many people
2 came in to rob y'all?

3 A All I saw was two. Then I saw the last person or
4 whatnot.

5 Q Okay. You saw two people at first?

6 A Right.

7 Q Okay. Those were the two that had Dexter?

8 A Correct.

9 Q And then of those two, did one of them take you to
10 your room?

11 A Yes.

12 Q Okay. And put those two aside: Beyond them how many
13 other people did you see come into the trailer?

14 A I didn't see any. I didn't see any. I just saw those
15 two.

16 Q Okay. At any point that night, did you see anyone
17 leaving or running from the trailer?

18 A No. I saw - I saw somebody else leaving out of the
19 trailer, but I know it wasn't nobody in my family.

20 Q I can't hear you.

21 A I know it wasn't nobody in my family, so ...

22 Q So that's the third person you saw?

23 A Right.

24 Q Did you get a real good look at that third person?

25 A No, I didn't.

1 Q Okay. And then, I believe in your statement you
2 describe a fourth person that you also saw. Is that not
3 correct?

4 A No. I never saw a fourth person.

5 Q You just saw three people?

6 A I saw -- yeah.

7 Q Okay. Now, when you were asked to look at the photo
8 line ups, the third person that you saw, you didn't get a
9 good look at him, is that right?

10 A No, I didn't.

11 Q And the police showed you more line ups than just
12 these two, State's Exhibit 4 and Defendant's Exhibit 1; is
13 that correct?

14 A Correct.

15 Q You saw more than these?

16 A Right.

17 Q And you didn't just pick somebody out of those line
18 ups, did you?

19 A No.

20 Q Because you didn't recognize anybody; is that correct?

21 A That's correct.

22 Q In this line up, State's Exhibit 4, you did pick
23 someone out; is that correct?

24 A Correct.

25 Q You picked out Number 5?

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1 A Right.

2 Q And then you gave a statement about that, did you not?

3 A Right.

4 Q I'm going to show you State's Exhibit 52. Do you
5 recognize that?

6 A Yes, I do.

7 Q And is this a statement that you gave after looking at
8 the line up?

9 A Yes, it is.

10 Q Okay. And in your statement you talk about being able
11 to pick out spot number five, do you not?

12 A Right, I do.

13 Q And how did you recognize the person in number 5?
14 Where had you seen him?

15 A In the house.

16 Q And who did he have?

17 A Dexter Perry.

18 MS. WILSON: Your Honor, at this time I'd offer
19 State's Exhibit 52.

20 THE COURT: Any objection?

21 MR. BARNWELL: Your Honor, I would ask that all three
22 statements be put in. If you're going to put in one, I
23 would ask that all three put be into evidence so that ---

24 THE COURT: No speaking. Please approach.

25 (Bench conference.)

1 THE COURT: The objection is sustained. You may
2 proceed.

3 Q Joe, after you looked at this line up, you signed a
4 statement stating that you picked out Number 5?

5 A Correct.

6 Q And Number 5 was the guy, Jermaine Hartwell, who had
7 Dexter at gunpoint?

8 A Correct.

9 Q Is that correct?

10 A Yes, it is.

11 Q And this other person that you picked out in
12 Defendant's Exhibit 1, he's not here today, is he?

13 A No, ma'am.

14 Q He's not in the courtroom?

15 A He's not.

16 Q And you didn't know any of these folks; is that
17 correct?

18 A No. I didn't know none of them.

19 MS. WILSON: That's all, Your Honor.

20 MR. BOLUS: No questions.

21 MR. BARNWELL: No questions.

22 MR. JONES: None.

23 THE COURT: Any objection to the witness being excused
24 from the State?

25 MS. WILSON: No, ma'am.

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1 THE COURT: From the Defense? Any, Mr. Bolus?

2 MR. BOLUS: Nothing.

3 MR. BARNWELL: None, Your Honor.

4 MR. JONES: No.

5 THE COURT: Sir, you're excused. Please call your
6 next witness.

7 MR. JENNINGS: The State calls Amber Cobbs.

8 AMBER COBBS, having been first
9 duly sworn, testifies as follows:

10 COURT OFFICER: State your name and spell your full
11 name for the record.

12 WITNESS: My name is Amber Marie Cobbs. A-m-b-e-r --
13 A --

14 THE COURT: Take a deep breath.

15 WITNESS: A-m-b-e-r. Middle name is Marie, A -- M-a-
16 r-i-e, Cobbs, C-o-b-b-s.

17 THE COURT: And pull the microphone down a little bit
18 below your mouth. Good. You may proceed.

19 DIRECT EXAMINATION BY MR. JENNINGS:

20 Q All right. Amber, you nervous about being here today?

21 A Yeah.

22 Q All right. I just want you to take a deep breath,
23 okay?

24 A Okay.

25 Q Let me know if you need to take a break.

- 1 A Okay.
- 2 Q You live at [REDACTED] Dutch Fork?
- 3 A Yes.
- 4 Q With your dad and your mom?
- 5 A Yes.
- 6 Q Ms. Birdie and Odoner?
- 7 A Yes.
- 8 Q How old are you?
- 9 A Eighteen.
- 10 Q All right. And you grew up and went to school here?
- 11 A Yes.
- 12 Q Where did you go to high school?
- 13 A Stratford High School.
- 14 Q All right. And where you working right now?
- 15 A At the Double Tree Guest Suits [sic] downtown
- 16 Charleston, off of Market Street.
- 17 Q Uh-huh. What do you do there?
- 18 A I'm a hostess/cashier.
- 19 Q And you've got a son now, right?
- 20 A Yes.
- 21 Q What's his name?
- 22 A Minor2
- 23 Q How old is Minor2
- 24 A Seven months.
- 25 Q And you were pregnant with Minor2 at the time when this

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1 incident happened, right?

2 A Yes.

3 Q Are you still living with your parents?

4 A Yes.

5 Q Back on August the 1st, the night we're going to talk
6 about, you were living with your parents there on Dutch
7 Fork?

8 A Yes.

9 Q And who else was staying there at the time?

10 A At the time, my cousin, Joe Alex, he was -- well, he
11 came from out of town and he stayed a couple of nights at
12 the house.

13 Q Uh-huh.

14 A But my cousin Chris Nelson, he was a resident at my
15 house at that time, too.

16 Q Okay. And did you know Dexter Perry?

17 A Yes.

18 Q How did you know him?

19 A As being Chris Nelson's best friend.

20 Q All right. Would he come by y'all's house from time
21 to time?

22 A Yes.

23 Q Did he ever have -- did he keep stuff there or ...

24 A No. He just come and chilling out. The usual --

25 Q Just hang out?

- 1 A Yeah.
- 2 Q Okay. Jermaine Hartwell, did you ever know him?
- 3 A No.
- 4 Q Gary Grant?
- 5 A No.
- 6 Q Kareem King?
- 7 A No.
- 8 Q Kerry Hollins?
- 9 A No.
- 10 Q Marquita Smith?
- 11 A No.
- 12 Q Ever would have given any of those folks permission to
- 13 come into the house?
- 14 A No.
- 15 Q All right. You're seeing this diagram of y'all's
- 16 house?
- 17 A Yes.
- 18 Q That's the front door there?
- 19 A Yes.
- 20 Q And you come in and you go down the hall, who stayed
- 21 in this back bedroom?
- 22 A Joe Alex -- well, that's where Chris is -- that was
- 23 Chris's room that we let him stay in.
- 24 Q And this is where the road is in the neighborhood?
- 25 A Yes.

- 1 Q And the bathroom's right here?
- 2 A Yes.
- 3 Q And whose room was this?
- 4 A Mine's.
- 5 Q And then that's the livingroom?
- 6 A Yes.
- 7 Q And the kitchen?
- 8 A Yes.
- 9 Q And whose bedroom was back here?
- 10 A My mom's.
- 11 Q Now, were you home that night on August the 1st?
- 12 A Yes.
- 13 Q And what time did you go to sleep?
- 14 A Say around 11 -- 11 -- close to 12, but around 11.
- 15 Q All right. In this -- in this bedroom?
- 16 A Yes.
- 17 Q And were you working at the time?
- 18 A No.
- 19 Q Okay. You were still in school?
- 20 A Yes.
- 21 Q When you went to sleep, who was -- who was home?
- 22 A When I went to sleep, my mom, my dad, and my cousin
- 23 Joe Alex was home.
- 24 Q Okay.
- 25 A And myself.

1 Q And can you explain to the jury what -- what you heard
2 when you were in your room?

3 A Yes. On that night I was -- the whole time, really,
4 while I was pregnant I just really didn't get a good night
5 to rest. So -- but that night I was in my room and I heard
6 the door swing open and hit the wall. And the way our
7 house is set up, when the door swings open my door, it --
8 my room is the -- the room like right behind the door. And
9 it got to hit the wall. It don't swing, like, into the
10 hallway. So that woke me up when it hit against my room
11 door -- my -- my room -- the wall in my room.

12 Q And that -- when you say "door," you're talking about
13 the front door?

14 A Uh-huh.

15 Q What kind of noise did it make?

16 A A loud banging noise, like, "boom." And that's when -
17 --

18 Q Was it like the door had been opened softly?

19 A Uh-huh. No.

20 Q Or loudly?

21 A And then I heard like the rattling of the -- the
22 screen door and it just sounded rough. But I really didn't
23 know what was going on at that time, so it didn't really
24 register until I started hearing, "Get on the floor. Get
25 on the floor," this and that. And it really didn't

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1 register right then because I never heard nothing like that
2 before. I'm not used to nothing like that. And it really
3 started dawning on me when I heard my dad say, "What's
4 going on," and this and that, and they said, "Get on the
5 floor." And my dad -- well, they said get on the floor so
6 that's -- that's what I heard.

7 And then I heard Dexter's voice, and he was, "Ah, ah,
8 ah, man. Ah, man," you know, like he was hurt. And then I
9 just heard fellows in the house, "Where's it at? Where's
10 it at?" And I'm like, What's going on, you know? It
11 really didn't -- it started dawning on me, but I was so
12 scared at the same time that I didn't know how to react,
13 you know?

14 And then I heard fellows going down the hallway and I
15 heard my cousin, Joe Alex, he was like, "What -- what,"
16 like, "what the so and so." And this and that and I heard
17 him, "Ah." So I figured something had happened to him too.

18 So then I heard the people -- I heard somebody in the
19 front room questioning Dexter, "Where's it at? Where's it
20 at?" Then he says, "Look in the wall. Look in wall. Tear
21 up the wall. It's in there." He says, "Look in the wall."

22 So when the guy, I guess, was talking to -- trying to
23 holler down the hallway to whoever was in the back room,
24 you know, "Tear up the wall. Tear up the wall." "I don't
25 see it. I don't see it. Drag him back here."

1 So I heard some, like, a dragging noise and I heard
2 footsteps, like, at least two people -- I know at least two
3 people was going down the hallway because I heard different
4 voices, different pattern in the footsteps going towards
5 the backroom.

6 And then Dexter was yelling, "It's in the wall. It's
7 in the wall. Tear up the wall. Tear up the wall."

8 After that they didn't find what they wanted and I
9 heard -- they came back down the hallway and they were
10 tussling, bumping from side-to-side because the hallway is
11 not too big. It's a trailer. And they bumped against my
12 door and my door popped open, so -- it didn't like fly
13 open, it popped open. It was like "ding." You know,
14 popped open and they still didn't come in. They kept
15 moving going to the front, going to the front and that's
16 when they asked my dad, "Who all living here?"

17 My dad said, "My baby girl is in the middle room and
18 my wife's back there in the back room."

19 So then that's when they called for my mom to come
20 out. And I heard my mom say, "All right. Give me a
21 minute. Let me crank up my knees."

22 And they were like, "Uh-uh. Bring your so and so out
23 here," you know.

24 And then after that, well, I could hear my mom really
25 like the -- I could hear my mom coming from out of the

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1 room, like she was making it towards the -- the kitchen,
2 you know, coming from in the back -- way in the back. I
3 could hear her moving up and I could hear my dad tell her,
4 "Sit there. Do whatever they say. Just sit at the kitchen
5 table and do whatever they say."

6 And then they asked my mom the same question, "Who all
7 in this house?" And my mom said, "My baby girl's back
8 there in the room pregnant, in the middle room; and my
9 nephew is here and my -- and my husband."

10 So then after that, I heard Dexter, "Man, y'all want
11 to do this to me? You done hit me more than one time."
12 Then somebody said, "Well, I'll hit you again." So they
13 hit him again. I could hear somebody hitting him again.

14 And he was, "Ah, ah." And then, "Ah, man."

15 And then after that -- after that I heard my mom say,
16 "Please don't shoot me. Please don't shoot me." And like
17 right after that, I heard the gunshots in the house. And I
18 assumed that they done shot my mom because I didn't hear
19 her voice anymore. I didn't even hear -- all I heard was
20 gunshots going off.

21 So then I done panicked -- I -- I done panicked. I
22 done got out of my bed and I threw the quickest pair of
23 pants I could find on and I shoed out the room. And on the
24 way I seen glass on the -- like -- like, at the screen
25 door. I -- I took it came from the screen door. I really

1 wasn't in the motion, but I seen glass like right in front
2 of the door. And I seen my mom laying between -- well, I
3 passed my dad and he was getting up off the floor in the
4 front room. Then I seen my mom laying in between the dryer
5 and the washer and the wall and I said, "Mom, you okay?
6 You okay? Are you shot? Are you shot?" "No, I'm okay.
7 I'm okay."

8 And then that's when I went in the room. I peeped
9 around the corner, and I seen -- and I seen Dexter laying
10 there. And I seen a bullet in his leg -- well, like, you
11 know, a gash wound like that he had been shot in his leg.
12 And I seen him coming from underneath the bed like he was
13 trying to swim underneath the bed. But my mom -- the way
14 my mom's bed is -- is set up is that -- is that -- is books
15 holding it up. So it looked like he was trying to get
16 underneath the bed from -- from as much as I could tell.
17 And he -- he -- he was moving, and at that time I was like,
18 "Kuk, Kuk." That's what we called him. I was like,
19 "Dexter. Dexter," you know, "You okay? You okay?" And he
20 -- he flipped himself over and then he -- I said -- I was
21 nervous, "Dad, Dad. Mom," you know, "He's shot. He's
22 shot."

23 And that's when we were like, "Amber, call 9-1-1." So
24 then that's when I went like, "Okay." And I ran -- well,
25 walked quickly to the kitchen and my mom, she had got

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1 herself up and she was already on the telephone dialing 9-

2 1-1.

3 And from there I went back and forth from the room and
4 my dad went back there and attend to him. And he was,
5 "Odoner, Odoner, it's hot. It's hot, Odoner. It's hot."
6 And he was wheezing. And -- and then he wanted to get up
7 to go on the bed, so my dad and -- I don't really -- I know
8 my dad helped him up. I don't really -- it was going so
9 fast. I don't really remember too many other faces, but I
10 know my dad helped him get up on the bed. And from there
11 he was -- he called and he was like, "Who did this to you?
12 Who did this to you?" You know, "Hot. Hot." This and
13 that. He called out the name, "Manny." And I didn't know
14 who that was, but you know, it stucked [sic] in my mind
15 because that's who -- that's who he said did it.

16 Q Uh-huh.

17 A And after that the -- after that, family members
18 starting coming to the house and like, a couple of minutes
19 after that that's when the police and ambulance showed up
20 and it went fast after that.

21 And from there I went on the porch, walking back and
22 forth trying to calm myself down, because I was in my room,
23 you know. I was scared for my life because I was pregnant
24 with my -- my first -- well, my only child. I was pregnant
25 with him, like three months pregnant with him. So I had to

1 try to keep myself as calm as I could, because you know, I
2 didn't want to lose him. And that's really -- what really
3 all happened that night.

4 As far as the gunshots, I could say maybe I heard
5 "pow, pow, pow, pow." So I say maybe four --

6 Q Uh-huh.

7 A -- four gunshots went off. And that's really all that
8 happened that night.

9 Q When you were in your bedroom, was the door opened or
10 closed?

11 A It was closed.

12 Q Okay. So everything that you perceived that night was
13 what you were hearing?

14 A Uh-huh.

15 Q You heard the door slam open?

16 A Uh-huh.

17 Q And did you hear people come in? How would you
18 describe their voices? How were they talking?

19 A Rough. They didn't, like, scream. They didn't want
20 the neighborhood to hear. They was more like -- like a
21 deep -- deep kind of rough. I really can't -- it wasn't --
22 wasn't normal. It wasn't normal like how I'm talking to
23 you now. It wasn't like that. It was, "Get your -- get --
24 get on the floor now." Sort of kind of rough. It was
25 rough. The -- the way he was talking, Dexter was like, you

1 could tell he was scared, you know, stuttering and
2 everything.

3 And I could tell something was wrong, but I didn't
4 want to come out of my room. I didn't know what to do. I
5 was -- I didn't know what to do, you know?

6 Q Could you hear your dad talking?

7 A Yes. I heard somebody told my dad -- when they told
8 him to get on the floor, I heard the guy tell my dad, "If
9 you -- if you look at me again I'm going to blow your
10 brains out." I heard that.

11 All I really was worried after that was -- the only
12 thing I heard from my mom was, "Please don't shoot me."
13 You know, "My daughter's in the room," and besides, "Let me
14 get my legs cranked up." That's all I heard from her.

15 Q Uh-huh. So you heard somebody tell your dad, "Don't
16 look at me again or I'm going to blow your brains out"?

17 A Uh-huh. Yes.

18 Q You were talking about hearing people walking down the
19 hall. This is the hall you were talking about?

20 A Yes.

21 Q And when you were talking about them going into
22 another bedroom, you were talking about Joe Alex and
23 Chris's room?

24 A Yes.

25 Q And they would have been walking right past the door

1 to your room?

2 A Yes.

3 Q And where your dad was and the conversations in the
4 livingroom were just on the other side of -- of the wall --
5 -

6 A Of the wall.

7 Q --- to your room?

8 A Yes.

9 Q And so you didn't have any problem hearing what was
10 going on in there?

11 A No.

12 Q And I think as they come out of that back bedroom,
13 somebody bumps in and sort of knocks your door ajar?

14 A Uh-huh.

15 Q But you still didn't come out of your room, right?

16 A Uh-uh.

17 Q So did you ever -- during the whole time, other than
18 what you heard, did you ever hear any of these people that
19 came into the house with guns? Did you ever see them?

20 A No. I couldn't tell who it was, and you know.

21 Q You just heard what was going on?

22 A Yes.

23 Q Okay. And then when you heard -- when you heard the
24 gunshots, then after that, that's when you came running out
25 of your room?

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1 A Yes.

2 Q Okay. And so Ms. Birdie was here on the kitchen
3 floor?

4 A No. Go over, like, towards the dryer and the washer.

5 Q Okay.

6 A Like right -- laying right in between that.

7 Q Okay. And you found Kuk, as you call Dexter ---

8 A Uh-huh.

9 Q --- was back -- back here in the bedroom?

10 A Uh-huh.

11 THE COURT REPORTER: Is that a "yes"?

12 A Yes.

13 Q Show you -- and you've seen these pictures?

14 A Yes.

15 Q And they're difficult for you to look at. State's
16 Exhibit 27, you've seen that photograph?

17 A Yes.

18 Q And what does that show?

19 A Kuku blood and where he was laying at.

20 Q That's where you first saw him?

21 A Uh-huh.

22 MR. BARNWELL: Your Honor, is that already in
23 evidence?

24 MR. JENNINGS: No. I'm about to.

25 THE COURT: Could you please show them to counsel.

DIRECT EXAMINATION BY MR. JENNINGS / AMBER COBBS

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1 MR. JENNINGS: I will.

2 (Sotto voce discussion between Mr. Jennings and the
3 court reporter.)

4 (Sotto voce discussion between Mr. Jennings and
5 Defense counsel.)

6 MR. JENNINGS: Your Honor, we would --

7 DIRECT EXAMINATION BY MR. JENNINGS:

8 Q Does this, State's Exhibit 27, fairly and accurately
9 depict how the floor looked after Dexter was shot?

10 A Yes.

11 THE COURT: Any objection?

12 MR. JONES: None.

13 MR. BARNWELL: None.

14 MR. BOLUS: No objection.

15 THE COURT: Marked and admitted without objection.

16 (Marked State's Exhibit 27, photograph.)

17 DIRECT EXAMINATION BY MR. JENNINGS:

18 Q That's your mom and dad's bed?

19 A Yes.

20 Q And this is where Dexter was lying when you went in
21 the room?

22 A Uh-huh.

23 Q And that's his blood on the floor?

24 A Uh-huh.

25 Q And y'all -- you and -- show you State's Exhibit 28.

DIRECT EXAMINATION BY MR. JENNINGS / AMBER COBBS Page 367

1 You and your dad helped -- moved him up onto the bed?

2 A Yes. My dad. I - I didn't touch him.

3 Q And while -- while Dexter was in there, who did he
4 tell y'all was one of the people responsible for this?

5 A Manny.

6 Q And you didn't know -- you didn't know any of these
7 people that were involved, did you?

8 A No.

9 Q Okay.

10 MR. JONES: Thank you, Amber. Please answer any
11 questions of the defense attorneys.

12 THE COURT: Mr. Bolus?

13 MR. BOLUS: No questions.

14 THE COURT: Mr. Barnwell?

15 MR. BARNWELL: No questions.

16 THE COURT: Mr. Jones?

17 MR. JONES: None, Your Honor.

18 THE COURT: Any objection to the witness being excused
19 from the State?

20 MR. JENNINGS: None, Your Honor.

21 THE COURT: From the Defense?

22 MR. BOLUS: None.

23 MR. BARNWELL: None, Your Honor.

24 THE COURT: Mr. Jones?

25 MR. JONES: No, Your Honor.

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1 THE COURT: Ma'am, you're excused.

2 Can counsel approach for me, please?

3 (Bench conference.)

4 MR. JENNINGS: The State calls Deputy McElvogue.

5 THE COURT: Ladies and gentlemen, we're going a little
6 beyond the five o'clock hour. I do not anticipate that we
7 will go beyond six o'clock. I have some concerns about our
8 ability to finish this case so that we will not have to
9 hold you over the holiday weekend. And so if anybody needs
10 to -- does anyone need to make calls for children or
11 otherwise to their family, or is everyone fine?

12 (No audible response.)

13 THE COURT: You may continue, Mr. Jennings.

14 J.D. McELVOGUE, having been first
15 duly sworn, testifies as follows:

16 COURT OFFICER: State your name and spell your for
17 full name for the record.

18 WITNESS: Clifford McElvogue. C-l-i-f-f-o-r-d,
19 McElvogue, M-c-e-l-v-o-g-u-e.

20 THE COURT: You may proceed.

21 MR. JENNINGS: Thank you, Your Honor.

22 DIRECT EXAMINATION BY MR. JENNINGS:

23 Q Deputy McElvogue, where are you employed, sir?

24 A The Berkeley County Sheriff's office.

25 Q In what capacity?

DIRECT EXAMINATION BY MR. JENNINGS / J.D. McELVOUGE Page 369

1 A Excuse me?

2 Q What capacity?

3 A Deputy sheriff.

4 Q How long have you been with the sheriff's department?

5 A Approximately four years.

6 Q And in August of 2006, you were with the sheriff's
7 department?

8 A Yes, sir.

9 Q And how -- at that time, would you have been assigned
10 to a particular shift to work?

11 A Yes, sir. I was employed with the K-9 unit, assigned
12 to normal night shift.

13 Q And what time does the night shift begin?

14 A It begins 5:30 in the afternoon until 5:30 in the
15 morning.

16 Q And were you on duty on the 1st, which would have
17 carried into the 2nd of August?

18 A Yes, sir.

19 Q About -- on the -- about 1:30, I guess, on the morning
20 of August 2nd, were you dispatched to a call at [REDACTED] Snow
21 Goose Circle?

22 A I was not dispatched, but I responded.

23 Q Okay. And what was the call that deputies were asked
24 to respond to?

25 A It was possibly in reference to a possible kidnapping

DIRECT EXAMINATION BY MR. JENNINGS / J.D. McELVOUGE Page 370
1 and abduction.

2 Q And did you go to that residence?

3 A Yes, sir.

4 Q Okay. And then while -- while y'all were on the scene
5 there, did you then receive another call to another
6 residence?

7 A Yes, sir. Approximately five minutes after getting to
8 Snow Goose, we received the -- the call for Dutch Fork.

9 Q Okay. And who responded over at Dutch Fork?

10 A It was myself, Danny Jones -- he had a ride along,
11 Scott Hurly with him -- and several other units.

12 Q Okay. Who got to that -- to the residence at Dutch
13 Fork first?

14 A Me and Deputy Jones arrived pretty much the same time
15 and we entered the residence at the same time.

16 Q And so going from Snow Goose Circle -- which is down
17 in Goose Creek?

18 A Yes, sir.

19 Q How long would it take you to get up to Dutch Fork
20 Road?

21 A Due to the severity of the call, we got there
22 approximately seven to eight minutes.

23 Q And that would have been with blue lights and sirens?

24 A Yes, sir.

25 Q And in the middle of the night there was relatively

DIRECT EXAMINATION BY MR. JENNINGS / J.D. McELVOUGE Page 371
1 little traffic.

2 A There was little traffic, yes, sir.

3 Q And how would you -- what was the quickest way that
4 you went to get there?

5 A Due to not knowing whether the vehicle left, Danny
6 Jones took Saint James down Crowfield through College Park,
7 and I took Saint James to 52 to 78, and come through the
8 Charleston County area.

9 Q Okay. But 70 -- I mean, Dutch Fork is in Berkeley
10 County?

11 A Yes, sir.

12 Q Explain to the jury what you found when you got to
13 Dutch Fork. Did you go into the residence?

14 A Yes, sir. We had several -- appeared to be family
15 members or people that were inside the residence, and very
16 ecstatic. They pointed us to the back bedroom where the
17 victim was laying on the bed. And when we got back there,
18 we observed him on the bed. He was -- he was talking to us
19 and we could tell he was hurt pretty bad.

20 Q Was he bleeding?

21 A Yes, sir.

22 Q And were you actually able to have a conversation with
23 him?

24 A Very brief. We asked him -- he was stating that he
25 didn't want to die and "Help us -- help me. Help me." We

DIRECT EXAMINATION BY MR. JENNINGS / J.D. McELVOUGE Page 372
1 advised him that the ambulance was on the way.

2 Due to him talking to us, we asked him, "Who shot
3 you," or "What happened?" And the only thing that we --
4 that I could gather was he said, "Manny did it. Manny did
5 it."

6 And at that time there was a lot of commotion outside.
7 A bunch of family members or friends in the area were
8 coming down towards the house. And while I was on the K-9
9 unit we needed to protect the crime scene. So I went
10 outside and got my dog and stood near the residence so
11 nobody could contaminate the crime scene.

12 Q So you had the crime scene secure?

13 A Yes, sir.

14 Q And -- but based on your conversation with Dexter
15 Perry he told you that Manny was involved?

16 A Yes, sir. He said Manny was there and Manny did it.

17 Q By the time you arrived were any suspects there?

18 A No, sir. Everybody was gone.

19 Q And you stayed there until EMS came?

20 A Yes, sir. I stayed there approximately an hour and a
21 half/two hours.

22 Q And who was -- who was the crime scene ultimately
23 turned over to?

24 A I believe the detectives responded. There was some
25 people in North Charleston helped us, and -- but I was

CROSS-EXAMINATION BY MR. JONES / J.D. McELVOGUE Page 373

1 mostly -- I don't who -- patrol units turned the scene
2 over, but my -- my main job was protecting the crime scene
3 with my K-9 dog.

4 Q Did you ultimately see Sergeant Merrithew?

5 A I don't recall. I believe he was there later on, but
6 I don't recall right at the time seeing him.

7 MR. JENNINGS: Thank you, Your Honor. That's all the
8 questions I have.

9 MR. BOLUS: No questions.

10 THE COURT: Mr. Barnwell?

11 MR. BARNWELL: May I approach?

12 (Bench conference.)

13 THE COURT: Mr. Barnwell, do you have any questions of
14 the witness?

15 MR. BARNWELL: I don't have any questions of this
16 witness.

17 THE COURT: Mr. Jones?

18 MR. JONES: Just one.

19 THE COURT: You may proceed.

20 CROSS-EXAMINATION BY MR. JONES:

21 Q You were at Snow Goose and went to -- to the Dutch
22 Fork Residence. You said it took about seven to eight
23 minutes now, but really, y'all were running code?

24 A Yes, sir.

25 MR. JONES: Nothing further, Your Honor.

1 THE COURT: Any redirect of the witness?

2 MR. JENNINGS: No, Your Honor.

3 THE COURT: Any objection to the witness being
4 excused?

5 MR. BOLUS: None.

6 MR. BARNWELL: None, Your Honor.

7 MR. JONES: None, Your Honor.

8 THE COURT: Any objection from the State to the
9 witness being excused?

10 MR. JENNINGS: No, Your Honor.

11 THE COURT: Sir, you're excused.

12 You may call your next witness.

13 MS. WILSON: Beg the court's indulgence?

14 THE COURT: Uh-huh.

15 MR. JENNINGS: May we approach, Your Honor.

16 THE COURT: You may.

17 (Bench conference.)

18 THE COURT: Mr. Foreman, ladies and gentlemen, we're
19 going to take advantage of this break in testimony to take
20 our evening recess. During the break, please do not
21 discuss this case among yourselves or with anyone else.

22 I am almost certain that on the six o'clock news there
23 will probably be a blurb regarding the case. I would ask -
24 - as well as the 11 o'clock news. As I indicated, we have
25 media present today and I would assume that all three

1 channels are covering this trial. So I would ask that you
2 take special attention to make sure that you are not
3 exposed to any media coverage about this case since you
4 know in advance that it will probably be televised as well
5 as on the radio, and probably in the morning there will be
6 -- I saw a reporter from the *Post and Courier*, so I'm
7 almost certain that there will probably -- may be some
8 coverage about the matter in the morning paper. So I would
9 ask that you take special precaution to make sure that you
10 are not exposed to any media accounts about this case.

11 As I have indicated, you are the fact finders in this
12 case. It is a very serious matter and it is essential that
13 you remain fair and impartial, uninfluenced by anything
14 outside of the evidence in this case.

15 I would ask that you return in the morning at 9:30,
16 and you return directly to your jury room.

17 Please don't have any contact with anybody in or about
18 the courthouse. There are many witnesses that remain, and
19 of course, you will not know those persons or individuals
20 are, and you may well be having an innocent conversation.
21 But someone observing it might be thinking that you may be
22 having some inappropriate conversation about facts and
23 circumstances of this case. That is why we ask that you
24 strictly abide by that admonition.

25 I hope that you all have a restful evening. Please

1 leave your notepads in your seats, and please don't do any
2 independent research of any type regarding any issue or
3 matter involved in this case on the Internet.

4 We'll see you in the morning at 9:30, and everybody,
5 I'm sure, will be bright and refreshed at that time. If
6 you will go with your caretakers.

7 Everyone in the gallery, you will remain in place.

8 (The jury exits at 5:38 p.m.)

9 THE COURT: Will you please take your seats. I would
10 ask that everyone remain in place until such time that I'm
11 assured that the jury has reached their destination. After
12 which everyone else will be escorted from the gallery.

13 (To the bailiff) Mr. Hutto, can you check for me and
14 see if the jury is already gone?

15 MR. HUTTO: No. I've got one juror left who needs
16 something for her employer.

17 THE COURT: All right. We'll take care of that.

18 And if you all would make sure that my instructions
19 are followed regarding everyone at the courthouse.

20 We're in recess. I'll see you all at 9:30 in the
21 morning.

22 MR. JENNINGS: Your Honor, could we place one thing on
23 the record?

24 THE COURT: Yes, sure.

25 MR. JENNINGS: In certain statements that we've

1 alleged that Dexter Perry made --

2 THE COURT: Order.

3 MR. JENNINGS: -- just so that the record is clear,
4 and I think -- think we are clear based on Your Honor's
5 ruling, that the State has been operating under the belief
6 that those statements would be admissible.

7 THE COURT: I'm sorry. I need you to start over again
8 because there was too much noise going on and I didn't hear
9 what you said originally. Start over for me, please.

10 MR. JENNINGS: The statements that have been
11 attributed to Mr. Perry --

12 THE COURT: Are you talking about dying declaration?

13 MR. JENNINGS: Yes. And I was just going to place on
14 the record that we -- our claim would be that they were
15 excited utterances and/or dying declaration based on the
16 evidence that has come in as to his condition at the time
17 that he made those statements.

18 THE COURT: There's only been one contemporaneous
19 objection made regarding the statements. I ruled at that
20 time that -- Mr. Barnwell made an objection that the
21 statement was hearsay, and I overruled the objection based
22 on the fact that it could be viewed as an excited
23 utterance, that the appropriate foundation was laid as a
24 dying declaration. But I think certainly in the most
25 liberal sense they were excited utterances and would be an

1 exception to the hearsay rule, and I overruled Mr.
2 Barnwell's objection.

3 Prior to asking if he had any questions for Amber Cobb
4 -- I believe that is her name and I don't want to be
5 inaccurate, Cobbs -- I asked if he had any cross-
6 examination of the witness. He indicated that he wanted to
7 approach and he indicated he had a continuing objection to
8 statements attributed to Mr. Perry. And I again indicated
9 that while I do not allow speaking objections, that parties
10 should make contemporaneous objections, but simply be
11 succinct in their statement of their objection for the
12 record. And Mr. Barnwell indicated that he had a
13 continuing objection and I overruled the objection citing
14 that it was an excited utterance.

15 MR. BARNWELL: Your Honor, I didn't want to waste the
16 court's time, but ---

17 THE COURT: Certainly. I would not take it that way.

18 MR. BARNWELL: I objected over and over, but you had
19 already ruled on that and you would have made the same --
20 made the same ruling.

21 THE COURT: Exactly, and I'm not -- I'm not -- please
22 don't take my comments as criticism. It was not. I just
23 wanted to make sure everybody was clear as to my
24 instructions that certainly speaking objections do not
25 prohibit you from making contemporaneous objections. I

1 just want to make sure everybody was clear.

2 Anything else before we break -- (sneezes) excuse me -
3 - break for the evening?

4 MR. JENNINGS: Nothing from the State.

5 THE COURT: Anything from Defense?

6 MR. BOLUS: No.

7 MR. BARNWELL: (Shakes head back and forth.)

8 MR. JONES: No.

9 THE COURT: And I would ask that any assistance that
10 you all need with your clients being prepared in terms of
11 their grooming for court, that the Sheriff's staff would
12 assist you. And please make sure that their families have
13 their items here in enough time so that they can be dressed
14 out for court. Okay?

15 Thanks, guys. Y'all have good evening. See you in
16 the morning.

17 AUGUST 29, 2007; DAY 3

18 THE COURT: Is the State ready to proceed?

19 MR. JENNINGS: Yes, Your Honor.

20 THE COURT: Is the Defense ready to proceed, Mr.
21 Bolus?

22 MR. BOLUS: Yes, Your Honor.

23 THE COURT: Mr. Barnwell?

24 MR. BARNWELL: Yes.

25 THE COURT: Mr. Jones?

DIRECT EXAMINATION BY MS. WISON / DR. KIM COLLINS Page 380

1 MR. JONES: Yes, Your Honor.

2 THE COURT: Anything before we bring in the jury?

3 MR. JENNINGS: Nothing from the State.

4 MR. BOLUS: Nothing.

5 MR. BARNWELL: Nothing.

6 THE COURT: Mr. Jones?

7 MR. JONES: Nothing, Your Honor

8 THE COURT: Please bring in the jury. Who is the
9 first State witness going to be? Do we have that person --

10 -

11 MS. WILSON: Kim Collins.

12 THE COURT: Who?

13 MS. WILSON: Dr. Kim Collins.

14 THE COURT: Can we have her ready, please?

15 MS. WILSON: She's right here.

16 THE COURT: Okay.

17 (The jury enters at 9:43 a.m.)

18 THE COURT: You may be seated.

19 MS. WILSON: The State calls Dr. Kim Collins.

20 DR. KIM COLLINS, having been first
21 duly sworn, testifies as follows:

22 COURT OFFICER: Please be seated and state and spell
23 your name for the record.

24 DR. COLLINS: Dr. Kimberly Ann Collins, C-o-l-l-i-n-s.

25 MS. WILSON: Your Honor, did you have anything? May I

DIRECT EXAMINATION BY MS. WILSON / DR. KIM COLLINS Page 381
1 approach?

2 THE COURT: Uh-huh.

3 (Bench conference.)

4 THE COURT: You may proceed.

5 DIRECT EXAMINATION BY MS. WILSON:

6 Q Good morning, Dr. Collins. How are you?

7 A Good morning. Fine, thank you.

8 Q Tell the jury where you practice medicine.

9 A I practice medicine as a forensic pathologist at the
10 Medical University of South Carolina in Charleston.

11 Q And can you tell the jury what kind of educational
12 background you have.

13 A I went to college and received my undergraduate degree
14 in microbiology at the University of Georgia. After
15 college I went to medical school for four years for my
16 M.D., and that was at the medical college of Georgia.
17 Following medical school, I completed a combined anatomical
18 clinical pathology residency for five years at Bowman-Gray
19 School of Medicine which is now known as Wake Forest
20 University School of Medicine. Following my residency, I
21 completed a forensic pathology fellowship at the Medical
22 University of South Carolina and I remained on staff in the
23 department of pathology and laboratory medicine. And
24 currently, I'm a professor of pathology and laboratory
25 medicine at MUSC.

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1 Q Explain to the jury what it means to be a pathologist.

2 A A pathologist is a medical doctor and I'm sure that
3 most or probably everyone's been treated by a pathologist.
4 Anytime you've had blood drawn, given a urine sample, or
5 Rapid Strep throat test or biopsy, any type of cancer,
6 infection, you were diagnosed by and treated by through
7 consultation with your physician by a pathologist. After
8 pathology training, if an individual wants to study
9 unnatural or suspicious death or trauma, then you can
10 specialize in an area called "forensic pathology" that
11 deals with medical and legal death investigation or trauma
12 investigation.

13 Q So within the field of pathology, you have a specialty
14 of forensic pathology?

15 A Yes. And that would be what they call "sub-
16 specialty."

17 Q And are you a member of any professional organizations
18 relating to that?

19 A Yes. I'm a member of the College of American
20 Pathologist where I'm the national chair of the autopsy
21 committee. I'm also a member of the National Association
22 of Medical Examiners and the American Academy of Forensic
23 Pathologists or Forensic Sciences. And there are other
24 organizations local such as the South Carolina Society of
25 Pathologists, and I'm past president of that. And then you

DIRECT EXAMINATION BY MS. WILSON / DR. KIM COLLINS Page 383
1 can expand out to national and then international

2 organizations such as the International Academy of
3 Pathology, and I'm the forensic director for that
4 organization.

5 Q How many autopsies, if you could just estimate, have
6 you performed?

7 A Approximately 2500/2800.

8 Q And have you been qualified before in a court of law
9 to testify as an expert in forensic pathology?

10 A Yes, I have.

11 Q And you know about how many times you've done that?

12 A Approximately 200 times.

13 MS. WILSON: Your Honor, at this time we'd offer Dr.
14 Collins as an expert in forensic pathology.

15 THE COURT: Any objections or questions, Mr. Bolus?

16 MR. BOLUS: No.

17 THE COURT: Mr. Barnwell?

18 MR. BARNWELL: No, Your Honor.

19 THE COURT: Mr. Jones?

20 MR. JONES: No.

21 THE COURT: So admitted. You may proceed.

22 MS. WILSON: Thank you, Your Honor.

23 THE COURT: You're welcome.

24 DIRECT EXAMINATION BY MS. WILSON:

25 Q Dr. Collins, before we get into the facts of this

DIRECT EXAMINATION BY MS. WILSON / DR. KIM COLLINS Page 384
1 specific case, can you explain to the jury how it is that

2 you actually day-to-day come to perform an autopsy.

3 A Yes. If you have a medical legal autopsy, such --

4 that's a forensic autopsy, there are really are not that

5 many forensic pathologists in the country. And we have a

6 center at MUSC as well as there is a forensic pathologist

7 in Newberry. There's one in Myrtle Beach and one in

8 Greenville. So we have a coroner system. We don't have a

9 medical examiner system in South Carolina. So we have 46

10 counties, one coroner per county. And whenever there is an

11 unexplained or unnatural death, then it is up to the

12 coroner to decide whether or not an autopsy will take

13 place. And at that time, he or she will then call a

14 forensic pathologist to perform the autopsy.

15 So at this time, we were notified in this case by the

16 Berkeley County coroner, and it was the Deputy Coroner Sam

17 Tanner. And we perform all of Berkeley County's forensic

18 cases, as well as many other counties, especially the low

19 country. And so those counties will send their cases to

20 MUSC in Charleston to investigate and to perform the

21 autopsy.

22 Q So on August the 2nd of 2006, did you have occasion to
23 perform an autopsy on Dexter Perry?

24 A Yes. The body was transported to MUSC and we started
25 the examination on the 2nd at 9:45 in the morning.

DIRECT EXAMINATION BY MS. WILSON / DR. KIM COLLINS Page 385

1 Q Based on your examination of Dexter Perry's body, do
2 you have an opinion to a reasonable degree of medical
3 certainty as to the manner and the cause of his death?

4 A The cause of death is that event or events which
5 ultimately resulted in his demise and his death. The
6 manner of death is something different. There are five
7 manners of death. There's natural, that the death is a
8 natural process of just cancer, leukemia, heart attack.
9 There's suicide, there's accident, there's homicide, and
10 there's undetermined. And undetermined is used when you
11 just don't have enough information, such as you have
12 skeletal remains that are discovered and you really don't
13 know why the individual died. And so undetermined is not a
14 manner that's used very often.

15 In this case, we determined that the manner of death
16 was a homicide. The cause of death, the reason that Dexter
17 Perry died is that he had tears or perforations of his
18 inferior vena cava, which is the largest vein in the body,
19 as well as perforations of the blood vessels that are in
20 his left axilla, or his left armpit area. These are some
21 large blood vessels. And he had tears to these areas
22 causing massive bleeding, and these tears were due to two
23 gunshot wounds to his trunk area, specifically going into
24 the back.

25 Q Before we get into those gunshot wounds, let me ask

DIRECT EXAMINATION BY MS. WILSON / DR. KIM COLLINS Page 386

1 you: As part of your forensic autopsy, did you also have
2 toxicology tests performed on Mr. Perry?

3 A Yes. On all of our cases we do a complete autopsy,
4 meaning external examination, internal examination of all
5 the organs, regardless of what the cause of death is or is
6 suspected to be. We do microscopic examination of all the
7 organs and tissues, as well as on every single case we run
8 toxicology analysis. And this is looking at blood, urine,
9 or body tissues for drugs, alcohol, anything from aspirin
10 to cocaine. So everything is looked at or looked for in
11 every single case. And we did do toxicology in this case.

12 Q And what were the findings?

13 A Just one moment. In this case, Mr. Perry had received
14 medical attention and received fluids through an IV, and
15 therefore that would change the blood results. And so
16 blood was not a suitable specimen to analyze at this time.
17 So what we analyzed was the specimen that research has
18 shown correlates to the blood specimen very well, and it is
19 not diluted. And that would be the liver. And so we
20 examined the liver for drugs and alcohol, and we found that
21 there was no -- there were no drugs. The only drugs that
22 were present were the ones that were used to resuscitate
23 him near the time of death. There was an alcohol level
24 that was 92 milligrams per deciliter. And so that would be
25 like a 0.092.

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1 Q And did that finding of alcohol have any effect on
2 your opinion as to the cause or manner of death?

3 A No, it did not.

4 Q Okay. Now, getting back to the wounds that you
5 described, I'm going to show you what's been marked as
6 State's Exhibit 77.

7 A Yes.

8 Q And what is that?

9 A This is a -- a body diagram. We call this one "a
10 naked adult male body diagram." It's a cartoon. We use
11 this on all of our male adult cases. It shows the front of
12 the body and it shows the back of the body. And on these
13 diagrams we will mark where different findings are. Wounds
14 -- in this case, gunshot wounds, and some tears to the skin
15 of the -- the head.

16 Q Okay. Would you mind stepping down and let's going
17 over this with the jury?

18 MS. WILSON: Your Honor, at this time we'd offer
19 State's Exhibit 77, I believe, without objection.

20 MR. BOLUS: No objection.

21 MR. JONES: No objection.

22 MR. BARNWELL: No objection.

23 THE COURT: Mark and admitted without objection.

24 (Marked State's Exhibit No. 77, body diagram.)

25 Q I'm going to hand you a laser pointer, and if you

DIRECT EXAMINATION BY MS. WILSON / DR. KIM COLLINS Page 388

1 would -- if you could go through with the diagram and
2 explain to the jury your findings during the autopsy of Mr.
3 Perry.

4 A And I'm referring to my notes and I have my own
5 diagram similar to this. What we do when we get these
6 findings is we give them letters -- gunshot wound letters.
7 And so you can see the letters on the screen. We just
8 arbitrarily label "A" etc., "A,B,C,D." This has nothing to
9 do with the order of the wounds, and the reason we use
10 letters instead of numbers is that it could be confusing if
11 you had an A and a B, so you have two gunshot wounds that's
12 really an entrance and an exit. So it's actually one
13 gunshot, if you follow me. That's why we've got the
14 letters.

15 If we will just -- we can start from -- in order with
16 the letters. We arbitrarily gave the left hand -- the back
17 of the left hand as the letter "A." And this gunshot wound
18 was round and it went through the skin, the tissues of the
19 hand, the muscles of the hand, and it actually exited. And
20 when they exit, that is called "perforating" gunshot wound.
21 It exited at letter "B," so you have to look at the other
22 diagram for the front -- don't you -- okay. So if you look
23 at the other diagram, this is "B" and this is the middle of
24 the palm of his left hand.

25 Q Now, again the -- the fact that you started with "A"

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and numbered or lettered that as "A," you don't know

whether or not "A" was first or second or third?

A No.

Q That's just where you started with your examination?

A Exactly. But what I do know is that "A" goes to "B," not vice versa. Not "B" goes to "A." We can tell that by looking at the shape, the configuration, the changes in the skin of the defects. So we do know that "A" is the entrance; "B" is the exit.

Q Okay. What next?

A Okay. The next one -- I'd like to go -- would be "C." However, "C" is an exit, so let's go in order as the bullet travels. So let's look at "E."

"E" is beneath the left shoulder blade area, and "E" travels through the body to exit at "C." So left back to left front of the arm area. "E" goes through the skin and muscles of the left back. This is the bullet that travels forward and tears the vessels under the arm here. These are large vessels that feed the arm, and so it tore through the vessels of the left -- we call it "axilla" or "armpit area." It goes into his pectoralis muscle in the chest and it exits at "C."

Q Would -- would that have been a fatal wound?

A Yes. These can -- these gunshot wounds and destruction of the axillary vessels, the arm vessels, can

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1 be fatal. Yes.

2 This was also termed "perforated" because it exits.
3 There's not a bullet left behind. And again, we do know
4 that "E" was the entrance; "C" was the exit.

5 The next wound that we see is "D" on the back of the
6 right hand. This is "D." This wound -- the pathway is
7 skin, muscle of the right hand, and then we find bullet
8 number 1.

9 Q So you actually recovered the bullet?

10 A Recovered bullet number 1. We know that "D" is an
11 entrance wound because there is no exit. We recovered
12 bullet number 1. This type of bullet wound is called
13 "penetrating" because the bullet is still inside. So we
14 have the "penetrating" gunshot wound to the right hand --
15 back of the right hand.

16 The next wound that we see -- trying to go in order --
17 alphabetical order would be "F." "F" is to the right back.
18 "F" goes through the skin, the skeletal muscle of the right
19 back, and actually exits the right armpit side area. But
20 it does not go through any vital structures. This exit --
21 exits through "H." So "F" is the entrance; "H" is the
22 exit. Goes through skin and muscle. It does not hit any
23 blood vessels, etc. So this is another perforating gunshot
24 wound to the back.

25 And lastly we've got ---

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1 Q I don't think "G" is on there. Could you put "G" on
2 there?

3 A My mistake. I'll -- I'll -- I'll -- I will put "G" up
4 there. "G" is to the left lower back.

5 Q Okay. You said "G" was to the left lower back? Okay.

6 A The reason it's not up there is I did this for
7 clarification because mine has so many notes on it and it
8 gets very confusing. So I apologize.

9 "G" is to the left lower back region here.

10 Q Did the bullet that went in "G" exit anywhere?

11 A No. "G" goes into the skin, the muscle at the left
12 back, goes through the left kidney, goes through the
13 pancreas and the small intestine, through the spleen and
14 the stomach. Then it goes through the inferior vena cava -
15 - the large vein -- and into the esophagus, which is the
16 tube that you -- you swallow. And that is where we
17 recovered bullet number 2. So bullet number 2 was from "G"
18 entranceway here, the left lower back region. Goes upwards
19 into the esophagus area, and this was a fatal wound. And
20 this is a penetrating gunshot wound.

21 Q Okay. Now, outside of the gunshot wounds, did you see
22 any other evidence of trauma on Mr. Perry's body?

23 A Yes. On the head region, there's an area on his left
24 forehead, or top of the head, and then one on the left
25 front of the chin. And these were two lacerations. And a

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1 laceration is a tear in the skin from being hit with a hard
2 object or falling against a hard object. These are called
3 "lacerations." The one on the head was 0.8 or almost an
4 inch long here, and then there was one on the left part of
5 the chin, which is approximately 1/2 of an inch long.

6 Q You can have a seat. Thank you.

7 (Witness returns to seat.)

8 Q Now, those lacerations that you mentioned,
9 particularly the one on the head -- could that be
10 consistent with a blow with the butt of a gun?

11 A Yes. Any hard object. We call it "blunt force
12 trauma." It tore the skin and it caused hemorrhage
13 underneath the scalp region.

14 Q Now, you mentioned that you recovered two bullets.
15 Beg the Court's indulgence.

16 THE COURT: Uh-huh.

17 (Sotto voce discussion between Ms. Wilson and Defense
18 counsel.)

19 Q You mentioned that you recovered two bullets from Mr.
20 Perry. I'm going to show you State's Exhibits 53 and 54
21 and ask you if you recognize those items.

22 A Yes. These are two vials that we use in the autopsy
23 area. On one that reads "Bullet No. 1," it has the
24 decedent's name -- it has our FA number. "F" stands for
25 forensic and "A for autopsy; "06" for 2006; and "468" --

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1 that was the number of the autopsy. It has my name on it

2 and it says "Bullet No. 1, from right hand."

3 And the second container similarly labeled says,
4 "Bullet No. 2, from esophagus."

5 MS. WILSON: Your Honor, at this time we'd offer
6 State's Exhibits 53 and 54 ---

7 THE COURT: Any objection?

8 MS. WILSON: --- in evidence.

9 MR. BOLUS: None.

10 MR. BARNWELL: No objection.

11 MR. JONES: No objection.

12 THE COURT: Marked and admitted without objection.

13 (Marked State's Exhibit No. 53, Bullet No. 1, from
14 hand.)

15 (Marked State's Exhibit No. 54, Bullet No. 2, from
16 esophagus.)

17 Q Now, Dr. Collins, regarding all of these injuries, you
18 went over the entrance wounds and the exit wounds, is there
19 any way for you to know the exact position of the -- the
20 victim when he was shot?

21 A No.

22 Q Okay. Can you explain to the jury why you can't tell
23 that to a reasonable degree of medical certainty?

24 A The way that the wounds are described in the autopsy
25 report as far as direction -- when I say, "The direction is

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1 up, such as "G" goes up toward the esophagus," this is what
2 is termed "anatomic position" if you have the decedent
3 positioned like so. We cannot tell at autopsy whether the
4 person was sitting down, kneeling, lying on his side, etc.
5 Some scenarios are more consistent; some are very
6 inconsistent. But you cannot from the autopsy identify
7 exactly how the body was positioned, nor can you say how
8 the perpetrator was positioned.

9 Q Okay. So in other words, like, for instance, wound
10 "G" which went in right here, and I believe you recovered
11 the bullet somewhere up here (indicates) --

12 A Yes.

13 Q -- how the victim was positioned in relation to where
14 the gun was would affect all of that?

15 A Correct.

16 Q And there's no way for you to tell that just based on
17 the path of the bullet?

18 A That's correct.

19 Q Okay. But these wounds -- these entrance wounds --
20 all of them were from -- he was shot from the back, or in
21 the -- from behind?

22 A Yes.

23 Q Okay. All of the entrance wounds are on the backside
24 of his body?

25 A Yes.

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1 MS. WILSON: Beg the Court's indulgence.

2 Q That's all I have, Dr. Collins.

3 MR. BOLUS: No questions.

4 MR. BARNWELL: No questions.

5 MR. JONES: No questions.

6 THE COURT: Any objection to the doctor being excused?

7 From the State?

8 MS. WILSON: No, ma'am.

9 THE COURT: From the Defense?

10 MR. BOLUS: None.

11 MR. BARNWELL: No, Your Honor.

12 MR. JONES: No, Your Honor.

13 THE COURT: Doctor, you're excused.

14 DR. COLLINS: Thank you.

15 THE COURT: You're welcome.

16 MS. WILSON: Your Honor, we did offer State's 77,

17 didn't we?

18 THE COURT: Which is?

19 MS. WILSON: The diagram?

20 THE COURT: I believe it was marked and admitted

21 without objection.

22 You may call your next witness.

23 MR. JENNINGS: Thank you, Your Honor. May it please

24 the Court, the State calls Kerry Hollins.

25 **Kerry Hollins**, being first duly

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1 sworn, testified as follows:

2 DIRECT EXAMINATION BY MR. JENNINGS:

3 Q Good morning, Mr. Hollins. How old are you, sir?

4 A Twenty-one.

5 Q And you are currently in the Berkeley County Detention
6 Center?

7 A Yes, sir.

8 Q And you were charged with a number of offenses out of
9 this incident, correct?

10 A Yes, sir.

11 Q Now, you're charged with accessory before the fact to
12 armed robbery?

13 A Yes, sir.

14 Q Accessory before the fact to kidnaping?

15 A Yes, sir.

16 Q Accessory before the fact to burglary first?

17 A Yes, sir.

18 Q And accessory before the fact to murder?

19 A Yes, sir.

20 Q And you are represented by Ms. Kennedy from the public
21 defender's office?

22 A Yes, sir.

23 Q And in the conversations we've had -- we met one day
24 last week, correct?

25 A Yes, sir.

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1 Q And in the conversations we've had, we have not
2 discussed any resolution of your case?

3 A No, sir.

4 Q Okay. So as of right now, there's no deal in place?

5 A Right.

6 Q And when you and I spoke, my one instruction to you
7 was what?

8 A Tell the truth.

9 Q And is that what you intend to do?

10 A Yes, sir.

11 Q You have -- in addition to these charges, you've been
12 convicted in 2004 of a marijuana charge?

13 A Yes, sir.

14 Q Possession with intent to distribute?

15 A Yes, sir.

16 Q In August of 2006, where were you living?

17 A 1814 Redwood Street.

18 Q And what city is that in?

19 A North Charleston.

20 Q Who were you living with?

21 A My mama.

22 Q I'm going to talk to you about some people, and I want
23 you to let me know if you know them. Did you know a woman
24 named "Marquita Smith"?

25 A Yes, sir.

1 Q How did you know her?

2 A From being my girlfriend.

3 Q And how long was she your girlfriend?

4 A About 3 1/2 years.

5 Q In August of 2008, was she your girlfriend?

6 A No, sir. We done broke up.

7 Q And when did -- when had you broken up?

8 A About -- around April or May.

9 Q Of 2006?

10 A Yes, sir.

11 Q And do you see Ms. Smith in the courtroom today?

12 A Yes, sir.

13 Q Can you point her out to the jury, please?

14 A (Complies.)

15 Q Sitting at the end of the table?

16 A Yes, sir.

17 MR. JENNINGS: Your Honor, if the record will reflect
18 he identified Ms. Smith.

19 THE COURT: Let the record so indicate.

20 Q And did you know a gentleman by the name of "Gary
21 Grant"?

22 A Yes, sir.

23 Q And prior to August of 2006, I think you said you'd
24 known him a couple of months?

25 A Yes, sir.

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1 Q Do you see him in the courtroom?

2 A Yes, sir.

3 Q And if you could point him out for the jury, please.

4 A (Complies.)

5 Q Can you describe what he's wearing or where he's
6 sitting?

7 A In the middle with a black jacket and a white shirt.

8 Q Okay.

9 THE COURT: I'm still having difficulty hearing you.
10 I'm going to need you to speak directly into the microphone
11 ---

12 MR. JENNINGS: You need to speak up so everybody can
13 hear you.

14 THE COURT: --- and that chair does not move.

15 MR. JENNINGS: Okay?

16 A Black jacket and a white shirt.

17 Q Okay.

18 MR. JENNINGS: If the record -- the record can reflect
19 he's identified Mr. Grant, Your Honor.

20 THE COURT: Let the record so indicate.

21 Q And a fellow named "Jermaine Hartwell," did you know
22 him?

23 A Yes, sir.

24 Q How did you know Jermaine?

25 A From growing up together.

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1 Q And how long roughly had you known him?

2 A Half of my life.

3 Q Okay. Do you see him in the courtroom?

4 A Yes, sir.

5 Q And if you can point him out to the jury, please.

6 A (Complies.)

7 Q What's he wearing?

8 A Black shirt.

9 Q Sitting at the end of the table?

10 A Yes, sir.

11 THE COURT: Your Honor, if the record can reflect he's
12 identified Jermaine Hartwell.

13 THE COURT: Let the record so indicate.

14 Q Now what did you call Jermaine? Did you call him
15 "Jermaine" or some nickname?

16 (Sotto voce discussion between the Court and law
17 clerk.

18 A Manny.

19 Q Manny?

20 A Yes, sir.

21 Q Okay. Is that what he went by?

22 A Yes, sir.

23 Q And where was Mr. Hartwell from? What part of
24 Charleston?

25 A North Charleston.

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- 1 Q And a fellow named "Kareem King," did you know him?
- 2 A Yes, sir.
- 3 Q How long had you known Kareem?
- 4 A Half my life.
- 5 Q He was a friend of yours as well.
- 6 A Yes, sir.
- 7 Q And Dexter Perry, the victim in this case, did you
- 8 know Dexter?
- 9 A No, sir.
- 10 Q Okay. Did you -- had you ever met him before?
- 11 A No, sir.
- 12 Q Had you heard his name?
- 13 A No, sir.
- 14 Q The first time you head his name, who told it to you?
- 15 A Marquita.
- 16 Q Marquita Smith?
- 17 A Yes, sir.
- 18 Q In August of 2006, did you have a job?
- 19 A No, sir.
- 20 Q How did you make money?
- 21 A Hustling.
- 22 Q And what do you mean by "hustling"?
- 23 A Selling drugs.
- 24 Q Okay. What kind of drugs were you selling?
- 25 A Cocaine.

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1 Q Were any of your friends involved in that with you?

2 A Yes, sir.

3 Q Who was?

4 A Everybody.

5 Q And when you say "everybody," who -- who was involved?

6 A Jermaine ---

7 THE COURT: I'm going to need you to speak directly
8 into the microphone. I -- I -- Madam Court Reporter, are
9 you able to hear him clearly?

10 THE COURT REPORTER: Yes, ma'am.

11 THE COURT: I can't. It's muffled. I need you to
12 speak directly into the microphone, which means you can't
13 lean back in the chair. I need you to lean forward.

14 A Jermaine, Grant, and King.

15 Q And the three of you sold drugs together?

16 A Yes, sir.

17 Q Cocaine. Where -- where did y'all do this?

18 A North Charleston.

19 Q Okay. Any place in particular?

20 A On The Macon.

21 Q And what's "The Macon"?

22 A On Spruill Avenue.

23 Q That's an area of North Charleston?

24 A Yes, sir.

25 Q Did y'all -- I mean, did you do it out of your house

DIRECT EXAMINATION BY MR. JENNINGS / KERRY HOLLINS Page 403
1 or did you do it out of Manny's house or where'd you do it?

2 A A crackhead.

3 Q All right. And where was the crackhead's house?

4 A Clement Avenue.

5 Q And that's in "The Macon"?

6 A Yes, sir.

7 Q What had happened in August of -- of 2006? Well, tell
8 me how this -- how did this plan come about for this
9 incident that involved Dexter Perry?

10 A Marquita called me one day and was like, she "got a
11 lick" and ---

12 Q Now, tell me what's a "lick"?

13 A A robbery.

14 Q Okay. And when -- when you're going to do a lick,
15 what do you need to do a lick?

16 A Some type of weapon.

17 Q All right. Is there any confusion about that?

18 (Sotto voce discussion between the Court and law
19 clerk.)

20 A No, sir.

21 Q And a lick ---

22 MR. JONES: Your Honor, I -- I can't hear -- hear him.

23 THE COURT: It is very difficult to hear. I'm going
24 to need you to lean -- that chair doesn't move, and
25 unfortunately the acoustics in here are horrible. So I'm

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1 going to need you to speak directly into the microphone so
2 that Mr. Barnwell and Mr. Jones, as well as all the members
3 of the panel, can hear what you're saying.

4 MR. JENNINGS: Lean forward.

5 THE COURT: Please repeat the last answer.

6 Q I asked you when Marquita Smith used the term "lick,"
7 what does that mean?

8 A Armed robbery.

9 Q Okay. An armed robbery. And when you use the word
10 "lick" on -- on the street, is there any confusion that
11 that means an armed robbery?

12 A No, sir.

13 Q Okay. And who contacted you concerning a lick?

14 A Marquita.

15 Q Okay. And did she provide you with the name of a
16 person who she could set up a lick on?

17 A Yes, sir.

18 Q And who was that?

19 A She gave me the name "KuKu."

20 Q And do you know who "KuKu" was?

21 A Not at the time.

22 Q Did she tell you who it was?

23 A She said it been her cousin.

24 Q So that was on -- the first time that y'all talked
25 about doing this lick on KuKu, her cousin, do you remember

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1 what day that was?

2 A One day before.

3 Q Okay. And the -- the robbery actually happened on a
4 Wednesday morning, early morning.

5 A Yes, sir.

6 Q That first day that you talked about it, did anything
7 happen with the robbery actually going through?

8 A No, sir.

9 Q So tell me what happened on the next day. On Tuesday,
10 August 1st, what happened in connection with the robbery?

11 A She been at the restaurant with her and her friend,
12 Tawana, and Dexter and one of his friends.

13 Q And when you say who -- "her," who are you talking
14 about?

15 A Marquita.

16 Q Okay. What restaurant were they at?

17 A Ruby Tuesday.

18 Q Okay. Who were you with when these plans were being
19 made?

20 A Grant, King, and Hartwell.

21 Q And when you say "Grant," who are you talking about?

22 A Gary Grant.

23 Q Okay. This man right here?

24 A Yes, sir.

25 Q And "Hartwell" is Jermaine Hartwell, you've identified

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1 as "Manny"?

2 A Yes, sir.

3 Q And Kareem King. Where were y'all when you were
4 talking about this plan?

5 A On Clement Avenue.

6 Q Did any of the four of you have weapons?

7 A Yes, sir.

8 Q Who had weapons?

9 A Everybody.

10 Q And when you say "everybody," tell me who -- what type
11 of weapon did Mr. Grant have?

12 A He had a .45 and a .357.

13 Q And what -- those are handguns?

14 A Yes, sir.

15 Q Did -- were they loaded?

16 A Yes, sir.

17 Q How do you know they were loaded?

18 A Because he loaded them inside the house where all us
19 seen it.

20 Q You saw him load it?

21 A Yes, sir.

22 Q Manny, did he have a handgun?

23 A A 9-millimeter.

24 Q Okay. And Kareem King, did he have a handgun?

25 A Yes, sir.

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1 Q What kind of handgun did he have?

2 (Sotto voce discussion between the Court and law
3 clerk.)

4 A A .32.

5 Q So as y'all were coming up with these plans, all three
6 of your co-defendants were armed with handguns?

7 A Yes, sir.

8 Q And who was providing you with the information as to
9 where Dexter Perry was?

10 A Marquita.

11 Q And so tell us, how did the plan develop? You -- the
12 first time you heard from her, where were -- she told you
13 she was with Tawana?

14 A At Ruby Tuesdays.

15 Q Okay. Now, did y'all go and try to meet at Ruby
16 Tuesdays?

17 A No. We ain't never gone.

18 Q Why not?

19 A We just ain't never have gone.

20 Q Okay.

21 A Something had came up. And then about a hour later,
22 she came on Clement Avenue to come and get us.

23 Q Okay. So you, Gary Grant, Jermaine Hartwell, and
24 Kareem King were on Clement Avenue?

25 A Yes, sir.

1 Q And who came and met you in North Charleston?

2 A Marquita.

3 Q And where did she take you?

4 A To Ladson.

5 Q Okay. And where in Ladson did you go?

6 A To the Hess on Highway 78.

7 Q Who -- was she in her own car?

8 A Yes, sir.

9 Q And how did y'all get to Ladson?

10 A It's a -- a rental car I'd been driving.

11 MR. BARNWELL: Your Honor, could you ask him to speak
12 up if he can?

13 THE COURT: Yes, sir. Please speak directly into the
14 microphone.

15 Q I'll show you what's marked as State's Exhibit 18. Do
16 you recognize that car?

17 THE COURT: Did you -- let me interrupt you one
18 second. Mr. Barnwell, were you able to hear the last
19 answer?

20 MR. BARNWELL: Yes. Yes, Your Honor.

21 THE COURT: Okay. You may continue, Mr. Jennings.

22 MR. JENNINGS: Thank you.

23 Q Do you ---

24 THE COURT: (To the bailiff) Is there any way we can
25 turn the microphone up, ma'am?

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1 THE BAILIFF: I'll see, Judge.

2 THE COURT: Okay. Thank you.

3 Q State's Exhibit 18. Do you recognize that?

4 A Yes, sir.

5 Q And whose car is that?

6 A That'd been the car I been driving.

7 Q Okay. Whose -- whose car was it?

8 A My girlfriend rented it.

9 Q And whose -- what was her name?

10 A Chandra Chisholm.

11 Q Okay.

12 MR. JENNINGS: Your Honor, we offer State's Exhibit 18
13 into evidence.

14 THE COURT: Any objection, Mr. Bolus?

15 MR. BOLUS: No.

16 THE COURT: Mr. Barnwell?

17 MR. BARNWELL: No objection.

18 THE COURT: MR. Jones?

19 MR. JONES: None, Your Honor.

20 THE COURT: Marked and admitted without objection.

21 (Marked State's Exhibit No. 18, photograph of car.)

22 Q And so who was driving that car?

23 A Me.

24 Q And that was a silver Pontiac?

25 A Yes, sir.

1 Q And when had Chandra Chisholm rented that car?

2 A Early in the evening.

3 Q On August the 1st?

4 A Yes, sir.

5 Q And who was in -- who was in this vehicle with you?

6 A Grant, King, and Hartwell.

7 Q And where was Marquita Smith?

8 A In her own vehicle.

9 Q And she led you over to the Hess at Highway 78?

10 A Yes, sir.

11 Q And what was the purpose of going over to Ladson?

12 A Trying to find Dexter.

13 Q And why -- what was the -- why did you go to Highway
14 78?

15 A That's where she lead us at.

16 Q Did you have any idea where you were going?

17 A No, sir.

18 Q Had Marquita Smith not led you to Highway 78, would
19 you have had the first idea where to look for Dexter Perry?

20 A No, sir.

21 Q And what happened when you got to -- to the Hess at
22 Highway 78?

23 A She -- she get on her phone and said she'd been trying
24 to call him to come up here, and then she left and came
25 back.

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1 Q And what did she tell you when she came back?

2 A She said that he already had left and went to Goose
3 Creek to Tawana house.

4 Q Did you know where Tawana lived?

5 A No, sir.

6 Q But what did Ms. Smith do when she found out that
7 Dexter Perry had left and gone to Tawana's house?

8 A She took us to Goose Creek.

9 Q And you ended up at Tawanda's [sic] apartment complex?

10 A Yes, sir.

11 Q What happened then when you got to the apartment
12 complex?

13 A I parked by the building and Grant, King, and Hartwell
14 get out of the car.

15 Q Okay. Did they have anything in their hands when they
16 got out of the car?

17 A Yes, sir.

18 Q What did they have?

19 A Guns.

20 Q And based on y'all's discussion and your plan, what
21 were they going to do?

22 A Rob him.

23 Q Rob who?

24 A Dexter.

25 Q Okay. Why did you not get out of the car?

1 A Because Tawana ain't supposed to see me.

2 Q Had you -- did you know Tawana?

3 A Yes, sir.

4 Q And what would have happened if Tawana would have seen
5 you?

6 A She would have knowed [sic] Marquita had something to
7 do with it.

8 Q Who asked you to stay in the car?

9 A Marquita.

10 Q Did Mr. Grant or Manny or Kareem have anything over
11 their faces?

12 A No, sir.

13 Q Did Tawana know either of those three?

14 A No, sir.

15 Q All right. So what happened after the three of them
16 got out of the car with their guns? Could you see where
17 Dexter was or where the apartment they were going?

18 A No, sir.

19 Q All right. And what happened next?

20 A I sat there for approximately three to five minutes,
21 and Marquita called my phone and tell me to leave, that
22 Tawana be calling the police.

23 Q Did you know what happened up at Tawana's apartment?

24 A No, sir.

25 Q And what did you do when Marquita called you?

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1 A I asked her, "For what?" And she be like, "They got
2 my cousin." So I leave.

3 Q Okay. Would you have had -- would you have known to
4 leave had Marquita not called you?

5 A No, sir.

6 Q What did you do then after Marquita called you and
7 told you to leave?

8 A I left and was on my way back to Ladson.

9 Q All right. Why were you going to Ladson?

10 A I called Jermaine phone to find out what was going on,
11 and I didn't get no answer. He called me back and tell me
12 to come to Ladson.

13 Q Did he tell you any place in particular in Ladson?

14 A The "Bada Bing Club."

15 Q Okay.

16 THE COURT REPORTER: I'm sorry, where?

17 A Bada Bing.

18 Q I show you State's Exhibit 49. This is College Park
19 Road. You're familiar with this area?

20 A No, sir.

21 Q Okay. Were you -- the Hess station that you went to
22 was on Highway 78?

23 A Yes, sir.

24 Q Okay. You knew where the Bada Bing Club was?

25 A Yes, sir.

1 Q All right. And this shopping center at the
2 intersection of College Park and Highway 78?

3 A Yes, sir.

4 Q Okay. Is that the shopping center that you went to?

5 A Yes, sir.

6 Q Because who told you to go there?

7 A Jermaine.

8 Q Jermaine Hartwell?

9 A Yes, sir.

10 Q And where did you -- use this pointer or you can use
11 this one. Point out to the jury, where did you park when
12 you got to the shopping center?

13 A (Indicates) About right here.

14 Q Okay. Who were you waiting on?

15 A Grant, King, Hartwell.

16 Q And then what -- once you got to the shopping center,
17 about how long did you wait there?

18 A About 5 to 10 minutes.

19 Q Okay. And then what happened?

20 A Kareem King called. He tell me he come pick them up
21 because Jermaine get shoot.

22 Q Okay. And where was Kareem King?

23 A He been at the end of the parking lot.

24 Q All right. And if you would, point out to the jury
25 where you found Kareem King.

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1 A (Indicates) About right here.

2 Q Were Mr. Grant or Mr. Hartwell with him?

3 A No, sir.

4 Q And what did you do when you picked up Mr. King?

5 A I got back on College Park.

6 Q All right. If you would, point out to the jury where
7 you went.

8 A Down this road right here (indicates.)

9 Q Did you ever see Mr. Grant or Mr. Hartwell that night?

10 A Yeah. I picked them up on -- like going back on the
11 interstate.

12 Q Okay. And what was -- what condition was Mr. Hartwell
13 in?

14 A He'd been shot in the chest.

15 Q Did he tell you where -- where he was when he got
16 shot?

17 A No, sir.

18 Q And how about Mr. Grant? Did he make any statements
19 to you about what happened inside the house?

20 A Yes, sir.

21 Q What did he say?

22 A He said, "I think I 'stank the dog.'"

23 Q "I think I 'stank the dog'?"

24 A Yeah.

25 Q And what does that mean?

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1 A It mean you shoot him. Shoot the person.

2 Q Okay. And who was he talking about?

3 A Dexter.

4 Q Did he tell you whether or not they had stolen
5 anything from Mr. Perry?

6 A He had a bracelet and a ring.

7 MR. BOLUS: Objection.

8 THE COURT: Basis?

9 MR. BOLUS: That it's not responsive.

10 (Bench Conference.)

11 THE COURT: The objection's sustained by response, and
12 the answer will be struck from the record.

13 Ladies and gentlemen, you are to disregard the last
14 question and answer. You're to give it absolutely no
15 consideration in your deliberations. It is not to be
16 discussed at all.

17 You may proceed, Mr. Jennings.

18 Q When -- when you picked up Gary Grant and Jermaine
19 Hartwell, did Gary Grant have any items with him?

20 A Yes, sir.

21 Q What did he have?

22 A A bracelet and a ring.

23 Q Did he tell you where he got that bracelet and ring?

24 A Off Dexter.

25 Q That's what Gary Grant told you?

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1 A Yes, sir.

2 Q Where did y'all go then, after you picked up Manny and
3 Mr. Grant and Kareem King?

4 A Back on Clement Avenue.

5 Q Back to the house?

6 A Yes, sir.

7 Q And what did y'all do when you got back to the house?

8 A We were standing in the parking lot, and Gary Grant
9 throwed [sic] three shells in the bushes. When we got
10 upstairs -- and he started loading the .45 again. And then
11 they left like three minutes after.

12 Q Now, the .45 that Gary Grant had, are you familiar
13 with the difference between a revolver and a semi-
14 automatic?

15 A Yes, sir.

16 Q And what type of weapon was the .45?

17 A An automatic.

18 Q And the .357 that he had, what type of gun was that?

19 A A revolver.

20 Q When he took the shells out of one of the guns, which
21 -- what gun was he taking the shells out of?

22 A The -- the .357.

23 Q When you fire a semi-automatic weapon, what happens to
24 the casings of the bullets that you fired?

25 A They come out.

1 Q They come out of the gun?

2 A Yes, sir.

3 Q And when you fire a revolver, what happens to the
4 casings?

5 A They stay in.

6 Q How long did you stay -- after you brought them back
7 to the house in North Charleston, how long did you stay
8 there?

9 A About five minutes.

10 Q And who all -- when you left, who all was at the
11 house?

12 A Grant, King, and Hartwell.

13 Q Okay. And where did you go after that?

14 A I'd been on my way to Ashley Phosphate, and I get
15 stopped by a state trooper.

16 Q And who lived over on Ashley Phosphate?

17 A Chandra Chisholm.

18 Q What -- and what happened to you when you got pulled
19 over by the highway patrolman?

20 A I get lock up.

21 Q And then a couple days, did the detectives come and
22 talk to you?

23 A Yes, sir.

24 Q From Berkeley County?

25 A Yes, sir.

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1 Q Sgt. Merrithew?

2 A Yes, sir.

3 Q And when he came and saw you, you provided him with a
4 statement?

5 A Yes, sir.

6 Q On August the 4th?

7 A Yes, sir.

8 Q And you told him about -- knowledge you had about
9 this?

10 A Yes, sir

11 (Sotto voce discussion between State counsel.)

12 MR. JENNINGS: All right. Mr. Hollins, if you'll
13 answer any questions that the defense attorneys have.

14 THE COURT: Mr. Bolus, you may proceed.

15 (Sotto voce discussion between State counsel.)

16 (Sotto voce discussion between all counsel.)

17 CROSS-EXAMINATION BY MR. BOLUS:

18 Q Mr. Hollins, you're saying that you're testifying
19 today without any deals having been made to you?

20 A Yes, sir.

21 Q What, you just had a stroke of bad conscience is --
22 while you're sitting in jail or what? What's the
23 situation?

24 A I don't understand what you're saying.

25 Q Well, you have a lawyer, don't you?

1 A Yes, sir.

2 Q Okay. And you've talked to her before about this
3 case?

4 A Yes, sir.

5 Q You've talked to the prosecutor about the case, right?

6 A Yes, sir.

7 Q And you want us, the jury, and everybody in this
8 courtroom to believe that you're just sitting here doing
9 your good deed as a citizen, without having a deal been
10 made to you?

11 A I ain't got no deal.

12 Q Has a -- hasn't a deal been tentatively offered to you
13 that you would plead to accessory before armed robbery and
14 look at 10 to 30 years?

15 A No, sir.

16 Q Nothing has been said to you by your lawyer or by this
17 prosecutor about that?

18 A No, sir.

19 Q And you're just taking your chances, just testify? Is
20 that what you're saying?

21 A Yes, sir.

22 Q Well, what's motivating you to do it?

23 A Telling the truth.

24 Q You're just telling the truth? You just want to tell
25 the truth? That's it?

1 A That's it.

2 Q Now, do you know your handguns, you say?

3 A Yes, sir.

4 Q You said that Grant had a .45 caliber and a .357
5 Ruger?

6 A Yes, sir. Yes, sir.

7 Q Sir?

8 A Yes, sir.

9 Q In your statement that you gave to the officer, you
10 said that, "Grant had a semi-auto, but I don't know what
11 caliber it was." You know what caliber it was, you think,
12 now, because the cops told you that, right?

13 A No, sir.

14 Q Well, in your statement that you gave to them right
15 after it happened, "Gray [sic] had a semi-auto, but I don't
16 know what caliber it was." You didn't say anything about a
17 --

18 A I didn't write the statement.

19 Q Huh?

20 A I didn't write the statement; I just signed it.

21 Q Well, did somebody make up the statement for you?

22 A No, sir.

23 Q Well, you're telling the police what you knew and they
24 wrote it down. You know how to read, do you?

25 A Yes, sir.

1 Q Okay. And you said, "Gray [sic] had a semi-auto, but
2 I don't know what caliber it was." That's in the police
3 officer's handwriting?

4 A Yes, sir.

5 Q But you read -- you read the statement, signed it.

6 A Yes, sir.

7 Q And you said "Jermaine," referring to Manny, "had a
8 .357 Ruger." But today, you're saying my client, Grant,
9 had a .45 caliber and a .357 Ruger. That's your testimony
10 today.

11 A I ain't tell him he had a .357. I tell him he had a
12 9-millimeter when -- when he wrote the statement.

13 Q You said who had a 9-millimeter?

14 A Jermaine.

15 Q No, I -- right. You had -- you said in the statement,
16 "Jermaine had a .357 Ruger." That is a revolver wheel gun.
17 You know that, right?

18 A I understand that. But when he was writing the
19 statement, he had done wrote it too fast, because I told
20 him he had a 9-millimeter.

21 Q Oh, another mistake?

22 A Yes, sir.

23 Q Because today you said, "Manny had a 9-millimeter,"
24 which is an automatic also, right?

25 A Yes, sir.

- 1 Q And -- but in your statement, you say he had a .357.
2 So you're changing all that today?
- 3 A Didn't say -- I ain't changing it.
- 4 Q Okay.
- 5 A He had to write the statement too fast, but I remember
6 I told ---
- 7 Q Why didn't you get him ---
- 8 A --- him he had a 9-millimeter.
- 9 Q Why didn't you get him to correct it?
- 10 A Because I just briefly read over it.
- 11 Q Were they already offering you deals back then to make
12 the statement?
- 13 A No, sir.
- 14 Q You just decided, what? two days afterwards to make a
15 complete confession?
- 16 A Y'all be trying to charge me with murder, and I ain't
17 killed nobody.
- 18 Q You don't know who killed anybody either in this case,
19 do you? You don't know who did what, right?
- 20 A I'm going by what he tell me.
- 21 Q But you weren't in the place, right?
- 22 A No, I wasn't there.
- 23 Q And if a witness says you were there, that -- they're
24 just wrong?
- 25 A Yeah, they wrong. I didn't go in there.

1 Q Okay. Now, Mr. Hollins, a lick doesn't refer to just
2 an armed robbery, does it?

3 A My understanding it is.

4 Q Well, if -- if you saw me on the road, it can also
5 refer to the person, right? In other words, "He's the
6 lick." If you point at me and say, "He's the lick,"
7 meaning I'm the person that's going to get robbed, right?

8 A Yes, sir.

9 Q Isn't that right?

10 A Means a armed robbery.

11 Q He's the lick.

12 A He's the person going get robbed.

13 Q Right. But if you and a couple of boys jump me, three
14 to one, I'm still the lick. You don't have -- it doesn't
15 refer to carrying a weapon necessarily. It refers to the
16 robbery, right?

17 A It refers to a robbery.

18 Q A robbery. So that means if Ms. Smith or someone
19 said, "We got a lick," that does not necessarily mean in
20 her mind or anybody else's mind that it's an armed robbery.
21 It just means "We got somebody to rob." That's the correct
22 street slang; is it not?

23 A The plan was to rob.

24 Q To rob. She did not discuss anything with you,
25 though, about weapons or anything. It's just "We got a

1 lick." A man -- it could be a man or a person. If you're
2 going to lick, he's the lick; isn't that correct?

3 A Yes, sir.

4 Q Okay. Now, who told you to say it was an armed
5 robbery, though?

6 A That's what the plan was.

7 Q Your plan, but maybe not her plan or somebody else's
8 plan. In your mind it was an armed robbery, right?

9 A I know what the plan was.

10 Q Oh. Okay. Now, in your statement you said that,
11 "Marquita called me one day and said she had a lick." That
12 obviously refers to a noun, a person. She had a lick. It
13 wouldn't make any sense, "She has a armed robbery." She
14 has a lick, which means there's a robbery going down on
15 somebody. And you said you wanted to know who it was,
16 right?

17 A I didn't say I wanted to know who it was.

18 Q You gave the phone to Manny?

19 A Yes, sir.

20 Q You don't make any -- you don't make any reference in
21 this statement. It's the second statement you gave to the
22 police about Gary Grant being there. You say you gave the
23 phone to Manny and they talked. You don't say anything
24 about Gary being there when this phone call came to you.
25 He wasn't there at that time, was he?

1 A Yes, he was.

2 Q Y'all just hang around all day together?

3 A Yes, sir.

4 Q But that's not in your statement. Did you write this
5 statement or the police wrote this one for you, too?

6 A He wrote it.

7 Q And this was made right after -- now, you gave a
8 three-page statement at first; isn't that right?

9 A Correct.

10 Q And then you came back with about a six-page
11 statement?

12 A Right.

13 Q And you and the police are getting kind of cozy about
14 this point in time, and you -- you just start to run off at
15 the mouth and tell him a lot of things, right?

16 A (No audible answer.)

17 Q But you're not reading your statement?

18 A (No audible response.)

19 Q Sir?

20 A Yes, sir.

21 Q Now, today you just come on down here, you got to get
22 it off your mind and tell the truth, right? You're not
23 involved, but everybody else is involved, right?

24 A They got me charged with it and like I tell you, I
25 didn't kill nobody.

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1 Q Okay. And that's your position: If you haven't
2 killed anybody, you shouldn't be charged. And you still
3 don't know if there's a deal or not? Right now, you don't
4 know what -- what's going to happen to you?

5 A I ain't got no deal.

6 Q Has someone given you assurances that you're going to
7 be "look -- looked after," though, after this trial is
8 over?

9 A No, sir.

10 Q Now, in your -- your -- your second statement -- when
11 you first state -- you said, "Gary had a ring and a
12 bracelet that he took off of Dexter." You don't -- you
13 don't know that for a fact, do you?

14 A He told me he took it off.

15 Q But you didn't say that he told you he took it off.
16 You just said, "Gary had a ring and a bracelet that he took
17 of Dexter." You just -- you saw a ring and a bracelet.
18 You just assumed it came off of Dexter; isn't that correct?

19 A I can tell you he tell me.

20 Q He told you that?

21 A (No audible response.)

22 Q Well, what color was the bracelet? What color was the
23 ring?

24 A It been silver.

25 Q Huh?

1 A It was silver.

2 Q Sir?

3 A Silver.

4 Q Silver? And what happened to the ring and the
5 bracelet?

6 A I don't know.

7 Q You don't know?

8 A (No audible response.)

9 Q And you said that Gary threw away some bullets or --
10 or what did he throw away in the bushes?

11 A Shell casings.

12 Q That's not in any of your statements, is it?

13 A No, sir.

14 Q "No, sir"? It isn't, is it?

15 A No.

16 Q So now we got two statements, neither one were written
17 by you. Both statements have things that didn't contain
18 what you said today; isn't that correct?

19 A Yes, sir.

20 Q And these things matter, don't they?

21 A Yes, sir.

22 Q Because -- yeah, they do. Because today you're saying
23 that Gary Grant said something, but in your statement you
24 didn't say that. But now you've got him tied him into an
25 armed robbery because you saying he said it. For the first

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1 time today, you're saying he said it. But you didn't say
2 it in the statement. And for the first time today, you're
3 saying he throw away -- he threw away some bullets in the
4 bushes. That's today for the jury to hear, but it wasn't
5 in your statement either time, was it?

6 A No, sir.

7 Q Thanks a lot.

8 THE COURT: Mr. Barnwell?

9 CROSS-EXAMINATION BY MR. BARNWELL:

10 Q Mr. Hollins, you testified you had a criminal record
11 for marijuana; is that -- is that correct?

12 A Yes, sir.

13 Q You have a -- other additional charges that you've
14 been convicted of?

15 A No, sir.

16 Q You don't have a conviction for possession of schedule
17 1, 2, or 3 drugs which I -- cocaine?

18 A I can't understand you.

19 Q You didn't get a -- a -- a conviction for possession
20 of cocaine, that you got a YOA suspended on probation for
21 two years?

22 A No. Been marijuana charges.

23 Q How about possession with intent to distribute drugs
24 in your school? You didn't -- you didn't get -- didn't get
25 that?

1 A Yes, sir.

2 Q And that's what you got YOA suspended on probation?

3 A Yes, sir.

4 Q And you -- you just testified you didn't -- you don't
5 -- you didn't know -- know Dexter Perry?

6 A Right.

7 Q Did Gary Grant know Dexter Perry?

8 A No, sir.

9 Q Did Mr. King know -- know Dexter Perry?

10 A No, sir.

11 Q But Jermaine Hartwell know Dexter Perry?

12 A Yes, sir.

13 Q And you did discuss robbery with Mr. Hartwell, didn't
14 you?

15 A Yes, sir.

16 Q Didn't he say that he did not think that was a good
17 idea and he didn't want to participate in it?

18 A He was saying that Dexter sold him some bad product
19 one time before.

20 Q Dexter sold some bad product. Did he say he -- he
21 wanted to discuss that with Dexter?

22 A Yes, sir.

23 Q He didn't say he wanted to rob Dexter, did he?

24 A That was the plan.

25 Q But that's not -- that was not what he -- he was

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1 wanting to participate in; isn't that correct?

2 A He said that -- his words was that he sold him some
3 bad product.

4 Q He sold some bad product, but that -- doesn't that
5 mean he -- did he say that -- that he wanted to make it
6 right? Right with -- or he wanted Dexter Perry to make it
7 right with him?

8 A Right.

9 Q And that didn't mean -- that didn't mean robbing him,
10 did it?

11 A No, sir.

12 Q And Jermaine had lost his phone at this time, hadn't
13 he?

14 A Yes, sir.

15 Q So you -- you didn't have any telephone conversation
16 with him -- with him on the other end of the phone, did
17 you?

18 A No, sir.

19 Q You didn't go -- after you picked up Jermaine and --
20 and King and -- and Grant, you didn't go directly to
21 Clement Avenue, did you?

22 A Yes, sir.

23 Q Didn't you go by your girlfriend's house?

24 A No, sir.

25 Q She didn't patch -- she didn't patch up Jermaine's

1 chest before you went to Clement Avenue?

2 A No, sir. We went straight back to Clement.

3 Q And then when did she -- when did she patch up
4 Jermaine's chest?

5 A She didn't ever patch him up.

6 Q You were the driver; isn't that right?

7 A Yes, sir.

8 Q You drove this G -- G6?

9 A Yes, sir.

10 Q And you never went in -- in the house at Snow Goose,
11 did you?

12 A No, sir.

13 Q And you never went in the trailer at Dutch Fork at
14 all?

15 A No, sir.

16 Q So if anybody said they saw you there, that's not --
17 that's -- that's not true, is it?

18 A Right.

19 Q Because you weren't there.

20 A No, sir.

21 Q You just -- you planned this robbery, didn't you?

22 A Marquita.

23 Q And -- and you just saying other people involved to
24 try to get yourself out of trouble?

25 A No, sir.

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1 Q Please answer any other questions that Mr. Jones may
2 have.

3 THE COURT: Mr. Jones, you have any questions for the
4 witness?

5 MR. JONES: I certainly do, Your Honor.

6 THE COURT: You may proceed.

7 CROSS-EXAMINATION BY MR. JONES:

8 Q All right. Where to start. Let's start -- let me ask
9 you this: You -- your statement is -- and -- and the
10 solicitor said the -- the one instruction you had from the
11 solicitor is to tell the truth. That's correct, right?

12 A Yes, sir.

13 Q And that's what you're doing today, right?

14 A Yes, sir.

15 Q Okay. Now, what you're saying is you never went into
16 the trailer park at all?

17 A Never.

18 Q Never went in there. The only thing you did was pick
19 the guys up at the Bada Bing and on the road?

20 A Yes, sir.

21 Q Any witnesses to that other than those guys? Because
22 you didn't pick them up in front of a crowd or anything,
23 did you?

24 A No, sir.

25 Q All right. Let me ask you this: How is it that --

1 let me go back a little bit. Do you know -- did you know
2 where Dexter Perry lived?

3 A This be my first time ever hearing about him.

4 Q How about Chris Nelson? Did you know where he lived?

5 A No, sir.

6 Q Do you know -- are you friends with Joe Husser?

7 A No, sir.

8 Q How about Chris Nelson?

9 A No, sir.

10 Q Do you know where they live?

11 A No, sir.

12 Q Well, let me ask you this: How is it that Mr. Husser
13 identified your car -- Florida tag, speeding out of the
14 trailer park. Mr. Nelson identified your car -- Florida
15 tag, speeding out of the trailer park. And on August the
16 2nd, a day before the police ever talked to your girlfriend
17 who gives them the information on the rental car, there's
18 already a BOLO out. How is that?

19 A I don't know.

20 Q I mean it's -- it's like magic. From the time you
21 left Tawana Deas's apartment at -- at Dutch Fork and picked
22 up -- who's the first one you picked up was Kareem, right?

23 A Yes, sir.

24 Q How -- how long was that?

25 A After they got to the club?

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1 Q How long between the time you left Tawana's and got to
2 the club?

3 A About 15/20 minutes.

4 Q So from the time that you took off and got -- from
5 Tawana's and you got to the club in 15 to 20 minutes?

6 A Yes, sir.

7 Q Now, you talk about -- I assume that you say, "We just
8 missed them." When -- when Tawana and Dexter and Chris and
9 Marquita were at the Ruby Tuesdays, you said, "We just
10 missed them." What do you mean you just -- or -- or what
11 happened there?

12 A We ain't never went there.

13 Q You -- you never went in that area?

14 A No, sir.

15 Q Where -- where were you all this time?

16 A We was on Clement Avenue.

17 Q Now, there were -- I think you said there were four
18 guns in the car, right?

19 A Yes, sir.

20 Q None of them were yours.

21 A No, sir.

22 Q So somebody basically was double-gunning, right?

23 A Yes, sir.

24 Q So from the time that -- you said you sat in the
25 parking lot at Tawana's 3 to 5 minutes.

1 A Yes, sir.

2 Q From the time you got there, they get out the car and
3 go and then you leave?

4 A Yes, sir.

5 Q No. You said you left and went to Ladson. Where were
6 you going?

7 A To the Bada Bing Club.

8 Q All right. You did a second statement somewhere
9 around, I think, August 6th or 9th or something like that,
10 correct?

11 A Right.

12 Q None of these errors you corrected that we -- that Mr.
13 Bolus discussed. You never -- you never corrected any of
14 the things he talked about. You just didn't have a chance
15 to read your statement, or you skimmed over it and signed
16 the original statement like they gave it to you?

17 A Right.

18 Q When you met back again, nobody questioned you any
19 further on these issues, and you -- you did the second and
20 you didn't -- you just went through it again, correct?

21 A Right.

22 Q What all had you been charged with at that time?

23 A Four counts of kidnaping, murder, two first-degree
24 burglary, and armed robbery.

25 Q Okay. So when did -- they charged you with that,

1 what? the same day you were arrested?

2 A At bond court.

3 THE COURT REPORTER: I'm sorry?

4 A At bond court, like three days after I'd been
5 arrested.

6 (Sotto voce discussion between the Court and law
7 clerk.)

8 Q Now, you knew that the day before you gave your
9 statement that Marquita had met with the detectives.

10 A No. I didn't know that at the time.

11 Q You didn't know it at the time?

12 How long have you been planning to testify?

13 A About two weeks.

14 Q About two weeks? And before that, what were you going
15 to do?

16 A I didn't know. I ain't planning to go into trial.

17 Q What changed?

18 A The chance of me getting convicted.

19 Q What's changed about that?

20 A Nothing.

21 Q Well, something's changed. You still got the charges,
22 right? Did they drop any charges?

23 A No, sir.

24 Q So what's changed? I mean, what makes it different
25 that you might not be convicted still?

1 A There ain't no change.

2 Q So your deal is you really didn't want to be an active
3 participant in this?

4 A Right.

5 Q But Marquita influenced you?

6 A Right.

7 Q But y'all were broken up at this time.

8 A Yes, sir.

9 Q You have -- you had another girlfriend at this time.

10 A Yes, sir.

11 Q Are you intimidated by Marquita? Does she scare you?

12 A No, sir.

13 Q Does she have a lot of experience in this?

14 A I don't think so.

15 MR. JONES: Court's indulgence just one?

16 THE COURT: Uh-huh.

17 (Sotto voce discussion among Defense counsel.)

18 MR. JONES: Your Honor, if I may, I'm looking for the
19 line-up photo. Do you know which one that is? Exhibit
20 number?

21 THE COURT: Pardon me. There are two others right
22 there, Mr. Jones.

23 (Sotto voce between Defense counselors.)

24 Q Mr. Collins, [sic] see anybody in there you recognize?

25 A Yes, sir.

1 Q Who?

2 A Me.

3 Q Where at? Can you ---

4 A First picture.

5 Q --- do you have a pointer right there? Point to it.

6 Would it surprise you that ---

7 MR. JENNINGS: Objection, Your Honor.

8 THE COURT: Basis?

9 MR. JENNINGS: Speculation.

10 THE COURT: Please approach.

11 (Bench conference.)

12 THE COURT: Lay the appropriate foundation.

13 Overruled.

14 Q Mr. Collins, [sic] again, were you ever in the trailer
15 at Silver Fox?

16 A No, sir.

17 Q Did you ever have any contact with Mr. Joe Husser?

18 A No, sir.

19 Q Let me -- can you explain why he would -- let me ask
20 you this, make sure I -- make sure we're clear: You never
21 went into the house with a gun at Silver Fox?

22 A No, sir.

23 Q Never went in the house and pistol-whipped anybody
24 with a gun at Silver Fox?

25 A No, sir.

REDIRECT EXAMINATION BY MR. JENNINGS / KERRY HOLLINS Page 440

1 Q Never had any bad relations with Mr. Joe Husser? Any
2 reason he'd want to get back at you or anything of that
3 sort?

4 A I don't even know him.

5 Q Okay. Can -- can you explain to me why he would have
6 picked you out of a lineup yesterday as the man that had
7 him and pistol-whipped him inside of that house?

8 A I don't know, but I know I ain't been there.

9 Q And you can't explain how anybody knew about your car
10 and how all these people in the trailer park picked out
11 your car and gave it to the police the night of the
12 incident, hours before they had found anything through the
13 girlfriend?

14 A No, sir.

15 MR. JONES: Nothing further at this time, Your Honor.

16 THE COURT: Any redirect of the witness?

17 MR. JENNINGS: Yes, Your Honor.

18 THE COURT: You may proceed.

19 MR. JENNINGS: Thank you.

20 THE COURT: You're welcome.

21 REDIRECT BY MR. JENNINGS:

22 Q Mr. Hollins, do you know where Marquita Smith was
23 living in August of 2006?

24 A Yes, sir.

25 Q Where was she living?

REDIRECT EXAMINATION BY MR. JENNINGS / KERRY HOLLINS Page 441

1 A In Moncks Corner.

2 Q And do you know who she was living with?

3 A Her mama and daddy.

4 Q Up here in Moncks Corner?

5 A Yes, sir.

6 Q And when had y'all broken up?

7 A About April or May.

8 Q Of 2006?

9 A Yes, sir.

10 Q Now, talking about the plan, when you use the term
11 "lick" and when people use the term "lick" on the street,
12 what does that term mean?

13 A It mean rob somebody.

14 Q And when you rob somebody, what do you have to have?

15 A Some type of weapon.

16 Q And when you and Mr. Grant and Mr. Hartwell and Mr.
17 King were at your drug house in North Charleston, you saw
18 Mr. Grant loading his weapons?

19 A Yes, sir.

20 Q All right. Mr. Hartwell was loading his weapons.

21 A Yes, sir.

22 Q And Mr. King was loading his weapons.

23 A Yes, sir.

24 Q And the reason you didn't have a weapon is because
25 Marquita Smith told you not to go up to the house.

1 A Yes, sir.

2 Q Correct?

3 A Right.

4 Q Because Tawana Deas knew you, and would recognize you
5 if you were involved.

6 A Yes, sir.

7 Q And if Tawana Deas recognized you as being there, she
8 would know Marquita Smith was involved.

9 A Yes, sir.

10 Q And Marquita Smith did not want anybody to know she
11 was involved in setting up Dexter Perry.

12 A Yes, sir.

13 Q So when the four of you left your house in North
14 Charleston, was there any doubt what the plan was?

15 A No, sir.

16 Q And the plan was to rob Dexter Perry.

17 A Yes, sir.

18 Q Who told you he shot Dexter Perry?

19 A Grant.

20 Q Gary Grant.

21 A Yes, sir.

22 Q And who told you that he took a bracelet and a ring
23 from Dexter Perry?

24 A Grant.

25 Q Those were his words?

REDIRECT EXAMINATION BY MR. JENNINGS / KERRY HOLLINS Page 443

- 1 A Yes, sir.
- 2 Q When y'all left the house in North Charleston, did
3 anybody force Manny to get in the car?
- 4 A No, sir.
- 5 Q Anybody force Manny to load his gun?
- 6 A No, sir.
- 7 Q When you got to the apartment complex in Snow Goose
8 Circle, did anybody force Manny to get out of the car?
- 9 A No, sir.
- 10 Q He did it of his own free will?
- 11 A Yes, sir.
- 12 Q To go and rob Dexter Perry?
- 13 A Yes, sir.
- 14 Q And who set this whole plan in motion?
- 15 A Marquita.
- 16 Q Marquita Smith.
- 17 A Yes, sir.
- 18 Q Did you have any idea where Dexter Perry was going to
19 be that night?
- 20 A No, sir.
- 21 Q Who told you where Dexter Perry was going to be?
- 22 A Marquita.
- 23 Q After he had been kidnaped and taken from Snow Goose
24 Circle, who told you to leave?
- 25 A Marquita.

RE-CROSS EXAMINATION BY MR. BARNWELL / KERRY HOLLINS Page 444

1 Q Because why?

2 A Tawana called the police.

3 Q Tawana called the police. And she told you to get out
4 of there.

5 A Yes, sir.

6 Q That's all I have.

7 THE COURT: Anything further?

8 MR. BOLUS: No questions.

9 THE COURT: Mr. Barnwell, anything further?

10 RE-CROSS EXAMINATION BY MR. BARNWELL:

11 Q Didn't you testify in response to my questions that
12 Jermaine Hartwell said that Dexter Perry gave him bad
13 product?

14 A Yes, sir.

15 Q And was it his intention not to rob him? Didn't you
16 testify to that?

17 A When we left the intention was to rob him, but he sold
18 him some bad product. So he was supposed to get his deal
19 straight or whatnot.

20 Q But that wasn't -- it didn't involve robbery, though?

21 A Yes, sir.

22 Q I don't have any further questions.

23 THE COURT: Anything further, Mr. Jones?

24 MR. JONES: Just a couple of follow-ups real quick.

25 RE-CROSS-EXAMINATION BY MR. JONES:

RE-CROSS BY MR. JONES / KERRY HOLLINS

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1 Q You said that Manny called you and told you to go to
2 the Bada Bing Club.

3 A Yes, sir.

4 Q And where did Manny call you from?

5 A His cell phone.

6 Q From his?

7 A Yes, sir.

8 Q So in your statement, you talked about when y'all were
9 setting this up, supposedly, Marquita would call you and
10 you'd hand your cell phone to Manny, right?

11 A No, sir. He had his own cell phone.

12 Q I think you said -- let me refresh back here. I'm
13 sorry. You said, "Marquita called one day and said, 'We
14 got a lick.' I gave the phone to Manny." And that would
15 seem that -- that would seem to say that she called your
16 phone.

17 A That'd been the first time when she ever called.

18 Q So every other call was to Manny?

19 A Yes, sir.

20 Q And then Manny would convey to you what was supposed
21 to happen after that?

22 A She be calling my phone, too.

23 Q Oh, so she's calling your phone and Manny's phone?

24 A Yes, sir.

25 Q Well, you didn't put that in -- you didn't tell that

1 to the detectives?

2 A Yeah, I tell them.

3 Q They just didn't put down everything you said?

4 A Right.

5 Q Did you say, "Look, y'all got to put this in. I got
6 to make sure this is right"? I mean, you -- you -- you got
7 murder charges pending at the time they're taking this
8 statement, right? And four kidnappings. You didn't want to
9 get the facts straight?

10 A I hadn't been charged with nothing right then.

11 Q I'm sorry. Say that again.

12 A I wasn't charged with nothing right then. That's when
13 they first locked me up.

14 Q So I thought you testified -- I thought I asked you
15 when you gave the statement, what charges did you have?
16 And you said, "I got murder, four kidnapping, and all this
17 stuff."

18 A I tell you they -- they give me my papers at bond
19 court with the actual charges.

20 Q All right. Well, let me ask you this: They gave you
21 the charges. You did a second statement -- I don't know
22 how many days later, but then you had the charges. Weren't
23 you concerned? "Let me get these facts straight"?

24 A (No audible response.)

25 Q I can see you are. And let me make sure I'm clear:

RE-DIRECT EXAMINATION BY MR. JENNINGS / KERRY HOLLINS Page 447

1 Nobody ever went back to the girlfriend -- to your
2 girlfriend's house with a gunshot wound?

3 A No, sir.

4 MR. JONES: Nothing further, Your Honor.

5 THE COURT: Anything further from the State?

6 MR. JENNINGS: Beg the Court's indulgence.

7 THE COURT: Uh-huh.

8 MR. JENNINGS: Very briefly, Your Honor?

9 THE COURT: Uh-huh.

10 RE-DIRECT BY MR. JENNINGS:

11 Q Mr. Hollins, let me show you what's been marked as
12 State's Exhibit 78. Do you recognize that?

13 A Yes, sir.

14 Q That's the statement you gave on August the 4th?

15 A Yes, sir.

16 Q When detectives first approached you?

17 A Yes, sir.

18 Q And that's the statement everybody's been referring
19 to?

20 A Yes, sir.

21 MR. JENNINGS: Your Honor, we would offer State's
22 Exhibit 78 into evidence.

23 MR. BOLUS: I object.

24 THE COURT: Sustained. Move along, Mr. Jennings. You
25 want to use it to refresh his recollection, you can do

1 that.

2 MR. JENNINGS: I'll just -- I'll just -- Mr. Jones
3 read from it earlier, so I was just -- for clarification.

4 THE COURT: There was no objection.

5 MR. JENNINGS: Okay.

6 THE COURT: If you want to read for clarity, you can
7 do that. But it's not admissible.

8 Is there anything further from the State?

9 MR. JENNINGS: No, Your Honor.

10 THE COURT: Anything further from the defense?

11 MR. BOLUS: No, Your Honor.

12 THE COURT: Mr. Barnwell?

13 MR. BARNWELL: No, Your Honor.

14 THE COURT: Mr. Jones?

15 MR. JONES: None, Your Honor.

16 THE COURT: Any objection to the witness being excused
17 from the State?

18 MR. JENNINGS: No, Your Honor.

19 THE COURT: From the defense? Mr. Bolus?

20 MR. BOLUS: None.

21 THE COURT: Mr. Barnwell?

22 MR. BARNWELL: None, Your Honor.

23 THE COURT: Mr. --

24 MR. JONES: None, Your Honor.

25 THE COURT: Sir, you're excused.

1 Mr. Foreman, ladies and gentlemen, you all have been
2 sitting a considerable amount of time this morning. I'm
3 going to give you a morning break.

4 During the break, please do not discuss the case among
5 yourselves. Please leave your note pads in your seats, and
6 if you need anything, please let the bailiffs know so that
7 they can accommodate you. There should be sufficient time
8 for you all -- for -- for those who desire to smoke to do
9 that. And I would anticipate that we will out about 15
10 minutes. If you would go with the bailiffs.

11 Oh. If you all could bear with me one moment.

12 (Sotto voce discussion between the Court and the
13 bailiff.)

14 (The jury exits at 11:12 a.m.)

15 THE COURT: You may be seated. Does the State -- if
16 the -- (to bailiff) is that door closed? I need that door
17 closed. Is it closed? I can't see. Is it closed?

18 If the defendants testify, is there any record that
19 the State would seek to introduce to impeach their
20 credibility? From Mr. Grant?

21 MR. JENNINGS: Your Honor, both Mr. Grant and Mr.
22 Hartwell have some drug convictions. But based on the
23 Supreme Court's most recent ruling, those are not --

24 THE COURT: So there would be no record that the State
25 would be seeking to use ---

1 MR. JENNINGS: No.

2 THE COURT: --- to impeach Mr. Grant or Mr. Hartwell,
3 correct?

4 MR. JENNINGS: That's correct.

5 THE COURT: And as to Ms. Smith?

6 MR. JENNINGS: No, Your Honor.

7 THE COURT: All right. I notice that there's a --
8 mixed in with the evidence -- the statement that goes with
9 one of the identifications is mixed down in there. That
10 was not admitted, and I need to make sure -- you know,
11 there's another short one that I looked at yesterday that's
12 sitting over here. Yeah.

13 Let me see that to make sure. I'm confused. Yeah.
14 (To the bailiff) Make sure those are not mixed in with the
15 evidence, because none of those have been admitted.

16 Okay. Is there anything before we take a short break,
17 from the State?

18 MR. JENNINGS: No, Your Honor.

19 THE COURT: From the defense?

20 MR. BOLUS: No.

21 THE COURT: Mr. Barnwell?

22 MR. BARNWELL: No, Your Honor.

23 THE COURT: Mr. Jones?

24 MR. JONES: No, Your Honor.

25 THE COURT: Enjoy your break. We'll be out about ten

1 minutes. Are there going to be any requests to charge? If
2 you have any, you need to submit them to me during the
3 break.

4 MR. JENNINGS: Submit any what, Your Honor?

5 THE COURT: Requests to charge.

6 MR. JENNINGS: Your Honor ---

7 THE COURT: I'm going to have -- I'm going to have a
8 charge conference. If there's something you want me to
9 read, you need to give it to me now so that I can be
10 reading it.

11 THE COURT: You may be seated.

12 Is the State ready to proceed?

13 MR. JENNINGS: Yes, Your Honor.

14 THE COURT: Is the Defense ready to proceed?

15 MR. BOLUS: Yes, it is, Your Honor.

16 MR. BARNWELL: Yes, Your Honor.

17 MR. JONES: Yes, Your Honor.

18 THE COURT: Please bring in the jury. And who's the
19 next State's witness?

20 MR. JENNINGS: Det. Bobby Shuler.

21 THE COURT: Det. Bobby --

22 MR. JENNINGS: Shuler.

23 THE COURT: Shuler.

24 (The jury enters at 11:49 a.m.)

25 THE COURT: You may be seated. Ladies and gentlemen,

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1 I hope you enjoyed your break. We'll now resume with the
2 trial testimony.

3 Mr. Jennings, you may proceed. Or Ms. Wilson, whoever
4 is going to present.

5 MR. JENNINGS: Your Honor, we call Det. Bobby Shuler.

6 THE COURT: If you would come to the witness stand to
7 be sworn.

8 **BOBBY RAY SHULER**, being first duly
9 sworn, testified as follows:

10 COURT OFFICER: Please be seated and state and spell
11 your name for the record.

12 DET. SHULER: Full name is Bobby Ray Shuler. The
13 spelling of my last name is S-h-u-l-e-r.

14 THE COURT: You may proceed.

15 MR. JENNINGS: Thank you, Your Honor.

16 THE COURT: You're welcome

17 DIRECT EXAMINATION BY MR. JENNINGS:

18 Q Det. Shuler, you're employed with the Berkeley County
19 Sheriff's Department?

20 A Yes, I am.

21 Q And you're a detective in the investigative unit?

22 A Yes, sir.

23 Q Can you explain to the jury what involvement you had
24 in the investigation in the death of Dexter Perry?

25 A The day after the incident, I responded to a

DIRECT EXAMINATION BY MR. JENNINGS / BOBBY RAY SHULER Page 453

1 intersection of Moses Extension and College Park Road,
2 which is located in Ladson, South Carolina, in the
3 jurisdiction of the Berkeley County Sheriff's Office, in
4 reference to a found handgun on the side of the road.

5 Q And actually, you were out there on August the 2nd?

6 A Yes, sir.

7 Q Which actually -- chronologically was the same day of
8 the shooting. It just happened that early morning?

9 A Yes, sir.

10 Q I'll show you what's marked as State's Exhibit 49.

11 You're familiar with this area. This is College Park Road?

12 A Yes, sir.

13 Q And this is Moses Extension?

14 A Yes, sir.

15 Q And this is Dutch Fork Road?

16 A Yes, sir.

17 Q Where the incident took place?

18 A Yes, sir.

19 Q If you would use that pointer to your right. And
20 where were you called to a handgun that was found?

21 A Right in that area right there.

22 Q And what type of handgun did you find?

23 A A 6-shot Smith and Wesson 38-caliber revolver.

24 Q And did you take that item into evidence?

25 A Yes, sir. I photographed it and cleared the weapon of

DIRECT EXAMINATION BY MR. JENNINGS / BOBBY RAY SHULER Page 454

1 the ammo that was in the chamber and took it into evidence.

2 (Marked State's Exhibit 80 for ID, gun.)

3 (Marked State's Exhibit 81 for ID, bullets.)

4 Q Det. Shuler, I'm going to show you what's marked as
5 State's Exhibit 80. Do you recognize that handgun?

6 A Yes, sir.

7 Q Is that the gun that you took into your possession?

8 A Yes, sir.

9 Q And at the time I believe you said it was -- had how
10 many bullets in it?

11 A It had a total of five.

12 Q Do you recognize what's marked as State's Exhibit 81?

13 A Yes, sir.

14 Q Did you remove these from the gun?

15 A Yes, sir.

16 Q Did you turn this into evidence?

17 A Yes, sir.

18 Q At the time, did you have any idea whether the handgun
19 was related to this shooting or not?

20 A No, sir. We didn't know whether it was related. We
21 just assumed that it possibly could be.

22 Q Okay.

23 MR. JENNINGS: Your Honor, we offer State's Exhibit 80
24 and 81 into evidence.

25 THE COURT: Any objection?

DIRECT EXAMINATION BY MR. JENNINGS / BOBBY RAY SHULER Page 455

1 MR. BOLUS: None.

2 MR. BARNWELL: None.

3 MR. JONES: None.

4 THE COURT: Marked and admitted without objection.

5 Q So basically, you just collected it so that it could
6 be compared --

7 A Yes, sir.

8 Q See if it was involved.

9 A Yes, sir.

10 MR. JENNINGS: That's all the questions I have.

11 THE COURT: Mr. Bolus?

12 MR. BOLUS: None.

13 THE COURT: Mr. Barnwell?

14 MR. BARNWELL: None.

15 THE COURT: Mr. Jones?

16 MR. JONES: None.

17 THE COURT: Any objection to the witness being --
18 being ---

19 MR. JENNINGS: No, Your Honor.

20 MR. BOLUS: No.

21 THE COURT: --- excused. I'm sorry. I couldn't get
22 the word out. Mr. Bolus?

23 MR. BOLUS: None.

24 THE COURT: Mr. Barnwell?

25 MR. BARNWELL: None.

DIRECT EXAMINATION BY MR. JENNINGS/ CRYSTAL SPENCE Page 456

1 MR. JONES: None.

2 THE COURT: Sir, you're excused.

3 DET. SHULER: Thank you.

4 THE COURT: You may call your next witness.

5 MR. JENNINGS: Your Honor, the State calls Crystal
6 Spence, now Crystal Dease.

7 MS. SPENCE: Crystal Spence. S-p-e-n-c-e.

8 THE COURT: You may proceed.

9 MR. JENNINGS: Thank you, Your Honor.

10 **CRYSTAL SPENCE**, being first duly
11 sworn, testified as follows:

12 COURT OFFICER: Please be seated. State your name for
13 the record and spell your last name.

14 MS. SPENCE: I spell "Spence," S-p-e-n-c-e.

15 THE COURT: You may proceed.

16 MR. JENNINGS: Thank you, Your Honor.

17 DIRECT EXAMINATION BY MR. JENNINGS:

18 Q Good morning, Ms. Spence. Where are you employed?

19 A Berkeley County Sheriff's Office, Forensic Service
20 Unit.

21 Q And how long have you been in the forensic unit?

22 A I've been in the forensic unit since September --
23 September of 2000.

24 Q How long -- how long have you been in law enforcement?

25 A 1997 I started at Berkeley County.

DIRECT EXAMINATION BY MR. JENNINGS/ CRYSTAL SPENCE Page 457

1 Q And where did you start with Berkeley County?

2 A The detention center.

3 Q And when did you move over for -- so 19 -- I'm sorry.

4 What year did you move to the forensic unit?

5 A 2000.

6 Q And you just moved straight from the detention center

7 ---

8 A Yes, sir.

9 Q --- over there? And what training did you receive
10 when you moved over to the forensic unit?

11 A I've gone to Criminal Justice Academy for law
12 enforcement photography, crime scene processing, basic
13 fingerprints, latent processing.

14 Q And when you say "latent processing," what are you
15 referring to?

16 A How to process items from scenes using ninhydrin,
17 fingerprint dust, and super glue.

18 Q And so basically when a crime's committed, typically
19 being a crime, y'all are the folks that go to the scene and
20 process it for any evidence?

21 A Yes, sir.

22 Q Who is the supervisor of your unit?

23 A Sgt. Dean Kokinda.

24 Q Now, since 2000 could you estimate how many times have
25 you had the opportunity to process a crime scene?

DIRECT EXAMINATION BY MR. JENNINGS/ CRYSTAL SPENCE Page 458

1 A Approximately 300 cases.

2 Q And that could involve various ---

3 A Anything from burglaries to homicides to sexual
4 assaults, shootings, everything and anything.

5 Q And some of the things you might do at a crime scene
6 would be photographing it?

7 A Photograph, process for latents, look for any kind of
8 hairs, fibers, shell casings, projectiles if they're lodged
9 into anything, blood.

10 Q And basically, what you're trying to do is document
11 everything at the scene so that later, if it goes to court,
12 you can come into court and sort of recreate what the crime
13 scene looked like?

14 A Correct.

15 Q What in general -- when you go to a scene, what would
16 be the sort of flow of activity you go through when you're
17 processing a scene?

18 A First thing I do is get with the -- either the deputy
19 or the detective that is on scene. They run through what
20 they know about the scene, and then I'll go in and look
21 around to see what I've got, what equipment I'm going to
22 need, and then I just start with photographs and work my
23 way through trace evidence, anything outside the building
24 or house that needs to be done; cars, anything like that.
25 I normally start with photographs and then work my way out

DIRECT EXAMINATION BY MR. JENNINGS/ CRYSTAL SPENCE Page 459
1 from the scene.

2 Q And how will it typically work as to who is -- or how
3 your unit's notified when a crime has taken place?

4 A We're on call from a week-to-week basis, and whoever's
5 on call gets called first. Anything that is a homicide,
6 the whole unit goes out.

7 Q And how many people are in your unit?

8 A Right now, two.

9 Q You and Sgt. Kokinda?

10 A Yes.

11 Q In August of -- that first week of August of 2006, who
12 was on call for your unit?

13 A I was primary.

14 Q And were you notified in the early morning of August
15 the 2nd of an incident at [REDACTED] Snow Goose Circle?

16 A Yes, sir. By dispatch, they paged me.

17 Q And what did they notify you of?

18 A They stated that they had a kidnaping and a burglary
19 at the time.

20 Q Okay. And what did you do?

21 A I called Sgt. Kokinda to tell him what we had. Got to
22 the scene, and then that's when they determined that a
23 shooting at Dutch Fork was related to this incident.

24 Q And so the first scene that you went to was where?

25 A Snow Goose.

1 Q And that's in ---

2 A [REDACTED]

3 Q --- that's in Berkeley County?

4 A Yes, it is.

5 Q Tell me what you found when you got to -- to that
6 apartment.

7 A When I arrived to the apartment, I spoke to Deputy
8 Crumley. He stated that the suspects had kicked in the
9 door, and there was blood droplets on the door -- the
10 floor. And that's about all that he told me. And I went
11 inside, looked around, and verified that the door was
12 kicked in, and started doing photographs of the door area,
13 and then went upstairs. And there was nothing that looked
14 disturbed upstairs, so my main focus was at the door.

15 Q So your crime scene was focused on that entryway area.

16 A Correct.

17 Q I'll show you what's marked as State's Exhibit 6.
18 That's a -- is this a photograph that you took?

19 A That's correct.

20 Q And that's the front door to the apartment of [REDACTED]
21 Snow Goose Circle?

22 A Correct.

23 Q And I believe you could -- you could tell when you got
24 there that the door had been kicked in?

25 A Yes.

DIRECT EXAMINATION BY MR. JENNINGS/ CRYSTAL SPENCE Page 461

1 Q I show you State's Exhibit No. 8. That was -- this
2 wood on the floor was part of the doorjamb?

3 A Correct.

4 Q And were actually metal pieces of the -- the engaging
5 system of the handle and latch were on the floor?

6 A Correct. That's exactly how it was when I arrived.

7 Q Tell me about the blood that you observed in the
8 entryway.

9 A There was a couple of droplets on the floor and a
10 couple droplets on the first step. That's the only blood
11 that I noticed.

12 Q And you photographed those?

13 A Yes.

14 Q I'm going to show you what's marked as State's Exhibit
15 No. 10. Can you point out -- there's a laser pointer there
16 to your right. Right over -- right over there. If you'll
17 point out ---

18 A This area right here is what was on the floor, and
19 this area right here is on the first step. I used a scale
20 and I photographed both.

21 Q What -- did you do anything further with those two
22 areas of blood?

23 A I collected a blood sample from this first dot, and
24 collected a blood sample right next to the scale.

25 Q And what's the purpose of collecting those samples?

DIRECT EXAMINATION BY MR. JENNINGS/ CRYSTAL SPENCE Page 462

1 A So we could verify whose blood it was.

2 Q And how -- what's the process that you go about taking
3 a sample?

4 A You use water on a cotton swab; you swab the blood;
5 let it air dry; put it in a package; seal it up; and then
6 it gets shipped to SLED.

7 Q And then SLED's the South Carolina Law Enforcement
8 Division?

9 A Correct.

10 Q And they have the DNA people out there?

11 A Correct.

12 Q I show you these items that are in State's Exhibit 63.
13 Do you recognize those?

14 A Yes, sir.

15 Q And what are those two items?

16 A These are the blood samples that I took. This one is
17 from the step, and this one is from the floor.

18 Q In fact, is your name written on those?

19 A Yes, sir.

20 Q Then you took these in your possession to turn into
21 evidence?

22 A Yes.

23 MR. JENNINGS: Your Honor, we would offer State's
24 Exhibit 63 into evidence.

25 THE COURT: Any objection?

DIRECT EXAMINATION BY MR. JENNINGS/ CRYSTAL SPENCE Page 463

1 MR. BOLUS: None.

2 MR. BARNWELL: None.

3 MR. JONES: None, Your Honor.

4 THE COURT: Marked and admitted without objection.

5 (Marked State's Exhibit No. 63, Blood samples.)

6 Q Now, while you were at the Snow Goose Circle
7 apartment, were you notified of another incident that had
8 taken place in Berkeley County?

9 A Yes, sir. We -- we were notified that there was a
10 shooting with a death involved at Dutch Fork.

11 Q And so did you ultimately -- were you able to make it
12 to that residence?

13 A Yes, sir. I -- we -- me and my supervisor left Snow
14 Goose. We both went straight to Dutch Fork to process
15 that.

16 Q Okay. And tell us what you did at -- when you first
17 got to the Dutch Fork house.

18 A We spoke to Lt. Mason and he advised of what we kind
19 of had. And me and Sgt. Kokinda went inside to look and
20 see what we had. We started at the front door and then we
21 went to the left through the living room, through the
22 kitchen, and the -- ended up into the master bedroom where
23 the incident took place.

24 Q Were you able to take photographs when you were at the
25 house?

DIRECT EXAMINATION BY MR. JENNINGS/ CRYSTAL SPENCE Page 464

1 A Yes, sir. I took photographs of the overall area and
2 then in detail in the bedroom.

3 Q First of all, I'm going to show you State's Exhibit
4 48, which is a diagram of the residence. You enter in here
5 through the front door?

6 A Correct.

7 Q And the living room area is here?

8 A Correct.

9 Q And then you would go into the kitchen and into this
10 back bedroom?

11 A Correct.

12 Q And is that the area where you found the majority of
13 the evidence?

14 A Correct.

15 Q And State's Exhibit 27. In that back bedroom, you
16 found a large amount of blood?

17 A Correct.

18 Q I show you State's Exhibit -- show you State's Exhibit
19 23. Do you recognize that?

20 A Yes. That's the front glass door.

21 Q Okay. And these are all photographs that you took?
22 Are these photographs you took?

23 A Yes, sir.

24 Q State's Exhibit 29.

25 A As I said, the front door of the glass that was broke.

DIRECT EXAMINATION BY MR. JENNINGS/ CRYSTAL SPENCE Page 465
1 from the top portion of the glass door.

2 Q Okay. And State's Exhibit 37?

3 A That is walking down the hallway into the master
4 bedroom.

5 Q Next is State's Exhibit 46, 47 -- let's see -- 45, 44,
6 43, 42, 41, 40, 39, 38, 36, and 24 and 25. See if you --
7 you don't have to say what each one is, but are those the
8 photographs that you took that night?

9 A Yes, sir.

10 Q And do each of these photographs fairly and accurately
11 depict how that house looked and the items of evidence that
12 you saw that night?

13 A Yes, sir.

14 MR. JENNINGS: Your Honor, we offer these into
15 evidence.

16 MR. BOLUS: No objection.

17 MR. BARNWELL: No objection.

18 MR. JONES: No objection.

19 THE COURT: Marked and admitted without objection.

20 (Marked State's Exhibit Nos. 23, 24, 25, 29, 36, 37,
21 38, 39, 40, 41, 42, 43, 44, 45, 46, and 47; photos.)

22 Q We'll start with State's Exhibit 23, which is the
23 front screened door. There's -- marked here, it's a little
24 hard to see in this blowup. Is that an item that you
25 placed on the door?

DIRECT EXAMINATION BY MR. JENNINGS/ CRYSTAL SPENCE Page 466

1 A That is an item that Sgt. Kokinda placed on the door.

2 Q Okay. And what did that signify?

3 A It was a bullet hole.

4 Q In the front screen door?

5 A Uh-huh.

6 THE COURT REPORTER: Is that a "yes."

7 MS. SPENCE: Yes, ma'am.

8 THE COURT REPORTER: Thank you.

9 Q And State's Exhibit 29?

10 A That is a picture also of the screen door showing the
11 glass from the top portion.

12 Q And that was how you found it when y'all arrived at
13 the scene?

14 A Yes, sir.

15 Q Show you State's Exhibit 37. And this is the picture
16 as you're walking from the -- from the kitchen back towards
17 the back bedroom, correct?

18 A Correct. It's in front of the washer and dryer.

19 Q And this is the room where the victim was shot?

20 A Say again?

21 Q This -- this is the room where the victim was shot,
22 Dexter Perry?

23 A That's what we believe.

24 Q Okay. And explain to the jury, what do these numbered
25 placards represent?

DIRECT EXAMINATION BY MR. JENNINGS/ CRYSTAL SPENCE Page 467

1 A The markers represent -- No. 1 is a shell casing; No.
2 2 is pieces of a cell phone that was also shot; and No. 3
3 is also another casing.

4 Q And what's the purpose of placing the -- the placards
5 where you find the items?

6 A So we can document them in our paperwork.

7 Q Show you State's Exhibit 36. That a photograph taken
8 from inside of the room?

9 A Yes, sir. At the foot of the bed.

10 Q And what was item No. 1 that you marked? What was
11 that?

12 A It was a shell casing.

13 Q Were you able to -- did you determine what caliber
14 shell casing it was?

15 A It's a .45 caliber.

16 Q And what is the evidence marked in No. 3?

17 A Number 3 is also a shell casing, .45 caliber.

18 Q And No. 4?

19 A Same thing: shell casing, .45 caliber.

20 Q And I'm going to show you what's marked as State's
21 Exhibit 55, 56, and 57. Do you recognize those containers?

22 A Yes, I do.

23 Q And what are those?

24 A The casings that we -- or the boxes that we put shell
25 casings in and we mark either it's a casing or a projectile

DIRECT EXAMINATION BY MR. JENNINGS/ CRYSTAL SPENCE Page 468
1 are the only two things we put in these boxes.

2 Q Okay. And -- and State's Exhibit No. 55 is evidence
3 No. 1?

4 A Placard No. 1, and placard No. 3, and placard No. 4
5 are all three casings.

6 MR. JENNINGS: Your Honor, we'd offer State's Exhibits
7 56 -- 55, 56, and 57 into evidence.

8 THE COURT: Any objections?

9 MR. BOLUS: No objection.

10 MR. BARNWELL: No objection.

11 MR. JONES: No objection.

12 THE COURT: Marked and admitted without objection.

13 (Marked State's Exhibit Nos. 55, 56, and 57; photos.)

14 Q And all three of those items were shell casings that
15 were .45 caliber ammunition?

16 A Yes, sir.

17 Q And I believe -- No. 2 was what?

18 A It was a cell phone that appeared to be shot also.

19 Q Show you what's marked as State's Exhibit 82. Do you
20 recognize that?

21 A Yes, I do. Yes, sir.

22 Q And that's the -- that's the cell phone that you
23 marked as No. 2?

24 A Correct.

25 Q In fact it appears to have a bullet hole in it.

DIRECT EXAMINATION BY MR. JENNINGS/ CRYSTAL SPENCE Page 469

1 A Correct.

2 MR. JENNINGS: We'd offer Exhibit 82 into evidence.

3 MR. BOLUS: No objection.

4 THE COURT: Marked -- Mr. Barnwell?

5 MR. BARNWELL: No objection.

6 THE COURT: Mr. Jones?

7 MR. JONES: No objection.

8 THE COURT: Marked and admitted without objection.

9 (Marked State's Exhibit No. 82, cell phone.)

10 Q As far as -- in addition to a large amount of blood,
11 as far as evidence that was recovered from that room, was
12 that the extent?

13 A Yes, sir. There was no other evidence collected from
14 that room.

15 Q Okay. Moving back to the -- sort of back to the
16 kitchen area, were you able to find a projectile in the
17 hallway that was next to the dryer?

18 A Yes, sir. It should be item No. 5.

19 Q And the -- this -- this area where the dryer -- the
20 table was here and the dryers were right here?

21 A Correct.

22 Q And as we'll see in State's Exhibit No. 45, evidence
23 placard No. 5, what does that signify?

24 A That signifies a projectile.

25 Q And did you also collect that?

DIRECT EXAMINATION BY MR. JENNINGS/ CRYSTAL SPENCE Page 470

1 A Yes, I did.

2 Q I'll show you what's marked as State's Exhibit 58. Do
3 you recognize that item?

4 A Yes, I do. It's placard No. 5 and it's a projectile.

5 Q And that was collected into evidence?

6 A Yes, it was.

7 MR. JENNINGS: Your Honor, we'd offer 58 into
8 evidence.

9 THE COURT: Any objection?

10 MR. BOLUS: None.

11 MR. BARNWELL: None.

12 THE COURT: Mr. Jones?

13 MR. JONES: No objection.

14 THE COURT: Marked and admitted without objection.

15 (Marked State's Exhibit No. 58, photo.)

16 Q And in the kitchen, were you able to -- did you see
17 any damage to the freezer or refrigerator?

18 A Yes, sir. There was a -- a bullet hole in the freezer
19 on the front.

20 Q I'll show you what's marked as State's Exhibit 38.
21 Can you point to the jury -- that's the hole in the
22 freezer?

23 A Right there.

24 Q Okay. And inside the freezer, did you find anything
25 that correlated to that hole?

DIRECT EXAMINATION BY MR. JENNINGS/ CRYSTAL SPENCE Page 471

1 A Yes, sir. There was also a projectile inside the
2 freezer.

3 Q I'll show you what's marked as State's Exhibit 42.
4 Did you take that item into evidence?

5 A Yes, sir.

6 Q Show you what's marked as State's Exhibit 60.

7 A This is item No. 8, projectile from the freezer. And
8 I did collect it.

9 MR. JENNINGS: Your Honor, we'd offer State's Exhibit
10 60 into evidence.

11 THE COURT: Any objection?

12 MR. BOLUS: None.

13 MR. BARNWELL: None.

14 MR. JONES: None.

15 THE COURT: Marked and admitted without objection.

16 (Marked State's Exhibit No. 60, projectile.)

17 Q Looking back at State's Exhibit 48, the freezer and
18 refrigerator was located right here?

19 A Correct.

20 Q And this is the bedroom where the victim was shot?

21 A Correct.

22 Q And finally the last item, item No. 7, is a projectile
23 and it was located under this chair?

24 A Correct.

25 Q Show you what's marked as the State's Exhibit 59.

DIRECT EXAMINATION BY MR. JENNINGS/ CRYSTAL SPENCE Page 472

1 A This is placard No. 7, also a projectile collected
2 from under the chair.

3 MR. JENNINGS: We'd offer 59 into evidence, Your
4 Honor.

5 THE COURT: Any objection?

6 MR. BOLUS: None.

7 MR. BARNWELL: None.

8 MR. JONES: None.

9 THE COURT: Marked and admitted without objection.

10 (Marked State's Exhibit No. 59, projectile.)

11 Q And that's the -- the essence of the significant
12 evidence that y'all found?

13 A Correct.

14 Q Now, as far as the -- the casings and the projectiles,
15 were those sent up to SLED?

16 A Yes, they were.

17 Q And what's the purpose of sending those up to SLED?

18 A For ballistics testing to see if we had a gun in the -
19 - case if it was shot from that particular weapon.

20 Q So people from SLED would do any DNA testing or any
21 firearms identification?

22 A Correct.

23 Q And as far as your continuing investigation, I believe
24 you had hair samples from Dexter Perry from the autopsy?

25 A Yes. They were turned in.

DIRECT EXAMINATION BY MR. JENNINGS/ CRYSTAL SPENCE Page 473

1 Q And DNA samples could be taken from that?

2 A Correct.

3 Q As well as pursuant to court order, blood samples were
4 taken from Marquita Smith, Kerry Hollins, Jermaine
5 Hartwell, Gary Grant, and Kareem King?

6 A Correct.

7 Q And all six of those items were sent to SLED?

8 A Correct.

9 Q Now, on November -- on November 21st of 2006, were you
10 requested to go over to the detention center to take a
11 photograph of one of the defendants in this case?

12 A Yes, I was.

13 Q Who -- whose photograph were you asked to take for ---

14 A Mr. Hartwell.

15 MR. JENNINGS: This is 14 and 15, Your Honor.

16 THE COURT: Are you seeking to admit that?

17 MR. JENNINGS: Yes.

18 Q Do you recognize those?

19 A Yes, I do.

20 Q Are those the photographs you took of Mr. Hartwell?

21 A Yes, they are.

22 Q And do you see him in the courtroom today?

23 A Yes, I do.

24 Q Can you point him out, please?

25 A Middle of that table.

1 Q All right.

2 MR. JENNINGS: Your Honor, we would offer State's
3 Exhibit 14 and 15 into evidence.

4 THE COURT: Any objection?

5 MR. BOLUS: None.

6 MR. BARNWELL: None.

7 MR. JONES: None.

8 THE COURT: Marked and admitted without objection.

9 (Marked State's Exhibit Nos. 14 and 15, photos.)

10 Q Show you what's marked as State's Exhibit 14. This
11 photograph you took documents an injury Mr. Hartwell
12 claimed to have sustained the night of this incident.

13 A Yes, it does.

14 Q Okay. And State's Exhibit 15 is just a closer
15 photograph.

16 A Correct.

17 Q Okay. That's all I have. If you will answer any
18 questions of the defense.

19 MR. BOLUS: No questions.

20 THE COURT: Mr. Barnwell, you may proceed.

21 CROSS-EXAMINATION BY MR. BARNWELL:

22 Q Officer Spence, could you take the laser pointer and
23 point it to the -- the back -- the back bedroom.

24 A (Complies.)

25 Q Is that -- that's where blood -- blood was found in

CROSS-EXAMINATION BY MR. BARNWELL / CRYSTAL SPENCE Page 475
1 that -- that back -- that area?

2 A Yes, sir.

3 Q And there's also projectiles found by the washer/dryer
4 and in -- in that back bedroom?

5 A There was no projectiles in the bedroom, just casings.
6 There was projectiles ---

7 Q Casings. I'm sorry.

8 A Yes, sir.

9 Q Casings. All right. And there was a projectile in
10 the freezer?

11 A Inside the freezer.

12 Q And could you point the -- point the -- the -- the
13 pointer down the -- the other -- the other end of the
14 trailer?

15 A (Complies.)

16 Q Is that -- did you examine that -- that area?

17 A Sgt. Kokinda is the one that searched that bedroom. I
18 went into the bedroom and looked, but I did not search for
19 anything.

20 Q All right. So you don't -- you don't have any
21 information about that area?

22 A No, sir.

23 Q All right. Thank you. No further questions.

24 THE COURT: Mr. Jones?

25 MR. JONES: No questions, Your Honor.

DIRECT EXAMINATION BY MR. JONES / DEAN KOKINDA

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1 THE COURT: Any redirect of the witness?

2 MR. JENNINGS: No, Your Honor.

3 THE COURT: Any objection to the witness being
4 excused? From the State?

5 MR. JENNINGS: No objections.

6 MR. BOLUS: None.

7 MR. BARNWELL: None.

8 MR. JONES: None.

9 THE COURT: Ma'am, you're excused.
10 Could counsel approach for me, please?

11 (Bench conference.)

12 THE COURT: You may proceed.

13 MR. JENNINGS: Sgt. Dean Kokinda.

14 **DEAN KOKINDA**, being first duly
15 sworn, testifies as follows:

16 COURT OFFICER: Please be seated. State your full
17 name, but spell your last name for the record.

18 A Dean Robert Kokinda. Spelling of the last name, K-o-
19 k-i-n-d-a.

20 THE COURT: You may proceed.

21 MR. JENNINGS: Thank you, Your Honor.

22 DIRECT EXAMINATION BY MR. JENNINGS:

23 Q Sgt. Kokinda, you're employed with the Berkeley County
24 Sheriff's Department?

25 A Yes, sir.

DIRECT EXAMINATION BY MR. JENNINGS / DEAN KOKINDA Page 477

1 Q And you are the supervisor over the crime scene unit?

2 A Yes, sir.

3 Q And you've had extensive training in crime scene
4 processing, as well as fingerprint collection and analysis?

5 A Yes, sir. I have.

6 Q And you've been qualified as an expert on numerous
7 cases, have you not?

8 A Yes, sir. In this court.

9 Q As an expert in both the collection of evidence and
10 the analysis of fingerprints?

11 A Yes, sir.

12 MR. JENNINGS: Your Honor, we would offer him as an
13 expert in the field of evidence processing and fingerprint
14 analysis.

15 MR. BOLUS: No objection.

16 MR. BARNWELL: No objection.

17 MR. JONES: No objection.

18 THE COURT: So admitted.

19 Q Ms. Spence works with you in the crime scene unit,
20 correct?

21 A Yes, sir.

22 Q Now, on the night or the early morning of August the
23 2nd, 2006, y'all initially responded to an incident at Snow
24 Goose Circle?

25 A Yes, sir. At [REDACTED] Snow Goose.

1 Q And Ms. Spence has already testified to the
2 significance of that front door being kicked in.

3 A Yes, sir.

4 Q And essentially processing that entryway was what
5 y'all did.

6 A Yes, sir.

7 Q All right. Did you also process the front door and
8 attempt to lift any fingerprints or footwear impressions?

9 A Yes, sir. I did.

10 Q Starting with -- with the front door, I'm going to
11 show you what's marked as State's Exhibit 7. What -- what
12 did you see that sparked your curiosity?

13 A That particular photograph -- to the right of the
14 doorknob and down you'll see some marking where a foot had
15 kicked the door.

16 Q Okay.

17 A In this area.

18 Q And you thought that was where the door had been
19 kicked in?

20 A Yes, sir.

21 Q So what did you attempt to do with that area?

22 A I processed it using magnetic latent powder.

23 Q Uh-huh.

24 A To see if I could get a footwear image.

25 Q And what's a "footwear image"?

DIRECT EXAMINATION BY MR. JENNINGS / DEAN KOKINDA Page 479

1 A It's the design of the -- of the bottom of the -- of
2 the shoe.

3 Q Uh-huh.

4 A And that can be compared to a known source.

5 Q Were you able to lift a -- a footwear impression?

6 A No, sir.

7 Q Okay. And how about looking for fingerprints on the
8 door?

9 A Yes, sir. The door was additionally processed for
10 latent fingerprints.

11 Q And what sort of process do you do to look for
12 fingerprints?

13 A On this particular surface, it was kind of a rough
14 wood surface, I used a magnetic powder.

15 Q Okay. And how do you go about doing it?

16 A Basically, you put -- you have a magnet wand. The
17 powder has a ferrous metal in it. It sticks to the wand
18 and therefore you're applying the powder directly to the
19 surface, so it'll get down into the grooves. Where with
20 regular powder, you're putting the powder onto a brush and
21 then the brush to the surface. And that would tend to
22 smear it on this type of surface.

23 Q Now, based on your training, how -- explain sort of
24 how the process is that somebody will leave their
25 fingerprint in a particular place.

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1 A Well, basically the -- the bottom of your hand has a
2 different type of skin, which is known as "friction skin."
3 And it's your body's way of giving you gripping power. If
4 you didn't have this skin, if you tried to grab a -- a wet
5 glass or something, it would slip out of your hands.

6 Basically, anything you touch you have the possibility
7 of leaving an image of that rigid detail behind on the
8 surface that you touched because the friction skin, or the
9 ridges of the friction skin, have pores which exude sweat
10 and oils and water.

11 Q And now, every time you touch something, are you
12 automatically going to leave your fingerprint on what you
13 touch?

14 A Not necessarily -- not -- you wouldn't recover a
15 fingerprint every time.

16 Q Uh-huh. What are some of the factors that contribute
17 to whether or not somebody like yourself is going to be
18 able to recover the fingerprint?

19 A Well, you've got, you know, the type of surface that
20 you're touching, you know, the amount of pressure that you
21 put onto the surface. You know, if grab a doorknob and you
22 turn it to get inside somewhere, you're obviously putting
23 downward pressure and rotational pressure to turn that
24 knob, which would basically smear what you have there.
25 Humidity, temperature, sunlight: All these things affect

DIRECT EXAMINATION BY MR. JENNINGS / DEAN KOKINDA Page 481
1 how the latent fingerprint will stay on the surface, how

2 long it will stay on the surface. Basically, though,
3 they're very fragile, at least on most surfaces.

4 Q And does humidity have a -- a positive or a negative
5 impact on ---

6 A Negative.

7 Q And so when you processed the front door at Snow Goose
8 Circle, were you able to lift any fingerprints?

9 A Yes, sir. I did.

10 Q How many did you lift?

11 A On that front door, there were two.

12 Q And what's the term that you will associate to that
13 fingerprint that you lifted? A "latent fingerprint"?

14 A Yes, sir.

15 Q And basically meaning that at the time you don't know
16 whose fingerprint that is?

17 A Well, latent means invisible, so basically when you're
18 looking at the door prior to processing it, you won't see
19 anything. And the dust or the chemical, whatever you, you
20 know, process you use will bring out and enhance it so you
21 can see it visibly.

22 Q And then what will you do later, after you've
23 collected the fingerprints from a particular scene?

24 A We'll compare them to a known source.

25 Q If suspects are developed.

1 A Yes, sir.

2 Q I'll show you what's marked as State's Exhibit 75 and
3 76. Do you recognize those?

4 A Yes, sir. These are the two latent fingerprints that
5 I got off the front door.

6 Q Okay. And later were you provided some names by
7 detectives of Marquita Smith, Kerry Hollins, Gary Grant,
8 Jermaine Hartwell, and Kareem King?

9 A Yes, sir.

10 Q And you had fingerprint -- known fingerprints from
11 each of these individuals?

12 A Yes, sir. I did.

13 Q Were you able to compare those fingerprints to the --
14 the two latent fingerprints that you found at Snow Goose
15 Circle?

16 A Yes, sir. I did.

17 Q And what were the results of your analysis?

18 A One of the fingerprint cards is labeled as item 6 --
19 was identified with Marquita Smith, the left palm,
20 hypothenar area.

21 Q Uh-huh. And which that is State's Exhibit ---

22 A Seventy-five.

23 MR. JENNINGS: Your Honor, we'd offer States's Exhibit
24 75 and 76 into evidence.

25 THE COURT: Any objection?

DIRECT EXAMINATION BY MR. JENNINGS / DEAN KOKINDA Page 483

1 MR. BOLUS: None.

2 MR. BARNWELL: None.

3 MR. JONES: No objection.

4 THE COURT: Marked and admitted without objection.

5 (Marked State's Exhibit Nos. 75 and 76, latent
6 fingerprints.)

7 Q And State's Exhibit 76, were you able to make any
8 finding in relation to that?

9 A It wasn't identified with any -- any of the names.

10 Q Okay.

11 THE COURT REPORTER: I'm sorry. What did you say?

12 A It wasn't identified with any of the names as
13 provided.

14 Q So State's Exhibit 75 was Marquita Smith?

15 A Yes, sir.

16 Q Okay. And 76 was not any of those individuals that
17 you compared it to?

18 A That's correct.

19 Q And when y'all responded to [REDACTED] Dutch Fork -- and Ms.
20 Spence has already testified about the projectiles and
21 casings that were found. You also went into -- I'll show
22 you State's Exhibit 48. As you entered the front door down
23 this hallway, you -- you did some significant work in this
24 back bedroom?

25 A Yes, sir. I did.

DIRECT EXAMINATION BY MR. JENNINGS / DEAN KOKINDA Page 484

1 Q And what appeared -- based on photos you were taking
2 and observing, what was the condition of that back bedroom?

3 A It was ransacked.

4 Q The bed was turned up ---

5 A Yes, sir.

6 Q --- side down?

7 A Yes, sir. The bed was lifted up off the frame and
8 flipped up against the wall.

9 Q And did you find several items in that room that you
10 took into your possession?

11 A Yes, sir. I did.

12 Q And what was it that you found?

13 A It was \$1,653 in a shoe, 48 grams of marijuana, and a
14 social security card.

15 Q And where was the shoe located?

16 A It was located what would have been underneath the
17 bed.

18 Q I'll show you what's marked as State's Exhibit 21.
19 That's the bed that you were describing as having been
20 turned up on end?

21 A Yes, sir.

22 Q And you found the shoe in this area?

23 A Yes, sir.

24 Q Show you what's marked as State's Exhibit 20. Do you
25 recognize that?

DIRECT EXAMINATION BY MR. JENNINGS / DEAN KOKINDA Page 485

1 A Yes, sir. That's a photograph of the shoe.

2 Q All right. And State's Exhibit 19?

3 A That's a photograph of the bag with the marijuana.

4 Q Okay. And both of those items were found in that back
5 bedroom?

6 A Yes, sir.

7 MR. JENNINGS: Your Honor, we'd offer State's Exhibit
8 19 and 20, Your Honor.

9 THE COURT: Any objection?

10 MR. BOLUS: None.

11 MR. BARNWELL: None.

12 MR. JONES: None.

13 THE COURT: Marked and admitted without objection.

14 (Marked State's Exhibits Nos. 19 and 20, photos.)

15 Q And State's Exhibit 20, that's the money you found in
16 the shoe?

17 A Yes, sir.

18 Q And where was this bag of marijuana that's shown in
19 State's Exhibit 19? Where was that located?

20 A It was located approximately a foot away from that
21 shoe, kind of in a pile of clothes that was -- would have
22 been at the end of the bed.

23 Q By that bed?

24 A Yes, sir.

25 Q Okay. Now, did you also -- referring back to State's

1 Exhibit 48. When you were at the scene, were you able to
2 identify any substances on the front steps here, and on the
3 -- the interior entryway of the house that appeared to be
4 blood?

5 A Yes, sir.

6 Q Where were those items?

7 A There was an area on the front step, an area on the
8 inside of the storm door, and an area on the hall wall --
9 right -- right in this area.

10 Q And did you collect samples of that?

11 A Yes, sir. I did.

12 Q And what process did you use to collect those samples?

13 A Just taking sterile cotton swabs, using distilled
14 water; and then sampling it, drying it.

15 Q And then later those can be sent to SLED?

16 A Yes, sir.

17 Q And can be compared to other known DNA?

18 A Yes, sir.

19 Q Of people? I'll show you these three items that are
20 in State's Exhibit No. 64. Do you recognize those?

21 A Yes, sir. These are the swabs that I collected that
22 night.

23 Q Okay. And did those represent samplings of all of the
24 -- of any substance that appeared to be blood from the
25 front steps or the -- the front portion of the house?

DIRECT EXAMINATION BY MR. JENNINGS / DEAN KOKINDA Page 487

1 A Yes, sir.

2 MR. JENNINGS: Your Honor, we would offer State's
3 Exhibit 64 into evidence.

4 THE COURT: Any objection?

5 MR. BOLUS: None.

6 MR. BARNWELL: None, Your Honor.

7 MR. JONES: None.

8 THE COURT: Marked and admitted without objection.

9 (Marked State's Exhibit No. 64, swabs.)

10 Q And I believe finally you were able to process this --
11 the purple Altima that was at the residence that's shown in
12 State's Exhibit 17?

13 A Yes, sir. We processed that for latent fingerprints.

14 Q And did you use the same process that you used at Snow
15 Goose Circle?

16 A Used the regular powder on that.

17 Q Okay. And how does that process differ from what you
18 did at the apartment?

19 A Basically the powder goes onto a fiberglass brush and
20 then the brush is brushed on that surface.

21 Q And were you able to identify several areas that had
22 ridge detail that you were able to lift?

23 A Yes, sir.

24 Q When you actually -- when you find an area that has
25 some ridge detail, how do you lift it and get it on paper

1 so that you can look at it?

2 A There's a couple of ways that you can preserve it.

3 The easiest and the most common way is using clear adhesive

4 tape. They call it "fingerprint tape," but basically it's

5 -- it's similar to Scotch tape, but the adhesive's a little

6 different. And you will put that on that area where the

7 ridge detail's at, lift it up, and you put it on a -- a

8 latent backer, which is what you have in your hand.

9 Q Okay. I'm going to show you what's marked as State's

10 Exhibits 65, 66, 67, 68, 69, 70, 71, 72, 73, and 74. Do

11 you recognize those items?

12 A Yes, sir. These are the -- the latent fingerprints

13 that were recovered from that car.

14 MR. JENNINGS: Your Honor, we'd offer 65 through 74

15 into evidence.

16 THE COURT: Any objection?

17 MR. BOLUS: No objection.

18 MR. BARNWELL: No objection.

19 MR. JONES: No objection.

20 THE COURT: Marked and admitted without objection.

21 (Marked State's Exhibit No. 65 through 74, latent

22 fingerprints.)

23 Q And you had known fingerprints as we said from all of

24 the co-defendants in this case?

25 A Yes, sir.

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1 Q All right. Now, the State's Exhibit 74, 73, and 72,
2 those were able to be matched to who?

3 A These were matched to the victim, Dexter Perry.

4 Q And what location -- State's Exhibit 72, where was
5 that fingerprint lifted?

6 A Exhibit 72 was in the right front roof at the door.

7 Q Okay. State's Exhibit 73?

8 A Exhibit 73 was the -- above the driver's side door
9 handle.

10 Q And State's Exhibit 74?

11 A Seventy-four was the right front door handle.

12 Q And all three of those you matched to Dexter Perry?

13 A These were matched by Charleston City.

14 Q Okay. And as to 65, 66, 67, 68, 69, 70, and 71, were
15 you able to match those to -- to anybody?

16 A 65, 66, 67, 68, 69, 70, and 71 were not identified
17 with any of the names that I was given for this case.

18 Q Okay. And some number of them -- did they not have
19 sufficient ridge detail to make a comparison?

20 A Some of them did not have enough -- enough ridge
21 detail to make an identification.

22 Q And what does that mean?

23 A Basically when you -- when you compare latent
24 fingerprints with known fingerprints, you have three levels
25 of detail: 1, 2, and 3.

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1 Level 1 is your ridge flow, which is a ridge pattern.

2 Level 2 is your ridge path, and that's where we would get
3 identification. And Level 3 is the ridge shape. In order
4 to make identification, you have to have a sufficient Level
5 2 and Level -- and sometimes Level 3 detail to make that
6 identification.

7 Q And so basically there wasn't enough detail there to
8 compare them to anybody?

9 A That's correct.

10 Q Now, just because Dexter Perry is the only person
11 whose fingerprints you were able to identify with that car,
12 does that mean that Dexter Perry was the only person that
13 was ever in the car?

14 A No, sir.

15 Q And so is it highly possible that other people have
16 been in the car, touched the car, and you just were not
17 able to recover any fingerprints?

18 A That's correct.

19 Q So in your opinion, based on not finding somebody's
20 fingerprints there, are you able to say that it's your
21 opinion that they were never in that car and never touched
22 that car?

23 A No, sir. I couldn't say that.

24 Q In fact, based on your experience, is it not uncommon
25 not to find somebody's fingerprints at a particular scene,

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depending on the different facts involved?

1
2 A Yeah. That would be correct.

3 Q Now, on July 31st of this year, did you return to
4 Dutch Fork?

5 A Yes, sir. I did.

6 Q And what was the purpose of that?

7 A To recover two projectiles that were in the wall of
8 the trailer.

9 Q And which wall are you referring to?

10 A The exterior wall at the front door of the trailer and
11 to the left of it.

12 Q I'll show you what's marked as State's Exhibit 11. Is
13 that a photograph you took?

14 A Yes, sir.

15 MR. JENNINGS: We'd offer 11 into evidence, Your
16 Honor.

17 THE COURT: Any objection?

18 MR. BOLUS: No objection.

19 MR. BARNWELL: No objection.

20 MR. JONES: No objection.

21 THE COURT: Marked and admitted without objection.

22 (Marked State's Exhibit No. 11, photo.)

23 Q And this just shows the front porch of [REDACTED] Dutch Fork?

24 A That's correct.

25 Q And there's -- you know that there were two bullet

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holes here in the exterior.

1
2 A Yes, sir.

3 Q And you were aware as the investigation had proceeded
4 that a witness named "Chris Nelson" had fired three shots
5 into the home.

6 A Yes, sir.

7 Q And were you able to recover any projectiles that were
8 associated with those two holes?

9 A Yes, sir. I recovered a projectile from each hole.

10 Q I'll show you what's marked as State's Exhibit 62.

11 A Sixty-two came from the hole that was closest to the
12 door.

13 Q Okay. Now, where -- where was the -- where was the
14 bullet? Where'd you actually find it?

15 A This particular bullet was in the -- in between the
16 exterior wall and the interior wall on top of the -- the
17 base 2-by-4 of the wall.

18 Q And so it had not entered into the home?

19 A No, sir. It had struck an upright 2-by-4 and then
20 dropped down.

21 Q And State's Exhibit 61?

22 A That was recovered in this hole in the picture, just
23 to the left of the first hole.

24 Q And could you tell by looking at those holes and the
25 way that the metal had been defected from which direction

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State's Exhibit 61 and 62 had been fired?

A Based on the angles, they both were fired from around
the bottom of the front steps, around in that area.

Q Okay. But from outside of the mobile home?

A Yes, sir.

MR. JENNINGS: Your Honor, we'd offer State's Exhibit
61 and 62 into evidence.

THE COURT: Any objection?

MR. BOLUS: No objection.

MR. BARNWELL: None.

MR. JONES: None.

THE COURT: Marked and admitted without objection.

(Marked State's Exhibit Nos. 61 and 62, projectiles.)

Q And all of the -- all the swabs, the known DNA samples
were all sent to SLED?

A Yes, sir.

Q As well as the casings, projectiles?

A Yes, sir.

Q And the only firearm that was ever found in this case
was submitted by Det. Shuler?

A Yes, sir. That's correct.

MR. JENNINGS: That's all I have, Your Honor.

THE COURT: Any questions?

MR. BOLUS: No questions.

THE COURT: Mr. Barnwell?

1 CROSS-EXAMINATION BY MR. BARNWELL:

2 Q I think you -- I'm not sure if it was a question Mr.
3 Jennings was asking you or is it your testimony: You said
4 that Chris Nelson fired three shots into the home?

5 A Yes, sir. That's the information I have.

6 Q Is that -- is that based on your crime scene
7 investigation, or what is that based on?

8 A No. It was based on information that was provided to
9 me by one of the other investigators.

10 Q Not -- not on your -- not on your crime scene
11 investigation?

12 A No, sir.

13 Q And you found two -- two projectiles -- two holes that
14 would have come from shooting from outside?

15 A That's correct.

16 Q So he could have fired more than -- more than three
17 shots. Would you say that would be correct?

18 A Well, there was another hole in the storm door.

19 Q So it could have been additional -- so that's three --
20 three -- three projectiles or holes accounted for, I guess
21 they'd say?

22 A Yes, sir.

23 Q But that doesn't rule out the fact he could have fired
24 additional shots?

25 A I can't say that he did or didn't.

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1 Q All right. Thank you.

2 THE COURT: Mr. Jones?

3 MR. JONES: Nothing, Your Honor.

4 THE COURT: Any re-direct of the witness?

5 RE-DIRECT EXAMINATION BY MR. JENNINGS:

6 Q The only defects or damage you found to the home
7 associated with shots fired from the outside were those two
8 holes to the left of the door, and then the hole in the
9 door?

10 A Correct.

11 Q So based on your investigation, any other shots would
12 not have hit the home?

13 A That's correct.

14 Q Thank you.

15 THE COURT: Anything further?

16 MR. BOLUS: No.

17 RE-CROSS EXAMINATION BY MR. BARNWELL:

18 Q With the -- the glass door and the glass in the screen
19 door, that was broken, though?

20 A Yes, sir.

21 Q Could that have come from shots fired through --
22 through the screen door?

23 A You mean additional shots to the three?

24 Q Additional shots, yes.

25 A They would have probably lodged inside the interior of

RE-CROSS EXAMINATION BY MR. BARNWELL / DEAN KOKINDA Page 496
the house.

MR. BARNWELL: All right. I don't have anything further.

THE COURT: Mr. Jennings?

MR. JENNINGS: No, Your Honor.

THE COURT: Any objection to the witness being excused from the State?

MR. JENNINGS: No, ma'am.

THE COURT: From the Defense?

MR. BARNWELL: No.

MR. JONES: No.

THE COURT: Sir, you're excused.

Mr. Foreman, ladies and gentlemen, we're going to take advantage of this break in testimony to take our lunch and recess. We will resume the trial at a quarter of two, which gives us an hour for lunch.

During the break, please do not discuss this case among yourselves or with anyone else. Again, please abide by my instructions about no contact with anyone in or about the courthouse. Please leave your note pads in your seats. And again, please do not watch, read, or listen to any media accounts about this case in any form of the media. I hope that you all have a good lunch, and we'll see you at a quarter of two.

(Jury exits at 12:48 p.m.)

1 THE COURT: You may be seated. Is there anything
2 before we break for lunch from the State?

3 MR. JENNINGS: Nothing, Your Honor.

4 THE COURT: From the Defense?

5 MR. BOLUS: Nothing.

6 MR. JONES: None here, Your Honor.

7 THE COURT: Mr. Jones?

8 MR. JONES: No, nothing.

9 THE COURT: Yes, sir?

10 MR. BARNWELL: I believe Mr. Hartwell will testify. I
11 guess we'll need to be able to get him into the witness box
12 with ---

13 THE COURT: We'll take care of that.

14 MR. BARNWELL: --- the leg irons.

15 THE COURT: We'll -- we'll approach that when we --
16 because I'm going to have to go through the colloquy and
17 everything else before we ...

18 The State, as I understand it has three more
19 witnesses?

20 MR. JENNINGS: Yes. And with the stipulation that
21 we've all entered into on the DNA in evidence.

22 THE COURT: And then how -- and you're not bound by
23 this. I'm just asking for scheduling purposes. How long
24 do you all think it will take for us to complete those
25 witnesses?

1 MR. JENNINGS: Certainly should be less than two
2 hours.

3 MR. JONES: Let me see who they are, Your Honor. Just
4 --

5 THE COURT REPORTER: I'm sorry, Mr. Jones. What did
6 you say?

7 MR. JONES: I was just going to see who they were --
8 just to see how long I thought --

9 MR. JENNINGS: Ballistics expert, Sgt. Merrithew, and
10 Sgt. -- Lt. Mason.

11 THE COURT: And just for scheduling purposes, Mr.
12 Bolus, do you plan to call any witnesses?

13 MR. BOLUS: No, ma'am.

14 THE COURT: And Mr. Barnwell, you've indicated you
15 only intend to call one witness, correct?

16 MR. BARNWELL: I'm sorry. I didn't hear you.

17 THE COURT: That's okay. I'm just asking for
18 scheduling purposes. You've indicated you plan to call one
19 witness; is that correct?

20 MR. BARNWELL: That -- that's correct.

21 THE COURT: Mr. Jones, you indicated you plan to call
22 three witnesses?

23 MR. JONES: Your Honor, I -- at this point in time,
24 I'm going to think a little bit, but I don't think I'm
25 going to call any.

1 THE COURT: Okay.

2 MR. BOLUS: You ---

3 THE COURT: Yes, sir?

4 MR. BOLUS: Your Honor, could I ask you --

5 THE COURT: Sure.

6 MR. BOLUS: I been trying to find a rule on no
7 evidence by a defendant, but I understand it's --

8 THE COURT: It's -- it's joint and if any of you
9 present evidence, you lose last argument.

10 MR. BOLUS: Even though he presented something that I
11 --

12 THE COURT: Doesn't matter.

13 MR. BOLUS: Well, that's not good.

14 (To Mr. Barnwell) Thanks a lot.

15 THE COURT: I just -- I just read it, actually.

16 MR. BARNWELL: I didn't know "the hand of one was the
17 hand of all."

18 THE COURT: I did.

19 MR. JENNINGS: Well, it is in this court.

20 THE COURT: I read it. I just read it actually by
21 accident, reading something else on Monday.

22 MR. BOLUS: I thought I could see it in the rules and
23 I -- it's not in the rules, but I guess ---

24 THE COURT: It's not in the rules. It's in a case,
25 and I -- I just read it Monday and it's going to drive me

1 crazy all lunch, trying to remember where I read it.
2 Actually, it's in the cases that deal with severance,
3 because one of the arguments that has classically been made
4 in severance is that because one defendant may present
5 testimony, the others lose their right to last argument.
6 And the Courts have ruled that that's not a sufficient
7 basis to sever a case.

8 MR. BOLUS: Well, thanks.

9 THE COURT: But it's like an edict of another --
10 another case, but I know I read it Monday. I just couldn't
11 remember.

12 So what we'll do is we'll plan to go forward with
13 those witnesses. I will question the defendants regarding
14 the right to testify. And hopefully we'll finish today, do
15 the charge conference, and be ready to close and charge in
16 the morning; unless, of course, the State has rebuttal
17 testimony and we'll just cross that bridge when we come to
18 it.

19 MR. BOLUS: Thank you, Judge.

20 THE COURT: Y'all have a good lunch. I'll see you at
21 quarter of two.

22 THE COURT: Is the State ready to proceed?

23 MR. JENNINGS: Yes, Your Honor.

24 THE COURT: Is the Defense ready to proceed? Mr.
25 Bolus?