

VOLUME TWO OF THREE

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED

JUL - 6 2015

Appeal from Charleston County

S.C. Supreme Court

Stephanie P. McDonald, Circuit Court Judge

TERRELL CHANDLER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO, 2014-002307

APPENDIX

KATHRINE H. HUDGINS
Appellate Defender

ALAN WILSON
Attorney General

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

J. RUTLEDGE JOHNSON
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

ATTORNEY FOR PETITIONER

INDEX

INDEX.....	i
TRIAL TRANSCRIPT.....	1
INDICTMENTS AND SENTENCING SHEETS.....	1049
APPLICATION FOR POST-CONVICTION RELIEF.....	1055
RETURN.....	1063
AMENDED RETURN.....	1068
POST-CONVICTION RELIEF HEARING TRANSCRIPT.....	1073
ORDER OF DISMISSAL.....	1133

1 you're not going to get that deal, right?

2 A. I don't understand that, no.

3 Q. And Terrell tells you in his letter, They're going
4 to lock Steven Brown up and charge him with murder to see
5 if he can scare him up enough to tell on his cousin, and
6 then they'll let Steven go, and that is exactly what
7 happened, isn't it?

8 A. Right.

9 MR. SLADE: No further recross, Your Honor.

10 THE COURT: All right.

11 Folks we're going to take about a ten-minute
12 break right here so we can plan the rest of the day, so
13 go ahead.

14 I don't know that we're breaking today we
15 might get another short witness in, but we've got to plan
16 out a little bit. So go ahead. Go back. Don't begin
17 deliberations or discussions. We'll be back in just a
18 few minutes.

19 (Recess taken.)

20 THE COURT: All right. Do you have a witness
21 ready?

22 MS. SHEALY: I do.

23 THE COURT: Okay. Bring the jury in.

24 (In open court, jury present.)

25 THE COURT: Okay. Folks, we're going to do

1 one fairly short witness that is here from out of town so
2 that they can go on back tonight.

3 So, Ms. Shealy, call your next witness.

4 MS. SHEALY: Thank you. Tamara Dixon.

5 TAMARA DIXON,

6 having been first duly sworn,

7 was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MS. SHEALY:

10 Q. Do people call you Tammy?

11 A. Yes.

12 Q. Tell the jury what city you're living in now.

13 A. Columbia, South Carolina.

14 Q. How old are you now?

15 A. Twenty.

16 Q. Tell us a little bit about your educational
17 background.

18 A. Went to Wando High School, graduated in 2000.

19 Went to basic training, then went to North Carolina to
20 school.

21 Q. Where are you in school now?

22 A. I'm enrolled at Miller-Motte, but I'm transferring
23 to Midlands Tech in Columbia.

24 Q. I'm going to cut to the chase. Let's go to May
25 2008. Where were you working at that time?

1 A. East Bay Deli.

2 Q. Which location?

3 A. Dorchester Road.

4 Q. And did Terrell Chandler work there with you?

5 A. Yes.

6 Q. Tell the jury whether you developed a relationship
7 with Mr. Chandler.

8 A. Yes.

9 Q. How would you describe your relationship?

10 A. Just a regular relationship. We just hung out and
11 stuff.

12 Q. But, I mean, was it a romantic relationship?

13 A. Yes.

14 Q. Boyfriend, girlfriend? Focussing your attention
15 back to actually May 30th of 2008, could you tell the
16 jury whether you worked that day.

17 A. It was Friday, I believe so, yes.

18 Q. And did Mr. Chandler work?

19 A. Yes.

20 Q. At some point that day -- do you get off work
21 before or after he does?

22 A. Before.

23 Q. And where did you go?

24 A. I went to his house.

25 Q. And why were you going there?

1 A. I was supposed to be picking up some money from
2 his cousin.

3 Q. And when you say you were picking up some money,
4 what was that for?

5 A. Because I was getting an apartment, and he was
6 giving me the deposit and first month's rent.

7 Q. When you went to his apartment, were you able to
8 get the money?

9 A. No. His cousin said there wasn't any money.

10 Q. Who was his cousin?

11 A. Steven Brown.

12 Q. Did you communicate that to Terrell?

13 A. Yeah. I called him on the phone because he was
14 still at work, and he said for me to tell his cousin to
15 give me the money.

16 And then he called his cousin on his cell phone,
17 and I don't know what they were talking about, and he
18 called me back. It was just like back and forth like
19 that for a few minutes.

20 Q. Did you, in fact, ever get the money for the
21 apartment?

22 A. No.

23 Q. Were there other people with Troop that day? Is
24 Troop the cousin?

25 A. Yes.

1 Q. Were there other people with Troop?

2 A. The twins.

3 Q. And how well did you know the twins?

4 A. I didn't know them. I just met them through
5 Terrell. They had started hanging out with Terrell after
6 me and him started talking.

7 Q. Do you know the difference between the twins or
8 which one is which?

9 A. Twin one, twin two.

10 Q. Okay. And did either one of the twins ever have
11 the occasion that you know of to go by your apartment?

12 A. I know one of them was in the car with Terrell
13 when they came to bring me something at my apartment. I
14 don't know which one it was.

15 Q. Where were you living then?

16 A. Northwood Manor.

17 Q. Okay. Do you see Terrell again that day?

18 A. No, not that day.

19 Q. And the last conversation you had with Terrell
20 about the money, could you tell us what his demeanor was
21 like?

22 A. Well, he was mad 'cause when they -- he -- they
23 had left before he got there, and he said -- he walked
24 inside, and then he said, Where are they?

25 And I said they walked down the street and they

1 went inside again, and he came back out, and he was,
2 like, Well, my brother is coming to get me. I'll talk to
3 you later.

4 Q. So you did, in fact, see him after you left work?

5 A. Yes.

6 Q. And that was at his apartment?

7 A. Yes.

8 Q. And the last thing he told you was he was going
9 where?

10 A. He was going with his brother. He didn't say
11 where.

12 Q. When is the next time you see Terrell after that?

13 A. The next day, that Saturday.

14 Q. Did you expect to see him on Friday night?

15 A. Well, not really. I just -- I was calling him and
16 he wasn't answering the phone.

17 Q. Did you hope to see him Friday night?

18 A. I was going by my brother's house. Sometimes he
19 went with me when I went to my brother's house, so I just
20 called him to see if he was going with me over there.

21 Q. Did you have a conversation with him that night?

22 A. No.

23 Q. When is the next time you either have a
24 conversation with him or see him?

25 A. Well, I did talk to him before I went to my

1 brother's house because my car had started -- it had,
2 like, cut off, and I called him because I thought he was
3 still with his brother, and he said he wasn't with his
4 brother, so then I just hung up the phone and I ended up
5 going to my brother's house once I got the car --

6 Q. You've got to slow down. She got to take down
7 every word you say, and you were going very quickly. So
8 tell us that again. You spoke to him when?

9 A. I don't know, it was probably like 6:00 or
10 something. I was getting ready to go to my brother's
11 house, and the car had cut off on me. So I called him,
12 and he said he wasn't with his brother anymore, so I said
13 okay, so I just waited in the car and went to my
14 brother's house.

15 Q. Did he indicate to you what he would be doing
16 Friday night?

17 A. No.

18 Q. When is the next time that you see him?

19 A. Saturday.

20 Q. And tell us about that.

21 A. I just went to his house and asked him why -- and
22 I talked to him Friday, and he was, like, he was handling
23 business.

24 Q. He was handling business?

25 A. Uh-huh.

1 Q. When you went there on Saturday, was anyone else
2 at the apartment?

3 A. Troop and the twins.

4 Q. Okay. And what, if anything, happened with your
5 car that day?

6 A. It was running hot when I got over there, so I
7 parked in the back, and Terrell and Troop was putting
8 water in it and checking it to make sure it wasn't going
9 to run hot on the way home.

10 Q. At some point does he give you any item?

11 A. Yeah. He handed me a gun, and I put it in the
12 trunk of my car.

13 Q. What did he tell you the reason was he wanted to
14 give you that gun?

15 A. His son was coming, and he didn't want it at the
16 house.

17 Q. Do you know what this is, State's Exhibit 99?

18 A. That looks like my gun.

19 Q. That looks like your gun?

20 A. Uh-huh.

21 Q. Tell the jury about when you purchased the gun.

22 A. Sometime in March of that year, 2008.

23 Q. And where did you purchase?

24 A. Money Man Pawn.

25 Q. Do you recall whether Terrell was in the car when

1 you were going inside to purchase it?

2 A. Yeah. I think he was in the car.

3 Q. Excuse me. What?

4 A. I think he was in the car.

5 Q. Okay. When he gave you a gun to put -- I'm sorry.

6 After you purchased this, where did this gun stay?

7 A. It was mine. It was, like, in my car.

8 Q. And then when you --

9 A. I went to his house one day when he got off work,
10 and I went inside. I took it with me.

11 Q. You took it in there with you?

12 A. Uh-huh.

13 Q. Did you take it back that night?

14 A. No, I forgot it.

15 Q. And how long would you say that gun had been left
16 at Terrell's?

17 A. A month or so.

18 Q. A month or so?

19 A. Uh-huh.

20 Q. The weapon that he gives you to put in your car,
21 let me ask if you can identify State's Exhibit 98.

22 A. That looks like it, yeah.

23 Q. Okay. And in addition to the gun, did he give you
24 other items to go with it?

25 A. It was, like, a magazine, and I think two boxes of

1 bullets.

2 Q. I'm showing you State's Exhibit 100.

3 A. Yes.

4 Q. That is what you're calling the magazine?

5 A. Yes.

6 Q. And two boxes of bullets?

7 A. Yes, ma'am.

8 Q. Okay. Now -- I'm sorry. You said you bought that
9 gun when, do you remember?

10 A. I believe it was in March.

11 Q. Of '08?

12 A. Uh-huh.

13 Q. Now, you told us that when he gave you those items
14 to put in the car, he said it was because his child was
15 coming over?

16 A. Uh-huh.

17 Q. Do you recall the next time you see Terrell?

18 A. That Sunday.

19 Q. And what did y'all do on that Sunday?

20 A. We went bowling.

21 Q. When you put that -- did you actually put the gun
22 in the car or did Terrell?

23 A. No, he handed it to me.

24 Q. And you put it in there?

25 A. Uh-huh.

1 Q. I'm showing you State's Exhibit 33, State's
2 Exhibit 33. Let me ask you if that is a photograph of
3 your car.

4 A. Yes.

5 Q. And are you at home when the police come and
6 search your vehicle?

7 A. Yes.

8 Q. You were actually at your home that day?

9 A. I was getting out and getting ready to leave for
10 work, and they were already outside when I came outside.

11 Q. And was that on June 2nd?

12 A. The Monday.

13 Q. The Monday?

14 A. Uh-huh.

15 Q. I'm showing you what has been marked as State's
16 Exhibit 34. Were you outside when they were looking in
17 your car?

18 A. Yes.

19 Q. Were they looking in all areas of your car that
20 you can see?

21 A. Yes.

22 Q. There seem to be several items in your automobile.
23 What was going on that you had all those boxes?

24 A. I was already packed because I was planning on
25 moving to the apartment.

1 Q. Showing you State's Exhibit 35, those are the
2 boxes you're talking about?

3 A. Uh-huh.

4 Q. And State's Exhibit 36, can you see the gun and
5 the rifle in that picture?

6 A. Yes.

7 Q. Can you point that out to the jury.

8 A. Right here (indicating).

9 Q. And 37?

10 A. Yes.

11 Q. Is that a better shot of it?

12 A. Yes.

13 Q. 38?

14 A. That's if -- I had a speaker box in my trunk, and
15 if you pull it forward, then you can get to where the gun
16 was.

17 Q. Okay. It's a little dark in that photograph. Can
18 you use this, if you just point at it. Show the jury
19 where the gun is in that photo.

20 A. Right there.

21 Q. And can you see the banana clip or the ammunition?

22 A. From here, I can't.

23 Q. You cannot. Now, if Terrell got arrested on June
24 2nd, can you tell the jury whether you saw him again
25 after that?

1 A. No.

2 Q. Did you ever go see him at the jail?

3 A. No.

4 Q. Did you have conversations with him?

5 A. Yes.

6 Q. And when you say you had conversations, were those
7 by telephone?

8 A. Yes.

9 Q. While he was in the jail?

10 A. Uh-huh.

11 Q. Did he tell you a different reason that he wanted
12 you to hold on to the gun that day?

13 A. No.

14 Q. Did he say anything about the twins in connection
15 with that gun?

16 A. Yes.

17 MR. HOWE: Objection. That's leading, Your
18 Honor.

19 THE COURT: Did he say anything about the
20 twins.

21 MS. SHEALY: I can rephrase it.

22 THE COURT: Go ahead.

23 BY MS. SHEALY:

24 Q. What, if anything, did Terrell tell you once he
25 was in jail about the gun, the rifle?

1 A. He had told me he got it from the twins because
2 they came knocking at his door one night.

3 Q. Talk a little bit louder.

4 A. He said he had got it from the twins. They had
5 came knocking at his door that night, and they had it and
6 he took it from them.

7 Q. Did he tell you anything about his relationship
8 with the twins and what he was trying to do for them?

9 A. Well, he was -- the impression I got was he was
10 trying to keep them out of trouble so that is why he took
11 it from them.

12 Q. Did he use the word mentor?

13 A. He didn't use that word.

14 Q. That is your word?

15 A. That's my word.

16 MS. SHEALY: I beg the Court's indulgence
17 just one moment.

18 BY MS. SHEALY:

19 Q. Ms. Dixon, I think at some point some paperwork
20 about a gun was taken from your car either from you -- do
21 you have any familiarity with that?

22 A. The receipt?

23 Q. Yes. Had you had a gun prior to the one you
24 purchased here?

25 A. Yes.

1 Q. And what happened to that gun?

2 A. It was stolen from my car.

3 Q. Okay. And this paperwork, does that actually
4 apply to the first gun that was purchased in '06?

5 A. This is the carrying case. Yes. Well, no. This
6 isn't the one that was stolen. This is the one that I
7 got, this one, when I was married, and when me and my
8 husband separated, this is the gun he took.

9 Q. Okay. Well, you told us a little bit about your
10 background, and you went to basic training?

11 A. Uh-huh.

12 Q. So you have owned guns in the past?

13 A. Yes.

14 Q. Do you have any paperwork on the gun that was
15 purchased most recently and is involved in this case?

16 A. I thought it was in the carrying case, but I guess
17 not.

18 Q. Let me ask you, can you identify this?

19 A. It's a carrying case. Each time I got a gun, they
20 gave me a carrying case exactly the same, so I don't know
21 if that is the one.

22 Q. That's fine. When you left the gun over at
23 Terrell's the night that you told us you left it behind,
24 did you leave it in the carrying case?

25 A. Yes.

1 MS. SHEALY: Beg the Court's indulgence. I
2 have no further questions. Please answer any the defense
3 has.

4 THE COURT: Cross?

5 MR. HOWE: Yes. Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. HOWE:

8 Q. Ms. Dixon?

9 A. Hi.

10 Q. How are you? So you have been a friend and had a
11 relationship with Terrell, you said, starting in the
12 early part of 2008?

13 A. Like, February.

14 Q. 2008?

15 A. Uh-huh.

16 Q. And you went over to that apartment on Battery
17 Avenue fairly often?

18 A. Uh-huh.

19 Q. And you had seen, going over there, those twins
20 and Steven Brown quite often; isn't that correct?

21 A. Well, I saw Steven Brown, like, just about every
22 time I went over there. The twins I didn't start seeing
23 until later on, but they were over there the few times I
24 did go over there. After he started hanging out with
25 them, I wasn't really over there very much.

1 Q. Maybe -- he started seeing the twins maybe April,
2 May 2008, you think?

3 A. Yeah.

4 Q. And when you were answering Ms. Shealy's
5 questions, you indicated when you went over there to
6 Terrell's apartment on May the 30th that when you
7 arrived, the twins, Storme and Che, and Steven were there
8 when you arrived, correct?

9 A. Yes.

10 Q. And you went inside the apartment?

11 A. No.

12 Q. You didn't go inside the apartment?

13 A. No, sir.

14 Q. But were the twins and Steven inside the
15 apartment?

16 A. Yes.

17 Q. But Terrell and Terrell's roommate, Troy, weren't,
18 were they?

19 A. No.

20 Q. So nobody's name who might be on the lease was
21 there while those three were there?

22 A. No.

23 Q. Didn't that give you the impression that those
24 visitors kind of had the run of the place?

25 A. I didn't get any impression because they were

1 there all the time anyway, so --

2 Q. Okay. Now, also, when you returned there that
3 Saturday, something about your car overheating?

4 A. Yeah.

5 Q. When you got there, the twins were there again,
6 correct?

7 A. Yes.

8 Q. And Steven as well?

9 A. Yes.

10 Q. Okay. Now, when you said that Terrell gave you
11 the rifle that Saturday for you to hold, you said the
12 reason he gave -- or was giving it to you was that his
13 son was coming over --

14 A. That weekend.

15 Q. Okay. And would that strike you as a good reason
16 to get a gun like that out of the apartment?

17 A. Yes.

18 Q. Okay. And, in fact, his son was over there the
19 next day, that Sunday, correct?

20 A. Yes.

21 Q. And that Sunday, I believe you said, you and
22 Terrell and what, your child and his child, went off on a
23 bowling outing; is that correct?

24 A. Yes.

25 Q. Okay. Now, when Terrell gave you that gun on

1 Saturday to hold for him, as he said, because his son was
2 coming over, didn't he also tell you to bring the gun
3 back on Monday?

4 A. He didn't tell me. I just assumed he would get it
5 back on Monday because his son was just going to be there
6 for the weekend.

7 Q. But he didn't tell you, Bring it on back after my
8 son leaves on Sunday on Monday?

9 A. No.

10 Q. Okay. Now, you liked Terrell, right?

11 A. Yes.

12 Q. And your kids played together, maybe even more
13 than on that one Sunday bowling outing, right?

14 A. Yes.

15 Q. All right. And when he gave you that gun on
16 Saturday for the reason that he gave that his son was
17 coming over, you had no reason to disbelieve that was the
18 reason he wanted you to hold it, did you?

19 A. No.

20 Q. Okay. One second, please. Now, as far as the
21 apartment at 930 Battery Avenue, your time over there,
22 did you frequently see other guests besides Steven Brown
23 and the twins? Did you see other young ladies there?

24 A. No.

25 Q. Was it a comfortable place to go, and when you

1 went you would spend several hours at a time?

2 A. Yes.

3 MR. HOWE: That's all I have. Thank you,
4 Ms. Dixon.

5 REDIRECT EXAMINATION

6 BY MS. SHEALY:

7 Q. Mr. Howe has asked you whether it seemed like a
8 good reason for you to have taken the rifle if the son
9 was coming over to the apartment.

10 A. Yes.

11 Q. And that didn't seem unusual to you.

12 A. No.

13 Q. When he told you after he had been arrested that
14 the reason he had the gun and wanted you to take it away
15 was that he was doing the twins a favor --

16 A. He told me that is why he had it, he was getting
17 it away from them.

18 Q. And that was to protect them?

19 A. Yes.

20 MS. SHEALY: I have nothing further.

21 THE COURT: Any recross?

22 MR. HOWE: No, Your Honor.

23 THE COURT: Okay. You can step down.

24 All right. Folks, that is where we'll break
25 for the evening. I'll send you home with, again, the

1 same instructions and reminder just not to talk about the
2 case with anyone. Don't comment on any of the witnesses'
3 testimony. Don't look in the newspaper or news if you
4 see anything on it.

5 Again, I haven't seen any cameras and don't
6 know if there will be anything in the paper, but if you
7 happen to open the paper in the morning and you see an
8 article, please don't read it.

9 Be back tomorrow morning in the jury room at
10 9:30, and we will resume at that time. Thank you for
11 your patience today.

12 (Recess taken.)

13 (Thursday, June 10, 2010.)

14 THE COURT: Let the record reflect the
15 defendant is in the courtroom. Bring the jury in.

16 (In open court, jury present.)

17 THE COURT: Welcome back, folks. We're going
18 to resume now with the state calling their next witness.

19 MR. NEELY: State calls Anita Maestas.

20 ANITA MOORE,

21 having been first duly sworn,
22 was examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MR. NEELY:

25 Q. Thank you. Now, Ms. Moore I just called you

1 Maestas, but it's Moore now?

2 A. Yes, sir.

3 Q. What is your current position at CPD?

4 A. Right now I'm an associate criminalist with the
5 Charleston Police Department.

6 Q. And how long have you been with the department?

7 A. Nine and a half years.

8 Q. Were you working in that capacity in 2008?

9 A. No, sir, I was not.

10 Q. What were you doing then?

11 A. In 2008 I was the crime scene technician.

12 Q. And will you tell the jury a little bit about what
13 that means and what your role was at that time.

14 A. As a crime scene technician, or crime scene
15 investigator, our role is to respond to any crime scenes
16 or possible crime scenes to collect, preserve any
17 evidence of that nature.

18 Q. Let me ask this, did you work on a scene, I guess,
19 in 2008, on May the 30th?

20 A. Yes, sir, I did.

21 Q. Would you tell the jury how you were called out to
22 that scene.

23 A. I was on duty, working the 5:00 to 3:00 shift, and
24 we responded to a call of a shooting in the area of
25 Sycamore and Battery, Sycamore and 61.

1 Q. And when you arrived, who was present?

2 A. The first on scene officers, medic unit was on
3 scene, the victim, and several officers.

4 Q. I want to show you what has been marked as State's
5 Exhibit 4, and it would be behind you, and I'll just ask
6 if you can identify that. Is that what you saw when you
7 arrived?

8 A. Yes, sir, it was.

9 Q. Let me ask, at some point did you later determine
10 that there was another area involved in this case?

11 A. Yes, sir. When we first arrived, myself and
12 CST Middleton was working and I was assisting him, and he
13 was taking information down on the vehicle. I was
14 helping him with notes. We got more information from
15 other officers that there was a shell casing located in
16 the area of 930 Battery.

17 Q. I'm going to show you what is marked as State's
18 Exhibit 2 and ask if you can identify that area. First
19 of all, where were you when you said you first arrived on
20 scene where the car was?

21 A. This is an older map of the area, but where it
22 says St. Andrew 171 and Sycamore, it was in that
23 vicinity. There is a Kangaroo gas station there now, and
24 it was that corner where the scene -- when we first
25 responded, that is where it was, and 930 Battery is

1 behind that area and there is that housing -- where the
2 little arrow is up there is a housing unit.

3 Q. And if we could look at State's Exhibit 32, can
4 you recognize that building.

5 A. Yes. That is 930 Battery.

6 Q. Okay. When you said you arrived there, there was
7 something about a shell casing. Where did you find that?

8 A. One of the officers on scene, when we first
9 responded to the scene, they always try to locate any
10 other possible areas that was involved, and they located
11 a shell casing in the breezeway of this building. Once
12 they locate it, they secure the area, and they call us
13 and we respond.

14 Q. And is one of your duties to record or document
15 what's found?

16 A. Yes, sir.

17 Q. Could you tell the jury how you do that.

18 A. When we first arrive at the scene, we take notes
19 as to the location, what we first observe, so we take
20 notes, we take photographs, and after everything was done
21 and we go back to our office, we actually do a report to
22 state what we observed.

23 Q. Do you remember what some of the items were that
24 you found there that day?

25 A. In the breezeway, there was a shell casing and a

1 bunch of torn pieces of paper. I'm not sure if they were
2 evidence to the case eventually or not, and then they
3 eventually found more shell casings in the rear of the
4 building.

5 Q. I'm going to show you what has been marked as
6 State's Exhibit 110 for identification and ask if you can
7 look at that and tell me if you know what that is. And
8 if you need to open it, that's fine.

9 A. Okay. Without opening it, the package itself is
10 going to be evidence, CPD number for my identification of
11 2-A, which on my report states that it's pieces of white
12 paper. Do you want me to open it --

13 MR. NEELY: At this time we would like to
14 admit Exhibit 110.

15 THE COURT: Any objection?

16 MR. HOWE: No objection.

17 THE COURT: Admitted.

18 (Slips of paper marked for identification and
19 admitted into evidence as State's Exhibit No. 110.)

20 BY MR. NEELY:

21 Q. You just open that and show that to the jury. And
22 are those the pieces you found there that day?

23 A. Yes, they are.

24 Q. If we could, for the record, look at State's
25 Exhibit 42. Is that where you found those?

1 A. Yes, they are.

2 Q. And those are the pieces that you're holding?

3 A. Yes. They have my initials and the case number on
4 them.

5 Q. I'm going to show you what has been marked as
6 State's Exhibit 109 for identification and ask if you can
7 tell us what that is.

8 A. The outside of the bag states it's this case
9 number -- document 12-A, my initials, and, according to
10 my paperwork, it's the potato chip bag. Do you want me
11 to open it as well?

12 Q. Yes, please. And while you're opening that, could
13 you tell the jury what the reason was for you to look in
14 that particular bag.

15 A. Through further investigation, it was brought to
16 my attention from one of the detectives that the car was
17 originally in the rear of the building, and this potato
18 chip bag was on the ground in the back of the building,
19 and the witness stated that -- and this is all from what
20 the detective told me -- was originally in the car, so we
21 collected it because it was in the victim's vehicle.

22 Q. Yes, ma'am. And is that the bag that you
23 collected that day?

24 A. Yes, it is.

25 MR. NEELY: At this time we would move

1 State's 110 into evidence.

2 MR. HOWE: No objection.

3 THE COURT: Admitted.

4 (Potato chip bag marked for identification
5 and admitted into evidence as State's Exhibit No. 109.)

6 BY MR. NEELY:

7 Q. Before we do that, let's look at State's Exhibit
8 55. Is that the bag that you collected?

9 A. Yes. It's the evidence marker that I placed down
10 to take our photographs to identify the items.

11 Q. Okay. At some point did you begin looking for
12 shell casings?

13 A. Yes, we did. We try to do a very thorough search
14 of the scene just to make sure we get any evidence that
15 is left behind. Shell casings are very small. We have
16 one shell casing, so we checked there to make sure there
17 was no other shell casings. We also brought in a K-9 dog
18 that is trained to find shell casings, and we were able
19 to locate several more in the rear of the building.

20 Q. I'm going to show you what is marked as State's
21 Exhibit 108 and ask if you can identify that.

22 A. Yes. This is the outer packaging with the
23 evidence numbers of the shell casings I collected from
24 the rear of the building.

25 Q. And if could you just check inside and make sure

1 that is what you remember collecting.

2 A. They're all individually sealed, the shell
3 casings, and they're sealed back up without opening them.
4 The boxes are what I collected and marked.

5 MR. NEELY: Judge, at this time we would
6 offer State's Exhibit 108 into evidence, the shell
7 casings that were found on the scene.

8 MR. HOWE: No objection.

9 THE COURT: Admitted.

10 MR. NEELY: Thank you, Your Honor.

11 (Shell casings marked for identification and
12 admitted into evidence as State's Exhibit No. 108.)

13 BY MR. NEELY:

14 Q. If we could look at State's Exhibit 45.

15 A. They're all individually packaged.

16 Q. Can you identify what that is?

17 A. That is the rear of 930 Battery, and those are the
18 evidence markers that I placed down for each shell casing
19 that we collected that evening.

20 Q. Okay. And do you take a picture of every single
21 shell casing?

22 A. When we document a scene, we take photographs when
23 we first arrive of any -- undisturbed from when I arrive.
24 Once we search the area for any evidence, we'll take
25 pictures of it without it being marked, and then we come

1 back and mark it with evidence tags so we know where
2 they're at and we can give an overall orientation. We'll
3 take photographs of them again, and then we'll collect
4 them.

5 Q. Let me ask you this: How was the lighting that
6 night?

7 A. In the rear of the building, there was no direct
8 lighting in the rear where the shell casings were, but on
9 the street behind it, there was two street lights
10 lighting up the building.

11 Q. I want to show you what has been marked as State's
12 Exhibit 111 for identification and ask if you can
13 identify that.

14 A. This is a copy of the sketch that I drew for -- of
15 the scene.

16 Q. That is the sketch of the scene?

17 A. Yes.

18 Q. What does it show? What is the purpose of that?

19 A. We try to give an orientation, take photographs so
20 you can actually see evidence in place. We do a sketch
21 of where all the evidence is so you get an overall
22 picture of where everything was collected from.

23 Q. Thank you.

24 MR. NEELY: Judge, at this time we would like
25 to introduce State's Exhibit 111.

1 MR. HOWE: No objection.

2 THE COURT: Admitted.

3 MR. NEELY: Thank you, Judge.

4 (Diagram marked for identification and
5 admitted into evidence as State's Exhibit No. 111.)

6 BY MR. NEELY:

7 Q. Did you find any other type of markings or
8 anything in the ground?

9 A. We did, again, where the potato chip was, and they
10 stated the vehicle was originally parked in the rear of
11 the building. We checked the area and searched the area.
12 We noticed the tree in the back. The very bottom portion
13 of it was pressed down. You could see where the grass
14 was matted, and there was also acceleration marks, or
15 what we assumed to be acceleration marks, coming out from
16 underneath the tree to where the road is. I think it was
17 Hillsboro Road.

18 Q. If you could, this is the diagram we were just
19 talking about?

20 A. Yes, it is.

21 Q. Would you walk the jury through what that is and
22 what you're showing there.

23 A. Certainly. The very top there is Battery Avenue.
24 That is 930 Battery. All the circles that you see with
25 the little numbers, those are evidence items. We put the

1 little marker on there and then the numbers. We have to
2 bring out so you can actually see the numbers to identify
3 where everything is placed. It's not to scale perfectly.
4 We do it -- we measure everything that we collect, and we
5 use the measurements in a scale to place them on the
6 sketch so you can get a good representation of where
7 everything was.

8 So the majority of the shell casings were in the
9 rear of the building, just to the right of the first
10 apartment. There is that tree that I was talking about,
11 right below where that cluster of shell casings were.
12 The potato chip bag -- do you mind if I stand for a
13 second?

14 Q. Go right ahead.

15 A. I believe this is 12 where the potato chip bag
16 was, and this part right here is where we had seen the
17 first of the acceleration marks, and the line comes down
18 through and back out to Hillsboro, and, basically,
19 it's -- the tire marks and the grass has been torn away,
20 and you can see an impression of the tires and they skid
21 off.

22 Q. Okay. A few more questions about the scene, and
23 then I want to ask you about some other things that you
24 did. You mentioned acceleration marks. If we could look
25 at State's Exhibit 57, could you tell the jury what that

1 is.

2 A. This is a picture, without markings, of the
3 acceleration marks. You can see the line where the tire
4 is in the grass, where it made that impression of the
5 tire, and looking at it, I believe that goes back out to
6 Hillsboro, looking at it this way.

7 Q. And if we could see State's Exhibit 32. I'm not
8 sure if I showed you that, but what is in that scene? I
9 know we talked about the breezeway. Are you able to
10 identify it there?

11 A. This is 930 Battery, and looking at this, it's
12 kind of hard to tell. I'm not sure that's the breezeway
13 right there behind the stairs. I know it was in the
14 center of the building. It's kind of hard to see in this
15 photo.

16 Q. Okay. Was that photograph taken that particular
17 night?

18 A. Yes, it was, yes.

19 Q. Let me ask this: At some point did you collect
20 some DSR kits on some individuals?

21 A. Yes, I did. After I had left 930 Battery, I
22 responded to MUSC emergency room, and I took a GSR kit on
23 Calvin Terrell Gibbs, Junior which is the victim.

24 Q. If you could tell the jury what a GSR kit is.

25 A. A GSR kit is a gunshot residue kit and it is a

1 packet of items we can use to obtain any gunshot residue
2 that is on a person's hand or clothing or items.

3 Q. And did you do any type of fingerprints or palm
4 prints on anyone?

5 A. We did. After the gunshot residue kit was done, I
6 took what we call a ten print of the victim so we could
7 have his fingerprints on file.

8 Q. Okay. Let me ask you, what do you do with the
9 evidence that you collect?

10 A. Once I collect the evidence, I mark it so I know
11 it's my evidence. I seal it, put evidence tags on it,
12 and then I put it into a secure storage location. Once
13 all the paperwork is done, it then goes to the main
14 evidence room down at the station.

15 Q. Okay.

16 MR. NEELY: Judge, this is all we have at
17 this point.

18 THE COURT: Cross?

19 CROSS-EXAMINATION

20 BY MR. HOWE:

21 Q. Ms. Maestas, how are you?

22 A. Fine.

23 Q. Officer Maestas?

24 A. I'm a civilian.

25 Q. When you arrived on the scene, did you speak to

1 anybody who was perhaps a potential witness?

2 A. No, I did not. I don't speak -- or try not to
3 speak to witnesses. I don't interrogate anybody.

4 Q. Did you observe any other officers speaking to
5 anyone who may have been a witness?

6 A. I really do not recall who spoke with who. My
7 main concern was preserving the scene and the vehicle. I
8 was assisting CSC Middleton with getting information
9 about the vehicle and talking to the first officer and
10 getting the victim's name and what happened.

11 Q. Did you observe any officers there trying to
12 address the car for any possible fingerprints that might
13 be on the car, Calvin Gibbs's car?

14 A. Not at that time, no. What we did was we secured
15 the vehicle to where we could take it back to the office
16 to then process the vehicle in a controlled area, and I
17 believe they obtained a search warrant before they did
18 all that. I think that is what they were waiting on. I
19 was at 930 Battery where CSC Middleton stayed with the
20 vehicle.

21 Q. Do you know if, when you were there, the young
22 lady who was a passenger in the victim's car was still at
23 the scene?

24 A. I believe so. I believe -- I don't recall her --
25 I believe I remember seeing her there. As to who she

1 was, I don't know that information.

2 Q. Did you have any -- we've heard what you
3 described. Did you have any role in any examination of
4 the interior of the white car?

5 A. No, I did not. Like I said, that was taken back
6 to the office and another crime scene tech took inventory
7 and processed the vehicle.

8 Q. So as far as any contents of that car, whether on
9 the seat or floor board or the interior door, who would
10 have performed any examination on that?

11 A. I do not recall who the crime scene tech was that
12 processed the vehicle. CST Middleton escorted the
13 vehicle back to the crime scene office, and if I'm not
14 mistaken, like I said, it's not positive, but I think it
15 was done the next day after a search warrant. It was
16 done by another crime scene tech. It goes according to
17 who was on duty to who processed the vehicle, and I don't
18 recall who did that.

19 Q. Well, what was Officer Middleton doing? Because
20 it sounded like to me y'all were doing a lot of this work
21 in tandem. So what was he doing?

22 A. We try. I mean, we work together as a team, and
23 when we first got on scene, he was -- the first thing we
24 do is observe what is going on and we see what the
25 situation is, and he was, you know, just taking a general

1 overview of what was happening with the vehicle.

2 The victim was getting in the medic unit to be
3 transported. We get the tag number, the VIN number,
4 write down the description of the vehicle, that kind of
5 thing. I think at that point we find out there was a
6 shell casing at 930 Battery, and I went over there, and
7 then at that point I don't know what else Mr. Middleton
8 did. I do know that everything was stopped and that it
9 was taken -- they had decided at that point to take it to
10 the crime scene, and once we decided to take it, we don't
11 continue working it on the scene. We just stop what
12 we're doing. We wait until the tow truck gets there, and
13 then we take it back to the office.

14 Q. That is what I was going to ask: The vehicle, and
15 I think you said you found it at rest, close to the end
16 of Sycamore where now a Kangaroo convenience store is,
17 from there it's actually towed to Lockwood Drive?

18 A. No, it's actually towed to the crime scene
19 evidence office, which is on Wappoo Road, by a tow truck
20 and secured in our bay area where we process vehicles.

21 Q. And you said some other officer escorts that
22 vehicle when it's taken over to the crime scene?

23 A. Yes. Either the crime scene officer who is with
24 it, or we get a patrolman to escort it over so it's not
25 out of sight.

1 Q. Right. I've forgotten who you said was the one
2 who escorted it. Was it Middleton?

3 A. Again, I don't know because I was working 930
4 Battery. Then I went down to MUSC ER. I don't know if
5 it was Middleton or if he had somebody else do it, but I
6 do know when I left Sycamore and 61, Middleton was in
7 charge of the vehicle.

8 Q. Now, when you first got to the scene, I think you
9 said you first went up to the car.

10 A. Yes. I mean, we approached the vehicle to check
11 with the first officers on scene because we have to ask
12 them what happened, what information do we know to judge
13 what we need to do.

14 Q. When you first got to the car, and, as you said,
15 communicated with those officers, about how many officers
16 were there at the car?

17 A. I honestly don't recall.

18 Q. More than five?

19 A. I really can't say a number because I don't really
20 remember how many were there.

21 Q. Do you have a recollection of which officers they
22 were, any names?

23 A. I know that the responding officer that I talked
24 to that I have in my report is Officer Kohn. I know
25 Salkeld responded afterward, K-9 dog to assist in the

1 back, but I don't recall who else was there off the top
2 of my head.

3 We have a crime scene list of officers who were
4 there, and I believe I have it, but I don't recall off
5 the top of my head everyone who was there: Sergeant
6 Jenkins, Sergeant Goldstein, Officer Zelinski, Officer
7 Kohn, myself, Middleton, Lieutenant Hawkins, Officer
8 Ratliffe, Salkeld, Koegler, Sergeant Clayton, Detective
9 Antonio, Detective Kosarko, and Detective Middleton are
10 the ones I have listed for the crime scene log.

11 Q. When you first arrived and went up to the car,
12 were there any doors open in the car?

13 A. I would have to look at the photos. I don't
14 recall. I didn't take photos of the vehicle itself.
15 Mr. Middleton would have done that. I believe they were
16 open, but, again, I would have to see the photos.

17 Q. Just based on your experience at that scene, your
18 presence at the scene, did you happen to see anything in
19 terms of contents inside that white car?

20 A. No, I did not.

21 Q. Okay. Now, as far as the shell casing that you
22 were, I believe, first informed about at the white car,
23 correct?

24 A. Uh-huh.

25 Q. And did you say -- which officer it was that told

1 you that? Maybe you --

2 A. No. It came over the radio that they found an
3 additional scene, and as soon as we heard that, I went
4 over to 930 Battery, and I don't know what officer it was
5 that came over the radio.

6 Q. In terms of what you found, was there any
7 difference in the casing between, I think you said, the
8 one you found in the breezeway, or it was located in the
9 breezeway, and then the other cluster of those that show
10 up on your diagram?

11 A. According to the list that I have, there was two
12 different types of shell casings that were found. The
13 one in the breezeway was a 380 auto manufactured CBC. In
14 the rear of the building, there was the same ones, 380
15 auto CBC and a 7.6207, and it's identified by SADU, which
16 is a different type of shell casing, so there is two
17 different type of shell casings located.

18 Q. Okay. Now, as far as once you got to the rear of
19 the building, 930 Battery Avenue, you mentioned something
20 about how it wasn't very well lighted; is that correct?

21 A. When I'm stating not very well lit, we have the
22 street lights from the street behind us. I could see,
23 you know, people, but looking for shell casings, it was
24 very difficult because it's in the grass and they're very
25 small. That is why we had to bring the K-9 unit out.

1 Q. Well, the street lights, were those street lights
2 along Hillsboro or where were they?

3 A. They were on Hillsboro, yes. There is a house
4 right behind the tree where the car was, and then there
5 is a street light right there at that house, and then
6 there is another one further down Hillsboro, down at the
7 end of, I guess you want to say, the yard.

8 Q. Were they both operating?

9 A. Yes. That is, from what I can remember. I know
10 at least the one at the other end, because I remember
11 seeing it in the pictures that you can see the spot with
12 the light, but I do recall that both of them were lit.

13 Q. Okay. I think you said that also when you were
14 examining the area behind the building, you said
15 something about matted grass and something about a bottom
16 part of a tree was mashed.

17 A. The information that I received from Detective
18 Antonio was that the vehicle was supposedly parked
19 underneath this tree in the back of the yard, and to
20 describe the way that it possibly could have been there,
21 I described it as the bottom of the tree was matted and
22 the grass was matted. You know when you drive over
23 something, it's going to press it down, and that is the
24 kind of impression I got of that area, was the bottom
25 branch of the tree, that there was something on top of

1 it, and the grass was matted, like someone was sitting on
2 it.

3 Q. But you don't really know, and you're not in the
4 position to offer any kind of opinion theory as to how
5 that grass became matted or how that tree came to be in
6 the condition that you observed?

7 A. No. All I can do is give you the facts of what I
8 observed, the acceleration mark from a vehicle in that
9 same vicinity, and from what I'm told by the detectives,
10 I cannot say that yes, that car was not there. I didn't
11 see it there. All I could do is give you the facts, what
12 I observed, and it leads to the possibility that yes,
13 maybe there was a car parked there.

14 Q. And as far as those acceleration marks, you're
15 certainly not in a position to say what car it was, what
16 kind of car it was, that may have produced those, as you
17 say, acceleration marks?

18 A. No. I don't have any information to say
19 definitively what car made that. I don't know -- we
20 didn't do any tire comparisons as far as I know.

21 Q. Okay. Now, you said all in all, from the time you
22 arrived at the crime scene until you went, I think you
23 say, over to MUSC, about how long were you at that crime
24 scene?

25 A. I'm trying to recall. If I go by the times on my

1 evidence forms, because I marked down the times of when I
2 collect items, I responded to 930 Battery shortly before
3 midnight, and then I took the GSR from the victim at
4 about 2:30, so I'm giving travel time, maybe two hours, a
5 little more than two hours at the scene.

6 Q. Okay. Now, the sketch that you made up -- and I
7 believe you said this is yours. This is actually made by
8 you?

9 A. I did it on the computer, yes.

10 Q. So you made some sort of drawings or notes and
11 measurements and such on a pad and later on transferred
12 it?

13 A. When we have to do our measurements, we have a
14 sheet that says evidence item number one, it was this far
15 from the baseline, and then we use that to make our
16 sketch.

17 Q. And when you're out there and doing that kind of
18 work, I guess, taking notes, making measurements such as
19 that, is there somebody next to you that one person is
20 measuring, one is note taking? You do that by yourself,
21 or do you that in tandem with somebody else?

22 A. Ideally, you would love to have a lot of people
23 helping you do that. Sometimes you are by yourself. At
24 930 Battery, I was the only crime scene person there, but
25 I did have officers assisting me, you know, holding the

1 measuring tape while I read the measurements and then
2 wrote them down.

3 Q. Okay. So, again, just for clarification, when you
4 went over to MUSC you did the GSR kit administered on the
5 victim, correct?

6 A. Yes, I did.

7 Q. And you likewise took fingerprints of him; is that
8 right?

9 A. Yes, sir.

10 Q. Okay.

11 MR. HOWE: That's all I have. Thanks so
12 much.

13 THE COURT: Redirect?

14 REDIRECT EXAMINATION

15 BY MR. NEELY:

16 Q. Just for clarification, did you have any issue --
17 I know we talked about the lighting. Did you have any
18 issue with seeing the other people you were working with
19 that day?

20 A. No. We didn't have any problems with seeing
21 people and officers. I could tell who I was with, and we
22 can see them. The issues that we have, and we like to
23 specify lighting, is we're looking for a shell casing
24 that is, you know, about that big (indicating) at night
25 in grass that is probably this big (indicating). So that

1 is -- we like to mention, you know, the lighting, that
2 it's difficult to find evidence. As to seeing people, it
3 was fine.

4 Q. And just as an example, I want you to identify
5 what is behind you. This is State's Exhibit 46.

6 A. Yes. We try to take pictures in orientation where
7 you have an overall, as you approach, of the evidence,
8 without it being touched midways and then a close-up.
9 This is actually a close-up shot of evidence number A, I
10 don't know -- this item right here, that is the shell
11 casing, and that is a close-up picture of the shell
12 casing in the position we found it.

13 MR. NEELY: Thank you. No further questions,
14 Judge.

15 THE COURT: Recross?

16 MR. HOWE: No, Your Honor.

17 THE COURT: All right. You can step down.
18 Thank you. Next witness?

19 MR. NEELY: State calls Officer Brian
20 Salkeld.

21 MS. SHEALY: May Ms. Moore be excused?

22 THE COURT: Any objection?

23 MR. SLADE: No.

24 THE COURT: You're free to go.

25 Thank you.

1 BRIAN SALKELD,
2 having been first duly sworn,
3 was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. NEELY:

6 Q. Officer Salkeld, could you tell the jury where you
7 currently work?

8 A. I work at the city of Charleston Police
9 Department.

10 Q. How long have you worked there?

11 A. I started in 1998 as a reserve officer, came on
12 full time in the year 2000.

13 Q. And what is your current position or role as an
14 officer there?

15 A. I'm a master police officer. I work in Team Four
16 under the operations bureau. I'm a field training
17 officer, patrolman, and also an ATF explosive detective
18 and K-9 handler as well.

19 Q. You would tell the jury a little bit about the
20 last thing, the K-9 part.

21 A. The work that I do, I'm a handler with an
22 ATF program where we are utilized for explosives
23 detective for preemptive work, such as large events. My
24 primary function has become within the police department
25 for helping me to assist in locating evidence, shootings,

1 guns, to that effect. That is primarily what I do and
2 primarily what I use my K-9 for.

3 Q. What type of training do you have to do that?

4 A. Our initial training is the dogs' initial training
5 is about three months prior to my arrival at the ATF's
6 K-9 training center at Front Royal, Virginia. I traveled
7 up there and stayed there for three months in 2006, and
8 we currently do daily training on a variety of
9 explosives, odors, including shell casings and guns as
10 well. He's a food reward dog, which means the only way
11 he eats is through training, so every day have I to set
12 out some type of a training aid. We do a search of an
13 area or a building or a room or a vehicle, and when he
14 locates that item, he is hand fed, and we have to do that
15 every day, in order to complete his training.

16 Q. And how long have the two of you, I'll say two of
17 you, you and the dog been together?

18 A. Since summer of 2006, so about four years now.

19 Q. In 2008 were you working in that capacity?

20 A. Yes.

21 Q. Did you receive a call concerning a shooting on
22 May 30th?

23 A. I did.

24 Q. Tell me, where did you respond?

25 A. I responded to Battery Avenue in reference to a

1 shooting in the area of -- they said it was the area of
2 the Greenway where I made contact with Battery Avenue.

3 Q. Were you one of the initial officers, or did you
4 receive a call a little bit later?

5 A. A little bit later.

6 Q. And why were you called there?

7 A. I was called to assist -- we could not locate any
8 shell casings at the incident location, so I was called
9 to assist in locating an actual incident location.

10 Q. Okay. I'm going to show you State's Exhibit 66.
11 It should be right behind you. And while that is coming
12 up, what type of dog do you have?

13 A. A black lab.

14 Q. Okay. If you could identify that picture, are you
15 able to?

16 A. Yeah. That is the rear of -- that is obviously
17 me, and that is my dog, Winslow, and that is the rear of
18 the incident location on Battery Avenue. That is a
19 little breezeway that goes toward the front of the
20 building, and this is the back side of the building.

21 Q. Thank you. Let me ask, how does the dog look for
22 explosives or shell casings or anything of that nature?

23 A. It depends on what we're doing. In this
24 particular case, for shell casings or guns, it's usually
25 in an open area. There are usually exterior searches of

1 buildings or homes or fields, obviously back yards.

2 What I do is I have to -- I have to put on a food
3 pouch. I have to have a slobber towel that I put on.
4 He's put on a lead, I brake him, and then we go to the
5 area that we're concerned with.

6 And the way we do an open area search, in
7 particular like this, is I'll have him sit in the area
8 that we're getting prepared to search, and then I cast
9 him out and I use the single -- single word, seek, and
10 that is his on word, and that means he's to start
11 looking. And he knows when we're in an open area that
12 we're looking for something on the ground because, again,
13 we do a lot of training with shell casings and guns.

14 Q. Did he alert to anything that night?

15 A. He did.

16 Q. Can you tell the jury about that.

17 A. We -- you can't see where the size of the building
18 is, but we started on this side of the building, and then
19 we worked our way to this area, which is behind the
20 building, and we work in a pattern. And once we started
21 working that back area of the building, Winslow located a
22 shell casing and gave his proper indication, which is to
23 sit.

24 One of their behaviors -- I don't know why they do
25 this, nobody can figure out why they do this -- they

1 actually pick the shell casing up in their mouth and spit
2 it back out, and then they sit and that is their proper
3 indication. I reward him with a handful of food, and we
4 continue working forward or we'll stop.

5 Q. Let me ask this, what did y'all do in this
6 instance?

7 A. In this incident, we stopped, and that is sort of
8 my typical procedure. Once I find a shell casing,
9 usually one or two, I'll stop, and the reason why I stop
10 is because, again, he picks up those shell casings and
11 then spits them out. I don't want to disturb anything,
12 so what I'll do is I will indicate where I found the
13 shell casing or two, and then we'll move out. I'll
14 advise the on scene crime scene people, the other
15 officers, uniformed officers or the detectives that might
16 be on that scene, and then I leave the area to let them
17 work that area by hand to finish finding anything that is
18 right in that area.

19 Q. Is it possible that even using Winslow or one of
20 the other ATF dogs that a shell casing or some other item
21 could be missing?

22 A. Yes.

23 MR. NEELY: Judge, that's all the questions
24 we have.

25 THE COURT: Cross?

1 MR. SLADE: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. SLADE:

4 Q. Can you leave that up there, Katherine? Officer
5 Salkeld --

6 A. Yes.

7 Q. -- in the picture that we were looking at just a
8 moment ago, the shell casings that you found were in the
9 area where my finger is, right?

10 A. Yes.

11 Q. And if you don't mind, if you could put the
12 picture back up. Thanks. And this picture was taken, I
13 assume, right before or shortly before y'all found shell
14 casings. I don't see any of those little markers out
15 there.

16 A. Correct. I don't know. I mean, I don't know if
17 we go further out. I'm not 100 percent sure.

18 Q. Okay. I'm just trying to get an idea from your
19 recollection. It's my impression -- I'm just trying to
20 get a feel for them for the area. You're talking about
21 somewhere right over here, right?

22 A. I believe so.

23 Q. Doesn't that make sense?

24 A. Yeah, I believe so.

25 Q. So y'all are sweeping that way?

1 A. Correct.

2 Q. You and Winslow just do sweeps down that way?

3 A. What I try to do is a create a pattern based on
4 the environment.

5 Q. A grid of some sort?

6 A. Correct.

7 Q. And so I was curious -- I assume y'all just take
8 pictures during the investigation before you put out
9 those little markers or something?

10 A. That is the crime scene. I'm not really sure.

11 Q. I don't have -- excuse me one second. Oh, what --
12 do you know what time you got there?

13 A. I don't recall exactly what time, no, sir.

14 Q. Okay.

15 MR. SLADE: I don't have any further
16 questions for this witness, Your Honor.

17 THE COURT: All right. Any redirect?

18 MR. NEELY: No, Your Honor.

19 THE COURT: All right. You can step down.
20 Thank you.

21 MR. HOWE: Your Honor, could we approach the
22 bench for just a moment?

23 THE COURT: Sure.

24 (Discussion held at sidebar.)

25 THE COURT: Okay. Folks, we're going to take

1 about a 15 minute break right now. If anybody needs to
2 smoke, they'll take you downstairs, and, again, you can
3 smoke, but don't talk about the case or comment on it in
4 any way. Thank you.

5 (Recess taken.)

6 (In open court, jury not present.)

7 MS. SHEALY: I have just confirmed with the
8 defense attorney that their intention is to question
9 David Osborne about a letter that was provided to us, and
10 I don't know specifically whether it was provided to Nate
11 Williams, who was the solicitor handling this case prior
12 to my getting involved, or if it was handed directly to
13 David Osborne, but it is a letter that they purport their
14 client received from Che Carr.

15 That letter has been examined by the SLED
16 handwriting expert, and she cannot conclude that Che Carr
17 is the author of that letter, and, additionally, I'm not
18 sure that they will be able to or that they intend to
19 properly get the letter in, that being calling their
20 client to the stand.

21 So it would be our position that no reference
22 to that letter should occur during their
23 cross-examination of David Osborne.

24 THE COURT: It's a letter that purports to be
25 from Che Carr, who is a codefendant not on trial, right?

1 MS. SHEALY: Correct. I could hand you up a
2 copy. And if we could get this marked --

3 THE COURT: And it's addressed to whom?

4 MS. SHEALY: I don't know that there was an
5 envelope.

6 MR. SLADE: There was an envelope, and it was
7 addressed to Terrell. The outside of the envelope is
8 called Sexy B. In other words, the person it's coming
9 from calls himself Sexy B.

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

11 THE COURT: All right.

12 MS. SHEALY: And if you would like to see the
13 envelope, the original letter.

14 THE COURT: Oh, okay. All right. Okay.
15 Well, let's start out with our analysis that we can all
16 agree that this is hearsay, right?

17 MR. SLADE: Yes, sir.

18 THE COURT: All right. So you have a reason
19 why it's either not hearsay or you have an exception to
20 the hearsay rule?

21 MR. SLADE: Yes, sir.

22 THE COURT: What would that be?

23 MR. SLADE: We can authenticate it, Your
24 Honor, as a letter -- well, I'm sorry. I'm starting on
25 the wrong problem.

1 THE COURT: Well, authentication is probably
2 not a bad start. How do you purport to authenticate it
3 as being from Che and that he is Sexy B?

4 MR. SLADE: It's a two-step procedure, Your
5 Honor.

6 THE COURT: Okay.

7 MR. SLADE: Early in this case, when Terrell
8 gave the letter to Mr. Howe, Mr. Howe informed the
9 solicitor's office that he had the letter, and --

10 THE COURT: All right. So your client gave
11 it to his lawyer.

12 MR. SLADE: Yes, sir, that's correct. That
13 was the first step. And then Mr. Howe notified the
14 solicitor's office that he had received the letter, the
15 facsimile that you're looking at along with the envelope.
16 So at that point, Your Honor, this was, if memory serves
17 me correctly, I believe in September of 2008. It was
18 fairly early on in this case, and if the date is not
19 quite correct, it was fairly early on in this case, and
20 what happened --

21 THE COURT: Is Mr. Howe going to testify that
22 he has some familiarity with Sexy B's handwriting and
23 knows this is him?

24 MR. SLADE: No, sir.

25 THE COURT: Then he can't authenticate it.

1 MR. SLADE: I agree.

2 THE COURT: Your client, I'm being told, is
3 not going to testify?

4 MR. SLADE: That's correct.

5 THE COURT: Then he can't authenticate it.

6 MR. SLADE: Here is what happened at the
7 handwriting analysis: What happened was the solicitor's
8 office asked Mr. Howe to bring Terrell down to do some
9 handwriting samples so that they could get the standards
10 that are typically used to compare with the questioned
11 document.

12 What you're holding there will be referred
13 to, if we get that far, as the questioned document. So
14 at that point, Your Honor, there were only two people
15 charged, Terrell Chandler and Che Carr. They were the
16 first two people arrested, and what the solicitor's
17 office decided to do at that point, Your Honor, was to
18 have handwriting -- they questioned whether or not that
19 letter was from Che at all, so what they wanted to do was
20 get handwriting samples from Terrell and get handwriting
21 samples from Che, so that is what they did.

22 I believe y'all went down to the solicitor's
23 office? I'm sorry. They went to the police station,
24 Your Honor. Mr. Howe took our client and Mr. Carr's
25 mother went with his client, and at that point Detective

1 Osborne was there. The handwriting sample series, I
2 think they asked him to write ten times what -- they
3 asked each of them to write ten times what was in these
4 letters, trying to see how their handwriting compared to
5 the words, the way the words were formed, et cetera, in
6 that letter, standard handwriting analysis procedure.

7 At that time, Detective Osborne and Terrell
8 were there, and Detective Osborne asked him about the
9 letter, and Terrell told him he got the letter from Che.
10 And, Your Honor, in our argument, that is authentication
11 that he got the letter from Che, or that is the first
12 step in authentication. Our client has told Detective
13 Osborne he got the letter from Che. That's the first
14 step. I got a letter, it's purported to be from this
15 person.

16 Now, our client is not going to testify, so
17 we got to get to is the letter from Che? Is the letter
18 from Terrell? We had our own handwriting analysis done,
19 Your Honor, and we provided the prosecutor's office with
20 reports of that examination. And what our handwriting
21 analyst tells us, Your Honor, is that he can completely
22 eliminate Che -- excuse me, strike that -- he can
23 completely eliminate Terrell as the person who wrote the
24 Sexy B letter and that -- excuse me. I'm going to read
25 from it, that he cannot eliminate Che Carr as the writer

1 of the questioned document.

2 So that's how we get from having the letter
3 to introducing the contents of the letter.

4 MS. SHEALY: May I respond to those
5 arguments, Judge?

6 THE COURT: Yes, ma'am.

7 MS. SHEALY: I think it fails at the very
8 first part. Terrell Chandler -- it was the day of
9 proffer by Terrell Chandler that was actually heard, and
10 Terrell Chandler indicating to David Osborne that he
11 received it from Che is certainly no authentication.

12 But, secondly, the exact language from the
13 defense attorneys' expert as it related to the authorship
14 of that document is, and I quote, There is some reason
15 not to eliminate the writer of K/1, Che Carr, as the
16 writer of the questioned document, and he refers to that
17 as Q/1 so the highest it gets is there is some reason not
18 to eliminate.

19 It in no way says Che is the author of the
20 letter, and our SLED expert, her language in making the
21 comparison, is based on the examination of the additional
22 evidence submitted. It has been determined that there
23 are indications that Cherelle (sic) Carr did not write
24 the questioned entries on item 28, which is the document
25 you have before you.

1 MR. SLADE: Your Honor, if I could be heard
2 on that, when you get a minute, I didn't want to
3 interrupt you --

4 MS. SHEALY: I'm sorry. I was just going to
5 clarify what I said first. Terrell telling David Osborne
6 on an earlier occasion that he received this from Che
7 Carr does not provide authentication during the trial.
8 They do not intend to put their client up. They are not
9 meeting the necessary requirements for authentication.

10 And, Your Honor, for purposes of the
11 argument, I would like to submit a copy of the Court's
12 exhibit as the report from Gaile Heath and Marvin Dawson.

13 THE COURT: Okay.

14 MS. SHEALY: Would you like me to hand them
15 up to you now and get them marked later?

16 THE COURT: You've seen these?

17 MR. SLADE: Yes, sir, I have. I have copies
18 of both of them.

19 THE COURT: All right. What do you want to
20 say?

21 MR. SLADE: Well, Your Honor, I want to
22 address one of her earlier points about the
23 authentication step. When a person says, I got this
24 letter from somebody, that is -- in my understanding,
25 that is the first step in authentication. It's a fairly

1 small hurdle: I got this letter from my mom, I got this
2 letter from somebody would serve to authenticate the
3 letter.

4 He told Detective Osborne that. I don't
5 think there is any dispute about that. They could use
6 these statements -- you know, we've gone through an
7 entire process where they're using statements that our
8 client made. We're entitled to use that. Detective
9 Osborne is fixing to testify to a good bit of stuff that
10 our client said, so it's fair for us to use something our
11 client told Detective Osborne.

12 THE COURT: Did he tell it to them or did
13 they tell it to his lawyer who told it to him?

14 MR. SLADE: Well, Your Honor, my
15 understanding is he told that to him.

16 THE COURT: Let's have that out loud. Did
17 you tell the detective or did Terrell tell the detective?

18 MR. HOWE: Both of us did. When you sit down
19 for the writing sample session, Osborne said,
20 Mr. Chandler, is this the letter that you say you
21 received in jail from Che Carr? Yes, sir.

22 MS. SHEALY: Judge, if I could just address
23 one issue regarding that, I think there are two different
24 questions. One would be can they get this document in,
25 you know, into evidence in this case, which is a bit

1 different than can they authenticate it, but the
2 authentication requirements are identified in Rule 901 of
3 the rules of evidence, and I don't believe that they have
4 asserted anything, and we can take a look at the
5 illustrations under 901 that would authenticate it.
6 Terrell Chandler telling David Osborne that he received
7 this does not authenticate it.

8 MR. SLADE: Your Honor, I believe 901(b)1 is
9 directly on point and supports our argument that our
10 client is saying this is -- saying what it is
11 authenticates it, excuse me.

12 MS. SHEALY: My position on that would be
13 that Mr. Chandler's statement would assert that he is
14 saying that is a letter he received. That does not
15 authenticate the authorship of the letter, which I think
16 is what is required under authentication, not that I just
17 received this letter, but this is Che Carr's letter.

18 THE COURT: Anything else?

19 MR. SLADE: Your Honor, I think our client
20 saying I got this letter from Che Carr as the initial
21 hurdle under 901(b)1 is fairly low. That authenticates
22 so that it can be read to the jury. Then it becomes a
23 question of the weight, and the battle of the experts
24 comes in. They have an expert to say what she says in
25 terms of whether or not she believes, using her expert

1 analysis, that this letter was written by Che Carr and we
2 use our expert to say whether his analysis says this
3 letter was written by Che Carr.

4 THE COURT: Let me ask you, for what purpose
5 would you be offering this letter?

6 MR. SLADE: Your Honor, it's a statement --

7 THE COURT: To prove what?

8 MR. SLADE: By Che Carr that he says he shot
9 the guy. He didn't mean to, it just happened. I can't
10 remember precisely the language.

11 THE COURT: It doesn't in here, I don't
12 think, say, I shot the guy.

13 MR. SLADE: You're right. What it says, I
14 ain't no I been done kill dog, which is -- I think,
15 clearly, he said he didn't know he was going to kill.
16 And the second part, Your Honor, I apologize if I
17 interrupt your train of thought, he said that he didn't
18 mean to get him any, and it takes me a minute to focus
19 on -- I'm sorry, I think, third line, that line starts,
20 Man, I think that word is man, I sorry for even putting
21 you in this shit. Them police keep telling me I that you
22 did it so I tell them you did it.

23 MS. SHEALY: It would be our position that
24 obviously he is attempting to admit it for the truth of
25 the matter asserted and nothing else.

1 MR. SLADE: Well, there has been, and I think
2 will be, more evidence that Storme Carr and Che Carr are
3 telling the police various stories to exculpate
4 themselves out of this thing, and one of the stories that
5 Che Carr has told incriminates our client.

6 They have known each other for a long time.
7 This letter to our client is further proof of this effort
8 to frame up on our client, and this is further proof that
9 Che Carr and Storme Carr are contriving a story or have
10 contrived a story or are trying to contrive a story that
11 makes our client a responsible party.

12 It's further evidence, not necessarily for
13 the words that are in there, but to show that they are
14 further taking steps, just like they did when they called
15 Crime Stoppers, just like they did when they told the
16 Taliban story, just like when they changed their story
17 from the Taliban story to the Terrell did it story.

18 And in our view, Your Honor, these are verbal
19 acts, these words or actions, and you can't obstruct
20 justice. You can't contrive a frame-up without these
21 acts that can only be done with words.

22 THE COURT: All right. Well, let me run
23 through -- my analysis is it is hearsay within hearsay if
24 it's Terrell -- if the way this officer would testify is,
25 Terrell told me that he got this from Che, this statement

1 which this letter, which purports to be from Che, would
2 be hearsay, and then the statement that Terrell told him
3 would be hearsay, so it's hearsay within hearsay.

4 Which doesn't necessarily mean it can be
5 automatically excluded, but each part has to conform to
6 an exception to the hearsay rule, but you first have to
7 get through authentication, and through parts of the
8 rule, 901 that apply 901(a)1, or -- excuse me, 901(b)1
9 and 901(b)9, 901(b)1 would be testimony that matters what
10 it claims to be, and that would be if Terrell took the
11 stand and said, I got this letter from Che, that would
12 satisfy that, but he's not going to get up on the stand
13 and say that.

14 That would be back to hearsay within hearsay,
15 and I don't know that that is allowed to authenticate it.
16 So the other attempt to authenticate it would be through
17 expert testimony, and that would be 901(b)9, evidence
18 describing a process or system used to produce a result,
19 showing that the process or system produces an accurate
20 result.

21 We've got two reports here, one from a
22 forensic document examiner who presumably would be
23 qualified as an expert, and then the SLED investigator,
24 who again presumably would be qualified as an expert.
25 SLED report concludes that it has been determined there

1 are indications that Cherelle (sic) did not write the
2 questioned entry, and that the author is unidentified, so
3 that would not satisfy authentication.

4 And Mr. Dawson's report concludes, at best,
5 that there is some reason not to eliminate the writer --
6 or not to eliminate Che Carr as the writer. That is
7 hardly a ringing endorsement that one could conclude that
8 Che Carr is the author. It's just at best he's willing
9 to say there is some reason not to eliminate it.

10 So based on that, I don't conclude that
11 you've satisfied 901(b)9 either. So I don't think you
12 can get it in because it's not been properly
13 authenticated. So we don't have to get to the issue of
14 whether or not it's hearsay within hearsay, because you
15 can't authenticate the document in the first place.
16 So --

17 MR. SLADE: Your Honor, I have one request.
18 Since Detective Osborne -- we would like to make a
19 proffer on that. Since Detective Osborne is here and is
20 about to take the stand, could we just have him briefly
21 say what Terrell told him?

22 THE COURT: Okay. Is it going to be
23 different than what you --

24 MR. SLADE: I don't think so, Your Honor, but
25 I'm just very conscious of trying to make a proffer of

1 the evidence that is critical, and that is my only reason
2 for that.

3 THE COURT: Go ahead. We've got him here.
4 Come on up.

5 DAVID OSBORNE,
6 having been first duly sworn,
7 was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. SLADE:

10 Q. Detective Osborne, I have a couple of questions
11 for you about a part of your investigation of this case.
12 You've been in the courtroom during the discussion that
13 is immediately preceding discussion with the judge about
14 the admissibility -- I want to call it the Sexy B letter.
15 Do you understand what we're talking about?

16 A. Yes.

17 Q. And at some point, fairly early on in this
18 investigation, in September or October of 2008, did you
19 supervise, if that's the right word, the taking of some
20 handwriting exemplars from the two defendants in this
21 case?

22 A. Yes.

23 Q. And were Terrell Chandler and Waring Howe present
24 at that handwriting exemplar session?

25 A. Yes.

1 Q. And just so the record is clear, what the
2 handwriting exemplar session is, is that you or another
3 detective read the letter that has been entered as --
4 excuse me, Your Honor, if I could get --

5 THE COURT: I'm sorry.

6 MR. SLADE: I apologize. Could I get that
7 marked?

8 THE COURT: Yeah. Hand all that to the
9 reporter and have her mark the two reports as well for
10 identification at this point, those would be --

11 MS. SHEALY: Could we have them marked as
12 Courts Exhibits?

13 THE COURT: Why don't we do that, mark them
14 all as Court's exhibits.

15 (Letters marked for identification as Court's
16 Exhibit Nos. 3, 4, and 5.)

17 BY MR. SLADE:

18 Q. Detective Osborne, I'm going to show you Court's
19 Exhibit No. 3 and just ask you to hold on to that for
20 just a minute for this next series of questions. I think
21 where we left off was you and Terrell Chandler's lawyer
22 at the time, current lawyer, Waring Howe, met at
23 Charleston Police Department to do some handwriting
24 samples?

25 A. And Jennifer Shealy and Nathan Williams.

1 Q. So two of the prosecutors on the case at the time
2 were also there.

3 A. Yes.

4 Q. And the purpose of that meeting was to take some
5 handwriting samples from Terrell Chandler, right?

6 A. That's right.

7 Q. And the whole reason this event came up was Mr.
8 Howe had contacted either you or someone in the
9 solicitor's office and told you he had gotten a letter
10 from Terrell Chandler, which is in evidence now as
11 Court's Exhibit No. 3 and he wanted to turn that over to
12 y'all, right?

13 A. Specifically, Nathan called me at the beginning of
14 September of '08, saying that Waring had the letter. On
15 September the 4th, I went and met with Mr. Howe's
16 secretary, and she is the one that turned the letter and
17 the envelope over to me.

18 Q. And following up on that, y'all decided that, of
19 course, y'all had some suspicion about who wrote it,
20 right?

21 A. Right.

22 Q. And so what y'all wanted to do was get handwriting
23 exemplars from Terrell and get handwriting exemplars from
24 his codefendant, Che Carr, right?

25 A. That's right.

1 Q. And the only two codefendants at that time were
2 Terrell Chandler and Che Carr?

3 A. That's correct.

4 Q. So what y'all did was you read the contents of his
5 letter, right?

6 A. Yes.

7 Q. And asked Terrell to write portions of the letter,
8 or the whole letter, is what he actually wrote, right?

9 A. That's right.

10 Q. And sometimes you would give him the spellings so
11 you could see if there was a difference in the spelling,
12 right?

13 A. Right.

14 Q. And then sometimes you would tell him exactly how
15 the letter was spelled and ask him to write those words,
16 right?

17 A. That's right.

18 Q. During the course of that handwriting exemplar
19 taking session, you asked Terrell if that was the letter
20 he had gotten from Che, right?

21 A. I don't remember exactly how that came up, but I
22 do remember at a certain point Terrell did tell me that
23 that letter came from Che. My attempt at that point was
24 to take a written or an audio recorded statement from
25 Terrell, because he was also talking about the night of

1 the incident as well, but Mr. Howe said no.

2 Q. The proffer was a separate meeting and a separate
3 occasion, right?

4 A. No, sir. As I recall, it was all going on at the
5 same time.

6 Q. Well, the proffer conversation took place either
7 before or after the handwriting session, right?

8 A. Right, but I thought you were talking about me
9 questioning him in regards to the letter.

10 Q. Right.

11 A. As I recall it, that was part of the proffer. I
12 didn't question him whenever I was asking him to write
13 it. He was writing it; I was dictating it. When that is
14 over, then we went into the proffer, and I might be
15 wrong, but as I recall it, that's when I started asking
16 him about the letter.

17 Q. All right.

18 MR. SLADE: I don't have any other questions
19 for this witness, Your Honor.

20 MS. SHEALY: I have no questions.

21 THE COURT: Okay. You can step down.

22 MS. SHEALY: There is one other matter I
23 would like to put on the record, and I don't remember if
24 we put some of this on the record or if we just discussed
25 it at the bench, but earlier this morning, I advised the

1 Court that I been alerted by defense counsel for Steven
2 Brown that he had information from earlier that day when
3 the twins had indicated that -- excuse me, where Steven
4 Brown was with the twins and something had happened with
5 the twins, suggesting to Steven that he jump some guy.

6 I asked the Court if I could have the Court's
7 permission to send Abigail Walsh down to talk with Steven
8 Brown to make sure I could flesh out the facts and that I
9 may be recalling them. Abigail Walsh came back up when
10 we were questioning witnesses and spoke to my law clerk,
11 Katherine Walters. Katherine took notes of the substance
12 of Mr. Brown would indicate. I then took Ms. Walters'
13 notes and provided them to the defense. They have over
14 our morning break the opportunity to review the facts.
15 They indicated to me that they did not want Mr. Brown to
16 be allowed to go into those matters, and I have elected
17 not to call him, but I would like to put Ms. Walters'
18 notes in as a Court's exhibit.

19 THE COURT: All right. That will be fine.

20 (Ms. Walter's notes marked for identification
21 as Court's Exhibit No. 6.)

22 (In open court, jury present.)

23 THE COURT: All right. Call your next
24 witness.

25 MS. SHEALY: David Osborne.

1 DAVID OSBORNE,
2 having been previously duly sworn,
3 was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MS. SHEALY:

6 Q. Detective Osborne, if you would, tell us a little
7 bit about your law enforcement background.

8 A. I started with the New Orleans police department.
9 I worked there for five years. I worked in patrol for a
10 year, the task force for two years. I worked as a
11 robbery detective for two years. Then I came to
12 Charleston. I been here for eight years.

13 I worked in patrol for two years, I worked in the
14 robbery unit for two years, and now I'm in the crime
15 scene and been there for four years.

16 Q. In May of 2008 what were your duties?

17 A. I was in the crime scene unit.

18 Q. Were you a detective then?

19 A. Yes.

20 Q. Now, focussing then on May 30, 2008, describe for
21 the jury when you first become involved in this
22 investigation.

23 A. I was at home sleeping. I got a phone call about
24 1 o'clock saying there was a homicide, so I responded to
25 the scene.

1 Q. And tell us what was going on at the scene when
2 you got there.

3 A. When I got there, it is was pretty much cleared
4 up. I met with Detective Sergeant Goldstein and
5 Detective Antonio. They gave me a briefing on what
6 happened, and after that I relocated to MUSC.

7 Q. Why did you go to MUSC?

8 A. Well, the victim's families were going to be
9 there. A lot of times, if you go meet with them, you can
10 get more information. I also knew that there was a
11 witness, Cherelle Anderson, who was inside the car, and I
12 wanted to go try to meet with her.

13 Q. And when you got to the hospital, was Cherelle
14 Anderson still there?

15 A. No, she was not there.

16 Q. What did you do next?

17 A. Well, I spoke to Sergeant Dutton, then Sergeant
18 Dutton. He gave me a briefing on what happened, manner
19 of death. At that point I found out that Cherelle lived
20 at 5468 Delow Street in North Charleston, so myself and
21 Detective Burkhardt went there and looked for her.

22 Q. When you got there, was Cherelle there?

23 A. No, she wasn't there.

24 Q. And at some point does she arrive there?

25 A. Yes.

1 Q. Tell us about that. Tell us about what happened
2 once Cherelle got to her home.

3 A. Well, when Cherelle was there, she was obviously
4 really upset. I believed at that point there was
5 probably more information that she could relay but just
6 wasn't, so I tried to talk to her and she asked me, well,
7 she said, she was very upset and she asked me if I could
8 come back the next day and talk to her then.

9 Q. And when you went to the hospital, had Mr. Gibbs
10 already died by the time you got there?

11 A. Yes. He was already pronounced.

12 Q. When is the next time that you talked to Cherelle
13 Anderson?

14 A. Well, I made contact with her. It would be the
15 same day, but later on in the afternoon at -- I guess
16 that would have probably been about 8:30 p.m.

17 Q. On the 31st?

18 A. Yes.

19 Q. Now, if you would, tell us about how many people
20 you've interviewed in your career.

21 A. I would say over 13 years, probably going on a
22 couple thousand.

23 Q. If you could describe to the jury the first time
24 you speak to someone. Do you usually get a very detailed
25 accounting of what happened?

1 A. Well, we try, but it's difficult. I mean, a lot
2 of times -- I would say it's a very fair statement that
3 with every interview you're going to get a little bit
4 more information.

5 Q. On the occasion that you spoke to her on the 31st,
6 around 8:30 in the evening, did you learn about the drug
7 transaction at that point?

8 A. Not from her, but we had pretty much surmised it
9 was a drug transaction because there were drugs and money
10 inside the car.

11 Q. Now, at some point after talking to Ms. Anderson
12 that evening, do you go to Mr. Gibbs' family's home?

13 A. Yes.

14 Q. And what was the purpose of your going there?

15 A. Delores Gibbs, Calvin's mother, had made contact
16 with me and said that she had some additional
17 information, and namely she said that she had had one of
18 the phones that Calvin was using on the night of the
19 murder.

20 Q. Okay. And was it your understanding that it was
21 actually Calvin's phone --

22 A. No, it was not.

23 Q. -- or someone else's? Did you actually receive
24 the phone while you were there?

25 A. Yes, I did.

1 Q. I'm going to show you this and ask if you can
2 identify it.

3 A. Yes. This is the phone that I got from Ms. Gibbs.

4 MS. SHEALY: Your Honor, I would like to
5 offer this in at this point, telephone received from Ms.
6 Gibbs' house.

7 MR. SLADE: No objection, Your Honor.

8 (Cell phone marked for identification and
9 admitted into evidence as State's Exhibit No. 112.)

10 BY MS. SHEALY:

11 Q. Now, showing you State's Exhibit 112, the phone is
12 currently disassembled; is that correct?

13 A. That's correct.

14 Q. Do you know if that is the way evidence stores
15 them?

16 A. Yes, they do.

17 Q. When you received the phone that evening from
18 Ms. Gibbs, was it in working order?

19 A. Yes.

20 Q. And did you at that point look at the most recent
21 phone calls?

22 A. Yes, I did.

23 Q. Okay. Could you tell the jury, please, if you
24 would, what were the last phone calls that had been made
25 from that phone or received from that phone?

1 A. On the night of the murder -- and I'm going
2 backwards -- on the night of the murder, at 1 a.m., there
3 was a phone call that was dialled out to 926-7260, 843
4 area code, no name on the contact. Going backwards, the
5 very previous call was May 30th, which would have been
6 the same night, at 11:51 p.m., 911 dialled. The very
7 call prior to that was on the same night, 11:46, five
8 minutes earlier to 843-303-4219.

9 Q. And as part of your investigation, were you able
10 to determine who had the phone number 303-4219?

11 A. Yes, I was.

12 Q. And who had that phone number?

13 A. Che Carr.

14 Q. Did you learn anything else when you were at
15 Ms. Gibbs's house that gave you any direction regarding
16 the phone number?

17 A. That was -- while I was there, that was the first
18 time that I heard the name Che Carr.

19 Q. And that is because someone knew that number?

20 A. That's correct.

21 Q. Okay. What did you do next once learning the name
22 Che Carr?

23 A. Well, the first thing I did was I went back to the
24 station, did a background on this individual. I wasn't
25 familiar with him. Pulled up his photograph, his

1 physical features, to see if it was similar to what
2 Cherelle was identifying as the person who was waving
3 them in, found out that he was a viable candidate. Then
4 I got a single photograph of him from his
5 DMV photographs, and then I proposed a photographic
6 line-up with him as a suspect.

7 Q. Were you aware at that time he had an identical
8 twin?

9 A. No, I wasn't.

10 Q. When is the next time you meet with Cherelle?

11 A. That same evening at 6:30 p.m.

12 Q. And that was for the purpose of showing her the
13 line-up?

14 A. Yes, and reinterviewing her.

15 Q. And showing you State's Exhibit 102, could you
16 tell me whether this is the original line-up that was
17 shown to her.

18 A. Yes, it is.

19 Q. Now, describe the process that you underwent in
20 showing her the line-up.

21 A. The first thing I do is read the top of the
22 admonition form. After I get through with that, I ask
23 her if she understands the procedure and what is going to
24 happen. She said she did, and then put the date and
25 time, just indicating that she understands, and then I

1 just put it right in front of her like that and tell her
2 to turn it over and look at that time, and that is what
3 she did.

4 Q. When she turned it over and looked at it, tell us
5 how quickly she made an identification?

6 A. I remember it was pretty fast, and I put down in
7 my notes, it was, like, 20 seconds.

8 Q. Before you showed her the line-up, were you aware
9 of whether or not she had indicated that more than one
10 person was involved?

11 A. Yes.

12 Q. And how many individuals were you attempting to
13 identify?

14 A. Four, at least four.

15 Q. Do you take another statement from Cherelle?

16 A. Yes.

17 Q. And what was the reason for talking to her again?

18 A. Again, when you talk to people, especially after
19 she was just involved in what she was involved in, you
20 can't expect her to relay everything. I mean, it's just
21 not fair to keep her there that long either, so we
22 continued the interview process, get more information,
23 and just try to get a good idea of what happened.

24 Q. So if you could kind of describe to the jury at
25 this point in the investigation, where were you? You had

1 one person identified or you believe identified?

2 A. That's correct.

3 Q. And you were looking for what?

4 A. The other people responsible for the murder.

5 Q. Now, there has been some testimony about your
6 having written her statements.

7 A. That's correct.

8 Q. Okay. Now, describe that for the jury. Explain
9 to us what happens when you're interviewing witnesses.

10 A. I mean, it's all sort of -- I wouldn't say there
11 is a standard procedure to have a witness write it or me
12 write it, but I know with -- you're talking less than 12
13 hours earlier she was just involved in this traumatic
14 experience. I wouldn't ask her to write a four or five
15 page statement. I just wrote it as best I could.

16 Q. And are you writing word for word what she is
17 telling you, or are you interviewing her and summarizing
18 it or what?

19 A. Interviewing and summarizing.

20 Q. Do you typically interview someone and then come
21 back and write it, or do you write it as you go?

22 A. I don't know if there is a typical way of doing
23 it. I mean, and this -- I'm pretty sure with this one, I
24 know Detective Antonio took over at a certain point, but
25 I think I was pretty much writing it.

1 Q. And when you look at the line-up, the language at
2 the bottom of the line-up says what?

3 A. He looks like the guy who ran up to the car with
4 the long gun.

5 Q. Okay. Well, tell the jury, do you remember her
6 saying that the guys had run up to the car?

7 A. I don't remember whether -- I mean, I would like
8 to say that I put down what she said, but, I mean, to be
9 honest, if she said they were at the car, I may have
10 asked her, did they run up to the car, and if she said
11 yeah, then that is what I put down.

12 Q. Do you specifically remember ever asking her if
13 she saw them literally running to the car?

14 A. At this point, I don't remember her specifically
15 saying that.

16 Q. And do you remember whether at any point -- you've
17 interviewed her several times -- whether you asked her if
18 she saw whose hands were on the rifle when the people are
19 at the car?

20 A. I do remember specifically asking her that in
21 subsequent interviews, yes.

22 Q. And did she indicate to you whether or not she saw
23 the hands on the gun?

24 A. No. When I specifically asked her, are you sure
25 the shorter guy was holding the gun, her answer was no.

1 Q. At some point do you go over to Che Carr's home?

2 A. That same evening.

3 Q. And what spurred that?

4 A. Then Sergeant Dutton received a phone call from
5 Che Carr indicating that he had heard that his name was
6 being called as responsible for the murder.

7 Q. And who went over to Che Carr's house?

8 A. Myself, Detective Antonio, and Sergeant Dutton.

9 Q. I'm sorry. Say that again, you, Antonio and --

10 A. Sergeant Dutton.

11 Q. When you got to Che Carr's house, who was there?

12 A. Storme Carr was there and Frank Carr, and I think
13 they identified Frank as being their uncle.

14 Q. And at the time you go over there, was this the
15 first time you realized there was a twin brother?

16 A. When I saw Storme, that was the first time.

17 Q. I'm going to show you a map of the area, No. 2,
18 and could you show us what road it is that Che and Storme
19 Carr live on, or lived on.

20 A. I would say it's either that house or that house.
21 They live on Tripe Street.

22 Q. Did you conduct a search?

23 A. I asked for Che to conduct a search on his house,
24 and he agreed.

25 Q. Was anything found of any evidentiary nature when

1 you searched that house?

2 A. No, no.

3 Q. Detective Osborne, when you were dealing with
4 people who are suspects in a crime, do they always tell
5 you the truth the first time they talk to you?

6 A. Hardly ever.

7 Q. Do they always tell you the truth?

8 A. No.

9 Q. And, in fact, you got a statement from Che Carr
10 that evening that was pretty preposterous, right?

11 A. That's what I thought.

12 MR. SLADE: I would ask she not lead the
13 witness.

14 MS. SHEALY: Yes, sir.

15 THE COURT: Please rephrase.

16 BY MS. SHEALY:

17 Q. The statement you got from Che Carr, did you
18 believe it?

19 A. No. I found it pretty unbelievable.

20 Q. And prior to getting that statement from Che Carr,
21 did you, in fact, go over his Miranda warnings with him?

22 A. Yes, I did.

23 Q. Now, did you have the occasion -- or at some point
24 do you meet with Andre Jenkins?

25 A. I do, yes.

1 Q. And who is Andre Jenkins?

2 A. Andre Jenkins is a sergeant that is assigned --
3 they changed the name of his unit, but it's basically
4 like a street crimes unit. He deals with drugs, stopping
5 people. He's a sergeant involved in the Ashley division
6 of that unit.

7 Q. When you say with stopping people, what do you
8 mean?

9 A. Well, they mostly focus on high drug areas, high
10 crime areas, they get out on suspicious people. They are
11 a proactive unit.

12 Q. And did he know at that point who your suspect
13 was, who one of your suspects was?

14 A. He was familiar with the twins, Storme and Che,
15 yes.

16 Q. What information did Andre Jenkins give you about
17 Che and Storme Carr that focussed your attention around
18 Battery Avenue?

19 A. That they frequented 930 Battery Avenue, Apartment
20 Five.

21 Q. What did you do based on that information that
22 Officer Jenkins gave you?

23 A. Well, I compiled that information with everything
24 else that I had, witness statements, Che being positively
25 identified. I composed a search warrant for 930 Battery

1 Avenue, Apartment Five, and arrest warrants for Che Carr
2 for murder and possession of a firearm during a felony.

3 Q. And could you tell the jury what date it was that
4 you actually filled in the search warrant and compiled
5 the arrest warrant for Che?

6 A. That was on June the 1st, 2008.

7 Q. Now, again, at this point in the investigation,
8 are you just looking for one person?

9 A. No.

10 Q. And were you present the day that the search
11 warrant was actually executed?

12 A. I was.

13 Q. Would you describe that process to the jury.

14 A. Well, we had enough evidence to go and do a search
15 warrant on 930 Battery Avenue, Apartment Five.

16 Q. Let me interrupt you, and I apologize for this.
17 When you say you had enough evidence, what was your
18 understanding as to what type of weapons were involved in
19 the incident?

20 A. We knew there were two weapons involved, a rifle
21 that fired 762 ammunition, and a handgun that fired 380
22 ammunition.

23 Q. And you knew that how?

24 A. From shell casings that were recovered from the
25 scene and the autopsy.

1 Q. Okay. And are you aware of what type of bullet,
2 in fact, killed Mr. Gibbs?

3 A. The rifle, the 7.62 round.

4 Q. You told us the SWAT team was involved with the
5 search warrant. What was the significance of having the
6 SWAT team involved? Why were they engaged?

7 A. Namely because of the rifle, very dangerous
8 weapon. To my knowledge, we don't have any ballistics
9 that is going to stop that round.

10 Q. When you say you don't have any ballistics, what
11 are you talking about?

12 A. Bullet proof vests or shields.

13 Q. What is different about the SWAT team? Why would
14 their involvement have been helpful?

15 A. That is what they are trained to do, to make high
16 risk entries into residences and serve high risk arrest
17 warrants.

18 Q. And what is your familiarity about the hour of the
19 day that is best to go into someone's house if you think
20 they have a dangerous weapon?

21 A. While they're sleeping.

22 Q. While that was going on in Apartment Five, was
23 someone else down at Tripe Street?

24 A. I was. We didn't have enough to go back and get a
25 search warrant on Che and Storme's residence since he had

1 already given us permission to search, so myself, Officer
2 Mosher, Sergeant Dutton, we went to 874 Tripe in an
3 attempt to try to find Che. We tried to coordinate with
4 SWAT at the same time, so while we were doing 874 Tripe,
5 SWAT was focussing on 309 Battery, Apartment Five.

6 Q. And when you went back to Tripe Street, that was
7 to serve the arrest warrants?

8 A. Yes, the location.

9 Q. When you went there, was Che Carr there?

10 A. He was not.

11 Q. So what did you do as a result of that?

12 A. Walked right down to 930 Battery Avenue.

13 Q. And when you got there, what was going on down
14 there?

15 A. They had set up a perimeter on the apartment
16 building. They had went to all of the occupants that
17 were in the apartment and we had asked everyone else to
18 leave, so we got everyone -- they got everyone out of the
19 apartment, and they were attempting to serve the warrant
20 and make contact with the residents.

21 Q. Do you recall who was inside the apartment when
22 the SWAT team entered?

23 A. Well, I wasn't there, but I do know who I was told
24 was there, and -- let's see. It was Terrell Chandler,
25 Storme Carr, Che Carr, Ta'Mequa Durant, I'm pretty sure,

1 and Troy White.

2 Q. What do you do --

3 A. I'm sorry, Tamara Dixon.

4 Q. The one whose -- the gun was in her car?

5 A. Yeah. I'm pretty sure it was her. It could have
6 been Ta'Mequa.

7 Q. Okay. Ta'Mequa is the friend of Latrice's?

8 A. Yes.

9 Q. Now, what happens with all the people in the
10 apartment when the investigate -- tell us this: When
11 they go in to look for items of evidence, are they
12 delicate with the furnishings and the drawers or are they
13 plowing through it?

14 A. They're not exactly delicate, no.

15 Q. Do you take anyone from the scene back to the
16 headquarters?

17 A. Yes.

18 Q. And who do you take back?

19 A. Che Carr.

20 Q. Are you aware of whether or not at some point that
21 same day Storme Carr gets interviewed?

22 A. Yes, he does.

23 Q. Now, as a result of your interview with Che Carr,
24 who else do you believe may be involved in this incident?

25 A. Terrell Chandler.

1 Q. Are you then saying Che Carr's not to be blamed
2 and you're only looking for Terrell Chandler?

3 A. No.

4 Q. Well, tell the jury what that added to the
5 investigation.

6 A. Well, it helped me to identify the other people
7 responsible for the murder. I mean, typically, and that
8 is exactly what happened here, you get a codefendant, he
9 gives a statement, and then that is where you go. You
10 verify, credit or discredit his statement, and they go
11 from there and continue to gather evidence.

12 Q. And when Che gave you a statement on that
13 occasion, did it contain the same facts as the one he
14 gave you when you went to Tripe Street?

15 A. No.

16 Q. Based on statement Che gave you, what were you
17 hoping to find, rifle wise?

18 A. The rifle?

19 Q. What information led you to find the rifle, I
20 guess is a better way to ask the question.

21 A. I knew we didn't have the rifle at 930 Battery
22 Avenue, so is that is really what I was focussing on
23 early on, and he gave me information pretty readily to
24 say where I could find the rifle.

25 Q. And did he, in fact, describe where to go?

1 A. Yes.

2 Q. Did he accompany you to show you or someone else
3 where to go?

4 A. Yeah. I wanted him to tell me exactly where it
5 was and point it out, so we got in the police car, drove
6 over there. He pointed out the apartment and the car,
7 saying it would either be in the apartment or in the car.

8 Q. And are you aware of whether or not when -- did
9 you have to draft a search warrant for that vehicle?

10 A. For the vehicle and the apartment, yes.

11 Q. After you drafted the search warrant, was the
12 search warrant actually executed on the vehicle of Tamara
13 Dixon?

14 A. Yes.

15 Q. And the rifle was found in her vehicle?

16 A. Yes.

17 Q. What was your understanding as to who Tamara Dixon
18 was friends with, or involved with?

19 A. Terrell Chandler.

20 Q. When you were interviewing Che Carr at the station
21 that day, did you take a cell phone from him?

22 A. Yes, I did.

23 Q. Do me a favor. On the earlier cell phone that Ms.
24 Gibbs gave you, State's Exhibit 112, what type of phone
25 is this?

1 A. I mean, it's --

2 Q. Name brand?

3 A. It's old now. It's a Nokia.

4 Q. And the phone you took from Che that day -- first
5 of all, tell me whether that is the phone you took.

6 A. Yes.

7 Q. And what type of phone is that, if you can tell?
8 You can open it, if necessary. You need scissors?

9 A. It's a Motorola.

10 MS. SHEALY: I would offer this at this time.

11 THE COURT: Any objection?

12 MR. SLADE: No objection.

13 THE COURT: Admitted.

14 (Cell phone marked for identification and
15 admitted into evidence as State's Exhibit No. 113.)

16 BY MS. SHEALY:

17 Q. That is State's Exhibit 113, Judge.

18 You told us about Che getting arrested back at
19 Battery Avenue. Was Terrell also arrested?

20 A. No, he wasn't.

21 Q. Back at Battery Avenue?

22 A. Oh, yes. He was arrested at that time for the
23 narcotic violations that we found in the apartment.

24 Q. And after talking to Che, getting his phone and
25 getting his statement and finding out the information

1 from Tamara Dixon, did you have occasion to talk with
2 Terrell Chandler?

3 A. I do, yes.

4 Q. Describe what happened to us.

5 A. Well, on June the 4th, I met with Terrell at the
6 CPD central investigations office.

7 Q. Let me interrupt you, and I apologize, but as a
8 result of the conversation you had with Che Carr, does
9 that expand your investigation at all?

10 A. Yes.

11 MR. SLADE: Your Honor, I object at this
12 point. There was some -- we had an objection earlier to
13 some of the lines of questioning we're about to enter. I
14 just wanted to make sure I'm entering my objection on the
15 record.

16 THE COURT: Noted for the record. It's
17 overruled.

18 BY MS. SHEALY:

19 Q. Regarding my -- you don't have an objection to
20 this question?

21 MR. SLADE: No, no.

22 BY MS. SHEALY:

23 Q. After talking to Che Carr, how did the
24 investigation expand?

25 A. Well, it led to him identifying other individuals

1 that were responsible for the murder.

2 Q. And in addition to other individuals responsible
3 for the murder, did it also include other potential
4 witnesses?

5 A. Yes.

6 Q. Who were you then looking for to try to interview?

7 A. Well, he had named some females that were inside
8 the apartment. That was the first time I heard that,
9 Latrice Smalls, Megan White, Ta'Mequa Durant. He also,
10 to the best of my knowledge, recollection, identified a
11 person by the name of Troop that I would need to talk to,
12 and he identified Terrell Chandler as the shooter.

13 Q. And prior to that, had you heard anything about
14 the females?

15 A. No.

16 Q. Had you heard anything about Troop?

17 A. No.

18 Q. And then did you learn about Terrell's involvement
19 in the apartment and outside as well?

20 A. That's correct.

21 Q. You were getting ready to tell us before I
22 interrupted you about the process of attempting to
23 interview Mr. Chandler.

24 A. Yes.

25 Q. Tell us how that came into play.

1 A. I met with him. It was about 9:00 in the morning
2 at the CPD central investigations office.

3 Q. How was that accomplished?

4 A. I picked him up from the detention center on Leeds
5 Avenue, transported him back to the station.

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

8 (Discussion held at sidebar.)

9 BY MS. SHEALY:

10 Q. I'm going to show you a photograph and ask if you
11 can identify that.

12 A. This is the booking photo of Terrell Chandler.

13 MS. SHEALY: Your Honor, I would offer this
14 in at this time.

15 MR. SLADE: We have an objection to that.

16 THE COURT: Over the objection. It's
17 admitted. Go ahead.

18 (Booking photograph marked for identification
19 and admitted into evidence as State's Exhibit No. 118.)

20 BY MS. SHEALY:

21 Q. When someone is arrested, do they have a
22 photograph taken of them when they're booked in?

23 A. Yes.

24 (Booking photograph marked for identification
25 and admitted into evidence as State's Exhibit No. 114.)

1 BY MS. SHEALY:

2 Q. Okay. And State's Exhibit 114, is this the
3 reflexion of Mr. Chandler's mugshot, or booking photo?

4 A. Yes.

5 Q. And that was dated, let's see, June 2?

6 A. That's right.

7 Q. And it reflects his height as six-three?

8 A. Yes, yes.

9 Q. When you interviewed him that day, is that how he
10 appeared to you?

11 A. Yes.

12 Q. Okay. Now, you brought him over from the jail to
13 talk to him.

14 A. Right.

15 Q. What is the first thing you do when you are
16 interviewing a defendant?

17 A. Well, first things we do is advise them of their
18 Miranda rights.

19 Q. Did you do that in this case?

20 A. I did.

21 Q. How do you accomplish that?

22 A. We have a small CPD issued Miranda warnings card,
23 and it's got the warnings on the front as five. What
24 I'll do is read the first one, make sure that they
25 understand that. If they agree to it, then I go to the

1 second, go all the way through to five, and at the back I
2 ask, Do you understand your rights? Do you want to talk
3 to me about what happened?

4 If they indicate yes, I'll ask them to sign the
5 back, yes, and then sign their name, and I'll put the
6 date and time and then I'll sign it.

7 Q. And showing you what has been previously been
8 marked just for identification purposes, could you tell
9 the jury whether you could identify that.

10 A. This is the Miranda card.

11 Q. And showing you what previously has been marked as
12 State's Exhibit 97 for ID purposes, could you identify
13 what those documents reflect.

14 A. This is the written statement that Terrell gave to
15 me.

16 MS. SHEALY: Your Honor, I would offer these
17 at this time, subject to their earlier objection.

18 THE COURT: Over objection it's admitted.

19 MR. SLADE: Yes.

20 BY MS. SHEALY:

21 Q. Do you need the card? Would you tell -- first of
22 all, when you take them over -- where are y'all actually
23 located at the city police department? Where are you?

24 A. We're upstairs. When you take the elevator
25 upstairs, it opens up into a pretty large room, and that

1 is where all the detectives, or most of the detectives,
2 work, maybe, like, 30 of us in there, and it's all open.
3 There is a room to the side, and that is our interview
4 room.

5 Q. And is that the room you took Mr. Chandler in?

6 A. Yes.

7 Q. Could you describe the room to the jury.

8 A. Small room. It's standard off white paint. There
9 is at least two chairs in there and a small table, and
10 the room is 10 by 10. It's a small room.

11 Q. When Mr. Chandler was over there, was he
12 handcuffed?

13 A. He was handcuffed when I picked him up at the jail
14 and handcuffed when I transported there, but when we got
15 him to the room, I probably handcuffed him up front.

16 Q. Do you remember?

17 A. I don't remember.

18 Q. Tell the jury, if you would, please, when you
19 refer to the Miranda warnings or the Miranda rights, what
20 specifically did you tell Mr. Chandler?

21 A. All right. You have the right to remain silent.
22 Anything you say can and will be used against you in a
23 court of law. You have the right to talk to a lawyer and
24 have him present during any questioning. If you cannot
25 afford to hire a lawyer, one would be appointed to

1 represent you before any questioning if you wish one. If
2 you decide to answer questions without a lawyer present,
3 you have the right to stop answering questions at any
4 time you so choose.

5 Q. And on that card, did you indicate that
6 Mr. Chandler signed it?

7 A. Yes, he did.

8 Q. I'll take that. So State's Exhibit 96, this is
9 what is referred to as a Miranda warning card?

10 A. That's correct.

11 Q. And then you flip it over, and it has both your
12 signature and Mr. Chandler's signature?

13 A. That's correct.

14 Q. And that reflects the date of what?

15 A. That's the date and time that I actually read him
16 those warnings.

17 Q. Okay. Describe the interview process with
18 Mr. Chandler.

19 A. Well, even before that, when we first got there, I
20 asked him if he needed to use the bathroom, needed water
21 or anything like that, and he said no. The first thing
22 you do is just talk to them, try to get a little
23 background information, try to figure out what they're
24 all about, and that gives you a good idea about where the
25 interview is going to go.

1 Q. Did he at any point indicate he would not want to
2 talk to you?

3 A. No.

4 Q. Did he at any point indicate he would like to have
5 a lawyer present while y'all talked?

6 A. No.

7 Q. Now, when you interview a defendant, is it usually
8 a pretty quick process?

9 A. No.

10 Q. Why is that?

11 A. Well, I mean, just that initial part right there
12 could go -- it all depends. It could go 30 minutes, it
13 could go an hour, it may go longer than that, and then,
14 inevitably, the first statement that you get is not going
15 to be true --

16 MR. SLADE: Your Honor, I have an objection.

17 THE COURT: What is it? You want to come up
18 here?

19 (Discussion held at sidebar.)

20 THE COURT: Let me send y'all out for a few
21 minutes again. Don't talk about the case while you're
22 out.

23 (In open court, jury present.)

24 THE COURT: All right. You want to state
25 your objection for the record?

1 MR. SLADE: Yes, sir. My objection is this:
2 The previous question by Ms. Shealy was about the -- I
3 can't reconstruct it perfectly, but it was the first
4 statement --

5 THE COURT: Her first statement was roughly,
6 Now, when you interview a defendant, it is usually a
7 pretty quick process? No. Why is that? Well, just that
8 initial part right there could go -- well, depends. It
9 could be 30 minutes. It might go longer than that, and
10 then inevitably the first statement that you get is not
11 going to be true.

12 MR. SLADE: Thank you, Your Honor. That's my
13 objection, and my objection is that that is a direct
14 comment on my client's character. Your Honor, earlier,
15 in a number of questions back, in a different part of her
16 direct, she asked Detective Osborne about the first
17 statement, and Detective Osborne said something to the
18 effect, The first statement isn't true, and that was very
19 general and that is about first statements in general.

20 Now, when you begin to focus -- and I'm not
21 objecting to any of that. But when you begin to focus
22 directly on the preparation, the buildup to putting
23 Terrell's statement in, to say the first statement is not
24 true is a direct comment on his character, and that is
25 what I'm objecting to, Your Honor.

1 MS. SHEALY: Could we flesh one thing out
2 with Detective Osborne, because I'm not sure if I
3 remember correctly, if that is okay with the Court.

4 BY MS. SHEALY:

5 Q. David, can you remind me, and tell the Court, does
6 Mr. Chandler tell you something initially that never gets
7 put in the written statement or oral statement because of
8 your decision to call him out on it?

9 A. That's correct.

10 Q. Would you remind me of what it was.

11 A. Sure. He initially stated on the day of the
12 murder, that morning, he says that he wakes up and there
13 is a large rifle in his apartment. He said he had never
14 seen it before, a large rifle in his apartment. He says
15 he goes to work, comes back, rifle is gone.

16 He said he assumes Che and Storme took the rifle
17 or that they put the rifle there. The next day, which
18 would have been Saturday, he said that then Che brought
19 the rifle to him and said, Can you take this for me? And
20 he agreed.

21 Then he changed his story and said that Friday
22 morning Che, he actually saw Che, put the rifle in the
23 apartment. That is when he started changing his story,
24 and I said, look, let's go ahead and get this in writing.

25 THE COURT: Let me state, there is no problem

1 for him to point out inconsistencies. The problem is for
2 him to say he's not telling the truth when he says
3 something at first.

4 You can point out exactly what he says that
5 contradicts something that he said earlier, but it's not
6 your place to say he's telling the truth or not telling
7 the truth.

8 Okay? Does that cover it?

9 MR. SLADE: Yes, sir.

10 THE COURT: I want to do this: I want to
11 take a rest room break since we're going to play that and
12 that will take a few minutes, but I also want to get --
13 the objection, I don't believe we got on the record, the
14 bench conference we had about the mugshots that got put
15 in. The one that did get put in, you had an objection.
16 You believed that the coloring was too dark, and I
17 overruled that objection, and then you just wanted to
18 proffer another mugshot with a different hue or lightness
19 of your client, and I said, well, I thought the other one
20 that the state wanted was accurate coloring. It seemed
21 to be more realistic. Yours has more of a greenish hue
22 to it. While it might portray your client to be a little
23 bit lighter skinned than the other one, it also does not
24 appear to be a realistic coloring, but I would allow you
25 to proffer it, so I wanted to put that into the record at

1 this point.

2 MR. SLADE: Thank you, Your Honor. I
3 appreciate you doing that.

4 THE COURT: So we'll just have that marked as
5 a defense exhibit.

6 (Mugshot marked for identification as
7 Defendant's Exhibit No. 12.)

8 MR. SLADE: Would you instruct that the last
9 statement given by Detective Osborne be stricken.

10 THE COURT: Remind when we come back from our
11 rest room break.

12 (Recess taken.)

13 (In open court, jury not present.)

14 THE COURT: Detective, you can come on up.
15 Let's go ahead and do that, and we'll finish that after
16 lunch.

17 (In open court, jury present.)

18 THE COURT: All right. Be seated. All
19 right, folks.

20 Two things: First, before we had the last
21 break, there was an objection to the witness stating
22 basically something to the effect that, you know, I
23 didn't believe or I figured the first part of his
24 statement wasn't going to be true.

25 It is improper for a witness to state whether

1 or not he believes another witness is telling the truth
2 or not, so I want you to disregard that. He may point
3 out inconsistencies in statement, if any, but he may not
4 give you his opinion about whether or not somebody else
5 is telling the truth. We don't pit witnesses in that
6 way, so I want you to disregard his last statement before
7 we broke about that.

8 The second thing is we have a few more
9 questions of him and then we have an audio statement to
10 listen to. That would probably take close to 45 minutes,
11 so what we decided to do was go ahead and break now,
12 rather than play that and come back after lunch and have
13 cross-examination.

14 It will flow a little bit better if we go
15 ahead and take a break right now, and what I would like
16 to have you do is be back in the jury room at 1:15. It's
17 a little over an hour and should give you time to eat.
18 Be back in the jury room at 1:15, and then we'll finish
19 up with him, or just resume with him, right after that.

20 So, again, don't begin deliberations or
21 discussions. You can go to lunch with anybody on the
22 jury panel that you want to, but, again, don't comment on
23 the evidence or any of the witnesses that you've heard so
24 far. Enjoy your lunch and we'll see you back at 1:15.

25 (Recess taken.)

A F T E R N O O N S E S S I O N

(In open court, jury not present.)

THE COURT: All right. Is that him?

MR. SLADE: Yes, sir.

MS. SHEALY: Your Honor, could I inquire about one thing first? When they indicate they've sent him some new things on Thursday, could you articulate to me what those were.

MR. HOWE: These were some additional more recent letters that Mr. Chandler received in jail from Che Carr, and these were originals, and as what you'll hear the expert said, because they were originals, it made a difference to him.

And in the process of his analysis -- because what he had before, because the state had the original Sexy B letter, the original, and he was sent the copy, in hindsight, I wish I had gotten the original back from them because I wasn't provided it by them so our analyst could have had the benefit of the original, but we didn't realize the significance of that at the time.

MS. SHEALY: I want to make sure I understand something, Judge. What they are having -- could we ask that Mr. Dawson leave the courtroom for this argument, please?

MR. HOWE: Could you step outside for a

1 second, please?

2 MS. SHEALY: What they are now doing is
3 comparing the letter that Terrell asserted was from Che
4 with other letters that Terrell asserts are from Che. I
5 don't know how that advances anything.

6 THE COURT: Doesn't he need to compare those
7 to what are known samples of Che's?

8 MR. SLADE: He has, Your Honor.

9 THE COURT: He's got a known sample of Che's
10 that's not provided to him by Terrell?

11 MR. SLADE: Yes, sir.

12 THE COURT: The whole problem is if Terrell
13 is writing these to himself, they're going to
14 authenticate they're from the same source.

15 MR. SLADE: He has analyzed those ten
16 handwriting exemplar samples that Detective Osborne got
17 from both Terrell and from Che Carr.

18 THE COURT: Well, let's put him on and see
19 what he's got to say.

20 MS. SHEALY: Your Honor, I have one more
21 matter, but I have not been provided access to the other
22 letters they are mentioning that allegedly are from Che
23 to Terrell, and I would like to have the benefit of
24 having those letters prior to this argument.

25 THE COURT: Well, let's put him up, and if

1 you want a few minutes after you hear what he has to say
2 to study those documents after you cross him on that,
3 then I'll allow that.

4 MARVIN H. DAWSON,
5 having been first duly sworn,
6 was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. SLADE:

9 Q. Mr. Dawson, could you just give us a very brief
10 summary of your qualifications to be a questioned
11 document examiner.

12 A. Yes, sir. I was employed by SLED in 1972; late
13 '72, early '73 I started and then completed a two-year
14 year internship with the Georgia Bureau of Investigation
15 Atlanta as a document examiner; went back to SLED and
16 started the document laboratory.

17 I am Board certified by the American Board of
18 Forensic Document Examiners; I'm a member of the two most
19 important organizations; I am, education-wise, graduate
20 and undergraduate degrees from the University of South
21 Carolina; FBI National Academy graduate; I've presented
22 papers, research, et cetera, from the podium of the
23 National Training Conferences numerous times over the
24 years published.

25 Q. Mr. Dawson, how long did you work for SLED?

1 A. Approximately 18 years, and then --

2 Q. Were you a questioned document examiner the entire
3 time?

4 A. Yes. I was in charge of the laboratory, also did
5 some field work early on in my career.

6 THE COURT: If it helps, it I'm familiar with
7 him and his work so we don't need to qualify him. Go
8 ahead.

9 BY MR. SLADE:

10 Q. Mr. Dawson, when you -- and you're going to need
11 to refer to your file so you can show the Court the
12 documents you used.

13 A. It's in the black folder behind your desk, sir.

14 Q. And when you got -- when you first got this case,
15 when you were first asked by us, the defendant's lawyers,
16 to analyze the questioned document -- and the Court is
17 familiar with what the questioned document is -- tell us
18 what you looked at in order to compare the questioned
19 document of some known samples of writings of
20 individuals.

21 A. Initially, I had machine copies of what we call
22 collected standards that were normal course of business
23 writings.

24 Q. Okay. Let's stop right there. Let's address --
25 what documents did you have that were known samples of

1 Che Carr's handwriting?

2 A. I received two types of known handwritings. The
3 first were collected standards, I believe.

4 Q. Do you know how many copies of handwriting samples
5 there were in the package for each individual?

6 A. I'll give you that.

7 Q. Okay.

8 A. Other were standards of both of Mr. Chandler and
9 Mr. Carr taken by officers. Those are requested
10 standards, requested writings.

11 Q. Okay. The term you used, requested standards, is
12 the known handwriting samples that were taken by the
13 officers?

14 A. Yes. When you ask someone to sit down and write
15 something, it's requested. When you go in normal course
16 of business settings, then those are considered
17 collected, and all of my standards at that time were
18 machine copies.

19 Q. All right. Now, what did you compare those
20 standards to?

21 A. A document identified to me as a questioned
22 document. I have a copy somewhere here. I was going to
23 do all this tonight.

24 Q. That's fine.

25 A. This is what I received from your office, four

1 packets, Bates numbers and references on there.

2 Q. Can you describe for us --

3 A. Give me one second, please. I'll find what I'm
4 looking for here. This is your letter of transmittal.
5 In packet one, I had questioned document. It was
6 allegedly a letter from the codefendant, Mr. Carr, to
7 your client, Mr. Chandler; packet number two letters that
8 the prosecution represents as being written by the
9 codefendant, Mr. Carr; packet number three, copies hand
10 delivered to Mr. Howe by the prosecutor's office before
11 they were Bates stamped, two copies, some were Bates
12 stamped, some were not.

13 Packet number four was a report from a SLED
14 examiner; packet number five would be handwriting samples
15 taken by Charleston city police officers from Mr. Carr
16 and Mr. Chandler.

17 Q. All right. And did you compare first -- did you
18 first compare the handwriting samples you identified in
19 the last packet that were taken by the Charleston police
20 officers? Did you compare that to the questioned
21 document?

22 A. Yes, sir. As a protocol we have to go through
23 that is part of the manner in which we approach cases, we
24 always consider the specimen writings. In this
25 particular case, we have to validate or be sure that each

1 of the specimens were written by the individual
2 particular. That is more important when you get checks
3 and all to make sure a spouse didn't write a signature or
4 something like that, so, yes --

5 Q. Now --

6 A. I had two sets, one Mr. Chandler, one Mr. Carr;
7 and I made sure all of those were written by that
8 particular individual.

9 Q. Right.

10 A. And then -- go ahead.

11 Q. And those were copies?

12 A. Everything was copies yes, sir.

13 Q. Go ahead.

14 A. And then I had known writings submitted, and then
15 I went from there to the package of known writing of Mr.
16 Carr and Mr. Chandler, and those two matched.

17 Q. And those known writings were letters we received
18 from the solicitor's office that are letters from Che to
19 his girlfriend, Megan White, at the time. There is a
20 fairly thick packet of those that were included in this,
21 and then there was some letters, as you've seen, from
22 Terrell to -- I forgot who he sent them to, but, anyway,
23 they had letters from Terrell, so you examined -- you're
24 calling those the known writing samples?

25 A. All those known samples both requested and

1 collected, all those matched each individuals --

2 Q. Those letters that we're talking about would be
3 the collected writing samples?

4 A. Yes, sir.

5 Q. Collected known samples?

6 A. No. The letters are the known samples. They are
7 collected, yes, sir.

8 Q. And tell us what your conclusions were when you
9 examined the known handwriting samples taken by the
10 officers as well as the letters that were furnished to us
11 by the solicitor's office from Che and Terrell?

12 A. Bottom line examination was I eliminated
13 Mr. Chandler as the author of the questioned document,
14 and, as I reported to my client a couple weeks ago, I
15 could not eliminate Mr. Chandler -- I mean, I could not
16 eliminate Mr. Carr as the author of the questioned
17 document.

18 The questioned document had what was machine
19 copied, and there were elements disguised in it as well.
20 There were two individual characteristics in there that I
21 told my client that I cannot eliminate him, and I would
22 like to, you know, get some more -- look at him real
23 closely.

24 Q. And you wrote a report reflecting what you just
25 told the Court?

1 A. Yes, sir, that's correct.

2 Q. Now, you were furnished some further copies --
3 excuse me, some further originals from Che Carr last
4 week, right?

5 A. Last Thursday I was given two original documents,
6 both from Mr. Carr, and I was asked to examine those in
7 light -- to continue my examination of those.

8 THE COURT: How do you know they were from
9 Mr. Carr?

10 THE WITNESS: They matched handwriting that I
11 had as the writer of K-1, Your Honor, as being
12 technically correct.

13 THE COURT: My question was, you said I was
14 given two documents, both from Mr. Carr. How did they
15 come in your possession?

16 THE WITNESS: Counselor gave them to me. I
17 was giving the Reader's Digest version.

18 BY MR. SLADE:

19 Q. So the question the Court needs answered is you
20 recently received on Thursday some originals?

21 A. That's correct.

22 Q. That you didn't get from Terrell Chandler. You
23 don't have any reason to know they're from Terrell
24 Chandler. How do you come to the conclusion that these
25 originals that are -- that we're claiming are from

1 Terrell Chandler, how do you -- how can you justify that
2 conclusion? Because you don't know who those letters are
3 from.

4 A. That's true.

5 Q. How do you say that -- you said there were what,
6 known samples of --

7 A. I compared them to the material I had before and
8 the writer of the material I had before that I said I
9 could not eliminate was the same writer that prepared
10 this new evidence I had which I informally referred to as
11 Mr. Carr. Technically, I should have said the writer of
12 K-1.

13 Q. Are you telling us that you looked at these
14 originals?

15 A. Yes.

16 Q. They are originals that we are saying were from
17 Terrell Chandler?

18 A. Purported to be, yes, sir.

19 Q. And you compared them to -- I'm sorry. The letter
20 that we are saying is from Che Carr, the letters, the
21 originals, from Che Carr, are you saying you went back
22 and compared those letters to the letters from Che Carr
23 to Megan White that I included in your packet?

24 A. Certainly. I couldn't accept those as such. I
25 had to verify them myself, that's correct.

1 MR. SLADE: Am I going in a right path to
2 answer the Court's question?

3 THE COURT: That's where I was headed, yeah.

4 BY MR. SLADE:

5 Q. Now, how can you do that? I mean, you took that
6 thick packet of letters from Che Carr to Megan White, and
7 you took those originals that Mr. Howe and I are saying
8 are from Che Carr. How can you justify the conclusion
9 that Che Carr wrote those originals? That's the first
10 step in this analysis.

11 A. By the individual characteristics noted in the
12 writing, individual characteristics --

13 Q. We need to -- I'm not cutting you off, but we need
14 to get into some detail on that.

15 MS. SHEALY: I would like the opportunity to
16 look at the chart.

17 BY MR. SLADE:

18 Q. Mr. Dawson, when you get these, I'm going to
19 reorient you to the question, and the question that is
20 before us at this point is how do you get from that stack
21 of letters from Che Carr to Megan White to saying that
22 those originals that we gave you are letters from Che
23 Carr?

24 A. Based upon individual characteristics, which is
25 the primary thing we expect, we look for, we determine

1 whether it's genuine writing, non-genuine writing is
2 association of writing, and I have prepared --

3 Q. Tell us the individual characteristics you saw in
4 the Che to Megan letters and how you compared those and
5 how many there were, that kind of thing.

6 A. We're going a little bit beyond where I'm going
7 there, but Your Honor, may I use these charts to show the
8 Court what I was looking for?

9 THE COURT: Sure, sure.

10 THE WITNESS: Thank you. Could I step down,
11 Your Honor? Thank you.

12 Your Honor, I have two charts. The first
13 chart was prepared with initial examination. The left
14 hand column are certain words pulled out from the
15 questioned letter. The center is known. K-1 at this
16 point would be identified as submitted to me as
17 Mr. Carr's known and collected writing. K-2 would be --

18 MS. SHEALY: Your Honor, I would object at
19 this time because I'm not sure that this expert can
20 testify those are known writings from Mr. Carr.

21 THE COURT: Go ahead.

22 THE WITNESS: The officer's name's on it, so
23 I took it for granted that the officer's witness took
24 them.

25 MS. SHEALY: Address the Court, please.

1 THE COURT: All right. Go ahead, please.

2 THE WITNESS: So to go back, I took the
3 handwriting exemplars that the Charleston police officers
4 signed as witnesses from these individuals, and I
5 continued comparing those up the line, including the new
6 material and associated commonality all the way through.

7 With that said, Mr. Chandler also had a
8 number of characteristics. The first, most important
9 one, you notice Mr. Chandler makes his D as a counter
10 clockwise movement coming up, and down. That is an
11 individual characteristic. That is one of his styles.

12 If you go over to the questioned, you'll see
13 the person comes down and around, down and around,
14 entirely a different pen group altogether coming off the
15 staff of the D.

16 BY MR. SLADE:

17 Q. Let me interrupt you at this point. You're
18 describing a habit that writers have?

19 A. Individual habit this writer has.

20 Q. Habit in the way they move their pen hand,
21 correct?

22 A. All of us have individual habits. You and I may
23 have one habit but we don't have the totality of habits
24 of a particular writer.

25 Going back, K-1 on Mr. Carr's you see has the same

1 type of pen movement in the D that you have in the
2 questioned D. Mr. Chandler does not. Mr. Carr over here
3 has a deep bow in his U. You'll find the known, the
4 same. Mr. Chandler's U is opened and moves more to the
5 left. The H on the questioned document has a shoulder
6 coming up, a little bit higher and tighter. This has a
7 rounded shoulder in Mr. Carr's, the same as the
8 questioned.

9 Mr. Chandler uses a very angular bow in his H.
10 The D in question is oblong and pointed most of the time.
11 Mr. Carr has the same round D. There is a variation of
12 D. You see it coming down. Mr. Chandler's D is entirely
13 different. It's more vertical. It's not the oblong
14 horizontal D.

15 Coming over to the G, you'll notice that the
16 questioned G has a small hook in the bottom, a slight
17 rounded lower extender. Mr. Carr had a hook in the
18 bottom of his G, and it's more of a light rounded
19 extender. Mr. Chandler has a deep, rounded extender on
20 his G. Continuing on, B, for example, the questioned B,
21 the initial stroke looks like a flag coming off of the B,
22 back off the staff, Mr. Carr has the flag on the B coming
23 back off the D where Mr. Chandler has the round B, if you
24 would, and does not come off the staff.

25 So based upon this, I delivered a report and my

1 opinions to my client, that in my opinion I cannot
2 eliminate the writer of K-1, which I have called Mr.
3 Carr, and then we go to the second chart.

4 Q. And that deals with your analysis of the original
5 documents that you got a week ago?

6 A. Yes, sir. The second chart on the questioned
7 represents the documents I acquired last Thursday and
8 I've been examining since then, and the known will be --
9 I'm sorry. The questioned is a questioned document. I'm
10 sorry. The known is specimen writings from documents
11 received 6/4/10, last week.

12 MS. SHEALY: I would object to those being
13 characterized as known documents.

14 THE COURT: Well, again, you received these,
15 and you have compared them to the known exemplars of Che,
16 which is known as K-1.

17 THE WITNESS: That is correct, sir.

18 THE COURT: All right. Go ahead.

19 THE WITNESS: If you'll notice once again the
20 questioned, once again we have a small hook at the
21 bottom, and the shallow lower extender and it's
22 duplicated --

23 MS. SHEALY: I apologize, Mr. Dawson. From
24 what I understand, and maybe I'm wrong, he is referring
25 now to known documents as those that he received last

1 week.

2 THE COURT: And you testified that you
3 compared those to K-1 and those matched, so you will
4 then -- you've already --

5 THE WITNESS: I validated K-1. Basic
6 protocols of a document examiner is knowing what the
7 devil you're working with.

8 MS. SHEALY: My objection is the use of the
9 term known when it's also documents provided to
10 Mr. Dawson from their client. These are not the
11 exemplars.

12 THE COURT: All right. Overruled. Go ahead.

13 THE WITNESS: You'll notice also from time to
14 time under questioned document, you'll have a hook in the
15 G, and under the K-1 writing, you also see a G as open
16 from time to time. This is an individual habit, right
17 here. This is something that this writer has. When he
18 writes the combination, the S is larger as you go through
19 here. S is larger. It's a lowercase letter, but it's
20 not the same height as an I. It's larger. This person
21 writes the S larger.

22 Over in the K-1 writing, you also see the D
23 is larger. Just a habit the writer has. You'll also see
24 several types of V forms, all of them elongated,
25 basically. This is the same type of D form coming across

1 as well.

2 The writer of the question has a habit of
3 using the letter U instead of y-o-u, and that is a very
4 heavy, stilted U, almost an N, but we know from the
5 letter it's a U, and the writer of K-1 also used
6 U instead of y-o-u.

7 The initial stroke of the word "in" starts at
8 12:00, comes down, opens up, around, shallow middle
9 staff, down. You'll see it here, here, and, once again,
10 the K-1 writings can almost overlay these over here.

11 The questioned writing also has a habit, from
12 time to time, of taking the eyelet of the E up high into
13 the E form. Over here you also see the eyelet of E. Once
14 again, this is a K-1 specimen submitted it me as Mr.
15 Carr's writing.

16 Back under the g-o-n, the point is the O. A
17 lot of times in the question the O will end in the 12:00
18 position with the initial stroke coming over the O, and
19 this is also duplicated in the K-1 writing. The F, in
20 the for, you see a slight underlying. Once again, this
21 is a machine copy I had to work with, but you see the
22 slight underwriting on the F. It looks like the staff of
23 F-1 down, very similar to here.

24 It looks as though the writer said oops and
25 went back and made an uppercase, once again revealing

1 disguised writing. If you look beyond the disguise and
2 the individual characteristics, and, a-n-d, this there
3 are internal Ds, and this starts off here, it comes down
4 like a rocker, but also see this happening up under the
5 writings of K-1.

6 If you'll notice, a number of times in the
7 questioned signature, the A has a flat top to it when it
8 starts out, and you look under the K one writings and you
9 see the flat top as well, and I think basically this was
10 the examiner here and this -- I came to a conclusion over
11 the weekend, reported my conclusion to my client Monday,
12 and I'm here today.

13 THE COURT: Let me ask you this, because I
14 think this goes to the heart of her objection and the
15 question I have in my mind: You're stating that you
16 believe the document that we're calling the questioned
17 document, the proffered document, that the author is Che
18 because Che is the author of K-1, correct?

19 THE WITNESS: If I may back up, I'm not
20 saying Che is the author of this, I'm saying there is a
21 strong reason to believe he did. I did not make him the
22 author of this because I have not examined it
23 individually.

24 THE COURT: What is your opinion as to who is
25 the author of that?

1 THE WITNESS: Most probably Che.

2 THE COURT: Okay.

3 THE WITNESS: But I didn't say he was.

4 THE COURT: Most probably, fair enough. Fair
5 enough. And you couldn't make that conclusion prior to
6 last Thursday?

7 THE WITNESS: No, sir. I came up with this
8 conclusion -- I couldn't eliminate him --

9 THE COURT: You couldn't eliminate him, but
10 you could not most probably say it was him.

11 THE WITNESS: No, sir, I could not.

12 THE COURT: Okay. So today you're able to
13 say, well, I think it's most probably him because he
14 matches up with the author of the documents provided to
15 you last Thursday.

16 THE WITNESS: Yes, sir.

17 THE COURT: I guess I'm -- my question is,
18 well, if you can now do it with those other documents,
19 why couldn't you do it before, because you've got more
20 documents and there is a different, you know, K-1 to the
21 documents last Thursday, to the document in question.
22 You couldn't do it without that middle set of documents.
23 Why couldn't you do it before?

24 THE WITNESS: There were some pen movements I
25 wasn't satisfied with. I could not validate such things.

1 Look closely at the R. You see the that comes up in the
2 R here, that is kind of unusual. You never take a big
3 step until you see the documents.

4 THE COURT: What was it about the documents
5 last Thursday that leads you to believe they are authored
6 by the K-1 author?

7 THE WITNESS: I just have more of the letter
8 combinations and letter forms that were not present in
9 the first admission. Now, were they written at a
10 different place, different time? They may have been five
11 years old, they may have been five days old, I don't
12 know, but I did not have the combinations that I wanted,
13 the combinations that I needed, to reach a more
14 definitive opinion.

15 THE COURT: And that is based on an objective
16 viewing of the documents provided you last Thursday
17 absent you having any idea who wrote them prior to last
18 Thursday? When they gave you the documents you got last
19 Thursday, did any say, Oh, these are written by Che, or
20 did they say tell us if these match up with K-1 or not?

21 THE WITNESS: I think they said these were --
22 my client said these were sent to me by co-counsel. They
23 were what Terrell said he received from Che, and they
24 were submitted to me as Che's writings; however, as a
25 document examiner, no offense, I didn't want to take my

1 counsel's word for it, so I examined it myself to
2 validate that it was indeed K-1's writing, and I'm
3 satisfied that a new specimen of writings were indeed
4 executed by the writer of K-1.

5 BY MR. SLADE:

6 Q. So are you saying you did some analysis on the
7 stuff you got Thursday to determine if it was written by
8 Che?

9 A. I did a lot of analysis, yes, sir.

10 THE COURT: All right. You want to ask
11 him -- I'm sorry. Are you finished? Do you want to ask
12 him any questions?

13 MS. SHEALY: Yes, I do. I ask if he could
14 take his seat.

15 CROSS-EXAMINATION

16 BY MS. SHEALY:

17 Q. Mr. Dawson, just to make sure I understand your
18 testimony, your conclusions -- and you said you had these
19 and reported these back to your client on Monday?

20 A. That was probably correct, yes, that's correct,
21 yes.

22 Q. To whom did you report them?

23 A. Mr. Slade.

24 Q. This wasn't today, that was on Monday?

25 A. Yes, ma'am.

1 Q. And you have told us then that when you
2 compared -- your ultimate conclusions today -- when you
3 compared the questioned document --

4 A. Yes, ma'am.

5 Q. -- with those items received from your client,
6 seemingly from his client, that you have reached the
7 conclusion you have reached today?

8 A. Based upon the second submission, yes, ma'am.
9 First submission would be indicators, indication of, can
10 I eliminate type of thing; the second submission pretty
11 much turned corner through a stronger association, yes,
12 ma'am.

13 Q. And you had mentioned something about disguised
14 writing.

15 A. Yes, ma'am.

16 Q. Are you referencing the exemplars that were taken
17 from Che Carr?

18 A. Disguised writings, we had three disguised
19 writings here. One was the questioned document that was
20 disguised in that, and both Mr. Carr and Mr. Chandler
21 attempted some different level or some level of disguise
22 in the requested writing that the investigators took from
23 them.

24 Q. Okay. So each exemplar was disguised.

25 A. Yes, that's correct.

1 Q. And the questioned document was disguised.

2 A. Yes. Now, you use the word disguise. Let's not
3 go overboard with disguised. We had, what, ten pages
4 from each of the two writers, and there were a certain
5 amount of disguised in each of the ten pages. Now, not
6 all ten were heavily disguised with major attempts to
7 disguise. You could only keep the disguise up to a
8 certain period of time. It was elementary, kind of
9 basic, but it was nothing of consequence.

10 Q. Now, when you indicate what your conclusion is,
11 and you stated it several different ways, could you give
12 me the language that you used in your conclusion today as
13 to the questioned document compared to the other samples
14 given by your client? What is the conclusion you
15 reached?

16 A. A reason to believe that the writer of the K-1
17 executed the questioned document.

18 Q. A reason to believe.

19 A. Yes, ma'am.

20 Q. That whoever wrote the questioned document --

21 A. Let me see the page you have, and I can point it
22 out to you, I believe.

23 Q. Are you referring to the page from SLED?

24 A. I don't know what SLED sent you or not, but I
25 think it is the page you just picked up then.

1 Q. This?

2 A. No, probably -- okay.

3 Q. What are you referring to?

4 A. ASTM standards of report writing.

5 Q. And those are the standards that are adopted by
6 SLED?

7 A. It probably would be. I need to see those. I
8 have not seen those before.

9 Q. I'll show those to you.

10 A. Okay. These -- okay. This is a -- I don't want
11 to use the word corruption. This is a reduction of
12 ASTM language of the report.

13 Q. So, in other words, you're saying that if this is
14 SLED's terminology, that's not the terminology you use.

15 A. It's very similar, yes.

16 Q. It's similar?

17 A. Uh-huh.

18 Q. But the conclusion you reach today is not one that
19 SLED recognizes.

20 A. I don't know. Let me see what I've got. I'm not
21 familiar with it. I would use number 3, probably. I
22 would adopt that.

23 Q. You're adopting that now?

24 A. That explains my language, yes.

25 Q. So a reason to believe and probable are synonymous

1 to you?

2 A. For the evidence, yes.

3 Q. Do you know of your own personal knowledge where
4 the questioned document came from?

5 A. No, ma'am.

6 Q. Do you know of your own personal knowledge where
7 the items that were sent to you by the defense on -- June
8 4th, was it? Do you know where those came from?

9 A. They came from --

10 Q. Of your own personal knowledge?

11 A. I never do. Document examiner never does. We
12 take evidence sent to us, and it's because of our
13 training and experience we can associate multiple
14 documents with a common author.

15 Q. And, again, what you're prepared to testify to is
16 the comparison of the questioned documents with other
17 items provided to you by the defense.

18 A. With items purported to be from Mr. Carr, which I
19 say was K-1, and so I am prepared to testify that the
20 items, my items of K-1, most probably, did execute the
21 questioned document.

22 MS. SHEALY: Thank you, Judge. I have
23 nothing further.

24 THE COURT: Go ahead.

25 MR. SLADE: No, sir. That's our proffer,

1 Your Honor.

2 MS. SHEALY: And, Honor, if we're going to
3 have any discussion or argument about it, I would ask
4 Mr. Dawson leave the courtroom.

5 THE COURT: All right. Would you step back
6 out in the hallway?

7 THE WITNESS: Yes, sir.

8 THE COURT: Thank you. All right, Mr. Slade.

9 MR. SLADE: Your Honor, our argument for
10 admitting Mr. Dawson's testimony is -- excuse me. Let me
11 find the rules just a minute. I apologize.

12 Your Honor, our -- I appreciate you letting
13 us make a proffer. Our argument for admitting this
14 testimony is based on, first, crossing the authentication
15 threshold first. We take the approach that our client is
16 entitled to a preliminary -- to take the stand in a
17 preliminary hearing to testify exclusively to what he
18 says about where he got those letters from, or the Che
19 letters from. We think that based on Rule 104(d) we're
20 entitled to that.

21 Now, I understand I've gotten an indication
22 from the Court of where that argument is going, but I
23 wanted to put it on the record for the proffer. In other
24 words, we believe that we're entitled to deal with the
25 admissibility of evidence, Your Honor, under 104, and

1 then have that testimony heard by the Court under 104(d).

2 The second argument we have to only come to
3 authentication on it, Your Honor, is in the
4 authentication section of the rules where documents can
5 be authenticated by testimony of process or system
6 primarily by an expert who testifies to the means by
7 which questioned document examiners come to the
8 conclusion that a document is, in fact, written by the
9 person we introduced the evidence to say it was written
10 by, in other words, by itself, based on the samples that
11 were submitted to Detective Osborne when he took the
12 questioned -- excuse me, when he took the exemplars in
13 the process that Mr. Dawson has described to you in the
14 proffer hearing, that in and of itself authenticates it.

15 You start from two sets of documents that
16 everybody agrees, and please correct me if I'm wrong,
17 Ms. Shealy, that everybody agrees came from Che Carr, and
18 those two sets of documents are the handwriting exemplars
19 that Detective Osborne took and the letters that we were
20 given by the solicitor's office that are from Che Carr to
21 the woman who was at that time his girlfriend, Megan
22 White.

23 That is a considerable stack of letters. So
24 beginning from those known samples, Mr. Dawson has
25 conducted an analysis that he has just testified to. So

1 based on that, that gets us past the authentication
2 hurdle, Your Honor, those two writings.

3 THE COURT: Okay.

4 MR. SLADE: And I understand the question is
5 beyond that.

6 THE COURT: Let's deal with that one first,
7 Mr. Chandler.

8 MS. SHEALY: Rule 104 is inapplicable here.
9 He asserts under 104(b) -- what is contemplated in that
10 is when you're putting a defendant up for purposes of a
11 Miranda hearing, for example, I'm not then allowed to
12 question him about the entire scenario of the case and
13 all the facts of case. As are articulated in verbatim in
14 that section, the accused does not, by testifying upon a
15 preliminary matter, become subject to cross-examination
16 as to other issues in the case.

17 That has nothing to do with what we're
18 talking about. Regarding the authentication, I was very
19 specific with Mr. Dawson, and what he tells us he can
20 tell us is whoever wrote the questioned document, and
21 whoever wrote these other two letters that the defense
22 has submitted to him are -- let me get his language -- he
23 has a reason to believe that those are the same people.

24 Well, that very well may be true, Judge.
25 Whoever Terrell keeps getting to write these letters or

1 Terrell, yet at another effort of describing his
2 handwriting, writes them, but if there is nothing
3 Mr. Dawson has told us that says those were written by
4 Che Carr. As I understand, we're not even getting into
5 how in the world they would present this.

6 THE COURT: Do you want to respond?

7 MR. SLADE: I understood her question to be
8 what witness puts this letter in and answer that as
9 Detective Osborne. That was my -- he turned the letter
10 over to Detective Osborne at the handwriting session, at
11 the handwriting exemplar session.

12 THE COURT: Well, the question is, have you
13 met the burden of showing that the document is what it
14 purports to be and that is a letter from Che, all right?
15 And to link that up, we have a SLED report, which says
16 it's not Che, and we've got Mr. Dawson, who is a
17 recognized expert. I know we didn't put that up, but for
18 the purposes of that hearing, he's an expert in that
19 field, stating that he believes -- has reason to believe
20 or I think even used the word most probably or probably
21 he is, and I think that is -- I think you've met the
22 burden of authenticating the documents.

23 It's not beyond a reasonable doubt that you
24 have to prove anything. This is a document that you want
25 to get in, and I don't think the threshold is as high to

1 get that in. There is evidence that it is the author
2 probably is Che, and that gets you past the
3 authentication issue.

4 MR. SLADE: Right.

5 THE COURT: So let's talk about -- now that
6 it is authentic, how do you get it admissible?

7 MR. SLADE: All right. I think, Your Honor,
8 when we discussed it this morning, you set out two
9 hearsay obstacles today. The first one was the hearsay
10 obstacle of Terrell saying where it came from, and the
11 second one is the hearsay obstacle of what the letter
12 says, essentially, the text of the letter is saying what
13 Che says.

14 Your Honor, our argument on the first portion
15 of the hearsay argument, which is what Terrell tells
16 Detective Osborne, is that when Detective Osborne asked
17 him about that letter, he told him. They're entitled to
18 use all of the other things that Terrell told them. As I
19 said, we've had a hearing to allow them to use all that,
20 so if they can use parts of what Terrell told them, we
21 can use all of what Terrell told them.

22 So they're getting theirs in under,
23 essentially, a statement or admission by a party
24 opponent, and we're just using the same thing or the same
25 language or the same admissions they are.

1 THE COURT: About the fact that it's hearsay
2 as pertains to Che's statement?

3 MR. SLADE: Your Honor, I deal with that on
4 the same basis we dealt with the other -- or that our
5 position on the admission of the other statements that
6 Che has made, and, in fact, Your Honor, I think on the
7 part of Detective Osborne, whose testimony you've heard
8 up to this point, he has characterized some of the things
9 Che says as unbelievable, preposterous, I can't remember
10 if that was the word Ms. Shealy used or he used, but the
11 point is, even they recognize that Che is making some
12 wild allegations.

13 And our contention is, Your Honor, we can
14 have those kinds of verbal acts admitted to show what Che
15 and Storme are doing to try to direct Detective Osborne's
16 attention away from them on to our client, and so our
17 argument, really, there are several headings under --
18 it's not a hearsay exception, but there are several
19 headings for the kind of thing this is.

20 THE COURT: Let me help you, because there
21 actually is a hearsay exception that I think applies.
22 804(b)3, if you have to do an 804(a)1 analysis first, and
23 that is Che is unavailable because of privilege from
24 testifying, and then if he's unavailable, 804(b) says the
25 following are not excluded by the hearsay rule if the

1 declarant is unavailable as a witness, which I would
2 declare that he is, and, three, it's a statement which
3 was made at the time of it's making and is so far
4 contrary to the declarant's pecuniary or proprietary
5 interest or so far tended to subject the declarant to
6 civil or criminal liability or render invalid a claim
7 against the declarant against another that a reasonable
8 person in declarant's position would not have made the
9 statement unless believing it's true.

10 A statement intending to expose the declarant
11 to criminal liability and offered exculpate the accused
12 is not admissible unless corroborating circumstances
13 clearly indicate the trustworthiness of the statement.
14 So I think that it --

15 MR. SLADE: Thank you, Your Honor.

16 MS. SHEALY: May I be heard on it?

17 THE COURT: Yes.

18 MS. SHEALY: First of all, I have a couple
19 different things I would like to address. How is this
20 jury to understand where this letter comes from when it's
21 received allegedly, how it gets in the hands of anyone?
22 As I understand it, first of all, I have no idea how
23 Mr. Howe came in possession of it. I then have no idea
24 how his secretary became in possession of it.

25 I don't know how it was transported to the

1 city police department on the day of Mr. Chandler's
2 proffer. I have no idea when Mr. Chandler received it.
3 I don't know whether he received it -- I mean, I have no
4 idea. I don't know the date that he received it. So I
5 think that's troublesome to see how in the world is this
6 jury supposed to figure out where this letter just comes
7 from?

8 Now, I don't think they can remedy that with
9 Detective Osborne because just because Detective Osborne
10 picked it up from Mr. Howe's office, all we know at that
11 point is the secretary has them. I personally don't know
12 whether it was in possession of Mr. Chandler or whether
13 they got it from a family member or a friend. I mean,
14 all of those questions would be --

15 THE COURT: Well, it's not like it's fungible
16 evidence, you know? You don't have to have a chain of
17 custody on it.

18 MS. SHEALY: No, but the issues sound similar
19 to chain of custody issues, but it's a different issue.
20 How are we supposed to know where this came from in the
21 body of this and when he received it? And I'm not
22 afforded the opportunity --

23 THE COURT: I presume it's going to come from
24 one of these two gentlemen asking Mr. Osborne, unless you
25 bring it up, asking him, Isn't it true my office provided

1 you with this statement from Che?

2 MS. SHEALY: I don't think he can say this
3 statement from Che. I don't think they can say that.
4 Then how are we supposed to know how he had it, how he
5 came in possession of it? Yes, he may be able to say
6 that Mr. Osborne picked up the letter from his office,
7 but how do you then say where his office received the
8 letter from? That would be completely a void in this
9 trial.

10 And I think that's inappropriate, just to
11 throw that in here and the jury not having the benefit of
12 knowing where this came from? When is he supposed to
13 have received it? Where has it been since the alleged
14 writing? And I think we need to be cautious about
15 characterizing it as a letter from Mr. Carr. I don't
16 think Mr. Dawson's testimony gives rise to that.

17 I mean, he is still just telling us whoever
18 wrote the questioned document, there is reason to believe
19 he also wrote the other two letters they provided last
20 week. I don't know that that is from Che.

21 THE COURT: All right. You want to address
22 that?

23 MR. SLADE: Yes, sir. Your Honor, when if
24 you make it past the authentication hurdle, what we
25 propose to do is ask Detective Osborne if he got this

1 letter from Mr. Howe's secretary, and then Mr. Dawson can
2 testify that's a letter that is -- I'm trying to use his
3 language, anyway -- of probable indication, of stronger
4 probable indication, that was written by Che Carr.

5 And the content, I think, shows it says, I,
6 that N word, Rell, so it's a letter from -- he says in
7 it, but this this Che, again. There is basically no
8 other way we could have given them the letter to check
9 out.

10 THE COURT: It does point out the problem of
11 you getting it into evidence through this witness, and
12 that is where the hurdle comes back to the second part of
13 the hearsay within the hearsay, because you can get -- if
14 you put the recipient of the letter up, that is Che, you
15 could get it in through the 804 exception, no problem
16 there.

17 The problem is, is getting it in as hearsay
18 within hearsay, because you want to say, well, isn't it
19 true you got it from Mr. Howe or whoever and all that, so
20 you got another hearsay statement out there, and I'm
21 just -- I'm tending to agree that I think it's a problem
22 getting it in through this witness. You might be able to
23 get it in some other way, but just to throw it out to the
24 detective, well, then, you get this from Mr. Howe's
25 secretary, I'm a little troubled. Somebody then has got

1 to testify where she or he got it from.

2 Really, you're talking about triple hearsay.
3 He would be saying, I got it from Mr. Howe's office who
4 got it from Terrell who got it from Che. So it's triple
5 hearsay.

6 MR. SLADE: I'm maybe just remembering the
7 colloquy with Detective Osborne this morning, but I'm
8 thinking he asked Terrell about that, about that exact
9 letter.

10 THE COURT: Did he? I'm not recalling. In
11 what context?

12 MR. SLADE: Is that not correct?

13 MS. SHEALY: We'll have to get Detective
14 Osborne to remind us because I'm not sure.

15 MR. SLADE: I'm thinking that he testified
16 that he asked Terrell -- we were -- I was examining him
17 about the samples, and he told me --

18 THE COURT: Once he got lawyered up, how does
19 he ever have a conversation with Terrell again?

20 MS. SHEALY: There was a proffer. We were
21 meeting at the police department with Mr. Howe and
22 Mr. Chandler, and he was proffered, Terrell Chandler was
23 proffered, being questioned by us. And then after that
24 process, Mr. Howe refused to allow him to either be
25 recorded or to give a written statement as to what he

1 told us that day. And then Mr. Tatman, who was
2 accompanied by Mr. Osborne, took the stand.

3 THE COURT: So Detective Osborne would be
4 able to testify that he got it or that Terrell told him
5 he got it from Che?

6 MS. SHEALY: I don't know if that is what we
7 need to ask Mr. Osborne. I don't remember.

8 THE COURT: Bring him back.

9 DAVID OSBORNE,
10 having been previously sworn,
11 was examined and testified as follows:

12 THE COURT: All right. You're still under
13 oath.

14 MS. SHEALY: Do you want me to question him?

15 THE COURT: How did you get that letter?

16 THE WITNESS: As best I can remember, when we
17 got there and we did the handwriting exemplars from
18 Terrell, I remember that was the first thing we did. I
19 could be wrong, but that is the way I remember it, and
20 Tatman dictated it while Terrell wrote it. At the end of
21 that, that is when we questioned Terrell, and I asked him
22 where the letter came from. He said he got it in the
23 mail. Che wrote it to him, and that second portion was
24 when the proffer started.

25 THE COURT: All right. He would be able to

1 say then that Terrell told him that he got it in the mail
2 from Che, so it's just --

3 MS. SHEALY: That's hearsay..

4 THE COURT: It's back to hearsay within
5 hearsay.

6 MS. SHEALY: Instead of three hearsays.

7 THE COURT: No. If he would have said, well,
8 he hadn't ever had a conversation with Terrell but he
9 only had a conversation with Mr. Howe or somebody in his
10 office who would have to then come in and say, I got it
11 through Terrell, then that would be triple hearsay.

12 MS. SHEALY: Well, he has not testified where
13 the letter went from Terrell and when Terrell indicates
14 he received it and who got it from Terrell. None of
15 those questions were asked.

16 THE COURT: But he's able to testify that
17 Terrell told him he got it from Che. So you got to have
18 an exception to that or -- how do you get Terrell's
19 hearsay statement into this?

20 MR. SLADE: Well, Your Honor, they are using
21 party admissions and party opponent against our client,
22 and --

23 THE COURT: That is because 801(d)2 says they
24 can't use admissions against party opponents.

25 MR. SLADE: That's correct, Your Honor.

1 THE COURT: Against.

2 MR. SLADE: That's correct.

3 THE COURT: What about this statement
4 against?

5 MR. SLADE: We're entitled to -- when he's
6 talking to them, we're entitled to the complete
7 statement, or the complete -- the whole conversation or
8 his entire explanation to them. You're about to hear, or
9 the jury is about to hear, Terrell's entire explanation
10 of this incident, his version of it. This is just a part
11 of his explanation of that.

12 I mean, the handwriting exemplars are
13 something, a part of what they could use against him.
14 They can use -- as I said, they are about to use the
15 things he says, and that comes in as a party admission.
16 My argument is there is a rule of completeness about all
17 this that we get to use the things they all said to him
18 that help us, just like they get to use the things he
19 said to him that don't help us.

20 I don't mean to interrupt, Your Honor, but if
21 they had found out or if it was their view that in this
22 process that he has faked this letter, that they have
23 found -- if the expert could say this letter was written
24 by Terrell, they certainly would be using that and where
25 they got it from. It's just because it's part of the

1 case -- part of the admissions against him that we want
2 to introduce doesn't take it out from under that
3 exception.

4 THE COURT: All right. Give me five. I'm
5 going to think about it.

6 (Recess taken.)

7 THE COURT: All right. Here is what I've
8 decided: The statement can come in because the first
9 part of the hearsay prong, as I said, I think Che's
10 statement comes in under 804(b)3 because I've declared
11 him to be unavailable under 804(a)1.

12 Then this other part of the hearsay would be
13 if it's offered to prove not the substantive basis of
14 what is in it, but that it's being used to prove this is
15 a statement that he got from -- sent to him in jail from
16 Che. In other words, it's being offered, more or less,
17 for authenticity and not for proving the truth of the
18 matter asserted of what is contained in it.

19 So it is not hearsay, so it can come in. You
20 can ask him about it. Now, here is how we get to asking
21 him about it: If you want the state to challenge the
22 part about whether or not it is, in fact, admissible,
23 we've got that proffer on the record, and I've declared
24 that they have met that as a preliminary basis for
25 showing it's authentic.

1 If you just want to say, well, we object and
2 live with my ruling, you don't have to renew your basis
3 for that, and you're not going to argue about whether or
4 not you think it's authentic in front of them, then we
5 don't need Mr. Dawson anymore. We've got Mr. Dawson's
6 testimony on the record, but I suppose at some point if
7 you still want to challenge his -- whether or not to
8 document this is authentic in front of the jury, then we
9 would at some point need to bring Mr. Dawson back in.

10 Of course, if I'm letting it in and he's
11 not -- it's not an appealable issue. It's hard to
12 imagine how it's an appealable issue for you if I'm
13 letting it in.

14 MS. SHEALY: Could I make a suggestion?

15 THE COURT: Yes.

16 MS. SHEALY: I think the appropriate way to
17 handle it would be for them in their case to call
18 Mr. Dawson, and if they want to put up David Osborne
19 after that to indicate -- or before that and then
20 Mr. Dawson, but I certainly would not be in the position
21 to call Mr. Dawson.

22 THE COURT: No, no, I'm not saying you have
23 to even deal with it on direct, but on cross, they could
24 deal with it. Now, they could just deal with it just
25 straight and if he doesn't offer it into evidence at that

1 point but then brings in Mr. Dawson afterwards, if the
2 challenge is, you know -- I don't know whether it's an
3 authentic document or not. They bring in Mr. Dawson
4 after we've finished with a witness, as opposed to
5 breaking it off in the middle, which is a clumsy and
6 awkward way of doing it, and my least preferred way of
7 doing it.

8 MS. SHEALY: That is why I like my idea.
9 They do it all in their case. They handle it in their
10 case.

11 THE COURT: Yeah, but I think he's entitled
12 to cross him on it if he wants to.

13 MS. SHEALY: I think he needs to make the
14 showing that it's authentic before he's able to cross him
15 on it.

16 THE COURT: No, I think he needs to make --
17 well, I am ruling that it is going to be authenticated.
18 You can still argue that in front of the jury, but I
19 don't think -- here is what we'll do: He can argue -- he
20 can talk to him about it, but you just don't talk to him
21 about it until after you're finished with him, and then
22 you can bring on Mr. Dawson in your case to admit it.

23 MS. SHEALY: We won't get into the substance
24 of the statement.

25 THE COURT: You can get into -- yeah, we do

1 run into that problem.

2 MS. SHEALY: I think it's similar to marking
3 something for ID purposes. He can do that with David
4 Osborne only.

5 THE COURT: It just doesn't get offered into
6 evidence. It's marked for identification, he gets to ask
7 him about it, but it doesn't -- what are your thoughts on
8 that? How do you plan on handling this?

9 MR. SLADE: Your Honor, the way I planned on
10 handling it is my cross, a big part of my cross, is going
11 to be what he knew about these two, Che and Storme, doing
12 this, creating the fabrication that it was Terrell, and
13 doing that with these stories.

14 Now, I can live with that. What I intended
15 to do, telling Detective Osborne what I was going to ask
16 him, what I intended to do was say, You knew Che Carr was
17 telling these different stories. You knew Che Carr was
18 telling -- or you knew Storme was telling other witnesses
19 what to say, you knew Che Carr was saying it, you knew
20 Che Carr was sending Terrell letters. You know, in other
21 words, it should have had some effect on you to know
22 this, but you should have led your investigation in a
23 different direction, in fact, than where it's going now,
24 if I understand where they're going with it.

25 But my argument is, knowing what he knew -- I

1 guess the heart of my argument is knowing what he knew,
2 he should have directed --

3 THE COURT: I got a pretty good idea of what
4 you want to ask him. I'm trying to figure out the
5 mechanics of getting that document into evidence, if you
6 intend to offer it into evidence.

7 MR. SLADE: Yes, sir. I was planning to.

8 THE COURT: Other than just asking him about
9 it.

10 MR. SLADE: I was planning to offer it into
11 evidence. This is the letter you got, you knew --

12 THE COURT: She's going to object on the
13 grounds it's not authentic.

14 MR. SLADE: Sure, and the reason I wanted to
15 get into the substance of it with him, my question to him
16 was, you got this letter and you knew that Che was
17 telling people stuff about it.

18 THE COURT: He shrugs and says, I didn't know
19 where it came from. As far as I knew, your guy could
20 have made it up. I'm just saying. All right? So at
21 what point do you want to offer Mr. Dawson? That is what
22 I'm trying to get to.

23 MR. SLADE: We'll offer him in our case, Your
24 Honor. Does that resolve that?

25 THE COURT: So at that point, that's when you

1 offer the document itself into evidence.

2 MR. SLADE: All right. But I can ask him
3 about the substance of it?

4 THE COURT: Yes, that's what I'm trying to
5 get to.

6 MR. SLADE: I want to ask him about the
7 substance of it. You got this letter. This is what it
8 said. Then I offer the letter.

9 MS. SHEALY: That is where I would object. I
10 don't think he's allowed at that point, unless I just
11 misunderstood, because I said something to Katherine. I
12 think the only time he can inquire of Mr. Osborne as to
13 the substance of the letter is if he calls him in his
14 case, not now, before Dawson has testified.

15 THE COURT: Then we get back to do we take
16 and bring in Dawson, in the middle of all this, in your
17 case?

18 MS. SHEALY: Okay. This is what I think
19 might be the simplest way to handle it: I question David
20 Osborne. He questions David Osborne. He says, did you
21 receive this on such and such a date from Terrell
22 Chandler?

23 Yes, I did. He marks it as an ID. He at the
24 beginning of his case or whenever in his case, he calls
25 Mickey Dawson and asks him if he was provided with it and

1 then puts David Osborne back on and says, now, when you
2 received this, what did you do with it?

3 THE COURT: Wouldn't that be simpler and we
4 just reserve your right to recall him?

5 MR. SLADE: I have no problem with that.

6 THE COURT: Okay.

7 MR. SLADE: In my cross, I'm just going to
8 ask him to identify it as something he got from Terrell
9 Chandler, have it marked as an exhibit, and we'll move on
10 to the next part.

11 THE COURT: We'll come back to this later.
12 Okay?

13 MR. SLADE: We can do that.

14 THE COURT: Okay. Good.

15 Let's bring the jury in.

16 (In open court, jury present.)

17 THE COURT: All right, folks. Thank you so
18 much for your patience, but like I told you on Monday,
19 there are times when I have to take up legal matters, and
20 sometimes they take a little bit longer than we
21 anticipate, but I just have to say trust me when I tell
22 you that when you're in there waiting, it drives me
23 crazy, but we're in here working. We are not just
24 twiddling our thumbs, and it's all designed to streamline
25 things for you so you're in here for as little as

1 possible, certainly not in another room wondering what's
2 going on. So that is just on me, and I apologize for the
3 delay. All right?

4 So let's resume with Ms. Shealy's direct
5 examination.

6 DIRECT EXAMINATION (Cont'd)

7 BY MS. SHEALY:

8 Q. Detective Osborne, I hope I don't repeat anything,
9 but I'm trying to remember exactly where we were. The
10 search happened on June 2 at Battery Avenue?

11 A. Yes.

12 Q. And Terrell and Che were both arrested.

13 A. Yes.

14 Q. Terrell at that point for the drugs, not for
15 murder.

16 A. That's right.

17 Q. Okay. And I think you told us that Tamara Dixon's
18 vehicle gets searched that same day, June 2.

19 A. That's right.

20 Q. And you told us the rifle was found there.

21 A. Yes.

22 Q. Was Tamara Dixon also interviewed about the rifle?

23 A. Yes.

24 Q. Well, based on that, what did you do on June 3rd?

25 A. Based on that and all -- well, other interviews,

1 other evidence, I went ahead and prepared arrest warrants
2 to charge Terrell Chandler with murder and possession of
3 a firearm during a crime.

4 Q. When we were talking earlier about when you went
5 to pick up Terrell Chandler from the jail, that was
6 actually on what date?

7 A. On June the 4th.

8 Q. Now, you told us that you read him his Miranda
9 warnings.

10 A. Right.

11 Q. Will you tell us -- and you've indicated he didn't
12 ask for a lawyer, and he didn't ever say he wanted to
13 stop talking; is that right?

14 A. That's correct.

15 Q. At any point did he indicate he was hungry or
16 needed a rest room break or anything?

17 A. Well, yeah. I think a little after 10:00 I asked
18 him if he wanted to use the rest room or needed water,
19 and yeah, he used the rest room then.

20 Q. Did you give him food at any point?

21 A. At the end of the interview, we both ate together.

22 Q. Okay. Where and was that?

23 A. McDonald's.

24 Q. You went and picked something up?

25 A. Yes.

1 Q. Now, when he was in the interview room and you
2 were interviewing him, at any point do you leave the
3 room?

4 A. Yes.

5 Q. And explain to the jury under what circumstances
6 you would leave the room.

7 A. Well, I know one in particular was at the
8 conclusion of the -- I'm pretty sure it was at the
9 conclusion of the audio recorded portion of the
10 interview. I stepped outside and started doing the
11 booking paperwork, starting getting together the whole
12 package at the detention center so they could properly
13 book him.

14 Q. Did another officer go in there and sit with him
15 during the booking process?

16 A. Yes.

17 Q. Just explain to us -- first of all, you indicated
18 you start with an interview and you're talking to him?

19 A. Right.

20 Q. And at some point did you, in fact, take a written
21 statement from him?

22 A. Yes.

23 Q. And that is what is depicted in State's Exhibit
24 97?

25 A. That's correct.

1 Q. Prior to that, tell us what he said at the
2 beginning of the interview.

3 A. All right. So once we started talking, after
4 Miranda, we're just -- I'm trying to develop a rapport
5 with him, talk to him. I started getting into what
6 happened on the date of the murder. The first thing he
7 tells me is that on Friday morning, Mr. Gibbs was killed
8 Friday night. He says on Friday morning he wakes up and
9 there is a large rifle in his apartment. He doesn't know
10 how it got there. He's assuming that Che or Storme put
11 it there.

12 He says he goes to work Friday evening, he comes
13 back, the rifle is gone. He says Saturday morning, Che
14 Carr brings the rifle to him and asks him to hold it for
15 him and he does.

16 Q. At any point does he change that story in some
17 fashion?

18 A. Yes.

19 Q. Okay. Tell us about that.

20 A. So the next thing he says is -- I challenge him.
21 I said the rifle appears and disappears and appears
22 again, and he said, well, all right, Che Carr actually
23 brought the rifle to me Friday morning, and so that is
24 how I got them to the apartment.

25 Q. After that, do you talk to him some more and then

1 begin the writing process?

2 A. At that point he already changed his story twice
3 and rather than me trying to keep track of the changing
4 of the stories, I was getting the impression it was going
5 to change again. I went ahead and started to write down
6 or begin the written statement.

7 Q. And in showing you State's Exhibit 97 -- I could
8 show it to you up here -- up here it notes it's page 1 of
9 12 pages; is that right?

10 A. That's right.

11 Q. And at the top of the page, it indicates advice of
12 constitutional rights.

13 A. Yes.

14 Q. Did you go over those with him again before you
15 started writing this statement?

16 A. Yes, I did, and it's a little bit different in the
17 sense that when I -- as I would read one, I would ask him
18 if he understood what it meant, and if he said yes, then
19 I just went ahead and asked him to put his initials by
20 each number before I went to the next one.

21 Q. So when we see the TCs on the left margin, those
22 are Mr. Chandler's initials.

23 A. Yes.

24 Q. And also in the area that I'm pointing to, is that
25 his signature?

1 A. Yes.

2 Q. Is your signature also --

3 A. Right. That's me on this side, that's him.

4 Q. Okay. Then each page of the 12 page document,
5 could you tell us whether or not he signs each page.

6 A. He does, and so do I.

7 Q. Okay. And that is for all 12 pages?

8 A. That's correct.

9 Q. After you completed the writing of it, when he
10 signed each page, did you ask him if he would look at it
11 and see if there were any corrections that needed to be
12 made?

13 A. Yeah. And, actually, what I did even more
14 specifically, was I said, look, I'll go back and read the
15 statement to you, and if there is any corrections that
16 you want to make, you just tell me, and then we'll
17 correct it and make sure we get it right, and I recorded
18 that.

19 MS. SHEALY: Your Honor, at this time we
20 would offer the audio recording.

21 THE COURT: All right. Over defendant's
22 objection.

23 MS. SHEALY: And, Your Honor, it's our
24 intention, as the audio is playing, we will be depicting
25 the written statement on the screen.

1 THE COURT: All right. Both are admitted
2 over defense's objection.

3 MS. SHEALY: Your Honor, I'll have it marked.

4 THE COURT: You're getting ready to hear what
5 purports to be a statement from the defense, and I have
6 made a preliminary decision that this is admissible. It
7 is still up to you to determine whether or not this
8 statement is freely, voluntarily, and intelligently made
9 and whether it was given of his own free will. That is
10 totally within your purview. My decision to decide that
11 it is admissible, it should have no bearing on your
12 decision as to whether or not it is a voluntary
13 statement. You can consider such things as his age, his
14 education, lack of experience, mental capacity,
15 intelligence quotient, background, environment, length of
16 detention, nature of questioning, advice that he received
17 about his constitutional rights, that sort of thing.

18 In other words, you consider all of the
19 surrounding circumstances before you decide how much
20 weight to give it to determine whether or not the
21 statement was freely, voluntarily, and intelligently
22 made. The state has the burden of proving to you that
23 the statement was voluntarily made, and if you determine
24 that it was, you can give the statement any further
25 consideration that you deem is proper if you decide what

1 weight, if any, should be given to the alleged statement,
2 and if you determine that the alleged statement was not
3 the free and voluntary statement of the defendant, you
4 should not consider the statement at all. All right?
5 You may proceed.

6 MS. SHEALY: Your Honor, the recording is
7 State's Exhibit 115.

8 (Statement marked for identification and
9 admitted into evidence as State's Exhibit No. 115.)

10 BY MS. SHEALY:

11 Q. Detective Osborne, before I begin playing it,
12 would you indicate how old Terrell Chandler was at the
13 time you took the statement from him?

14 A. He was 21.

15 Q. How far had he gone in school?

16 A. He completed the tenth grade.

17 Q. Did you have any difficulty communicating with
18 him?

19 A. No, not at all.

20 Q. Did he appear to understand the questions you
21 asked?

22 A. Yes.

23 MS. SHEALY: Your Honor, we'll play it at
24 this time.

25 THE COURT: All right. You may proceed.

1 (Whereupon, the audiotaped statement was
2 played for the jury.)

3 BY MS. SHEALY:

4 Q. Detective Osborne, during that break where you end
5 and then you go back on the record, could you tell the
6 jury what was going on in between those two times?

7 A. I was completing the booking paperwork to get
8 Terrell booked in the detention center, and Detective
9 Jerome Fleming went in and spoke to him briefly.

10 Q. And when you went back in to talk to Terrell, did
11 he indicate he had something else he wanted to tell you?

12 A. Yes.

13 Q. What did he say to you at that point?

14 A. Well, what he said was that he was ready to tell
15 me the whole truth. He was ready to be honest and tell
16 me everything that happened, but he first wanted to take
17 a ride in a police car.

18 I asked him what he meant by that. He already got
19 a ride in the police car there, and I was going to give
20 him a ride back in the police car, and he said he just
21 wanted to go for a ride and he wanted to go in the police
22 car.

23 Q. Did you take him for a ride in the police car?

24 A. No, no.

25 Q. After taking the statement from Terrell, will you

1 tell the jury, who were you investigating at that point
2 for the death of Calvin Gibbs?

3 A. I'm sorry. Please say that one more time.

4 Q. After taking the statement from Terrell Chandler,
5 who was the focus of your investigation at that time?
6 Who all was in focus?

7 A. Che Carr, Terrell Chandler, and I wanted to talk
8 to all of these girls that were in the apartment.

9 Q. And after then taking the statement from
10 Mr. Chandler, who else did get interviewed in this case,
11 do you recall?

12 A. Yes. Well, just going in order, I speak to
13 Carmesha Sheppard, which was one of the girls that
14 Terrell had told me about. She was not in the apartment,
15 but I still wanted to interview her. Then I spoke to
16 Megan White -- want me to keep going?

17 Q. Let me ask you about Megan real quick. Did Megan
18 tell you the truth starting off?

19 A. No.

20 Q. And, if you would, describe to the jury Megan's
21 demeanor when she was talking to you.

22 A. Megan was very nervous. In fact, she didn't want
23 to meet with me at the station. The only way she would
24 meet with me is if I agreed to meet with her near Hampton
25 Park. So I saw her there in a car. She agreed to come

1 to the police car. She sat next to me in the police car,
2 and I spoke to her there.

3 Q. When you indicated to us that what she told you at
4 first didn't appear to be true, was it very difficult to
5 get her to tell you the truth?

6 A. No, not at all.

7 Q. Describe that to us.

8 A. Okay. So she sits down. She starts to tell me
9 this story that is strikingly similar to the first story
10 that Che Carr told me, and all I told her was, Megan,
11 that is the first story that Che told me, and he has
12 since come off that story, so do you want to change your
13 story? And immediately she did.

14 Q. And that is when she told you about being present
15 in the apartment that evening, et cetera?

16 A. That's right.

17 Q. You were telling us that you interviewed Megan
18 White and who else -- Carmesha Sheppard, and I think you
19 were going to tell us who else you interviewed.

20 A. Cherelle Anderson again, Tamara Dixon. Again,
21 Tamara helps us with identifying Steven Brown. Then we
22 go on to attempted interview Storme, Latrice Smalls,
23 Ta'Mequa Durant, and then Steven Brown, and this is going
24 on over a period of weeks.

25 Q. Over a period of weeks. So if you could tell the

1 jury, how long did this investigation take?

2 A. I wouldn't say this investigation ended until a
3 week or two ago.

4 Q. Okay. Now, you told us that you found out the
5 identification of Troop, Steven Brown, from Tamara Dixon;
6 is that correct?

7 A. Yes.

8 Q. On June 9, could you tell us what you did.

9 A. Well, June 9th, that would be the interview with
10 Megan White, and before Megan, I speak to Carmesha
11 Sheppard.

12 Q. And what about some search warrants regarding
13 blood?

14 A. Right. So, again we knew that we were going to
15 take DNA samples from the guns, possibly from the scene
16 as well, and we also had blood evidence. So I knew we
17 would need DNA samples from the two defendants at that
18 point, so I proposed search warrants. At that time, we
19 were doing blood, saliva, so I did search warrants for
20 Terrell Chandler and Che Carr.

21 Q. And did you, in fact, execute those search
22 warrants?

23 A. I did, yes.

24 Q. Explain to the jury how that is accomplished.

25 A. After the judge signs a search warrant, I'll go

1 and make arrangements with correction officers to have
2 both of the individuals transported to the nurses's
3 station at the detention center. Then I met with the
4 nurse. Her name was Blizzard, nurse Blizzard, and she's
5 actually the one -- I give her a kit, and she is actually
6 the one that draws the blood and takes saliva samples
7 from both of them and then signs it, makes sure
8 everything is done proper, and gives back to me, and I
9 turn it into evidence.

10 Q. You use the word kit. What are you talking about?

11 A. At that point, what we have -- it's like a SLED
12 kit. It's pretty small, and it comes with special vials
13 that you can put the blood in, that it won't coagulate so
14 they can test it properly.

15 Q. When you tell us SLED, could you tell us what SLED
16 is.

17 A. South Carolina Law Enforcement Division.

18 Q. And where is the majority of those offices
19 located?

20 A. In Columbia.

21 Q. And is that the place that houses the labs to test
22 evidence?

23 A. And they do test them, right.

24 Q. And if I could show you two items and ask if you
25 can identify those.

1 A. Yes. These are the kits that would have, or maybe
2 do contain, Terrell and Che Carr's blood samples.

3 MS. SHEALY: Your Honor, I would offer these
4 at this time.

5 MR. SLADE: No objection, Your Honor.

6 THE COURT: Admitted.

7 (Test kits marked for identification and
8 admitted into evidence as State's Exhibit Nos. 116 and
9 117.)

10 BY MS. SHEALY:

11 Q. In showing you State's Exhibit 117, this says it's
12 from Cherelle Carr?

13 A. Right.

14 Q. Could you clarify that for the jury?

15 A. It should be Che Carr. The only thing I can think
16 is I got Cherelle's name mixed up. What I think actually
17 happened was they thought Che was an abbreviation for
18 Cherelle.

19 Q. Was Cherelle Anderson's blood taken for any reason
20 in this case?

21 A. No.

22 Q. Now, on June 17, did Storme Carr indicate that he
23 wanted to talk to you?

24 A. At first he did. He made contact with me, or I
25 him, I'm not sure, but either way, he agreed to come to

1 the police station and give a police statement. He came
2 into the station. I met him downstairs, and as we were
3 waiting for the elevator to come up, he said no, he
4 didn't want to give a statement. His mother told him he
5 should have a lawyer.

6 Q. Okay. And then on July 16, did you have the
7 opportunity to interview Steven Brown?

8 A. Yes, I did.

9 Q. And you told us this investigation continued and
10 continued up until very recently.

11 A. Yes.

12 Q. In March of 2009, did you have the occasion to
13 interview three young girls about what they had witnessed
14 that evening?

15 A. Yes, I did.

16 Q. And would you tell the jury the name of those
17 three girls.

18 A. Amanda Mack, Naomi Bryant, and Brittney Simmons.

19 Q. And could you describe whether or not those girls'
20 demeanor suggested they were pleased to talk to you or
21 not pleased to talk to you?

22 A. No, they were definitely not pleased to talk to
23 me.

24 Q. And where were you when you talked to them?

25 A. I was at West Ashley High school.

1 Q. Did they get taken out of class?

2 A. Yes. I interviewed them right there.

3 Q. And when you interviewed them, did you interview
4 them all three at one time or did you interview them
5 separately?

6 A. Separately.

7 Q. Now, Storme Carr and Steven Brown are not arrested
8 back in June of 2008; is that correct?

9 A. That's right.

10 Q. Would you tell the jury, please, when they were
11 arrested.

12 A. I know it would have been -- I want to say it was
13 in November of '09, toward the latter part of '09.

14 MS. SHEALY: Beg the Court's indulgence one
15 moment.

16 BY MS. SHEALY:

17 Q. Let me ask you about this: Were they arrested on
18 a warrant?

19 A. No, they weren't.

20 Q. Can you explain to the jury what happened
21 regarding the arrest of Steven Brown and Storme Carr.

22 A. Yes. We arrested Che and Terrell on the warrants.
23 That is where I composed the arrest warrant, take it to
24 the judge, judge reviews it. If there is enough
25 evidence, he signs it and we arrest them. I had Che; we

1 had Terrell. We were gathering evidence -- we knew there
2 were at least two other individuals involved. We were
3 gathering evidence, doing our interviews. I was in
4 constant contact with the solicitor's office. I was
5 updating them, apprising them of what was going on.

6 At a certain point, and the way I looked at it was
7 this: I felt that I had enough evidence at that point to
8 charge Storme and Steven, but I didn't know whether there
9 was enough evidence from the solicitor's office to
10 prosecute them, so while I charge them, I wanted to make
11 sure they were going to prosecute them before I did.

12 And at a certain point after reviewing the case
13 that was ongoing with them, I was advised by their office
14 that yes, they would prosecute Steven and Storme, so at
15 that point she -- Miss Shealy said that, Go ahead and get
16 the arrest warrants.

17 And the only thing I asked was, well, would you
18 mind if we just go ahead and direct indict them, and all
19 that means is when I compose an arrest warrant and I
20 arrest someone, they go through a bond hearing, a
21 preliminary hearing, then the grand jury, and that is
22 where they either indict or not.

23 When you direct indict, someone the solicitor's
24 office is saying, We will prosecute them, so we can skip
25 the bond hearing. We can skip the preliminary hearing.

1 We can go directly to the grand jury, and then I can
2 present it to the grand jury and they can direct indict
3 them. It's just a faster way of doing it since they
4 already made up their mind they would prosecute.

5 Q. And just to -- would it refresh your memory as to
6 when they were actually picked up if I showed you their
7 booking report?

8 A. Yeah. I was notified that they were arrested, but
9 I wasn't there.

10 Q. Showing you State's 106, could you tell the jury
11 what date he was picked up, Storme Carr?

12 A. This was a booking date of December 23rd of '09.

13 Q. And asking you about Steven Brown -- and I would
14 like to move this, I think without objection, Your
15 Honor -- could you tell the jury when Steven Brown was
16 arrested?

17 A. He had a booking date of December 7th, and I do
18 remember Steven was arrested before Storme was.

19 MS. SHEALY: Your Honor, I'll move the
20 booking report of Steven Brown in without objection.

21 MR. SLADE: Without objection.

22 THE COURT: Admitted.

23 (Booking report of Steven Brown marked for
24 identification and admitted into evidence as State's
25 Exhibit No. 118.)

1 BY MS. SHEALY:

2 Q. Okay. Detective Osborne, you indicated that
3 Steven Brown was picked up on December 7th; is that
4 correct?

5 A. Yes, I think that's it.

6 Q. And did you have the opportunity to interview him
7 on the 8th?

8 A. I did.

9 Q. And you were here yesterday when Steven Brown
10 testified.

11 A. Yes.

12 Q. During that recorded statement, did he indicate
13 who had fired the rifle?

14 A. Terrell Chandler.

15 Q. Now, you've told us there is a little difference
16 between getting arrested on a warrant and getting picked
17 up on a directly indicted case.

18 A. Right.

19 Q. Do you know whether or not when these two
20 gentleman, Storme Carr and Steven Brown, got picked up,
21 would their fingerprints have been taken at that point?

22 A. Should have been.

23 Q. Okay. What happened in this case?

24 A. Well, because of the direct indict and picking
25 somebody up on a direct indictment isn't something that

1 happens all the time, I found out that their fingerprints
2 weren't taken as a result of the murder arrest warrant,
3 or indictment. As they were arrested, they were not
4 fingerprinted.

5 Q. And if you could tell us, as a part of this case,
6 were fingerprint analyses done on certain items?

7 A. Yes.

8 Q. What did you have to do as a result of learning
9 that Storme Carr and Steven Brown's fingerprints had not
10 been compared?

11 A. Well, I called up and asked whether I needed a
12 search warrant to have their fingerprints done, learned
13 that I did not because the fingerprints were never taken
14 in the first place, so they went ahead and then took the
15 fingerprints from Steven and Storme.

16 Q. And, in addition to the fingerprints, did you also
17 take buccal swabs?

18 A. I did, yes.

19 Q. Now, what are buccal swabs as opposed to the blood
20 you took earlier?

21 A. That is how we do it now. SLED -- it's much
22 simpler. All you have to do is take a Q tip, it's about
23 this long, and I can do it, and once I get a search
24 warrant, I'll ask the individual to open up their mouth,
25 put the Q tip on the inside of their gums, and just twist

1 it and then do the other side, package it, label it, and
2 then submit that, and they can compare the DNA analysis
3 from that and the buccal, I'm assuming, is some term for
4 the inside of your mouth.

5 Q. And that was done relatively recently?

6 A. Yes.

7 Q. Do you remember the date it was done?

8 A. Yes.

9 Q. What was that?

10 A. I believe it was on March the 19th.

11 Q. March or May?

12 A. You're right, May the 19th.

13 Q. And with the buccal swabs, is there a kit provided
14 to you by SLED as well?

15 A. Yes, yes.

16 MS. SHEALY: I beg the Court's indulgence
17 just a second. Thank you, Detective Osborne. Please
18 answer any questions the defense may have.

19 THE COURT: All right. Go ahead.

20 CROSS-EXAMINATION

21 BY MR. SLADE:

22 Q. Detective Osborne, you've been assigned to this
23 case since quarter to 2:00 on the morning of May 30,
24 2008?

25 A. That's correct.

1 Q. You've been assigned to this case for basically
2 two years and ten days, give or take?

3 A. That's correct.

4 Q. And in the -- you have -- you decided very, very
5 early on that Terrell Chandler was guilty of murder,
6 correct?

7 A. Well, I guess you would have to say that -- how
8 are you defining early on?

9 Q. Well, three days after you began investigating
10 this shooting, you swore under oath that you believed
11 that Terrell Chandler was the shooter, correct?

12 A. That's correct.

13 Q. And ever since that time, you've been pursuing
14 that theory of the case, trying to develop evidence
15 against Terrell Chandler, correct?

16 A. I wouldn't characterize it that way. What I would
17 say is that during this entire investigation, what I've
18 been trying to do is to gather evidence to bring all the
19 individuals that are responsible for Calvin Gibbs's
20 murder to justice.

21 Q. Well, in order to try to bring any individuals
22 that are responsible for Calvin Gibbs's death to justice,
23 you have to base that on evidence, correct?

24 A. That's correct.

25 Q. So you have to find the facts that fit your theory

1 of the case, right?

2 A. I think you can make a mistake if you try to have
3 facts match your theory. I think what you do is let the
4 facts take you wherever it goes.

5 Q. You knew from talking with Cherelle Anderson that
6 there were a number of people out in the back yard of
7 Apartment Five on the night of May the 30th, right?

8 A. That's correct.

9 Q. And you knew that Ms. Anderson had described --
10 you knew from talking to Ms. Anderson that the car that
11 she and Calvin Gibbs was riding in was right up here near
12 the cut of the breezeway in this apartment building,
13 right?

14 A. That's correct.

15 Q. And you knew that Ms. Anderson had described
16 people running from this side of her car, the car she was
17 riding in, correct?

18 A. That's correct.

19 Q. And you knew that she couldn't -- excuse me. You
20 knew that she could only describe thoroughly one person?

21 A. That's correct.

22 Q. And on the first, she has consistently, over and
23 over, described Che Carr, correct?

24 A. That's correct.

25 Q. There is a -- she gave a description to the first

1 officer, or one of the first officers, on the scene who
2 talked to her, Detective Antonio, Jennifer Antonio,
3 correct?

4 A. Yes.

5 Q. And you're familiar with the contents of your case
6 file, right?

7 A. Yes.

8 Q. And you know that on the morning -- excuse me.
9 You know that on the morning of May the 31st, just within
10 less than an hour of the time that this shooting
11 occurred, Ms. Anderson described one of the black males
12 as five-five, five-six, with a white T-shirt, wearing
13 short twists or dreads right?

14 A. That's correct.

15 Q. And the second male that she described she
16 described as a black male wearing a black T-shirt, blue
17 jeans, and a low fade haircut. Do you know what a low
18 fade haircut is?

19 A. I think so.

20 Q. I'm going to show you the booking picture of
21 Terrell when he was first arrested. That was within --
22 that was June the 2nd, so three days later, correct?

23 A. Right.

24 Q. Now, can you describe his hairdo there?

25 A. I would say that is -- it is certainly not tightly

1 braided. I would say messy braided.

2 Q. That is a braided hairdo?

3 A. Right.

4 Q. Would you describe that as a low fade?

5 A. No.

6 Q. A low fade is very close cut?

7 A. On the sides, right.

8 Q. To the skull, right?

9 A. Right.

10 Q. So it was clear to you from the -- and I'm certain
11 that you must have talked to Detective Antonio right
12 there at the scene, or within hours of being assigned to
13 the case, right?

14 A. Yes.

15 Q. So it was clear to you that she was describing two
16 people, one clearly, and one who she simply described as
17 being taller than the five-five, five-six individual, and
18 he had a low fade hairdo, right?

19 A. Right.

20 Q. And, of course, the whole point, or one of the
21 whole points, of your job is to further develop
22 identifications of suspects, correct?

23 A. Right.

24 Q. And you knew there might have been people, or
25 there were people, out there who there was no evidence

1 against participating in this, correct?

2 A. Well, no, if they participated in it -- I guess I
3 don't understand the question.

4 Q. Well, you're right. They wouldn't have been
5 questioned. There were people out there in the back, in
6 that area, who did not participate in the shooting of
7 Calvin Gibbs, right?

8 A. No, not out of these four individuals.

9 Q. All right. You know that later on that morning
10 Ms. Anderson gave a written statement, correct?

11 A. Yes.

12 Q. And she described -- she was asked by Detective
13 Antonio to describe these suspects and she described two.

14 A. Right.

15 Q. She described one who was a black male, five-five,
16 five-six, and she described that person as the shooter,
17 correct?

18 A. Right.

19 Q. Now, she also described the other black male as
20 having a low fade hairstyle, wearing black shirt and blue
21 jeans, right?

22 A. Yes.

23 Q. Now, she came down to the police department at
24 your request. She did a photo line-up, right, and before
25 she did the photo line-up, you discussed with her, you

1 asked her, about these suspects, right?

2 A. Yes.

3 Q. And that is important.

4 A. Yes.

5 Q. Correct? And she described the guy that came up
6 to the car as having a white shirt.

7 A. Yes.

8 Q. And she told you that he came running up to the
9 car, correct?

10 A. Yeah. I mean, again, did she use those exact
11 words? I would like to think I wouldn't have put it down
12 unless she did say that. Is it possible that I said,
13 well, did he run up to the car and she said yes and then
14 I wrote it down? I mean, that's possible.

15 Q. Well, are you thinking you -- I mean, you got to
16 explain, given your theory of the case now, how somehow
17 she really wasn't describing somebody running up to the
18 car, right?

19 A. I'm sorry. Ask that again, please.

20 Q. You're telling us today, maybe I was wrong, right?
21 Maybe I misheard her, right?

22 A. Absolutely, absolutely. That's possible.

23 Q. Let's look at -- and I guess the point of my
24 question was, why are you telling us today you might have
25 misheard it?

1 A. Because I'm only human. I think Cherelle answered
2 that best. I think if you asked her what happened --

3 Q. Well --

4 MS. SHEALY: Judge, I would ask that he be
5 allowed to finish his comment.

6 THE COURT: Go ahead and -- answer his first,
7 but you can explain your answer.

8 THE WITNESS: The only thing I would say is I
9 think Cherelle probably said it best in her own words. I
10 mean, I'm trying to write down as best as she is telling
11 it to me, but, I mean, again, I'm only human. If I made
12 a mistake, I'm going to tell you, it's possible I made a
13 mistake.

14 BY MR. SLADE:

15 Q. You knew that earlier that morning Cherelle
16 Anderson had described two -- excuse me, I seen people
17 running up shooting, correct?

18 A. Yes.

19 Q. That describes people running up shooting as well,
20 right?

21 A. Right, yes.

22 Q. And if she had said something different to you, as
23 you were searching for the right way to put down what she
24 says, if she said something different from running, you
25 would have asked her about it, right?

1 A. Right. I mean, once again, you know, I would try
2 to do the best I could.

3 Q. I mean, we just got through listening to a lengthy
4 interview you conducted where you asked plenty of
5 questions to clarify your position. You're always
6 capable of doing that in a interview, right?

7 A. Little different scenario, though. With a
8 defendant, you get one shot, so you want to make sure you
9 can get everything as detailed as you can. With
10 Cherelle, I can come to her a second time, third time,
11 fourth time. There is no reason why I couldn't go back
12 and interview her again, so I'm trying not to alienate
13 Cherelle, but, again, I've got a job to do.

14 Q. Continuing on the topic of your explanation of why
15 you might have misheard running, you, as you just
16 described, went back to Cherelle on -- later that
17 afternoon, on 5/31, which was Saturday, at about 6:32,
18 and you asked her about did the suspect say -- you're
19 familiar enough with this. You have a copy of this? You
20 need to look at it?

21 A. I don't have a copy of that with me.

22 Q. Let me read it, and then you can have it. You
23 asked her, at 6:32 on Saturday, May the 31st, Did the
24 suspect say anything?

25 Her answer: The guy identified in the picture

1 came running up. He said I got you now. N word.

2 Now, tell us your explanation of why she didn't
3 say running that time.

4 A. You mean why she did?

5 Q. And you misheard it?

6 A. Why she didn't and -- again, I would answer that
7 the same way.

8 Q. You think you put that down accurately or --

9 A. Well, I mean, to be specific, this isn't my
10 handwriting, although I was standing there, or sitting
11 there. This is Detective Antonio's handwriting, but
12 having said that, I mean, again, it's the same answer.
13 You know, I'm certainly not here suggesting that I didn't
14 try or she didn't try to put down exactly what she said.
15 We tried.

16 Q. All right. And you mentioned that it wasn't your
17 handwriting. You were standing right there, right?

18 A. Yes.

19 Q. And your purpose was to listen to what she was
20 saying, right?

21 A. I was very interested, yes.

22 Q. And if you had heard her say something different
23 than you had heard her say before, surely you would have
24 interviewed and asked a question yourself, right?

25 A. I would have, yeah. But, I mean, again, I guess

1 from my point of view, at that point -- and it is
2 important. I'm not suggesting it's not whether they
3 walked up or whether they ran up, I think at that point
4 and really early on I was really more focussed on trying
5 to find out who these people were, their method of
6 getting to the car. I want to get these guys identified
7 and get them off the street.

8 Q. You testified I think in cross just a few minutes
9 ago that it's important to have the facts to fit your
10 theory of the case, right?

11 A. No. I didn't say that.

12 Q. Tell me what you said.

13 A. Well, because I think the way you characterize
14 that, what you're suggesting is that, I might be wrong,
15 but it just seems like you're suggesting that I have a
16 theory and that I try to get the facts to meet that
17 theory.

18 That is a mistake. You don't want to do that as a
19 detective. You want to evaluate the facts and go in
20 whatever direction it leads you. If you do that, you can
21 start missing things.

22 Q. It's important to base your case on the words that
23 come out of the witness's mouth, right?

24 A. Yes.

25 Q. And at that time, you didn't have a theory of the

1 case that you have today, that Terrell was standing right
2 there at the window, right?

3 A. We didn't know very much about the case at all at
4 that point, that's correct.

5 Q. My question was, you didn't have a theory of the
6 case that you have today, that Terrell was standing right
7 at the window with a gun, right?

8 A. No.

9 Q. Now, when Ms. Anderson took a look at the photo
10 line-up, that's what we were going through just a moment
11 ago, she -- and it was important for you to ask her, she
12 told you the shooter had twists or dreads, right?

13 A. Right.

14 Q. She told you that the shooter was five-five,
15 five-six, right?

16 A. Right.

17 Q. She told you that the shooter had on a white
18 shirt, right?

19 A. Yes.

20 Q. And she told you she thought the shooter was a
21 teenager, right?

22 A. I think so.

23 Q. Do you recognize that?

24 A. That is --

25 Q. I'm not trying to --

1 A. Yeah, I know.

2 Q. Okay. Do you recognize that?

3 A. Yes. This is my report, and it was dated May the
4 31st. You want me to read the description?

5 Q. No, just identify that. It's your report?

6 A. Yes.

7 Q. And you were writing some notes for yourself for
8 the file so you could remember what was going on, right?

9 A. Yeah. I wouldn't say notes, what I do is -- what
10 I did here and what I like to do is I summarize the
11 written statement in the report, so if you don't want to
12 go back and read the whole written statement, you could
13 just read the summary.

14 Q. All right. And halfway down this report that you
15 wrote, just to aid your memory, as you described, you
16 said Cherelle stated that the initial black male was
17 described as being about 19 years of age, dark
18 complexion, right?

19 A. Yeah. The teenager thing kind of threw me off,
20 19 -- that would be a teenager, but the description,
21 that's what she gave me.

22 Q. That's what she told you. And then you decided to
23 put -- you decided to put Che Carr's photo in that
24 line-up, right?

25 A. That's correct.

1 Q. And she picked out Che Carr as the shooter in 20
2 seconds?

3 A. About, yes.

4 Q. And from then on, you described -- excuse me.
5 When you went to get an arrest warrant for Che Carr, you
6 have to get -- you have to swear under oath to a couple
7 of facts, right?

8 A. Right.

9 Q. To back up the warrant?

10 A. Yes.

11 Q. And in that warrant, you said she positively
12 identified Che Carr as the shooter, right?

13 A. That's correct.

14 Q. And she told you in that -- she told you all of
15 those descriptors of those person, and it turns out that
16 Che Carr -- she told you he was -- the shooter was
17 five-five, five-six; Che Carr is five-seven, right?

18 A. That's correct.

19 Q. She told you that the shooter had twists or
20 dreads. Che Carr has twists or dreads, right?

21 A. Yes.

22 Q. She told you that the shooter was a teenager. Che
23 Carr is 19, correct?

24 A. Yes.

25 Q. Excuse me. She told you the shooter was 19. Che

1 Carr was almost 18 at the time of the shooting.

2 A. I can't see that date.

3 Q. It's a week before his birthday.

4 A. Oh, there it is.

5 Q. 6/2?

6 A. That's right, yeah.

7 Q. I need that -- speak up.

8 A. Yes. I was just doing math in my head. Sorry.

9 Q. She told you that the shooter was a teenager. How
10 old was Che Carr at the time?

11 A. All right. So that would have been -- 17, about
12 to be 18.

13 Q. About to be 18. So at that point, she had
14 corroborated -- when she picked Che Carr's picture, she
15 described every detail of what she had told you about
16 that description, right?

17 A. That's correct.

18 Q. Now, you knew at the time that Che and Storme were
19 trying to get you to charge somebody other than Che Carr,
20 right?

21 A. I'm not trying to be difficult. What time are you
22 talking about?

23 Q. I'm talking about in the very beginning. I'm
24 talking about May the 31st. By May the 31st, you knew
25 that Che and Storme Carr were trying to get the police to

1 charge somebody else, other than Che Carr.

2 A. No, not at that time.

3 Q. Okay. Let's take a look at -- again, this is from
4 your supplemental. Now, just take a look at it and
5 just -- I can identify them better by Bates numbers. Do
6 you have that?

7 A. No.

8 Q. All right. It's from 6/1, is the date at the
9 bottom, but it's your notes of your interview with Che
10 when you went over to his uncle's house. Is that ringing
11 a bell?

12 A. Yes, this first time statement.

13 Q. And that was done -- for the record, that
14 interview you did of Che Carr was done on Saturday, May
15 the 31st, right?

16 A. Right.

17 Q. Less than 24 hours after the shooting.

18 A. Yes.

19 Q. My question to you is, at that point you knew Che
20 and Storme Carr were trying to deflect attention from
21 them to someone else.

22 A. That is why I didn't want to say yes, because you
23 said Che and Storme. I didn't talk to Storme. I talked
24 to Che. So was Che deflecting, and he was saying that
25 somebody else did it? Yes.

1 Storme was standing there. I didn't even talk to
2 Storme. The's the only reason I didn't say yes. If I
3 knew you were talking about that, I would have said no.

4 Q. Che told you they called Crime Stoppers earlier
5 that day, right?

6 A. Right.

7 Q. And they told them the Taliban story.

8 A. Right.

9 Q. The story of them being -- or Che being the victim
10 in this shooting. He was put down on the ground and had
11 to run home naked.

12 A. This is all Che. Absolutely.

13 Q. Well, you knew Storme was engaged in that effort,
14 right?

15 A. I never spoke to Storme, so that is the only
16 reason why I didn't answer yes, because I didn't know
17 where you were going with it.

18 Q. Well, let's take a look at another supplemental
19 from your file, if you're not familiar with it. You can
20 tell me that, but this is a supplemental done by Sergeant
21 Dutton.

22 A. Right.

23 Q. And Sergeant Dutton was working, I guess, under
24 your supervision in that case.

25 A. He was actually my supervisor, but yeah.

1 Q. Y'all were talking back and forth?

2 A. Right.

3 Q. So you knew what he was investigating, and he knew
4 what you were investigating, right?

5 A. Right.

6 Q. And Che Carr called him a number of times on that
7 afternoon, right?

8 A. Right, Che.

9 Q. Of the 31st and then, on June the 2nd and June the
10 3rd, Storme was calling Sergeant Dutton, right?

11 A. Well, right. Again, I mean, so I don't talk to
12 Storme May the 31st. Maybe I'm confused. I thought you
13 were only talking about May the 31st. Storme does come
14 into play later on and deflect, as you say, but not on
15 May the 31st.

16 Q. Well, certainly Storme was already starting a
17 story that deflected, at least one story, began a story,
18 to deflect attention from himself.

19 A. Right, a couple days later, on the 22nd.

20 Q. And Che began even the day of the shooting, right?

21 A. That's correct.

22 Q. So the first story he told you was the Taliban
23 story, where a bunch of guys name Taliban and Chopper and
24 Mikey come running through the cut here, and he sees
25 Taliban shoot Mr. Gibbs, right?

1 A. Yes.

2 Q. That's the first story. And so you go arrest him,
3 right?

4 A. Well, not immediately, but yes, he is arrested.

5 Q. Well, not immediately, but you heard the Taliban
6 story on May the 31st, and on June the 1st, you swore out
7 a warrant for murder against him, right?

8 A. The very next day, that's right.

9 Q. And when he got arrested, he changed his story,
10 right?

11 A. Yes.

12 Q. And he started telling a story then about Terrell
13 being the shooter, right?

14 A. Yes.

15 Q. And so based on what he has told you, you get --
16 based on what Che Carr has told you, you go get an arrest
17 warrant on Terrell, charging him as the shooter, right?

18 A. Not only what Che told me, but partly of what Che
19 told me.

20 Q. Well, you put the information that you used to
21 arrest somebody in the arrest warrant, correct?

22 A. Well, I don't -- well, you summarize. The arrest
23 warrant is only a summary of what you've done to this
24 point to accuse this individual of the crime that you're
25 trying to get the arrest warrant for.

1 Q. And when you went to summarize the information
2 that you had on Terrell Chandler, you summarized it by
3 saying you were basing the warrant on what Che Carr had
4 told you, correct?

5 A. You're leaving out the other part too.

6 Q. All right. What is the other part?

7 A. You want me to read it?

8 Q. I don't have it with me.

9 A. I remember it off the top of my head. I
10 identified Tamara Dixon as being -- I won't call her a
11 confidential informant or person to be named later. Che
12 told me that the murder weapon is going to be in Tamara's
13 trunk, and Terrell gave the gun to her.

14 When I went to talk to Tamara -- it actually
15 wasn't me, but it was Sergeant Dutton that talked to
16 Tamara. Tamara verified that, she said, Yeah, I got the
17 gun. It's in my trunk. It was given to me by Terrell,
18 so although I do not mention her in that warrant on
19 purpose, I wanted to keep her anonymous, so I identified
20 her as being an individual to be identified later, and
21 that is off memory, but I'm pretty sure that should be in
22 there.

23 Q. All right. Let's take a look at this warrant.
24 This is the warrant that you swore out -- these are just
25 my notes here. This is the arrest warrant that you swore

1 out against Che -- I'm sorry. That is Che Carr. This is
2 the arrest warrant you swore out against Terrell
3 Chandler, right?

4 A. Right.

5 Q. And you based that warrant on saying you spoke to
6 Che after he was arrested. Che provided a statement
7 indicating he was the black male who approached Calvin's
8 vehicle, however, he identified Terrell Chandler as the
9 shooter; correct?

10 A. That's correct.

11 Q. And then you go on to say that it's further proof
12 that you found the gun, right?

13 A. Right.

14 Q. And who led you to the gun, Detective Osborne?

15 A. Che Carr.

16 Q. Che Carr, the person that you just based this
17 warrant on, right?

18 A. Right.

19 Q. Now, when you began focussing on Terrell Chandler,
20 you say that you were considering all the facts; is that
21 right?

22 A. Yes.

23 Q. And you didn't exclude facts that pointed away
24 from him, right?

25 A. No. Tried not to.

1 Q. All right. Well, I want to make it clear. I'm
2 not questioning your integrity. Everybody just gets
3 locked in on something you were telling them a moment
4 ago. You're just human. You mean you get locked in on
5 stuff and make mistakes too, right?

6 A. Yeah.

7 Q. And you convinced yourself that the tall guy out
8 there that night was Terrell Chandler early on, right?

9 A. Well, I wouldn't say I convinced myself, but I
10 would say I couldn't find anything that pointed to the
11 contrary.

12 Q. All right. You also described in your direct
13 testimony a little about the procedure of bringing a case
14 to where we are today, the court, right?

15 A. Yes.

16 Q. To the trial court.

17 A. Yes.

18 Q. And one of the steps along the way to the trial
19 court is the preliminary hearing, right?

20 A. It can be, yes.

21 Q. Well, okay. It can be. And in this case, it was
22 one of the steps, right?

23 A. For Terrell's case, yes.

24 Q. And your job, you went to Terrell's preliminary
25 hearing, right?

1 A. Yes.

2 Q. And what you did was sit in a witness stand like
3 that, and the point of a preliminary hearing is that you
4 are put under oath and your job is to give a judge, who
5 is sitting to hear, you got to give him some facts,
6 right?

7 A. Right.

8 Q. That you have discovered that point to the person
9 who is having the preliminary hearing as a person who's
10 guilty of a crime, right?

11 A. Yes.

12 Q. Now, you knew this preliminary hearing was held on
13 July 1, 2008. That was about, oh, a little better than a
14 month after the shooting, correct?

15 A. That sounds right.

16 Q. And you knew from your conversations with Cherelle
17 Anderson multiple times -- by that point, you had taken
18 three written statements, right, two written statements?

19 A. Yes.

20 Q. You had talked to her at her house when you didn't
21 take a written statement, right?

22 A. Right.

23 Q. And were you familiar with a written statement
24 that Detective Antonio had taken, right?

25 A. Yes.

1 Q. And in the statement that Detective Antonio had
2 taken, and we just went over this at the beginning, she
3 described the taller guy as having a low fade hairdo,
4 right?

5 A. Yes.

6 Q. And then in the statement, the written statement,
7 that you took from her, she described the taller guy as
8 having a low fade hairdo, correct?

9 A. Yes.

10 Q. And then you took another statement from her on
11 June the 10th, and she described the taller guy as having
12 braids or low cut hair, right?

13 A. Yes.

14 Q. And so --

15 A. Wait a minute. One more time? I'm sorry.

16 Q. June 10th.

17 A. The short guy as having braids or dreads.

18 Q. The taller guy.

19 A. I have to go back and look at that one.

20 Q. All right. You asked her, question: Describe the
21 two guys with the handgun, right? At this point she's
22 telling you that some people are coming from this side,
23 right?

24 A. Yes.

25 Q. And you're asking her to describe them, and the

1 only other person that she's giving any description of
2 was the guy with the gun, meaning the handgun, right?
3 She was telling you some guy with a handgun was coming
4 from this side, right?

5 A. Oh, right, yes.

6 Q. And you asked her to describe that person, and she
7 told you, tall, muscular, six, six-one? What did she
8 say?

9 A. Braided hair back or low cut.

10 Q. All right. So you knew at the time of that
11 preliminary hearing that four times Ms. Anderson, the
12 eyewitness to the case, had described the other person,
13 the taller person, as a person with a low fade haircut,
14 right, or low haircut?

15 A. Yes.

16 Q. Now, and only at the very end had she ever said
17 anything -- after saying four times about a low fade
18 haircut, did she say something that he might have had
19 braided hair, right?

20 A. That's correct.

21 Q. And that is important, isn't it?

22 A. Yes.

23 Q. Now, let's look at what you told the judge about
24 the description of the taller person. All right?

25 Look --

1 MS. SHEALY: May we approach for a moment?

2 (Discussion held at sidebar.)

3 THE COURT: Ladies and gentlemen: The
4 objection was basically that Mr. Slade, when he said
5 let's talk about what you told the judge, and he kind of
6 gestured in my direction, it gave the implication that it
7 was me, and it was a different hearing, different day, at
8 the preliminary hearing, so that was the objection. I
9 was not the judge in that.

10 MR. SLADE: Sorry for the confusion, Your
11 Honor.

12 BY MR. SLADE:

13 Q. It's important to give -- got your place?

14 A. No. I don't know where you're at.

15 Q. It's important to give the judge at the
16 preliminary hearing an accurate description of the facts
17 in your possession, correct?

18 A. Yes.

19 Q. And it's also important not to get so locked into
20 one theory that you misrepresent the facts, right?

21 A. Yes.

22 Q. And you know that three times or four times
23 Cherelle Anderson had told you the taller person had a
24 low fade haircut, right?

25 A. Yes.

1 Q. And only once -- and only in conjunction with
2 telling you it might have been a low haircut or braids
3 had she ever mentioned braids, right?

4 A. Right.

5 Q. Now, let's look at page 14 of the transcript of
6 what you told the judge at the preliminary hearing.

7 MS. SHEALY: Your Honor, I would renew my
8 objection. Could we approach?

9 THE COURT: Again, if you can ask him what he
10 said without reading from a particular line.

11 (Discussion held at sidebar.)

12 BY MR. SLADE:

13 Q. In the preliminary hearing, you described for the
14 judge the appearance of the taller person, did you not?

15 A. The description, yes.

16 Q. And knowing that Cherelle Anderson had described
17 the person at least three times, or four times, as having
18 a low face hairdo, you never told the judge that the
19 taller suspect had a low fade haircut, did you?

20 A. I did not mention that Cherelle had once described
21 the subject as having a low fade haircut, no.

22 Q. Over and over, you told the judge that the suspect
23 had braided hair, correct?

24 A. Well, I don't want to say that because I've only
25 turned to page 14, like you said, and on page 14, I do

1 say braided hair, but if you say that, I'm certainly not
2 going to argue.

3 Q. Okay. Well, you told the judge in that
4 description -- did you tell the judge anything about a
5 low fade haircut?

6 A. No, but you didn't mention anything about his
7 clothing or anything like that. It was just a brief
8 summary of the description.

9 Q. And the purpose that you describe that you gave --
10 the reason that you had told the judge that the taller
11 suspect had braided hair was to identify him as Terrell,
12 right?

13 A. Right, that his physical description was similar
14 to that of Terrell.

15 Q. All right. And you described -- you gave the
16 judge a description of Terrell at least three times in
17 that preliminary hearing, correct?

18 A. I mean, again, I haven't read all this. First
19 time I've ever seen this, but I assume that's probably
20 true.

21 Q. All right. Well, you would have described it --
22 you would have given a description to the judge when you
23 first began to narrate -- when you first began to narrate
24 your case, right? You go in. The prosecutor asks you
25 some questions, and in that part of it, you gave the

1 judge a description.

2 A. Well, it's a little different. What they do is in
3 a preliminary hearing, they sit down and you basically
4 summarize why this person was arrested.

5 Q. All right.

6 A. And then, after you get through with that, you
7 certainly don't go through the entire case. It's not
8 like trial. You summarize it, the judge hears it. If
9 the solicitor's office or the prosecutor that is there
10 has any questions that they felt like, you know, maybe
11 you shouldn't have, they want follow-up questions, they
12 ask questions, and then it's the defense attorney's turn
13 to, I guess, kind of hear what is going on with the case.
14 They try to get more information.

15 Then at the end of that the judge then decides
16 whether you should have made the arrest or not. They can
17 get rid of the whole thing, drop it then, or they can
18 bound it over, and that is when it goes to the grand
19 jury.

20 Q. When you summarized it, you offered a description,
21 right?

22 A. Yes.

23 Q. And you told the judge that the taller suspect had
24 braided hair, right?

25 A. Yes.

1 Q. And you left out the description of a low fade
2 haircut, right?

3 A. I did not mention a low fade haircut, no.

4 Q. Now, you just testified it's important to bring
5 all the facts. The fact was at the time Terrell did not
6 have a low fade haircut, did he?

7 A. No, he did not.

8 Q. He had braided hair?

9 A. Yes.

10 Q. And the point of your getting focussed on braided
11 hair and leaving out the low fade haircut was you wanted
12 facts that fit Terrell Chandler?

13 A. That's where we part. Physical descriptions are
14 just that. I mean, they're physical descriptions.
15 Witnesses, especially when a rifle is being pointed at
16 them, I don't hold -- I mean, certainly you look at it.
17 I'm not saying it's not important, but something like
18 hairstyles, with a rifle being pointed at you and being
19 fired, I'm not going to hinge a case on that.

20 What I'm going to look at -- the biggest thing I'm
21 going to look at is the height and the weight. She said
22 there were two guys five foot five at the car, that would
23 have made a big difference. The hairstyles I wasn't as
24 focussed on as are you now. I mean, I'm not saying it's
25 not important. I certainly did look at it, but I wasn't

1 that focussed on that.

2 Q. All right. Then Mr. Carr's attorney, who was at
3 the preliminary hearing, asked you some questions and
4 asked you to describe the taller person, right?

5 A. Probably, yes.

6 Q. And if you would, take a look at page 26 and 27.
7 Now, she -- Che Carr's lawyer is a woman named Michelle
8 Suggs right?

9 A. Yes.

10 Q. And she asks you to describe the taller person.

11 A. Yes.

12 Q. And you describe the person, again, with braided
13 hair, and you left out any reference to a low fade
14 haircut, right?

15 A. You said 26, right?

16 Q. Bottom of 26, top of 27.

17 A. That's correct.

18 Q. Left out any reference to low fade hair.

19 A. Yes.

20 Q. You described the other -- you told the judge that
21 she had described the other subject, meaning the taller
22 person, the one she has given a description of, as
23 muscular with braided hair, six foot tall, brown
24 complexion?

25 A. I repeated it, yes.

1 Q. That describes Steven Brown, doesn't it?

2 A. Steven is either muscular or stocky, but, sure, I
3 guess you could say that.

4 Q. But that doesn't fit your theory of the case, does
5 it?

6 A. Well, what theory?

7 Q. The theory that Terrell Chandler is the shooter.

8 A. If you're asking me if Steven Brown coming up to
9 the car fits the rest of the evidence in the case, no, it
10 doesn't.

11 Q. It doesn't fit your theory of it, and that is your
12 theory of the case, right?

13 A. Well, that's correct, yes.

14 Q. Now, when you were testifying on direct
15 examination when Ms. Shealy was asking you some
16 questions, you were discussing techniques that you have
17 of interviewing that went -- I guess that was sort of a
18 theme or something y'all discussed in the direct
19 examination that Ms. Shealy conducted of you, right?

20 A. Yes.

21 Q. And one of the techniques that policemen use in
22 order to get witnesses to tell a story that is more
23 consistent with their theory of the case is when they
24 hear a story that doesn't fit their theory of the case,
25 they tell them, if you continue to tell that story,

1 you'll be charged with giving false information to a
2 policeman, right?

3 A. Yes.

4 Q. And you describe -- and that has an intimidating
5 effect on a witness.

6 A. I hope it gets their attention, yes.

7 Q. And that is the whole purpose for doing that is,
8 to a certain extent, try to intimidate them.

9 A. I wouldn't say intimidate. The word that I would
10 use is -- yeah, you want to get their attention, and when
11 you talk to somebody, I like to let them know, look, this
12 is what you're faced with. These are your choices. It's
13 your choice, and you decide how you want to go with it,
14 but yeah, if I believe they're telling a false statement
15 or giving a false statement, I'm going to tell them, if
16 it turns out you're giving a false statement, you could
17 be facing a charge.

18 Q. Well, early on in an investigation, you decided --
19 well, early on in an investigation, you decided what the
20 truth was, right?

21 A. No.

22 Q. Now, when you were testifying on direct, you and
23 Ms. Shealy talked about you're going to meet Megan White,
24 one of the women who testified here yesterday, right?

25 A. Yes.

1 Q. And you said that it was not very difficult to get
2 her to change her statement. Is that a fair
3 characterization of what you said when Ms. Shealy was
4 questioning you?

5 A. Yeah.

6 Q. In fact, what you did was you told her if she
7 continued to tell the story that didn't fit your theory
8 of the case, you would charge her with giving false
9 information to a policeman, right?

10 A. No. I remember Megan pretty -- it's not like it
11 happened yesterday, but I do remember Megan sitting in
12 the car, and when she started mentioning Taliban,
13 Chopper, and Mikey, those names just jump right back out
14 at me.

15 And I told her right then, you know, Che has
16 already given that statement. He's already come off that
17 statement. Don't go down that road, and almost
18 immediately she changed her story.

19 Q. Now, let's take a look at your supplemental report
20 dated 6/10/08 when it's a summary of your interview with
21 Megan White. Do you have that? It's about the third
22 down. Is that it? I think we start right about there.

23 A. Yes.

24 Q. All right. I.O., that's you, investigating
25 officer, informed Megan that Che originally relayed that

1 story but has since changed his statement to a statement
2 that alleged Terrell was the shooter. Then you, I.O.,
3 investigating officer, informed Megan that if she were to
4 lie she could be facing charges. So you told her at that
5 point, in order to get her to change her story, that she
6 would be charged with giving false information to a
7 police officer, correct?

8 A. I did.

9 Q. And up to now, your recollection has been that
10 she -- it was not very difficult to change her -- get her
11 to change her statement?

12 A. Right. As best I remember, yeah, as soon as I
13 told her that, she was pretty quick to come off the
14 story.

15 Q. Well, now, when you're investigating a case,
16 sometimes you can't find the facts that do fit -- well,
17 at some point, you start getting an idea about the case,
18 right?

19 A. Yes.

20 Q. And you don't -- you start looking for facts that
21 back up that idea you have of the case, right?

22 A. Yeah. You look at facts, I mean, again, whichever
23 way that you're being led, whichever way they're telling
24 you to go, and that is where you go.

25 Q. And you've never convinced yourself of the wrong

1 case theory before, correct? Is that what you're -- in
2 the past, you've had the wrong theory about a case,
3 right?

4 A. Have I been wrong before about investigations?
5 Yes.

6 Q. I wasn't asking you that. I was asking you,
7 you've been wrong about your theory of the case before,
8 right?

9 A. I thought you meant previous cases. About this
10 case? No, I don't think I'm wrong at all.

11 Q. Now, in one of the letters that y'all had admitted
12 yesterday, Terrell writes to Steven something to the
13 effect, Don't let Detective Osborne come over and scare
14 you up and get you to make a statement.

15 Do you remember that?

16 A. I heard that.

17 Q. Words to that effect? And he said words to the
18 effect of, Don't let him lie to you and tell you I made a
19 statement, right?

20 A. Right.

21 Q. And that is a technique that you and other
22 policemen use, occasionally, to lie to people to get
23 people to make a statement to get facts that fit your
24 theory of the case, right?

25 A. Well, that you can get statements, yeah. A lot of

1 times we'll use deception and trickery, pit one defendant
2 against another, sure, good cop, bad cop.

3 Q. That is a method that you use, correct?

4 A. Yes.

5 Q. There have been times that you fabricated SLED
6 documents and told people that SLED had discovered some
7 evidence on them when, in fact, that was a complete lie,
8 right?

9 A. I have done that, yes.

10 Q. And you did that in order to get facts from a
11 suspect to fit your theory of the case, right?

12 A. No. Well, sort of. I did that to get a
13 confession from an individual.

14 Q. One of the things that happens when you convince
15 yourself of the wrong theory of the case is you don't
16 look for evidence that points away from your theory of
17 the case, right?

18 A. That can happen, yes.

19 Q. Now, you became aware in the course of this
20 investigation that Storme Carr was around Apartment Five
21 the night of the shooting, right?

22 A. Yes.

23 Q. And y'all had or you were aware as the chief
24 investigating officer that y'all had taken some
25 fingerprints off of Calvin Gibbs's car, correct?

1 A. That's correct.

2 Q. And those fingerprints -- there were about 19
3 fingerprints taken off the car, right?

4 A. Yes.

5 Q. Somewhere in that neighborhood. And you knew as
6 early as June of 2008 that none of those fingerprints
7 came -- the fingerprints on Calvin Gibbs's car came back
8 to Terrell Chandler, right?

9 A. That's correct.

10 Q. But you also knew and got the same report on June
11 the 16th of 2008 that there were a number of readable
12 fingerprints lifted from that car, right?

13 A. Yes.

14 Q. In other words, there was enough of a print for
15 the fingerprint analyst at Charleston Police Department
16 to find out who those prints belonged to.

17 A. That's correct.

18 Q. And you knew Storme Carr had been out there that
19 night, right?

20 A. Yes.

21 Q. And Storme Carr having something to do with the
22 shooting didn't fit your theory of the case, did it?

23 A. No, it does. I don't know when you're talking
24 about, but, no, it does, that Storme Carr is involved.

25 Q. Well, it does now. Y'all say Storme was up at the

1 car now, right?

2 A. Well, I mean, no -- well, you had said out there
3 had something to do with it, so I guess I would ask where
4 during the investigation are you asking me that I came to
5 that conclusion, but, nevertheless, yeah, there was a
6 certain point in which Storme, Steven, Terrell, and Che
7 were all being responsible for the murder.

8 Q. Well, in the beginning, you charged two people,
9 Terrell Chandler and Che Carr.

10 A. Yes.

11 Q. And you charged them in June of 2008?

12 A. That's right.

13 Q. And July of 2008 went by, August of 2008,
14 September of 2008, October, November, December of 2008
15 goes by, right?

16 A. Yes.

17 Q. And you don't arrest Storme Carr, right?

18 A. Right.

19 Q. And January, February, March, April, the summer of
20 2009 goes around and you don't arrest Storme Carr, do
21 you?

22 A. That's right.

23 Q. And September and October come and Storme Carr is
24 still out on the street, right?

25 A. Yes.

1 Q. So Storme Carr didn't fit your theory of the case
2 back in June, right?

3 A. No.

4 Q. Of 2008?

5 A. Well, I mean, that's right there during the time
6 frame. It's not that he didn't fit. Again, what happens
7 is this, I mean, when you're going to get an arrest
8 warrant for murder on somebody, you would like to know
9 it's going to be prosecuted. It's a pretty serious
10 charge. It's not fair to the family to charge somebody
11 that is not going to end up in court, so I felt good that
12 Terrell and Che would have their day in court. I wasn't
13 so sure with Storme and Steven, and that is why I
14 continued to meet with the solicitor's office, and I
15 didn't want to pull the trigger until they were on board
16 with the prosecutor's office.

17 Q. So you're saying it would have been nice to have
18 evidence against Storme?

19 A. No. We did have evidence, but I don't know if it
20 reached the level of the evidence we had against Che and
21 Terrell.

22 Q. You weren't looking for evidence against Storme?

23 A. No. We continued to work this case. Did the
24 fingerprints slip through? Yes, they did.

25 Q. So you knew back in June of 2008 that there were

1 at least four or five legible, readable fingerprints on
2 that car?

3 A. Yes.

4 Q. On Calvin Gibbs's car?

5 A. Yes.

6 Q. And you now knew Storme was out there?

7 A. Yes.

8 Q. And you knew you could get Storme Carr's
9 fingerprints, as you described in direct testimony, I
10 believe, simply by getting a search warrant and going and
11 getting his prints?

12 A. That's correct.

13 Q. Just like that?

14 A. Yes.

15 Q. And you didn't make that decision until sometime
16 after he was arrested, right?

17 A. Right.

18 Q. You just basically ignored that evidence.

19 A. I wouldn't say ignore. I would say lost track of.

20 Q. You realize that when you charge someone with
21 murder, it's pretty intimidating, isn't it?

22 A. Yes.

23 Q. And you realize that when you charge someone with
24 murder, oftentimes they change their stories, right?

25 A. Yes.

1 Q. And you arrested Steven Brown primarily to see if
2 the intimidation factor of being arrested would get him
3 to change his story, right?

4 A. No.

5 Q. Now, you had him arrested in November of 2009,
6 right?

7 A. That's correct.

8 Q. Eighteen months after the shooting.

9 A. Yes.

10 Q. And your purpose was simply to see if he would
11 change his story.

12 A. No. Again, could I charge Storme and Steven early
13 on? Yes, I could have. I did not want to throw up a
14 murder charge on two individuals and tell the family we
15 were prosecuting all four if it wasn't going to happen,
16 so I knew that Che and Terrell would end up in court on
17 the evidence that we had. I wasn't sure about Storme or
18 Steven.

19 I continued to work the case, continued to meet
20 with the solicitor's office. When they said yes, they
21 are prosecuting Storme and Steven, that's when we went
22 ahead and charged.

23 Q. What new piece of evidence did you find in, say,
24 October of 2009 that led you to arrest them in November?

25 A. There was no smoking gun. This was a continual

1 investigation. I met with -- well, we had a new
2 prosecutor that was assigned the case. Nathan Williams
3 was first assigned. He went to the federal prosecutors.
4 Then it went to Jennifer Shealy. I've had at least two
5 or three other murder trials that have been in between
6 there, so there is no smoking gun. There was no new
7 piece of evidence that came about.

8 But what did happen was after meeting with her on
9 numerous occasions and Mr. Neely that the decision was
10 made that yes, we are going to go ahead and prosecute,
11 and when that decision was made, that is when we went
12 ahead and charged.

13 Q. So you didn't find any new evidence against Steven
14 Brown in September, August of 2009, July, June of 2009,
15 right?

16 A. That's correct.

17 Q. Didn't -- you didn't find any new evidence against
18 him in June or May or April or March or February or
19 January of 2009?

20 A. That's correct.

21 Q. Right? So you had enough evidence, you thought,
22 to arrest him for murder, but you didn't. Is that what
23 you're saying today?

24 A. Yes, absolutely.

25 Q. You didn't need any authority from anybody to

1 arrest Che and Terrell, did you?

2 A. No.

3 Q. I didn't mean to interrupt up.

4 A. No, I had the authority to arrest.

5 Q. And you had the authority to arrest Steven Brown
6 and Storme Carr, didn't you?

7 A. Yes.

8 Q. Your theory of the case has changed now, right?

9 A. You keep talking about the changing of theory. It
10 all depends on when you're talking about. It's working
11 an investigation. It's a fluid thing. You know, it
12 changes, you know, so at what point are you asking?

13 Q. Well, you charged Che Carr as the shooter, right?

14 A. Yes.

15 Q. You swore under oath, you had evidence he was the
16 shooter. That is not your theory of the case now, is it?

17 A. No. I think Terrell is the shooter.

18 Q. And you at some point decided that Storme Carr was
19 up at the car rather than Che Carr, right?

20 A. No, I wouldn't say that. If you're asking me what
21 I think, I think they were both at the car. I think it's
22 very likely that Storme and Che went up to the car at
23 differing times and so did Terrell.

24 Q. And you know that somebody out there didn't do
25 anything, right?

1 A. No.

2 Q. Somebody who was out there didn't do anything.

3 A. No, I think all four of them are guilty of --

4 MS. SHEALY: Your Honor, I just would like
5 for him to be able to fully answer.

6 THE COURT: Let him finish his answer.

7 THE WITNESS: I think they're all
8 responsible, all four of them. I think they're all
9 responsible for Calvin Gibbs's murder.

10 BY MR. SLADE:

11 Q. And you heard your witness Steven Brown testifying
12 yesterday, right?

13 A. Yes.

14 Q. And he testifies he was simply standing in that
15 breezeway, and when he heard that shot, he ran out the
16 other side of the breezeway, up the north end of that
17 building, correct?

18 A. Yes.

19 Q. Had nothing to do with it, right?

20 A. No. I think Steven is just as involved as the
21 rest of them. Maybe not the shooter, but he's out there.

22 Q. And he's going to get a deal, right?

23 A. No, that's not up to me. I would think that -- I
24 don't know what is going to happen to Steven. I don't
25 know.

1 MR. SLADE: Beg the indulgence of the Court
2 for a minute.

3 BY MR. SLADE:

4 Q. In your direct testimony with Ms. Shealy, you said
5 something about Ms. Anderson changing her statement, do
6 you remember that, with regard to who was holding the
7 gun?

8 A. Yes.

9 Q. Do you recall that?

10 A. Yes.

11 Q. I don't have that statement. When did she make
12 that change?

13 A. I would have to look -- change is maybe not the
14 best word to use. I think what I did was I asked
15 Cherelle -- when it appeared as though Terrell is the one
16 with the rifle, I asked her point blank, Are you positive
17 that Che had the gun?

18 And then her answer was, No, I can't be positive.

19 Q. Where is it in your notes?

20 A. This could have been during an interview with the
21 solicitor's office. In fact, I'm fairly certain it was
22 in a interview with the solicitor's office.

23 Q. One of the recent?

24 A. Well, recent. We have been trying to get ready
25 for this trial for several months.

1 Q. So her statement changed to fit your theory of the
2 case?

3 A. I asked if it was possible, and she said it is
4 possible.

5 Q. My question to you is, it appeared to you it
6 changed to fit your theory of the case.

7 A. Well, again, I guess the way I would answer that
8 is to say that it would almost be neglectful for me to at
9 least ask her that, is she positive about that. I'm sure
10 Che's attorney would want me asking that question.

11 Q. She told you what had happened four or five times
12 up to that point, right?

13 A. Yes.

14 Q. And you asked and asked you until you got the
15 answer you want.

16 A. No. When you get more evidence, you ask more
17 detailed questions.

18 MR. SLADE: Beg the indulgence of the Court
19 one more time, Your Honor, just quickly.

20 BY MR. SLADE:

21 Q. Now, at some point in your investigation of this
22 case, Detective Osborne, did you receive an envelope, a
23 letter, from Terrell?

24 A. Yes.

25 Q. And --

1 A. Well, not specifically, but I did get the letter,
2 yes.

3 Q. Now, you are familiar with the county jail policy
4 of recording inmate calls?

5 A. Yes.

6 Q. And Terrell's calls are constantly recorded,
7 right?

8 A. All inmates, yes.

9 Q. And you didn't find anything in those phone calls
10 that were incriminating, right?

11 A. I never conducted a search warrant to get his
12 phone recordings.

13 Q. Y'all don't have to get a search warrant, do you?

14 A. We do, yes.

15 Q. And there are thousands of them, right, or
16 hundreds and hundreds of them?

17 A. Hundreds of Terrell's phone calls?

18 Q. Right.

19 A. I have no idea. I would have to get a search
20 warrant to get the phone calls.

21 MR. SLADE: Could I have Court's Exhibit No.
22 3?

23 BY MR. SLADE:

24 Q. I'm going to hand you a note in an envelope
25 labelled Court's Exhibit No. 3 and just ask you if that's

1 the letter from Terrell that you were given.

2 A. This is a letter that I received, yes.

3 Q. All right. And I don't think I need to mark it
4 any further, Your Honor.

5 THE COURT: Not at this point, no.

6 MR. SLADE: Thank you. I don't have
7 anything.

8 THE COURT: Redirect?

9 MS. SHEALY: Yes. May we approach for just a
10 second?

11 (Discussion held at sidebar.)

12 THE COURT: All right, folks. What we're
13 going to do is take a little rest room break right now,
14 and then we will also discuss how long we'll be this
15 evening and I'll get some idea of that, and we'll discuss
16 that with you and have you back in about ten minutes.

17 So don't begin deliberations or discussions.

18 (Recess taken.)

19 THE COURT: All right. Bring the jury in.

20 (In open court, jury present.)

21 THE COURT: Okay, folks. We're going to
22 resume now with redirect of this witness. Then we've got
23 one more witness I want to try to get in tonight because
24 he goes on vacation tomorrow, so we want to get him in,
25 and that's why I sent in word.

1 I think we'll be done by 6:00 tonight, and
2 before we break, I'll update you where we're at. We're
3 going to have a long day tomorrow, because I really want
4 to work to get this thing finished, and we'll talk about
5 that when we finish up before you go home. All right?
6 Go ahead.

7 MS. SHEALY: Thank you, Your Honor. Okay.

8 REDIRECT EXAMINATION

9 BY MS. SHEALY:

10 Q. Detective Osborne, I want to try to make this
11 quick, okay?

12 A. All right.

13 Q. When you're doing an investigation, is your goal
14 to get a theory and stick with it, or what is your goal?

15 A. The goal is to just go where the evidence leads
16 you.

17 Q. And what are you seeking to accomplish?

18 A. To find out what happened.

19 Q. Now, do you have some type of relationship with
20 Che Carr where you're trying to help him?

21 A. No.

22 Q. And when Mr. Slade was asking you about Cherelle
23 saying that the people were running up, were you
24 anticipating that Terrell Chandler and Che Carr were
25 slowly approaching the vehicle?

1 A. No.

2 Q. Throughout Ms. Anderson's statements to you, is it
3 clear she continually describes either Che Carr or Storme
4 Carr in her descriptions of someone short, someone young?

5 A. Yes, and taller, yes.

6 MR. SLADE: My objection is to leading.

7 MS. SHEALY: I'll try to correct that.

8 THE COURT: All right. Please don't try to
9 ask a question that suggests an answer.

10 BY MS. SHEALY:

11 Q. Detective Osborne, would you please tell the jury
12 whether when y'all interviewed Tamara Dixon, did she tell
13 y'all she had gotten that rifle from Che or did she tell
14 you she had gotten it from Terrell, or who did she tell
15 you she got it from?

16 A. She said she got the rifle from Terrell.

17 Q. When Mr. Slade was asking you about just in
18 general police techniques and how you may make up
19 something in an effort to get a confession --

20 A. Yes.

21 Q. -- could you tell the jury whether you're
22 interested in getting a false confession?

23 A. Absolutely not.

24 Q. Tell the jury what a false confession is.

25 A. Well, a false confession would be an individual

1 might come in and say that he committed a crime that he
2 didn't commit.

3 Q. And Mr. Slade asked you about swearing on
4 affidavits as to charges that murder would be appropriate
5 against these defendants.

6 A. Yes.

7 Q. Tell us, if you would, please, who all you swore
8 out an affidavit on.

9 A. I swore out an affidavit on Terrell Chandler and
10 Che Carr and under the direct indictment where I
11 testified in front of the grand jury I was also under
12 oath.

13 Q. Now, they asked you some questions about a
14 preliminary hearing and your leaving out the low fade
15 language.

16 A. Yes.

17 Q. Cherelle Anderson, how does she describe the
18 second person's hair? How did she describe it?

19 A. Well, it was low fade. This being the taller
20 individual, it was low fade, and at a certain point she
21 says braids or low fade. She says both.

22 Q. And when you say she says both, are you talking
23 about in one of her later statements?

24 A. That's correct, later, but before the preliminary
25 hearing.

1 Q. Did you manufacture that to help your theory of
2 the case?

3 A. No.

4 Q. The first statement that Ms. Anderson gives is on
5 May 31st, '08 to Detective Antonio?

6 A. Yes.

7 Q. Just quickly, if you would, tell the jury how she
8 describes the second individual.

9 A. Black male, black shirt, blue jeans, had a fade
10 hairstyle.

11 Q. Okay. What about in her oral statement to you
12 later that day, on 5/31?

13 A. Black male, six foot, dark complexion, late teens,
14 thin build, low cut hair.

15 Q. And then later, even later that day, around 6:32
16 that evening, on May 31st, how does she describe the
17 second person?

18 A. Black T-shirt, blue jeans, six foot two, low fade
19 hair.

20 Q. And then the final time, that being June 10th, how
21 does she describe the second person that is out there
22 that evening?

23 A. Muscular, six foot something, braided hair, back
24 or low cut, brown complexion.

25 Q. Now, from your multiple conversations with

1 Ms. Anderson, can you tell the jury -- can you tell the
2 jury if you got any idea as to how long of a look she got
3 at the second person?

4 A. No. I wouldn't -- I know it was brief, I know
5 that. Without getting into the exact seconds, the way
6 she describes it to me, this was happening pretty quick.

7 Q. And showing you State's Exhibit -- sorry, I picked
8 up the wrong one -- 106, that being Storme Carr, do you
9 know what that type of hairstyle is called?

10 A. I would say that is probably dreadlocks. That is
11 how I would describe it.

12 Q. And would you agree there is hair out to the
13 sides?

14 A. Yes.

15 Q. By way of comparison, looking at the mugshot of
16 Terrell Chandler from the head up, does he look like he
17 has much hair on the sides?

18 A. No, he doesn't.

19 Q. You said something to us about the haircut wasn't
20 the most important thing to you. Could you explain what
21 you meant by that.

22 A. Yes. After doing police work for a while, IDs,
23 descriptions, I mean, you just -- you got to take that
24 with a grain of salt. That is why I don't get into
25 specific weights. I don't get into specific heights,

1 although you have to ask, but basically what we're
2 looking for is general, especially when someone is having
3 a gun pointed at them, robbery, were they big? Were they
4 small? Were they white? Were they black? You try not
5 to get really that caught up, although it is important,
6 I'm not saying it's not, but you don't want to get too
7 caught up in that.

8 Q. Okay. And regarding the fingerprints and Storme
9 Carr and Steven Brown, would you explain to us what was
10 tricky about the fingerprints.

11 A. Well, it was tricky because what happens when you
12 arrest someone for the arrest warrant, they're put into
13 our system. They're automatically fingerprinted at the
14 county with the arrest warrant for the murder or whatever
15 charges, they're fingerprinted.

16 Well, then those names are attached to our
17 database to that case file, or that case number. Then
18 our technicians, our fingerprint people, they see the
19 name attached to the case number. They will compare the
20 fingerprints.

21 In this case, because there was no arrest warrant
22 and there was a direct indictment, my mistake, I felt
23 that that connection, that merger, was going to occur.
24 It did not occur, and that was brought to my attention by
25 Ms. Shealy when she says, Are you positive that Storme

1 Carr and Steven Brown's fingerprints were compared to the
2 case?

3 My initial response was, Yes, it should have
4 been.

5 And she says, Well, I'm not so sure, can you
6 check?

7 And when I started checking on it, I found
8 out, in fact, it was not. That's when I went back and
9 made that happen.

10 Q. Okay. Was Storme Carr arrested prior to his
11 fingerprints being sent?

12 A. His fingerprints were sent after he was arrested.

13 Q. And the various items of evidence, when Mr. Slade
14 is asking you, he keeps wanting to use the term theory.
15 When evidence is collected and it is sent to SLED, do you
16 sometimes find out new things about a case?

17 A. Yes.

18 Q. And is that process a quick one or not a quick
19 one?

20 A. No. SLED is -- SLED is slow. You submit
21 something through -- especially DNA. It could be six
22 months; it could be a year. When you're coming up for
23 trial, though, your office's investigators will then call
24 SLED and make sure that everything has been done, and
25 once they say hey, we've got a court date set, we need

1 this done, then it starts to get expedited. Generally
2 speaking, it does take quite a while.

3 MS. SHEALY: I have no further questions.
4 Thank you.

5 THE COURT: Recross?

6 RECROSS-EXAMINATION

7 BY MR. SLADE:

8 Q. In your redirect, Ms. Shealy was asking you about
9 something tricky about getting Storme's fingerprints. If
10 you had wanted to connect Storme Carr to this shooting,
11 you could have gotten his fingerprints in July of 2008,
12 couldn't you?

13 A. I could have gotten them sooner, yes.

14 Q. My question was, could you have gotten them in
15 July of 2008?

16 A. Right, yes.

17 Q. You could have gotten them any time in 2008,
18 right?

19 A. Yes.

20 Q. You could have gotten them in January of 2009,
21 February, March, and on and on?

22 A. Yes.

23 Q. And you didn't get them because you didn't try to
24 get them, right?

25 A. I did not get them, that's right.

1 Q. Okay. Well, my question was, you didn't attempt
2 to get them?

3 A. That's right.

4 Q. And had you wanted to connect Storme Carr with the
5 shooting, it would have been in the forefront of your
6 mind, getting those fingerprints, right?

7 A. I wouldn't characterize it that way. What happens
8 is when you work a murder investigation, in the very
9 beginning, you're assisted by a lot of detectives.
10 Everybody is helping you. You give out assignments;
11 people do this, people do that.

12 As evidence starts to -- more prioritize evidence,
13 you'll lead that way and start going that way with it.
14 As the weeks go by, days, weeks, months go by, less
15 detectives are involved. It's on me. At a certain
16 point, it's just me.

17 Do things happen early on, that, hey, we had
18 fingerprints the night of the incident. We didn't have
19 any suspects, and when we get suspects, then we compare.
20 Should I have, in my mind, said, Hey, look, we have
21 fingerprints, I should have came back to Storme and
22 Steven much earlier? Yes, I should, no question about
23 that. Luckily, the solicitor's office did see that
24 comparison was never done and we were able to complete
25 that.

1 Q. All these months went by that Storme wasn't
2 arrested, you were really, really wanting to arrest him,
3 right?

4 A. I don't know that I would say really, really want.
5 I would say I felt like I could arrest him, but I wanted
6 to make sure if I could arrest him -- again, this is out
7 of fairness to Mr. Gibbs's family, that I want to make
8 sure I'm just not throwing a charge on somebody that is
9 going to go away.

10 Q. You have a fingerprint of him on the car. That
11 would help, wouldn't it?

12 A. That would have definitely helped.

13 Q. But you didn't go looking for it?

14 A. I didn't get it.

15 MR. SLADE: No further questions.

16 MS. SHEALY: I have nothing further.

17 THE COURT: You can step down. Call your
18 next witness.

19 MS. SHEALY: Steve Hood.

20 STEVEN C. HOOD,
21 having been first duly sworn,
22 was examined and testified as follows:

23 BY MS. SHEALY:

24 Q. Sergeant Hood, where are you currently employed?

25 A. I'm with the Charleston police department.

1 Q. And in what capacity?

2 A. As a crime scene investigator.

3 Q. And how long have you been a crime scene
4 investigator?

5 A. Out of thirty-four years with the department,
6 about 27.

7 Q. In connection with this case, were you involved in
8 two searches?

9 A. Yes, I was.

10 Q. Okay. And if you'll tell the jury, please, what
11 two searches you were involved in.

12 A. Okay. On this particular -- regarding this
13 particular case, the first search was of an apartment at
14 930 Battery, Apartment Number Five. This is where the
15 perpetrators are supposed to be located, as well as
16 possible evidence related to the incident.

17 The second location was a vehicle at North
18 Woodmere. There was a gray Chrysler Concord, I had
19 obtained additional evidence regarding this case.

20 Q. Let's focus on the search at 930 Battery Avenue,
21 if we could. Could you tell the jury, first, about what
22 time of day it was that you conducted the search.

23 A. Well, in my report, we all mustered at 4:00 for a
24 briefing to figure out how this was going to go down, and
25 it was shortly after 6:00 everybody had gotten on the

1 scene and the special tactics and narcotics officers went
2 in and did the search, cleared the house. I remained
3 outside until it was clear to do my thing.

4 Q. When you say they did the search of the house, are
5 you talking about the individuals or the items of
6 evidence?

7 A. They went in to take custody of the individuals,
8 get them out, and they, the special team of narcotics,
9 went through the rooms, looking for whatever they were
10 told to look for, or -- and then after it was cleared and
11 safe, they sent for crime scene to come on in, and that's
12 when I went in and did what I was supposed to do.

13 Q. Okay. And the diagram that is behind you, was
14 that prepared by you?

15 A. Yes, it was.

16 Q. Okay. And is that a pretty rough diagram?

17 A. Yeah. That is a very rough diagram. It just
18 shows the floor plan, the layout, of the apartment at 390
19 Battery.

20 Q. Tell us what did you as you went through the
21 apartment in an effort to collect evidence.

22 A. When I first got there, there was some narcotics
23 officers just finishing up. Detective Burkhardt one of
24 our central detectives was on location as well. They
25 gave me an update of what rooms were searched, what was

1 potential evidence, and when I went in, I initially
2 started taking my photographs and then going from room to
3 room. I think I went from the living room first, and
4 then from the living room went into the kitchen, taking
5 pictures of everything before I do anything first, and
6 then I just went down the hallway to room number one and
7 room number two.

8 Q. Okay. Well, if we can walk through what you
9 collected, but before doing so, let me ask you, part of
10 your role, you indicated, was to take photographs?

11 A. To take photographs, yes, ma'am.

12 Q. And in any fashion do you protect your hands while
13 you're going through the house?

14 A. Whenever I go on to a crime scene, whether it's a
15 burglary or whatever, I always put on a pair of rubber
16 gloves.

17 Q. Okay. Did you know where the defendants were when
18 the SWAT team went in?

19 A. Not until I saw them coming out of the house with
20 people and putting them in vehicles.

21 Q. Okay. Now, in room number one that you've got
22 marked up there --

23 A. Yes, ma'am.

24 Q. -- I can show you -- let's see. First of all,
25 let's look at 25 real quick. I'm going to lower the

1 light a little bit to see if you can see it a little
2 better. Can you tell us what is depicted on that
3 photograph.

4 A. As I'm taking this particular photograph, I'm
5 standing in the kitchen, looking down the hallway, and
6 the door at the end of the hall would be what was
7 referred to in the diagram as room number one.

8 Q. Showing you photo number 27, could you tell us
9 what is depicted in that photograph.

10 A. Could we reduce that a little bit? That is fine.
11 I can see. This is the interior of room number one.

12 Q. Of room number one, the one we were looking down
13 the hall at?

14 A. Yes.

15 Q. Photo 28, please. Could you tell us what is
16 depicted in that photograph.

17 A. That is the identification I found in -- that was
18 found in room number one, and that belonged to Mr. Troy
19 White.

20 Q. Okay. And photo 29, is that the area where you
21 found that ID?

22 A. That is where I found the ID badge, yes, ma'am.

23 Q. Number 30, the shirt is that is on the bed, what
24 can you tell us about that shirt?

25 A. Well, the shirt on bed is a blue shirt, and it's

1 got a city of Charleston emblem on the -- I think it's
2 the left pocket, and there is also a name on the shirt.

3 Q. And what name is on the shirt?

4 A. White.

5 Q. White? Then showing you State's Exhibit 21, can
6 you tell us which room this was.

7 A. This is, again, referring to the diagram that we
8 showed earlier. This is room number two, which would be
9 to left of room number one, left-hand side of the screen.
10 That is designated as room number two.

11 Q. Are you aware of who was in there when the
12 officers got there?

13 A. As far as all the persons?

14 Q. Uh-huh.

15 A. No, I was not.

16 Q. Okay. Was there anything in this room that helped
17 you identify whose room this was?

18 A. On the dresser to the right there was a check
19 stub.

20 Q. Showing you State's 88 first, is that the check
21 stub you're referring to?

22 A. Yes.

23 Q. And State's Exhibit 89?

24 A. That says Terrell Q. Chandler.

25 Q. Okay. Now, going back out to the front of the

1 apartment, if we could for a second, did you come in the
2 front door, do you recall?

3 A. I came in the front door, yes, ma'am, the same
4 door that was exited by the special team in narcotics.

5 Q. Okay. Showing you State's Exhibit 78, that
6 placard that says number one, could you explain what the
7 use of that placard is.

8 A. Whenever a placard is used, it's just to give a
9 number to the item of evidence that we found at the time,
10 and this one happens to be on the front stoop of
11 apartment number five, and that is a camouflage colored
12 cell phone.

13 Q. I'm going to show you an item and ask if you can
14 identify this.

15 A. Yes. This is the cell phone that is in the
16 picture. It was collected by me. It has my initials and
17 the case number.

18 Q. Okay. And what type of phone is that?

19 A. It looks like a Motorola. I'm not quite sure of
20 the model.

21 Q. That's okay. Could you just hold it up a little
22 bit and explain what you said about camouflage? I'm not
23 sure they could see it.

24 A. Camouflage is just a color. When you see a hunter
25 that goes out in the woods, they're camouflaged with the

1 environment so the animals don't see them before they see
2 them. That is the color of this. I call it camouflage
3 because that is what this is.

4 Q. And the tin you keep it in, what is the purpose of
5 keeping it in that tin?

6 A. Well, supposedly, our digital evidence people said
7 that if we keep it here, it will keep stray signals from
8 coming into the can, so I just do what the policy
9 dictates.

10 Q. What they tell you to do?

11 A. Yes, ma'am.

12 MS. SHEALY: Okay. Your Honor, we would
13 offer this at this time, without objection, I believe.

14 MR. SLADE: No objection, Your Honor.

15 THE COURT: Admitted.

16 MS. SHEALY: That's State's Exhibit 119.

17 (Cell phone marked for identification and
18 admitted into evidence as State's Exhibit No. 119.)

19 BY MS. SHEALY:

20 Q. And focussing your attention back in the bedroom
21 that y'all had designated as room two, would you tell us
22 whether you found anything in the dresser in that room,
23 other than the check stub.

24 A. On the dresser, there was found some narcotics
25 paraphernalia, and in a little area to the right of the

1 cabinet, I call it the shelf divider, there was one live
2 7.62 by 39 assault rifle round live. I think it was
3 Wolf.

4 Q. And showing you State's Exhibit 81, could you show
5 the jury where on that you found it.

6 A. Here is where I'm calling the shelf divider right
7 here. It was down behind this area right here, closer to
8 the ground here. This is the top of the dresser, and
9 this is the back board, and there is a little decorative
10 piece of wood here, and it was down behind that on the
11 top of the dresser.

12 Q. Okay. And showing you 82, it may depict that area
13 a little more closely. Can you see it in that picture?
14 That picture may be too dark. If you don't see it,
15 that's okay.

16 A. It was right around this area right here, and I'm
17 using the deodorant as a reference.

18 Q. Okay. I'm going to show you an item and ask you
19 to identify that.

20 A. This is the live round in the packaging. Since
21 the evidence is so small, we put a mark on it.

22 Q. And that is what was found in the dresser in
23 bedroom number two?

24 A. Yes, ma'am.

25 MS. SHEALY: If I could offer this at this

1 time with no objection.

2 MR. SLADE: No objection.

3 THE COURT: Admitted.

4 (Round marked for identification and admitted
5 into evidence as State's Exhibit No. 120.)

6 BY MS. SHEALY:

7 Q. This is State's Exhibit 120 you just identified.

8 A. Yes, the bullet you just showed me?

9 Q. Yes.

10 A. Yes.

11 Q. And when you say it's a live round, what do you
12 mean?

13 A. That means that -- and live round is the
14 cartridge, which is the bottom that holds the projectile,
15 which is the bullet, and then the shell casing, it's got
16 the powder and the primer and the bullet all in one.
17 It's what we call a live round, as opposed to an expended
18 round. The bullet is going to be missing and the casing
19 empty.

20 Q. Okay. Was there an examination or a search of the
21 closet area in that same bedroom?

22 A. When I got in, the narcotics officer said they
23 went through everything, and there was a weapon they said
24 they found in the closet.

25 Q. Okay. And did you, in fact, photograph that

1 weapon?

2 A. Yes, I did. It should be on the floor. At the
3 time I photographed it, it should have been on the floor.

4 Q. Okay. Showing you State's Exhibit 75, is that the
5 weapon that you are describing?

6 A. Yeah. That's the weapon I'm referring to, yes,
7 ma'am.

8 Q. Okay. And showing you 76 also, is that a close-up
9 shot that is just a closer up shot of that same one?

10 A. Yes.

11 Q. I'm going to show you State's Exhibit 99 and ask
12 you if this is the weapon that you recovered that day,
13 and I have an additional piece, if that's what you're
14 looking for. I'll ask you to identify that.

15 A. This is the clip that goes into the butt. All the
16 bullets are here, and they're automatically fed into
17 here. It's a semi-automatic weapon.

18 Q. If you could show us how the clip -- can you fit
19 that in with the safety valve? And if not, don't worry
20 about it.

21 A. The clip would fit in here and go straight up.

22 Q. And when you found the weapon, was it --

23 A. Yes. As you can see, see this part of the clip?
24 It was still in the weapon. So the clip was actually in
25 the weapon in its proper position.

1 Q. Okay.

2 MS. SHEALY: I'm just going to offer the
3 clip, Your Honor, because it's not in evidence at this
4 point.

5 MR. SLADE: No objection from us.

6 THE COURT: Admitted.

7 (Clip marked for identification and admitted
8 into evidence as State's Exhibit No. 121.)

9 BY MS. SHEALY:

10 Q. When you found the clip, was it full or did it
11 have any bullets in it?

12 A. It had one in the chamber and the chamber at the
13 top of the magazine I was showing the Court, at the top
14 of the magazine is -- it feeds the bullets into the
15 chamber. There was one in the chamber, and there were
16 eight live rounds still left in the clip, so a total of
17 nine.

18 Q. I'll ask you whether you can identify this.

19 A. Yeah, this is -- this is the one in the chamber.

20 Q. And what type of ammunition is that?

21 A. The caliber is 380 because that was the caliber of
22 the weapon, and it's just a diameter of the bullet.
23 That's how they determine caliber as opposed to a 50,
24 which is a big old piece of armament.

25 Q. And is that the bullet that was found in the

1 chamber?

2 A. Yes. On the outside of the box, I had written
3 found in the chamber, and it's a hard nosed -- just a
4 hard nosed piece of ammunition, copper jacketing.

5 Q. Very good. Thank you.

6 MS. SHEALY: Your Honor, we would offer this
7 at this time without objection.

8 MR. SLADE: No objection from us.

9 THE COURT: Admitted.

10 (Round from chamber marked for identification
11 and admitted into evidence as State's Exhibit No. 122.)

12 MS. SHEALY: Your Honor, that was marked as
13 State's Exhibit 122.

14 BY MS. SHEALY:

15 Q. And showing you 122, that is the one that was
16 found in the chamber then.

17 A. The one that was in the box you just showed me is
18 the one in the chamber, correct, and that is a live round
19 as well.

20 Q. A live round as well. Okay. Did you find any
21 clothing of any type in that room?

22 A. There was a pair of blue jeans that was pointed
23 out to me. They were on the bed, a pair of blue jeans
24 with some colored lines on the legs.

25 Q. Okay. Would you like a pair of gloves?

1 A. If you could, please, yes, ma'am.

2 Q. I'm going to show you this item, and you can tell
3 us whether or not you recognize it.

4 A. Yes. These are the blue jeans I was referring to,
5 and in my report I was referring to these fabric painted
6 blue and white lines.

7 Q. Okay. And do you remember where in that room you
8 found those?

9 A. I had retrieved them from the bed.

10 Q. From the bed?

11 A. Yes, ma'am.

12 Q. Okay.

13 MS. SHEALY: Your Honor, we would offer those
14 at this time.

15 THE COURT: Any objection?

16 MR. SLADE: No.

17 THE COURT: Admitted.

18 (Blue jeans marked for identification and
19 admitted into evidence as State's Exhibit No. 124.)

20 BY MS. SHEALY:

21 Q. Okay. And one other item. You indicated
22 narcotics and SWAT went in initially; is that correct?

23 A. That's correct.

24 Q. And are you familiar with the marijuana that they
25 found in bedroom number two?

1 A. I didn't collect it, but I do recall them saying
2 along with the paraphernalia --

3 Q. Okay.

4 A. -- they found some green material.

5 MS. SHEALY: We would offer this.

6 MR. SLADE: No objection, Your Honor.

7 THE COURT: It's admitted.

8 (Marijuana marked for identification and
9 admitted into evidence as State's Exhibit No. 125.)

10 BY MS. SHEALY:

11 Q. That's State's 125?

12 A. Miss Shealy?

13 Q. Yes?

14 A. I was just looking at my report, just to refresh
15 my memory, and I did make a notation in the last
16 paragraph, last couple sentences, narcotics, they took
17 their own evidence. Anything narcotic related, I had
18 them take, and there were small bags with green plant
19 materials, electronic scales, several small baggies noted
20 on the dresser.

21 Q. Okay. And that was on -- in the same bedroom,
22 bedroom two?

23 A. Bedroom number two.

24 Q. Found on dresser?

25 A. Yes.

1 Q. And if you could tell us whether that is
2 identified as what was found on that dresser.

3 A. This is the scale that should be in one of the
4 pictures.

5 MS. SHEALY: Your Honor, I would offer this
6 at this time, scale.

7 MR. SLADE: No objection.

8 THE COURT: Admitted.

9 MS. SHEALY: State's 126.

10 (Scales marked for identification and
11 admitted into evidence as State's Exhibit No. 126.)

12 BY MS. SHEALY:

13 Q. Could you just hold this up for the jury so they
14 can see? Okay. And what are scales like that commonly
15 used for?

16 A. Well, when you find a scale like this -- well, in
17 this particular -- it's for weighing material, in this
18 case, apparently narcotic material.

19 MS. SHEALY: Beg the Court's indulgence just
20 a second.

21 BY MS. SHEALY:

22 Q. Taking you back to the closet area, we're asking
23 if you can identify this.

24 A. Yes. This is the High Point gun case that I
25 referred to in my report. It has my initials and the

1 case number on it.

2 Q. Okay. And where was it located?

3 A. I believe, when I saw it, it was to the left of
4 the closet. It was higher up on the clothes hamper or
5 pile of clothes or something like that, but it was next
6 to the closet.

7 MS. SHEALY: Your Honor, we would offer the
8 gun box at this time.

9 MR. SLADE: No objection.

10 THE COURT: Admitted.

11 MS. SHEALY: State's Exhibit 127.

12 (Gun case marked for identification and
13 admitted into evidence as State's Exhibit No. 127.)

14 BY MS. SHEALY:

15 Q. Okay. Now, you've told us that you were also --
16 let me ask you this. First of all, when you find weapons
17 and you find ammunition, frequently where are those items
18 then sent?

19 A. Once we take them in, I will have them sent to
20 latent recovery to see if they can recover any latent
21 prints from them. Before I do that, if there is any
22 DNA request, I'll go ahead and do the swabbing of the
23 weapons before I send them to latent recovery. And then
24 after they're finished with it, once the request is made
25 from the investigating officer to protect it, they will

1 send them up to SLED for a ballistics comparison.

2 Q. After you receive these items, will you tell the
3 jury where you store them.

4 A. At that time -- we do things a little bit
5 different now since we have new court management system.
6 At that time, we bring the evidence back to my office, or
7 to all the crime scene officers' offices. In the back
8 there is a locker area. Once I am finished tagging the
9 evidence and marking it for whatever purpose it's going
10 to be used for, whether it goes to the lab or stays in
11 evidence until the trial, it will be locked up in the
12 secure locked area where only myself has access to it.
13 It's in a locked, sealed cabinet at all times.

14 Q. Okay. Now, you told us you were involved in the
15 search for the vehicle; is that correct?

16 A. Yes. At 8:52, I was called over to 1625 North
17 Woodmere.

18 Q. It was on the same day --

19 A. The same day, June 2.

20 Q. Showing you State's 33, could you tell the jury
21 whether or not that is the vehicle you were going to
22 search.

23 A. Yes. That was the vehicle. That is that gray
24 Chrysler Concord.

25 Q. And when was this photograph taken?

1 A. It was taken on June 2nd, when I was called over
2 there. I couldn't tell you exact time of the picture,
3 but it was after arrival.

4 Q. And were you there pursuant to a search warrant?

5 A. I was called over there because they said they
6 had -- they found a weapon consistent with that used in
7 the incident prior.

8 Q. Okay. What did you do in relationship to
9 searching the vehicle?

10 A. Well, first of all, I photographed it. The
11 officer said he -- when he looked in the vehicle, I think
12 it was Sterling Dutton, for narcotics, he said on the
13 back seat there is a fold out arm rest that you could
14 have access to the back storage area. He said when he
15 pulled that down, he saw the weapon, the assault rifle,
16 or however he referred to it, and he said okay.

17 And I went around to the trunk. The trunk was
18 open, and then the trunk was full of sundry items, from
19 children's toys, tables, clothing, microwave.

20 Q. Showing you State's 34 --

21 A. Yes.

22 Q. -- and then also 35, that is the condition you
23 found the vehicle in?

24 A. When I got called there, yes. This stuff was all
25 in the same location where we were looking at it now.

1 Q. Showing you State's 36, could you tell us what
2 that depicts.

3 A. Yeah. This is the back seat of the Concord. And
4 I was referring to the little hatch area. In between the
5 two seats, there is a little access hatch to go into the
6 trunk, and that is what we're looking at here, and this
7 is the armrest covering for that hatch, which is here,
8 the seat behind the driver, seat behind the passenger.

9 Q. Okay. And showing you 37, or is that 37? Let's
10 see. Does that show you a closer up image?

11 A. This shows what Detective Dutton saw at the time,
12 and this is a rifle. That is what we saw with a folded
13 stock on it.

14 Q. Okay. Showing you 38, this is the trunk area?

15 A. Yes. After all the stuff was taken out of the
16 trunk, this area -- this thing here was a big speaker for
17 a stereo system, and this had to be moved out so we could
18 get behind it because right back in here, that is the
19 access to the hatch that we were looking at from the
20 seat. The weapon is laying right in here.

21 Q. Okay. Could you tell us what you found in that
22 trunk area.

23 A. Yeah. In that trunk area, I had found a box of
24 ammunition, 380.

25 Q. Okay. Hold on just a second. See if I can speed

1 that up a little bit for us. Okay. Let me ask you if
2 you can identify this.

3 A. Yeah. This is what I have marked as item 1-H, a
4 box of Magtech cartridges, 22 of them in the box. And
5 it's for a 380 automatic, the same caliber weapon you saw
6 in the picture.

7 Q. Can you take one out for us?

8 MS. SHEALY: Your Honor, I would offer these
9 at this time without objection.

10 THE COURT: Admitted.

11 THE WITNESS: My name and the case number is
12 in here. This is just an ammunition carrying tray, so
13 when they're in the box they don't rattle around, and
14 that is one of those for the 380.

15 MS. SHEALY: If it suits Your Honor, I'll
16 identify and then move several in at a time.

17 BY MS. SHEALY:

18 Q. If you could tell us whether or not you can
19 identify this, which we had previously marked State's
20 Exhibit 100.

21 A. Okay. That was also --

22 Q. In this bag originally?

23 A. Yes.

24 Q. Okay.

25 A. And then inside the clip, we found -- I found 25

1 of this 7.62 point 39 rifle round. They were in the
2 clip. This is a 7.62 round that I found in the trunk of
3 the vehicle.

4 Q. It was loose in the trunk?

5 A. It was loose in the trunk, yes, ma'am. And that
6 is item 4-H.

7 Q. When you say item 4-H, that is how it's referred
8 to?

9 A. That is how I referred to it on my tag here.

10 Q. Okay.

11 A. This is 5-H, which is one live round. This is
12 another one that was found loose in the trunk, and it's
13 the same caliber as what we were looking at before.

14 Q. Have you looked at this yet?

15 A. Yeah, 7.62 casing.

16 Q. Is this one of the ones you found in the back of
17 the vehicle or not?

18 A. No. This is spent. This is what I referred to as
19 a spent cartridge casing.

20 Q. Okay. Well, then, if you did not find that, we'll
21 just leave that alone.

22 A. Well, the original package.

23 Q. And if you could identify this, please.

24 A. This is what I referred to as 2-H, one box of wolf
25 7.62 live rounds. This is the box that was falling

1 apart, and my initials and markings are inside this box.
2 Inside this box, which was standing in the trunk of the
3 car near the weapon, were some more of these rounds here.
4 It was 15 in all, in this particular area.

5 This is what I refer to as 6-H, and it was in
6 the trunk of the Chrysler as well as an empty -- it's an
7 empty gun box. This is going to be MCM. It's the type
8 of case that one would put a weapon in. It's got foam
9 padding in here with the receipts that I referred to
10 earlier in my report.

11 Q. Okay. And that was found where?

12 A. This was found in the trunk of the Chrysler as
13 well.

14 Q. Okay. This has already been previously marked as
15 State's Exhibit 98, and I ask you where you found this.

16 A. This is the weapon -- well, the shoulder stock is
17 folded up. It's a little bit smaller.

18 Q. Could you tell us what you mean by that?

19 A. It was folded up this way.

20 Q. How about standing up for me so the jury can see.

21 A. This is folded up. This is where it's extended,
22 and when I found it, it was found in this position, which
23 made it easy to get into that little access hole.

24 Q. Okay. Now, let me double-check and make sure
25 everything is marked. Okay.

1 Now, when you were at the scene and you found the
2 rifle, could you tell us whether or not the rifle
3 appeared to be jammed in any fashion?

4 A. Well, I didn't realize -- first of all, when I
5 found the weapon after I took pictures of it, and I
6 removed it, the first thing I will do for safety reasons
7 is to look to try -- this is the bolt.

8 When the weapon is fired, usually the bolt will
9 come back automatically and a round will eject out. The
10 first thing I do is make sure the gun is safe so we don't
11 have any accidents so I attempted to open up the bolt to
12 see if there was anything in there. Excuse me.

13 Q. How about if you'll come stand down here. That
14 might make it a little bit easier for us to understand.

15 A. This is the weapon. The way we were looking at it
16 in this little access, this is how it's found. This part
17 is the shoulder stock, and it fits in your shoulder and
18 you fire it, or you fire it free hand or whatever.

19 When I found it, it was folded like this. When I
20 went to make sure that the weapon was clear or safe, so I
21 could transport it without incident, the first thing I
22 tried to do is I try to pull this. Again, I've got
23 gloves on, so I'm not putting anything of mine on here
24 that won't come off. I start to pull the slide back to
25 see if it was clear, because the last thing I wanted was

1 an accident to happen because we were careless. Well, I
2 found out that this would not come back. It was jammed.

3 Q. Okay. Now, was it easy to unjam?

4 A. Once -- I had to go back to the office and
5 actually work on it, and I couldn't tell you exactly, but
6 I was able to get the bolt open, and there was a fired
7 shell casing still in the chamber.

8 Q. What does that mean, for there to be a fired shell
9 casing in there?

10 A. On a weapon like this, this hole in the bottom,
11 this is where the clip goes in.

12 Q. Let me just grab the banana clip.

13 A. I was referring to the clip in the 380, the
14 handgun. That is where the bullets were kept. Then this
15 will be situated like this. This will hold multiple
16 rounds, 25, but this was not in the weapon. This was
17 totally separate, when I went to open the bolt up to make
18 sure it was safe.

19 And then when I found it, it looked like I could
20 see the head stamp of the shell casing, the bullets I
21 show you earlier. I saw the shell casing inside the
22 chamber, which the chamber is this section here, and the
23 bullet --

24 Q. If you'll step back a little bit so everybody in
25 the jury can see.

1 A. I'm sorry. The bullet will fit. Once it's back
2 in the gun, it will slide in the chamber. So when you
3 pull the trigger, the firing pin hits the primer. That
4 makes the charge in the shell, sends the bullet out, and
5 supposedly how this gun is made is after that shell is
6 fired, this comes back, kicks the other shell casing out,
7 and then the next bullet will slide up so you will have a
8 loaded firing round.

9 Q. What does that mean in relationship whether there
10 was a bullet fired but no shell casing, as you've
11 described it? In other words, when the shell casing is
12 jammed in the rifle, does that mean the bullet has fired
13 and the shell casing --

14 A. Until I got that shell out of there, I wasn't sure
15 if it was live or if it had been spent, which means it
16 had already been shot but until I got the action open and
17 the casing out, I didn't know if it was live, so I
18 treated it as though it was live when I found out it was
19 spent, just the cartridge and no bullet at the top.

20 Q. Okay. Tell me whether you can identify that.

21 A. This is the -- this is an empty shell casing. And
22 just to help you understand, help you remember, when I
23 talk about an empty shell casing, this is it right here.
24 This is just a shell.

25 The bullet, as you saw, was a piece of copper

1 stuck on it. That is the one that goes up. This is the
2 actual shell casing. This was actually in the chamber,
3 and for some reason, it had jammed in the firing process.

4 Q. Okay.

5 A. Making it incapable of firing another round that
6 was in the clip.

7 Q. Making it incapable of firing another round?
8 Okay.

9 MS. SHEALY: Your Honor, I would offer all of
10 these and have them marked.

11 MR. SLADE: No objection.

12 THE COURT: All admitted.

13 MS. SHEALY: Your Honor, we have marked
14 State's 129 as the gun box; 130 as the 380 ammunition
15 box; 131 as the jammed shell casing; 132 as the live 7.62
16 bullet; 133 as a live 7.62 bullet; and 134 as a 7.62 live
17 round. I'm sorry, and I left out one, 128, 25 rounds of
18 7.62 bullets.

19 (25 rounds of 7.62 bullets, gun box, 380
20 ammunition box, jammed shell casing, live 7.62 bullet,
21 7.62 live bullet, and 7.62 live round were for
22 identification and admitted into evidence as State's
23 Exhibit No. 128-134.)

24 BY MS. SHEALY:

25 Q. Okay. Now after you took everything down to your

1 office, you've told us that you did some swabbing.

2 A. Yes.

3 Q. Describe what that means.

4 A. When I say I swabbed, in this particular case, the
5 rifle, what I'm doing is I'm taking some distilled water
6 on a Q tip and I am rubbing it on -- in this case, it was
7 the forestock, which is the piece that you would hold
8 this way. The barrel is out here and this is the
9 forestock.

10 Q. How about show us with the weapon itself.

11 A. Yes.

12 Q. Just come on back down here.

13 A. The forestock that I refer to is this piece right
14 here. Firing the weapon, you hold it like this. For
15 those who know about shooters, you hold it like this, and
16 then you pull the trigger like this.

17 The forestock is this part of the weapon that
18 you will hold when you're firing it. In other words,
19 you're cradling this so you can steady the weapon, using
20 the opposite hand that you're not holding the forestock
21 to operate the trigger.

22 The forestock is what I swabbed using
23 distilled water and a Q tip, and I am swabbing this area
24 along with a trigger and the inside of the trigger guard.
25 The swabbing that I was doing was for possible contact

1 DNA. I was looking for anything here that might be sent
2 off and examined for possible DNA.

3 Q. Okay. And, in fact, did the swabs from this case
4 get sent to SLED?

5 A. That's correct.

6 Q. If you could just identify this for us. I'll take
7 it from you.

8 A. These are the two swabs that I had taken from the
9 rifle we were looking at. One was from the trigger and
10 one was from the forestock of the rifle.

11 Q. Now, did you ever swab the pistol in this case?

12 A. Not at that time.

13 Q. Did you at some later time?

14 A. Yes, I did.

15 Q. And similarly, do you recall what area of the
16 pistol you may have swabbed?

17 A. When I swabbed the pistol, again, it's always the
18 trigger, because you're always coming in contact with the
19 trigger, and then in the pistol case it was the hand grip
20 that you would hold like this. So I did the hand grip
21 and the trigger.

22 Q. The hand grip and the trigger?

23 A. Yes.

24 Q. That has not come back yet from SLED; is that
25 correct?

1 A. To my knowledge, no.

2 MS. SHEALY: Big the Court's indulgence just
3 a second, Your Honor. I have no further questions.
4 Thank you.

5 THE COURT: Cross?

6 MR. SLADE: No questions.

7 THE COURT: All right. You can step down.
8 Okay, folks. We'll break for today then. Let me leave
9 you with my repeated instructions about not discussing
10 the case or deliberating with it in any way with anyone.
11 Don't comment on any witnesses or their testimony, and,
12 of course, if anyone contacts you or approaches you about
13 the case, please inform the Court immediately about that.

14 Now, tomorrow what I would like to do, we are
15 going to make every attempt to get this case finished up
16 tomorrow. My intention -- we're obviously past where we
17 thought we would be at this point, but it's a fluid
18 situation, trials, and this was a serious case, so we
19 have a lot of "I"s to dot and "T"s to cross, so there is
20 a method to the madness, believe it or not, and I
21 appreciate very much your patience.

22 What I would like to do is ask you to report
23 tomorrow morning by 9:00. We'll get started a little bit
24 earlier, and we will do our best to get it finished
25 tomorrow, and by that I mean get it to you and have you

1 deliberating. That is my intention, and we will do our
2 best to have that happen because we didn't anticipate you
3 guys being here on Saturday. It happens occasionally,
4 but it doesn't -- it's not normal thing, but, you know,
5 from time to time, it's just one of those things.

6 There is a lot that goes on in a case, and
7 you've got to be thorough and I got to cover a lot of
8 ground, but we will start a little earlier tomorrow, and
9 we will, obviously, be working later tomorrow, so plan to
10 have a full day, and we will again do our best to get it
11 to you tomorrow. It will be late in the day, that is for
12 sure, and as far as when you get it, however long you
13 want to deliberate, we pretty much leave that up to you,
14 so we'll stay as late as you want and we'll come back
15 whenever you want, assuming that we do get it to you
16 tomorrow, but, again that, is our aim. We are all
17 working towards that.

18 So we'll have -- Mr. Brown is going to bring
19 you doughnuts in the morning. We'll have breakfast for
20 you, and what we will do is also order you lunch, and so
21 tomorrow morning, if you'll get here a little bit early,
22 I'll have my clerk have your lunch orders ready for you
23 and so we'll take a short lunch tomorrow, and pretty much
24 it will boil down to bring you lunch, you'll eat it,
25 we'll probably take 30, 45 minutes, but we'll just keep

1 plugging right on through so that we will make every
2 attempt to get it finished tomorrow.

3 So that is the plan. Go home, have a safe
4 evening. See you bright and early, and thank you for
5 your patience most of all. All right.

6 (Recess taken.)

7 (June 11, 2010.)

8 THE COURT: Are we ready? Bring the jury in.

9 (In open court, jury present.)

10 MS. SHEALY: Your Honor, at this time I would
11 move into evidence items 135 through 147, as I understand
12 it, without objection.

13 MR. SLADE: No objection.

14 THE COURT: They're admitted.

15 (Victim's shoe; victim's shoe; victim's boxer
16 shorts; victim's red t-shirt; 7.62 39 mm. projectile and
17 shell casing; bone fragment from victim; marijuana and
18 cocaine from autopsy; \$560, \$39, and 71 cents; GSR from
19 Buick; swabs and bloodstains Battery Avenue; victim's
20 blood standard; \$146 from Buick; and Nokia cell phone
21 from Buick were marked for identification and admitted
22 into evidence as State's Exhibit Nos. 135-147.)

23 RANDALL UNTERBRINK

24 having been first duly sworn,
25 was examined and testified as follows:

1 DIRECT EXAMINATION

2 BY MS. SHEALY:

3 Q. Mr. Unterbrink, where are you currently employed?

4 A. Charleston Police Department.

5 Q. And what is the position that you currently hold?

6 A. Crime scene technician.

7 Q. And how long have you been in law enforcement?

8 A. Twenty years.

9 Q. And how long have you been with crime scene?

10 A. About eight.

11 Q. Okay. Could you tell us what involvement you had
12 in the investigation regarding the death of Calvin Gibbs.13 A. There are a couple different things I was involved
14 with. I went to the autopsy. I also processed a
15 vehicle. I also returned -- well, I went to the actual
16 scene on Battery Avenue twice.17 Q. Okay. And if we could focus your attention first,
18 then going to the autopsy, what would your role have
19 been?20 A. Well, my role in the autopsy is to document
21 whatever may pertain to the scene itself, which involves
22 photographs, the collection of clothing, anything that
23 might be -- such as a weapon or bullet or tattoos,
24 anything of that sort, just to document the condition of
25 the body and anything on the body.

1 Q. And as a result of going to the autopsy, do you
2 remember, first of all, which day it was?

3 A. That would have been the 31st.

4 Q. You indicated as part of your role you would
5 collect items of clothing from the victim; is that
6 correct?

7 A. That's correct.

8 Q. I'm going to show you some items that have already
9 been marked into evidence, but if you could just tell us
10 what is contained within the bags. This is State's
11 Exhibit 138.

12 A. May I open it?

13 Q. Unless you can tell from the outside, but if you
14 need to open it --

15 A. This is the victim's shirt.

16 Q. Okay. State's Exhibit 135.

17 A. Could I take a look at this?

18 Q. Sure, go ahead. Here's some scissors if you need
19 them. Would you like gloves?

20 A. Yes, ma'am.

21 Q. I don't necessarily need for you to pull it out,
22 but if you want to look at it to make sure you're telling
23 us the right item.

24 A. Okay.

25 Q. So 138 is the victim's red T-shirt?

1 A. That's correct.

2 Q. Okay. Then items 135 and 136, if you could tell
3 the jury what that is, please.

4 A. Without opening it, it feels like a shoe. Yes,
5 pair of tennis shoes.

6 Q. Okay. And showing you State's Exhibit 137.

7 A. This would be boxer shorts.

8 Q. Showing you State's Exhibit 139, I think it may
9 actually contain one item from the autopsy and one from
10 Battery Avenue. Could you tell the jury what's contained
11 in that package.

12 A. Okay. That would be a projectile as well as a
13 spent shell casing.

14 Q. Okay. And State's Exhibit 142, would you tell the
15 jury whether you found any -- or whether there was found
16 on the victim any drugs in his clothing?

17 A. Yes, there was.

18 Q. Okay. Showing you State's Exhibit 142, I think
19 this package similarly contains something from the
20 autopsy, and it may contain something from the search of
21 his vehicle, if you could let us know what that has in
22 it.

23 A. All right. There are three items in this bag.
24 One bag is said to have contained \$560, which was
25 received from the coroner, who was there at the autopsy

1 with me.

2 Q. And tell the jury, if you would, where did the
3 \$560 come from?

4 A. She told me it came from the victim.

5 Q. On his person somewhere?

6 A. Yes, uh-huh.

7 Q. Okay.

8 A. Also, 39 cents also came from the clothing from
9 the victim as well, as 71 cents from the driver's floor
10 board of the vehicle that I processed. So some money
11 and -- well, all money.

12 Q. Now, going back just for a second to 139, when it
13 says spent projectile, tell the jury where that came
14 from. The projectile, not the shell casing.

15 A. The projectile itself would have come from the
16 victim.

17 Q. From the victim?

18 A. At the autopsy, yes.

19 Q. Now, you've indicated that in addition to going to
20 the autopsy, you went back out to Battery Avenue that
21 day; is that correct?

22 A. That's correct.

23 Q. And what was the purpose of going out on the 31st?

24 A. My supervisor, Mike Sherman, was there, and they
25 requested that I assist him that day.

1 Q. Okay. And when you went out to Battery Avenue,
2 did y'all find anything of evidentiary value?

3 A. Yes. There were different items that were
4 collected. I, per se, did not actually collect those
5 items, Mike Sherman did, but I assisted him in that.

6 Q. And do you recall whether or not a shell casing
7 was found on Battery Avenue?

8 A. Yes, ma'am.

9 Q. Directing your attention to State's Exhibit 63.
10 I'm sorry. It's going to be a photograph behind you.
11 Looking at that photograph, could you tell the jury what
12 that placard number two reflects.

13 A. We use placards to help identify items that are of
14 interest, and in this corner, number two, right there,
15 you can see an object, and that is a spent projectile.

16 Q. Okay. Showing you 64, can you point it out in
17 that photograph?

18 A. (Indicating.)

19 Q. Is that the spent shell casing that was in the bag
20 with the projectile that was found at the autopsy?

21 A. Yes, yes, it would be.

22 Q. Could you tell the jury what type of shell casing
23 that is, if you remember.

24 A. That would be a 7.62 times 39.

25 Q. And that was a shell casing that was, as far as

1 you know, was not obviously located the night before? Or
2 do you have any familiarity with that?

3 A. The night before? I was not there the night
4 before, so this would have been something that Mike
5 Sherman and I found while processing on that particular
6 day.

7 Q. Very well. Now, while you were at Battery Avenue,
8 did you also find some area of the apartment complex that
9 looked like it had blood on it?

10 A. Right. There was a breezeway on the west side
11 that had some red substance on the -- like, patio area
12 that looked like blood, and it tested positive for
13 presumptive blood.

14 Q. Showing you State's 11, does that reflect the area
15 you found the blood?

16 A. Yes, ma'am.

17 Q. When you find blood, what do you do in an effort
18 to test it? What do have you to do?

19 A. Whenever you see a red substance, you're not
20 always sure what it is, so we go through a process. It's
21 a very simple test of applying some chemicals together.
22 You do it right on the scene. You use a Q tip or a
23 cotton swab, and you collect a small portion of it, and
24 if the red substance turns into a blue-ish green color,
25 then that is an indication that the substance is testing

1 presumptive blood.

2 It's not saying it is blood, it is presumptive of
3 blood. You treat it as if it is blood, and you're pretty
4 confident it is.

5 Q. When you do a swabbing of that, do you follow a
6 kit that is provided to you by SLED?

7 A. Yes, ma'am.

8 Q. Let me show you one item and ask you if you can
9 identify this. This is State's Exhibit 144.

10 A. Okay.

11 Q. And what does that envelope reflect?

12 A. A cotton swab field tested blood, and I have in
13 parentheses OTOPP, which simply means it's testing
14 positive for presumptive blood.

15 Q. And that placard number one, does that reflect
16 where the bloodstains were found?

17 A. Yes, ma'am. Right there on the -- right behind
18 the black card and a little bit higher.

19 Q. When you collect this evidence, where would the
20 laboratory analysis take place?

21 A. Whenever we collect blood samples, we store it and
22 it's later sent to SLED.

23 Q. Was there any other type of round found while
24 y'all were out there that day that you recall?

25 A. That's the only one I can recall.

1 Q. Was there a 38 unspent round found? Maybe that
2 was on June 1.

3 A. That was on a different day.

4 Q. Tell us about that.

5 A. On the following day, I received a dispatch to
6 return to 930 Battery Avenue because there was an
7 unspent, a nonfired bullet that is not far from this
8 scene here, a little to the right as you look at it. And
9 when I received that call, I just knew that we had been
10 there the day before and we looked over the whole area,
11 so sure enough, on the ground, there was an unspent 38
12 round. So I went ahead and collected that and submitted
13 it as evidence as well.

14 Q. Okay. And did you say you looked back at
15 photographs of the area?

16 A. Yes. I was confused by that because several of us
17 had already covered that area, so now why is there an
18 unspent bullet there when we had already looked it over?
19 So the only way that I could solve that is by looking at
20 the photographs that I took the previous day, and it does
21 cover that exact spot, although there is a certain degree
22 of distance there. I looked at it, I blew up the
23 photographs, and it wasn't there in that photograph. So
24 the previous day it wasn't there.

25 Q. Now, you indicated to us as well that you

1 participated in the search of the vehicle that had been
2 drive by Calvin Gibbs; is that correct?

3 A. Yes, ma'am, that's correct.

4 Q. Do you recall what day that would have been?

5 A. That would have been on June the 1st.

6 Q. Showing you State's Exhibit 67, is that the
7 vehicle you searched?

8 A. Yes, ma'am.

9 Q. If you turn your head, we'll quickly go through
10 some photographs, and I'll ask you about the search
11 itself. State's Exhibit 68, 69, 70, 71, what is that
12 depicted in the bag in the floorboard there?

13 A. Food.

14 Q. Okay. And could you tell where it was from?

15 A. Waffle House, I believe it was.

16 Q. 71, 72, 73, and 74. I'm sorry. Okay. Now, when
17 you search a vehicle, describe to the jury in a summary
18 fashion, what do you do? What all do you need to do?

19 A. I'm looking for anything that would help with the
20 case, of course, and so my initial steps, consistent
21 basis, is to first just observe the vehicle. I don't
22 want to do anything with it.

23 Well, I want to look at it, see what is right,
24 what is wrong; in other words, what other markings are on
25 it; the conditions of the windshield, tires, bumpers, et

1 cetera. I just want to get an overall view of it.

2 Once I have that, I then begin to photograph the
3 vehicle exactly as I see it when I first see it for the
4 first time. After I have completed that, then I begin to
5 look more closely under things, because I have to know if
6 there is something underneath the clothing, a book, a bag
7 of whatever, and as I understand the whole scene, then I
8 am beginning to put numbered placards at those points
9 that I consider of interest, and then I retake
10 photographs of the entire car again, this time with the
11 placards in place, so that we can see what it is that was
12 of interest at that point.

13 And then I go ahead, and after I photograph it,
14 then I begin to process the car for latent fingerprints,
15 which you can see right there is one of them, and then I
16 photograph each print so that we can then find out, or
17 recall where each print came from.

18 Q. This is State's Exhibit 73. Is this an area also
19 where you were lifting prints?

20 A. Yes, ma'am.

21 Q. And the area of the vehicle that is depicted
22 there, which door is that?

23 A. That would be the driver's side rear.

24 Q. Okay. If we could go through what you found in
25 the vehicle first, do you have your notes with you that

1 you could tell us what was found?

2 A. Yes, ma'am. You want me to read them off?

3 Q. Yes, and as you do so, I will show you the various
4 items, just so you can identify them.

5 A. I have 4-F.

6 Q. And that is State's Exhibit 146.

7 A. Okay. This would have been \$146 in U.S. currency,
8 and it was found in the driver's front side floorboard.

9 Q. Okay.

10 A. 5-F. This is a cell phone as well as a cell phone
11 charger, and it was found -- the cell phone was found in
12 the driver's front side floorboard and the charger was
13 found in the passenger's back seat.

14 Q. State's Exhibit 141.

15 A. All right. I found a green leafy substance, which
16 was in the passenger's front door area, as well as a
17 white substance. This would have been on the driver's
18 front seat.

19 Q. Okay. Now, you've indicated that you dusted for
20 fingerprints. Was there anything -- well, first of all,
21 let me go over the photographs real quick of those items
22 that you depicted.

23 A. I'm sorry.

24 Q. I'm waiting for her to pull up a picture for us.
25 Okay. State's Exhibit -- I think that's 69. The money

1 that is in the floorboard, that is the money that you
2 referenced earlier?

3 A. Yes, ma'am.

4 Q. Okay. And the white substance that's in the
5 driver's seat, is that the white powder substance you
6 referenced earlier?

7 A. Yes, ma'am.

8 Q. Can you see in that photograph any of the other
9 items that we just discussed?

10 A. No, ma'am.

11 Q. But they were found in the various areas that
12 you've just cited.

13 A. Yes, ma'am.

14 Q. Now, regarding gunshot residue, did you do any
15 type of collection process for that?

16 A. Yes. GSR, which is a gunshot residue, is a way of
17 collecting spent gunpowder, for example. Whenever a gun
18 is fired, there is a certain amount of powder that will
19 come from the gun. Many times when a person fires a gun,
20 we're looking for the gunpowder on the person's hand, but
21 in this case, I was looking for it on the car because I
22 understood that a gunshot had been fired in close
23 proximity to the vehicle.

24 And so I wanted to see if I could, in fact, find
25 any of that residue on the vehicle, whether it be on the

1 exterior side of the door or on the interior side, and
2 the way in which you collect it is really nothing more
3 than using sticky tape, scotch tape, really, and you're
4 tapping it on whatever surface if you're looking for,
5 whether it's on your skin or, in this case, on the car
6 door.

7 And you are attempting to collect the powder. You
8 really can't see it, so you are just tapping the whole
9 area, attempting to collect that.

10 Q. Showing you State's Exhibit 68, the placard that
11 says number 2, could you tell the jury what that
12 reference is.

13 A. On number two, there was some dirt on the driver's
14 front door, on the exterior side, and I stated in my
15 report that there was a small amount of dried dirt that
16 was over the bottom left-hand corner of the frame of the
17 vehicle, and I was just trying to indicate that dirt that
18 was on that door.

19 Q. Okay. And showing you State's Exhibit 72, could
20 you point to us where you attempted to collect GSR, or
21 gunshot residue.

22 A. That would be just below the window and a couple
23 inches down.

24 Q. Okay. When the car was transported to -- what
25 facility did you look at it?

1 A. Where was it?

2 Q. Uh-huh.

3 A. It was at the crime scene office, which is at
4 Wappoo Road.

5 Q. When it would have been transported from the scene
6 to that location, would y'all have changed anything about
7 the contents of it or the way it had been found?

8 A. No, ma'am. It's left alone.

9 Q. Do you recall whether, in fact, the front window
10 was down?

11 A. That is the condition it was in.

12 Q. Showing you State's Exhibit 143, could you tell us
13 what that is.

14 A. Yeah. This is the GSR kit, or package.

15 Q. Okay. Now, I guess when you were at the autopsy,
16 did you attempt to get any type of blood standard from
17 the victim, Calvin Gibbs?

18 A. Yes. That is part of the procedure at autopsies,
19 is to collect that among other things.

20 Q. And showing you State's Exhibit 145, I ask you to
21 tell us what this is.

22 A. This would be -- it looks like it would be the
23 tube of blood, yes. That would be the standard, blood
24 standard.

25 Q. I'm sorry. Say that again, please.

1 A. That would be the blood standard.

2 Q. Now, when y'all went back out to Battery Avenue on
3 the 31st, do you remember seeing acceleration marks out
4 there?

5 A. Yes, ma'am.

6 Q. And they were -- where in relation to the back of
7 the building were they, do you recall?

8 A. It was in the rear of that building, just on the
9 opposite side of where we saw the blood.

10 Q. Very well.

11 MS. SHEALY: I have no further questions.
12 Please answer any the defense may have. Thank you.

13 THE COURT: Cross?

14 MR. SLADE: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. SLADE:

17 Q. Officer, you recovered some money from Mr.
18 Gibbs's, person or Mr. Gibbs's body at the autopsy?

19 A. Yes.

20 Q. It was a roll of cash, was it not?

21 A. The money that I received was -- when you talk
22 about roll, I never saw a roll. What I collected was
23 from the coroner who handed me a bag that was said --

24 Q. I'm sorry.

25 A. It was a bag that was said to have contained

1 money.

2 Q. That was Judy Koeplin?

3 A. Yes.

4 Q. I'm not sure how to pronounce it.

5 A. Koeplin.

6 Q. And she gave you a bag?

7 A. That's correct.

8 Q. And she told you it was \$560?

9 A. That's correct.

10 Q. You understood that to be cash?

11 A. That's correct.

12 Q. You don't know whether it was a roll or wadded up?

13 A. I never saw it. I just left it in the bag.

14 Q. And then if we could return to y'all's picture,
15 number 69. And the money that was recovered from the car
16 was all recovered from right there at the foot of the
17 driver's seat, or I guess in the par of the car where you
18 put your feet?

19 A. Yes, sir.

20 Q. Where the driver would have had his feet; is that
21 fair to say?

22 A. Yes.

23 Q. In y'all's picture, number 69 is some white powder
24 substance there. I assume it's going to be determined --
25 or y'all are going to have some evidence about it being

1 cocaine. Did you find any white powder on Mr. Gibbs at
2 the autopsy?

3 A. In the pants pocket there was.

4 Q. Not any loose?

5 A. No, sir.

6 Q. Okay. On the outside of the clothing?

7 A. Yeah. It was in the pocket.

8 Q. Now, y'all took some fingerprints off of the rear
9 door, right?

10 A. Yes, sir.

11 Q. I'm sorry. I should have been more specific. You
12 went through a picture where y'all took some
13 fingerprint -- y'all dusted the door on the driver's side
14 rear door for fingerprints right?

15 A. Yes, sir.

16 Q. And did you dust the driver's side, driver's door?

17 A. Yes, sir.

18 Q. Okay. And you have to dust for fingerprints
19 before you do gunshot residue, right?

20 A. Yes, sir. I generally would do the GSR first, and
21 then I'll dust for prints.

22 Q. Well, you put the sticky tape down, right?

23 A. Yes, sir.

24 Q. And that doesn't mess up the chance to get --
25 raise the latents for the fingerprints?

1 A. Well, when I do that, I am -- when I say latent,
2 generally you cannot see the print.

3 Q. Right.

4 A. But what I will do then is I will shine it with a
5 flashlight, and sometimes when you do that you can
6 actually see the print. It's difficult to see, but you
7 can see in those areas where it looks like there is a
8 smudge or a print or anything that has been touched I
9 will avoid those areas and just go ahead and collect from
10 those areas.

11 Q. Thank you. That is my point. If we imagined in
12 this picture the driver's side door being shut --

13 A. Yes, sir.

14 Q. I'm not going to ask you to show the picture, but
15 if we imagine the driver's side door being shut, and I
16 think we all got a picture of that in mind, you don't put
17 the GSR, the gunshot residue sticky tape everywhere, and
18 there are places you intentionally avoid, right?

19 A. If I see a print, yes.

20 Q. So you don't know whether you got a large percent
21 of the GSR, or a small percentage of the GSR?

22 A. You never know.

23 Q. You never know. Okay. You you're just trying to
24 see what you can get.

25 A. Yes.

1 Q. And you don't have any idea which places on the
2 driver's side door you missed with the sticky tape or you
3 hit with the sticky tape?

4 A. You don't know because you're going through an
5 area. You're not sure exactly what area.

6 Q. It's more of an art than a science. I mean, you
7 document everything you do?

8 A. Yes, sir.

9 Q. But you just -- where y'all had this thing and
10 you're looking around and trying to look at places where
11 you might see a smudge but might not, and it might be the
12 light and it might not, and you just get some sticky tape
13 and go with what you got?

14 A. Yes, sir.

15 Q. Okay. And the same -- we saw some pictures just a
16 few minutes ago in your testimony. We don't need to move
17 back to those two, but the black smudgy stuff, do you
18 remember that?

19 A. Yes, sir.

20 Q. In the earlier picture?

21 A. Yes, sir.

22 Q. Well, if you don't mind, Katherine, could you go
23 back to 73 maybe? Okay. All that smudgy stuff is when
24 you're trying to lift a latent fingerprint, right?

25 A. That's right.

1 Q. And you did the same thing there. You look around
2 and try to see where you can find what you think may or
3 may not be fingerprints -- go ahead.

4 A. Yeah. Well, at this point I'm processing
5 everything.

6 Q. Okay.

7 A. I'm looking for prints at this point. My main
8 concern right at the door was the GSR. That is what I
9 was concerned about with the interior of the front door
10 as well as the exterior, at least the first couple inches
11 in height. The rest of the car, I wasn't interested in
12 the GSR any longer. I'm now just processing the entire
13 surface area.

14 Q. So if there had been GSR, let's say, in a standard
15 car, and that is, what, 2003 Buick or something, Le
16 Sabre?

17 A. 2001.

18 Q. And so you got the front door of the driver's side
19 and then there is a post, or what I call a post, between,
20 you know, between the driver's door and the rear door on
21 the driver's side, and so if we use this corner of the
22 podium right here as the post, then you didn't check
23 anything back here for GSR, right?

24 A. No, sir, I did not.

25 Q. Okay. So if GSR -- and that is gunshot residue,

1 and what that is, is just the contents of the exploded
2 bullet coming out the end of the barrel?

3 A. That's correct.

4 Q. If this hit the post, right, of the car, or the
5 back door, you didn't check for it?

6 A. That's correct, I did not.

7 Q. And you primarily didn't do that because the
8 information you got from whoever you were talking to in
9 your chain of command just said the theory we're going on
10 now, you just need to check the front door, right?

11 A. It was my understanding that was the point of
12 interest.

13 Q. That's fine. Just checking. And let's talk about
14 the 38 just a moment. Do y'all have a picture of 38?

15 A. Uh-huh.

16 Q. The one that --

17 A. Unspent?

18 Q. Right. And you had told us that you did a
19 thorough search of the area earlier, I think the day
20 before, right?

21 A. The day before.

22 Q. Am I misunderstanding that?

23 A. That's correct.

24 Q. So you did a thorough search the day before, and
25 you got a call, and you went back out there and you

1 discovered this live, still could be fired, 38, or 380, a
2 live shell that could be fired out of a 380, right?

3 A. It's a 38, right.

4 Q. Exactly. And you don't know if you missed it? It
5 probably wasn't there, but you just don't know, right?

6 A. It wasn't there --

7 Q. Okay.

8 A. -- the day before.

9 Q. Right.

10 A. Because, like I said, I reviewed the photographs
11 of that area, and you just don't see it there.

12 Q. Okay. And the blood in the breezeway, well, you
13 don't know whose it was. That's not -- your job is not
14 to talk about that here. That goes to somebody else,
15 right?

16 A. Yeah. The blood, we didn't know who it belonged
17 to.

18 Q. I'm just talking about the results.

19 A. The results --

20 Q. That's not yours?

21 A. No, sir.

22 Q. Don't worry about it. Excuse me one second, Your
23 Honor. I beg the indulgence of the Court one moment.

24 MR. SLADE: Thank you, Your Honor.

25 THE COURT: Redirect?

1 MS. SHEALY: Judge, I have four photos I
2 would like to admit, I believe, without objection.

3 MR. SLADE: That's correct, without
4 objection.

5 THE COURT: Admitted.

6 MS. SHEALY: Those are State's Exhibit 148,
7 149, 150, and 151.

8 (Photographs marked for identification and
9 admitted into evidence as State's Exhibit Nos. 148, 149,
10 150 and 151.)

11 REDIRECT EXAMINATION

12 BY MS. SHEALY:

13 Q. If you could tell me, please, whether or not you
14 recognize these photos.

15 A. I do.

16 Q. Tell the jury what these depict.

17 A. That is the 38 caliber that was found the
18 following day. It's a 38 live round that is on the walk
19 on the west side or the front area of 930 Battery Avenue.

20 Q. Okay. So showing you 148 -- can you see it in
21 that one?

22 A. I can.

23 Q. Can you point it out here?

24 A. Its right here on the left side. This is the
25 placard with the number, so it would be right in that

1 area.

2 Q. And 149, which is a little closer up shot.

3 A. In which case it's at the bottom.

4 Q. And then 150?

5 A. And that is a close-up of that round.

6 Q. Now, point out the round itself.

7 A. Its right in front.

8 Q. And do you know what that is behind?

9 A. It's a piece of plastic which also was not in the
10 previous photos either.

11 Q. It was not either?

12 A. That's correct.

13 Q. And then I think 151 just shows it even closer.

14 Okay.

15 MS. SHEALY: I have no further questions.

16 Thank you.

17 MR. SLADE: Nothing from us, Your Honor.

18 THE COURT: You can step down.

19 MS. SHEALY: Mike Sherman.

20 MICHAEL SHERMAN,

21 having been first duly sworn,

22 was examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MS. SHEALY:

25 Q. Tell the jury what your position is, please.

1 A. I'm a supervisor for the crime scene unit with the
2 Charleston Police Department.

3 Q. What is your title?

4 A. Crime scene supervisor.

5 Q. How long have you worked with the city police
6 department?

7 A. Since 1977.

8 Q. I don't know that I've asked anybody this, but the
9 address of 930 Battery Avenue, is that in Charleston
10 County?

11 A. Yes, it is.

12 Q. What was your first involvement in this
13 investigation, do you recall?

14 A. I went to the scene the morning after it occurred,
15 went back over there and looked to see in daylight, and,
16 also, we wanted to go back and see if there was any other
17 items that we may recover, and we wanted to search the
18 bike path, which is adjacent to where the in-take took
19 place.

20 Q. Did you accomplish that?

21 A. Yes, we did.

22 Q. Showing you State's Exhibits 56, 60, and 61, could
23 you describe for the jury what those pictures depict.

24 A. That's the back of Battery Avenue. That would be
25 Hillsboro Drive area, and, of course, that is nighttime.

1 I was there during the daytime.

2 Q. Okay. When you were there the next day, did you
3 still see the acceleration marks that are depicted in
4 those photos?

5 A. Yes, I did.

6 Q. And could you kind of describe to the jury how far
7 out on to Hillsboro the acceleration marks continued.

8 A. They continue out on to the pavement, and you can
9 see where the pavement is polished. That's just where
10 the tires spin, and then they fade out as they go down
11 Hillsboro Drive back towards where they come out. I
12 can't remember the name of the next street it comes to,
13 and then it goes back out to Highway 61.

14 Q. That would be Sycamore that leads to 61 --

15 A. That's correct.

16 Q. Now, in showing you State's Exhibit 65, can you
17 describe to the jury what area is depicted in this
18 photograph.

19 A. That is the same general area I just described.
20 This is daylight and this is at another time.

21 Q. Do you see the placard in that photograph where
22 y'all found the shell casing on the 31st?

23 A. Yes, I do.

24 Q. Could you point that out to the jury.

25 A. Right in front where the vehicle is, where the

1 shade and the sunlight merge.

2 Q. In showing you State's Exhibit 94. Can you orient
3 us and show us in what area this placard had been?

4 A. That would be right back in this area.

5 Q. I'm sorry?

6 A. Right back in this area.

7 Q. And in showing you State's Exhibit 95 -- let's
8 stay on that just a second. What is the street to the
9 left of you where the police car is?

10 A. That's Battery Avenue.

11 Q. And what is the street to the right of you?

12 A. That's Hillsboro Drive.

13 Q. Okay. And showing you State's Exhibit 95, can you
14 orient us as to where Battery Apartments are in that
15 photograph?

16 A. This is Hillsboro. This is Battery, and Battery
17 Apartments would be back over here, out of view. At the
18 time of the incident, this was the construction site for
19 this service station that wasn't there.

20 Q. Okay. Stand up again for me, if you don't mind,
21 and just point out where Highway 61 is and which way it
22 runs.

23 A. This is Highway 61. It runs this way, which is
24 basically the same direction Battery Avenue runs at that
25 particular place.

1 Q. And if you could point to us and show us in what
2 general direction that shell casing was found, that last
3 shell casing?

4 A. That would be back -- of course, it is out of the
5 frame, but it would be back in this direction.

6 Q. And looking at 94 one more time.

7 A. That would be right over here.

8 Q. Okay. Now you can have a seat. As a crime scene
9 supervisor in this case, are you aware whether or not
10 crime scene technician Henry Middleton took some gunshot
11 residue swabs from Cherelle Anderson?

12 A. I'm aware that he did, yes.

13 Q. And those items would have been sent to SLED as
14 well?

15 A. That's correct.

16 MS. SHEALY: Beg the Court's indulgence once
17 minute.

18 BY MS. SHEALY:

19 Q. Let's take a look at State's 14. Could you tell
20 us whether there are any acceleration marks depicted in
21 that photograph.

22 A. Right here (indicating). A lesser amount over
23 here.

24 Q. And the road we're looking on right now runs
25 where, as compared to the apartment?

1 A. That's Hillsboro Drive, which runs on the back
2 side of the apartments.

3 MS. SHEALY: That's all the questions I have.
4 Answer any questions the defense may have.

5 CROSS-EXAMINATION

6 BY MR. HOWE:

7 Q. Officer Sherman, could we go back to State's
8 Exhibit 65, please, Katherine. Now, Officer Sherman, you
9 pointed out a placard in this photograph. And point
10 out -- I can see it. If you would point it out again for
11 everyone's ability to refer to it.

12 A. Right here (indicating).

13 Q. Now, would you agree that that is on the side of
14 the building rather than behind it or in front of it?

15 A. I would say it's behind the building. It's right
16 where the side and behind the building converge.

17 Q. Well, like that vehicle that you see, the actual
18 rear of the building is behind it off to the left,
19 correct? Because aren't we looking at Hillsboro right
20 there?

21 A. That's correct.

22 Q. And right there, that corner, that front of the
23 facade of the building, doesn't that face Battery?

24 A. This is the side of the building. That's not the
25 front of the building.

1 Q. Okay. I got you.

2 A. The front of the building faces Battery.

3 Q. So we're looking at the actual side of the
4 building?

5 A. We're looking at the side of the building, and
6 this is the rear of the building.

7 Q. I got you. So that placard is kind of at the
8 corner, a little bit to the rear, correct?

9 A. At the corner a little, bit to the rear would be
10 correct.

11 Q. All right. Now, looking at this shot, that's a
12 house on that sort of curved part of Hillsboro, correct?

13 A. That would be correct, yes, sir.

14 Q. I mean, Hillsboro runs off of Sycamore, and then
15 it is sort of straight, and then curves rightward about
16 where we're looking, correct?

17 A. Yes, sir.

18 Q. And that is a house right there with -- it looks
19 like a person standing in front of the house, right?

20 A. Right.

21 Q. And as far as you know, that house is not vacated.
22 It's occupied; is that correct?

23 A. I couldn't tell you at this time. I don't
24 remember.

25 Q. I mean, in terms of your -- maybe your knowledge

1 of the area, you've been a police officer since 1974 in
2 the city of Charleston?

3 A. '77.

4 Q. Do you know of any of those buildings, either that
5 go around the curve of Hillsboro or on the straight part
6 that goes back toward Sycamore, if any of those are
7 vacant?

8 A. I couldn't tell you. I know that the day that we
9 were there, we knocked on a lock of doors. Most of them
10 had people present. Some didn't answer, but I couldn't
11 tell you which ones were vacant and which ones weren't.

12 Q. Did any of them strike you as being obviously
13 vacant, boarded up or anything like that?

14 A. I don't remember seeing anything like that.

15 Q. Okay. Could I see 94, please. Now, would you
16 admit that this view of it is a rather open area to the
17 left of the apartment building and to the right?

18 A. We've got houses back here. We've houses on the
19 street over here, a street and a street, and you got a
20 small parking area and a little grassy area, and then
21 you've got these trees. And then on the other side,
22 you've got the bike path, so I wouldn't call it very
23 open.

24 Q. Now, this field area, this grassy area right in
25 the forefront of this photograph, and maybe off to the

1 right off the frame a little bit --

2 A. Yes, sir.

3 Q. Are you familiar with the fact that a lot of older
4 gentlemen hang out there under the shade?

5 A. I'm familiar with that over the last year or so
6 because I've been back over there several times and seen
7 them. Prior to that, I don't know.

8 Q. But you saw, almost seemed to be an everyday
9 congregation point, people sitting in chairs, on top of
10 recycling bins, things of that nature, just kind of
11 hanging out, letting the time go by?

12 A. I can only say in the past year. I can't say
13 prior to that.

14 Q. You said you've seen some men congregate there?

15 A. In the last year, I've been over there several
16 times that I've seen them there. I have also been over
17 there several times when there hasn't been anybody there,
18 so I can't say how often they're there.

19 Q. When you saw those men congregate that time you
20 referred to, wouldn't they be able to readily see the
21 rear of that apartment building from where they're
22 seated?

23 A. There are some trees back here that aren't in this
24 frame that I think would block a good bit of the view of
25 the back of it. I think they could see down Battery

1 Avenue and back toward 61 pretty well, but I'm not sure
2 they could see back down that way.

3 Q. They weren't seated in front of the trees such
4 that they would have a straight view of the rear of the
5 building?

6 A. When I was there, the people I've seen, their
7 observation wouldn't be very good of the back of the
8 building.

9 Q. Okay. Now, since apparently you have a knowledge
10 of this neighborhood, across Battery Avenue, pretty much
11 where that police vehicle is, aren't there two or three
12 homes directly in front of 930 Battery?

13 A. There are some homes in front, yes, sir.

14 Q. And aren't there -- are they occupied?

15 A. When I went there, back when this occurred, they
16 were occupied. I couldn't tell you for sure whether they
17 are right now.

18 Q. Okay. So when you were investigating this crime,
19 they were occupied?

20 A. Well, I was looking for bullet strikes in that
21 area, and at that time they were mostly occupied.

22 Q. Do you know if anybody on the crime scene team or
23 anyone else actually as part of their canvassing effort
24 spoke to the residents of those houses directly across
25 from the apartment building?

1 A. I wouldn't have anything to do with the
2 canvassing. That would be a detective assignment. I'm
3 not aware of that.

4 Q. Would you expect that that would likely have been
5 done?

6 A. I would expect, yes, sir.

7 Q. Okay. Now, also, back on Hillsboro, sort of kitty
8 corner from the corner of the building to the right, did
9 you notice the presence of a rather obnoxious dog back
10 there when were you out there? Did you notice?

11 A. I noticed several dogs in the neighborhood. I
12 didn't really call any of them obnoxious. I'm kind of a
13 dog person.

14 Q. There wasn't one of them that was constantly
15 barking at you incessantly?

16 A. There was one that was barking, but when I walked
17 over to him, he started wagging his tail so I wasn't too
18 concerned about it.

19 Q. So y'all made sort of a connection?

20 A. I'm a dog person.

21 MR. HOWE: I have nothing further.

22 MS. SHEALY: I have nothing further.

23 THE COURT: You may step down. Thank you.

24 MR. NEELY: The state calls Jennifer Wooley.

25 JENNIFER WOOLEY,

1 having been first duly sworn,
2 was examined and testified as follows:

3 DIRECT EXAMINATION

4 BY MR. NEELY:

5 Q. Would you tell the jury where you work.

6 A. I work for the Charleston Police Department.

7 Q. And how long have you been there?

8 A. I've been there -- it will be eight years in
9 November.

10 Q. What office or department in the police department
11 do you work in now?

12 A. I'm assigned to the crime scene unit.

13 Q. And how long have you been in the crime scene
14 unit?

15 A. Six years.

16 Q. What would you -- or how would you describe your
17 daily activities?

18 A. I'm a crime scene technician, but my main job is
19 latent recovery specialist, meaning I work in more of a
20 laboratory facility, recovering fingerprints.

21 Q. And what type of seminars or educational training
22 have you been to to do that?

23 A. Specifically for fingerprints, I've been to basic
24 fingerprint at South Carolina Law Enforcement Academy,
25 I've been to police photography --

1 THE COURT: Hold on.

2 MR. SLADE: We will stipulate to her
3 qualifications.

4 MR. NEELY: We would just like to move that
5 she's an expert in the field of latent print recovery.

6 MR. SLADE: I don't have a problem with that
7 either.

8 THE COURT: All right. Folks, normally when
9 somebody testifies, they're allowed to testify about what
10 they heard, touched, felt, smelt, that sort of thing. We
11 don't let them testify about their opinion about things;
12 however, the law says that when somebody because of
13 education or experience or training reaches a level of
14 expertise in a field, we allow them to -- we qualify them
15 as an expert, allow them to testify, not only about their
16 observations, but we also allow them to give their
17 opinion about their observations and give you the basis
18 for their opinion.

19 This witness has now been qualified as an
20 expert in the field of fingerprints and will be allowed
21 to testify to you and give her opinion about whatever her
22 observations were and the basis for those opinions. You
23 decide how much weight to give her testimony, based on
24 all of the witness's testimony and evidence that you hear
25 and see throughout the trial. You're not required to

1 necessarily give her opinion or her testimony any greater
2 weight than any other evidence that you hear or see
3 throughout the trial, but you decide how much weight to
4 give her testimony based on all of the evidence that you
5 hear throughout the trial.

6 All right? Go ahead, Mr. Neely.

7 BY MR. NEELY:

8 Q. Would you tell the jury what an ink print is.

9 A. An ink print is when somebody is taken into
10 custody or a victim, we actually apply ink to those
11 friction ridges on their hand and lay them down out on a
12 card. We typically call those ten prints based on the
13 number of fingers, and that is for comparison of the
14 fingerprints that may be found at the scene.

15 Q. And what is a latent print?

16 A. A latent print is a hidden or invisible print.
17 Normally, in your body's natural secretions, it's an
18 impression of those friction ridges in those natural body
19 secretions on the surface.

20 Q. Could you tell the jury how you actually leave
21 fingerprints?

22 A. I do. When I explain how a fingerprint can be
23 left on a surface, I want you to kind of look at your
24 fingerprints like a rubber stamp, maybe with a lot of
25 small detail, and the sweat or the substance is left in

1 as ink, and I say there are four elements required for a
2 fingerprint to be left on a surface. If one of those is
3 missing, then you will not even have a fingerprint there.

4 The first step is the presence of oil, or ink, in
5 the case of a rubber stamp. With a rubber stamp, if you
6 don't put any ink on it and put it down on a piece of
7 paper, you don't see anything. If you put too much ink
8 on it and set it down on a piece of paper, you get kind
9 of a blurry image. Same thing with the friction ridges
10 on your hands. You can have too much or too little oil
11 to get that impression of those friction ridges that
12 we're looking for.

13 Second, number two, is the contact with that
14 surface. Same thing with the rubber stamp. If you don't
15 set it down or you smear it as you make contact, you lose
16 that detail of the rubber stamp. That can also happen
17 with the friction ridges on your hands if you don't make
18 good, solid contact.

19 The third is a little more tricky. That's the
20 surface itself. There are a lot of variables in
21 different textures and surfaces that we have. We have
22 everything from porous, meaning the oils are soaked in,
23 non-porous, meaning the oils are sitting on top; we've
24 got fabrics and leathers and everything. There is a lot
25 of variety as to what they are, a good surface.

1 The fourth step is what I call contamination or
2 destruction. Contamination happens on the front end,
3 which could mean just maybe there's oil on that surface.
4 When you go to touch it, maybe it's really dirty, dusty,
5 something like that; so if you have good oils on your
6 hands and you hit something that's really dusty, you will
7 actually pick up that dust instead of leaving those
8 impressions behind. Destruction comes after the fact,
9 where you actually make contact with that surface, so if
10 you're talking about a nonporous surface and those oils
11 are sitting on top, they're really easy to destroy, so if
12 somebody else comes behind them, touches it, handles it,
13 most likely they're going to damage or destroy those
14 fingerprints.

15 It can also just be a simple movement of that item
16 into, you know, your pocket, can knock those type of
17 fingerprints off. But you must have all four of those
18 steps present for a fingerprint to be left on the
19 surface.

20 Q. Thank you. We are here about a shooting that
21 happened on May 30th. Did you have any involvement in
22 that case in terms of fingerprints?

23 A. Yes, sir. There were several, many items that I
24 processed in the laboratory for that case.

25 Q. Did you process any shell casings?

1 A. I did.

2 Q. Were you able to make any list from that?

3 A. From the fired shell casings no fingerprints were
4 recovered.

5 Q. What about on the bag of potato chips, or potato
6 chip bag?

7 A. No fingerprints were recovered from the potato
8 chip bag.

9 Q. Were you able to make any lists from some money?

10 A. I believe I did photograph one lift off the money
11 that I processed.

12 Q. Okay. What about a handgun? Did you process
13 that?

14 A. I had processed a High Point with no fingerprints
15 recovered.

16 Q. And you said you looked at the actual ammunition
17 as well as the shell casing. What did you end up with --
18 I guess what lifts did you find?

19 A. From --

20 Q. From any of your items?

21 A. I got lifts from an ammunition box and -- two
22 ammunition boxes, and the money, and there were some
23 white papers that were processed that fingerprints were
24 recovered on.

25 Q. And what did you do with those lifts after you

1 recovered them?

2 A. When I recover them, I turn them in to our latent
3 print examiners.

4 MR. NEELY: Those are all the questions we
5 have at this time.

6 CROSS-EXAMINATION

7 BY MR. SLADE:

8 Q. Officer Wooley, do you do any of the comparisons
9 or do you just lift the latents?

10 A. I just recover the fingerprint. I do not do the
11 comparisons.

12 Q. Okay. So you took the -- you didn't take the
13 latents off the car, you just took the pictures of them,
14 right?

15 A. I did not process a vehicle. I believe somebody
16 else processed the vehicle.

17 Q. So what you did was some ammunition boxes were
18 turned over to you?

19 A. Yes, sir.

20 Q. And you tried to lift -- you tried to get
21 fingerprints off of them to compare to suspects; is that
22 fair?

23 A. Yes. Suspects, victims, anybody.

24 Q. And you lifted a total of and -- you lifted total
25 of -- do you have your file in front of you?

1 A. Yes, all the reports. I count five lifts --

2 Q. Hold on. If you could just slow down just a
3 little, what I want everybody to understand is where you
4 got the lifts from.

5 A. Okay.

6 Q. Okay? So as we go through -- it's okay to count
7 them. I would just like you to identify where you got
8 them from as you go through them. So according to my
9 records, you got two lifts off of one ammunition box that
10 y'all had labelled as 1-H, right?

11 A. Correct.

12 Q. And 1-H is the High Point ammunition?

13 A. All I have is an ammunition box collected.

14 Q. So you don't have that level of detail in your
15 report?

16 A. Right.

17 Q. But you got two prints off that ammo box, and you
18 got three prints off another ammunition box, right?

19 A. Yes, with an additional photocopy off that one.

20 Q. Well, that was just an alternative recovery
21 method, right?

22 A. Yes.

23 Q. It's not an additional fingerprint?

24 A. It is probably -- I would have to look at the
25 prints to tell if you it was a different print. It's a

1 different technique. Different chemicals so sometimes it
2 will enhance, but I wouldn't know without actually
3 looking at the prints.

4 Q. Are those all the prints that you lifted? I'm
5 sorry. You took some off some cash, right?

6 A. Yes. I got one partial off a \$5 bill and some
7 off -- some white paper, eight pieces of white paper,
8 that were turned in to me.

9 Q. And that is it?

10 A. Yes.

11 Q. And when you say you got a latent lift, you mean
12 you got enough of a -- you got enough of a fingerprint to
13 make a comparison.

14 A. I actually -- I don't necessarily determine
15 whether or not it's enough for a comparison.

16 Q. Right.

17 A. I look at the ridge detail, what's in there. If I
18 think it's possibly adequate, I will lift it and turn it
19 in and the latent examiners will determine its quality.

20 Q. Okay. And you report your results to the
21 detective working on the case, correct?

22 A. Correct.

23 Q. And tell us when you reported the results that you
24 had lifted these latent prints to the detectives in this
25 case. Tell us when you reported that you had made

1 these --

2 A. When you -- this is -- my reports are dated June
3 2nd and June 4th.

4 Q. Right. The latent --

5 A. Of 2008, yes.

6 Q. June 4 of 2008?

7 A. Yes.

8 MR. SLADE: Thank you, ma'am. I beg the
9 indulgence of the Court one minute.

10 Thank you, ma'am. I have no other questions,
11 Your Honor.

12 THE COURT: Redirect?

13 MR. NEELY: Yes, Judge, quickly.

14 REDIRECT EXAMINATION

15 BY MR. NEELY:

16 Q. Fired shell casings, how often are you able to
17 pull up prints from those?

18 A. I have never recovered a fingerprint from a fired
19 shell casing. Typically, the heat from that explosion
20 kind of evaporates the water, which is the main content
21 of latent prints.

22 Q. And what about money? How easy or difficult is it
23 to pull up prints off of cash?

24 A. Money can be very tricky. The surface itself is
25 not a spectacular surface because money is handled a

1 great deal in society, so you have a lot of oils,
2 contaminations. It's pretty rare that a comparable print
3 is recovered off money.

4 Q. And just one last question: As far as guns or
5 firearms, how easy or difficult to get a print off that?

6 A. It completing depends on the firearm itself and
7 those surfaces. Some are better firearms for
8 fingerprints and some are not, and so it's very specific
9 to the gun.

10 MR. NEELY: Thank you, Judge. Thank you.

11 THE COURT: Any recross?

12 MR. SLADE: None, Your Honor.

13 THE COURT: You can step down.

14 MR. NEELY: State calls Kathleen Butler.

15 KATHLEEN BUTLER,

16 having been first duly sworn,

17 was examined and testified as follows:

18 DIRECT EXAMINATION

19 MR. SLADE: Your Honor, I told the assistant
20 solicitor I will stipulate -- he doesn't have to go
21 through her qualification. I'll stipulate to it.

22 MR. NEELY: We're going to offer her as an
23 expert in fingerprint examination.

24 THE COURT: All right. Folks, this witness
25 is now being offered and qualified as an expert in the

1 field of fingerprint examination. The same instructions
2 that I gave you on the earlier witness on experts will
3 apply to this witness as well.

4 You determine how much weight her testimony
5 deserves based on all of the testimony that you hear
6 throughout the trial. All right? Go ahead.

7 BY MR. NEELY:

8 Q. Thank you, Your Honor. Officer Butler, your job
9 at the police department is to actually compare prints?

10 A. Yes, it is.

11 Q. Did you make any comparisons in this case?

12 A. I did.

13 Q. And before we talk about results, if you could
14 just briefly tell the jury how you make those
15 comparisons.

16 A. A comparison is conducted. We use the ACE-V
17 method, that's analyze, compare, evaluate, and then
18 verify. Basically, when you're looking at a latent print
19 to a known fingerprint, you're going to look for, first
20 off, what's available? Do you have a pattern? Do you
21 have a starting point that you can zone in on from the
22 latent to the known? Are there scars available to where
23 you can clue in very quickly find a fingerprint that
24 visually looks like what you have as a latent?

25 At this point, this part of the evaluation, you

1 can't individualize. You can't make a match on an
2 individual. It's just a starting point. Second, you go
3 into your points, minutiae and you look at your ridges,
4 the flow of the ridges, the areas in between the ridges.
5 You pick a sequence of points in the latent, and then you
6 go and look for that sequence in the same area and the
7 known fingerprints. Go back and forth until you find
8 that, or if you do not find that, you eliminate that
9 individual. So if you do find sequence of points, you're
10 going to expand out with another sequence of points,
11 looking for anything that matches or that is in the
12 same -- that is the same or you're also going to look for
13 that which is not.

14 Is it explainable? The things that are not, are
15 they explainable? If it's not explainable, then you do
16 not call it a match.

17 The third part is the evaluation. You make your
18 determination. Does this latent match this known
19 fingerprint or does it not? And we write up a report and
20 submit it to another latent examiner who should come to
21 the same conclusion.

22 So, basically, that is our methodology. That is
23 how a comparison is done.

24 Q. Thank you. Let me ask you, did you receive any
25 cards to makes comparisons on concerning this case?

1 A. Yes, I did.

2 Q. How many cards did you receive?

3 A. We actually separate them in envelopes, but from
4 Officer Randy Unterbrink, I received 19 cards; Jennifer
5 Wooley, one of her envelopes had seven cards, I got
6 another envelope which was a photo of a latent, which was
7 one photo, and then fingerprint strips from Anita
8 Maestas.

9 MR. SLADE: I'm sorry, I didn't hear that.

10 THE WITNESS: Fingerprint strips from the
11 autopsy.

12 BY MR. NEELY:

13 Q. Whose fingerprints were you asked to compare to
14 those items?

15 A. We were asked to compare Terrell Chandler, Calvin
16 Terrell Gibbs, Junior, Che Mark Carr, Steven Brown,
17 Storme Carr, and that is it.

18 Q. Of those comparisons you made, did anything come
19 back to Terrell Chandler?

20 A. No, not to Terrell Chandler.

21 Q. Did anything come back to Steven Brown?

22 A. No.

23 Q. Did anything come back to Che Carr?

24 A. No.

25 Q. What about Calvin Gibbs?

1 A. Yes.

2 Q. And if you could share with us what you were able
3 to compare -- what items came back to him?

4 A. Okay. The fingerprint strips taken from the
5 autopsy matched up to Calvin Terrell Gibbs.

6 Q. Anything else?

7 A. Yes. Nothing from the envelopes submitted by
8 Officer Wooley with the photograph, that didn't come back
9 to him. The 19 latent fingerprint cards submitted by
10 Randy Unterbrink, latent lift number -- you want me to
11 read out the descriptions?

12 Q. Yes, you could tell them what that is.

13 A. Latent lift number three developed from behind
14 driver's side back door exterior on the Buick LeSabre
15 matched up to -- sorry. The latent lift number three
16 above driver's back door exterior. Tag number 8928AX
17 matched up to Calvin Gibbs. Latent lift number nine,
18 trunk, driver's side exterior, Buick LeSabre, 8928AX for
19 the tag matched up to Calvin Gibbs.

20 Q. So those are the prints from the vehicle?

21 A. They are from the vehicle turned in by Randy
22 Unterbrink.

23 Q. Did anything come back to Storme Carr?

24 A. Yes, sir. One latent lift matched to Storme Carr,
25 and that was latent lift number seven developed on the

1 driver's back door exterior, Buick LeSabre tag number
2 892AX.

3 Q. Thank you, Officer Butler.

4 MR. NEELY: That's all we have for her.

5 THE COURT: Cross?

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

7 CROSS-EXAMINATION

8 BY MR. SLADE:

9 Q. Officer Butler, you're the person responsible for
10 matching the latent prints to the suspects or to the
11 names of the people who are given to you for comparison,
12 correct?

13 A. Yes, I am.

14 Q. Okay. And you were given, I think, if I'm
15 following your direct testimony with Kris, you were given
16 19 latent fingerprints; in other words, fingerprints that
17 at this point we don't know who they belong to, right?

18 A. Yes.

19 Q. Is that a fair description? And those came from
20 Detective Unterbrink, correct?

21 A. Officer Unterbrink, yes.

22 Q. Officer Unterbrink. That's how you identified
23 them. And those are the ones I would like to talk about
24 for just a minute that is the subject of this line of
25 questioning.

1 I have a report here that you did, or that I take
2 it to be what you did, on those 19 prints, and if you
3 don't mind, would you turn to yours so we can talk about
4 that just a minute. All right. This is what I have.
5 It's a two-page report; is that fair to say?

6 A. It is. Yes, sir.

7 Q. If you don't mind, if you could take a look at
8 that. Now, you prepared this report, correct?

9 A. Yes, I did.

10 Q. This is the report you prepared?

11 A. Yes, I did.

12 Q. All right. And this deals with 19 latent
13 fingerprints, at this point unknown whose latent
14 fingerprints these are, right? At the point you got
15 them, you didn't know who they belonged to?

16 A. No.

17 Q. And you analyzed whether or not you could tell
18 enough, get enough data in the way you just finished
19 describing how y'all analyzed the data off the print, you
20 looked at these 19 to decide if there was enough
21 information picked up that you could do what you took to
22 be a valid comparison between the unknown and the names
23 you might be submitted, right?

24 A. Yes.

25 Q. Is that fair?

1 A. That's fair.

2 Q. Okay. And what I would like to do first is go
3 through this list and eliminate all the ones that didn't
4 have enough data. All right?

5 A. Yes, sir.

6 Q. You see what I'm talking about? All right. And
7 you went through those 19 that were taken off the car,
8 and you couldn't get enough information -- I'm sorry.
9 You could get enough information on latent print number
10 one to determine who that print belonged to, right?

11 A. Yes.

12 Q. All right. And the way you describe it and the
13 way we'll describe it through the rest of this
14 questioning, cross-examination, will be your words are,
15 that that particular print, latent print number one that
16 was on the front door, the front outside of the Buick
17 LeSabre, had enough quality and quantity to effect
18 identification, right?

19 A. Yes.

20 Q. That meant you thought there was enough data off
21 of that print, whichever -- whatever part of the hand or
22 finger it came from, there was enough data for you to
23 make a valid comparison, right?

24 A. Yes.

25 Q. And latent print number two, which was also off

1 the front door, you said, didn't have enough -- lacked
2 quality and quantity to effect identification, right?

3 A. Yes.

4 Q. Couldn't use that one?

5 A. No.

6 Q. All right. Latent print number three was above
7 the driver's back door, right?

8 A. Yes.

9 Q. And that was the information given to you and that
10 was from -- you already had Mr. Gibbs, the owner of the
11 car, the driver of the car, and you identified that one
12 as being Mr. Gibbs, right?

13 A. Yes.

14 Q. Okay. Now, latent print number four, you didn't
15 find enough quality and quantity to effect
16 identification, correct?

17 A. Correct.

18 Q. But latent print number five on the driver's side
19 rear you told or you put in your report had the quality
20 and quantity to effect identification, right?

21 A. Correct.

22 Q. So that was the second one that you didn't know
23 who put it there, but you thought you had enough
24 information to determine who put it there, right?

25 A. Correct.

1 Q. Now, let's look at latent print number six on the
2 gas cover plate that covers the gas cap, where you put
3 the gas in, right? You described it as gas cover plate,
4 right?

5 A. Right.

6 Q. I'm sorry. Go ahead.

7 A. Officer Unterbrink, those are direct quotes from
8 what was written on that card, so that is how he
9 describes it.

10 Q. So you're repeating what he told you?

11 A. What he wrote on the card.

12 Q. You can only go by that because you're not at the
13 car, right?

14 A. Right.

15 Q. Didn't mean to imply that, sorry. You found
16 enough data off of that fingerprint to identify the owner
17 of that fingerprint, right? You said it possesses the
18 quality?

19 A. It possess the quality and quantity to affect an
20 case identify.

21 Q. And latent print number 7 was from the driver's
22 back door -- excuse me, latent print number 7 and 8 had
23 the quality and quantity to effect identification, right?

24 A. Correct.

25 Q. Now, latent print number nine was Calvin Gibbs on

1 his own card, right?

2 A. Correct.

3 Q. And latent print number ten, which was on the
4 passenger side back fender of the car -- you weren't
5 here, but we were just looking at, possessed a quality at
6 the time and quantity at the time to effect
7 identification, right?

8 A. Correct.

9 Q. Number 11 did not, and number 12, which was taken
10 from behind the passenger back door, possessed a quality
11 and quantity to effect identification, right?

12 A. Correct.

13 Q. And latent lift number 13, which is also on the
14 passenger side back door, had the quality and quantity to
15 effect identification, right?

16 A. Correct.

17 Q. And number 14 -- and this certainly wasn't Calvin
18 Gibbs' because you had his known prints to compare this
19 to, right?

20 A. Correct.

21 Q. So all you're saying, had the quality and quantity
22 to effect identification, weren't Calvin Gibbs who was
23 the only person you had compared it to at that point?

24 A. No, sir. At the point of this report, there were
25 several people that we were asked to compare.

1 Q. Okay.

2 A. And that was Terrell Chandler, Che Carr, and
3 Calvin Gibbs.

4 Q. My mistake.

5 A. That's okay.

6 Q. You were also compare -- and this is back in June
7 of 2008, right?

8 A. June 16, yes.

9 Q. And you were asked to compare Calvin Gibbs's known
10 fingerprints, Terrell Chandler's known fingerprints, and
11 Che Carr's known fingerprints, right?

12 A. Correct.

13 Q. And number 14, latent lift number 14, had enough
14 data and information off the print for you to determine
15 who the owner of those prints were, right?

16 A. Correct.

17 Q. And number 15 possessed the quality and quantity
18 to effect identification.

19 A. Correct.

20 Q. Number 18 did not; number 17 possessed the quality
21 and quantity to effect identification, and it was off the
22 hood on the passenger side of the Buick LeSabre, correct?

23 A. Correct.

24 Q. Now, the remaining two, 18 and 19, did not have
25 enough data, is the word I'm using, to effect an

1 identification, right?

2 A. Right.

3 Q. So by my count, at that point on June 16, 2008,
4 you had 11 fingerprints that you were told were on this
5 Buick LeSabre that you had enough data to compare to
6 identify the owners, correct?

7 A. Correct.

8 Q. All right. So you had enough data to identify who
9 had put those 11 fingerprints there. You had checked
10 Terrell Chandler, and it wasn't him, right?

11 A. Correct.

12 Q. And you had checked Che Carr and it wasn't him?

13 A. Correct.

14 Q. When did you write this report that we've been
15 discussing?

16 A. On June the 16th.

17 Q. Of 2008?

18 A. 2008.

19 Q. And did you inform the detectives working this
20 case of what you had determined at that point?

21 A. Yes.

22 Q. Now, there came a time later on when you were
23 asked to compare some other suspects to these 11 unknown
24 fingerprints that had the quality and quantity to effect
25 identification, correct?

1 A. Correct.

2 Q. And tell us when you received those two
3 comparisons, or those two individual known fingerprints,
4 for comparison.

5 A. Okay. We received the request on 5/24/10 to
6 compare.

7 Q. So that is May the 24th of 2010?

8 A. Correct.

9 Q. That's less than a month ago; am I correct?

10 A. Correct.

11 Q. Whose fingerprints were you asked to compare less
12 than a month ago to the 11 unknown?

13 A. We were asked to compare Steven Brown and Storme
14 Carr.

15 Q. All right. And what did you -- what were you able
16 to determine in comparing Storme Carr's fingerprints to
17 the 11 unknown that had the quality and quantity to
18 effect identification?

19 A. That he was identified to the number seven lift.

20 Q. And that was from the driver's back door exterior,
21 correct?

22 A. Correct.

23 Q. And you made a report to that effect. I'm
24 assuming you're looking at your report as well. All
25 right. And you made a report to that effect, and turned

1 it over to the detectives working this case, right?

2 A. Correct.

3 Q. And when did you make your report?

4 A. On the 25th of May 2010.

5 Q. And at the bottom of your report, could you read
6 that last line, please.

7 A. Comparison of Storme Carr came out completed with
8 a better set of palm prints.

9 Q. Have you received those?

10 A. Yes, we did.

11 Q. And what did you determine?

12 A. That nothing else matched up, and that was written
13 on the 26th of May.

14 Q. May the 26th.

15 A. Uh-huh.

16 Q. Now, you received some latent prints from Officer
17 Wooley. I don't want to get her title wrong. Is it
18 Officer Wooley?

19 A. It is.

20 Q. The officer that just testified? All right. She
21 raises -- her job is to actually get the latent prints
22 off different objects, correct?

23 A. Yes, that are submitted to her.

24 Q. Correct. And could you take a look at your notes
25 for what you received from Ms. Wooley, from Officer

1 Wooley. Those were essentially latent prints off
2 ammunition boxes, correct?

3 A. Five of them were latent prints. Two were
4 photocopies of prints.

5 Q. And she notes in there from ammunition boxes.

6 A. And a piece of paper, yes.

7 Q. Yes, correct. And a piece of paper. And did you
8 compare Terrell Chandler's fingerprints to those on the
9 ammunition boxes?

10 A. Yes, I did.

11 Q. And were any of his fingerprints on there?

12 A. No, they weren't.

13 Q. And you compared Storme Carr, Che Carr, and Steven
14 Brown, correct?

15 A. Correct.

16 Q. And no fingerprints there either; is that right?

17 A. No, no one matched up.

18 Q. All right. And when was that fingerprint analysis
19 done? When did you do your analysis?

20 A. The analysis or the request for comparison came in
21 at different times. Terrell Chandler, Calvin Gibbs, and
22 Che Carr was on the 16th of June 2008.

23 Q. And -- go ahead.

24 A. Steven Brown and Storme Carr were compared on the
25 24th of last month 2010.

1 MR. SLADE: Thank you, ma'am. I have no
2 further questions.

3 THE COURT: Redirect?

4 MR. NEELY: Yes, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. NEELY:

7 Q. Officer Butler, is it unusual to receive prints to
8 compare close to a date of trial?

9 A. No, it's not uncommon.

10 Q. How are the prints preserved so that they don't
11 lose its detail if you receive something to compare
12 later?

13 A. I don't understand the question.

14 Q. If you receive a set to compare a year later, how
15 do you make sure that the originals that you have, those
16 latents, aren't disrupted in any way?

17 A. Okay. We are in evidence intake, which means I
18 hold on to all the latent fingerprint cards submitted.
19 They are considered evidence, and they are locked behind
20 a door that only those who work within my office have the
21 combination to. So nobody else can get to them unless we
22 give them access.

23 They're also sealed. We are crime lab accredited,
24 so we have standards in place to -- basically that make
25 us stick to protocols to keep them safe and keep them

1 secure by sealing and putting them behind locked doors.
2 Known fingerprints are pretty much treated the same way.
3 Major case prints on individuals, if I have them, and
4 they were given to me, are kept behind the same locked
5 door that we only have access to.

6 Q. And just so that we're clear, are you always able
7 to match every comparable print or are there cases years
8 later you're not able to make a match with?

9 A. Many cases go unsolved. No matches are made.

10 MR. NEELY: Judge, that's all we have.

11 MR. SLADE: Nothing.

12 THE COURT: All right. You can step down.

13 THE WITNESS: Thank you.

14 THE COURT: All right. Folks, we'll take
15 about a ten, fifteen minute break right here. Usual
16 instructions about not talking about the case or
17 commenting on the witnesses in any way. If anyone wants
18 to take a smoke break, they'll take you downstairs for
19 that.

20 Now, I haven't given up entirely on
21 completing this case today, but there is a strong
22 possibility it will carry on another day. So what I
23 would like you to discuss, because I would like your
24 input on whether, if it's necessary to come back, whether
25 you would prefer to come back tomorrow or whether you

1 would prefer to come back on Monday, but I would like
2 your input on that because I know we didn't plan and let
3 you know and I didn't know if anybody has, you know,
4 already made plans that they couldn't change for the
5 weekend, and then, of course, that is -- we're talking
6 about you being away from work or whatever else you do
7 next week, but I think there is a strong possibility that
8 we may need one more day on this, and I would like to get
9 your input as to whether or not you would prefer to do it
10 tomorrow or Monday if that becomes necessary, so you can
11 discuss that aspect of the case and then we'll talk about
12 that a little bit later when we break for lunch.

13 All right, so see you back in about 15
14 minutes.

15 (Recess taken.)

16 (In open court, jury not present.)

17 THE COURT: Let the record reflect the
18 defendant is in the courtroom.

19 MS. SHEALY: We have a stipulation we've
20 agreed to. I would have it marked and read it to the
21 jury.

22 THE COURT: All right. I'll tell them what
23 the stipulation is. You want to put that in right now?

24 MS. SHEALY: We can.

25 THE COURT: All right. Bring them in.

1 (In open court, jury present.)

2 THE COURT: Before we call the next witness,
3 we have a stipulation to put on the record. A
4 stipulation is an undisputed fact. Both sides have
5 agreed it's not necessary to call a witness in order to
6 prove what has been stipulated to, and so Ms. Shealy will
7 now read to you what the stipulation is. You give this
8 stipulation no more weight than any other piece of
9 evidence throughout the trial. It's simply evidence for
10 you to consider and give as much weight as you think it
11 deserves, based on all the testimony you hear throughout
12 the trial.

13 MS. SHEALY: Thank you, Your Honor. Reading
14 from state's Exhibit 152, the state and defense agree to
15 the following: That on May 31, 2008, Officer Unterbrink
16 of the Charleston Police Department crime scene unit was
17 present during the autopsy of Calvin Gibbs. He collected
18 two plastic bags with white powder from Mr. Gibbs's pants
19 pocket. Elizabeth Wiggins Mitchell, a chemical analyst
20 with the Charleston Police Department tested the
21 substances and determined that both bags contained
22 cocaine weighing 2.16 grams and 1.83 grams respectively.

23 On June 1, 2008, Officer Unterbrink executed
24 a search warrant on a 2001 Buick LeSabre. During the
25 search he collected loose white powder from the driver's

1 seat, a clear plastic bag containing a white powder from
2 the center console, and a clear plastic bag containing a
3 green leafy substance from the front passenger's door.

4 Chemical analyst Wiggins Mitchell tested the
5 substances and determined that the substance found in the
6 driver's seat was .58 grams of cocaine. The substance
7 found in the center console was .61 grams of cocaine, and
8 the substance found in the passenger's door was 1.90
9 grams of marijuana.

10 On June 2, 2008, Officers Gilmore and Gill of
11 the Charleston Police Department participated in the
12 execution of a search warrant at 930 Battery Avenue in
13 Charleston. During the search, they collected a plastic
14 bag containing 13 individual bags with green leaf
15 substance in the front bedroom on the dresser. Chemical
16 analyst Wiggins Mitchell tested the substance and
17 determined that it was 11.38 grams of marijuana.

18 These substances were properly recovered,
19 properly secured, and sent to the Charleston police
20 department forensic laboratory from recovery by officers
21 Unterbrink, Gilmore, and Gill for the submission with
22 chemical analyst Wiggins Mitchell. All requisite
23 procedures regarding proper chain of custody were adhered
24 to.

25 THE COURT: Thank you. Call your next

1 witness.

2 MR. NEELY: State calls Kathy Woodward.

3 KATHY WOODWARD,

4 having been first duly sworn,

5 was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. NEELY:

8 Q. If you could tell the jury where you work.

9 A. I work for the South Carolina Law Enforcement
10 Division in the trace laboratory.

11 Q. And when you say trace laboratory, what exactly
12 does that mean?

13 A. In the trace laboratory, we analyze forensic
14 evidence, specifically gunshot residue. We analyze arson
15 evidence from suspicious fires, paint analysis, glass
16 analysis, fiber analysis, trace and other explosives.

17 Q. And what type of background do have you that
18 allows you to do that?

19 A. I have a bachelor of science degree from Commerce
20 College, and I have also completed in-house training in
21 the areas of GSR, gunshot residue, fire debris analysis,
22 or arson analysis and also in paint.

23 Q. And have you ever been qualified as an expert in
24 trace evidence?

25 A. Yes, I have.

1 Q. About how many times?

2 A. I think about 12 times.

3 MR. NEELY: Your Honor, at this time we would
4 offer Ms. Woodward as an expert in the field of trace
5 evidence.

6 MR. SLADE: No objection.

7 THE COURT: All right. Folks, this witness
8 has now been qualified as an expert in the field of trace
9 evidence, did you say?

10 MR. NEELY: Yes, sir.

11 THE COURT: The instructions that I gave you
12 earlier about expert witnesses apply to this witness as
13 well, so you decide how much weight to give her testimony
14 based on all of the evidence that you will hear
15 throughout the trial. All right? Go ahead.

16 MR. NEELY: Thank you, Your Honor.

17 BY MR. NEELY:

18 Q. Did you receive any GSR kits in this case?

19 A. Yes, I did.

20 Q. Whose kits were they?

21 A. I received a GSR kit from Calvin Terrell Gibbs, I
22 received a GSR kit from a Buick LeSabre, and I received a
23 GSR kit from -- is it Cherelle Anderson?

24 Q. Yes.

25 A. Cherelle Anderson.

1 Q. And did you make any type of examinations on that,
2 on those kits?

3 A. I did.

4 Q. What did you do?

5 A. Well, I performed GSR analysis on all three of
6 those kits per our protocol at SLED.

7 Q. And when you're performing that analysis, what are
8 you looking for?

9 A. I'm looking for the presence of lead, barium, and
10 antimony.

11 Q. What conclusions did you reach as far as looking
12 for those or finding those things on the items you
13 receive?

14 A. The results from Calvin Terrell Gibbs's GSR kit,
15 on the right palm and right back, the metals did not
16 indicate the presence of gunshot residue. On the left
17 palm, there was no gunshot residue found, and again on
18 the left back, the metals -- the metals did not indicate
19 the presence of gunshot residue.

20 On the Buick LeSabre, there were four areas that
21 were collected and -- the four areas that I tested. The
22 first one was of the interior side of the driver's door,
23 and I found one round lead particle, which is a component
24 of gunshot residue.

25 The second area was the interior side of the

1 driver's door, starting at the window slot approximately
2 three inches down, and in that area, gunshot residue was
3 found.

4 In the third area, which was the exterior side of
5 the driver's front door, I found round lead particles,
6 and, again, those are a component of GSR, and the fourth
7 area was, again, the exterior side of driver's front
8 door, and gunshot residue was found on that particle
9 lift.

10 Q. So I know you found some particles -- was that the
11 end of your examination on those three kits?

12 A. No. I got one more kit to go over.

13 Q. Ms. Anderson?

14 A. The third kid was from Cherelle Anderson, and all
15 four areas of the hand, which is the right palm and the
16 right back and the left palm and left back of the hand,
17 the quantities of metals did not indicate the presence of
18 gunshot residue.

19 Q. So just so we're clear, you didn't find any
20 gunshot residue on Ms. Anderson's kit?

21 A. No.

22 Q. And you didn't find any gunshot resolution on
23 Calvin Gibbs's kit?

24 A. That's correct.

25 Q. And the car, just so that we can clarify this, you

1 found some particles, or lead particles, on certain
2 parts. Could you tell the jury what part of the car, if
3 any, did you find enough to say you had GSR gunshot
4 residue?

5 A. I found actual gunshot residue particles on the
6 interior side of the driver's door, starting at the
7 window slot, to approximately three inches down, and I
8 also found gunshot -- actual gunshot residue particles on
9 the exterior side of the driver's front door. There were
10 two particle lifts taken from each of these areas, and on
11 one particle lift from one area, I found gunshot residue
12 and on one particle lift from the second area, I found
13 gunshot residue.

14 Q. And let me ask this: We're talking about gunshot
15 residue. What part of the gun creates that?

16 A. Gunshot residue is actually produced from the
17 chemicals that are located in the crown or cap of the
18 cartridge, and the cartridge is the actual bullet and the
19 casing together as one. That is how a bullet is loaded
20 into a weapon.

21 And on the primer cap of the cartridge, there is a
22 little circle in the center, if you're familiar with
23 ammunition, and that is where the hammer of the gun
24 strikes that cartridge, and when that hammer strikes that
25 cartridge in that area, there is a small spark that is

1 created, which in turn creates a small explosion between
2 the chemicals, and that primer cap and those chemicals
3 are lead, barium, and antimony.

4 That small explosion is what builds pressure and
5 propels the bullet out of the barrel of the weapon, and
6 as a result there is a plume of smoke that comes out the
7 barrel of the weapon, and also a little bit may come out
8 any other openings in the weapon, so, like, an ejector
9 port or maybe around on a revolver, around that area, so
10 that is where gunshot residue comes from.

11 Q. Okay. Were you able or did you perform any other
12 tests on the rifle?

13 A. I did not perform any examinations on the rifle
14 itself. I did perform a distance determination.

15 Q. Okay. Could you tell us about that.

16 A. Yes. A distance determination or a bullet hole
17 analysis was performed using -- it's my item 18, it's --
18 it was a 762 rifle and --

19 Q. And just for the record, I'm showing you what has
20 been marked as State's Exhibit 98 and ask, is this the
21 weapon that you're referring to?

22 A. Yes.

23 Q. Thank you. You can continue.

24 A. And my item 25 was one red T-shirt that was
25 collected from Calvin Gibbs, and I also received what was

1 my item 26, which was an envelope containing unfired
2 ammunition. Using these three items, I analyzed the red
3 T-shirt from Calvin Gibbs, microscopically as well as
4 chemically, to see what the hole looks like and to see if
5 there was any lead around the hole.

6 Tested it for that, and then I did some test
7 firing using the rifle and at different distances to try
8 to reproduce the particles that I saw around the hole.

9 Q. And did you actually fire the weapon or did
10 someone else?

11 A. I actually had a co-worker fire that one for me.

12 Q. And why is that?

13 A. Well, 'cause I was kind of uncomfortable firing
14 one that was that big.

15 Q. Okay. So you were able to make some measurements?

16 A. Yes. I was present when my co-worker fired the
17 weapon for me, and I actually did the measurements, and,
18 you know, told him where to stand and how far away I
19 wanted to do the test firing, and using all that
20 information, I determined that the area around the hole
21 on the back of the T-shirt was consistent with a bullet
22 hole and that the test patterns that I fired were
23 approximately -- showed that the distance at which he was
24 shot was between near contact and 12 inches away.

25 Q. Let me ask, do you sometimes find GSR on the

1 victim's hands?

2 A. Yes.

3 Q. Does the location of the shot affect whether
4 GSR will be found?

5 A. It can.

6 Q. Could you tell us about that.

7 A. If a victim -- if a victim is shot, say, from the
8 front, a lot of times they might have a -- maybe a
9 defensive. Posture, they might have their hands in front
10 of them or something like that. If someone is, you know,
11 shot from behind, then their hands are in front of them,
12 so -- and as the smoke, you know, as the plume of smoke
13 comes out of the barrel of the weapon, you remember how
14 the gunshot residue is produced, that plume of smoke will
15 be behind them, so you wouldn't really expect to see a
16 whole lot of gunshot residue on their hands from that
17 weapon being fired.

18 So that's just a couple of ways, you know.
19 If they were, I don't know, there are so many different
20 possibilities it's kind of hard to go into all of them,
21 but that would be from front to back. That would be a
22 good explanation.

23 Q. One other thing, when you say near contact, you're
24 talking about the distance between what part of the gun
25 and the shirt or the victim's body in this case?

1 A. Between the barrel of the gun, the very end of it,
2 and whatever is being shot, you know, the shirt, the
3 person, that kind of thing.

4 Q. And Ms. Shealy wants to make sure I've asked this
5 properly. When you're talking about near contact, tell
6 us again what your conclusion was.

7 A. That the victim was shot at approximately between
8 near contact and 12 inches.

9 Q. Thank you.

10 THE COURT: Cross?

11 MR. SLADE: Yes, sir.

12 CROSS-EXAMINATION

13 BY MR. SLADE:

14 Q. Could I see your report?

15 A. Sure.

16 Q. You don't take the actual gunshot residue samples
17 that you test, correct?

18 A. No, sir, I don't collect them.

19 Q. So if you didn't test the back -- the window post
20 that would have been behind the driver's side window of
21 the car?

22 A. Yes, sir.

23 Q. You know the part of the car I'm talking about?

24 A. I think so.

25 Q. The driver's side has a door and it has a window,

1 and then in that -- or on that door there is a post,
2 between the front door and the back door, right?

3 A. Yes, sir.

4 Q. Does that make sense?

5 A. Uh-huh.

6 Q. And if you didn't test that for gunshot residue,
7 it's because you didn't get any samples to test; is that
8 right?

9 A. That's correct.

10 Q. All right. And the only gunshot residue that you
11 tested was four samples; is that right?

12 A. That's correct.

13 Q. Only potential gunshot residue you tested was four
14 samples, correct?

15 A. That's correct.

16 Q. And all you know about where they were taken from
17 is what the report tells you, right?

18 A. That's correct.

19 Q. And if you didn't test any gunshot residue from
20 the front panel of the driver's side, the front panel
21 being where the front of the driver's side meets the rest
22 of the car, forms the hood, you know the part I'm
23 referring to or trying to refer to here?

24 A. Yes, sir.

25 Q. And if you didn't test any of that for gunshot

1 residue it's because you didn't get a sample for that,
2 right?

3 A. That's correct.

4 Q. Now, you found some gunshot residue in one
5 place -- excuse me, in two places that you were sent
6 samples from the driver's side door, right?

7 A. I received samples from the interior of the
8 driver's door, starting at the window slot, to
9 approximately three inches down. That was how they were
10 labelled when they were submitted to me.

11 Q. Okay. I apologize for the way I asked the
12 question. Did you test for gunshot residue, for samples
13 outside the driver's side door?

14 A. No, sir.

15 Q. On the exterior part of the driver's side door?

16 A. There was -- I did have samples from the exterior
17 of the driver's front door.

18 Q. All right. And you found gunshot residue there.

19 A. Yes, sir.

20 Q. And you didn't test any area larger than the door,
21 right? Those two samples was all you got?

22 A. Right. I got two particle lifts that were both
23 labelled exterior side driver's front door.

24 Q. All right. And you don't know whether they came
25 from near the bottom of the door or close to the window,

1 right?

2 A. No, sir, I don't know that information.

3 Q. All right. And when were you asked to make this
4 distance determination? You conducted -- let me back up
5 a step. You first conducted a gunshot residue test,
6 correct?

7 A. Yes.

8 Q. First thing you did --

9 A. Yes.

10 Q. -- was test these four samples; is that your word?
11 Is that what you called them?

12 A. I actually received three GSR kits.

13 Q. Okay.

14 A. And I analyzed those three kits.

15 Q. Right. Let's take the two people out of it and
16 just talk about the car.

17 A. Okay.

18 Q. There were four samples in the car, right?

19 A. Yes, sir.

20 Q. And you did a gunshot -- you determined where you
21 found gunshot residue in those four samples, right?

22 A. Yes, sir.

23 Q. Two from the exterior of the driver's side door
24 and two from the interior side of the driver's side door?

25 A. That's correct.

1 Q. And when did you do those tests?

2 A. You don't mind if I look through here?

3 Q. Sure, take your time.

4 A. I analyzed those four car lifts on August 11 of
5 2008.

6 Q. And when were you asked to do this distance
7 determination?

8 A. Let's see. It looks like the clothing, the shirt,
9 and the ammunition was received on December 26 of 2008.

10 Q. I'm asking you when -- are you telling me when you
11 received it is when you were asked to do the distance
12 determination? I apologize if it wasn't clear. When
13 were you asked to do a determination of the distance
14 between this conclusion you've reached on how far you
15 think the gun was away?

16 A. I'm sorry. You probably asked me sooner because I
17 had to ask them to bring in the evidence. Okay. It
18 looks like on July 31 of 2008 the request for a distance
19 determination was made.

20 Q. All right. And what you would describe for us is
21 that when the cartridge is fired, there is basically an
22 explosion, right?

23 A. Right.

24 Q. A small explosion that propels the bullet casing
25 that is holding the bullet is ejected from the weapon,

1 and the explosion propels the bullet out the end of the
2 barrel, right?

3 A. That's true.

4 Q. The explosion, the gas and the particles that form
5 the explosive power to drive the bullet out of the end of
6 the barrel come out with it, right?

7 A. Yes.

8 Q. Let's call it gunpowder. I know it's not exactly
9 gunpowder, but that is how people normally refer to it,
10 and it -- and what we're calling the gunpowder is
11 composed of all those elements you talked about, pieces
12 of lead, antimony, barium, et cetera, and that is blasted
13 out the end of the barrel, right?

14 A. Yes, sir.

15 Q. And it creates -- what it does, essentially is
16 lands on stuff?

17 A. That's correct.

18 Q. And you couldn't test whether it landed on the
19 front part of the car if you don't get swabs from it.

20 A. That's true, yes.

21 Q. And you can't test whether it was on that door
22 post behind the driver's side door if you don't get those
23 samples, right?

24 A. That's correct.

25 Q. And you can't test it if, say, the driver's side

1 back door, if you don't get those samples, correct?

2 A. Right.

3 Q. And you tested it, the samples you had, correct?

4 A. I'm sorry?

5 Q. You can only test the samples you get?

6 A. That's correct.

7 MR. SLADE: Thank you.

8 REDIRECT EXAMINATION

9 BY MR. NEELY:

10 Q. Briefly, Ms. Woodward, what do your conclusions
11 show that you were able to make based on what you
12 received, concerning the distance?

13 A. Concerning the distance?

14 Q. Yes.

15 A. Concerning the distance, the distance
16 determination I made is that the -- using the submitted
17 ammunition and the submitted weapon was that approximate
18 distance was near contact to 12 inches.

19 Q. And one other question about GSR. If you wash
20 your hands or do anything of that nature, will that make
21 the GSR leave that area of your body?

22 A. Yes. GSR is very delicate evidence, and it -- so
23 it is very easily removed from the hands. Washing your
24 hands can remove it, but also just everyday moving
25 around, things that you would do, like take your hands in

1 and out of your pockets would start to wipe it away.
2 It's also absorbed by the skin, so over time it can be
3 absorbed by the skin and, you know, I guess be removed
4 that way. It's actually absorbed, not physically
5 removed, so we do have some limitations there.

6 MR. NEELY: Thank you. Thank you, Judge.

7 MR. SLADE: I have one on redirect -- based
8 on redirect, Your Honor.

9 RECROSS-EXAMINATION

10 BY MR. SLADE:

11 Q. The solicitor was asking you about your test and
12 the distance. When you test -- well, the gunshot residue
13 comes out of the end of the barrel, so when you find
14 gunshot residue on the exterior, on the outside of the
15 driver's side door, the gunshot residue is going forward,
16 correct?

17 A. Yes, sir.

18 Q. And so that would indicate that the end of the
19 barrel, which is where the gunshot residue comes out, has
20 to be on the outside of the car in order to put gunshot
21 residue on it, correct?

22 A. Yes, sir.

23 Q. All right. And you don't know how far the
24 gunshot -- the gun barrel was back because it would
25 make -- let me back up a second. It would make a larger

1 pattern the further out it goes, correct?

2 A. Yes, sir.

3 Q. And if you couldn't test the areas around the
4 driver's side door, you don't know how big a pattern it
5 made, do you?

6 A. No, sir.

7 Q. All right.

8 MR. SLADE: I don't have any other questions.

9 THE COURT: All right. You can step down.

10 MS. SHEALY: We would ask she be excused.
11 You can come down.

12 THE COURT: Any objection to her being
13 excused?

14 MR. SLADE: None, Your Honor.

15 THE COURT: You're free to go. Thank you.

16 MS. SHEALY: Jasper Humbert.

17 JASPER HUMBERT,

18 having been first duly sworn,
19 was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MS. SHEALY:

22 Q. Mr. Humbert, if you would, please, tell us where
23 you're employed.

24 A. I'm employed at the South Carolina Law Enforcement
25 Division, also known as SLED.

1 Q. Did you drive here this morning from Columbia?

2 A. Yes, we did.

3 Q. What is your position there? What is your title?

4 A. I'm a DNA analyst.

5 Q. And how long have you worked at SLED?

6 A. Over four years now.

7 Q. Have you ever testified in court before?

8 A. Yes, I have.

9 Q. Have you been qualified as an expert when you
10 testified?

11 A. Yes, I have.

12 Q. Tell us a little bit about your educational
13 background.

14 A. I have a bachelor's of science degree from
15 Armstrong Atlantic State University in Savannah, Georgia.
16 I have a master's degree in biological sciences from the
17 University of Iowa, and I have a further three years of
18 graduate education in a genetics PhD program from the
19 Penn State Medical College.

20 Q. And from the time you've been at SLED, have you
21 always been in the DNA department?

22 A. Yes, I have.

23 MS. SHEALY: Your Honor, at this time we
24 would after Mr. Humbert as an expert in the field of
25 DNA analysis?

1 MR. SLADE: No objection, Your Honor.

2 THE COURT: All right. This witness has now
3 been qualified as an expert in the field of DNA analysis.
4 Same instructions I gave you pertaining to expert
5 witnesses applies to this witness as well. You decide
6 how much weight to give his testimony based on all the
7 evidence you hear throughout the trial. Thank you.

8 BY MS. SHEALY:

9 Q. Mr. Humbert, can you kind of summarize for us what
10 DNA is.

11 A. Yes, I can.

12 Q. Tell us what it is.

13 A. DNA is basically a chemical in all the cells of
14 our body that stands for deoxyribonucleic acid, and it's
15 basically the blueprint for who we are. So if we have
16 certain hair color or eye color, that is determined by
17 our DNA. We get half of our DNA from our mother and half
18 from our father, and in my profession, the way that I
19 basically test, use DNA, is that I get evidence items and
20 I get standards and I do DNA testing on them and I get
21 what's called a DNA profile, which is basically a series
22 of numbers that I get from testing different locations on
23 the DNA.

24 Q. Okay. In this case, were you asked to compare
25 some standards with some items of evidence?

1 A. Yes, I was.

2 Q. If you could further start to tell us whose
3 standards you have.

4 A. Okay. I have tested -- I have tested standards
5 from Calvin Gibbs, Terrell Chandler, Che Carr, Steven
6 Brown, and Storme Carr.

7 Q. And when you received those standards, were some
8 blood standards and some buccal standards?

9 A. Yes. There were some -- some were blood and some
10 were buccal.

11 Q. And the two buccal were from whom?

12 A. The two buccal swabs were from Steven Brown and
13 Storme Carr.

14 Q. Tell us what items of evidence you received to
15 make comparisons with.

16 A. Okay. I received four items of evidence, or
17 basically four items, in our system of evidence. Item 19
18 was swabs from a rifle. Item 20 was swabs from 930
19 Battery, which I believe to be an address. Item 35 was
20 swabs from a 380 auto handgun, and item 36 was another
21 swab from a 380 handgun.

22 Q. And first let me ask you a preliminary question.
23 Regarding Che Carr and Storme Carr, are they identical
24 twins?

25 A. According to my results, where identical twins

1 have the same DNA, I got the same DNA profile from them,
2 so I would concluded that they are identical twins.

3 Q. Okay. Why don't you tell the jury what your
4 conclusions were as to each item of evidence in the
5 comparisons you made.

6 A. Okay. I'll go ahead and start with item 19.

7 Q. And tell us as you go, please, remind us what item
8 of evidence that is.

9 A. Item 19 was some swabs from a rifle, okay, and the
10 conclusion that I got from the item was that the
11 DNA obtained from item 19 is a mixture of at least two
12 individuals. The partial DNA profile, the major
13 contributor to item 19, matches Terrell Chandler. The
14 probability of randomly selecting an unrelated individual
15 having a DNA profile matching the major contributor of
16 this item is approximately one in 740,000.

17 Q. Would you say that a little more simply, what that
18 statistic means.

19 A. Well, the that statistic, the way we get the
20 statistic, is that when they were originally coming up
21 with these locations on the DNA they tested, they wanted
22 to see basically how -- well, how much of these basically
23 numbers were present in the population, okay? So at one
24 location, they would say that 10 percent of the people
25 have one number, okay, so the probability of a person

1 having that number would be one in ten, okay?

2 So at each location on the DNA, they looked at a
3 population database which had basically people in it that
4 they could look to to see how common this number was that
5 this person had, and then they could come up with
6 basically probabilities of getting, like, one number
7 being one in ten, one would be one in twenty, okay?

8 And when I test items, I use that population
9 database that gives me those numbers, okay, so I'll test
10 one location, and I'll see that it's a one in 100
11 probability of a person having that, and then I could do
12 that for every location that I test because they're
13 independent of one another, so I could do 1 in 100, so I
14 end up, you know, with one in 10,000 after the second
15 one, or it varies, but that is the idea behind it.

16 Q. Okay. And, again, as it related to the major
17 contributor from the rifle, your conclusion was who was
18 the major contributor?

19 A. I said that the DNA -- the major contributor to
20 item 19 matches Terrell Chandler.

21 Q. Tell us the statistic you reached as to that
22 analysis.

23 A. Okay. The probability of a random person
24 submitting it is one in 740,000.

25 Q. Now, when you say that he is the major

1 contributor, would you describe to the jury what you mean
2 by major contributor and minor contributor.

3 A. Yes, I can. When I got -- when I did the
4 DNA testing, when I got my result back, I saw that there
5 were more than two numbers at several locations, so every
6 person has two numbers. They get half from their mother
7 and half from their father, so they get one from their
8 mother and one from their father. If I see several
9 locations with more than two numbers, I know it's a
10 mixture, okay?

11 And when I look at the data, if there is one
12 person that is contributing a significantly more amount
13 of DNA, I can look at my data and pull out a major
14 contributor and a minor contributor or several minors
15 from that DNA provide file, so in this case I was able to
16 pull out a major contributor from that mixture of
17 DNA that I had.

18 Q. Now, in analyzing the evidence comparing it to the
19 other standards that you had, was there any conclusion
20 you could reach as to Che Carr, Calvin Gibbs, and Storme
21 Carr?

22 A. Yes. I was able to make a conclusion. Cheryl
23 (sic) Carr, Calvin Gibbs, and Storme Carr are excluded as
24 possibility contributors to this mixture, and I'll go
25 ahead and read the rest of my conclusion. Steven Brown

1 cannot excluded as a possible minor contributor to this
2 mixture.

3 Q. Say that a little more plainly. Steven Brown's
4 DNA could also be on that rifle; is that correct?

5 A. I could not eliminate him as a possible minor.
6 There was not a lot of information there, but based on
7 the information, I could not exclude him from that being
8 the minor.

9 Q. Okay. Now, regarding what you refer to as item
10 20, that being the swabs from 930 Battery, would you tell
11 the jury what conclusion you reached regarding that piece
12 of evidence.

13 A. Yes, I will. The DNA obtained from item 20 is a
14 mixture of at least two individuals. The DNA profile,
15 the major contributor to item 20 is an unidentified male
16 individual. The partial DNA profile from the minor
17 contributor is insufficient for reliable interpretation.
18 Cheryl Carr, Calvin Gibbs, Storme Carr, and Steven Brown
19 are excluded as possible contributors to this mixture.

20 Q. Okay. And then regarding the swabs that came from
21 the 380, you received actually two swabs?

22 A. That's correct.

23 Q. And could you tell the jury what your results were
24 regarding the swabs from the 380.

25 A. No DNA profiles were developed from items 35 and

1 36, which were the two swabs from that gun.

2 Q. What does that mean?

3 A. That means there was too little DNA there, and I
4 got absolutely no numbers back when I tested the DNA.

5 Q. Okay. Is it unusual to sometimes find no DNA on
6 an item?

7 A. No, it's not.

8 Q. Now, regarding the swabs from the rifle, could you
9 tell us whether or not when those items were presented to
10 you, was it one item, one swab, or were there two swabs?

11 A. I'll look at my notes and let you know. According
12 to my notes, there were two swabs from the trigger and
13 the fire stock of the weapon, and I combine them for my
14 testing.

15 Q. Since you combined them for your testing, are you
16 able to tell us what area of the gun had Terrell
17 Chandler's DNA on it?

18 A. I would not be able to because I combined the two
19 swabs in my testing, so I can't tell which location they
20 would have come from.

21 Q. And why would you combine two?

22 A. Well, with contact DNA on an item, I usually get a
23 low level of DNA, which I did in this case too, so for
24 the gun, I combine them to try to get as much DNA as
25 possible to test for my further testing, or to get ready

1 for my further testing.

2 Q. And in relationship to your analysis in this case,
3 did you receive some items and some standards early on
4 and other items and standards later?

5 A. Yes, I did.

6 Q. Okay. And I think when I asked you to do that it,
7 didn't make SLED very happy.. I'm not real popular there.
8 Tell them, if you would, which standards you got late.

9 A. I got these standards from Steven Brown and Storme
10 Carr later than the other three standards.

11 Q. And do you happen to remember when you got those?

12 A. I got them approximately two-and-a-half, three
13 weeks ago.

14 Q. Okay. And what about the swabs from the 380?

15 A. About a week and a half ago.

16 Q. In fact, did you bring some of the evidence with
17 you to court today?

18 A. Yes. I brought all of the newest items with me
19 today.

20 Q. And that is because, why, you just --

21 A. I was still finishing the testing, and I didn't
22 want -- I wasn't going to return the items until all of
23 my reviews were finished.

24 MS. SHEALY: Your Honor, at this time I would
25 also move these into evidence.

1 (Buccal swabs marked for identification and
2 admitted into evidence as State's Exhibit Nos. 153, 154,
3 and 155.)

4 BY MS. SHEALY:

5 Q. I'm going to get to you identify each one as we
6 admit them.

7 A. I may need to open this one. I know what's in
8 there.

9 Q. Here are some scissors if you would like to do
10 that.

11 A. This is 33. This is the -- this would be the
12 buccal swab from Steven Brown.

13 Q. Okay.

14 MS. SHEALY: Your Honor, I would like to
15 offer that at this time.

16 THE COURT: Any objection?

17 MR. SLADE: No.

18 THE COURT: To all three of them?

19 MR. SLADE: Yes, none to any of them.

20 THE COURT: All admitted then.

21 THE WITNESS: Item 34, swabs from Storme
22 Carr. And I'll go ahead and open this one. I see that
23 the top one is the handgun -- I just need to see my
24 initials and number on it. This is 36, which is the swab
25 from the other handgun, so I can see both of them in

1 there.

2 MS. SHEALY: Those are item numbers 153, 154,
3 and 155. I have no further questions. Answer, please,
4 any the defense may have. Thank you.

5 THE COURT: Cross.

6 CROSS-EXAMINATION

7 BY MR. SLADE:

8 Q. The substance that you test for DNA -- well, let
9 me try again. DNA remains for a long, long time,
10 correct?

11 A. Yes, it can.

12 Q. It can?

13 A. It can.

14 Q. And there are DNA samples that are taken from
15 Egyptian mummies, correct?

16 A. A certain type of DNA can be taken.

17 Q. My only point is whatever it is that you're
18 testing, when you're testing DNA, it stays a long time.
19 It doesn't go away, correct?

20 A. It can.

21 Q. And I'm not asking anything any more narrow than
22 that. It exists?

23 A. It can stay for a long time.

24 Q. Okay.

25 A. It can stay as long as it's not exposed to

1 anything that would get rid of it. It can stay there for
2 a very long time.

3 Q. Hundreds of years?

4 A. It can.

5 Q. And the fact that you have found DNA on any object
6 isn't any -- that can't tell you anything about when that
7 DNA was attached to or made contact with that object,
8 correct?

9 A. No. I have no idea how long the DNA had been on
10 that item.

11 Q. Okay. And you knew from prior experience that
12 there is so little of the substance of DNA to test off
13 of, I guess, guns, that you were just hoping to be able
14 to make any kind of fining combined with the samples that
15 you got, correct?

16 A. That's correct.

17 Q. And you just have one DNA report for the weapon
18 that you made, or the two weapons. You combine it for
19 both weapons, correct?

20 A. I combine for the first one.

21 Q. Yeah. Okay.

22 A. Okay.

23 Q. You just combine for the --

24 A. First weapon.

25 Q. First weapon.

1 A. So that was combined for that.

2 Q. When did you get the DNA samples, the buccal
3 swabs? And that is the swab right inside the mouth?

4 A. Yeah.

5 Q. And you got buccal swabs for Steven Brown and
6 Storme Carr, correct?

7 A. Yes, I did.

8 Q. And you just completed the testing on those in the
9 last week or so?

10 A. Last week, yes.

11 Q. And, in fact, some of the results you had to bring
12 with you because you didn't send it down here?

13 A. The evidence.

14 Q. Okay. When did you finish the testing of Storme
15 Carr?

16 A. Friday of the last week.

17 Q. A week ago today?

18 A. Yes.

19 Q. Okay.

20 MR. SLADE: I beg the indulgence of the Court
21 one moment.

22 BY MR. SLADE:

23 Q. In your direct testimony, Ms. Shealy was asking
24 you about it would be unusual to test -- she was asking
25 you about the 3-A, the other weapon you tested. You

1 didn't find any DNA on that?

2 A. No, I didn't.

3 Q. And, in fact, people can handle things like
4 weapons all the time and not leave DNA on them.

5 A. I wouldn't be an expert on that. All I know is
6 the items I got in that are touched, like from swabs from
7 a gun.

8 Q. Right.

9 A. It's not a high percentage result.

10 Q. Okay.

11 A. So I mean, I don't know -- I don't test to see if
12 someone touched an item.

13 Q. I understand. Let me ask you a better question.
14 Of the numbers of weapons that you test for contact DNA
15 samples, it's not uncommon to find nothing, correct?

16 A. That's not uncommon.

17 Q. Right. I don't have any other questions.

18 MS. SHEALY: I have nothing further and ask
19 that he be excused.

20 FRANK DAN DeFREESE,
21 having been first duly sworn,
22 was examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MS. SHEALY:

25 Q. Mr. DeFreese, tell the jury where you work and

1 what your background is.

2 A. I work for the South Carolina Law Enforcement
3 Division in the forensic services laboratory in Columbia,
4 and within the laboratory I'm assigned to the department
5 where we do the examination of firearm and tool mark
6 evidence.

7 Q. Could you tell the jury whether you have ever
8 testified in court before?

9 A. Yes, I have.

10 Q. And when was the first time you testified, do you
11 remember?

12 A. The first time I testified as an expert witness
13 was here in Charleston in September of 1969.

14 Q. Could you tell the jury approximately how many
15 you've testified since then?

16 A. I estimate between 600 and 700 times.

17 Q. And on those occasions, you were qualified as an
18 expert?

19 A. Yes.

20 Q. And that is in the field of what?

21 A. Firearm and tool mark analysis.

22 MS. SHEALY: At this time I would offer
23 Mr. DeFreese as an expert in the field of firearm and
24 tool mark identification.

25 MR. SLADE: We have no objection to that.

1 THE COURT: All right. This witness has been
2 qualified as an expert in the field of firearm and tool
3 mark analysis. Same instructions I've been giving you
4 about expert witnesses applies to this one as well. You
5 decide how much weight his testimony deserves based on
6 all the evidence that you hear throughout the trial.

7 Go ahead.

8 BY MS. SHEALY:

9 Q. Thank you. Were you asked to analyze some items
10 in this case?

11 A. I was.

12 Q. In general, before we go over what you actually
13 analyzed, would you tell the jury what types of things
14 you do analyze. What is the role of a firearm and tool
15 mark analyst?

16 A. Within the field of firearms identification, we
17 are most frequently asked to identify ammunition
18 components where possible back to the firearms from which
19 they were fired.

20 Most of the time we're talking about bullets. We
21 can also talk about shotgun bullets, which were not
22 involved in this case, and were we talking about
23 cartridge cases. It happens that when bullets are fired
24 through the barrel of a rifle of a firearm -- which
25 includes rifles, pistols, and revolvers, and even some

1 shotguns are now rifles, the rifling that grips the
2 bullet and imparts a spin on the bullet as the bullet is
3 leaving the barrel also leaves marks, which are capable
4 of being identified back to that particular gun barrel.

5 The rifling consists of a series of spiral and
6 grooves on the inside surface of the barrel, and they
7 grip the bullet so tightly that they scratch the bullet
8 in a very unique way. Where the bullet survives in
9 sufficiently good condition, it's possible to identify a
10 particular bullet as being fired by a particular gun
11 barrel.

12 In a similar fashion with cartridge cases, it's
13 possible to identify cartridge case back to the gun in
14 which it was fired based on matching firing pin or breach
15 face marks or mechanism marks that were placed on that
16 cartridge or cartridge case by a particular gun.

17 We do this by means of a side by side microscopic
18 comparison wherein if we have a firearm we obtain test
19 bullets and test cartridge cases, and we use one test
20 bullet and one test cartridge case to compare against an
21 evidence bullet, or evident cartridge case, to see if the
22 same unique markings are present, and where there are
23 repeatable and they are sufficiently present, we can
24 conclude the particular bullet or particular cartridge
25 case is fired by a specific firearm.

1 Q. Okay. Now, in showing you the two weapons that
2 you were presented with, let's start with item 99. Can
3 you tell the jury what type of weapon that is.

4 A. Yes, ma'am. Item 99 is a High Point firearms
5 model CF380. It's a 380 auto caliber semi-automatic
6 pistol.

7 Q. And would you describe for the jury what is meant
8 by the term semi-automatic.

9 A. A semi-automatic firearm fires one type for each
10 pull of the trigger. A fully automatic firearm is a
11 machine gun where you pull the trigger and it keeps
12 firing until you let up on a trigger. But in a pistol
13 such as this, if it were loaded and prepared for firing,
14 if I pull the trigger once it would fire once, a bullet
15 would go down and out the barrel, and a short time
16 thereafter the slide would go to the rear and the fired
17 cartridge case would be extracted and ejected from the
18 gun.

19 When the slide reached its most rear ward point,
20 it would stop and spring would cause it to move forward
21 and grab the next cartridge from the magazine and load it
22 into the back of the barrel so that the gun is prepared
23 to fire the next shot. If you would let up on the
24 trigger slightly and pull the trigger again, it would
25 fire again until all the ammunition is exhausted in the

1 magazine or unless the gun jams.

2 Q. And when you are telling us that the shell casing
3 ejects from the weapon, is there anything you can tell us
4 about the direction that the shell casing would eject?

5 A. Well, in this case, obviously, the ejection port
6 is on the right-hand side of the gun, so if the gun were
7 oriented in a more or less straight up manner, it would
8 eject to the right of the gun, and it might eject to the
9 right and to the rear or to right and the front or
10 straight out. You don't know, because there are a lot of
11 factors involved in which direction cartridge cases are
12 ejected from semi-automatic firearms.

13 Q. And what if a weapon like that were pointed
14 straight up? Do you have any idea how the shell casing
15 is going to be ejected?

16 A. Well, if it's straight up, it's still with respect
17 to the right side, it's going to come out the right side
18 because that's the only point the ejection port is, but
19 once it doesn't, I don't know whether it would tend to go
20 slightly forward or straight down. I just don't know.

21 Q. And I might get you to come down here, if you
22 would regarding, the rifle.

23 Ejection this is State's Exhibit 98, is this
24 the rifle you were presented with.

25 A. Yes, it is.

1 Q. Okay. Were you presented also with the banana
2 clip?

3 A. I was not.

4 Q. Okay. The roll of the banana clip is to hold the
5 ammunition; is that correct?

6 A. Yes.

7 Q. If you could just stand down in front of the jury
8 and sort of describe what type of weapon this is for us.

9 A. State's Exhibit 98 is a -- it's a 7.62
10 semi-automatic rifle. This one was constructed by the
11 Century Arms International Company. It's actually called
12 a model 70 AB, or AB 2. It was made principally of parts
13 from a used military rifle, but the Century Arms company
14 got a new receiver and a new barrel and they assembled
15 the parts from what was formerly a fully automatic rifle
16 and they made it into a semi-automatic rifle.

17 This rifle is capable of firing only once for each
18 pull of the trigger. It has some Yugoslavian made parts
19 on it, some America made parts on it.

20 Q. When you say it is a military -- how did you refer
21 to it, as a military weapon?

22 A. It is. This is a semi-automatic version of a
23 military assault rifle. It's not an assault rifle
24 because it's not capable of fully automatic fire.
25 Assault rifles are generally capable of fully auto fire,

1 semi-auto fire, selective. This will only fire
2 semi-automatically. In every other respect, it's the
3 same thing as what people generally refer to as the AK47,
4 or AKM series firearm.

5 Q. Okay. And when you say it's semi-automatic, if a
6 gun is fired three times, how many times has the trigger
7 been pulled?

8 A. Three times.

9 Q. Now, could you give us some idea about the
10 capability of how far a bullet from this gun, or this
11 type of gun, can travel.

12 A. A bullet fired from this firearm can travel a
13 considerable distance, depending on the angle at which
14 its fired, but if it's elevated at the optimum angle,
15 which is going to be something around 35 degrees, give or
16 take, it's going to go at least a couple miles, maybe
17 farther than that. Of course, if it's fired on the
18 level, it will not -- it won't go that far.

19 Q. Okay. And is there anything else about the weapon
20 itself that you would like to bring to the jury's
21 attention before going through your analysis? And if
22 not, that's fine.

23 A. There is nothing else particular about that
24 firearm. Like any other semi-automatic firearm, it fires
25 in essentially the same way a pistol does, that if I had

1 a magazine in the presence -- or magazine with ammunition
2 present fixed in the gun, pulling the operating handle to
3 the rear and letting it go, it would strip off the first
4 cartridge and load it, place it in the chamber.
5 Thereafter, so long as the safety is in the fired
6 position each time I shoot it, the gun will fire, the
7 bullet would emerge from the barrel, and the fire
8 cartridge case would be expelled from the action, and it
9 would be prepared for the next shot.

10 Q. And when you told us that a bullet could travel
11 for a couple of miles with that weapon, how far would it
12 get, the bullet, or could you tell?

13 A. Depending on where someone struck, because shot
14 placement has a lot to do with whether it's deadly or
15 not, but hundreds if not thousand yards or more. It's
16 effective as pretty much any distance that you could hit
17 with.

18 Q. Could you describe for the jury, please, the power
19 of a bullet that is emitted from this type of weapon?

20 A. Based on an assault rifle, it uses what's known as
21 an intermediate power cartridge; that is, it uses a small
22 rifle cartridge that is significantly more powerful than
23 a pistol cartridge, but somewhat less powerful than a
24 full powered rifle or a machine gun cartridge of the type
25 used in larger weapons.

1 It's meant to be man portable and relatively
2 light, relatively easy to use, but yet still possess
3 considerably more power than a pistol or submachine gun.

4 Q. And when thinking about a bus or a car or a mobile
5 home, could you describe to the jury the power of the
6 rifle if it were to strike one of those objects?

7 A. If it struck it using a full metal jacketed bullet
8 or armor piercing bullet, it would be capable of going
9 completely through it.

10 Q. You can have a seat. Now, if you could identify
11 to the jury -- why don't we follow your report, if that
12 is okay, as to what items you received to make
13 comparisons with. Showing you State's Exhibit 108, could
14 you describe to the jury, please -- and that bag is
15 torn -- could you describe to the jury what items you
16 received.

17 A. Among the items in State's Exhibit 108 was an
18 unfired 380 auto caliber cartridge case. The primer has
19 not been fired. It has no powder in it and no bullet.

20 Q. Is that your item 1-A?

21 A. This would be my item four.

22 Q. Your item four?

23 A. Yeah. Evidently it's someone else's item 1-A.

24 Q. All right. Well, let's start there. Could you
25 tell the jury what type of analysis you did on that

1 bullet with what other item, if any, and what your
2 conclusions were.

3 A. Well, this was an unfired cartridge case. And I
4 did a microscopic examination of the unfired cartridge
5 case to see if there were any marks on the cartridge case
6 that were capable of being associated with a specific
7 firearm. Sometimes when cartridges or cartridge cases
8 are loaded into a firearm, the firearm will leave marks
9 on it that are sufficient to identify it as being loaded
10 into that gun. Most of the time they're not, but in this
11 case, I found markings on this unfired cartridge case
12 that matched the breach face markings left by State's
13 Exhibit 99.

14 So I took unfired cartridges and cycled them
15 through this pistol so that I had cartridges that I knew
16 had been just simply loaded into the gun without being
17 fired and compared them with this unfired cartridge case
18 and found sufficient matching breach face markings on it
19 to conclude that this cartridge case at some prior time
20 was loaded into this pistol.

21 Q. Okay. And in looking at your items 5 through 12?

22 A. My items 5 through 12 were all fired 380 caliber
23 cartridge cases. They did have a firing pin impression,
24 and I likewise found matching breach face markings on all
25 these fired cartridge cases, and I also concluded that

1 all of these cartridge cases were fired by this pistol.

2 Q. Okay. Regarding your item number 14 --

3 A. Item 14 is a fired 7.62 by 39 millimeter cartridge
4 case. It's the correct ammunition to be used in the
5 rifle but not the pistol. I did a microscopic analysis
6 of my item 14, but I simply could not find enough
7 individual markings on this cartridge case to identify it
8 as being fired by that firearm, by the rifle.

9 Q. Okay. So what conclusion then did you reach
10 regarding that item and the rifle?

11 A. I concluded that this cartridge case could have
12 been fired by that rifle.

13 Q. But you could not make the specific connection?

14 A. I couldn't say it was fired by that specific
15 rifle.

16 Q. Okay. And if it weren't fired by that specific
17 rifle, were there other rifles of a certain nature that
18 you felt had to have been fired from?

19 A. Well, it was fired by another 7.62 by 39
20 millimeter rifle, and a class characteristic that is on
21 this cartridge case is a circular firing pin mark, and
22 circular firing pins are used on AK47 and SKS type
23 rifles, which are both, you know, formerly Soviet and
24 Soviet client state firearms.

25 Q. Just to I make sure I understand you, as it

1 relates to that bullet and this rifle, are you saying,
2 though, that that bullet did not come from this rifle?

3 A. No. This cartridge case.

4 Q. I'm sorry?

5 A. This cartridge case could have been fired by that
6 rifle.

7 Q. Okay.

8 A. I can't say it for sure was fired by that specific
9 rifle, but it could have been. It could have been fired
10 by another similar rifle.

11 Q. Regarding your item 15, and if you could tell the
12 jury what that item was.

13 A. My item 15 must be in a different container. It's
14 not in 108.

15 Q. Take a look at State's Exhibit 139.

16 A. All righty. This one has not been opened.

17 Q. That's correct.

18 A. Yes, ma'am. My items 15 and 16 are both contained
19 within State's Exhibit 139.

20 Q. If we could deal with item 15 first.

21 A. My item 15 is a fired 7.62 millimeter jacketed
22 bullet.

23 Q. Okay. And does the identification on that reflect
24 where it was taken from?

25 A. It has a -- it is simply marked bullet, Calvin T.

1 Gibbs, and has an autopsy number on it, Dr. Presnell, and
2 other initials.

3 Q. Thank you, and tell us what conclusion you reached
4 regarding the bullet that was found in Calvin Gibbs.

5 A. I obtained -- I test fired the rifle, as I said,
6 and I obtained test bullets I knew it had fired. I
7 compared them first with each other to see if I could
8 watch them, which I could. I then compared my test
9 bullets with what I referred to as my item number 15, the
10 bullet from Calvin Gibbs. I found sufficient matching
11 individual marks on both my test and this bullet. From
12 that, I concluded that this bullet was fired by that
13 rifle.

14 Q. And then your other item that was found, or your
15 item 16, that is State's Exhibit 139.

16 A. Item 16 was another fired 7.62 by 39 millimeter
17 cartridge case.

18 Q. And so that was similar to item 14 that we just
19 discussed?

20 A. Yes.

21 Q. And similarly, item 24 is of the same --

22 A. My item 24 is was also a fired 7.62 by 39
23 cartridge case.

24 Q. And those cartridge cases fall into which category
25 for purposes of your analysis?

1 A. They are the correct caliber of ammunition to be
2 used in the rifle. Is that State's Exhibit 109? I
3 forget what the number is.

4 Q. State's Exhibit 98.

5 A. 98, excuse me, and my results, essentially, with
6 this cartridge case and with the other fired cartridge
7 case I referred to as my other number 24 was the same as
8 it was for the first cartridge case; that is, I could not
9 identify this cartridge case as being fired by that rifle
10 and only that rifle.

11 Q. But it could have been?

12 A. It could have been fired by that rifle.

13 Q. Okay. Now, when you received the pistol, the High
14 Point pistol, could you tell us whether or not the
15 magazine was with it.

16 A. I'll double-check. It was. It had a magazine and
17 it had nine unfired cartridges.

18 Q. Okay. So, in other words, contained in this were
19 nine unfired?

20 A. I think at the time I received it, all the
21 ammunition had been removed from the magazine. You can
22 put eight cartridges in the magazine, and if you fully
23 load the pistol with a round in the chamber, the pistol
24 is capable of firing as many as nine times without
25 reloading.

1 Q. And when you received the bullets that had not
2 just been fired, the magazine, and the weapon, there were
3 nine there?

4 A. There were nine unfired cartridges and then the
5 magazine, which was the correct magazine for that pistol.

6 Q. I beg the Court's indulgence just one moment.

7 Was there anything in particular about the shell
8 casings for the ammunition that would fit this rifle that
9 made it difficult to make an exact match with the shell
10 casings?

11 A. All of the 7.62 by 39 millimeter ammunition
12 specimens I received in this case are of the type that is
13 produced for eastern block military firearms. The bullet
14 in question was a full metal jacketed steel, copper
15 plated steel jacketed, full metal case bullet. The
16 cartridge cases were made out of steel, and they were
17 coated with a coating to prevent them from rusting. One
18 of them has what we call a lacquered coat on it, and the
19 other two have a polymer coat.

20 The coating interferes, to an extent, with the
21 transfer of markings from the gun in which those
22 cartridges are fired. Sometimes you can identify them
23 with specific firearms, sometimes you can't.

24 Q. Are you familiar with the sound that comes from a
25 bullet while -- after it's been shot?

1 A. Yes.

2 Q. Okay. Can you describe that sound to the jury.

3 A. It's a cracking noise that -- supersonic bullets,
4 when they pass near something, give a whipping or
5 cracking noise, just due to the fact they are supersonic.
6 Subsonic bullets don't give nearly as much noise as the
7 supersonic ones do, but it's -- I'm not sure I can
8 characterize it, but it's a cracking or whipping noise
9 that results from the bullet passing nearby something and
10 the sound of a sonic boom being reflected back to you.
11 Of course if it's coming straight at you, you don't hear
12 anything.

13 MS. SHEALY: I have no further questions.
14 Thank you very much. Answer any the defense may have.

15 THE COURT: Cross?

16 MR. SLADE: We don't have any questions of
17 this witness, Your Honor.

18 THE COURT: All right. You can step down.
19 Thank you. All right, folks. They tell me your lunch is
20 here now, so what we'll do is -- it's back there waiting
21 on you. Let's take about 45 minutes. That will give you
22 time to eat, digest, and relax for a few minutes and
23 then -- I've got 12:30, so let's resume at 1:15.

24 After you eat, if you want to go downstairs
25 and take a break for a few minutes, you're welcome to do

1 that. Just be back up in the jury room by 1:15, and
2 we'll get started right back then.

3 Again, don't begin deliberations or
4 discussions or comment on any of the evidence, and we'll
5 see you back at 1:15. Thank you.

6 (Recess taken.)

7 A F T E R N O O N S E S S I O N

8 THE COURT: Let the record reflect the
9 defendant is in the courtroom.

10 (In open court, jury present.)

11 THE COURT: All right. Folks, I hope you
12 enjoyed lunch. I'm sorry it was so short. We're going
13 to call now the state's next witness.

14 MS. SHEALY: Dr. Erin Presnell.

15 SUSAN ERIN PRESNELL,

16 having been first duly sworn,

17 was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MS. SHEALY:

20 Q. Dr. Presnell, tell the jury a little bit about
21 your educational background.

22 A. I am a forensic pathologist. I work at the
23 Medical University of South Carolina. Just education
24 route to get there is went through college and then four
25 years of medical school. After medical school, you

1 receive your MD, and at that point you choose your
2 specialty, like pediatrics or surgery. I chose
3 pathology, and that is one year and change and then one
4 year of subspecialty in forensics. Forensics is actually
5 a part of the overall broad field of pathology, so that
6 is four years, and I took the general pathology boards as
7 well as the forensic pathology boards.

8 Q. Well, when you say forensic, could you define that
9 for the jury.

10 A. I think everyone is a little more familiar with
11 forensic pathology, but just to kind of back up a little,
12 like I said, there is a broad field of pathology, and
13 pathology is the study and diagnosis of disease. So the
14 general pathologist will receive anything that another
15 clinician or physician samples on a patient.

16 Like, say you get a skin biopsy or women a Pap
17 smear. Any kind of tissue that comes off somebody goes
18 to a pathologist. They look at it under the microscope
19 and diagnose. Is it cancer, is it not? Is it infection,
20 is it not? Did the surgeon get all the tumor out or did
21 they not? So that is the subsequent pathology in a
22 nutshell.

23 Forensic pathology, again, it's a subspecialty of
24 that, and so instead of looking at little small piece of
25 tissue or an organ, we're looking at an entire body of

1 somebody is that has passed on. The process, of course,
2 is the autopsy, and, ultimately, we're looking to
3 determine the cause of death and oftentimes interpreting
4 the different types of injuries.

5 Q. Okay. And you're employed by MUSC?

6 A. Yes.

7 Q. How long have you been with MUSC?

8 A. Well, I came to medical school in MUSC in 1989 and
9 I never left but I became faculty in -- came to medical
10 school in 1989, became faculty in 1999.

11 Q. Will you give the jury an idea of how many
12 autopsies you performed?

13 A. Just an estimate, over 2,000 probably.

14 Q. Okay.

15 MS. SHEALY: Judge, at this time I would
16 offer Dr. Presnell in the area of forensic pathology.

17 MR. HOWE: There is no objection from the
18 defense, Your Honor.

19 THE COURT: Folks, this witness has now been
20 qualified as an expert in the field of forensic
21 pathology, and the same instructions I've given you as
22 earlier witnesses apply to this witness as well. You
23 decide how much weight to give her testimony based on all
24 of the testimony that you hear throughout the trial. You
25 may resume.

1 MS. SHEALY: Thank you.

2 BY MS. SHEALY:

3 Q. In this case, did you do an autopsy on Calvin
4 Gibbs?

5 A. Yes. We performed an autopsy on May the 31st,
6 2008.

7 Q. And could you inform the jury as to what the time
8 of death was for Mr. Gibbs?

9 A. He was pronounced at the hospital at 12:24 a.m. on
10 that day, that same day.

11 Q. When you are doing autopsies for the purpose of
12 examining someone who's been shot, what are you looking
13 for?

14 A. Holes, bullets. Usually when somebody comes to
15 us, we may have some history that he's been shot or
16 whatnot, but we're going to approach --

17 Q. Would you like some water?

18 A. There's some up here. Thank you. We're going to
19 approach the case with a general overview, kind of doing
20 the same things with all of them. When Mr. Gibbs came to
21 us, we had a history of gunshot wounds, and we saw holes
22 consistent with gunshot wounds, so what we're going to do
23 is photograph, diagram, document.

24 We'll bring X-ray down so that the X-ray people
25 can get X-rays of him so we can actually see where the

1 bullet is, and the purpose of that is to recover it.
2 Then we'll do an internal exam and kind of track where
3 the bullet went, what it hit, and recover the bullet if
4 it's still in the body.

5 Q. Okay. And would you describe to the jury, please,
6 what your findings were as they related to Mr. Gibbs.

7 A. Mr. Gibbs had a single gunshot wound. It was a
8 close range gunshot wound that went into the back of his
9 left shoulder.

10 Q. Let me show you State's Exhibit 84. Can you see
11 that?

12 A. Okay. He's labeled with a autopsy tag and we
13 label our gunshot wounds with letters just so it -- like,
14 if he has A and B, one is an entrance and one exit, that
15 is one gunshot wound, but if I labelled him with numbers,
16 that might imply it's two, so they're all labelled with
17 numbers, and the tag is oriented so that the top of the
18 tag is pointed toward the top of his head.

19 So this is his left shoulder so that his head
20 would be up here. Here is the entrance gunshot wound.
21 One thing in particular you can notice about this gunshot
22 wound is that it has all these little punctate abrasions
23 or scratches around it. We would call that stippling.
24 That is caused from -- well, the hole obviously is caused
25 from the bullet entering into his body.

1 The stippling is caused, or the scratches are
2 caused, from the gunpowder that is exiting into the
3 barrel as well. Little pieces of gunpowder particles
4 that exit the end of the barrel will strike the skin if
5 it's close enough and cause that appearance. This was a
6 close range gunshot.

7 Q. Do you recall whether or not you saw his clothing
8 at some point during the autopsy? Did you notice that?

9 A. Yes. He has a hole in the same area that
10 corresponds to the gunshot wound in his T-shirt. It was
11 difficult to actually visualize any of the particles on
12 the shirt, but it did have little perforations around the
13 entrance wound on the shirt that would correspond with
14 that same phenomena.

15 Q. And you told us that was a close shot?

16 A. Yes.

17 Q. Now, how is the best way to determine how close
18 the shot was? What is your --

19 A. Well, when we're doing the autopsy, when we're
20 examining gunshot wounds, there are three ranges that we
21 can kind of classify the gunshot as. One is contact, and
22 that is the gun is right up against the skin, touching
23 the skin. One is close range, which is this appearance,
24 whereas the gun is close enough, not only do you have the
25 bullet exiting, you have the little gunpowder particles

1 to create that stippling appearance. One is distant,
2 once you get far enough away where the gunpowder
3 particles would no longer reach the skin, and then we
4 just have an appearance of a hole. We wouldn't have that
5 stippling around it, and there are certain
6 measurements -- you could say, for example, if you want
7 to include most guns, that a close range gunshot wound is
8 somewhere within 42 inches of the person.

9 Now, if you want to narrow that range down, what
10 you should do is get the suspected gun, use the suspected
11 ammunition, because different types of gunpowder
12 particles can act differently, you know, and then test
13 fire that and try to reproduce that pattern, how big that
14 pattern is, so it's equal to those measurements and how
15 far that is away, so that would narrow down more
16 specifically how close that might have been.

17 Q. And what agency usually does that in a criminal
18 investigation?

19 A. A few times I've seen it done SLED has done that.

20 Q. Now, regarding the bullet hole there, have you
21 indicated whether or not that appeared to be an entrance
22 wound?

23 A. This is an entrance wound. Not only -- it does
24 have the appearance of an entrance wound, but you have
25 the stippling around it as well.

1 Q. Did you find any other type of abrasion or marking
2 or evidence on his body that would suggest to you the
3 path of that bullet from the external side?

4 A. Well, he has another hole in him, which is in the
5 front of his -- right where his chest and abdomen meet,
6 and so we probably wouldn't hypothesize too much what was
7 going on until we could see everything. So as far as
8 externally, you could hypothesize certain things, but the
9 other findings he had was a hole in the front of his
10 chest/abdomen.

11 Q. Could you stand up? I think you're pointing.

12 A. Right in this general area. Kind of right where
13 your chest meets your abdomen, so right here. There is a
14 hole right here, and you can palpate. You can feel the
15 bullet. It's right under the skin right here.

16 Q. Let me show you what has been previously been
17 marked as State's Exhibit 85, and you may want to use
18 that pointer or stand up again and describe to the jury
19 what that reflects.

20 A. Well, right here is the edge of the -- what they
21 call the thoracotomy incision, where the surgeons or
22 ER people were trying to get into the chest cavity real
23 quick. This is the hole that I described right where the
24 chest and abdomen come together. It's a rather irregular
25 abrasion, and right there you can kind of see a shadow.

1 That bullet is right underneath that skin.

2 Q. Now, the area that we're seeing that is red and
3 somewhat disfigured there, could you describe to the jury
4 what your opinion is as to what happened in that area.

5 A. All right. Well, so here is the hole. It's
6 pretty irregular compared to the entrance wound, and we
7 have it associated with a large, irregular abrasion where
8 the skin is scratched, and I didn't draw any conclusions
9 on this case until, you know, we went through the whole
10 entire thing, and that includes the internal.

11 So I'll go ahead and describe that and then kind
12 of give you my hypothesis of what actually happened. The
13 bullet enters in the back shoulder. It goes through the
14 musculature, goes through the ribs here, it completely --
15 it has extensive fracturing of the ribs. It goes through
16 the left lung. It goes through the front of the heart
17 and gets one of the coronary arteries, which is an artery
18 that supplies the heart with some blood, and then after
19 it goes -- it's going through the top of the heart. Then
20 it starts to come out here, but you end up with the
21 bullet right there, and a possibility would be is if
22 there was something in front of him, perhaps a seat belt,
23 perhaps against the steering wheel, but that helps to
24 deflect that bullet back in.

25 And what supports that is the appearance of

1 this abrasion, that when the bullet is coming out, it's
2 pressing the skin against whatever object might be in
3 front of it. Sometimes we see that with tight bras.
4 Sometimes we see it with just multiple layers of
5 clothing. Sometimes if it's on the ground, we'll see
6 where the bullet exits. It's called a shored abrasion,
7 meaning that the skin is being held up by something, and
8 that is what is causing the abrasion.

9 So we X-rayed him after we took all the
10 organs out. He has one projectile, and he has a
11 definitive entrance in the front shoulder. He has one
12 pathway. There is one path that you can track along the
13 ribs, the left lung, the heart. The ribs in the front
14 and then to this spot here. Even though we have what
15 appears to be an exit wound, and it appears it could slip
16 right back under there, so putting all of it together, it
17 ends up being a single gunshot wound.

18 Q. A single gunshot wound that causes his death.

19 A. Yes.

20 Q. And is there something more defined than that as
21 to what the gunshot wound actually did to him that caused
22 the death, or is it striking the various organs that you
23 talked about?

24 A. When it struck the ribs, which is not necessarily
25 fatal, but one of the things it did, this particular

1 bullet, when it hit the ribs, would cause extensive
2 fractures, so we had a lot of bony fragments that have
3 been ejected into the right lung, and we have one that
4 actually perforated, a small perforation on the right
5 side of the heart.

6 The bullet itself went across the top of the
7 heart. It lacerated it. It just didn't perforate it all
8 the way through. It had also gotten one of the coronary
9 arteries, so all these injuries together would be
10 considered fatal, the heart in particular, and the left
11 lung would be contributory to that.

12 Q. I'm going to show you State's Exhibit No. 140, and
13 if you could open this, please do, but could you tell the
14 jury what this is.

15 A. It has our autopsy form on it. It looks like the
16 envelope from our autopsy room. It has our information.
17 It says foreign material from armpit.

18 Q. Okay. And is that an example of a bone fragment
19 that you found?

20 A. This was a piece -- remember, they had -- I don't
21 know if you remember he had a thoracotomy, so they opened
22 his chest up, and while they're trying to resuscitate
23 him -- and, remember, he's got extensive fractures, and
24 we found what looks like a little piece of bony material,
25 kind of in his armpit area. I imagine it came from that

1 area when he was being worked on.

2 Q. I show you State's Exhibit 87. Is this one of the
3 X-rays that you were talking about?

4 A. Yes.

5 Q. Can you orient us?

6 A. We're looking at his side, so like a picture from
7 right here, so his head is up here. Here is his chest,
8 with air in it. Here is his back, and right here is the
9 bullet. Like I said, it was right underneath the skin in
10 that chest abdomen area.

11 Q. As part of the autopsy, then, do you remove the
12 bullet, the projectile?

13 A. Yes, yes.

14 Q. And showing you what has been previously marked as
15 State's Exhibit 139, if you could tell the jury what that
16 reflects.

17 A. Again, our autopsy label, et cetera, with the
18 bullet that we recovered from Mr. Gibbs.

19 Q. During the process of an autopsy, do you
20 photograph projectiles as well?

21 A. Yes.

22 Q. And showing you State's Exhibit 86, can you tell
23 us -- behind you, the photograph, can you tell us whether
24 that is a photograph that was taken during the autopsy?

25 A. Yes. You can see the autopsy numbers.

1 Q. And what does that picture reflect?

2 A. That is the bullet that we recovered.

3 Q. I beg the Court's indulgence just a moment.

4 Dr. Presnell, that's all I have. Thank you very much.

5 Answer any questions the defense may have.

6 THE COURT: Cross?

7 MR. HOWE: Yes, thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. HOWE:

10 Q. Dr. Presnell, you have some of your investigator
11 materials in front of you?

12 A. Yes. I have the autopsy report, a copy of the
13 autopsy report.

14 Q. On Mr. Gibbs, what does it reflect as far as his
15 height?

16 A. Approximately 71 inches, which is five feet 11
17 inches.

18 Q. Okay.

19 A. Five feet 11.

20 Q. And, in general, with the process that you've
21 described, when you get involved in this process, is
22 there somebody there before you are with the body?

23 A. Well, we're a coroner state, and the coroner is
24 going to respond to this investigation first, and then
25 the coroner decides where they send somebody to get an

1 autopsy if they should want and autopsy, so that is
2 likely the coroner investigated -- or had contact with
3 the body first.

4 Q. So about what time did you appear at the site
5 where your examination occurred?

6 A. In our autopsy room, we started this case at 9
7 a.m.

8 Q. Okay. And you were involved with this about what
9 length of time?

10 A. Oh, gosh, I don't know. This one was a long one,
11 especially for just a single gunshot wound. This would
12 have taken us several hours, like, three, four, and that
13 is just the first part of the autopsy, and there are
14 other parts too. We get them microscopically; we get
15 toxicology reports back. We have to put the whole report
16 together, so the initial exam may be several hours, and
17 this one took a while, but it continues on.

18 Q. And what kind of assistance did you have around
19 you as you were doing this?

20 A. Oh, the people that participated were -- we have a
21 fellowship training program, so I had a fellow, a
22 forensic fellow, somebody that had gone through all the
23 training up to the last year of fellowship. We have an
24 autopsy technician. We, in this case, had a pathology
25 assistant who helps us with the paperwork and me. I'll

1 see if there is anybody else in the paragraph. No.

2 Q. And on -- in response to questions on direct
3 examination, you said as far as your opinion goes that
4 the shot was fired at close range, correct?

5 A. Yes.

6 Q. And that could be anywhere from one inch to 42
7 inches?

8 A. Yes, from -- for our general -- if you want to
9 include most guns, yes.

10 Q. So as far away as 42 inches, according to your
11 opinion?

12 A. Right. I wouldn't be able to narrow it down
13 without having the weapon test fired to try to reproduce
14 that pattern.

15 MR. HOWE: That's all I have. Thank you so
16 much.

17 MS. SHEALY: Just one follow-up question.

18 REDIRECT EXAMINATION

19 BY MS. SHEALY:

20 Q. If SLED actually test fired the weapon with the
21 ammunition and determined that the shot was between
22 contact and 12 inches, you would accept their testing
23 results?

24 A. Yes.

25 MS. SHEALY: I have nothing further. Thank

1 you.

2 THE COURT: Recross?

3 MR. HOWE: None, Your Honor.

4 THE COURT: All right. You can step down.

5 Thank you.

6 MS. SHEALY: May she be excused?

7 THE COURT: Any objection?

8 MR. HOWE: None.

9 THE COURT: All right. You're free to go.

10 Thank you. Next witness?

11 MS. SHEALY: The state would rest.

12 THE COURT: We have now reached the
13 conclusion of the state's presentation of the evidence.
14 I need to send you out for a few minutes while we take up
15 a legal matter at this point in the trial.

16 We'll have you back in about ten minutes, so
17 if you need to use the rest room or anything, that would
18 be fine, and, again, don't begin deliberations or
19 discussions about the case.

20 (In open court, jury not present.)

21 THE COURT: All right. Motions?

22 MR. SLADE: Yes, sir. We move for a directed
23 verdict at this point based on the fact that in order for
24 them to go forward, there has to be a reasonable
25 possibility that they can get a conviction.

1 Your Honor, I think, looking at the evidence
2 that we have to this point, the last several witnesses
3 have testified essentially to the manner of death.
4 They've testified the gunshot wounds, DNA on the rifle,
5 those kinds of things. Given what the evidence has shown
6 about the rifle being in Mr. Chandler's apartment, given
7 what the evidence has shown about the fact that he was
8 shot with an AK47, none of those kinds of things are in
9 any controversy.

10 What is in controversy, Your Honor, is who
11 was holding the gun, who shot him, and what the
12 circumstances were that led to whoever was standing by
13 his car or running up to his car holding the gun that
14 shot him.

15 Your Honor, when you get to that point, we
16 are in considerable controversy, and the witnesses that
17 stated, up to this point on these issues, have not told
18 the same story twice. I don't think any of them have.
19 Given the testimony that we have on the contested points
20 in his case, Your Honor, it is simply just a toxic stew
21 of conflicting statements. Anything could be disproved;
22 anything could be proved.

23 I think at this point they've not met their
24 burden of providing minimal proof that a reasonable jury
25 could reach a conclusion for conviction, Your Honor.

1 THE COURT: Ms. Shealy?

2 MS. SHEALY: Your Honor, regarding Rule 19, I
3 certainly think the state has not failed to present
4 competent evidence tending to prove the charge of the
5 indictment. We've certainly done so.

6 THE COURT: All right. Well, I agree. The
7 state has put in sufficient evidence to withstand a
8 directed verdict motion. Any conflicts in witnesses'
9 statements go to credibility, which the jury has to be
10 the ultimate determiner of that, and so the motions are
11 denied.

12 Let's do this: Let's take advantage of the
13 ten minutes, and if you would mark any exhibits you want
14 to have and get your witnesses lined up, and we'll get
15 cranked up here in just a minute.

16 (Recess taken.)

17 MS. SHEALY: Judge, unless you've already
18 ruled on them, I think you addressed some of my
19 objections yesterday, but I do object to exhibits. Of
20 course I object to his testimony in its entirety.

21 THE COURT: I understand that. As far as the
22 exhibits and those coming in, you want to offer those
23 things there, or are you offering the --

24 MR. SLADE: Well, I see your point. We want
25 to offer his actual work sheets and then just let him

1 speak and address the jury from these exhibits. We don't
2 have a problem with that.

3 THE COURT: Okay. Those would come in to
4 support -- I mean, if they're going to still challenge
5 authenticity, then while I might make a threshold
6 determination that it's admissible, certainly the jury
7 will be instructed they ultimately determine whether or
8 not it is authentic and how much weight they want to give
9 it. Okay? So they'll need that, I suppose, to help make
10 that determination, so that will get to come in.

11 MS. SHEALY: And just to make sure I preserve
12 my issues, I object to him even referring to them in
13 front of the jury, if he's not admitting them.

14 THE COURT: You're wanting to admit them,
15 right?

16 MR. SLADE: We're wanting to. Your Honor, my
17 understanding is he's developed some work sheets that are
18 similar to these. That is how he arrived at these
19 conclusions. I mean, just -- Waring is going to argue
20 these.

21 THE COURT: Those are one thing, but I think
22 the jury is entitled to look at those things that are the
23 known -- the thing that they compared it to, and, of
24 course, ultimately they'll have the note too.

25 So while we got an expert up there to make

1 that determination that in his opinion it's all the same
2 author, they ultimately get to decide that. So they need
3 to have those documents.

4 MR. SLADE: Right, and we intended to offer
5 those documents, right?

6 MR. HOWE: Yes.

7 THE COURT: Okay.

8 MR. SLADE: The ones he worked from -- this
9 is just to demonstrate --

10 THE COURT: That is a demonstrative exhibit
11 which would normally not come in.

12 MR. SLADE: Right. And you're asking us to
13 what he referred to as K-1 about those kinds of things
14 yesterday.

15 THE COURT: Those do get to come in.

16 MR. SLADE: Yes. So we'll mark those, and
17 just, Your Honor, what I -- Detective Osborne is my
18 witness. What we plan to do is just offer Mr. DeGiovine
19 on the matter we already discussed, offer Mickey Dawson
20 for the authentication, and at that point I'll call
21 Detective Osborne, ask him, Didn't you get this letter
22 from Terrell Chandler, and, you know, how did that affect
23 the way you went about investigating this case?

24 THE COURT: Okay. So that -- and did you say
25 you had a fourth?

1 MR. SLADE: Only three.

2 THE COURT: Sounds like probably Dawson will
3 be the longest of the three. If it's not too long, you
4 might get to finish this up today. We'll see how long it
5 takes. All right. Get everything marked and we'll be
6 back.

7 MR. SLADE: He also testified in the proffer
8 he had examined the letters. We also sent him the letter
9 that y'all provided him from someone whose name escapes
10 me right now, Terrell to somebody, maybe -- I can't
11 remember, Latrice or whoever, but y'all provided us some
12 letters that Terrell had written, and my understanding
13 was there was no dispute that Che had written these
14 letters to Megan nor that Terrell had written the letters
15 to whomever, and I provided Mickey a copy of -- these are
16 known -- I think we both accept these are known Che Carr
17 writings.

18 THE COURT: And you used those to form your
19 opinion?

20 THE WITNESS: In totality, yes, sir.

21 MS. SHEALY: But, Your Honor, as we went
22 through the exercise yesterday, when he was showing us
23 his sheets and what he intended to present, he limited
24 that to those items that were on the questioned document
25 and letters from the questioned document and then letters

1 from the recently received correspondence that Mr. Slade
2 or Mr. Howe's office had given him, not those.

3 MR. SLADE: I don't think he ever limited his
4 testimony to that because I specifically asked him more
5 than once about when we were working from the -- can you
6 show me the handwriting samples? What packet is that?
7 It's in here.

8 Your Honor, what I have sent him were the
9 questioned handwriting -- these are the -- let me take a
10 second. I apologize. These are the handwriting samples
11 that everybody acknowledges were written by Terrell and
12 by Che because at the bottom you can see where the
13 officer actually did this, and what they did was read
14 this Sexy B letter to each of these people. I can't
15 remember if this is Terrell or Che.

16 I sent him that. This is the first thing.
17 These are the acknowledged handwriting samples of both
18 people. In addition to that, I sent him these letters
19 that we were sent by the solicitor's office in the letter
20 from Che to his former girlfriend, Megan White, and I
21 also sent Mickey these letters which are acknowledged, I
22 think, as letters from Terrell to somebody.

23 And so when I asked Mickey to evaluate the
24 questioned document, I sent him the handwriting samples
25 done for the police and the two sets of letters that both

1 sides acknowledge were written by Che and Terrell.
2 That's what he got the first time. That is what he
3 testified to yesterday.

4 THE COURT: Well, if he testifies to it
5 today, that is what he used to formulate his opinion that
6 comes in under 703, so unless you want to not challenge
7 the authenticity of the document, it comes in under 703.

8 MS. SHEALY: Yes, sir. I understand your
9 ruling.

10 THE COURT: Okay. So go ahead and mark them.

11 (Packet #2, packet #3, packet #4, packet #5,
12 original of Che Carr letter, original of Che Carr letter
13 2, and original of Che Carr letter 3 marked for
14 identification as Defendant Exhibit Nos. 14-20.)

15 THE COURT: Let the record reflect the
16 defendant is in the courtroom. Bring the jury in.

17 (In open court, jury present.)

18 THE COURT: All right. Folks, we're now
19 going to have the defense call their first witness.

20 MR. SLADE: Thank you, Your Honor. Art
21 DeGiovine.

22 ARTHUR DeGIOVINE,
23 having been first duly sworn,
24 was examined and testified as follows:

25 DIRECT EXAMINATION

1 BY MR. SLADE:

2 Q. Thank you, Arthur. To introduce you to the jury,
3 I would like you to give them just a brief background on
4 who you are and what you do and how you came to be
5 involved in this case. Tell us what you are doing now,
6 what you've done for the last several years.

7 A. I've been an investigator since 1972, with the
8 public defender's office in New Jersey from '72 to '96,
9 and from '96 to the present I've been with the Charleston
10 County public defender's office, and I've been involved
11 not in this case, but in the codefendant's case, Che
12 Carr.

13 Q. Right. Okay. You are an investigator for the
14 public defender's office?

15 A. Yes.

16 Q. Tell us what your duties are in relation to
17 interviewing witnesses for your employers or the
18 attorneys in that office.

19 A. Well, my attorneys put a request in, and they ask
20 me to go out and interview certain witnesses on the case.
21 And when I interview a witness, I'll go out. I'll speak
22 to them. If it's deemed necessary by the attorney, I'll
23 take a written statement, but most of my statements are
24 in the third person, summary of what that person tells
25 me.

1 Q. Okay. Just so there is no confusion about the
2 distinction, since we're in this business, we sometimes
3 jump over the distinctions. Describe for the jury what
4 you mean by the term written statement.

5 A. A written statement, or a signed statement, is
6 where a person -- you ask them a question, and they'll
7 give you an answer, question, answer, and then they'll
8 sign the statement, read it, review it, make any
9 corrections, they'll sign the statement, and then I'll
10 witness the statement.

11 Q. Okay. And is that what you did in this case with
12 the witness I'm about to question you about?

13 A. No.

14 Q. Tell us what you did and what your practices are
15 in regard to how you handle that interview.

16 A. Well, unless the attorney tells me different, I'll
17 just take a summary of what the person tells me. I'll
18 take notes, and then I'll transcribe that when I get back
19 to my office into a written report.

20 Q. Okay. Tell us about your interview process with
21 the witness or the prospective witness when you're doing
22 the summary process interview.

23 A. Well, when I first meet the witness, I'll go over
24 what they have to do before I even write any notes
25 because that kind of distracts me, and then what I'll do

1 is I'll go over with them and I'll take notes and then
2 I'll review with them what they told me, and then that is
3 it. I'll go back to my office and transcribe it on the
4 computer.

5 Q. In this case, who were you working for? Which
6 attorney were you working for in the public defender's
7 office?

8 A. Michelle Suggs. She's a staff attorney with our
9 office.

10 Q. Right. And who does she represent in this case?

11 A. Che Carr.

12 Q. And back on July the 9th of 2008, did you
13 interview a protective witness named Megan White?

14 A. Yes, I did.

15 Q. I'm going to show you a copy of your
16 investigator's report and ask you if that is an accurate
17 copy of the report that you made.

18 A. Yes, it is.

19 Q. Now, can you tell us what Ms. White told you --
20 strike that. What did you go there -- what did you meet
21 with Ms. White and question her about?

22 A. I questioned her about what she saw, what she
23 knows about the incident in question, if she knew
24 anything at all.

25 Q. The shooting out at Apartment Five at 930 Battery

1 Avenue?

2 A. Right.

3 Q. And from your summary, tell us your recollection
4 of what she told you.

5 A. Well, could I refer to my notes?

6 Q. Sure.

7 A. Because it's been a while. Well, I met her on
8 7/9/08 outside of the McDonald's restaurant on Spring
9 Street. She didn't want me to meet her at her home, so
10 she said, I'll meet you at McDonald's.

11 And we spoke outside together at McDonald's, and
12 briefly what she told me, she is the girlfriend of our
13 client, Che Carr, and they had been dating, she and Che
14 had been dating, about two months prior to this incident.

15 On the day of the incident, she and Carr went to
16 an apartment on Battery Avenue in Charleston. She didn't
17 know the address. If she gave me the address, I would
18 have put the address. Carr went inside while she stayed
19 outside. This is what she told me.

20 He came out of the building about an hour later
21 and walked home, Carr, and when White stated that Rell,
22 real name unknown at the time, she didn't know who Rell
23 was, lives in the building on Battery Avenue, sometime
24 around 11:00 to 11:30 p.m., White heard multiple gunshots
25 from the rear of the building where she was standing out

1 front.

2 White then saw someone with a rifle shooting into
3 a car while it was moving. The person with the rifle --
4 I asked her to describe the person, if she could. The
5 person with the rifle was tall, she said, about six feet,
6 a light-skinned black male, wearing cornrows and a white
7 or black T-shirt and shorts, and she said -- that person
8 matched the description of Rell.

9 So Carr is a dark-skinned black male about five
10 feet five inches to five feet six inches tall, and he
11 wears dreadlocks, which are different than cornrows and
12 wore a white and black shirt with blue or black jeans.
13 White ran to her car and drove home alone. White did not
14 see any other person outside when she left the area. The
15 following day -- do you want me to continue?

16 Q. Yeah.

17 A. The following day --

18 Q. That's okay.

19 A. That's what happened that day.

20 Q. She's describing the incident.

21 A. About the incident itself.

22 Q. Right. Did you ask her if she stayed outside the
23 whole time?

24 A. Yes.

25 Q. And she told you what?

1 A. Well, she said she wasn't there -- well, she was
2 out there.

3 Q. And she stayed outside the whole time?

4 A. Yes. She was outside, and then she heard the
5 shots and then she left.

6 MR. SLADE: I don't have any other questions
7 for this witness, Your Honor. And -- I do have another
8 question, I'm sorry.

9 BY MR. SLADE:

10 Q. When did you take this statement, Art?

11 A. I took it on July 9th of 2008.

12 Q. That would have been approximately six weeks after
13 the --

14 A. I don't remember exactly. I don't have my notes
15 here, the date of the incident itself.

16 Q. Okay. I don't have any other questions.

17 MS. SHEALY: Just briefly, Your Honor.

18 CROSS-EXAMINATION

19 BY MS. SHEALY:

20 Q. As an investigator at the public defender's
21 office, it's certainly not unusual for the public
22 defender clients to want you to talk to their
23 girlfriends, is it?

24 A. No.

25 Q. Would you say that most often if they've got a

1 girlfriend they want you to talk to them?

2 A. Yes.

3 Q. Okay. And, similarly, if they've got a brother
4 that they're close to, they want you to talk to their
5 brother too?

6 A. Yes.

7 MS. SHEALY: I have nothing further.

8 MR. SLADE: Nothing further for this witness,
9 Your Honor.

10 THE COURT: You can step down.

11 THE WITNESS: Thank you.

12 THE COURT: All right. Next witness.

13 MR. SLADE: Marvin Dawson.

14 MARVIN DAWSON,

15 having been previously duly sworn,

16 was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. SLADE:

19 Q. Mr. Dawson, I would like for you to describe what
20 you do now, and just tell the jury what it is you do now
21 and then tell the jury what your qualifications and your
22 preparation was in order to do the job you do now.

23 A. I am called a forensic document examiner. I'm
24 many times called a handwriting expert. The travels I
25 took to get to this position, I was hired by SLED, the

1 South Carolina Law Enforcement Division in 1972. At that
2 time SLED did not have a document examiner nor a document
3 laboratory.

4 As a mandatory two-year internship in a recognized
5 laboratory, under a recognized mentor, I had to go to the
6 GBI, Georgia Bureau of Investigation in Atlanta, in their
7 laboratory, and work under James Kelly, the examiner who
8 helped start the board certification process. Completed
9 two years of internship, returned to SLED, and started at
10 the document laboratory in SLED. I retired from the
11 state in 1999 after 27 years in state law enforcement.

12 In between there, I developed a laboratory. I
13 became Board certified, a testing process you go through,
14 Board certified as a forensic document examiner. I
15 joined the organizations that are appropriate for
16 individuals in my profession.

17 I have given papers, research papers, et cetera,
18 numerous times in national meetings of these
19 organizations. Education-wise, I have undergraduate and
20 graduate degrees from the University of South Carolina,
21 graduate of the FBI National Academy, testified
22 approximately 325 times as a forensic document examiner,
23 in courts-martial, federal courts, civil courts, General
24 Sessions, et cetera, so that is a nutshell of my
25 background to the present time.

1 I am one of 14 examiners who meet twice a year at
2 Quantico for the FBI program to develop protocols for
3 document examiners and I've been on that particular
4 committee for four years now. I think that pretty much
5 sums up my qualifications.

6 Q. That's fine. Let me ask you the next question.
7 Have you been qualified in state and federal courts in
8 South Carolina as a document examiner in previous trials?

9 A. Oh, numerous times, yes.

10 MR. SLADE: Your Honor, I would offer
11 Mr. Dawson as a qualified document examiner.

12 THE COURT: Any objection?

13 MS. SHEALY: I have no objection.

14 THE COURT: All right, folks. This witness
15 has now been qualified as an expert in the field of
16 forensic document examination. Same instructions I gave
17 you for earlier expert witnesses apply to this one.
18 Again, you decide how much weight to give his testimony,
19 based on all the testimony that you will hear throughout
20 the trial.

21 You may resume.

22 MR. SLADE: Thank you, Your Honor.

23 (Questioned document marked for
24 identification as Defendant's Exhibit No. 13.)

25 BY MR. SLADE:

1 Q. Mr. Dawson, I'm handing you several items. The
2 first is marked Defendant's Exhibit 13. Can you just
3 identify that in very general terms at this point. What
4 does a document examiner call the document you're
5 holding?

6 A. This is what would be referred to as a questioned
7 document. This examination protocol, normally you have a
8 document or a signature on an item that is in question as
9 to authenticity, any number of things. We're addressing
10 handwriting at this time. This has probably been
11 admitted into court, the original has. This is a machine
12 copy. This is the copy I had to work with.

13 Q. Okay. Now, I'm going to ask you to take a look at
14 Defendant's Exhibit -- excuse me. Defendant's Exhibits
15 14, 15, 16, and 17. And, just briefly, take a quick look
16 at that and tell me if you can identify those documents
17 for us. I'm not asking you to tell us what they are, I'm
18 just asking if you are familiar with them.

19 A. Yes. Defendant's Exhibit 14, which is known as
20 packet number two, I have examined or submitted to me as
21 specimens. I've examined this. Defendant's Exhibit 15,
22 which is identified as packet number three to me, I used
23 this in my examination. This was sent to me as
24 specimens. Packet number four, which is Defendant's
25 Exhibit 16, was sent to me. This contained specimens as

1 well. And Defendant's Exhibit 17, or packet number five,
2 was sent to me of numerous documents, and these were
3 submitted to me as specimen writings also.

4 Q. All right. Let's talk about how you got in this
5 case. Mr. Howe and I contacted you, what, a month ago,
6 several -- a couple months ago, a month ago?

7 A. First of May, I believe, sir.

8 Q. All right. And we retained you to examine a
9 document; is that right?

10 A. That, yes.

11 Q. And in order to accomplish that, I sent you that
12 packet of material you just took a look at and generally
13 identified, correct?

14 A. That is correct.

15 Q. Now, what I would like to move to, Mr. Dawson, is
16 identifying -- well, why did you need what I sent to you?

17 A. A document examiner has a protocol he or she may
18 follow in a case. A case comes in as a questioned item,
19 and in any type of forensic work, if you have a
20 questioned item, be it handwriting, blood, fingerprints,
21 whatever, you need specimens, or standards, of known
22 material, so in order to determine if the question is who
23 authored this document, you need specimen writings of
24 individuals who you want to know did they or did they not
25 author this document, and then they can be identified or

1 eliminated.

2 A document examiner in handwriting, and I'll
3 address that issue, identifying handwriting is two-fold.
4 When we receive a letter in the mailbox at home, we look
5 at it pictorially, and you can tell whether it came from
6 mom, dad, sister, whomever. You recognize the writing
7 pictorially. A document examiner looks at it
8 differently. We look at the pen movements, the shape,
9 the individual characteristics. All of us have
10 individual characteristics. Anyone here may have a like
11 characteristic with someone else, but in totality you do
12 not. A person's handwriting is identifiable to that
13 person and that person only. That's the premise.

14 So, therefore, as a document examiner, you take
15 the questioned document. You would examine it. You look
16 at several things. Does it appear to be genuinely,
17 naturally executed? Does it look as though it's a
18 forgery? Does it look like disguised writing? Is it
19 stilted writing? What is the condition of the writing in
20 the document?

21 Then you look at your specimen writings. Specimen
22 writings appear genuinely executed naturally executed?
23 Does it flow naturally and neatly, or does it appear to
24 be stilted or disguised or whatever? And then you make
25 sure you validate that, and all the material you have

1 submitted to you as a particular writer, indeed, does
2 come from the hand of that particular writer.

3 To separate your specimen writing, we identify
4 them by writings, K-1, Known One, and that is normally
5 the name associated with that, or K-2, that is a name
6 associated with that.

7 Q. All right. Let's go from the general procedure to
8 the specific. Tell us the first set of documents that
9 you received from me and identify it by the exhibit
10 number, please, if you don't mind.

11 A. Exhibit No. 17 would be packet number five.

12 Q. And by packet, you're referring to how I packaged
13 it when I send them to you?

14 A. That's correct.

15 Q. Now, what did you understand that -- what did you
16 understand that Exhibit 17 to be?

17 A. This was identified as -- and there are Bates
18 numbers on this. It's a method that a lot of legal
19 offices use to maintain control and identification of
20 documents. On the bottom of each document is a stamp
21 number. It's called a Bates number. This packet, number
22 five, Bates numbers, et cetera, is the handwriting
23 samples taken by Charleston city police officers from Che
24 Carr and Terrell Chandler. Che Carr would be K-1 to me;
25 Chandler would be K-2 to me.

1 Q. All right. And how many -- in that packet that I
2 sent you of handwriting samples taken by the Charleston
3 police department, how many did they take from Che and
4 how many did -- Che, being K-1, and how many did they
5 take from Terrell, K-2?

6 A. As I recall, I think it was ten pages. Each has
7 what we call dictated writing. Dictated writing is when
8 you request a writing or you sit someone down and say, I
9 want you to write this for me, but dictate what you want.
10 So this was requested writing. I was not there, but
11 procedure wise, they would have set an individual down
12 they knew and identified and dictated right to them. In
13 this case, I think it was ten pages from each one, K-1
14 and K-2.

15 Q. And what words were they writing? Where did the
16 words that they were writing come from?

17 A. In obtaining specimen writings, you normally
18 dictate the exact wording you want as a rule. It depends
19 on the investigation and the particulars of that
20 particular investigation. In this case, it was a long,
21 extended writing, full paragraph, and dictated the exact
22 wordage of the questioned document, and questioned
23 document being Defendant's Exhibit 13.

24 Q. And I sent you or did you receive additional
25 documents from me to examine?

1 A. Yes, I did.

2 Q. All right. And what I would like you to do,
3 Mr. Dawson, is identify what Defendant's Exhibit No. 14
4 is and how it relates to the analysis that you were going
5 to do for us.

6 A. Additional exhibits, of course this call came in
7 one packet to me so it was the same date, not additional,
8 but another date. This is packet number two. Packet
9 number two is identified by Bates numbers. This packet
10 is made of letters that the prosecution represents as
11 being written by the codefendant Che Carr.

12 Q. All right. And they are letters from Che Carr
13 to --

14 A. Several individuals. This is what we would call
15 normal course of business letters, or normal course of
16 social letters or whatever. As we recall, we took a
17 requested writing and dictated it. This would represent
18 handwriting from normal course of business in the
19 person's past, whatever, prior to litigation or whatever.
20 This is very naturally executed, no disguise or anything
21 like that.

22 Q. All right.

23 A. Normal course of business writing.

24 Q. I'm going to show you Defendant's Exhibit No. 15
25 and ask you how that -- what that packet of documents has

1 represented to you to be and how that relates to your
2 examination.

3 A. Packet number three is also referenced by Bates
4 numbers, includes copies of Bates numbers, et cetera.
5 Copies are provided because the Bates numbered copies
6 provided by the prosecutor are much fainter. The copies
7 were hand delivered to Mr. Howe and me by the
8 prosecutor's office before they were Bates stamped. All
9 these copies are letters the prosecution represents are
10 being written by our client, Terrell Chandler, which is
11 K-2.

12 Q. And I believe the last exhibit we need to get into
13 for this part of your examination, Mr. Dawson, is
14 Defendant's Exhibit No. 16, and tell us what that
15 document is please, sir.

16 A. Defendant's Exhibit 16 is also referenced as
17 packet number four. It also has Bates numbers on it. It
18 is a report of the SLED handwriting comparisons in the
19 questioned document, their packet number one, I guess.
20 The comparisons used by SLED are included below as packet
21 number five, and that was also included to me. That was
22 a packet number five. It wasn't my packet number five.

23 Q. Right. Now, tell us what Defendants Exhibits 18,
24 19, and 20 are and when you received them and what part
25 they played in your analysis.

1 A. These documents as a single submission and the
2 letter of transmittal to me came May the 18, 2010. Last
3 Thursday, last week, I met Mr. Slade in his office, and
4 he hand delivered to me these documents and asked me to
5 examine these and see somehow if they fit into the case
6 of authorship. Everything I had to work with here were
7 machine copies and, of course, photocopies and machine
8 copies, some small things we look for, maybe microscopic,
9 are not duplicated with photocopies.

10 Q. Let me interrupt you just for a moment. When you
11 use the term machine copy, you're talking about what
12 conventionally are -- in normal course of nonprofessional
13 handwriting examiners, what normal, ordinary people call
14 photocopies or some kind of Xerox copies, something that
15 your copier produces, correct?

16 A. That's correct. Machine copies, could be scanned,
17 digitized, faxed, number of things. It's not an
18 original, okay? Yes. These were Xeroxed copies.

19 Q. All right. Now that we've identified what you
20 worked on, I would like to address in this next series of
21 questions what document examiners look for and how they
22 go about their examination. All right? So describe for
23 us what the writing habits of a writer are.

24 A. A writer's habits we look for on these letters,
25 the two letters here, you'll find they're very faint,

1 written on the front and the back, and in these letters
2 are darkened copies to make it easier to read, but these
3 are two letters I did receive last Thursday.

4 Q. I'm sorry, Mr. Dawson. What I wanted to start off
5 with is just how you go about analyzing whether specimen
6 documents are written by -- excuse me. Whether the
7 questioned document is written by the specimen -- the
8 author of the specimen document, the person you know who
9 wrote the specimen documents.

10 A. I'm just trying to separate the two.

11 Q. Sure.

12 A. Okay. Handwriting is identifiable to one person
13 and one person only as a rule. We start in the first
14 grade with a copy book, block letters, copy book, maybe
15 second grade. You start connecting the copy letters, and
16 then you start making them into cursive writing and you
17 start developing the cursive style pretty much from the
18 copy books you use in school signatures.

19 You continue that style on through, but to a
20 document examiner, we say a person's handwriting matures
21 late teens or early 20's. Maturing is not an emotional
22 thing. What happens is, we start getting sloppy. For
23 example, we're taught to make a lower extent of a G very
24 nicely down with a curve, depending on what copy book we
25 use but, as we become older, the G comes straight down.

1 Q. Mr. Dawson, as you mature, do you develop habits?

2 A. Yes, sir. That's kind of where I was headed.

3 Q. Go ahead.

4 A. We deviate from the way we're taught in school and
5 copy book, and what we do is we start getting sloppy, and
6 by getting sloppy, we start having individual habits, and
7 those individual habits are what makes our handwriting
8 identifiable to one person and one person only. So as
9 we're looking through these specimens --

10 Q. I'm sorry, and I apologize. Could you give us a
11 couple of examples of what you're talking about, about
12 these individual characteristics that people -- what are
13 some typical individual characteristics that people would
14 have?

15 A. It depends on an individual.

16 Q. Right.

17 A. As you're looking through the specimen signatures
18 here, and going to the question here, you would note that
19 one writer has a habit of making a large S. He's writing
20 show, for example. Large s-h-o-w. We all know that
21 lowercase letters are supposed to be the same height.

22 One of these writers has a habit of making a large
23 S. Also, pen movements is what a document examiner looks
24 for. Document examiner doesn't look at it like you
25 would, pictorially, but how the letters are made.

1 Individual habits again. One of these writers has a
2 habit of making a D coming down, but at about the 3:00
3 position, and making the D large counterclockwise, going
4 up the stair, and coming down.

5 Q. Are person's handwriting characteristics that
6 you're describing there dictated by habit?

7 A. Habit is deviated by copy book design. It's the
8 way you make -- the other person would make a D the other
9 way. One makes it clockwise; one makes it
10 counterclockwise. One in here makes it clockwise, the
11 other makes it counterclockwise. Those individual habits
12 form, so here you would find the D is made one way. Over
13 here, you have two ways, so that would help you, the
14 examiner, determine one of the steps in the authorship of
15 this, the large S, authorship of this, and the other
16 individual characteristics you look for as well.

17 For example, the M, we're all taught in school to
18 make an M from the baseline up, double loop down.
19 Sometimes you have a little staff on the end in your
20 uppercase M's you'll find that in here, one of these
21 writers has a habit of bringing -- lowercase stem, bring
22 the staff down, bring it away from the staff, and the
23 center post of the M is short. It doesn't come down to
24 the baseline, it goes out. The other writer makes the M
25 pretty much -- so now we have a difference in the pen

1 movement. We have a difference in the size of the S, and
2 then we have a difference in the construction of an M.

3 So once again, we have three points moving over
4 here. So this the way we start developing the
5 identification of a writing or the elimination of a
6 writing.

7 Q. And tell us, now, the process that you went
8 through in reaching the conclusions that you have reached
9 in this case?

10 A. Went through that process, double-checked
11 everything, and I made charts to demonstrate my
12 testimony.

13 Q. Tell us the first documents you examined in order
14 to determine whether you could make any -- or you could
15 come to any conclusion about the author of the questioned
16 document given the fact that you had these samples from
17 Terrell Chandler and from Che Carr. Take us through the
18 steps of your analysis.

19 A. As we discussed, we take a look at the questioned
20 documents, look at the condition of them, the
21 handwriting, the pressure, the consistency of them, if
22 there is a consistency before then, we examine specimen
23 signatures of the two writers in this case, K-1 and K-2,
24 and we looked for the consistency internally, and we make
25 sure that the specimen signatures of K-2, there are

1 several submissions. Keep that in mind, two submissions
2 actually, and other submissions within.

3 We evaluate the same writer, K-2 did this, this
4 bunch K-2s, this bunch of K-2s, and we make sure that the
5 K-1 writer did this bunch of K-1s, K-1s, and K-1s that is
6 there is no contamination there, so we have two sets, K-1
7 stack and K-2 stack, and then you go to your questioned
8 document, and when you deal with expended writing like
9 this, it's fairly labor intensive, you just plow through
10 it and then things start falling into place and you start
11 seeing characteristics, and before long you can reach an
12 opinion as to who did what in this case of the two
13 writers.

14 Q. All right. When you first examined the
15 handwriting samples, the ten times that the city police
16 requested that Terrell and Che write the contents of
17 these -- of the questioned document and examined the
18 letters from Che to his girlfriend and the letters from
19 Terrell to whoever, were you able to look through that
20 and come to any conclusions? Were you able to look at
21 those documents and do any kind of analysis and reach a
22 conclusion?

23 A. Yes.

24 Q. Tell us what you concluded and what you basically
25 did.

1 A. I concluded that the writer of K-2, Terrell
2 Chandler, did not execute the document in question.

3 Q. All right. And could you conduct a similar
4 analysis in reaching a conclusion about Che Carr, K-2?

5 A. I did. I reached that conclusion. My conclusion
6 of that is that probably that the writer of K-1,
7 Mr. Carr, probably did write the document in question.

8 Q. All right.

9 A. Which is -- what is the exhibit number?

10 Q. It's right there in front of you.

11 A. Exhibit 20?

12 Q. Right.

13 A. The original.

14 Q. Oh, it's over here. You're talking about the
15 original.

16 A. I examined a machine copy. A machine copy was the
17 original copy and the reference to the original
18 document --

19 Q. Now, did you prepare some charts to describe your
20 analysis of how you reached your conclusion?

21 A. Yes, I did.

22 Q. Could you come down and take us through your
23 analysis of how you reached this conclusion.

24 A. Yes, I can. Your Honor, could I step down?

25 THE COURT: Yes, please.

1 MR. SLADE: Sure.

2 BY MR. SLADE:

3 Q. Now, take us through the analysis you did to reach
4 the conclusion that Che Carr wrote the questioned
5 document.

6 A. As we recall, I had two submissions. The first
7 one being all of these, the big pack of four or five
8 documents, and the chart I prepared, working on this, and
9 this chart, this opinion, a report was prepared, a number
10 of weeks back. This represents the questioned, and these
11 aren't the only letters. This represents the writings of
12 questioned material. It just represents some of the
13 letter forms of the known K-1, which is Mr. Carr. It
14 just represents some or a few of the total writings of
15 K-2 and Mr. Chandler, representing Mr. Chandler.

16 If you'll notice, for example, in this initial
17 report, initial exam, the U comes down in a bow of the
18 question. Over on the known side of Mr. Carr, you have
19 the same shaped U. The N, the staff sticks up in a nice,
20 round form, kind of shallow, kind of narrow in, same over
21 here --

22 Q. Let me stop you just a minute, Mr. Dawson. So
23 what you do is you found a word in the questioned
24 document, and did you look for that same word in writings
25 of Mr. Carr and of Mr. Chandler?

1 A. I did and I'll explain that. Actually, I compared
2 letter by letter. That's why it takes so long, but for
3 the purpose of demonstrating to the Court, I've selected
4 words which brings everything into a more visual sense.
5 So I looked for the U's, the D's, the N's, the T's, but I
6 found a word in the questioned that I found in the known
7 so I could put them side by side and get a visual
8 representation of them.

9 So continuing on to the N, you notice the round
10 top of the N and sort of a shallow width across here.
11 You have the same thing on the K-1, Mr. Carr. On the
12 K-2, the U, the staff sticks out to the side more. The
13 N also opens up a little bit there.

14 On the "charges", you see the staff come down.
15 The role of the H coming over, a nice role, the same
16 here. This H is pointed and goes to the side. The G,
17 stroke of the G, comes down sort of a shallow circle.
18 There is a tag or a little hook right there. You have
19 the same thing here. This G drops longer and -- I'm
20 sorry, shorter and rounder, and it is a different form
21 altogether, and, once again, there is that date we were
22 talking about.

23 Q. Now, these characteristics, are these the habits
24 that you were describing to us?

25 A. Some of them. Others have individual

1 characteristics we would be looking for, yes, sir.

2 Under the D, for example, you notice this D is
3 oblong to the left. It's a little rounder. Kind in mind
4 that in the questioned document itself, there is a lot
5 the of disguise, lot of disguise in the writing. You
6 notice the very heavy line pressure. You'll notice the
7 difference in variations in some of the letter forms in
8 some D's, for example, but we're looking for association
9 as we go forward into the individuals.

10 But we'll notice the D points up to the left, a
11 little oblong. This bowl of the D may be a little round.
12 This bowl of the D comes around like this, maybe a little
13 oblong and continues across, but the thing we're looking
14 for here is how the D is constructed.

15 If you notice this D, for example, the way this
16 person makes the Ds comes down from the top and back
17 around and out with a little tail. It comes -- here we
18 go, down and around and a little lip, down, and back
19 around, and you'll find the same D over here, down, back
20 around, a little tail coming over, down, back around,
21 down back around. Let's go over to K-2 now, which is
22 Mr. Chandler.

23 His Ds come here and down around, up to the staff
24 and back, the individual characteristics. That is what
25 I'm looking for. That is what you see. The same thing

1 on the D here. Here, up and around, back up to the
2 point, down, now, go back to this, and you see this is
3 down and around, entirely different movement altogether
4 and carry on through.

5 Let's go to the Gs. The Gs, once again, we
6 discussed it up here, come down in a small hook, small
7 hook. These are sort of messed up, but you see the
8 little hook coming there. This G once again is longer
9 and more open. It's a different form of it altogether.
10 This B is interesting. If you'll notice, the B has a
11 flag on top, comes across, tall, narrow, down through the
12 staff, over and around. Okay?

13 Same B here, flag, over, and around, over here, no
14 flag. It's open. It's a fat, horizontal B. Does not
15 come to the staff. Okay? B here. We all have natural
16 variations. No one here will write the same every time.
17 We all have different letter forms we use. In your name
18 you may have a different letter form that you use six
19 months, for example, and drop out, so we all have natural
20 variation in our letter forms, but what I'm looking for
21 is individual characteristics.

22 And so when I wrote this report, I wrote a report
23 on this, I said I could not eliminate the writer of K-1.
24 I can eliminate Chandler. I think we all can eliminate
25 Chandler, but we cannot eliminate Carr. Then the second

1 submission comes in last Thursday, and these were
2 original documents last Thursday. Everything we had to
3 work with before were the machine copies, and now we have
4 original documents to work with, and these were also
5 submitted as the writings of Mr. Carr, but to me they're
6 the writings of K-1.

7 Once again, these come from the questioned
8 document that we have, and you'll see that same G we're
9 talking about and the little open G there and an open
10 G there. It has a habit of opening up on the front, on
11 the top. There is a lot of variation here.

12 Here is that large S we're talking about. You can
13 look through the questioned document and look at the
14 writings and the word show, perhaps, other writings.
15 This writer, K-1, has a habit of making the S large and
16 lowercase, for example. It's large, initial S, internal
17 S, or terminal S, but these words, you see the larger S
18 each time? Come over here and see the larger S each
19 time.

20 This writer does not use U, y-o-u. It's an
21 abbreviation. He makes the letter U. You'll find that
22 in this question. You'll find it over here in the known
23 writing as well. Look at the M. Remember, we talked
24 about the M, and that is that staff up, down, away from
25 the staff, shallow, all the way across. We found that

1 again, staff down, all, short, down. Duplicate again.
2 You will find these all through the writings if you look
3 at them.

4 The E, the questioned writer has a habit of making
5 the eyelet of an E a little tall in the E form, and
6 you'll find that from time to time. It's above where you
7 normally would find it, and it's over here as well.

8 Let's look at this F. This is the word "for".
9 When you get it and look at it, you'll find, up
10 underneath, it looks like a little shepherd's crook, very
11 much like this F, only when this person was writing this,
12 they, for some reason, went back to make an uppercase F,
13 and overwrote it.

14 Also, the R, the R comes down the staff and comes
15 out, up like that, but you see where the pen stops, the
16 ink sort of changes just a little bit.

17 Q. Is that part of a disguise, the characteristics
18 you found?

19 A. Part of the disguised characteristics.

20 Q. In the questioned document?

21 A. You're exactly correct. Then you continue over
22 here, and see the F form here, R form here. You'll find
23 the R form all through here. This is interesting, the A.
24 This writer has a habit a lot of times of putting a
25 little flat spot on top of the A instead of the round, if

1 you would.

2 You'll notice over here a Little flat spot on the
3 A. We talked about the tail coming off that D. There is
4 that tail of the D coming off there.

5 Q. Okay.

6 A. So I examined the specimen signature of K-1 and
7 K-2. I questioned the questioned document. I looked for
8 the individual habits, characteristics, and I reached an
9 opinion.

10 Q. All right. Now, I'm going to show you Defendant's
11 Exhibit No. 13 that you refer to as the questioned
12 document. Did you reach a conclusion about whether or
13 not you could determine who the writer of the questioned
14 document was based on your analysis?

15 A. Yes. Exhibit 13 is a machine copy I had to work
16 with. Exhibit 13 are -- Exhibit 13 will be on these
17 charts under the heading questioned. All the entries on
18 the question came from Exhibit 13, the questioned
19 document.

20 Q. In your opinion, who is the writer of the
21 questioned document?

22 A. The writer of K-1, which is submitted to me as Mr.
23 Carr.

24 Q. All right. Che Carr?

25 A. Probably wrote that, yes.

1 Q. All right. I was going to ask you about the
2 degree of certainty you have about that opinion. What is
3 the degree of certainty you have about that opinion?

4 A. Probable, as there is a lot of disguise in this.
5 I have not examined the original document; however, there
6 are individual characteristics in there that cannot be
7 accounted for other than written by a single individual,
8 and so probable would be my opinion.

9 MR. SLADE: Your Honor, at this time I would
10 ask to have moved into evidence Defendant's Exhibits 13
11 through 20.

12 THE COURT: Those are the supporting
13 documents or are they -- as well as the document in
14 question?

15 MR. SLADE: Yes, sir. It's the machine copy
16 of the document in question that Mr. Dawson examined.

17 THE COURT: All right.

18 BY MR. SLADE:

19 Q. That is correct?

20 A. That is correct, sir, yes, Your Honor.

21 THE COURT: All right. That won't come in
22 yet until we go to the next witness.

23 MR. SLADE: I beg the indulgence of the
24 Court.

25 I don't have any other questions.

1 THE COURT: Ms. Shealy?

2 MS. SHEALY: May it please the Court, I beg
3 the Court's indulgence just a second. Could we approach
4 just for one moment, Judge?

5 (Discussion held at sidebar.)

6 CROSS-EXAMINATION

7 BY MS. SHEALY:

8 Q. Mr. Dawson, I want to make sure we're clear about
9 something. You're not testifying about any letters that
10 Terrell Chandler sent Steven Brown at all, are you?

11 A. I do not recall each letter individually. All I'm
12 testifying to is who wrote the questioned document.

13 Q. Okay.

14 A. Who probably wrote the questioned document.

15 Q. Because you really can't say he did write the
16 questioned document; is that correct?

17 A. All I can say is the exhibits were submitted to me
18 as having been written by a particular individual,
19 individuals. I sorted those by the writing
20 characteristics, the person that was -- the evidence
21 submitted to me as being offered by Mr. Carr, I assigned
22 the value of K-1, the number K-1. The writer of K-1
23 probably wrote the questioned document.

24 Q. And yesterday in a separate hearing, did you
25 indicate that there was reason to believe he may have?

1 Is that the way you phrased it initially?

2 A. I may have, yes.

3 Q. Okay. But now it's probable?

4 A. Exactly. But I think if you check with my --

5 Q. I'm sorry?

6 A. If you'll check with counsel, I think I probably
7 told him -- I told him earlier, last week, that it was a
8 probable identification.

9 Q. Okay. But yesterday when you testified in another
10 hearing regarding this issue, the first way you explained
11 it was if there was reason to believe that Che Carr may
12 have written Defendant's Exhibit 13, which is not into
13 evidence yet; is that correct?

14 A. That is correct, and then you have a list of
15 verbiages that we reviewed, and I agreed with you that
16 probable was the accurate way of expressing my opinion in
17 this case.

18 Q. Now, when you say you agreed with me, I wasn't
19 agreeing that it was probable, was I?

20 A. No, you were not. I'm sorry.

21 Q. Okay. Now, let's make sure the jury understands
22 what you've got. When y'all were going through
23 Defendant's Exhibit 14 --

24 A. Okay.

25 Q. -- and it was a compilation combining of letters

1 from Che Carr to girlfriends?

2 A. Okay.

3 Q. That is what you have referred to as known
4 writings of Che, or how did you refer to those?

5 A. I think that's correct, known writings of Che.

6 Q. And those were to Megan White; is that correct?

7 A. I have no idea who they were to.

8 Q. Well, take a look at them.

9 A. Winfrey, baby mama, whoever that may be. You are
10 my wifey. Megan, yes.

11 Q. When you were doing this examination, did you read
12 the materials themselves, or you were just paying
13 attention to the letters?

14 A. I was paying attention as a document examiner to
15 the letters, the individual characteristics, the letters
16 we put up here.

17 Q. Okay.

18 A. Context didn't mean anything to me.

19 Q. But when Mr. Slade was referring to known letters
20 of Che Carr, he's referring to that packet that the
21 solicitor gave him; is that correct, the one with the
22 Bates numbers?

23 A. Yes. That's what he transferred to me, yes,
24 ma'am.

25 Q. Now, when you were referring to known letters

1 provided by Mr. Slade to you from Che Carr, you don't
2 know where those came from, do you?

3 A. No, I do not. I just know who wrote them.

4 Q. You don't know how Mr. Slade came in possession of
5 those, do you?

6 A. No, ma'am. I just know who wrote them.

7 Q. You just know who wrote them?

8 A. Yes, ma'am.

9 Q. So now we've gone from probable to certain?

10 A. I say who wrote them. The writer of K-1 authored
11 those. Now, K-1 may be a number of people, but y'all
12 gave them to me as Mr. Carr.

13 Q. Those are the ones the solicitor's office gave
14 you, or that you got from Mr. Slade from the solicitor's
15 office?

16 A. I may be confused because I've known you some
17 years. Are you still with the solicitor's office?

18 Q. I am from the solicitor's office.

19 A. So they came from your office.

20 Q. Those came from my office.

21 A. Yes, ma'am.

22 Q. But the ones that are in Defendant's 18 -- and I'm
23 sorry. Are these in at this point?

24 MR. SLADE: We offered them and you objected.

25 MS. SHEALY: I'll offer Defendant's 18 as a

1 State's exhibit.

2 BY MS. SHEALY:

3 Q. Just to make sure we're clear, Mr. Dawson, showing
4 you State's Exhibit 152, which contains the opinion copy
5 and an original, will you tell this jury, please, from
6 whom you received these items.

7 A. Mr. Slade.

8 Q. Okay. And what was it represented to you who it
9 was from?

10 A. Mr. Carr.

11 Q. Che Carr?

12 A. Yes, ma'am.

13 Q. And why don't you hang on to the original for a
14 second.

15 A. May I have the plastic? I don't want to damage
16 this.

17 Q. Sure. This --

18 THE COURT: Excuse me just a second. Did you
19 mark them for identification or are you offering them
20 into evidence?

21 MS. SHEALY: I will admit them.

22 THE COURT: Okay. Admitted.

23 (Document marked for identification and
24 admitted into evidence as State's Exhibit 156.)

25 BY MS. SHEALY:

1 Q. This document you received from Mr. Slade that
2 represented this was from Che Carr reads, Damn. Listen,
3 I got something since I -- excused my language -- fuck up
4 and write them statements. I got this if you tell people
5 I ain't tell and don't show them the statement, don't you
6 forget you tell OG don't show them papers, and I got to
7 take this for y'all. Word on my mama.

8 Is that how that letter reads?

9 A. Pretty much so. What is on the back of this
10 letter? Do I have that also?

11 Q. Yes. I've got a copy of that also. Do this for
12 and I got to set you free. Is that what it says?

13 A. Well, two statements on there.

14 Q. And do this, and I'm going to -- I got you, I
15 going to set you free. Is that correct?

16 A. It looks like it, yes, ma'am.

17 Q. Could we put this up? This is the letter
18 Mr. Slade tells you is from Che Carr?

19 A. Yes, ma'am.

20 Q. The one that says, I'm going to take this for
21 y'all. Word on my mama.

22 A. Okay.

23 Q. And looking behind you, is that a depiction of
24 that letter?

25 A. That looks correct, yes, ma'am.

1 Q. And then the part that was on the back, it's
2 written one way and written another way; is that correct?

3 A. Yes, ma'am, that's correct.

4 Q. And that is the part that says, I gone set you
5 free; is that correct?

6 A. I believe so.

7 Q. Let me stick all that back in that envelope.
8 Okay. And then showing you Defendant's 19 marked for ID,
9 I asked you if that is another letter that you received
10 from Mr. Slade with his indicating it was from Che Carr.

11 A. That's correct.

12 MS. SHEALY: I would like to offer this at
13 this time, Your Honor.

14 MR. SLADE: No objection.

15 (Document marked for identification and
16 admitted into evidence as State's Exhibit No. 157.)

17 BY MS. SHEALY:

18 Q. State's Exhibit 157, and that letters reads, Don't
19 forget. You write one Z.

20 A. I have the wrong one then.

21 Q. Okay. I'm sorry.

22 A. I may not have that one. Let me check one more
23 thing, Ms. Shealy.

24 Q. Okay. I got a copy for you. Okay.

25 A. Yeah, I don't --

1 Q. I'm sorry.

2 A. I was looking. I recognized these scratches.

3 Q. Okay. And in this letter provided to you by the
4 defense who told you it was from Che Carr, it reads at
5 the top, Don't forget you write one Z, A, and then the
6 word n-i-g-g-a, read this and then you play -- excuse my
7 language -- fuck up you must of forgot you write a
8 statement too, but I'll be the man in this and I gone
9 free you and my brother and Troop because we, or should I
10 say, you and me ain't got no win in trial cause that girl
11 Cammy and day got you DNA on the gun so check this out.
12 You write OG, Omar Grant, and Slim Ball and tell them
13 Z stop showing that paperwork and telling people that me
14 and my brother tell.

15 I gone take a plea and get you free, that only if
16 you tell OG and Slim Ball to stop showing that paper and
17 tell people that I ain't tell word on everything I about
18 Z do that not just cause that but for my bubba and I play
19 fuck up by writing statement on you. You handle that. I
20 gone man. You too my part word on everything do that and
21 I got you word. Write me back when you done. That hurry
22 up trial coming up.

23 And then on the back read this, this a way for you
24 to get home. Only I you hand that. I gone to word on my
25 DD lady.

1 Is that correct?

2 A. Yes, ma'am.

3 Q. Now, in the letter that we just discussed, that
4 being State's Exhibit 156, and this being the first page
5 of that letter, your testimony in front of this jury is
6 that the author of that letter, there is either reason to
7 belief, probable, or now certainty, that that letter was
8 written by the same person who wrote this letter; is that
9 correct?

10 A. That's correct.

11 Q. So you're telling us, as a handwriting expert,
12 that that writing and this writing are about the same
13 person.

14 A. Probably, yes.

15 Q. Probably yes?

16 A. Uh-huh.

17 Q. Certainly yes?

18 A. I didn't say certainly, I said probably yes.

19 Q. Now, you don't know what kind of shenanigans go on
20 at the jail, do you?

21 A. No, ma'am, I don't.

22 Q. And you've been in this business for a while. You
23 know there are all kind of shenanigans going on; is that
24 correct?

25 A. I've examined jail letters for many years, yes,

1 ma'am.

2 Q. And isn't it true that people will get their
3 buddies in jail to draft a letter for them?

4 A. Absolutely.

5 Q. I want to make sure I understand the sequence of
6 events. You were telling us at one point you reached one
7 opinion and then was it yesterday or the day before you
8 came up with another opinion?

9 A. I reached an opinion I could not eliminate.
10 Additional material came in, and I elevated that to
11 probable based on additional material so it wasn't 180
12 degrees, it was the same end of the spectrum, stepped up
13 a little.

14 Q. And if you hadn't reached that conclusion, you
15 wouldn't be making the money you're making today to
16 travel to Charleston, would you? Where are you living
17 now?

18 A. Listen. Clear this air right now, Miss Shealy.
19 What are you suggesting?

20 Q. I'm just asking you, if you had not changed your
21 opinion, would you be here today testifying?

22 A. I am paid for my time, not for my opinion. My
23 opinion cannot be bought. She's correct, I'm being paid
24 for my time, not my opinion. Now, let's continue.

25 Q. At some point yesterday did Mr. Slade tell you he

1 may not need to you testify?

2 A. I do not recall that.

3 Q. Do you recall advising him yesterday that you had
4 a new opinion?

5 A. I recalled advising him Friday afternoon -- I may
6 have a recall advising him Monday morning that there
7 would probably be, yes.

8 Q. Are you aware that -- you know who Gail Heath is,
9 right?

10 A. Yes, ma'am.

11 Q. And she is the document examiner with the South
12 Carolina Law Enforcement Division, correct?

13 A. Correct.

14 Q. I think, in fact, you trained her, did you not?

15 A. That is correct.

16 Q. You are colleagues?

17 A.. We're both Board certified examiners, yes.

18 Q. You are aware, are you not, that she does not
19 share your opinion regarding that?

20 A. I'm not aware of that.

21 Q. They didn't let you know that?

22 A. What opinion are you talking about?

23 Q. That she does not believe it's probable that Che
24 Carr is the author of the questioned document.

25 A. Do you have her reports on this?

1 Q. I certainly do. Did they not provide it to you?

2 A. They did.

3 Q. Well, then you have it, am I correct?

4 A. It's probably in evidence somewhere, but I would
5 like for us to review that together.

6 MR. SLADE: I think it's Exhibit 17.

7 THE WITNESS: I have it right here. It's

8 a --

9 MR. SLADE: 16.

10 BY MS. SHEALY:

11 Q. You have it in front of you?

12 A. Yes, ma'am.

13 Q. And is it true that Gail Heath's opinion about the
14 authorship of the, quote, questioned document, is that
15 there are indications that Cherelle (sic) Carr did not
16 write the questioned entries.

17 A. Results of examination: Based on evidence
18 submitted, and that was the first evidence, as I read
19 this report, she never saw the evidence I had second
20 time, according to that report. Based on the evidence
21 submitted, it's been determined that items 27 and 28 were
22 written by two different writers. It's probable that
23 neither Terrell Chandler or Cherelle Carr wrote the
24 questioned materials. No conclusion could be reached.

25 It is probable that neither wrote the questioned

1 materials. Based on what she had, what I had to start
2 with, is probable they did not. She does not say they
3 did not, and she left a lot of room open for
4 identification, if the proper materials were submitted.

5 Q. And then you're saying what you had that she did
6 not have, again, was State's Exhibit -- I'm sorry.
7 State's Exhibit 157, which is behind you.

8 A. Yes, ma'am.

9 Q. Do you want to look at it?

10 A. I know what you're bringing up.

11 Q. Okay. And State's Exhibit 156.

12 A. Okay.

13 Q. Is that correct?

14 A. Yes, ma'am.

15 Q. That's what you had that she did not have?

16 A. But, once again, you had the N, on the word on, if
17 you lay that on top of that one on that chart right over
18 there.

19 Q. The word on?

20 A. Yes, ma'am.

21 Q. Okay.

22 MS. SHEALY: I have no further questions.

23 THE COURT: Redirect.

24 MR. SLADE: Yes, sir.

25 REDIRECT EXAMINATION

1 BY MR. SLADE:

2 Q. If you could tell us, I got lost in your
3 cross-examination, Mr. Dawson. What is your opinion on
4 whether or not Che Carr wrote the questioned document?

5 A. I can't say Che Carr wrote it. I can say the
6 writer of K-1, and those were documents submitted to me
7 as known writings of Che Carr.

8 Q. What is your opinion about whether or not K-1
9 wrote this document?

10 A. Probably -- K-1 probably wrote that document. I
11 examined the machine copies, and I said probably.

12 MR. SLADE: All right. I don't have any
13 other questions for this witness, and, again, I just
14 offer these documents we've discussed into evidence, Your
15 Honor. That is Defendant's 13 through 20.

16 (Defendant's Exhibit Nos. 13-20 were admitted
17 into evidence.)

18 MS. SHEALY: I have one other question.

19 THE COURT: Sure, go ahead.

20 RECROSS-EXAMINATION

21 BY MS. SHEALY:

22 Q. Mr. Dawson, when you work at SLED, do you have to
23 have any report that you prepare, reviewed by a peer in
24 your department?

25 A. Peer review is part of their laboratory

1 certification, correct.

2 Q. All right. So, in other words, when Gail Heath
3 reached her conclusions, there was another analyst at
4 SLED who reviewed it to see if they shared those
5 sentiments, correct?

6 A. I don't know. I'm sure she probably testified as
7 to what -- she probably testified to her opinion here. I
8 don't know.

9 Q. Okay. That's not my question.

10 A. That's a question for her to answer. I can't
11 answer that.

12 Q. You told us you worked at SLED, right?

13 A. Yes, I did.

14 Q. And you're aware of the certification requirements
15 of SLED, or are you not?

16 A. No. They became as class certified five or six
17 years ago. I retired from the state in '99.

18 Q. If they are class certified, you are aware of the
19 need for peer review of document?

20 A. I'm familiar with peer review, yes.

21 Q. And were your conclusions reviewed by any peer?

22 A. No, they were not. I work solo practice and --
23 well, let's clear the air on that. Peer review, as
24 defined by laboratory standards, can be one out of every
25 ten document, can be every document, every third

1 document, it's a matter of having someone review your
2 work product periodically to make sure that you're on
3 sound, logic ground.

4 The laboratory at SLED, I believe, you can check
5 me on this one with Lieutenant Heath, is that everyone is
6 reviewed. Most laboratories do not have that. It also
7 depends on qualifications of reviewers. About once a
8 month, I have someone review my material. It's a Board
9 certified examiner. In fact, the examiner sits on the
10 board, quite frankly, and they review my material about
11 once a month.

12 I pull cases, go up, they look at them, so, in
13 essence, I do have peer review. In essence, I did not
14 have peer review in this case, and all I can say is, no,
15 I did not. I have peer review as defined by laboratory
16 procedures that periodically I do. This laboratory has
17 everyone peer reviewed for whatever reason so that the
18 answer to the question.

19 Thank you.

20 MR. SLADE: No further questions.

21 THE COURT: He offered 13 to 20?

22 MS. SHEALY: I would object -- there is one
23 that I object to. I still object to 13 coming in, Judge.

24 THE COURT: That is the document requested?

25 MR. SLADE: Yes, sir.

1 THE COURT: That one is not in, but 14
2 through 20 are in.

3 All right. You can step down.

4 THE WITNESS: Thank you, Your Honor.

5 THE COURT: All right. Call your next
6 witness.

7 MR. SLADE: David Osborne.

8 THE COURT: I'll remind you you're still
9 under oath.

10 DAVID OSBORNE,
11 having been previously duly sworn,
12 was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. SLADE:

15 Q. You've been in the courtroom during Mr. Dawson's
16 testimony, correct?

17 A. Yes.

18 Q. You were present when these writing samples were
19 taken from Che Carr and from Terrell Chandler, correct?

20 A. Yes.

21 Q. And y'all did that writing sample --

22 MS. SHEALY: Your Honor, I object to the
23 leading nature.

24 BY MR. SLADE:

25 Q. When did y'all take the writing samples from Che

1 Carr?

2 A. I don't have that date in front of me.

3 Q. Okay. Do you know when y'all took the writing
4 samples from Terrell Chandler?

5 A. I do. That was on October the 29th, 2008.

6 Q. And when y'all took the writing samples, you had
7 somebody from your department, from the city police
8 department, ask Terrell to write the contents of this
9 letter ten times, right?

10 A. That's correct.

11 Q. And later on, I think y'all did Che's later on?

12 A. I can't remember.

13 Q. Well, when y'all did Che's, he wrote the contents
14 of this letter ten times.

15 A. That's correct.

16 Q. And that is the first step in getting a
17 non-handwriting sample from someone you suspect or want
18 to look at as a writer of a letter, correct?

19 A. That's right.

20 Q. And at that time, Terrell --

21 MS. SHEALY: Your Honor, again, I would
22 caution about leading.

23 THE COURT: Well, he is an adverse witness,
24 so I'll let him lead. Go ahead.

25 BY MR. SLADE:

1 Q. At that time, Terrell gave you this letter, right?

2 A. No.

3 Q. You asked Terrell who had written that letter, who
4 had written that letter, right?

5 A. Later on in the interview, yes.

6 Q. And Terrell told you he had gotten that letter
7 from Che, correct?

8 A. He said he got the letter in the mail and that it
9 came from Che, yes.

10 MR. SLADE: And, Your Honor, at this time we
11 offer Defendants Exhibit No. 13.

12 THE COURT: Do you object?

13 MS. SHEALY: Based on my earlier discussions
14 regarding Mr. Dawson.

15 THE COURT: Over the state's objection it is
16 admitted.

17 Let me just explain to you what we've been
18 doing. Every exhibit up to this point there hasn't been
19 a question as to authenticity, but you just heard
20 testimony as to whether or not this document is
21 authentic.

22 Ultimately, that is a question for you to
23 decide. I have to make a threshold determination as to
24 whether or not they've met the basis for getting it to
25 you to determine whether it's authentic and whether or

1 not it's admissible.

2 I am allowing the document to be admitted;
3 that, however, does not mean that you can't determine
4 whether or not you think it is genuine. Authenticity,
5 genuineness, is ultimately a question for you to decide,
6 but the document itself is now admitted into evidence for
7 your consideration. You determine, based on all of the
8 evidence that you have heard, whether or not the document
9 is what it purports to be, and that is a letter from the
10 gentleman we've been referring to as Che. All right?
11 Che Carr, I believe, yes.

12 All right. Go ahead.

13 MR. SLADE: Thank you.

14 BY MR. SLADE:

15 Q. You read the letter?

16 A. To Terrell? I think I actually had Investigator
17 Brian read the letter ten times.

18 MR. SLADE: May I publish the letter, Your
19 Honor?

20 THE COURT: You may.

21 BY MR. SLADE:

22 Q. And the letter said, I that nigga Rell, all jokes
23 aside, I ain't mean to put you in this shit, but I
24 couldn't take that charges at that time man. I'm sorry
25 for even putting you in this shit. Them police keep tell

1 me that you did it, so I tell them you did it. But the
2 way I see it is we already in this shit so we might as
3 well ride this bitch out to the end.

4 They talk about they gone charge me with some
5 before and after the fact of a murder. I ain't know how
6 much they supposed to give us but fuck 'em. But man,
7 like I had said, my bad for putting you in this. I ain't
8 know I been gone kill dog. That shit just happened.
9 Ain't no address on the letter. But this Che, my nigga.

10 Is that is the contents?

11 A. Yes.

12 MR. SLADE: I don't believe I have any other
13 questions, Your Honor.

14 THE COURT: Do you have anything you want to
15 ask him?

16 MS. SHEALY: Yes.

17 CROSS-EXAMINATION

18 BY MS. SHEALY:

19 Q. Detective Osborne, at any point, at any point has
20 there been any discussion about offering Che Carr
21 anything less than murder?

22 A. No.

23 Q. And are you familiar with what kind of things go
24 on at the jail between inmates with letters, et cetera?

25 A. Yes.

1 Q. Okay. Tell the jury what goes on down there.

2 A. Everything and anything. Any way they can
3 communicate to one another they do. When we get any sort
4 of jailhouse letter, we try to authenticate it. We take
5 handwriting samples; we do anything along those lines.
6 Unfortunately, the jail doesn't track when you mail
7 something out, so there is no way of knowing who mails
8 what, but the defendants aren't supposed to be
9 communicating with each other, but what you can do, what
10 does happen you is can write on there to send it to
11 whoever you want.

12 Once you drop it in the mail, it goes out and then
13 it comes back, so really there is no way to check it. I
14 mean, you can mail to whoever you want, even though
15 you're not supposed to.

16 Q. Do you have any reason to believe that Che Carr
17 wrote that letter?

18 A. No.

19 MS. SHEALY: I have nothing further.

20 THE COURT: Any redirect?

21 MR. SLADE: I don't have any further
22 questions, Your Honor.

23 THE COURT: You can step down. Okay, folks.
24 We are going to take -- let's take a ten-minute break at
25 this point, and don't begin deliberations or discussions

1 about the case. We'll see you back in just a few.

2 (In open court, jury present.)

3 THE COURT: All right. Are those the three
4 witnesses you intend to call?

5 MR. SLADE: Yes, sir.

6 THE COURT: Mr. Chandler, stand up.
7 Mr. Chandler, you've heard me tell the jury at the
8 beginning of the trial that the state has the burden of
9 proving your guilt beyond a reasonable doubt to those 12
10 folks sitting over there.

11 You don't have to prove a thing. You don't
12 have to put up a defense, and you do not have to testify;
13 however, your lawyers have called three witnesses, and
14 they tell me that they do not intend to call any more on
15 your behalf; however, it is ultimately your decision as
16 to whether or not to testify. It is a constitutional
17 right that you have to testify. It is a constitutional
18 right that you have to not testify if you desire not to
19 testify.

20 If you do not want to testify, I will tell
21 the jury they are not to hold that against you in any way
22 while they are deliberating their verdicts. Ultimately,
23 if you decide that you do want to testify, get up and
24 tell the jury your side of the story, you are free to do
25 so. I will tell you that if you do testify, your lawyers

1 will ask you questions, and then the prosecutors will get
2 the chance to cross-examine you.

3 If you have any prior convictions, we'll talk
4 about that, and if I make a determination they fall
5 within our rules, you would be asked about those for the
6 purposes of impeaching your character, i.e., that is,
7 your propensity to tell the truth or not to tell the
8 truth based on the fact that you have prior convictions.

9 They would not be offered as proof as to your
10 guilt or innocence; however, the jury would be instructed
11 that they would be allowed to consider prior convictions
12 for the purpose of assessing your character, and,
13 ultimately, whether or not you're telling the truth is
14 what they could would be used for.

15 Do you understand that?

16 THE WITNESS: Yes, sir.

17 THE COURT: Okay. Now, have you had the
18 opportunity to discuss whether or not you want to testify
19 with your lawyers?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And have you discussed it with
22 anybody else?

23 THE DEFENDANT: No, sir.

24 THE COURT: All right. Now, as I told you,
25 this is ultimately your decision as to whether you want

1 to testify, but you indicate to me you have had the
2 opportunity to discuss this with both of your lawyers; is
3 that correct.

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right. What is your decision
6 about whether or not you want to testify?

7 THE DEFENDANT: It's new to them. I wasn't
8 going to do nothing, I wasn't going to say nothing, but
9 I'm going to go ahead. I'm going to testify. I'm going
10 to get on that stand.

11 THE COURT: You do want to testify?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: You want to talk to your lawyers
14 about that for a minute before you go forward? Because
15 they have indicated to me that you do not want to, and
16 that, it looks like, a little bit of a surprise to them,
17 and, again, it is your decision. If you go back in
18 consultation with them, come back and say you want to
19 testify, that is perfectly fine. All right?

20 But I do want you to talk to your lawyers
21 about that because that appears to be, from what I can
22 gather, a little change in strategy, so I want to make
23 sure you are all on board with your decision, but
24 ultimately it is your decision. It is not their
25 decision. Okay?

1 THE DEFENDANT: All right.

2 THE COURT: So why don't you go back and talk
3 with your lawyers, and we'll take about a 10, 15 minute
4 break here.

5 (Recess taken.)

6 (In open court, jury not present.)

7 THE COURT: Mr. Chandler, you told me a
8 moment ago you thought you wanted to testify. I said go
9 talk to your lawyers, because that did seem to be a
10 surprise, a little bit of a change in strategy. Y'all
11 have talked 10, 15 minutes or so. What is your desire at
12 this point?

13 THE DEFENDANT: My decision, I'm going with
14 my first, not to testify.

15 THE COURT: All right. Well, I find it's
16 your decision. It's freely, voluntarily, intelligently
17 made. What we will do now is just have a little brief
18 charge conference. I think there is just one real point
19 of contention, maybe two, and then I'll bring the jury
20 back. Y'all will rest in front of the jury, and then
21 we'll go into charging and arguing, or arguing and then
22 charging.

23 Does the state have anything they want to say
24 about the proposed charges I've handed you?

25 MS. SHEALY: We were a little confused last

1 night whether we were looking at the last set you gave
2 us. Did y'all just attach our requested ones?

3 THE COURT: You requested felony murder and
4 also hand to one, hand of all. They requested mere
5 presentation. Both of those have been requested.

6 MS. SHEALY: Then we have no other questions.

7 THE COURT: Defense?

8 MR. SLADE: Thank you, Your Honor.

9 Your Honor, we object to the hand of one,
10 hand of all charge. The state's theory of the case, what
11 they've alleged in this case and what Ms. Shealy told
12 them, told the jury in their opening, was that Terrell
13 was the shooter. When they have positioned their case
14 and their evidence in that fashion, the hand of one, hand
15 of all doesn't apply, Your Honor.

16 There is nothing that -- I mean, there is
17 nothing that Terrell Chandler did under their theory of
18 how the facts are laid out to assist Terrell Chandler in
19 being the shooter. Typically a hand of one, hand of all
20 charge is applicable when the state is seeking to convict
21 someone who hasn't done the proximate act that caused the
22 harm, so it's not appropriate here because there's
23 nothing, as I said, when he's the one holding the gun and
24 their theory is he's the shooter.

25 This is no act on the part of someone else

1 that they're trying to say -- they're not saying Terrell
2 tried to do anything to help someone else murder or shoot
3 the victim in this case. It's not -- the hand of one,
4 hand of all isn't applicable as the facts have come into
5 the evidence in this case.

6 THE COURT: Ms. Shealy, are you going to
7 argue that?

8 MS. SHEALY: Your Honor, I certainly think
9 hand of one, hand of all is appropriate. The defense's
10 position throughout the trial has been that Che Carr is
11 the shooter. The jury certainly could reach the
12 conclusion that Terrell Chandler was present that
13 evening, that he provided the weapons and he provided the
14 ammunition and he went out of the house with the rifle,
15 but they may believe Che Carr is the actual trigger man.

16 I certainly am entitled to explore that all
17 four of these guys were involved in it, that all four
18 played a role. He gets rid of the gun the next day. I
19 think it's clear that the jury should have that option to
20 explore.

21 THE COURT: Well, I agree. I think there is
22 evidence in the record that will support a conviction
23 based on the hand of one, hand of all theory. I don't
24 believe that they're bound by just the state's opening
25 statement. They're bound by what the evidence -- how it

1 plays out in trial, and the trial is there is evidence
2 that Terrell was the shooter and there is evidence
3 somebody else may have been the shooter, but that is
4 still ultimately for the jury to decide.

5 They also have the right to know that the law
6 says that under those circumstances, they could convict
7 on that theory, so the motion is denied as to that one.
8 Do you have any other ones?

9 MR. SLADE: I think that's it, Your Honor.

10 THE COURT: All right. Well, let's bring the
11 jury in then, and I'll let you rest in front of the jury.

12 (In open court, jury present.)

13 THE COURT: All right. Does the defense have
14 any other witnesses?

15 MR. SLADE: No, Your Honor. That's our case.

16 THE COURT: Does the state have any reply?

17 MS. SHEALY: No, sir, Your Honor.

18 THE COURT: Okay. Well, folks, you have now
19 heard all of the evidence that is going to be presented
20 in the trial, so we move into the last phase of the trial
21 in which we have the closing arguments and the jury
22 charge.

23 I am going to just reiterate the fact that
24 the lawyers are going to get up and speak to you now and
25 review the evidence that you have heard, give you a

1 little preview of the law that I'm going to charge, in an
2 attempt to sway you into rendering a verdict on their
3 client's behalf.

4 It is important to remember that what the
5 lawyers say, again, is not evidence and is not to be
6 considered by you as evidence. They are simply reviewing
7 the evidence that is in the record and arguing on behalf
8 of their clients based on that evidence and the law.
9 After they have finished with their closing arguments, I
10 will then charge you on the law, and then you'll retire
11 to consider your verdict.

12 Now, the rules provide that the state has the
13 burden of proof and so they actually get to argue to you
14 last, so you will hear from the defense first and then
15 you will hear from the state last. After the closing
16 arguments, again, I will then charge you on the law.

17 So Mr. Slade, you going to do the closing?

18 MR. SLADE: Yes, I am.

19 THE COURT: You may begin, sir.

20 MR. SLADE: May it please the Court. Back on
21 Monday afternoon when we started this case, the
22 prosecution told you that what you were going to see --
23 and I know y'all took some notes on it. I tried to take
24 some notes on it too, just to see what it is that they
25 say that they are going to try to prove to get you to

1 find beyond any reasonable doubt that Terrell Chandler is
2 guilty of murder.

3 And what you were told in Ms. Shealy's
4 opening remarks and her opening statement was that you
5 were going to hear evidence of four guys who all go dress
6 in their darkest clothes and lure someone over to their
7 house to commit a robbery and a murder.

8 Now, let's take a look at what they have
9 offered to prove to you beyond any reasonable doubt that
10 that happened. And we start off looking at this case
11 from some of the evidence that they presented, and what
12 they show you is someone who is in this house, Apartment
13 Five, who has people over, like Che and Storme Carr, who
14 has people over, like Megan White, who has people over
15 like Steven Brown. These folks are there at various
16 times in the night on May the 30th.

17 They've all been hanging around there for
18 weeks and months leading up to May the 30th, and what
19 they show you is in that house, in that apartment, these
20 people smoking dope. These people are partying. These
21 people have weapons in this house, and what they show you
22 is that there is a gun in this house, and we spent a good
23 bit of time talking about, I think you probably remember,
24 Latrice Smalls. She was probably about the third or
25 fourth witness, and she was asked to stand up and walk

1 around in front of you showing you how Terrell walked
2 around in the house with the gun.

3 And you were shown some pictures of Mr. Brown
4 firing, or, excuse me, holding this weapon in this
5 position. I'm not going to hunt around and find it, but
6 I'm sure y'all recall that picture of Steven Brown
7 sitting there in that white shirt, I guess in the firing
8 position, playing with this gun.

9 And you heard some of the language, some of
10 the way these folks who hang around this apartment talk,
11 and no doubt that the reason that you are shown some of
12 these -- some of this evidence and had a demonstration of
13 how people walk around in the apartment with the gun is
14 to show you, or try to prove to you, that because people
15 have these things in their house and because he was -- or
16 because Terrell was in the house with all these other
17 people who were doing all these other things that they
18 can prove something to you about what went on behind
19 Apartment Five on May the 30th.

20 Here is the problem: There is no doubt that
21 Che Carr, Storme Carr, Terrell, Steven Brown, Latrice
22 Smalls, Megan White, TaMequa DuRant, Tamara Dixon, all
23 these people were in and out of this apartment. There is
24 no question that Terrell and Troy had this gun in there.
25 There was no question there was a pistol in there. There

1 was no question these people were in there smoking dope,
2 doing a lot of things that I'm sure are things that when
3 your mom and your dad tell you not to be hanging around
4 with people like that, not to be doing stuff like that,
5 then because when something happens, then -- when
6 something bad happens, then you're going to be shown to
7 be -- you have guns like that, marijuana like that in
8 your house, therefore you're guilty. That is why you
9 were shown all that, to get you started thinking in that
10 direction.

11 The problem that the state has in this case
12 is not what happened inside this apartment. The problem
13 that they have is what happened outside. So how do they
14 get from Terrell, and all these people inside this house,
15 with a bunch of stuff that I'm sure they wish they had
16 never seen and done before -- I'm sure they wish they
17 never fooled with marijuana or had guns in the house --
18 but how do they get from Terrell Chandler's apartment and
19 the people that are in Terrell Chandler's apartment to
20 calling him -- to saying Terrell Chandler is the shooter
21 in this case?

22 Because that is what the state's position is.
23 That is what Ms. Shealy told you that she was going to
24 prove when she first started speaking to you back on
25 Monday. She said Terrell Chandler is the shooter. That

1 is their theory of the case.

2 Now, let's look at how do you get from this
3 apartment out to the back. The first person that they
4 got to take them to where they want to be, which is
5 Terrell is the shooter, is Megan White. She was one of
6 their first witnesses. Now, one of the things that Judge
7 Young is going to tell you when he in just a short while
8 tells you what the law is in this case, he's going to
9 give you some -- one of the main tools that you use in
10 deciding this case. One of the tools that he's going to
11 give you is that the state, the government, has the
12 burden of proof in this case, and what that means is that
13 they have to prove to you beyond any reasonable doubt
14 that what they're claiming to prove is what happened, is
15 true. They have to prove it to you beyond any reasonable
16 doubt.

17 So let's take a look at how they get from
18 this apartment where they say people are walking around
19 with this gun, where people are in there smoking dope,
20 let's see how they get to the back yard and to claiming
21 that Terrell is the shooter.

22 The first person they got is Megan White.
23 You remember her? Now, Ms. Shealy told you that these
24 people changed into all black. Remember? They went
25 in -- they changed clothes. They changed into all black,

1 and they lured Calvin Gibbs over there to their
2 apartment, and they put up Megan White to help convince
3 you of their theory of the case. And so Megan White came
4 in, and she said something, she gave y'all some
5 statements, she told y'all some -- gave y'all some
6 testimony that is very different from the first time that
7 she started talking about this case to the police and to
8 the prosecution. What she said was when she came in here
9 today, or came in here this week to support their theory
10 of the case, was that they all changed into black
11 hoodies.

12 Y'all remember that when she said they went
13 into the bedroom, Terrell's room, and they had on
14 different clothes and they came out with black hoodies
15 on. That sounds like four guys dressing in all black to
16 lure somebody over to their apartment, right? And that
17 is what they're trying to prove. Well, we had the
18 opportunity to ask some questions of some of the other
19 folks who they don't dispute are in that apartment.

20 We had the opportunity to question Steven
21 Brown. I think you probably understand Steven Brown is
22 not on our side in this case, and we had the opportunity
23 to ask him questions, and what did he say? Nobody
24 changed clothes.

25 So they have a witness to try to get them

1 from inside this apartment to saying in the back that
2 Terrell Chandler is the shooter, and one of the first
3 people they try to get to persuade you of that is a woman
4 who forgot to mention when she was talking to the police
5 two years ago that people changed into black hoodies and
6 somehow or another the other people and Latrice Smalls
7 was also -- we asked her about that too, and she said
8 nobody put on hoodies.

9 Now, they might put on all black, and I'm
10 going to get to that in a second, but we know Megan
11 White, and Megan White said they put on hoodies. And
12 their star witness, Steven Brown, who admits he was
13 there, who admits he was in the house, in the apartment
14 at the time, said nobody changed clothes. Nobody had
15 hoodies.

16 Now, the fact that one of the other tools
17 that Judge Young is going to tell you to use in analyzing
18 the facts in this case is your common sense, your life
19 experience. You got two people, Megan White, Steven
20 Brown, and Latrice Smalls who are all in this same
21 apartment, and so they bring them here to prove the
22 theory of changing into all black and luring these people
23 over there.

24 And Steven Brown said nobody changed. And
25 here is the other thing you have to remember about Megan

1 White. See, you got to have everybody changing into
2 hoodies and acting as a group to support the claim
3 they're trying to make here. So when Megan White shows
4 up to testify for y'all, her testimony has changed.
5 She's got them in hoodies, and remember this: When
6 you're evaluating whether you have any reason to doubt
7 Megan White taking us out here into the back of the
8 apartment, if you have any reason to doubt what Megan
9 White says, look at the facts that Steven Brown said.
10 Storme Carr had on a white T-shirt.

11 Now, Megan White has changed her story in a
12 number of ways, but the most significant thing she told
13 y'all is the truth, and she recognized we were going to
14 have a chance because she had been prepared by the
15 prosecutor's office. That's fair. You should prepare
16 your witnesses. She had been prepared. She knew she was
17 going to be attacked on that issue because she was making
18 a huge change in her statement, but she wanted y'all to
19 know this is the truth now. What I'm telling you is the
20 truth, and she forgot to mention the hoodies. It's just
21 a minor detail.

22 The second witness that they bring in to take
23 us from inside the apartment and a bunch of people enter
24 what Latrice Smalls calls a chilling place, a place
25 everybody hung out, place everybody goes to chill out,

1 the person -- the next person or one of the witnesses
2 that they bring in to say that Terrell Chandler was the
3 shooter, to get them from inside the apartment where, no
4 question, people were acting stupid, is Steven Brown.
5 Steven Brown tells you that he was just simply standing
6 here in the breezeway, not doing -- you know, talking on
7 the phone, smoking a cigarette. Didn't have anything to
8 do with anything, and when he heard the shot, he says
9 now, as opposed to what he said two years ago, he says
10 now that Terrell walked up to the car with a gun and he
11 heard a shot, and he ran from inside the -- ran through
12 the back of the breezeway, around the other side of this
13 apartment building, and back to the side where Mr. Gibbs'
14 car was.

15 Does anybody do that kind of thing?
16 Mr. Brown is going to get some kind of deal for his
17 testimony. He was out on the street for 18 months before
18 he was arrested. He told a story that didn't incriminate
19 himself or really anybody else. He basically said that
20 he saw what went on in the back, he saw the twins out
21 there. He saw Terrell out there, but he wasn't saying
22 anything, like, Terrell was walking up to the car with
23 this gun, and he admitted, he thought that he was out of
24 this case. He didn't think he had anything to worry
25 about, and then 18 months after this shooting in the back

1 of this apartment, Steven Brown is arrested.

2 Now, when Steven Brown is arrested, he
3 changes his statement. Now, one of the things you're
4 going to have to look at in this case is a number of
5 their witnesses, by my count, almost all -- all about two
6 of them, have significantly changed their statements from
7 the time that they first gave them. Some of them have
8 changed them two or three times to the statement that
9 they give when they come in here to testify, and,
10 amazingly enough, each time they change it, they change
11 it in a way that fits Detective Osborne's theory of the
12 case.

13 Detective Osborne's theory of the case has
14 been, as you know, from the very beginning, that he
15 thinks Terrell Chandler was the shooter. He called him
16 that in the warrant that he signed back on June the 3rd
17 two years ago, of 2008. You have to look -- when you're
18 looking at Steven Brown and how they get from a bunch of
19 people hanging out in the chilling place, wanting to buy
20 dope and something terrible and tragic happened in the
21 middle of a dope deal, it doesn't have to be any kind of
22 conspiracy. Stupid stuff happens when you're playing
23 around with guns.

24 Steven Brown told you and testified that the
25 twins are crazy. Storme and Che Carr will set you up,

1 were his words. They'll do stupid stuff to get you in
2 trouble. And so their problem in getting from this
3 apartment in here where people are smoking dope, having
4 guns, walking around doing stupid stuff to a plan, which
5 is what they say to lure somebody over there and shoot
6 them or rob them, whichever one of the theories, they
7 brought Steven Brown here, and for 18 months they didn't
8 think they needed him, but as we get closer to trial and
9 knowing, as Detective Osborne has testified to himself,
10 that people change their statements when they get
11 charged. He knows that.

12 But people change their statements when they
13 get charged and they need somebody, and they know Steven
14 Brown is there and they charge him, and Detective Osborne
15 knows that being charged with murder is an intimidating
16 thing and he knows that it's a tactic, as he used with
17 Megan White, to make sure she told a story that fit with
18 his theory of the case. He's willing to tell them, I
19 could charge you with giving false information to a
20 police officer if you continue to tell the story you're
21 telling. If it doesn't change to what I have decided is
22 the truth, you're facing a criminal charge.

23 I want to say at this point, I'm not saying
24 that Detective Osborne is a bad guy. I think he's a good
25 guy. I'm not supposed to give you my opinion. There is

1 evidence Detective Osborne is a hardworking policeman.
2 Okay? That's a fact, and we can't get away from that,
3 but as Detective Osborne told you, they used tactics.
4 They lie to people to get statements. They don't see
5 anything wrong with that.

6 He falsifies documents to get statements. He
7 understands that being arrested for murder is
8 intimidating, and he does what he can to tell people they
9 could be locked up for telling a story that doesn't fit
10 with his theory of the case. All of these are police
11 techniques that are used, and he's not by any means the
12 only policeman that uses those techniques, and there are
13 probably times when that is appropriate, but y'all are
14 going to have to judge, and part of your decision about
15 does this really -- I have a doubt, a concern, about why
16 these people changed what they're saying to fit with
17 their theory of the case?

18 You have to look at those techniques and how
19 they're used. Detective Osborne is a very hardworking
20 guy. He's just stuck with people like Megan White and
21 Steven Brown and these other witnesses who cannot tell
22 the same story twice, running to save their lives. They
23 have told -- in Megan White's situation, she's told a
24 story about, to Detective Osborne, Taliban robbed Che,
25 that a story that fit with what Detective Osborne wanted

1 to hear, and then this afternoon you heard from Art
2 DeGiovine who tells you that a couple weeks later she
3 tells a story where she wasn't even inside this
4 apartment.

5 And so what I am asking you to do is when you
6 get back there and start analyzing how you get from a
7 bunch of people that are sitting around wanting to buy
8 some more dope and smoke some more dope out to the back
9 yard where they were claiming that Terrell is the
10 shooter, you got to look at why and how these people came
11 to change their statement.

12 Look at some of the techniques that the
13 police used in this case, because one of their own
14 witnesses -- and don't imagine that these techniques
15 don't work, because remember when Troy White testified
16 here a couple of days ago? That is Terrell's roommate.
17 Y'all remember him? He was the guy that works for the
18 city and somewhere out at Citadel Mall, walked home that
19 night, and he said that when he sat down to be
20 interviewed by one of the detectives the night or early
21 morning hours when they searched his apartment and they
22 felt pressured by the police and he told them something,
23 he said -- I think he said he told them -- I'm sure he
24 said he told them that he had seen Che playing with this
25 gun, but he hadn't, but the reason that he said something

1 that he knew wasn't so was because he felt coerced.

2 He said that the police came to him and told
3 him that they knew Che had something to do with it, and
4 he felt like they wanted him to say something that went
5 along with it. So yeah, I'm not saying that Detective
6 Osborne is doing something wrong. He's a hardworking
7 guy. He used accepted standard police techniques, and
8 he's working very hard in this case. He is working very
9 hard to make sure that he brings a case based on that
10 theory, but the problem that he has is when you got
11 witnesses, the caliber of some of these folks, they're
12 willing to say anything.

13 So to get from inside this apartment where
14 all this stuff, dope smoking and all that is going on and
15 people want to buy dope and need some more to the
16 scenario that they want to create for you outside the
17 apartment, they have to use Steven Brown.

18 And Steven Brown, in addition to changing his
19 story, tells us that he has seen the twins playing with
20 the gun. He has seen the twins over there at the
21 apartment, by themselves, playing with the gun, and to
22 him, he's told other stories about this case that don't
23 match what he said up here. And it's just all words to
24 him, remember that? He just said that's just what you
25 say.

1 And he tells us that there were no hoodies,
2 that nobody changed into hoodies, nobody changed clothes,
3 but now he's changed his story, and guess what? He knows
4 that Detective Osborne has a theory of the case, and
5 Detective Osborne testified about this from the very
6 beginning, that he thought that everybody out there had
7 something to do with the shooting. And that has been his
8 goal, is to convict -- excuse me, to charge everybody out
9 there, and so what he's done is -- and he recognizes that
10 there might have been more than these four people out
11 there.

12 We've got a guy who has a low fade haircut
13 who's been described by eyewitness to this over and over
14 and over, and we know from looking at pictures in this
15 case that this is an open area over here. People are
16 back and forth here all the time.

17 And Steven Brown knows that there is more
18 than one tall guy out there behind that apartment that
19 night, and he knows that Detective Osborne's theory of
20 this case is that one of those tall guys did something.
21 And he's changed his story to make sure that that tall
22 guy that gets charged in this case is not going to be
23 him, Steven Brown. He says all he did was stand out
24 there in that breezeway, and when he heard this shot, he
25 runs up the north end, around this apartment, comes back

1 the other side.

2 That's all he's done. He's made sure to keep
3 himself out of this. Now, one of the things you're going
4 to have to look at when they're trying to get Steven --
5 they're trying to get Terrell from somewhere inside this
6 apartment to being the shooter outside is that they've
7 got to show you beyond any reasonable doubt that he was
8 the shooter. But if you don't want to believe Steven
9 Brown, if something about the way he changed his story
10 about not being arrested for 18 months and now he's
11 coming here to say now he remembers it's Steven -- that
12 Terrell was the shooter, if something about Steven
13 Brown's testimony gives you a reasonable doubt, if
14 something about Megan White now saying they all put on
15 hoodies and she saw Rell going out the back door with a
16 gun in his hand, if something of that gives you a
17 reasonable doubt, they got a backup theory.

18 They got an alternate theory. Now, the
19 problem with that, and one of the things that you got to
20 look at when you're analyzing this evidence, is that we
21 learn in the course of our life that the truth -- one of
22 the features of the truth is it remains constant. It
23 doesn't change when your position in life changes. It
24 doesn't change once your needs change. It doesn't change
25 when you've been outside and all of a sudden you're

1 arrested and you need to get out and all you can do is
2 trade your story for the chance of getting out. The
3 truth remains consistent.

4 And either Terrell was the shooter, which is
5 what Ms. Shealy told you at the beginning, or he wasn't.
6 But just in case y'all can't go along with that, just in
7 case the reasonable doubts about the witnesses they used
8 to get from inside this apartment to Terrell being
9 outside at that time -- I mean, no question people were
10 in and out that night, dope smoking going on, dope buying
11 going on, and you had these crazy twins there who will do
12 anything, or who would set you up, as Steven Brown says.

13 If you can't go along with that, if you have
14 a reasonable doubt about that, they got a back-up theory,
15 and that is he was setting something up. He might not
16 have been the shooter, he was just helping out. He was
17 setting up this gun out in a recycling bin that afternoon
18 before, right? Remember that testimony?

19 One of these young women who lives out there
20 at the -- two of these young women who live out there at
21 the apartment complex, or near the apartment complex,
22 tell you that they were out there talking, and one of
23 them was sitting on a recycling bin. And they saw, or
24 one of them says she saw -- the other one managed not to
25 see it -- but one of them saw Terrell, she says, put this

1 gun in a recycling bin. It's a little larger than this
2 trash can here, and in order to hide it, he puts it in
3 this recycling bin and comes -- now, bear in mind, they
4 want to try to prove to you in alternate theory, theory
5 B, if you don't -- if you have some reasonable doubt
6 about Terrell being the shooter, what they want to prove
7 or what they're trying to prove is that he hid, and I use
8 that term very loosely, hid the gun in a recycling bin in
9 the back yard, I guess they're going to argue in
10 anticipation of putting on those black hoodies.

11 What she says is, in support of alternate
12 theory B, if you don't accept Terrell the shooter theory
13 is that they were sitting on this recycling bin in the
14 breezeway, remember that, and she says Terrell came up.
15 Now, this is Terrell's apartment here, number five, and
16 so in order to hide the gun in preparation for the hoody
17 plan, Terrell comes up, tells them to get off the
18 recycling bin, walks to his apartment in the front here,
19 with the recycling bin, puts that thing in the recycling
20 bin, and, remember, according to her, walks this way in
21 front of all those houses -- you know, across this
22 street, approximately where y'all are sitting.

23 Several witnesses have identified it as a
24 bunch of old ladies that are constantly calling, raising
25 cane about them making too much noise, you know, cars

1 there all time of night, I guess, that kind of thing, but
2 in broad daylight, about 5:00, Terrell, in order to hide
3 a gun, walks out his front door with a gun, carries it
4 around the north end of the building and around to the
5 back, and, in order to hide it, puts it beside his back
6 door.

7 Now, that's how they support theory B. So
8 when you're analyzing the evidence in this case, you have
9 to look at the testimony of how they get to all the
10 conclusions that they want you to reach about Terrell
11 being the shooter or Terrell being somebody who sets up
12 the black hoody, luring them over there to shoot the dope
13 dealer.

14 To support theory B, they have -- I believe
15 that young woman's name is Amanda Mack. It's either
16 Amanda Mack or Naomi Bryant, one of those two, and they
17 say -- excuse me, one of them says he walks all the way
18 around that building and comes back and puts the gun
19 beside -- leans it in the recycling bin beside the back
20 door.

21 So the question that you have is how -- is
22 that legal? Is that true? And the tool that you have to
23 apply, and, in fact, the law in this state is that you
24 have to look at that evidence and decide, do I have a
25 reasonable doubt about that? Is that the kind of thing

1 that I would believe in order to convict someone of
2 murder on either their theory A, that Terrell is the
3 shooter, or theory B?

4 And you have to consider that since they
5 probably recognize you're going to have some problems
6 with theory A, given Megan White's and Steven Brown's
7 changed testimony regarding their theory of the case and
8 because theory B supported by these two girls on the
9 recycling bin, one of whom didn't see anything, or never
10 mentions the gun, and the fact that in order to go on
11 theory B, you got to have a plan. Okay?

12 I mean, theory B is based on Terrell sort of
13 organizing something, I guess. I'm not sure of the word
14 she's going to use, but setting something up, and so in
15 order to do that, it would seem to me there would have to
16 be some conversation about it.

17 Now, one of the obvious participants -- he
18 denies it, but one of the obvious participants in theory
19 B, the setting up some kind of dope deal to lure somebody
20 over there, would be Steven Brown, right? He was clearly
21 over there, and you heard Steven Brown testify for the
22 better part of two hours, and you never heard him say
23 once, not one time, that there was one word out of
24 Terrell's mouth or anybody else's about any kind of plan.
25 Nothing.

1 You go there, you take the gun, you do this,
2 you do that. He just changes his story to fit the theory
3 of the case, so he just adds in a couple of facts that
4 help support that theory. Then he says he saw Terrell
5 Chandler walking up to the car with the gun, heard the
6 shots, and then he took his lap around the north end of
7 the building.

8 So when you're analyzing this, as Judge Young
9 is going to tell you, it's not just a tool that you use,
10 is there something about this that gives me a reason to
11 doubt it, it's the law, because they have the burden.
12 They have to prove beyond any reasonable doubt, whether
13 they want to prove it under theory A or theory B. And
14 what you have to remember is since they recognize sure
15 that they have some problems under theory A or theory
16 B that they have now come up with some letters that they
17 have had Steven Brown read at some length to y'all, that
18 they contend are evidence, I guess, of -- I don't know,
19 theory A or theory B, and so they have them read to y'all
20 letters from somebody who has known Steven Brown most of
21 his life, who is close to Steven Brown.

22 And somebody who knows how police officers,
23 how they plan to see what people say when they change
24 their statement, how they use the -- informing people
25 that you could be arrested for giving false information,

1 how they use lying to folks, telling them that they have
2 evidence that they don't have in order to get statements,
3 and so knowing that, he tells -- and knowing that Steven
4 has been arrested 18 months after this happened, and as
5 you heard Detective Osborne say, they didn't have any new
6 evidence. He got arrested in November of 2008. They
7 didn't have any new evidence in October of 2008 against
8 Steven Brown. They didn't have any new evidence against
9 Steven Brown in September or August or July or June or
10 May.

11 They didn't have any new evidence against him
12 for over a year. They just decided primarily that they
13 wanted to see if he was going to help with their theory
14 of the case, and he did, and he's going to get a deal for
15 it, and so Terrell sends Steven Brown a letter, saying,
16 See? All they doing is saying, let's lock up Steven
17 Brown and charge him with murder to see if they can scare
18 him up enough.

19 And he did. He changed his statement.
20 Terrell is telling him, don't dare let the police or
21 Detective Osborne tell you I called your name; in other
22 words, that I'm making the statement against you. He
23 used that kind of false information to get Steven Brown
24 to change. So you need to evaluate why they are trying
25 to use that kind of information, that kind of evidence,

1 to get over these witnesses that they -- the problems and
2 the inconsistent statements with these witnesses that
3 they have to view to get from inside the apartment to a
4 killing outside of the apartment.

5 So when you look at this, when you consider
6 this evidence, you need to say that I have a reasonable
7 doubt in my mind. Is the fact that Cherelle Anderson --
8 who saw this entire event at a little more than arm's
9 length, who over and over and over and over has said that
10 she saw Che Carr standing outside that window, she saw a
11 guy five five, five six, white shirt, she doesn't say
12 anything about black hoodies, she doesn't say anything
13 about a black T-shirt. She saw a white shirt. She heard
14 somebody making a dope deal.

15 She saw a guy five five, five six, twists or
16 dreads, but she's not said that once, she's not said that
17 twice, she's not said that three times, she said that
18 four times, and the only other person that she says she
19 can identify is someone taller than a guy who is five
20 seven, and he had a low fade hair style. At the time,
21 Terrell had braids.

22 And what you need to consider and remember in
23 this is that because of the way we go about making
24 decisions, what makes this difference work is that we
25 hold the government to its burden. The law requires that

1 they be held to their burden, that they've got to prove
2 their case. I don't want you to think in considering
3 this case that this is a contest between Cherelle
4 Anderson's story and the story that is basically
5 Detective Osborne's theory of the case.

6 You have to look at their theory of the case,
7 whether it's theory A or theory B, and then look at
8 Cherelle Anderson and the fact that she said over and
9 over and over, I saw it, I saw it, and it was Che Carr.
10 You have to look at that and say, does that give me some
11 hesitation about saying -- does that give me a reasonable
12 doubt about saying forever and ever, because this
13 decision now, does that give me some doubt about whether
14 or not their theory of the case is true?

15 Remember, after talking with Detective
16 Osborne, she's made a little change in her statement.
17 She says that maybe there was somebody standing behind
18 Che holding the gun, and you have to consider whether in
19 the use of their police methods, tactics, when we're
20 dealing with some of these folks that we're dealing with
21 here, as you see from Troy White's testimony, they're
22 intimidated. They're scared. They're saying what they
23 think the police want them to say.

24 That is what Troy White said. He said what
25 the detective wanted him to say, and so you have to look

1 at this and say does Cherelle Anderson's identification
2 two years ago, over and over and over again, saying Che
3 Carr was the shooter give me doubt about this case?

4 So what Judge Young is going to tell you in a
5 few minutes, or in just a short while, is that in every
6 instance, in order to fulfill the duty the constitution
7 gives us, the United States constitution and our state
8 constitution, what makes this -- excuse me. What makes
9 this society is that we make the government prove their
10 case and that in an instant, in a situation where they
11 come in with what is clearly a terrible tragedy, what is
12 clearly something that never should have happened but
13 something where somebody who their star witness says is a
14 crazy, crazy guy who will set you up and do whatever,
15 goes out with a gun and shoots somebody, then in order
16 for us to continue to live in a lawful society, we have
17 to make them show us believable evidence that their
18 theory of the case is true.

19 Because other than that, we are just taking
20 what is a terrible situation and saying, Everybody that
21 is out there, we've got to lock them up. They're not
22 entitled to a conviction until they overcome the kind of
23 witnesses that they brought in in this case.

24 So we ask you to consider the evidence that
25 they have brought to you, theory A, theory B, and take a

1 look at how they get from what was in this apartment, the
2 outside, when the only person who doesn't have a dog in
3 this fight says that she saw Che Carr running up to the
4 car, running up to the car with that gun. That, in
5 itself, is reasonable doubt, and when you hold government
6 to its burden, proving their case beyond a reasonable
7 doubt, the only verdict in this case is not guilty.

8 Thank you.

9 Excuse me just one moment. I do have one
10 more thing I need to bring up. One of the last things
11 when you're looking at the evidence that they put up,
12 theory A, theory B, whichever one they're going to ask
13 you to go with, is this letter that Mr. Dawson has
14 testified probably came from Che Carr to Terrell. And
15 you know these people are sending letters back and forth
16 all the time, and so he said, all jokes aside, I ain't
17 mean to put you in this shit, but I couldn't take that
18 charges at that time, man. I'm sorry for even put you in
19 this shit. Them police keep telling me you did it. So I
20 tell them you did it. The way I see it we is already in
21 this shit so we might as well ride the bitch out to the
22 end. They talk about they're going to charge me with
23 some before and after the fact of murder. I ain't know
24 how much they supposed to give us but fuck 'em. Man,
25 like I say, my bad for putting you in this. I ain't know

1 I been gone kill dog. That shit just happened.

2 That's the letter that's from Che, the twin,
3 who will set you up. So those are facts you need to
4 consider when you evaluate whether they have met their
5 burden of proving to you the believable evidence that the
6 shooter was Terrell.

7 So we ask you hold them to that verdict and
8 return a verdict of not guilty. Thank you.

9 THE COURT: All right. Ms. Shealy?

10 MS. SHEALY: May it please the Court: Good
11 afternoon. Think about Cherelle Anderson. There she was
12 with her boyfriend of many years, and they're running by
13 to get the Waffle House food to take over to her
14 apartment to eat, and they make that last stop. And it's
15 night, and it's late, and she's in an area of West Ashley
16 she's not familiar with. And they don't find the place
17 at first.

18 There are phone calls to Calvin, and finally
19 there is the guy. Waving them in. He's been lured over,
20 yes, he has. And he's waving him in, and that is
21 absolutely one of the twins: Short, he's got the dreads
22 or the twists, his hair is out to the side, and there are
23 Calvin and Cherelle, pull into that back area, back of
24 the apartment complex. It's dark outside, and her
25 boyfriend has the conversation with the twin about drugs.

1 And he gets it together for them. He puts
2 some powder in a dollar bill, and what does the twin say?
3 The B has got my money. And so he goes, seemingly, back
4 into the apartment, or over to the breezeway or wherever,
5 but Cherelle knows she doesn't feel very comfortable.
6 It's taking too long.

7 And the next thing she knows is right at that
8 window where Calvin is seated is the face of that twin
9 again and the barrel of a gun. There has been a lot said
10 about whether or not she said she saw them running up.
11 She tells me, she didn't say she saw them running up, but
12 I could see how she would have, number one, thought they
13 ran up. People aren't going to take their time when
14 they're carrying an AK47. They're not going to take
15 their time when they want to rob or kill someone. You
16 get there fast.

17 You don't want to let the person see you
18 coming. And when she sees that gun, what is the next
19 thing that happens? It goes off. There is no time in
20 between, but what did she tell us? Who else approaches
21 the car? A taller guy, and she absolutely does say a low
22 fade. Well, let's talk about that for a second.

23 When you've got two faces coming at you, and
24 one of them has got the hair out and the other one,
25 looking at the booking report of Terrell Chandler, is

1 slicked back into a braid, I could see how she would call
2 that a low fade by way of comparison. One has got the
3 hair out, one doesn't.

4 And what immediately happens after the shot,
5 one of the guys says, I got you, N, and Calvin starts
6 backing up to get the heck out of there.

7 You see the acceleration marks in that yard,
8 and Cherelle is having to help steer, is scared to death.
9 She sees two other people, and they are getting out of
10 that neighborhood as fast as they can, and, in addition
11 to all of that, she is calling 911.

12 David Osborne testified about the difference
13 between the time of the telephone call to the twin and
14 the 911 call. It's like five minutes, and a lot of
15 people's lives were turned upside down.

16 But isn't it remarkable what all Cherelle
17 Anderson frankly does see? And thank God she did. She's
18 paying attention to that face in the window. She knows
19 there is a taller guy out there. She knows he has on
20 dark clothing. She is observant, powerfully so,
21 considering all she was living through at the moment.

22 Let me ask you to consider something for a
23 second. Do you think for one second Cherelle Anderson
24 wants the wrong person punished? Of course not. And
25 she's a young girl who did give several statements in the

1 case, and, as Detective Osborne told you, each time they
2 become more detailed. She's not, as the defense likes to
3 keep characterizing it, changing her story. She's giving
4 greater details.

5 She kept all her statements for all these
6 years. That's how important this is to her. Why in the
7 world would she in any way want the wrong person
8 convicted? She doesn't. And, frankly, it's offensive to
9 suggest that she has done anything wrong.

10 She didn't come in here and tell y'all, Oh, I
11 can identify Terrell Chandler. She didn't do that,
12 because she can't. She's being truthful. All she can
13 tell you is she sees one of the twins at the time of the
14 drug deal and the twin is back at the car window after he
15 walks away, seemingly to get money. And there is a tall
16 guy with him.

17 That tells you who the other guy was: Steven
18 Brown. Now, Mr. Slade wants to keep telling you, Oh,
19 Steven Brown, he's changed his story too.

20 Baloney. Back in July, remember, I asked
21 him, when he gave his first statement, July after this
22 event, who does he tell the police officers had the
23 rifle? Terrell Chandler. He wrote it in his own
24 handwriting. After he does get arrested and he gives a
25 statement to Detective Osborne, again, who does he say

1 shot Calvin Gibbs? Terrell Chandler.

2 You saw his face. You saw him seated there,
3 and the judge is going to tell you that it's your role to
4 judge the credibility of the witnesses, whether they're
5 believable or not. Did he look like a man that was happy
6 to be here? He has known Terrell Chandler since they
7 were in diapers. This wasn't an easy thing for him to
8 do. And let's talk a second about Mr. Slade continually
9 saying, oh, their theory of the case.

10 As Detective Osborne told you, this is about
11 facts and evidence. It's not about theories. It's sort
12 of preposterous to think, Let's develop a theory and then
13 let's just stick with it.

14 This is the criminal justice system. That is
15 not how it works. Steven Brown, who had been Terrell
16 Chandler's friend since they were babies, told you, It
17 was Terrell Chandler who shot in the car. It was Terrell
18 Chandler at the car, pointing the rifle in the car, and
19 what Steven Brown told you was he heard him say, Give me
20 all your money, or, Give me something, something to that
21 effect. You can remember yourselves, and that was said
22 before the shot, and Steven Brown circles around the
23 building. Let's think about that for a second, because I
24 think it's odd.

25 If I just heard an AK47 go off, I believe I

1 would have run elsewhere. But I don't live over on
2 Battery Avenue and my friends don't live that way, but
3 Steven Brown was scared but still curious. He went
4 around that building to still see what was going on. He
5 told you that. It's not great. He was right there in
6 the thick of it as well.

7 Back to Cherelle Anderson for a second.
8 Remember, she wanted her pocketbook. She wanted to look
9 at those statements again. She had taken the time the
10 night before she came to testify to look at all her
11 statements again, and what is so interesting I think is
12 Mr. Slade didn't ask her what happened that night. He
13 didn't ask her what she saw. He didn't ask her what she
14 did. He didn't want to hear that. The only thing he
15 focussed on with her was, well, now, didn't you say this
16 on the first occasion? Didn't you say this on the second
17 occasion?

18 Let's talk about when Cherelle Anderson gave
19 her statements. The first time she is blocks away from
20 where a gun blast just deafened her and killed her
21 boyfriend. She's on the side of the road with the police
22 officers, and where does Cherelle Anderson go while all
23 these guys are hiding out?

24 She goes to the hospital where Calvin dies,
25 and then she goes home, and when she gets home, who's

1 already there? The police. This is a woman who lived
2 through the most horrific evening most of us could even
3 imagine, and she is telling what happened on a day that
4 she has been in a vehicle with a gunshot like that, lost
5 a loved one, probably scared to death because she knows
6 those thugs down there saw her. She knows they know
7 there is a witness, and we're going to judge her
8 critically about small details? Small details, nothing
9 significant.

10 Keep in mind that what she tells us
11 essentially is important and what was important in David
12 Osborne and directed his investigation was there wasn't
13 just one person out there that night acting solely.
14 There was one person with the rifle, one person who
15 pulled the trigger on that rifle three times until it
16 jammed, one person who shot that rifle in the
17 neighborhood which teenagers live above him and across
18 the street, in a neighborhood where when you go straight
19 that way you hit Highway 61. There was one person who
20 did that, but there were three others in the thick of it.

21 And thank goodness Cherelle Anderson had her
22 wits about her enough to tell David Osborne, There is not
23 just one person involved. There was one right beside,
24 and there were two others running after the car, and what
25 is important is there wasn't just that one shot. That

1 AK47 was blowing bullets all the way to Highway 61.

2 Thank God Mr. Hoyes wasn't in a tall vehicle.
3 He told us he heard it whizzing over his head. He knows
4 what that type of bullet sounds like. This was a
5 complete disregard for human life, complete.

6 Let's talk about before the incident, during
7 the incident, and after the incident. Before, who had
8 the AK47, not just that night, but before that night?
9 Terrell Chandler. Remember Steven Brown telling you, he
10 got it. Went over to a buddy's house, he showed it off,
11 and Steven Brown sat right there and told you he thought
12 it was pretty cool. Steven Brown thought it was pretty
13 cool. They're taking their pictures with it.

14 That is something that made them proud. It
15 was fun. It was a bad gun. Terrell Chandler had the
16 gun. Who had the ammunition? Terrell Chandler. Who
17 told us that? Steven Brown. Who else told us that?
18 Troy White. Obviously, the tragedy to Calvin Gibbs'
19 family is great, but poor Troy White, a guy who worked
20 two jobs and walks home from work, living with the likes
21 of Terrell Chandler.

22 One gun didn't do it for Terrell, though.
23 You got to have your High Point. You want your
24 semi-automatic pistol too and the ammunition to put in
25 it. Where did he tell us Terrell would keep the rifle?

1 On his bed beside him, on his dresser, on the floor,
2 propped up, and, yes, I did have Latrice come down and
3 show you how he walked around that apartment with a
4 swagger, AK47 in hand. Like a kid who gets the money,
5 when you always hear the expression, it burns a hole in
6 his pocket, Terrell Chandler wanted to use that gun. He
7 wanted to use that ammunition.

8 Latrice saw him before with the AK47. Megan
9 saw him before with the AK47. Steven saw him before with
10 the AK47, and Troy saw him before with the AK47. It was
11 Terrell Chandler. It was his baby.

12 But who else sees it that night? The young
13 girls, Amanda Mack and Naomi Bryant. Now, think about
14 it, Naomi Bryant's family lives right across that street,
15 lives across Battery Avenue. Amanda Mack, her sister
16 Brittney, and her stepfather, Jamel Brown, Mr. Fox, they
17 live in that top right apartment of Battery Avenue with
18 two smaller children. Remember? She had the younger
19 siblings. And what does Terrell Chandler tell them that
20 night? First he says to Brittney, Get off your recycling
21 bin, Brittney.

22 She gets off of it. Now, please, let's just
23 think about this for a second.

24 Did Mr. Slade say the recycling bin was about
25 the size of this trash can? Do you remember when he was

1 showing it to a witness and asked what that smaller
2 recycling bin is, about what the size of it was? And
3 that recycling bin was about six times as big as this,
4 and the witness said, No, it was a bigger one.

5 So what does Terrell Chandler do? This is
6 the evening in question. He goes back to his apartment,
7 he gets his AK47, he takes that recycling bin, and he's
8 propping it up outside by his back door, preparation.
9 There is a plan, and you know it not only by his trying
10 to figure out how to prop it up outside by the back door.
11 That would be cool. Nobody would know I had it, and,
12 remember, the back part bends down.

13 He walks around the building, and Mr. Slade
14 wanted to make a big deal about that. Heck yeah. I
15 guess if you're in this apartment building and you've
16 seen the photographs and this is where Sycamore is and
17 that is where Hillsboro is, you're going to walk around
18 with an AK47, you are going to go the back way near the
19 bike path and around. What do our photographs show us?
20 Where is that recycling bin?

21 In the photographs that we have, right by
22 Terrell Chandler's back door. He's getting ready. And
23 he tells the girls, Now, don't come out back tonight.
24 You got to come out, go around.

25 A plan, preparation. But he goes a little

1 further with Mr. Fox, Jamel Brown. He goes outside,
2 Jamel Brown does, and he sits in his red car, and Terrell
3 Chandler comes up and what does he tell Jamel Brown?
4 You're going to hear some shots tonight. I don't want
5 you to get hurt. Go in the back. Can you imagine the
6 audacity to announce ahead of time, you're going to hear
7 shots tonight? He had a total disregard for the safety
8 of anyone else because what did he do? He warned four
9 people, Brittney, Amanda, Naomi, and Jamel.

10 You've seen the photographs of the
11 surrounding area. How many people did he not warn that
12 there would be shots that night?

13 Trouble. They call him Trouble. Remember
14 what Dan DeFreese told us. This weapon can shoot a
15 bullet that would pierce a bus, will go through a mobile
16 home. We're not playing around when we talk about an
17 AK47. I'll tell you who was: Terrell Chandler. It's a
18 toy. It's frightening to think about what may have
19 happened if that gun had not jammed that night. If you
20 recall, they found two shell casings from the rifle out
21 behind the building.

22 One, closer to Terrell's apartment, and the
23 other one in the outer corner going more towards that
24 empty field where -- heading towards 61. He could have
25 shot Cherelle. He could have shot William Hoyes, Tara

1 Patrick who was with William Hoyes, James Eidenberg who
2 was with William Hoyes. What did Steven Brown tell us
3 that Storme and Terrell had been talking about? This is
4 a phrase I hadn't heard until this case: Re-upping. He
5 was running low on his marijuana. He needed to re-up.

6 Let's think about what else happened earlier
7 that afternoon, because I think it's very significant.
8 Tamara Dixon, remember? She wanted to get a new
9 apartment. She needed a down payment. And the big man,
10 I'll give you the money. Just go by my apartment. My
11 cousin will take care of you.

12 What does Tamara do? She goes by the
13 apartment. She doesn't get taken care of. Terrell
14 doesn't have the money. Terrell was looking for
15 marijuana and Terrell was looking for money that night,
16 and Terrell was looking for trouble.

17 Those two girls that came in and testified,
18 Naomi and Amanda Mack, I'm not sure if the defense's
19 theory is that all these witnesses are coming in here to
20 lie about Terrell Chandler, but did those girls look like
21 they wanted to be in here doing this? And what did they
22 tell you they felt like when David Osborne shows up at
23 West Ashley High?

24 They get called out of class. The police are
25 there to talk to him. Do you think the police would have

1 told them what they did if it wasn't true? Yes, Terrell
2 was out there with that rifle earlier in the evening;
3 yes, Terrell was preparing; and, yes, Terrell warned
4 them.

5 Let's talk about the girls inside the
6 apartment, because despite the fact that Megan White says
7 there were black hoodies and Latrice says it was dark
8 clothing, the point is this, and we all know it: The
9 three of us can watch what happens in court and go back
10 after court and we all kind of remembered some details
11 differently, but what really happened, we know. So what
12 is significant about what Megan White and Latrice Smalls
13 tell you is that apartment had a different vibe that
14 night. These guys that were fun to be around, something
15 was weird.

16 And where are they going when they're making
17 their efforts to get ready? Terrell Chandler's room.
18 They come out with darker clothes. They both told you
19 that was odd. Megan, who was the last to arrive, tells
20 us she walks in. It's dark. The lights are off. There
21 is no music. There is no TV. The guys aren't even in
22 the house. Those people in the apartment tell you, those
23 girls, they were in and out, in and out.

24 They are getting ready. They are getting
25 ready, and what does Terrell Chandler say when he's in

1 that apartment? This is so telling. He says, It's
2 getting ready to go down. It's getting ready to go down.
3 We know the rifle was out that night. We know the High
4 Point 380 was out. We know he warned people. We know he
5 wanted money. He wanted drugs. I'll tell you what they
6 and those other people had on their mind: A felony. It
7 was getting ready to go down.

8 Evil intent. There was nothing good that was
9 going to come from this. They wanted drugs. They
10 probably wanted to rip him off, and they had that AK47
11 out there. Mr. Trigger Happy pulled the trigger. Who
12 went out with the rifle? Terrell Chandler. Who came
13 back in with the rifle? The girls tell us that. Terrell
14 Chandler.

15 Who owned it? Terrell Chandler. Who took it
16 outside? Terrell Chandler. He shot it. He shot it
17 again and he shot it again and it jammed. When they come
18 running back inside, it's significant that they all do.
19 As I told you in the opening, this is four guys up to
20 absolutely nothing good with a total abandonment of any
21 concern for anybody but themselves. What are they,
22 living out a video game, being all gangster?

23 Let's talk about the car itself. If Calvin
24 is seated here and Cherelle is there and the twin's face
25 it at the window and the barrel of the gun is in the

1 window -- because, remember, the shot comes from near
2 contact to Calvin Gibbs 12 inches back. That is how
3 close the barrel is.

4 But look how fast it is from the tip of the
5 barrel to the trigger. If Che or Storme Carr is right up
6 at the window, they can't manipulate this gun. It's got
7 to be somebody taller who is shooting him in his back.
8 What a coward. For one minute, do you think Terrell
9 Chandler would have missed out on this? Absolutely not.

10 And what happens afterwards just to tell you
11 how they're all in on it? What does Storme Carr do? He
12 unloads the High Point. Remember, Dan DeFreese told you,
13 When you're shooting it up, the shell casings come out.
14 You will see from the photographs they're almost like in
15 a little circle, celebrating, celebrating. And isn't it
16 significant that when they come in and do the search, is
17 this magazine empty? Absolutely not.

18 Were these guys humbled by what they did?
19 Absolutely not. It's full again. When the police find
20 it, it's full again. They've reloaded. They come
21 barrelling in that apartment. Where do they run?
22 Terrell's room. What do they do? They take off their
23 over shirts. They're there with their wife beater
24 T-shirts. Remember how Megan described it? And some of
25 them run to the bathroom to cleanse themselves, trying to

1 get the gunpowder off. Has anybody got Ajax? Where is
2 the Ajax? You find it in Terrell Chandler's room.

3 And who takes the shower? Who is the one
4 that needs the complete bath? Terrell Chandler. But
5 what do they do before they even wash up? They're still
6 fooling with the AK47. They're trying to unjam it.
7 Remember Steven Brown told you that when they're outside
8 when it jams, Terrell's trying to work it. He's trying
9 to get it going again. He wasn't finished shooting. He
10 had some more evil on his mind.

11 The house is still. The police come. They
12 see the blue light. They're laying low now, have no idea
13 how they're feeling. Maybe they're feeling like they're
14 about the coolest things in Charleston County. They're
15 laying low. And while they're laying low, Calvin Gibbs
16 is taking his last breath. Who gets rid of the rifle the
17 next day? Terrell Chandler.

18 Tamara Dixon told you, she goes over there,
19 car is running hot. Maybe the twin is there. Troop is
20 there. And he says, Tammy, could you take this rifle for
21 me because my son is coming over. That's not why he
22 wanted to get rid of that rifle, and who led the police
23 to that rifle? Che Carr, because he was there.

24 And he knows who Terrell Chandler gave it to,
25 and on that day, before Mr. Slade can say one word to any

1 of us about any theory, Tammy Dixon tells the police, I
2 got it from Terrell Chandler.

3 And, remember, once Terrell goes to jail, he
4 has another whole theory about why he gave that gun to
5 Tammy Dixon. Oh, it's because I'm Che and Storme's
6 mentor, so I was trying to take the gun from them and
7 keep them out of trouble. He has told lie after lie
8 after lie.

9 What do they find in that car? They find the
10 rifle, they find the banana clip, and they find boxes of
11 ammunition. Those guys were ready for more. Now,
12 Mr. Slade kind of changed his approach during the closing
13 argument, but with all the witnesses he was, like, Oh,
14 you came in and you met with the solicitor's office and
15 now you've given more detail.

16 Well, absolutely. No offense to the guys,
17 but when I'm asking questions, women tend to be a little
18 more detail oriented than David Osborne, but he got the
19 central facts from them but, I'm the one who asked what
20 all goes on in the apartment, as you can imagine, went
21 through a bunch of questions with them, as I should. I
22 represent the state. This is a criminal prosecution. I
23 need to know what happened.

24 The state is seeking one thing in this case,
25 one thing in the case of Storme Carr, one thing in the

1 case of Che Carr, and one thing in the case of Steven
2 Brown: Justice.

3 Let's talk about David Osborne for a second.
4 David Osborne did exactly what we would want detectives
5 to do. It's interesting to me that Mr. Slade keeps
6 wanting to sound like he took on a theory and ran with it
7 and wasn't going to change his mind. Quite the opposite.
8 Let me tell you what a lazy detective would have done.

9 A lazy detective, when they had Cherelle
10 Anderson identifying Che Carr as the shooter, would have
11 stopped there. Got an eyewitness ID. David Osborne
12 didn't do that. He worked this case, worked this case,
13 and worked it. An investigation doesn't just take a
14 couple of weeks. You are continually getting things back
15 from the labs, et cetera, and every time he can fine
16 someone to interview he interviewed.

17 He knew there were four guys. He wanted to
18 identify all four guys, and he wanted to make the right
19 decision about arresting the four guys. He took his time
20 and he followed every lead that he could follow.

21 We should be thankful for people like David
22 Osborne. Is there any reason a detective with the
23 Charleston police department, David Osborne, would want
24 to convict the wrong person? Why would we want to
25 convict the wrong person? Now, Mr. Slade wants to

1 characterize a legal doctrine as another theory.

2 Do some of y'all remember the saying all for
3 one and one for all? I think it was a Three Musketeers
4 club from the story? Well, under the law there is the
5 evil side, and that is the hand of one is the hand of
6 all.

7 Ladies and gentlemen: You've got your
8 trigger man. Terrell Chandler is the trigger man. I
9 don't think you're going to have difficulty coming to
10 that conclusion. But I, as an officer of the court, need
11 to explain to you that when you have four codefendants
12 and they are preparing and they are planning and they are
13 acting together, helping each other out, they're making
14 arrangements, there is the legal theory of hand of one,
15 hand of all, and that definitely comes into play in this
16 case.

17 It comes into play, frankly, with Che and
18 Storme and Steven Brown, but if you do have a problem,
19 for whatever reason, if you think that Terrell Chandler
20 is the shooter, he is absolutely guilty of murder under
21 the hand of one is the hand of all.

22 When have you one person with the weapon and
23 the bullet kills the victim, it doesn't mean that the
24 other people who are helping and planning get off. We
25 don't want people to combine to commit crimes. We don't

1 want someone to provide people with an AK47 and a pistol
2 and ammunition. We don't want people to lure someone
3 over for the purpose of robbing them and killing them.
4 People who are acting together and have committing a
5 crime, that is the hand of one, the hand of all.

6 Whose DNA is on the rifle? Terrell Chandler.
7 Who had the ammunition? Terrell Chandler. Who had the
8 weapons? Terrell Chandler. The apartment? Terrell
9 Chandler. Who gives Tammy Dixon the rifle the next day?
10 Terrell Chandler. Please look at his own words.

11 It was kind of hard to hear the other day
12 when we had the recording going on of his statement, but
13 you'll have the actual written statement back in the jury
14 room with you. He completely lies about that night.
15 First he tells David Osborne all about this vanishing gun
16 and appearing gun. I get up and the gun is there. I
17 come back out and the gun is gone, the same gun that all
18 these witnesses tell you he had for weeks before.

19 Oh, I was just at home playing Play Station
20 all by myself, Terrell Chandler's words. Well, Terrell,
21 why was Megan White's car parked out in front of your
22 apartment that night? You have the picture of it.
23 You're in your apartment all by yourself? Talk about
24 getting a theory and sticking to it. That is Terrell
25 Chandler. Then remember, Oh, I'm just holding that